

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RALPH TILLISON, III)
)
 Plaintiff,)
)
 v.) C.A. No. N15C-12-168 WCC
)
 GEICO SECURE INSURANCE)
 COMPANY, a foreign corporation,)
)
 Defendant.)
)

Submitted: January 25, 2017
Decided: May 15, 2017

Defendant’s Motion for Summary Judgment – DENIED

MEMORANDUM OPINION

Gary S. Nitsche, P.A., Joel H. Fredricks, Esquire, Weik, Nitsche & Dougherty, 305 N. Union St., P.O. Box 2324, Wilmington, DE 19899. Attorneys for Plaintiff.

Shae Chasanov, Esquire, Swartz Campbell, LLC, 300 Delaware Avenue, Suite 1410 Wilmington, DE 19801. Attorney for Defendant.

CARPENTER, J.

This case presents a claim for uninsured/underinsured motorist (“UIM”) benefits pursuant to an automobile insurance policy issued by Defendant GEICO Secure Insurance Company (“GEICO”). Before the Court is GEICO’s Motion for Summary Judgment. As explained below, GEICO’s Motion must be **DENIED**.

I. BACKGROUND

On September 17, 2014, Ralph Tillison, III (“Plaintiff”) was injured in an automobile collision while riding as a passenger in a 2009 Ford Focus operated by Diane Alexander (“Alexander”).¹ As the vehicle was proceeding onto Interstate 95 near the City of Wilmington, Alexander “negligently caused her vehicle to strike another vehicle with force and violence”² At the time of the accident, Alexander was insured under an automobile policy issued by GEICO (the “Policy”).³ The Policy affords \$20,000 per person/\$40,000 per accident in both bodily injury liability and uninsured/underinsured motorist (“UIM”) coverage.⁴

Plaintiff received medical treatment following the accident and sought recovery against Alexander for his injuries. GEICO paid Plaintiff the Policy’s \$20,000 liability limits.⁵ Plaintiff then pursued a claim for UIM benefits under the Policy.

¹ Pl.’s Am. Compl. ¶¶ 4-13.

² *Id.* ¶¶ 5-6.

³ *Id.* ¶ 7; Def.’s Mot. for Summ. J. ¶¶ 3-4 (noting coverage was supplied pursuant to “policy number 4355-67-43-77”).

⁴ Def.’s Mot. for Summ. J. ¶ 4, Exs. B-C (Policy Declaration Page and certified copy of Policy).

⁵ Pl.’s Am. Compl. ¶ 8; Def.’s Mot. for Summ. J. ¶ 5.

Section V of the Policy reflects that GEICO agreed to “pay damages for *bodily injury and property damage* caused by accident which the *insured* is legally entitled to recover from the owner or operator of an *uninsured motor vehicle* or *hit and run auto* arising out of the ownership, maintenance or use of that auto.”⁶ The definition of “uninsured motor vehicle” was amended to encompass “underinsured motor vehicles.”⁷ An “underinsured motor vehicle” is a vehicle insured by a bodily injury liability policy with limits less than the damages suffered by the insured.⁸ The Policy’s definition of uninsured motor vehicle expressly excludes “insured auto[s],” which refers to, in relevant part, any vehicle “[d]escribed in the declarations and covered by the bodily injury...liability coverages of this policy.”⁹

The 2009 Ford Focus Alexander was operating at the time of the accident appears in the Policy declarations, and is thus an “insured auto” under the Policy. As a result, GEICO informed Plaintiff that UIM coverage was unavailable as the

⁶ See Def.’s Ex. C at 42 (emphasis in original). An “uninsured motor vehicle” is that “which has no bodily injury...liability bond or insurance policy applicable with liability limits complying with the Financial Responsibility Law of the state in which such auto is principally garaged or registered at the time of the accident.” *Id.* “Bodily injury” is defined under the Policy as “bodily Injury, sickness, or disease, including death, sustained by you, your relatives or any other person occupying an Insured auto with your consent.” *Id.* at 41 (emphasis omitted).

⁷ See *id.* at 49 (“We agree with you that any Uninsured Motorists coverage provided under the policy is amended to include Underinsured Motorists coverage subject to all policy provisions except as modified by this amendment.”).

⁸ See *id.*

⁹ See *id.* at 41-42 (emphasis omitted). “Insured auto” also includes temporary replacement vehicles for the car referenced in the declarations and vehicles “[o]perated by” the “policyholder named in the declarations page,” so long as, in either case the car is not owned by or furnished for the regular use of an insured.” *Id.* at 41-42.

2009 Ford Focus “does not qualify as an underinsured motor vehicle per the terms of the [P]olicy....”¹⁰ GEICO’s denial letter further provides that, even if the Ford Focus “were deemed an underinsured motor vehicle,” UIM benefits would be unavailable per the Policy’s exclusion of coverage for “[b]odily injury sustained by an *insured* while *occupying*, or through being struck by an *uninsured motor vehicle* owned by an *insured*....”¹¹ The instant litigation followed.

Plaintiff’s Amended Complaint was filed on March 2, 2016. Plaintiff alleges GEICO “stands in the shoes of...Alexander and is contractually and statutorily liable pursuant to 18 *Del. C.* § 3902” for Alexander’s negligent conduct.¹² On January 6, 2017, GEICO filed this Motion for Summary Judgment pursuant to Superior Court Civil Rule 56. Plaintiff responded in opposition to the Motion and a hearing was held before this Court on January 25, 2017. This is the Court’s decision on GEICO’s Motion for Summary Judgment.

II. STANDARD OF REVIEW

In reviewing a motion for summary judgment pursuant to Superior Court Civil Rule 56, the Court must determine whether any genuine issues of material fact exist.¹³ The moving party bears the burden of showing that there are no genuine issues of material fact, such that he or she is entitled to judgment as a

¹⁰ Pl.’s Opp’n to Def.’s Mot. for Summ. J ¶ 1, Ex. 1 (Denial Letter).

¹¹ See Def.’s Ex. C at 42 (emphasis in original).

¹² Pl.’s Am. Compl. ¶¶ 9-10.

¹³ Super. Ct. Civ. R. 56(c); see also *Wilm. Trust Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).

matter of law.¹⁴ In reviewing a motion for summary judgment, the Court must view all factual inferences in a light most favorable to the non-moving party.¹⁵

Where it appears that there is a material fact in dispute or that further inquiry into the facts would be appropriate, summary judgment will not be granted.¹⁶

III. DISCUSSION

GEICO argues it is entitled to summary judgment because the Policy clearly and ambiguously prohibits Plaintiff from recovering both bodily injury liability and UIM benefits under Alexander's Policy. Even if such coverage were not excluded by the Policy's express terms, GEICO contends public policy weighs against allowing "intrapolicy stacking."¹⁷ In this regard, GEICO claims the purpose of UIM is to "allow a driver to protect himself [or herself] from *other* vehicles on the roadway that...carry insufficient insurance, or no insurance at all."¹⁸

Plaintiff does not dispute that the terms of the Policy preclude UIM coverage under the circumstances presented here. Rather, Plaintiff claims Delaware courts have found similar policy language void as inconsistent with 18 *Del. C.* § 3902 and

¹⁴ See *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

¹⁵ See *Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).

¹⁶ See *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. Super. 1962), *rev'd in part* on procedural grounds and *aff'd in part*, 208 A.2d 495 (Del. 1965).

¹⁷ Def.'s Mot. for Summ. J. ¶¶ 8-9.

¹⁸ *Id.* ¶ 9 (emphasis in original).

the underlying public policy.¹⁹ In order to determine whether policy limitations and exclusions are valid, the Court looks first to the language of 18 *Del. C.*

§ 3902.²⁰ If the statute is ambiguous, the Court will consider the relevant public policy.²¹

Section 3902(a) of Title 18 requires that uninsured motorist coverage be “provided” in or “supplemental” to every automobile insurance policy, unless such coverage is expressly rejected in writing by the insured. Per §3902(b), insurers must also offer insureds the option to purchase additional underinsured bodily injury liability coverage “up to a limit of \$100,000 per person and \$300,000 per accident or \$300,000 single limit, but not to exceed the limits for bodily injury liability set forth in the basic policy.”²² Acceptance of such coverage affords an insured payment for “bodily injury damage” the insured is “legally entitled to recover from the driver of an underinsured motor vehicle.”²³ The statute defines “underinsured motor vehicle” as “one for which there may be bodily injury liability coverage in effect, but the limits of...liability coverage under all bonds

¹⁹ Pl.’s Opp’n to Def.’s Mot. for Summ. J. ¶ 3 at 6.

²⁰ See *State Farm Mut. Auto. Ins. Co. v. Kelty*, 126 A.3d 631, 641 (Del. 2015) (discussing framework for evaluating policy restrictions in context of 21 *Del. C.* § 2118). See also *Baunchalk v. State Farm Mut. Auto. Ins. Co.*, 2015 WL 12979117, at *4 (Del. Super. Ct. Oct. 26, 2015) (citing *Kelty* in UIM context and noting that, in the decision, “the Delaware Supreme Court...set forth guidelines for examining limitations or exclusions contained in automobile insurance policies”).

²¹ See *Kelty*, 126 A.3d at 641 (“Even then, any judicial ruling impinging on contractual freedom should be carefully justified by reference to the public policy as reflected in the overall statutory regime, as that is the legitimate source of public policy in this heavily regulated field.”).

²² 18 *Del. C.* § 3902(b).

²³ *Id.* § 3902(b)(1).

and insurance policies applicable at the time of the accident are less than the damages sustained by the insured.”²⁴

For purposes of this Motion, the Court assumes Alexander’s negligent operation of her vehicle was the sole cause of Plaintiff’s injuries and that Plaintiff’s injuries exceed the \$20,000 bodily injury liability limits he received under Alexander’s Policy. In *Baunchalk v. State Farm Mutual Auto. Ins. Co.*,²⁵ the Court considered the validity of a policy provision purporting to prohibit a passenger involved in a single-vehicle collision from recovering UIM benefits under the driver’s insurance policy after receiving the bodily injury liability limits of that policy. Like the Court in *Baunchalk*, this Court finds 18 *Del. C.* § 3902’s underinsured motorist provisions are unambiguous. Contrary to the interpretation urged by GEICO, the statute’s definition of “underinsured motor vehicle” makes no distinction based upon the number of vehicles or insurance policies involved in a collision. Rather, “the statute defines an underinsured motor vehicle *relative to the victim’s injuries*.”²⁶ While the language involved in *Baunchalk* differs slightly from the provisions at issue here,²⁷ it appears that the language relied on by GEICO would achieve the same result the *Baunchalk* Court sought to avoid.

²⁴ *Id.* § 3902(b)(2).

²⁵ 2015 WL 12979117 (Del. Super. Ct. Oct. 26, 2015).

²⁶ *See id.* at *5.

²⁷ *See id.* at *1-2. In *Baunchalk*, the insurer claimed a “non-duplication of benefits clause” excluded payment of UIM benefits when the insurer had already paid the policy limits for bodily injury. The non-duplication clause states that the insurer would not provide Uninsured Motor

“The Delaware Code requires UM/UIM insurance for all occupants of a vehicle at a minimum level or at a level that mirrors liability coverage.”²⁸ This Plaintiff was the innocent victim of another’s negligence in the operation of a motor vehicle. The public policy of Delaware requires that policy provisions “attempting to limit the right of injured persons to uninsured/underinsured motorist coverage be narrowly construed.”²⁹ Absent ambiguity, this Court “cannot arbitrarily insert an exclusion for single-vehicle collisions where there is no indication that was the intent of the General Assembly.”³⁰ Thus, at this stage, GEICO’s Motion must be DENIED.

IV. CONCLUSION

In making this decision, the Court adhered to the interpretation that has previously been applied to the 18 *Del. C.* § 3902. However, this Judge finds the arguments GEICO advances are not unreasonable and, candidly, may reflect the intent of the legislature at the time the statute was enacted. However, as is often the case, there is no legislative history that has been provided to the Court to support GEICO’s contentions and there probably is none recorded. While the Court is unwilling to rule contrary to previous interpretations of the statute, it

Vehicle Coverage for “any damages that have already been paid to or for the Insured: ... For bodily injury or property damage under Liability Coverage...of any policy issued by the State Farm Companies to you or any resident relative.” *See id.*

²⁸ *See Davis v. State Farm Mutual Auto. Ins. Co.*, 2011 WL 1379562, at *6 (Del. Super. Feb. 15, 2011).

²⁹ *See State Farm Mut. Auto. Ins. Co. v. Washington*, 641 A.2d 449, 450 (Del. 1994).

³⁰ *See Baunchalk*, 2015 WL 12979117, at *5.

would encourage GEICO to pursue legislative clarification of this situation. The statute, as now enacted, stands in the way of the result GEICO requests, not its legal arguments.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.