IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DEBORA MINNER, as Administrator of the Estate of Kori Lynn Minner, DEBORA MINNER, individually and HARRY MINNER, individually,	:	**C.A. No: 09C-03-032 (RBY)**
Plaintiff,	:	
v.	:	
STATE FARM MUTUAL AUTOMOBILE and ROBERT PARDEE,	:	
Defendants.	:	

Submitted: December 18, 2010
Decided: February 3, 2010

Upon Consideration of Defendant State Farm's Motion to Dismiss
GRANTED

OPINION AND ORDER

Joseph M. Jachetti, Esq., Kenneth R. Schuster & Associates, P.C., Wilmington, Delaware for Plaintiff.

Colin M. Shalk, Esq., Casarino, Christman & Shalk, Wilmington, Delaware for Defendant State Farm.

Cynthia G. Beam, Esq., Newark, Delaware for Defendant Robert Pardee.

Young, J.

SUMMARY

Defendant State Farm Mutual Automobile Insurance Company ("State Farm") moves this Court to grant summary judgment[1] in its favor. This suit arises out of the death of minor Kori Lynn Minner ("Decedent") on December 15, 2007. Plaintiffs Deborah and Harry Minner, the parents of Kori Lynn Minner ("Plaintiffs"), seek Uninsured Motorist ("UM") benefits from State Farm. Because Decedent's death did not arise out of the operation, maintenance, or use of the uninsured motor vehicle, State Farm's Motion is well-taken, and is **GRANTED**.

FACTS

On December 15, 2007, Decedent was driving an automobile on Fox Hunters Road. At the same time, hunters were lawfully parked on the side of Fox Hunters Road, adjacent to Defendant Robert Pardee's ("Pardee") property. The hunters were hunting on Pardee's property. The hunters had Pardee's permission to use the property.

The alleged theory of the Plaintiffs is that the hunters were attempting to load their dogs into the vehicle when one dog escaped into the road, causing Decedent to swerve in an attempt to avoid hitting the animal. However, the only evidence presented by either side reveals that the dogs were nowhere near the vehicle at the time of the accident. In fact, they were fifty yards away.

[1] Because the record has been supplemented with discovery, State Farm converted its Motion to Dismiss, originally filed May 15, 2009, to a Motion for Summary Judgment pursuant to Super. Ct. Civ. R. 12(b).

Whatever the catalyst for her evasive action, Decedent ultimately lost control of her vehicle. She ran off the road, hitting a tree. This collision caused personal injuries, which eventually led to Decedent's death.

Plaintiffs were the owners and holders of an automobile insurance policy with State Farm. This policy was in effect on December 15, 2007. The applicable UM section of the policy states:

> "[w]e will pay damages for ***bodily injury*** and ***property damage*** an insured is legally entitled to collect from the owner or driver of an ***uninsured motor vehicle***. The ***bodily injury*** or ***property damage*** must be caused by accident arising out of the operation, maintenance[,] or use of an ***uninsured motor vehicle***." (emphasis in the original policy)

Decedent was an insured for purposes of this UM coverage at the time of the incident giving rise to the claim.

State Farm contends that, in view of these facts, there is simply no evidence that Decedent's accident arose out of the operation, maintenance, or use of the unidentified hunters' vehicle.

STANDARD OF REVIEW

When considering a motion for summary judgment, the Court must determine if there are genuine issues of material fact.[2] If there are none, and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.[3] If, when considering the facts in a light most favorable to Plaintiff, the Court determines that no reasonable trier of fact would find in favor of Defendant, summary judgment

[2] Super. Ct. Civ. R. 56(c).

[3] *Id.*

is also appropriate.[4]

DISCUSSION

The seminal case in Delaware for determining the availability of UM coverage is *Nationwide Gen. Ins. Co. v. Royal*.[5] In *Royal*, the plaintiff, Amy Royal, was struck by a bullet fired from a moving vehicle. She recovered from the insurer of the vehicle from which the bullet was fired. She then filed a claim against her own uninsured/underinsured motorist carrier. The applicable policy provided that the damages must result from an accident arising out of the ownership, maintenance, or use of the vehicle.

In analyzing Royal's claims for coverage, the Delaware Supreme Court formally adopted the *Klug* test, as articulated by the Minnesota Supreme Court in *Continental Western Insurance Co. v. Klug*.[6] The three-step *Klug* test requires a court to determine:

> (1) whether the vehicle was an "active accessory" in causing the injury - i.e., "something less than proximate cause in the tort sense and something more than the vehicle being the mere situs of the injury;"
> (2) whether there was an act of independent significance that broke the causal link between use of the vehicle and the injuries inflicted; and
> (3) whether the vehicle was used for transportation purposes.[7]

The *Royal* court held that the shooter's motor vehicle was not an active accessory to the plaintiff's injuries . It found, instead, that the use of the motor vehicle was merely

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[4] *Matas v. Green*, 171 A.2d 916, 918 (Del. Super. June 7, 1961).

[5] 700 A.2d 130 (Del. 1997).

[6] 415 N.W.2d 876 (Minn. 1987).

[7] *Royal*, 700 A.2d at 132 (citing *Klug*, 415 N.W.2d at 878).

fortuitous.[8] The *Royal* court reasoned that the incident could easily have occurred without the motor vehicle. Furthermore, it stated that the use of the vehicle was not necessary to the occurrence.

Utilizing the *Klug* test, Delaware courts have considered a myriad of cases with UM/UIM claims.[9] All of the outcomes in these cases have hinged upon the nexus between the injuries sustained and the extent of the uninsured/underinsured vehicle's involvement. "To constitute an accident involving [a] motor vehicle, a causal connection is required between the use of the vehicle and the injury."[10] "The injury must originate from, be incidental to, or have some connection with the use of a motor vehicle."[11] A vehicle must be more than the "mere situs of an injury."[12] Additionally, an accident simply occurring in the "vicinity of an

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[8] *Id.* at 132-33.

[9] *State Farm Mut. Auto. Ins. Co. v. Buckingham*, 919 A.2d 1111 (Del. 2007) (although first and third *Klug* factors satisfied, plaintiff denied coverage because an independent criminal act - an assault - broke the causal link between the use of the vehicle and the injuries inflicted); *Sanchez v. Am. Indep. Ins.Co.,* 886 A.2d 1278 (Del. 2005) (plaintiff, who was accidentally shot in the head while riding as a passenger in his mother's vehicle, denied coverage because the injuries did not arise out of the use of a motor vehicle); *Bryant v. Progressive No. Ins.* Co., 2008 WL 4140686 (Del. Super. Ct. July 28, 2008) (insurer's motion for summary judgment denied because court found all three *Klug* factors satisfied where motorist was injured by a motor vehicle in a carjacking); *Carroll v. Nationwide Mut. Ins. Co.*, 2008 WL 2583012 (Del. Super. Ct. June 20, 2008) (although first and third *Klug* factors satisfied, plaintiff denied coverage because an independent criminal act - an assault - broke the causal link between the use of the vehicle and the injuries inflicted); *Am. Int'l South Ins. Co. v. Morrow*, 2008 WL 3321331 (Del. Super. Ct. May 2, 2008) (automobile insurance company was not required to defend or indemnify an insured in an underlying action brought by automobile passenger who was bitten by a dog inside an automobile).

[10] *Wisnewski v. State Farm Mut. Auto. Ins. Co.*, 2005 WL 697945, at *1 (Del. Super. Ct. Feb. 14, 2005).

[11] *Id.* (citing *Gray v. Allstate Ins. Co.*, 668 A.2d 778, 780 (Del. Super. 1995)).

[12] *Id.* at *2.

[uninsured/underinsured] vehicle" will not be deemed to satisfy the requisite causal connection.[13]

There does not appear to be any evidence that the hunters' uninsured vehicle was involved in Decedent's accident. Jonathan Miller ("Miller'), the only eyewitness to the accident, testified in his deposition that the hunting dogs never escaped onto the roadway, that the dogs were fifty yards from the parked car, and that the hunters were neither near the dogs nor trying to load the dogs into their vehicle at the time of the accident. Miller further testified that, in his non-expert opinion, the only causes of the accident were Decedent's reaction to the dogs on the side of the road and her speeding.

Both parties agree that Miller was the only witness to the accident. According to Miller, no animals or people were near the vehicle at the time of Decedent's accident. The first prong of the *Klug* test cannot be satisfied if the uninsured vehicle is completely uninvolved in the accident. The first prong requires that the vehicle is an "active accessory" in causing the injury. Even assuming, *arguendo,* that the unidentified hunters were loading the dogs into the vehicle, that action does not make the vehicle an active accessory. It merely indicates that the vehicle may have been used, at some point, as a means of arriving at the scene. It was not, however,

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[13] *Id*.; see, e.g., *Nationwide Gen. Ins. Co. v. Royal*, 700 A.2d 130, 133-34 (Del. 1997) (plaintiff, struck by a bullet in a drive-by shooting while asleep inside her trailer home, was not entitled to underinsured motorist benefits); *Oggenfuss v. Big Valley Assoc.*, 1996 WL 453319, at *1 (Del. Super. Ct. May 3, 1996) (plaintiff who slipped and fell between the curb and a parked vehicle not covered by PIP); *Carter v. Nationwide Ins. Co.*, 1992 WL 240479, at *1-3 (Del. Super. Ct. Aug. 26, 1992) (plaintiff not covered for injury sustained while walking to a convenience store after fueling his vehicle); *Dick v. Koutoufaris*, 1990 WL 106182, at *5 (Del. Super. Ct. July 19, 1990) (plaintiff who was raped in her vehicle was not entitled to no-fault benefits); *Selected Risks Ins. Co. v. Penn. Mfrs. Ass'n Ins. Co.*, 1986 WL 13107, at *2 (Del. Super. Ct. June 20, 1986) (disabled child left in a school bus not covered by PIP insurance).

necessary to the occurrence in any material way.

Plaintiff challenges the Court to extrapolate on the idea of transportation. Plaintiff asks the Court to infer that, but for the vehicle transporting the unidentified hunters and their dogs to the location, Decedent's accident would not have occurred. The vehicle, therefore, was an "active accessory" because it brought the hunters and the dogs to the scene. The Court finds this argument too attenuated to satisfy the first prong.

With the first prong of the *Klug* test unsatisfied, a claim for uninsured benefits cannot proceed. All three prongs must apply in order to present a successful claim.

CONCLUSION

There is no evidence to suggest that the uninsured vehicle was an "active accessory" to Decedent's injuries or death. Its presence at the time of Decedent's accident was merely fortuitous. As a result, uninsured motorist coverage is unavailable under the *Klug* test. Accordingly, State Farm's Motion for Summary Judgment is **GRANTED**.

SO ORDERED this 3rd day of February, 2010.

/s/ Robert B. Young
J.

cc: Opinion Distribution
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