

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Aneita Patterson,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 08C-04-127-JRJ
	:	
State Farm Mutual Automobile	:	
Insurance Company,	:	
	:	
Defendant.	:	

CORRECTED ORDER

AND NOW TO WIT, this 29th day of October, 2008, the Court having heard and duly considered the defendant's Motion for Summary Judgment and plaintiff's opposition thereto, **IT APPEARS TO THE COURT THAT:**

1. The question presented is whether an insured who is a Delaware resident and who has uninsured motorist coverage in a policy issued in Delaware is entitled to recover uninsured motorist benefits arising from an automobile accident that occurred in New Jersey between the insured and a New Jersey resident, when New Jersey law precludes the recovery of such damages from the tortfeasor because of verbal threshold requirements.

2. Plaintiff Aneita Patterson, an insured of defendant State Farm Mutual Automobile Insurance Company, was injured in the state of New Jersey by a tortfeasor who had insurance with Allstate Insurance Company. Allstate has denied Patterson's claim for damages on the grounds that her injuries do not meet the verbal threshold requirements of the New Jersey insurance statute.
3. The Court addressed this exact same issue in *Kent v. Nationwide Property and Casualty Insurance Co.*, 844 A.2d at 1092 (Del. Super. 2004). Just as in *Kent*, the relationship between the parties here arises from a contract between a Delaware citizen and an insurance company registered to do business in Delaware. The contract was entered into and the premiums were paid in Delaware. The policy relates to a vehicle registered in Delaware and the scope of the coverage provided in the policy is governed by Delaware statutes. The public policy of Delaware, expressed in its uninsured motorist statute, is to permit a Delaware motorist "to take to the roads" knowing that a certain amount of protection will always be available. See *Aetna Casualty and Surety Co. v. Kenner*, 570 A.2d at 1172 (Del. 1990). The legislative intent of 18 Del. C. § 3902 is to protect people injured by tortfeasors carrying little or no insurance. See *Deptula v. Horace Mans Ins. Co.*, 842 A.2d at 1235

(Del. Supr. 2004). And, just as in *Kent*, it is clear Delaware has the most significant relationship to the issue presented. *See Kent*, 844 A.2d at 1095-96. Under the circumstances presented here, the Delaware underinsured motorist statute requires that the tortfeasor be considered uninsured in order to achieve the legislative objective of that statute.¹ *See Kent*, 844 A.2d at 1096.

4. Whether the plaintiff is legally entitled to recovered damages will depend upon plaintiff's ability at trial in this case to prove fault and damages. *See Kent*, 844 A.2d at 1098.

WHEREFORE, IT IS HEREBY ORDERED THAT defendant's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/Jan R. Jurden
Jurden, J.

cc: Kenneth M. Roseman, Esq.
Matthew E. O'Byrne, Esq.

¹ In so holding, the Court disagrees with the holding in *Whitaker v. USAA General Indemnity Co.*, 2007 WL 2812998 (Del. Super.).