IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WAYNE S. TODD	:	CIVIL ACTION
	:	
vs.	:	
	:	NO. 00-CV-2533
LIBERTY MUTUAL FIRE INSURANCE COMPANY and LIBERTY MUTUAL INSURANCE GROUP	:	

MEMORANDUM AND ORDER

JOYNER, J. **January , 2001**

Plaintiff, Wayne Todd, instituted this civil action to obtain a declaratory judgment that he is entitled to receive $200,000 in underinsured motorists benefits ("UIM") for injuries which he suffered in an automobile accident under his insurance policy with defendants Liberty Mutual Fire Insurance Company and Liberty Mutual Insurance Group (hereinafter "Liberty Mutual") and for bad faith. The parties have filed cross-motions for summary judgment. For the reasons set forth below, the plaintiff's motion shall be denied and the defendants' motion granted.

Factual Background

As noted, this case arose out of an automobile accident which occurred on July 17, 1995 at the intersection of 11th and Callowhill Streets in Philadelphia, Pennsylvania when a vehicle owned and operated by one James Lauria ran a red light and struck the left side of the van which Mr. Todd was then operating. At the time of the accident and as of the date of the filing of his

complaint, Plaintiff was a resident of New Jersey and insured his personal vehicles under a policy of automobile insurance with defendant Liberty Mutual. The vehicle which Mr. Todd was driving at the time of the accident, however, belonged to his employer, Lawrence J. Dove Associates, and was insured pursuant to the laws of the Commonwealth of Pennsylvania through State Farm Mutual Automobile Insurance Company. On the day of the accident, Mr. Lauria was apparently driving on a suspended/expired Pennsylvania operator's license but was a resident of New Jersey and was driving a vehicle registered and insured in New Jersey.

Subsequent to the accident and with Liberty Mutual's permission, Plaintiff settled his claims against Mr. Lauria for the $50,000 limits of liability insurance coverage available under the policy covering the Lauria car. Plaintiff then demanded and received the $100,000 policy limits of UIM coverage from the State Farm policy covering the van that he was driving when the accident occurred, also with the consent of Liberty Mutual. When Plaintiff sought to recover an additional $200,000 in UIM coverage available to him under the policy which Liberty Mutual issued to he and his wife and covering their personal vehicles,[1] however, Defendant refused to pay more than $100,000 on the grounds that the New Jersey Anti-Stacking statute applied. Plaintiff thereafter commenced this lawsuit.

Summary Judgment Standards

[1] Specifically, Plaintiff's Liberty Mutual automobile insurance policy provided uninsured/underinsured motorists coverage of $250,000 per person and $500,000 per accident.

The standards to be applied by the district courts in ruling on motions for summary judgment are set forth in Fed.R.Civ.P. 56. Under subsection (c) of that rule,

> ....The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Pursuant to this rule, a court is compelled to look beyond the bare allegations of the pleadings to determine if they have sufficient factual support to warrant their consideration at trial. Liberty Lobby, Inc. v. Dow Jones & Co., 838 F.2d 1287 (D.C.Cir. 1988), cert. denied, 488 U.S. 825, 109 S.Ct. 75, 102 L.Ed.2d 51 (1988); Aries Realty, Inc. v. AGS Columbia Associates, 751 F.Supp. 444 (S.D.N.Y. 1990).

Generally, the party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party and all reasonable inferences from the facts must be drawn in favor of that party as well. U.S. v. Kensington

Hospital, 760 F.Supp. 1120 (E.D.Pa. 1991); Schillachi v. Flying Dutchman Motorcycle Club, 751 F.Supp. 1169 (E.D.Pa. 1990). See Also: Williams v. Borough of West Chester, 891 F.2d 458, 460 (3rd Cir. 1989); Tziatzios v. U.S., 164 F.R.D. 410, 411, 412 (E.D.Pa. 1996).

Discussion

A. Declaratory Judgments in General.

Plaintiff brought this action pursuant to the Court's diversity jurisdiction, 28 U.S.C. §1332(a)(1) and 28 U.S.C. §2201 seeking a declaratory judgment that Defendant is obligated to pay him the sum of $200,000, or the difference between the underinsured motorist coverage limit of his and his wife's Liberty Mutual policy ($250,000) and the other driver's liability coverage ($50,000). That Statute states, in relevant part:

> (a) In a case of actual controversy within its jurisdiction, ...as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

A federal court thus has the discretion to entertain a declaratory judgment action when it finds that the declaratory relief sought "(i) will serve a useful purpose in clarifying and settling the legal relations in issue; and (ii) will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." Icaron, PLC v. Howard County, MD., 904 F.Supp. 454, 458 (D.Md. 1995), quoting

Continental Casualty Co. v. Fuscardo, 35 F.3d 963, 966 (4th Cir. 1994); Bortz v. DeGolyer, 904 F.Supp. 680, 684 (S.D.Ohio 1995).

While federal law will be applied and will control whether or not the court can render a declaratory judgment, state law is to be applied to the underlying substantive issues. Britamco Underwriters, Inc. v. C.J.H., Inc., 845 F.Supp. 1090, 1093 (E.D.Pa. 1994), aff'd, 37 F.3d 1485 (3rd Cir. 1994). Under the Declaratory Judgment Act, declaratory relief is appropriate where there is a substantial controversy of sufficient immediacy and reality between parties having adverse legal interests. Id., citing Maryland Casualty Company v. Pacific Coal & Oil Company, 312 U.S. 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941) and Louisiana Nevada Transit Co. v. Marathon Oil Co., 779 F.Supp. 325, 328 (W.D.La. 1991).

B. Choice of Law.

In his Memorandum of Law in support of his motion for summary judgment, Plaintiff avers that he "seeks [a] declaration that Pennsylvania law, which provides for inter-policy stacking (single vehicles insured under separate policies) of underinsured motorist (UIM) benefits, applies to this UIM claim..."
In addition, Plaintiff avers, the "OTHER INSURANCE UIM" language provisions of his policy do not contain clear and unambiguous contract language and do not expressly require a reduction in the coverage for benefits paid pursuant to a foreign UIM insurance contract or show that an express bargain was created whereby any UIM benefits paid pursuant to a foreign contract would be an offset, set-off or credit against those otherwise payable

under the Liberty Mutual policy. Likewise, he argues, the "OUT OF STATE COVERAGE" language provisions of his policy do not mandate or direct the application of New Jersey law to the interpretation of the policy specifically when the state in which the auto accident occurred has a financial responsibility or similar law.

Defendant, on the other hand, contends that the law of New Jersey is properly applied to interpret the insurance agreement which it issued to Mr. Todd and his wife and that the amount of UIM benefits to which Plaintiff is entitled are limited to the highest amount due under any of the policies applicable to him in accordance with N.J.S.A. 17:28-1.1(c), the so-called "anti-stacking law." Accordingly, we must first decide whether Pennsylvania or New Jersey law is applicable here.

As a federal court exercising diversity jurisdiction over this declaratory judgment action, this court is obliged to apply the substantive law of the state in which it sits. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938); Nationwide Insurance Co. v. Resseguie, 980 F.2d 226, 229 (3rd Cir. 1992); Coregis Insurance Co. v. Baratta & Fenerty, Ltd., 57 F.Supp.2d 179, 181 (E.D.Pa. 1999). Similarly, where no specific choice of law has been made by the parties, a district court in a diversity action will apply the choice of law rules of the forum state in determining which state's law will be applied to the substantive issues before it. Calhoun v. Yamaha Motors Corp., 216 F.3d 338, 343 (3rd Cir. 2000), citing Klaxon v. Stentor Electric Manufacturing Co., 313 U.S. 487, 496-497, 61 S.Ct. 1020,

1021, 85 L.Ed.1477 (1941). For both contract and tort actions, the Pennsylvania Supreme Court has adopted a flexible approach which combines a significant relationship test with government interest analysis. Stated otherwise, the Pennsylvania rule requires an examination of the significant contacts as they relate to the public policies underlying the issues in question. KNK Medical-Dental Specialties, Ltd. v. Tamex Corporation, 2000 WL 1470665, *2 (E.D.Pa. 2000), citing, inter alia, Carrick v. Zurich-American Ins. Group, 14 F.3d 907, 909 (3rd Cir. 1994) and Griffith v. United Air Lines, 416 Pa. 1, 203 A.2d 976 (1974).

We are guided in our resolution of the choice of law issue in this case by the Third Circuit's decision in Assicurazioni Generali, S.P.A. v. Clover, 195 F.3d 161 (3rd Cir. 1999). There, the Court of Appeals was faced with the issue of whether the resident parents of a truck lessor were entitled to underinsured motorist benefits under an endorsement to their lessor-son's non-trucking liability insurance policy provided by the Indiana corporation to whom he leased his truck. Although the insurance policy in that case likewise did not contain a choice of law provision, the Third Circuit noted it was drafted in accordance with Indiana law and contained a UIM endorsement entitled "INDIANA UNINSURED AND UNDERINSURED MOTORISTS COVERAGE." Finding that Pennsylvania in large measure followed the Restatement (Second) Conflict of Laws which holds that a contract's references to the laws of a particular state may provide persuasive evidence that the parties to the contract intended for that state's law to apply, the Third Circuit concluded that the

district court should have considered the content of the endorsement itself rather than an interest analysis as determinative of the choice of law question. Thus, the Third Circuit reasoned, Indiana law should have been applied. See, Clover, 195 F.3d at 164-165.

In this case, while Plaintiff is correct in his assertion that there is no specific "choice of law" provision contained in the automobile insurance contract which he has with Liberty Mutual, we nevertheless must agree with Defendant that the contract, as written, implicitly selects New Jersey law as the law to be applied in interpreting the policy. Indeed, as in Clover, the policy issued to the plaintiff here contains an endorsement very clearly entitled "UNINSURED MOTORISTS COVERAGE–NEW JERSEY," which repeatedly references and reflects that it was written to comply with and to fulfill the provisions of the New Jersey Financial Responsibility and No-Fault insurance laws. As the Third Circuit found in Clover, we also find that this language clearly determines the outcome of the choice of law issue and we see no need to undertake an interest analysis. Accordingly, we shall apply New Jersey law in interpreting the Liberty Mutual insurance policy.

C. Plaintiff's Entitlement to UIM Benefits.

Recognizing that insurance policies are not ordinary contracts but contracts of adhesion between parties who are not equally situated, New Jersey's courts interpret insurance contracts under the doctrine of "reasonable expectations." Meier v. New Jersey Life Insurance Company, 101 N.J. 597, 611, 503 A.2d

862, 869 (1986). In applying this principle, an objectively reasonable interpretation of the average policyholder is accepted so far as the language of the insurance contract in question will permit and any ambiguities contained therein should be construed against the insurer and in favor of the insured. Id.; DiOrio v. new Jersey Manufacturers Insurance Company, 79 N.J. 257, 268, 398 A.2d 1274, 1280 (1979); Stiefel v. Bayly, Martin and Fay of Connecticut, Inc., 242 N.J. Super. 643, 651, 577 A.2d 1303, 1307-1308 (App. Div. 1990).

Underinsured motorists insurance coverage in New Jersey has its genesis in N.J.S.A. 39:6A-3 and N.J.S.A. 17:28-1.1, which dictate that "[e]very owner or registered owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Banking and Insurance..." and that "[u]ninsured and underinsured motorist coverage shall be provided as an option by an insurer to the named insured electing a standard automobile insurance policy..." N.J.S.A. 17:28-1.1(b). Finally, where uninsured/underinsured motorists coverage is selected, N.J.S.A. 17:28-1.1(c) provides:

> "Uninsured and underinsured motorist coverage provided for in this section shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

A motor vehicle tortfeasor is "underinsured" only when all the liability coverage insuring his or her purportedly underinsured vehicle is less than the UIM benefits "held" by the UIM claimant. French v. New Jersey School Board Association Insurance Group, 149 N.J. 478, 483, 694 A.2d 1008, 1010 (1997). Once that threshold analysis results in a potential UIM claim, recovery against the UIM coverage results only when the insured demonstrates that his or her damages exceed the liability limits involved. Id. Likewise, the statute contemplates that the insured is free to pursue UIM benefits under other policies under which he or she may be insured be it a personal policy, as the occupant of an employer's vehicle, the permissive occupant of a motor vehicle owned by any other insured person, or as the resident in the household of a relative possessing his or her own UIM insurance. French, 149 N.J. at 495, 694 A.2d at 1017; CNA Insurance Co. v. Canning, 327 N.J. Super. 388, 392, 743 A.2d 386, 388 (App. Div. 2000). This fact notwithstanding and irrespective of the standard "other insurance" clause in the typical UIM endorsement, the anti-stacking provision of N.J.S.A. 17:28-1.1(c) precludes collecting an amount greater than that afforded by the policy with the highest coverage. Magnifico v. Rutgers Casualty Insurance Co., 153 N.J. 406, 421, 710 A.2d 412, 419 (1998); Granger v. Ohio Casualty Insurance Co., 306 N.J. Super. 469, 474, 703 A.2d 1004, 1007 (App. Div. 1997), cert. denied, 154 N.J. 611, 713 A.2d 502 (1998).

In moving for summary judgment, Plaintiff argues that the relevant provisions of his Liberty Mutual policy are ambiguous

and hence this Court should accept his interpretation and his expectations with respect to the UIM benefits recoverable thereunder. According to Plaintiff, the "Limit of Liability" and "Other Insurance" clauses contained in his Liberty Mutual policy (Endorsement AS 1181 08 90, p.2 of 3) and the explanation of Uninsured Motorists Coverage provided at page 16 of Liberty Mutual's New Jersey Auto Insurance Buyer's Guide, do not specifically state that UIM benefits shall be limited to the highest coverage limit available under any one policy where a claimant is an "insured" under more than one policy and thus may be interpreted as allowing recovery of the limits of UIM coverage under all available policies. Those provisions state, in relevant part:

LIMIT OF LIABILITY

> ...With respect to an accident with an "underinsured motor vehicle," the limit of liability shall be reduced by all sums:
>
> 1. Paid because of "bodily injury or "property damage" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A (Liability Coverage) of the policy; and
>
> 2. Paid because of the "property damage" under Part D of the policy or any similar coverage under any other policy.
>
> No one is entitled to receive duplicate payment for the same element of loss.

OTHER INSURANCE

If there is other applicable similar insurance under more than one policy or provision of coverage:

> 1. Any recovery for damages for "property damage" or "bodily injury" sustained by an "insured" may equal but

not exceed the higher of the applicable limit for any one vehicle under this insurance or any other insurance.

2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

3. We will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

UNINSURED MOTORISTS COVERAGE
(Required by Law)
Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which do not require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to **you,** your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

There are other motorists who have auto insurance coverage but with very low limits. When you buy uninsured motorist coverage, you are also provided coverage to protect you from those motorists who are **underinsured.** If you are in an accident caused by such a motorist, underinsured motorist coverage will pay damages up to the difference between your underinsured motorist coverage limit and the other driver's liability coverage limit...."

Contrary to Plaintiff's allegations, our examination of these contractual clauses does not reveal any ambiguity or conflict with N.J.S.A. 17:28-1.1(c). The language of the "Limit of Liability" section of Plaintiff's Liberty Mutual policy and the New Jersey Buyer's Guide are both clearly written to explain generally how underinsured motorists coverage works, i.e., in an

accident with an underinsured driver, a claimant can recover an amount up to the difference between the underinsured driver's liability coverage and the limits of UM/UIM coverage available under his own policy. This provision and Buyer's Guide simply do not discuss how UIM coverage works where a claimant is an "insured" under more than one insurance policy which is, of course, the situation with which we are faced in this case. Since they are merely silent on this issue, we find no ambiguity in their language and no conflict between them and the anti-stacking provision.

Rather, the "Other Insurance" provision clearly and unambiguously addresses how UIM benefits are to be paid "[i]f there is other applicable similar insurance under more than one policy or provision of coverage." In that event, this clause clearly explains that the Liberty Mutual policy is to be deemed to provide "excess" coverage when the claim emanates from a vehicle which the plaintiff does not own and that any recovery of UIM benefits for bodily injury may equal but not exceed the higher of the applicable limit for any one vehicle under either this policy or any other insurance policy. We find that this language, too, is wholly consistent with New Jersey's anti-stacking provision and that applying it to the instant case results in Plaintiff being entitled to an additional $100,000 in UIM benefits from his Liberty Mutual policy after an offset is given for the $50,000 proceeds received from the tortfeasor's liability carrier and the $100,000 in UIM coverage received from the carrier insuring the van which Plaintiff was driving at the

time of the accident. Accordingly, we shall enter the attached order granting the defendants' summary judgment motion and denying that of the plaintiff.

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ORDER

AND NOW, this day of January, 2001, upon consideration of Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion therefor, it is hereby ORDERED that the Plaintiff's Motion is DENIED, the Defendants' Motion is GRANTED and Judgment is hereby entered in favor of the Defendants and against Plaintiff as a matter of law in accordance with Fed.R.Civ.P. 56.

BY THE COURT:

_____
J. CURTIS JOYNER, J.