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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4255-16T4

GINO SULPIZI,

Plaintiff-Appellant,

v.

LM GENERAL INSURANCE
COMPANY,

Defendant-Respondent.

Submitted February 27, 2018 – Decided April 4, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Docket No.
L-2880-15.

D'Arcy Johnson Day, attorneys for appellant
(Richard J. Albuquerque and Dominic R.
DePamphilis, on the brief).

Martin, Gunn & Martin, PA, attorneys for
respondent (William J. Martin and Ryan W.
Kelly, on the brief).

PER CURIAM

Plaintiff Gino Sulpizi appeals from a May 26, 2017 order
granting summary judgment to defendant LM General Insurance
Company (LM Insurance) and dismissing his claim for personal injury

protection (PIP) benefits under N.J.S.A. 17:28-1.4 (the "Deemer" statute). We affirm because plaintiff's injuries were not related to the use or operation of his vehicle.

The material facts are not in dispute. Plaintiff is a Pennsylvania resident whose primary residence is located in Philadelphia. He owns a vehicle that has a Pennsylvania automobile insurance policy provided by LM Insurance. Plaintiff also owns a vacation home in Brigantine, New Jersey.

On June 30, 2015, plaintiff was at his vacation home in New Jersey when he decided to mail a letter. He drove his car from his home and parked across the street from a mailbox. Plaintiff exited his vehicle and began to walk across the street towards the mailbox. When he was halfway across the opposite lane, he saw a pickup truck approaching him and he "scurried over" to the side of the road. Plaintiff then tripped on the curb and fell near the mailbox. He alleges he suffered personal injuries as a result of the fall.

His Pennsylvania automobile policy issued by LM Insurance provided \$5000 in PIP medical benefit coverage. Plaintiff submitted a PIP claim to LM Insurance for benefits exceeding \$5000, contending he was entitled to additional coverage under the Deemer statute. LM Insurance denied the claim because plaintiff was injured as a pedestrian and not while using his vehicle.

Thereafter, plaintiff filed a declaratory judgment action seeking \$250,000 in New Jersey standard PIP benefits under the Deemer statute. On cross-motions for summary judgment, the trial court granted summary judgment to LM Insurance and denied plaintiff's request for summary judgment.

The Deemer statute generally requires an insurer, authorized to do business in New Jersey, to provide PIP coverage for policies sold outside of New Jersey when the insured motor vehicle is "used or operated" in New Jersey. Specifically, the statute provides in pertinent part:

Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State . . . shall include in each policy coverage to satisfy at least the personal injury protection benefits coverage pursuant to . . . [N.J.S.A. 39:6A-4] . . . whenever the automobile or motor vehicle insured under the policy is used or operated in this State

[N.J.S.A. 17:28-1.4.]

Accordingly, the Deemer statute provides that "out-of-state policies within its ambit are automatically construed as New Jersey policies when the covered vehicle is involved in a New Jersey accident." Cooper Hosp. Univ. Med. Ctr. v. Prudential Ins. Co., 378 N.J. Super. 510, 515 (App. Div. 2005). "In short, the Deemer Statute furnishes the covered out-of-state driver with New Jersey's statutory no-fault PIP and other benefits and, in

exchange, deems that driver to have selected the limitation-on-lawsuit option of N.J.S.A. 39:6A-8(a)." Zabilowicz v. Kelsey, 200 N.J. 507, 514 (2009).

The issue on this appeal is purely a question of law, which we review de novo. Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285, 294 (2017). Specifically, the question is whether the Deemer statute requires coverage for a claim involving a pedestrian injured after parking his or her car and while walking across the street. We have already answered that question in Leggette v. Gov't Emps. Ins. Co., 450 N.J. Super. 261 (App. Div.), certif. denied, 231 N.J. 216 (2017). In Leggette, we held that an out-of-state automobile policy is not deemed by N.J.S.A. 17:28-1.4 to provide PIP benefits when the named insured is injured as a pedestrian. The plaintiff in Leggette was a Virginia resident who drove to New Jersey to visit her daughter at Princeton University. Plaintiff parked her car, walked away, and was crossing the street when she was struck by another vehicle.

After reviewing the plain language of the statute and the case law discussing the terms "use" and "operation[,]" the Leggette court concluded that coverage under the Deemer statute demanded a "'substantial nexus' between that out-of-state vehicle and the accident for which benefits are sought." 450 N.J. Super. at 270.

Here, plaintiff argues that we should not follow Leggette, and that we should reach a different conclusion. We are not persuaded by that argument. Instead, we agree with the reasoning of the court in Leggette. Applying the Leggette holding to the facts of this case, we affirm the order granting summary judgment in favor of LM Insurance. Indeed, this case is even clearer than the facts in Leggette. In Leggette, the plaintiff was hit by another vehicle. Here, plaintiff never came into contact with the truck. Instead, he was injured when he moved out of the way, tripped, and fell. Thus, there was no nexus between plaintiff's use or operation of his vehicle and his injuries.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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