

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

**ROLANDO RAFAEL CASTILLO,** )

Plaintiff, )

v. )

**CLEARWATER INSURANCE** )

**COMPANY, a Delaware Corporation,** )

Defendant. )

C. A. No.: 06C-08-69 CLS

Date Submitted: November 1, 2006

Date Decided: November 21, 2006

*Upon Consideration of Defendant's Motion to Dismiss or in the Alternative  
for Stay of Proceedings*

**DENIED.**

**ORDER**

Natalie Wolf and Timothy E. Lengkeek, Esquires, Young Conaway Stargatt  
& Taylor, LLP, Wilmington, Delaware, Attorneys for Plaintiff.

Jeffrey A. Krawitz, Esquire, Silverman, Bernheim & Vogel, Philadelphia,  
Pennsylvania; Arthur M. Krawitz and Matthew R. Fogg, Esquires,  
Doroshow, Pasquale, Krawitz & Bhaya, Wilmington, Delaware, Attorneys  
for Defendant.

**SCOTT, J**

## **INTRODUCTION**

Defendant Clearwater Insurance Company (“Defendant”) has moved to dismiss or stay Plaintiff’s action in this Court. Defendant primarily brings this Motion because it has filed a prior, pending action in a New Jersey court. Since the parties have not yet conducted sufficient discovery as for a determination on the issues, Defendant’s Motion is **DENIED** without prejudice.

## **FACTS**

Plaintiff Rafael Castillo (“Plaintiff”) is an individual and citizen of the State of Delaware, residing in Newark, Delaware. Defendant Clearwater is a Delaware corporation that sold a \$1,000,000.00 policy to Plaintiff for a 2000 Volvo tractor trailer, which is registered under the laws of the State of Delaware.

Plaintiff had a “lease” arrangement for his tractor with International Motor Freight (“IMF”), a motor carrier with operations based in Newark, New Jersey. Plaintiff entered into this lease agreement in Newark, New Jersey, and he was “under the dispatch, auspices, and control of IMF at all

times”.<sup>1</sup> According to Defendant, Newark, New Jersey was the origin and destination for Plaintiff each 24 hour period.

On December 7, 2005, Plaintiff was driving his tractor trailer eastbound on Route 40 in Perryville, Maryland while in the course of his employment. Plaintiff pulled over to the shoulder of the road and exited the tractor to check a noise coming from the rear of it. Meanwhile, a car driven by Lucian Joseph Junto (“Mr. Junto”), and owned by Mary A. Gonce (“Ms. Gonce”) crossed into the shoulder. The vehicle hit Plaintiff and propelled him into the air causing him to sustain multiple injuries. Junto left the scene of the accident, but police later identified him as the driver.

At the time of the accident, Junto refused to take a blood alcohol test. “Upon information and belief,” Junto was intoxicated at the time of the accident.<sup>2</sup> However, police charged him with driving under the influence and failure to stop at the scene of an accident involving bodily injury. On June 15, 2006, Junto pled guilty to these charges.

Plaintiff subsequently settled a third party claim against Junto for policy limits of \$250,000. On June 27, 2006, Plaintiff contends that he “submitted in good faith to a ‘statement under oath’ at (Defendant)

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<sup>1</sup> Def. Mot. to Dismiss at 3.

<sup>2</sup> Pl. Compl. at 2.

Clearwater’s request for the purpose of determining factual issues regarding coverage under the Policy”.<sup>3</sup>

Less than three weeks later, on July 14, 2006, Defendant filed a Complaint in the Superior Court of the State of New Jersey, Essex County, seeking a declaration of insurance coverage for this accident.<sup>4</sup> On August 9, 2006, Plaintiff filed a Complaint in the Superior Court of Delaware for Underinsured Motorist Benefits and Declaratory Judgment “that such benefits are covered under the Clearwater policy”.<sup>5</sup>

Defendant Clearwater contends that Plaintiff filed his Complaint in Delaware after Plaintiff’s counsel had already received copies of the New Jersey action and obtained an extension of time within which to answer. Defendant, therefore, requests this Court to Dismiss or Stay the Delaware proceedings in favor of the previously filed New Jersey action. At the November 1, 2006 hearing, both parties stated that the New Jersey Court had not yet given a scheduling order and no discovery had taken place.

## **PARTIES’ CONTENTIONS**

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<sup>3</sup> Pl. Resp. to Def. Mot. to Dismiss at 2.

<sup>4</sup>Plaintiff contends that Defendant filed this Complaint before Plaintiff submitted a written demand for underinsured motorist benefits.

<sup>5</sup> Pl. Resp. to Def. Mot. to Dismiss at 2.

The arguments made by both parties here generally address whether New Jersey or Delaware law controls the insurance coverage in dispute. First, Defendant Clearwater argues that New Jersey law applies to the particular coverage in dispute under its' Non-Trucking Liability policy. According to Defendant, New Jersey law controls because New Jersey "is the citus of the lease agreement and dispatch/control component of the hauling performed by Mr. Castillo (Plaintiff)." <sup>6</sup> Plaintiff "Castillo's point of origin and destination each 24 hour period was Newark, New Jersey, and Castillo was under the auspices of IMF at all times relevant." <sup>7</sup>

In response, Plaintiff argues that Delaware law clearly governs all coverage disputes under a Delaware insurance policy. <sup>8</sup> Delaware law, therefore, applies to the dispute at issue here because Defendant Clearwater's insurance policy is a Delaware policy delivered to a Delaware resident.

At the hearing, Defendant Clearwater Insurance acknowledged that it sold Plaintiff a Delaware insurance policy. However, Defendant further argued that a New Jersey Court must decide whether the Delaware non-trucking liability policy is even triggered in the first place. Defendant,

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<sup>6</sup>Def. Mot. to Dismiss at 3.

<sup>7</sup> *Id.*

<sup>8</sup> Pl. Resp. to Def. Mot. to Dismiss at 4 (citing *Buzalek v. State Farm Mut. Auto Ins. Co.*, 2004 U.S. Dist. LEXIS 20576 (D.Del.); *Kent v. Nationwide Prop. & Cas. Ins. Co.*, 2004 Del. Super. LEXIS 70).

therefore, argued that a New Jersey Court would most appropriately address the issue at hand.

### STANDARD FOR STAY

As a general rule, a “Delaware action will not be stayed as a matter of right by reason of a prior action pending in another jurisdiction involving the same parties and the same issues.”<sup>9</sup> The Court will stay a proceeding depending on “considerations of judicial comity and efficient administration of justice where a competent court exists to do prompt and complete justice”.<sup>10</sup> While the Court must give deference to the original choice of forum, it has sound discretion to stay or dismiss a suit based on these considerations.<sup>11</sup> The Court will, therefore, take into account the facts and circumstances of each case.<sup>12</sup>

### DISCUSSION

As both the Delaware action and the New Jersey action clearly involve the same parties, the primary question here involves the identity of

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<sup>9</sup> *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Engineering Co.*, 263 A.2d 281, 283 (Del. 1970).

<sup>10</sup> *General Dynamics Corp. v. United Technologies Building Systems Co.*, 1991 Del. Super. LEXIS 397 at \*5 (citing *McWane*, 263 A.2d at 283 (Del. 1970)). This Court also notes that the traditional test for forum non conveniens does not apply where the parties raise the issue of a stay due to a prior action pending in another jurisdiction.

<sup>11</sup> *Baks v. Centra Inc.*, 1991 Del. Super. LEXIS 448 at \*6-7 (citing *McWane*, 263 A.2d at 283).

<sup>12</sup> *Id.*

issues. The Court generally finds that both Complaints involve a dispute over rights to the same insurance policy. The facts clearly play out that Defendant filed a Complaint in New Jersey seeking a declaration of insurance coverage for the December 7, 2005 accident. For the same accident, Plaintiff filed a Complaint in the Superior Court of Delaware to obtain Underinsured Motorist Benefits and Declaratory Benefits. Hence, Plaintiff would like to claim the right to Underinsured Motorist Benefits from his policy with Defendant, while Defendant would like to claim that it owes nothing under the policy.

Even though the Court may identify similar parties and issues here, “such identities are not always prerequisites to granting a motion to stay.”<sup>13</sup> The Court finds that it must choose to stay or dismiss the proceedings depending on whether New Jersey or Delaware law controls the coverage dispute here.

First, Plaintiff generally contends that, “Delaware law governs disputes involving insurance policies that are delivered to an insured domiciled here.”<sup>14</sup> In *Kent v. Nationwide Prop. & Cas. Ins. Co.*, the issue concerned a contract between an insurance company registered in Delaware

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<sup>13</sup> *Baks*, 1991 Del. Super. LEXIS 448 at \*10 (citing *Lanova Corp. v. Atlas Imperial Diesel Engine Co.*, 64 A.2d 419 (Del. Super. 1949); *Life Assurance Co. of Pa. v. Associated Inv. Int’l Corp.*, 312 A.2d 337 (Del. Ch. 1973)).

<sup>14</sup> Pl. Resp. to Def. Mot. to Dismiss at 4 (citing *Buzalek*, 2004 U.S. Dist. LEXIS 20576 (D.Del.); *Kent*, 2004 Del. Super. LEXIS 70).

(Defendant) and a Delaware citizen (Plaintiff).<sup>15</sup> The *Kent* Court decided whether an insured was entitled to recover uninsured benefits for non-economic damages from an accident that occurred in New Jersey.<sup>16</sup>

Ruling on a motion for summary judgment, the Court in *Kent* held that the “legislative intent of the Delaware statute governing uninsured claims requires that such benefits be available” even though the accident occurred in another state.<sup>17</sup> It based this ruling on the legislative purpose of 18 *Del. C.* §3902, which is “protecting people injured by tortfeasors carrying little or no insurance”.<sup>18</sup> Furthermore, the *Kent* Court cited to the public policy of this statute. 18 *Del. C.* §3902 was created “to permit a Delaware motorist to ‘take to the roads’ knowing ‘that a certain amount of protection will always be available’”.<sup>19</sup> As such, the Court found that Delaware law had “the most significant relationship to the issue presented”.

Here, the issue pertains to Delaware Underinsured Coverage as opposed to Delaware Uninsured Coverage as in *Kent*. Despite this difference, the same statute, 18 *Del. C.* §3902, governs both types of

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<sup>15</sup> 2004 Del. Super. LEXIS 70 at \*3.

<sup>16</sup> *Id.*

<sup>17</sup> *Kent*, 2004 Del. Super. LEXIS 70 at \*3.

<sup>18</sup> *Id.* at \*8 (citing *Deputula v. Horace Mann Ins. Co.* Del. Supr., No 362, 2002, Berger, J. (Feb. 13, 2004).

<sup>19</sup> *Id.* (citing *Adams v. Delmarva Power & Light Co.*, 575 A.2d 1103, 1107 (Del. 1990); *Travelers Indemnity Co. v. Lake*, 594 A.2d 38, 43 quoting *Aetna Casualty & Surety Co. v. Kenner*, 570 A.2d 1172, 1174 (Del. 1990)).



coverage. A similar analysis, therefore, applies as to whether Delaware law controls the contract policy between Plaintiff Castillo and Defendant Clearwater Insurance Company. Applying the public policy stated above, the Court finds that Delaware also has a significant relationship to the issue presented here. Plaintiff Castillo, like the plaintiff in *Kent*, is a Delaware resident seeking to gain benefits under his policy with a Delaware insurance company. While the accident occurred in Maryland, Plaintiff has a right to know “that a certain amount of protection will... be available.”

Based on this case law, Delaware law controls the issue of Castillo’s insurance policy with Defendant Clearwater Insurance. In addition, Defendant also raised the issue of a non-trucking liability policy for the first time at the November 1, 2006 hearing.<sup>20</sup> The parties have not yet conducted sufficient discovery with regard to this issue. As such, the Court cannot make a determination as to whether the non-trucking liability policy plays a significant role in the matter at hand.

Delaware courts generally hold that, “in circumstances such as these, the Court should weigh all the pertinent facts and circumstances before deciding whether to grant a stay.”<sup>21</sup> Delaware has the most significant

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<sup>20</sup> The Court notes that neither motion submitted by the parties makes any reference to the non-trucking liability policy.

<sup>21</sup> *Baks*, 1991 Del. Super. LEXIS 448 at \*11 (citing *Life Assurance Co.*, 312 A.2d at 341).

relationship to the present issue. Because of the circumstances in this case, the Court finds that it must deny Defendant's Motion to Dismiss or in the Alternative for a Stay of Proceedings without prejudice.

### **CONCLUSION**

For the foregoing reasons, Defendant's Motion to Dismiss or in the Alternative for Stay of Proceedings is, hereby, **DENIED** without prejudice.

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**