IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JERRY RODRIGUEZ, SR. and IDAHAILI RODRIGUEZ, husband and wife,	:	C.A. No. 04C-03-028 WLW
Plaintiffs,	:	
v.	:	
FARM FAMILY CASUALTY INSURANCE COMPANY, a foreign corporation;	:	
Defendants.	:	

Heard: October 21, 2005
Decided: January 26, 2006

ORDER

Upon Defendant's Motion
for Summary Judgment. Denied.

Scott E. Chambers, Esquire of Schmittinger and Rodriguez, P.A., Dover, Delaware; attorneys for the Plaintiffs.

David C. Malatesta, Jr., Esquire of Kent & McBride, P.C., Wilmington, Delaware; attorneys for Defendant Farm Family Casualty Insurance Company.

WITHAM, R. J.

Farm Family Casualty Insurance Company ("Defendant") filed a Motion for Summary Judgment contending that it was not liable to Jerry and Idahaili Rodriguez (collectively "Plaintiffs") pursuant to the "Uninsured Motorists Coverage" clause of their insurance policy. Defendant argues that it is not liable to Plaintiffs for two reasons: (1) Plaintiffs were not legally entitled to recover against the tortfeasor because the claim against the tortfeasor was dismissed as untimely by this Court in an Order dated April 19, 2005, and (2) the tortfeasor's vehicle was not uninsured. Plaintiffs contend that Defendant is liable under the clause because the vehicle was uninsured pursuant to 19 *Del. C.* § 3902(a)(3)c., which considers a hit-and-run vehicle that causes physical injury or property damage an uninsured vehicle. As a result of the alleged hit-and-run, Plaintiffs claim they were not able to identify the tortfeasor until after the expiration of the two-year statute of limitations.

This claim arises out of an incident involving three cars with an unusual set of facts. The first car, which Plaintiffs now know was driven by Gina Bell, rear-ended the second car, which then rear-ended Plaintiffs. Bell stopped at the accident, but concluded that there was no damage, so she left the scene before the police officer arrived. In his report, the police officer stated that because "damage did not occur an accident did not happen and a report would not be filed." However, the police officer also noted that the passenger in Plaintiffs' vehicle, Jerry Rodriguez, mentioned that he felt discomfort, but waited until the next day to respond to the hospital, where he was diagnosed with muscle strain.

For the reasons set forth below, Defendant's motion is *denied*.

Standard of Review

Superior Court Civil Rule 56(c) provides that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] On a motion for summary judgment the Court examines the record to determine whether any material issues of fact exist. Summary judgment will only be granted when, after viewing the record in a light most favorable to the non-moving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[2] Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.[3]

Discussion

Defendant makes two arguments. The first is that Defendant is not liable to Plaintiffs because Plaintiffs were not legally entitled to recover from the tortfeasors because their case was dismissed as time-barred. The second argument is that the vehicle was not uninsured at the time of the accident. Plaintiffs' argument is that they were involved in an accident with a hit-and-run vehicle, which is an uninsured

---

[1] Super. Ct. Civ. R. 56.

[2] *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973); *see also McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994).

[3] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

vehicle pursuant to Delaware law.

Legally Entitled to Recover:

In *Nationwide Mutual Insurance Company v. Nacchia*,[4] the Delaware Supreme Court addressed the issue of when an insured is "legally entitled to recover" damages. The Court opined that the phrase is "unambiguous" and presents "'a question of law subject to concise legal definition.'" Additionally, "[t]hat holding requires the phrase 'legally entitled to recover' to be construed literally."[5] As a result, the Court held that the plaintiffs were not entitled to recover pursuant to their underinsured motorist insurance policy with Nationwide because they had signed a release with the underinsured defendant, which provided unequivocally that it was a "full and complete settlement."[6]

However, the case before this Court is distinguishable from *Nacchia*. In this case, Plaintiffs filed the initial suit against their insurance company pursuant to their uninsured motorist clause. Whereas in *Nacchia,* the plaintiffs settled with the underinsured motorist and then pursued additional compensation from their insurance company. Here, the identity of the tortfeasors were unknown because the driver left the accident without providing any information. However, in *Nacchia*, the plaintiffs knew the identity of the tortfeasor, named her as a defendant and then settled their

---

[4] 628 A.2d 48, 52 (Del. 1993).

[5] *Id*.

[6] *Id*. at 53.

claim against her. There is clearly a difference between the situation in *Nacchia* and the case *sub judice*. It would be unfair to bar recovery by a plaintiff who does not learn the identity of a hit-and-run driver within the two-year statute of limitations. This is a situation that is designed to be protected by uninsured motorist insurance.

Therefore, the Court finds that because Plaintiffs were legally entitled to recover from the tortfeasors initially, and did nothing improper to terminate that right, the "legally entitled to recover" requirement is met. Thus, Defendant's argument fails.

Vehicle Was Uninsured:

Section 3902 does not expressly define the term hit-and-run vehicle, but the Supreme Court has stated, "[t]he phrase hit-and-run is the commonly accepted description of an incident involving a car accident where the driver flees the scene."[7] Subsection (3)c. states:

> (3) For the purposes of this section, an uninsured vehicle shall be defined as . . . c. A hit-and-run motor vehicle that causes an accident resulting in bodily injury or property damage to property of the insured. Bodily injury or property damage must be caused by physical contact of the hit-and-run vehicle with the insured or with an insured motor vehicle, or by a noncontact vehicle where the identity of both the driver and owner of such vehicle are unknown. The accident must be reported to the police or proper governmental authority. The insured must notify his/her insurer within 30 days, or as soon as practicable thereafter, that the insured or his/her legal representative has a legal action arising out of the accident.

---

[7] *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670 (Del. 1978).

Additionally, Plaintiffs' insurance contract states, "E. 'Uninsured motor vehicle' means a land motor vehicle or trailer of any type: . . . 3. Which is a hit-and-run vehicle whose operator and owner cannot be identified and which hits or which causes accident resulting in 'bodily injury' or 'property damage' without hitting."

Further, in *Leffler v. Allstate Insurance Company*[8], this Court addressed the issue of a plaintiff who was able to obtain the identity of a hit-and-run driver, but did not. After analyzing several other states' approaches to the issue, this Court determined, "the policy of Delaware is . . . to protect the insured injured by unknown tortfeasors. The driver had the responsibility to provide his name and address. Plaintiff reported the incident to the police. This factual situation places plaintiff within the protection of 18 *Del. C.* § 3902."[9] Thus, the Court allowed the plaintiff to seek uninsured motorists benefits.[10]

In the case *sub judice*, the driver did not flee in the typical sense, because she did stop. However, she left the scene without providing any information and before the police officer arrived, so the result was the same as if she had fled because her identity remained unknown. According to *Leffler*, Plaintiffs had no obligation to identify the owner or operator of the vehicle because the responsibility is on the driver to provide his/her name and address. Also, Plaintiffs did report the incident

---

[8] 1998 Del. Super. LEXIS 299.

[9] *Id.* at *12 -13.

[10] *Id.* at *13.

to the police. Consequently, the Court finds that Plaintiffs are protected by Section 3902, thereby rendering the vehicle uninsured and defeating Defendant's second argument.

Based on the foregoing, Defendant's Motion for Summary Judgment is *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution