IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MATTHEW KELTY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N10C-08-246 WCC
	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

Submitted: January 6, 2014
Decided: May 28, 2014

MEMORANDUM OPINION ON REMAND

Gary S. Nitsche, Esquire. Weik, Nitsche & Dougherty, 305 N. Union Street, Second Floor, P.O. Box 2324, Wilmington, DE 19899. Attorney for Plaintiff.

Danielle Yearick, Esquire. Tybout, Redfearn & Pell, 750 Shipyard Drive, Suite 400, P.O. Box 2092, Wilmington, DE 19899. Attorney for Defendant.

CARPENTER, J.

This is the Court's decision on remand following the Delaware Supreme Court's reversal of summary judgment entered in Defendant's favor. On appeal, the Delaware Supreme Court found unequivocally that the Plaintiff's injuries were covered by personal injury protection ("PIP") benefits under the policy; thus, on remand, this Court ordered briefing from the parties on the only remaining issue—the amount of PIP benefits available. After reviewing the supplemental briefing and the insurance policy, the Court finds that Plaintiff is entitled to draw from the full policy limit of $100,000.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is seeking insurance coverage under Delaware's PIP statute for injuries he sustained on August 3, 2008. Plaintiff was helping John and Shirley Lovegrove cut branches from the top of a tree at their residence. Plaintiff climbed into the tree, positioned himself among the branches, and used a chainsaw to cut branches off the tree. To ensure that the branches did not strike a nearby power line once cut, Plaintiff and the Lovegroves decided to tie one end of a rope to the targeted branch and the other end to the trailer hitch on John's truck, wherein John was seated. John would then accelerate in order to keep the rope taut, while Plaintiff cut the branch. This would ensure that, when a branch fell, the rope would pull it away from the power line.

Unfortunately, this plan went awry. Plaintiff claims that while he was cutting a branch, John rapidly accelerated, causing the rope to snap. Freed of the truck's pull, the branch recoiled, broke off the tree, struck the power line, and knocked Plaintiff out of the tree in the process. Plaintiff suffered multiple injuries, of which he sought compensation through the Lovegrove's insurer, Defendant. The parties were able to settle Plaintiff's claims for bodily-injury liability, however, Defendant denied Plaintiff's PIP claim.

Thereafter, Plaintiff filed the underlying Complaint for PIP coverage and Defendant moved for summary judgment under Superior Court Civil Rule 56, arguing that Plaintiff was not entitled to PIP benefits under 21 *Del. C.* § 2118. This Court applied the three-part test previously adopted by the Delaware Supreme Court to determine whether Plaintiff was entitled to benefits.[1] This Court concluded that there was no genuine issue of material fact that the truck was not used for transportation purposes when Plaintiff was injured—as the test required—and granted Defendant's summary-judgment motion. The Delaware Supreme Court, on appeal *de novo*, determined that the transportation element of the prior three-part test was inconsistent and could not be reconciled with

[1] *Kelty v. State Farm Mut. Auto. Ins. Co.*, 2012 WL 1413966, at *1 (Del. Super. Feb. 21, 2012) (applying the *Klug* test: "(1) whether the vehicle was an "active accessory" in causing the injury, which is something less than proximate cause in the tort sense and something more than the vehicle being the mere situs of the injury; (2) whether there was an act of independent significance that broke the causal link between the use of the vehicle and the injuries inflicted; and (3) whether the vehicle was used for transportation purposes").

21 *Del. C.* § 2118 (a)(2).[2] Thus, the Supreme Court rejected the third element of the test and set forth a new standard only requiring a party to establish the first two elements of the prior test for PIP coverage. In applying the modified test, the Supreme Court found, as this Court previously found on summary judgment, that the first two elements were met. Thus, the Supreme Court concluded that Plaintiff was entitled to PIP benefits. The case was thereby reversed and remanded to this Court to determine the amount of benefits available to Plaintiff under the policy.

After remand, the Court held an office conference on November 12, 2013, to ascertain the status of the case. At the office conference, the parties informed the Court that the only remaining issue was whether Plaintiff was entitled to the maximum policy limit of $100,000 or whether Plaintiff's damages were subject to a provision limiting PIP benefits to $15,000. The Court ordered supplemental briefing by both parties to determine whether the case can be decided on purely legal grounds or if it was necessary to schedule discovery and prepare for trial.

Defendant, thereafter, tendered a check for $15,000 to Plaintiff on November 14, 2013. Plaintiff, however, refused the tender and is arguing that Plaintiff was entitled to draw from the full policy amount of $100,000.[3] After review of the supplemental briefing, the Court finds that there are no factual issues

[2] 21 *Del. C.* § 2118 (a)(2) (setting forth the requirements for PIP coverage).

[3] It is unclear from the record whether Plaintiff has "cashed" the check; however, the Court notes that had Plaintiff accepted the tender, Defendant's supplemental briefing would have contained a waiver or satisfaction-in-full argument. Therefore, the Court is acting under the assumption that Plaintiff has reserved his claim to the full policy limits.

for a jury to determine and, rather, it is appropriate for the Court to rule on the purely legal issues raised by the parties. This is the Court's decision on remand determining the PIP benefits available to Plaintiff under the policy.

DISCUSSION

As described above, this Court is only faced with one issue—the amount of PIP benefits available under the policy. Plaintiff contends that he is entitled to the policy's maximum coverage of $100,000, while Defendant argues that the accident and injuries are subject to a provision limiting benefits to $15,000.

The policy provision which limits recovery states as follows:

> **When Coverage P Does Not Apply[4]**
> The following provisions apply only to the extent the limits of liability of this policy exceed the minimum limits of liability required by law. THERE IS NO COVERAGE:
>
> . . .
>
> 2. FOR ***BODILY INJURY***:
>
> f. IN EXCESS OF THE MINIMUM LIMITS REQUIRED BY LAW FOR ANY PEDESTRIAN. This does not apply to ***you***, ***your spouse*** or any ***relative***.[5]

Plaintiff concedes that his claim falls within this provision but argues that the provision should not apply for two alternative reasons: (1) the provision is invalid under Delaware law or (2) Plaintiff qualifies as a "relative" exempt from the provision. The Court finds that the provision is invalid under Delaware law as

[4] Coverage P is the no-fault coverage provided for in the policy. Both parties agree Coverage P is the applicable coverage and the quoted provision, the applicable provision. *See* Pl.'s Supp. Br. Ex. A, p. 9.
[5] *Id.*

being against the public policy of this State. Therefore, the Court hereby strikes the provision, allowing Plaintiff to draw from the full policy limits. Since the Court is striking the provision, the Court need not address Plaintiff's second argument.

The litigation around Delaware's PIP statute and the companion Delaware Financial Responsibility Law has been unfortunately all too frequent[6] and, frankly, decisions related thereto have made it difficult to always find clear and unequivocal guidance for insurers and insurance companies. Obviously, the nature of these actions will always develop from the tension between the insurance companies trying to limit coverage and, thus, their liability and the insured wanting to maximize that coverage. This tension is also placed against the backdrop of public policy, which favors full coverage to victims of automobile accidents.[7]

The Delaware Supreme Court in *State Farm Mutual Automobile Insurance Company v. Wagamon*[8] came close to developing a bright line regarding coverage when it ruled that any attempt to restrict coverage based on the relationship of the injured to the policyholder was invalid as against public policy.[9] Unfortunately,

---

[6] *See, e.g.*, *Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 502 (Del. 2012); *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 918 (Del. 1997); *Cubler v. State Farm Mut. Auto. Ins. Co.*, 679 A.2d 66 (Del. 1996); *Harris v. Prudential Prop. & Cas. Ins. Co.*, 632 A.2d 1380, 1382-1383 (Del. 1993); *State Farm Mut. Auto. Ins. Co. v. Wagamon*, 541 A.2d 557 (Del. 1988); *Patilla v. Grissom*, 1999 WL 743680 (Del. Super. July 28, 1999); *Passwaters v. State Farm Mut. Auto. Ins. Co.*, 1997 WL 363969, at *4 (Del. Super. Mar. 27, 1997).
[7] *See Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 918 (Del. 1997).
[8] 541 A.2d 557 (1988).
[9] *Id.* at 561.

the Delaware Supreme Court, after making this definitive statement stated that the offending exclusion would be struck down because it "conflict[ed] with the basic requirements of providing minimum legal liability coverage for claims by victims of an automobile accident, regardless of their relationship to the insured."[10] Thus, the court left open whether a provision that did not disallow all coverage based on the affiliation with the insured but rather limited that coverage to the statutorily-mandated minimum coverage would withstand a public policy challenge. It is this question that is now clearly raised in this litigation. The policy at issue here provides all claimants with, at least, benefits up to the minimum limits ($15,000) but denies benefits beyond that amount to non-relative pedestrians.

The public policy decisions, however, go beyond the desire to fully compensate victims of car accidents. The Delaware Supreme Court has ruled that a related goal to achieve this public policy is to encourage the Delaware driving public to purchase more than the statutorily-mandated minimum coverage.[11] As such, the Delaware Supreme Court has found that, absent express legislation otherwise, public policy would prevent policy exclusions that would hinder an individual's ability to acquire coverage beyond the statutorily-mandated minimum amount.[12]

---

[10] *Id.*
[11] *See Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 918 (Del. 1997).
[12] *See Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 502 (Del. 2012) (quoting *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d at 918).

When this Court considers these important public policy goals together with the Delaware Supreme Court's decisions interpreting them, it can only come to one conclusion: when a policy provision attempts to exclude coverage beyond the statutorily-mandated minimum based on the claimant's relationship to the insured, those provisions will be held invalid under this State's public policy.

Now, the Court will concede that the stated public policy goals are perhaps not as compelling when the covered individual is not a direct family member but is simply a friend, albeit a son-in-law, helping the insured, as we have here in this litigation. However, the Delaware Supreme Court in *Progressive Northern Insurance Company v. Mohr*,[13] in discussing these public policy goals, stated:

> One way to achieve that purpose is to "encourag[e] the Delaware driving public to purchase more than the statutory minimum amount [of coverage]." Those related goals are particularly intertwined in a case such as this where, to obtain "full compensation," a pedestrian victim of a car accident will need access to the higher limit of the insurance policy coverage that the pedestrian himself (or a relative) has purchased.[14]

As such, this again supports the conclusion that the class of covered individuals will not change the strong public policy of mandating full coverage.

This decision is intended to develop a bright line so that insurance companies providing coverage in this State will appreciate the limits they have on including exclusions in their policies. Thus, any policy provision that restricts

---

[13] 47 A.3d 492 (Del. 2012).
[14] *Id.* at 502 (quoting *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d at 918).

coverage based on the affiliation of the injured to the insured will be ruled invalid as against public policy.

Having found that the exclusion violates this State's public policy, the Court believes it is important to discuss the interplay between public-policy concerns and 21 *Del. C.* § 2118 (f). Both parties have argued about the applicability of this section and, on first blush, it would appear to create a framework to decide these disputes. Section 2118 (f) defines the parameters by which an insurer can condition or exclude the PIP benefits provided for in an insurance policy and states:

> The coverage described in paragraphs (a)(1)-(4) of this section [(which sets forth the mandated PIP coverage)] *may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section*, except there shall be no exclusion to any person who sustains bodily injury or death to the extent that benefits therefore are in whole or in part either payable or required to be provided under any workers' compensation law.[15]

However, the Court finds that 21 *Del. C.* § 2118 (f) cannot be used to salvage the policy provision at issue here. For this Court to find an exclusion is permissible under Section 2118 (f), it must first ensure that the provision is not against public policy.[16] Only then can the Court inquire into whether the exclusion is customary in the insurance industry. Once an exclusion is found to be against public policy,

---

[15] 21 *Del. C.* § 2118 (f) (emphasis added).
[16] *See, e.g.*, *Harris v. Prudential Prop. & Cas. Ins. Co.*, 632 A.2d 1380, 1382-1383 (Del. 1993).

the inquiry ends and it becomes irrelevant whether the exclusion set forth in the policy is customary in the insurance industry. A good example of Section 2118 (f)'s applicability is the case of *Harris v. Prudential Property & Casualty Insurance Company*,[17] where the Delaware Supreme Court found that a cooperation clause does not rise to the same level of public-policy concerns as cases like *Wagamon*.[18] The court then found that since the policy provision did not raise any public policy conflicts, the cooperation provision was appropriate and would be upheld.[19]

This State's public policy is to encourage the driving public to purchase more than the statutorily-mandated minimum amounts set by the legislature and to ensure full recovery for victims of automobile accidents. These dual goals would be impermissibly frustrated if the Court were to uphold a policy provision which restricts an injured party's access to the full policy limits based off of their relationship to the insured. Because this provision is against the State's public policy, it is irrelevant whether such is customary in the insurance industry. The exclusion is, therefore, void as against public policy and may not be used to restrict Plaintiff's access to the full policy limit of $100,000.

---

[17] *Id.*
[18] 541 A.2d 557 (1988).
[19] *See also Passwaters v. State Farm Mut. Auto. Ins. Co.*, 1997 WL 363969, at *4 (Del. Super. Mar. 27, 1997) (upholding an owned-vehicle exclusion as consistent with public policy and customary).

CONCLUSION

The Court hereby finds that Plaintiff is entitled to draw from the full policy limit of $100,000 to compensate for his proximately-caused injuries.

IT IS SO ORDERED.

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