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SUMMIT COUNTY
CLERK OF COURTS IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHEILA J. HODNICHAK, et al.	:	CASE NO. CV 1999-09-3844
	:	
Plaintiffs,	:	Judge Patricia A. Cosgrove
	:	
vs.	:	
	:	ORDER
DAVID C. GRAY, et al.	:	
	:	
Defendants.	:	VOL. 2587 PAGE 0226

This cause came before the Court on motions for summary judgment filed by Defendant Indemnity Insurance Company and Defendant National Union Fire Insurance. Plaintiff has filed briefs in opposition to both motions. In the interest of judicial economy and clarity, this Court will address the motions together.

On July 14, 1998, Plaintiff Sheila Hodnichak was involved in a traffic accident that caused her serious personal injuries. The accident was allegedly caused by the negligence of Defendant David Gray. Gray is a party to this lawsuit and his personal automobile insurance limits of \$100,000 have not been paid to date. On the date of the accident, Plaintiff's husband was employed by Lockheed Martin Corporation which was insured by two commercial automobile liability policies issued by Indemnity Insurance Company of America and American

International Specialty Lines Insurance Company (ASLIC). Plaintiff's seek UIM coverage under the Indemnity and ASLIC policies.

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SUMMARY JUDGMENT STANDARD

Pursuant to Civ.R. 56(C), the trial court may grant summary judgment where there is no genuine issue as to any material fact. Welco Industries, Inc. v. Applied Cos. (1993), 67 Ohio St.3d 344, 346. Summary judgment will be granted if reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion is made. Id. An issue of fact exists when the relevant factual allegations in the pleadings, affidavits, depositions or interrogatories are in conflict. Link v. Leadworks Corp. (1992), 70 Ohio App.3d 735, 741. A dispute of fact is "material" if it affects the outcome of the litigation, and is "genuine" if demonstrated by substantial evidence going beyond the allegations of the complaint. Burkes v. Stidham (1995), 107 Ohio App.3d 363, 371.

In deciding whether there is a genuine issue of material fact, the evidence must be construed in the nonmoving party's favor. Hannah v. Dayton Power & Light Co. (1998), 82 Ohio St.3d 482, 485. Further, "the inferences to be drawn from the underlying facts contained in the evidentiary materials, such as affidavits and depositions, must be construed in a light most favorable to the party opposing the motion." Id., citing Turner v. Turner (1993), 67 Ohio St.3d 337, 341.

In reviewing the moving party's motion, a trial court should award summary judgment with caution. Nevertheless, a summary judgment is appropriate where a plaintiff fails to produce evidence supporting the essential elements of his claim. Id. In determining whether the plaintiff demonstrated the elements of his claim, an appellate court must independently review the record

to determine if summary judgment was appropriate. Therefore, an appellate court affords no deference to the trial court's decision while making its own decision. Beardsley v. Manfredi Motor Transit Co. (1994), 97 Ohio App.3d 768, 769.

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INDEMNITY INSURANCE MOTION FOR SUMMARY JUDGMENT

Defendant Indemnity Insurance filed a motion for summary judgment asserting that Plaintiff is not entitled to UM/UIM coverage because Lockheed Martin was self-insured in a practical sense and thus not subject to the offer requirements of R.C. 3937.18.

R.C. 3937.18(A) provides that “[n]o automobile liability or motor vehicle policy of insurance ... shall be delivered or issued for delivery in this state ... unless both [UM and UIM] coverages are provided to persons insured under the policy.” The UM/UIM coverages must be provided in an “amount equivalent to the automobile liability or motor vehicle liability coverage.” R.C. 3739.17(A)(2).

Defendant Indemnity argues that Lockheed Martin is a self-insurer and that Indemnity merely provides a service and a vehicle through which Lockheed can satisfy the automobile insurance requirements of the state of Ohio. In order to satisfy the financial responsibility laws for insurance in the state of Ohio, some corporations are using insurance companies as a “fronting” agency. In this case, Indemnity issued a motor vehicle liability policy. Lockheed then reimburses Indemnity for any payments made under the policy. In essence, Lockheed is spared from having to formally qualify as an actual self-insurer while at the same time enjoying the benefit of the insurance company’s rates and filings. The argument is that Lockheed acts as a self-insurer in the practical sense because it retains the risk of loss under the policy.

In support of this argument, Defendants submits the case law of Grange Mut. Cas. Co. v. Refiners Transport and Terminal Corp. (1986), 21 Ohio St.3d 47, wherein the Supreme Court held that the “uninsured motorist provisions of R.C. 3937.18 does not apply to either self-insurers or financial responsibility bond principals.” Defendants also submit the case law of Lafferty v. Reliance Ins. Co. (S.D. 2000), 109 F. Supp. 837 wherein the Federal District Court held that a company may be a self-insured in a practical sense since the company was required to reimburse the insurance company for the entire amount of any payments made. Also, because the company agreed to assume the risk of loss up to the policy limits, it is self-insured in a practical sense, although not self-insured pursuant to the statute. Based on this, the Lafferty court held that a self-insurer in a practical sense is not required to comply with R.C. 3937.18.

Plaintiff argues in opposition that the coverage at issue is an insurance policy. Plaintiff argues that it looks like an insurance policy, it reads like an insurance policy and therefore there must be a valid offer and rejection of UM/UIM. Plaintiff argues that there is no such thing in Ohio as a practical self-insured. Plaintiff further submits two supplemental cases from the trial court level; Roberts v. State Farm Mutual et al. (June 7, 2001), Montgomery Co. Ct. Com. Pleas, Case No. 00-CV 0886 and Caylor, et al. v. Pacific Employers Ins. et al. (August 3, 2001), Miami Co. Ct. Com. Pleas, Case No. 99-400.

In Roberts, the Court held:

It may be well and good and entirely lawful for a “fronting agreement” and “facultative reinsurance agreement” to spare Emery the expense and potential administrative quagmires of formal registration in every state, territory and country where it does business and for these “devices” to provide Emery the use of National Union’s filings and claims service, but they do not paralyze or mute the walking and quacking duck of insurance coverage.

In Caylor the Court held:

The Court concludes that the focus is not whether an entity acts as a self-insured, but rather it depends on whether the parties have framed a motor vehicle liability policy. Where motor vehicle liability coverage is provided by policy, even in a limited form, UM/UIM coverage must be provided.

Under the holding in Grange, it is clear that the only statutory exceptions to R.C. 3937.18 are either self-insurers who comply with statutory requirements or principals on a financial responsibility bond. In the case at bar, Lockheed has not complied with the statutory requirements to fulfill the requirements to be self-insured. Furthermore, this court is not bound to follow the holdings of a federal court. State v. Nabozny (1978), 54 Ohio St.2d 195, judgment vacated on other grounds, (1978), 439 U.S. 811, 99 S.Ct. 70.

A review of the Indemnity policy language reveals also that if Lockheed were to file bankruptcy or otherwise become insolvent that Indemnity would not be relieved of the obligation to pay. Therefore, although Defendant argues that Lockheed has retained full risk under the policy, the language of the policy refutes that argument.

Lockheed Martin chose to meet its financial responsibility requirements through the maintenance of an automobile liability policy of insurance with Indemnity. The UM/UIM statute does not exempt "practical" self-insureds. Therefore, it is the opinion of this court that there are no statutory guidelines for a "practical" self-insured for purposes of not offering UM/UIM coverage.

Plaintiff argues that as further evidence that the Indemnity policy is an automobile liability policy that Defendant Indemnity offered uninsured and underinsured motorist coverage. Plaintiff argues that the offer was not proper made pursuant to Linko, Exr. v. Indemnity Ins. Co. of N.A. (2000), 99 Ohio St.3d 445 and therefore the rejection was not proper. According to

Linko, a proper offer must have the minimum elements from which a contract may arise. It must (a) describe the coverage, (b) give the premium cost and (c) expressly state the coverage limits.

In the case at bar, the rejection signed by Lockheed was not in compliance with Linko and therefore UM/UIM arises under operation of law.

Plaintiff has filed a cross-motion for summary judgment based on the same arguments. Based on the foregoing, this Court DENIES Defendant Indemnity's motion for summary judgment and grants Plaintiff's motion for summary judgment and finds that UM/UIM coverage is mandated by law under the Indemnity policy in an amount equal to the policy limits.

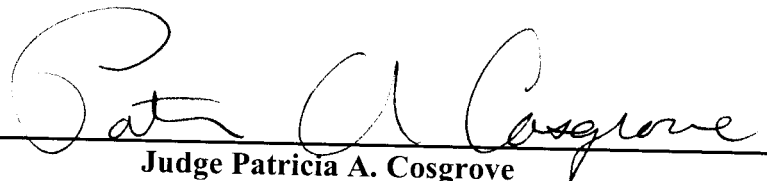
Defendant National Union has also filed a motion for summary judgment asserting the practical self-insured argument as set forth by Indemnity. Based on the foregoing, this Court finds that UM/UIM arises by operation of law as to the National Union policy in an amount equal to the policy limits. Defendant National Union further argues that if UM/UIM is provided by operation of law then it applies only to Plaintiff George Hodnichak because he is an employee of Lockheed Martin. Plaintiff argues that as an insured George Hodnichak is entitled to recover damages for legal injury he sustained as a result of the physical injury to his wife.

Plaintiff argues that an insured could recover UM benefits for the legal injury sustained on account of bodily injury to a person not insured under the insurance policy. Sexton v. State Farm Mutl. Automobile Ins. Co. (1982), 69 Ohio St.2d 431 and Moore v. State Auto. Mut. Ins. Co. (2000), 88 Ohio St.3d 27. Plaintiff further argues that a husband or wife is entitled to recover damages for the losses sustained as a result of bodily injury to a spouse. Clouston v. Remlinger Oldsmobile Cadillac Inc. (1970), 22 Ohio St.2d 65.

Based on the foregoing, this Court finds that Defendant National Union did issue a valid umbrella policy and that Plaintiff George Hodnichak is an insured under the policy. Furthermore, based on the case law currently available, this Court further finds that Plaintiff Sheila Hodnichak is also entitled to insurance benefits under the National Union policy. Defendant National Union's motion for summary judgment is DENIED; Plaintiff's cross-motion for summary judgment is GRANTED and this Court finds that Plaintiffs are insured under the policy issued by National Union.

IT IS THEREFORE ORDERED that Defendant Indemnity's motion for summary judgment is DENIED; Defendant National Union's motion for summary judgment is DENIED and Plaintiff's cross-motions for summary judgment are GRANTED.

IT IS SO ORDERED.



Judge Patricia A. Cosgrove