IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

OWNERS INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 12-1441-CV-W-SOW
	)	
JUSTIN MANN, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is plaintiff Owners Insurance Company's Motion for Summary Judgment (Doc. #6). For the following reasons, it is granted.

I. Background

The facts of this case are not in dispute. Plaintiff Owners Insurance Company ("plaintiff") is an insurance company incorporated in the State of Ohio. Defendant Justin Mann is a citizen of Colorado. Defendant Chad Mann is a citizen of Iowa. Defendant Jarred Mann is a citizen of California.

The Manns ("defendants") are the named plaintiffs in a wrongful death action filed in the Circuit Court of Jackson County, Missouri. The defendant in the wrongful death action is Amanda Douglas ("Douglas"), a citizen of Missouri. In the wrongful death action, defendants allege that Douglas's negligence was the cause of Russell Mann's (defendants' father) death. According to the Petition, defendants' father was operating a motorcycle when he was struck and killed by a vehicle being driven by Douglas. At the time of the collision, plaintiff's vehicle was covered by a policy of insurance, which was in effect on the date of the accident. The policy was

issued in Missouri to Douglas's parents, and it covers three vehicles, including a 1985 Ford LTD. Douglas was operating the Ford LTD at the time of the accident.

The Policy provides liability coverage to Douglas with respect to damages for "bodily injury" for which she is legally responsible. The Policy limits with respect to any "bodily injury" resulting from Douglas's operation of the Ford LTD are limited to $100,000 per person. Plaintiff filed this action seeking a declaration that its coverage obligation is limited to $100,000. Plaintiff has moved for summary judgment.

II. Standard

Summary judgment is proper only when the evidence, viewed in the light most favorable to the nonmoving party, demonstrates there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is material when its resolution affects the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is considered genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party. See id. at 252. "Because the interpretation and construction of insurance policies is a matter of law, the issue of whether the duty to defend or indemnify exists under a policy is particularly amendable to summary judgment." Newyear v. Church Ins. Co., 155 F.3d 1041, 1043 (8th Cir. 1998) (citing Reliance Ins. Co. v. Shenandoah South, Inc., 81 F.3d 789, 791 (8th Cir. 1996)).

III. Discussion

A. Statutory Argument

The issue in this case is whether the "per person" limit in the Policy is the maximum amount that plaintiff is obligated to pay as damages. Plaintiff claims that, under Missouri law, "where a single policy covers multiple vehicles, an insured driver who has an accident while

driving one of those vehicles is only entitled to coverage equal to the stated policy limits, and is not entitled to benefits of any *additional* policy, by reason of the fact that other vehicles are also covered under the policy." Plaintiff finds support for this argument in O'Rourke v. Esurance Insurance Co., 325 S.W.3d 395, 398 (Mo. Ct. App. 2010).

Defendants argue that the Policy is an "owner's policy" as to the vehicles listed and owned by Douglas's parents and an "operator's policy" as to Douglas. This is significant, defendants say, because they may stack the $25,000 statutory minimum liability limits of each of the remaining vehicles listed in the Policy for a combined total of $150,000 or, alternatively, they may stack the Policy limits of each vehicle covered, thus resulting in $300,000.[1]

The Court starts with the Missouri Motor Vehicle Financial Responsibility Law ("MVFRL"), Mo. Rev. Stat. § 303.190, *et seq*. The MVFRL "establishes a mandate for maintenance of financial responsibility by owners of motor vehicles and, absent owner's coverage, requires operators to maintain financial responsibility when operating a vehicle owned by another." Am. Standard Ins. Co. of Wis. V. May, 972 S.W.2d 595, 599 (Mo. Ct. App. 1998) (citing Mo. Rev. Stat. § 303.025). There are two types of liability insurance policies that satisfy the MVFRL's requirement for proof of financial responsibility: an "owner's policy" and an "operator's policy." Wilson v. Tranders Ins. Co., 98 S.W.3d 608, 616 (Mo. Ct. App. 2003). The MVFRL requires owner's and operator's policies to provide the following minimum amount of liability coverage: "twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten

[1] The Court has found no argument in defendants' motions suggesting that they may stack the policies for a total of $300,000. Therefore, the Court has not addressed this argument.

thousand dollars because of injury to or destruction of property of others in any one accident." Mo. Rev. Stat. §§ 303.190.2(2), 303.190.3.

Regarding "owner's policies," the MVFRL states that an owner's policy shall insure any person named therein as an insured, as well as any other person using any of the autos designated in the policy, in the minimum amount of $25,000, for any bodily injury to any one person. Id. § 303.190.2. The MVFRL also provides that an "operator's policy" shall insure the person who is named therein as insured, when using any motor vehicle not owned by him or her, in the minimum amount of $25,000. Id. § 303.190.3. Thus, an owner's policy only requires coverage in the minimum amount of $25,000 to any person named in the policy and any person using the automobile listed in the policy. The operator's policy requires coverage in the amount of $25,000 to a person named as an insured, but only when using a motor vehicle not owned by him or her.

The O'Rourke decision by the Missouri Court of Appeals, Southern District is instructive. There, an automobile driver was driving a 2006 Jeep Wrangler with his wife when it rolled down an embankment, causing injuries to his wife in an amount in excess of $100,000. O'Rourke, 325 S.W.3d at 397. Esurance issued a policy to the driver and his wife that was in effect at the time of the accident, and it insured the vehicle the driver was driving; it covered the driver's other vehicle as well. Id. Geico had issued a separate policy of insurance to the driver's son—who resided in the driver's home—for a 2006 Chevrolet. Id. The driver brought action against his insurer and his son's insurer, alleging the driver's policy provided coverage for his wife's injuries in excess of $25,000, and further, that his son's insurance provided additional coverage for the accident. Id. The trial court found that the driver's policy unambiguously

prevented the driver from stacking the coverage for his two insured vehicles and granted summary judgment in the insurers' favor.

The driver appealed the trial court's decision, arguing, among other things, that the trial court erred in granting summary judgment because Missouri public policy and the MVFRL dictate that the insurer must provide $25,000 in compensation *for each vehicle* covered by a policy purchased by the insured if the insured is involved in a motor vehicle accident. Id. at 398. The court noted that the facts of the case were different from Karscig v. McConville, 303 S.W.3d 499 (Mo. 2010) (en banc), because in Karscig two policies covered one automobile, and in O'Rourke's case there was one policy covering two vehicles. O'Rourke, 325 S.W.3d at 398. Ultimately, the court held that the MVFRL only requires $25,000 for *each* insured vehicle involved in an accident, not $25,000 multiplied by the number of vehicles insured under one policy . . . ." Id. at 398 (emphasis in original).

The Court finds O'Rourke's reasoning applicable in this case. The cases cited by defendants are inapposite because they involved multiple policies. This case involves one policy covering three vehicles.

Defendants initially argued that the Policy was an owner's policy as to the vehicles listed and owned by Douglas's parents but an operator's policy as to Douglas. Defendants filed supplemental suggestions in opposition to plaintiff's motion for summary judgment, and they argued that "new evidence" shows Douglas owned the Ford LTD vehicle. Defendants say this means a "hybrid" policy was created under Missouri law, i.e. an owner's policy as to Douglas but an operator's policy as to her parents. In Karscig v. McConville, the Missouri Supreme Court distinguished an owner's and operator's policy on the sole criterion of ownership, concluding that "a policy issued to an owner is an 'owner's policy' . . . while a policy issued to a

non-owner is an 'operator's policy.'" 303 S.W.3d at 503 (citations omitted). The court also stated that it "[did] not know of a situation in which a policy can be both an owner's and an operator's policy." Id. at 503 n.7. Thus, language from Missouri's highest court strongly undermines defendants' argument herein.

It is important to consider the Policy when considering whether it is an "owner's policy" or an "operator's policy." In this case, the Policy lists the three automobiles and extends coverage to each of the named insureds for any of their liability arising *out of the use of one of the listed automobiles.* The policy does not, however, provide coverage to the named insureds for their liability arising out of the use of any automobile *not owned by them.* Accordingly, the Court finds that the Policy issued by plaintiff is an owner's policy because Douglas owned the Ford LTD that was insured.

There were not two separate policies—an owner's policy and an operator's policy—issued to Douglas and her parents as defendants would have the Court find. There was only one owner's policy that provided liability limits of $100,000. The "MVFRL only requires $25,000 for *each* insured vehicle involved in an accident, not $25,000 multiplied by the number of vehicles insured under one policy . . . ." O'Rourke, 325 S.W.3d at 398. Consequently, the Court concludes that the "per person" policy limit of $100,000 is the maximum amount that plaintiff is obligated to pay as a result of the accident.[2]

B. The Policy Is Not Ambiguous

Defendants argue that the Policy is ambiguous with respect to whether it provides for $100,000 in coverage or $300,000 in coverage ($100,000 multiplied by the number of automobiles in the policy). Defendants argue the Policy is ambiguous as to the issue of stacking

[2] If the Court understands defendants' argument correctly, the success of their argument hinges on the Court finding that there is both an owner's and operator's policy. Since the Court concludes there was only one owner's policy, defendants' argument necessarily fails.

liability coverage. Defendants say that the Declarations page does not contain anti-stacking language, but that the anti-stacking language is found in the back of the policy in Section II-Liability Coverage. Defendants concede that this anti-stacking language would ordinarily prevent stacking; however, defendants contend that Section 6 entitled **Other Insurance** creates the ambiguity.

> Defendants' ambiguity argument concerns the following Policy language in Section 6:
>
> the Liability Coverage provided by this policy for **your automobile** shall be primary and with regard to any other **automobile** to which it applies, coverage shall be excess of any other applicable **automobile** liability insurance.

According to defendants, the other insurance clause "could mean the liability coverage provided for the three vehicles listed in the Declarations shall be primary but with regard to any other vehicles to which it applies it shall be excess. Since Douglas was a non-owner, but permissive user, of [sic] any of the vehicles that it could mean that the vehicle she was operating had coverage and the other vehicles had excess coverage."

The Court finds no ambiguity in the Policy. The Policy defines "your automobile" as "the automobile described in the Declarations." In this case, the Declarations list three automobiles, including the Ford LTD. Therefore, "your automobile" refers to the three vehicles contained the Declarations, not just the Ford LTD. Moreover, the word "other" in the phrase "other **automobile** to which it applies" could only mean an automobile that is not described in the Declarations. Lastly the word "other" in the phrase "any other applicable automobile liability insurance" means any applicable automobile liability insurance *other than* the liability coverage provided for in the Policy. Therefore, the phrase at issue cannot refer to the liability insurance provided under this Policy.

None of defendants' arguments are reasonable interpretations of the Policy. Therefore, the Court finds that the Policy is not ambiguous.

IV. Conclusion

Accordingly, it is hereby

ORDERED that plaintiff Owners Insurance Company's Motion for Summary Judgment (Doc. #6) is granted.

/s/ Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated 8/1/2013