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

L. CURTIS SLICER, JR. as Guardian of BEVERLY SLICER,	)	
Plaintiff,	)	
	)	C.A. No. 08C-12-054-JEB
v.	)	
WESTFIELD INSURANCE, a Foreign Corporation,	)	
Defendant.	)	

Submitted: August 28, 2009
Decided: December 16, 2009

Upon Cross-Motions for Summary Judgment
Plaintiff's Motion for Summary Judgment Granted
Defendant's Motion for Summary Judgment Denied

MEMORANDUM OPINION

Appearances:

Gary S. Nitsche, Esquire, Wilmington Delaware
Attorney for Plaintiff L. Curtis Slicer, Jr. as Guardian of Beverly Slicer

John D. Balaguer, Esquire, Wilmington Delaware
Attorney for Defendant Westfield Insurance

JOHN E. BABIARZ, JR., JUDGE

Factual and Procedural Background

Plaintiff Beverly Slicer, ("Slicer"), and her husband, L. Curtis Slicer, Jr., own and operate Slicer's Camping Trailers, Inc., a Delaware Corporation, (the "Corporation"), which purchased a commercial automobile insurance policy, (the "Policy"), from Defendant Westfield Insurance, ("Westfield"). The named insured on the Policy is the Corporation. Furthermore, the Policy provides personal injury protection coverage under two endorsements in the amounts of $30,000.00 and $270,000.00 respectively.

On October 20, 2007, Slicer was injured when she was hit by a car in the parking lot of a department store. The car that she drove to the store was owned by the Corporation and insured under the Policy. Slicer was an authorized driver under the Policy, but she was not engaged in corporate business at the time of the injury. However, the car was the one that she drove for her personal use, and the broker who negotiated the Policy was aware that it was her personal car.

The offending driver's no-fault coverage limit in the amount of $15,000 was paid to Slicer. Slicer now claims additional personal injury protection in accordance with the Policy, and, in connection with this claim, filed an action for declaratory judgment. Subsequently, Slicer and Westfield

each moved for summary judgment with the conflict centering on the language of the Policy in reference to who is covered.

Discussion

Standard of Review

The interpretation of an insurance policy is a question of law.[1] Moreover, a moving party is entitled to summary judgment as a matter of law where there is no genuine issue of material fact.[2] In this case both sides agree that there is no genuine issue of material fact.

Policy Ambiguity

An insurance policy is deemed ambiguous when the language at issue is reasonably susceptible to different meanings.[3] An ambiguity is created where the term "family member" is listed as an insured in a policy for a business entity."[4]

In this matter, the Policy states on page five at Section F(2)(c) of the personal injury protection endorsement that coverage would be available for

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[1] *O'Brien v. Progressive Northern Ins. Co.,* 785 A.2d 281, 286 (Del. 2001).

[2] Super. Ct. Civ. R. 56(c); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1970); *Snyder v. Baltimore Trust Co.,* 532 A.2d. 624, 625 (Del. Super. 1986).

[3] *O'Brien,* 785 A.2d at 288.

[4] *Derrickson v. American National Fire Insurance Company*, 538 A.2d 1113, 1988 WL 5729, *2 (Del. 1988); *Harleysville Mut. Ins. Co. v. Grzbowski*, 2002 WL 1859193, *2 (Del. Super. 2002).

"*you* or any family member injured while a pedestrian . . . ." Furthermore, at Section F(3)(a), a "family member" is defined as "members of *your* immediate family . . . ."[5] However, on page one the Policy defines the words "you" and "your" as the named insured, which is the Corporation and not the individual owners.

Therefore, since the pronouns "you" and "your" refer to the Corporation, the term "family member" would refer to a member of the Corporation's immediate family. Since a corporation does not have familial relationships, the Policy's use of the phrase "you or any family member injured while a pedestrian" creates an ambiguity as to its meaning and is in contradiction to the definition of the insured, namely, the Corporation.[6] As it stands, the Policy could be understood in various ways—to mean family members of the corporate officers are covered, to mean all employees and their family members are covered, or even to mean that the term "family members" should just be ignored.

Moreover, since "you" or "your" refers to the Corporation, then, the term "injured while a pedestrian" also becomes contradictory in the sense

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[5] (*Emphasis added*).

[6] *See Derrickson*, 538 A.2d 1113, 1988 WL 5729 at *2.

that a corporate entity cannot suffer from bodily injury.[7] Thus, since the Policy appears to provide coverage for the Corporation when it is injured while a pedestrian, the Policy is not clear on its face. Furthermore, if only an entity were intended to be covered for personal injury protection, then, the meaning of personal injury protection itself becomes ambiguous.

Accordingly, the Court finds that the phrase "you or any family member injured while a pedestrian" is reasonably susceptible to different meanings and is, therefore, ambiguous.

The Reasonable Expectations of the Insured

Where an ambiguity in the language is found, a court will interpret the language of an insurance policy in light of the reasonable expectations of the insured party at the time of purchase.[8] In addition, the doctrine of *contra proferentem* demands that the ambiguous policy language be construed "most strongly" against the drafter of the policy because the insurance company is expected to create a policy that is clear on its face.[9]

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[7] *Harleysville Mut. Ins. Co.*, 2002 WL 1859193 at *2.

[8] *Del Collo v. Houston*, 1986 WL 5841, *3 (Del. Super. 1986).

[9] *O'Brien*, 785 A.2d at 288.

Furthermore, a court will not interpret a policy in such a way as to make a provision meaningless.[10]

Moreover, whether a vehicle is a company-owned vehicle is a factor for the court to consider in an injured party's favor when determining the reasonable expectations of a party to a business automobile policy.[11] Another factor to be considered is whether the party was listed as an authorized driver under the policy.[12]

Here, Slicer used the insured, company-owned vehicle for her own personal use, and, in fact, it was the only vehicle she regularly used. In addition, the broker who negotiated the policy between Westfield and the Corporation was informed that the vehicle was driven by Slicer primarily for her own personal use. Slicer was also listed as an authorized driver of the vehicle on the Policy. Under these circumstances, it is difficult to believe that Slicer would have even purchased the Policy if she did not expect to have personal injury protection for herself.

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[10] *O'Brien*, 785 A.2d at 287.

[11] See *Ruggiero v. Montgomery Mutual Ins. Co.*, 2004 WL 1543234, *3 (Del. Super. 2004) (finding no coverage in an uninsured motorist policy dispute where the employee was driving her privately-owned vehicle rather than a company-owned vehicle).

[12] See *Nationwide Mutual Ins. Co. v. Hockessin Const., Inc.*, 1996 WL 453325, *1, 3 (Del. Super. 1996) (finding no coverage in a personal injury protection policy dispute where the injured person was not listed as a driver of any of the vehicles under the policy).

In *Del Collo v. Houston*, a case with similar facts, the Court found that no ambiguity existed where a corporate policy referred to the coverage of "you or any family member."[13] The *Del Collo* Court further stated that the phrase "you or any family member" was inapplicable to a corporation and use of that phrase was simply the result of the insurance company's utilization of a pre-printed form.[14] However, the policy at issue in *Del Collo* was for uninsured motorist coverage and did not specifically address personal injury protection coverage for "you or any family member injured while a pedestrian" as is the case, here.

Furthermore, even though the *Del Collo* Court found no ambiguity in the corporate policy and, thus, did not reach the issue of reasonable expectations, *Del Collo* went on to discuss such reasonable expectations.[15] The Court stated that an incorporator of a business would be sophisticated enough to know that family members would not be included on a corporate policy and, accordingly, would not have reasonably expected individual family members to be covered.[16]

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[13] 1986 WL 5841 at *3-4.

[14] *Del Collo,* 1986 WL 5841 at *3-4.

[15] *Del Collo,* 1986 WL 5841 at *4.

[16] *Del Collo,* 1986 WL 5841 at *4.

However, the situation in the matter before the Court is quite different. Here, the vehicle in question was driven by Slicer primarily for personal use at the time the Policy was brokered. Had Slicer been aware that she would be giving up personal injury protection by purchasing a corporate automobile insurance policy for the only car she had, she likely would not have purchased such a policy. No mention is made in *Del Collo* that the covered vehicle was for personal use.

In addition, nothing, here, suggests that Slicer was sophisticated in legal or business matters so as to know that she would not have personal injury protection coverage under the language of her corporate policy. On the other hand, nothing suggests that even a person sophisticated in corporate business matters would interpret the Policy language to mean that Slicer had no personal injury protection. The broker certainly did not interpret the Policy that way when he was negotiating for a policy to specifically cover Slicer's personal use vehicle. In any event, someone sophisticated in legal matters would not leave themselves without personal injury protection, and, therefore, the Court does not imbue Slicer with such legal knowledge.

Furthermore, the possibility that Westfield used a pre-printed form when writing the Policy cannot be deemed an excuse for not preparing a

policy that is clear on its face. Westfield had a responsibility to prepare a policy with clear terms and simply failed to do so when it used the phrase "you or any family member injured while a pedestrian" where the named insured was the Corporation.

Under the circumstances, the phrase "you or any family member injured while a pedestrian" most assuredly caused Slicer to believe that she was purchasing personal injury protection coverage for herself as a pedestrian. Thus, the determination in *Del Collo* that the phrase "you or any family member" is inapplicable to a corporate policy does not factor into an analysis of the language of the Policy in this matter. The Court must determine *Slicer's* reasonable expectations for coverage of *her* personal vehicle from the language of *her* Policy.

Moreover, if the phrase "you or any family member injured while a pedestrian" were determined to be inapplicable to the Policy, then, the phrase itself would become meaningless. Likewise, the provision for personal injury protection of a pedestrian made possible by that phrase also would become meaningless. The Court seeks to avoid rendering any provision in the Policy meaningless.

For these reasons, the Court finds that Slicer had a reasonable expectation at the time of purchase that she would have personal injury

protection coverage under the Policy and construes the phrase "you or any family member injured while a pedestrian" to include Slicer.

Accordingly, the Court finds that Slicer is entitled to personal injury protection coverage under the Policy. Slicer's motion for summary judgment is hereby granted and Westfield's motion for summary judgment is denied.

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Judge John E. Babiarz, Jr.

JEB, Jr./lb/bjw

Original to Prothonotary