

01/07/01 WED 12:21 FAX 330 434 3224

LAW OFFICES

WJUZ

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CAROL RIMEL, Administrator of the
Estate of DANNY J. RIMEL, dec'd

Plaintiff,

vs.

CHUBE GROUP OF INSURANCE
COMPANIES, et al.

Defendant.

FILED
OCT 31 2000
G. GIAYASIS
STARK COUNTY OHIO
CLERK OF COURTS

CASE NO. 1999CV02413

JUDGE JOHN F. BOGGINS

JUDGMENT ENTRY
ON MOTIONS
FOR SUMMARY JUDGMENT

This matter came before the court on Plaintiff's Motion for Summary Judgment against Defendants Northland Insurance Company and Federal Insurance Company, filed August 14, 2000, Defendant Northland Insurance Company's Memorandum in Opposition, filed October 2, 2000, Defendant Federal Insurance Company's Brief in Opposition and Cross Motion for Summary Judgment, filed October 2, 2000, Plaintiff's Reply to Defendant Northland Insurance Company, filed October 11, 2000, and Plaintiff's Reply to Defendant Federal's Brief in Opposition and Brief in Opposition to Cross Motion for Summary Judgment, filed October 19, 2000.

A non-oral hearing on Defendants' Motions for Summary Judgment was held on October 20, 2000, at 9:00 a.m.

On October 26, 2000, Defendant Federal Insurance Company filed a Reply Brief. Civil Rule 56 requires that any response to a summary judgment motion be filed no later than the day preceding the hearing date. In this case, any responses or replies had to be filed no later than October 19, 2000. Therefore, the Court cannot consider said reply.

The Court has reviewed the Motions for Summary Judgment, the pleadings, the affidavits and the stipulations of fact filed in this matter in accordance with Civil Rule 56.

Under the directive of Wing v. Anchor Media Ltd. of Texas (1991), 59 Ohio St.3d 108, the nonmoving party is required to produce evidence on any issue for which that party bears the burden of production at trial. Celotex v. Catrett (1986), 477 U.S. 317. However, such is inapplicable due to the agreement as to the facts and the copy of the insurance policy.

04/13/01 WED 12:22 FAX 330 434 3224

LAW OFFICES

0003

The Court has reviewed the applicable policies of insurance and the stipulations and determines the following:

1. Danny Rimel was killed in an automobile accident on August 16, 1997.
2. At the time of accident, Danny Rimel was an employee of Litco Wood Products, Inc.
3. On the date of said accident, Litco Wood Products, Inc. Had the following policies of insurance in effect:
 - A. Northland Insurance Company: Commercial Automobile Liability Insurance Policy TN227805; \$1,000,000.00 UM/UIM coverage.
 - B. Northland Insurance Company: Commercial General Liability Insurance Policy NL000288; \$2,000,000.00 liability coverage.
 - C. Federal Insurance Company: Excess/Umbrella Insurance Policy 9873-24-13; \$10,000,000.00 liability coverage.

NORTHLAND INSURANCE COMPANY

COMMERCIAL AUTOMOBILE LIABILITY POLICY

The commercial automobile liability policy issued to Litco Wood Products, Inc. by Northland Insurance Company listed Litco Wood Products, Inc. along with two other corporations and two individuals as named insured on the declaration page.

In *Scott-Pontzer v. Liberty Mutual Fire Insurance Company* (1999), 85 Ohio St.3d 660, the Ohio Supreme Court held:

It was ambiguous whether a corporation's employees were insureds entitled to underinsured motorist (UIM) coverage under a commercial automobile liability policy which designated the corporation as the named insured and which defined "insured" to include "you" and "[i]f you are an individual, any family member," since it would be meaningless to limit protection solely to a corporate entity, which cannot occupy or operate an automobile or suffer bodily injury or death; thus, the policy had to be construed as extending insured status to employees.

11/10/01 WED 12:23 FAX 330 454 3224

LAW OFFICES

004

Language in a contract of insurance which is reasonably susceptible of more than one meaning shall be construed liberally in favor of the insured and strictly against the insurer, *King v. Nationwide Insurance* (1988), 35 Ohio St.3d 208.

In the case *sub judice*, the language in the policy is identical to the Liberty Mutual policy in *Scott-Pontzer, supra*. The only difference in the present case is that there was also two individuals named along with the three corporations listed on the declaration page as named insured. The Court does not find that the inclusion of the two named individuals creates a distinction from the reasoning by the Court in *Scott-Pontzer, supra*, as the corporation is still a named insured and as such extends "insured status to employees".

The Court therefore finds that Danny Rimel was an insured under the Commercial Automobile Liability Insurance Policy, TN227805, issued by Northland Insurance Company and that the \$1,000,000.00 UM/UIM coverage under is available under same.

Plaintiff is granted summary judgment as to issue of coverage under the Commercial Automobile Liability Insurance Policy, TN227805, issued by Northland Insurance Company.

COMMERCIAL GENERAL LIABILITY POLICY

Revised Code §5937.18(A) requires that where motor vehicle liability coverage is provided, even in limited form, uninsured/underinsured (UM/UIM) coverage must also be provided:

"No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state."

unless both uninsured and underinsured motorist coverage are provided. *Selander v. Erie Insurance Group* (1999), 85 Ohio St.3d 541.

In *Selander, supra*, the Ohio Supreme Court found that UM/UIM coverage was available under a policy which was denominated as a "General Business Liability Policy (excluding

01/10/01 WED 12:23 FAX 330 454 3224

LAW OFFICES

005

automobile)" but included an "Extension of Coverage" section that provided liability coverage for accidents involving "hired" or "non-owned" automobiles. The Court found that this limited purpose was within the category of motor vehicle liability policies under which uninsured/underinsured (UM/UIM) coverage arises by operation of law and UM/UIM coverage existed under a separate commercial automobile policy issued by the same insurer.

In the present case, the General Commercial Liability Policy contained the following language:

2. Exclusions

This insurance does not apply to:

g. Aircraft, auto or watercraft

Bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto", or watercraft owned or operated by, or rented or loaned to any insured. Use included operation and loading or unloading".

This exclusion does not apply to:

3. Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto is not owned by or rented or loaned to you or the insured".

While the Court finds that above exception to exclusion "g" provides auto liability coverage in, albeit, a limited circumstance, it does find that under *Selander, supra*, such is sufficient to qualify such policy as an automobile liability or motor vehicle policy pursuant to R.C. §3937.18. Therefore, by operation of law, UM/UIM coverage in an amount equal to liability coverage is mandated.

The Court therefore finds that Danny Rimel was an insured under the Commercial General Liability Insurance Policy, NL000288; issued by Northland Insurance Company and that the \$2,000,000.00 UM/UIM coverage under is available under same.

Plaintiff is granted summary judgment as to issue of coverage under the Commercial General Liability Insurance Policy, NL000288 issued by Northland Insurance Company

4/18/01 WED 12:24 FAX 330 434 3224

LAW OFFICES

@005

FEDERAL INSURANCE COMPANY**EXCESS/UMBRELLA INSURANCE POLICY**

With regard to the Excess/Umbrella Insurance policy issued by Federal Insurance Company, the only issue before the Court is whether the written rejection signed on May 6, 1994, by Phillip Fong on behalf of Litco International, Inc. was a valid and timely express rejection. (Litco Wood Products, Inc. is a wholly owned subsidiary of Litco International, Inc.)

The policy in question was for the time period of January 1, 1994, to January 1, 1995. The written rejection is dated May 6, 1994.

Revised Code §3937.18(C) allows for rejection of UM/UIM coverage by an insured.

In *Gyori v. Johnson Coca Cola Bottling Company, Inc.* (1996), 76 Ohio St.3d 565, the Ohio Supreme Court held that in order for the rejection of UM/UIM coverage to be expressly and knowingly made, such rejection must be in writing and must be received by the insurance company prior to the commencement of the policy year.

In *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246, the Ohio Supreme Court held that every automobile liability insurance policy issued in the State of Ohio, must have, at a minimum, a guaranteed two-year policy period during which time the policy cannot be altered except by agreement of the parties and in accordance with R.C. §3937.30 to 3937.39.

According to *Ross v. Farmers Insurance Group of Cos.* (1998), 82 Ohio St.3d 281, the statutory law in effect on the date of issue of each new policy is the law to be applied.

While the Court does not know the date of initial issuance of this particular policy of insurance, it can still determine that such two-year guarantee period, wherever it fell, would still be between the dates of 10/20/94 and 9/3/97, which are the dates of legislative changes to R.C. §3937.18. As such, any rejection made after the commencement of such two-year guarantee period would not be effective as to said two-year policy period of insurance. The Court does find however, that the rejection, if in accordance with R.C. § 3937.18(A) and (C), would become effective for the following two-year periods of insurance. In the present case, the policy in question would have renewed at least once from the time Mr. Fong signed the written rejection.

11/10/01 WED 12:25 FAX 330 454 3224

LAW OFFICES

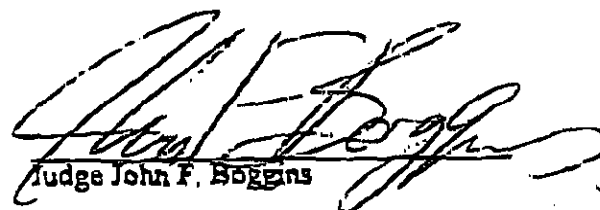
007

The question then becomes whether or not said rejection is in compliance with mandates of R.C. §3937.18(A) and (C). Upon review said rejection form, the Court finds that same is in substantial compliance with the requirements of R.C. §3937.18(A) and (C).

The Court therefore finds that the rejection signed by Philip Fong constituted a valid rejection per R.C. §3937.18 as to policy of insurance in effect on the date of the accident in this case, August 16, 1997.

The Court therefore denies Plaintiff's Motion for Summary Judgment on the issue of coverage under the policy of insurance issued by Federal Insurance Company: Excess/Umbrella Insurance Policy 9873-24-13 and hereby grants Federal Insurance Company's Cross-Motion for Summary Judgment.

IT IS SO ORDERED.



Judge John F. Boggins

COPIES: John Coury, Esq.
Paul D. Eklund, Esq.
Stephen A. Bailey, Esq.
Gary L. Nicholson, Esq.