IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN J. DANKS, III,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N11C-10-086 CEB
	)	
GEICO GENERAL INSURANCE COMPANY, a foreign corporation,	)	
	)	
	)	
Defendant.	)	

Date Decided: April 29, 2013
Date Submitted: April 18, 2013

MEMORANDUM OPINION

Upon Consideration of Defendant's Motion for Summary Judgment.
GRANTED.

Gary S. Nitsche, Esquire, WEIK, NITSCHE & DOUGHERTY, Wilmington, Delaware. Attorney for the Plaintiff.

Dawn Becker, Esquire and Michael K. DeSantis, Esquire, LAW OFFICE OF DAWN L. BECKER, Wilmington, Delaware. Attorneys for Defendant.

BUTLER, J.

INTRODUCTION

We are called upon here to sort out the rights of a party to insurance coverage after a motorcycle accident in April of 2011. The insurance provider has moved for summary judgment asserting that the circumstances fall within an accepted policy exclusion. For the reasons articulated below, the Court agrees and defendant's motion for summary judgment is hereby **GRANTED**.

FACTUAL BACKGROUND

Plaintiff is a Delaware resident who owned a motorcycle that he insured through Progressive Direct Insurance Company ("Progressive"). The policy contained the standard, required "no fault" Personal Injury Protection ("PIP") coverage of $15,000/30,000 per individual or incident, the minimum insurance required under 19 Del. C. §2118.

On April 30, 2011 plaintiff was injured in a collision with another vehicle while driving his motorcycle on the Delaware Memorial Bridge.[1] Plaintiff sought PIP coverage from his carrier and Progressive duly paid out PIP benefits under its policy of insurance.

Plaintiff also owned 3 household vehicles that he insured separately through GEICO General Insurance Company ("GEICO"). On these 3 vehicles, plaintiff maintained coverage substantially in excess of the coverage mandated by statute.

[1] Exhibit B to Defendant's Motion for Summary Judgment (hereinafter "Ex.__ to Def.'s Mot. Sum. Judg.")

The coverage on these 3 vehicles was $100,000/300,000 per individual or incident.[2] So if Mr. Danks' injuries had been sustained as a result of a collision while he was driving one of his other vehicles, it appears certain that the GEICO PIP policies then in effect would have been required to respond to a claim for coverage. Alas, on this day, he was driving his motorcycle, insured with the minimums and he sustained injuries substantially more costly than those minimums.

After using up his Progressive coverage, plaintiff called upon GEICO to cover his injuries pursuant to this latter policy of insurance. On July 21, 2011, GEICO demurred, relying upon an exclusion that provided that "You and members of your household are not covered if injured while in, or through being struck by, a motor vehicle covered by another Delaware no-fault policy."[3]

Plaintiff has now filed suit for declaratory judgment, seeking a court ruling that GEICO's refusal to cover his losses is against public policy and 19 Del. C. §2118.

ANALYSIS

There is no material fact at issue that would preclude a resolution of the controversy before the Court. In plaintiff's response to the motion for summary

[2] Ex. A to Def.'s Mot. Sum. Judg.

[3] Exhibit A to Plaintiff's Response to Defendant's Motion for Summary Judgment (hereinafter "Ex.__ to Plf's Res.")

judgment, he says "there are material issues of fact to preclude summary judgment," but he cites none and the rest of his brief is an argument on the law.[4] When asked at oral argument to identify what issues of material fact must be determined, the Court was advised that perhaps there should be some discovery over GEICO's treatment of the exclusion in other, unrelated cases. The opponent of a motion for summary judgment "must do more than simply show that there is some metaphysical doubt as to material facts."[5] Rather, the motion-opponent "is obliged to bring in some evidence showing a dispute of material fact."[6] The Court is convinced that plaintiff's suggestion is indeed "metaphysical" as GEICO's treatment of the exclusion in other cases is largely irrelevant to its treatment of the exclusion in this case.

GEICO did not insure the motorcycle involved in the accident, Progressive did. Plaintiff concedes that the exclusion in GEICO's policy, referred to in its letter of denial on July 21, 2011, means that plaintiff may not recover under the GEICO policy as written. Thus, plaintiff agrees that the only way he may recover as against the GEICO policy is if the Court were to rule that the exclusion upon which defendant relies is unenforceable.

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[4] Plf's Res. at p. 2.

[5] *Gutridge v. Iffland*, 889 A.2d 283, at *5 (Del. 2005).

[6] *Id*.

This is not the first time a party has sought coverage from other policies when s/he found the coverage on the vehicle in which he was injured insufficient. Unfortunately, this seems particularly true for motorcycles. In *Raskauskas v. GEICO Gen. Ins. Co.*,[7] a motorcyclist sustained injuries and attendant medical bills of $134,000. She recovered the minimum in statutory PIP coverage of $15,000 through the policy with Progressive Northern Insurance Company that insured the motorcycle. She then sought coverage under a GEICO policy that insured a vehicle owned by her mother, with whom she lived. Her mother's policy contained the same exclusion at issue here: "You and members of your household are not covered if injured while in, or through being struck by, a motor vehicle covered by another Delaware no-fault policy."[8] The Court held that "under the undisputed facts of this case, Plaintiff is not entitled to PIP coverage from the GEICO policy."[9]

In *Passwaters v. State Farm Mut. Auto. Ins. Co.*,[10] a motorcyclist was injured on his motorcycle while carrying the minimum insurance required by statute, $15,000/30,000. At the time he lived with one Gail Thompson, who carried $100,000/300,000 in no fault coverage benefits on her personal vehicle and

[7] 2010 WL 1781882 (Del. Com. Pl. Apr. 21, 2010).

[8] *Id.* at *2.

[9] *Id.* at *3.

[10] 1997 WL 363969 (Del. Super. Mar. 27, 1997).

plaintiff sought coverage under that policy as well. Ms. Thompson's policy, however, had an exclusion for "a member of your household if a policy covering a vehicle owned by him or her provides such benefits."[11] President Judge (now Justice) Ridgely enforced the exclusion and granted summary judgment to defendant State Farm, ruling that "the owned vehicle exclusion contained in the State Farm policy encourages an owner to have his vehicle insured rather than rely on the insurance coverage of another. I find that it is consistent with the language and purpose of Section 2118 as a whole and that it is authorized by 21 Del. C. §2118(f)."[12]

The exclusion in this case, while termed somewhat different from the State Farm exclusion at issue in *Passwaters*, nonetheless has the effect of excluding all other vehicles, save the named, insured vehicle, so long as that other vehicle has a no fault policy in effect. It is then, *in pari materia* with an "other owned vehicle" exclusion that was ruled permissible in *Passwaters.*

Plaintiff argues that the exclusion ought nonetheless be judged void as against public policy. But plaintiff has not directed us to any public policy that is frustrated by this exclusion. The only argument raised by plaintiff is that the language of the exclusion appears reminiscent of a "household exclusion" that

[11] *Id.* at *2.

[12] *Id.* at *4.

would indeed run afoul of 21 Del C. §2118(d). PIP policies that exclude members of the insured's household are prohibited under Delaware law.[13] During oral argument, plaintiff pointed out that the "owned vehicle exclusion" relied on by GEICO here applies to "you and members of your household." While it would be correct to say that the exclusion does include the word "household," it would be incorrect to characterize it as a prohibited "household exclusion." The exclusion is for all persons insured by the no fault policy (whether the policy holder or the mandatorily included fellow household members) if they are operating a vehicle that is insured by a different no fault policy. This is the very exclusion found appropriate by President Judge Ridgely in *Passwaters.*

The public policy issue was also addressed by Judge (now Justice) Steele in *Webb v. State Farm Mut. Auto. Ins. Co.*.[14] In *Webb*, the plaintiff and his wife were injured while operating a car owned by his wife that was uninsured. Mr. Webb owned 3 other vehicles, all of which were insured by State Farm and covered by a policy that contained an exclusion for any other vehicle not owned by the policy holder himself. Like the plaintiff here, Mr. Webb acknowledged that coverage was not available under the State Farm policy as written, but he believed he should be covered on the basis of "public policy." The Court held that "Allowing Plaintiffs

[13] *State Farm Mut. Auto Ins. Co. v. Wagaman*, 541 A.2d 557 (Del. 1988).

[14] 1993 WL 80634 (Del. Super. Mar. 17, 1993).

to recover on these facts would enable individuals to circumvent the mandate of section 2118 which requires every automobile owner to purchase insurance."[15]

The test applied in *Webb*, and ratified in *Passwaters*, for determining if an exclusion is enforceable is 1) whether it is a standard exclusion in the insurance industry and 2) whether enforcing the exclusion is at least not inconsistent with the aims of the no fault insurance law. In both *Webb* and *Passwaters*, the exclusion at issue excluded coverage for a member of the insured's household when the household member was not operating one of the named vehicles on the policy. In both cases the exclusion was upheld because the "owned vehicle exclusion" was recognized as standard in the insurance industry and its presence was not inconsistent with the goals of 21 Del. C. §2118. Plaintiff has pointed us to nothing in this record that would compel a different result here.

The logic applied in *Webb* is equally true here: if plaintiff were permitted to reach his separate policy covering his other automobiles, there would be little reason to secure substantial insurance on any but one of an insured's several vehicles in an entire household. The safest driver of the household could insure the safest of the automobiles in the household at maximum coverage and all of the other drivers could be as reckless as they pleased while maintaining the bare minimum insurance under the statute. It is difficult to imagine how an insurer

[15] *Id.* at *4.

could accurately predict his risk and price his insurance accordingly. All of these "risk freeloaders" would receive excess PIP coverage as members of the safe driver's household and at rates insuring only the safest of vehicles. It is difficult to reconcile that vision with any public policy demonstrated in the financial responsibility law.

In his opposition to the defendant's motion, plaintiff refers us to the case of *Mohr v. Progressive Northern Ins. Co*.[16] *Mohr* involved pedestrian coverage and an interpretation of 21 Del. C. §2118(a)(2)(e), not the exclusion provision for other vehicles as permitted by 21 Del. C. §2118(f) that is at issue here. *Mohr* was affirmed on appeal.[17] That opinion interpreted a "pedestrian exclusion" and not the "owned vehicle exclusion" at issue here. It is thus distinguishable on its facts.

While not central to this holding, we think it worth mentioning that Mr. Danks controlled both policies – the one for his motorcycle and the one for his other household vehicles. The nature and extent of risk and coverage was completely within his control and the insurance was coverage he chose.

[16] 2010 WL 4061979 (Del. Super. Sept. 27, 2010).

[17] 47 A.3d 492 (Del. 2012).

CONCLUSION

We think that public policy favors enforcing the "owned vehicle exclusion" on these facts and therefore so order. Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler