

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARION F. RUBA,)	
)	
Plaintiff,)	C.A. NO. N12C-02-159 ALR
)	
v.)	JURY TRIAL DEMANDED
)	
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	
COMPANY, a foreign corporation,)	
)	
Defendant.)	

Submitted: October 15, 2013
Decided: November 12, 2013

**On Defendant State Farm Automobile Insurance Company's
Renewed Motion for Summary Judgment
DENIED**

Gary S. Nitsche, Esquire, Nicholas M. Krayner, Esquire, WEIK, NITSCHE & DOUGHERTY, Attorneys for Plaintiff

Patrick G. Rock, Esquire, HECKLER & FRABIZZIO, Attorney for Defendant

This lawsuit arises out of an automobile accident. Plaintiff worked for a medical transport company. At the time of the accident, Plaintiff Marion F. Ruba was riding in the rear of an ambulance being driven by Plaintiff's co-worker. The ambulance, owned by Plaintiff's employer, is registered in Pennsylvania and insured under a Maryland automobile insurance policy. The Maryland policy provided \$2,500 in Personal Injury Protection ("PIP") coverage, less than the amount required by Delaware law. Plaintiff has a personal automobile insurance policy with State Farm Mutual Automobile Insurance Company which provides PIP coverage. State Farm has not paid Plaintiff any PIP

benefits because State Farm claims that the “regular use” exclusion on Plaintiff’s policy operates to exclude coverage for Plaintiff’s injuries.

Defendant has filed a Motion for Summary Judgment, which is opposed by Plaintiff. After written submissions by the parties, the Court heard oral argument. This is the Court’s decision on the pending Motion for Summary Judgment.

Standard of Review for Summary Judgment

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”¹ Summary judgment can only be granted when there is no material issue of fact. The moving party bears the initial burden of showing that no material issue of fact is present.² If the moving party is able to meet this burden, the burden then shifts to the non-moving party to demonstrate a material issue of fact.³ If the non-moving party can show that an issue of material fact is disputed, summary judgment will not be granted.⁴ In considering a motion for summary judgment, the Court must view the record in a light most favorable to the nonmoving party.⁵

State Farm’s Motion for Summary Judgment

The minimum insurance coverage required on motor vehicles registered in Delaware is set forth in 21 *Del. C.* §2118(a). In Delaware, insurers are required to provide PIP coverage of \$15,000 for any one person and \$30,000 for all persons injured

¹ Super. Ct. Civ. R. 56(c).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

in one accident.⁶ Additionally, this statute requires any motor vehicle operated in this state to carry the same minimum coverage required by Delaware law.⁷ Under this provision of the statute, coverage is “applicable to the named insured 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...”⁸ Nevertheless, coverage may be subject to conditions and exclusions that are 1) customary to the field of liability, casualty and property insurance and, 2) not inconsistent with the requirements of 21 *Del. C.* §2118. If exclusion meets this two-prong test, the Court will uphold it.⁹

1. Regular Use Exclusion

Defendant submits that, under Plaintiff’s personal automobile policy, there is no coverage in this case due to an exclusion clause. Defendant points to the following language in the policy:

Insured means: ... 2. You or any member of your household while occupying or injured in an accident as a pedestrian by any other land motor vehicle designated for use on public highways and which IS NOT: a. OPERATED ON RAILS OR TRACKS, OR b. OWNED BY OR FURNISHED FOR THE REGULAR USE OF YOU OR ANY MEMBER OF YOUR HOUSEHOLD.¹⁰

⁶ 21 *Del. C.* §2118(a)(2)(b).

⁷ 21 *Del. C.* §2118(b).

⁸ 21 *Del. C.* §2118(a)(2)(d).

⁹ *Martin v. Colonial Ins. Co. of Cal. V. Central Nat’l Ins. Co. of Omaha*, 644 F. Supp. 349 (D. Del. 1986).

¹⁰ Def.’s Ex. A.

Defendant contends that the ambulance Plaintiff used for work falls within this exclusion. Specifically, Defendant contends that because Plaintiff spent 99% of a 40-hour workweek in the vehicle, the “regular use” exclusion is applicable.

This Court has found that “regular use” exclusions, such as the one contained in Plaintiff’s policy, are customary in the field of Delaware Insurance.¹¹ When analyzing if a vehicle was in regular use by an employee, the relevant inquiry is not on the particular vehicle involved, but instead on the employee’s use of the entire fleet of vehicles.¹² In the instant case, it is evident that Plaintiff had access to and used the employer’s fleet. Therefore, Plaintiff had regular use of the vehicle and this incident falls within the “regular use” language of the policy.

2. Public Policy and Policy Exclusions

The purpose of a “regular use” exclusion is to prevent an individual from only carrying insurance on one vehicle but claiming PIP benefits for injuries suffered while occupying another vehicle which the individual regularly uses but for which the individual has not paid a premium.¹³ For the exclusion to apply, it must be consistent with the purpose of 21 *Del. C.* §2118. The policy behind 21 *Del. C.* §2118 is to ensure that injured parties are fully and promptly compensated regardless of fault.¹⁴

Defendant contends that they are entitled to summary judgment because the exclusion does not violate public policy. Defendant relies on this Court’s rulings in

¹¹ *Marvin v. State Farm Mut. Auto. Ins. Co.*, 2002 WL 31151655, at *4 (Del. Super. Jan. 8, 2002).

¹² *Id.* at *3 (citing *Martin*, 644 F. Supp. 349).

¹³ *Mason v. State Farm Mut. Auto. Ins. Co.*, 1997 WL 524129, at *3 (Del. Super. Jul. 21, 1997).

¹⁴ *Id.* at *5.

Mason and *Webb* to support this contention.¹⁵ However, the instant action is distinguishable from those cases for several reasons. First, Plaintiff has not received the full benefits required by 21 *Del. C.* §2118 under any applicable policy. Second, the lack of full PIP coverage is a result of the employer's choice of a Maryland insurance policy and no fault of or action taken by Plaintiff.

While Defendant argues that Plaintiff's reliance on *Marvin* is misplaced, this Court finds that the reasoning in *Marvin* is instructive even though the *Marvin* court expressly limited its holding to the facts before the court. For instance, in *Marvin*, the court reasoned that although the plaintiff regularly used his employer's vehicle, to apply the "regular use" exclusion in his personal policy would leave him with no coverage, which would violate public policy.¹⁶ In this case, Plaintiff was not fully compensated because the coverage provided by the Maryland policy was less than the amount of PIP benefits mandated by Delaware law. Accordingly, to apply the "regular use" exclusion in Plaintiff's policy would frustrate the purpose of 21 *Del. C.* §2118 and violate public policy.

CONCLUSION

Denying coverage to Plaintiff based on the "regular use" exclusion in Plaintiff's personal automobile policy would violate public policy and frustrate the purpose of 21 *Del. C.* §2118.

¹⁵ *Mason v. State Farm Mut. Auto. Ins. Co.*, 1997 WL 524129 (Del. Super. Jul. 21, 1997); *Webb v. State Farm Mut. Auto. Ins. Co.*, 1993 WL 80634 (Del. Super. Mar. 17, 1993).

¹⁶ *Marvin*, 2002 WL 31151655, at *5.

NOW, THEREFORE, IT IS HEREBY ORDERED this 12th day of November, 2013, Defendant's Motion for Summary Judgment is hereby DENIED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli