IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

Glenn Carpenter,	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No.: N23C-06-081 FJJ**
	)	
Liberty Mutual Insurance Co. and LM	)	
General Insurance Company.,	)	
	)	
Defendants.	)	

Submitted: November 17, 2025
Decided: November 21, 2025

OPINION AND ORDER

on Plaintiff's Motion for Partial Summary Judgment
GRANTED

on Plaintiff's Motion for Relief from an Order Pursuant to Rule 60(b)
DENIED AS MOOT

on Defendants' Motion in Limine
GRANTED

on Defendants' Motion for Summary Judgment on Punitive Damages
GRANTED

Daulton Gregory, *Esquire and Bayard Marin*, *Esquire* Marin & Gregory, LLC, Wilmington, Delaware, *Attorneys for Plaintiff.*

Karine Sarkisian, *Esquire and Gary S. Kull*, *Esquire,* Kennedys CMK, LLP, Wilmington, Delaware, *Attorneys for Defendants.*

Jones, J.

This underinsured motorist claim is set for its second trial on December 15, 2025. The pending trial deals with whether Plaintiff had a binding agreement to settle the underinsured motorist claim under an automobile policy issued by Liberty Mutual Insurance Company ("Liberty Mutual") and whether the plaintiff is entitled to extracontractual damages. Both Plaintiff and Liberty Mutual have filed motions for summary judgment. Plaintiff has also filed a Motion for Relief under Rule 60(b). Defendant has filed certain Motions in Limine. This is the Court's decision on the pending motions.

PROCEDURAL HISTORY

This case has a long and tortured history with litigation in the Court of Chancery,[1] the Federal District Court for the District of Delaware[2] and this Court, including a two-day jury trial before this Court in December 2024.[3] An explanation of some of this history is relevant to the instant motions.

Plaintiff filed suit seeking to recover under two separate insurance policies for underinsured motorist benefits issued by Liberty Mutual Insurance Company.[4] The first policy covered the automobile that Plaintiff was operating at the time of the incident that gives rise to the claim.[5] The second policy covered a motorcycle

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[1] *See generally* Docket Item ("D.I") 2.
[2] *See generally* D.I. 10, 11.
[3] *See* D.I. 49.
[4] D.I. 5, ¶ 14-23.
[5] D.I. 5, ¶ 16.

that was not involved in the accident.[6] Defendant maintained that Plaintiff could not stack the two policies given the language of 18 *Del. C.* §3902 and denied the claims under the motorcycle policy.[7]

In addition to the usual UIM claims, Plaintiff has asserted additional extra contractual claims, including a claim for bad faith and punitive damages.[8] The extra contractual claims revolve around allegations that Liberty Mutual acknowledged that the value of the Plaintiff's claims exceed the amount of coverage under the automobile policy, but Defendant failed to pay the policy limits under the automobile policy without Plaintiff signing a release releasing all claims under both the automobile and motorcycle policy.[9]

Plaintiff previously filed a Motion for Summary Judgment arguing that he was entitled to the $100,000 under the automobile policy because Liberty Mutual agreed to tender that policy, and Plaintiff accepted the tender of that policy.[10] The factual basis for the offer was an April 28, 2022 letter to Plaintiff's counsel from Liberty Mutual's adjuster and an email response from Plaintiff's counsel to that adjuster. The appropriate portion of the April 28, 2022, letter provided:

> On April 18, 2022, you presented a demand for Mr. Carpenter under the Underinsured Motorist bodily injury coverage for the accident of October 31, 2021. The demand was for

[6] D.I. 5, ¶ 15-18.
[7] D.I. 6, Exhibit 6, p. 3.
[8] D.I. 5, ¶ 51, 63, 67.
[9] *Id.* at 51, 61-62, 65, 67.
[10] D.I. 25.

> $200,000.00, which is the total of the coverage stacked between the policies. As explained above, I am not able to meet this demand as the policy issued to Mr. Carpenter does not support it.
>
> However, I am in position to offer the available $100,000.00 under Mr. Carpenter's automobile policy claim 047435635-05 in exchange for a full and final release.[11]

Plaintiff's counsel responded to this letter with an email on May 23, 2022, to the adjuster. The email provided in pertinent part:

> [Plaintiff] still wants to pursue the additional policy. However, since we both agree on the first policy amount, can you send the $100K check to my office[?] I will hold the money into escrow to pay off ay liens or balances before disbursing the funds.[12]

In an October 7, 2024, decision from the bench, the Court denied Plaintiff's Motion for Summary Judgment without prejudice.[13] Based on the record before it, which did not include any discovery, the Court found that Liberty Mutual's offer of $100,000 was conditioned on Plaintiff releasing all claims that it had against Liberty Mutual. Since Plaintiff clearly wanted to retain the right to bring an action under the second policy, there was no meeting of the minds.[14] As such, the Court found that no contract was formed and summary judgment was denied.[15]

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[11] D.I. 6, Exhibit 6, p. 3.
[12] D.I. 6, Exhibit 6, p. 3.
[13] D.I. 26.
[14] *See* D.I. 40, p. 3.
[15] D.I. 26; *see also* D.I. 40, p. 3.

On October 29, 2024, the Delaware Supreme Court issued its *Ginsberg v. Harleysville Worcester Ins. Co.* decision in which it held that where two insurance policies were ambiguous, a claimant could recover under two separate underinsured motorist policies that were issued by the same insurer despite the language of 18 *Del. C.* §3902(c).[16] Plaintiff filed a renewed motion for summary judgment maintaining that the decision in *Ginsberg* compelled a conclusion that Plaintiff was entitled to recover under both polices and once again arguing that there was an agreement to settle the auto policy for the $100,000 policy limit.[17] This Court, on November 20, 2024, denied the motion for summary judgment:

> [T]here was no meeting of the minds as to a settlement. Liberty Mutual agreed to settle the case "in exchange for a full and final release." Plaintiff wanted to continue to pursue the second policy as a condition of settlement. There was simply no agreement regarding the settlement. Therefore, Plaintiff is not entitled to summary judgment because there was no agreed upon settlement.[18]

The Court bifurcated the trial in this case, electing to proceed to a trial to first determine the liability of the tortfeasor and the value of the Plaintiff's injuries.[19] This case proceeded to a jury trial in December 2024.[20] The jury determined that the value of plaintiff's injuries was $5,000.[21] Since Plaintiff had

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[16] *Ginsberg v. Harleysville Worcester Ins. Co.*, 329 A.3d 504, 506, 510-12 (Del. 2024).
[17] *See* D.I. 32.
[18] D.I. 40, p. 5.
[19] *Id.* at p. 3.
[20] *See generally* D.I. 44, 49.
[21] D.I. 44.

received $25,000 from the tortfeasor's carrier, judgment on the UIM claim was entered in favor of the Defendant.[22]

Following trial, Plaintiff moved for a new trial which this Court denied.[23] Defendant then moved for judgment on the pleadings.[24] The Court ruled that Counts 1, 2, 4 and 5 of the Complaint were resolved by the jury's verdict.[25] The Court allowed Count III, the claim for breach of contract and extra contractual damages, to proceed.[26]

The Plaintiff then filed a Motion to Enforce Settlement Agreement and Strike or Excuse Unforeseeable Conditions.[27] The Motion was an attempt to once again rehash Plaintiff's arguments that there was a valid contract formed requiring Liberty Mutual to pay the $100,000 policy limit of the automobile policy. This motion was again presented without the benefit of any discovery responses from Liberty Mutual. This Court, on August 11, 2025, denied the motion, again finding that no contract had been formed because there had been no meeting of the minds.[28]

Plaintiff has once again filed a Motion for Summary Judgment maintaining that a valid contract was formed in which Liberty Mutual agreed to pay the

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[22] D.I. 51.
[23] D.I. 52, 55.
[24] D.I. 59.
[25] D.I. 72.
[26] *Id.*
[27] D.I. 73.
[28] D.I. 78.

$100,000 under the automobile policy.[29] This time the plaintiff has presented the Court with a discovery record on which to base a decision. Defendant has countered Plaintiff's motion with a motion of its own, maintaining that the record does not support a claim for punitive damages.[30]

STANDARD OF REVIEW

Superior Court Civil Rule 56(c) states a party seeking summary judgment must show "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[31] "A genuine issue of material fact is one that 'may reasonably be resolved in favor of either party.'"[32] The court views the evidence provided "in a light most favorable to the non-moving party."[33] The initial burden is on the moving party to show there are no genuine issues of material fact.[34] The burden then shifts to the non-moving party to show there is at least one material issue of fact in dispute.[35] The court must consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any," in determining whether there is a genuine issue as to any material fact.[36] Further, "the court must accept all undisputed factual assertions

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[29] D.I. 100.
[30] D.I. 98, 104.
[31] Del. Super. Ct. Civ. R. 56(c).
[32] *Saunders v. Lightwave Logic, Inc.*, 2024 WL 4512227, at *6 (Del. Super. Ct. Oct. 17, 2024) (quoting *Moore v. Sizemore*, 405 A.2d 679, 680–81 (Del. 1979)).
[33] *Gibson v. Metro. Grp. Prop. And Cas. Ins. Co.*, 2017 WL 5606714, at *2 (Del. Super. Ct. Nov. 15, 2017) (citing *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991)).
[34] *Id.*
[35] *Id.*
[36] *Coker v. Tenney-Andrews*, 2016 WL 6659500, at *2 (Del. Super. Ct. Nov. 10, 2016) (quoting

and accept the nonmoving party's version of any disputed facts."[37] However, any factual inferences made in favor of the non-moving party must be reasonable.[38]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

In its prior rulings on the issue of whether the parties had reached an agreement on the $100,000 policy limit from the automobile policy, this Court focused on the language of the offer letter that Liberty Mutual was requiring a "full and final release." On each prior occasion that this issue was raised, the Court ruled that the term "full and final release" meant that Liberty Mutual required all claims, those under both the automobile and motorcycle policy, to be released.[39] As such, this Court concluded that there was no meeting of the minds and, therefore, no contract was formed.[40] The Court now has the benefit of discovery which reveals that there was, in fact, a meeting of the minds on what "full and final release" meant: it only applied to the automobile policy.

The Liberty Mutual adjuster who handled and was responsible for this claim testified as follows during their deposition:

> A. "However, I am in position to offer the available $100,000 under Mr. Carpenter's automobile policy claim 047435635-05 in exchange for a full and final release."[41]

Super. Ct. Civ. R. 56(c)).

[37] *Id.*

[38] *Smith v. Haldeman*, 2012 WL 3611895, at *1 (Del. Super. Ct. Aug. 21, 2012) (citing *Mergenthaler v. Asbestos Corp. Of America, Inc.*, 1988 WL 16284, at *5 (Del. Super. Ct. July 13, 1988)).

[39] D.I. 78, p. 3-5; *see also* D.I. 40, p. 3.

[40] D.I. 78, p. 3-5; *see also* D.I. 40, p. 3.

[41] Dep. of Robert Brookens, p. 42, lines 10-13.

> …
>
> Q So it was only the automobile policy to be released; correct?
>
> MS. HYDE: Objection. You've asked the same question four times.
>
> Go ahead and answer it again, Bob.
>
> THE WITNESS: Yes. The automobile policy claim is one referenced in this paragraph you're referring to.
>
> BY MR. MARIN:
>
> Q And, of course, that paragraph, that does not require a release of the motorcycle policy; correct?
>
> MS. HYDE: Objection.
>
> Go ahead.
>
> THE WITNESS: The motorcycle policy is not referenced in the paragraph.[42]
>
> …
>
> Q And there's nothing in that paragraph about releasing the motorcycle policy's UIM claim; correct?
>
> MS. HYDE: Objection.
>
> Go ahead.
>
> THE WITNESS: That is correct. It does not speak to the motorcycle policy.[43]

The clear import of this testimony is that "full and final release" applied only to the automobile policy. Liberty Mutual suggests that this language is not as clear as the plaintiff says it is and does not support a finding on summary judgment. I disagree.[44] But even if this language is somehow not sufficient, Liberty Mutual's

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[42] *Id.* at p. 44-45, lines 11-2.

[43] *Id.* at p. 50, lines 16-21.

[44] Liberty Mutual maintains that to the extent the plaintiff relies on the deposition testimony of the adjuster, that is not appropriate. Liberty Mutual reasons the deposition was not taken under Rule 30 (b)(6) and the adjuster is merely a fact witness whose testimony cannot bind them. This argument is contrary to Delaware Law. *Commonwealth Ins. Co., v. Soloman*, 119 A 850, 852 (Del. 1923). Moreover, this argument flies in the face of Liberty Mutual's admission in its answer to the amended complaint that "the adjuster was working for Liberty Mutual, was an employee of Liberty Mutual, held himself out as an agent of Liberty Mutual and/or was working for Liberty Mutual's benefit." (D.I. 18, ¶ 23).

responses to two requests for admissions make it unmistakably clear that “full and final release” language did not apply to the automobile policy. The Responses to Request for Admissions provide as follows:

> 13. Admit that Liberty Mutual Never Offered to settle Plaintiff’s Auto UIM Claim without also requiring Plaintiff to Release the Motorcycle UIM Claim.
>
> **RESPONSE: Denied**
>
> 14. Admit that Plaintiff’s entitlement to benefits under the Auto Policy was not contingent upon releasing Liberty Mutual from liability under the Motorcycle Policy.
>
> **RESPONSE: Admitted, except that Liberty Mutual denies any argument or implication contained in this request.**[45]

These responses admit in no uncertain terms that Liberty Mutual was not conditioning the settlement of the automobile policy limit of $100,000 in exchange for a full and final release which would include release of any claims under the motorcycle policy.

In an email on May 22, 2022, Plaintiff’s counsel wrote to the Liberty Mutual adjuster “[Plaintiff] still wants to pursue the additional policy. However, since we both agree on the first policy amount, can you send the $100,000 check to my office[?] I will hold the money into escrow to pay off any liens or balances before

[45] D.I. 100, Exhibit C, ¶ 13-14.

disbursing the funds."[46] The email is a clear acceptance of the $100,000 offer for the automobile policy. In short, there was a meeting of the minds between the parties on the payment of the $100,000 policy limit under the automobile policy.

For the stated reasons, Plaintiff is entitled to summary judgment on the issue of Plaintiff's entitlement to the $100,000 policy limit under the automobile policy and interest from the legal rate from May 23, 2022, the date the contract was formed.

PLAINTIFF'S MOTION FOR RELIEF UNDER RULE 60(b)

As this Court has found it appropriate to consider Plaintiff's motion for summary judgment at this time, with the benefit of a complete discovery record, Plaintiff's request for relief under Rule 60(b) is denied as moot.

LIBERTY MUTUAL'S MOTION FOR SUMMARY JUDGMENT AND MOTION IN LIMINE

Liberty Mutual has moved for summary judgment on Plaintiff's claim for punitive damages.[47] Liberty has also moved in Limine on a number of issues which impacts the Court's decision on punitive damages. Both will be addressed herein.

In *Enrique v. State Farm Mutual Automobile Insurance Company*, the Delaware Supreme Court had occasion to address the law of bad faith and punitive

[46] D.I. 100, Exhibit B to Plaintiff's Motion for Partial Summary Judgment, p. 19.
[47] D.I. 98.

damages in the context of an underinsured motorist claim. There, the Court explained when punitive damages may be available:

> An insurance policy is a contract between the insurer and the insured. In all contracts, there is an implied covenant of good faith and fair dealing. The covenant "requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." We have recognized that an insured has a cause of action for breach of the implied covenant of good faith when the insurer refuses to honor its obligations under the policy and clearly lacks reasonable justification for doing so. A mere delay in paying benefits is insufficient to constitute bad faith, but "[d]elays attributed to a 'get tough' policy, *i.e.*, a general business practice of claims denial without a reasonable basis, may subject the insurer to a bad faith claim."
>
> Courts have disagreed about whether the bad faith cause of action sounds in contract or tort, or both. This Court has grounded the claim in contract, because "there is no sound theoretical difference between a first-party insurance contract and any other contract." Although direct and consequential damages would ordinarily be the limit of damages for a breach of the implied contractual obligation of good faith, earlier cases of this Court carved out an exception for insurance contracts. As the law now stands, given the special nature of the insurance relationship, punitive damages are available as a remedy for bad faith breach of the implied covenant of good faith where the plaintiff can show malice or reckless indifference by the insurer.[48]

[48] *Enrique v. State Farm Mut. Auto. Ins. Co.*, 142 A.3d 506, 511–12 (Del. 2016) (footnotes omitted).

Enrique makes it clear that a mere delay in paying benefits is insufficient to constitute bad faith absent evidence of a general business policy to deny claims without a reasonable basis to do so. Plaintiff has attempted to satisfy this requirement by relying on: (1) Delaware Department of Insurance Reports dated December 31, 2015, March 31, 2021, and July 31, 2023; (2) reference to the settlement practices of State Farm Insurance Company; and (3) a 10th Circuit opinion in *Hatfield v. Liberty Mut. Ins Co.*, 98 F.App'x 789 (10th Cir. 2004).[49] Liberty Mutual has moved in limine to exclude Plaintiff from relying on these materials.[50] I agree with Liberty Mutual that these materials are not admissible.

The Delaware Insurance Commissioner reports that Plaintiff attempts to rely upon do not contain enough information or detail to be used to form the basis of a general business practice that the Insurance Commissioner's office took issue with. In addition, the 2015 report is too remote in time to be relevant to the instant case. Admission of these documents without any explanation of the details surrounding the underlying findings is more prejudicial than probative under the Rule 401/403 balancing test. These reports are therefore inadmissible.

Any reliance on the 10th Circuit decision in *Hatfield* is improper. The case is over twenty years old, involves Oklahoma law and is based on entirely different

[49] D.I. 87, 105.
[50] D.I. 99.

facts.[51] Given this, the decision is not relevant to showing a business pattern in Delaware 20 years later given the facts of this case. Even if the facts of *Hatfield* were somehow relevant, their relevance is far outweighed by the prejudicial impact the decision would have if admitted, and its admission would further confuse the jury. Accordingly, the Delaware Rules of Evidence 401/403 balancing test precludes admission.

Plaintiffs attempt to rely on the business practices of a different insurer, State Farm, without expert testimony that the State Farm insurer's policy is the prevailing policy of other insurers operating in Delaware is insufficient to establish a general business practice. No expert on this topic has been identified by Plaintiff to establish this fact. Therefore, evidence of State Farms' practice is not admissible.[52]

This Court grants the Defendants Motion in Limine to exclude any reference to (1) the various Delaware Insurance Commissioner reports involving Liberty Mutual; (2) State Farm's handling of UM/UIM claims; and (3) the decision in *Hatfield*. Having concluded that the items Plaintiff relies upon to establish a

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[51] *See generally Hatfield v. Liberty Mut. Ins Co.*, 98 F. App'x 789 (10th Cir. 2004).

[52] This judge is well aware of the practices surrounding how UIM claims are handled in Delaware. State Farm has a policy of sending a check to the plaintiff in a UIM or UM claim for the amount that State Farm believes is owed. The check is sent without prejudice to the plaintiff's ability to continue to pursue a claim. State Farm is the only carrier in Delaware who has this practice. All other carriers require that when payment is made it is conditioned upon the execution of a full and final release for the claims under that policy.

general business practice are not admissible, Plaintiff cannot rely upon a general business practice to establish the foundation for a punitive damage claim.

Enrique did not limit a claim for punitive damages to the situation where the plaintiff could prove a "get tough" general business practice. Rather, *Enrique* allows for a punitive damage claim where the plaintiff can show that the insurance carrier exhibited malice or reckless indifference towards an insured.[53]

One of the ways that Plaintiff asserts he can establish malice or reckless indifference is by showing that Liberty Mutual was attempting to take advantage of an elderly plaintiff who was in financial distress.[54] Plaintiff will attempt to prove this through the fact that Plaintiff made a claim under his homeowner's policy in 2023.[55] Liberty Mutual has filed a Motion in Limine seeking to exclude any mention of this claim as it is not relevant, and, even if relevant, its probative value is outweighed by its relevance with the DRE 401/403 balancing test.[56] I again agree with Liberty Mutual. The homeowners claim, in and of itself, without more, does not prove that Liberty Mutual acted with malice or recklessness toward Carpenter. Plaintiff has produced no evidence beyond the existence of the homeowner's claim and the failure to pay the UIM claim to tie the homeowners

[53] *Enrique*, 142 A.3d at 512.
[54] D.I. 87, 105.
[55] *Id.*
[56] D.I. 99.

claim to this UIM claim. I **GRANT** Liberty Mutual's Motion in Limine to exclude any mention of the homeowners claim at trial.

Finally, Plaintiff claims that defendant's continued failure to pay the claim under the automobile policy, when it knew that the adjuster was not conditioning the payment on a full and final release of claims under both the automobile and motorcycle policy, demonstrates either malice or reckless indifference towards the plaintiff. At oral argument on this motion I advised the parties that I was inclined to deny Liberty Mutual's motion as I was of a view that there were sufficient facts to justify submitting the issue to the jury. Upon reflection, and based in part on the oral argument, I have reached the opposite conclusion. The law is clear that a mere delay in payment where the insurer has a reasonable basis for the position it has taken shields the insurer from a claim for punitive damages.[57] I am satisfied that having reviewed the record as a whole that Liberty Mutual had a good faith basis to take the position that it took. In the spring of 2022 when the parties were discussing the issue of settlement any fair reading of 18 *Del.C.* §3902(c) would lead a carrier to a conclusion that the two policies could not be stacked. It was not until the Delaware Supreme Court's decision in *Ginsburg*, issued in October 2024, that the issue became less clear. As this case was litigated it was not clear to the parties or to the Court that there was an agreement to pay the $100,000 automobile

[57] *Enrique*, 142 A.3d at 512.

policy limit. In fact, when the issue was presented to the Court on three prior occasions, without the benefit of a complete record, I concluded on the record presented that there was no meeting of the minds on whether Liberty Mutual agreed to tender the limit of the automobile policy. It was only after Liberty Mutual's responses to Plaintiff's Request for Admissions, which were filed on October 24, 2025, and the deposition of the Liberty Mutual adjuster, which occurred on October 17, 2025, did the record support a conclusion by the Court that there was a meeting of minds in May 2022 on the payment of the $100,000 policy limit under the automobile policy. On this record I cannot reach a conclusion that Liberty Mutual's position on this issue lacked a reasonable basis. Nor can I reach a conclusion that there are sufficient facts for a jury to conclude that Liberty Mutual's conduct, in light of the entire record, amounted to reckless indifference or malice towards the plaintiff. I therefore **GRANT** Liberty Mutual's Motion for Summary Judgment on the issue of punitive damages.

CONCLUSION

For the above reasons, Plaintiff's Motion for Partial Summary Judgment is **GRANTED;** Plaintiff's claim for relief under Rule 60(b) is **DENIED** as moot; Defendant's Motions in Limine are decided as set out in this opinion; and Defendants Motion for Summary Judgment on the issue of Punitive damages is **GRANTED.** Final judgment is entered in favor of the plaintiff against LM

General Insurance Company in the amount of $100,000 plus interest at the legal rate from May 22, 2022.

IT IS SO ORDERED.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: File&ServeXpress