

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

January 10, 2006

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RE: **Steven R. Donovan vs. Kevin Johnson, et al.**  
**C.A. No. 05C-01-004-ESB**

Date Submitted: November 2, 2005

Dear Counsel:

This is my decision on defendant Nationwide Insurance Company's ("Nationwide") motion for partial summary judgment. I have denied Nationwide's motion for the reasons set forth herein.

**STATEMENT OF THE CASE**

Plaintiff Steven Donovan ("Donovan") was driving his truck when it was involved in a collision with a van driven by Defendant Kevin Johnson ("Johnson"). Donovan was pulling a trailer loaded with a bobcat. The collision knocked the bobcat off the trailer and on to the road. Donovan was injured and the truck, trailer and bobcat were damaged. Johnson did not have insurance. Donovan is covered by an insurance policy issued by Nationwide. Donovan seeks coverage from Nationwide for his damages. Nationwide admits that it must cover Donovan's injuries and damage to his truck, but it denies that it must cover damage to his trailer and bobcat.

## STANDARD OF REVIEW

Summary Judgment may be granted only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.<sup>1</sup> Once the moving party meets its burden, then the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>2</sup> Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.<sup>3</sup> If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of her case, then summary judgment must be granted.<sup>4</sup> If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate.<sup>5</sup>

## DISCUSSION

Donovan's claim against Nationwide is based on 18 Del. C. § 3902(a), the uninsured motor vehicle coverage statute. It states, in part, that the policy must cover "persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or hit-and-run

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<sup>1</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>2</sup> *Id.* at 681.

<sup>3</sup> Super. Ct. Civ. R. 56(3); *Celotex Corp. V. Catrett*, 477 U.S. 317, 322-23 (1986).

<sup>4</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

<sup>5</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

vehicles for bodily injury, sickness, disease, including death, or personal property damage...”<sup>6</sup> The statute then goes on to state that the “amount of coverage to be so provided shall not be less than the minimum limits for bodily injury and property damage liability insurance provided for under the motorist financial responsibility laws of this State.”<sup>7</sup> The uninsured motorist statute dictates the minimum amount of coverage which insurers must provide to their insured who purchase uninsured motorist coverage.<sup>8</sup> Any insurance policy provisions which reduce or limit uninsured motorist coverage to less than that prescribed by § 3902 are void as a matter of public policy.<sup>9</sup>

Nationwide’s defense to coverage is based on the language of its insurance policy, which provides, in part, that there is coverage for Donovan’s automobile and its contents. Nationwide argues that the bobcat and trailer are not covered because they are neither an automobile or contents. Nationwide’s interpretation of its policy is correct, but the issue is whether or not Nationwide’s policy provides the minimum coverage required by section 3902(a).

I have concluded that Nationwide’s uninsured provision is in conflict with the minimum statutory requirements set forth in section 3902(a) because it reduces the minimum coverage afforded to Donovan. Applying the insurance policy as written would exclude the bobcat and trailer from coverage under the uninsured provision in Nationwide’s policy. Under the statutory minimum, the bobcat and trailer would be covered because they constitute personal property that was damaged by

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<sup>6</sup> 18 Del. C. § 3902(a).

<sup>7</sup> 18 Del. C. § 3902(a)(2).

<sup>8</sup> 18 Del. C. § 3902.

<sup>9</sup> *Mohl v. Doe*, 1995 WL 339099 at \*2 (Del. Super.), *citing State Farm Mut. Auto. Ins. Co. v. Washington*, 641 A.2d 449, 451 (Del. 1994).

an uninsured motorist. I must apply the statute as written. It specifically states that “no policy insuring against liability” can be issued unless coverage is provided for “personal property damage resulting from the ownership, maintenance or use of such uninsured or hit-and-run motor vehicle.”<sup>10</sup> If the Legislature did not intend the statute to provide coverage to personal property damaged by an uninsured motorist, then it would not have included it in the statute.

There are no material disputes of fact. Nationwide does not contest its liability toward Donovan. Nationwide only contests the extent of its liability. The uninsured motorist provision clarifies this by mandating minimum coverage. The minimum coverage covers damage to personal property caused by an uninsured motorist. The trailer and bobcat were personal property that were damaged by Johnson, an uninsured motorist. As such, Nationwide is liable to Donovan for damage to both the trailer and bobcat up to the uninsured levels provided for in his insurance policy.

### **CONCLUSION**

Nationwide’s motion for partial summary judgment is denied.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

cc: Prothonotary’s Office  
Kevin Johnson  
Henry Johnson  
H & L Transport

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<sup>10</sup> 18 Del. C. § 3902(a).