IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DIANE ANNESTELLA,	:	
	:	C.A. No. K13C-11-027 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
GEICO GENERAL INSURANCE COMPANY, a foreign corporation, NATIONWIDE MUTUAL INSURANCE COMPANY, a foreign corporation,	:	
	:	
Defendants.	:	

Submitted: May 6, 2015
Decided: June 15, 2015

ORDER

Upon Defendant GEICO General Insurance Company's
Second Motion for Summary Judgment.
Denied.

William D. Fletcher, Jr., Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorney(for the Plaintiff.

Michael K. DeSantis, Esquire of The Law Office of Dawn L. Becker, Wilmington, Delaware; attorney for Defendant, GEICO General Insurance Company.

Sean A. Dolan, Esquire of The Law Office of Cynthia G. Beam, Newark, Delaware;; attorney for Defendant Nationwide Mutual Insurance Company.

WITHAM, R.J.

INTRODUCTION

GEICO General Insurance Company (hereinafter "GEICO") filed its motion for summary judgment with this Court on April 14, 2014. GEICO argued that Plaintiff's claims were barred based on her failure to notify GEICO of her agreement to settle her claims with the other driver involved in the auto accident. This Court denied the motion on August 18, 2014. GEICO brings its second motion for summary judgment based on similar claims, seeking to have this Court make a choice of law determination in favor of GEICO.

FACTS AND PROCEDURE

On November 23, 2009, Diane Annestella (hereinafter "Plaintiff") was involved in a motor vehicle accident. Plaintiff was driving a car owned by Margaret Barrett, and was involved in an accident with another vehicle operated by Michael Haxton (hereinafter "Haxton"). In Plaintiff's complaint, she stated her insurance policy is through GEICO which provided uninsured/underinsured (UM/UIM) coverage, and was also insured with Nationwide Mutual Insurance Company (hereinafter "Nationwide"). Plaintiff argued in the complaint that because the insurance offered by Nationwide was greater than Haxton's policy limits, Plaintiff was entitled to the UM/UIM benefits provided by Nationwide.

Plaintiff settled her case with Haxton and filed her amended complaint on December 30, 2013, arguing that her settlement with Haxton was insufficient and that she should be compensated fully for the damage caused by Haxton's negligence. Plaintiff argued that the uninsured/underinsured insurance agreement with GEICO

provided for benefits in the amount of $100,000 per person and $300,000 per occurrence. Plaintiff also argued that the uninsured/underinsured policy with Nationwide had benefits in the amount of $15,000 per person and $30,000 per occurrence. Plaintiff demanded judgment against both Nationwide and GEICO.

On April 14, 2014, GEICO filed its first motion for summary judgment. GEICO asserted that Plaintiff was insured by a GEICO policy from Maryland, even though Plaintiff argued she was a resident of the State of Delaware. GEICO argued that the Plaintiff should have complied with Maryland law, and notified GEICO of her intent to settle with Haxton; she did not do so until over a year after she had already entered into an agreement with Haxton and executed a release of claims against him. According to GEICO, this would result in a dismissal of Plaintiff's claims since she failed to contact GEICO with her intent to settle with the tortfeasor, pursuant to Maryland Insurance Code Annotated § 19-511(2013).[1]

The Court denied GEICO's motion without prejudice. The Court held that there was not enough discovery, at that point, to determine whether Maryland law applied to the case. The Court held that "even if Maryland law is favored in a choice of law analysis, it may ultimately not apply because of Delaware's public policy

[1] Md. Code Ann., Ins. § 19-511 (West) "Settlement offers sent to insurers providing uninsured motorist coverage:(a) If an injured person receives a written offer from a motor vehicle insurance liability insurer or that insurer's authorized agent to settle a claim for bodily injury or death, and the amount of the settlement offer, in combination with any other settlements arising out of the same occurrence, would exhaust the bodily injury or death limits of the applicable liability insurance policies, bonds, and securities, the injured person shall send by certified mail, to any insurer that provides uninsured motorist coverage for the bodily injury or death, a copy of the liability insurer's written settlement offer."

against forfeitures of insurance contracts in the absence of prejudice." The Court went on to hold that:

> "Maryland law indicates that its statutory notice requirement is a bright-line all or nothing rule; failure to provide notice to the insurer results in wholesale forfeiture, even if there is no prejudice to the insurer...this seems...repugnant to Delaware public policy."

On April 6, 2015, GEICO filed its second motion for summary judgment to dismiss claims brought by Plaintiff. GEICO asserts that this Court need not interpret any choice of law provision in the contract, since the policy was signed in Maryland and should be interpreted under Maryland law, despite Plaintiff's possible residency in Delaware. GEICO maintains that even after discovery, it cannot be said with reasonable certainty that the Plaintiff was a resident of Maryland at the time of the accident. GEICO also points out that although Delaware courts are reluctant to forfeit contracts, denying GEICO's motion would undermine "Delaware's policy favoring the state in which an insurance contract was issued in a choice of law analysis." GEICO argues that public policy favors significant weight being given to the state the policy was contracted in Maryland. GEICO lastly argues that Plaintiff's knowledge of the policy containing a notice provision that Maryland law would apply shows her ability to understand she should've provided notice to GEICO regarding the settlement with the Plaintiff.

STANDARD OF REVIEW

Summary judgment will be granted when, viewing all of the evidence in the

light most favorable to the nonmoving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."[2] This Court shall consider the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in determining whether to grant summary judgment.[3] When material facts are in dispute, or "it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances," summary judgment will not be appropriate.[4] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[5]

DISCUSSION

On August 18, 2014, this Court issued its decision regarding GEICO's first motion for summary judgment. The Court denied GEICO's motion. This Court noted in the opinion how insufficient the record was, and thus summary judgment would have been premature. First, the Court held that the record was such that a choice of law analysis would have been inappropriate. The Court held:

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[2] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991 (citing *Benge v. Davis*, 553 A.2d 1180, 1182 (Del. 1989)); *see also* Del. Super. Ct. Civ. R. 56c.

[3] Del. Super. Ct. Civ. R. 56c.

[4] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957)).

[5] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

> "Delaware follows the Restatement (Second) Conflict of Laws's (hereinafter "the Restatement") "most significant relationship" test when resolving choice of law issues.[6] Choice of law issues involving insurance coverage are resolved by analyzing the relevant contacts set forth in sections 188 (dealing with general contractual issues) and 193 (dealing specifically with fire, surety, and casualty insurance contracts) of the Restatement.[7] These contacts must also be evaluated in light of the principles set forth in section 6 of the Restatement[8]; one such principle is the relevant policies of the forum state.[9] Delaware will not apply another state's law if doing so "would be clearly repugnant to the public policy of Delaware."[10] One such policy is disfavoring forfeiture of insurance coverage when the insurer does not show prejudice resulting from the insured's actions or omissions.[11] The record is insufficient as to allow for a full choice of law analysis; accordingly, summary judgment at this stage in the proceedings would be premature. While some of the contacts relevant to a choice of law analysis appear undisputed, such as the location of the accident (Delaware), residency of the tortfeasor (Delaware), and where the insurance policy was entered into (Maryland)..."[12]

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[6] *Liggett Group Inc. v. Affiliated FM Ins. Co.*, 788 A.2d 134, 137 (Del. 2001) (citing *Hoechst Celanese Corp. v. Nat'l Union Fire Ins. Co.*, 1994 WL 721651, at *3-4 (Del. Super. Mar. 28, 1994)).

[7] *Id.*

[8] *Id.*

[9] Restatement (Second) of Conflict of Laws § 6(2)(b).

[10] *See J.S. Alberici Const. Co., Inc. v. Mid-West Conveyor Co.*, 750 A.2d 518, 521 (Del. 2000).

[11] *See State Farm Mut. Auto. Ins. Co. v. Johnson*, 320 A.2d 345, 347 (Del. 1974).

[12] *Annestella v. GEICO Gen. Ins. Co.*, 2014 WL 4229999, at *5 (Del. Super. Aug. 18, 2014).

Residency

Subsumed within the choice of law issue is whether the Plaintiff was a resident of Delaware or Maryland at the time of the accident, and whether the policy was a Delaware or Maryland policy. The text of the policy states that it is rated as a Maryland policy and that the policy's choice of law provision uses Maryland law. The Court was unable to decide on this issue, as it was unclear whether Plaintiff notifying GEICO of her change of residency from Maryland to Delaware "[...] had the effect of rendering the policy a Delaware policy, or if the policy remained a Maryland policy."[13]

Further, this Court ruled on the residency of the Plaintiff, holding that "[...]the declarations in the GEICO policy do not reveal when Plaintiff changed her residency to Delaware, or when Plaintiff notified GEICO of this change."[14] However, the Court noted that Plaintiff notified GEICO of her address change at some point, but could not verify a specific date. The Court went on to state "[e]ven when viewing the record in the light most favorable to the Plaintiff, the Court cannot conclude that Plaintiff was a Delaware resident at the time of the accident."[15]

Lastly, the Court then expressed its opinion regarding Delaware's public policy against forfeiture of contracts:

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[13] *Id.*

[14] *Id.*

[15] *Id.*

> "While the Court does not resolve the choice of law question at the present time, it is worth observing that even if Maryland law is favored in a choice of law analysis, it may ultimately not apply because of Delaware's public policy against forfeitures of insurance contracts in the absence of prejudice. Maryland law indicates that its statutory notice requirement is a bright-line all or nothing rule; failure to provide notice to the insurer results in wholesale forfeiture of coverage, even if there is no prejudice to the insurer. This seems harshly draconian to the Court and repugnant to Delaware public policy, particularly given the fact that the settlement release with Haxton is broadly worded as to potentially preserve any subrogation rights GEICO might have in Maryland. The Court makes this observation now, because counsel at oral arguments did not fully address this issue, and it will have to be addressed should GEICO choose to refile for summary judgment at a later stage in these proceedings."[16]

GEICO's Second Motion for Summary Judgment

In GEICO's second motion for summary judgment, it raises similar claims as the first. GEICO argues that though discovery has ended, the Plaintiff is still unable to establish, with reasonable certainty, that she was a resident of Maryland at the time of the accident, and that summary judgment is appropriate in favor of GEICO. GEICO argues that even if the Plaintiff was a Delaware resident, the policy being used was a Maryland policy, aiding in GEICO's contention that Maryland law should apply to the choice of law provision. GEICO further points out that the insurance policy itself was to be governed by Maryland law.

GEICO holds that since Maryland law should apply, this will dismiss

[16] *Annestella v. GEICO Gen. Ins. Co.*, 2014 WL 4229999, at *6 (Del. Super. Aug. 18, 2014).

Plaintiff's claims. Under Maryland law, the Plaintiff was required to notify GEICO in writing of her settlement with Haxton, but she failed to do so. GEICO holds that denying the motion for summary judgment would "undermine Delaware's policy favoring the state in which the insurance contract was issued in a choice of law analysis." GEICO still contends that Plaintiff was a Maryland resident when the GEICO policy was issued to her, and argues that she did not pay premiums "consistent with a Delaware policy [...]."

GEICO argues that Plaintiff's deposition makes clear that she understood her car policy was governed by Maryland law, and that her claim should be dismissed based on Plaintiff's failure to notify GEICO of settlement with Haxton.

Plaintiff's Response to GEICO's Second Motion for Summary Judgment

Plaintiff argues that she was a resident of Delaware at the time of the auto accident. She cites that she received a Delaware driver's license in 2006, three years prior to the accident. Plaintiff also cites that she contacted GEICO in an attempt to change everything over to her Delaware address. She points to billing documents sent to Plaintiff's Smyrna, Delaware address, as evidence of such contact with GEICO.[17] Plaintiff claims she contacted GEICO and the GEICO representative insisted that her car remain registered in Maryland because that is where it would be used. Plaintiff argues that it is a party's residence which triggers registration, as opposed to determining what state the vehicle will be driven in.

Plaintiff also quotes a portion of a deposition with Deborah Decker, a

[17] Pl. Ex. 4.

representative from GEICO. In that deposition, Ms. Decker stated that GEICO's policy is to insure a car based on the location of where the vehicle is being kept, versus the policy being based on the residency of the driver. Plaintiff argues that GEICO's business practices are in violation of 21 *Del.C.* § 2102(a) which states that every owner of a motor vehicle must receive vehicle registration within sixty days of residency. Plaintiff also contends that GEICO is in violation of 18 *Del. C.* § 3902(a) which holds that UM/UIM coverage only applies to cars that are covered in the State of Delaware, and to issue a Delaware policy to an out-of-state vehicle is in violation of the statute.

The Plaintiff lastly argues that denying summary judgment as a matter of public policy is in keeping with Delaware law.

Analysis

Based on the parties' filings, it is apparent that there are several issues of material fact that warrant a denial of GEICO's second motion for summary judgment. First, determining where Plaintiff was a resident at the time of the accident remains a question of material fact. In looking at the facts in the light most favorable to the non-moving party, a reasonable person could draw the inference that Plaintiff was a resident of either state. "Domicile is said to require bodily presence plus the intent to make the place one's home."[18] While the Court may respond as to what constitutes

[18] *Williamson v. Standard Fire Ins. Co.*, 2005 WL 6318348, at *5 (Del. Super. Aug. 19, 2005) citing *See* Black's Law Dict. 1310 (7th ed.1999). *See also Fritz v. Fritz, 187 A.2d 348, 349 (Del. 1962).* ("[A] domicile is defined as a dwelling place with the intention to make that place the resident's permanent home. It requires a concurrence of the fact of living at a particular place with

as a dwelling place or home, intent remains a question of fact for a jury to answer.[19] For this reason, summary judgment on the basis of residency of Plaintiff, alone, is inappropriate.

With regard to whether the policy was a Maryland or a Delaware policy, the facts as recited by the Plaintiff are that she visited a GEICO field office at some point prior to the car accident to change her vehicle policy, and had billing statements sent to her Delaware address. It is unclear whether GEICO ever actually changed the policy to reflect her change in home address. GEICO responded by stating that the car insurance policy was registered in the State of Maryland, because Plaintiff allegedly informed a GEICO representative that Maryland is where the car would primarily be driven. In this Court's opinion regarding GEICO's first motion for summary judgment, no conclusion could be drawn at that time if such a change had been made, and specifically called for more discovery to be completed should another motion on the same basis be filed. The Court again, finds that the facts do not permit a reasonable person to make but one inference for this second motion for summary judgment. In viewing the facts in the light most favorable to the Plaintiff, summary judgment is inappropriate, as more than one inference could be made as to whether GEICO's policy constituted as one held in Maryland or Delaware.

Lastly, the Plaintiff raises a public policy issue in its response in opposition to

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the necessary intention of making that the permanent home.").

[19] *Williamson v. Standard Fire Ins. Co.*, 2005 WL 6318348, at *5 (Del. Super. Aug. 19, 2005).

the motion for summary judgment. One of the cases relied upon by GEICO is *Tiller v. Nationwide,*[20] which it contends stands for the proposition that there is no public policy concern with regard to policies where both parties are Maryland residents. In *Tiller*, however, there was no issue regarding residency of the parties, nor was there an issue of a policy holder potentially changing the state in which their vehicle was registered. The choice of law question came into effect solely because the motor vehicle accident occurred in Delaware, but both motorists were insured and residents of Maryland.

In viewing the facts in the light most favorable to the non-moving party, the Plaintiff has provided this Court with evidence of billing statements which went to her Delaware home in an effort to prove that she contacted GEICO to change her registration. Plaintiff also has deposed a GEICO representative who stated that GEICO would issue a policy to a driver who is a resident of one state even though they use the car in another. These issues are genuine issues of material fact that have been in dispute since the beginning of this litigation and for this reason, granting the summary judgment motion would be inappropriate.

The most compelling reason for denying GEICO's motion for summary judgment is the public policy concerns associated with the case at bar. Setting aside any choice of law issues, Maryland law provides a strict, bright-line rule which would

[20] *Tiller v. Nationwide Mut. Ins. Co.*, 2007 WL 2199649, at *1 (Del. Super. July 31, 2007).

punish the plaintiff for failing to report to GEICO of her settlement talks with Haxton. Genuine issues of material fact exist in this case regarding both Plaintiff's residency and whether the GEICO policy was a Maryland or a Delaware policy. The Court is still unable to grant Defendant's motion for summary judgment, as the above issues are reasonably in dispute, and are not resolved to this Court's satisfaction.[21]

CONCLUSION

For the reasons set forth above, GEICO's second motion for summary judgment is ***denied*.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

[21] Once facts are developed at trial, a party may submit a motion for judgment as a matter of law pursuant to Delaware Superior Court Rule 50.