

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

LEOPOLDO LARA GARCIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N14C-11-003 EMD
	)	
SARAH MC GUCKIN,	)	
BRITTANY WARDEN,	)	
GOODYEAR and PROGRESSIVE	)	
SPECIALTY INSURANCE CO.	)	
(NAIC#32786),	)	
	)	
Defendants.	)	

Submitted: March 30, 2015  
Decided: June 25, 2015

**MEMORANDUM OPINION**

Upon Defendant Progressive Specialty Insurance  
Company's Motion to Dismiss  
**GRANTED**

**DAVIS, J.**

**INTRODUCTION**

Plaintiff Leopoldo Lara Garcia filed this action against Defendants Sarah McGuckin, Brittany Warden, Goodyear, and Progressive Specialty Insurance Co. ("Progressive") for personal injuries arising out of a motor vehicle accident that occurred on December 11, 2012. Mr. Lara Garcia does not have the name of the driver who caused the motor vehicle accident and seeks to obtain the name from Progressive.

Progressive Specialty Insurance Company has now filed Defendant Progressive Specialty Insurance Company's Motion to Dismiss (the "Motion"). The Court grants the Motion because

Mr. Lara Garcia has not shown that Progressive owes him any legally cognizable duty rising to the level of a legal claim for relief: (i) to reveal the name of the driver who caused the motor vehicle accident; or, (ii) for money damages.

### **PARTIES CONTENTIONS**

Progressive contends that Mr. Lara Garcia lacks standing to bring claims against Progressive who is the alleged liability carrier for the individual co-defendants. Progressive argues that, under Delaware law, a non-party to the insurance agreement cannot maintain a direct action against the insurer.

Mr. Lara Garcia contends that he is not suing Progressive for tortfeasor liability for the bodily injuries that Mr. Lara Garcia suffered. Instead, Mr. Lara Garcia states that he sued Progressive because Progressive has independently sought to harm Mr. Lara Garcia by withholding the names of the alleged tortfeasors.

### **STANDARD OF REVIEW**

In reviewing a motion to dismiss under Rule 12(b)(6), the truthfulness of all well-pleaded allegations in the complaint is to be assumed.<sup>1</sup> The Court must take all well-pled allegations as true and all reasonable inferences must be made in favor of the non-moving party.<sup>2</sup> Further, the Court must give the pleader the benefit of all reasonable inferences that can be drawn from its pleading.<sup>3</sup>

### **DISCUSSION**

#### ***Facts***

According to the complaint, on December 11, 2012, Mr. Lara Garcia was driving his vehicle in Claymont, Delaware when suddenly a truck operated by an unknown woman hit Mr.

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<sup>1</sup> *Grobow v. Perot*, 539 A.2d 180, 187 (Del. 1988).

<sup>2</sup> *Vaughn v. Jackerson*, 2013 WL 6667752, \*2 (Del. Super. Ct. Dec. 18, 2013).

<sup>3</sup> *In re USACafes, L.P. Litig.*, 600 A.2d 43, 47 (Del. Ch. Ct. 1991).

Lara Garcia's vehicle from the rear, causing injury to Mr. Lara Garcia. Following the accident, the unidentified woman admitted fault to Mr. Lara Garcia, and provided her insurance information. The insurance information indicated that the unknown driver was insured by Progressive. Mr. Lara Garcia did not obtain the name of the female driver, or the license plate of the vehicle. The police were not called to the accident scene and there is no police report regarding the accident.

Mr. Lara Garcia alleges that he suffered \$13,000 in damages for cracked teeth and a retinal injury causing loss of depth perception and vision in one eye. Because Mr. Lara Garcia suffered injuries, Mr. Lara Garcia filed a claim with Progressive. Progressive assigned a claim number to Mr. Lara Garcia. However, Progressive has refused to provide any information about the identity of its insured.

Mr. Mario Moreno-Gasca was a passenger in the vehicle with Mr. Garcia, and he settled his claim with Progressive. When Mr. Moreno-Gasca signed the release from Progressive, the release stated that Mr. Moreno-Gasca would release "Sarah McGuckin, Brittany Warden and Good Year" from any liability. Mr. Lara Garcia believes that either Ms. McGuckin or Ms. Warden was the driver who caused the motor vehicle accident.

Following that settlement, Mr. Lara Garcia requested from Progressive certification of policy limits, identification of the driver and owner of the vehicle, and an explanation of how Good Year was involved. Progressive has declined to respond to any of these requests.

Progressive has offered to settle this matter for \$15,000, however, Mr. Lara Garcia wishes to open a UIM claim. According to the complaint, Mr. Lara Garcia's UIM carrier will not open a claim without the information that Mr. Lara Garcia has requested from Progressive.

On November 3, 2014, Mr. Lara Garcia filed the instant suit. Mr. Lara Garcia makes claims of negligence, negligent entrustment and *respondeat superior* against Ms. McGuckin, Ms.

Warden and Good Year. Mr. Lara Garcia asserts a bad faith claim against Progressive for Progressive's failure to provide the name of the insured under the policy to Mr. Lara Garcia.

*Analysis*

Progressive is correct that under Delaware law, a plaintiff cannot maintain a direct action against a liability insurer based upon the negligence of the insured.<sup>4</sup> Moreover, an injured third party may not prosecute a direct action against a liability insurer before a determination of the insured's liability.<sup>5</sup>

However, Mr. Lara Garcia argues that he is not suing Progressive for damages sustained by a tortfeasor's negligence. Mr. Lara Garcia is filing suit against Progressive for Progressive's failure to identify the driver and owner of the vehicle which caused Mr. Lara Garcia's injuries. In the opposition to the Motion, Mr. Lara Garcia states that Progressive's conduct amounts to a civil conspiracy under 21 *Del. C.* §4202.

Mr. Lara Garcia correctly points out that the driver's refusal to identify herself is a violation of 21 *Del. C.* §4202. However, Progressive does not have a duty under 21 *Del. C.* §4202 to Mr. Lara Garcia. Mr. Lara Garcia does not provide the Court with any legally recognizable tort, statute or duty that would create an obligation under which Progressive was required to reveal information about its insured to Mr. Lara Garcia. Moreover, the Court cannot find any authority that provides that 21 *Del. C.* §4202 imposes any duties (criminal or civil) on an insurance company to identify drivers involved in motor vehicle accidents.

Mr. Lara Garcia contends that Progressive is acting in bad faith due to its refusal to reveal information to Mr. Lara Garcia. Delaware Courts recognize a claim of bad faith but only as to an

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<sup>4</sup> *Kauffmann v. McKeown*, 193 A.2d 81, 83 (Del. 1963).

<sup>5</sup> *Id.*

insurer and its insured.<sup>6</sup> As Mr. Lara Garcia is not Progressive's insured, he has no standing to pursue this claim against Progressive. In addition, Mr. Lara Garcia's argument under 21 *Del. C.* §4202 – whether as a direct action or as part of a “civil conspiracy” (a conspiracy not actually plead in the complaint) – does not present the Court with a legally cognizable claim under which Mr. Lara Garcia can proceed against Progressive.

### CONCLUSION

The Court understands that Mr. Lara Garcia is frustrated with Progressive and wants information relating to the alleged tortfeasors. However, Mr. Lara Garcia fails to state a cognizable legal claim for relief against Progressive. Based on the foregoing, the Motion is **GRANTED**.

Dated: June 25, 2015  
Wilmington, Delaware

/s/ *Eric M. Davis*

Eric M. Davis, Judge

Cc: File&Serve  
Donald Ransom, Esq.  
Andres Gutierrez de Cos, Esq.

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<sup>6</sup> See *Tackett v. State Farm Fire & Casualty Ins. Co.*, 653 A.2d 254, 264 (Del. 1995).