

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DENNIS MARTIN,

Plaintiff,

vs.

CHUBB GROUP OF INSURANCE  
COMPANIES,

Defendant.

) CASE NO. 1:00CV2335

) Judge John M. Manos

) MEMORANDUM OF OPINION

On August 21, 2000, Dennis Martin, plaintiff, filed the above-captioned case against the Federal Insurance Company ("Federal")<sup>1</sup> in the Cuyahoga County Court of Common Pleas, seeking declaratory and monetary judgment arising from a fatal automobile accident involving his daughter. Specifically, the Plaintiff alleges that he is entitled to uninsured motorist ("UM") coverage, as part of a business automobile policy issued by the Defendant to his employer.

On September 14, 2000, this case was removed to this court by the Defendant, pursuant to the provisions of 28 U.S.C. § 1441. Because the Plaintiff is a citizen of Ohio, the Defendant is

---

<sup>1</sup> The Plaintiff's Complaint incorrectly identifies the Defendant as the "Chubb Group of Insurance Companies."

a New Jersey corporation doing business in Ohio, and the amount in controversy exceeds \$75,000, federal jurisdiction is properly predicated on 28 U.S.C. § 1332.

On November 29, 2000, Federal filed a Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) (Docket No. 12). The motion has been fully briefed. For the following reasons, the Defendant's motion is DENIED.

### 1. FACTS

The Plaintiff is the administrator of the estate of his daughter, Jennifer Martin Burton ("Burton"). On August 13, 1998, while riding as a passenger in a car driven by her husband, Burton was killed when the car was struck by an another vehicle.<sup>2</sup> The Plaintiff alleges that the accident was the "direct and proximate result of David Burton's negligence and failure to exercise due care." Complaint at ¶ 6. The automobile was owned by David Burton and was uninsured. Burton was an emancipated adult at the time of the accident and did not reside in the Plaintiff's home.

The Plaintiff does not claim that he personally suffered any bodily injury due to the negligence of an uninsured motorist. Instead, he claims that he is entitled to damages in his capacity as both "a person entitled, under [Ohio Revised Code] 2125.02, to recover money damages for the wrongful death of his daughter" and as the administrator of the decedent's estate. Complaint at ¶ 1.

At the time of the accident, the Plaintiff was employed by Mobilemedia Communications, Inc. ("Mobilemedia"). Defendant issued to Mobilemedia a "Business Auto Policy," which included a provision for uninsured and underinsured motorist coverage (Policy No. (98) 7320-82-

---

<sup>2</sup> David Burton, the decedent's husband, was also killed in the accident.

59). Believing that he was covered by the policy issued to his employer, the Plaintiff submitted a request for benefits. When the Defendant did not respond to the request, he filed the instant action seeking a declaratory judgment that he was entitled to benefits and, in the alternate, for monetary damages resulting from the breach of the insurance contract.

## II. STANDARD OF REVIEW

A motion for judgment on the pleadings is evaluated under the same standards as a motion to dismiss. Schied v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 n.1 (6th Cir. 1988). Under Federal Rule of Civil Procedure 12(b)(6), a complaint fails to state a claim upon which relief can be granted if "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The complaint is to be construed in the light most favorable to the plaintiff and all factual allegations are to be considered as true. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The Court, however, is not bound to accept as true a legal conclusion couched as a factual allegation. Parasan v. Allain, 478 U.S. 265, 286 (1986).

## III. LAW

The relationship between an insurer and an insured is purely contractual in nature. Nationwide Mut. Ins. Co. v. Marsh, 15 Ohio St.3d 107, 109 (1984). Insurers may draft policies which provide "varying arrays of coverage to any number of individuals", so long as they do so in "language that is clear and unambiguous and ... comports with the requirements of the law." Scott-Pontzer v. Liberty Mut. Fire Ins. Co., 85 Ohio St.3d 660, 664 (1999). Insurance policies, "which are in language selected by the insurer and which are reasonably open to different interpretation, will be construed most favorably to the insured." Id. at 665; and see Faruque v.

Provident Life & Acc. Ins. Co., 31 Ohio St.3d 34 (1987). Furthermore, "in the construction of insurance contracts, '[w]here exceptions, qualifications or exemptions are introduced into an insurance contract, a general presumption arises to the effect that that which is not clearly excluded from the operation of such contract is included in the operation thereof.'" Scott-Pontzer, 85 Ohio St.3d at 665-66 (quoting King v. Nationwide Insurance Co., 35 Ohio St.3d 208, 214 (1988)).

An insurer may not deny a claim for UM coverage when a claimant meets four statutory criteria: (1) there is an insured; (2) the insured is entitled to recover damages resulting from the injury or death caused by an uninsured motorist; (3) damages result from injury, sickness, disease or death; and (4) the tortfeasor is the owner or operator of an uninsured automobile. See Sexton v. State Farm Mut. Auto. Ins. Co., 69 Ohio St.2d 431, 434-35 (1982) (interpreting Ohio Revised Code § 3937.18); Wright v. Allstate Ins. Co., 2000 WL 1288296 (Ohio App. 9 Dist. 2000). See also Moore v. State Auto. Mut. Ins. Co., 88 Ohio St.3d 27, 31-32 (2000) (finding that the legislature's amendment of Ohio Revised Code § 3937.18 was not intended to supercede the Court's ruling in Sexton). If the Complaint does not establish, either directly or by inference, any one of the required elements, however, this Court must grant the Defendant's Motion for Judgment on the Pleadings. See Begala v. PNC Bank, Ohio, Nat. Ass'n, 214 F.3d 776, 779 (6th Cir. 2000); Advocacy Org. for Patients and Providers v. Auto Club Ins. Ass'n, 176 F.3d 315, 319 (6th Cir. 1999).

#### IV. ANALYSIS

A.

In order to be entitled to benefits under an UM policy, there first must be an insured. Sexton, 69 Ohio St.2d at 434. The declarations page of the Business Auto Policy issued by the Defendant to the Plaintiff's employer lists only "MOBILEMEDIA COMMUNICATIONS, INC. ETAL" as the named insured. The UM coverage provided as part of the Business Auto Policy, however, contains the following definition:

WHO IS AN INSURED

1. You.
2. If you are an individual, any "family member."
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
4. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured."

The Plaintiff does not allege that his daughter was an insured under the policy issued to Mobilemedia.<sup>3</sup> Instead, the Plaintiff asserts that *he*, as an employee of Mobilemedia, is an insured based on the authority of the Ohio Supreme Court's decision in Scott-Pontzer v. Liberty Mutual Fire Insurance Co., 85 Ohio St.3d 660 (1999). The Court agrees.

Scott-Pontzer, as here, concerned the interpretation of a commercial automobile liability policy and the determination of whether an employee was an insured under a policy which formally named only the corporate employer. In finding that the employee was, in fact, an insured, the Ohio Supreme Court interpreted policy language identical to that quoted above, and

---

<sup>3</sup> The policy defines "family member" as "a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child." See Motion for Judgment on the Pleadings at Ex. 3. Thus, because the emancipated decedent lived with her husband, rather than the Plaintiff, she cannot be a "family member" as defined by the policy.

found it ambiguous and susceptible to an interpretation that included the corporation's employees. *Id.* at 663-64.<sup>4</sup> Specifically, the court held that "'you' while referring to [the corporate employer], also includes [the corporation's] employee, since a corporation can act only by and through real live persons." *Id.* at 664. Likewise, the "you" here must also be read so as to include the employee Plaintiff.

The Defendant argues that an additional contract term distinguishes this policy from that at issue in Scott-Pontzer. Specifically, the Defendant points to the "Drive Other Car Coverage - Broadened Coverage for Named Individuals," which ostensibly amends the UM coverage and reads:

The following is added to WHO IS AN INSURED:  
Any individual named in the Schedule and his or her "family members" are "insureds" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:  
Any "auto" owned by that individual or by any "family member."

The Defendant argues that this language limits the definition of "who is an insured" to include only those employees "named in the Schedule."<sup>5</sup> The Court disagrees. The provision, by its very terms, purports to be an *addition* to the definition of "who is an insured." This being so, it

---

<sup>4</sup> See also Ezawa v. Yasuda Fire & Marine Ins. Co. of America, 86 Ohio St.3d 557 (1999). The plaintiff in Ezawa was the father of a minor child killed while riding in a car driven by an underinsured motorist. The Ohio Supreme Court reversed the decision of the appellate court and found the father to be an insured because he was an employee of a corporation that had been issued UIM coverage with a definition of "who is an insured" identical to that in Scott-Pontzer.

<sup>5</sup> No employees are named in the Schedule. Instead, the Schedule merely reads, "See Drive Other Car Manuscript." See Motion for Judgment on the Pleadings at Ex. 9 The Defendant further cites an additional endorsement, which purports to amend the "Drive Other Car Endorsement" to include, "ALL EMPLOYEES ASSIGNED A COMPANY VEHICLE." See *id.* at Ex. 10. This addition, however, does not clarify the ambiguity.

cannot be read to instead *limit* the scope of who is an insured. King v. Nationwide Ins. Co., 35 Ohio St.3d 208, 214 (1988) ("In the construction of insurance contracts '[w]here exceptions, qualifications or exemptions are introduced into an insurance contract, a general presumption arises to the effect that that which is not clearly excluded from the operation of such contract is included in the operation thereof.'). Therefore, the Plaintiff here is an insured under the policy.

B.

A claimant must next show that he or she is entitled to recover damages sustained because of injury or death caused by an uninsured motorist. Sexton, 69 Ohio St.2d at 434-35. As stated above, it was the Plaintiff's daughter, and not he who suffered bodily injury by an uninsured motorist. Ohio Revised Code 3937.18(A)(1), however, "does not permit an insurer to limit uninsured motorist coverage in such a way that an *insured* must suffer bodily injury, sickness, or disease in order to recover damages from the insurer." Moore v. State Auto. Mut. Ins. Co., 88 Ohio St.3d 27, syllabus (2000) (emphasis added). Any language in the policy at issue here, which limits benefits to instances in which the insured has suffered bodily injury is therefore, "invalid and unenforceable." Id. at 32-33.

The Court finds, therefore, that the Plaintiff is entitled to recover damages sustained because of injury caused by an uninsured motorist. This is so because the Plaintiff, as the decedent's father, would have a cause of action against the negligent driver for the wrongful death of his child, had the driver been insured. See Ohio Revised Code § 2125 *et seq.*;<sup>6</sup> Sexton.

---

<sup>6</sup> Specifically, Ohio Revised Code § 2125.02(A)(1) provides:

[A]n action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of

69 Ohio St.2d at 435; Moore, 88 Ohio St.3d at 31 (2000). The result should not differ here merely because the negligent motorist was uninsured. Moore, 88 Ohio St.3d at 31.

C.

In order to make out a *prima facie* showing of entitlement to UIM coverage, the Plaintiff must next sufficiently allege that the purported damages "result from injury, sickness, disease or death." Sexton, 69 Ohio St.2d at 435. As stated above, the Plaintiff's daughter died as a result of fatal injuries she suffered in an automobile accident. Thus, any damages suffered by the Plaintiff, as the father of the decedent, result from bodily injury, sickness, disease or death.

D.

Lastly, the Plaintiff must sufficiently allege that the tortfeasor was the owner or operator of an uninsured vehicle. Sexton, 69 Ohio St.2d at 435. Here, the Plaintiff alleges in his Complaint that his son-in-law, the driver of the car in which the decedent was riding at the time of the accident, "failed to exercise due care [and] operated his vehicle in a negligent manner." Complaint at ¶ 6. Further, the complaint states that "[a]t the aforementioned time of collision, David Burton was the operator of an uninsured vehicle as the term is defined by R.C. 3935.18 and by the subject policy." Complaint at ¶ 7. Taking these allegations as true, the pleadings sufficiently allege that the tortfeasor was the owner and operator of an uninsured vehicle.

V. CONCLUSION

Accepting the pleadings in a light most favorable to the non-moving party, the Court finds that the Plaintiff has made a *prima facie* showing of entitlement to benefits due under the

---

whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent.

policy of insurance issued by the Defendant. Accordingly, Defendant's Motion for Judgment on the Pleadings (Docket No. 12) is DENIED.

IT IS SO ORDERED.

s/John M. Manos  
UNITED STATES DISTRICT JUDGE

