IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ROBERT MICKENS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. K24C-03-035 NEP
	)	
	)	
HORACE MANN PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation,	)	
	)	
	)	
Defendant.	)	

Submitted: January 6, 2026
Decided: February 16, 2026

MEMORANDUM OPINION

Upon Defendant Horace Mann Property and Casualty Insurance Company's Motion For Summary Judgment

DENIED

William D. Fletcher, Jr., Esquire, Schmittinger and Rodriguez, P.A., *Attorney for Plaintiff*.

Miranda D. Clifton, Esquire, Heckler and Frabizzio, *Attorney for Defendant*.

Primos, J.

This action arises from a motor-vehicle incident in which Plaintiff Robert Mickens ("Mickens") was struck by tortfeasor Alton J. Latchum ("Latchum") while working as a road-construction flagger directing traffic through an active work zone. After exhausting Latchum's bodily-injury liability coverage, Mickens seeks underinsured motorist ("UIM") benefits under Latchum's automobile insurance policy issued by Defendant Horace Mann Property and Casualty Insurance Company ("Horace Mann"). Horace Mann has moved for summary judgment pursuant to Superior Court Civil Rule 56, contending that Mickens is not entitled to UIM benefits because Mickens does not qualify as an "insured" as a matter of law.[1] The central question before the Court is whether, viewing the record in the light most favorable to Mickens, a reasonable factfinder could conclude that Mickens was an "occupant" of the insured vehicle at the time of the accident because he was engaged in a task related to the operation of that vehicle.

For the reasons that follow, the Court finds that genuine issues of material fact exist as to whether Mickens was engaged in a task related to the operation of the insured vehicle at the time of the accident, such that he may be deemed an "occupant" under Delaware law for purposes of UIM benefits. Accordingly, Horace Mann's Motion for Summary Judgment is **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On August 24, 2021, Mickens was standing in the roadway at the intersection of Pearsons Corner Road and Central Church Road while working as a traffic-control flagger.[3] Mickens was authorized to stop, slow, or otherwise control and regulate

[1] The Horace Mann policy defines an "insured" for purposes of UIM coverage to include, *inter alia*, "any other person" while "occupying" a covered vehicle. Mot. For Summary Judgment ¶¶ 5–6.
[2] Citations in the form of "D.I. ___" refer to docket items.
[3] Compl. at ¶ 2 (D.I. 1); Mickens Dep. 33:24, 34:1–10 (D.I. 32).

traffic by directing a traffic-control sign toward incoming vehicles.[4] At the same time, Latchum was operating a pickup truck traveling on Central Church Road at its intersection with Pearsons Corner Road.[5] Mickens directed Latchum to stop, but, despite Micken's directions, Latchum began making a left-hand turn onto Pearsons Corner Road, striking Mickens and propelling him into a ditch off the roadway.[6]

Mickens settled his tort liability claim against Latchum through Latchum's insurer Horace Mann for the liability policy limit of $100,000 on or about July 20, 2023.[7] Alleging that the $100,000 policy limit was insufficient to fully compensate him, Mickens sought payment of UIM benefits under Horace Mann's policy, which Horace Mann refused to provide.[8]

Mickens commenced the instant action by filing a complaint on March 28, 2024, seeking recovery of UIM benefits from Horace Mann arising out of the August 24, 2021, incident.[9] On May 14, 2024, Horace Mann filed a Motion to Dismiss. The Court denied the Motion on July 19, 2024.[10] On July 26, 2024, Horace Mann filed its Answer, asserting, *inter alia*, that Mickens's claims are barred by the terms of the policy and precluded by 18 *Del. C.* § 3902.[11]

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[4] Compl. at ¶¶ 3–4; *See* Mickens Dep. 35:22–24, 36:1–3, 44:1–3 (D.I. 32).
[5] Compl. at ¶ 4 (D.I. 1).
[6] Compl. at ¶ 4 (D.I. 1); Mickens Dep. 37:13–16; 41:19–21; 43:1; 44:1–6; 45:2–18; 47:1–8; 48:23–24, 49:1–5 (D.I. 32). Latchum died several months after the incident from unrelated causes. Resp. in Opposition to Mot. for Summ. J. at ¶ 2. As a result, Latchum never provided sworn testimony regarding the circumstances of the incident, including whether he observed Mickens or responded to Micken's signaling. *Id.*
[7] Compl. at ¶ 11 (D.I. 1).
[8] Compl. at ¶¶ 11–13 (D.I. 1). The Delaware Supreme Court has confirmed that an individual may pursue both a liability claim and a UIM claim under the same policy. *See Nationwide Prop. & Cas. Ins. Co. v. Irizarry*, 2020 WL 525667, at *3–6 (Del. Super. Jan. 31, 2020), *aff'd*, 238 A.3d 191 (Del. 2020) (TABLE).
[9] D.I. 1.
[10] D.I. 13.
[11] Answer at 2. (D.I. 16).

On November 18, 2025, Horace Mann filed the Instant Motion for Summary Judgment pursuant to Superior Court Civil Rule 56.[12] Horace Mann argues that Mickens cannot recover UIM benefits because he does not qualify as an insured under the policy, and specifically that Mickens does not qualify as an "occupant" because he was not engaged in a task related to the operation of the vehicle when he was struck.[13] Horace Mann further notes that accepting Mickens's theory would improperly expand the definition of occupancy by rendering flaggers "instant and constant 'occupants'" of some vehicle at any given time.[14]

Mickens filed his Response to Horace Mann's Motion for Summary Judgment on December 5, 2025, arguing that his acting as a flagger operates as a task related to operation of Latchum's vehicle, rendering him an occupant by law and entitling him to UIM benefits under Horace Mann's policy.[15] The Court heard oral argument on the Motion for Summary Judgment on January 6, 2026, and took the matter under advisement.[16]

STANDARD OF REVIEW

Summary judgment is appropriate if, when viewing the facts in the light most favorable to the non-moving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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.[17] The movant bears the initial burden of showing

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[12] D.I. 26.
[13] Mot. for Summ. J. at ¶¶ 3, 7–10, 16 (D.I. 26). As discussed later in this Opinion, a person is deemed an "occupant" under Delaware law if he or she is either (a) within a reasonable geographic perimeter of the vehicle or (b) engaged in a task related to the operation of the vehicle. *See infra* notes 27 to 28 and accompanying text.
[14] *Id.* at ¶ 15.
[15] Resp. to Mot. for Summ. J. at ¶¶ 6–8 (D.I. 28).
[16] D.I. 31.
[17] Del. Super. Ct. Civ. R. 56(c); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

that there are no genuine issues of material fact.[18] If the movant meets its burden, the non-movant must show there is a "genuine issue for trial."[19] To determine whether a genuine issue exists, the Court construes the facts in the light most favorable to the non-movant.[20] Although summary judgment is encouraged when possible, there is no "right" to summary judgment.[21]

The Court will not grant summary judgment if "it seems desirable to inquire thoroughly into [the facts] to clarify the application of the law to the circumstances."[22] If the Court finds that no genuine issues of material fact exist, and the moving party has demonstrated its entitlement to judgment as a matter of law, summary judgment is appropriate.[23]

DISCUSSION

Disputes arising under uninsured and underinsured motorist coverage must be resolved by careful attention to the specific facts presented. As this Court has observed, "analysis of [occupancy] is highly reliant upon the individual facts of a given case."[24] In analyzing occupancy for insurance purposes, the Delaware Supreme Court has held that the term "occupant" must be construed liberally to reflect the General Assembly's intent to ensure meaningful coverage for injured

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[18] *Moore*, 405 A.2d at 680 (citing *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962)).
[19] Del. Super. Ct. Civ. R. 56(e); *see also Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995) ("If the facts permit reasonable persons to draw from them but one inference, the question is ripe for summary judgment.").
[20] *Judah v. Del. Tr. Co.*, 378 A.2d 624, 632 (Del. 1977) (citation omitted).
[21] *US Dominion, Inc. v. Fox News Network, LLC*, 293 A.3d 1002, 1034 (Del. Super. 2023) (quoting *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002) (internal quotation marks and citation omitted)).
[22] *Ebersole*, 180 A.2d at 468–69 (citation omitted).
[23] *Brooke v. Elihu-Evans*, 1996 WL 659491, at *2 (Del. Aug. 23, 1996) (citing *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322 (Del. Super. 1973)); *see also Jeffries v. Kent Cty. Vocational Tech. Sch. Dist. Bd. of Educ.*, 743 A.2d 675, 677 (Del. Super. 1999) ("However, a matter should be disposed of by summary judgment whenever an issue of law is involved and a trial is unnecessary.") (citing *State ex rel. Mitchell v. Wolcott*, 83 A.2d 759, 761 (Del. 1951)).
[24] *Buckley v. State Farm Mut. Auto. Ins. Co.*, 139 A.3d 845, 851 (Del. Super. 2015), *aff'd*, 140 A.3d 431 (Del. 2016).

persons and avoid arbitrary distinctions that would foreclose injured persons from recovery.[25] The availability of overlapping or potentially duplicative coverage, such as workers' compensation benefits, is not dispositive of whether UIM benefits are available to an otherwise qualifying claimant.[26]

A. Occupancy Requirement Pursuant To *Fisher*

The Delaware Supreme Court provided the occupancy test at issue in *Nat'l Union Fire Ins. Co. of Pittsburgh v. Fisher*.[27] This is a disjunctive two-pronged test whereby a claimant will be considered an occupant of a vehicle "if he or she is either: (a) within a reasonable geographic perimeter of the vehicle, or (b) engaged in a task related to the operation of the vehicle."[28] Mickens represented at oral argument, through counsel, that he is not asserting coverage under the geographic perimeter prong. Therefore, the Court confines its analysis here to the second, or task-related, prong.

Under the task-related prong, courts must "carefully distinguish between job-related tasks for which one's vehicle is an integral tool and tasks directly related to the operation of one's vehicle."[29] Only tasks that are directly related to the operation of the vehicle will suffice under the second prong of the *Fisher* analysis.[30] In other words, tasks such as "handing a package to a customer at his front door, a tow truck operator sweeping debris from a roadway, or an ambulance driver administering aid

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[25] *Nat. Union Fire Ins. Co. of Pittsburgh v. Fisher*, 692 A.2d 892, 896 (Del. 1997). While the Delaware Supreme Court in *Fisher* applied the liberal construction of "occupant" in the personal injury protection ("PIP") context, the Court also made clear that the liberal construction of "occupant" applied to both PIP and UIM coverage. *Id*.
[26] *Friel v. Hartford Fire Ins. Co.*, 2014 WL 1813293, at *2 (Del. Super. May 6, 2014), *aff'd*, 108 A.3d 1225 (Del. 2015). *See also Irizarry*, 2020 WL 525667, at *3–6 (claimant may pursue both a liability claim and a UIM claim under the same policy).
[27] 692 A.2d at 896–98.
[28] *Id.* at 896.
[29] *Id.* at 897–98.
[30] *Id.* at 898.

to a person on the roadside" may be "job-related tasks" for which a vehicle is an "integral tool," but they are likely not tasks related to the operation of a vehicle.[31]

Delaware courts have identified a variety of tasks that would qualify as tasks related to the operation of a vehicle for occupancy purposes. These include pumping gasoline into a vehicle,[32] checking that vehicles loaded on a trailer were secured,[33] directing the movement of a vehicle for towing purposes,[34] and crossing a roadway at the direction of a vehicle operator in order to board the vehicle.[35] Across these contexts, the decisive consideration is whether the claimant's actions at the time of injury were undertaken for the purpose of influencing how the particular vehicle would move, function, or be operated.

B. Mickens Was Engaged In A Task Related To The Operation Of Latchum's Vehicle

Viewing the record in the light most favorable to Mickens, a reasonable factfinder could conclude that Mickens was engaged in a task related to the operation of Latchum's vehicle at the moment he was struck. Mickens was not a passive pedestrian or a bystander incidentally present near traffic, but an authorized roadway flagger,[36] stationed in an active work zone, and actively directing traffic pursuant to his assigned duties.[37] Moreover, immediately before the incident, Mickens was waving a red and white stop sign **toward Latchum's vehicle** in an effort to make

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[31] *Id.*
[32] *Selective Ins. Co. v. Lyons*, 681 A.2d 1021, 1026 (Del. 1996); *Fisher*, 692 A.2d at 898.
[33] *Walker v. M & G Convoy, Inc.*, 1989 WL 158511, at *1 (Del. Super. Nov. 2, 1989); *Fisher*, 692 A.2d at 898.
[34] *Wagner v. State Farm Mut. Auto. Ins. Co.*, 2001 WL 34083818, at *2–3 (Del. Super. Oct. 25, 2001).
[35] *Buckley*, 139 A.3d at 851.
[36] *See* Mickens Dep. 12:18–14:10 (D.I. 32) (explaining licensure of roadway flaggers).
[37] *Id.* at 28:18–32:24.

Latchum stop.[38] This conduct was undertaken for the express purpose of controlling the movement of Latchum's vehicle through the intersection.

Horace Mann argues that because Latchum allegedly failed to see Mickens before the incident, Mickens could not have been engaged in a task "affecting" the operation of Latchum's vehicle and therefore cannot qualify as an "occupant."[39] That premise misconstrues Delaware's task-related inquiry, which turns on the claimant's objective conduct and its relationship to vehicle operation, not on the tortfeasor's perception of, awareness of, or compliance with that conduct. Moreover, the test is not whether the plaintiff's task-related actions "affected" the operation of the subject vehicle, but whether they were "related to" the operation of the vehicle.

Delaware courts recognize that tasks need not involve physical contact with a vehicle to satisfy the task-related prong,[40] nor does a task need to be successfully completed in order to satisfy that prong.[41] Rather, the key inquiry is examining the task the plaintiff was engaged in, not the tortfeasor. *E.g.*, in *Selective Insurance Co. v. Lyons*, the Delaware Supreme Court explained that a claimant pumping gas into a vehicle was engaged in a task related to the operation of the vehicle and therefore an "occupant" of the vehicle.[42] Under the facts of the case, "[w]hile Lyons was

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[38] *Id.* at 37:5–38:16, 41:4-5, 43:17–44:6. Mickens testified that prior to the incident he was "swinging [the stop sign] up and down" at Latchum's vehicle to try to get his attention. *Id.* at 44:1-4.

[39] Mot. for Summ. J. at ¶ 10. There is no evidence in the record that Latchum failed to see Mickens prior to the incident other than Mickens's testimony that immediately after the incident Latchum apologized and stated that he "didn't see" him. Mickens Dep. 48:17–18, 52:21–23 (D.I. 32). Even assuming that this statement were admissible, it would not eliminate a genuine issue of material fact, i.e., a factfinder would still be required to assess Latchum's credibility and determine whether Latchum's statement was truthful or merely an attempt to exculpate himself.

[40] *See, e.g., Wagner*, 2001 WL 34083818, at *2 (explaining that the plaintiff was engaged in a task related to the operation of a tow truck, namely, directing the tow truck, while standing ten to fifteen feet away).

[41] *See, e.g., Walker*, 1989 WL 158511, at *1 (plaintiff was in process of making sure cars loaded onto trailer were secured when he slipped and fell, giving rise to PIP coverage).

[42] 681 A.2d at 1026.

standing behind his vehicle filling it with gasoline, with his hand on the gasoline hose and the nozzle inserted into his automobile's gas-tank filler neck, [the driver of a second vehicle] drove her vehicle forward, striking Lyons and pinning him between the two vehicles."[43] Even if, hypothetically, the injury had occurred **after** the nozzle was inserted but **before** gas had begun flowing into the vehicle, the plaintiff would still have been deemed an occupant because the task was integrally connected to vehicle operation, even though performance of the task would have had no actual **effect** upon the operation of the vehicle.

The principle of focusing on the claimant's objective conduct without requiring physical contact or successful completion of a task applies with equal force here. Mickens's task of directing Latchum to stop was already underway and was aimed at immediately affecting the operation of Latchum's vehicle.[44] Whether Latchum complied with the directive, noticed Mickens, or ultimately failed to stop did not negate the task-related nature of Mickens's conduct.

Horace Mann argues that a task related to the operation of a vehicle for "occupancy" purposes must either be "integral to the operation of the vehicle" or "utilize[] specialized capabilities inherent to that specific vehicle."[45] Horace Mann fails to explain why directing a specific vehicle's movements for purposes of officially authorized traffic control is any less integral to the operation of the vehicle than "pumping gas, checking the fasteners on a loaded trailer, changing a tire or jump-starting a vehicle."[46] Furthermore, the fact that in *Wagner v. State Farm Mutual Automobile Insurance Co.*, the claimant was directing the movements of the subject vehicle, a tow truck, so that it could be used to tow another vehicle does not

[43] *Id.* at 1023.
[44] Mickens Dep. 43:17–44:6 (D.I. 32).
[45] Mot. for Summ. J. at ¶ 14 (D.I. 26).
[46] Fisher, 692 A.2d at 898.

mean that other instances of directing a vehicle unrelated to the mechanical capabilities of that vehicle are therefore unrelated to the operation of the vehicle.[47] Such a construction would be contrary to the liberal construction of "occupant" repeatedly upheld by the Delaware Supreme Court.[48]

In the instant case, Mickens's act of signaling Latchum to stop was undertaken for the express purpose of controlling the movement of Latchum's vehicle through an active work zone. The fact that Mickens's role did not involve specialized machinery or that Latchum ultimately failed to comply with the directive does not remove Mickens's conduct from the scope of tasks related to vehicle operation under *Fisher.*

C. Horace Mann's Overbreadth Argument Misconstrues The Inquiry

Horace Mann argues that accepting Mickens's position would improperly render all flaggers "instant and constant occupants" of all vehicles they flag for UIM purposes.[49] This concern is misplaced. The Court does not hold that any injury suffered while flagging automatically gives rise to underinsured motorist coverage. Rather, coverage remains tethered to the specific facts of the incident.

The facts in the record for purposes of summary judgment establish that immediately prior to the incident, Mickens was engaged in a task related to a specific vehicle, i.e., Latchum's vehicle, not generally directing multiple vehicles. As Mickens has testified, at the time of the incident he was waving a stop sign at

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[47] 2001 WL 34083818, at *2. In *Wagner*, the plaintiff, a truck mechanic, drove his employer's van onto the shoulder of I-95 to examine a disabled box truck. *Id*. at *1. After determining that the box truck required a tow truck and summoning a tow truck to the scene, the plaintiff positioned himself between the tow truck and the disabled box truck to guide the tow truck into position. *Id.* During that process, a third vehicle driven by a drunk driver left the roadway, glanced off the van, and struck the disabled box truck, which was pushed forward and pinned the plaintiff against a guardrail. *Id.*

[48] *See Lyons*, 681 A.2d at 1025; *Fisher*, 692 A.2d at 896.

[49] Mot. for Summ. J. at ¶ 15 (D.I. 26).

Latchum's vehicle in an attempt to get him to stop.[50] The Court's holding here would not support an argument that a flagger holding a traffic-control device generally directing multiple vehicles to stop or proceed slowly—but not directed at the movement of any particular vehicle—could assert a claim for underinsured coverage through all or any of those vehicles.

Here, Mickens's claim arises only because he was struck by Latchum's vehicle after directing Latchum's particular vehicle pursuant to his duties as a flagger. Injuries sustained while flagging traffic generally, without a nexus to a specific vehicle's operation, would not satisfy this standard. As applied to the narrow facts presented, the Court's holding recognizes that a flagger actively directing a specific vehicle at the moment of impact may qualify as an occupant of that vehicle, without creating a categorical rule that all flaggers are per se entitled to UIM coverage for all injuries sustained while working.

CONCLUSION

For the foregoing reasons, the Court finds that genuine issues of material fact exist as to whether Mickens was engaged in a task related to the operation of Latchum's vehicle at the time of the incident such that he may be deemed an "occupant" under Delaware law. Accordingly, Horace Mann's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

Noel Eason Primos, Judge

[50] *See supra* note 38.

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