

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE	:	No. 315,2014
COMPANY	:	
	:	
	:	
Defendant Below,	:	Appeal from the Decision of the
Appellant,	:	Superior Court of the State of
	:	Delaware, in and for New
v.	:	Castle County,
	:	C.A. No. N10C-08-246 WCC
MATTHEW KELTY,	:	
	:	
Plaintiff Below,	:	
Appellee.	:	

**APPELLANT'S OPENING BRIEF**

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## NATURE OF PROCEEDINGS

This case arises out of a breach of contract action, in which Appellee/Plaintiff Below, Matthew Kelty (“Plaintiff”), sought Personal Injury Protection (“PIP”) benefits from Appellant/Defendant Below State Farm Mutual Automobile Insurance Company (“State Farm”) after an accident that occurred on August 3, 2008. The parties completed discovery and State Farm filed for summary judgment, asserting that Plaintiff was not eligible to receive PIP benefits. After the Trial Court granted State Farm’s motion, the case was appealed to this Court. *Kelty v. State Farm Mut. Auto.. Ins. Co.*, 73 A.3d 926 (Del. 2013). At that time, the Court found that Plaintiff was eligible to receive PIP benefits, as it found the “transportation purposes” element of the *Klug* test was inconsistent with the PIP statute. *Id.* at 928. The Court remanded the case for further proceedings. *Id.* at 934.

On remand, the Trial Court held a status conference with counsel, after which the parties submitted informal briefing on the issue of whether Plaintiff was entitled to draw from \$15,000 in PIP coverage or \$100,000 of PIP coverage, pursuant to a provision contained in the insurance policy. This issue was first raised at the status conference after discovery had been completed. In State Farm’s informal briefing, it requested additional time for discovery to address whether the provision contained in the insurance policy was “customary” pursuant to 21 *Del. C.* § 2118(f). (A33-39).

After reviewing the informal briefing the Trial Court issued its Memorandum Opinion on Remand, without oral argument on the matter. The Trial Court found that it was not necessary to address the “customary” issue as it found the policy provision to be void as against public policy. State Farm appealed the Memorandum Opinion on Remand. This is State Farm’s Opening Brief on Appeal.

## **SUMMARY OF ARGUMENT**

1. The non-relative pedestrian provision contained in the Policy is compliant with Delaware law and does not violate any public policy. Accordingly, the provision is valid.



## STATEMENT OF FACTS

On August 3, 2008, Plaintiff was assisting John E. Lovegrove III and Shirley Lovegrove (collectively referred to as the “Lovegroves”) in “topping” trees at the Lovegroves’ residence. (A8). Plaintiff was to be paid \$400 for his work. (A9-10). In doing so, Plaintiff climbed to the top of the tree to cut down branches. *Kelty* 73 A.3d at 928. The branches were tied to a rope, which was attached to the Lovegroves’ truck. *Id.* While Plaintiff was cutting a branch, John Lovegrove accelerated his vehicle, the rope snapped, and the branch broke off the tree, knocking Plaintiff out of the tree. *Id.*

At the time of the accident, State Farm Mutual Automobile Insurance Company (“State Farm”) provided a motor vehicle policy of insurance to the Lovegroves for a 2001 Ford F150, policy number 412 4008-E16-08J (the “Policy”). (A11-32). Plaintiff did not reside with the Lovegroves at any time relevant to this litigation. (A6-7). The Policy contained a provision under the PIP benefits section entitled: “When Coverage P Does Not Apply.”<sup>1</sup> This section provides:

The following provisions apply only to the extent that the limits of liability of this policy exceed the minimum limits of liability required by law.

**THERE IS NO COVERAGE:**

---

<sup>1</sup> Coverage P is identified as PIP coverage.

\* \* \*

2. FOR ***BODILY INJURY***

\* \* \*

f. IN EXCESS OF THE MINIMUM LIMITS REQUIRED BY LAW FOR ANY PEDESTRIAN. This does not apply to *you, your spouse* or any *relative*.

(A19).

Pursuant to the terms of the Policy, State Farm issued a check in the amount of \$15,000 to Plaintiff and his counsel. The Trial Court noted that it was unknown if the \$15,000 check has been deposited or cashed, Appellant Counsel checked with State Farm, and State Farm records show that the \$15,000 check cleared on or about November 22, 2013.

## ARGUMENT

### I. THE SUPERIOR COURT ERRED IN FINDING THE INSURANCE POLICY PROVISION WAS VOID AS AGAINST PUBLIC POLICY.

#### A. Question Presented

Whether the policy provision limiting PIP benefits to the statutory required amount for a pedestrian who is not the named insured or a relative of the named insured is consistent with Delaware law and public policy. This question was preserved for appeal by State Farm's Informal Briefing. (A33-39).

#### B. Scope of Review

Interpretation of an insurance policy is a determination made as a matter of law. *Cubler v. State Farm Mut. Auto. Ins. Co.*, 679 A.2d 66, 68 (Del. 1996). The Supreme Court will review the Trial Court's interpretations as a *de novo* review.

*Id.*

#### C. Merits of Argument

There is no allegation that the non-relative pedestrian provision is ambiguous or unclear. Further, there is no finding that the provision violates the statute itself. Instead, the Trial Court found that the provision was invalid because it was contrary to public policy. The non-relative pedestrian provision is not only consistent with Delaware law, but it also continues to support and follow the public policy concerns

as established by the Court.

1. *The Lovegroves' Insurance Policy is Consistent with Delaware Law.*

The provision at issue in the present case is contained under the PIP section of the Lovegroves' insurance policy. The provision states that for any pedestrian, other than the named insured, the spouse of the named insured and any relative, the coverage for bodily injury is limited to that required by statute. (A19). This provision is clear and unambiguous. The provision applies only to excess coverage.

The insurance required for vehicles registered in the State of Delaware has been established by the General Assembly, under three statutes: Section 2118 of Title 21 (no fault), Section 2902 of Title 21 (liability) and Section 3902 of Title 18 of the Delaware Code (uninsured/underinsured motorist coverage). All these statutes, for all the different coverages, provide for minimum limits of \$15,000 per person and \$30,000 per accident. None of the statutes require more.

As recognized by this Court in *Kelty*, Section 2118 of Title 21 of the Delaware Code, provides 4 different requirements for insurance: (1) liability, (2) PIP coverage, (3) property damage, and (4) damage to the insured vehicle. *Kelty* 73 A.3d at 929. Section 2118 requires PIP coverage in the amount of "\$15,000 for any 1 person and \$30,000 for all persons injured in any 1 accident." 21 *Del. C.* § 2118(a)(2)b. The PIP

statute also identifies other circumstances in which the required PIP coverage must apply and the circumstances in which the coverage will not apply. For example, subsection c. provides that PIP coverage “shall be applicable to each person occupying such motor vehicle and to any other person injured in an accident involving such motor vehicle, other than an occupant of another motor vehicle.” 21 *Del. C.* § 2118(a)(2)c.

Section 2118 further provides that the section does not prohibit obtaining coverage “more extensive than the minimum coverages required” or that the excess coverage must be segregated from the minimum coverages. 21 *Del. C.* § 2118(d). The statute anticipates and allows for exclusions that are customary and not inconsistent with the requirements of the statute. 21 *Del. C.* § 2118(f). The statute, however, does not contain a requirement stating that excess coverage available to the named insured and his relatives, must also be available to strangers. Pursuant to this statute, only \$15,000 is required to be available to Plaintiff as a pedestrian involved in an accident with a Delaware registered vehicle in the State of Delaware.

Under Section 2902 of Title 21 of the Delaware Code, the General Assembly established that a motor vehicle liability policy must

[i]nsure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named

insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle. . . as follows: \$15,000, because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person \$30,000, because of bodily injury to or death of 2 or more person in any 1 accident, and \$5,000 because of injury to or destruction of property of others in any 1 accident.

21 *Del. C.* § 2902(b)(2). Under this section the General Assembly provided that coverage in excess of the required amount would not be subject to that statutory chapter. 21 *Del. C.* § 2902(g).

Lastly, the General Assembly has provided, subject to certain exceptions, that all motor vehicles must carry uninsured/underinsured (“UM/UIM”) motorist coverage pursuant to Section 3902 of Title 18 of the Delaware Code. Again, the only required limit is \$15,000 per person and \$30,000 per accident.

These three statutes encompass the entire required coverage for motor vehicles registered in the State of Delaware. The General Assembly in weighing the costs and benefits to insurers, insureds, and the general public, found that \$15,000 per a person and \$30,000 per an accident is the required amount of coverage for the Delaware driving public for liability, PIP, and UM/UIM coverage. As this Court has noted, the General Assembly “is far better suited to gather and weigh the legislative facts and hear the arguments of those interested parties over the costs and benefits of extending