

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ERIE INSURANCE EXCHANGE,
Plaintiff,

vs.

AMOS L. DODSON,
Defendant.

: No. 19-1710
:
:
:
: CIVIL ACTION - LAW
:
: *Motion for Partial*
: *Summary Judgment*

ORDER

AND NOW, following argument held March 15, 2021, on Plaintiff Erie Insurance Exchange's Motion for Partial Summary Judgment, the Court hereby issues the following ORDER.

Background

On October 8, 2019, Plaintiff Erie Insurance Exchange ("Erie Insurance" or "Plaintiff") filed a Complaint in Declaratory Judgment ("Complaint"). Pursuant to the facts alleged in the Complaint, on May 21, 2017, Defendant Amos L. Dodson ("Mr. Dodson" or "Defendant"), while operating a Harley-Davidson 100 E Series motorcycle ("subject motorcycle" or "motorcycle"), was involved in a collision in which the other driver was tortuously liable. Mr. Dodson co-owned the subject motorcycle with Donald Ward Miller ("Mr. Miller"), and the motorcycle was insured to Mr. Miller under GEICO Indemnity Company insurance policy number 4321-90-56-73 ("GEICO Policy").¹ Under the GEICO Policy, Mr. Dodson would qualify for underinsured/uninsured ("UM/UIM") benefits.

In addition to filing a claim under the GEICO Policy, Mr. Dodson also filed a claim for UIM benefits under Erie Insurance policy number Q08 0163767 ("Erie Policy"), issued to Mr. Dodson's mother, Carol C. Houtz ("Ms. Houtz").² One vehicle is listed on the Erie Policy, a 2001 Ford Escape XLT. In Count I of the Complaint, Plaintiff seeks a determination Mr. Dodson was not a "resident" of Ms. Houtz's household at the time of the accident as defined under the Erie Policy, and therefore would not be subject to coverage under the Erie Policy. In Count II, Plaintiff requests that if Mr. Dodson is found to be a resident, that his claim be dismissed as Ms. Houtz waived the stacking of

¹ The GEICO Policy is attached as Exhibit A to the Complaint.

benefits under the Erie Policy.³ Defendant filed an Answer to the Complaint on January 8, 2020.

Following the close of discovery, on January 29, 2021, Plaintiff filed a Motion for Partial Summary Judgment, accompanied by a supportive brief. Defendant filed an Answer and Brief in Opposition to the Motion on March 10, 2021. The Court held argument on the Motion for Partial Summary Judgment on March 15, 2021.

Motion for Partial Summary Judgment

Within the Motion for Partial Summary Judgment, Plaintiff seeks a judgment on Count II as a matter of law, arguing that Ms. Houtz knowingly and voluntarily rejected inter-policy stacking of UIM benefits. Plaintiff cites the Pennsylvania Supreme Court's decision in *Craley v. State Farm Fire and Casualty Co.* as being directly on-point. In *Craley*, the insured signed a waiver of stacking form containing identical language to the waiver of stacking form signed by Ms. Houtz on August 8, 2016 (as such language is mandated by 75 Pa.C.S. § 1738(d)). The provision titled "Insured Coverage Limits" provides:

By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy for **myself and members of my household** under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. **I knowingly and voluntarily rejected the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.**⁴

Plaintiff emphasizes that in *Craley*, the Supreme Court held that this language was sufficient to put the insured on notice that they were waiving inter-policy stacking, i.e., stacking between multiple policies. The *Craley* Court held that with only one vehicle insured under the policy at issue, the insured could not reasonably believe that the reduction in insurance premiums was related to a waiver of intra-policy stacking, i.e.,

² The Declarations Page and Erie Policy are respectively attached as Exhibits B and C to the Complaint.

³ The Uninsured/Underinsured Motorists Coverage Endorsement is attached as Exhibit D to the Complaint.

⁴ Motion for Partial Summary Judgment ¶ 29 (Jan. 29, 2021). The Waiver of Stacking is attached as Exhibit D to the Motion for Partial Summary Judgment.

stacking among multiple vehicles insured under a single policy.⁵ The Superior Court recently affirmed in *Erie Insurance Exchange v. Petrie* that such language would put an insured with only one vehicle covered under a policy on notice that they were waiving inter-policy stacking. However, the *Petrie* Court held that that such language would be insufficient to put the insured with a multi-vehicle policy on notice that he or she was waiving inter-policy stacking.⁶

Further, Plaintiff alternately argues that the Court should find that Defendant is not entitled to UIM benefits under the Erie Policy as a matter of law because he was occupying a “miscellaneous” vehicle as defined under the statute. The Exclusion section of the Erie Policy explicitly provides that the policy does not apply to:

[D]amages sustained by “**anyone we protect**” while “**occupying**” or being struck by a “**miscellaneous vehicle**” owned or leased by “**you**” or a “**relative**,” but not insured for Uninsured or Underinsured Motorist Coverage under this policy.⁷

A “miscellaneous vehicle” includes, *inter alia*, a motorcycle under the policy.⁸

Within his Answer and Brief in Opposition, Defendant asserts that the Court would be acting prematurely in dismissing this case on summary judgment, as there is currently pending before the Pennsylvania Supreme Court the case of *Donovan v. State Farm Mutual Auto. Insurance, Co.* On July 24, 2020, the Supreme Court issued the following order granting a petition for certification of the following questions of law:

1. Is a named insured’s signing of the waiver form set out at 75 Pa.C.S § 1738(d) sufficient to waive inter-policy stacking of underinsured motorist benefits under Pennsylvania’s Motor Vehicle Financial Responsibility Law, where the policy insures more than one vehicle at the time the form is signed?
2. If the answer to Question 1 is no, is a household vehicle exclusion contained in a policy in which the named insured did not validly waive inter-policy stacking enforceable to bar a claim made by a resident relative who is

⁵ Motion for Partial Summary Judgment ¶ 30 (citing *Craley v. State Farm Fire & Cas. Co.*, 895 A.2d 530 (Pa. 2006)).

⁶ Motion for Partial Summary Judgment ¶¶ 40-42 (citing *Erie Ins. Exch. v. Petrie*, 242 A.3d 915, 920 (Pa. Super. 2020), reargument denied (Jan. 19, 2021)).

⁷ Motion for Partial Summary Judgment ¶ 22 (quoting Complaint (Ex. C – Uninsured/Underinsured Motorists Coverage Endorsement at pg. 2)).

⁸ Motion for Partial Summary Judgment ¶ 23 (citing Complaint (Ex. C – Erie Policy at pg. 2)).

injured while occupying a vehicle owned by him and not insured under the policy under which the claim is made?

3. If the answers to Questions 1 and 2 are no, is the coordination-of-benefits provision in the Automobile Policy nonetheless applicable, such that it limits ... recovery of underinsured motorist benefits under the policy ..., or does the lack of a valid waiver of inter-policy stacking render that provision inapplicable?⁹

Defendant further asserts that the waiver of stacking form signed by Ms. Houtz was not clear that Ms. Houtz would be waiving vehicles outside the scope of the policy. Defendant specifically cites the following language as ambiguous as to inter-policy waiver:

By signing this waiver, I am rejecting stacked limits of uninsured motorist coverage **under the policy** for myself and members of my household under which limits of coverage available would be the sum of limits for each motor vehicle insured **under the policy**. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.¹⁰

Defendant next argues that in *Gallagher v. GEICO Indemnity Co.*, the Pennsylvania Supreme Court held that a “household vehicle exclusion” contained in a motor vehicle insurance policy violated section 1738 of the Motor Vehicle Financial Responsibility Law because the exclusion impermissibly acted as a *de facto* waiver of stacked UM/UIM coverages.¹¹ Defendant argues that allowing Plaintiff to deny UIM benefits to a motorcycle, a motor vehicle as defined in the Financial Responsibility Laws of Pennsylvania, would effectively act as a “household vehicle exclusion” waiver of stacking, in violation of *Gallagher*.¹² Finally, Defendant asserts within his Brief in Opposition to the Motion for Partial Summary Judgment that Plaintiff has failed to produce evidence showing that Ms. Houtz’s premium was in fact reduced after she signed the stacking waiver.

⁹ Answer of Defendant Dodson to Plaintiff’s Motion for Partial Summary Judgment ¶ 29 (March 10, 2021) (“Defendant’s Answer”) (quoting *Donovan v. State Farm Mut. Auto. Ins. Co.*, 237 A.3d 395 (Pa. 2020) (per curiam)).

¹⁰ Defendant’s Brief in Opposition to Plaintiff’s Motion for Partial Summary Judgment at pg. 3 (March 10, 2021) (“Defendant’s Brief in Opposition”) (quoting Motion for Partial Summary Judgment (Ex. D – Waiver of Stacking)).

¹¹ Defendant’s Brief in Opposition at pg. 4 (citing *Gallagher v. GEICO Indem. Co.*, 201 A.3d 131 (Pa. 2019)).

Standard of Review

A court may enter summary judgment after the close of the relevant pleadings if the court determines that there is no dispute as to material fact or if the record contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.¹³ “In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.”¹⁴ However, the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but must file a response to the motion for summary judgment within thirty days identifying: “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or; (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.”¹⁵ The Court will only grant summary judgment “where the right to such judgment is clear and free from all doubt.”¹⁶

Analysis

After reviewing the parties’ arguments and the relevant caselaw, the Court first holds that *Gallagher* is not controlling to this case. Under the facts of *Gallagher*, Brian Gallagher (“Mr. Gallagher”) purchased two insurance policies from GEICO, one policy covering his motorcycle and the other policy covering two automobiles. In both instances, Mr. Gallagher opted for stacked UM/UIM coverage and paid the requisite premiums. However, an amendment to Mr. Gallagher’s automobile policy included a “household vehicle exclusion” that provided: “This coverage does not apply to bodily injury while occupying or from being struck by a vehicle owned or leased by you or a relative that is not insured for Underinsured Motorists Coverage under this policy.”¹⁷ Mr. Gallagher was later involved in an accident while operating his motorcycle, for which he was able to obtain UIM coverage under the motorcycle policy. However, GEICO denied

¹² See Defendant’s Brief in Opposition at pg. 4.

¹³ *Petrina v. Allied Glove Corp.*, 46 A.3d 795, 798 (Pa. Super. 2012).

¹⁴ *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001).

¹⁵ Pa.R.C.P. 1035.3(a)(1)-(2).

¹⁶ *Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (quoting *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007)).

¹⁷ *Gallagher v. GEICO Indem. Co.*, 201 A.3d 131, 133 (Pa. 2019).

UIM coverage under the automobile policy based on the “household vehicle exclusion.” The Pennsylvania Supreme Court held on appeal that the “household vehicle exclusion” provision was invalid “[a]s inconsistent with the unambiguous requirements of Section 1738 of the MVFRL under the facts of this case inasmuch as it acts as a *de facto* waiver of stacked UIM coverage provided for in the MVFRL, despite the indisputable reality that Gallagher did not sign the statutorily-prescribed UIM coverage waiver form.”¹⁸ The facts of *Gallagher* are clearly distinguishable, as in that case, the insured had opted for stacked coverage and in this case, it is undisputed that the insured did not.

Defendant’s reliance on *Donovan* is also misplaced, as *Donovan* addresses the same issue raised in *Petrie*, i.e., whether an insured signing a waiver of stacking on a multi-vehicle policy is properly on notice that they are waiving not only intra-policy stacking, but inter-policy stacking as well. Here, there was only one vehicle on Ms. Houtz’s Erie Policy.

Conversely, as Plaintiff contends, *Craley* is directly on-point. In *Craley*, Jayneann M. Craley (“Ms. Craley”) was killed in an accident attributable to the negligence of the other driver. Her husband, Randall Craley (“Mr. Craley”), obtained UIM benefits under a State Farm policy where Ms. Craley was the named insured. However, when Mr. Craley attempted to obtain UIM benefits under the State Farm policy where he was the named insured, his claim was denied based on his signing of a stacking waiver using language identical to the waiver in this case.¹⁹ The Court held that even though the waiver referred to “this policy,” because Mr. Craley had only one vehicle covered under his policy, there was no reasonable expectation that the waiver applied to intra-policy stacking, and therefore held that Mr. Craley had made a knowing waiver of inter-policy stacking.²⁰

To find that the waiver of stacking did not apply to inter-policy stacking in this instance, the Court would not only have to disregard controlling precedent from our Supreme Court, but would effectively need to hold that a party may not waive inter-policy stacking under any circumstance, in contravention of 75 Pa.C.S § 1738(d). Further, Defendant’s argument that Mr. Dodson co-purchased the subject motorcycle

¹⁸ *Gallagher*, 201 A.3d at 138.

¹⁹ See *Craley*, 895 A.2d at 533-34.

after Ms. Houtz signed the stacking waiver is irrelevant, as the motorcycle was never added to the Erie Policy, nor did Ms. Houtz attempt to change the terms of her policy despite the fact that nothing precluded her from doing so. Lastly, Defendant's last-hour argument that Ms. Houtz's premium may not have, in actuality, been reduced after she signed the stacking policy should have been raised as an affirmative defense in new matter. Plaintiff had no notice that Ms. Houtz's payment of reduced premiums was in dispute, and to entertain such an argument now would deprive Plaintiff the opportunity to investigate this issue by discovery. Certainly, as the Complaint sought declaratory judgment, in part, on Ms. Houtz's signing of the stacking waiver, Defendant could have conducted his own discovery as to whether Ms. Houtz consequently paid reduced premiums if he had any question as to this issue.

Conclusion

Pursuant to the foregoing, Plaintiff's Motion for Partial Summary Judgment is GRANTED. As ruling in favor of Plaintiff on Count II of the Complaint disposes of all of the relevant issues in this case, the Court hereby ENTERS A DECLARATORY JUDGMENT in favor of Plaintiff. The Court holds that Plaintiff had no duty or obligation to tender UIM benefits under the Erie Policy to Defendant as a result of the May 21, 2017 motor vehicle accident.

IT IS SO ORDERED this 29th day of March 2021.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

cc: Douglas Engelman, Esq.

Ryan W. French, Esq.

500 Grant St., Suite 2300, Pittsburgh, PA 15219

Gary Weber, Esq. / Lycoming Reporter

²⁰ See *Craley*, 895 A.2d at 541-42.