IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

TIFFANY LEWIS and **TYRONE CURTIS**, Plaintiffs, v. **AMERICAN INDEPENDENT INSURANCE COMPANY**, Defendant.	)))))))))))	C.A. No. 03C-11-001 PLA

Submitted: April 21, 2004
Decided: June 22, 2004

UPON DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS
GRANTED.

ORDER

John Bialecki, Esquire, Wilmington, Delaware, Attorney for Plaintiffs.

Donald R. Kinsley, Esquire, Megan T. Mantzavinos, Esquire, Marks, O'Neill, O'Brien & Courtney, P.C., Wilmington, Delaware, Attorneys for Defendant.

ABLEMAN, JUDGE

Before the Court is a Motion For Judgment on the Pleadings filed by defendant, American Independent Insurance Company, seeking dismissal of a breach of contract claim for failure to make a payment of underinsured motorist bodily injury liability coverage ("UIM") benefits to plaintiff Tiffany Lewis, its insured, and to plaintiff Tyrone Curtis, the driver/occupant of Ms. Lewis' automobile at the time of the accident. As will be set forth more fully hereafter, under Delaware law, the defendant was not obligated to pay UIM coverage benefits to plaintiffs, because the limits of the applicable bodily injury liability coverage available to them at the time of the accident did not total less than the limits provided by the uninsured motorist coverage, as stated in the declaration sheet of the automobile insurance policy under which plaintiff Tiffany Lewis was insured as a principle driver.

Furthermore, defendant was not obligated to provide UIM coverage because Delaware law precludes the stacking of multiple underinsured motorist coverages for the threshold purpose of establishing whether the tortfeasor is an underinsured motorist. Accordingly, in light of the standard of review utilized by Delaware courts when considering a motion for judgment on the pleadings, the pleadings fail to raise any material issue of fact, and, even assuming as true, for purposes of the motion, the allegations contained in plaintiffs' pleadings, these allegations are insufficient as a matter of law. Defendant's motion is therefore granted.

Statement of Facts

The relevant facts are not in dispute. In the early morning hours of June 18, 2002, Tyrone Curtis was operating a 1999 Mazda Protégé in which Tiffany Lewis, an insured under defendant's policy, and presumed owner of the automobile, was also a passenger ("Plaintiffs"). While approaching the intersection of Reed Street and Delaware Avenue in Philadelphia, Pennsylvania, Plaintiffs were injured in a collision with another car, driven by Peter Duggan and owned by Bernadette Cullen. As a result of the accident, Plaintiffs sustained substantial injuries, and the automobile was demolished and declared a total loss.

One month prior to the accident, on May 13, 2002, American Independent Insurance Company ("Defendant") issued a policy of personal automobile insurance to Nicole Lewis, listing Nicole Lewis as the named insured, and listing Nicole Lewis and Tiffany Lewis as principle drivers of the insured vehicles. The policy insured two automobiles, a 1989 Nissan Maxima, and the 1999 Mazda Protégé. Under the terms of the insurance policy, Plaintiff Tiffany Lewis is a direct beneficiary, and Plaintiff Tyrone Curtis, as an occupant of one of the automobiles, is an intended beneficiary. Contained on the declaration page of the insurance policy, under the description of the two insured automobiles, is the pertinent information concerning the type of uninsured/underinsured coverage provided by the insurer, stated as follows:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

		UNIT 1 (1989 Maxima) PREMIUM	DED.	UNIT 2 (1999 Protégé) PREMIUM	DED.
Bodily Injury	15,000/person 30,000/accdnt	273		458	
Property Damage	10,000/accdnt	179		301	
Medical Payments (Household Incl.)	15,000/person 30,000/accdnt	217	500	321	500
Under/uninsured BI/PD	15/30/10 x100	116		116	
Comprehensive		75	500	190	500
Collision		222	500	689	500
Rental car Reimburse	$20/day, for 30 days	40		40	
Towing and Labor	300/accdnt	20	500	20	500
FULL TERM PREMIUM		1,142		2,135	
Policy fee		30.00			
Total charges		3,307.00			

On July 3, 2002, Plaintiffs notified the Defendant of their intent to seek first party benefits of $15,000.00 each, and collision coverage for the 1999 Mazda Protégé. Initially, Defendant refused to pay first party medical benefits and collision coverage, claiming that the 1999 Mazda Protégé had been removed from the policy of automobile insurance prior to the date of the accident. Defendant's belief was based on an endorsement signed by Nicole Lewis, dated May 15, 2002, with an effective date of May 15, 2002. The record indicates that there existed confusion and disagreement between the parties as to the correct date of the endorsement. During December 2002, and January 2003, Defendant conducted

further investigation into the discrepancy and determined that the effective date of the removal of the 1999 Mazda Protégé was subsequent to the June 18, 2002 accident. Upon discovery of this fact, Defendant paid the first party medical benefits and collision insurance coverage pursuant to the policy.

In October of 2002, Plaintiffs learned that Peter Duggan and Bernadette Cullen (collectively, "tortfeasor") were covered for third party liability by the Nationwide Insurance Company, with bodily injury liability limits of $15,000.00 per person, and $30,000.00 per accident. Due to the extent of their injuries, and in consideration of the limits of the tortfeasor's third party bodily injury liability coverage, in November 2002, Plaintiffs also notified the Defendant of their intent to pursue a claim for UIM coverage benefits arising from the injuries they had sustained.

In June 2003, upon Defendant's consent to a settlement, Nationwide Insurance Company tendered the $15,000.00 policy limit for third party bodily injury liability coverage to each of the Plaintiffs, and releases were executed. Despite a second request made by Plaintiffs in June 2003, Defendant continued to refuse to pay UIM coverage benefits to the Plaintiffs. Plaintiffs filed the instant complaint on November 3, 2003.

Contentions of the Parties

The predominant focus of Plaintiffs' breach of contract complaint in this case is Defendant's refusal to pay supplemental UIM coverage. Pursuant to the coverage provided for in the single policy of insurance issued by Defendant, it is Plaintiffs' contention that they are entitled to UIM coverage and benefits because "the combined limit for underinsured motorist benefits of $30,000.00 . . . was greater than the total third party liability coverage of $15,000.00, rendering the Duggan/Cullen vehicle underinsured under Delaware law."[1] In support of this line of reasoning, Plaintiffs argue that, "[b]ecause underinsured motorist benefits are considered personal to the insured[,] and not vehicle oriented, the terms of defendant's policy and the payment of separate premiums on each insured vehicle entitled each plaintiff to $30,000.00 in underinsured motorist coverage."[2] Plaintiffs conclude, "[a]ny interpretation (or statutory proscription) to the contrary would render the payment of separate premiums to defendant on each vehicle meaningless, and the collection of separate premiums by defendant on each vehicle unconscionable."[3]

In addition to an alleged breach of contractual obligations pursuant to the policy for automobile insurance, Plaintiffs allege that Plaintiff Tyrone Curtis is

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[1] Plaintiffs' Complaint, filed November 3, 2003, at 6 (hereinafter "Pls.' Compl. at ___.").
[2] Pls.' Compl. at 6-7.
[3] Pls.' Compl. at 7.

entitled to UIM coverage benefits under Pennsylvania law, as well as under Delaware law, because the accident occurred in the Commonwealth of Pennsylvania and he was a resident of Pennsylvania at the time of the accident. Next, Plaintiffs assert that Defendant committed an act of bad faith because it had a "fiduciary, contractual and statutory duty to provide underinsured motorist benefits to plaintiffs," and Defendant has refused to acknowledge that duty "without legal justification or cause."[4]

Moreover, Plaintiffs claim that Defendant's sale of "[o]nly $15,000.00 in underinsured motorist benefits in the State of Delaware (where the minimum third party liability coverage is $15,000.00) and/or the collection of separate premiums on each vehicle for uninsured/underinsured motorist benefits," constituted fraud, deception, and misrepresentation in violation of Delaware's Consumer Fraud Act, 6 *Del. C.* § 2511, *et seq*.[5] Lastly, Plaintiffs allege that Defendant engaged in a civil conspiracy with various independent insurance agencies to defraud the public, by illicitly charging and collecting premiums from insureds for uninsured/underinsured motorist coverage, equal in amount to the minimum third party liability coverage required in the State of Delaware, thereby knowing that they would not be required to pay a loss in these instances.

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[4] Pls.' Compl. at 8.
[5] Pls.' Compl. at 9-10.

In its motion for judgment on the pleadings, Defendant refutes Plaintiffs' claims, arguing that the main premise of their complaint is incorrect under Delaware law. Defendant contends that Plaintiff Lewis' UIM coverage of $15,000.00 per person, and $30,000.00 per accident, on two vehicles, for which she paid separate premiums, as delineated on the declaration page of her policy, cannot be stacked for a combined total of $30,000.00 per person, and $60,000.00 per accident. Defendant points out that, pursuant to 18 *Del. C.* § 3902 (b)(2) and (c), an insurer is only required to pay UIM coverage benefits when the applicable limits of bodily injury liability coverages under all insurance policies and bonds total less than the limits provided by the insured's uninsured motorist coverage. Defendant notes that, since the Delaware Supreme Court has previously established that § 3902(b)(2) precludes the stacking of UIM coverages for purposes of making the threshold inquiry into whether the UIM coverage provided by any one UIM policy is triggered, Plaintiffs' contention that they can stack both UIM coverages in the policy to total $30,000.00 per person/$60,000.00 per accident is misguided. Under these circumstances, Defendant argues that since Delaware law prohibits stacking by Plaintiffs, it follows, *a priori*, that Defendant was not obligated to provide UIM coverage. Therefore, Defendant did not commit a breach of contract.

As to Plaintiff Curtis' UIM claim under Pennsylvania law, Defendant relies on the "most significant relationship" test, as set forth in *Travelers Indemnity Co. v. Lake.*[6] Defendant maintains that Plaintiff Curtis' claim for UIM coverage can only originate from Plaintiff Lewis' Delaware policy. Since the policy was issued in the State of Delaware, to a Delaware resident, for an automobile registered in Delaware, Delaware law should govern. With regard to Plaintiffs' allegation of Defendant's bad faith dealings in denial of UIM benefits, Defendant contends that there can be no claim of bad faith since Defendant was not obligated, under Delaware statutory or case law, to pay the UIM benefits.[7] Moreover, Defendant purports, its conduct in handling the claim did not constitute a bad faith refusal to make payments, nor did it fall within the constructs of the "clearly without any reasonable justification" standard set forth in *Casson v. Nationwide Insurance Co*.[8]

Finally, Defendant submits that Plaintiffs have failed to plead fraud with particularity, and that there is no basis for Plaintiffs' Consumer Fraud Act claim.

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[6] *See Travelers Indem. Co. v. Lake*, 594 A.2d 38 (Del. 1991).

[7] In addition, Defendant contends that its handling of the entire claim, and its denial of UIM benefits, did not constitute a breach of contract or bad faith because, "[t]he facts of the case show Nicole Lewis signed a notification deleting the 1999 Mazda Protégé from the policy on a form dated May 15, 2002, and stating its effective date as May 15, 2002. (citation omitted). The intent of the form, as was later discovered from further investigation by Defendant, was to delete the Mazda from the policy because it was totaled in the accident on June 18, 2002. Defendant based its initial decision to deny the claim on this form and the good faith belief that Ms. Nicole Lewis signed the form on May 15, 2002, intending to make it effective as of May 15, 2002, which was about one month before the accident. In September 2002, AIIC [Defendant] was told by its agent that the form's effective date for deletion of the 1999 Mazda Protégé was May 15, 2002. However, AIIC reinvestigated in December 2002, and discovered that the effective date was incorrect on the form, and that the effective date should have been after the accident. Then, as stated in Plaintiff's complaint paragraph 19, AIIC acknowledged in January 2003 that the 1999 Mazda Protégé had not been removed from the policy until after the accident, and AIIC paid the property damage claim on the insured's behalf." Defendant's Motion For Judgment on the Pleadings, dated January 20, 2004, at 3 (hereinafter "Def.'s Mot. J. Pleadings at ___.").

[8] *See Casson v. Nationwide Ins. Co*., 455 A.2d 361, 369 (Del. 1982).

Plaintiffs cannot substantiate any violations of the Consumer Fraud Act because Defendant's conduct and business practices properly conform to standard Delaware insurance industry practices. In recognition of Plaintiffs' allegation of civil conspiracy, Defendant notes that "civil conspiracy is not an independent cause of action, but requires proof of the underlying wrong that would be actionable absent conspiracy."[9] As such, because Plaintiffs were not permitted to stack their UIM benefits, they have failed to prove any identifiable underlying wrong to be actionable and no civil conspiracy ever existed.

On March 8, 2004, the Court held a hearing to consider Defendant's motion. After both parties presented oral argument, the Court reserved it decision, ordering supplemental briefing from the Plaintiffs to support their argument. Plaintiffs filed their memorandum of law on April 12, 2004. The gist of Plaintiffs' argument revolves around their contention that the Court should consider the general intent underlying 18 *Del. C.* § 3902(b)(2) and (c), and override the literal interpretation and reading of these statutes to permit stacking of UIM benefits. Otherwise, Plaintiffs maintain, a literal reading of these statutory provisions "create an unfair and unconscionable result," and the literal interpretation should be subjugated to a reading in line with the general intent of the legislature – "to allow motorists, like

[9] *Parfi Holding AB v. Mirror Image Internet, Inc*., 794 A.2d 1211, 1237-38 (Del. Ch. 2001).

Ms. Lewis, to purchase and receive supplemental UIM insurance to fully compensate themselves for their injuries."

Applicable Standard

A motion for judgment on the pleadings, brought pursuant to Superior Court Civil Rule 12(c), is viewed "in the nature of a general demurrer or motion to dismiss" in that it admits, for the purpose of the motion, the allegations of the opposing party's pleadings, but contends that they are insufficient at law.[10] That is, the Court accepts as true the non-movant's well-pleaded factual allegations and grants the non-movant the benefit of any inferences that one may fairly draw from the allegations.[11] In essence, the motion presents a question of law and may not be granted where the pleadings raise any issue of material fact.[12] The motion may be granted when the moving party establishes that it is entitled to judgment as a matter of law. Thus, in assessing the merits of a motion for judgment on the pleadings, a court should not grant such a motion unless it appears to a reasonable certainty that the non-movant would not be entitled to relief for its claims under any set of facts that could be proven in support of its allegations,[13] i.e., whether a plaintiff may recover under any reasonably conceivable set of circumstances

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[10] *Fagnani v. Integrity Fin. Corp.*, 167 A.2d 67, 75 (Del. Super. Ct. 1960).
[11] *Warner Communications, Inc. v. Chris-Craft Indus., Inc.*, 583 A.2d 962, 965 (Del. Chan. 1989), *aff'd* without opinion, 567 A.2d 419 (Del. 1989).
[12] *Fagnani*, 167 A.2d at 75.
[13] *Warner*, 583 A.2d at 965.

susceptible of proof under the complaint.[14] In performing such an evaluation, the Court bases its judgment on the substance of the pleadings, and views them in a light most favorable to the non-movant.[15]

Discussion

A proper analysis of Plaintiffs' steadfast contention that 18 *Del. C.* § 3902 permits stacking of individual UIM coverage benefits, predicated on an insured's single policy of insurance insuring two separate automobiles, should begin with a careful review of the Delaware courts' most recent decisions in this matter, as well as an overview of the general legislative intent fundamental to the statute.

In its most recent decision dealing with the issue of stacking, *Deptula v. Horace Mann Insurance Co*., the Delaware Supreme Court grappled with the language of 18 *Del. C.* § 3902. In the Court's own words, "[w]e have attempted to follow the plain meaning of the unambiguous portions of the statute, and to interpret those portions that are ambiguous in a manner that gives effect to the legislative purpose of protecting people injured by tortfeasors carrying little or no insurance."[16] The Court went on to acknowledge that it recognized the difficulty in "[p]arsing this statute, and applying it in different fact patterns . . . ."[17] In interpreting 18 *Del. C.* § 3902, the Delaware Supreme Court has expressed an

[14] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978); *Klein v. Sunbeam Corp*., 94 A.2d 385, 391 (Del. 1952).
[15] *Harman v. Masoneilan Intern., Inc*., 442 A.2d 487, 502 (Del. 1982).
[16] *Deptula v. Horace Mann Ins. Co*., 842 A.2d 1235, 1236 (Del. 2004).
[17] *Id*.

unremitting intent and desire to "provide clear and consistent direction to the trial courts and litigators," while acknowledging that the "courts cannot usurp the legislative function by rewriting the statute."[18]

It is well established that, in construing the language of a statute, Delaware courts attempt to ascertain and give effect to legislative intent,[19] i.e., the "objective of statutory construction is to 'ascertain and give effect to the intent of the legislature.'"[20] In the construction of a statute, the Delaware Supreme Court has established as its standard the search for legislative intent.[21] Further, '[w]here the intent of the legislature is clearly reflected by unambiguous language in the statute, the language itself controls.'[22] That is to say, if a statute contains unmistakable language, no interpretation is required and the plain meaning of the words control.[23]

Interpretation of legislative intent and statutory construction requires that a court first examine the text of the statute in its context to determine if it is ambiguous.[24] By and large, a statute is ambiguous if it is "reasonably susceptible

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[18] *Id*.
[19] *Ingram v. Thorpe*, 747 A.2d 545, 547 (Del. 2000); *State v. Cephas*, 637 A.2d 20, 23 (Del. 1994).
[20] *Dir. of Revenue v. CNA Holdings, Inc., f/k/a Hoechst Celanese Corp.*, 818 A.2d 953, 957 (Del. 2003) (quoting *Ingram*, 747 A.2d at 547).
[21] *Cephas*, 637 A.2d at 23; *Sandt v. Del. Solid Waste Auth*., 640 A.2d 1030, 1032 (Del. 1994).
[22] *Sandt*, 640 A.2d at 1032 (quoting *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989)); *see also Streett v. State*, 669 A.2d 9, 12 (Del. 1995); *Cephas*, 637 A.2d at 23.
[23] *Ingram*, 747 A.2d at 547; *accord Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999); *Cephas*, 637 A.2d at 23; *Spielberg*, 558 A.2d at 293.
[24] *Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998); *State v. Reynolds*, 669 A.2d 90, 93 (Del. 1995).

of two interpretations" or to evoking different conclusions.[25] A statute may also contain ambiguity, "[i]f a literal interpretation of the words of the statute would lead to a result so unreasonable or absurd that it could not have been intended by the legislature."[26] Therefore, in those instances where a statute's language lends itself to ambiguity, "[a] court must seek to resolve the ambiguity by ascertaining the legislative intent."[27] Concomitantly, in those instances when the language of a statute harbors no ambiguity and application of the literal meaning of its words would not be unreasonable, there is no basis for an interpretation of those words by the court.[28]

In a long-standing succession of case law, the Delaware Supreme Court has consistently recognized that the legislative purpose in mandating the availability of *uninsured* motorist coverage is to foster the "protection of innocent persons from the negligence of unknown or impecunious tortfeasors."[29] The Court has held that "[i]nsurance policy provisions designed to reduce or limit the coverage to less than that prescribed by the Delaware statute, 18 *Del. C.* § 3902, are void."[30] As a result, any limitation in the scope or degree of coverage that § 3902 affords, must be

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[25] *CNA Holdings, Inc*., 818 A.2d at 957; *accord Newtowne Vill. Serv. Corp. v. Newtowne Rd. Dev. Co.,*772 A.2d 172, 175 (Del. 2001); *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd*., 492 A.2d 1242, 1246 (Del. 1985).
[26] *CNA Holdings, Inc*., 818 A.2d at 957; *accord Newtowne Vill. Serv. Corp*., 772 A.2d at 175; *Snyder*, 708 A.2d at 241; *DiStefano v. Watson*, 566 A.2d 1, 4 (Del. 1989).
[27] *Snyder*, 708 A.2d at 241; *Acierno v. Worthy Bros. Pipeline Corp*., 656 A.2d 1085, 1088 (Del. 1995).
[28] *Snyder*, 708 A.2d at 241; *DiStefano*, 566 A.2d at 4.
[29] *Frank v. Horizon Assur. Co*., 553 A.2d 1199, 1201 (Del. 1989).
[30] *Id*. at 1201-02.

"specifically authorized by statute."[31] Contemporaneously, § 3902 also makes available to Delaware motorists the option to contract for *UIM* coverage as well.[32] With respect to UIM coverage, the Delaware Supreme Court also has acknowledged that the underlying principle and intent of 18 *Del. C.* § 3902 is to permit a risk-adverse person to create a fund to protect against losses caused by uninsured/underinsured motorists, by acquiring add-on coverage beyond the minimum provided for in subsection (a), and to assure that the individual is aware of the extra coverage.[33]

Bearing all this in mind, the Court turns its analysis to the supposition underlying Plaintiffs' complaint of breach of contract, i.e, the permitted stacking of two UIM coverages related to two automobiles for which separate premiums were

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[31] *Id*. at 1204.

[32] Specifically, § 3902(b) provides:

Every insurer shall offer to the insured the option to purchase additional coverage for personal injury or death up to a limit of $100,000 per person and $300,000 per accident or $300,000 single limit, but not to exceed the limits for bodily injury liability set forth in the basic policy. Such additional insurance shall include underinsured bodily injury liability coverage.

(1) Acceptance of such additional coverage shall operate to amend the policy's uninsured coverage to pay for bodily injury damage that the insured or his/her legal representative are legally entitled to recover from the driver of an underinsured motor vehicle.

(1) An underinsured motor vehicle is one for which there may be bodily injury liability coverage in effect, but the limits of bodily injury liability coverage under all bonds and insurance policies applicable at the time of the accident total less than the limits provided by the uninsured motorist coverage. These limits shall be stated in the declaration sheet of the policy.

(1) 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 settlements or judgments.

(4) An insured who executes a release of a single tortfeasor owner or operator of an underinsured motor vehicle in exchange for payment of the entire limits of liability insurance afforded by the tortfeasor's liability insurer shall continue to be legally entitled to recover against that tortfeasor for the purposes of recovery against the insured's underinsurance carrier. An insured who executes a release of 1 of multiple tortfeasors shall have rights against that tortfeasor and the insured's underinsurance carrier determined in accordance with the Uniform Contribution Among Joint Tortfeasors Act and paragraph (3) of this subsection. DEL. CODE ANN. tit. 18, § 3902(b) (1999 & Supp. 2002).

[33] *Humm v. Aetna Cas. & Sur. Co*., 656 A.2d 712, 716 (Del. 1995).

listed on the declaration page of Plaintiff Lewis' policy of insurance. In performing its analysis, the Court relies on the most recent, dispositive, case law encompassing the statutory interpretation of § 3902(b)(2) and (c) for guidance.

As stated earlier, the Delaware Supreme Court, in a succession of ever-developing case law, has diligently sought to define and clarify the intent and meaning of § 3902, in particular, the potential to "stack" uninsured/underinsured motorist benefits under § 3902(b). In *Nationwide Mutual Insurance Co. v. Williams*,[34] the Court reaffirmed its prior holding in *Nationwide Mutual Automobile Insurance Co. v. Peebles*, stating that, § 3902(b)(2) defines an

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[34] *Nationwide Mut. Ins. Co. v. Williams*, 695 A.2d 1124, 1126 (Del. 1997). The Delaware Supreme Court began its analysis in *Williams* by acknowledging prior precedent found in its two recent holdings examining the statutory provisions relating to uninsured and underinsured motorist coverage. In *Hurst v. Nationwide Mutual Insurance Co*., the Court decided the statutory operation of *uninsured* motorist coverage, holding that, "18 *Del. C.* § 3902(b) mandates that any reduction provided for by Section 3902(b)(3) must be deducted from the total amount of the insured claimant's bodily injuries and not from the limits of the insured claimant's uninsured coverage." *Id*. at 1126 (citing *Hurst v. Nationwide Mut. Ins. Co*., 652 A.2d 10, 13-14 (Del. 1995)). Expounding on these principles, the Delaware Supreme Court in *Hurst* held that the logical operation of § 3902 is reflected by its express terms as follows:

> First, an offer of uninsured coverage must be extended, not to exceed the basic policy limits. 18 *Del. C.* § 3902(b). Second, the damages recoverable for "bodily injury" from the uninsured carrier are quantified in Section 3902(b)(1) as the amount the insured is "legally entitled to recover from the driver of an underinsured motor vehicle." Third, Section 3902(b)(3) provides that the amount of any other "bodily injury" insurance available to the claimant must be exhausted (deducted) before the payment "for bodily injury" by the uninsured carrier pursuant to Section 3902(b)(1). Thereafter, to the extent that the innocently injured claimant has not been fully compensated for all the bodily injury damages that could legally be recovered from the uninsured/underinsured driver, the claimant is entitled to be paid for the uncompensated bodily injuries, up to the full policy limits of the uninsured coverage. 18 *Del. C.* § 3902(b)(1) and (3). *Hurst v. Nationwide Mut. Ins. Co*., 652 A.2d 10, 13-14 (Del. 1995).

After *Hurst*, the Court subsequently held, in *Nationwide Mutual Automobile Insurance Co. v. Peebles* (*Nationwide Mut. Auto. Ins. Co. v. Peebles*, 688 A.2d 1374 (Del. 1997)), that the logical operation of § 3902(b), as described in *Hurst*, also applied to *underinsurance* coverage. *Williams*, 695 A.2d at 1126. The *Peebles* Court held that, § 3902(b)(3) provides that the underinsured motorist coverage insurer does not have to make any payment until the limits of all bodily injury insurance policies or bonds available to the insured have been exhausted. *Peebles*, 688 A.2d at 1377-78. Further, "[S]ection 3902(b) mandates that any reduction provided for by § 3902(b)(3) must be deducted from the total amount of the insured claimant's bodily injuries and not from the limits of the insured claimant's underinsurance coverage." *Peebles*, 688 A.2d at 1378.

"underinsured driver" as a tortfeasor with liability policy *limits* that are less than the *limits* of the claimant's uninsured motorist coverage.[35] The definition of underinsurance in § 3902(b)(2), according to the Court in *Peebles*, operates as a prerequisite to a right of recovery from the claimant's underinsurance motorist policy.[36]

In *Williams*, as in Plaintiffs' case, only a single underinsurance policy was at issue. In recognition of the prior precedent established by the Court in *Hurst* and *Peebles*,[37] the Court in *Williams* found that, "[t]he focus of the unambiguous definition of underinsurance in § 3902(b)(2) is on the symmetry between the *limits* of the insured claimant's coverage and the *limits* of the tortfeasor's coverage, not the amount of the tortfeasor's coverage that remains *available* to pay the insured, after other "per accident" claims are paid pursuant to the tortfeasor's liability policy."[38] Accordingly, the *Williams* Court concluded that, since the limits of the tortfeasor's liability coverage applicable at the time of the accident were identical to the limits of the claimant's uninsured/underinsured motorist coverage, the tortfeasor was not an "underinsured" motorist within the meaning of Section 3902(b)(2).[39]

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[35] *Nationwide Mut. Auto. Ins. Co. v. Peebles*, 688 A.2d 1374, 1377 (Del. 1997) (emphasis added). *See also supra* note 32.
[36] *Id*. at 1378 (emphasis added).
[37] *See supra* note 34.
[38] *Williams*, 695 A.2d at 1127.
[39] *Id*.

Subsequently, in *Colonial Insurance Co. of Wisconsin v. Ayers*, the Delaware Supreme Court was presented with an issue of first impression: whether it is permissible to stack multiple UIM coverages (more than one policy) for the threshold purpose of establishing whether the tortfeasor is an underinsured motorist.[40] Generally, Delaware courts have found that attempts to limit stacking of underinsurance coverages violate public policy.[41] The Court began its analysis in *Ayres* by noting that a reading of Section 3902(b)(2) suggests that it authorizes the stacking of total liability coverage "under all bonds and insurance *policies*," and that the amount of that combined liability coverage is then compared to the amount of UIM coverage "stated in the declaration sheet of *the policy*."[42] In order to make the essential, determinative, calculation of whether a tortfeasor is "underinsured," in essence "to get the green light" to access UIM benefits, § 3902(b) requires that a comparison be made between the total of all liability insurance policies available on behalf of the tortfeasor and the <u>limits of each particular underinsured motorist policy</u> that the insured is attempting to access.[43]

In addressing the apparent dichotomy in the statutory language contained in § 3902(b)(2), i.e., the use of the plural term "policies" in referring to the aggregate

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[40] *Colonial Ins. Co. of Wis. v. Ayers*, 772 A.2d 177 (Del. 2001).
[41] *Hurst*, 652 A.2d at 12-13; *Frank v. Horizon Assurance Co*., 553 A.2d 1199, 1201 (Del. 1989).
[42] *Colonial Ins. Co. of Wis*., 772 A.2d at 180-81.
[43] *Id*. at 181 (emphasis added).

limit of bodily liability coverage, in juxtaposition with the singular term "policy," in referring to the limit of bodily liability coverage stated on the declaration sheet to be compared, the Court opined that the "[u]nambigous language of the statute demonstrates that [the] term "the declaration sheet of the policy" in Section 3902(b)(2) refers to each single UIM policy under consideration."[44] Based on this analysis of statutory construction, in light of the General Assembly's purposeful intent to distinguish between these terms, the Court concluded that § 3902(b)(2) precludes the stacking of UIM coverages for purposes of the threshold inquiry into whether the underinsured motorist coverage provided by any one UIM policy is triggered."[45]

Notwithstanding the fact that the plaintiff in *Ayers* attempted to lay claim to UIM coverages, where there existed *more than* one policy of insurance, the holding in *Ayers* is dispositive as to the case at bar as well. Because Plaintiffs are attempting to access UIM coverages derived from multiple vehicles insured by one policy, the Court's analysis does not end here. Plaintiffs' claim rests on the ability to invoke UIM coverages for each insured automobile contained in *one policy*. Therefore, the Court seeks further instruction as provided by our General Assembly in § 3902(c). In this provision of Delaware's uninsured/underinsured statute, a literal reading is most instructive:

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[44] *Id*.
[45] *Id*.

> The affording of insurance under this section to more than 1 person or to more than 1 vehicle shall not operate to increase the limits of the insurer's liability. When 2 or more vehicles owned or leased by persons residing in the same household are insured by the same insurer or affiliated insurers, *the limits of liability shall apply separately to each vehicle* as stated in the declaration sheet, *but shall not exceed the highest limit of liability applicable to any 1 vehicle*.[46]

The Delaware Supreme Court, as well as this Court, have acknowledged the limited application of § 3902(c), since, by its own terms, it does not purport to govern the question of multiple vehicle coverage through different policies.[47] Section 3902 was amended in 1984 to add subsection (c). The legislative purpose behind the amendment was to limit an insurer's exposure to liability under a single policy, which extended to more than one person or more than one vehicle.[48] As originally enacted, the second sentence of the paragraph in subsection (c) read: "[w]hen 2 or more vehicles are insured under 1 policy, the limits of liability shall apply separately to each vehicle as stated in the declaration sheet, but shall not exceed the highest limit of liability applicable to any 1 vehicle." In 1990, 18 *Del. C.* § 3902 (c) was amended by striking the second sentence in the paragraph and substituting the following: "[w]hen 2 or more vehicles owned or leased by persons residing in the same household are insured by the same insurer or affiliated

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[46] DEL. CODE ANN. tit. 18, § 3902(c) (1999 & Supp. 2002) (emphasis added).
[47] *Frank*, 553 A.2d at 1204; *Johnson v. Colonial Ins. Co. of Cal.*, 1997 WL 126994, at *2-3 (Del. Super. Ct.).
[48] *See* 64 Del. Laws c. 426 (1984); *Frank*, 553 A.2d at 1204.

insurers, the limits of liability shall apply separately to each vehicle as stated in the declaration sheet, but shall not exceed the highest limit of liability applicable to any 1 vehicle."[49]

In construing this statute, it is the duty of the Court to find the legislative intent and give it effect.[50] "When a legislative body . . . amends its prior enactment by a material change of language, the rule of statutory construction presumes that a change in meaning was intended."[51] Further, courts have considered assorted external factors in seeking out legislative intent; the "most legitimate factors are drafters' commentaries prepared before a bill is enacted by the legislature."[52] As well, "[t]he synopsis of a bill is a proper source from which to glean legislative intent."[53]

As originally submitted, Senate Bill No. 223 amending § 3902 (c) reflected a deliberate attempt to effectuate a comprehensive change in the ability to stack UM coverage by preventing such coverages.[54] It read, in pertinent part:

> Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured motorist or underinsured motorist coverage shall not be added to or stacked upon limits for such

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[49] 67 Del. Laws c. 180 (1990). *See also* S. B. 223, § 1, 135th Gen. Assem. (Del. 1990).
[50] *Murphy v. Bd. of Pension Trustees*, 442 A.2d 950, 951 (Del. 1982) (citing *Mosley v. Bank of Del.*, 372 A.2d 178, 179 (1997)).
[51] *Daniel D. Rappa, Inc. v. Engelhardt*, 256 A.2d 744, 746 (Del. 1969) (citing 1 Sutherland, Statutory Construction (3rd. Ed.), § 1930).
[52] *Siegman v. Columbia Pictures Entertainment, Inc.*, 576 A.2d 625, 634 (Del. Ch. 1989).
[53] *Carper v. New Castle County Bd. of Ed.*, 432 A.2d 1202, 1205 (Del. 1981).
[54] *Johnson*, 1997 WL 126994, at *3.

> coverages applying to other motor vehicles to determine the amount of coverage available to an insured injured in any one accident.[55]

The synopsis accompanying the bill lends further insight into the General Assembly's ultimate objective: "[p]resently there is an inequity in the Code defining uninsured/underinsured motor vehicle benefits between policies insuring multiple motor vehicles and those policies insuring only one motor vehicle. This bill eliminates that inequity."[56]

Thus, the final version of the enacted bill was much narrower in scope. In *Johnson v. Colonial Insurance Co. of California*, this Court found that an inclusive and literal reading of the amended subsection (c) denoted that Senate Bill No. 223, as enacted, was intended to prohibit stacking in those limited circumstances of policies for vehicles owned or leased by members of the same household that are insured by the same or affiliated insurers.[57] The Court reaffirms its prior holding in *Johnson*, as it is equally applicable herein.

In Plaintiffs' instance, the policy for personal automobile insurance was issued to Nicole Lewis, as the insured, with Nicole Lewis and Plaintiff Tiffany Lewis listed as insured, principle drivers. Although the record does not reflect if Nicole Lewis and Tiffany Lewis were residing in the same household at the time of

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[55] S. B. 223, 135th Gen. Assem. (Del. 1990).
[56] S. B. 223, 135th Gen. Assem. (Del. 1990), Synopsis.
[57] *Johnson v. Colonial Ins. Co. of Cal.*, 1997 WL 126994, at *3 (Del. Super. Ct.).

the accident, and/or which of these two individuals owned the insured vehicles, it is clear, within the meaning and intent of § 3902(c), that both the 1989 Nissan Maxima and the 1999 Mazda Protégé were owned or leased by members of the same family, and insured in one policy by the same insurer. Additionally, the Court notes that Plaintiffs did not specifically refute the applicability of § 3902(c) and/or § 3902(b)(2) in either their opposition to Defendant's motion or in their memorandum of law. The extent of Plaintiffs' argument as to why Delaware law does not preclude the stacking of UIM coverages centers on their contention that *Ayers* and *Johnson* are distinguishable because both of these cases involved attempts to stack or combine coverages from different policies. Because application of § 3902(b)(2) and (c) to Plaintiffs' claim of entitlement to UIM coverage benefits results in only one outcome, Plaintiffs complaint must fail.

To summarize, since § 3902(c) proscribes the stacking of UIM coverages in Plaintiffs' situation, and § 3902(b)(2) precludes the stacking of UIM coverages for the further purpose of the threshold inquiry into whether the UIM coverage provided by the Plaintiffs' single UIM policy of insurance is triggered, Defendant was not obligated to provide UIM coverage benefits. Consequently, Defendant did not breach its contract of insurance with the Plaintiffs. In Plaintiffs' instance, pursuant to § 3902(c), the limit of bodily injury liability coverage applicable to any one vehicle was $15,000/$30,000, separately, as defined in the declaration sheet,

with the limits of Defendant's liability not to exceed $15,000/$30,000. Plaintiffs cannot stack the separate bodily injury liability limits of each insured automobile to access a total liability limit of $30,000/$60.000. As in *Williams*, where the debate over UIM coverage derived from plaintiffs' single policy of insurance, in the instant case, the tortfeasor's limits of bodily injury liability coverage ($15,000/$30,000) applicable at the time of the accident was identical to the limits of the Plaintiff Lewis' uninsured/underinsured motorist coverage ($15,000/$30,000). Therefore, the tortfeasor was not an "underinsured" motorist within the meaning of § 3902(b)(2).

Although the Court need look no further than the definitive, unambiguous, language contained in § 3902(b)(2) and (c) in support of its findings, *Ayers* also instructs that Plaintiffs cannot attempt to circumvent § 3902(c) by claiming that the bodily injury liability limit applicable for the entire policy of insurance equals the summation of the bodily injury liability limit for each of the automobiles. *Ayres* serves to invalidate this mathematical equation because Plaintiffs simply may not combine the limits of the two automobiles to calculate the limit of the coverage under the policy. Plaintiffs argue that they should be allowed to pursue this facially rational line of reasoning because Plaintiff Lewis paid two premiums, and therefore, is entitled to twice the amount of bodily injury liability coverage. Plaintiffs' argument, however, ignores the fact that Plaintiff Lewis derived

multiple benefits for each automobile by paying a premium for insurance coverage on each of the automobiles, i.e. personal injury liability coverage, collision coverage, underinsurance coverage, medical coverage, property coverage, etc. The fact that Delaware statutory and case law prohibit stacking, or "doubling up" on UIM coverages, does not invalidate the need for these types of insurance coverages to Delaware residents. Nor can Plaintiffs seriously claim that they received nothing of value for their premiums, when both automobiles were covered under the policy and Defendant would have been obliged to pay benefits if either, or both cars, were involved in an accident with uninsured or underinsured tortfeasors.

Based on the Court's conclusion that Defendant's conduct complied with the statutory requisites set forth in 18 *Del. C.* § 3902(b)(2) and (c), it follows, *a priori*, that Defendant's conduct in handling the claim and its initial denial of benefits did not constitute bad faith. Unsuccessful with their claim that Delaware law sanctioned stacking of UIM benefits of the two automobiles, Plaintiffs' claim of bad faith cannot stand. In addition, Defendant's actions do not constitute "bad faith" within the parameters established in *Casson*.[58] Admittedly, if a claim arises concerning a breach of the terms of an insurance policy contract agreement, whether it concerns a dispute over coverage, or an exclusion or delay in payment of a claim, the remedy is properly one for breach of contract.[59] The implied

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[58] *Casson*, 455 A.2d at 369.
[59] *Tackett v. State Farm Fire & Cas. Ins. Co.*, 653 A.2d 254 (Del. 1995).

obligations of good faith and fair dealing underlying all contractual obligations are breached in those instances where an insurer fails to investigate or process a claim or delays payment in bad faith.[60] Pursuant to the standard set forth in *Casson*, "[i]n order to establish "bad faith" the plaintiff must show that the insurer's refusal to honor its contractual obligation was *clearly without any reasonable justification*."[61] The ultimate question in determining if an insurer's denial of benefits or liability coverage constituted actionable, lack-of-good-faith dealings, or, in the alternative, the presence of bad faith on the part of the insurer, is if there existed a set of facts or circumstances known to the insurer at the time the insurer denied liability or payment, which created a bona fide dispute, and therefore, a meritorious defense to the insurer's liability.[62]

In the Court's judgment, due to the confusion that existed over the timing of the removal of the 1999 Mazda Protégé from the policy of insurance by signed endorsement, Defendant had a meritorious defense in delaying payment to Plaintiffs of first party medical benefits and collision insurance coverage. The question of whether the vehicle involved in the accident was still insured at the time of the accident was a legitimate concern for the Defendant. These circumstances provided more than a "reasonable justification" for Defendant to

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[60] *Merrill v. Crothall-American, Inc*., 606 A.2d 96, 101 (Del. 1992).
[61] *Casson*, 455 A.2d at 369 (emphasis added); *see also Tackett*, 653 A.2d at 264.
[62] *Casson*, 455 A.2d at 369.

delay payment of first party medical benefits and collision insurance coverage to Plaintiffs. There existed at that time a "set of circumstances creating a bona fide dispute" between Plaintiffs and Defendant, as Plaintiffs and Defendant attempted to resolve the issue of the exact date the automobile was removed from the policy. Once Defendant conducted further investigation, the dilemma was ultimately resolved, and Plaintiffs were paid.

Since Plaintiffs' allegations of bad faith, Consumer Fraud Act violation, and civil conspiracy to defraud, all hinge on a finding that Defendant committed a breach of contract, these allegations are now moot. The only remaining count in Plaintiffs' complaint that the Court needs to consider is the allegation that Plaintiff Curtis should be entitled to UIM coverage benefits under Pennsylvania law, as well as under Delaware law. Having dispensed with the later contention, the Court applies the "most significant relationship" test as set forth in *Travelers Indemnity Co. v. Lake*[63] to determine if Plaintiff Curtis is entitled to UIM coverage under Pennsylvania law.

Pursuant to 18 *Del. C.* § 3901, *et seq.*, a policy of insurance providing for motor vehicle uninsured and/or underinsured coverage is a "casualty insurance contract." Delaware courts usually categorize lawsuits contesting insurance coverage as actions in contract, not in tort.[64] Except to the extent that statutory

[63] *Travelers Indemnity Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991).
[64] *Allstate Ins. Co. v. Spinelli*, 443 A.2d 1286 (Del. 1982).

restrictions or public policy dictate a different result, contractual principles govern claims by an insured arising under uninsured/underinsured coverage.[65] As such, Plaintiffs' alleged claim of UIM benefits entitlement dictate that the Court treat it as a contract action and adopt the "most significant relationship" test. The relevant contacts the Court need consider under this test are the following factors: 1) the place where the injury occurred; 2) the place where the conduct causing the injury occurred; 3) the domicil, residence, nationality, place of incorporation and place of business of the parties; and 4) the place where the relationship, if any, between the parties is centered.[66]

Evaluating these contacts according to their relative importance in recognition of the UIM coverage issue, reveals that Plaintiff Curtis' claim for UIM coverage benefits originates solely from Plaintiff Lewis' Delaware policy of automobile insurance. This is due, in large part, to the importance and consequence of the insurance policy being issued in Delaware (the UIM coverage provision of Plaintiff Lewis' policy arose out of Delaware law), by a corporation authorized to conduct business in Delaware, to a Delaware resident, and on behalf of a Delaware-registered automobile. In view of the above, Delaware clearly has the "most significant relationship" to the issue presented.

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[65] *Hurst*, 652 A.2d at 12-13.
[66] *Travelers*, 594 A.2d at 47.

As a final point, turning briefly to the defenses and arguments raised by Plaintiffs in their memorandum of law, the Court must deny Plaintiffs' request to rewrite the statute, to be read "in line with the general intent of the legislature." The Delaware Supreme Court has established as its standard in the construction of a statute, the search for legislative intent.[67] Where the intent of the legislature is clearly reflected by *unambiguous language* in the statute, judicial interpretation is not required, and the language itself controls.[68] If uncertainty exists, however, rules of statutory construction are applied. In applying these rules, the statute must be viewed as a whole, and literal or perceived interpretations, which yield mischievous or absurd results, are to be avoided.[69] In other words, Delaware courts are obliged, under settled rules of construction, to read a statute as a whole and to harmonize the parts thereof.[70] If in reading a statute, a literal interpretation leaves a result inconsistent with the general statutory intention, such interpretation must give way to the general intent.[71] That is not the situation here. Because § 3902 (b)(2) and (c) speaks in unambiguous terms, with no uncertainty to be found, the Court will not override the plain, unambiguous, language of the statute, substituting a literal meaning in favor of the general intent of the legislature.

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[67] *Richardson v. Wile*, 535 A.2d 1346, 1348 (Del. 1988).
[68] *See Evans v. State*, 516 A.2d 477, 478 (Del. 1986) (emphasis added).
[69] *Daniels v. State*, 538 A.2d 1104, 1110 (Del. 1988); *Burpulis v. Dir. of Revenue*, 498 A.2d 1082, 1087 (Del. 1985).
[70] *E.I. du Pont de Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952).
[71] *Home Ins. Co. v. Maldonado*, 515 A.2d 690, 695-96 (Del. 1986).

Additionally, because the Defendant is not obligated to provide UIM coverage benefits under the statute, there is no foundation for this Court to judicially reform the contract of insurance to "provide at least some measure of UIM protection" for the Plaintiffs. With respect to Plaintiffs' reliance on the doctrine of equitable estoppel, Plaintiffs cannot assert this defense because neither Plaintiff entered into a contract with the Defendant. Extending their reliance one step further, if they were to assert that they qualify as a third-party beneficiary under the insurance contract, they would have to demonstrate, as one element of the doctrine, that they were somehow induced to rely detrimentally on Defendant's conduct. There is no evidence of detrimental reliance in the record. Also, the doctrine is generally relied upon as a last resort, solely as a means of preventing an injustice, and does not trump the law.

In conclusion, both Delaware statutory and decisional law control the outcome of this issue. When considered together: 1) the text of the uninsured/underinsured provision contained in the declaration page of the insurance policy issued to Nicole Lewis, on behalf of Plaintiff Lewis; 2) the statutory requirement prohibiting stacking delineated in 18 *Del. C.* § 3902(b)(2) and (c); and 3) the applicable case law, all clearly mandate that Plaintiffs are prohibited from stacking the UIM coverage benefits associated individually with each of the two automobiles insured in the single policy of insurance for purposes

of the threshold inquiry into whether the UIM coverage provided by their policy is triggered. UIM coverage benefits become activated, and the Defendant obligated to provide them, only when the limits of liability of all bodily injury bonds or policies at the time of the accident total less than the uninsured limits provided in declaration page of Plaintiff Lewis' policy. Thus, Plaintiffs' UIM claim never matured, and Defendant cannot, as a matter of law, be deemed to have breached the insurance contract, and/or acted in bad faith, in denying payment of UIM benefits to Plaintiffs.

As both a matter of law and fact, Plaintiffs' complaint of breach of contract, allegedly committed by the Defendant, is decisively without merit. Even after accepting as true Plaintiffs' well-pleaded factual allegations, viewing them in a light most favorable to the Plaintiffs, and granting Plaintiffs the benefit of any inferences that one may fairly draw from the allegations, the Defendant has established that it is entitled to judgment as a matter of law. Moreover, Plaintiffs are not entitled to relief for their claims under any set of facts that could be proven in support of its allegations, i.e., Plaintiffs may not recover under any reasonably conceivable set of circumstances susceptible of proof under their complaint. As Plaintiffs may not recover under any "reasonably conceivable set of circumstances susceptible of proof," the Court finds that it is required to grant Defendant's motion.

Conclusion

For all of the foregoing reasons, Defendant's Motion For Judgment on the Pleadings is **GRANTED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

cc: John Bialecki, Esquire
Donald R. Kinsley, Esquire
Megan T. Mantzavinos, Esquire
Prothonotary