

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

BETTY BAKER, :
Plaintiff, : C.A. No. K14C-06-013 WLW
 :
v. :
 :
EDMUND A. GOLDSBOROUGH :
and EDWARD J. GOLDSBOROUGH, SR. :
and STATE FARM MUTUAL AUTO :
MOBILE INSURANCE COMPANY, a :
foreign corporation, :
Defendants. :

Submitted: March 3, 2015
Decided: June 18, 2015
Corrected: October 6, 2015¹

ORDER

Upon Defendant State Farm Mutual Automobile
Insurance Company's Motion for Summary Judgment
on Plaintiff's Claims for Punitive Damages.
Granted.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorney for Plaintiff.

Brian T. McNelis, Esquire of Young & McNelis, Dover, Delaware; attorney for
Defendants Edmund A. Goldsborough and Edward J. Goldsborough, Sr.

Colin M. Shalk, Esquire and Catherine M. Cramer, Esquire of Casarino Christman
Shalk Ransom & Doss, P.A., Wilmington, Delaware; attorneys for Defendant State
Farm Mutual Automobile Insurance Company.

WITHAM, R.J.

¹ On page 5, second full paragraph, "include" is corrected to "exclude".

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The issue before the Court is whether a Plaintiff may recover punitive damages for an uninsured motorist claim against an insurance company when Plaintiff was involved in an auto accident with a third-party tortfeasor, and the policy explicitly states punitive damages are unavailable. For the reasons set forth below, the answer is no.

FACTS AND PROCEDURE

Betty Baker (hereinafter “Plaintiff”) was involved in an auto accident with Edmund A. Goldsborough and Edward J. Goldsborough, Sr. (collectively “the Defendants”) on September 26, 2013. Plaintiff filed her complaint on June 9, 2014, and filed an Amended Complaint on September 22, 2014, October 16, 2014, and on June 11, 2015.² Plaintiff alleges that the Defendants were negligent *per se* in causing injuries to Plaintiff. Edward J. Goldsborough, Sr. was the owner of the vehicle involved in the accident, which was driven by Edmund A. Goldsborough.

On January 20, 2015, Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”) filed a motion for summary judgment, requesting this Court deny Plaintiff’s ability to recover punitive damages from her UM/UIM policy for the third-party uninsured tortfeasor’s alleged recklessness. Plaintiff’s

² On June 11, 2015, the Plaintiff filed a motion with the Court to amend her complaint. This amendment will be heard by the Commissioner on June 25, 2015. This amendment is to substitute one of Defendants, Edward J. Goldsborough, Sr., who is recently deceased, with Jean M. Carver, the Estate’s Representative. The Plaintiff is also seeking to amend the complaint to add Count IV of uninsured/underinsured motorist claims against Defendant State Farm. This Court is deciding State Farm’s Motion for Summary Judgment prior to the Commissioner deciding the Motion to Amend the Complaint, as amending the complaint will not materially affect the current motion before this Court.

policy has a limit of \$100,000 per person and \$300,000 per occurrence. Plaintiff's policy states that there is no coverage for punitive or exemplary damages.³ Defendant argues that there is no policy in Delaware for paying punitive damages against an uninsured motorist, and that UM/UIM providers are able to exclude coverage for punitive damage awards. Defendant relies on this Court's decision in *Hamilton v. Liberty Mut. Fire Ins. Co.*, 2010 WL 8250753 (Del. Super. June 24, 2010) where the Court held that insurance providers may contractually exclude coverage for punitive damages.

On February 2, 2015, Plaintiff responded in opposition to State Farm's motion. Plaintiff writes that "it is not disputed that State Farm's uninsured/underinsured motorist policy has a written exclusion in the policy for 'exemplary and punitive damages.'"⁴ The Plaintiff, however, argues that the Delaware Supreme Court has yet to rule on the enforceability of such an exclusion. Plaintiff argues that the meaning of "damages" in the Delaware Code likely applies to both compensatory and punitive damages, in that the statute allows for recovery of "damages" from owners of uninsured vehicles.

STANDARD OF REVIEW

Summary judgment will be granted when, viewing all of the evidence in the light most favorable to the nonmoving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled

³ State Farm's Exhibit B, Page 15.

⁴ Pl. Opp. At 1.

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to judgment as a matter of law.”⁵ This Court shall consider the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any” in determining whether to grant summary judgment.⁶ When material facts are in dispute, or “it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances,” summary judgment will not be appropriate.⁷ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.⁸

DISCUSSION

For the purposes of this Motion for Summary Judgment, the facts are not in dispute. The question before this Court is simply whether the exclusion in question is permitted under Delaware law. Specifically, whether the exclusion in question violates 18 *Del.C.* §3902, which states:

“No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle shall be delivered ... 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 ... for

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991 (citing *Benge v. Davis*, 553 A.2d 1180, 1182 (Del. 1989)); *see also* Del. Super. Ct. Civ. R. 56(c).

⁶ Del. Super. Ct. Civ. R. 56(c).

⁷ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957)).

⁸ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

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bodily injury, sickness, disease, including death, or personal property damage....⁹

Baker advances an argument nearly identical to that in *Hamilton*. The Plaintiff seeks to carve out an area of law whereby she may recover for punitive damages even though her policy explicitly states she may not. The Plaintiff asks this Court to analyze the difference between the term “damages” in an insurance policy, and the term “damages” as it appears in the aforementioned statute.

As in *Hamilton*, the Plaintiff in this case attempts to distinguish *Jones v. State Farm*¹⁰ and *Price v. Continental*.¹¹ Both *Jones* and *Price* held that policy provisions could be read to exclude punitive damages.¹² The *Hamilton* Court previously analyzed *Price* under factually similar circumstances as the case at bar:

“The *Price* court held that while this legislative purpose entitles the insurance consumer to the full benefits required under the law, “[no] authority holds, or even suggests, that the provisions of the UM/UIM sections of the Delaware insurance code *require* coverage for punitive damages.”¹³ Consequently, the *Price* court concluded that,

⁹ 18 *Del. C.* § 3902.

¹⁰ *Jones v. State Farm Mut. Auto. Ins. Co.*, 610 A.2d 1352 (Del. 1992).

¹¹ *Price v. Cont'l Ins. Co.*, 768 A.2d 975 (Del. Ch. 2000).

¹² *Hamilton v. Liberty Mut. Fire Ins. Co.*, 2010 WL 8250753, at *2 (Del. Super. June 24, 2010).

¹³ *Price v. Cont'l Ins. Co.*, 768 A.2d 975, 976 (Del. Ch. 2000).

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‘UM/UIM providers and purchasers can contractually exclude coverage for punitive damage awards.’¹⁴ Similar to the situation in *Price*, there is no dispute that Hamilton's policy clearly and unambiguously excludes coverage for punitive or exemplary damages. The Court, therefore, agrees with the *Price* court, and concludes that UM/UIM providers and purchasers can contractually exclude coverage for punitive damage awards.”¹⁵

Contrary to Plaintiff’s assertion, it is not for this Court to reinterpret the holdings found historically in Delaware that have unambiguously held that “Section 3902 does not require that punitive or exemplary damages be made available in every UM/UIM policy.”¹⁶

CONCLUSION

For the foregoing reasons, State Farm’s Motion for Summary Judgment on Plaintiff’s claims for punitive damages is **granted**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

¹⁴ *Id.* at 979.

¹⁵ *Hamilton v. Liberty Mut. Fire Ins. Co.*, 2010 WL 8250753, at *3 (Del. Super. June 24, 2010).

¹⁶ *Id.*