IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

MICHAEL A. MAZZAGGATI	)	CASE NO. CV-2016-05-2308
	)	
Plaintiff	)	JUDGE MARY MARGARET
-vs-	)	ROWLANDS
	)	
PEYTON N. BURRELL, et al.	)	
	)	**O R D E R**
Defendant	)	

- - -

This matter is before the Court on Defendants Alpha Property and Casualty Company, Inc. (Alpha) and Mark DeBlauw's (DeBlauw) motion for summary judgment, filed on September 6, 2017. Plaintiffs Michael Mazzagatti (Michael), Michael's wife Lisa Mazzagatti (Lisa), and Holub Recycling Inc. (Holub) (collectively, "Plaintiffs") filed an opposition on September 20, 2017. Defendants Alpha and DeBlauw (collectively, "Defendants") filed a reply on September 27, 2017.

Holub, d.b.a. Mike's Shaker Auto Salvage & Towing, is in the business of auto salvage, parts, and repair. Michael is the head of Holub which is owned by Michael's brother, Patrick Mazzagatti. In 2010, Michael sold Mike's Shaker Auto Salvage & Towing (Mike's Shaker) to Holub and continued to operate Mike's Shaker as a d.b.a. on behalf of Holub, and is an agent of Holub. Holub purchases hundreds of salvage vehicles per month which are either parted out, scrapped, rebuilt and sold, or sold "as is" to another auto dismantler. Michael has met with DeBlauw several times each year since 2009 to discuss insurance issues for the business.

Plaintiffs' complaint alleged they requested Alpha, through its employee, DeBlauw, to obtain an insurance policy that provided automatic coverage for any acquired vehicles for a period of 30 to 60 days even though they were not specifically listed on the policy. The policy procured by Defendants was a Motorists Mutual policy with a thirty (30) day automatic

insurance clause for newly acquired vehicles. After thirty (30) days, the insured must specifically add vehicles to the policy for them to have insurance coverage. Plaintiffs allege Defendants failed to exercise good faith and reasonable diligence to obtain the coverage Plaintiffs requested, despite Defendants' assurances that the Motorists Mutual policy automatically covered vehicles for 30 to 60 days after acquisition. Further, Lisa filed a claim for the loss of Michael's consortium against Defendants due to their negligent procurement of insurance.

On October 15, 2013, Holub purchased a 2008 Harley Davidson motorcycle. Prior to Holub's policy renewal in May 2014, Alpha forwarded the current list of vehicles Holub identified for coverage under the Motorists' Mutual policy, which did not include the 2008 Harley Davidson motorcycle. It is undisputed that Holub did not inform Alpha that it had acquired the 2008 Harley Davidson motorcycle or identified it for coverage. On July 1, 2014, Michael was operating the 2008 Harley Davidson motorcycle when he was rear ended.

The evidence reveals Michael was in charge of selecting insurance coverage for Holub. Michael admittedly never read any of the insurance policies. Although Holub purchased the salvaged 2008 Harley Davidson in October 2013, the motorcycle registration and plates were registered to Mike's Shaker on June 7, 2014, and the accident occurred on July 1, 2014.

Plaintiffs were aware of the need to specifically add vehicles after the thirty (30) day automatic coverage expired because they had done so in the past. There had been many instances of gaps in coverage because Plaintiffs notified Defendants after the automatic coverage expired and coverage could not be "backdated" to the original purchase date.

To prevail on a motion for summary judgment, the party moving for summary judgment must first be able to point to evidentiary materials that demonstrate there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

Dresher v. Burt, 75 Ohio St.3d 280, 293, 1996-Ohio -107, 662 N.E.2d 264 (1996). Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 1996-Ohio-211, 663 N.E.2d 639 (1996).

> Rule 56(C) of the Ohio Rules of Civil Procedure provides, in pertinent part:
> * * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * *

Defendants assert they are entitled to summary judgment because they procured the requested insurance with automatic coverage for thirty (30) days upon acquisition of a vehicle. Under Plaintiffs' theory of liability, the accident occurred within the thirty (30) day automatic coverage period, therefore, the additional days of automatic coverage Plaintiffs claim they requested (31-60) is not relevant to this analysis. Defendants further assert Motorists Mutual's denial of coverage for the July 1, 2014 accident is a matter of policy interpretation between Plaintiffs and Motorists Mutual (which claimed it occurred outside the thirty (30) day automatic coverage period, specifically, eight (8) months after Holub acquired the motorcycle without inclusion on the list of insured vehicles); therefore, summary judgment should be granted in Defendants' favor. Additionally, Defendants also allege Plaintiffs breached their corresponding duty to review the insurance policy and know the extent of insurance coverage

issued. *See*, e.g., *Roberts v. Maichl*, 1st Dist. Hamilton No. C-040002, 2004-Ohio-4665, ¶ 18; *Rose v. Landen*, 12th Dist. Warren No. CA2004-06-066, 2005-Ohio-1623, ¶ 16; *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010-Ohio-6036, ¶ 16, 944 N.E.2d 207.

Plaintiffs claim Defendants are not entitled to summary judgment because Defendants assured Plaintiffs they would have automatic coverage for thirty to sixty (30-60) days after a vehicle acquisition. Plaintiffs argue that Defendants' interpretation of the policy requiring Plaintiffs to notify Defendants of vehicles they wanted insured before the expiration of the thirty (30) day automatic coverage provision, "* * * obviously makes no sense, and is contrary to the policy language." Under Plaintiffs' interpretation of the terms "who is an insured," "acquisition," "auto," "motor vehicle," and "salvage motor vehicle," Motorist Mutual should not have denied coverage for Michael's accident. Plaintiffs assert Motorist Mutual's denial of coverage is the result of Defendants' failure to procure the correct insurance; hence, summary judgment is inappropriate. Plaintiffs argue, "The policy language should be read to provide automatic coverage for 30 days after Holub acquires a functional, road-worthy vehicle, rather than DeBlauw and Alpha's construction that the 30 day clock starts ticking when an inoperable salvage vehicle is acquired." However, DeBlauw and Alpha did not deny coverage to Plaintiffs; rather, Motorists Mutual denied it. Lastly, if it is determined that Plaintiffs' interpretation of the policy language is correct, then Plaintiffs do not claim Defendants failed to procure the requested insurance.

At the heart of the dispute is whether the automatic coverage "clock" began on October 15, 2013, the date Holub purchased the motorcycle, or on June 7, 2014, the date the motorcycle was registered. Plaintiffs' claim Motorists Mutual's denial of coverage is equivalent to Defendants' failure to procure the requested insurance coverage, even though the denial of Plaintiffs' claim is "contrary to the policy language." Plaintiffs also assert Defendants never

offered Plaintiffs a different type of insurance coverage that would have covered the motorcycle accident in this case and were therefore negligent in not doing so.

Count Three of Plaintiffs' Complaint - Negligent Procurement and Loss of Consortium

Negligent procurement occurs when an agent fails to obtain insurance of a requested type or in a requested amount. "An insurance agent may be liable if, as a result of a negligent failure to procure insurance, the other party to an insurance contract suffers a loss as the result of a want of insurance coverage contemplated by the agent's undertaking." *C&R v. Liberty Mut. Fire Ins. Co.*, 2008-Ohio-947. Lisa's loss of consortium action is a derivative claim that arises from Plaintiffs' negligent procurement action. *See, Gearing v. Nationwide Ins. Co.*, 76 Ohio St.3d 34, 1996 Ohio 113, 665 N.E.2d 1115.

In the case at bar, when the evidence is viewed in the light most favorable to Plaintiffs, there is no genuine issue of material fact that Defendants procured an insurance product that provided Plaintiffs with a thirty (30) day automatic coverage provision for newly acquired vehicles, which is the insurance Plaintiffs requested Defendants to procure. There is no evidence that Plaintiffs ever discussed their definition of "who is an insured," "acquisition," "auto," "motor vehicle," and "salvage motor vehicle" with Defendants, and then Defendants failed to procure a policy in conformity with their definitions. Furthermore, Plaintiffs claim Motorist Mutual's denial of coverage is "contrary to the policy language" and insists the current policy provides coverage in this instance. Plaintiffs' additional assertion that Defendants negligently procured insurance because: 1) Defendants did not offer Plaintiffs other policies; 2) Plaintiff would have purchased such other policies, and; 3) the other policies would have covered Plaintiffs in this unique situation, is speculative and without evidentiary support.

Defendants' position on interpretation of the policy is immaterial as they are without authority to grant or deny Plaintiffs' claim with Motorists Mutual.

WHEREFORE, Defendants Alpha Property and Casualty Company, Inc. and Mark DeBlauw's motion for summary judgment regarding Plaintiffs' negligent procurement claim is GRANTED. Defendants' motion for summary judgment as to Plaintiff Lisa Mazzagatti's derivative claim against Defendants for loss of consortium is GRANTED.

There is no just reason for delay. Civ. R. 54(B).

IT IS SO ORDERED.

JUDGE MARY MARGARET ROWLANDS

CC: ATTORNEY JACK W. MORRISON
ATTORNEY CHRISTINE M. FARANDA
ATTORNEY JACK MORRISON, JR.
ATTORNEY IAN R. LUSCHIN
ATTORNEY ANDREW J. DORMAN
ATTORNEY ARTHUR W. BRUMETT
ATTORNEY SARAH M. MANCUSO
ATTORNEY MERLE D. EVANS, III