

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

COTTY JAAK LUKK,)
)
) Plaintiff,)
)
) v.)
)
) **STATE FARM MUTUAL**)
) **AUTOMOBILE INSURANCE**)
) **COMPANY,**)
)
) Defendant.)

C.A. N12C-06-161 PRW

Submitted: March 31, 2014
Decided: March 31, 2014
Opinion Issued: May 12, 2014

MEMORANDUM OPINION

Upon Plaintiff's Motion for Summary Judgment
DENIED.

Joseph J. Longobardi, III, Esquire, Longobardi & Boyle, LLC, Wilmington, Delaware, Attorney for Plaintiff.

Colin M. Shalk, Esquire, Casarino, Christman, Shalk, Ransom & Doss, P.A., Wilmington, Delaware, Attorney for Defendant.

WALLACE, J.

I. INTRODUCTION

Plaintiff Cotty Jaak Lukk (“Mr. Lukk”) has filed a claim against State Farm Mutual Automobile Insurance Company (“State Farm”) for breach of contract for failing to pay underinsured motorist benefits pursuant Mr. Lukk’s father’s State Farm insurance policy (the “Policy”).¹ Mr. Lukk alleges that he is entitled to benefits under a “Resident Relative” clause in the Policy.² He has moved for summary judgment, urging, *inter alia*, the Court to interpret the Policy’s primary residency requirement as void against public policy.³ State Farm argues that: (1) the Policy’s language is valid and enforceable; (2) that language does not allow Mr. Lukk’s father to claim that his son “resides primarily” in more than one household; and (3) the evidence demonstrates that Mr. Lukk did not primarily reside with his father as the Policy requires.⁴ For the following reasons, Mr. Lukk’s Motion for Summary Judgment is **DENIED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2010, Mr. Lukk was seriously injured in an accident that took place in Indiana County, Pennsylvania while he was the passenger in a friend’s

¹ Complaint, dated Jun. 19, 2012, at ¶10 [hereinafter “Complaint”].

² Complaint at ¶9.

³ Pltf’s Mot. For Summary Judgment, dated Jan. 17, 2014, at 3 [hereinafter “Pltf’s MSJ”].

⁴ Deft’s Response to Pltf’s MSJ, dated Feb. 27, 2014, ¶7 [hereinafter “Deft’s Resp to Pltf’s MSJ”].

truck.⁵ Mr. Lukk's friend was liable for the one-vehicle accident and Mr. Lukk collected the \$35,000.00 policy limit from his friend's insurance company.⁶ He then made a claim for Underinsured Motorist Coverage ("UIM") through the Policy.⁷ State Farm denied coverage alleging that if Mr. Lukk's primary residence was with a parent, it was with his mother and, thus, he was not covered under the Policy.⁸

At the time of the accident, Mr. Lukk was an adult, living in his own apartment and attending a technical college in Western Pennsylvania.⁹ During Mr. Lukk's childhood, his parents shared equal custody and he alternated between their houses week-by-week.¹⁰ During his childhood and into adulthood, Mr. Lukk maintained a bedroom with furniture, clothing and personal effects in both his father's and his mother's home.¹¹ Mr. Lukk's father and mother jointly shared his expenses including his car insurance payments, cell phone payments and spending

⁵ Complaint at ¶3-4; *See* Lukk. Dep. Ex. 2 to Pltf's MSJ at 39-40.

⁶ Pltf's MSJ at ¶2.

⁷ Pltf's MSJ at ¶2; Deft's Resp to Pltf's MSJ at ¶1.

⁸ Pltf's MSJ at ¶2; Deft's Resp to Pltf's MSJ at ¶1.

⁹ Pltf's MSJ at ¶5; Deft's Resp to Pltf's MSJ at ¶2.

¹⁰ Pltf's MSJ at ¶5; Deft's Resp to Pltf's MSJ at ¶2. In 1996, the Delaware Family Court entered a custody order requiring Mr. Lukk's parents to share joint custody of Mr. Lukk. Pltf's MSJ at ¶5.

¹¹ *See* Pltf's MSJ at ¶5. At the time of the accident, Mr. Lukk's mother resided in Chadds Ford, Pennsylvania. His father then-resided in Wilmington, Delaware, but has since moved to Kennett Square, Pennsylvania. Deft's Resp to Pltf's MSJ at ¶2.

money.¹² Mr. Lukk had access to two vehicles, one registered to his father and the other registered to his mother.¹³ Mr. Lukk's primary source of income was from both his parents and was additionally supplemented by student loans.¹⁴

Mr. Lukk has filed a breach of contract action in this Court against State Farm.¹⁵ Mr. Lukk claims that he incurred substantial medical injuries from the accident while he was an insured resident relative pursuant to the Policy.¹⁶ According to Mr. Lukk, State Farm breached the Policy when it refused to pay him underinsured motorist benefits and he demands full payment of those underinsured

¹² See Lukk Dep. Ex. 2 to Pltf's MSJ. Mr. Lukk's mother paid for his cell phone at the time of the accident, but his father paid for it at other times. The breakdown of which parent paid which particular expenses at what time is not exactly clear, beyond a few specific examples. Nor is it clear what is the percentage breakdown of Mr. Lukk's total economic burden carried by each. No matter what the exact breakdown is, it can be fairly inferred from the record that both Mr. Lukk's mother and father made a good faith effort to divide his expenses and bills equally. Lukk Dep. Ex. 2 to Pltf's MSJ at 2-3.

¹³ See Lukk Dep. Ex. 2 to Pltf's MSJ at 7. Mr. Lukk's primary automobile, a Ford F-150 pickup truck, was registered in his mother's name and was under his mother's insurance policy, although his father helped pay the insurance payments. Mr. Lukk's secondary automobile, a Datsun 280-ZX, was registered in his father's name and was under his father's insurance policy, but was stored in a garage at his mother's house. Lukk Dep. Ex. 2 to Pltf's MSJ at 7-8.

¹⁴ Lukk Dep. Ex. 2 to Pltf's MSJ at 9. Mr. Lukk testified that he believed both parents co-signed for his student loans. Lukk Dep. Ex. 2 to Pltf's MSJ at 9.

¹⁵ Complaint at ¶10.

¹⁶ Complaint at ¶5, 8-10.

motorist benefits, costs and interest.¹⁷ He now seeks summary judgment on this claim.¹⁸

III. PARTIES' CONTENTIONS

Mr. Lukk says that he is entitled to summary judgment because, in his view, the Policy improperly restricts access to uninsured/underinsured motorist benefits and is therefore void as against public policy.¹⁹ Mr. Lukk challenges the Policy's "Resident Relative" definition which states:

Resident Relative means a ***person*** other than ***you***, who resides primarily with the first ***person*** shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school or otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured his or her spouse, or a ***person*** described in 1. above.²⁰

This express language of the Policy, he contends, creates a class of persons, then restricts the scope of the insurance coverage for such persons, and in doing so improperly reduces the minimum coverage benefits provided under 18 *Del. C.*

¹⁷ Complaint at ¶10.

¹⁸ Pltf's MSJ at ¶1.

¹⁹ Pltf's MSJ at ¶ 6-9.

²⁰ State Farm Car Policy Booklet, at 4, Ex. B to Def't's Resp to Pltf's MSJ (italics and bold in original, underlining added).

§ 3902.²¹ Mr. Lukk argues that Delaware’s public policy requires this Court to interpret any attempt to limit any person’s claim to uninsured/underinsured motorist protection narrowly and against imposing any limitations on coverage.²² He argues further that he is entitled to UIM benefits because he satisfies the Policy’s “Resident Relative” definition which he suggests should account for any person living in more than one residence.²³

According to State Farm, the Policy is unambiguous, is not against public policy and, therefore, is enforceable.²⁴ The Policy’s language, State Farm argues, does not allow Mr. Lukk to claim that he “reside[d] primarily” in more than one household or with more than one parent.²⁵ Lastly, State Farm contends that if at the time of the accident he resided primarily with one parent or the other, then the

²¹ Eighteen *Del. C.* § 3902(b) states:

Every insurer shall offer to the insured the option to purchase additional coverage for personal injury or death 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. Such additional insurance shall include underinsured bodily injury liability coverage.

²² Pltf’s MSJ at ¶7.

²³ Pltf’s MSJ at ¶12. In an alternative argument, Mr. Lukk asserts that the Policy language is impermissible because it creates a separate class of persons -- children of parents with equal joint custody. He asserts that children raised under an equal joint custody agreement would necessarily have two primary residences. In the instant case, Mr. Lukk was not a minor child whose living circumstances were governed by a custody order at the time of the accident, but an adult. Thus, the Court need not and does not address this argument; it inapplicable here and the Court’s ruling here does not decide that issue.

²⁴ Deft’s Resp to Pltf’s MSJ at ¶7.

²⁵ Deft’s Resp to Pltf’s MSJ at ¶6-7.

evidence presented demonstrates that Mr. Lukk's primary residence is with his mother. This is so because, among other things, his mother's address was that listed on the Complaint, was listed on his driver's license, was used to determine his school district, and was used for his school loans.²⁶

IV. STANDARD OF REVIEW

Summary judgment is appropriate where the record indicates that there are no genuine issues of material fact and where, viewing the facts in the light most favorable to the non-moving party, the moving party is entitled to summary judgment as a matter of law.²⁷ The moving party has the burden of proof to show that there are no genuine issues of material fact.²⁸ If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.²⁹ Here the burden did not shift, but even if it arguably did, State Farm provided sufficient evidence showing a genuine issue of material fact.³⁰

²⁶ Deft's Resp to Pltf's MSJ at ¶2, 7.

²⁷ Del. Super. Ct. Civ. R. 56(c).

²⁸ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

²⁹ *Id.* at 681.

³⁰ This is the case no matter whether the contested language is operable or not. But because determination of the validity and enforceability of that language will be critical to properly instructing the jury in this case, the Court must first address that question of law.

V. DISCUSSION

A. The adjective “primarily” used in a “Resident Relative” requirement is not *per se* contrary to Delaware statutory insurance requirements.

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 by the insured.³¹ And Section 3902(b) requires that each insured be offered the option to purchase additional underinsured bodily injury liability coverage.³² As a whole, Section 3902 advances the longstanding public policy of ensuring the availability of uninsured and underinsured motorist coverage to “protect innocent persons from impecunious tortfeasors.”³³ Section 3902 has been interpreted to include statutory minimum coverage -- addressing both monetary and party concerns -- which insurance companies must offer to all

³¹ Eighteen *Del. C.* § 3902 (a) states:

No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle shall be delivered or issued for delivery in this State with respect to any such vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operator of uninsured or hit-and-run vehicles for bodily injury, sickness, disease, including death, or personal property damage resulting from the ownership, maintenance or use of such uninsured or hit-and-run motor vehicle.

Eighteen *Del. C.* § 3902 (a)(1) states in pertinent part: “No such coverage shall be required in or supplemental to a policy when rejected in writing. . .”

³² See *supra* text accompanying note 21.

³³ *Frank v. Horizon Assurance Co.*, 553 A.2d 1199, 1201 (Del. 1989). See DEL. CODE ANN. tit.18, § 3902 (2013).

insureds.³⁴ Delaware courts have consistently held that policy provisions which reduce or limit uninsured motorist coverage to less than the prescribed amounts are void.³⁵ And in Delaware, insurance policies may not carve out classes of potential claimants “*based upon the relationship of the tort victim/plaintiff to the tortfeasor/defendant,*” for special exclusion from UIM coverage.³⁶ But that means only that, the Delaware Financial Responsibility Laws and the statute mandating insurance on registered vehicles prohibits the exclusion or restriction of claims of a “household” claimant *against* the tortfeasor/insured. The operative language here does neither, but instead defines who is covered by the insured’s Policy.

Mr. Lukk argues that the adjective “primarily” included in the “Resident Relative” provision of the Policy is impermissible and void because it restricts a class of persons covered by UIM.³⁷ Mr. Lukk reasons that the adjective acts as a disqualifying exclusion void against public policy.³⁸ Not so.

³⁴ DEL. CODE ANN. tit.18, § 3902 (2013).

³⁵ See *Frank*, 553 A.2d at 1201-02 (citing *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670, 673 (Del. 1978)); *Hurst v. Nationwide Mut. Ins. Co.*, 652 A.2d 10, 12 (Del. 1995).

³⁶ *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 918 (Del. 1997) (citing *State Farm Mut. Auto. Ins. Co. v. Wagamon*, 541 A.2d 557, 560 (Del. 1988)) (emphasis supplied).

³⁷ Pltf’s MSJ at ¶¶ 6-9.

³⁸ Pltf’s MSJ at ¶¶ 6-9.

Whether this definition of “Resident Relative” *per se* violates Delaware public policy is a matter of first impression in this Court. This State’s well-established case law prohibits broad, categorical exclusions that degrade coverage such that it falls below statutory minimums or excludes an injured’s claims because of his or her affiliation to the policy holder who injured him or her.³⁹ However, the same case law certainly does not void all express insurance policy provisions that may limit coverage.⁴⁰ In determining the enforceability of insurance policy provisions, Delaware courts balance the language and nature of the insurance policy, the language, framework and history of the applicable statute, and the overall public policy concerns.⁴¹

³⁹ See *Bass v. Horizon Assurance Co.*, 562 A.2d 1194, 1196 (Del. 1989) (rejecting an insurance provision that had an exclusion which completely denied coverage when the insured was convicted of driving under the influence); *Wagamon*, 541 A.2d at 560 (holding that a broad household exclusion that precluded any claim for bodily injury against the insured when brought by an insured’s family member residing with the insured was impermissible because it was in direct conflict with Sections 2118 and 2902); *Seeman*, 702 A.2d at 918 (rejecting a modified household exclusion which limited the liability coverage for household members to the statutory minimum because it violated the public policy encouraging Delaware drivers to purchase more than the statutory minimum); *State Farm Mut. Auto. Ins. Co. v. Washington*, 641 A.2d 449, 452 (Del. Super. Ct. 1994) (that application of a named driver exclusion was “repugnant to the statutory requirements and clear public policy” when it excluded underinsured coverage only when the named driver was driving but not while he was a passenger or pedestrian).

⁴⁰ See *e.g. Washington*, 641 A.2d at 451 (Our law permits named driver exclusions applicable to household members).

⁴¹ See *Progressive v. Mohr*, 47 A.3d 492, 495-96 (Del. 2012) (reasoning that the language of an insurance policy ran counter to the statute’s language, the “apparent purpose” of the statute, and the relevant public policy and concluded that the insurance provision in question was void because it would discourage the insured from acquiring the coverage needed to fully protect himself and his family); *Frank*, 553 A.2d at 1201-02 (interpreting the legislative purpose, the requirements of the statute, and the coverage provided in the insurance policy to conclude that an

The Policy’s “Resident Relative” language does not act as the type of broad, categorical exclusions disfavored by Delaware law. The Policy’s “Resident Relative” provision merely defines who is eligible for coverage under the terms of the Policy; the adjective “primarily” operating as a qualifying standard for such coverage.

Other states accept just such “resident relative” requirements when considering the availability of UIM coverage.⁴² The Policy does not reduce or limit coverage minimums prescribed by Section 3902, nor is it inconsistent with other requirements of Section 3902. In turn, this Court is not convinced that “primarily” used in this “Resident Relative” provision violates any Delaware public policy, but is instead a valid and fully enforceable part of this insurance contract.

Lastly, Mr. Lukk notes that Delaware’s overwhelming public policy “establish[s] that the fundamental purposes of 21 *Del. C.* §2118(a) and of 21 *Del. C.* Ch. 29 generally, is to compensate fully victims of car accidents. . . . [and that]

“other motor vehicle” exclusion would impermissibly deny coverage for all claims arising out of an accident involving a vehicle owned by the insured but not listed on the policy).

⁴² See, e.g., *State Farm Mut. Auto. Ins. Co. v. Brown*, 26 So. 3d 1167 (Ala. 2009); *Cole v. State Farm Ins. Co.*, 128 P.3d 171 (Alaska 2006); *Parsons v. State Farm Mut. Auto. Ins. Co.*, 737 S.E.2d 718 (Ga. Ct. App. 2013); *Gaudina v. State Farm Mut. Auto. Ins. Co.*, 2014 IL App (1st) 131264 (Ill. App. Ct. March 28, 2014); *Hall v. Shelter Mut. Ins. Co.*, 253 P.3d 377 (Kan. Ct. App. 2012); *Haydel v. State Farm Ins. Co.*, 935 So. 2d 171 (La. Ct. App. 2006); *Wallace v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 4216132 (Ohio Ct. App. Nov. 30, 2007); *Cook v. State Farm Auto. Ins. Co.*, 656 S.E.2d 784 (S.C. Ct. App. 2008); *Bauer v. USAA Cas. Ins. Co.*, 720 N.W.2d 187 (Wis. Ct. App. 2006).

[o]ne way to achieve that purpose is to encourage the Delaware driving public to purchase more than the statutorily minimum amount of coverage.”⁴³ While he suggests that the Policy frustrates the overall purpose of Delaware’s insurance statutes to require minimum insurance coverage, Mr. Lukk overlooks some salient facts. First, UIM coverage offered under Section 3902 is not a statutorily mandated minimum found in 21 *Del. C.* §2118. Second, the requirement to offer this supplemental coverage⁴⁴ was followed here; State Farm offered UIM coverage to Mr. Lukk’s father for himself and those relatives who “reside[d] primarily with [him].”

B. There is a genuine issue of material fact with respect whether Mr. Lukk “reside[d] primarily” with his father at the time of the accident.

Delaware courts have noted that generally the determination of “residence . . . is a question of fact, to be answered by an examination of the circumstances of each individual case.”⁴⁵ A factual determination will only be made on a motion for

⁴³ *Mohr*, 47 A.3d at 501-02. Twenty-one *Del. C.* §2118(a) states:

No owner of a motor vehicle required to be registered in this State, other than a self-insurer pursuant to § 2904 of this title, shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum insurance coverage. . .

⁴⁴ *Hurst*, 652 A.2d at 14-15 (describing the supplemental and optional nature of Section 3902).

⁴⁵ *Fisher v. Novak*, 1990 WL 82159, at *2 (Del. Super. Ct. June 11, 1990). See *Davenport v. Aetna Casualty and Surety Co. of Illinois*, 241 S.E.2d 593 (Ga. Ct. App. 1978) (holding that place of residence is a jury question); *Griffith v. Security Insurance Co. of Hartford*, 356 A.2d

summary judgment when the underlying facts are not disputed and the inferences drawn from those facts “point inescapably to a single conclusion.”⁴⁶ Here they do not.

This case is a breach of contract matter and the Court has held that the contested language of the Policy is valid and enforceable. The Policy provides UIM coverage for a “Resident Relative,” that is, one who “resides primarily with the first person shown as a named insured on the Declarations Page and who is: (1) related to that named insured . . . including an unmarried and emancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured.”⁴⁷ Mr. Lukk believes that he can meet that definition even if he resided equally with his mother and father.⁴⁸ State Farm argues that Mr. Lukk can “reside primarily” only in one residence and that the evidence demonstrates that if Mr. Lukk resided primarily with either parent, it was with his mother.⁴⁹

94, 97 (Conn. 1975) (reasoning that the issue of deciding whether a person is a resident of a household is a factual decision).

⁴⁶ *Fisher*, 1990 WL 82159, at *2.

⁴⁷ State Farm Car Policy Booklet, at 4, Deft’s Resp to Pltf’s MSJ, Ex. B (emphasis added).

⁴⁸ Pltf’s Rply to Ptf’s MSJ, dated Mar. 24, 2014, at ¶4.

⁴⁹ Deft’s Resp to Pltf’s MSJ at ¶7.

In determining the common meaning of insurance policy terms, courts have examined and adopted dictionary definitions.⁵⁰ The Oxford English Dictionary defines “primarily” as “to a great or the greatest degree; for the most part, mainly.”⁵¹ Established case law broadly defines the term “reside” to mean “to live with.”⁵² Reading these two definitions together, this Court concludes, as have many others construing such language, Mr. Lukk can “reside primarily” only in one residence only and the jury will be so instructed.

The record demonstrates that Mr. Lukk had a designated bedroom in each of his parents’ residences, had furniture, clothing and personal effects at each residence, and split his time evenly between his mother and father. Furthermore, Mr. Lukk’s parents testified that they attempted to split all of his expenses evenly. While State Farm argues that Mr. Lukk used his mother’s address as his address-of-record for school and licensing purposes, these facts are not conclusive as to where Mr. Lukk “reside[d] primarily.”

⁵⁰ *Fisher*, 1990 WL 82159, at *2.

⁵¹ *Oxford English Dictionary Online*, 2014, <http://www.oed.com/view/Entry/151277?redirectedFrom=primarily#eid> (last visited May 12, 2014); *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/dictionary/primarily> (last visited ay 12, 2014) (defining “primarily as “for the most part”).

⁵² *Fisher*, 1990 WL 82159, at *2; *See also Powell v. State Farm Fire and Cas. Co.*, 1996 WL 190023 (Del. Super. Feb. 27, 1996) (adopting the definition of “reside” articulated in *Fisher*).

This Court in deciding a summary judgment motion must identify disputed factual issues whose resolution are necessary to decide the case, but the Court must not decide those issues.⁵³ And “[u]nless the [] Court is reasonably certain that there is no triable issue, it is within the [] Court’s discretion to decline to decide the merits of the case in a summary adjudication, and to remit the parties to trial.”⁵⁴ There exists here a genuine issue of material fact and the jury, as finder of fact, must resolve this issue.

VI. CONCLUSION

For the foregoing reasons, there remains a genuine issue of material fact and Mr. Lukk has failed to demonstrate he is entitled to summary judgment as a matter of law. Consequently, his Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge

Original to Prothonotary
cc: Counsel via File & Serve

⁵³ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁵⁴ *Cross v. Hair*, 258 A.2d 277, 278 (Del. 1969) (internal citations omitted).