IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HELENA BUZALEK, LEE BUZALEK, SUSAN BUZALEK, individually and as parent and next friend, KYLE BUZALEK, and ANDREW BUZALEK, a minor,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 03-570-KAJ
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant.	)	

MEMORANDUM ORDER

I. Introduction

Presently before this court is State Farm Mutual Automobile Insurance Company's ("State Farm") Rule 12(b)(6) motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted. (Docket Item ["D.I."] 3.)

In their amended complaint, Plaintiffs allege that State Farm is liable to Plaintiffs, as third party beneficiaries, for breaching a contract of insurance (the "Policy") between State Farm and William Hennessey ("Hennessy"). Because of Hennessey's non-cooperation, State Farm refuses to indemnify Hennessey for a default judgment entered against him in favor of Plaintiffs. (D.I. 1, Ex. A at ¶¶ 19-26.) Plaintiffs seek a declaratory judgment against State Farm, requiring State Farm to pay to Plaintiffs the amount of the default judgment, plus attorney's fees, interest, and costs of this action. (*Id.* at 5-6.)

II. Standard of Review

In analyzing a motion to dismiss pursuant to Federal Rules of Civil Procedure 12 (b)(6), the court must accept as true all material allegations of the complaint. *See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." *Id*. The moving party has the burden of persuasion. *See Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991).

III. Statement of the Facts

Plaintiffs Lee, Susan, Kyle, and Andrew Buzalek are residents of Pennsylvania and Plaintiff Helena Buzalek is a resident of Australia. (D.I. 1, Ex. A at ¶¶ 1-5.) State Farm is licensed to sell insurance within the state of Delaware. (*Id.* at ¶¶ 1-5.)

On July 18, 1998, Plaintiffs were involved in a motor vehicle collision with Hennessey. (*Id.* at ¶¶ 8-10.) Shortly after the collision, State Farm compensated Plaintiffs for property damage to their vehicle. (D.I. 5 at 3.) For almost two years after the accident, Plaintiffs and State Farm attempted to negotiate a settlement of the personal injury claims against Hennessey. (D.I. 5 at 3.) Before the statute of limitations was to run, the Plaintiffs informed State Farm of their intention to file suit against Hennessey, and offered State Farm a copy of the complaint. (D.I. 5 at 3.) State Farm did not accept the copy of the complaint, and suit was filed in the Superior Court of the

State of Delaware in and for New Castle County. Plaintiffs obtained a default judgment against Hennessey on or about April 9, 2001. (*Id.* at ¶ 14.)

On or about October 12, 2001, the Superior Court held a hearing wherein it awarded Lee Buzalek $140,000, Susan Buzalek $75,000, Kyle Buzalek $8,500, and Andrew Buzalek $8,500. (*Id.* at ¶ 15.) On or about January 8, 2002, the Superior Court, after taking Helena Buzalek's testimony via telephone, awarded her $125,000. (*Id.* at ¶ 15.) Thereafter, State Farm determined that Hennessey was not covered under the policy because of non-cooperation in defending against the Superior Court action and, consequently, it denied covered for the accident. (*Id.* at ¶ 20.)

On April 28, 2003, Plaintiffs filed an amended complaint for declaratory judgment in Superior Court, requesting that State Farm pay default judgments totaling $352,500, plus attorney fees, interest, and costs. (*Id.* at 5.)

On June 20, 2003, State Farm removed this action from the Superior Court to this court, pursuant to 28 U.S.C. §§ 1441(a) and 1446. (D.I. 1 at 1.)

IV. Discussion

The question before me is whether Plaintiffs have standing to sue State Farm. The main argument between the parties is whether Delaware or Maryland law controls. The Plaintiffs contend that Maryland law applies and, under that law, they have standing. (D.I. 5 at 5-6.) State Farm, however, contends that Delaware law applies and that that law does not provide standing. (D.I. 6 at 9-11.)

In a choice of law analysis the court must first determine if there is actually a conflict between the two competing laws. *Oil Shipping B.V. v. Sonmez Denizcilik Ve Ticaret A.S.*, 10 F.3d 1015, 1018 (3d Cir., 1993)

In, *Brown v. Allstate Ins. Co.*, 1997 U.S. Dist. LEXIS 3319 (D.Del Feb 27, 1997), the United States District Court for the District of Delaware held that: "Delaware does not treat an injured third party as a third-party beneficiary of a tortfeasor's insurance contract absent a showing of specific intent to create such a relationship." *Id.* at *7. Maryland case law, however, holds that "the right of the injured claimant to collect from the insurer of the one who harmed him derives from the contract right of the tortfeasor to have the insurer pay ... ." *Travelers Ins. Co., v. Godsey*, 273 A.2d, 431, 434 (Md. 1971). As the above cases make clear, third parties usually lack standing under Delaware law to sue under an insurance policy, while Maryland provides such a right. Consequently, the two state's laws conflict with regard to the pertinent issue and require this court to apply the conflict of law rules.

Under the conflict of law principles, I must "apply the choice-of-law rules of the State in which [this court] sits." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Accordingly, I apply Delaware choice-of-law rules. Delaware applies the modern most "significant relationship" test and, in particular, applies the Restatement (Second) of Conflicts § 188 (1971) to "conflicts arising out of the interpretation and validity of contracts." *Travelers Indem. Co. V. Ben E. Lake and Bonnie J. Lake*, 594 A.2d 38, 41 (Del 1991). Additionally, Delaware law states that "an action by an insured against his automobile insurance carrier to recover uninsured motorist benefits is more closely akin

to a contract claim than a tort." *Robinson v. Adco Metals, Inc.*, 663 F. Supp. 826, 830 (D. Del. 1984) (citing *Allstate Ins. Co. V. Spinelli*, 443 A.2d 1286, 1289-90 (Del 1982)).

In the present case, State Farm argues that Plaintiffs are not intended third-party beneficiaries of the contract and as such have no rights to bring suit against State Farm under Delaware law. (D.I. 6 at 9.) State Farm further argues that this action should be considered tortuous in nature and not contractual, as Plaintiffs have no rights under the policy and the original judgment against Hennessy was the result of a tort. (D.I. 6 at p. 8-9.) State Farm's argument is faulty because it presupposes that Delaware or Maryland law is controlling with respect to Plaintffs' rights. The proper questions are whether the action sounds in tort or contract and, depending on that answer, whether Delaware law controls the issue of standing to sue under the policy.

In a case very similiar to the one at bar The United States District Court for the District of Delaware held that "[a]lthough [a claim is] ... based on allegedly tortuous acts, to make the declaratory judgment sought by the parties, this Court must determine the exact nature of the contractual relationship between [the parties]." *Robinson*, 663 F. Supp. at 831. Therefore, the court applied Delaware choice of law rules in relation to the contract at issue to determine which state's law to apply. *Id*. In *Robinson*, the Plaintiffs were the insured parties, as opposed to the instant case where the Plaintiffs are not; however, the logic of that case is still applicable. *Id*. Consequently, I conclude that the instant action sounds in contract.

As the question of whether Plaintiffs have standing to sue under the policy is one of contract, I turn to § 188 of the Restatements (Second) of Conflicts to determine which

state has the most "significant relationship" to this contractual issue. *Travelers*, 594 A.2d 38.

Restatement (Second) of Conflicts § 188, states that

> (2) The contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
>
> (a) the place of contracting,
> (b) the place of negotiation fo the contract
> (c) the place of performance,
> (d) the location of the subject matter of the contract, and
> (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.
>
> (3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied ...

RESTATEMENT (SECOND) OF CONFLICTS § 188

In automobile cases, the place(s) where the insurance contract was entered into and where the car was primarily housed and operated is of paramount importance when determining which state's law to use when interpreting the contract. *Robinson*, 663 F. Supp. at 830.

In the instant case, it appears that negotiation of the policy occurred in Maryland. (D.I. 6. at 6.) The Restatement (Second) of Conflicts, § 188(3), indicates that Maryland law should be applied in this case because both the place of the negotiations and the primary place of performance, namely where the vehicle was operated, is Maryland. The discussion in *Robinson,* also indicates that Maryland law should govern the interpretation

of the policy, as it was entered into in Maryland and the vehicle in question was primarily housed and operated in Maryland. *See* 663 F. Supp. 826. Consequently, I will apply Maryland law to determine if Plaintiffs have standing to sue State Farm.

Applying Maryland law it is clear that Plaintiffs have standing to sue State Farm. *See*, *Travelers*, 273 A.2d at 434 ("the right of the injured claimant to collect from te insurer of the one who harmed him derives from the contract right of the tortfeasor to have the insurer pay ..."). State Farm does not cite any case law to refute the authority cited by Plaintiffs under Maryland law for the proposition that they have standing to sue State Farm.

Conclusion

Therefore, it is ORDERED that State Farm's motion to dismiss the amended complaint for failure to state a claim (D.I. 3) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

DATE: October 15, 2004
Wilmington, Delaware