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

RICHARD NOWAK,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08C-06-007 MMJ
	)	
v.	)	
	)	
	)	
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
	)	
	)	
Defendant.	)	

Submitted: September 16, 2009
Decided: December 16, 2009

On Plaintiff's Cross-Motion for Summary Judgment. **GRANTED.**

On Defendant's Cross-Motion for Summary Judgment. **DENIED.**

OPINION

Arthur M. Krawitz, Esquire, Cynthia H. Pruitt, Esquire, Doroshow, Pasquale, Krawitz, Siegel & Bhaya, Wilmington, Delaware, Attorney for Plaintiff Richard Nowak

Sherry R. Fallon, Esquire, Tybout, Redfearn & Pell, Wilmington, Delaware, Attorney for Defendant United Services Automobile Association

JOHNSTON, J.

This case presents an issue of first impression in Delaware regarding reformation of an insurance contract to increase PIP coverage upon relocation of the insured vehicle. The Court holds that under the terms of the contract at issue, upon timely notice by the insured of relocation from Maryland to Delaware, the insured is entitled to reformation of the insurance policy to provide PIP coverage consistent with Delaware minimum statutory requirements. Any change in premium is retroactive to the date of relocation.

STATEMENT OF FACTS

This litigation arises out of a May 28, 2007 traffic accident. At approximately 8:55 p.m., David Bortle, Jr.'s vehicle struck the rear of the Richard Nowak's 2003 Dodge Dakota pick-up truck. Both vehicles were travelling south on Delaware Route 9.

Approximately two weeks earlier, on May 15, 2007, Nowak had moved his family's possessions into a newly-purchased home in New Castle, Delaware. Nowak retained ownership of a home in Accident, Maryland until July 17, 2007. Beginning on May 15, 2007, Nowak spent approximately six days a week at his Delaware residence and returned to Maryland only sporadically until that home was sold. Nowak began working at Lowe's Home Improvement in Newark, Delaware on May 21,

2007 but also worked for Garrett College in McHenry, Maryland until June 30, 2007. His employment for Garrett College did not require him to be physically present in Maryland.

On the date of the accident, Nowak was a Maryland licensed operator. His truck also was registered in Maryland. Nowak surrendered his Maryland driver's license on July 10, 2007. The truck was Nowak's primary personal and work vehicle. Nowak kept the truck in New Castle, Delaware beginning on May 15, 2007, along with the remainder of his family's possessions.

For the period between March 20, 2007 and September 20, 2007, United Services Automobile Association (USAA) insured Nowak for personal injury protection (PIP) benefits pursuant to a Maryland insurance policy. USAA offers nationwide banking, investing, financial planning services and insurance to people and families that serve, or served, in the United States military.

According to the policy, "[t]he total aggregate amount payable by [USAA] to or on behalf of any one covered person who sustains [bodily injury] in any one motor vehicle accident shall not exceed $2,500.00 for medical expense benefits, income continuation benefits, and essential services benefits." This $2,500.00 limit represents the minimum PIP

coverage required by Maryland law.[1] For policyholders domiciled in Delaware, Delaware law requires at least $15,000.00 of PIP coverage.[2]

Following the accident, USAA paid Nowak $2,500.00 in PIP benefits. Nowak brought suit demanding the PIP coverage be reformed from $2,500.00 to the minimum amount required under Delaware law - $15,000.00. The parties have filed cross-motions for summary judgment.

STANDARD OF REVIEW

The Court will grant a motion for summary judgment only where there is no genuine issue as to any material fact, and one of the parties is entitled to judgment as a matter of law.[3] When filing cross-motions for summary judgment, "the parties implicitly concede the absence of material factual disputes and acknowledge the sufficiency of the record to support their respective motions."[4]

Where the facts compel only one conclusion, the Court has a duty to enter a judgment according to the inferences drawn therefrom.[5] The effect

[1] *Md. Code Ann.*, Insurance § 19-505.
[2] 21 *Del. C.* § 2118 (a)(2)(b).
[3] Super. Ct. Civ. R. 56(c).
[4] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 100 (Del. 1992).
[5] *Faircloth v. Rash*, 317 A.2d 871, 871 (Del. 1974).

of the undisputed terms of an integrated agreement is construed as a matter of law and in light of the surrounding circumstances.[6]

As a general rule, because the insurer drafted the contract language, an insurance contract is construed strongly against the insurer, and in favor of the insured.[7] If the language of an insurance contract is clear and unambiguous, the Court "will not destroy or twist the words under the guise of construing them."[8] "Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language."[9] But where an ambiguity exists -- when the contract language permits two or more reasonable interpretations -- the Court will read the insurance contract in accordance with the reasonable expectations of the insured so far as the contract language will permit.[10]

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[6] *Reardon v. Exch. Furniture Store*, 188 A. 704 (1936) ("[W]here the terms of a . . . contract are undisputed its construction and effect are to be determined by the court, as a matter of law."); *see also Klair v. Reese*, 531 A.2d 219, 223 (Del. 1987).
[7] *Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 400 (Del. 1978).
[8] *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982); *see also Apotas v. Allstate Ins. Co.*, 246 A.2d 923, 925 (Del. 1968); *Novellino v. Life Ins. Co. of N. Am.*, 216 A.2d 420, 422 (Del. 1966).
[9] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997).
[10] *Hallowell*, 443 A.2d at 926-27.

ANALYSIS

Timely Notice

According to the terms of his insurance policy, plaintiff agreed to notify his insurer if there was a "[c]hange in location where any vehicle [covered under the policy] is garaged" and to do so "as soon as is reasonably possible."

Defendant argues that plaintiff failed to comply with this requirement. Defendant contends that plaintiff did not notify his insurer at any time before the accident occurred, as required by his insurance policy. Therefore, plaintiff is not entitled to any additional PIP benefits.

Plaintiff's payroll records show that he was employed at Lowe's Home Improvement in Delaware by May 19, 2007. On June 11, 2007 USAA sent a copy of an "Explanation of Reimbursement" to plaintiff's New Castle, Delaware address. The evidence shows defendant received notification of the truck's change in location no later than two weeks after the accident and approximately four weeks after plaintiff's relocation. Plaintiff paid a six-month premium for coverage from March 20, 2007 to September 20, 2007. Plaintiff notified defendant of his move at least 14 weeks before his next billing cycle.

This Court has found that the "reasonable timeliness" of a notification is determined on a case-by-case basis.[11] Generally, notice given within 30 days after the circumstances giving rise to the duty to provide notice is reasonable. As a matter of law, the undisputed facts and circumstances of this case lead the Court to conclude that the notice here was reasonably timely.

Reformation of Insurance Policy to Delaware Requirements

Section 2118(a)(2)(b) of title 21 of the Delaware Code requires all owners of motor vehicles required to be registered in Delaware to obtain a minimum of $15,000.00 of PIP coverage.[12] Section 2102(a) mandates that automobile owners register their vehicles within 60 days of taking up residence in the State.

Black's Law Dictionary defines "residence" as "(1) the act or fact of living in a given place for some time . . . (2) the place where one actually lives as distinguished from a domicile."[13] Plaintiff began living in his home in New Castle, Delaware on May 15, 2007. As a result of his Delaware residency, the Delaware Code required plaintiff register his truck with the Secretary of State before July 15, 2007. Because the truck was a vehicle

[11] *See Smith v. Daimlerchrysler Corp.*, 2002 WL 31814534, at *4 (Del. Super.) (finding that the definition of "reasonable notice" under the U.C.C. is decided on a case-by-case basis) ; *see also Brown v. Liberty Mut. Ins. Co.*, 774 A.2d 232, 240 (Del. 2001) ("The definition of 'reasonable time' varies from case to case, but courts generally require that the record be created within a few weeks of the event.").
[12] 21 *Del. C.* § 2118 (a)(2)(b).
[13] Black's Law Dictionary (8th ed. 2004).

required to be registered in the State, plaintiff also was obligated to insure the truck with a minimum of $15.000.00 of PIP coverage.

In his insurance policy, "Part E – General Provisions" governs "Changes." Subpart A of the "Changes" provision notified plaintiff that USAA could adjust the premium "during the policy period" if the information contained in the policy changed. Subpart B specified that if the risk exposure changed, the changes to the premium would be effective the date of change in risk exposure. Subpart C again informed plaintiff that USAA would make "any calculations or adjustments" of the premium as of the effective date of the change.

The policy also states: "If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that change will automatically apply to your insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us**. Its terms may not be changed or waived except by endorsement issued by **us**."

The United States District Court for the District of Delaware, in *Deel v. Rizak*,[14] found that insurance companies have no duty to provide Delaware-required minimum benefits to out-of-state drivers merely because the accident giving rise to those benefits occurred in Delaware. The District Court stated that such an application would impose an "unreasonable and economically unfeasible burden" on insurance companies with multi-state business.[15] The District Court opined that these insurance companies would be forced to adjust their premiums on a world-wide basis "to take into account the likelihood that (they) might be required to pay benefits in accord with § 2118(a)(2) and (3) since any non-Delaware registered vehicle which (they) insured might possibly be involved in an accident while passing through Delaware."[16]

Defendant argues that there is no provision in the Maryland insurance policy that requires PIP coverage according to the laws of the state where an accident occurs. Defendant worries that a contrary holding would impose an "unreasonable and economically unfeasible burden" on insurance companies with multi-state business. While defendant's claim holds true for accidents

[14] 474 F. Supp. 45 (D. Del. 1979).
[15] *Id*. at 47.
[16] *Id*.

in Delaware involving out-of-state drivers, the instant case is distinguishable from *Deel* and similar cases.[17]

In *Deel*, the plaintiff, an out-of-state driver, was injured in an accident in Delaware involving Delaware defendants.[18] The District Court held that although the defendants were eligible for the expanded Delaware no-fault benefits, the plaintiff's insurance company was not bound to provide similar no-fault benefits.[19]

Similarly, in *Nationwide Insurance Co. v. Battaglia*, the Delaware Supreme Court held that section 2118 did not impose Delaware's minimum PIP insurance benefits on the defendant for the same reasons enumerated in *Deel.*[20] The plaintiff, a Delaware resident, was injured in Delaware while a passenger in a vehicle owned and operated by a Maryland resident.[21] The Delaware Supreme Court recognized that there is "some relationship to premium and risk in the insurance contract."[22] The Court concluded that requiring insurers to provide coverage according to the laws of each state to which the insured might potentially travel would constitute an unjustifiable burden.[23]

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[17] *See also Nationwide Ins. Co. v. Battaglia*, 410 A.2d 1017 (Del. 1980).
[18] *Deel*, 474 F. Supp. at 45.
[19] *Id*. at 47.
[20] *Battaglia*, 410 A.2d at 1019.
[21] *Id.* at 1017.
[22] *Id*. at 1019.
[23] *Id*.

The Supreme Court of Colorado has considered the public policy concerns and noted that "the 'Changes' provision unambiguously permits USAA to increase [an insured's] premium to reflect [the changes regarding a] vehicle as of the date" of those changes.[24] The provision allows a retroactive increase in premiums to compensate for an increase in risk exposure and the increase in the insurer's possible liability.

This case did not arise as a result of an insured vehicle traveling to or through another state. These facts involve the actual relocation of the vehicle to Delaware. Reformation of plaintiff's policy to comply with Delaware's minimum PIP coverage requirement would not have the same adverse impact on the insurance industry as that considered in *Deel*.

The insurance policy in question takes into account USAA's obligation to provide an insured with lawful coverage upon the insured's relocation. USAA requires insureds to provide reasonable notice of any changes that might affect risk exposure. The policy expressly allows for retroactive modification of an insured's premium beginning on the date of change in risk exposure, regardless of when the insured actually provides notice of the change.

[24] *USAA v. Anglum*, 119 P.3d 1058, 1061 (Col. 2005).

If the situation were reversed, USAA lawfully could provide Maryland PIP benefits to a former Delaware resident who had relocated to Maryland. In that event, the insured would be entitled to an appropriate retroactive reduction in the insurance premium.

CONCLUSION

Under the circumstances in this case, two weeks' notice of the change of location of the vehicle was reasonable. Plaintiff Nowak is entitled to reformation of this insurance policy and defendant USAA is obligated to provide PIP coverage for the May 28, 2007 accident consistent with 21 *Del. C.* § 2118 (a)(2)(b), in the minimum amount of $15,000.00. Any increase in premium shall be retroactive to the date of relocation.

THEREFORE, Plaintiff's Cross-Motion for Summary Judgment is hereby **GRANTED**.

Defendant's Cross-Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston