

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HARLEYSVILLE MUTUAL INSURANCE)
COMPANY, a foreign corporation,)
)
Plaintiffs,)
)
v.) C.A. No. 02C-02-113
)
CHRISTOPHER GRZBOWSKI,)
)
Defendants.)

Date Submitted: July 17, 2002

Date Decided: August 9, 2002

ORDER

UPON CROSS MOTIONS FOR SUMMARY JUDGMENT

**PLAINTIFF'S MOTION DENIED
DEFENDANT'S MOTION GRANTED**

Thomas P. Leff, Esq. of Casarino, Christman & Shalk, P.A., Wilmington, Delaware 19899, Attorney for Plaintiff.

Sheldon S. Saints, Esq. of Rahaim & Saints, Wilmington, Delaware 19808, Attorney for Defendant.

On this 9th day of August 2002, upon consideration of the parties' Cross Motions for Summary Judgment and oral argument, it appears to the Court that:

(1) The parties do not dispute the underlying facts in this action. On May 11, 2001, as Defendant was driving a motorcycle near Prices Corner Shopping Center on Old Capital Trail, a vehicle pulled out of the shopping center in front of Defendant. A motor vehicle accident occurred with Defendant sustaining significant personal injuries. Subsequently, Defendant received \$100,000, the full amount of liability insurance, from the other vehicle in the accident. Apparently, Defendant's motorcycle had no insurance coverage at the time of the accident. Now Defendant seeks to claim Under Insured Coverage ("UIM") benefits under the commercial auto policy issued by Plaintiff to the Grzybowski Company. Defendant filed this declaratory judgment action to determine whether the Grzybowski Company's commercial auto policy covers Defendant as an insured under its terms. The Harleysville policy defines "Who Is Insured" as:

1. You;
2. If you are an individual, any "family member"
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
4. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured"

The only covered auto listed is a 1993 Ford Cargo Van with Chris Grzybowski as an operator.

(2) When an insurance policy expresses clear and unequivocal terms it binds the parties to that clear meaning.¹ No ambiguity exists where a court can determine the meaning of the contract without any other guides than knowledge of simple facts.² Thus, contracts are only ambiguous when the provisions in controversy are reasonably or fairly susceptible to different interpretations or may have two or more different meanings.³ When an ambiguity does exist the court is to interpret the policy in favor of the insured and against the insurer.⁴ If the relevant policy language is found to be ambiguous, the Court will construe the language to accord with the reasonable expectations of the insured.⁵

(3) Plaintiff argues that Defendant is not covered under the insurance policy at question because Defendant was not a named insured and cannot be a family member of the named insured because the named insured is a business entity. Defendant contends

¹ *O'Brien v. Progressive Northern Ins. Co.*, 785 A.2d 281, 288-89 (Del. 2001).

² *Id.*

³ *Id.*

⁴ *Delledonne v. State Farm Mut. Auto. In. Co.*, 621 A.2d 350, 352 (Del. Super. 1992).

⁵ *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 927 (Del. 1982).

that the applicable declarations identify the Grzybowski Company as an individual and that individual would be Chris Grzybowski. Further, Defendant argues that he had a reasonable expectation that he, as the individual business owner, was covered by underinsured portion of the policy. If Defendant had been occupying a covered auto this question would not need to be considered, as he would clearly be covered. Plaintiff combats that the company is not an individual and thus has no family members and further that Defendant could have named himself as the insured but chose not to.

(4) The Court determines that the policy language is ambiguous in this case. The use of family member language in a policy naming a business entity renders the insurance endorsement ambiguous.⁶ Delaware courts have held that business entities cannot sustain bodily injury or have family members.⁷ Thus, a commercial auto insurance policy which includes language referring to family members is ambiguous because familial relations cannot exist.⁸ Moreover, this court has taken the position that the “if

⁶ *Nationwide Mut. In. Co. v. Hockessin Const., Inc.*, No. 93C-03-057, 1996 WL 453325, at *3 (Del. Super. May 15, 1996).

⁷ *Derrickson v. American Nat'l Fire Ins. Co.*, Nos. 214,1987 and 226,1987, 1988 WL 5729 (Del. Jan. 13, 1998).

⁸ *Id.*

you are an individual” language in a policy insuring a business entity does not overcome the ambiguity.⁹

(5) The Court further finds that Defendant had a reasonable expectation to expect coverage under the commercial auto insurance policy. The Delaware cases that have found no reasonable expectation to coverage did so based on the reasoning that since the insured had incorporated, he understood the legal distinction between himself and the corporation.¹⁰ Specifically in *Del Collo*, the Court held that:

a person sophisticated enough to be incorporated and to contract through a corporation cannot expect to expand his corporate insurance coverage to his family unless there is clear language to that effect, such is not found in these policies.¹¹

Here, the company is a sole proprietorship and not a corporation, thus not a distinct legal entity. “[W]here a sole proprietor purchases an insurance policy under his trade name, the trade name is equated with the proprietor’s name, making the proprietor an insured.”¹²

⁹ *Fisher v. National Union Fire Ins. Co. of Pittsburgh*, No. 95C-06-307, 1997 WL 817893 (Del. Super. Dec. 11, 1997).

¹⁰ *Hockessin Const., Inc.*, 1996 WL 453325, at *3.

¹¹ *Del Collo v. Houston*, C.A. No. 83C-JA-121, 1986 WL 5841 (Del. Super. May 7, 1986).

¹² *Id.*(citing *O’Hanlon v. Hartford Accident and Indemnity Co.*, 693 F.2d 1019 (3d Cir. 1981)).

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This Court adopts the reasoning in *O'Hanlon* and holds that Defendant is an insured under the insurance policy at question.

For the aforementioned reasons, Defendants' Motion for Summary Judgment is Hereby GRANTED and Plaintiff's Motion for Summary Judgment is Hereby \DENIED.

IT IS SO ORDERED.

ALFORD, J.

Original: Prothonotary's Office - Civil Div.