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

CHRISTOPHER R. GIFT, and NANCY M. GIFT, Administrators of the Estate of CHRISTOPHER C. GIFT, Plaintiffs,	CIVIL ACTION
v.	NO. 97-6934
NATIONWIDE INSURANCE COMPANY, Defendant.	

MEMORANDUM

R.F. KELLY, J. APRIL 9, 1998

Plaintiffs, the parents of Christopher C. Gift, have brought this action as administrators of their son's estate to recover uninsured motorist benefits under an automobile insurance policy issued to them by Defendant, Nationwide Insurance Company. Defendant removed the case from the Chester County Court of Common Pleas and asserted a counterclaim for a declaratory judgment. Cross-Motions for Summary Judgment are presently before this Court. For the reasons that follow, Plaintiffs' Motion is denied and Defendant's Motion is granted in part.

I. FACTS.

On August 17, 1995, Christopher C. Gift ("Decedent") was fatally injured when the car he was riding in struck a tree. The vehicle involved belonged to Wilma A. Wareham and was taken, without her permission, by her grandson, Charles Norris, who was also fatally injured in the accident. Virgil Brian Smith was driving the vehicle at the time of the accident; he and two

female passengers survived.

After the accident, Plaintiffs' presented claims for uninsured motorist benefits to Home Mutual Insurance Company under a policy issued to Wilma Wareham and to State Farm Mutual Insurance Company under a policy issued to Rose M. Smith, the mother of Virgil Brian Smith. Both insurers denied coverage on the basis of a "non-permissive use exclusion" contained in their policies.

In this action, Plaintiffs' seek to recover uninsured motorist benefits through an automobile insurance policy issued to them by Defendant. Defendant denies coverage on the basis of a "non-permissive use exclusion" which provides:

> This coverage does not apply to:
>
> 2. Use of any motor vehicle by an insured without the owner's permission.

Plaintiffs' argue that because all other sources of insurance have denied coverage, it would violate the public policy of Pennsylvania to allow Defendant to likewise deny coverage especially where there is no evidence that decedent "knew" he was riding in a stolen vehicle. Alternatively, Plaintiffs' argue that the exclusion is ambiguous regarding whether it applies to insureds who unknowingly occupy a vehicle being used without the permission of its owner and therefore must be construed to provide coverage to the insured.

II. Standard.

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a

judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986); Kiewit Eastern Co. v. L & R Construction Co., 44 F.3d 1194, 1198 (3d Cir. 1995). The moving party has the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, the non-moving party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

Cross-motions for Summary Judgment do not necessitate the determination of the case at that stage. Rains v. Cascade Indus., 402 F.2d 241, 245 (3d. Cir. 1968). The standard applied remains the same. U.S. v. Hall, 730 F. Supp. 646, 648 (M.D. Pa. 1990). Each party has the burden to prove the absence of a genuine issue of material fact and that judgment in their favor is proper as a matter of law. Id.

III. Discussion.

Judicial interpretation of an insurance policy is a question of law when the facts are undisputed. Pacific Indem. Co. v. Linn, 766 F.2d 754, 760 (3d Cir. 1985). Because the facts of this case are not in dispute, this Court may properly

interpret the policy at issue.

"A provision of an insurance policy is ambiguous if reasonably intelligent men on considering it in the context of the entire policy would honestly differ as to its meaning." Allstate Ins. Co. v. Davis, 977 F. Supp. 705, 711 (E.D. Pa. 1997). When the words in an insurance policy are clear and unambiguous, effect must be given to their plain and ordinary usage. Pacific Indem. Co., 766 F.2d at 760-61. Determining whether or not an insurance policy is ambiguous is a question of law, appropriate for determination by the Court. Id. at 760. I find the policy at issue to be unambiguous as a matter of law.

A. Pennsylvania Public Policy.

Plaintiffs' contend that if the non-permissive use exclusion contained in the insurance policy issued by Defendant is not ambiguous, then it should be invalidated because it violates the public policy of the Uninsured Motorist Act ("UMA").[1] 42 Pa.C.S.A. § 2000. Essentially, Plaintiffs claim that because all other sources of insurance have denied coverage, Defendant must provide coverage, because otherwise Plaintiffs will not be compensated for the death of their son at all, and that result is inconsistent with Pennsylvania's public policy.

Plaintiffs' broadly assert that "the purpose of the Uninsured Motorist Act is to provide protection to innocent

[1] Presumably, Plaintiffs use the term "public policy" to refer to the intent of the Pennsylvania legislature in enacting the UMA. Nationwide Mut. Ins. Co. v. Cummings, 652 A.2d 1338, 1342 n.8 (Pa. Super. 1994), alloc. denied, 659 A.2d 988 (Pa. 1995).

victims of irresponsible drivers." The Supreme Court of Pennsylvania, however, has declared that the legislative purpose of the UMA was altered by the later enactment of the Motor Vehicle Financial Responsibility Law ("MVFRL"). Windrim v. Nationwide Ins. Co., 641 A.2d 1154, 1156 (Pa. 1994)(citing Nationwide Mut. Ins. Co. v. Hampton, 935 F.2d 578, 587 (3d Cir. 1991). More recently, it has been held that in enacting the MVFRL the legislature was concerned with "the escalating costs of purchasing motor vehicle insurance and the increasing numbers of uninsured motorists." Nationwide Mut. Ins. Co. v. Cummings, 652 A.2d 1338, 1342 (Pa. Super. 1994), alloc. denied, 659 a.2d 988 (Pa. 1995).

In Cummings, the Superior Court of Pennsylvania held that a "non-permissive use exclusion" did not violate the legislative intent behind the MVFRL. Cummings, 652 A.2d at 1343. There, the court reasoned that the exclusion was consistent with the legislative purpose of reducing the cost of automobile insurance. Id. If the "non-permissive use exclusion" was declared invalid, the result would be an increase in the cost of insurance because of the increased risk associated with the use of an automobile without the owner’s permission. Id.

Plaintiffs seek to distinguish Cummings on the grounds that the injured passenger in that case sought coverage under a policy issued to the driver of the automobile, after he had already recovered benefits under a policy issued to his sister. These distinctions do not change my holding. There is nothing in

the MVFRL or the UMA which requires an injured party to recover benefits in all instances. Frazier v. State Farm Mut. Auto. Ins. Co., 665 A.2d 1, 2 (Pa. Super. 1995)(noting "the ‘maximum feasible restoration’ principle was confined to the No-Fault Act and [has] not been carried over into the MVFRL")(citing Jeffrey v. Erie Ins. Exch., 621 A.2d 635 (Pa. Super. 1993), alloc. denied, 644 A.2d 736 (1994). Indeed, if the legislature intended recovery in all instances it would not have repealed the No-fault Act in the first place. Id.

"[T]he method by which an injured party obtains coverage is limited to the clear and unambiguous terms of the insurance policy." Cummings, 652 A.2d at 1342. The terms of the policy are clear and unambiguous and as such must be afforded their plain and ordinary meaning. Plaintiffs cannot recover uninsured motorist benefits because they concede their son was using the automobile without its owner’s permission.[2]

B. Ambiguity.

Plaintiffs contend that the insurance policy is ambiguous regarding whether it applies to insureds who unknowingly occupy a vehicle being used without the permission of its owner. Essentially, Plaintiffs seek to insert the term "knowingly" into Defendant’s "non-permissive use exclusion," and then avoid the exclusion entirely because their decedent did not act with knowledge. This is not a proper interpretation of the

[2] "Occupancy" is equivalent with "use" of a vehicle. Cummings, 652 A.2d at 1345.

policy.

As previously stated, the insurance policy is "clear and unambiguous," thus, its terms must be given their "plain and ordinary meaning." Davis, 977 F. Supp. 705, 711 (E.D. Pa. 1997). The exclusion applies to any non-permissive use of an automobile by an insured. Absence of the word "knowing" does not make the policy ambiguous, therefore, this Court is unable to raise the state of mind required by the exclusion to one of "knowing conversion." The "non-permissive use exclusion" precludes Plaintiffs from recovering uninsured motorist benefits from Defendant.

An appropriate Order follows.

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CHRISTOPHER R. GIFT, and NANCY M. GIFT, Administrators of the Estate of CHRISTOPHER C. GIFT, Plaintiffs,	CIVIL ACTION
v.	NO. 97-6934
NATIONWIDE INSURANCE COMPANY, Defendant.	

ORDER

AND NOW, this 9th day of April, 1998, upon consideration of the Motions for Summary Judgment filed by Plaintiffs, Christopher R. Gift and Nancy M. Gift, and Defendant, Nationwide Insurance Company, and all responses thereto, it is hereby ORDERED that Plaintiffs' Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED. It is further ORDERED that:

1. Declaratory Judgment is hereby ENTERED in favor of Defendant, Nationwide Insurance Company and against Plaintiffs Christopher R. Gift and Nancy M. Gift;

2. Defendant Nationwide Insurance Company has no obligation to provide uninsured motorist benefits to or on behalf of Christopher C. Gift in connection with the August 17, 1995

motor vehicle accident.

BY THE COURT:

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Robert F. Kelly, J.