[Cite as *Knight v. Grange Mut. Cas. Co.*, 2004-Ohio-6677.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARTHA KNIGHT, et al.

Plaintiffs-Appellants

-vs-

GRANGE MUTUAL CASUALTY CO., et al.

Defendants-Appellees

JUDGES:
Hon. John W. Wise, P. J.
Hon. Julie A. Edwards, J.
Hon. John F. Boggins, J.

Case No. 2004 AP 04 0033

O P I N I O N

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Case No. 2003 CV 02 0104

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 8, 2004

APPEARANCES:

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Wise, P. J.

{¶1} Appellants Martha and James Knight appeal the decision of the Tuscarawas County Court of Common Pleas that granted motions for summary judgment filed by Appellees Grange Mutual Casualty Company ("Grange"), Maryland Casualty Company ("Maryland") and Northern Insurance Company of New York ("Northern"). The following facts give rise to this appeal.

{¶2} The accident resulting in this lawsuit occurred on September 14, 2001. On this date, Appellant Martha Knight was the front-seat passenger in an antique 1930 Model A Ford. Appellant Martha Knight's husband, James Knight, was driving the vehicle in a northbound direction on State Route 39. The accident occurred when Bessie Merrill, traveling in the southbound direction, drove directly into the path of the vehicle occupied by appellants. At the time of the accident, appellants were participating in an activity involving antique automobiles sponsored by the Rubber City Chapter of the Penn-Ohio Model A Club. As a result of the collision, both appellants suffered serious injuries.

{¶3} Bessie Merrill had in place an automobile liability policy, issued by Allstate Insurance Company, which provided automobile liability coverage with liability limits of $100,000 per person and $300,000 per occurrence. Appellant Martha Knight settled her claims, against Bessie Merrill, for payment of the per person policy limits. Appellees Grange, Maryland and Northern expressly consented to the settlement with Allstate.

{¶4} Thereafter, on February 8, 2003, appellants filed a complaint for declaratory judgment, against Grange. Appellants amended their complaint on July 9, 2003, to add Appellees Maryland and Northern. In their complaint, appellants

requested the trial court to construe certain insurance policies and determine whether said policies provided them with UIM coverage.

{¶5} On June 10, 2003, Grange filed a motion for summary judgment. The trial court denied Grange's motion on August 25, 2003. Four months later, Grange filed a second motion for summary judgment. Appellants moved to strike Grange's second motion for summary judgment, which the trial court denied. Appellants responded to Grange's second motion for summary judgment and filed a cross-motion for summary judgment. Appellees Maryland and Northern also filed motions for summary judgment on November 3, 2003. Appellants filed cross-motions for summary judgment against Maryland and Northern.

{¶6} On March 17, 2004, the trial court granted the motions for summary judgment filed by Grange, Maryland and Northern and determined that appellants were not entitled to UIM coverage under any of the policies. The trial court denied appellants' cross-motions for summary judgment. Appellants timely filed a notice of appeal and set forth the following assignments of error for our consideration:

{¶7} "I. THE TRIAL COURT ERRED IN GRANTING APPELLEE GRANGE INSURANCE'S SECOND MOTION FOR SUMMARY JUDGMENT.

{¶8} "II. THE TRIAL COURT ERRED IN GRANTING APPELLEE MARYLAND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND DENYING APPELLANT'S CROSS MOTION FOR SUMMARY JUDGMENT.

{¶9} "III. THE TRIAL COURT ERRED IN GRANTING APPELLEE NORTHERN INSURANCE COMPANY OF NEW YORK'S MOTION FOR SUMMARY JUDGMENT AND DENYING APPELLANT'S CROSS MOTION FOR SUMMARY JUDGMENT.

{¶10} "IV. THE TRIAL COURT ERRED IN REFUSING TO STRIKE APPELLEE GRANGE INSURANCE'S SECOND MOTION FOR SUMMARY JUDGMENT."

Summary Judgment Standard

{¶11} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. As such, we must refer to Civ.R. 56 which provides, in pertinent part:

{¶12} "* * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * *"

{¶13} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically

point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, (1996), 75 Ohio St.3d 280.

{¶14} It is based upon this standard that we review appellants' assignments of error.

I

{¶15} Appellants maintain, in their First Assignment of Error, the trial court erred when it granted Grange's second motion for summary judgment on the basis that Grange's policy does not provide UIM coverage to them. We disagree.

{¶16} In its motion for summary judgment, Grange argued the Model A Ford that Appellant Martha Knight was occupying, on the date of the accident, was not a covered vehicle under its policy. Specifically, Grange cites the following language in Part C of its policy:

{¶17} "A. We [Grange] do not provide Uninsured Motorists Coverage for bodily injury sustained by any person:

{¶18} "1. While occupying * * * any motor vehicle owned by you or any family member which is not insured for this coverage under this policy. * * *." (Emphasis sic.) See Part C-Uninsured Motorists Coverage at Exclusions (A)(1).

{¶19} The policy defines "you" as follows:

{¶20} "You and Your refer to the named insured, which includes the individual named on the Declarations page or that person's spouse if a resident of the same household." See Definitions at Section A.

{¶21} Grange maintains the above language, commonly referred to as the "other owned auto" exclusion is valid and enforceable. As such, no UIM coverage is afforded appellants because Appellant Martha Knight was occupying another auto owned by the named insured that was not listed as a covered auto on the Declarations page of Grange's policy. In support of this argument, Grange refers to H.B. 261, which amended R.C. 3937.18, effective September 3, 1997. H.B. 261 added subsection (J)(1) to R.C. 3937.18 and provides:

{¶22} "(J) The coverages offered under division (A) of this section or selected in accordance with division (C) of this section may include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under any of the following circumstances:

{¶23} "(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use for the named insured, a spouse, or a resident relative of the named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made * * *."

{¶24} Appellants contend the H.B. 261 version does not apply to the policy in effect on the date of the accident. Appellants further maintain that Grange did not provide the trial court with critical information, including the date the Grange policy was first issued to appellants; the date the last two-year renewal period commenced; and the date when the "other owned auto" exclusion was added to Grange's policy. As such,

appellants argue the trial court should have denied Grange's second motion for summary judgment.

{¶25} In *Wolfe v. Wolfe*, 88 Ohio St.3d 246, 2000-Ohio-322, the Ohio Supreme Court held Ohio law requires that every automobile liability insurance policy issued in Ohio have, at a minimum, a guaranteed two-year policy period during which the policy cannot be altered except by agreement of the parties and in accord with the Revised Code. Id. at syllabus. Further, the Court outlined a simple method by which courts are to determine which endorsement applies by looking to the original issuance date of the automobile liability insurance policy and then counting successive two-year policy periods from that date. Id. at 251.

{¶26} Although appellants contend Grange failed to provide pertinent information, to the trial court, concerning the policy in effect on the date of the accident, this court has previously determined that such burden rests with the party asserting the claim. *Rosenberry v. Morris*, Stark App. No. 2002CA00399, 2003-Ohio-2743, at ¶ 18. In the case sub judice, appellants do not set forth a specific date for us to consider in determining whether H.B. 261 applies. Instead, appellants allege the latest the policy could have been renewed for a two-year period was a date that precedes the effective date of H.B. 261.

{¶27} In its motion for summary judgment, Grange attached the affidavit of Kathleen Holtz, an auditor for Grange, in which she opines the following:

{¶28} "2. That after examining the records concerning said insured, she states that Grange Mutual Casualty Company has issued to said insured a (sic) Auto Policy

number FA4319217, effective 12/29/00 to 06/29/01, * * *." Affidavit of Kathleen Holtz, June 10, 2003, at ¶ 2.

{¶29} Based upon this evidence, when Grange renewed its policy on December 29, 2000, it became a new contract of insurance and incorporated the H.B. 261 version of R.C. 3937.18, which became effective over three years prior to the renewal of Grange's policy. Accordingly, the trial court did not err when it granted Grange's motion for summary judgment on the basis that the "other owned auto" exclusion, contained in Grange's policy, precluded UIM coverage.

{¶30} Appellants also argue the post-H.B. 261 version of R.C. 3937.18 is internally inconsistent and therefore unenforceable. In support of this argument, appellants cite two cases: *Morris v. United Ohio Ins. Co*., Ross App. No. 02CA2653, 2003-Ohio-1708 and *Ratkosky v. Scottsdale Surplus Lines Ins. Co*., Cuyahoga App. No. 81519, 2003-Ohio-2868. In *Morris* and *Ratkosky*, the Fourth District and Eighth District Courts of Appeals determined that Sections (J)(1) and (K)(2) of R.C. 3937.18, effective September 3, 1997, were internally inconsistent. The courts reached this conclusion because Section (J)(1) only permits coverage on a vehicle listed in a policy and Section (K)(2) precludes UM coverage for a claimant, spouse or resident family member even if listed in the policy.

{¶31} The General Assembly apparently recognized the inconsistency between Sections (J)(1) and (K)(2) and repealed Section (K)(2) in S.B. 267, effective September 21, 2000. The S.B. 267 version of R.C. 3937.18 was in effect on December 29, 2000, when Grange issued the policy to appellants. This version of the statute, applicable to

Grange's policy, is not internally inconsistent. Further, in *Eslich v. Johnson*, Stark App. No. 2003CA00200, 2004-Ohio-617, we specifically rejected this argument and held:

{¶32} "We cannot agree with the reasoning of *Morris* and *Ratkosky*. Instead, we find no inherent conflict in the statute. Even if we did find a potential conflict, we must give effect to the words used rather than re-writing the legislation, *Erb v. Erb* (2001), 91 Ohio St.3d 503, 747 N.E.2d 230. Where the words of a statute are ambiguous, we must construe the language consistently with the intent of the General Assembly. *Clark v. Scarpelli* (2001), 91 Ohio St.3d 271, 744 N.E.2d 719, citations deleted.

{¶33} "We find the underlying purpose of R.C. 3937.18 is to provide uninsured and underinsured motorist coverage for injured persons. However, we also find the language of the revision clearly demonstrates the General Assembly intended endorsements like the one before us [non-listed vehicle exclusion] to be valid and enforcible (sic), see *Bergmeyer v. Auto Owners Ins. Co*., 2003-Ohio-133." Id. at ¶ 23, ¶ 24.

{¶34} Finally, appellants maintain that even if the H.B. 261 version of R.C. 3937.18 applies, the exclusion in Grange's policy does not meet the requirements of that specific version of the statute because it does not track the statutory language. Specifically, appellants challenge the definition of "you." The policy provides:

{¶35} "**You** and **Your** refer to the named insured, which includes the individual named on the Declarations page or that person's spouse if a resident of the same household." (Emphasis sic.) See Definitions at Section A.

{¶36} Appellants maintain the definition of "you" can mean either Martha Knight or James Knight separately, but not both at the same time or interchangeably.

Appellants conclude the trial court was required to use the definition of "you" most favorable to the insured. Therefore, "you," in this context, would mean the named insured's spouse, Appellant Martha Knight. Further, if Appellant Martha Knight's name is inserted, it is clear that Appellant Martha Knight did not own the antique vehicle in question and therefore, would be entitled to coverage under Grange's policy.

{¶37} We rejected a similar argument in *Jones v. Nationwide Ins. Co*. (July 23, 2001), Stark App. No. 2000CA00329. Even if we determined appellants' argument had merit, Appellant Martha Knight is still excluded from coverage because the exclusion applies to a motor vehicle owned by a family member, which under the terms of the policy is defined as "* * * a person related to you by blood, marriage or adoption and whose principal residence is at the location shown in the Declarations." See Declarations at Section F. Since Appellant James Knight is related to Appellant Martha Knight by marriage and the vehicle involved in the accident was not insured for UIM coverage under Grange's policy, the "other owned vehicle" exclusion applies.

{¶38} Appellants' First Assignment of Error is overruled.

II

{¶39} Appellants' Second Assignment of Error concerns policies issued by Maryland to POMAR and The Antique Automobile Club of America, Inc.

Maryland's CGL Policy Issued to The Penn-Ohio Model A Restorers

{¶40} Maryland issued a commercial general liability policy ("CGL") to the Penn-Ohio Model A Restorers ("POMAR") with policy limits of $1,000,000. Appellants contend Maryland's CGL policy is an automobile liability policy. We disagree.

{¶41} Appellants claim the CGL policy is a motor vehicle policy because it contains a "hired" and "non-owned" auto endorsement. Appellants also claim the CGL policy is an automobile liability policy because it falls within the definition of an "automobile liability policy," as defined in R.C. 3937.18(L), since it acts like an umbrella policy for the underlying liability insurance purchased by POMAR.

{¶42} Although the parties dispute the applicable version of R.C. 3937.18, both S.B. 57 and S.B. 267 provide identical definitions of an "automobile liability or motor vehicle liability policy of insurance." This definition is contained in Section (L) of the statute as follows:

{¶43} "(L) As used in this section, 'automobile liability or motor vehicle liability policy of insurance' means either of the following:

{¶44} "(1) Any policy of insurance that serves as proof of financial responsibility, as defined by division (K) of section 4509.01 of the Revised Code, for owners or operators of the motor vehicles specifically identified in the policy of insurance;

{¶45} "(2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section."

{¶46} We conclude R.C. 3937.18(L)(1) precludes a finding that the CGL policy issued by Maryland, to POMAR, is an automobile liability or motor vehicle liability policy. Section (L)(1) requires such a policy to specifically identify the motor vehicle(s). Maryland's CGL policy does not specifically identify motor vehicles. In *Dean v. Royal Ins. Co. of Am.*, Stark App. No. 2003CA00020, 2003-Ohio-5915, we held:

{¶47} "Because appellant's commercial general liability policy does not insure motor vehicles 'specifically identified in the policy,' R.C. 3937.18 does not apply.

[Citations omitted.] The inclusion of liability coverage for 'hired' and 'non-owned' vehicles does not transform American Alliance's CGL policy into a motor vehicle liability policy of insurance, and coverage does not arise by operation of law." Id. at ¶ 24.

{¶48} Appellants next maintain Maryland's CGL policy is an umbrella policy. In *Pillo v. Stricklin* (Feb. 5, 2001), Stark App. No. 2000CA00201, we defined an umbrella policy and stated:

{¶49} "An umbrella policy is defined as a policy which 'provides excess coverage beyond an insured's primary policies.' [Citations omitted.] Umbrella policies are different from standard excess insurance policies in that they are meant to fill gaps in coverage both vertically (by providing excess coverage) and horizontally (by providing primary coverage). [Citation omitted.] 'The vertical coverage provides additional coverage above the limits of the insured's underlying primary insurance, whereas the horizontal coverage is said to "drop down" to provide primary coverage for situations where the underlying insurance provides no coverage at all.'" [Citations omitted.] Id. at 4.

{¶50} In the case sub judice, there is no underlying policy of insurance issued to POMAR. Instead, Maryland's CGL policy is the primary policy of insurance and provides no excess or umbrella coverage. Further, Maryland's CGL policy does not contain language providing horizontal coverage that drops down to provide primary coverage in the event that an underlying policy issued to POMAR does not provide coverage. Accordingly, Maryland's CGL policy issued to POMAR is not an umbrella policy.

{¶51} Finally, appellants claim they are insureds under Maryland's CGL policy issued to POMAR. In support of this argument, appellants reference an endorsement contained in Maryland's policy. This endorsement provides:

"ADDITIONAL INSURED – CLUB MEMBERS

{¶52} "This endorsement modifies insurance coverage provided under the following:

"COMMERCIAL GENERAL LIABILITY COVERAGE PART

{¶53} "WHO IS AN INSURED (Section II) is amended to include as an insured any of your members, but only with respect to their liability for your activities or activities they perform on your behalf."

{¶54} This endorsement does not make appellants insureds under Maryland's CGL policy. Rather, the clear terms of the endorsement limit its application, for CGL coverage, to members with respect to their liability for the club's activities or the activities members perform on the club's behalf.

{¶55} Appellants are not seeking CGL coverage. Instead, appellants are seeking UIM coverage, which we have previously determined the policy does not provide. Appellants also are not seeking liability coverage as a result of their negligence against a third-party. As such, the endorsement does not apply to the facts of this case and appellants are not insureds under Maryland's CGL policy.

B. Maryland's CGL Policy and Business Auto Policy Issued to The Antique Automobile Club of America, Inc.

{¶56} Maryland also issued a CGL policy and a business auto policy, to the Antique Automobile Club of America, Inc. ("Antique"), with liability limits of $1,000,000. Appellants contend they are entitled to UIM coverage under this policy. Prior to

determining the merits of appellants' argument, we must first determine whether Ohio law applies. In *Ohayon v. Safeco Ins. Co. of Illinois*, 91 Ohio St.3d 474, 2001-Ohio-100, the Ohio Supreme Court addressed the choice-of-law issue as it pertains to the determination of UM/UIM coverage. The Court held:

{¶57} "1. An action by an insured against his or her insurance carrier for payment of underinsured motorist benefits is a cause of action sounding in contract, rather than tort, even though it is tortious conduct that triggers applicable contractual provisions." *Landis v. Grange Mut. Ins. Co*. [1998], 82 Ohio St.3d 339, 341, 695 N.E.2d 1140, 1141, followed.)

{¶58} "2. Questions involving the nature and extent of the parties' rights and duties under an insurance contract's underinsured motorist provisions shall be determined by the law of the state selected by applying the rules in Sections 187 and 188 of the Restatement of the Law 2d, Conflict of Laws (1971). (1 Restatement of the Law 2d, Conflict of Laws [1971], Section 205, applied." Id. at paragraphs one and two of the syllabus.

{¶59} The Court explained that absent an express choice of law provision, the trial court should consider the factors set forth in Restatement (Second) of Conflict of Laws, Section 188, in order to determine the applicable law. The trial court should determine which state has " '* * * the most significant relationship to the transaction and the parties.' " Id. at 477. In making this determination, the trial court should consider the following factors: "* * * the place of contracting, the place of negotiation, the place of performance, the location of the subject matter, and the domicile, residence, nationality, place of incorporation, and place of business of the parties." Id.

{¶60} The Court further found that coverage issues, like other contract issues, should be determined " 'by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship * * * to the transaction and the parties.' " Id. at 479, quoting Restatement at 610, Section 193." " '[I]n the case of an automobile liability policy, the parties will usually know beforehand where the automobile will be garaged at least during most of the period in question.' " Id. at 479-480, quoting Restatement at 611, comment b.

{¶61} In the case sub judice, Antique's policy does not indicate the applicable state law to apply. Therefore, we must apply the factors contained in Section 188. In doing so, we find the policy at issue was sold by an agent located in Darby, Pennsylvania and issued to Antique, whose place of business is located in Hershey, Pennsylvania. The policy was produced out of the Zurich Group-Harrisburg branch office located in Mechanicsburg, Pennsylvania, pursuant to negotiations that occurred between the offices of Antique, Zurich Group-Harrisburg and J.C. Taylor. The policy lists two trailers on the schedule of covered autos. Both of these trailers are registered and garaged in Pennsylvania.

{¶62} Thus, although the accident occurred in Ohio, we conclude the factors to be considered under Section 188 support the conclusion that Pennsylvania law applies to the interpretation of the policy at issue. Since Ohio law does not apply, there can be no UIM coverage that arises by operation of law under the policy Maryland issued to Antique.

{¶63} Appellants also contend the business auto policy issued to Antique is an automobile liability policy under R.C. 3937.18 because it provides coverage for "hired" and "non-owned" motor vehicles and two trailers. We reject this argument for the reasons set forth in *Dean*, supra.

{¶64} Appellants also claim they are insureds under the business auto policy Maryland issued to Antique. The definition of "insured" is contained in the general liability provisions of Antique's policy. This provision provides as follows:

{¶65} "1. **Who Is An Insured**

{¶66} "The following are 'insureds':

{¶67} "a. You for any covered 'auto'.

{¶68} "b. Anyone else while using with your permission a covered 'auto' you own, hire or borrow except:

{¶69} "(1) The owner or anyone else from whom you hire or borrow a covered 'auto'. This exception does not apply if the covered 'auto' is a 'trailer' connected to a covered 'auto' you own.

{¶70} "(2) Your 'employee' if the covered 'auto' is owned by that 'employee' or a member of his or her household.

{¶71} "(3) Someone using a covered 'auto' while he or she is working in a business of selling, servicing, repairing, parking or storing 'autos' unless that business is yours.

{¶72} "(4) Anyone other than your 'employees', partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their 'employees', while moving property to or from a covered 'auto'.

{¶73} "(5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered 'auto' owned by him or her or a member of his or her household.

{¶74} "c. Anyone liable for the conduct of an 'insured' described above but only to the extent of that liability."

{¶75} Appellants would qualify as insureds, under Antique's business auto policy, only if they were occupying a "covered auto." In order to qualify as a "covered auto," the vehicle must be a "hired" or "non-owned" vehicle as defined on the business auto coverage form under Symbol 8 and Symbol 9. However, the evidence establishes, and appellants do not dispute, that they were occupying a vehicle owned by Appellant James Knight at the time of the accident. Appellants were not driving an auto leased, hired, rented or borrowed by Antique. Further, the motor vehicle was not a non-owned auto used in connection with Antique's business. Thus, appellants are not insureds under the business auto policy Maryland issued to Antique.

{¶76} Appellants next argue they are entitled to UIM coverage under Maryland's CGL policy issued to Antique. In support of this argument, appellants cite *Mlecik v. Farmers Ins. of Columbus, Inc*., Cuyahoga App. No. 81110, 2002-Ohio-6222, wherein the Eighth District Court of Appeals determined that a mobile equipment provision, in a CGL policy, made the policy a motor vehicle policy for purposes of R.C. 3937.18.

{¶77} We have repeatedly rejected this argument. In *Pickett v. Ohio Farmers Ins. Co*., Stark App. No. 2001CA00236, 2002-Ohio-259, we determined that a CGL policy of insurance providing coverage for "mobile equipment" did not qualify as an automobile or motor vehicle liability policy of insurance for purposes of the mandatory

offering of UM/UIM coverage. Id. at 3. See also, *Jett v. State Auto Mut. Ins. Co*., Stark App. No. 2002CA00183, 2002-Ohio-7211; *Jordan v. Travelers Prop. Cas. Ins. Co.*, Stark App. No. 2002CA00248, 2003-Ohio-1309; *Pugh v. Erie Ins. Exchange*, Stark App. No. 2002CA00134, 2002-Ohio-5929; *Szekeres v. State Farm Fire & Cas. Co*., Licking App. No. 02CA00004, 2002-Ohio-5989; *Werstler v. Westfield Ins. Co*., Stark App. No. 2002CA00227, 2003-Ohio-1715; and *Bell v. Currier*, Guernsey App. No. 02-CA-10, 2003-Ohio-3294.

{¶78} Further, the *Mlecik* decision is distinguishable because it relied upon a prior version of R.C. 3937.18, which did not contain the detailed definition of "automobile liability or motor vehicle liability policy of insurance" set forth in R.C. 3937.18(L). Therefore, we conclude the CGL policy issued by Maryland, to Antique, is not an automobile liability or motor vehicle liability policy.

{¶79} In their final argument, under their Second Assignment of Error, appellants contend they are insureds under the CGL portion of the business auto policy Maryland issued to Antique. Appellants rely upon an "Additional Insured-Club Members Endorsement" which provides:

{¶80} "WHO IS AN INSURED (Section III) is amended to include as an insured any of your members, but only with respect to their liability for your activities * * *."

{¶81} Based upon this language, appellants conclude they are insureds because they were club members of Antique, at the time of the accident, and were participating in club activities. The evidence establishes that Antique had no affiliation with the chapter tour on which appellants were participating at the time of the accident.

Therefore, appellants are not insureds under Antique's CGL portion of the business auto policy.

{¶82} Appellants' Second Assignment of Error is overruled.

III

{¶83} Appellants' Third Assignment of Error concerns an insurance policy issued by Northern to the Model A Restorers Club ("MARC.") Appellants set forth two arguments under this assignment of error. First, appellants contend the CGL policy Northern issued to MARC is an automobile liability policy. Second, appellants maintain they are insureds under Northern's policy because of the insured-club members endorsement. We disagree with both arguments.

{¶84} Northern issued a CGL policy to MARC with policy limits of $1,000,000. As with the CGL policy Maryland issued to Antique, we must first determine the applicable state law. Pursuant to the *Ohayon* case and the factors set forth in Restatement (Second) of Conflict of Laws, Section 188, we conclude Pennsylvania law applies.

{¶85} The affidavit of Paulette Crooke indicates Northern, an Illinois company, entered into a contract of insurance with MARC, in Darby, Pennsylvania. Further the CGL policy issued to MARC was negotiated, made, issued and delivered in Pennsylvania through an agent whose office is located in Pennsylvania. Based upon these factors, we conclude Pennsylvania law applies.

{¶86} Even if we were to determine that Ohio law applies to Northern's CGL policy, we find the inclusion of coverage for "hired" and "non-owned" vehicles does not

make the policy an automobile or motor vehicle liability policy as defined in the S.B. 57 version of R.C. 3937.18(L). See *Dean*, supra.

{¶87} Appellants next maintain Northern's CGL policy is an umbrella policy. We disagree with this argument for the reasons discussed above regarding Maryland's CGL policy issued to POMAR. Finally, appellants contend they are insureds, under Northern's CGL policy, pursuant to the language contained in the additional insured-club members endorsement. This endorsement contains the identical language addressed in Maryland's CGL policy. For the reasons set forth in the Second Assignment of Error, we reject appellants' argument that they are insureds pursuant to the language of this endorsement.

{¶88} Appellants' Third Assignment of Error is overruled.

IV

{¶89} In their Fourth Assignment of Error, appellants contend the trial court erred when it overruled their motion to strike Grange's second motion for summary judgment. We disagree.

{¶90} Appellants claim Grange's second motion for summary judgment was no more than a request for reconsideration of the trial court's original ruling on Grange's first motion for summary judgment. The record does not support appellants' argument. Grange's first motion for summary judgment dealt with the issue of what impact the amount of the tortfeasor's liability coverage had on the same amount of UIM coverage appellants had under their policy with Grange. The second motion for summary judgment dealt with the "other owned auto" exclusion in Grange's policy. Clearly, Grange's second motion for summary judgment was not a motion for reconsideration.

{¶91} Further, Civ.R. 56 does not place a limit on the number of motions for summary judgment that may be filed. Most recently, in *Pummill v. Carnes*, Ross App. No. 02CA2659, 2003-Ohio-1060, the Fourth District Court of Appeals addressed this same issue and stated, "[w]e fail to see how the trial court abused its discretion in granting appellee leave to file his second motion for summary judgment, especially in light of the absence of authority indicating that a party is limited to filing one motion for summary judgment." Id. at ¶ 20.

{¶92} Accordingly, the trial court did not err when it permitted Grange to file a second motion for summary judgment.

{¶93} Appellants' Fourth Assignment of Error is overruled.

{¶94} For the foregoing reasons, the judgment of the Court of Common Pleas, Tuscarawas County, Ohio, is hereby affirmed.

By: Wise, P. J.

Edwards, J., and

Boggins, J., concur.

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JUDGES

JWW/d 112

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARTHA KNIGHT, et al.	:	
Plaintiffs-Appellants	:	
-vs-	:	JUDGMENT ENTRY
GRANGE MUTUAL CASUALTY CO., et al.	:	
Defendants-Appellees	:	Case No. 2004 AP 04 0033

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Tuscarawas County, Ohio, is affirmed.

Costs to Appellants.

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JUDGES