

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

ANDREW S. GALLAHER	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04C-01-048-PLA
	)	
USAA CASUALTY INSURANCE	)	
COMPANY,	)	
Defendant.	)	

Submitted: August 5, 2005
Decided: November 14, 2005

UPON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
GRANTED.
UPON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
DENIED.

David J. Lyons, Esquire, Wilmington, Delaware, attorney for Plaintiff.

Thomas P. Leff, Esquire, Wilmington, Delaware, attorney for Defendant.

ABLEMAN, JUDGE

Before the Court are Cross Motions for Summary Judgment in a dispute over the proper interpretation of exclusionary clauses in an insurance contract for Personal Injury Protection benefits. As will be set forth more fully below, Plaintiff Gallaher is entitled to collect benefits under the plain language of the contract because Plaintiff's claim falls within the general definition of a covered accident, and does not come within any contractual exclusions. Therefore, Plaintiff's Motion for Summary Judgment is **GRANTED**. Defendant's Motion for Summary Judgment is **DENIED**.

I. Statement of Facts

The facts are undisputed. Plaintiff Andrew Gallaher was injured on October 10, 2001 while moving cars on a tractor trailer. The tractor trailer was owned by his employer, Allied Automotive Group, a Georgia-based corporation that maintains a terminal in Newark, Delaware in order to haul new Chrysler vehicles from the Newark assembly plant to dealerships through the Eastern United States. The tractor trailers are registered and insured in Georgia, but are dispatched with drivers from the Newark location. Mr. Gallaher was injured when he slipped and his left foot became caught between two I-beams in the trailer's frame.

Mr. Gallaher received the available Personal Injury Protection ("PIP") benefits from the auto insurance carrier for the tractor trailer. After those

initial PIP benefits were exhausted, Mr. Gallaher applied for excess PIP benefits through his personal PIP policy with USAA that covered his two personal vehicles. USAA initially began paying Mr. Gallaher benefits but later discontinued the payments, arguing that he was not eligible under the terms of his policy.

II. Discussion

When opposing parties make Cross Motions for Summary Judgment, neither party will be granted summary judgment unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law.¹ Under the newly amended Superior Court Civil Rule 56(h),² where the parties do not represent to the Court that there is an issue of fact material to the disposition of the motions, the Court will treat the cross motions as a stipulation for decision of the case based on the submitted record.³ Since the parties agree that the facts of this case are not in dispute, and that the sole issue involves the legal interpretation of a contract for insurance, the

¹ *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 745 (Del. 1997).

² Superior Court Civil Rule 56 was amended by adding subsection (h) which states:

Cross motions. Where the parties have filed cross motions for summary judgment and have not 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 on the merits based on the record submitted with the motions.

³ *See also Battista v. Chrysler Corp.* 454 A.2d 286, 290 (Del. 1982) (indicating that uncontroverted evidence presented in support of a motion for summary judgment will be accepted as true).

questions are therefore legal rather than factual and summary judgment is appropriate.⁴

The Court's interpretation of USAA's policy is a determination of law.⁵ Clear and unambiguous language in an insurance policy should be given its ordinary and usual meaning.⁶ To the extent that ambiguity does exist, the doctrine of *contra proferentum* requires that the language of an insurance contract be construed most strongly against the insurance company that drafted it.⁷ However, a contract is not rendered ambiguous simply because the parties do not agree on the proper construction. A contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations, or may have two or more different meanings.⁸ The Court will, therefore, construe the words of the provisions in accordance with their plain and obvious meaning, it not being the function of the Court to rewrite the plain language of an otherwise valid contractual provision.⁹

A. The Anti-Stacking Provisions

USAA argues that its policy prohibits stacking PIP coverage. Since Gallaher has already received the maximum PIP benefits available from the

⁴ *Robinson v. Allstate Ins. Co.*, 1992 WL 207272 (Del. Super. Ct.)

⁵ *Universal Underwriters Ins. Co. v. The Travelers Ins. Co.*, 669 A.2d 45 (Del. Super. Ct. 1995).

⁶ *Rhone-Poulenc v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992).

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

⁸ *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

⁹ *Ed Fine Oldsmobile, Inc. v. Diamond State Tel.*, 494 A.2d 636 (Del. 1985).

tractor trailer's insurance policy, Gallaher's claim is thus precluded as a stacked benefit.

The policy provides as follows:

Exclusions

Coverage under this Part, does not apply to BI sustained by:
7. You or any family member, while occupying... any motor vehicle (other than your covered auto) with respect to which the insurance required by the Delaware Motorists Protection Act is in effect.¹⁰

Nonduplication of Benefits; Other Insurance

Any coverage provided by this part will be excess over any other similar applicable insurance available to a covered person:
a. As a result of BI sustained while occupying... any vehicle, other than a motor vehicle for which the security required by the Delaware Motorists Protection Act is in effect.¹¹

USAA argues that the tractor trailer falls within the above exclusion provisions because the trailer is subject to several provisions of the Delaware Financial Responsibility Laws, including Title 21 § 2112(c)'s requirement that nonresident "vehicles used for compensation" in Delaware pay the same fees resident commercial vehicles would be assessed.

The contract language in this instance, however, does not refer to the Financial Responsibility Laws generally, but instead expressly indicates that the exclusion applies to vehicles insured under the Delaware Motorists Protection Act. The Financial Responsibility statute cited by USAA does

¹⁰ Pl.'s Mot. for Summ. J., Ex. E at 9.

¹¹ *Id.* at 10 (emphasis removed).

not address the mandatory insurance coverage contemplated by the exclusion language. Rather, § 2118(a) of Title 21 provides the minimum insurance coverage required to legally operate a motor vehicle on Delaware roads.¹²

Section 2118 of Title 21 requires motor vehicles registered in other states but operating on Delaware roads to insure their vehicles pursuant to the laws of the State where the vehicle is registered.¹³ If that state requires no minimum amount of insurance, then the vehicle must carry insurance equal to the minimum prescribed by the Delaware Motorists Protection Act.¹⁴ Consequently, the question of whether the tractor trailer in question was subject to § 2118's insurance requirements, and therefore subject to the exclusionary provision, hinges on Georgia insurance laws. The Georgia

¹² 21 *Del. C.* § 2118(a) provides, in part:

(a) No owner of a motor vehicle registered in this State... shall operate or authorize any other person to operate such vehicle unless the owner has insurance on such motor vehicle providing the following minimum coverage...

(b) The minimum insurance coverage which will satisfy the requirements of subparagraph a. of this paragraph is a minimum limit for the total of all payments which must be made pursuant to that subparagraph of \$15,000 for any 1 person and \$30,000 for all persons injured in any 1 accident.

(d) The coverage required by this paragraph shall also be applicable to the named insureds... for accidents which occur through being injured by an accident with any motor vehicle other than a Delaware insured motor vehicle... while occupying any registered motor vehicle other than a Delaware registered insured motor vehicle, in any state of the United States, its territories or possessions or Canada.

¹³ 21 *Del. C.* § 2118(b) states:

No owner of a motor vehicle being operated in this State shall operate in this State, or authorize any other person to operate such vehicle in this State, unless the owner has insurance on such motor vehicle equal to the minimum insurance required by the state or jurisdiction where said vehicle is registered. If the state or jurisdiction of registration requires no minimum insurance coverage, then such owner must have insurance on such motor vehicle equal to the minimum insurance coverage required for motor vehicles registered in this State.

¹⁴ *Id.*

Code, Section 33-7-11 provides that motor vehicles on Georgia roads must carry a minimum of \$25,000 of personal injury coverage for one person, \$50,000 maximum per accident.¹⁵ This requirement is greater than Delaware's minimum requirement of \$15,000/\$30,000.¹⁶

The tractor trailer, therefore, being properly registered and insured under Georgia law, which exceeds Delaware's minimum requirements, is not subject to the policy's stacking exclusion. The contractual language of the policy only prohibits stacking benefits where the insured is occupying a motor vehicle required to be insured by the Delaware Motorist Protection Act. The tractor trailer here, being insured under Georgia law, is not insured under the Delaware Motorists Protection Act and therefore does not come within the exclusion.

USAA argues that covering Gallaher for this particular accident would stretch the policy beyond its intended limits, and twist its meaning in a way not intended by the plain language of the policy. Permitting Gallaher coverage in this instance, USAA contends, would permit coverage any time an insured rode in any out-of-state vehicle, when USAA intended the policy

¹⁵ *Ga. Code Ann.* § 33-7-11(a)(1)(A) states:

No automobile liability policy or motor vehicle liability policy shall be issued or delivered in this state... unless it contains an endorsement or provisions undertaking to pay the insured all sums... within limits exclusive of interests and costs which at the option of the insured shall be:
(A) Not less than \$25,000 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, \$50,000 because of bodily injury to or death of two or more persons in an accident...

¹⁶ 21 *Del. C.* § 2118(a).

to cover injuries where the insured was actually out of the State, perhaps on vacation. This argument in essence seeks reformation of the contract's clear terms, since the policy does not reference where an accident must take place to be covered. Yet, in the absence of statutory provisions to the contrary, reformation is solely an equitable matter.¹⁷ The Court will therefore construe the language of the contract as written.

USAA additionally points to *Robinson v. Allstate Insurance Co.*¹⁸ where this Court upheld a nearly identical exclusion, refusing to allow the plaintiff in that case to stack benefits. The details of the accident in *Robinson* were not set forth in the opinion, but there was no indication that the accident in question involved a vehicle registered and insured under the laws of another state, as here. Presumably, then, Robinson's attempt to stack benefits fell within the exclusion because the accident involved a vehicle registered, licensed and insured in Delaware. In this case, however, Gallaher's accident involved a vehicle not required to be insured under the Delaware Motorist Protection Act. His claim thus does not fall within the exclusion.

¹⁷ *Moore v. Home Indem. Co.*, 274 A.2d 705 (Del. Super. Ct. 1971).

¹⁸ 1992 WL 207272 (Del. Super. Ct.).

B. The Regular Use Exclusion

USAA additionally argues that Gallaher's claim is excluded under the regular use exception in the policy. That provision provides:

Exclusions:

Coverage under this Part, does not apply to BI sustained by:
You or any family member while occupying or while a pedestrian arising out of the ownership, maintenance or use of any motor vehicle owned by or furnished or available for regular use by you... if such motor vehicle is not your covered auto.¹⁹

The policy additionally defines a motor vehicle as:

a land motor vehicle, including a trailer or semi-trailer as used therewith, required to be registered, licensed and to carry insurance under the Delaware Financial Responsibility Laws.²⁰

USAA submits that the fleet of tractor trailers owned by Allied Automotive Group was limited and static, and Gallaher routinely drove one of them. As a result, the tractor trailers were available for regular use by Gallaher, who is thus not entitled to benefits. Gallaher counters that the definition of "motor vehicle" takes his claim out of the exclusion since the tractor trailer on which he was injured is not required to be registered or carry insurance under the Delaware Financial Responsibility Laws.

The Delaware Supreme Court, in *Home Insurance Co. v. Kennedy*,²¹ held that the purpose of such 'other automobiles' provisions is to "provide

¹⁹ Pl.'s Mot. for Summ. J., Ex. E at 9.

²⁰ *Id.* at 7.

²¹ 152 A.2d 115 (Del. 1959).

coverage to a driver, without additional premiums, for the occasional or infrequent driving of an automobile other than his own.”²² In *Kennedy* the plaintiff had been assigned a truck for his exclusive use by his employer. The plaintiff drove the truck daily and was permitted to use it for his daily commute to and from work. The Court held that this consistent use constituted “regular” within the meaning of the contractual exclusion.

Likewise, in *Martin v. Colonial Ins. Co. of California*²³ the United States District Court for the District of Delaware found that a plaintiff who drove a different truck every day from his employer’s fleet fell within the “regular” use exclusion. In this case, Gallaher’s use of the tractor trailer in question falls somewhere between *Kennedy* use and *Martin* use. Gallaher frequently used the tractor trailer on which he was injured, but he also used all the other trucks in the fleet.

Notwithstanding the case law defining “regular use” upon which USAA relies, the policy in this case defines a motor vehicle as a vehicle “required to be registered, licensed and to carry insurance under the Delaware Financial Responsibility Laws.” Again, the exclusion does not apply to the tractor trailer, which was registered, licensed and insured under Georgia law. Title 21 § 2112(a) provides that a motor vehicle, properly registered in a foreign state, may operate on

²² *Id.* at 118.

²³ 644 F.Supp. 349 (D.Del. 1986).

Delaware roads without registering the vehicle in Delaware.²⁴ Additionally, § 2118(b) permits vehicles insured under other State's financial responsibility laws to maintain insurance under those laws, provided the insurance is at least commensurate with that required by Delaware.²⁵ Thus, even assuming Gallaher's routine constituted regular use of the fleet of tractor trailers, the exclusion does not apply to the Georgia registered and insured tractor trailer. Gallaher's claim is thus outside the policy's regular use exclusion.

USAA again argues that applying the motor vehicle definition to this exclusion distorts the exclusion in a manner unintended by its drafters. This provision was drafted by USAA, a large insurance company with greater resources and expertise in drafting insurance policies than Gallaher. The contract's definition of a motor vehicle is exceptionally specific and is set out at the beginning of the policy in an obvious attempt to carefully define words used throughout the contract. The provision is unambiguous and its meaning is clear. In this context, the Court finds that Gallaher's injury is therefore covered under the precise terms of his policy.

²⁴ 21 *Del. C.* § 2112(a) provides, in part:

A nonresident owner... owning any foreign vehicle which has been duly registered for the current registration year in the state, country or other place of which the owner is a resident and which at all times, when operated in this State, has displayed upon it the number plate or plates issued for any such vehicle in the place of residence of such owner[,] may operate... such vehicle within this State without registering such vehicle or paying any fees to this State.

²⁵ 21 *Del. C.* § 2118(b); *see* footnotes 11-15 and accompanying text *supra*.

III. Conclusion

For all of the foregoing reasons, this Court determines, as a matter of law, that Gallaher is entitled to PIP coverage under his USAA policy. Gallaher's claim falls outside the anti-stacking exclusion because the language of the policy excludes coverage only for injuries suffered in a Delaware insured vehicle. Gallaher's injury was suffered in a Georgia insured vehicle. Likewise, Gallaher's claim falls outside the regular use exclusion because the policy defines "motor vehicle" as a vehicle registered, licensed and insured under Delaware law. Accordingly, Plaintiff's Motion for Summary Judgment is therefore **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: David J. Lyons, Esquire
Thomas P. Leff, Esquire