



IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATALIE AYERS,)	
)	
Plaintiff-Below,)	No. 411, 2025
Appellant,)	
)	
v.)	
)	On Appeal from the
TRAVELERS CASUALTY)	Superior Court
INSURANCE COMPANY,)	No. N24C-05-130 KMV
)	
Defendant-Below,)	
Appellee.)	

PLAINTIFF-BELOW APPELLANT'S REPLY BRIEF ON APPEAL

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TABLE OF CONTENTS

TABLE OF CITATIONS..... ii

INTRODUCTION..... 1-2

ARGUMENTS

 I. THE SUPERIOR COURT ERRED IN DETERMINING THAT
 PLAINTIFF IS NOT AN INSURED UNDER THE BUSINESS AUTO
 POLICY. 3-7

 II. THE “DRIVE OTHER CAR COVERAGE” ENDORSEMENT IS
 MISLEADING AND AMBIGUOUS, AND MUST BE CONSTRUED IN
 FAVOR OF COVERAGE. 8-10

TABLE OF CITATIONS

CASE	PAGE
<u>Bermel v. Liberty Mut. Fire Ins. Co.</u> , 56 A.3d 1062 (Del. 2012).....	4, 5, 6, 8
<u>Frank v. Horizon Assurance Co.</u> , 553 A.2d 1199 (Del. 1989).....	7
<u>Hallowell v. State Farm Mut. Auto. Ins. Co.</u> , 443 A.2d 925 (Del. 1982).....	8
<u>Hurst v. Nationwide Mut. Ins. Co.</u> , 652 A.2d 10 (Del. 1995).....	7

STATUTES

18 Del. C. § 3902.....	<i>passim</i>
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INTRODUCTION

Travelers' Answering Brief avoids the central issues presented in Plaintiff's Opening Brief. Travelers does not substantively engage with the Drive Other Car Coverage endorsement that expressly names Plaintiff as an "insured." See Op. Br. at 8-9; A6 (subsection C.). Travelers does not meaningfully address the significance of the separate premium that Plaintiff paid for UIM coverage. Travelers does not reconcile its own admissions before the Superior Court that Plaintiff is an insured (A29:15-20), and would have been covered if operating her personally owned vehicle for business purposes (A20:22 – A21:1-13). Travelers does not dispute that the purported exclusion upon which it relies, limiting coverage only to business activities, is not written anywhere in the policy.

Rather than addressing the policy language or the record, Travelers repeats the Superior Court's characterization of the declarations page while disregarding the endorsement that controls the issue. The Drive Other Car Coverage endorsement unambiguously adds Plaintiff as a named individual insured. Travelers does not explain how an insurer that drafts an endorsement naming an individual as an insured and accepts a separate premium can later deny that the individual is an insured.

This case is straightforward: Travelers sold Plaintiff UIM coverage as an insured through a separately paid endorsement, and section 3902 prohibits Travelers

from denying that coverage based on the vehicle Plaintiff occupied or an unwritten business-use limitation. Underinsured motorist coverage is personal to the insured.

Finally, Travelers does not meaningfully respond to Plaintiff's ambiguity argument. The Drive Other Car Coverage endorsement is misleadingly presented as "Broadened Coverage for Named Individuals," yet Travelers claims coverage is narrowed to the point of being practically nonexistent. Travelers does not confront the multiple interpretations of the endorsement or the reasonable expectations doctrine.

Because Travelers leaves the dispositive issues unrebutted, and Delaware law supports Plaintiff's position, the Superior Court's judgment should be reversed.

ARGUMENT I

THE SUPERIOR COURT ERRED IN DETERMINING THAT PLAINTIFF IS NOT AN INSURED UNDER THE BUSINESS AUTO POLICY.

Travelers fails to rebut Plaintiff's showing that she is an insured under the policy through the Drive Other Car Coverage endorsement and the payment of a separate premium.

The Drive Other Car Coverage endorsement provides that "This endorsement *changes [] those coverages* where a premium is shown in the Schedule." A5 (emphasis added). The schedule shows a premium for uninsured motorist coverage ("\$47") and underinsured motorist coverage ("\$INCL").¹ A5. The endorsement goes on to explicitly designate "[a]ny individual named in the Schedule" as an "insured[]." A6. The Schedule to the endorsement provides: "Name of Individual: NATALIE AYERS." A5.

Paragraph B.2. of the endorsement is directed to "Changes In Covered Autos Liability Coverage" and states: "Any individual named in the Schedule and his or her spouse, ... are "insureds" while using any covered "auto" described in Paragraph

¹ Plaintiff submits that the \$47 premium paid for uninsured coverage includes underinsured coverage. Not only is that conclusion true by virtue of the "\$INCL" notation, but also because the endorsement provides: "When Uninsured Motorists Coverage is provided at limits higher than the basic limits required by a financial responsibility law, Underinsured Motorists Coverage is included, unless otherwise noted." A5. Additionally, supplemental UM and UIM coverages are sold as a combined product in Delaware. See generally 18 Del. C. § 3902.

B.1.” A6. Paragraph C. of the endorsement is directed to “Changes In ... Underinsured Motorists Coverages” and states:

Any individual named in the Schedule and his or her “family members” are “insureds” while “occupying” or while a pedestrian when being struck by any “auto” you don’t own except:

Any “auto” owned by that individual or by any “family member.”

A6.

Travelers does not address or quote any of these provisions. Instead, Travelers argues that the declarations page identifies the business as the named insured, and therefore, only the business is the named insured. Ans. Br. at 4-8. But this argument ignores the endorsement. And there is no dispute that the Drive Other Car Coverage endorsement supersedes the declarations page because it is specifically drafted to modify coverage and change the policy. Travelers’ failure to address the endorsement is a failure to respond to the dispositive coverage grant.

Travelers likewise does not dispute that Plaintiff paid a separate premium for supplemental UIM coverage in the endorsement. Travelers does not explain how an insurer may collect a premium from a named individual insured and then deny coverage to that insured.² Travelers’ silence on this point constitutes forfeiture.

² It is the payment of a premium that triggers the requirement of full coverage. See Bermel v. Liberty Mutual, 56 A.3d 1062, 1067 (Del. 2012) (“Once uninsured [or underinsured] motorist coverage is purchased, the insurance consumer is entitled to secure the full extent of the benefit which the law requires to be offered.” (citation omitted)).

Travelers does not address its concessions before the Superior Court at oral argument. Specifically, Travelers conceded that Plaintiff is an insured under the policy:

The Court: ... So I think it's agreed that she [Plaintiff] was [a]n insured under the policy. Is that fair, defendant, Ms. Williams [defense counsel]?

Ms. Williams: Yes, that's fair, Your Honor.

A29:15-20. Travelers' Answering Brief is silent as to this point.

Additionally, Travelers conceded that UIM coverage would have been triggered if Plaintiff had been engaged in business activity at the time of the crash, even while operating her personal vehicle. A20:22 – A21:1-13. Travelers, however, fails to identify any language in the policy supporting this conclusion. The sole justification Travelers provides is that the policy is a “business policy,” and therefore, it supposedly applies only while one is engaged in business activities.³ Nothing in the Drive Other Car Coverage endorsement conditions UIM coverage on business use, and Travelers identifies no policy language imposing such a limitation.

Travelers does not respond to Plaintiff's arguments distinguishing this matter from Bermel v. Liberty Mutual, 56 A.3d 1062 (Del. 2012). Specifically, Plaintiff contends that the Bermel plaintiff (1) was not listed as a named individual in the

³ See A16:15-20 (“This business policy is a business policy. So the mere fact that she [Plaintiff] was doing nothing in relation to the business is the exact reason for which coverage is just not to be afforded. There is no exclusions. There is just no coverage to be provided.”).

policy, (2) paid no separate premium for personal coverage, and (3) was not designated as an “insured” through any endorsement. Op. Br. at 8. Travelers ignores these distinctions, and simply repeats Bermel’s holding without addressing why it should apply despite Plaintiff being expressly named as an insured and paying a separate premium. Ans. Br. at 7-9.

To illustrate the flaws in Travelers’ position, it is useful to consider all of the circumstances in which Travelers agrees, or presumably would agree, that Plaintiff is entitled to UIM coverage under the business policy. According to Travelers, Plaintiff would be eligible for UIM coverage through the business policy if she was injured in the following manners:

- While occupying a personally-owned vehicle, so long as she was engaged in a business activity (A20:22 – A21:1-13);
- While occupying a non-business- and non-personally-owned vehicle, so long as she was engaged in a business activity (A22:15-20; A37:9-15);
- While struck as a pedestrian by a non-business- and non-personally-owned vehicle, so long as she was engaged in a business activity.⁴

If all of the above points are true, then the UIM coverage provided in the endorsement is necessarily personal to Plaintiff, because she is an insured, and such

⁴ Plaintiff presumes that Travelers would not dispute coverage under these facts. See A6 (specifically, subsection C.).

coverage cannot be conditioned upon the manner in which Plaintiff is injured. Such a conclusion is compelled by the fact that (1) UIM coverage is personal to the insured,⁵ and (2) the subject policy contains no language excluding or limiting coverage for non-business activities.

Both Travelers and the Superior Court rely on a business-use limitation which simply does not exist in the policy. Indeed, neither Travelers nor the Superior Court point to any language in the policy that restricts Plaintiff's operation of vehicles to business purposes, or otherwise limits insurance coverage to business activities only.

In sum, Plaintiff is an insured under the policy because she is explicitly designated as an "insured" in the endorsement and paid a separate premium for UIM coverage. Therefore, any limitation of coverage based upon the vehicle Plaintiff was operating represents an unenforceable "other motor vehicle" exclusion. Frank, 553 A.2d at 1204.

⁵ Hurst v. Nationwide, 652 A.2d 10, 14 (Del. 1995) (quoting Frank v. Horizon Assurance Co., 553 A.2d 1199, 1203 (Del. 1989)).

ARGUMENT II

THE “DRIVE OTHER CAR COVERAGE” ENDORSEMENT IS MISLEADING AND AMBIGUOUS, AND MUST BE CONSTRUED IN FAVOR OF COVERAGE.

Travelers offers no meaningful response to the misleading presentation and ambiguity of the Drive Other Car Coverage endorsement. Travelers does not answer the argument that the endorsement’s title, DRIVE OTHER CAR COVERAGE – BROADENED COVERAGE FOR NAMED INDIVIDUALS, creates a reasonable expectation of personal UIM coverage. Op. Br. at 12. Travelers does not respond to the contention that its interpretation, which purports to exclude coverage for personally-owned vehicles, renders the title of the endorsement misleading. *Id.* Travelers does not explain how a reasonable consumer should understand the endorsement’s title to exclude personally-owned vehicles. Travelers likewise does not respond to the contention that its interpretation of the policy violates the reasonable expectations doctrine because “the fine print takes away that which has been given by the large print.” *Bermel*, 56 A.3d at 1071 (quoting *Hallowell v. State Farm*, 443 A.2d 925, 927 (Del. 1982)). Op. Br. at 12.

When an endorsement is presented as “Broadened Coverage for Named Individuals,” but the insurer later claims there is virtually no coverage at all, Delaware law requires resolution in favor of the insured. Travelers’ position renders

the endorsement's coverage illusory and it cannot be reconciled with the endorsement's plain promise of "Broadened Coverage for Named Individuals."

Travelers similarly does not address the different interpretations of the endorsement's terms. Subsection C of the endorsement provides:

Any individual named in the Schedule and his or her "family members" are "insureds" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member."

A6.

As discussed in Plaintiff's Opening Brief, this language is susceptible to at least two reasonable interpretations, either of which gives effect to the text as written. The exception could apply to the vehicle which the individual was occupying at the time of the collision, or otherwise to the vehicle that strikes the insured. Op. Br. at 13-14. It bears mentioning that both exceptions cannot simultaneously be true without disregarding the phrase "you don't own" in the first paragraph.⁶ Travelers does not substantively address the ambiguity, and merely relies on the Superior Court's cursory finding that the provision is unambiguous.

⁶ Without ignoring the phrase "you don't own," application of the exception to both situations would create a double negative (e.g., excluding coverage while occupying any auto "you don't own" except any auto you or a family member own; excluding coverage while being struck by any auto "you don't own" except any auto you or a family member own).

Travelers has failed to confront the core arguments presented in Plaintiff's Opening Brief. The endorsement designates Plaintiff as an insured. Section 3902 prohibits the denial of UIM benefits to an insured based on the vehicle occupied. The endorsement is ambiguous and misleading, and must be construed in favor of coverage.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court reverse the decision of the Superior Court, and remand with instructions to enter judgment in favor of Plaintiff.

Respectfully submitted:

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