IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

KATHLEEN M. GRIFFITH, ET AL.,	:	
Plaintiffs,	:	CASE NO. 00CVC05-4488
vs.	:	JUDGE BESSEY
WAUSAU BUSINESS INSURANCE COMPANY, ET AL.,	:	
Defendants.	:	

DECISION GRANTING PLAINTIFFS' MOTION IN LIMINE, FILED MARCH 29, 2002

This matter is before the Court upon the Motion in Limine, filed by Plaintiffs, Kathleen M. Griffith and James Griffith (hereinafter "Plaintiffs"), on March 29, 2002. Plaintiffs move the Court to exclude: (1) any argument or questioning concerning a witness' or a juror's understanding of Ohio insurance law; (2) any argument or questioning regarding a witness' or juror's view of the "fairness," of the law of Ohio as set forth by the Ohio Supreme Court in *Scott-Pontzer v. Liberty Mut. Ins. Co.* (1999), 85 Ohio St. 3d 660; and (3) any argument or questioning regarding the manner in which Plaintiffs became entitled to coverage under the policies that are the subject of this case.

On April 1, 2002, Defendant, Wausau Business Insurance Company (hereinafter "Defendant Wausau"), and Defendant, Nationwide Agribusiness Insurance Company (hereinafter "Defendant Nationwide"), filed a Memorandum Contra Plaintiffs' Motion in Limine.

I. Background

On September 14, 1999, Plaintiff, Kathleen Griffith, was driving her car westbound on State Route 37 in Granville Township, Licking County, Ohio, when Donald Riley, was driving

eastbound on the same road, and went left of center causing a crash. Plaintiff, Kathleen Griffith, contends that she suffered serious personal injuries, including a closed head brain injury that caused partial paralysis, numbness and weakness of her extremities, and other physical and emotional consequences.

State Farm Mutual Automobile Insurance Company (hereinafter "State Farm") was the automobile liability insurer for Donald Riley. State Farm has offered its liability limits of $100,000.00 in exchange for settlement of Plaintiff's claims against Donald Riley, and a waiver from Defendant Wausau of its subrogation claims against Donald Riley.

On September 14, 1999, Plaintiff, Kathleen Griffith, was employed as a teacher by the Granville Exempted Village School District (hereinafter "Granville"). However, at the time of the accident, she was not acting within the scope of her employment with Granville.

On September 14, 1999, Defendant Wausau insured Granville under a business auto coverage policy, policy number 0839-03-005341, which had a policy period of October 22, 1998 through October 22, 1999, and which provided UM/UIM coverage in the amount of $1,000,000.00 per accident.

On September 27, 2001, this Court issued a Decision denying Defendant Wausau's Motion for Summary Judgment, and granting Plaintiffs' Cross-Motion for Summary Judgment. In this Decision, the Court found that Plaintiffs are entitled to UIM coverage under Defendant Wausau's business auto coverage policy, up to the policy limit of $1,000,000.00, subject to actual damages.

On March 27, 2002, this Court issued a Decision granting Plaintiffs' Motion for Summary Judgment Against Defendant Nationwide, and denying Defendant Nationwide's Motion for Summary Judgment. In this Decision, the Court found that Plaintiffs were entitled to

additional UIM coverage under Defendant Nationwide's umbrella policy, in the amount of $3,000,000.00, subject to actual damages, and over and above the coverage provided by the underlying Wausau automobile policy.

II. Standard of Review

"A motion in *limine* is tentative and precautionary in nature, reflecting the court's anticipatory treatment of an evidentiary issue at trial. In deciding such motions, the trial court is at liberty to change its ruling on the disputed evidence in its actual context at trial. Finality does not attach when the motion is granted." *State v. Ricciardi* (Oct. 8, 1999), Mahoning App. No. 98 C.A. 184, 1999 Ohio App. LEXIS 4858, at *14, (Cox, P.J., dissenting on other grounds), unreported, quoting, *State v. Grubb* (1986), 28 Ohio St.3d 199, 201-202, 503 N.E.2d 142, 145; see, also, *Cunningham v. Goodyear Tire & Rubber Co.* (1995), 104 Ohio App.3d 385, 393, 662 N.E.2d 73. "The nature of the ruling is interlocutory and not final until raised in the context of a trial. Failure to object to the evidence at issue during trial constitutes a waiver of any challenge to such evidence irrespective of the pre-trial preliminary ruling." *Marr v. Mercy Hosptl.* (May 22, 1998), Lucas App. No. L-97-1160, 1998 Ohio App. LEXIS 2227, at *4, unreported. For these reasons, the following ruling is subject to modification during trial.

III. Discussion

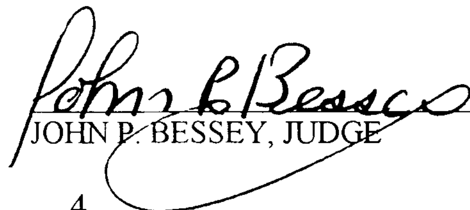
As stated above, Plaintiffs move the Court to exclude: (1) any argument or questioning concerning a witness' or a juror's understanding of Ohio insurance law; (2) any argument or questioning regarding a witness' or juror's view of the "fairness," of the law of Ohio as set forth by the Ohio Supreme Court in *Scott-Pontzer v. Liberty Mut. Ins. Co.* (1999), 85 Ohio St. 3d 660; and (3) any argument or questioning regarding the manner in which Plaintiffs became entitled to coverage under the policies that are the subject of this case.

Plaintiffs contend that any argument or evidence elicited from such questioning would be irrelevant and inadmissible because they go to matters of law and not to any factual issues in dispute. Plaintiffs also contend that any argument or questioning on such issues would be for the purpose of contradicting this Court's rulings that Plaintiffs are insureds, and are thereby entitled to insurance coverage under the policies that are the subject of this case.

The Court finds Plaintiffs' arguments well taken and finds that any attempt on the part of Defendants' to elicit testimony or submit arguments contradicting this Court's interpretation of Ohio law and controlling Ohio Supreme Court authorities would be an attempt to introduce irrelevant evidence. Therefore, because the issue of whether Plaintiffs are entitled to coverage under the policies issued by Defendants has been resolved by this Court as a matter of law, the "fairness" or what a witness or juror thinks about whether Plaintiffs were entitled to coverage is irrelevant, and not appropriate for the jury's consideration.

Therefore, based on the foregoing and pursuant to Evid.R. 402, the Court hereby **GRANTS** Plaintiffs' Motion in Limine, and accordingly **ORDERS** that (1) any argument or questioning concerning a witness' or a juror's understanding of Ohio insurance law; (2) any argument or questioning regarding a witness' or juror's view of the "fairness," of the law of Ohio as set forth by the Ohio Supreme Court in *Scott-Pontzer v. Liberty Mut. Ins. Co.* (1999), 85 Ohio St. 3d 660; and (3) any argument or questioning regarding the manner in which Plaintiffs became entitled to coverage under the policies that are the subject of this case, shall be excluded from trial.

IT IS SO ORDERED.



JOHN P. BESSEY, JUDGE

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