

[Cite as *Gonzalez v. Travelers Ins. Co.*, 2003-Ohio-6491.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 82139

ANNETTE GONZALEZ	:	
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	
	:	AND
vs.	:	
	:	OPINION
TRAVELERS INSURANCE	:	
COMPANY, ET AL.	:	
	:	
Defendants-Appellees	:	
	:	
	:	
DATE OF ANNOUNCEMENT	:	
OF DECISION	:	<u>December 4, 2003</u>
	:	
CHARACTER OF PROCEEDINGS	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. CV-470555
	:	
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellant	STEPHEN S. VANEK, ESQ. Friedman, Domiano & Smith Co. 1370 Ontario Street 600 Standard Building Cleveland, Ohio 44113-1701
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For defendant-appellee
Travelers Insurance Company

TIMOTHY J. FITZGERALD, ESQ.
THOMAS J. CABRAL, ESQ.
RICHARD J. SCISLOWSKI, ESQ.
Gallagher, Sharp, Fulton &
Norman
7th Floor Bulkley Building
1501 Euclid Avenue
Cleveland, Ohio 44115

For defendant-appellee
TIG Insurance Company

R. GARY WINTERS, ESQ.
McCaslin, Imbus & McCaslin
900 Provident Bank Building
632 Vine Street
Cincinnati, Ohio 45202-2442

SEAN C. GALLAGHER, J.:

{¶1} Appellant Annette Gonzalez (“Gonzalez”) appeals the judgment of the Cuyahoga County Court of Common Pleas, which denied her motion for summary judgment and granted the motions for summary judgment of appellees Travelers Indemnity Company of Illinois (“Travelers”) and TIG Insurance Company (“TIG”). For the reasons that follow, we affirm.

{¶2} On December 11, 1996, Gonzalez exited a bar and was walking along the sidewalk on Clifton Avenue in Cleveland when she was struck and injured by a vehicle operated by Ekrami Ayoub. Ayoub’s liability carrier tendered its policy limits of \$12,500 to Gonzalez, and a release was executed on December 5, 1997.

{¶3} Gonzalez alleged that at the time of the accident she was employed

by Dillard's Department Stores ("Dillard's"). Dillard's was insured by Travelers under a commercial auto policy and by TIG under a coverage plus excess liability policy. Dillard's was the named insured under the policies.

{¶4} Gonzalez filed a complaint against Travelers and TIG on May 13, 2002, seeking to have underinsured motorist ("UIM") coverage imposed by law under the respective policies. All parties moved for summary judgment.

{¶5} The trial court denied Gonzalez's motions and granted Travelers and TIG's motions. The trial court determined that Arkansas law applied, that Gonzalez failed to give timely notice of her claims and the failure was prejudicial, and that Gonzalez materially prejudiced the subrogation rights of Travelers and TIG.

{¶6} Gonzalez appeals the judgment of the trial court and asserts two assignments of error for this court's review:

{¶7} "I. The trial court erred in granting Defendant-Appellees Travelers Insurance Company and TIG Insurance Company's Motions for Summary Judgment and [d]enying Plaintiff-Appellant's Motions for Summary Judgment by applying Arkansas law in order to determine the rights and duties of the parties with respect to the Travelers and TIG Policies issued to Dillard's Department Stores."

{¶8} "II. The trial court erred in granting Defendant-Appellees Travelers

Insurance Company and TIG Insurance Company's Motion for Summary Judgment and [d]enying Plaintiff-Appellant's Motions for Summary Judgment by finding that appellant's failure to give timely notice and failure to protect Traveler's and TIG's alleged right of subrogation materially prejudiced appellees by failing to allow appellant the opportunity to rebut the presumption of prejudice pursuant to the Ohio Supreme Court's holding in *Ferrando v. Auto-Owners Mut. Ins. Co.*, [98 Ohio St.3d 186, 2002-Ohio-7217]."

{¶9} We need not address the above assignments of error in light of the recent opinion by the Ohio Supreme Court in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849. In *Galatis*, the court held: "Absent specific language to the contrary, a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of employment." *Id.* at paragraph two of the syllabus.

{¶10} Under the facts of this case, the named insured under the policies was a corporation, Dillard's. Since Gonzalez's loss did not occur within the course and scope of her employment, Gonzalez is not an insured for UM/UIM

purposes under the policy. See *Id.* Therefore, regardless of whether Ohio or Arkansas law is applied, Gonzalez is not entitled to underinsured/uninsured motorist coverage. See *Id.*; *Monday v. Canal Ins. Co.* (2002), 348 Ark. 435, 73 S.W.3d 594; *First Security Bank of Searcy v. John Doe* (1988), 297 Ark. 254, 760 S.W.2d 863. We affirm the judgment of the trial court, albeit for another reason. *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96. The assigned errors lack merit. The judgment is affirmed.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, P.J., AND

ANNE L. KILBANE, J., CONCUR.

SEAN C. GALLAGHER
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).