IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

LESLIE HILL, Plaintiff,	)	Case No. 1116-CV06084
v.	)	
	)	Division 13
PHILLIP MALONE, et al., Defendants.	)	

JUDGMENT / ORDER

Defendant Government Employees Insurance Company ("Government Employees") [1] has filed a Motion For Summary Judgment regarding Count II of Plaintiff's Petition. Plaintiff has filed her Suggestions in Opposition. The Parties have fully briefed all the issues. After considering the pleadings of both Parties, the Court issues the following Judgment and Order.

For good cause shown;

IT IS HEREBY ORDERED that the Motion For Summary Judgment By Defendant Government Employees on Count II Of Plaintiff's Petition is **GRANTED.**

IT IS FURTHER ORDERED that judgment be entered in favor of Defendant Government Employees, and against Plaintiff, on Count II of Plaintiff's Petition.

MEMORANDUM

i.

The following facts are not in dispute. On September 13, 2008, Plaintiff Leslie Hill was driving a 2000 Lexus LS300 ("Lexus") northbound on Wornall Road. While

[1] Plaintiff Leslie Hill named Defendant Government Employee Insurance Company as Defendant GEICO General Insurance Company in her Petition. In paragraph 23 of Defendant Government Employee Insurance Company's Statement Of Uncontroverted Facts, Defendant states "Defendant Government Employee Insurance Company ('Government Employees') issued a policy of automobile insurance to 'Leslie Anne Hill.'" In her response to Defendant's Statement Of Uncontroverted Facts, Plaintiff Hill admitted paragraph 23. To avoid confusion, this Court shall hereinafter refer to Defendant GEICO General Insurance Company named in Plaintiff's Petition as Defendant Government Employees. See Plaintiff's Petition; Defendant's Statement of Uncontroverted Facts, ¶ 23; Plaintiff's Response, ¶ 23.

stopped at a red light at the intersection of Wornall Road and Meyer Boulevard, a 2006 Dodge Ram ("Dodge Ram") operated by Matthew Malone collided with the rear of Plaintiff's Lexus (hereinafter "the Accident"). At the time of the Accident, Defendant Phillip Malone owned the Dodge Ram. Defendant Phillip Malone is the father of Mathew Malone.

An automobile insurance policy that GEICO General Insurance Company ("GEICO General") issued, and which named "Phillip E Malone and Raylene J Malone" as the insured ("Malone Policy"), was in effect at the time of the Accident. The Malone Policy insured three vehicles, one of which was the Dodge Ram. The Malone Policy provided coverage with a limit of $100,000 per person.

The Lexus was covered by an insurance policy issued by Defendant Government Employees. The policy named Plaintiff as the insured ("Hill Policy") and was in effect at the time of the Accident. The Hill Policy included uninsured motor vehicle ("UM") coverage up to at limit of $100,000.00 per person, but did not include underinsured motor vehicle ("UIM") coverage. The Hill Policy stated in pertinent part the following terms:

SECTION IV – UNINSURED MOTORISTS COVERAGE:
Protection For You and Your Passengers For Injuries Caused By Uninsured and Hit-and-Run Motorists.

DEFINITIONS

The definitions of terms for Section I apply to Section IV, except for the following special definitions.

6. ***Uninsured motor vehicle*** is a vehicle, including a ***trailer*** of any type, which has no bodily injury liability bond or insurance policy applicable with liability limits complying with the Financial Responsibly Law of the ***state*** in which the ***insured auto*** is principally garaged at the time of an accident, or a ***hit-and-run vehicle.*** This term also includes a vehicle for which there is a bodily injury liability insurance policy applicable at the time of the accident but the Company writing the policy is or becomes insolvent or denies coverage.

LOSSES WE PAY

> Under the Uninsured Motorists Coverage we will pay damages for ***bodily injury*** caused by accident which the ***insured*** is legally entitled to recover from the owner or operator of an ***uninsured motor vehicle*** or ***hit-and-run vehicle*** arising out of the ownership, maintenance or use of that auto.

After the Accident, Plaintiff filed a lawsuit ("Prior Lawsuit") against Matthew Malone. In her petition, Plaintiff alleged that Mathew Malone's negligence caused the Accident and injured Plaintiff. GEICO General settled Plaintiff's claim against Matthew Malone by paying Plaintiff the $100,000 coverage limit of the Malone Policy.

Plaintiff filed her petition in the current litigation against Defendant Phillip Malone and Defendant Government Employees. In Count I of her petition, Plaintiff alleged that Defendant Phillip Malone negligently entrusted the Dodge Ram to Mathew Malone, and in so doing, damaged Plaintiff. In Count II of her petition, Plaintiff made two separate allegations. First, Plaintiff alleged that her injuries sustained as a result of the Accident exceeded the $100,000.00 policy limit paid to Plaintiff in the Prior Lawsuit, and that, pursuant to the UIM provision of the Hill Policy, the Hill Policy covered Plaintiff for her loss in excess of that policy limit. Plaintiff also alleged that Defendant Phillip Malone is not insured, and that as a result, the Hill Policy's UM provision would be available to cover the damages she sustained from the negligence of Defendant Phillip Malone.

Defendant Government Employees filed a motion for summary judgment, and in that motion asserted that the Hill Policy did not provide for UIM coverage. Defendant Government Employees further alleged that the UM coverage is not triggered because the Dodge Ram owned by Defendant Phillip Malone, and operated by Mathew Malone, is not an "uninsured motor vehicle," as defined by the Hill Policy. Plaintiff responded that the definition of "uninsured motor vehicle" contained within the Hill Policy is

ambiguous, and whether Defendant Phillip Malone is uninsured is a genuine issue of material fact; therefore, Defendant Government Employees is not entitled to summary judgment as a matter of law.

In Plaintiff's Response to Defendant Government Employee's Statement Of Uncontroverted Material, Plaintiff admits that the Hill Policy does not contain a provision providing UIM coverage. Because Plaintiff admits that the policy did not contain a UIM provision, hereinafter, the Court will only discuss the issues related to the UM provision contained in the Hill Policy.

ii.

Pursuant to Mo. Sup. Ct. Rule 74.04 a movant is entitled to summary judgment if the movant shows that: (1) there is no genuine issue as to the material facts on which movant relies for summary judgment; and (2) based on those facts, movant is entitled to judgment as a matter of law. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 380 (Mo. 1993). A genuine issue only exists if there are two plausible, but contradictory, accounts of the material facts. See Wallingsford v. City of Maplewood, 287 S.W.3d 682, 685 (Mo. 2009). A material fact is a fact from which a movant's "right to judgment flows." Goerlitz v. City of Maryville, 333 S.W.3d 450,453 (Mo. 2011).

When a defendant is moving for summary judgment against a plaintiff, the movant must establish a right to judgment by negating any one, or more, of the essential elements of the plaintiff's claim. ITT Commercial Fin. Corp., 854 S.W.2d at 378. Prior to a grant of summary judgment, the non-moving party must have had adequate time to conduct discovery. Id. Movant is only entitled to summary judgment if, after an adequate period of discovery, movant can show that non-movant is unable, and will not be able, to produce evidence sufficient to allow the trier of fact to find the existence of

any one element of the non-movant's claim. Id. If the moving party establishes its right to judgment, the non-moving party must show by affidavit, or as otherwise provided by Rule 74.04, that there is a genuine issue for trial. Id. at 381.

Where a contract rests on undisputed facts, the interpretation of that contract is a question of law. Stotts v. Progressive Classic Ins. Co., 118 S.W.3d 655, 662 (Mo. Ct. App. 2003), citing Mo. Counsel. Health Care Plan v. BluesShield of Mo., 985 S.W.2d 903, 908 (Mo. Ct. App. 2001). The Court interprets an insurance contract by reading the contract as a whole to determine the parties' intent, and effectuating that intent by enforcing the contract as written. Stotts, 118 S.W.3d at 662. The Court gives the contract language its plain and ordinary meaning when interpreting an insurance policy. Id. In construing the terms of an insurance policy, the Court will give that meaning to a term which an ordinary person of average understanding who purchases insurance would give to that term. Seeck v. Geico Gen. Ins. Co., 212 S.W.3d 129, 132 (Mo. 2007). If the policy's terms are ambiguous, the Court will resolve all ambiguities in favor of the insured. Id. An ambiguity arises when there is duplicity, indistinctness, or uncertainty in the meaning of the words of a contract. Rodriquez v. Gen. Acc. Ins. Co. of America, 808 S.W. 2d 379, 382 (Mo. 1991). "A court is not permitted to create an ambiguity in order to distort the language of an unambiguous policy, or, in order to enforce a particular construction which it might feel is more appropriate." Id. Additionally, the simple fact that parties do not agree on the interpretation of a contract's terms does not, in and of itself, create an ambiguity. Stotts, 118 S.W.3d at 662.

The issue, as defined by the parties' pleadings, is whether Plaintiff Leslie Hill is afforded uninsured coverage for the injuries she received in the Accident. More specifically, whether the phrase "insurance policy applicable" and the phrase "denied coverage," as used by the Hill Policy to define "uninsured motor vehicle," is clear and

unambiguous, and if no ambiguity exists, whether the Dodge Ram that Mathew Malone operated and Defendant Phillip Malone owned, was an "uninsured motor vehicle." Plaintiff has alleged that within the definition of "uninsured motor vehicle" the terms "insurance policy applicable" and "denied coverage" are not defined, and this failure to define the two phrases creates an ambiguity within the contract. The Court does not agree.

The Hill Policy defined "uninsured motor vehicle" as "a ***vehicle*** [. . .] which has no bodily injury liability bond or insurance policy applicable with liability limits complying with the Financial Responsibility Law of the state in which the ***insured auto*** is principally garaged at the time of an accident, or a hit-and-run vehicle. This term also includes a vehicle for which there is a bodily injury liability insurance policy applicable at the time of the accident but the Company writing the policy is or becomes insolvent or denies coverage."

Neither "insurance policy" nor "applicable" gives rise to "duplicity, indistinctness, or uncertainty." Given the plain and ordinary meaning of the words used, the Hill Policy clearly and unambiguously provides uninsured coverage if, at the time of an accident, there is not in effect an insurance policy that provides liability coverage to the vehicle that collides with the policy holder's vehicle.

In this case, the policy holder is Plaintiff and the vehicle that collided with the Plaintiff's vehicle is the Dodge Ram, driven by Michael Malone and owned by Defendant Phillip Malone. It is clear and unambiguous that if any liability policy complying with state law provided coverage for the Dodge Ram at the time of the Accident, then the vehicle was not uninsured for purposes of the UM provision of the Hill Policy. See, e.g., Stotts, 118 S.W.3d at 662 (finding that where the driver of a car had an applicable

insurance policy, but the owner was uninsured, the owner's car was not an "uninsured motor vehicle" pursuant to the UM provision contained in Plaintiff's insurance policy).

Like the aforementioned phrase, "denied coverage" is equally as clear and unambiguous. Merriam-Webster defines "denied" as "[r]efusal to give (something requested or desired) to (someone) and "coverage" as "something that covers: as (a) inclusion within the scope of an insurance policy or protective plan." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2008). The language that proceeds "denies coverage" reads as follows: "This term also includes a vehicle for which there is a bodily injury liability insurance policy applicable at the time of the accident but the Company writing the policy [. . .] denies coverage." Read in context, and given their plain and ordinary meaning, the words "denies coverage" clearly and unambiguously means that the offending vehicle is covered by an insurance policy, but the insurance company which issued that policy refuses to pay out on any claim made in relation with the reported accident.

Because "uninsured motor vehicle" is not ambiguous in its use of the words "insurance policy applicable" and "denies coverage," the next question is whether the vehicle at issue, the Dodge Ram, either did not have an insurance policy applicable, or whether the Dodge Ram was covered by a policy, but the insurance company denied coverage. For the reasons stated below, the Court concludes that the Dodge Ram was insured by GEICO General, that GEICO General provided coverage, and therefore, Plaintiff does not have coverage under the Hill Policy's UM provision, as a matter of law.

Plaintiff admits that the Malone Policy insured the Dodge Ram which collided with her vehicle. Plaintiff also admits that GEICO General settled her claim with Mathew Malone by paying her the limits on the Malone Policy. The Hill policy expressly provides that a motor vehicle is uninsured where the **vehicle** has "no bodily

injury liability bond or policy applicable [. . .] at the time of the accident" or is a "**vehicle** [. . .] for which there is a bodily injury liability insurance policy applicable at the time of the accident but the Company writing the policy [. . .] denies coverage." Giving that language its plain and ordinary meaning, it is clear and unambiguous that if any liability policy provided coverage for the Dodge Ram at the time of the accident, it was not uninsured for purposes of the UM coverage. Stotts, 118 S.W.3d at 663.

WHEREFORE, judgment is hereby entered in favor of Defendant Government Employees Insurance Company and against Plaintiff on Count II of Plaintiff's Petition.

IT IS SO ORDERED

CHARLES H. McKENZIE, Judge

I hereby certify that:
copies of the above and foregoing were delivered
on this 6th day of February, 2012, to:

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