JUDITH M FLYNN,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 03-01,915
	:	
STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE CO.,	:	
	:	
Defendant	:	MOTION FOR SUMMARY JUDGMENT

Date: November 10, 2004

OPINION and ORDER

Before the Court for determination is the Motion for Summary Judgment of Defendant State Farm Mutual Automobile Insurance Company (hereafter "State Farm") filed July 20, 2004. The Court will grant the Motion.

The above-captioned matter is a declaratory judgment action. Plaintiff Judith M. Flynn (hereafter "Flynn") filed a Declaratory Judgment Complaint on November 14, 2003. Flynn seeks a determination that she was occupying a vehicle covered by an insurance policy issued by State Farm, and would thereby be entitled to the underinsured motorist benefits of the policy. State Farm filed an Answer to the Complaint on March 4, 2004. The Answer contained a counterclaim for declaratory judgment. State Farm seeks a determination that it is not liable to Flynn for any underinsured motorist coverage under the insurance policy because Flynn was not occupying the insured vehicle at the time of the accident.

This case arises out of an incident that occurred on March 1, 2003. On that date, Flynn and her mother, Patricia Hartzell, went to the Lycoming Mall to shop. Flynn drove herself and her mother to the Lycoming Mall in her mother's automobile. Hartzell's car was

covered by an automobile insurance policy issued by State Farm. Flynn and her mother arrived at the Lycoming Mall around 10:00 a.m. They exited the vehicle and proceeded to shop at Value City, which is a chain store within the Lycoming Mall. By around 12:30 p.m., Flynn and her mother had made several purchases. The two decided to have lunch in the Lycoming Mall. Instead of carrying the packages with them, Flynn decided to take the packages out to the car before the two had lunch.

Flynn went out to the car while her mother waited in Value City. Flynn deposited the packages in the trunk and started walking back to Value City, so that she and her mother could go have lunch. Flynn had traversed a distance roughly about the width of two or three parking spaces when a vehicle driven by Vincent Grazulis struck her. Flynn sustained serious injuries. As a result of the accident, Flynn had to have her right leg amputated above the knee.

The State Farm policy on the Hartzell vehicle provides underinsured motorist (hereafter "UIM") benefits. To be eligible for those benefits, the claimant must have been occupying the insured vehicle at the time of the accident. The policy defines "occupying" as "in, on, entering or alighting from" a vehicle.

In the Motion, State Farm contends that Flynn cannot claim UIM benefits under Hartzell's policy. This is because Flynn was not occupying the vehicle at the time of the accident. While recognizing that the Pennsylvania Supreme Court in ***Utica Mutual Insurance Company v. Contrisciane***, 473 A.2d 1005 (Pa. 1984), set forth the legal standard to be used in determining if an individual was occupying a vehicle, State Farm asserts that before that analysis is undertaken it must be shown that the claimant had a continuing relationship with the

vehicle to be evaluated by the Court under the factors. Absent that relationship, there is no need to engage in the analysis because the claimant cannot be considered to have been occupying the vehicle at the time of the accident. State Farm argues that Flynn did not have a continuing relationship with the vehicle at the time of the accident, as she had ended that relationship when she exited the vehicle at 10:00 a.m. to go shopping. State Farm asserts that Flynn had alighted from the vehicle and had not been in the vehicle for close to three hours.

If the Court finds that there was a continuing relationship with the vehicle, State Farm argues that Flynn cannot meet the four criteria to establish occupancy of the vehicle at the time of the accident. State Farm contends that the Hartzell car was not causally connected to Flynn's injury as it was not involved in the accident and did not contribute to her injury. State Farm contends that accident did not occur within reasonably close geographic proximity to the Hartzell car, as there was a minimum distance of three parking space widths from the accident scene to the Hartzell car. State Farm asserts that Flynn was not vehicle orientated at the time of the accident as she was headed back to Value City to have lunch with her mother at the time of the accident. Finally, State Farm contends that Flynn was not engaged in a transaction essential to the use of the vehicle at the time of the accident because she was in pursuit of her own personal needs and not undertaking any duties or obligations incident to the use of the vehicle when she was walking back to Value City. On this same point, State Farm cites to ***Huber v. Erie Insurance Exchange***, 587 A.2d 333 (Pa. Super. 1990), in support of the argument that Flynn cannot be considered to have been engaged in a transaction essential to the use of a vehicle when she was placing the packages into the trunk of the vehicle because the loading of materials into a vehicle is not a transaction essential to the use of a vehicle.

In response, Flynn asserts that she was occupying her mother's vehicle at the time of the accident, and thereby covered under her mother's automobile insurance policy. Flynn contends that she can meet all the ***Contrisciane*** criteria for occupancy. Flynn contends that there was a causal connection between the injury and her use of the vehicle as she had just finished depositing packages in the trunk of the vehicle before the accident. Flynn asserts that she was in a reasonably close geographic proximity to her mother's vehicle as she was but the width of two or three parking stall spaces away from the vehicle at the time of the accident. Flynn argues that she was vehicle orientated rather than sidewalk or highway orientated at the time, since she was moving away from the vehicle after having used it for one of its intended purposes by placing the packages in the trunk. Flynn finally argues that she was engaged in a transaction essential to the use of the vehicle at the time of the accident, since she was using the trunk as a repository for items that would be transported by the vehicle.

The broad issue that confronts the Court is whether Flynn, by virtue of her "occupying" the Hartzell vehicle at the time of the accident, is covered by the State Farm automobile insurance policy. The resolution of this issue will turn on how Pennsylvania law has defined the term occupancy. For the reasons discussed *infra*, the Court concludes that Flynn was not vehicle oriented at the time of the accident, and therefore, she was not occupying the vehicle. Consequently, Flynn is not entitled to UIM benefits under the State Farm policy.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the

moving party is entitled to judgment as a matter of law." ***Rauch v. Mike-Mayer***, 783 A.2d 815, 821 (Pa. Super. 2001); ***Godlewski v. Pars Mfg. Co.***, 597 A.2d 106, 107 (Pa. Super. 1991). The movant has the burden of proving that there are no genuine issues of material fact. ***Rauch***, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record " '… in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.'" ***Godlewski***, 597 A.2d at 107 (quoting ***Hower v. Whitmak Assoc.***, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that "… are free and clear from doubt …" and any "… doubt must be resolved against the moving party." ***Garcia v. Savage***, 586 A.2d 1375, 1377 (Pa. Super. 1991).

The interpretation of an insurance policy is a question of law. ***Petika v. Transcon. Ins. Co.***, 855 A.2d 85, 88 (Pa. Super. 2004); ***Fisher v. Harleysville Ins. Co.***, 621 A.2d 158, 159 (Pa. Super. 1993), *app. denied*, 637 A.2d 285 (Pa. 1983). The Pennsylvania Supreme Court has adopted certain rules of law "[w]hen interpreting insurance policies where coverage is extended to those "occupying" an insured vehicle at the time of the accident …." ***Petika***, 855 A.2d at 88. The Supreme Court has adopted the following criteria for determining whether an individual was occupying a vehicle at the time of the accident:

> (1) there is a causal relation or connection between the injury and the use of the insured vehicle;
>
> (2) the person asserting coverage must be in reasonably close geographic proximity to the insured vehicle, although the person need not be actually touching it;
>
> (3) the person must be vehicle oriented rather than highway or sidewalk oriented at the time; and

(4) the person must also be engaged in a transaction essential to the use of the vehicle at the time.

Contrisciane, 473 A.2d at 1009. But before a court must engage in a ***Contrisciane*** criteria analysis, the claimant must meet a prerequisite. ***Downing v. Harleysville Ins. Co.***, 602 A.2d 871, 875 (Pa. Super. 1992). The prerequisite requires that the claimant must have had a relationship with the insured vehicle prior to the accident so as to warrant an inquiry into whether the relationship with the vehicle at the time of the accident could be classified as occupancy. This type of relationship exists where the claimant had been in the vehicle or intended to enter the vehicle. *See, **Ibid***.

Flynn has satisfied this prerequisite. Flynn had been in the insured vehicle prior to the accident since she was the individual who drove the vehicle to the Lycoming Mall approximately three hours before the accident. The relationship Flynn had with the insured vehicle prior to the accident is not the type of relationship where the claimant was found to have failed to satisfy the prerequisite. In those situations, the insured vehicle was a second vehicle, which the claimant had not been in or had not intended to enter. *See, e.g.*, ***Downing***, 602 A.2d at 875 (Insured vehicle was a disabled vehicle to which the claimant stopped to render aid .); ***Aetna Cas. & Sur.Co. v. Kemper Ins. Co.***, 657 F. Supp. 213 (E.D.Pa. 1987) (Insured vehicle was a disabled vehicle to which the claimant stopped to render aid .). Flynn had a relationship with the insured vehicle prior to the accident sufficient to warrant an inquiry into whether her relationship with the vehicle at the time of the accident could be classified as occupancy.

An inquiry into Flynn's relationship with the Hartzell vehicle at the time of the accident does not lead to a conclusion of occupancy. At the time of the accident, Flynn was not vehicle oriented. In assessing whether a claimant is vehicle oriented, it is the claimant's

purpose for being outside the vehicle when the accident occurred that controls. ***Petika***, 855 A.2d at 90. An individual can be considered to be vehicle orientated if she is engaged in an activity directed towards the insured vehicle. *See*, ***Curry v. Huron Ins. Co.***, 781 A.2d 1255, 1258-59 (Pa. Super. 2001), *app. denied*, 797 A.2d 913 (Pa. 2002). Two cases are illustrative of why Flynn cannot be considered vehicle oriented at the time of the accident.

The first is ***McGilley v. Chubb & Son, Inc.***, 535 A.2d 1070 (Pa. Super. 1987). In ***McGilley***, the plaintiff was a cab driver who had pulled into a line of cabs at a cab stand in front of a hotel. 535 A.2d at 1071. The plaintiff planned to pick up a quick fare before returning to meet his partner for lunch at a restaurant near the hotel. The plaintiff had waited in the line for twenty minuets, and then turned off the ignition, turned off the dome light, which indicated whether the cab was in service, and exited the cab. The plaintiff then walked up to the cab parked in front of him to "bum a cigarette" from the driver. ***Ibid***. While the plaintiff was talking to the driver, a bus approached from the rear. The plaintiff attempted to make it to the curb before the bus reached him, but he could not. The plaintiff lost his leg as a result of the accident. ***Ibid***.

One of the issues in the case was whether, at the time of the accident, the plaintiff was occupying the cab he had been driving. ***McGilley***, 535 A.2d at 1074. The Superior Court held that the plaintiff was not occupying the cab at the time of the accident. The Superior Court reached this conclusion, in part, because the plaintiff was not vehicle oriented at the time of the accident. ***Id***. at 1075. The plaintiff was not vehicle oriented at the time of the accident because he had severed his relationship with the cab by the time of the accident. The Superior Court reached this conclusion based upon the following facts. The plaintiff had

turned off the ignition and exited the vehicle for the purpose of getting a cigarette from the driver ahead of him. After the plaintiff had obtained this cigarette, it was his intention to go to the nearby restaurant to purchase a pack of cigarettes and have lunch with his partner. ***Ibid.*** These facts demonstrate that the plaintiff's purpose for being outside the vehicle at the time of the accident was unrelated to the vehicle.

The second case is ***L.S. v. David Eschbach, Jr., Inc.,*** 822 A.2d 796 (Pa. Super. 2003), *app. granted*, 844 A.2d 1216 (Pa. 2004).[1] In ***Eschbach***, a minor child exited a school bus and made her way onto the sidewalk. 822 A.2d at 799. The child walked down the sidewalk with the intention of crossing the street at the intersection. As the child was attempting to cross the street at the intersection, an automobile struck her. ***Ibid***.

One of the issues in the case was whether the minor child was occupying the school bus at the time of the accident. The Superior Court held that the child was not occupying the bus, as she was not vehicle oriented at the time of the accident. ***Eschbach***, 822 A.2d at 806. Instead, the child was sidewalk oriented, as the minor child had walked away from the bus, passing two or three other busses before reaching the corner, and was in the process of crossing the street when the automobile struck her. ***Id***. at 805. At the time of the accident, the minor child was engaged in an activity that was not directed toward the insured vehicle.

It is clear that Flynn was not occupying the insured vehicle because she was not vehicle oriented. As in ***McGilley,*** Flynn's purpose for being outside the car was unrelated to the

[1] The Pennsylvania Supreme Court granted the Petitions for Allowance of Appeal on a limited basis. The appeal was confined to address only the following issue: "Whether the Superior Court erred in concluding that section 1705 of the Motor Vehicle Financial Responsibility Law, 75 Pa. S.C. §1705, which restricts the recovery of individuals who have limited tort insurance coverage, applies not only to motor vehicle drivers and passengers, but also to pedestrians." ***Eschbach***, 844 A.2d 1216.

vehicle. Her purpose for being outside the vehicle was to return to the Lycoming Mall to have lunch with her mother. Similarly to ***Eschbach***, Flynn was not engaged in an activity directed toward the vehicle. Arguably her return to the vehicle and placement of the packages in the trunk could be considered an activity directed toward the vehicle. However, that activity had ended by the time the accident occurred. Flynn had deposited the bags in the trunk of the vehicle, was headed toward the Lycoming Mall, and was two to three parking spaces away from the vehicle when the accident occurred. By the time of the accident, Flynn had ended her interaction with the vehicle and was walking back to the Lycoming Mall with the intended purpose of having lunch with her mother. Since Flynn was not vehicle oriented at the time of the accident she was not occupying the vehicle at the time of the accident. Since Flynn was not occupying the vehicle, she is not covered by the State Farm insurance policy on the vehicle.

Accordingly, the Motion for Summary Judgment is granted.

O R D E R

It is hereby ORDERED that the Motion for Summary Judgment of Defendant State Farm Mutual Automobile Insurance Company filed July 20, 2004 is GRANTED.

Further, it is hereby DECLARED that Judith M. Flynn was not occupying the vehicle of Patricia Hartzell on March 1, 2003. Therefore, Flynn is not entitled to the underinsured motorist benefits of the State Farm automobile insurance policy covering the Hartzell vehicle.

BY THE COURT:

William S. Kieser, Judge

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