

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

ELIZABETH RASKAUSKAS)	
Plaintiff,)	
)	
vs.)	
)	C.A. No. CPU6-09-000991
GEICO GENERAL INSURANCE)	
COMPANY, PROGRESSIVE)	
DIRECT INSURANCE COMPANY,)	
PROGRESSIVE NORTHERN)	
INSURANCE COMPANY)	
Defendants.)	

Submitted: March 8, 2010
Decided: April 21, 2010

Elizabeth Raskauskas, Plaintiff Pro Se.
Donald M. Ransom, Esquire, Attorney for Progressive Insurance Defendants
David A. Arndt, Esquire and Sandra F. Clark, Esquire, Attorneys for Defendant GEICO General

**DECISION ON PLAINTIFF’S MOTIONS FOR SUMMARY JUDGMENT AND
DEFENDANTS’ CROSS-MOTIONS FOR SUMMARY JUDGMENT**

CLARK, J.

On March 8, 2010 the Court heard cross-motions for both full and partial summary judgment in this automobile insurance coverage dispute. For the reasons stated below, the Court grants summary judgment in favor of defendants GEICO General Insurance Company and Progressive Northern Insurance Company, but denies the cross-motions between plaintiff and defendant Progressive Direct Insurance Company.

BACKGROUND

On April 23, 2007, Plaintiff Elizabeth Raskauskas was injured in a traffic collision while operating a motorcycle that she owned. Plaintiff alleges that she sustained bodily injuries and medical expenses in excess of \$134,000.00. The motorcycle was insured by Progressive Northern Insurance Company (“Progressive Northern”) with personal injury

protection (PIP) coverage of \$15,000.00 per person and \$30,000.00 per accident; however the policy has a \$15,000.00 deductible. At the time, Plaintiff also owned an uninvolved Jeep automobile insured by another Progressive Insurance corporate entity, Progressive Direct Insurance Company (“Progressive Direct”) with PIP coverage of \$25,000.00. Plaintiff claims that, at the time of the collision, she resided with her mother in Bethany Beach, Delaware. Plaintiff’s mother owned an uninvolved automobile insured by GEICO General Insurance Company (“GEICO”) with PIP coverage of \$25,000.00 per person. Each insurance company has denied plaintiff PIP coverage under its interpretation of its respective policy language.

Plaintiff filed this action on April 9, 2009, claiming she is entitled to PIP benefits coverage from one or all of three insurance policies for personal injuries suffered in the collision, under different theories. First, Plaintiff contends that her motorcycle insurance policy with Defendant Progressive Northern is contrary to the public policy embodied in 21 *Del. C.* § 2118, in that allowing a deductible to effectively deny all PIP benefits to an insured thwarts the intent of the Delaware legislature. Additionally, Plaintiff argues that the language in the Progressive Northern policy is ambiguous because it can be interpreted to have two different meanings, and so should be interpreted against the insurer and to provide coverage.

Second, Plaintiff contends that her separate Progressive Direct policy on her Jeep entitles her to PIP benefits for injuries sustained on the motorcycle insured by Progressive Northern. Finally, Plaintiff argues that, as a resident of her mother’s household, she is an insured on her mother’s auto policy and entitled to recover PIP benefits thereunder.

Accordingly, Plaintiff seeks: (1) a declaratory judgment stating the legal rights and duties of the parties; and (2) judgment against all defendants jointly and severally in

the amount of their respective PIP limits. Each of the defendants claims that, as a matter of law, the plaintiff is not entitled to PIP benefits under the terms of their respective policies.

Plaintiff initially filed a Motion for Partial Summary Judgment, asserting no material issues of fact remained regarding the underlying auto collision, her medical treatment and bills, and her proper submission of her insurance claims. Plaintiff then filed a motion for summary judgment, seeking a declaratory judgment interpreting the language and resulting coverage under the various policies. The Progressive Insurance defendants filed a cross-motion for summary judgment. At the motions hearing, Defendant GEICO made an oral motion for summary judgment against the Plaintiff. Thus, all parties in this matter are seeking motions for summary judgment against the opposing party.

DISCUSSION

Where parties file 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 Summary judgment is properly before the Court in this matter because, “[t]he proper construction of any contract, including an insurance contract, is purely a question of law.”²

In matters involving insurance contract disputes, the Court must first determine whether the policy language is ambiguous.³ “All provisions of a policy are to be read together and construed according to the plain meaning of the words involved, as to avoid ambiguity while at the same time giving effect to all provisions.”⁴ “Clear and

¹ *Gallagher v. USAA Cas. Ins. Co.*, 2005 WL 3062014, at *1 (Del. Super.).

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

³ *Gordon v. Nationwide Mutual Ins. Co.*, 2010 WL 546454 * 2 (Del. Com. Pl.) (citing *Ruggiero v. Montgomery Mut. Ins. Co.*, 2004 WL 1543234, at *2 (Del. Super.)).

⁴ *Keystone Ins. Co. v. Walls*, 2006 WL 1149143, at *4 (Del. Super.) (quoting *Hercules v. OneBeacon Am. Ins. Co.*, 852 A.2d 33, 35 (Del. Super. 2004)).

unambiguous language in insurance contracts will be given its plain and ordinary meaning.”⁵ If the language is reasonably susceptible to at least two different interpretations, it will be deemed ambiguous.⁶ Ambiguous language in an insurance contract is typically construed against the insurer.⁷ The Court first will address the collateral policies issued for the uninvolved vehicles, and then the policy on plaintiff’s involved motorcycle.

The Progressive Direct Policy

Plaintiff alleges that she is entitled to PIP benefits up to \$25,000.00 as an insured under her automobile policy with Progressive Direct, if she is unable to recover any or all of the PIP benefits from Defendant Progressive Northern.

Plaintiff’s motorcycle on which she was injured was not listed as a covered vehicle on her Progressive Direct policy; it was insured under a separate policy with Progressive Northern. The relevant language of the Progressive Direct policy provides:

“ . . . coverage ... does not apply to bodily injury sustained by ... an insured person while operating or using a motor vehicle, other than a covered vehicle, owned by an insured person.”

The language in this policy provision is not ambiguous. The policy clearly excludes PIP coverage where the insured is operating another vehicle he or she owns which is not listed under the Progressive Direct policy. Plaintiff is not entitled to PIP benefits from Progressive Direct, because she was operating her motorcycle, insured by Progressive Northern, at the time of the accident, and not her 2007 Jeep insured by Progressive Direct.

The GEICO Policy

Plaintiff alleges that she is entitled to PIP coverage for her motorcycle collision under the provisions of her mother’s GEICO auto policy as a resident of her mother’s

⁵ *Rhone-Poulenc Basic Chems. Co., supra*, 616 A.2d at 1195.

⁶ *Id.* at 1196.

⁷ *Fisher v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 1997 WL 81789, at *2 (Del. Super).

household. Plaintiff claims that she is entitled to recover \$25,000.00 from GEICO, if the Court finds that Plaintiff is not entitled to recover PIP benefits from either her Progressive Northern or Progressive Direct policies; or, alternatively, the amount of the difference between that policy's \$25,000.00 maximum benefit, and any PIP benefits the Court may award Plaintiff from either or both of the other policies.

Plaintiff's status as a member of her mother's household at the time of the accident is not a material fact issue for the purposes of the pending motions, because the plain language of the GEICO policy precludes PIP benefits even if she were a member of her mother's household. The GEICO policy provides: "You and members of your household are not covered if injured while in, or through being struck by, a motor vehicle covered by another Delaware no-fault policy." [*Emphasis added.*]

GEICO contends that plaintiff's mother's insurance policy does not cover the Plaintiff in this matter, because at the time of the accident, Plaintiff had her own personal insurance coverage with Progressive Northern for the motorcycle she was operating.

In *Gordon v. Nationwide Mut. Ins. Co.*⁸, the plaintiff was injured while exiting a third party's vehicle insured for PIP by Progressive, which paid its PIP policy limit. Plaintiff, as a related household member, sought to "stack" the PIP benefits in her husband's Nationwide auto policy to pay for her excess medical costs. That policy had exclusionary language which provided that if an otherwise insured was "injured while occupying ...any motor vehicle other than [the policy holder's] auto, this coverage will apply only if the other motor vehicle is not insured under the Delaware Motorists Protection Act." The Court held that this language was unambiguous and reasonably provided that PIP benefits were not available under that policy. The GEICO language,

⁸ 2010 WL 546454 (Del. Com.Pl.)

while similar, is even more unambiguous than that in *Gordon*. Plaintiff was injured “in” a motorcycle covered by another Delaware no-fault policy, the Progressive Northern policy. The fact that the deductible might reduce the *benefits* of the Progressive Northern policy to zero does not change the fact that the motorcycle was *covered* by it. Under the undisputed facts of this case, Plaintiff is not entitled to PIP coverage from the GEICO policy.

The Progressive Northern Policy

The Progressive Northern insurance policy issued to Plaintiff and covering her motorcycle, by its terms, provides PIP coverage with a limit of \$15,000.00 per person and \$30,000.00 per accident. The policy also has a PIP deductible of \$15,000.00. Thus, when, as in this case, the owner-operator of the motorcycle is the only person claiming PIP benefits under the policy for an accident, defendant Progressive Northern alleges the plain language of the policy provides for payment of no benefits, since the \$15,000 deductible encompasses the \$15,000 maximum benefit for one person. Plaintiff contends that the deductible and PIP coverage as offered and interpreted by Defendant are contrary to the public policy of Delaware as stated in 21 *Del. C.* § 2118, because Plaintiff’s PIP coverage is effectively eliminated. Additionally, Plaintiff argues that the wording concerning the deductible amount and the coverage after the deductible amount is reached is ambiguous, misleading, and not plainly understandable.

Plaintiff asserts that Defendant Progressive Northern did not explain or adequately inform her that the \$15,000.00 deductible would preclude any PIP coverage on her, and that she did not give informed consent to the elimination of all benefits under the PIP provision of her policy. Plaintiff contends that because her medical bills and lost income exceeded \$100,000.00, she is insured for \$15,000.00 in PIP coverage after deduction of the first \$15,000.00 or her medical expenses.

The Delaware Supreme Court has previously held that a deductible which eliminates PIP coverage required by statute is not against public policy.⁹ Accordingly, the stated intent of the Progressive Northern motorcycle policy to effectively eliminate PIP coverage when only one person is covered in an accident, through a deductible equal to the maximum per person coverage, is not contrary to public policy. However, if the language used in the policy to effectuate this stated intent is ambiguous, it may be construed against the insurer to provide coverage.¹⁰

Plaintiff indeed claims that the policy language is ambiguous, and defendant Progressive Northern responds that it is unambiguous, entitling it to summary judgment. The relevant language of the Progressive Northern motorcycle policy provides, “[t]he deductible will be applied to reduce the total of all sums which we are obligated to pay under personal injury protected coverage as a result of an accident.”

In *Cintron v. Universal Underwriters Group*¹¹, the Superior Court addressed a PIP policy with similar language. The policy in *Cintron* provided \$15,000.00 in PIP coverage, with a \$15,000.00 deductible, and provided that “the total amount of any applicable deductible shall be deducted from the total amount of all sums which the Company is obligated to pay for all loss and expenses...” The Superior Court concluded that “because the terms as used differ from the terms as ordinarily understood and is so convoluted as to cause confusion to the reader, the policy definition is ambiguous. Where the policy is ambiguous it must be construed against the insurer. The plaintiff could have reasonably relied on the language on the application and upon the Delaware Motorist’s Protection Form. Therefore, the reasonable expectations of the purchaser

⁹ *Barber v. Williams*, 1981 WL 394159 (Del. 1981); *Cintron v. Universal Underwriters Group*, 601 A.2d 1051, 1053 (Del. 1990). See also, *Dearie v. Weiss*, 1995 WL 339069, at *2 (Del. Super. May 8, 1995)

¹⁰ *Steigler v. Ins. Co. of North Am.*, 384 A.2d 398, 400 (Del. 1978).

¹¹ 601 A.2d 1051 (Del. Super. 1990)

must prevail. Those expectations are that no payment is due until plaintiff's damages exceed \$15,000.00 and then that coverage exists to the policy limit of \$15,000.00."

When this Court compares the policy deductible language in the present case to that in *Cintron*, they are strikingly similar. Although the Progressive Northern language is somewhat less convoluted, it is not necessarily any less ambiguous on its face. In reaching its decision, the *Cintron* court considered, and relied heavily upon, the deductible language in the insurance application, plaintiff's claim that he was not plainly advised of the implications of his deductible choice, and plaintiff's reasonable understanding of what the policy would provide for PIP benefits based upon the application language.

Plaintiff makes essentially the same claims here regarding her understanding of the PIP deductible in the insurance policy she purchased. However, neither plaintiff nor defendant Progressive Northern has adequately addressed those claims in their respective summary judgment motions and responses. The Court therefore is not able to consider such extrinsic evidence to interpret the ambiguous language of the policy, or to decide whether plaintiff's claimed understanding of the deductible was reasonable. Thus, triable issues of material fact remain. The cross-motions for summary judgment as to the Progressive Northern policy are each denied.

Finally, after reviewing the affidavit and documents submitted by plaintiff in support of her motion for partial summary judgment, the Court finds that the affidavit references and attaches documents that are not admissible in evidence as offered. Further, in attempting to state facts regarding the accident and medical information not within her personal knowledge, plaintiff's affidavit fails to "show affirmatively that [she] is competent to testify to the matters stated therein."¹² The plaintiff therefore has failed

¹² C.C.P. Civ. R. 56(e)

to meet her burden of proof or persuasion as to her motion for partial summary judgment.

CONCLUSION

Plaintiff's Motions for Summary Judgment and partial Summary Judgment are **DENIED**. Defendant Progressive Northern's cross-motion for Summary Judgment is **DENIED**. Defendants Progressive Direct's, and GEICO Insurance Company's cross-motions for Summary Judgment are **GRANTED**.

IT IS SO ORDERED this ____ day of _____, A.D. 2010.

Kenneth S. Clark, Jr., Judge