IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHELLE A. BECK,	)	
	)	
Plaintiff/Counterclaim	)	
Defendant,	)	
	)	
v.	)	
	)	C.A. No. 01C-11-183-MMJ
FRANK H. ISAACS,	)	
	)	
Defendant/Counterclaim	)	
Plaintiff,	)	
and	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
	)	
Defendant.	)	

Submitted: October 27, 2003
Decided: November 21, 2003

ON STATE FARM'S MOTION FOR SUMMARY JUDGMENT
DENIED

MEMORANDUM OPINION

Joseph J. Rhoades, Esquire, Law Offices of Joseph J. Rhoades, 1225 King Street, Suite 1200, Wilmington, DE 19801-0874, Attorney for Plaintiff

Brian E. Lutness, Esquire, Silverman & McDonald, 1010 N. Bancroft Parkway, Suite 22, Wilmington, DE 19805, Attorney for Defendant/Counterclaim Plaintiff, Frank H. Isaacs

Colin M. Shalk, Esquire, Casarino, Christman & Shalk, P.A., 800 N. King Street, Suite 200, Wilmington, DE 19899-1276, Attorney for State Farm Mutual Automobile Insurance Company

JOHNSTON, J.

Defendant State Farm Mutual Automobile Insurance Company ("State Farm") has moved for summary judgment, requesting that Plaintiff's claim against State Farm be dismissed. State Farm is Plaintiff Michelle A. Beck's uninsured/underinsured motorist insurance carrier. Plaintiff responds to State Farm's motion and asks the Court to deny the motion to enable Plaintiff's claims against Defendant Frank G. Isaacs ("Isaacs") and State Farm to be resolved in a single proceeding.

FACTS

On or about January 30, 2000, Plaintiff was traveling on Route 141 in New Castle County, Delaware. Plaintiff came upon a vehicle owned and operated by Isaacs which was parked partially in the left-side shoulder of Route 141 and the left lane of Route 141. As Plaintiff attempted to proceed around Isaacs's vehicle, an unknown operator of a vehicle whose owner is unidentified, exited the interstate 495 off-ramp onto Route 141 and proceeded across the right lane directly in front of Plaintiff's vehicle, causing Plaintiff to swerve and collide with Isaacs's vehicle. Plaintiff filed a complaint alleging that her injuries and damages were caused by the negligence of Isaacs and the owner and operator of the unknown and unidentified vehicle. Therefore, State Farm as Plaintiff's uninsured/underinsured motorist insurance carrier, should compensate Plaintiff pursuant to 18 *Del. C.* § 3902, and jointly and severally with Isaacs.

STATE FARM'S MOTION FOR SUMMARY JUDGMENT

The primary issue is whether in this action, Plaintiff can recover under her uninsured motorist policy for damage and injuries caused by Defendant Isaacs and the unknown and unidentified operator and owner of a vehicle.

Section 3902(a) of title 18 of the Insurance Code provides that uninsured vehicle coverage is for the purpose of the "protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or hit-and-run vehicles for bodily injury, sickness, disease, including death, or personal property damage resulting from the ownership, maintenance or use of such uninsured or hit-and-run vehicle."

In the Complaint, Plaintiff asserts that her injuries and damages were proximately caused by the negligence of the unknown operator of a vehicle whose owner is unidentified. State Farm is obligated to provide compensation for an accident caused by a "noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown."[1] Plaintiff demands judgment against State Farm under the Insurance Code and also claims that State Farm is "jointly, severally and individually" liable along with Defendant Isaacs.

Defendant argues that an uninsured motorist insurance carrier cannot be a joint tortfeasor. Instead, actions based upon uninsured motorist coverage are contractual in nature. Therefore, Plaintiff's claim against State Farm must fail because it is based in tort.

In *Johnson v. Bowman,*[2] this Court considered whether an uninsured motorist carrier can be deemed a joint tortfeasor. The *Johnson* Court held that the co-defendant had a right to seek recovery in contribution from the uninsured motorist carrier, "just like the plaintiffs had a right to seek recovery from the [uninsured motorist carrier] under the uninsured motorist coverage provision of their policy."[3]

---

[1] 18 *Del. C.* §3902(a)(3)c.

[2] 1997 WL 719354 (Del. Super. 1997).

[3] *Id.* at 4.

The *Johnson* Court distinguished the Delaware Supreme Court's holding in *Saienni v. Material Transit, Inc.*[4] In *Saienni*, the Supreme Court found that a carrier providing uninsured motorist coverage "could not be deemed a joint tortfeasor for contribution purposes."[5] The holding in *Saienni*, however, was limited to the facts of the case. The plaintiffs had released their contractual claim against the uninsured motorist carrier, but did not release their tort claim against the uninsured tortfeasor. The payment by the carrier had been made before any binding determination of liability. Because the carrier was no longer a party to the action brought by plaintiffs against the uninsured tortfeasor, the carrier could not be deemed a joint tortfeasor.[6] The *Johnson* Court denied the uninsured motorist carrier's motion for summary judgment and permitted the carrier to be named as a defendant.[7]

In the instant case, State Farm has argued that this Court's ruling in *Lankford v. Richter*[8] is determinative. The *Lankford* Court found that the uninsured motorist carrier cannot be defined as a joint tortfeasor because the carrier cannot be jointly or severally liable in tort. Rather, actions based on uninsured motorist coverage claims are contractual.[9] The Court held that the uninsured motorist carrier was not obligated to compensate a joint tortfeasor, even though the

---

[4] 669 A.2d 23 (Del. 1995).

[5] *Id.* at 24.

[6] *Id.* at 24-25.

[7] *Id.* at

[8] 1989 Del. Super. LEXIS 45 (1989), *aff'd in part, rev'd in part on other grounds,* 570 A.2d 1148 (Del. 1990).

[9] *Id.* at 3-4.

carrier may stand in the shoes of the uninsured tortfeasor. The uninsured motorist carrier had no duty to the uninsured tortfeasor. The insured plaintiff, not the uninsured tortfeasor, was the intended beneficiary of the insurance contract. An incidental beneficiary to a contract has no standing to enforce that contract.[10]

State Farm's reliance on *Lankford* in support of its Motion for Summary Judgment is misplaced. That Court did not resolve the issue of whether an uninsured motorist carrier may be brought into an action as a co-defendant of an alleged tortfeasor.

In considering State Farm's Motion for Summary Judgment, this Court need not resolve the issue of whether State Farm may be considered a joint tortfeasor. Plaintiff clearly has a cognizable cause of action against State Farm in contract. The Complaint demands judgment against State Farm under the uninsured vehicle coverage statute governing insurance contracts.[11] Plaintiff's request that the Court find State Farm jointly liable with alleged tortfeasor Isaacs is in addition to Plaintiff's contractual claim against State Farm.

The remaining issue is whether Plaintiff may seek recovery against State Farm at this time, or whether Plaintiff must wait until all other available policy proceeds have been exhausted. Section 3902(b)(3) establishes the sequence in which an insured may look to its uninsured carrier.

> (3) The insurer shall not be obligated to make any payment under this coverage until after the limits of liability under all bodily injury bonds and insurance policies available to the insured at the time of the accident have been exhausted by payment of settlement or judgments.

---

[10] *Id. at 4-5.*

[11] 18 *Del. C. §3902.*

In *Brown v. Comegys,*[12] the action was against two alleged tortfeasors: a named defendant and an unknown driver. The uninsured motorist carrier moved to stay proceedings involving the unknown driver on the grounds that the carrier was entitled to have any claim against it reduced by the amount the plaintiffs might recover from the named tortfeasor. Additionally, the carrier asserted that plaintiffs were not entitled to pursue the uninsured motorist claim in court because the policy mandated arbitration.[13]

The *Brown* Court held:

> Where more than one tortfeasor may have caused the accident, it is desirable to have the circumstances and causation of the accident and the determination of the liability of all whose negligence may have contributed to the accident be resolved in a single proceeding. In this way the contentions of each alleged tortfeasor that the other alleged tortfeasor caused the accident may be evaluated and a decision reached as to both alleged tortfeasors in that proceeding. . . . [Otherwise,] the result could be that the triers of each segment may reach inconsistent results either on the liability issue or on the amount of damages due plaintiff. This is a result which modern rules of procedure seek to avoid.
>
> * * *
>
> I find no support for the proposition that plaintiff must delay pursuing recovery under his uninsured motorist coverage as provided under 18 *Del. C.* § 3902 until exhausting recovery against another tortfeasor. Any such language in a policy would violate that statute.[14]

---

[12] 500 A.2d 611 (Del. Super. 1985).

[13] *Id.* at 612.

[14] *Id.* at 612-14.

CONCLUSION

Summary judgment is warranted when the moving party has shown that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.[15] For purposes of State Farm's Motion for Summary Judgment, there are no facts in dispute.

As Plaintiff's uninsured motorist carrier, State Farm is obligated to provide compensation for an accident caused by a noncontact vehicle where the identity of both the driver and the owner of such vehicle are unknown. An uninsured motorist carrier may be named as a defendant in an action in which the co-defendant is an alleged tortfeasor. The claim against the uninsured motorist carrier sounds in contract and this Court need not resolve the issue of whether State Farm also may be considered a joint tortfeasor.

Section 3902(b)(3) of the Insurance Code provides that the uninsured carrier is not obligated to make any payment until the limits of all other applicable insurance policies available to the insured have been exhausted by payment of settlement or judgments. Nevertheless, judicial economy and the potential for inconsistent results mitigate in favor of retaining State Farm in the instant action as a defendant.

Therefore, State Farm's Motion for Summary Judgment is hereby **DENIED.**

IT IS SO ORDERED.

Judge Mary M. Johnston

[15] *Moore v. Sizemore,* 405 A.2d 679, [] (Del. 1979).