SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

ALLAN M. LEAVITT vs. CYNTHIA A. PHILLIPS & others
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
FAR-27070

CASE HEADER			
Case Status	FAR denied	**Status Date**	10/18/2019
Nature	Tort: General	**Entry Date**	09/16/2019
Appeals Ct Number	2018-P-1132	**Response Date**	09/30/2019
Appellant	Plaintiff	**Applicant**	Plaintiff
Citation		**Case Type**	Civil
Full Ct Number		**TC Number**	1384CV03280
Lower Court	Suffolk Superior Court	**Lower Ct Judge**	Judith Fabricant, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
Allan M. Leavitt Plaintiff/Appellant	William J. Ruotolo, Esquire
Cynthia A. Phillips Defendant/Appellee	Mark C. Darling, Esquire Amanda Joy Cox, Esquire
Melissa Aebersold Defendant/Appellee	Ronald E. Harding, Esquire
Commerce Insurance Company Defendant/Appellee	John R. Callahan, Esquire Philip T. Tierney, Esquire
Geico Insurance Company Defendant/Appellee	Lynn G. McCarthy, Esquire David O. Brink, Esquire
United States Automobile Association Defendant/Appellee	Cathryn Spaulding, Esquire Karen Marie Connors, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
09/16/2019		Docket opened.
09/16/2019	#1	FAR APPLICATION filed for Allan M. Leavitt by Attorney William Ruotolo.
09/16/2019	#2	(IMPOUNDED) MOTION to waive with Affidavit of Indigency filed for Allan M. Leavitt by Attorney William Ruotolo. (ALLOWED forthwith. See 2018-P-1132).
09/16/2019	#3	MOTION for the Supreme Judicial Court to invite amicus briefs filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019	#4	MOTION for Chief Justice Ralph Gants to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).

DOCKET ENTRIES	
09/16/2019 #5	MOTION for Justice David A. Lowy to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019 #6	MOTION for Justice Barbara A. Lenk to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. No action necessary. Justice Lenk did not participate the court's decision in this matter).
09/16/2019 #7	MOTION for Justice Scott L. Kafker to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019 #8	MOTION for Justice Frank M. Gaziano to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019 #9	MOTION for Justice Elspeth B. Cypher to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019 #10	MOTION for Justice Kimberly S. Budd to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. (10/17/19. The motion is denied).
09/16/2019 #11	(Second) MOTION for Justice Kimberly S. Budd to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. See docket entry No. 10.
09/16/2019 #12	(Second) MOTION for Justice Frank M. Gaziano to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. See docket entry No. 8.
09/16/2019 #13	(Second) MOTION for Justice Scott L. Kafker to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. See docket entry No. 7.
09/16/2019 #14	(Second) MOTION for Justice David A. Lowy to recuse and disclose to be addressed prior to addressing the application for further appellate review filed for Allan M. Leavitt by Attorney William Ruotolo. See docket entry No. 5.
10/18/2019 #15	DENIAL of FAR application.

As of 10/18/2019 20:00

JUDGMENT AFTER RESCRIPT	Trial Court of Massachusetts The Superior Court
DOCKET NUMBER 1384CV03280	Michael Joseph Donovan, Clerk of Court
CASE NAME Leavitt, Allan M vs. Phillips, Cynthia A et al	COURT NAME & ADDRESS Suffolk County Superior Court - Civil Suffolk County Courthouse, 12th Floor Three Pemberton Square Boston, MA 02108

This action was appealed to the SJC or Appeals Court for the Commonwealth, the issues having been duly heard and the SJC or Appeals Court having duly issued a rescript,

It is **ORDERED and ADJUDGED**:

JUDGMENT/ORDER after Rescript: The original judgment (#158.0) is Affirmed. That all claims of the plaintiff against all defendants are dismissed. Entered on docket pursuant to Mass R Civ P 58(b) and notice sent to parties pursuant to Mass R Civ P 77(d).

JUDGMENT ENTERED ON DOCKET 10/23/19
PURSUANT TO THE FOLLOWING
AND NOTICE SENT
VERSIONS OF MASS.R.CIV.P. 77(d) AS FOLLOWS:

notice sent
10/25/19 (C.D.)

WJR CS
MCD LGM
REH DGB
JRC
PTT

DATE JUDGMENT ENTERED	~~CLERK OF COURTS~~/ ASST. CLERK
10/23/2019	X First

Date/Time Printed: 10-23-2019 15:08:29

SCV082\ 08/2015

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1132

ALLAN M. LEAVITT

vs.

CYNTHIA A. PHILLIPS & others.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This case arises out of an automobile accident between Cynthia A. Phillips, a Massachusetts resident, and Melissa Aebersold, a Vermont resident. The plaintiff, Allan M. Leavitt, was a passenger in Aebersold's automobile and was also a Vermont resident at the time of the accident. Leavitt brought a complaint alleging negligence against Phillips and asserting ten other claims against Aebersold, her insurance company, his own insurance company, and Phillips's insurance company. In Phillips's answer, she asserted a cross claim against Aebersold for negligence. All of Leavitt's claims, except his negligence claim against Phillips, were either dismissed on summary judgment or stayed pending a determination as to Phillips's

[1] Melissa Aebersold, The Commerce Insurance Company, GEICO Indemnity Company, and United Services Automobile Association.

negligence, and the case thus proceeded to trial solely on Phillips's and Aebersold's negligence. The jury concluded that Phillips was negligent but that her negligence did not cause Leavitt's injuries, with judgment thus entering for Phillips.[2] Leavitt's subsequent motion for a new trial on causation and damages was denied. On appeal, Leavitt raises numerous arguments with respect to the proceedings below. We affirm.

Discussion. 1. Personal injury protection. Leavitt's primary argument on appeal relates to most of the claims that he asserted against Aebersold; Aebersold's insurance company, GEICO Indemnity Company (GEICO);[3] and Leavitt's own insurance company, United Services Automobile Association (USAA). These claims turned on whether Aebersold was required, under Massachusetts

[2] At the close of Leavitt's case, Phillips and Aebersold moved for directed verdicts based on Leavitt's failure to prove an injury sufficient to satisfy the threshold requirements of G. L. c. 231, § 6D. The trial judge deferred decisions on these motions but ultimately, after the jury verdict, allowed both motions. After the jury verdict, the remaining claims that were stayed pending a determination as to Phillips's negligence were also dismissed.

[3] Leavitt's complaint named "GEICO Insurance Company" as a defendant. However, "GEICO Indemnity Company" is the real party in interest. In an attempt to fix this error, Leavitt and GEICO agreed by joint stipulation to amend the complaint such that all references to "GEICO Insurance Company" would instead be to "GEICO Indemnity Insurance Company." GEICO ultimately realized that this name, too, contained the erroneous inclusion of the word "insurance," and that error was fixed pursuant to a motion by GEICO. Leavitt argues that GEICO knowingly entered into a false stipulation to disguise the real party in interest, which he believes is still unknown. This argument is without foundation.

law, to purchase certain minimum motor vehicle insurance coverages, and in particular whether she had to carry personal injury protection (PIP).[4] Leavitt argues that Aebersold was required to carry PIP, even as a nonresident of the Commonwealth, because she spent more than thirty days in the Commonwealth in 1998.[5] In making this argument, Leavitt relies on G. L. c. 90, § 3.

General Laws c. 90, § 3, sets forth the requirements for nonresidents operating motor vehicles in the Commonwealth. The statute exempts most nonresidents from having to comply with the Commonwealth's motor vehicle insurance requirements,[6] with a

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[4] As against Aebersold, Leavitt asserted a claim for failure to carry PIP. As against GEICO and USAA, Leavitt asserted (1) claims for breach of contract arising from the denials of his PIP claims, (2) claims for unfair or deceptive acts and practices under Massachusetts law, and claims for bad faith conduct under Vermont law, arising from the denials of his PIP claims, and (3) claims seeking declaratory judgments that GEICO and USAA were required to pay his PIP claims. All of the above claims were dismissed on summary judgment, with declarations being entered that GEICO and USAA were not obligated to provide PIP coverage, and are addressed in this section. Leavitt also asserted underinsured motorist claims against GEICO and USAA. The underinsured motorist claims did not turn on the PIP issue and are addressed in note 10, infra.

[5] He further argues that if Aebersold was required to carry PIP, her policy with GEICO and his policy with USAA provided PIP due to both policies' out-of-State coverage clauses. Because we conclude that Aebersold was not required to carry PIP, we need not address this claim.

[6] This exemption applies only if a nonresident has complied with the "laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country [in which the motor vehicle or trailer is registered]." G. L. c. 90, § 3.

notable exception at issue here. That exception is the following: "no motor vehicle or trailer shall be [operated pursuant to this exemption] on more than thirty days in the aggregate in any one year or, in the case where the owner thereof acquires a regular place of abode or business or employment within the commonwealth, beyond a period of thirty days after the acquisition thereof." G. L. c. 90, § 3.

Leavitt's argument goes to the first of the two temporal limitations in G. L. c. 90, § 3. He interprets this language to mean that once a motor vehicle has been operated in Commonwealth for more than thirty days in the aggregate in any one year, the owner of that motor vehicle must comply with the Commonwealth's motor vehicle insurance requirements in perpetuity. He contends that Aebersold, who spent more than thirty days in the Commonwealth in 1998, still had to carry PIP at the time of the accident, two decades later. We disagree, as this interpretation of the statute would produce absurd results. See Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019) (statutory interpretation must avoid absurd results). We thus construe this language in G. L. c. 90, § 3, as requiring nonresidents to purchase the requisite motor vehicle insurance only during the year in which they have driven a motor vehicle in the Commonwealth for more than thirty days in the aggregate. See Commonwealth v. Chown, 459 Mass. 756, 766 (2011), quoting

G. L. c. 90, § 3 ("in the absence of the requisite liability insurance, a nonresident may not operate a motor vehicle in Massachusetts for 'more than thirty days in the aggregate in any one year'"). Once a year has passed, the thirty-day clock restarts.[7]

[7] Leavitt raises a variety of other arguments regarding the fact that his PIP-related claims against GEICO and USAA were all dismissed on summary judgment. First, he argues that the judge violated his rights of due process and equal protection by refusing to consider his requests for declaratory relief before granting summary judgment. This assertion lacks merit. Requests for declaratory relief are frequently resolved at the summary judgment stage, and the judge properly declared Leavitt's rights when granting summary judgment. See Rawston v. Commissioner of Pub. Welfare, 412 Mass. 778, 785 (1992) (with respect to resolving petition for declaratory relief at summary judgment stage, declaration of rights instead of dismissal should be entered). Second, Leavitt asserts that the judge erred in dismissing on summary judgment his breach of contract claims where there were material facts in dispute and where the judge made clearly erroneous findings of fact. He has not, however, pointed to any such facts or findings, and the argument is thus waived. See Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1630 (2019). Third, Leavitt argues that the judge erred in denying his requests for attorney's fees. Contrary to his assertions, Hanover Ins. Co. v. Golden, 436 Mass. 584, 584 (2002), does not support his argument; it involved an insured who brought a successful action for declaratory relief. Fourth, Leavitt argues that the GEICO and USAA insurance policies that were part of the summary judgment record were not "true and accurate" copies. This argument lacks foundation.

Leavitt also raises an argument with respect to how his PIP-related claim against Aebersold was dismissed. After the judge granted GEICO's motion for summary judgment, Aebersold prepared a motion for judgment on the pleadings based on the same legal arguments (i.e., that she did not have to carry personal injury protection because she had not been in the Commonwealth for more than thirty days in the aggregate in the year of the accident). Before Aebersold received Leavitt's opposition, a different judge held a hearing during which

2. Phillips's negligence. At trial, Leavitt made clear that, as against Phillips, he was seeking damages only for pain and suffering. He thus had the burden of proving that his injuries satisfied at least one of several statutory threshold requirements. See G. L. c. 231, § 6D (limiting recovery of damages for pain and suffering in motor vehicle tort actions to certain circumstances, including when plaintiff's medical expenses exceed $2,000). Leavitt raises two sets of arguments with respect to his proof of these threshold requirements: (1) arguments regarding evidence of his medical expenses and (2) arguments as to the weight of the evidence.[8]

We first turn to Leavitt's arguments regarding evidence of his medical expenses. Leavitt contends that the judge erred in denying his requests to obtain discovery from GEICO and USAA

Aebersold's motion for judgment on the pleadings was raised. Noting that the legal arguments had already been addressed in the ruling on GEICO's motion for summary judgment, the judge dismissed Leavitt's claim against Aebersold. We are not persuaded that this evidences ex parte communications.

[8] We note that Leavitt also alleged a claim for unfair or deceptive acts and practices against Phillips's insurance company, The Commerce Insurance Company (Commerce), related to Commerce's response to Leavitt's demand for settlement. This claim was stayed pending a determination as to Phillips's negligence and then dismissed. To the extent this claim was properly dismissed due to the fact that Phillips is not liable, the claim is addressed herein. Even assuming, however, that some portion of Leavitt's claim survived despite the fact that Phillips is not liable, Leavitt has not raised any arguments with respect to Commerce and any such arguments are waived. See Mass. R. A. P. 16 (a) (9) (A).

regarding any medical bills that they paid on his behalf. Leavitt has not explained, however, how any such payments are relevant to his negligence claim against Phillips. Leavitt further contends that the judge erred in prohibiting him from introducing Medicare summaries to prove the truth of the matter asserted therein, that he received medical care in excess of the $2,000 statutory threshold. See G. L. c. 231, § 6D. This is hearsay, and Leavitt has not articulated a single hearsay exception that applies.[9]

We next turn to Leavitt's arguments as to the weight of the evidence. As stated in note 2, supra, Phillips moved for a directed verdict based on Leavitt's failure to prove an injury sufficient to satisfy the threshold requirements of G. L. c. 231, § 6D. The trial judge initially deferred a decision on this motion but allowed it after the jury concluded that Phillips's negligence did not cause Leavitt's injuries. Leavitt argues that the judge erred in allowing Phillips's motion for a

[9] While G. L. c. 233, § 79G, sets forth procedures for the admission of itemized medical bills to avoid this common hearsay problem, Leavitt has not argued that the Medicare summaries are itemized bills. Even assuming that they are, Leavitt did not follow the procedures set forth in that statute. We further note that Leavitt's arguments with respect to GEICO and USAA may have been intended to address whether they were obligated to help him obtain itemized medical bills that complied with the procedures of G. L. c. 233, § 79G. The policy language that Leavitt cites in support of any such argument imposes no such obligation on either GEICO or USAA.

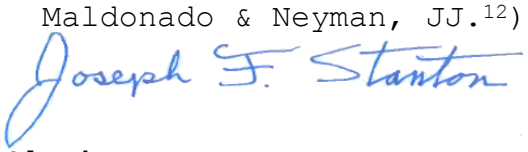
directed verdict and in denying Leavitt's subsequent motion for a new trial. Both arguments ask us to address the weight of the evidence. See O'Brien v. Pearson, 449 Mass. 377, 383-384 (2007) (setting forth standards of review for motion for directed verdict and motion for new trial). Both arguments fail because there was ample evidence that the automobile accident did not cause Leavitt's injuries. While Leavitt points to the testimony of his treating physician that the automobile accident caused radiculopathy, resulting in pain and numbness in Leavitt's arms and part of his hands, credibility of an expert is for the jury to decide. See Leibovich v. Antonellis, 410 Mass. 568, 573 (1991) ("The jury is entitled to discount, or disbelieve, the expert's testimony"). The jury had reason not to credit Leavitt's treating physician where there was evidence that (1) the accident was a minor one involving a low speed, soft impact, (2) Leavitt did not experience pain in his hands and arms until well after the accident, contrary to his own testimony, (3) neurological tests did not support a finding of radiculopathy, and (4) Leavitt suffered from a degenerative disease that could have caused the pain in his hands and arms.[10]

[10] The jury verdict also mooted Leavitt's underinsured motorist claims against GEICO and USAA. The only argument Leavitt raises as to either claim is that the judge erred in staying discovery pending a determination as to Phillips's negligence. This argument appears to go to Leavitt's ability to obtain discovery

3. Allegations of judicial misconduct. Lastly, Leavitt raises several allegations of judicial misconduct, including that the Superior Court (1) failed to address Leavitt's accusations of ex parte communications, (2) manipulated the docket, and (3) failed to disclose the name of a newly-inducted Superior Court judge who observed one of the hearings in this matter. Leavitt's accusations of ex parte communications and manipulations of the docket are without foundation, and the name of the newly-inducted Superior Court judge was in fact disclosed. All of these arguments are thus without merit.[11]

Judgment affirmed.

By the Court (Vuono, Maldonado & Neyman, JJ.[12]),



Clerk

Entered: August 27, 2019.

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regarding the medical bills that GEICO and USAA paid on his behalf, which we have already considered and rejected.

[11] We have carefully considered all of the arguments raised in Leavitt's brief. To the extent any additional arguments have not been addressed specifically herein, we have found them to be without merit. See Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

[12] The panelists are listed in order of seniority.

Notify

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL NO. 13-3280-A

ALLAN M. LEAVITT,
Plaintiff,

vs.

CYNTHIA A. PHILLIPS, et al.,[1]
Defendants.

Notice sent
06.02.14
cm
GPoHP
DOB
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MEMORANDUM OF DECISION AND ORDER ON DEFENDANT UNITED SERVICES AUTOMOBILE ASSOCIATIONS' MOTION FOR SUMMARY JUDGMENT

The plaintiff, Allan M. Leavitt ("Plaintiff" or "Leavitt") brought this action for damages he sustained while a passenger in a car driven by defendant Melissa Aebersold ("Aebersold") during a collision with a car driven by Cynthia A. Phillips ("Phillips"). Defendant United Services Automobile Association ("USAA") was Leavitt's motor vehicle insurance carrier. Defendant Geico Insurance Company ("Geico") insured Aebersold. Defendant, the Commerce Insurance Company insured Phillips. USSA has filed "Defendant United Services Automobile Association's Motion for Partial Summary Judgment" ("Motion"), which Leavitt has opposed. After hearing, USAA's Motion is **ALLOWED**.

BACKGROUND

The facts established by the Parties' Rule 9A(b)(5) statements, along with inferences drawn in favor of the plaintiff as opposing party, are as follows:

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[1] Melissa Aebersold, The Commerce Insurance Company, Geico Insurance Company and United Services Automobile Association.

This action arises from a two vehicle automobile collision that occurred on or about November 24, 2010 in Massachusetts. Leavitt was a passenger in a vehicle driven by Aebersold. His vehicle was not involved in this accident. At all relevant times both Leavitt and Aebersold were residents of Vermont.

Leavitt contracted with USAA for automobile insurance and obtained a Vermont automobile insurance policy ("Policy") effective at the time of the accident. His Policy provided Liability Coverage (Part A), Medical Payments Coverage (Part B), Uninsured Motorists Coverage (Part C), and Physical Damage Coverage (Part D).[2] Under Part A, Liability Coverage, the Policy states: "We will pay damages for BI [bodily injury] or PD [property damage] for which any covered person becomes legally liable because of an auto accident." Part A (at p. 6 of 20) also states:

> OUT OF STATE COVERAGE If an auto accident to which this policy applies occurs in any State or province other than the one in which your covered auto is principally garaged, your policy will provide at least the minimum amounts and types of coverages required by law.

No similar language appears in Parts B, C or D.

Mr. Leavitt is claiming that he suffered bodily injury, not that he is liable for causing another's bodily injury.

The USAA Policy was not issued or executed in Massachusetts. USAA itself is an insurance company located in Texas.

[2] This fact and subsequent facts are taken as admitted, because the plaintiff's response only refers to two policies, without providing any evidence or citation, in violation of Superior Court Rule 9A(b)(5). In any event, nothing turns on the description of the policy.

DISCUSSION

I.

On summary judgment, the moving party has the burden to demonstrate that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. Foley v. Boston Hous. Auth., 407 Mass. 640, 643 (1990). The movant may meet this burden by showing that the plaintiff has no reasonable expectation of producing evidence on a necessary element of his case. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Once the moving party meets the burden, the opposing party must advance specific facts that establish a genuine dispute of material fact. Id.

Massachusetts requires that automobile policies issued or executed in Massachusetts must provide Personal Injury Protection ("PIP") coverage. G. L. c. 90. § 34M.[3] The statutory definition of PIP is extensive and includes the following:

> "Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, . . . any authorized . . . passenger of the insured's or obligor's motor vehicle including a guest occupant, . . . of all reasonable expenses incurred within two years from the date of accident for necessary **medical, surgical, x-ray, and dental services**, . . ., and in the case of persons employed or self-employed at the time of an accident of any **amounts actually lost by reason of inability to work and earn wages or salary** or their equivalent, but not other income, that would otherwise have been earned in the normal course of an injured person's employment, and **for payments in fact made to others**, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, and in the case of persons not

[3] In relevant part, § 34M provides: "Every motor vehicle liability policy and every motor vehicle liability bond, as defined in section thirty-four A, issued or executed in this commonwealth shall provide personal injury protection benefits as defined therein except to the extent such defined benefits to an insured or obligor or members of an insured's or obligor's household may be modified, reduced or eliminated by the purchase of the deductible authorized in this section.."

employed or self-employed at the time of an accident **of any loss by reason of diminution of earning power** and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, as a result of bodily injury, sickness or disease, including death at any time resulting therefrom, caused by accident and not suffered intentionally while in . . . the insured's or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind, **to the amount or limit of at least eight thousand dollars on account of injury to or death of any one person,** [exceptions omitted; emphasis added].

Massachusetts also requires non-residents to comply with the following requirements:

> Section 3. Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; **provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year** . . . except during such time as **the owner** thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the **operation** of such motor vehicle or trailer with his express or implied consent, against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

G. L. c. 90, § 3 (emphasis added). Section 34A defines "motor vehicle liability policy" as "a policy of liability insurance which provides indemnity for **or protection to the insured and any person responsible for the operation** of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries . . ." (emphasis added). This definition

includes PIP, which is a "protection to the insured and any person responsible for the operation" of the insured's car. A non-resident whose motor vehicle is operated for more than 30 days in Massachusetts thus must have an insurance policy that includes PIP. Nothing requires a passenger in someone else's car to have PIP coverage or a "motor vehicle liability policy" within the meaning of G. L. c. 90, § 34A.

Vermont does not require drivers to carry PIP insurance or require Vermont auto insurance policies to include PIP coverage. 23 V.S.A. § 800. Leavitt's Policy does not itself include PIP coverage.

The USAA policy applies to Leavitt's vehicle, not Phillips' or Aebersold's. Leavitt's vehicle was not involved. Nor was he an operator. Under the USAA's out-of-state coverage clause, Leavitt is only entitled to coverage consisting of "the minimum amounts and types of coverages required by law." Because Leavitt was a passenger in a car that he did not own or operate, Massachusetts law does not "require[]" him to have PIP coverage. It would counter the express meaning of the words used in the Policy to require USAA to provide Leavitt coverage that he was not "required by law" to have in force.

It follows that the "minimum amounts and types of coverages required by law" of USAA's insured did not include PIP or, indeed, any coverages required by G. L. c. 90, § 34A, which apply to owners and operators. USAA's out-of-state coverage therefore does not apply to this accident.

Because the decision on the Motion turns entirely on the law and the undisputed text of the Policy, any facts that might be learned on discovery, or any investigation that USAA might have been done, are not material to the outcome.

United States Fid. & Guar. Co., 407 Mass. 689, 700 (1990). While any ambiguity in undefined terms is construed strictly against the insurer. Interstate Gourmet Coffee Roasters, Inc. v. Seeco Ins. Co., 59 Mass. App. Ct. 78, 83 (2003), the insurance policy must be construed "as a whole, in a reasonable and practical way, consistent with its language, background and purpose." Sullivan, 67 Mass. App. Ct. at 442. No reasonable insured would expect PIP coverage from his insurer simply because he was a passenger in someone else's car in another state that happens to require another person (the driver) to provide that coverage. Such a construction would be neither reasonable nor practical and would violate the purpose of the Policy.

It follows that the "minimum amounts and types of coverages required by law" of USAA's insured did not include PIP or, indeed, any coverages required by G. L. c. 90, § 34A, which apply to owners and operators. USAA's out-of-state coverage therefore does not apply to this accident.

Because the decision on the Motion turns entirely on the law and the undisputed text of the Policy, any facts that might be learned on discovery, or any investigation that USAA might have been done, are not material to the outcome.

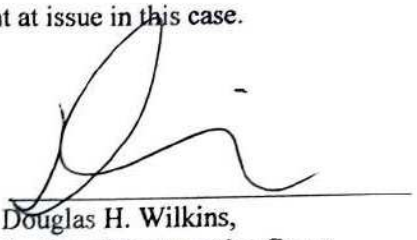
Because Count IX seeks a declaratory judgment, the Court declares the rights of the parties, instead of dismissing the claim. Somerset Importers, Ltd. v. Alcoholic Beverages Control Comm'n, 28 Mass. App. Ct. 381, 382 n.3 (1990).

CONCLUSION

For the above reasons:

1. The Defendant United Services Automobile Associations' Motion for Summary Judgment (Docket # 39) is **ALLOWED**.

2. The Court **DECLARES** that USAA has no obligation to provide PIP coverage for the November 24, 2010 accident at issue in this case.



Dated: May 30, 2014

Douglas H. Wilkins,
Justice of the Superior Court

Notice sent
06.02.14
(mo)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL NO. 13-3280-A

ALLAN M. LEAVITT,
Plaintiff,

vs.

CYNTHIA A. PHILLIPS, et al.,[1]
Defendants.

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT GEICO INDEMNITY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Allan M. Leavitt ("Plaintiff" or "Leavitt") brought this action for damages he sustained while a passenger in a car driven by defendant Melissa Aebersold ("Aebersold") during a collision with a car driven by Cynthia A. Phillips ("Phillips"). Defendant Geico Indemnity Insurance Company ("Geico") was Aebersold's motor vehicle insurance carrier. Defendant, the Commerce Insurance Company insured Phillips. Geico has filed "Defendant Geico Indemnity Insurance Company's Motion for Partial Summary Judgment" ("Motion"), which Leavitt has opposed. After hearing, Geico's Motion is **DENIED WITHOUT PREJUDICE**.

Notice Sent 06.11.14 LGM DOB S+B pc WJF zp pc PTT FWR+T REH Wp.pf RNB FRpte WJR MD

BACKGROUND

The facts established by the Parties' Rule 9A(b)(5) statements, along with inferences drawn in favor of the plaintiff as opposing party, are as follows:

This action arises from a two vehicle automobile collision that occurred on or about November 24, 2010 in Massachusetts. Leavitt was a passenger in a vehicle

[1] Melissa Aebersold, The Commerce Insurance Company, Geico Insurance Company and United Services Automobile Association.

driven by Aebersold. His vehicle was not involved in this accident. At all relevant times both Leavitt and Aebersold were residents of Vermont.

Leavitt contracted with Geico for automobile insurance and obtained a Vermont Family Automobile Insurance Policy ("Policy") effective at the time of the accident. Part I provides for Liability Coverages; Section II Provides for Medical Payments; Section III provides for Property Damage Coverages; and Part IV provides Uninsured Motorists Coverage. Part I (at p. 4) also states:

> OUT OF STATE INSURANCE
> When the policy applies to the operation of a motor vehicle outside of ***your*** state, we agree to increase ***your*** coverages to the extent required of out-of-state motorists by local law. . .. (emphasis in original).

For simplicity, this clause will be referred as the Out-of-State Coverage clause. No similar language appears in Parts II, III or IV.

Mr. Leavitt is claiming that he suffered bodily injury, not that he is liable for causing another's bodily injury. The Geico Policy was not issued or executed in Massachusetts.

DISCUSSION

I.

On summary judgment, the moving party has the burden to demonstrate that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. Foley v. Boston Hous. Auth., 407 Mass. 640, 643 (1990). The movant may meet this burden by showing that the plaintiff has no reasonable expectation of producing evidence on a necessary element of his case. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Once the moving party meets

the burden, the opposing party must advance specific facts that establish a genuine dispute of material fact. Id.

The issue raised by the Motion concerns Personal Injury Protection ("PIP") coverage. Massachusetts requires that automobile policies issued or executed in Massachusetts must provide PIP. G. L. c. 90, § 34M.[2] The statutory definition of PIP is extensive and includes the following:

> "Personal injury protection," provisions of a motor vehicle liability policy or motor vehicle liability bond which provide for payment to the named insured in any such motor vehicle liability policy, . . . "**any authorized . . . passenger of the insured's or obligor's motor vehicle including a guest occupant**," . . . of all reasonable expenses incurred within two years from the date of accident for necessary **medical, surgical, x-ray, and dental services**, . . ., and in the case of persons employed or self-employed at the time of an accident of any **amounts actually lost by reason of inability to work and earn wages or salary** or their equivalent, but not other income, that would otherwise have been earned in the normal course of an injured person's employment, and **for payments in fact made to others**, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, and in the case of persons not employed or self-employed at the time of an accident **of any loss by reason of diminution of earning power** and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, as a result of bodily injury, sickness or disease, including death at any time resulting therefrom, caused by accident and not suffered intentionally while in . . . the insured's or obligor's motor vehicle, without regard to negligence or gross negligence or fault of any kind, **to the amount or limit of at least eight thousand dollars on account of injury to or death of any one person**, [exceptions omitted; emphasis added].

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[2] In relevant part, § 34M provides: "Every motor vehicle liability policy and every motor vehicle liability bond, as defined in section thirty-four A, issued or executed in this commonwealth shall provide personal injury protection benefits as defined therein except to the extent such defined benefits to an insured or obligor or members of an insured's or obligor's household may be modified, reduced or eliminated by the purchase of the deductible authorized in this section.."

It is readily apparent that, contrary to Geico's arguments, PIP is not merely a first-party coverage. It benefits not only the policyholder, but also a category of people who potentially have claims against the policyholder, namely "any authorized . . . passenger of the insured's or obligor's motor vehicle including a guest occupant." Leavitt falls exactly into that category. It is one of the " . . . provisions of a motor vehicle **liability** policy . . ." G. L. c. 90, §§ 34A, 34M.

Massachusetts requires non-residents to comply with the following requirements:

> Section 3. Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; **provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year** . . . except during such time as **the owner** thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the **operation** of such motor vehicle or trailer with his express or implied consent, against loss **by reason of the liability to pay damages to others for bodily injuries**, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

G. L. c. 90, § 3 (emphasis added).

Section 34A, in turn, defines "motor vehicle liability policy" as "a policy of liability insurance which provides indemnity for **or protection to the insured and any person responsible for the operation** of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to

others for bodily injuries . . ." (emphasis added). This definition includes PIP, which is a "protection to the insured and any person responsible for the operation" of the insured's car. Because § 34A is applicable to non-residents to the extent provided in §3, it is of no consequence that § 34M (defining PIP) refers to policies "issued or executed in the commonwealth." Where § 3 provides, a non-resident has the obligation to obtain the "indemnity for or protection to him" set forth in the definition of "liability insurance policy" § 34A, which most assuredly included PIP. A non-resident whose motor vehicle is operated for more than 30 days in Massachusetts thus must have an insurance policy that provides PIP.

Vermont does not require drivers to carry PIP insurance or require Vermont auto insurance policies to include PIP coverage. 23 V.S.A. § 800. Aebersold's Policy does not itself include PIP coverage.

The terms of the Policy control. If unambiguous, as here, they must be construed according to their plain, ordinary meaning. Hakim v. Massachusetts Insurers' Insolvency Fund, 424 Mass. 275, 280 (1997). Even in cases of doubt, the Court must "consider what an objectively reasonable insured, reading the relevant policy language, would expect to be covered." Trustees of Tufts Univ. v. Commercial Union Ins. Co., 415 Mass. 844, 849 (1993), quoting Hazen Paper Co. v. United States Fid. & Guar. Co., 407 Mass. 689, 700 (1990). While any ambiguity in undefined terms is construed strictly against the insurer. Interstate Gourmet Coffee Roasters, Inc. v. Seeco Ins. Co., 59 Mass. App. Ct. 78, 83 (2003), the insurance policy must be construed "as a whole, in a reasonable and practical way, consistent with its language, background and purpose." Sullivan, 67 Mass. App. Ct. at 442.

There is no ambiguity in the statement that Geico "agree[s] to increase ***your*** coverages to the extent required of out-of-state motorists by local law." The plain meaning of the Out-of-State Coverage clause is to protect the driver in other states from violating local law by failing to have insurance. By this clause, Geico "obligated itself to protect its insureds from changing liabilities and to conform with various states laws, here [Massachusetts law], by 'replacing' coverage in the policy with that 'required by the law.'" Schleuter v. Northern Plans Ins. Co., Inc., 772 N.W.2d 879, 887 (N.D. 2009), quoted in Jeffrey E. Thomas, New Appleman on Insurance, Law Library Edition (LexisNexis Supp. Dec. 2013), §63.08, n.201. A reasonable insured would expect PIP coverage from his insurer if driving her own car in another state that requires her, as driver, to provide that coverage. Any other construction would be neither reasonable nor practical and would violate the purpose of the Policy. It would also subject insureds to the wholly unexpected and entirely unpleasant prospect of proceedings to establish their violations of state law. Local authorities would also be well within their rights in taking Geico to task for lulling their customers into a false sense of security, which, in turn, would lead to violation of state auto insurance laws.

Geico argues that the placement of the Out-of-State Coverage clause in part I of the Policy ("Liability") means that the key provision is inapplicable to PIP. The court rejects that argument. As a general rule, it may well be that the "location of the clause is a relevant consideration in interpreting its meaning." Avicolli v. Gov't Emps. Ins. Co., 2010 U.S. Dist. LEXIS 143526, 2010 WL 8981369 (Civ. Action No. 2:10-CV-2858; E. D. Pa. October 27, 2010), citing Jarrett v. Pa. Nat'l Mut Ins. Co.,

584 A.2d 327 (Pa. Super Ct. 1990). PIP, however, is a third-party (i.e. liability) coverage in this case and falls squarely within the Out-of-State Coverage provision, which is located in the liability section of the Policy. Because the concept of liability does not always require a showing of fault – and it covers third parties, including guest passengers like the plaintiff -- PIP, by its nature, includes "liability to pay damages to others for bodily injuries . . . caused by" the insured's motor vehicle within the meaning of G. L. c. 90, § 3.

Geico cites two out of state decisions from lower courts, neither of which addresses the key questions in this case. Geico Gen. Ins. Co. v. Bass, 2007 Ariz App. Unpub. LEXIS 222 (Ct. App. Ariz., Div. 1, Dept. C; January 30, 2007); Avicolli, 2010 U.S. Dist. LEXIS 143526, 2010 WL 8981369. These cases are certainly not the only decisions on Out-of-State coverages clauses.[3] In general, when construing such clauses "each of these courts has found that the plain language of this provision requires that an insured who is subject to compulsory financial responsibility laws of another state must be provided overage up to the minimum required amount." Western States Insurance Co. v. Zschau, 298 Ill. App. 3d 214, 232 Ill. Dec. 360, 698 N.E. 2d 198 (1998) and cases cited. See also Hansen v. U.S. Servs. Auto. Ass'n, 350 S.C. 62, 70-71, 565 S.E. 2d 114 (S.C. App. Ct. 2002) and cases cited at n. 23.

In Bass, the court held that the Out of State Coverage Provision did not require Geico to provide increased limits for uninsured motorist coverage (U/M) when Alaska (the state where the accident occurred) required insurers to offer U/M but did not require motorists to carry U/M. While the court also relied upon the

[3] Geico's citation to two unpublished out-of-state lower court decisions, while perfectly proper, might raise questions of fairness, since it has superior access to decisions concerning its own insurance clauses. Since those cases are not persuasive here, there is no actual unfairness.

location of U/M within its own section the policy (not in Section I, "Liability Coverages") in stating that the Out-of-State Coverage clause "can logically apply only to liability coverage, not to uninsured motorist coverage," that logic does not apply to PIP (for the reasons stated above). In any event, the court is not inclined to apply dicta from an unpublished decision of an intermediate court in another state to reach a contrary result here. The key holding of Bass is that Geico need not provide coverage that the accident state makes optional but does not require. If Massachusetts does require Aebersold to have PIP, then the Out-of-State Coverage provision does apply.

Avicolli is also distinguishable. It held that Pennsylvania law did not require non-resident car owners to purchase medical payments coverage, which it considered a form of first party benefits.[4] That is consistent with the plaintiff's position that Aebersold's Out-of-State coverage applies to PIP in Massachusetts, because (he contends) Massachusetts does require out of state motorists to carry PIP.

Geico also asserts, without citation (Mem. at 6), that case law demonstrates that the Out-of-State coverage clause "may serve to increase the dollar value of bodily injury liability coverage available but cannot create an entirely new type of insurance coverage."[5] That argument conflicts with the actual policy language, which promises to "to increase ***your*** coverages," not "your limits" or the "amount of your

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[4] The court's discussion of first party benefits (at *8) apparently turns upon Pennsylvania law. When an injured passenger seeks recovery against the driver, there is nothing "first party" about the claim. Such a claim would appear to meet the definition that "third party benefits are paid to an injured person by a tortfeasor's insurance carrier." Id. at *8.

[5] If Geico means to rely upon a case cited later in its Memo (at 8), and if that case actually applies to the differently-worded Geico policy at issue here, the case in fact simply upheld application of a household exclusion clause to the extent not inconsistent with statutorily prescribed mandatory minimum liability coverage. Hansen v. U.S. Servs. Auto. Ass'n, 565 S.E. 2d 114 (S.C. App. Ct. 2002).

coverage." The plain meaning of "coverages" is easily broad enough to include an additional "coverage" such as PIP. See Schleuter, 772 N.W.3d at 887 ("The term 'coverage' as used in the policy's provision for out-of-state coverage is broader than the 'minimum limits' of liability."). Even if it were ambiguous, the ambiguity would be construed in Leavitt's and Aebersold's favor. See Hakim, 424 Mass. at 280.

That leaves the question whether Aebersold was in fact required to have PIP coverage under Massachusetts law. Under G. L. c. 90, § 3, she, as an out-of-state motorist, would not be required to have a policy conforming to Massachusetts law unless her car was "operated [in Massachusetts] on more than thirty days in the aggregate in any one year . . ." Leavitt argues correctly that "Geico has provided no affidavit from Ms. Aebersold which would indicate what was her status in the Commonwealth on November 24, 2014.: It also states, again correctly, that "Geico cannot rule out that Ms. Aebersold's insurance policy was required to carry coverages consistent with Massachusetts law on November 24, 2010 . . .."

While Leavitt will ultimately have the burden to prove applicability of the Out-of-State Coverage s provisions, Geico has the burden, at the summary stage, to prove that Leavitt cannot meet that burden. See Kouravacilis, supra. To do that, it would have to exclude the possibility that Ms. Aebersold's car was operated on more than thirty days in Massachusetts during the year in question. It has not even attempted to meet that burden. Because it has not shown, on the undisputed facts, that Aebersold was free of an obligation to carry PIP – which would trigger coverage

under the Out-of-State Coverage provisions of the Geico Policy – Geico has not met its burden as moving party and cannot receive summary judgment at this time.[6]

The summary judgment deadline in this case does not run until September 11, 2014 in this case. Because Ms. Aebersold's deposition is likely to occur this summer, after which Geico may be able to meet its burden (or the plaintiff may actually be able to obtain summary judgment against Geico, depending on the facts), denial of Geico's motion is without prejudice to a subsequent summary judgment motion if future discovery permits Geico to meet its burden as moving party.

The court agrees with Geico that the U/M claim is premature and therefore does not rule on that claim. Likewise, Geico's argument on c. 93A presupposes that Leavitt's claim for PIP is "groundless." Since Geico has not met its burden to demonstrate the invalidity of the PIP claim, it cannot obtain summary judgment on the c. 93A claim either.

CONCLUSION

For the above reasons, the Defendant Geico Indemnity Insurance Company's Motion for Summary Judgment (Docket # 38) is **DENIED WITHOUT PREJUDICE to a motion for reconsideration upon completion of discovery regarding Aebersold's operation of her vehicle in Massachusetts during the relevant time period.**

Notice sent 06.11.14 (MO)

Dated: June 9, 2014

Douglas H. Wilkins,
Justice of the Superior Court

[6] Because the decision on the Motion turns entirely on the law and the undisputed text of the Policy, any facts that might be learned on discovery, or any investigation that USAA might have been done, are not material to the outcome.

IVOTHY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL NO. 13-3280-A

ALLAN M. LEAVITT,
Plaintiff,

vs.

CYNTHIA A. PHILLIPS, et al.,[1]
Defendants.

Notice sent
4/22/2015
W. J. R.
R. N. B.
F. R. P.
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ORDER ON DEFENDANT GEICO INDEMNITY INSURANCE COMPANY'S MOTION FOR RESONSIDERATION OF SUMMARY JUDGMENT

The plaintiff, Allan M. Leavitt ("Plaintiff" or "Leavitt") brought this action for damages he sustained while a passenger in a car driven by defendant Melissa Aebersold ("Aebersold") during a collision with a car driven by Cynthia A. Phillips ("Phillips"). Defendant Geico Indemnity Insurance Company ("Geico") was Aebersold's motor vehicle insurance carrier. Defendant, the Commerce Insurance Company insured Phillips.

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On June 11, 2014, the Court denied without prejudice Geico's motion for summary judgment. See Memorandum of Decision and Order on Defendant Geico Indemnity Insurance Co.'s Motion for Summary Judgment ("June 11 Decision"). The denial was "without prejudice to a motion for reconsideration upon completion of discovery regarding Aebersold's operation of her vehicle in Massachusetts during the relevant time period."

[1] Melissa Aebersold, The Commerce Insurance Company, Geico Insurance Company and United Services Automobile Association.

The parties engaged in additional discovery. On December 9, 2014, Geico filed "Defendant Geico Indemnity Insurance Company's Motion for Reconsideration of the Summary Judgment" ("Motion"), which Leavitt has opposed. Because the denial was "without prejudice" to the arguments now made by Geico, the Motion is really not a motion for reconsideration, but rather a renewed motion for summary judgment. The distinction makes no difference, however. After hearing, Geico's Motion is **ALLOWED**.

BACKGROUND

The facts established by the Parties' Rule 9A(b)(5) statements, along with inferences drawn in favor of the plaintiff as opposing party, are set forth in the June 11 Decision. The one material additional undisputed fact is that the plaintiff cannot prove that Aebersold operated a motor vehicle in Massachusetts for more than 30 days at any time in 2009 or 2010. It is also undisputed that she did operate a motor vehicle for more than 30 days in Massachusetts in 1998.

DISCUSSION

Part I of the applicable insurance policy (at p. 4) states:

> OUT OF STATE INSURANCE
> When the policy applies to the operation of a motor vehicle outside of ***your*** state, we agree to increase ***your*** coverages to the extent required of out-of-state motorists by local law. . .. (emphasis in original).

Massachusetts requires non-residents to comply with the following requirements:

> Subject to the provisions of section three A and except as otherwise provided in this section and in section ten, a motor vehicle or trailer owned by a non-resident who has complied with the laws relative to motor vehicles and trailers, and the registration and operation thereof, of the state or country of registration, may be operated on the ways of this commonwealth without registration under this chapter, to the extent, as to length of time of operation

> and otherwise, that, as finally determined by the registrar, the state or country of registration grants substantially similar privileges in the case of motor vehicles and trailers duly registered under the laws and owned by residents of this commonwealth; **provided, that no motor vehicle or trailer shall be so operated on more than thirty days in the aggregate in any one year** . . . except during such time as **the owner** thereof maintains in full force a policy of liability insurance providing indemnity for or protection to him, and to any person responsible for the **operation** of such motor vehicle or trailer with his express or implied consent, against loss **by reason of the liability to pay damages to others for bodily injuries**, including death at any time resulting therefrom, caused by such motor vehicle or trailer, at least to the amount or limits required in a motor vehicle liability policy as defined in section thirty-four A.

G. L. c. 90, § 3 (emphasis added).

The key question whether Aebersold was in fact required to have PIP coverage under Massachusetts law. Under G. L. c. 90, § 3, she, as an out-of-state motorist, would not be required to have a policy conforming to Massachusetts law unless her car was "operated [in Massachusetts] on more than thirty days in the aggregate in any one year . . ." One can debate whether the applicable year is a policy year, a 365-day period, or a calendar year. No matter which construction the court adopts, Aebersold did not operate her car for 30 days in Massachusetts within any one-year period encompassing the accident.

The plaintiff argues that as long as Aebersold operated a motor vehicle in Massachusetts for 30 days in any year, she was subject to Massachusetts compulsory insurance laws at all subsequent times. He argues that there is no expiration time on that obligation. This argument conflicts with the statutory language. The statute prohibits *operation* for more than 30 days without insurance. The straightforward construction of this language is that the time of operation exceeding 30 days is the time for which insurance must be in place. To require insurance for pass-through

drivers because they were in the Commonwealth years or decades before would be an unexpected and unforeseen burden upon motorists and interstate travel. The legislature did not impose such a burden. Rather, it required insurance for motorists who have a substantial driving presence in Massachusetts at the time of operation.

CONCLUSION

For the above reasons, the Defendant Geico Indemnity Insurance Company's Motion for Summary Judgment (Docket # 65) is allowed. Plaintiff's cross-motion is denied. Judgment shall enter in favor of Defendant Geico dismissing the plaintiff's claim under the policy. The Court DECLARES that Geico has no obligation to provide PIP coverage for the November 24, 2010 accident at issue in this case.

Dated: April 14, 2015

Douglas H. Wilkins,
Justice of the Superior Court