IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

LISA MYERS and BERNARD	:
MYERS, husband and wife,	:
	:
Plaintiffs,	:
	:
v.	:
	:
LIBERTY MUTUAL FIRE	:
INSURANCE COMPANY,	:
	:
Defendant.	:

C.A. No: K14C-03-013 RBY

Submitted: September 23, 2015 Decided: October 5, 2015

Upon Consideration of Defendant's Motion in Limine GRANTED

ORDER

Keith E. Donovan, Esquire, Morris James, LLP, Dover, Delaware for Plaintiffs.

David L. Baumberger, Esquire, Law Offices of Chrissinger & Baumberger, Wilmington, Delaware for Defendant.

Young, J.

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DECISION

On November 14, 2012 at around 6:30 p.m., Lisa Myers ("Plaintiff" and together with her husband "Plaintiffs") was struck by a car driven by Lena McFarlane ("McFarlane") while attempting to cross Route 299 in Odessa, Delaware. McFarlane's liability insurance company paid Plaintiffs the \$50,000 policy limit. Plaintiffs are insured by a policy with Liberty Mutual ("Defendant"). Plaintiffs filed a liability only suit in March 2014 against Defendant to recover excess damages.

By their Motion in Limine, Defendant moves to exclude photographs and reference to a crosswalk which Plaintiff claims to have been using at the time of the accident. Defendant's position is that the area of the accident is not a crosswalk and that photographs and reference to a crosswalk will be overly prejudicial at trial. Plaintiffs argue that the area is a crosswalk and that the photographs and references to a crosswalk are relevant to their case.

Plaintiffs seek to invoke liability based on Plaintiff's use of a crosswalk when the accident occurred. The existence of a crosswalk is an issue properly reserved to an expert.

Certainly, the presence or absence of a crosswalk, in effect as such at the time of the incident, is tremendously significant to this case. The photos of the critical area present a road marking picture that is equivocal ("of uncertain meaning") or ambiguous ("open to various interpretations") a vague ("not definite in impact") or some combination of all. That circumstance could be argued by each side to support its position. However, it could very well be a straight forward

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situation from the standpoint of the highway department. Notably, the investigating officer never considered the area "crosswalk controlled" at the time of the incident. If a Delaware Highway Department designer or engineer opined on the topic, concluding that the area was, in fact, as of the time of the incident, an extant crosswalk, the photos would be admissible. That is not to say that, in that event, the defense could not argue (or present expert opinion) that a reasonable driver, exercising due care, would not take such markings for a crosswalk, but it would make the photos admissible.

Absent that or similar expert opinion, however, and with the back drop of the investigating police deposition testimony, permitting use of the photos would unfairly open the jury presentation to argument based on conjecture or speculation, rather than on fact.

Plaintiffs will be given reasonable time to locate such expert witness to support their claim. If that is done, and if Defendant chooses, the defense will have time to provide for its expert.

CONCLUSION

For the foregoing reasons, Defendant's Motion in Limine is **GRANTED**. **IT IS SO ORDERED**.

> /s/ Robert B. Young J.

RBY/lmc

oc: Prothonotary

cc: Counsel Opinion Distribution File