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

JEREMY J. BEST,)
Plaintiff,)
v.) C.A. No. N11C-12-263 EMD
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,)) TRIAL BY JURY OF TWELVE) DEMANDED
Defendant.)
	,

Submitted:

Decided:

Upon Plaintiff's Motion for Partial Summary Judgment *GRANTED*

April 22, 2013 June 24, 2013

Martin Siegel, Esquire, The Law Office of Martin J. Siegel, New Castle, Delaware, *Attorney for Plaintiff*.

Matthew O'Byrne, Esquire, Casarino Christman Shalk Ransom & Doss, P.A., Wilmington, Delaware, *Attorney for Defendant*.

DAVIS, J.

Introduction

This is a personal injury action. Plaintiff Jeremy J. Best claims he was injured when he took evasive action to avoid striking a vehicle which unexpectedly turned into his lane from the opposite lane on Valley Road in Hockessin. Before the Court is Mr.

Best's Motion for Partial Summary Judgment (the "Motion"). Mr. Best seeks summary judgment with respect to an affirmative defense asserted by Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). Mr. Best asserts that, as a matter of law, the "disinterested witness" provision in his insurance contract with State Farm is void and unenforceable as being contrary to the clear, unambiguous language of the uninsured motorist statute and the public policy of the State of Delaware. Mr. Best argues that the provision impermissibly seeks to limit uninsured motorist coverage to something less than the coverage prescribed by the statute. For the reasons stated herein, the Motion is **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Best seeks a recovery against State Farm for uninsured motorist benefits. Mr. Best alleges that he was operating his vehicle northbound on Valley Road in Hockessin, Delaware when a vehicle travelling southbound on Valley Road made a left turn directly across Mr. Best's lane of travel. As a result, Mr. Best purportedly took evasive action that resulted in him striking a median and leaving the roadway. Mr. Best's vehicle never made contact with the second vehicle, whose driver did not remain at the scene of the incident. The driver of that vehicle has not been identified. As a result of the incident, Mr. Best alleges he suffered permanent injuries requiring hospitalization and major surgery.

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¹ This matter first came before the Court as a motion to strike affirmative defense under Superior Court Civil Rule 12(f). Under the circumstances, the Court determined that the relief would be better postured as a motion for summary judgment after discovery was initiated. Accordingly, the Court denied the motion to strike without prejudice to the parties presenting the matter under Superior Court Civil Rule 56.

Mr. Best filed a claim for uninsured motorist benefits with State Farm which State Farm denied pursuant to a "disinterested witness" provision (the "Provision") in its policy with Mr. Best.² The Provision states:

... If there is no physical contact between that land motor vehicle and: 1. The Insured; 2. The vehicle the Insured is occupying . . . then the facts of the accident must be corroborated by a disinterested person who witnessed the accident. You, resident relatives and persons occupying the same vehicle are not disinterested parties.

The parties have stipulated that there are no witnesses that can satisfy the Provision.

Mr. Best filed his Motion on February 28, 2013. State Farm filed its Opposition to the Motion on April 12, 2013. Mr. Best filed a Reply to State Farm's Opposition on April 17, 2013. The Court heard argument by counsel for the parties at a hearing held on April 22, 2013.

PARTIES' CONTENTIONS

Mr. Best contends that the Provision is void because it impermissibly seeks to limit uninsured motorist coverage to something less than prescribed by Delaware's uninsured motorist statute. He argues that the Provision contravenes public policy in Delaware to protect innocent persons from the negligence of unknown tortfeasors.

State Farm opposes Mr. Best's Motion, claiming that, while the validity of the Provision is a matter of first impression, Delaware courts have upheld insurance contract provisions limiting uninsured motorist coverage. State Farm contends that the Provision is in keeping with the legislative intent of the uninsured motorist statute because it aims to eliminate fraudulent or collusive claims. State Farm argues that the Provision does not

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² State Farm relies on the Provision for the following affirmative defenses: "Plaintiff has failed to meet the prerequisites for recovery of the uninsured motorist coverage as set forth in the policy of insurance at issue in this litigation," and "Plaintiff's claim is subject to the terms, conditions, limitations and exclusions of the subject policy." Def.'s Answer ¶¶ 10 & 15.

restrict or diminish the scope of coverage mandated by the legislature. State Farm asserts that if the Court finds the provision void, Mr. Best's uninsured motorist benefits should be reduced to the statutory minimum of \$15,000.00 (from \$25,000.00/\$50,000.00).

STANDARD OF REVIEW

The Court may grant a motion for summary judgment made pursuant to Superior Court Civil Rule 56 where the movant can show from the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, that no material issues of fact exist so that the movant is entitled judgment as a matter of law. In considering a motion for summary judgment, the Court views the evidence in the light most favorable to the non-moving party. The Court should deny summary judgment where, "a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."

DISCUSSION

A. The Provision is void and unenforceable, as it contradicts the uninsured motorist statute and contravenes public policy.

Delaware's uninsured motorist statute is codified at 18 *Del. C.* § 3902. It states as follows:

- (a) 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 . . . 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 operators of uninsured or hit-and-run vehicles for bodily injury . . .
 - . . .
- (3) For the purpose of this section, an uninsured vehicle shall be defined as:

³ Super. Ct. Civ. R. 56(c); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁴ United Vanguard Fund, Inc. v. TakeCare, Inc., 693 A.2d 1076, 1079 (Del. 1997).

⁵ Spence v. Funk, 396 A.2d 967, 968 (Del. 1978).

. . .

c. A hit-and-run motor vehicle that causes an accident resulting in bodily injury or property damage to property of the insured. Bodily injury or property damage must be caused by physical contact of the hit-and-run vehicle with the insured or with an insured motor vehicle, or by a noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown. The accident must be reported to the police or proper governmental authority. The insured must notify his/her insurer within 30 days, or as soon as practicable thereafter, that the insured or his/her legal representative has a legal action arising out of the accident ⁶

As structured, the uninsured motorist provision expressly sets forth a procedure that must be followed by the insured when there is an accident involving a "noncontact vehicle" driven by an unidentifiable driver. In that instance, in order to be covered, the insured must (i) report the accident to the proper enforcement authority and (ii) notify the insurer within 30 days, or as soon as practicable thereafter.⁷

The Supreme Court of Delaware has made clear that the intent of the uninsured motorist statute is to "protect innocent persons from the negligence of unknown or impecunious tortfeasors." The Supreme Court has stated:

Once uninsured motorist coverage is purchased, the insurance consumer is entitled to secure the full extent of the benefit which the law requires to be offered. Attempts by insurers to reduce this benefit by exclusion clauses are repugnant to the public policy of protecting persons injured in automobile accidents.⁹

Using this guidance from the Supreme Court, Delaware courts have struck down several insurer exclusions as unlawfully limiting uninsured motorist coverage. ¹⁰

⁶ 18 *Del. C.* § 3902 (2012) (emphasis supplied).

⁷ *Id.* § 3902(a)(3)c.

⁸ Cropper v. State Farm Mutual Auto. Ins., 671 A.2d 423, 425 (Del. 1995).

⁹ *Id*. at 426.

¹⁰ See State Farm Mutual Auto. Ins. Co. v. Abramowicz, 386 A.2d 670, 673-74 (Del. 1978) (finding that an "arbitrary physical contact requirement may not be used to frustrate the intent of § 3902 to provide relief to all insureds for damages suffered as a result of unlawful contact by the uninsured or unknown tortfeasor"); Frank v. Horizon Assurance Co., 553 A.2d 1199,1205 (Del. 1989) (finding that an "other motor vehicle"

In Adams v. Delmarva Power & Light Co., 11 cited by State Farm for the premise that parties to an insurance policy are free to contract as long as their agreement is not inconsistent with a statutory provision or public policy, 12 the Supreme Court quoted its own language: "When a motorist who carries full uninsured/underinsured coverage takes to the highways, he knows that a certain amount of protection will always be available." ¹³ In *Adams*, the Supreme Court read uninsured/underinsured insurance coverage as a contractual means whereby an insured can create a fund to indemnify against losses caused by other drivers. 14 The Supreme Court stated, "Delaware's public policy . . . permits such coverage to be contracted for by the 'rational and informed consumer." The Court relied on that policy to find that Adams' employer was not entitled a workers' compensation set off for payments made to Adams from his underinsured motorist insurer.¹⁶

State Farm relies upon Harris v. Prudential Prop. & Cas. Ins. Co. 17 for the premise that Delaware Courts enforce insurance policy exclusions notwithstanding strong public policy concerns. The Supreme Court in *Harris* held that the purpose of a cooperation clause was to prevent collusion between the insured and the injured party and

provision disclaiming coverage for injury or damage from incidents involving vehicles owned by the insured but not insured by the insurer as inimical to the purchase of underinsured motorist coverage); State Farm Mutual Auto. Ins. Co. v. Washington, 641 A.2d 449, 453 (1994) (finding an insurer could not deny an insured's son underinsured motorist coverage based on a named driver exclusion where the son was a passenger in a vehicle "because of the strong public policy of this State in favor of underinsured motorist coverage, and against any limitations upon such protection"); Jeanes v. Nationwide Ins. Co., 532 A.2d 595, 596 (Del. Ch. 1987) (declining to give effect to a policy provision precluding "uninsured motorist coverage as to any accident occurring during the use of any vehicle by the insured to carry persons or property where the insured receives a fee").

¹¹ 575 A.2d 1103 (Del. 1990).

¹² Def.'s Opp'n \P 5.

¹³ Adams, 575 A.2d at 1107 (quoting Aetna Cas. & Sur. Co. v. Kenner, 570 A.2d 1172, 1175 (Del. 1990). ¹⁴ *Id*

¹⁵ *Id*.

¹⁶ *Id.* 1107-08.

¹⁷ 632 A.2d 1380 (Del. 1993).

to allow the insurer an opportunity to conduct a reasonable investigation of the underlying claim." The Supreme Court found "no innate public policy conflict in permitting an insurer to require the cooperation of an insured in the defense of a claim where the mandatory minimum coverage has been satisfied," advancing instead the interest of "protecting the insurer's ability to present and prosecute a defense for the benefit of its insured."19

The Court finds that this case is factually distinguishable from *Harris*. As such, the Court does not believe that *Harris* is helpful. Here, the situation involves the inability of the insured to identify (i) a disinterested witness to the accident or (ii) the other driver involved in the accident, i.e., the noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown. This lack of a disinterested witness having viewed an accident does not hinder or prejudice an insurer's ability to formulate a defense the way an insured's lack of cooperation would—an insurer can conduct a reasonable investigation of a claim regardless of whether a disinterested witness viewed the event that is the subject of the claim.²⁰

More importantly, the uninsured motorist statute clearly and unambiguously requires insurers to provide uninsured motorist coverage for events involving the type of tortfeasor alleged in this action: "a noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown."²¹ The Provision's requirement that a disinterested witness corroborate the facts of an accident directly contradicts the

¹⁸ *Id.* at 1382. ¹⁹ *Id.* at 1382-83.

²¹ 18 Del. C. § 3902.

uninsured motorist statute, which provides a procedure for a motorist to follow when his vehicle is struck by a noncontact vehicle, to report the accident and notify his insurer.²²

Here, this means that Mr. Best, who purchased uninsured motorist coverage, will not be securing the full extent of the benefit which the law requires to be offered. Therefore, the disinterested witness clause is unenforceable. The Provision limits, and almost contravenes the intent of the uninsured motorist statute. As stated by the Supreme Court, insureds who procure uninsured motorist coverage are entitled to "secure the full extent of the benefit which the law requires to be offered" and be protected against "the negligence of unknown or impecunious tortfeasors." Therefore, the Court concludes that the Provision contained in Mr. Best's policy with State Farm is void and unenforceable as repugnant to public policy.

B. The Provision is not enforceable above the mandatory limits of uninsured motorist coverage.

State Farm cites *Harris* for its assertion that the disinterested witness provision is enforceable above the mandatory limits of uninsured motorist coverage. In *Harris*, the Supreme Court stated that, "[g]iven the legitimate interest of protecting the insurer's ability to present and prosecute a defense for the benefit of its insured, [the Court found] no public policy violation in allowing an insurer to raise an insured's noncooperation as a defense to liability coverage above the statutory minimum." The Court reasoned that Prudential was absolutely liable to the extent of the minimum of \$15,000.00 coverage

²³ *Cropper*, 671 A.2d at 426.

²² See id.

²⁴ Cropper v. State Farm Mutual Auto. Ins., 671 A.2d 423, 426 (Del. 1995).

²⁵ *Id.* at 425

²⁶ Harris v. Prudential Prop. & Cas. Ins. Co., 632 A.2d 1380, 1383 (Del. 1993).

required by Delaware's Financial Responsibility Law.²⁷ Therefore, even though the insured in *Harris* violated his policy's cooperation clause, the insurer was required to provide minimum coverage. 28

Unlike the case in *Harris*, the policy advanced by the Court's decision here—to "protect innocent persons from the negligence of unknown or impecunious tortfeasors"²⁹— is one that protects the interest of the insured and not the insurer. Therefore, *Harris* is not a basis for the Court to enforce the disinterested witness provision above the minimum mandatory limits. Contrary to State Farm's position, the Supreme Court has held, on more than one occasion, that the insured is entitled to fully recover under their uninsured motorist policies, even where provisions of those policies are deemed invalid. 30 Considering there is no authority otherwise, the Court holds that Mr. Best is entitled uninsured motorist coverage to the full extent of his contract with State Farm.

²⁷ See id. at 1381; 21 Del. C. § 2902(b)(2). ²⁸ Harris, 632 A.2d at 1382.

³⁰ See Hurst v. Nationwide Mut. Ins. Co., 6652 A.2d 10, 14 (Del. 1995); Frank v. Horizon Assur. Co., 553 A.2d 1199, 1205 (Del. 1989).

CONCLUSION

For the reasons stated above, the disinterested witness provision in the insurance policy between Mr. Best and State Farm is void and unenforceable. Therefore, Mr. Best's Motion for Partial Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/Eric M. Davis

Eric M. Davis Judge