

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

**FRED J. PAOLETTI, and
MARY E. PAOLETTI**

Plaintiffs,

v.

C.A. No. 03C-05-039 CLS

**EMILY N. GOUGE, JOHN GOUGE,
SUSAN G. GOUGE, HARLEYSVILLE
INSURANCE COMPANY, and
NATIONWIDE MUTUAL INSURANCE
COMPANY,**

Defendants.

Submitted: October 8, 2003
Decided: January 29, 2004

On Defendant Harleysville Insurance Company's
Motion to Dismiss for Failure to State a Claim.
DENIED.

MEMORANDUM ORDER

Beverly L. Bove, Esquire and Vincent J.X. Hedrick, II, Esquire, Wilmington,
Delaware, Attorneys for Plaintiffs.

John A. Elzufon, Esquire, Elzufon Austin Reardon Tarlov & Mondell, P.A.,
Wilmington, Delaware, Attorney for Defendants Emily Gouge, John Gouge, and
Susan G. Gouge.

Ransford Palmer, Jr., Esquire, Newark, Delaware, Attorney for Defendant Nationwide Mutual Insurance Company.

Joseph A. Gabay, Esquire and Neil R. Lapinsky, Esquire, Swartz Campbell & Detweiler, Wilmington, Delaware, Attorneys for Defendant Harleystown Insurance Company.

SCOTT, J.

I. INTRODUCTION

Defendant Harleysville Insurance Company (“Harleysville”)¹ has filed a Motion to Dismiss for Failure to State a Claim. Upon a review of Harleysville’s Motion, Plaintiffs’ response and oral argument, this court concludes the motion should be **DENIED**.

Plaintiffs Fred and Mary Paoletti (“the Paolettis”), in their Opposition to Harleysville’s Motion, offered to file a Motion to Amend the Complaint to set forth more particular facts in accordance with count One of the complaint. The Paolettis renewed this offer at oral argument for Harleysville’s Motion. Upon a review of the record, the court will not require the Paolettis to file a formal Motion to Amend and hereby **GRANTS** the Paolettis’ leave to Amend the Complaint.

II. BACKGROUND

The Paolettis were injured when their car was hit from behind by car driven by Defendant Emily Gouge (“Emily”). At the time, Emily was driving a loaner car because her own car was at the dealer’s for repair. The Paolettis made a claim against Emily and were informed the only insurance coverage was the Universal

¹ Harleysville Insurance Company is now doing business as Pennland Insurance Company. As the company was known by the Harleysville name at the time of the events at issue, it will be referred to as “Harleysville.”

Underwriters coverage of the dealer. The Paolettis signed a release based on this representation, receiving the maximum amount available under that coverage.²

The Paolettis subsequently filed a UIM³ claim with their own insurer, Nationwide Mutual Insurance Company (“Nationwide”). Nationwide denied coverage, saying the Paolettis had failed to pursue insurance coverage available to Emily through her parents’ (John and Susan G. Gouge, “the Gouges”) household coverage with Harleysville. The Paolettis then initiated this suit against Emily, the Gouges, Harleysville and Nationwide.

Harleysville has now moved to dismiss the claim against them, bringing statute of limitations and inadequate service of process defenses.

III. STANDARD OF REVIEW

Delaware has clear standards for granting a Rule 12(b)(6) Motion to Dismiss. The court must accept all well-pled allegations as true.⁴ The court must then apply a broad sufficiency test: whether a plaintiff may recover under any “reasonable conceivable set of circumstances susceptible of proof under the complaint.”⁵ Dismissal will not be granted if the complaint “gives general notice

² The Paoletti’s each received \$15,000.00.

³ UnderInsured Motorist.

⁴ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁵ *Id.* (internal citation omitted).

as to the nature of the claim asserted against the defendant.”⁶ Further, a complaint “will not be dismissed unless it is clearly without merit, which may be either a matter of law or fact.”⁷ “Vagueness or lack of detail,” standing alone, is insufficient to dismiss a claim.⁸ If there is a basis upon which the plaintiff may recover, the motion is denied.⁹

IV. DISCUSSION

Harleysville argues the Paolettis failed to bring suit against it with the applicable statute of limitations (two years). The accident between the Paolettis and Emily occurred January 16, 1996 and the present complaint was filed May 6, 2003. Harleysville states the tolling provisions of 18 Del. C. § 3914 are inapplicable to extend the time to bring suit. At oral argument, Harleysville also argued inadequate service of process, as the Paolettis attempted service of Emily at the Gouges’ Pennsylvania address, even though they had knowledge Emily was living in Delaware.

Harleysville argues 10 Del. C. § 8119 requires that any action for personal injury damages be brought within two years from when the injuries were

⁶ *Diamond State Tel. Co. v. University of Delaware*, 269 A.2d 52, 58 (Del. 1970).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, see also *Spence v. Funk*, 396 A.2d at 968.

sustained.¹⁰ The Paolettis counter that the time of discovery rule is applicable here. The Paolettis note they did not know of the possible existence of other than the Universal Underwriters coverage until their own insurance company denied coverage. The instant suit was brought within the statute of limitations period of that discovery.

The court finds the time of discovery rule applicable in the case at bar. The court finds, therefore, that 10 Del. C. § 8119 does not bar the bringing of this law suit.

Both parties draw the court's attention to 18 Del. C. § 3914. The Paolettis rely on 18 Del. C. § 3914 as tolling the statute of limitations period. Additionally, the Paolettis point to a lack of case law stating plaintiffs must notify a defendant's insurance company within the two-year statute of limitations period or their claim is barred. A letter from counsel for Harleysville¹¹ implies § 3914 means the Paolettis must have informed Harleysville of their claim within the applicable statute of limitations.

¹⁰ "No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained. . ." 10 Del. C. § 8119.

¹¹ D.I. 12 (Plaintiffs' Opposition to Defendant's Motion to Dismiss), App. A, p. 20.

The court finds 18 Del. C. § 3914 is not applicable here. That statute states that if a claim is filed with an insurance company, they (the insurance company) must notify the claimant of any applicable statutes of limitations. The issue here appears to be that no one notified Harleysville of any claim based on the Gouges' policy until the instant suit was filed and the Paolettis' attorney contacted Harleysville. The statute does not address whether there is a time limit for filing a claim against an insurer. The statute only addresses that an insurer must notify a claimant of any applicable statute of limitations. The letter from Harleysville's counsel does not correctly state the law. The Harleysville policy may well have had some limitation of when a claim must be made after an accident, but that is not in the record.

The court finds that to require plaintiffs to notify defendants' insurance company of a claim would mean that all a defendant would need to do to defeat any claim would be to fail to notify their insurer of a potential claim during the two-year statute of limitations period. This is against public policy as it would mean little, if any, recovery for plaintiffs under such circumstances.

The court also finds there is a factual issue regarding whether Emily was covered under the Gouges' insurance policy at the time of the accident. In their Answer to the Complaint, Emily is stated as living in Delaware and the Gouges in Pennsylvania. The court finds where Emily lives now is not the issue, but rather

where she was living at the time of the accident and/or whether she was covered under the Gouges' insurance policy at that time.

At oral argument, Harleysville argued service of process was inadequate because the Paolettis sent service for Emily to the Gouges' Pennsylvania address when they had knowledge Emily was living in Delaware at the time. The court finds this defense unavailing. The Paolettis produced proof that service for Emily was accepted at the Gouges' address.¹²

The Paolettis also requested leave to amend their complaint to add particular averments of fraud and/or misrepresentation. Superior Court Civil Rule 15 requires leave of the court to amend the pleadings at this point in the proceedings. Such "leave shall be freely given when justice so requires."¹³ The court finds this is such an instance when justice so requires. The Paolettis are given 10 days from the filing of this opinion to amend the complaint. Defendants may respond with 10 days thereafter.

¹² D.I. 15.

¹³ Super. Ct. Civ. R. 15.

V. CONCLUSION

For the above reasons, the court **DENIES** Harleysville's Motion to Dismiss for Failure to State a Claim.

The court **GRANTS** the Paoletti's request to amend their complaint. This amendment must be filed with 10 days of the filing of this opinion.

Calvin L. Scott, Jr.
Superior Court Judge