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

NATALIE L. MEEKS,	:	
	:	**C.A. No: 12C-08-015 (RBY)**
Plaintiff,	:	
	:	
v.	:	
	:	
GEICO INDEMNITY COMPANY, a foreign corporation,	:	
	:	
	:	
Defendant.	:	

Submitted: April 30, 2013
Decided: May 1, 2013

Upon Consideration of Defendant's Motion for Summary Judgment
DENIED

Upon Consideration of Plaintiff's Cross-Motion for Summary Judgment
GRANTED

ORDER

Scott E. Chambers, Esq., Schmittinger & Rodriguez, Dover, Delaware for Plaintiff.

Brian D. Ahern, Esq., Schwartz & Campbell, LLC, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

Plaintiff Natalie L. Meeks and Defendant Geico Indemnity Company have cross-moved for Summary Judgment. There are no facts of any nature in dispute. This case is entirely a legal interpretation of agreed upon language of Plaintiff's automobile insurance contract, and specifically its Additional Personal Injury Protection Amendment.

That critical language either supports the Plaintiff's position or else can be read just as rationally and fairly as first Plaintiff and then Defendant would assert. Thus, the language must be construed against the drafter. The result is that Defendant's Motion is **DENIED**, and Plaintiff's Cross-Motion is **GRANTED**.

STANDARD OF REVIEW

Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.[1] "Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances."[2] The movant bears the initial burden of establishing that no genuine issue of material fact exists.[3] Upon making that showing, the burden shifts to the non-movant to show

[1] *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

[2] *Id.*

[3] *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

evidence to the contrary.[4] Where the court is presented with cross-motions for summary judgment, neither party's motion will be granted unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law."[5] Further, when the court is asked to rule upon cross-motions for summary judgment, and neither party has "presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision to the merits based on the record submitted with the motions."[6] In this case, the Court must also consider an applicable rule of construction, that where any ambiguity exists in the language of an insurance contract, that ambiguity will be construed against the insurance company which drafted it.[7]

DISCUSSION

I. COVERAGE DETERMINATION

In this case, Plaintiff was operating a motor vehicle, owned by and insured on behalf of another person, which was involved in an accident, in which Plaintiff sustained personal injuries. As a result, she pursued a standard PIP claim, against the appropriate Delaware carrier providing PIP coverage for the vehicle she had

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[4] *Id.*

[5] *Playtex FP, Inc. v. Columbia Cas. Co.,* 622 A.2d 1074, 1076 (Del. Super. 1992) (quoting *Empire of America Relocation Services, Inc. v. Commercial Credit Co.*, 551 A.2d 433, 435 (Del. 1988)).

[6] Super. Ct. Civ. R. 56(h).

[7] *Steigler v. Ins. Co. of North America,* 384 A.2d 398, 400 (Del. 1978).

been operating. That claim was processed by that carrier. That resulted in a payment for Plaintiff in the amount of $15,000.00, the PIP policy limits of that coverage.

Following that, and in a timely manner, Plaintiff then looked to her own automobile PIP insurance policy in order to determine whether or not any additional coverage might be available to her. The primary policy (attached to Defendant's Motion as Exhibit A), at Section II "No Fault Coverage," delineates (at Part I) that various expenses resulting from bodily injury to the injured person will be paid. "Injured person" had been defined previously to include Plaintiff while in any motor vehicle. That, standing alone, would appear to resolve this issue easily in Plaintiff's favor. However, the policy goes on to list exclusions relative to PIP coverage. One of them is Exclusion #9. That states, plainly and clearly, that Plaintiff is <u>not</u> covered under this PIP policy if she is injured while in a motor vehicle covered by another Delaware no-fault policy. Since she was just that, both parties agree that said language is unequivocal, and would end the matter in Defendant's favor.

However, Plaintiff had purchased an "Additional Personal Injury Protection Amendment." Among the provisions of that coverage is the following: "Exclusion 9 of the PIP coverage section does not apply..." Though the syntax of the entire sentence leaves a good bit to be desired, the parties accept that the intent is to supplant the prior exclusion 9 language with the following:

> "This coverage [meaning the coverage of Plaintiff's policy as amended] does not apply...to bodily injury sustained by

> [Plaintiff]...while occupying...a motor vehicle other than the insured motor vehicle..."

Were the language of Plaintiff's amended policy relative to exclusion 9 to stop there, both parties – at least for these purposes – agree that Plaintiff would be foreclosed from the additional coverage she seeks. It does not, though, stop there. Rather, it goes on to say:

> "[This coverage does not apply...] to the extent that [Plaintiff] is entitled to receive optional personal injury protection coverage under the policy covering that motor vehicle."

The application of that language to the situation at bar has proved to be problematic. The single reading which gives any effect to that language (language crafted by Defendant) is to determine that any coverage afforded under Defendant's policy does not provide benefits to Plaintiff so long as [or "to the extent that"] she is entitled [that is: she has a right] to receive optional PIP protection under the policy covering that motor vehicle.

Now, the parties agree that Plaintiff has exhausted the coverage provided by the policy covering the vehicle she occupied, which coverage was limited to the statutory minimum of $15,000.00. Thus, she was not entitled to anything else (whether it's called "optional" or "additional" or "extended" or anything) under the coverage attendant to that (meaning the occupied) vehicle.

On the other hand, should this language be referring to Plaintiff's own policy, she would, in fact, have optional or additional coverage, extending to $25,000.00. Thus, Defendant states, arguing the latter, the intent of this was to say that "that motor vehicle" refers to Plaintiff's own covered vehicle.

From the philosophical perspective, that argument makes some sense. That is, the policy would mean: "we're not trying to limit your coverage on this policy or coverage that you paid for. But we certainly have no intention of puffing up some other policy under which you're making a claim."

Unfortunately, philosophy aside, the language of the policy can't support that. To begin with, in the paragraph in question there are two phrases: (1) "a motor vehicle," which unquestionably refers to the non-owned, other vehicle; and (2) " the insured motor vehicle," which unquestionably refers to the vehicle owned by Plaintiff and covered by the involved policy. Then the critical phrase at the end of the sentence states "motor vehicle." If the latter vehicle were intended, the verbiage was poorly chosen.

Next, the whole clause would be essentially superfluous if it were to refer to the covered auto. As earlier stated, the position of the Defendant would be persuasive if the clause had ended at "insured motor vehicle." By going on with the strangely worded language, the supposition must be made that something different, or at least additional, was intended. That something different can only be Plaintiff's interpretation.

If the contract language under consideration does not necessitate the acceptance of Plaintiff's position, it is certainly ambiguous, if not utterly obscure.

That ambiguity, of course, is resolved in the favor of the non-drafting party,[8] in this case Plaintiff.

II. COVERAGE AMOUNT

The parties further presented positions regarding the monetary effect of a ruling denying Defendant's Motion and granting Plaintiff's. Plaintiff argues, in essence, that since the Exclusion 9 of the original is voided by the Amendment, the basic additional coverage of $25,000.00 ought to be available.

Defendant, to the contrary, asserts that the Amendment provides for a level of potential recovery to be available to Plaintiff in the amount of $25,000.00. Since she has already received $15,000.00 from the occupied vehicle, the maximum amount now available by contract would be an additional $10,000.00.

It is safe to say that no express language in the policy covers this question directly.

The original policy (Section II – No Fault Coverages) states that this PIP coverage is to pay for medical expenses and lost earnings (plus other items not relevant to this consideration,) resulting from bodily injury to Plaintiff sustained in an automobile accident. Since those amounts were never discussed in the briefing or the oral argument, it is assumed (without deciding) that the combination of Plaintiff's recoverable medical expenses and lost wages totals at least $40,000.00, which is the total of the two PIP policies involved.

Perhaps the closest thing in the policy itself are the PIP provisions in the

[8] *Steigler v. Ins. Com. Of North America*, 384 A.2 398 (Del. 1978).

original policy under "coverage limits." At the conclusion of Part I (p. 6 of 22), the policy states that "Regardless of the number of policies available,...no more than $15,000.00 [now $25,000.00 due to the amendment] will be paid to any one injured person."

The language just cited is clear. It is not ambiguous. Unfortunately, it does not directly resolve the quandry presented. Hence, we are constrained to extrapolate. The purpose of the PIP coverage is to satisfy the statutory requirement that everyone have a fund available to provide $15,000.00 towards medical expenses and lost wages for the basic and essential and immediate needs of the injured people. It was, I believe, also for the protection of the public, in order to have a safeguard or cushion against having somehow to absorb the social cost of people suddenly thrust into a position of, hopefully temporary, destitution. Then, the various policies could provide for the insured to be able to protect himself or herself to an even greater extent through the payment of additional premium.

The predominant point, though, seems to be: If you are injured in an automobile accident, you will have your medical expenses and lost wages covered to whatever extent you purchase. Thus, if one determines that one needs $25,000.00 in coverage, and one pays to provide for that, then one can collect up to $25,000.00. The intuitive response would, therefore, be in accord with the apparent intent of the language cited above. That is, available to Plaintiff here, because of her added premium, is $25,000.00. If she obtains, as she did, $15,000.00 from the involved auto's coverage, then she has provided for herself an additional pool in the amount of up to $10,000.00 for the PIP eligible losses.

This conclusion, therefore, seems consistent with the policy language, intuition, and *Jones v. State Farm*.[9]

Accordingly, Plaintiff, pursuant to her Motion for Summary Judgment, is entitled to the application of Defendant's coverage on Plaintiff's own, uninvolved, vehicle to the extent of the difference between the purchased maximum coverage of $25,000.00 and the amount already received of $15,000.00, for a benefit available of $10,000.00. Thus, Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
Opinion Distribution
File

[9] *Jones v. State Farm*, A.2d 1998 WL 473041 (Del. Super.)