

the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

The facts material to the issue at hand are not in dispute. Following the accident, Plaintiff received benefits under her employer's uninsured motorist coverage in the amount of \$40,000.00. In addition, Plaintiff received workers compensation benefits in excess of \$51,000.00. The Town's worker's compensation insurer thereafter executed and delivered to Plaintiff a waiver of lien. Defendant is Plaintiff's private uninsured motorist carrier.

I. Uninsured Motorist Benefits Setoff.

The first issue is whether Defendant is entitled to a setoff for the benefits paid to Plaintiff under the Town's uninsured motorist coverage. The Court is satisfied that Defendant is entitled to this setoff for the simple reason that "the liability of insurance carriers is joint and several in cases where there are two or more insurance policies applicable to the same loss." *Bazinet v. Concord Gen. Mut. Ins.*, 513 A.2d 279, 281 (Me. 1986) (citations omitted). Consequently, the insured has the right to proceed against any carrier which might be liable for the entire amount of the loss. *Id.* Each carrier would then be liable for any or all of the total damages as yet unpaid.

Emery Waterhouse Co. v. Lea, 467 A.2d 986, 995-96 (Me. 1983).

I. Workers Compensation Benefits Setoff.

Defendant next argues that it is entitled to a setoff for the workers compensation benefits paid to Plaintiff, for which the workers compensation carrier has waived its right to a lien. This issue has not been addressed by the Maine Law Court in this factual context. The Court is nevertheless satisfied that Defendant is not entitled to this setoff.

On its face, this issue is complicated by the seemingly competing policies involved. On the one hand, there is a concern that plaintiffs not realize a double recovery. *Eg., Moreau v. State Farm Mut. Auto. Ins.*, No. CV-87-343 (Me. filed April 26, 1989). On the other is the common-sense maxim that plaintiffs should recover the benefits for which they've contracted and paid premiums. *Wescott v Allstate Ins.*, 397 A.2d 156, 170 (Me. 1979) (quoting *Van Tassel v. Horace Mann Ins.*, 296 Minn. 181, 207 N.W.2d 348, 352 (1973)) (other citation omitted). The Court is nevertheless troubled by Defendant's argument that it, rather than Plaintiff, should receive the benefit of the workers compensation carrier's waiver.

Indeed, it is not unheard of that Plaintiff should recover more than her total damages. In 1978, the Maine Law Court addressed the question whether an employer was entitled to a setoff against workers compensation benefits for unemployment benefits paid to the plaintiff/employee. *Page v. General Elec.*, 391 A.2d 303 (Me. 1978). The Law Court looked to the language and history of the workers compensation statute and concluded:

. . . we find no evidence of an intent to avoid dual benefits, nor do we find that such an intent is the only possible interpretation which can be placed on these laws. The Workmen's Compensation Act was adopted in its original form in 1915 (P.L.195, ch. 295). The "Unemployment Compensation Law," predecessor of the current Employment Security Law, 26 M.R.S.A. § 1041 et seq., was enacted in 1936 (P.L.1935, ch. 192). The latter Act, passed more than twenty years after the first, made no mention of avoiding double benefits. If the Legislature had wished, it could have amended the earlier act at the time when it created the right to unemployment benefits, or at any time in the forty-two years that followed. It has not done so, nor has it ever amended the Workmen's Compensation Act in this regard. We cannot read an intent to preclude dual benefits into this history.

Id. at 307.

Despite the fact that no bar to double recovery exists, however, the Law Court has also validated private agreements designed to avoid double recovery. *Soper v. St. Regis Paper*, 411 A.2d

1004 (Me. 1980). In *Soper*, the issue was whether a provision in a pension plan, providing for a reduction in pension benefits to the extent of a workers compensation lump sum award, was enforceable. The Law Court upheld the provision, at least in part for the reason that the benefits under both workers compensation and the pension plan were employer-financed. *Id.* at 1009. That is not the case here, and we are therefore left with our concern that the insurance company, which contracted with Plaintiff to provide a certain level of benefits in exchange for a set premium, and which has received that premium pursuant to its contract, now seeks to benefit from Plaintiff's agreement with the workers compensation carrier. The Court concludes that it may not do so.

Conclusion

For the foregoing reasons, Defendant's Motion for Partial Summary Judgment is hereby GRANTED IN PART AND DENIED IN PART. Specifically, Defendant is entitled to a setoff for amounts paid to Plaintiff pursuant to her employer's uninsured motorist coverage. Defendant is not entitled to a setoff for Plaintiff's workers compensation benefits.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine on September 18, 1996.