

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

Vanessa Wilson	:	
	Plaintiff,	CIVIL ACTION
	:	
v.	:	NO. 03-4055
	:	
Reliance Insurance Company, et al.,	:	
Defendants.	:	

MEMORANDUM-ORDER

Green, J.

June 21st, 2006

Presently pending is Defendants’ reinstated Motion for Summary Judgment and Plaintiff’s response thereto. For the following reasons, Defendants’ Motion for Summary Judgment will be denied and appropriate declaratory relief granted.

I. Factual Background:

On October 7, 1999 Dwayne Gardner, a Mobile Dredging & Pumping Co. (“Mobile”) employee, allegedly offered Plaintiff Vanessa Wilson a ride in a pickup truck (“truck”) owned by Mobile and insured by Reliance Insurance Company (“Reliance”). An unidentified vehicle allegedly forced the truck off the road in Wilmington, Delaware. Plaintiff claims to have been injured due to the accident. Plaintiff originally filed a complaint for medical and wage benefits,¹ and has filed the present complaint for uninsured motorist benefits. The Reliance insurance policy states in relevant part that the definition of an “insured” includes “anyone else while using with your permission a

¹ Plaintiff first filed a request for arbitration with the State of Delaware Automobile Arbitration Panel to obtain first party medical and wage benefits under Mobile’s auto insurance policy with Reliance. In an uncontested arbitration she was awarded medical and wage benefits. Not having received payment of the award she filed a Summons and Complaint in the Superior Court of the State of Delaware. Reliance neither entered an appearance nor answered the Complaint. Default judgment was therefore entered on the arbitration award on September 12, 2000. Reliance was declared insolvent on October 3, 2001 and Pennsylvania Property and Casualty Insurance Guarantee Association statutorily acquired all of Reliance’s rights, duties and obligations. Reliance paid Plaintiff’s wage and medical benefits when the company filed for receivership.

covered “auto” you own, hire or borrow...” Defendants assert that Mr. Gardner was a non-permissive user of the vehicle and the Plaintiff was a non-permissive passenger. Accordingly Defendants assert that Plaintiff is not entitled to uninsured motorist benefits.

II. Procedural Background:

Plaintiff Vanessa Wilson commenced this declaratory judgment action by filing a complaint in equity against Defendants Reliance and Pennsylvania Property and Casualty Insurance Guarantee Association (“PPCIGA”) and Mobile to determine the res judicata and/or estoppel effect of a default judgment entered by the Superior Court of the State of Delaware.² This court granted summary judgment in Plaintiff’s favor. Defendants appealed the court’s ruling to the United States Court of Appeals for the Third Circuit. The Third Circuit determined that this court erred by giving preclusive effect to the default judgment granted by the Superior Court of the State of Delaware. Pursuant to the Third Circuit’s ruling this Court’s judgment was ordered vacated and the matter was remanded on August 1, 2005. Presently before the court is Defendants’ motion for summary judgment, and Plaintiff’s response thereto.

² According to the Complaint, Plaintiff seeks a declaration that:

1. At all times relevant hereto PPCIGA is responsible for coverage for Reliance Insurance Company;
2. The Court Order of September 12, 2002 by the Honorable John E. Badiarz, Jr., of the Superior Court of the State of Delaware in and for New Castle County provides first party coverage benefits to Vanessa Wilson, and that Reliance and its successor PPCIGA are estopped from raising any defenses with regards to coverage under the doctrine of res judicata; and, Vanessa Wilson is declared an insured under the policy with regards to her claim for uninsured motorist benefits;
3. The failure of Reliance and PPCIGA to [timely] disclaim coverage estoppes Reliance and its successor PPCIGA from asserting that no coverage can be provided;
4. The defendants are required to submit the Plaintiff’s claim for uninsured motorist benefits to an arbitration panel pursuant to the policy of insurance that was in effect with Reliance Insurance Company and Mobile Dredging and Pumping Company on the date of the motor vehicle accident.

(Compl. at 4.)

III. Defendants' Motion for Summary Judgment

Defendants filed their motion for summary judgment asserting that there are no genuine issues of material fact, and that they are entitled to judgment as a matter of law. Summary judgment is appropriate "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." Fed.R.Civ.P. 56(c). A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). The court must draw all reasonable inferences in the light most favorable to the non-movant. See American Flint Glass Workers, AFL-CIO v. Beaumont Glass Company, 62 F.3d 574, 578 (3d Cir. 1995).

Defendants assert that Mr. Gardner drove the truck without the permission of Mobile or its representatives. However, Plaintiff points to other evidence related to permissive use. There is evidence that James C. Newton, Safety Director of Mobile, informed the investigating police officer that Mr. Gardner was a Mobile employee, had keys and access to the yard where the vehicles were maintained, and used the truck while at work. Furthermore, Plaintiff alleges in her deposition that Mr. Gardner was wearing his work uniform and was driving the truck with the name Mobile Dredging on it on the day of the accident. (Pl. Ex. A) Plaintiff further asserts that she had observed Mr. Gardner driving the same or similar pickup truck in Wilmington, Delaware on numerous occasions. Id In light of Plaintiff's evidence this court concludes that there is a genuine

issue of material fact regarding whether Mr. Gardner was authorized to use the vehicle. Accordingly, Plaintiff's Motion for Summary Judgment will be denied.

IV. Declarations:

Plaintiff's Complaint seeks four declarations. Plaintiff's first proposed declaration that PPCIGA is responsible for coverage for Reliance is uncontested by Defendants. Accordingly, this court will declare that PPCIGA is responsible for coverage for Reliance.

Plaintiff's also asks this court to declare that "the Court Order of September 12, 2002 ...provides first party coverage benefits to Vanessa Wilson and Reliance and its successor PPCIGA are estopped from raising any defenses with regards to coverage under the doctrine of res judicata..." The United States Court of Appeals for the Third Circuit stated in its opinion, "Because the Delaware judgment does not satisfy the requirements of either collateral estoppel or res judicata, it does not have preclusive effect in this action. Thus, the District Court's conclusion that it was bound by the Delaware Court's determination that Wilson was an "insured" is incorrect. Because this issue has not been conclusively determined, we will vacate the summary judgment and remand for further proceedings consistent with this opinion." Wilson v. Reliance Ins. Co., 138 Fed. Appx. 457, 460 (3d Cir. 2005). Accordingly, Reliance and PPCIGA are not precluded from raising defenses, with regards to coverage.

Plaintiff also seeks a declaration that the failure of Reliance and PPCIGA to timely disclaim coverage estoppes Reliance and its successor PPCIGA from asserting that no coverage can be provided. Paragraph 23 of Reliance's Order of Liquidation states in pertinent part that "no judgment or order against Reliance or an insured of Reliance

entered at any time by default or by collusion need be considered as evidence of liability...” The order entered by the Delaware state court against Reliance was entered by default. In accordance with Reliance’s Order of Liquidation, the default judgment, need not be considered as evidence of liability. This court will therefore deny Plaintiff’s request to prevent Reliance and PPCIGA from disclaiming coverage for Plaintiff.

The Plaintiff’s Complaint finally requests this court order the Defendants to submit Plaintiff’s claim for uninsured motorist benefits to an arbitration panel. Pursuant to the provisions of the Reliance insurance policy, in effect at the time of the motor vehicle accident, Defendants must submit Plaintiff’s uninsured motorist benefits claims to an arbitration panel. An appropriate declaratory judgment order follows.

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DECLARATORY JUDGMENT

AND NOW this 21st day of June 2006, upon consideration of the pleadings of the parties, **IT IS HEREBY ORDERED** that the parties' motions for summary judgment are **DENIED** and it is **HEREBY DECLARED** that:

1. At all times relevant hereto PPCIGA is responsible for coverage for Reliance Insurance Company.
2. Reliance and its successor PPCIGA are not precluded from raising any defenses with regards to coverage under the doctrine of res judicata.
3. The failure of Reliance and PPCIGA to earlier disclaim coverage does not estop Reliance and its successor PPCIGA from asserting that no coverage can be provided;
4. Defendants shall forthwith submit Plaintiff's claim for uninsured motorist benefits to an arbitration panel.

BY THE COURT

S/ CLIFFORD SCOTT GREEN
CLIFFORD SCOTT GREEN, S.J.