

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ST. PAUL FIRE & MARINE)
INSURANCE COMPANY,) No. 49, 2001
)
Co-Defendant Below,) Court Below: Superior Court
Appellant,) of the State of Delaware in
) and for New Castle County
v.)
) C.A. No. 98C-12-312
METROPOLITAN PROPERTY)
AND CASUALTY INSUANCE)
COMPANY,)
)
Co-Defendant Below,)
Appellee.)

Submitted: January 23, 2002

Decided: April 3, 2002

Before **WALSH, BERGER**, and **STEELE**, Justices.

ORDER

This 3rd day of April 2002, on consideration of the briefs of the parties, it appears to the Court that:

1) On July 30, 1996 an automobile driven by Mark Traenor struck a DART bus owned by the Delaware Transit Corporation (DTC) and driven by Ronald Loper. Following the accident, Loper filed a claim for personal injury against Traenor. Loper and Traenor entered into a settlement for an amount equal to Traenor's insurance policy limits. Loper then filed suit in the Superior Court against both Metropolitan Property and Casualty Insurance Company and St. Paul

Fire and Marine Insurance Company under the provisions of both policies covering underinsured motorists. Metropolitan provided underinsured motorist coverage for Loper personally and St. Paul provided similar coverage to DTC. The coverage of the St. Paul policy extended to Loper who operated the DART bus within the scope of his employment with DTC.

2) In October 2000, after hearing argument from the parties, the Superior Court judge ruled in chambers that DTC's underinsured motorist policy with St. Paul provided the primary coverage for Loper's claim. After the judge issued his ruling, Metropolitan and St. Paul reached a joint agreement with Loper regarding the amount he was entitled to recover under the underinsured motorist provisions of the two policies. The parties then signed and filed a Stipulation of Partial Dismissal with the court. The parties agreed to the dismissal of Loper's claims against St. Paul and Metropolitan, while the insurers' cross-claims remained active until the Superior Court judge determined the priority of coverage between the insurers.

3) In his ruling, the Superior Court judge found the opinion of the United States District Court in *Krutz v. Harleysville*¹ to be persuasive in determining priority of coverage between the two applicable policies. In that instance, under facts similar to those before us, the District Court judge applied the general rule

¹ 766 F. Supp. 219 (D. Del. 1991).

that the policy covering the owner of the vehicle is primary and the operator's uninsured and underinsured motorist coverage is secondary.² We find that the trial judge appropriately relied on the District Court's opinion as a correct statement of the law.

4) St. Paul's argument that the operator's insurance should be considered the primary coverage is based on an analysis of the legislative intent behind the statutory requirements for uninsured and underinsured motorist coverage. In support of its contention, St. Paul seizes upon earlier language of this Court in which we stated that uninsured and underinsured motorist coverage "is properly considered personal to the insured and not vehicle specific."³ However, our statement in *Frank v. Horizon Assurance Co.*⁴ regarding the personal nature of uninsured and underinsured motorist coverage is inapplicable to the facts of this appeal. Indeed, we made that statement in the context of specific circumstances in which the insurer tried to limit coverage to the vehicle in which the claimant traveled. In *Frank*, the insurer sought to deny uninsured motorist coverage on the basis of an exclusion applicable to other vehicles owned by the insured. We emphasized the personal nature of uninsured/underinsured coverage because a

² *Id.* at 225.

³ *Frank v. Horizon Assurance Co.*, 553 A.2d 1199 (Del. 1989).

⁴ *Id.*

vehicle-specific interpretation would have violated the express intent of the legislature to provide innocent persons coverage.

5) In *Graham v. State Farm Mut. Auto. Ins. Co.*, we specifically limited our holding in *Frank* to those cases in which an insurer attempts to reduce the scope of coverage in violation of the statute.⁵ In the instant case, neither St. Paul nor Metropolitan attempts to deny or limit Loper's recovery under their policy exclusions. We have found the public policy behind Delaware's requirement that insurers make available uninsured and underinsured motorist coverage to all members of the public to be driven by the General Assembly's intent to protect innocent persons from unknown and impecunious tortfeasors.⁶ Where, as here, the public policy is not threatened, we find no reason to deviate from the general standard of assigning primary coverage to the vehicle policy.

6) St. Paul also argues that the "Other Insurance" clause in its policy dictates that St. Paul pay, at most, a pro rata amount of the claim between the insurers. That clause states in part:

This agreement provides excess insurance for autos that you don't own that *also have primary coverage*. Excess insurance applies after other collectible uninsured and underinsured motorist insurance has been used up.

When this agreement and other collectible uninsured or underinsured motorists insurance apply to a loss *on the same primary*

⁵ 565 A.2d 908, 911 (Del. 1989).

⁶ *Frank*, 553 A.2d at 1201.

or excess basis, we'll pay that portion of the loss equal to what our limit of coverage bears to the total available limits. (Emphasis added).

The plain language of this provision indicates that it is only applicable if both policies offer *primary* coverage. To this end, it serves only to limit St. Paul's exposure when dual primary coverage exists. However, the Superior Court's ruling clearly states that St. Paul's coverage is primary and Metropolitan's coverage is secondary. Nothing in St. Paul's "Other Insurance" provision can be read to rebut this conclusion. The language of this provision would only be applicable if the Superior Court judge had found that the two insurers shared primary coverage. The Superior Court judge correctly found that they did not.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and hereby is, **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Justice