

MC/

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: CV-10-646
JAW - CUM - 3/22/2012

ROBERT A. WORTHLEY

Plaintiff,

v.

LESLIE ARSENAULT and
PATRIOT INSURANCE COMPANY

Defendants,

STATE OF MAINE
Cumberland ss. Clerk's Office
MAR 22 2012
RECEIVED

ORDER ON DEFENDANT'S MOTION TO DISMISS

Defendant Leslie Arsenault moves for an order dismissing the Plaintiff, Robert Worthley's claim against her, pursuant to M.R. Civ. P. 41(a)(2). Defendant, Patriot Insurance Company filed a timely objection to Arsenault's motion to dismiss and the Plaintiff filed a response to Patriot's objection.

BACKGROUND

This case arises from a vehicle collision that occurred in February 2010 between vehicles operated by Worthley and Arsenault. At the time of the accident Mr. Worthley was covered by an underinsured motorist policy issued by defendant Patriot Insurance Company ("Patriot") and Arsenault was covered by a State Farm policy with a \$50,000 limit. The plaintiff, Mr. Worthley, brought this action against Arsenault alleging negligence and against Patriot on an uninsured motorist claim. Mr. Worthley has settled his claim against Ms. Arsenault for \$35,000 and now she seeks to be dismissed from the case.

DISCUSSION

Patriot does not object to the dismissal of Arsenault based on the settlement between the Plaintiff and Arsenault. The basis of its objection is as to this case proceeding solely in its own name where the question at trial will be the liability of Arsenault.¹ Patriot requests that the case proceed with Arsenault being the sole named defendant because of the policy against introducing evidence of insurance in negligence cases.

There is a strong policy in Maine that “insurance in negligence cases is immaterial, prejudicial, and not admissible.” *Deschaine v. Deschaine*, 153 Me. 401, 407, 140 A.2d 746 (1958). M.R. Civ. P. 17(a) creates an exception to the rule requiring a claim to be prosecuted in the name of the real party in interest when an insurer is subrogated to a claim of an assured. Furthermore, the Maine Rules of Evidence make the fact of liability insurance inadmissible to prove that person acted negligently or wrongly. M.R. Evid. 411. However, the Law Court has explicitly authorized insured people to bring an action directly against their insurance company in an uninsured motorist claim without first having to obtain a judgment against the uninsured. *Greenvall v. Maine Mutual Fire Ins. Co.*, 1998 ME 204, ¶ 8, 715 A.2d 949. Unlike a typical insurance defense, where the insurer has a contractual obligation to defend the insured, in an uninsured motorist claim the insurer no longer is hidden behind the veil of the allegedly at-fault driver.

¹ The parties also raise the question of whether Patriot should be entitled to a \$50,000 credit (Arsenault’s policy limit) or a \$35,000 credit (the amount of the settlement) against any jury award in favor of the Plaintiff. This issue, although discussed by the parties, is not before the court on Defendant Arsenault’s motion to dismiss and is not addressed herein.

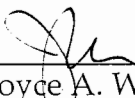
Although Patriot's liability is dependent upon Arsenault's liability, Patriot is a named defendant under a claim separate and independent from the negligence claim being dismissed. The court sees no reason to hide the fact that there is an uninsured motorist claim against the only remaining defendant.

The entry is:

Defendant Arsenault's Motion to Dismiss the Plaintiff's claim against her is GRANTED. This case will proceed against Defendant Patriot Insurance Company as the sole remaining named defendant.

The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATE: 3/21/12



Joyce A. Wheeler
Justice, Superior Court

Plaintiff Robert A Worthley- Peter Clifford
Esq
Defendant Arsenault-J William Druary Esq
Defendant Patriot Insurance --Jonathan Brogan
Esq