

Tatyana Kochergina

**PHILADELPHIA COURT OF
COMMON PLEAS**

v.

**August Term, 2010
NO. 02880**

**Evan Thaler and
Liberty Mutual Insurance Company**

AND NOW, this _____ day of _____, 2010, after review of the Preliminary Objections of Defendant, Evan Thaler, and any response thereto, said Preliminary Objections are GRANTED.

It is hereby ORDERED that this matter shall be transferred to the Court of Common Pleas of Bucks County and the Prothonotary of this Court shall forward certified copies of the docket entries, process, pleadings and all other papers in the action upon Praecipe of Counsel, with costs of transfer to be borne by Plaintiff.

It is also ORDERED that a paragraph 9 j of plaintiff's Complaint is hereby stricken with prejudice.

BY THE COURT:

J.

By: ANTHONY D. DAMIANO, ESQ.
Attorney I.D. 49499
226 West Market Street
West Chester, PA 19382
610 692 6520

Attorney for Defendant
Evan Thaler

Tatyana Kochergina

PHILADELPHIA COURT OF
COMMON PLEAS

v.

August Term, 2010
NO. 02880

Evan Thaler and
Liberty Mutual Insurance Company

**PRELIMINARY OBJECTIONS TO THE PLAINTIFF'S COMPLAINT OF DEFENDANT
EVAN THALER IN THE FORM OF A MOTION TO TRANSFER BASED UPON
IMPROPER VENUE AND MISJOINDER OF CAUSES OF ACTION, AND TO STRIKE
PARAGRAPH 9 J OF THE COMPLAINT**

Defendant, Evan Thaler, hereby preliminarily objects to Plaintiff's Complaint and in support thereof avers as follows:

1. Plaintiff instituted this lawsuit to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on or about August 22, 2008. A true and correct copy of Plaintiff's complaint is attached hereto as Exhibit "1," and is hereinafter referred to as the "Bodily Injury Complaint."

2. Plaintiff, Tatyana Kochergina, allegedly operated a vehicle which was involved in an accident in Langhorne, Bucks County, with a vehicle being operated by defendant, Evan Thaler. See paragraphs 7 and 8 of the Bodily Injury Complaint which is attached hereto as Exhibit 1.

3. This lawsuit was filed in the Court of Common Pleas of Philadelphia County despite that fact that another property damage subrogation lawsuit, arising from the same accident, and involving the same parties, was filed by Liberty Mutual and is pending in the Court of Common Pleas of Bucks County. See Complaint, *Liberty Mutual Insurance a/s/o Kochergina v. Thaler and Add'l Defendant, Tatyana Kochergina*, under Bucks County Docket CCP No. 2010-04852, and the Docket entries, that are attached hereto, collectively, as Exhibit 2 and is hereinafter referred to as the "Property Damage Complaint."

IMPROPER VENUE - Defendant Drivers and Defendant Liberty Mutual are not Joint Tortfeasors

4. As outlined in the Bodily Injury Complaint, Exhibit 1, and the Property Damage Complaint, Exhibit 2, Plaintiff, Tatyana Kochergina, and Defendant, Evan Thaler reside in Bucks County, Pennsylvania, and the

motor vehicle accident giving rise to the cause of action occurred in Langhorne, Bucks County, Pennsylvania, Pennsylvania. See Paragraphs 1, 2, 7, and 8 of Plaintiffs' Bodily Injury Complaint – Exhibit 1, and paragraphs 3 and 5 of the Property Damage Complaint, Exhibit 2.

5. As part of the instant lawsuit, Plaintiff also instituted a claim against her underinsured motorist carrier, Liberty Mutual Insurance Company, alleging that she is entitled to Underinsured Motorist Benefits "For payment of verdict against Defendant Evan Thaler that is in excess in his insurance policy limit without regard to the UIM policy limit." See Bodily Injury Complaint, Exhibit 1, at Counts II and III.

6. Plaintiff brought this lawsuit in Philadelphia County based upon the notion that Liberty Mutual and the driver, Evan Thaler, are somehow "joint tortfeasors." Pa RCP 1006 c provides that venue is appropriate against joint tortfeasors in any county where venue is proper for one of the joint tortfeasors.

7. Plaintiff alleged that Liberty Mutual conducts "substantial and continuous business" in Philadelphia County, see paragraph 3 of the Bodily Injury Complaint, Exhibit 1, and that venue against Liberty Mutual is appropriate in Philadelphia County.

8. However, Liberty Mutual and driver Even Thaler, are not "joint tortfeasors" and the venue considerations found in Rule 1006 c are not applicable.

9. The Uniform Contribution Among Joint Tortfeasors Act 42 Pa. C.S . § 8322, et seq. defines "joint tortfeasors" as two or more persons jointly or severally liable in tort for the same injury to persons or property, whether or not judgment has been recovered against all or some of them.

10. The claim against Liberty Mutual is for Underinsured Motorist benefits.

11. The claim for Underinsured Motorist benefits is a claim based upon the terms and provisions of an insurance contract for the vehicle which Ms. Kochergina was operating, whereas the claim against the driver, Evan Thaler, is based in negligence.

12. Certainly, Liberty Mutual Insurance and Evan Thaler are not "joint tortfeasors" as there is no allegation, and it cannot be established, that they are jointly or severally liable in tort for the same injury to a person, Maria Kochergina.

13. Accordingly, the venue considerations contained in Rule 1006, c 1, concerning "joint tortfeasors" is not applicable, and the suit against Mr. Thaler must be severed and transferred to Bucks County, where the accident occurred, where he resides, and where he was served with plaintiff's complaint.

Pa RCP 213 B PERMITS A COURT TO SEVER A CAUSE OF ACTION TO AVOID PREJUDICE TO ANY PARTY AND PENNSYLVANIA RULE OF EVIDENCE 411 STRICTLY FORBIDS INTRODUCTION OF A PARTY'S INSURANCE INTO TORT LITIGATION WHICH IS UNAVOIDABLE WHEN PLAINTIFF SEEKS TO PURSUE THE ALLEGED UIM CLAIM

14. Pa RCP 213 b provides: “A court, in furtherance of convenience, or to avoid prejudice, may, on its own Motion or on motion of any party, order a separate trial of any cause of action...”

15. Moreover, Pennsylvania Rule of Evidence 411 provides:

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

16. Permitting the plaintiffs’ UIM claim and the claim based upon negligence against defendant Thaler to proceed in the same action is unfairly prejudicial to defendant Thaler, because will be impossible ask the finders of fact - ordinary lay persons - to determine liability and damages, and ask the same finders of fact to determine whether defendant Thaler possessed “enough” insurance or if he had been had been “underinsured” such that plaintiff will be entitled to underinsured motorist benefits.

17. Pa. R.E. 411 prohibits using evidence that a defendant was covered by liability insurance to establish negligence or wrongful death action. *Price v. Yellow Cab, Co. of Philadelphia*, supra; *Nicholson v. Garris*, 418 Pa. 146, 210 A.2d 164 (1965). This rule is consistent with Pennsylvania law.

18. Evidence of insurance is seldom relevant and poses a substantial danger of prejudice that the jury may be motivated to award excessive damages upon the assumption that an insurance company, and not the defendant, will be the source of the payment. See McCormick, Evidence § 201 (5th ed. 1999).

19. In addition, the plaintiff’s claim for UIM benefits, or her entitlement to benefits pursuant to the underinsured motorist provisions of her insurance policy, (Counts II - III) of her complaint, is based in contract, whereas the claims against Mr. Thaler are based upon negligence.

20. No one can contest that if the negligence action had not been joined with the UIM claim against Liberty Mutual, that venue of the negligence claim against Mr. Thaler would be inappropriate in Philadelphia County (*see* Rule1006.)

21. The only basis for venue of this lawsuit is that there is an alleged contractual UIM claim against a corporation which conducts business in Philadelphia.

22. Mr. Thaler is brought into the Philadelphia litigation pursuant to Pa RCP 1006 (c)(1).

23. Even if this venue selection is appropriate - which it is not, Mr. Thaler’s defense will be unfairly prejudiced when the finder of fact is asked to determine if UIM coverage exists, is payable, and if Mr. Thaler was indeed “underinsured.”

24. Accordingly, the suit against Mr. Thaler must be severed from the UIM claim, and transferred to

Bucks County.

IMPROPER VENUE - PA RCP 1006

25. Notwithstanding the above, Liberty Mutual has filed Preliminary Objections to the Plaintiff's Complaint alleging that there existed a "forum selection" clause in the insurance policy which required that a lawsuit for UIM benefits must be brought in the county and state of the insured's legal domicile, which in this case, is in Bucks County. A true and correct copy of Liberty Mutual's Preliminary Objections is attached hereto as Exhibit 3 and is incorporated herein.

26. As set forth in Liberty Mutual's Objections, the law in this Commonwealth is clear - Pennsylvania has taken the view that forum selection clauses, wherein the parties to a contract designate a particular jurisdiction as the forum for the resolution of the disputes, are prima facie valid and should be enforced unless they can be shown to be unreasonable under the circumstances.

27. In these circumstances, if the Court believes that the case against Liberty Mutual should be severed and transferred to Bucks County based upon the forum selection clause, then the case against Evan Thaler must also be transferred to Bucks County for different, but compelling reasons, as venue in Philadelphia County is improper as to the defendant driver.

28. Pennsylvania of Civil Procedure 1028 permits the filing of preliminary objections in the nature of a motion to transfer for improper venue.

29. Pennsylvania of Civil Procedure 1006(a)(1) provides that venue against an individual is proper only in the County where an individual may be served, or where a transaction or occurrence took place out of which the cause of action arose, or in any other county authorized by law.

30. If venue is deemed to be inappropriate, Rule 1006 (e) provides that the Court can issue an Order transferring the case to the proper venue with costs to be borne by the Plaintiff.

31. Venue in Philadelphia County is clearly inappropriate because all parties, excluding Liberty Mutual, reside in Bucks County; defendant Thaler was served in Bucks County; the accident giving rise to this lawsuit occurred in Bucks County, and there is no "legal authorization" for venue in Philadelphia County provided by Rule 1006 (a)(1).

32. Philadelphia County has no relationship with this cause of action, and venue in this County is improper.

33. The only basis for venue in Philadelphia County is that one of the Defendants, Liberty Mutual, conducts business in the Philadelphia forum, but Liberty Mutual and the Thaler are not "joint tortfeasors." Further, the Liberty Mutual policy contained a binding "forum selection" clause requiring the case against Liberty Mutual be transferred to Bucks County.

34. In addition, as indicated, another property damage subrogation lawsuit, arising from the same accident, and involving the same parties, was filed by Liberty Mutual and is pending in the Court of Common Pleas of Bucks County. See Complaint, *Liberty Mutual Insurance a/s/o Kochergina v. Thaler and Tatyana Kochergina*, under docket Bucks County CCP No. 2010-04852, and associated docket entries that are attached hereto, collectively, as Exhibit 2 and are referred to as the "Property Damage Complaint."

35. Pa RCP 1028 also requires that all preliminary objections be raised at one time.

IMPERMISSIBLE GENERAL ALLEGATION OF NEGLIGENCE

36. In paragraph 9 j of Plaintiff's Bodily Injury Complaint, Exhibit A, Plaintiff vaguely alleges that all defendants (including Liberty Mutual), were negligent by "Otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of the Commonwealth of Pennsylvania and/or otherwise as will be proven at trial."


37. Rule 1019 (a) requires pleadings to state the material facts upon which a cause of action is based in a concise and summary form.

38. Pennsylvania case law requires plaintiff to plead sufficient facts to notify defendants of plaintiffs' claims and to inform defendants of the relevant issues.

39. In plaintiffs' complaint, paragraphs 9 j, plaintiff alleges that defendants were negligent by "Otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of the Commonwealth of Pennsylvania and/or otherwise as will be proven at trial."

40. Such boilerplate omnibus clauses fail to contain the specificity required by Pennsylvania law and should be stricken from plaintiffs' complaint.

WHEREFORE, Defendant, Evan Thaler, requests that this Honorable Court enter an Order transferring the above captioned matter to Bucks County, with cost of transfer to be borne by Plaintiff, and enter an Order Striking Paragraph 9 j of Plaintiff's Complaint.

BY: 
ANTHONY D. DAMIANO, ESQUIRE
Attorney for Defendant, Evan Thaler

DATE: 9/27/10

By: ANTHONY D. DAMIANO, ESQ.
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226 West Market Street
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PHILADELPHIA COURT OF
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v.

August Term, 2010
NO. 02880

Evan Thaler and
Liberty Mutual Insurance Company

**MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS TO THE
PLAINTIFF'S COMPLAINT OF DEFENDANT EVAN THALER IN THE FORM OF A
MOTION TO TRANSFER BASED UPON IMPROPER VENUE AND MISJOINDER OF
CAUSES OF ACTION, AND TO STRIKE PARAGRAPH 9 J OF THE COMPLAINT**

I. MATTER BEFORE THE COURT

Defendant's Preliminary Objections in the nature of a motion to transfer matter to Court of Common Pleas of Bucks County based upon Improper Venue and Misjoinder of Causes of Action, and to Strike General Allegation on Negligence contained in Paragraph 9 j of plaintiff's Complaint

II. STATEMENT OF QUESTIONS INVOLVED

- a. Whether venue in Philadelphia County is inappropriate because the only basis for venue in this County is that plaintiff instituted a UIM claim against Liberty Mutual Insurance Company and alleges that Liberty Mutual conducts business in Philadelphia County, but Liberty Mutual and driver Evan Thaler are not "joint tortfeasors," thus Pa RCP1006 (c)(1) is not applicable, and defendant Thaler cannot be compelled to litigate where it might be appropriate based upon proper venue for UIM carrier, but not against him?

Suggested Answer:

Yes.

- b. Whether defendant Thaler will be unfairly prejudiced when plaintiff seeks to prove her entitlement to "Underinsured Motorist Benefits" when the finder of fact is asked insurance coverage questions to determine if UIM coverage exists, is payable, and if Mr. Thaler was indeed "underinsured," and if so, does Pa RCP 213 b mandate severance of the litigation between contractual and tort claims?

Suggested Answer:

Yes.

- c. Whether, if the UIM claim against Liberty Mutual is transferred to Bucks County in response to Liberty Mutual's Preliminary Objections based upon a forum selection clause, and the remaining claims against the driver, Thaler, is severed, the venue for the remaining claim against Thaler should be transferred to the Court of Common Pleas of Bucks County where plaintiff and defendant reside and was served, in which the cause of action arose, and where another action involving the same accident and same parties is pending?

Suggested Answer:

Yes.

- d. Whether plaintiff's vague allegation in 9 j of plaintiff's Complaint that defendants were negligent by "Otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of the Commonwealth of Pennsylvania and/or otherwise as will be proven at trial" is insufficiently specific and should be stricken?

Suggested Answer:

Yes.

III. FACTS:

Plaintiff, Tatyana Kochergina, instituted this lawsuit to recover for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on or about August 22, 2008. A true and correct copy of Plaintiff's complaint is attached hereto as Exhibit "1," and is hereinafter referred to as the "Bodily Injury Complaint." At the time, she was involved in an accident in Langhorne, Bucks County, with a vehicle being operated by defendant, Evan Thaler. See paragraphs 7 - 8 of the Bodily Injury Complaint which is attached hereto as Exhibit 1. Tatyana Kochergina and Evan Thaler both reside in Bucks County, the auto accident occurred there, and Evan Thaler was served in Bucks County. As part of the instant lawsuit, plaintiff also instituted a claim against her underinsured motorist carrier, Liberty Mutual Insurance Company, alleging that she is entitled to Underinsured Motorist Benefits "For payment of verdict against Defendant Evan Thaler that is in excess in his of their insurance policy limit without regard to the UIM policy limit." See Bodily Injury Complaint, Exhibit 1, at Counts II and III. As set forth in the attached Preliminary Objections and in the brief below, venue in Philadelphia County is improper for any number of reasons.

This lawsuit was filed in the Court of Common Pleas of Philadelphia County despite that fact that another property damage subrogation lawsuit, arising from the same accident, and involving the same parties, was filed by Liberty Mutual and is pending in the Court of Common Pleas of Bucks County. See Complaint, *Liberty Mutual Insurance a/s/o Kochergina v. Thaler and Addl. Defendant, Tatyana Kochergina*, under Bucks County Docket CCP No. 2010-04852, and the Docket entries, that are attached hereto, collectively, as Exhibit 2, and is hereinafter referred to as the “Property Damage Complaint.”

IV. ARGUMENT

Issue 1. Whether venue in Philadelphia County is inappropriate because the only basis for venue in this County is that plaintiff instituted a UIM claim against Liberty Mutual Insurance Company and alleges that Liberty Mutual conducts business in Philadelphia County, but Liberty Mutual and drivers Evan Thaler and Tatyana Kochergina and are not “joint tortfeasors,” thus Pa RCP1006 (c)(1), is not applicable, and defendant Thaler cannot be compelled to litigate where it might be appropriate based upon proper venue for UIM carrier, but not against him?

Suggested Answer:

Yes.

As outlined in the Bodily Injury Complaint, Exhibit 1, and the Property Damage Complaint, Exhibit 2, defendant, Evan Thaler, and plaintiff, Tatyana Kochergina, reside in Bucks County, Pennsylvania, and the motor vehicle accident giving rise to the cause of action occurred in Langhorne, Bucks County, Pennsylvania, Pennsylvania. See Paragraphs 1, 2, 7, and 8 of plaintiffs’ Bodily Injury Complaint – Exhibit 1, and paragraphs 3 and 5 of the Property Damage Complaint, Exhibit 2.

Notwithstanding these operative facts, Tatyana Kochergina elected to institute this case in Philadelphia County with a claim against her underinsured motorist carrier, Liberty Mutual Insurance Company, alleging that she is entitled to Underinsured Motorist Benefits “For payment of verdict against defendant Evan Thaler that is in excess in his of their insurance policy limit without regard to the UIM policy limit.” See Bodily Injury Complaint, Exhibit 1, at Counts II and III.

Plaintiff brought this lawsuit in Philadelphia County based upon the notion that Liberty Mutual and the drivers, Evan Thaler, are somehow “joint tortfeasors.” Pa RCP 1006 c provides that venue is appropriate against joint tortfeasors in any county where venue is proper for one of the joint tortfeasors. Pa RCP 1006 (c) (1) states:

(c) (1) Except as otherwise provided by paragraph (2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against

any one of the defendants under the general rules of subdivisions (a) or (b).

Plaintiff alleged that Liberty Mutual conducts “substantial and continuous business” in Philadelphia County, see paragraph 3 of the Bodily Injury Complaint, Exhibit 1, and that venue against Liberty Mutual is appropriate in Philadelphia County. Thus by operation of 1006 (c)(1), if the driver of the allegedly “underinsured vehicle” (defendant Thaler) and Liberty Mutual were “joint tortfeasors,” then venue as to all defendants would be appropriate in any County where venue of one of the joint tortfeasors can be found. However, Liberty Mutual and Evan Thaler are not “joint tortfeasors” and the venue considerations found in Rule 1006 c are not applicable.

The Uniform Contribution Among Joint Tortfeasors Act 42 Pa. C.S. §§ 8322, et seq. defines “joint tortfeasors” as two or more persons jointly or severally liable in tort for the same injury to persons or property, whether or not judgment has been recovered against all or some of them. By way of example, when the acts of two or more wrongdoers are severable as to time, place or theory, the wrongdoers have no opportunity to guard against each other's acts, and when each of the wrongdoers breaches a different duty owed to the plaintiff, they are not joint tortfeasors. See *U.S. v. Union Corp.*, 277 F. Supp. 2d 478 (E.D. Pa. 2003) (applying Pennsylvania law); *Garrett Electronics Corp. v. Kampel Enterprises, Inc.*, 382 Pa. Super. 352, 555 A.2d 216 (1989); *Lasprogata v. Qualls*, 263 Pa. Super. 174, 397 A.2d 803 (1979).

Certainly, Liberty Mutual Insurance and Evan Thaler, are not “joint tortfeasors” as there is no allegation, and it cannot be established, that they are jointly liable in tort for the same injury to a person, Tatyana Kochergina. The claim against Liberty Mutual is for Underinsured Motorist benefits pursuant to the terms and provisions of a policy insuring the vehicle which plaintiff was operating, whereas the claim against the driver Evan Thaler, is based in negligence. Accordingly, the venue considerations contained in Rule 1006, c 1, concerning “joint tortfeasors” is not applicable.

The Courts have long recognized that “[w]hether liability for harm to a plaintiff is capable of apportionment is a question of law for the court, not a question of fact for the jury.” *Voyles c. Corwin*, 295 Pa.Super. at 130, 441 A.2d 381; *Lasprogata v. Qualls*, 263 Pa.Super. at 181, 397 A.2d at 806. Accordingly, from the facts alleged, Liberty Mutual and Evan Thaler are not “joint tortfeasors” as a matter of law and Evan Thaler cannot be forced to litigate a lawsuit in a County where venue is clearly improper.

Issue 2. Whether defendant Thaler will be unfairly prejudiced when plaintiff seeks to prove her entitlement to “Underinsured Motorist Benefits” and the finder of fact is asked insurance coverage questions to determine if UIM coverage exists, is payable, and if Mr. Thaler was indeed “underinsured,” and if so, does Pa RCP 213 b mandate severance of the litigation between these contractual and tort claims?

Suggested Answer:

Case ID: 100802880
Control No.: 10093124

Yes.

As noted by the Honorable Allan Tereshko of the Philadelphia Court of Common Pleas in the matter of *Thomas v. Titan Auto Insurance, et.al.*, (Phila. CCP, March TERM, 2010, No. 3050 [filed September 16, 2010], Superior Court appeal pending, Superior Court Docket 1722 EDA 2010), Pa RCP 213 b provides: “A court, in furtherance of convenience, or to avoid prejudice, may, on its own Motion or on motion of any party, order a separate trial of any cause of action...” In a case precisely like the matter at hand where the plaintiff was involved in an accident in Montgomery County against Montgomery County residents, yet the plaintiff brought suit against the tortfeasor drivers and the Uninsured Motorist carrier in Philadelphia, the Court severed the claims against the tortfeasor drivers, and transferred those cases to Montgomery County. Judge Tereshko noted that it is simply unfair against the defendants to inject insurance information in a case against the tortfeasors.

Pennsylvania Rule of Evidence 411 provides:

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

The Supreme Court in *Price v. Yellow Cab*, 443 Pa. 56, 278 A.2d 161, (Pa. 1971), has explained upon this long standing view upon the effect of advising the finder of fact about insurance:

“ I begin with the well-recognized rule that evidence in a personal injury action which informs the jury that the Defendant is insured against liability is inadmissible and an improper subject of cross-examination. See, e.g., *Trimble v. Merloe*, 413 Pa. 408, 197 A.2d 457 (1964); *Patton v. Franc*, 404 Pa. 306, 172 A.2d 297 (1961); *Harriett v. Ballas*, 383 Pa. 124, 117 A.2d 693 (1955); *Dively-Penn-Pittsburgh Corporation*, 332 Pa. 65, 2 A.2d 831 (1938); *Kaplan v. Loev*, 327 Pa. 465, 194 A. 653 (1937); *Lenahan v. Pittston Coal Co.*, 221 Pa. 626, 70 A. 884 (1908); *Hillis v. United States Glass Co.*, 220 Pa. 49, 69 A. 55 (1908). Although the technical reason for this rule of evidence is that such information is irrelevant, the chief reason is ‘the assumption *64 that a knowledge of the fact of insurance against liability will motivate the jury to be reckless in awarding damages to be paid, not by the defendant, but by a supposedly well-pursed and heartless insurance company that has already been paid for taking the risk.’ II Wigmore on Evidence s 282a, at 133-34 (3d ed. 1940).” 443 Pa. at page 63.

Permitting the plaintiffs’ UIM claim and the claim based upon negligence against defendant Thaler to

proceed in the same action is unfairly prejudicial to defendant Thaler, because will be impossible ask the finders of fact - ordinary lay persons - to determine liability and damages, and ask the same finders of fact to determine whether defendant Thaler possessed “enough” insurance or if he had been had been “underinsured” such that plaintiff will be entitled to underinsured motorist benefits.

Pa. R.E. 411 prohibits using evidence that a defendant was covered by liability insurance to establish negligence or wrongful death action. *Price v. Yellow Cab, Co. of Philadelphia*, supra; *Nicholson v. Garris*, 418 Pa. 146, 210 A.2d 164 (1965). This rule is consistent with Pennsylvania law. Evidence of insurance is seldom relevant and poses a substantial danger of prejudice that the jury may be motivated to award excessive damages upon the assumption that an insurance company, and not the defendant, will be the source of the payment. See McCormick, Evidence § 201 (5th ed. 1999).

In addition, the plaintiff’s claim for UIM benefits, or her entitlement to benefits pursuant to the underinsured motorist provisions of her insurance policy, (Counts II - III) of her complaint, is based in contract, whereas the claims against Mr. Thaler are based upon negligence. No one can contest that if the negligence action had not been joined with the UIM claim against Liberty Mutual, that venue of the negligence claim against Mr. Thaler would be inappropriate in Philadelphia County (*see* Rule1006.)

The only basis for venue of this lawsuit is that there is an alleged contractual UIM claim against a corporation which conducts business in Philadelphia. Mr. Thaler is brought into the Philadelphia litigation pursuant to Pa RCP 1006 (c)(1). Even if this venue selection is appropriate - which it is not, Mr. Thaler’s defense will be unfairly prejudiced when the finder of fact is asked to determine if UIM coverage exists, is payable, and if Mr. Thaler was indeed “underinsured.” Accordingly, the suit against Mr. Thaler must be severed from the UIM claim, and transferred to Bucks County.

Issue 3. If the UIM claim against Liberty Mutual is transferred to Bucks County in response to Liberty Mutual’s Preliminary Objections based upon a forum selection clause, and the remaining claims against the drivers are severed, then the venue for the remaining claims in plaintiff’s Complaint against the drivers should be transferred to the Court of Common Pleas of Bucks County where plaintiff and defendant reside and defendant was served, in which the cause of action arose, and where another action involving the same accident and same parties is presently pending?

Suggested Answer:

Yes.

Notwithstanding the fact that Liberty Mutual and Evan Thaler are not “joint tortfeasors, Liberty Mutual has filed Preliminary Objections to the plaintiff’s Complaint alleging that there existed a “forum

selection” clause in the insurance policy which required that a lawsuit for UIM benefits must be brought in the county and state of the insured’s legal domicile, which in this case, is in Bucks County. A true and correct copy of Liberty Mutual’s Preliminary Objections is attached hereto as Exhibit 3 and is incorporated herein.

Pennsylvania case law holds that forum selection clauses, wherein the parties to a contract designate a particular jurisdiction as the forum for the resolution of the disputes, are prima facie valid and should be enforced unless they can be shown to be unreasonable under the circumstances. The party challenging the clause bears the heavy burden of demonstrating why it should not be bound by its contractual choice of forum. *See Nemo Associates, Inc. v. Homeowners Marketing Services Intern., Inc.*, 942 F. Supp. 1025 (E.D. Pa. 1996); *Provident Mut. Life Ins. Co. of Philadelphia v. Bickerstaff*, 818 F. Supp. 116 (E.D. Pa. 1993) (applying Pennsylvania law); *Central Contracting Co. v. C. E. Youngdahl & Co.*, 418 Pa. 122, 209 A.2d 810 (1965). A forum selection clause should not be set aside unless the party challenging the clause can clearly show that enforcement would be unreasonable and unjust, *BABN Technologies Corp. v. Bruno*, 25 F. Supp. 2d 593 (E.D. Pa. 1998).

If the Court accepts the validity of the forum selection clause, and if the Court believes that the case against Liberty Mutual should be severed and transferred to Bucks County, then the case against Evan Thaler, must also be transferred to Bucks County for different, but compelling reasons, as venue in Philadelphia County is improper as to Evan Thaler.

Pennsylvania of Civil Procedure 1006(a)(1) provides that venue against an individual is proper only in the County where an individual may be served, or where a transaction or occurrence took place out of which the cause of action arose, or in any other county authorized by law. If venue is deemed to be inappropriate, Rule 1006 (e) provides that the Court can issue an Order transferring the case to the proper venue with costs to be borne by the plaintiff.

Venue in Philadelphia County is clearly inappropriate because all parties, excluding Liberty Mutual, but including plaintiff and defendant Thaler, reside in Bucks County; defendant was served in Bucks County; the accident giving rise to this lawsuit occurred in Bucks County. There is no “legal authorization” provided by Rule 1006 (a)(1) for venue against the Mr. Thaler in Philadelphia County because Philadelphia County has no relationship with this cause of action, and venue in this County is improper.

The only basis for venue in Philadelphia County is that one of the defendants, Liberty Mutual, conducts business in the Philadelphia forum. As indicated, Liberty Mutual and the drivers are not “joint tortfeasors” and the Liberty Mutual policy contained a binding “forum selection” clause requiring the case against Liberty Mutual be transferred to Bucks County.

In addition, another property damage subrogation lawsuit, arising from the same accident, and involving the same parties, was filed by Liberty Mutual and is pending in the Court of Common Pleas of Bucks County. See Complaint, *Liberty Mutual Insurance a/s/o Kochergin v. Thaler and Tatyana Kochergin*, (Additional defendant) under docket Bucks County CCP No. 2010-04852, and the docket entries, that are attached hereto as Exhibit 2, collectively.

Issue 3. Whether plaintiff's vague allegation in 9 j of plaintiff's Complaint that defendants were negligent when they "Otherwise operated said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of the Commonwealth of Pennsylvania and/or otherwise as will be proven at trial" is insufficiently specific and should be stricken?

Suggested Answer:

Yes

In paragraph 9 j of plaintiff's Bodily Injury Complaint, Exhibit 1, plaintiff vaguely alleges that defendant Thaler and Liberty Mutual were negligent by "Otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of the Commonwealth of Pennsylvania and/or otherwise as will be proven at trial." Rule 1019 (a) requires pleadings to state the material facts upon which a cause of action is based in a concise and summary form. Pennsylvania case law requires plaintiff to plead sufficient facts to notify defendants of plaintiffs' claims and to inform defendants of the relevant issues.

Paragraph 9 j, of the Complaint plaintiff fails to contain the specificity required by Pennsylvania law and should be stricken from plaintiffs' complaint. The lack of specificity of a plaintiff's complaint may be raised by way of preliminary objection in the nature of a motion for a more specific pleading, or in the nature of a motion to strike the pleading due to the lack of conformity with a rule of law. Pa RCP 1028(a)(2); *Connor v. Allegheny Hospital*, 501 Pa. 306, 461 A.2d 600 (1983.)

In *Connor, supra*, the Pennsylvania Supreme Court upheld the decision of the trial court to permit the plaintiff to amend his complaint to allege an entirely new factual theory of liability on the day of trial. The new theory, the court reasoned, "merely amplified" plaintiffs timely allegation that the defendant was negligent "in otherwise failing to use to care." 461 A.2d at 602. The defendant in *Connor* had argued that the eleventh hour amendment prejudiced the defendant. The court rejected this argument, stating:

"If appellees did not know how it 'otherwise failed to use due care and caution under the circumstances,' it could have filed preliminary objections in the nature of a request for a more specific pleading, or it could have moved to strike that portion of the appellants complaint. (Citations omitted)... In this case, however, appellees apparently

understood this allegation ... well enough to simply deny it in its answer. Thus, appellees cannot now claim that it was prejudiced by the late amplification of this allegation..." *Id.* at 311, n. 3, 461 A.2d at 602, n.3

The opinion in *Connor* clearly mandates that "catch all" allegations of negligence should be stricken when the appropriate preliminary objections have been filed. As the trial court noted in *Link v. Roberts*, 18 Center Leg.J. 24 (83-1296, September 25, 1984):


"To hold otherwise would require defendants to prepare to defend against every possible cause of action that might fall within the ambit of the language "otherwise fail to use due care." Clearly, this imposes an impossible burden upon the defendants." *Id.* at 26.

In another similar matter, the same reasoning was followed by the court in *Campital v. Williams*, 36 Bucks Co. L. R. 19 (Pa, CCP Bucks Co. 1981). In that case, plaintiff alleged that defendant "was otherwise negligent in the performance of his duties as an official Pennsylvania State Inspection Station Licensee." The court sustained the defendant's preliminary objections holding that these allegations "fall woefully short of pleading a clause of action." *Id.*

Since the *Connor* decision, many courts of this Commonwealth have required a more specific pleading, or had stricken such "catch all" allegations of negligence, and the equally abroad and equally commonplace allegation that the defendant's negligence may be ascertained "through discovery." See *Farmer v. Rhoads*, 43 D&C 3rd 393 (CCP Chester Co. 1986); *Kitzmuller v. Riverton Consolidated Water* 38 Cumberland L. J. 33, (Cumberland Cy CCP 1988), striking "otherwise failing to use due care under the circumstances;" *Simon v. Community General Osteopathic Hospital*, 108 Dauphin Co. R. 218 (Pa. CP Dauphin Co. 1988), striking phrases "otherwise negligent" and "including but not limited to."

In the instant case, a cursory review of the present appellate case law clearly mandates that paragraph 9 j of the plaintiff's complaint does not satisfy the requirement of Pa. Rule of Civil Procedure 1019(a) that a statement made in a pleading shall be in a "concise and summary form containing the material facts upon which plaintiffs cause of action is based." Without those provisions identified, defendants cannot adequately respond to plaintiff's vague contentions. Prejudice will result in having to prepare a defense to one or more original theories of liability only to later to prepare defenses to new theories brought in through the use of "amplification." Defendants should not be forced to prepare a defense to one or more theories of liability which may be later abandoned by the plaintiff in favor of some other theory which will be based upon the general allegations of negligence and improper conduct set forth in the vague paragraphs of the complaint.

WHEREFORE, defendant, Evan Thaler, requests that this Honorable Court enter an Order transferring the above captioned matter to Bucks County, with cost of transfer to be borne by plaintiff, and enter an Order Striking Paragraph 9 j of plaintiff's Complaint.

BY: 
ANTHONY D. DAMIANO, ESQUIRE
Attorney for Defendant, Evan Thaler

DATE: 9/27/10

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1880 JFK Blvd. 5th fl. at 11:00 AM - 04/20/2011
You must still comply with the notice below. USTED TODAVIA DEBE CUPLIR CON EL AVISO PARA DEFENDERSE.

This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial denovo on appeal from a decision entered by a Judge.



GALLAGHER, MALLOY & GEORGES, P.C.
By: JOAN D. GALLAGHER, ESQUIRE
ATTY I.D. #84081
JOSEPH P. TURCHI, ESQUIRE
ATTY I.D. #89555
1760 Market Street, Suite 1100
Philadelphia, PA 19103
(215) 963-1555

ARBITRATION
Attorneys for Plaintiff

TATYANA KOCHERGINA : COURT OF COMMON PLEAS
3415 Stafford Place : PHILADELPHIA COUNTY
Holland, Pennsylvania 18966 :
vs. :
EVAN THALER :
627 Sweetwater Drive :
Langhorne, Pennsylvania 19047 :
and : TERM, 2010
LIBERTY MUTUAL :
INSURANCE COMPANY :
111 S. Independence Mall E., Ste 710 :
Philadelphia, Pennsylvania 19147 : NO.:

CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint & Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA COUNTY BAR ASSOCIATION
Lawyer Referral & Information Service
One Reading Center, 1101 Market Streets, Philadelphia, Pennsylvania 19107
(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de s persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder u otros derechos importantes para usted.

LLEVE ESTSASS DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA ABAFRIGUAR DONDE SE PAADE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE PHILADELPHIA COUNTY
Servicio De Referencia E Informacion Legal
One Reading Center, 1101 Market Streets, Philadelphia, Pennsylvania 19107
(215) 238-1701

Case ID: 100802880

Case ID: 100802880
Control No.: 10093124

GALLAGHER, MALLOY & GEORGES, P.C.
By: JOAN D. GALLAGHER, ESQUIRE
ATTY I.D. #84081
JOSEPH P. TURCHI, ESQUIRE
ATTY I.D. #89555
1760 Market Street, Suite 1100
Philadelphia, PA 19103
(215) 963-1555

ARBITRATION
Attorneys for Plaintiff

TATYANA KOCHERGINA	:	COURT OF COMMON PLEAS
3415 Stafford Place	:	PHILADELPHIA COUNTY
Holland, Pennsylvania 18966	:	
	:	
vs.	:	
	:	
EVAN THALER	:	
627 Sweetwater Drive	:	
Langhorne, Pennsylvania 19047	:	
	:	
and	:	
	:	
LIBERTY MUTUAL	:	
INSURANCE COMPANY	:	
111 S. Independence Mall E., Ste 710	:	
Philadelphia, Pennsylvania 19147	:	NO.:

CIVIL ACTION

Plaintiff TATYANA KOCHERGINA, by and through her undersigned attorneys,
hereby demands judgment against Defendants EVAN THALER and LIBERTY
MUTUAL INSURANCE COMPANY upon the following cause of action:

1. Plaintiff TATYANA KOCHERGINA is an adult individual residing at
3415 Stafford Place, Holland, Pennsylvania 18966.
2. Defendant EVAN THALER is an adult individual residing at 627
Sweetwater Drive, Langhorne, Pennsylvania 19047.

3. Defendant LIBERTY MUTUAL INSURANCE COMPANY is an insurance company with its place of business at 111 S. Independence Mall E., Ste 710, Philadelphia, Pennsylvania 19147. The Defendant conducts substantial and continuous business as an insurance company in the Commonwealth of Pennsylvania and in the City and County of Philadelphia.

4. At all times material hereto, Plaintiff TATYANA KOCHERGINA was an operator of a 2005 Acura TL, which was involved in the hereinafter-described collision.

5. At all times relevant hereto Defendant EVAN THALER was an operator of a 2004 Ford Excursion, which was involved in the hereinafter-described collision.

6. Plaintiff reserves the right to amend the complaint to reflect the correct legal identity and/or address of any parties referred to herein.

7. All material facts and occurrences took place on August 22, 2008, at or near 120 N. Pine Street, Langhorne Borough, Bucks County, Pennsylvania.

8. On or about August 22, 2008, at or near the above described location, Defendant EVAN THALER failed to yield the right of way to oncoming traffic, and turned left into Plaintiff's vehicle, as a result of which Plaintiff sustained serious injuries more fully described below.

9. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence, recklessness and/or carelessness of the Defendant, in at least any or all of the following respects:

~~(a) failing to yield the right of way to oncoming traffic;~~

(b) failing to remain stopped before making sure that the road was clear from oncoming traffic and safe to proceed;

- (c) operating a vehicle at a high, dangerous and reckless speed under the circumstances;
- (d) failing to have the vehicle under proper control;
- (e) in driving into another vehicle;
- (f) in that the Defendant was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;
- (g) in violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
- (h) in violating the rules of the road and or in driving carelessly and recklessly;
- (i) failing to stop his vehicle within the assured clear distance required by 75 Pa.C.S.A. §3361 and 75 Pa.C.S.A. §3731; and
- (j) otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of Commonwealth of Pennsylvania and/or otherwise as will be proven at trial.

10. The aforesaid accident resulted solely from the negligence, carelessness and/or recklessness of Defendant EVAN THALER and was not caused in any manner whatsoever by any act or failure to act on the part of Plaintiff TATYANA KOCHERGINA.

11. Solely as the result of the negligence, carelessness and/or recklessness of the Defendant, Plaintiff TATYANA KOCHERGINA sustained at least the following injuries, damages, losses, limitations, pain and suffering, etc., all of which are or may be of a serious and or permanent nature:

- (a) Plaintiff has suffered, suffers and or will suffer serious injuries, pains, impairments, dysfunctions and or limitations including a C2-3 disc protrusion, a C7-T1 disc protrusion, neck whiplash

injury with myofascitis, lower back acceleration-deceleration injury, left shoulder sprain, muscle spasms, decreased mobility, as well as a severe shock to her emotional, psychological and nervous systems, all of which have caused, and may continue to cause her great pain and anxiety;

- (b) Plaintiff has been, is and or will be required to expend sums of money for medical, therapeutic attention, care and consultations, hospitalization, therapy, medical supplies, medicines and attendant services;
- (c) Plaintiff has suffered, suffers and or will suffer physical impairments, losses, and or dysfunctions;
- (d) Plaintiff has suffered, suffers and will suffer great pain, suffering, inconvenience, humiliation, anxieties, trauma, fear and physical limitations;
- (e) Plaintiff general health, and or vitality have been impaired, eliminated, reduced and or limited;
- (f) Plaintiff is, has, and will suffer pain and suffering, loss of function, reduction and or loss of enjoyment of life and or ability to enjoy life and or to partake in life's pleasure, ability to participate in recreation, work, activities of daily living, recreational and social activities, sports, hobbies, and family life;
- (g) As a result of Plaintiff's injuries, Plaintiff sustained a permanent and or a non-permanent diminution in the ability to enjoy life and life's pleasures and/or in her earning capacity and or potential;
- (h) Such other pain, suffering, physical injuries and monetary losses as will be proven at trial.

12. At all times material hereto, Defendant LIBERTY MUTUAL INSURANCE COMPANY acted through its respective agents, servants, and/or employees who were then and there acting within the course and scope of their employment and/or agency for Defendant LIBERTY MUTUAL INSURANCE COMPANY.

13. At all times material hereto, Defendant LIBERTY MUTUAL INSURANCE COMPANY insured a motor vehicle owned by Plaintiff TATYANA KOCHERGINA.

14. At all times material hereto, premiums requested by Defendant LIBERTY MUTUAL INSURANCE COMPANY as payment for the Plaintiff's policy of insurance had been paid in full and the aforesaid policy was in full force and effect on the date of the accident.

15. The insurance policy referred to above provided, inter alia, specific coverage for personal injury sustained by an occupant of the aforesaid vehicle as a result of the negligence of an underinsured motorist. The limits of liability under the underinsured motorist coverage portion of the policy are in the documents possessed by LIBERTY MUTUAL INSURANCE COMPANY.

16. The accident of and the negligence of Defendant EVAN THALER has been described in detail in this complaint as have the injuries sustained by the Plaintiff.

17. At the time of the collision, Defendant EVAN THALER had a liability insurance policy. His policy limits are unknown to the Plaintiff. Upon information and belief, due to the serious injuries sustained by Plaintiff, Plaintiff avers that Defendant's policy limits are insufficient.

18. Plaintiff qualifies for underinsured motorist benefits under the insurance policy provided by LIBERTY MUTUAL INSURANCE COMPANY.

19. Plaintiff's damages and injuries exceed the policy of insurance applicable to Defendant EVAN THALER.

20. Plaintiff and Plaintiff's counsel have provided sufficient information and

documentation of Plaintiff's claim for underinsured motorist benefits.

21. To date, Defendant LIBERTY MUTUAL INSURANCE COMPANY has not tendered its policy for underinsured motorist benefits.

22. Plaintiff requests this Court to award underinsured motorist benefits from Defendant LIBERTY MUTUAL INSURANCE COMPANY.

23. Defendant LIBERTY MUTUAL INSURANCE COMPANY is liable for any verdict against Defendant EVAN THALER in excess of his third party coverage.

COUNT I - NEGLIGENCE
TATYANA KOCHERGINA V. EVAN THALER

24. Paragraphs 1 through 23 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

COUNT II - UIM BENEFITS
TATYANA KOCHERGINA vs. LIBERTY MUTUAL INSURANCE COMPANY

25. Paragraphs 1 through 24 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

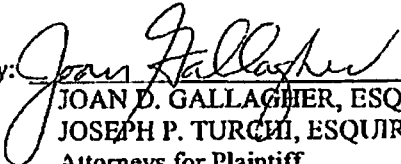
COUNT III - PAYMENT OF VERDICT AGAINST DEFENDANT EVAN THALER THAT IS IN EXCESS OF HIS INSURANCE POLICY LIMIT WITHOUT REGARD TO THE UIM POLICY LIMIT
TATYANA KOCHERGINA vs. LIBERTY MUTUAL INSURANCE COMPANY

26. Paragraphs 1 through 25 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

Date: 8/19/10

By: 
JOAN D. GALLAGHER, ESQUIRE
JOSEPH P. TURCHI, ESQUIRE
Attorneys for Plaintiff

VERIFICATION

I, Tatyana Kochergina, certify that I am the Plaintiff in the foregoing Civil Action and under the provisions of Pa.R.CP. 1024(c), I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to the unsworn falsification to authorities.


T. Kochergina
Tatyana Kochergina

Dated: 07/10/10

Case ID: 100802880

Case ID: 100802880
Control No.: 10093124

**COURT OF COMMON PLEAS
OF BUCKS COUNTY
OFFICE
OF
COURT ADMINISTRATOR
DOYLESTOWN, PA 18901**


 Case Number: 2010-04852
 Receipt: 2239360
 Code: 47
 Patricia Bechtel - Bucks Co Prothonotary
 809
 Judge: 25
 Filing: 9017181
 6/2/2010 12:39:44 PM

CIVIL COVER SHEET

The information provided herein is for case flow and calendar management purposes only. It does not replace or supplement the filing and service of pleadings or other papers as required by law or rules of court. This sheet will not be used as a source for making docket entries except to note the type of action commenced. This is not a substitute from documents for commencement of actions

Case No. 2010-04852

PLAINTIFFS

vs.

DEFENDANTS

Liberty Mutual Insurance Company
a/s/o Alexander Kocergin
Attorney Name & ID #

Evan Thaler
Attorney Name & ID #

Brian J. Walker, Esquire 71927

Anthony D. Damiano, Esquire

NATURE OF SUIT

(Check one classification only)

CONTRACTS

- Mechanics Lien 057
- Employment 525
- Insurance 526
- No-Fault Insurance 527
- Negotiable Instrument 528
- Product Liability 529
- Warranty 530
- Mortgage Foreclosure 060
- Replevin (With Order) 054
- Assumpsit 046
- Other 531

TORTS

- Motor Vehicle 047
- Non-Motor Vehicle 048
- Other Personal Injury 049
- Assault 532
- Libel/Slander 533
- Medical/Malpractice 534
- Legal Malpractice 535
- Product Warranty Liability 536
- Other 537

EQUITY

- Ejectment 053
- Partition 309
- Quiet Title 062
- Labor Dispute 540
- Mandamus 055
- Declaratory Judgment 061
- Equity 051
- Quo/Warrants 056
- Other 539

APPEALS

- DJ Appeal - Assumpsit 025
- DJ Appeal - Trespass 337
- Award of Viewers 501
- Board of Assessment 301
- Pa. Labor Relations Board 369
- Board of Elections 319
- Local Agency 262
- Zoning Hearing Board 030
- Suspension of Operator's License 134
- Suspension of Registration 694
- Other 538

OTHER

- Petition

DEMAND over \$50,000
 under \$50,000
 Not Applicable

JURY DEMAND
(Check only if demanded in Complaint.)
 Yes No

THIS FORM SHOULD BE RETURNED TO THE PROTHONOTARY'S OFFICE

Brian J. Walker, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 71927

Attorney for Plaintiffs

Liberty Mutual Insurance A/S/O

Alexander Kochergin
5050 W. Tilghman St, Ste 200
Allentown, PA 18104

: In the Court of Common Pleas

: Bucks County, Pennsylvania

VS

Evan Thaler
627 Sweetwater Drive
Langhorne, PA 19047

: Civil Action Law

: No: 2010-04852

NOTICE

AVISO

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lawyer Referral Service of the
Bucks County Bar Association
135 E. State St., PO Box 300
Doylestown, PA 18901
215-348-9413, ext. 102
888-991-9922

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo a partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por teléfono a la oficina cuya dirección se encuentra escrita abajo para averiguar dónde se puede conseguir asistencia legal.

Lawyer Referral Service of the
Bucks County Bar Association
135 E. State St., PO Box 300
Doylestown, PA 18901
215-348-9413, ext. 102
888-991-9922

Brian J. Walker, Esquire
Hennessy & Walker Group, P.C.
142 W. Market Street
West Chester, PA 19382
610-431-2727
Attorney I.D. 71927

Attorney for Plaintiffs

Liberty Mutual Insurance A/S/O

Alexander Kochergin
5050 W. Tilghman St, Ste 200
Allentown, PA 18104
VS

: In the Court of Common Pleas

: Bucks County, Pennsylvania

Evan Thaler
627 Sweetwater Drive
Langhorne, PA 19047

: Civil Action Law

: No: 2010-04852

COMPLAINT

1. Plaintiff Liberty Mutual Insurance is an insurance carrier licensed and authorized to conduct business in the Commonwealth of Pennsylvania and having as one of its principal places of business the above captioned address.

2. Alexander Kochergin an adult individual insured with Plaintiff Liberty Mutual Insurance on 08/22/2008.

3. Defendant Evan Thaler is an adult individual residing at the above captioned address.

4. On or about 08/22/2008, Plaintiff Liberty Mutual Insurance insured Alexander Kochergin with personal automobile policy, policy number 830-009106969-01 said policy covering a 2005 Acura and carrying with same, collision coverages.

5. On or about 08/22/2008 at or near the intersection of 120 N. Pine Street Langhorne, Bucks County, PA, Defendant Evan Thaler while operating a 2004 Ford Excursion, did negligently or recklessly strike/collide into Plaintiff's insured's 2005

Acura causing damages to same in the amount of \$7,006.38.


6. The negligence of the Defendant consisted of:
 - a) failing to yield right of way;
 - b) being inattentive;
 - c) striking another motor vehicle lawfully upon the roadway;
 - d) failing to give due regard to the rights, safety point and position of Plaintiff's insured's vehicle;
 - e) failing to maintain control of said vehicle so as to be able to stop within the assured clear distances ahead;
 - f) improper turning methods,
 - g) failing to give proper signal
 - h) improper methods of passing
 - i) disregarding a posted stop sign:
 - j) other such negligence that may be developed through continuing discovery and trial of this matter.

7. The aforesaid collision resulted solely from the negligent acts and/or failure to act on part of Defendant named herein and was due in no manner whatsoever to any act and/or failure to act on part of Plaintiff's insured.

8. As a result of the aforesaid collision, Plaintiff Liberty Mutual Insurance settled the collision claim of Alexander Kochergin in the amount of \$7,006.38 (said figure includes the first party deductible) representing fair and reasonable reimbursement for the damages sustained.

9. Pursuant to the aforesaid policy of insurance, Liberty Mutual Insurance is subrogated to Alexander Kochergin for this loss

WHEREFORE, Plaintiffs demand judgment against the Defendant in the amount of \$7,006.38 together plus costs, interest and such other relief this Court finds equitable and just.


Brian J. Walker, Esquire
Hennessy & Walker

LIBE-2975

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CHESTER


: ss

The undersigned verifies that the facts contained herein are true and correct.

The undersigned understands that false statements herein are made subject to the penalties of 19 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

If applicable, this affidavit is made on behalf of the Plaintiff(s); that the said Plaintiff(s) is/are unable and unavailable to make this verification on its/his/her own behalf within the time allotted for filing of this pleading, and the facts set forth in the foregoing pleading are true and correct to the best of counsel's knowledge, information and belief.

This verification is made pursuant to Pa. R.C.P. 1024 and is based on interviews, conferences, reports, records and other investigative material in the file


Brian J. Walker, Esq.
Hennessy & Walker Group, P.C.

Dated: 6/1/10

[Back to Search](#) > Case #2010-04852

Case Details	
Case Number	2010-04852
Matter Code	
Commencement Date	5/13/2010 11:30:18 AM
Case Type	NOTICE OF APPEAL FROM DISTRICT JUSTICE OF THE PEACE FILED. ASSUMPSIT ACTION.
PFA Number	
Caption Plaintiff	LIBERTY MUTUAL INSURANCE CO A/S/O
Caption Defendant	THALER, EVAN
Lis Pendens Indicator	No
Status	A
Judge	Rea. B. Boylan
Parcel Number	
Remarks	NOTICE OF APPEAL FROM DISTRICT JUSTICE OF THE PEACE FILED. ASSUMPSIT ACTION.
Sealed	0

Docket Date Range:

Plaintiffs

Name	Address	Counsel	Notify	Sequence
LIBERTY MUTUAL INSURANCE CO A/S/O	142 W MARKET ST STE 2 WEST CHESTER, PA 19382 UNITED STATES		Yes	1
KOCERGIN, ALEXANDER	5050 W TILGHMAN ST STE 200 ALLENTOWN, PA 18104 UNITED STATES	Walker, Brian Joseph	Yes	2

Defendants

Name	Address	Counsel	Notify	Sequence
THALER, EVAN	627 SWEETWATER DR LANGHORNE, PA 19053 UNITED STATES	Damiano, Anthony D.	Yes	1
KOCHERGIN, TATYANA	3415 STAFFORD PLACE HOLLAND, PA 18966 UNITED STATES		Yes	2

Garnishees

Dockets

Filing Date	Docket Text	Sealed
5/13/2010 11:30:18 AM	NOTICE OF APPEAL FROM DISTRICT JUSTICE OF THE PEACE FILED. ASSUMPSIT ACTION.	0
5/19/2010 3:25:21 PM	PROOF OF SERVICE OF NOTICE OF APPEAL FROM DISTRICT JUSTICE OF THE PEACE FILED.	0
6/2/2010 12:39:44 PM	COMPLAINT IN TRESPASS, MOTOR VEHICLE FILED.	0
6/2/2010 12:41:04 PM	APPEARANCE OF BRIAN J WALKER, ESQ., ENTERED FOR PLAINTIFF.	0
6/2/2010 12:41:25 PM	DEMAND FOR DAMAGES IS IN EXCESS OF \$50,000.00.	0
6/2/2010 12:41:33 PM	NOTICE TO DEFEND FILED WITH COMPLAINT.	0
6/23/2010 10:27:59 AM	ORDER FOR APPEARANCE FOR DEFENDANT'S FILED. APPEARANCE OF ANTHONY D DAMIANO,ESQ., ENTERED	0
6/23/2010 10:28:39 AM	JURY OF 12 DEMANDED.	0
6/23/2010 10:28:53 AM	ANSWER AND NEW MATTER FILED BY DEFT EVAN THALER TO COMPLAINT.	0
6/23/2010 10:29:24	COMPLAINT AGAINST ADD'L DEFT TATYANA KOCHERGIN FILED BY DEFT	0

AM	EVAN THALER.	
6/23/2010 10:30:31 AM	NOTICE TO DEFEND NOT FILED WITH COMPLAINT AGAINST ADDITIONAL DEFENDANT.	0
6/25/2010 11:22:07 AM	REPLY FILED BY PLTF TO DEFTS NEW MATTER	0
6/25/2010 11:23:16 AM	RECEIVED IN SHERIFF'S OFFICE FOR SERVICE. TRANSACTION # 10 1 10912 AMOUNT PAID \$ 48.00. NJC	0
6/25/2010 2:26:01 PM	SHERIFF'S RETURN, UNDER OATH, FILED. CPL SPICER, SERVED DEFENDANT(S) PURSUANT TO P.A.R.C.P. #402(A)(I) SERVED TATYANA KOCHERGIN BY HANDLING TO TATYANA, PERSONALLY, AT 3415 STAFFORD PLACE, HOLLAND, PA. NJC	0
6/28/2010 2:27:00 PM	PAPERS RETURNED TO PROTHONOTARY. INVOICE MAILED TO KRAFT & KRAFT TRANSACTION # 10 1 10912. NJC	0
7/26/2010 11:20:44 AM	AFFIDAVIT OF SERVICE BY MAIL FILED A COPY OF REPLY OF ADDITIONAL DEFT TATYANA KOCHERGIN TO JOINDER COMPLAINT OF DEFT EVAN THALER WITH NEW MATTER UPON DEFT ON JULY 23, 2010.	0
7/26/2010 11:26:42 AM	REPLY FILED BY ADDTL DEFT TATYANA KOCHERGIN TO JOINDER COMPLAINT OF DEFT EVAN THALER WITH NEW MATTER.	0
8/2/2010 10:50:21 AM	ANSWER FILED OF RANDY THALER TO NEW MATTER OF ADDITIONAL DEFT TANYA KOCHERGIN	0

Judgments

Microfilms

Linked Cases

Tatyana Kochergina
vs.
Evan Thaler
and
Liberty Mutual Insurance Company

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
Attested by
PROTHONOTARY
30 AUG 2010 11:13 am

NO: 100802880

ORDER

AND NOW, this ____ day of _____, 2010, after consideration of Defendant Liberty Mutual Insurance Company's Preliminary Objections, and any response thereto, it is hereby

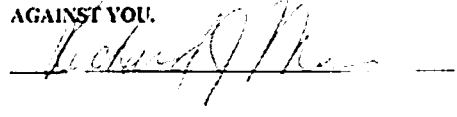
ORDERED and DECREED that Defendant's Preliminary Objections to improper venue are hereby SUSTAINED, and this matter is hereby ordered to be transferred to the Court of Common Pleas of Bucks County, Pennsylvania, within twenty (20) days of the date of this Order, with the costs of transfer upon the Plaintiff. It is further

It is further ORDERED and DECREED that Count III of Plaintiff's Complaint is Dismissed with prejudice.

BY THE COURT:

J.

TO COUNSEL:
YOU ARE HEREBY NOTIFIED
TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED PRELIMINARY OBJECTIONS
WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE ENTERED
AGAINST YOU.



MAYERS, MENNIES & SHERR, LLP
BY: RICHARD J. MENNIES, ESQUIRE
IDENTIFICATION NO. 43966
3031 WALTON ROAD, BUILDING A
SUITE 330, P.O. BOX 1547
BLUE BELLS, PA 19422-0440
(610) 825-0300

ATTORNEY FOR DEFENDANT
Liberty Mutual Insurance Company

TATYANA KOCHERGINA : PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
and :
: EVAN THALER :
: NO: 100802880
and :
: LIBERTY MUTUAL INSURANCE :
: COMPANY :

**PRELIMINARY OBJECTIONS OF DEFENDANT LIBERTY MUTUAL
INSURANCE COMPANY TO PLAINTIFF'S COMPLAINT**

A. Preliminary Objection to Plaintiff's Complaint on the Basis of Improper Venue

1. Plaintiff Tatyana Kochergina has filed a Complaint in this matter seeking to recover, among other things, underinsured motorist benefits arising out of an August 22, 2008 accident from insurer Liberty Mutual Insurance Company. A true and correct copy of Plaintiff's Complaint is attached as Exhibit "A".

2. At all times material hereto, Plaintiff has resided at 3415 Stafford Place, Holland, Pennsylvania, which is located in Bucks County, Pennsylvania.

3. Plaintiff's Complaint, Counts II and III are based upon an insurance policy provided by the Defendant Liberty Mutual Insurance Company. The policy at issue contains an underinsured motorist coverage endorsement a copy of which is attached hereto and marked as Exhibit "B".

4. The underinsured motorist endorsement provides in pertinent part:

LAWSUITS AGAINST US

You must comply with the terms of the policy before you may sue us. Suit must be brought in a court of competent jurisdiction in the county and state of your legal domicile at the time of the accident.

5. At the time of the accident underlying Plaintiff's Complaint, her legal domicile was in Bucks County.

6. Pursuant to the venue provision cited above, venue is proper in Bucks County and improper in Philadelphia County.

7. This precise issue had been decided in favor of moving defendant in the case of O'Hara v. The First Liberty Corp., 984 A.2d 938 (Pa. Super 2009).

8. Based upon the foregoing, this matter must be transferred to Bucks County.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order sustaining its Preliminary Objections and transferring this matter to Bucks County with costs upon the Plaintiff.

B. Preliminary Objection in the Nature of a Demurrer to Count III Damages in Excess of Insurance Policy

9. Defendant hereby incorporates by reference paragraphs 1 through 8 of these Preliminary Objections as if the same were set forth at length herein.

10. There is no cause of action at common law that allows an insured to collect over the insurance policy limits from an insurer.

11. The Plaintiff has not alleged any facts that support a claim for breach of an insurance contract.

12. The Complaint fails to allege how or why Moving Defendant is liable for damages in excess of policy limits.

WHEREFORE, Defendant respectfully requests this Honorable Court enter an Order granting its Preliminary Objection in the nature of a demurrer to Count II of Plaintiff's Complaint and strike this Count from her Complaint.

MAYERS, MENNIES & SHERR, LLP



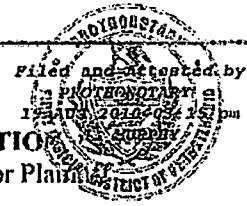
RICHARD J. MENNIES

Dated: 8/30/10

Exhibit A

Case ID: 100802880
Control No.: 10083792
Case ID: 100802880
Control No.: 10093124

USTED ESTA ORDENADO COMPARECER EN Arbitration Hearing 1880 JFK Blvd. 5th fl. at 11:00 AM - 04/20/2011
 .You must still comply with the notice below. USTED TODAVIA DEBE CUPLIR CON EL AVISO PARA DEFENDERSE.
 This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more parties is not present
 at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties.
 There is no right to a trial denovo on appeal from a decision entered by a Judge.



GALLAGHER, MALLOY & GEORGES, P.C.
 By: JOAN D. GALLAGHER, ESQUIRE
 ATTY I.D. #84081
 JOSEPH P. TURCILL, ESQUIRE
 ATTY I.D. #89555
 1760 Market Street, Suite 1100
 Philadelphia, PA 19103
 (215) 963-1555

ARBITRATION
 Attorneys for Plaintiff

TATYANA KOCHERGINA : COURT OF COMMON PLEAS
 3415 Stafford Place : PHILADELPHIA COUNTY
 Holland, Pennsylvania 18966 :
 vs. :
 EVAN THALER :
 627 Sweetwater Drive :
 Langhorne, Pennsylvania 19047 :
 and : TERM, 2010
 LIBERTY MUTUAL :
 INSURANCE COMPANY :
 111 S. Independence Mall E., Ste 710 :
 Philadelphia, Pennsylvania 19147 : NO.:

CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint & Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA COUNTY BAR ASSOCIATION
 Lawyer Referral & Information Service
 One Reading Center, 1101 Market Street, Philadelphia, Pennsylvania 19107
 (215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de a persona. Sea avisado que si usted no se defiende, la corte tramara meritos y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder u otros derechos importantes para usted.

LLEVE ESTAS DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVAERGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE PHILADELPHIA COUNTY
 Servicio De Referencia E Informacion Legal
 One Reading Center, 1101 Market Streets, Philadelphia, Pennsylvania 19107
 (715) 238-1701

Casc ID: 100802880

Case ID: 100802880

Control No.: 10083792

Case ID: 100802880

Control No.: 10093124

GALLAGHER, MALLOY & GEORGES, P.C.
By: JOAN D. GALLAGHER, ESQUIRE
ATTY I.D. #84081
JOSEPH P. TURCHI, ESQUIRE
ATTY I.D. #89555
1760 Market Street, Suite 1100
Philadelphia, PA 19103
(215) 963-1555

ARBITRATION
Attorneys for Plaintiff

TATYANA KOCHERGINA	:	COURT OF COMMON PLEAS
3415 Stafford Place	:	PHILADELPHIA COUNTY
Holland, Pennsylvania 18966	:	
	:	
vs.	:	
	:	
EVAN THALER	:	
627 Sweetwater Drive	:	
Langhorne, Pennsylvania 19047	:	
	:	
and	:	
	:	
LIBERTY MUTUAL	:	
INSURANCE COMPANY	:	
111 S. Independence Mall E., Ste 710	:	
Philadelphia, Pennsylvania 19147	:	NO.:

CIVIL ACTION

Plaintiff TATYANA KOCHERGINA, by and through her undersigned attorneys,
hereby demands judgment against Defendants EVAN THALER and LIBERTY
MUTUAL INSURANCE COMPANY upon the following cause of action:

1. Plaintiff TATYANA KOCHERGINA is an adult individual residing at
3415 Stafford Place, Holland, Pennsylvania 18966.
2. Defendant EVAN THALER is an adult individual residing at 627
Sweetwater Drive, Langhorne, Pennsylvania 19047.

3. Defendant LIBERTY MUTUAL INSURANCE COMPANY is an insurance company with its place of business at 111 S. Independence Mall E., Ste 710, Philadelphia, Pennsylvania 19147. The Defendant conducts substantial and continuous business as an insurance company in the Commonwealth of Pennsylvania and in the City and County of Philadelphia.

4. At all times material hereto, Plaintiff TATYANA KOCHERGINA was an operator of a 2005 Acura TL, which was involved in the hereinafter-described collision.

5. At all times relevant hereto Defendant EVAN THALER was an operator of a 2004 Ford Excursion, which was involved in the hereinafter-described collision.

6. Plaintiff reserves the right to amend the complaint to reflect the correct legal identity and/or address of any parties referred to herein.

7. All material facts and occurrences took place on August 22, 2008, at or near 120 N. Pine Street, Langhorne Borough, Bucks County, Pennsylvania.

8. On or about August 22, 2008, at or near the above described location, Defendant EVAN THALER failed to yield the right of way to oncoming traffic, and turned left into Plaintiff's vehicle, as a result of which Plaintiff sustained serious injuries more fully described below.

9. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence, recklessness and/or carelessness of the Defendant, in at least any or all of the following respects:

- (a) ~~failing to yield the right of way to oncoming traffic;~~
- (b) failing to remain stopped before making sure that the road was clear from oncoming traffic and safe to proceed;

- (c) operating a vehicle at a high, dangerous and reckless speed under the circumstances;
- (d) failing to have the vehicle under proper control;
- (e) in driving into another vehicle;
- (f) in that the Defendant was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;
- (g) in violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
- (h) in violating the rules of the road and or in driving carelessly and recklessly;
- (i) failing to stop his vehicle within the assured clear distance required by 75 Pa.C.S.A. §3361 and 75 Pa.C.S.A. §3731; and
- (j) otherwise operating said vehicle in a careless, reckless and/or negligent manner and in a manner violating the Motor Vehicle Code of Commonwealth of Pennsylvania and/or otherwise as will be proven at trial.

10. The aforesaid accident resulted solely from the negligence, carelessness and/or recklessness of Defendant EVAN THALER and was not caused in any manner whatsoever by any act or failure to act on the part of Plaintiff TATYANA KOCHERGINA.

11. Solely as the result of the negligence, carelessness and/or recklessness of the Defendant, Plaintiff TATYANA KOCHERGINA sustained at least the following injuries, damages, losses, limitations, pain and suffering, etc., all of which are or may be of a serious and or permanent nature:

- (a) Plaintiff has suffered, suffers and or will suffer serious injuries, pains, impairments, dysfunctions and or limitations including a C2-3 disc protrusion, a C7-T1 disc protrusion, neck whiplash

injury with myofascitis, lower back acceleration-decceleration injury, left shoulder sprain, muscle spasms, decreased mobility, as well as a severe shock to her emotional, psychological and nervous systems, all of which have caused, and may continue to cause her great pain and anxiety;

- (b) Plaintiff has been, is and or will be required to expend sums of money for medical, therapeutic attention, care and consultations, hospitalization, therapy, medical supplies, medicines and attendant services;
- (c) Plaintiff has suffered, suffers and or will suffer physical impairments, losses, and or dysfunctions;
- (d) Plaintiff has suffered, suffers and will suffer great pain, suffering, inconvenience, humiliation, anxieties, trauma, fear and physical limitations;
- (e) Plaintiff general health, and or vitality have been impaired, eliminated, reduced and or limited;
- (f) Plaintiff is, has, and will suffer pain and suffering, loss of function, reduction and or loss of enjoyment of life and or ability to enjoy life and or to partake in life's pleasure, ability to participate in recreation, work, activities of daily living, recreational and social activities, sports, hobbies, and family life;
- (g) As a result of Plaintiff's injuries, Plaintiff sustained a permanent and or a non-permanent diminution in the ability to enjoy life and life's pleasures and/or in her earning capacity and or potential;
- (h) Such other pain, suffering, physical injuries and monetary losses as will be proven at trial.

12. At all times material hereto, Defendant LIBERTY MUTUAL INSURANCE COMPANY acted through its respective agents, servants, and/or employees who were then and there acting within the course and scope of their employment and/or agency for Defendant LIBERTY MUTUAL INSURANCE COMPANY.

13. At all times material hereto, Defendant LIBERTY MUTUAL INSURANCE COMPANY insured a motor vehicle owned by Plaintiff TATYANA KOCHERGINA.

14. At all times material hereto, premiums requested by Defendant LIBERTY MUTUAL INSURANCE COMPANY as payment for the Plaintiff's policy of insurance had been paid in full and the aforesaid policy was in full force and effect on the date of the accident.

15. The insurance policy referred to above provided, inter alia, specific coverage for personal injury sustained by an occupant of the aforesaid vehicle as a result of the negligence of an underinsured motorist. The limits of liability under the underinsured motorist coverage portion of the policy are in the documents possessed by LIBERTY MUTUAL INSURANCE COMPANY.

16. The accident of and the negligence of Defendant EVAN THALER has been described in detail in this complaint as have the injuries sustained by the Plaintiff.

17. At the time of the collision, Defendant EVAN THALER had a liability insurance policy. His policy limits are unknown to the Plaintiff. Upon information and belief, due to the serious injuries sustained by Plaintiff, Plaintiff avers that Defendant's policy limits are insufficient.

18. Plaintiff qualifies for underinsured motorist benefits under the insurance policy provided by LIBERTY MUTUAL INSURANCE COMPANY.

19. Plaintiff's damages and injuries exceed the policy of insurance applicable to Defendant EVAN THALER.

20. Plaintiff and Plaintiff's counsel have provided sufficient information and

documentation of Plaintiff's claim for underinsured motorist benefits.

21. To date, Defendant LIBERTY MUTUAL INSURANCE COMPANY has not tendered its policy for underinsured motorist benefits.

22. Plaintiff requests this Court to award underinsured motorist benefits from Defendant LIBERTY MUTUAL INSURANCE COMPANY.

23. Defendant LIBERTY MUTUAL INSURANCE COMPANY is liable for any verdict against Defendant EVAN THALER in excess of his third party coverage.

COUNT I – NEGLIGENCE
TATYANA KOCHERGINA V. EVAN THALER

24. Paragraphs 1 through 23 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

COUNT II - UIM BENEFITS
TATYANA KOCHERGINA vs. LIBERTY MUTUAL INSURANCE COMPANY

25. Paragraphs 1 through 24 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

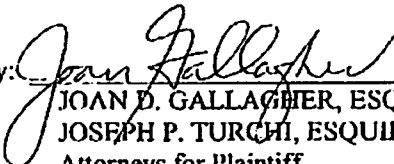
COUNT III - PAYMENT OF VERDICT AGAINST DEFENDANT EVAN THALER THAT IS IN EXCESS OF HIS INSURANCE POLICY LIMIT WITHOUT REGARD TO THE UIM POLICY LIMIT
TATYANA KOCHERGINA vs. LIBERTY MUTUAL INSURANCE COMPANY

26. Paragraphs 1 through 25 are incorporated by reference herein.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in a sum not in excess of fifty thousand dollars (\$50,000), plus interest, costs, and delay damages under Rule 238, Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

Date: 8/19/10

By: 
JOAN D. GALLAGHER, ESQUIRE
JOSEPH P. TURCHI, ESQUIRE
Attorneys for Plaintiff

VERIFICATION

I, Tatyana Kochergina, certify that I am the Plaintiff in the foregoing Civil Action and under the provisions of Pa.R.CP. 1024(c), I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to the unsworn falsification to authorities.

T. Kochergina
Tatyana Kochergina

Dated: 07/10/10

Case ID: 100802880

Case ID: 100802880

Control No.: 10083792

Case ID: 100802880

Control No.: 10093124

Exhibit B

Case ID: 100802880
Control No.: 10083792
Case ID: 100802880
Control No.: 10093124



LibertyGuard Auto Policy Declarations
 Liberty Mutual Fire Insurance Company
 Boston, Massachusetts

YOUR POLICY NUMBER: **AO2-201 927646-00 8 0**
 NAMED INSURED AND MAILING ADDRESS:
ALEXANDER KOCHERGIN
TATYANA KOCHERGIN
3415 STAFFORD PL.
HOLLAND PA 18966-2917

THESE DECLARATIONS EFFECTIVE: **04/26/08**
 FOR SERVICE PLEASE CONTACT:
REESE R J
2 MERIDIAN BLVD 2ND FL.
WYOMISSING PA 19160

www.libertymutualinsurance.com

services: 610-375-0192
 claims: 800-2CLAIMS (800-225-2467)

Policy Period: 04/26/08 to 04/26/09 12:01AM Standard Time at the Address of the Named Insured as Stated in the Policy.

Reason For This Notice: Your Renewal Policy Declarations

PERSONAL AUTOMOBILE COVERAGE, LIMITS, AND PREMIUM					
Coverages And Limits Under Your Auto Policy:					
Part			Coverage Is Provided Where A Premium Is Shown For The Coverage		
			Veh 1	Veh 2	Veh 3
A. Liability			\$ 410	410	347
Bodily Injury	\$ 50,000	Each Person			
	\$ 100,000	Each Accident			
Property Damage	\$ 50,000	Each Accident			
C. Uninsured Motorists			\$ 34	34	34
Bodily Injury	\$ 15,000	Each Person			
	\$ 30,000	Each Accident			
Underinsured Motorists			\$ 54	54	54
Bodily Injury	\$ 15,000	Each Person			
	\$ 30,000	Each Accident			
Full Tort Option Selected					
First Party Benefits			\$ 100	100	84
5,000 Medical Expense					
0 Funeral Expense					
0 Income Loss					
0 Accidental Death					
D. Coverage For Damage To Your Auto			\$ 357	469	352
Collision					
Actual Cash Value Less Deductible Shown:					
Veh 1 \$ 500		Veh 2 \$ 500			
Veh 3 \$ 500					
THIS POLICY COVERS COLLISION DAMAGE TO RENTAL VEHICLES.					
Other Than Collision			\$ 79	100	104
Actual Cash Value Less Deductible Shown:					
Veh 1 \$ 500		Veh 2 \$ 500			
Veh 3 \$ 500					
Optional Coverage			\$ 6	6	6
Towing And Labor Cost - \$50 Each Disablement					

08/25/2010 08:45

This policy, including all endorsements attached is countersigned by:

Dexter R. Long
 SECRETARY

Edmund F. Kelly
 PRESIDENT

Stephan J. ...

AT TEST AND REPRESENTATIVE

LibertyGuard Auto Policy Declarations
 Liberty Mutual Fire Insurance Company
 Boston, Massachusetts

YOUR POLICY NUMBER: AO2-281-927646-008 0

THESE DECLARATIONS EFFECTIVE: 04/26/08

(Continued from Previous Page)

Transportation Expenses	\$ 40	40	40
\$30 Per Day \$900 Per Accident			
Annual Premium Per Vehicle:	\$ 1080	1213	1021
Safe Driver Insurance Plan Credit:			
As A Result Of:	Violation	SCO NO	Surcharge
	Accident	SCO NO	Surcharge
Total Annual Policy Premium	\$ 3314.00		

VEHICLES COVERED BY YOUR POLICY

Veh Year	Make	Model	Vehicle ID Number
1	2002	INFINITI	135 JMKDA31A72T006854
2	2005	ACURA	3.2TL 19UUR66215A075741
3	1999	MITSUBISHI	ECLPSSPG 4A3AK55F6XE101905

Vehicles Owned By Other Than The Named Insured:
 VEH 2 A KOCHERGIN & HONDA

Loss Payee(s):	Month/Year Expires:
VEH 1 SOVEREIGN BANK	05/2010
VEH 2 HONDA LEASE TRUST	08/2011
VEH 3 BENEFICIAL SAVINGS BANK	04/2010

DRIVER INFORMATION

Number	Driver Name	DOB	State	License Number
1	ALEXANDER KOCHERGIN	09/16/48	PA	26338084
2	TATYANA KOCHERGIN	11/18/52	PA	26338078

To Ensure Proper Coverage, Please Contact Us To Add Drivers Not Listed Above.

VEHICLE DISCOUNTS INCLUDED IN YOUR RATE

Discounts	Veh 1	Veh 2	Veh 3
Anti-Lock Braking System	Yes	Yes	Yes
Anti-Theft Device(s)	Yes	Yes	Yes
Passive Restraint (Automatic Seats Belt and/or Air Bags)	Yes	Yes	Yes

OTHER DISCOUNTS INCLUDED IN YOUR RATE

Multi-Car Driver)	Preferred Auto Rating Plan (Preferred
-------------------	---------------------------------------

AL0000004450

This policy, including all endorsements attached is countersigned by:

Dexter R. Long
 SECRETARY

Edward F. Kelly
 PRESIDENT

Steph J. [Signature]

AUTHORIZED REPRESENTATIVE

LibertyGuard Auto Policy Declarations
 Liberty Mutual Fire Insurance Company
 Boston, Massachusetts

YOUR POLICY NUMBER: A02 281-927646-008 0

TRUCK DECLARATIONS EFFECTIVE: 04/26/08

(Continued from Previous Page)

ENDORSEMENTS ATTACHED TO YOUR POLICY	
2344	IMHC Membership
PP 05 51 11 92	Pennsylvania First Party Benefits Coverage Endorsement
PP 04 22 07 90	Split Uninsured Motorists Limits Pennsylvania (Stacked)
AS2049 09 06	Uninsured Motorists Coverage - Pennsylvania (Stacked)
AS2067 08 97	Amendment of Policy Provisions - Pennsylvania
PP 04 28 07 90	Split Underinsured Motorists Limits Pennsylvania (Stacked)
AS2051 09 06	Underinsured Motorists Coverage - Pennsylvania (Stacked)
AUTO 3941	Amendment of Policy Definitions
EP 03 05 08 86	Loss Payable Clause
AS2208 02 05	Towing and Labor Coverage
AS1187 11 90	Additional Insured - Lessor
PP 03 09 04 86	Split Liability Limits
AS1046 12 89	Automatic Termination Endorsement
AS2207 02 05	Optional Transportation Expenses Coverage
AS2112 10 99	New Vehicle Replacement Cost Coverage
AS2216 04 05	Automobile Amendatory Endorsement
AS2221 04 05	Nuclear, Bio-Chemical & Mold Exclusion Endorsement
PP 13 01 12 99	Coverage For Damage to Your Auto Exclusion Endorsement

SPECIAL STATE PROVISIONS

Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.

Pennsylvania Minimum Quote

The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require that you purchase liability and first-party medical benefits coverages. Any additional coverages or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.

Part		Veh 1	Veh 2	Veh 3
A. Liability		\$ 237	237	200
Bodily Injury	\$ 15,000 Each Person			
	\$ 30,000 Each Accident			
Property Damage	\$ 5,000 Each Accident			
First Party Benefits		\$ 48	48	40
5,000 Medical Benefits				
0 Funeral Benefits				
Premium Per Vehicle:		\$ 285	285	240
Total Premium:		\$ 610		

10/10/08 4:37

This policy, including all endorsements attached is countersigned by:

Dexter R. Long
SECRETARY

Edmund F. Kelly
PRESIDENT

Steph. J. ...

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE - PENNSYLVANIA (STACKED) AS 2051 09 06
(PP 04 19 06 95)

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

SCHEDULE		
UNDERINSURED MOTORISTS COVERAGE		
Description of Vehicle	Limit of Liability	Premium
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

INSURING AGREEMENT

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of "bodily injury":

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

We will pay under this coverage only if 1. or 2. below applies:

1. The limits of liability under any applicable bodily injury liability bonds or policies have been exhausted by payment of judgments or settlements; or
2. A tentative settlement has been made between an "insured" and the insurer of the "underinsured motor vehicle" and we:
 - a. Have been given prompt written notice of such tentative settlement; and
 - b. Advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

No judgment for damages arising out of a suit brought against the owner or operator of an "underinsured motor vehicle" is binding on us unless we:

1. Received reasonable notice of the pendency of the suit resulting in the judgment; and
2. Had a reasonable opportunity to protect our interests in the suit.

B. "Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".

3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for "bodily injury" under that bond or policy to an "insured" is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. For which liability coverage is provided under Part A of this policy.
2. Operated on rails or crawler treads.
3. Designed mainly for use off public roads while not on public roads.
4. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "bodily injury" sustained:

1. While "occupying" a motor vehicle owned by you or a "family member" not insured for Underinsured Motorists Coverage under this policy; nor to "bodily injury" from being hit by any such motor vehicle.
2. By a "family member":
 - a. Who owns an auto, while "occupying", or when struck by, any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

- b. Who does not own an auto, while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- D. We do not provide Underinsured Motorists Coverage for "bodily injury" sustained by any person:
1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (B.1.) does not apply to a share-the-expense car pool.
 2. Using a vehicle without a reasonable belief that that person is entitled to do so.
- C. We do not provide Underinsured Motorists Coverage for "noneconomic loss" sustained by any person to whom the limited tort alternative applies, resulting from "bodily injury" caused by an accident involving an "underinsured motor vehicle", unless the "bodily injury" sustained is a "serious injury".
- This exclusion (C.) does not apply if that "insured" is injured while "occupying" a motor vehicle insured under a commercial motor vehicle insurance policy.
- D. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.
- E. We do not provide Underinsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

- A. Except as provided in paragraph B., the limit of liability shown in the Schedule or in the Declarations for Underinsured Motorists Coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- B. If "bodily injury" is sustained in an accident by you or any "family member", our maximum limit of liability for all damages in any such accident is the sum of the limits of liability for Underinsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle. Subject to this maximum limit of liability for all damages, the most we will pay for "bodily injury" sustained by an "insured" other than you or any "family member" is the limit of liability shown in the Schedule or in the Declarations applicable to the vehicle the "insured" was "occupying" at the time of the accident. This is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- C. The damages payable under this coverage shall be reduced by all sums paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid for an "insured's" attorney either directly or as part of the amount paid to the "insured". It also includes all sums paid under Part A of this policy.
- D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B or Part C of this policy.
- E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.

OTHER INSURANCE

If there is other applicable similar insurance available under more than one policy or provision of coverage:

The following priorities of recovery apply:

- First The Underinsured Motorists Coverage applicable to the vehicle the "insured" was "occupying" at the time of the accident.
- Second The policy affording Underinsured Motorists Coverage to the "insured" as a named insured or family member.

If two or more policies have equal priority, the insurer against whom the claim is first made shall process and pay the claim as if wholly responsible for all insurers with equal priority. The insurer is thereafter entitled to recover contribution pro rata from any other insurer for the benefits paid and the costs of processing the claim.

If we are the insurer against whom the claim is first made, we will pay, subject to the limit of liability shown in the Schedule or in the Declarations for Underinsured Motorists Coverage, after we and all other contributing insurers agree:

1. Whether the "insured" is legally entitled to recover damages from the owner or operator of an "underinsured motor vehicle"; and
2. As to the amount of damages.

LAWSUITS AGAINST US

You must comply with the terms of the policy before you may sue us. Suit must be brought in a court of competent jurisdiction in the county and state of your legal domicile at the time of the accident.

ADDITIONAL DUTIES

A person seeking Underinsured Motorists Coverage must also promptly:

1. Send us copies of the legal papers if a suit is brought; and
2. Notify us in writing of a tentative settlement between the "insured" and the insurer of the "underinsured motor vehicle" and allow us 30 days to advance payment to that "insured" in an amount equal to the tentative settlement to preserve our rights against the insurer, owner or operator of such "underinsured motor vehicle".

PART F - GENERAL PROVISIONS

Part F is amended as follows:

- A. The following is added to the Our Right To Recover Payment provision:

OUR RIGHT TO RECOVER PAYMENT

Our rights do not apply under paragraph A, with respect to Underinsured Motorists Coverage if we:

1. Have been given prompt written notice of a tentative settlement between an "insured" and the insurer of an "underinsured motor vehicle"; and
2. Fail to advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification.

If we advance payment to the "insured" in an amount equal to the tentative settlement within 30 days after receipt of notification:

1. That payment will be separate from any amount the "insured" is entitled to recover under the provisions of Underinsured Motorists Coverage; and
 2. We also have a right to recover the advanced payment.
- B. The following is added to the Two Or More Auto Policies provision:

TWO OR MORE AUTO POLICIES

1. This provision does not apply to Underinsured Motorists Coverage.
2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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ATTORNEY FOR DEFENDANTS
Liberty Mutual Insurance Company

TATYANA KOCHERGINA

and

EVAN THALER

and

LIBERTY MUTUAL INSURANCE
COMPANY

: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
:
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: NO: 100802880
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**DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S MEMORANDUM
OF LAW IN SUPPORT OF PRELIMINARY OBJECTIONS**

I. MATTER BEFORE THE COURT

Defendant files these Preliminary Objections for improper venue requesting that the Court transfer the matter to Bucks County. The insurance contract underlying this dispute requires that suit is brought only in the county of the insured's domicile.

Plaintiff filed a Complaint in this matter seeking to recover underinsured motorist benefits arising out of an August 22, 2008 accident from the insurer of the car in which she was a passenger, Liberty Mutual Insurance Company. Plaintiff has at all times material hereto, resided at 3415 Stafford Place, Holland, Pennsylvania, which is located in Bucks County, Pennsylvania.

Plaintiff has included in her claims under Count II demand for damages in excess of her insurance policy limit. The Complaint, however, cites no statutory or contractual basis for such an award.

II. STATEMENT OF QUESTIONS INVOLVED

Whether the Court should grant Defendants' Preliminary Objections to improper venue.

Suggested Answer: Yes.

Whether the Court should strike Plaintiff's claims extra-contractual damages for an alleged breach of an insurance contract.

Suggested Answer: Yes.

III. FACTS

A. Venue

Plaintiff seeks to recover underinsured motorist benefits arising out of an August 22, 2008 accident from the insurer of the car in which she was a passenger, Liberty Mutual Insurance Company. Plaintiff has at all times material hereto, resided at 3415 Stafford Place, Holland, Pennsylvania, which is located in Bucks County, Pennsylvania.

The insurance policy at issue (Exhibit "B") contains an underinsured motorist coverage endorsement which provides in pertinent part:

LAWSUITS AGAINST US

You must comply with the terms of the policy before you may sue us. Suit must be brought in a court of competent jurisdiction in the county

and state of your legal domicile at the time of the accident.

Pursuant to the venue provision cited above, venue is proper in Bucks County and improper in Philadelphia County.

B. Damages in Excess of Insurance Policy Limits

In Count II of her Complaint, the Plaintiff seeks damages “in excess of his (sic) insurance policy limit without regard to the UIM policy limit.” The Plaintiff does not allege any factual or legal basis to support an award beyond insurance policy limits.

IV. ARGUMENT

A. This Matter Must be Transferred to Bucks County Based on the Forum Selection Clause in the Applicable Insurance Policy

Pennsylvania Rule of Civil Procedure 1006 entitled **Venue. Change of Venue**, Section (e)(1) provides in pertinent part:

Improper venue shall be raised by preliminary objection and if not so raised shall be waived. If a preliminary objection of venue is sustained and there is a county of proper venue within the state, the action shall not be dismissed but shall be transferred to the appropriate court of that county. The cost and fees for transfer and removal of the record shall be paid by the plaintiff.

Forum selection clauses have been held to be valid and enforceable under Pennsylvania law. In Patriot Commercial Leasing Co., Inc. v. Kremer Restaurant Enterprises, 915 A.2d 647 (Pa.Super. 2006), the Court discussed choice of forum provisions under Pennsylvania law.

We begin our analysis with the Supreme Court's seminal decision in Central Contracting Co. v. C.E. Youngdahl & Co., 418 Pa. 122, 209 A.2d 810 (1965). In that case, the Court ruled that forum selection clauses are presumed to be valid, noting that the “modern and correct rule” permits enforcement “when the parties have freely agreed that

litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.” Id. at 133, 209 A.2d at 816. The Court explained that a forum selection clause will be considered unreasonable “only where its enforcement would, under all circumstances existing at the time of litigation, seriously impair [a party’s] ability to pursue his cause of action.” Id.

Merely inconvenience or additional expense is not the test of unreasonableness since it may be assumed that [the party] received under the contract consideration for these things. If the agreed upon forum is available to [a party] and said forum can do substantial justice to the cause of action then [that party] should be bound by his agreement. Id. at 133-34, 209 A.2d at 816. Accord Bancorp Group, Inc. v. Pirgos, Inc., 744 A.2d 791 (Pa.Super.2000) (upholding unambiguous forum selection clause).

As noted in Central Contracting, the modern trend is to uphold the enforceability of forum selection clauses where those clauses are clear and unambiguous. *E.g.*, Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991); M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972); Secure Financial Service, Inc. v. Popular Leasing USA, 391 Md. 274, 892 A.2d 571 (2006); Ex parte Leasecomm Corp., 879 So.2d 1156 (Alabama 2003); Kennecorp Mgtg. Brokers, Inc. v. Country Club Convalescent Hospital, 66 Ohio St.3d 173, 610 N.E.2d 987 (1993); Chase Third Century Leasing Co., Inc. v. Williams, 782 S.W.2d 408 (Mo.App.1989); Manrique v. Fabbri, 493 So.2d 437 (Fla.1986); ABC Mobile Systems, Inc. v. Harvey, 701 P.2d 137 (Colo.App.1985); Haucnstein & Bermeister, Inc. v. Met-Fab Industries, Inc., 320 N.W.2d 886 (Minn.1982); Volkswagenwerk, A.G. v. Klippan, GmbH, 611 P.2d 498 (Alaska 1980); Societe Jean Nicolas Et Fils v. Mousseux, 123 Ariz. 59, 597 P.2d 541 (1979); Smith, Valentino & Smith, Inc. v. Superior Court, 17 Cal.3d 491, 131 Cal.Rptr. 374, 551 P.2d 1206 (1976); Reeves v. Chem Industrial Co., 262 Or. 95, 495 P.2d 729 (1972); see also Restatement (Second) of Conflict of Laws § 80 (forum selection clause will be given effect unless unfair or unreasonable).

The identical forum selection clause was held to be enforceable in the recent case of O’Hara v. The First Liberty Corp., 984 A.2d 938 (Pa. Super 2009). The O’Hara case is factually indistinguishable from this matter. “Here, the forum selection clause clearly and unambiguously states that any lawsuit against Appellee must be brought in the “county

and state” of the insured’s “legal domicile,” in this case Delaware County. As this provision is “clear and unambiguous,” we are “required to give effect to that language.” Id. at 942.

Accordingly, the forum selection clause in the Liberty Mutual policy is enforceable and requires the transfer of this case to Bucks County.

B. Plaintiff Has Not Alleged a Cause of Action That Would Permit Award Above Insurance Policy Limits

There is no cause of action at common law that allows an insured to collect over the insurance policy limits from an insurer. The exclusive remedy for punitive damages against an insurer is 42 Pa.C.S.A. § 8371. The Plaintiff has not alleged any facts that support a claim for breach of an insurance contract, nor has the Plaintiff alleged any facts or applicable law that support a claim for punitive damages.

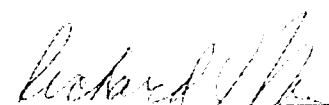
V. RELIEF

Defendant respectfully requests that this Honorable Court enter an Order sustaining its Preliminary Objections and 1) transferring this matter to Bucks County with costs upon the Plaintiff; and 2) striking Count II of Plaintiff’s Complaint.

Respectfully submitted,

MAYERS, MENNIES & SHERR, LLP

Dated: 8/30/10

By: 
RICHARD J. MENNIES, ESQUIRE
Attorney for Defendant
Liberty Mutual Insurance Company

VERIFICATION

RICHARD J. MENNIES, ESQUIRE, hereby states that he is the Attorney for the Defendant Liberty Mutual Insurance Company in this action and verifies that the statements made in the foregoing Defendant's Preliminary Objections to Plaintiff's Complaint are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


RICHARD J. MENNIES, ESQUIRE

DATE: 1/30/10

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Liberty Mutual Insurance Company

TATYANA KOCHERGINA

: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS

and

EVAN THALER

: No: 100802880

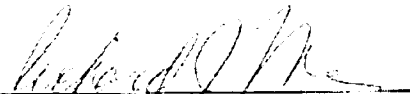
and

LIBERTY MUTUAL INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I, Richard J. Mennies, hereby certify that I served a true and correct copy of
Defendant Liberty Mutual Ins. Company's Preliminary Objections to Plaintiff's
Complaint via electronic filing upon the following:

Joan D. Gallagher, Esquire
Gallagher, Malloy & George, P.C.
1760 Market Street, Suite 1100
Philadelphia, PA 19103


RICHARD J. MENNIES, ESQUIRE
Liberty Mutual Insurance Company

Dated: 8/30/10

Case ID: 100802880
Control No.: 10083792
Case ID: 100802880
Control No.: 10093124

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Attorney for Defendant
Evan Thaler

Tatyana Kochergina

PHILADELPHIA COURT OF
COMMON PLEAS

v.

August Term, 2010
NO. 02880

Evan Thaler and
Liberty Mutual Insurance Company


CERTIFICATE OF SERVICE

I, ANTHONY D. DAMIANO, ESQUIRE, Counsel for Defendant, Thaler in the above-referenced matter, do hereby depose and say that Defendant's PRELIMINARY OBJECTIONS TO THE PLAINTIFF'S COMPLAINT OF DEFENDANT EVAN THALER IN THE FORM OF A MOTION TO TRANSFER BASED UPON IMPROPER VENUE AND MISJOINDER OF CAUSE OF ACTION AND TO STRIKE PARAGRAPH 9 J OF THE COMPLAINT, Memorandum of Law, and Proposed Order were served upon following counsel via Regular Mail, postage prepaid on September 27, 2010:

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BY: 

ANTHONY D. DAMIANO, ESQUIRE
Attorney for Defendant, Evan Thaler

DATE: 9/27/10