

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

CASARINO CHRISTMAN SHALK
RANSOM & DOSS, P.A.

COLIN M. SHALK, ESQ.
Del. Bar ID No. 99
RACHEL D. ALLEN, ESQ.
Del. Bar ID No. 5561
405 North King Street, Suite 300
P.O. Box 1276
Wilmington , DE 19899-1276
Telephone: (302)594-4500
Fax: (302)594-4509
Attorney for Appellant, Defendant-Below
State Farm Mutual Automobile Insurance
Company

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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.”¹ 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:

¹ 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

the policy underlying the Delaware Financial Responsibility Law”. *State Farm Mut. Auto. Ins. Co. v. Daprato*, 840 A.2d 595, 599 (Del. 2003).

When interpreting these statutes, the Court will “give unambiguous statutory language its plain meaning ‘unless the result is so absurd that it cannot be reasonably attributed to the legislature.’” *Kelty* 73 A.3d at 929 (quoting *Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 495).

The Lovegroves’ insurance policy meets the requirements established by Delaware statute. It provides PIP coverage of \$15,000 per a person and \$30,000 per accident as required by 21 *Del. C.* § 2118. The Lovegroves, however, decided that they wanted to obtain greater coverage for themselves and contracted for excess PIP coverage. There is no question that the Policy is in compliance with the statute, as the Policy provides the required basic coverage for all individuals eligible by statute. Further, that required coverage was in fact paid to Plaintiff.

Policy provisions that do not violate statute have been upheld by Delaware Courts when the coverage is restricted to the statutory minimum. In *Mason v. State Farm Mut. Auto. Ins. Co.*, 1997 Del. Super LEXIS 270 (Del. Super. July 21, 1997), the Court upheld a “regular use” exclusion. The Court found that the purpose of Section 2118 was satisfied when PIP coverage meeting the statutory requirements was available to the injured party and was paid to the injured party. *Id.* at *8.

Similarly, in *Harris v. Prudential Property & Casualty Ins. Co.*, 632 A.2d 1380 (Del. 1993), the Court found that an insurer did not have a duty to provide coverage above the statutory minimum when the insured failed to cooperate. *Id.* In *Harris*, the Court recognized that coverage beyond the statutory minimum was not subject to the requirements of the Financial Responsibility law. *Id.* at 1382.

In the present case there is no question that the Policy is compliant with Delaware law. Plaintiff seeks to expand the statutory requirements and find the non-relative pedestrian provision to be invalid based on public policy, despite the fact that the statute only requires that \$15,000 in PIP coverage be provided to a pedestrian.

2. *The Non-Relative Pedestrian Provision Encourages the Driving Public to Purchase Additional Insurance and Therefore is Consistent with Public Policy.*

The Trial Court relied on the public policy consideration of encouraging the Delaware driving public to purchase greater than the minimum coverage of insurance in finding the non-relative pedestrian provision invalid. *Kelty v. State Farm Mutual Automobile Insurance Company*, 2014 Del. Super. LEXIS 339 (Del. Super. May 28, 2014). In the present case, however, Plaintiff was not the individual who purchased the insurance policy at issue. The public policy espoused by the trial court cannot be found in any of the motor vehicle statutes. While the policy holder may have every interest in insuring himself, and those related to him or in his vehicle, what interest

does he/she have in providing insurance coverage to a stranger? In fact, the statute itself only applies to pedestrians that are in the State of Delaware. The General Assembly did not see fit to extend the pedestrian coverage to someone out the State, except to the policy holder and those related to the policy holder. 21 *Del. C.* § 2118(a)(2)d.

To meet this public policy goal, Plaintiff would need to purchase his own insurance policy which contained excess PIP coverage that he could reach to after he had obtained the first \$15,000 from the vehicle involved in the accident. *Progressive Northern Insurance Company v. Mohr*, 47 A.3d 492 (Del. 2012)(a pedestrian could obtain excess PIP coverage from his insurance policy after obtaining the \$15,000 from the Delaware registered vehicle involved in the accident).²

In *Passwaters v. State Farm Mut. Auto. Ins. Co.*, 1997 Del. Super. LEXIS 145 (Del. Super. March 27, 1997), then President Judge Henry duPont Ridgely stated that an owned vehicle exclusion was valid because it encouraged “an owner to have his vehicle insured rather than rely on the insurance coverage of another.” *Id.* at *16.

In the present case, the provision at issue meets the public policy goal, as it encourages individuals to ensure that their own insurance has additional coverage

² Whether Plaintiff had his own insurance policy providing excess PIP is irrelevant. This public policy is not met by providing a stranger the full amount of coverage. It is met by limiting his coverage to encourage him to obtain additional coverage and not rely on the insurance coverage of another.

beyond the mandatory minimum. To suggest otherwise, would be contrary to the *Passwaters* decision, as it would allow Plaintiff to rely on another individual to obtain greater insurance coverage.

The named insured has the obligation to have insurance as required by Delaware statute, which has been mandated by the Delaware General Assembly. Above that, insureds have the option to pay an additional premium for additional coverage. An insured decides on the types of coverage, beyond the required minimum, based upon his needs and economic concerns. Based on these factors, he purchases the additional coverage based on his choice. He may obtain only the minimum required or he may purchase coverage beyond what is required by the statute. It is the choice of the insured.

An insured has no interest in obtaining excess coverage for a stranger beyond what an insured is required to provide under the statutory scheme. Nor does an insured purchase insurance so that he can protect strangers or unknown members of the driving public. Insurance is purchased to protect the individual purchasing the insurance. The non-relative pedestrian provision protected the named insured and his relatives with excess PIP coverage. Accordingly, the provision is compliant with the public policy of encouraging the Delaware Public to purchase additional insurance coverage and is valid.

3. *The Provision Meets the Public Policy Goal of Compensating Persons Injured in Motor Vehicle Accidents.*

The Trial Court also found the non-relative pedestrian provision void because it violated the public policy to fully compensative victims of accidents. *Kelty* 2014 Del. Super. LEXIS 339 (Del. Super. May 28, 2014). The Court in *State Farm Mut. Auto. Ins. Co. v. Wagamon*, 541 A.2d 557 (Del. 1988) stated that clear purpose of Section 2118, “to provide *basic* insurance coverage for all personal injury claims arising out of an automobile accident regardless of the plaintiff’s relationship to the insured.” *Id.* at 558 (emphasis added). The Court found that exclusions that conflict “with the *basic requirement* of providing *minimum* legal liability coverage for claims by victims of an automobile accident” were invalid. *Id.* at 561 (emphasis added). The Court also recognized that the household exclusion was contradictory to the express requirements of Section 2118, in that it specifically excluded individuals that the statute required be included. *Id.*

In *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915 (Del. 1997), the Court found that a modified household exclusion, under a liability policy was invalid. *Id.* Interestingly, in finding that Delaware law favors full compensation, *Seeman* relied upon *Harris v. Prudential Property & Casualty Ins. Co.*, 632 A.2d 1380 (Del. 1993). In *Harris* the Court stated that “insurance coverage in excess of the statutory

minimum is not subject to the restraints of the Financial Responsibility Law.” *Id.* at 1382. Accordingly, despite the public policy favoring full compensation for victims of accidents, the Court found that an insurer could reduce liability coverage to the statutory minimum for the insured’s failure to cooperate. *Id.* at 1382-3.

The Court has also upheld other provisions and in doing so prevented a victim from “full recovery.” In *Mason v. State Farm Mut. Auto. Ins. Co.*, 1997 Del. Super. LEXIS 270 (Del. Super. July 21, 1997), the Court addressed whether an individual could obtain excess PIP coverage from his personal automobile insurance policy after he had exhausted the PIP coverage for the vehicle he was using at the time of the accident, which was his employer’s vehicle that he was using for work-related activities. *Id.* at *2-3. The Court found the “regular use” exclusion was valid under the PIP statute even when considering “the purpose of section 2118, which is ‘to protect and compensate all persons injured in automobile accidents.’” *Id.* at *8 (quoting *Hudson v. State Farm Mut. Auto. Ins. Co.*, 569 A.2d 1168 (1992)). In doing so the Court recognized that the purpose of the no-fault statute is met when an individual receives the full compensation required by the statute and established by the General Assembly. *Id.* at *8.

In *Universal Underwriters Ins. Co. v. Travelers Ins. Co.*, 669 A.2d 45 (Del. 1995), the Court found an automobile-business exclusion was valid for coverage

above the statutory minimum. *Id.* at 46. The Court also found that the purpose of the financial responsibility laws were to “protect and compensate all persons injured in automobile accidents.” *Id.* at 48. It should be noted that the Court did not say “fully compensate.” The Court further found that the exclusion would advance the cause of full recovery by encouraging auto related business to purchased additional insurance to cover their business activities. *Id.* at 48-9. Accordingly, the Court found that the exclusion did not violate any public policy.

In *Cubler v. State Farm Mut. Auto. Ins. Co.*, 679 A.2d 66 (Del. 1996), the Court found that an exclusion regarding carrying persons for a charge was enforceable beyond the minimum coverage limits. *Id.* In doing so, the compensation to the injured plaintiffs was limited, however, the Court found that the exclusion did not violate public policy. *Id.*

The idea of “full compensation for victims of accidents” is a laudable goal and a commendable public policy. However, no one who purchased the available coverages or the coverages required by the vehicle statutes can guarantee that he/she will be fully compensated. As stated previously, a non-relative pedestrian struck outside of the State of Delaware gets no coverage at all. The public policy of fully compensating individuals is contradictory to the PIP statute itself, as a non-relative pedestrian would only receive coverage if the accident occurred in Delaware. If this

accident had occurred in any of the 49 other states or one of the territories, Plaintiff would not be able to recover under the statute.

When this public policy goal is read in accordance with the statute, full compensation must be read as the amount that is required by the statute. After all, an individual with \$15,000 policy limits will not suddenly obtain \$100,000 policy limits simply because his medical bills have reached \$100,000 and his insurer offers limits of \$100,000.

The General Assembly has the ability to change the levels of coverage, the amount of coverage and the types of coverage required. Since the creation of the Financial Responsibility laws, all that the General Assembly has done is make them co-extensive and raise the required amount from \$10,000 to \$15,000 per person. 64 *Del. Laws* ch. 198 (1983).

The Delaware statutes all focus on the minimum coverage, the basic coverage, which the General Assembly, through its statutory creation process has determined is sufficient coverage. There is no focus in these statutes on coverage beyond that required minimum, other than to establish that an insured may obtain additional coverage beyond the required amount. The Policy in the present case does not exclude coverage, nor does it limit the coverage required by statute. The Policy provides the exact coverage as required by statute and then provides excess coverage

to the individual and his relative that contracted for coverage.

There is no statutory requirement that a policy have more than the statutory required minimum. In the present case the public policy of compensating the individual was met when Plaintiff received the \$15,000 that he was eligible to receive based upon statute. Accordingly, the non-relative pedestrian provision does not violate the public policy of providing compensation to individuals and is not void.

4. *There is No Public Policy Requirement for an Insured to Obtain Excess Insurance Coverage for a Stranger.*

The Trial Court found that the non-relative pedestrian provision is inconsistent with the public policy of Delaware, while the court referenced two public policies, this provision is compliant with both of those public policy considerations. It is unclear where a public policy argument regarding this provision would come from. Delaware law does not protect pedestrians in every circumstance and in fact the statute itself provides distinctions between insureds and strangers. Subsection d. of Section 2118 provides

The coverage required by this paragraph shall also be applicable to *the named insureds and members of their households* for accidents which occur through being injured by an accident with any motor vehicle other than a Delaware insured motor vehicle *while a pedestrian* or while occupying any registered motor vehicle other than a Delaware registered insured motor vehicle, in any state of

the United States...

21 *Del. C.* § 2118(a)(2)d (emphasis added).

The case law has not established a public policy regarding purchasing excess insurance coverage for the benefit of strangers, which may be because it would directly contradict the public policy goal of encouraging the driving public to purchase greater coverage. Further, such a public policy may open an insured up to greater future premiums. A stranger would access the higher limits that an insured had obtained for himself, use the higher amount and affect the premium of the insured without any option or decision made by the insured. The insured can control his own treatment, he to some extent can control the treatment of his spouse and household relatives. An insured has no control over that of a stranger, who in using the coverage of an insured can raise the premiums of an insured. An insured should be allowed to contract against that very risk by a provision that establishes his higher coverage is for himself, his spouse and his resident relatives, such as the non-relative pedestrian provision contained in the Policy.

As there is no public policy encouraging the Delaware driving public to purchase excess coverage for strangers, the non-relative pedestrian provision is valid.

5. *If the Non-Relative Pedestrian Provision is Considered to be an Exclusion, the Case should be Remanded for Further Discovery on Whether the Provision is Customary.*

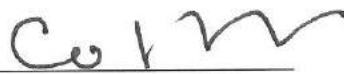
The Trial Court found that the provision was an exclusion and invalid pursuant to public policy. As noted in State Farm's Informal Briefing below, the characterization of the provision as an exclusion first occurred in Plaintiff's informal brief. State Farm requested additional time for discovery to address whether the provision was "customary to the field of liability, casualty and property insurance". 21 *Del. C.* § 2118(f). The trial court, however, found that as the provision was invalid under public policy, it did not need to address if the provision was customary. *Kelty*, 2104 Del. Super. LEXIS 339 at *12.

The PIP statute provides that coverage "may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section . . ." 21 *Del. C.* § 2118(f). As stated in this brief, the non-relative pedestrian provision follows and is compliant with the PIP statute. Plaintiff received the \$15,000 required by the statute. The provision is not inconsistent with the statute. Further, the provision conforms with Delaware public policy. Accordingly, if the provision is considered to be an exclusion, additional discovery is required to determine if the provision is customary and the case should be remanded for that purpose.

CONCLUSION

The Trial Court found that the non-relative pedestrian provision violated a public policy, however, pursuant to statute Plaintiff was given the coverage to which he was entitled. Delaware law provides that Plaintiff was eligible to receive \$15,000 in PIP benefits. There is nothing an insured can do after the accident that would absolve the minimum limits. The case law, however, has shown that coverage above the statutory limits can be limited in certain situations. In the present case, the non-relative pedestrian provision supports the public policy of encouraging the public to purchase additional insurance. It also continues to compensate individuals involved in accidents as it provides the statutory required coverage. It also provides excess coverage to the named insured, his spouse and his relatives. As the provision is consistent with Delaware law and public policy it is valid and Plaintiff is only eligible to receive \$15,000 in PIP benefits from the Policy.

CASARINO CHRISTMAN SHALK
RANSOM & DOSS, P.A.



COLIN M. SHALK, ESQ.

Del. Bar ID No. 99

RACHEL D. ALLEN, ESQ.

Del. Bar ID No. 5561

405 North King Street, Suite 300

P.O. Box 1276
Wilmington , DE 19899-1276
Telephone: (302)594-4500
Fax: (302)594-4509
Attorney for Appellant, Defendant-Below
State Farm Mutual Automobile Insurance
Company