

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JOHN LAMANNA,)	
)	
Plaintiff,)	
)	C.A. No.N12C-09-204 CLS
v.)	
PRIME INSURANCE COMPANY,)	
and)	
GEICO GENERAL INSURANCE)	
COMPANY,)	
)	
Defendants.)	

Date Submitted: November 29, 2012
Date Decided: March 4, 2013

On Defendant Prime Insurance Company's Motion to Dismiss. **DENIED.**

ORDER

Tabatha L. Castro, Esq. and Renee Duval, Esq., The Castro Firm, Inc. Wilmington, Delaware. Attorneys for Plaintiff.

William A. Crawford, Esq. and Marlaine A. White, Esq., Franklin & Prokopik, Wilmington, Delaware. Attorneys for Defendant Prime Insurance Company.

Dawn L. Becker, Esq., Law Office of Dawn L. Becker, Wilmington, Delaware. Attorney for Defendant GEICO General Insurance Company.

Scott, J.

Introduction

Before the Court is Defendant Prime Insurance Company's ("Prime") Motion to Dismiss Plaintiff John Lamanna's ("Plaintiff") Complaint for failure to state a claim. Plaintiff responded in opposition to Prime's motion. Thereafter, Defendant GEICO General Insurance Company ("GEICO") joined in Plaintiff's response. For the following reasons, Defendant Prime's Motion to Dismiss is **DENIED.**

Background

Plaintiff was involved in an accident on June 29, 2010 that occurred while he was driving a Lincoln Town Car owned and insured by Elite Taxi Cab Inc. Prime was the insurer of the vehicle and GEICO issued insurance to Plaintiff as a driver. Prime's policy included underinsured motorist bodily injury coverage of \$15,000 per person, while GEICO's policy included underinsured motorist bodily injury coverage of \$100,000.

Parties' Contention

Plaintiff filed a complaint against Defendants alleging that he was not fully compensated by the tortfeasor's policy limits for his injuries, medical treatment, and pain and suffering. Plaintiff further claimed that he was an underinsured motorist and, as such, he is entitled to recovery from Defendants based on their underinsured motorist policies.

Defendant moves to dismiss Plaintiff's complaint based on Plaintiff's failure to provide the policy limits of the tortfeasor's vehicle. Defendant asserts that this information is necessary to determine if the tortfeasor is an uninsured motorist.

Standard of Review

A motion to dismiss, brought pursuant to Superior Court Rule 12(b)(6), for failure to state a claim upon which relief can be granted is appropriate only when there appears to be no reasonably conceivable set of circumstances susceptible of proof under the complaint.¹ When determining whether to grant the motion, the Court must accept all well-pled allegations in the complaint as true.² Delaware is a notice pleading jurisdiction which means that "a plaintiff need not plead evidence. Rather, the plaintiff need only allege facts that, if true, state a claim upon which relief can be granted."³

Discussion

18 *Del. C.* § 3902 (b)(2) defines an underinsured vehicle as

one for which there may be bodily injury liability coverage in effect, but the limits of bodily injury liability coverage under all bonds and insurance policies applicable at the time of the accident total less than the limits provided by the uninsured motorist coverage.

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Id.*

³ *VLIV Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003); *See* Super.Ct. Civ. R. 8.

The Delaware Supreme Court has considered this definition to be unambiguous and explained that its “focus [] is on the symmetry between the *limits* of the insured claimant’s coverage and the *limits* of the tortfeasor’s coverage...”⁴ Therefore, “the presentation of record evidence which comports with the unambiguous definition in Section 3902(b)(2) is a condition precedent to pursuing an underinsurance claim.”⁵ Underinsured motorist coverage is not triggered or established unless the claimant establishes that the tortfeasor is underinsured pursuant to the definition provided by §3902(b)(2).⁶

Defendant correctly asserts that Plaintiff must present record evidence, including the policy limits, indicating that the tortfeasor is underinsured in order to pursue his claim; nevertheless, in accordance with Delaware’s notice-pleading standard, the Court finds that Plaintiff was not required to provide the tortfeasor’s policy limits in his complaint. Plaintiff was only required to allege facts that, if true, would be sufficient to state his claim. Plaintiff stated that he received the “full policy limits of the tortfeasor” as compensation for his injuries⁷ and that he was “not fully

⁴ *Nationwide Mut. Ins. Co. v. Williams*, 695 A.2d 1124, 1127 (Del. 1997).

⁵ *Nationwide Mut. Auto. Ins. Co. v. Peebles*, 688 A.2d 1374, 1378 (Del. 1997).

⁶ *Colonial Ins. Co. of Wisconsin v. Ayers*, 772 A.2d 177,180 (2001)(citing *Peebles*, 688 A.2d at 1378).

⁷ Compl., at ¶ 2.

compensated by a recovery of the policy limits of the tortfeasor.”⁸ Plaintiff also asserted that he is underinsured.⁹ The Court finds these facts sufficient to support Plaintiff’s claim for underinsured motorist coverage.

Conclusion

For the foregoing reasons, Defendant Prime’s Motion to Dismiss is **DENIED.**

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

⁸ *Id.* at ¶ 7.

⁹ *Id.* at ¶ 8.