

DOCKET NO. HHD CV-196108715-S : SUPERIOR COURT
 JUSTIN LOLLAR : J.D. OF HARTFORD
 VS. : AT HARTFORD
 PROGRESSIVE DIRECT INSURANCE CO. : OCTOBER 22, 2019

MEMORANDUM OF DECISION
 CROSS MOTIONS FOR SUMMARY JUDGMENT ## 112 & 116

I

BACKGROUND

The parties each seek summary judgment regarding the validity of an exclusion of uninsured/underinsured motorist (UM/UIM) coverage for rental vehicles under the terms of a contract of insurance. The driver in the present case was the operator of a rental car in which the plaintiff, Justin Lollar, was a passenger allegedly injured by an uninsured driver. Pursuant to the driver’s contract of insurance, rental vehicles are covered by the policy, as permitted by General Statutes § 38a-335 (b);¹ however, UM/UIM coverage for rental vehicles is excluded under the contract. The defendant, therefore, relies upon the language of the contract in denying coverage.

¹ General Statutes § 38a-335 (b) provides: “Each automobile liability insurance policy issued, renewed, amended or endorsed on or after October 1, 1988, and covering a private passenger motor vehicle as defined in subsection (e) of section 38a-363, shall contain or have attached thereto a conspicuous statement specifying whether the policy provides liability, collision or comprehensive coverage for damage to a rented private passenger motor vehicle and, where the policy provides such coverage, the limit of coverage provided and whether any deductible amount applies.”

cc: Rptr. Judicial Decisions 1
 10/22/19 (elp)

FILED

12/18

The plaintiff counters that the UM/UIM exclusion asserted here is in violation of statutory law and the public policy of our state. He further asserts that the language of the contract is not clear and should be construed against the defendant. In his cross motion for summary judgment, the plaintiff supplied an affidavit and supporting emails, in which the defendant's adjuster admits that the tortfeasor was uninsured. The defendant presented no evidence to the contrary. Therefore, summary judgment for either party depends upon the validity of the insured's UM/UIM exclusion for rental vehicles.

The insurance contract at issue in this case provides for coverage, generally, "when you rent a vehicle." Exhibit B, p. 29, Plaintiff's Brief. The contract also includes a separate endorsement, which unambiguously changes the definition of a covered automobile for UM/UIM coverage to those owned by the insured driver, thereby excluding rental vehicles. Exhibit C, §§ I & III. The issue here is whether an automobile insurer may exclude UM/UIM coverage from an automobile liability insurance policy when it provides rental vehicle coverage, albeit permissive. This question appears to be novel, as neither of the parties has presented the court with, nor has the court found, any Connecticut case law addressing the validity of this specific UM/UIM exclusion for rental vehicles.

II

DISCUSSION

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact

decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment.” (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012).

UM/UIM coverage is mandatory in Connecticut and may not be excluded from a contract of automobile insurance, unless specifically excluded by statute or regulation.² See *Tannone v. Amica Mut. Ins. Co.*, 329 Conn. 665, 679, 189 A.3d 99 (2018) (regulatory exclusion for self-insured carriers held invalid after federal law altered vicarious liability for automobile lessors). It is also the general rule in Connecticut that UM/UIM coverage attaches to the insured person, not the insured vehicle, unless excluded by law. See *Gormbard v. Zurich Ins. Co.*, 279 Conn. 808, 819, 904 A.2d 198 (2006) (excluding from coverage antique vehicle used for public exhibitions and not for general transportation purposes).

² General Statutes § 38a-336 (a) (1) (A) provides, in relevant part: “Each automobile liability insurance policy shall provide insurance, herein called uninsured and underinsured motorist coverage, in accordance with the regulations adopted pursuant to section 38a-334 . . . for the protection of persons insured thereunder who are legally entitled to recover damages because of bodily injury, including death resulting therefrom, from owners or operators of uninsured motor vehicles and underinsured motor vehicles . . .” Subdivision (a) (1) (C) of this statute then authorizes specific exclusions, as follows: “No insurer shall be required to provide uninsured and underinsured motorist coverage to (i) a named insured or relatives residing in the named insured's household when occupying, or struck as a pedestrian by, an uninsured or underinsured motor vehicle or a motorcycle that is owned by the named insured, except as provided in subparagraph (D) of this subdivision, or (ii) any insured occupying an uninsured or underinsured motor vehicle or motorcycle that is owned by such insured.”

Regulations of State Agencies § 38a-334-6 (c) also sets forth minimum coverage for protection against uninsured or underinsured motorists and goes on to authorize specific exclusions, as follows: “The insurer’s obligations to pay may be made inapplicable: (1) To any claim which has been settled with the uninsured motorist without the consent of the insurer; (2) if the uninsured or underinsured motor vehicle is owned by (A) the named insured or any relative who is a resident of the same household or is furnished for the regular use of any of the foregoing, (B) a self insurer under any motor vehicle law, or (C) any government or agency thereof; (3) to pay or reimburse for workers’ compensation or disability benefits.”

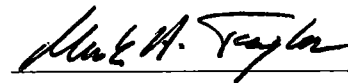
This limitation on exclusions from UM/UIM coverage is longstanding in Connecticut. “When an insurer seeks to limit its liability for [UM/UIM] coverage based on [a] regulation issued pursuant to [General Statutes] § 38-175c [now § 38a-336], it may do so only to the extent that the regulation expressly authorizes.” (Citation omitted.) *Lowrey v. Valley Forge Ins. Co.*, 224 Conn. 152, 156, 617 A.2d 454 (1992); see also *Bennett v. Automobile Ins. Co. of Hartford*, 230 Conn. 795, 800-801, 646 A.2d 806 (1994) (each automobile liability insurance policy shall provide insurance for uninsured and underinsured motorist coverage, in accordance with regulations adopted pursuant to § 38a-336); *Gohel v. Allstate Ins. Co.*, 61 Conn. App. 806, 816-17, 768 A.2d 950 (2001) (“no policy exclusions contrary to the statute . . . are permissible since uninsured motorist coverage is intended by the statute to be uniform . . .”).

Although rental car coverage is not mandatory in automobile liability insurance policies in Connecticut,³ an exclusion of UM/UIM coverage for such rental vehicles is not authorized by state statute or agency regulation. As such, the exclusion is unenforceable.

III CONCLUSION

The defendant’s motion for summary judgment is denied. The plaintiff’s cross motion for summary judgment is granted.

BY THE COURT



Mark H. Taylor, Judge

³ Policy reasons for permissive coverage of rental vehicles in automobile liability insurance policies in Connecticut may include an assumption that coverage is separately negotiated at the time of rental. Although this may provide a rationale for allowing UM/UIM coverage for rentals to be similarly permissive, there is no authority for this exception to the general rule.

CHECKLIST FOR CLERK

Docket Number CV 19-6108715-5

Case Name Justin Loller v. Progressive
Direct Insurance Co

Memorandum of Decision dated 10/22/19

File Sealed: yes _____ no X

Memo Sealed: yes _____ no X

This memorandum of Decision may be released to the Reporter of
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⚡ HHD-CV19-6108715-S LOLLAR, JUSTIN v. PROGRESSIVE DIRECT INSURANCE COMPANY
 Prefix: HD5 Case Type: C20 File Date: 03/15/2019 Return Date: 04/16/2019

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help

To receive an email when there is activity on this case, click here.

Information Updated as of: 10/22/2019

Case Information

Case Type: C20 - Contracts - Insurance Policy
 Court Location: HARTFORD JD
 List Type: JURY (JY)
 Trial List Claim: 05/24/2019
 Last Action Date: 09/27/2019 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
 Disposition:
 Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party	Category
P-01 JUSTIN LOLLAR Attorney: ⚡ BARRY BARALL & SPINELLA LLC (428935) File Date: 03/15/2019 202 WEST CENTER STREET 1ST FLOOR MANCHESTER, CT 06040		Plaintiff
D-01 PROGRESSIVE DIRECT INSURANCE COMPANY Attorney: ⚡ ALDRICH HANKS & SHEEHAN (419471) File Date: 04/18/2019 538 PRESTON AVENUE SUITE 305 MERIDEN, CT 06450		Defendant

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Motions / Pleadings / Documents / Case Status