



IN THE SUPREME COURT OF THE STATE OF DELAWARE

USAA GENERAL INDEMNITY :
COMPANY, :
 : No. 530, 2019
 :
 Defendant Below, :
 Appellant, :
 :
 v. : Court Below: Superior Court of the
 : State of Delaware
 : C.A.No.: N17C-11-101 AML
 HARRY BROWN, :
 :
 :
 Plaintiff Below, :
 Appellee. :

REPLY BRIEF OF DEFENDANT BELOW, APPELLANT
USAA GENERAL INDEMNITY COMPANY

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DATED: March 17, 2020

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PRELIMINARY STATEMENT

The Defendant below, Appellant, continues to view the plain and unambiguous language of the current 18 Del. C. §3902(b) as providing optional rights to an “insured.” The definition of insured within the USAA policy is equally straight forward and unequivocal. This Court should respect the guidance of the clear legislative demand as well as the straight forward definitional framework within the policy and resist calls to, in essence, reform said provisions.

The Defendant below, Appellant, does recognize the policy arguments that have been asserted within the amicus filing on behalf of the Delaware Trial Lawyers Association. The Defendant below, Appellant, opposes the amicus filing and an answer to said application is in the process of being filed or has been filed.

ARGUMENT

I. IN DELAWARE, UN/UIM INSURANCE IS “PERSONAL” TO THE INSURED AS OPPOSED TO BEING VEHICLE SPECIFIC.

The pendulum swings.

Prior to January 3, 2014, the Delaware UM/UIM law provided that an insured, who had the same amount of underinsured motorist coverage as an at fault driver had liability coverage, not to be deemed underinsured. One could not turn to one’s own policy, even when it was clear that the at fault driver did not have sufficient insurance to cover your injuries and/or losses. The legislature in its wisdom looked at said unfairness and provided for a fix allowing one to use one’s own UIM coverage if the at fault driver’s policy was insufficient to compensate.

This is clearly set forth within the Summary to the legislative change specifically noting that “[t]he purpose of this amendment is to allow innocent victims of motor vehicle collisions to access their own underinsured insurance benefits...”. See, *Perez v. State Farm Mut. Automobile Insurance Company*, 2018 Del. Super. Lexis 238 (Del. Super. June 1, 2018). Indeed, Section 3902(b) requires an insurer to offer and allows an insured the opportunity to decide whether or not to purchase additional coverage for personal injury or death, including underinsured bodily injury liability coverage. The option rests with the insured. The insured herein contracted with Defendant below, Appellant, for coverages.

Delaware case law clearly holds that UM/UIM insurance is “personal” to an insured person and not vehicle specific. See *Hurst v. Nationwide Mut. Ins. Co.*, 652 A.2d 10 (Del. 1995).

In these regards, an insured and insurer are free to bargain over reductions and limitations of coverage in circumstances wherein voluntary and non-mandatory coverages are involved. See *Stoms v. Federated Serv. Ins. Co.*, 125 A.3d 1102, 1106 (Del. 2014). This Court has recognized that allowing an insured and insurer to limit voluntary coverages in order to reduce premiums serves the underlying policy objective of the statutory provision that is to make the coverage more affordable and thus to encourage the procurement of same. *Id.* The Superior Court, in *Davis v. State Farm Mutual Automobile Insurance Company*, 2011 Del. Super. Lexis 658, 2011 WL 1379562 (Del. Super. Feb. 15, 2011), *aff’d* 29 A.3d 245 (Del., 2011) underscores the difference between an insurer and its insured and a third party guest. Therein the following was noted:

“The insured and his household members may have additional personal coverage up to the highest UM/UIM coverage on any vehicle insured under the policy because that coverage is ‘personal’ to them. The household members are the ones contracting with the insurer for coverage. The coverage is personal to the household members because they, personally, chose and purchased higher policy coverage. All the policies before the Court distinguish between the insured and his or her household members from third party permissive drivers and guests.

The Court concludes the UM/UIM coverage is not personal to a third party driver or guest.”

The Plaintiff below, Appellee, is such a “guest.” He is not an insured as designated within 18 Del. C. §3902 as he has no rights to obtain or decline the non-mandatory coverage as proffered or available pursuant to said provision.

While the lower courts have been happy to give lip service to the well settled understanding that the statutory provision is plain and unambiguous, the reviewing court must give effect to the clear legislative command without referring to traditional aids of statutory interpretation or a public policy review. See *Marine v. State*, 607 A.2d 1185, 1203 (Del. 1989).

And in flaunting this statutory interpretive guideline, the lower Court has allowed a guest outside of a contract to not only bring a direct claim against the insured, but then to attempt to reform the underlying contract and its definitional constructs to facilitate said guest being equated with an insured.

When the underlying coverages are non-mandatory, the parties are free to obtain coverages which meet the minimum requirements of the statute. The minimum requirements as is confirmed via the synopsis have been met. “[T]he insured is free as a matter of contract to procure as much or little optional insurance as it wants, and to allocate it among drivers as it chooses.” *Strom*, *supra*.

The statute was crafted to protect an insured through options to be clearly made available via the insurer. They can be waived, declined, or in this case accepted with certain limitations. The policy arguments offered by the Plaintiff below, Appellee, allows a legal stranger to the insurance contract to, as the Court in *Davis*, supra, noted, turn the intentions of the involved parties “on their head.”

The pendulum returns.

CONCLUSION

USAA General Indemnity Company respectfully requests that this Court reverse the rulings of the trial Court.

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Dated: March 17, 2020

CERTIFICATE OF COMPLIANCE

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using Microsoft Word, 2010.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 1302 words, which were counted by Microsoft 2010, Word, 2010.

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