

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

SHAWN D. YOUNG, )  
Plaintiff, )  
 )  
v. )  
 )  
ZURICH AMERICAN INSURANCE )  
COMPANY, a foreign corporation and )  
GEICO CASUALTY COMPANY, )  
a foreign corporation, )  
Defendants. )

C.A. No: N15C-01-088 ALR

Submitted: May 29, 2015  
Decided: June 3, 2015

***On Defendant GEICO Casualty Company's  
Motion for Summary Judgment  
DENIED***

Gary S. Nitsche, Esquire, Kiadrii S. Harmon, Esquire, WEIK, NITSCHKE, DOUGHERTY & GALBRAITH, Attorneys for Plaintiff

Nicholas E. Skiles, Esquire, SWARTZ CAMPBELL LLC, Attorney for Defendant

This lawsuit arises out of an automobile accident. Plaintiff Shawn D. Young was driving a tractor trailer in the course of his employment with Burris Logistics. The tractor trailer, owned by Plaintiff's employer, is insured under a policy with Zurich American Insurance Company. The tortfeasor had a policy with Allstate which paid its \$50,000 policy limits. At the time of the accident, Plaintiff was listed as an Additional Driver on a policy with GEICO which listed Katrina Gibbs as the Named Insured ("Policy"). Plaintiff was living with Gibbs at the time.

Plaintiff filed a complaint against GEICO for additional compensation for his injuries under the Uninsured Motorist (“UIM”) coverage of the Policy.

Defendant GEICO filed a Motion to Dismiss and presented matters outside the pleadings converting the motion into a motion for summary judgment.<sup>1</sup> Accordingly, the motion is disposed of as provided in Rule 56 of the Superior Court Rules of Civil Procedure. Plaintiff opposes the motion. After written submission by the parties, the Court heard oral argument.

### **Standard of Review for Summary Judgment**

Summary judgment is appropriate where the moving party can “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”<sup>2</sup> The moving party bears the initial burden of showing that no material issue of fact is present.<sup>3</sup> If the moving party is able to meet this burden, the burden then shifts to the non-moving party to demonstrate a material issue of fact.<sup>4</sup> If the non-moving party can show that an issue of material fact is disputed, summary judgment will not be granted.<sup>5</sup> In

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<sup>1</sup> Super. Ct. Civ. R. 12(b)

<sup>2</sup> Super Ct. Civ. R. 56(c).

<sup>3</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>4</sup> *Id.* At 681.

<sup>5</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.<sup>6</sup>

### **GEICO's Motion for Summary Judgment**

Defendant argues that Plaintiff cannot recover UIM benefits under the Policy because he does not meet the definition of "Insured." Defendant claims that Plaintiff's designation as an Additional Driver is virtually meaningless under the Policy.<sup>7</sup> Accordingly, Defendant argues that there is no genuine issue of material fact because the Policy clearly excludes Plaintiff from recovery of UIM benefits. On the other hand, Plaintiff argues that he is an "Insured" under the Policy. He contends that the definition of "Insured" includes those listed as Additional Drivers, and therefore he is entitled to recovery of UIM benefits. This Court finds that Plaintiff's understanding of "Insured" is consistent with the language and intent of the Policy, and consistent with decisional law.

Both parties agree on a number of issues. First, GEICO concedes that if Plaintiff was driving the vehicle insured under the Policy, he would have had UIM coverage. Second, the parties agree that Young is listed on the Declarations Page of the Policy as an Additional Driver. Third, the parties agree that the term

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<sup>6</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

<sup>7</sup> This argument is inconsistent with Delaware decisional law on contract interpretation under which contracts should be interpreted so as not to render any provision of a contract illusory or meaningless. *See O'Brien v. Progressive Northern Insurance Company*, 785 A.2d 281 (Del. 2001).

“Additional Driver” is not defined anywhere in the Policy. Fourth, GEICO admits that there is no Delaware case law which addresses the legal impact of being named as an Additional Driver on the Declarations Page of a policy. Fifth, the parties agree that Section V of the Policy addressing Uninsured Motorists Coverage is applicable to this dispute.

Section V of the pPolicy defines “Insured” as “(a) The individual named in the Declarations and his or her spouse; if a resident of the same household; (b) Relatives of (a) above if residents of his household; (c) Any other person while occupying an owned auto; (d) Any person who is entitled to recover damages because of bodily or property damage sustained by an insured under (a), (b), and (c) above.”<sup>8</sup> Defendant contends that the individual named in the Declarations means the “Named Insured,” excluding Plaintiff from coverage. Additionally, Defendant contends that Plaintiff does not fit under this definition in any other way because he was not the spouse of the “Named Insured,” was not related to her otherwise, and was not operating the insured automobile.

However, Section V does not expressly limit the definition of “Insured” to those identified as “Named Insured.” Rather, the language in the definition is much broader, including individuals named in the Declarations. Plaintiff is an individual named in the Declarations of the Policy as an Additional Driver. Thus,

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<sup>8</sup> Def.’s Ex. C.

Plaintiff is an “Insured” with respect to Section V. Further, Defendant concedes that if Plaintiff had been driving the insured vehicle, he would be entitled to UIM coverage. This suggests that naming Plaintiff as an Additional Driver on the Declarations Page did have a legal effect, contrary to Defendant’s position that the designation was meaningless. Accordingly, Defendant’s claim that Plaintiff’s designation as Additional Insured is meaningless is inconsistent with the text of the policy and the practical effect of the policy.

### **Conclusion**

Although there are no genuine issues of material fact with respect to the policy interpretation because it is a question of law, Defendant is not entitled to judgment as a matter of law because Plaintiff is an “Insured” under the Policy at issue and is therefore entitled to insurance coverage.

**NOW, THEREFORE, IT IS HEREBY ORDERED this 3<sup>rd</sup> day of June, 2015, Defendant’s Motion for Summary Judgment is hereby DENIED.**

*Andrea L. Rocanelli*

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**The Honorable Andrea L. Rocanelli**