

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

CESAR JIMENEZ, and	)	
OLGA MARTA SANCHO,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. N12C-10-245 ALR
	)	
WESTFIELD INSURANCE,	)	
	)	
Defendant.	)	

Submitted: September 18, 2013  
Decided: September 30, 2013

**Upon Plaintiff's Motion for Summary Judgment  
GRANTED**

Gary S. Nitsche, Esquire, Wilmington, DE, *Attorney for Plaintiffs*  
Michael I. Silverman, Esquire, Miika Roggio, Esquire, *Attorneys for Defendant*

**Rocanelli, J.**

This case arises from a motor vehicle accident. Plaintiff Cesar Jimenez was seriously injured when he was a passenger in a vehicle operated by his co-worker. The vehicle was leased by Plaintiff Jimenez's employer. The accident occurred when the vehicle's driver and passengers, including Plaintiff Jimenez, were acting within the course and scope of employment. The vehicle was insured by Defendant Westfield Insurance.

Plaintiff Jimenez and his wife, Olga Marta Sancho, sought coverage under the vehicle's uninsured/underinsured policy.<sup>1</sup> Westfield has denied coverage to Plaintiffs on the grounds that uninsured/underinsured coverage is not available because the vehicle was leased by Plaintiff Jimenez's employer and not owned.<sup>2</sup> Plaintiffs claim that Westfield owes uninsured/underinsured coverage to Plaintiffs under 18 *Del. C.* §3902.

Summary judgment may be granted only where the moving party can "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."<sup>3</sup> The moving party bears the initial burden of proof and, once that is met, the burden shifts to the non-moving party to

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<sup>1</sup> Plaintiff Sancho asserts claims in connection with her husband's injuries.

<sup>2</sup> In the meantime, Westfield has provided PIP coverage to Plaintiff Jimenez since the date of the accident.

<sup>3</sup> Super. Ct. R. Civ. P. 56.

show that a material issue of fact exists.<sup>4</sup> In reviewing the facts in consideration of summary judgment, the Court must view them “in the light most favorable to the non-moving party.”<sup>5</sup>

By statute, Delaware law requires uninsured/underinsured coverage for “liability arising out of the ownership, maintenance or use of any motor vehicle.”<sup>6</sup> The legislative purpose of this statute is to protect drivers from the negligence of unknown or uninsured drivers.<sup>7</sup> Insurance policies designed to limit the coverage to less than the coverage required by the statute are void.<sup>8</sup> When an employee is not a named insured under the policy, the question is whether the employee has a reasonable expectation that the insurance policy would provide coverage.<sup>9</sup>

Plaintiff Jimenez had a reasonable expectation of coverage under his employer’s automobile insurance policy issued by Westfield. The Court rejects the assertion by Westfield that Plaintiff Jimenez had some duty to provide his own automobile coverage for circumstances in which he might be injured in the course and scope of his employment and in his employer’s vehicle. An employee using a vehicle in the scope and course of his employment has a reasonable expectation

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<sup>4</sup> *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).

<sup>5</sup> *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

<sup>6</sup> 19 *Del. C.* §3902 (a).

<sup>7</sup> *Frank v. Horizon Insurance*, 553 A.2d 1199, 1201-02 (Del. 1989).

<sup>8</sup> *Id.*

<sup>9</sup> *Bermel v. Liberty Mut. Fire Ins. Co.*, 56 A.3d 1062, 1071-72 (Del. 2012).

that the employer's insurance policy for its vehicles will provide insurance coverage for the employee.

Moreover, Westfield's attempt to limit uninsured/underinsured coverage to vehicles owned by the insured is not consistent with the express provisions of 18 *Del. C.* §3902. By its express terms, the statute mandates uninsured/underinsured coverage much more broadly than Westfield contends. Specifically, the statute requires uninsured/underinsured coverage for "liability arising out of the ownership, maintenance *or use* of any motor vehicle."<sup>10</sup> An insurance policy which excludes uninsured/underinsured coverage for leased vehicles used by employees during the course and scope of employment improperly limits coverage required by Delaware law.

Westfield has not demonstrated any issues of material fact. It is uncontested that Plaintiff Jimenez was in his employer's vehicle at the time of the accident, that he was acting within the course and scope of his employment, and that Plaintiff Jimenez's employer had automobile coverage for the vehicle through Westfield. Although Westfield argues that there is a question of fact as to whether the exclusion is applicable to vehicles leased by the employer, no such demonstration has been made and such exclusion would be void under the mandatory requirements of the statute. Westfield has not provided any support for its

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<sup>10</sup> 19 *Del. C.* §3902 (a) (emphasis added).

contention that Westfield can withhold uninsured/underinsured coverage to Plaintiffs simply because Plaintiff Jimenez was in a vehicle rented, and not owned, by his employer. Accordingly, on the record before the Court, Plaintiffs are entitled to judgment as a matter of law.

**NOW, THEREFORE, this 30<sup>th</sup> day of September, 2013, Plaintiffs' Motion for Summary Judgment is hereby GRANTED and Judgment shall be entered in favor of Plaintiffs Cesar Jimenez and Olga Marta Sancho and against Defendant Westfield Insurance.**

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli