STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: August 4, 2015]

AMBERLEIGH HUDSON	:	
	:	
V.	:	**C.A. No. PC 12-6179**
	:	
GEICO INSURANCE AGENCY, INC. d/b/a GEICO GENERAL INSURANCE COMPANY	:	

DECISION

VOGEL, J. Plaintiff Amberleigh Hudson (Ms. Hudson or Plaintiff) has filed a two-count complaint against Defendant Geico Insurance Agency, Inc., d/b/a Geico General Insurance Company (GEICO or Defendant). Ms. Hudson seeks compensation for injuries she alleges to have sustained on February 12, 2012 when she was struck in a roadway by a vehicle operated by Tara Konturas (the underinsured motorist). Plaintiff brings her claim under the provisions of an underinsured motorist policy issued by GEICO to the owner of a motor vehicle in which she had been a passenger. For its part, Defendant denies Plaintiff's claim under the policy and asserts that she is not entitled to recover because she was not occupying the insured vehicle at the time of her accident.

This case was reached for trial on June 17, 2015. The parties submitted a joint statement of undisputed facts and seek a ruling from the Court on the legal issue of whether Ms. Hudson was an occupant in the insured vehicle at the time of her accident as that term is defined by the

policy and applicable law. The parties waived a jury trial by agreement and submitted the case to the Court on this limited issue.[1]

After consideration of the undisputed facts, the policy language, and applicable law, this Court finds that Ms. Hudson was not an occupant of the insured vehicle at the time of her accident with the underinsured motorist, and thus, she is not entitled to recover under that policy.

I

Undisputed Facts

The parties agreed to a set of stipulated facts. Ms. Hudson and her boyfriend at the time, Gregory Hurst (Mr. Hurst), sat in Mr. Hurst's Saab[2] parked outside the Amazing Super Store on Allens Avenue in Providence, Rhode Island. While the pair planned to enter the store, they lingered in the car, chatting idly. (Statement of Stip. Facts ¶ 4.) After one to two minutes, a loud bang from a motor vehicle accident cut their conversation short. Upon hearing the crash, Mr. Hurst turned off the car, which had been in "park," and both he and Ms. Hudson exited the vehicle. (Hurst Dep. 12:16-18, July 26, 2013.) Witnessing the aftermath of a car accident on an adjacent street, they proceeded to travel across the parking lot, then past the sidewalk and two lanes of traffic in order to help those injured in the collision. (Statement of Stip. Facts ¶ 8.) A passing vehicle struck Ms. Hudson while she was rendering assistance, breaking her leg. (Hudson Dep. 34:16-20.)

In the following months, Ms. Hudson settled a claim against the operator of the vehicle that hit her. Id. at 25:1-6. Plaintiff claims that the settlement did not fully compensate her for the injuries sustained. As such, she sought further relief from Mr. Hurst's automobile insurance

[1] Counsel agree that once this narrow legal issue has been decided by the Court, the parties will resolve all other issues without further judicial intervention.

[2] Mr. Hurst and Ms. Hudson were seated in the driver's and front passenger's seat respectively. (Statement of Stip. Facts, ¶ 3.)

carrier, GEICO. Mr. Hurst insured his Saab through a policy issued by GEICO—specifically, Policy No. 4230-93-68-76 (the GEICO policy). (Statement of Stip. Facts ¶ 16.) Underinsured Motorists coverage provided by the GEICO policy affords protection for those "occupying an owned auto" of the insured at the time of injury. (GEICO policy, § IV at ¶ 5.) The policy defines "occupying" as "in, upon entering into or alighting from." Id. at ¶ 5. GEICO denied Plaintiff's claim, stating that she was not occupying the Saab when the underinsured motorist hit her. (Statement of Stip. Facts ¶ 17.) Ms. Hudson filed the instant action in response to that denial and seeks a holding from this Court that she is covered under the GEICO policy.

II

Standard of Review

Generally, in a non-jury trial, the trial justice sits as both trier of fact and law. Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006). As such, the Court '"weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences."' Id. (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). The justice "need not view the evidence in a light most favorable to a plaintiff." Hood, 478 A.2d at 184-85. Here, however, the Court is deciding the case on a joint statement of undisputed facts. Although Ms. Hudson does not frame her Complaint as a declaratory judgment action, the Court notes that in effect, the parties seek such a holding on one narrow issue of law. "A decision to grant or deny declaratory . . . relief is addressed to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice committed an error of law." Kayak Ctr. at Wickford Cove, LLC v. Town of Narragansett, No. 2014-168-Appeal, 2015 WL 3659278, at *2 (R.I. June 15, 2015) (internal quotations omitted).

III

Discussion

GEICO urges this Court to apply the plain meaning of the word "occupying" in determining whether Ms. Hudson can recover under the policy. Defendant asserts that such application precludes Plaintiff from recovery under the policy because she was not physically inside the car at the time of the accident. Ms. Hudson disagrees and maintains that the Court should apply the four-part analysis set forth by our Supreme Court in Gen. Accident Ins. Co. of Am. v. Olivier, 574 A.2d 1240 (R.I. 1990). In Olivier, the Court adopted a fact-driven approach to determine whether a claimant could collect benefits under an uninsured motorist policy as an occupant of an insured vehicle. Id. Defendant disputes the applicability of Olivier to the instant matter and argues that the definition of "occupying" contained in its policy supersedes the common-law test followed by the Court in Olivier. GEICO further argues that even if the Court applies Olivier to this case, Ms. Hudson's claim fails because the facts surrounding her accident do not meet the requirements of the Olivier test.

In Olivier, an enraged motorist shot a woman exiting her car in the wake of an automobile accident. At the time of the shooting, the woman stood 117 feet away from the car, on her way to speak with a police officer regarding the collision. The Court considered the issue of whether she would be considered an occupant of the car she had exited for the purposes of insurance coverage. In concluding that she was indeed "occupying" the car when shot, the Rhode Island Supreme Court utilized the four-pronged analysis set forth by the Pennsylvania Supreme Court in Utica Mut. Ins. Co. v. Contrisciane, 473 A.2d 1005 (Pa. 1984), which involved a similar set of facts.

In adopting the test set forth by Contrisciane, our Supreme Court rejected "the strict literal approach whereby a person cannot be 'occupying' a vehicle unless he . . . [is] in physical contact with the vehicle." 473 A.2d at 1008. Following Contrisciane, the Court in Olivier adopted a more expansive view of what constitutes "occupying" a motor vehicle for the purposes of assessing coverage. Olivier, 574 A.2d at 1241; see Mau v. N.D. Ins. Reserve Fund, 637 N.W.2d 45, 59 (Wis. 2001) (Wilcox, J., dissenting) (noting Rhode Island Supreme Court "affords a liberal interpretation to the term 'occupy'"); Auto-Owners Ins. Co. v. Above All Roofing, LLC, 924 So. 2d 842, 847 (Fla. Dist. Ct. App. 2006) (listing Olivier and Contrisciane as cases which "extend[] the definition of 'occupying' much further" than its own jurisprudence).

In Constrisciane, the policy defined "occupying" as "in or upon or entering into or alighting from." 473 A.2d at 1008. The policy language currently before the Court—"in, upon entering into or alighting from"—is very similar, but not identical to that in Constrisciane. This Court notes that the pertinent language in Olivier differs both from the language contained in the Constrisciane policy and from that included in the GEICO policy. In Olivier, the insurance policy defined "occupying" as "in, upon, getting in, on, out or off."[3] Brief for Appellee, Ex. B at 1 (General Accident Insurance Policy), Olivier, 574 A.2d 1240, No. 87-0527; Brief for Appellant, Ex. A (General Accident Insurance Policy), Olivier, 574 A.2d 1240, No. 87-0527. It is clear that by applying the reasoning in Constrisciane to the decision in Olivier, our Supreme Court did not find the differences in their respective definitions of the term "occupying" as significant to the outcome of the case. See Lynn v. Westport Ins. Corp., 258 F. App'x 438, 440 (3d Cir. 2007) (finding that although the policy before it defined "occupying" as "in, upon,

[3] Although this definition is not set forth in the Rhode Island Supreme Court decision in that case, both parties attached copies of the policy to their appellate briefs. See Brief for Appellee, Ex. B at 1 (General Accident Insurance Policy), Olivier, 574 A.2d 1240, No. 87-0527; Brief for Appellant, Ex. A (General Accident Insurance Policy), Olivier, 574 A.2d 1240, No. 87-0527.

getting in, on, out or off,"—the same definition as in Olivier—this definition was "sufficiently similar to the definition in the policy in [Contrisciane] to make the test set out in that case applicable"). Based upon the similarities in the policy definition in this case and the definition in Contrisciane, it is clear that the Court must apply the same test to Ms. Hudson's claim as our Supreme Court applied to the claim of Ms. Olivier. Accordingly, this Court rejects GEICO's argument that the policy's definition for "occupying" supersedes the test set forth in Olivier.

In assessing when a person is "occupying" a vehicle for the purposes of insurance coverage, the Olivier test is purposefully flexible in recognition of the necessity for ad hoc tailoring. As such, our Supreme Court utilizes the following four-part standard:

> "(1) there is a causal relation or connection between the injury and the use of the insured vehicle;
> "(2) the person asserting coverage must be in a reasonably close geographic proximity to the insured vehicle, although the person need not be actually touching it;
> "(3) the person must be vehicle oriented rather than highway or sidewalk oriented at the time; and
> "(4) the person must also be engaged in a transaction essential to the use of the vehicle at the time." Olivier, 574 A.2d at 1241 (quoting Contrisciane, 473 A.2d at 1009).

"In order to be an occupant, all four of the criteria must be met[.]" Aetna Cas. & Sur. Co. v. Kelly, No. CIV. A. 90-3542, 1990 WL 162134, at *2 (E.D. Pa. Oct. 23, 1990); L.S. ex rel. A.S. v. Eschbach, 822 A.2d 796, 806 (Pa. Super. Ct. 2003), rev'd on other grounds, 874 A.2d 1150 (Pa. 2005) (holding that Contrisciane "requires all four elements be met to find occupancy[.]"); see also Petika v. Transcon. Ins. Co., 855 A.2d 85, 90 (Pa. Super. Ct. 2004) (finding no coverage where one prong was not satisfied).

Examining the first prong of this test—in contrast to the facts and circumstances in the Olivier case—Plaintiff's claim falls short. Ms. Hudson cannot demonstrate a causal connection between the use of the Saab and the incident where she was stricken by an oncoming motor

vehicle and injured. She fails to prove that "but for" her use of the Saab, she would not have sustained the claimed injuries. See Butzberger v. Foster, 89 P.3d 689, 694 (Wash. 2004) (defining "causal relation" as the "but for" cause of the claimed injury) (citing Beckman v. Connolly, 898 P.2d 357, 361 (Wash. App. 1995)); Hayes Freight Lines v. Wilson, 77 N.E.2d 580, 582 (Ind. 1948) (holding, in a negligence case, that a "causal connection" exists where "[b]ut for the [ ] act [here, the use of the vehicle,] the consequence in question would not have occurred") (internal citations omitted).

When Ms. Hudson heard the crash and was alerted to the collision, her presence inside the insured vehicle was merely incidental to the events that followed. Her Good Samaritan response might have been the same had she been standing outside the car, walking in the parking lot, or sampling the wares of the store she had planned to enter. Simply because she heard the crash while seated in Mr. Hurst's Saab does not give rise to a finding that her previous presence in the vehicle was causally related to her subsequent accident. See Olivier, 574 A.2d at 1241 (quoting Contrisciane, 473 A.2d at 1009) (requiring a "causal connection" between the injury and the use of the vehicle); Downing v. Harleysville Ins. Co., 602 A.2d 871, 874 (Pa. Super. Ct. 1992) (en banc) (holding that the plaintiff's "injuries were not causally connected to the use of the [insured] vehicle, rather they occurred when he was struck by some third party while aiding another motorist with her disabled vehicle"). "Indeed it would defy common sense for an insured vehicle's UIM coverage to extend to an injury wholly unrelated to the use of the vehicle." Butzberger, 89 P.3d at 694; see Contrisciane, 473 A.2d at 1009 (extending insurance coverage only to those "performing an act (or acts) which is (are) normally associated with the immediate 'use' of the auto").

Ms. Hudson's failure to satisfy the requirements of the first prong in the Olivier test defeats her claim under the GEICO policy. Although the remaining factors are rendered moot by this finding, the Court will address them at this time. With regard to the second prong—the requirement that Ms. Hudson be "in a reasonably close geographic proximity to the insured vehicle" when injured—the Court finds that her accident satisfies this prong. Olivier, 574 A.2d at 1241 (quoting Contrisciane, 473 A.2d at 1009). In Olivier, the claimant was "reasonably close" when shot 117 feet away from the insured vehicle. Here, as Ms. Hudson stood on the street adjacent to her insured vehicle when struck, she was certainly close enough to meet this requirement. Id.

Regarding the third Olivier prong—that "the person must be vehicle oriented rather than highway or sidewalk oriented at the time," the Court finds that Ms. Hudson fails to satisfy this requirement. At first blush, this standard may appear ambiguous, and jurisdictions differ regarding precisely what it means to be vehicle oriented. Id. The Washington Supreme Court construed "vehicle oriented" to "focus[] narrowly on the precise physical position of the insured toward or away from the insured vehicle." Butzberger, 89 P.3d at 696. Finding this narrow definition ultimately useless in formulating a "common sense" test for occupancy, Butzberger "abandon[ed] the vehicle oriented factor entirely." Id. In contrast, other courts have looked to the claimant's intention to determine if he or she remained "vehicle oriented" at the time of the injury. Moherek v. Tucker, 230 N.W.2d 148, 152 (Wis. 1975) (looking to claimant's "purpose and intent" in determining whether he or she is vehicle oriented).

Under those cases that look to intent, a person ceases to be vehicle oriented "where the individual's actions prior to the accident did not, in any way, involve the insured vehicle, such that the individual had severed all connections with the vehicle." Merchants Mut. Ins. Co. v.

Benchoff, No. CIV. A. 09-418, 2010 WL 2245572, at *13 (W.D. Pa. May 10, 2010) report and recommendation adopted, No. CIV. A. 09-418, 2010 WL 2196321 (W.D. Pa. June 1, 2010). Often crucial to such a determination is whether the individual planned to return to the car and continue with his or her journey. See Lynn, 258 F. App'x at 442 (holding that plaintiffs were vehicle oriented at the time of their injuries "because their actions were the means to the end of getting back in the vehicle and continuing the journey); Frain v. Keystone Ins. Co., 640 A.2d 1352, 1357 (Pa. Super. Ct. 1994) (stating that claimant was "vehicle oriented at the time of the accident because she was in the process of entering the vehicle in order to make the return trip home"). As the claimant in Olivier was deemed to be an occupant when standing near a police car to make a report so that she could continue on her drive, it is apparent that our Supreme Court follows this latter interpretation, looking to intent rather than spatial orientation. See Olivier, 574 A.2d at 1242 (holding that claimant "was certainly vehicle oriented at the time the fatal shot was fired").

Here, it is clear that Ms. Hudson planned to go shopping after rendering assistance rather than "full[y] inten[ding] [to] return[] to [Mr. Hurst's] vehicle," and would have done so if she had not been injured. Lynn, 258 F. App'x at 442. Such intent demonstrates that she was in no way vehicle oriented when struck. See McGilley v. Chubb & Son, Inc., 535 A.2d 1070, 1075 (Pa. Super. Ct. 1987) (finding claimant to not be "vehicle oriented" after he "turned off the ignition," and exited the vehicle, planning to "bum a cigarette" and "meet Mr. Burns, his partner, for lunch"); Beech v. Doe, No. M2013-02496-COA-R3CV, 2014 WL 2625430, at *6 (Tenn. Ct. App. June 11, 2014) (holding that claimant was not vehicle oriented because he "severed his relationship with the insured vehicle when he exited it to purchase personal items and he had not yet resumed his relationship with it when the injury occurred"); Saunderson v. Motor Vehicle

Acc. Indemnification Corp., 388 N.Y.S.2d 318, 319 (N.Y. App. Div. 1976) (finding that claimant "severed his connection with the vehicle upon alighting therefrom to perform a chore [i.e., shopping] which was not vehicle-oriented").[4]

Under the final prong of Olivier, the Court must look to whether Ms. Hudson was "engaged in a transaction essential to the use of the vehicle at the time" of her injuries. Olivier, 574 A.2d at 1241 (quoting Contrisciane, 473 A.2d at 1009). While our Supreme Court has yet to address whether rendering aid as a Good Samaritan constitutes such an essential transaction, courts of other jurisdictions differ on this issue. Compare Butzberger, 89 P.3d at 697 (holding that rending aid constitutes an essential transaction), with Aetna Cas. & Sur. Co. v. Kemper Ins. Co., 657 F. Supp. 213, 215 (E.D. Pa. 1987) (finding that aiding a distressed motorist is not essential to the use of one's vehicle); Downing, 602 A.2d at 874 (same); Greenwich Ins. Co. v. Hall, No. CIV. 11-66-ART., 2012 WL 5868915, at *2 (E.D. Ky. Nov. 20, 2012) (same).

In Hall, "Hall and his co-workers had driven by the accident when they made a decision to turn back and help the injured motorist." 2012 WL 5868915, at *2. In determining whether Hall was "occupying" the vehicle he exited to render aid before being hit by an oncoming

[4] Moreover, numerous courts have held that a Good Samaritan injured after exiting his or her car to render aid is not vehicle oriented. See Aetna Cas. & Sur. Co., 657 F. Supp. at 215 (finding that claimants "became 'highway-oriented' when they left the Cadillac for the purpose of helping [distressed motorist] with his pick-up truck"); Downing, 602 A.2d at 874 (holding that plaintiff "became 'highway-oriented' when he left the [Prudential vehicle] for the purpose of helping [the stranded motorist] with [her] [disabled vehicle]") (internal citations omitted) (brackets in original); Stonington Ins. Co. v. Dardas, No. CIV. A. 09-5765, 2010 WL 2853916, at *4 (E.D. Pa. July 20, 2010) (stating that if plaintiff "was acting as a Good Samaritan, he would not have been vehicle-oriented under the [Contrisciane] test"); Renter v. Anthony, 2003-Ohio-431, ¶ 60 (finding claimant to not be vehicle-oriented after assisting "stranded motorist [ ] solely for the benefit of the stranded motorist"). This, however, does not provide the basis of the Court's holding.

motorist, the district court found that acting as a Good Samaritan was not essential to Hall's use of the vehicle:

> "Was this the right thing to do? Absolutely. Was it essential to the use of their vehicle? Absolutely not. [Hall and his co-workers] had already driven by the accident, proving that the accident was not an obstacle to operating a vehicle on that road. Thus, from a factual perspective, it was not essential to the use of his vehicle." Id.

In contrast, the Washington Supreme Court in Butzberger found that as "a Good Samaritan is unable to ignore the sight of a perilously stranded motorist[,] . . . when a motorist interrupts his or her travel to rescue a victim in another vehicle, the rescue is a transaction essential to the use of the rescuer's vehicle[.]" 89 P.3d at 698. The court invoked the immortal words of Justice Cardozo that "'Danger invites rescue. The cry of distress is the summons to relief.'" Id. (quoting Wagner v. Int'l Ry. Co., 133 N.E. 437, 437 (N.Y. 1921)).

The Hall Court ultimately found unpersuasive the argument that covering Good Samaritans would fall in line with the state's public policy. 2012 WL 5868915, at *2. This Court recognizes that Rhode Island "law places a premium on human life, and one who voluntarily attempts to save a life of another should not be barred from complete recovery." Ouellette v. Carde, 612 A.2d 687, 690 (R.I. 1992). This Court at the same time though notes that Hall, despite some reluctance, found its hands were tied—stating that it was "not at liberty to create bad law to cover good persons [because if it] were to do so, it would right one wrong, Mr. Hall's injury, while creating another: holding Greenwich responsible even when the law said otherwise." 2012 WL 5868915, at *3.

Since the Court's findings as to the first and third prongs of the Olivier test defeat Plaintiff's claim, the Court need not decide this issue of first impression at this time.

Accordingly, the Court declines to determine whether the facts in the instant matter meet the requirements of the fourth prong of the Olivier test.

Because Ms. Hudson has failed to satisfy at least two of the four prongs of the Olivier test, she has failed to demonstrate that she was occupying Mr. Hurst's Saab when injured. See Aetna Cas. & Sur. Co., 1990 WL 162134, at *2 (holding that "[i]n order to be an occupant, all four of the criteria must be met"); L.S. ex rel. A.S., 822 A.2d at 806 (same). Plainly, here, it was not Ms. Hudson's "status as a passenger in the insured vehicle that precipitated the whole unfortunate series of events." Olivier, 574 A.2d at 1242. Accordingly, Plaintiff cannot recover under the underinsured motorist provisions of Mr. Hurst's policy with GEICO. She was not "occupying" the insured vehicle when an oncoming motorist struck and injured her.

IV

Conclusion

In utilizing the test set forth in Olivier, it is evident that Ms. Hudson was not vehicle oriented when harmed, nor was her accident causally related to her previous presence as a passenger in the car. Accordingly, the Court finds the policy does not provide coverage to her for her claimed injuries. Judgment for Defendant. Counsel shall submit the appropriate Order for judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Amberleigh Hudson v. GEICO Insurance Agency, Inc., et al.
CASE NO:	PC 12-6179
COURT:	Providence County Superior Court
DATE DECISION FILED:	August 4, 2015
JUSTICE/MAGISTRATE:	Vogel, J.
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