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IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

CAROLYN B. KEAGLER, etal)
Plaintiffs)
vs)
RAY BARISIC, etal)
Defendants)

CASE NO. 99CV000439)
SYNNE L. MAZEIKA)
LAKE CO CLERK OF COURT)
JUDGMENT ENTRY

The within cause came on for consideration this day, to wit: March 15, 2001 upon Defendant, Wausau Business Insurance Company's Motion for Summary Judgment, filed January 11, 2001 and Plaintiffs response, filed January 30, 2001 herein.

This action involves Plaintiffs Carolyn B. and Harry D. Keagler's (hereinafter collectively referred to as "Plaintiffs") Six Count Second Amended Complaint against Defendants Ray Barisic, USAA Property and Casualty Insurance Company, Wausau Business Insurance Company, and Continental Casualty Company for negligence, recklessness, failure to reasonably control vehicle, and underinsured motorist (UIM) coverage claims, in connection with a traffic accident between Plaintiff Carolyn B. Keagler and Defendant Ray Barisic. Plaintiffs allege, *inter alia*, that Plaintiff Carolyn B. Keagler was an employee of Kirtland Local Schools ("KLS") at the time of the accident, that KLS was insured under a commercial automobile liability policy ("Policy") issued by Defendant Wausau Business Insurance Company (hereinafter referred to as "Defendant Wausau"), which included uninsured motorists (UM) coverage, and that Plaintiff Carolyn B. Keagler is entitled to UIM benefits under the Policy. Defendant Wausau now requests this Court to enter Summary Judgment in Defendant Wausau's favor on the grounds that no genuine issue of material fact exists and that Defendant Wausau is entitled to judgment as a matter of law.

In support of its Motion, Defendant Wausau argues, *inter alia*, that: Plaintiffs do not qualify as insureds under the Policy. Plaintiffs are not entitled to coverage under the Policy; compelling Defendant to provide UM/UIM coverage to Plaintiffs would violate Defendant Wausau's Due Process Rights; and, compelling Defendant Wausau to provide UM/UIM coverage to a school district's employees and their families for personal, off-duty activities would violate the privacy rights of the school district's employees and their families.

In their Response, Plaintiffs argue, *inter alia*, that pursuant to the language of the Policy and *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660, employees of KLS, regardless of whether or not they are acting in the course of their employment, qualify as insureds under the Policy for purposes of UM/UIM coverage.

As an initial matter, the Court notes that although Defendant Wausau and Plaintiffs did not comply with *Loc.R. III(A)(1)* specifically limiting any document submitted to this Court to ten (10) pages, the Court shall address the merits of Defendant Wausau's and Plaintiffs' arguments *sua sponte*. But, future documents submitted to this Court not in compliance with the Local Rules may be stricken. *Loc.R. III(A)(5)*. The Court urges counsel to conscientiously maintain familiarity with the Local Rules promulgated by this Court.

Upon review, this Court finds Defendant Wausau's Motion not well taken. In accordance with *Civ.R. 56*, the evidence must be construed most strongly in favor of the non-moving party; summary judgment should be granted only if no genuine issue of fact exists, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, which is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64. A motion for Summary Judgment first forces the moving party to inform the court of the basis of the motion and to identify portions in the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 296. If the moving party makes that showing, the non-moving party is not permitted to rest upon the allegations or denials contained in his or her pleadings, but must come forth with

specific facts showing the existence of a genuine issue for trial. *Civ.R. 56(E)*; *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, 111, following *Celotex v. Catrett* (1986), 477 U.S. 317.

The Supreme Court of Ohio has held that a corporation's employees are insureds entitled to UIM coverage under a commercial automobile liability policy and that the employees enjoy such insured status regardless of whether they are acting in the scope of employment. *Scott-Pontzer*, 85 Ohio St.3d at 665-666; see, also, *Ezawa v. Yasuda Fire & Marine Ins. Co. of Am.* (1999), 86 Ohio St.3d 557 (holding minor son of insured's employee entitled to UIM coverage under insured's commercial automobile insurance policy). In the case *sub judice*, this Court finds that Defendant Wausau falls to establish that, as a matter of law, Plaintiffs are not insureds under the Policy's Ohio Uninsured Motorists Coverage - Bodily Injury section. Accordingly, Defendant Wausau's Motion for Summary Judgment shall be denied.

WHEREFORE, it is the Order of this Court that Defendant Wausau Business Insurance Company's Motion for Summary Judgment be and hereby is denied.

IT IS SO ORDERED.



PAUL H. MITROVICH, JUDGE

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