IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:19-cv-00822-DME-STV

DEBBIE DONEY,

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF ILLINOIS,

Defendant.

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT (Doc. 22)

This matter comes before the Court on Plaintiff Debbie Doney's Fed. R. Civ. P. 56 motion for partial summary judgment on a question of law. For the reasons that follow, the Court GRANTS that motion.

I. Background

A. Undisputed Facts

Debbie Doney is a Missouri resident who was injured in a car accident in Fort Collins, Colorado. The at-fault driver was a Colorado resident. Doney was insured under an automobile policy issued in Missouri by Safeco Insurance Company of Illinois ("Safeco"). The policy included underinsured motorist benefits.

After the accident, the at-fault driver's insurer made a payment to Doney up to the limit of the driver's policy. Doney then submitted a claim to Safeco for underinsured motorist benefits. The Safeco policy provides:

> 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.
>
> * * *
>
> 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;
>
> * * *
>
> "Underinsured motor vehicle" means a . . . motor vehicle . . . to which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for bodily injury is not enough to pay the full amount the insured is legally entitled to recover as damages.

The policy does not define the phrase "legally entitled to recover." Neither does the policy include a choice-of-law provision to govern disputes.

B. Procedure

Doney sued Safeco for breach of contract and unreasonable denial of benefits, alleging that Safeco "has failed to tender reasonable [underinsured motorist] benefits." Safeco denies this allegation and maintains that Doney was fully compensated by the at-fault driver's insurance policy and that she did not suffer actual damages over that policy's limit.

Broadly, the parties disagree about the amount of damages that Doney is "legally entitled to recover" from the at-fault driver. That amount will determine how much money, if any, Safeco is obligated to tender to Doney as underinsured motorist benefits. But this motion does not ask the Court to render summary judgment on the amount that Doney is legally entitled to recover from the at-fault driver. Instead, Doney asks the Court to issue a judgment about which state's law will govern that determination.

The parties disagree about the answer to that question. Doney argues that Colorado law should determine damages because the accident occurred in Colorado. Safeco argues that Missouri law should govern damages because the policy was issued in Missouri.

Doney presents the question as one of contract interpretation—i.e., what is the plain and ordinary meaning of the phrase "legally entitled to recover from the owner or operator of an underinsured motor vehicle" under the policy? Safeco presents the question as one of choice of law—i.e., which state has the most significant relationship to Doney's contractual claim for underinsured motorist benefits.

The Court agrees with Doney—this is a question of contract interpretation. And, under the plain meaning of the policy, Colorado law governs the amount of damages that Doney is "legally entitled to recover" from the at-fault driver.

II. Discussion

Federal Rule of Civil Procedure 56 permits a party to move for summary judgment on either an entire claim or defense or a part of a claim or defense. Fed. R. Civ. P. 56(a). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Id. The parties do not dispute the material facts. Rather, the parties dispute the interpretation of a contract. "[O]rdinarily, the construction of a contract is a question of law for the court." Caven v. Am. Fed. Sav. & Loan Ass'n, 837 F.2d 427, 430 (10th Cir. 1988).

A federal court sitting in diversity applies the choice-of-law rules of the forum state. Kipling v. State Farm Mut. Auto. Ins. Co., 774 F.3d 1306, 1310 (10th Cir. 2014). Colorado has adopted the Restatement (Second) of Conflict of Laws for contract

actions. Id. (citing Wood Bros. Homes, Inc. v. Walker Adjustment Bureau, 601 P.2d 1369, 1372 (Colo. 1979)). When a contract does not include a choice-of-law provision, the Second Restatement instructs courts to identify the state with the most significant relationship to the transaction and the parties. Id. (citing Restatement (Second) of Conflict of Laws § 188 (1971)).

Courts identify that state by considering the place of contracting, place of negotiation, place of performance, location of the subject matter, and residence or place of incorporation of the parties. Id. Here, the policy was negotiated and issued in Missouri; Doney is a Missouri resident and primarily drives in Missouri; and performance under the policy occurred in Missouri. Based on those factors, the Court concludes, as do the parties, that Missouri law governs the interpretation of the policy.[1]

However, under Missouri law, insurance policies are contracts and the ordinary rules of contract construction apply. Blair ex rel. Snider v. Perry Cty. Mut. Ins. Co., 118 S.W.3d 605, 606 (Mo. 2003) (en banc). Missouri courts give an insurance policy its plain meaning. Allen v. Cont'l W. Ins. Co., 436 S.W.3d 548, 554 (Mo. 2014) (en banc). If language in the policy is "reasonably open to different constructions," that language is considered ambiguous and courts will resolve the ambiguity in favor of the insured. Id. But if the language is unambiguous, Missouri courts "do not resort to canons of construction." Id.

[1] The Court is not aware of any case within the Tenth Circuit that has squarely addressed this issue. But other courts have applied this reasoning. For example, in Stern v. AAA Mid-Atlantic Insurance Co., 147 F. Supp. 3d 341 (E.D. Pa. 2015), the court concluded that the interpretation of an identical phrase was a matter of contract interpretation rather than a choice-of-law question.

Here, the Court concludes that the language in the Safeco policy is unambiguous. The policy states that Safeco 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." The Missouri Supreme Court has noted that the purpose of uninsured motorist coverage "is to take the place of the liability coverage the insured would have received had he or she been involved in an accident with an insured motorist." Floyd-Tunnell v. Shelter Mut. Ins. Co., 439 S.W.3d 215, 220 (Mo. 2014) (en banc). That principle extends to underinsured motorist coverage too. The purpose of underinsured motorist coverage is to take the place of liability coverage the insured would have received if she had been involved in an accident with an adequately insured motorist. In that sense, the insurer steps into the shoes of the at-fault driver, and the insurer's contractual liability derives from the at-fault driver's tort liability.[2]

Because the accident occurred in Colorado, Colorado law will govern the at-fault driver's tort liability. Thus, the determination of damages under Colorado law will govern Safeco's contractual liability. To apply Missouri law instead would be to manufacture a fictional Missouri accident. That would run contrary to the plain language of the policy. The policy states that Safeco will pay damages that Doney "is legally

[2] Doney identifies several courts that have reached the same conclusion. See, e.g., Stern, 147 F. Supp. 3d at 345 ("[T]he terms of the Policy defining UIM liability are clear and unambiguous; Plaintiffs' right to UIM recovery is derivative of the liability of the owner or operator of the underinsured motor vehicle . . . ."); Willet ex rel. Willet v. Allstate Ins. Co., 359 F. App'x 349, 351 (3d Cir. 2009) (unpublished) ("[The insurer's] contractual liability, as established by the provisions of its policy, is derivative of [the at-fault driver's] tort liability."); State Farm Mut. Auto. Ins. Co. v. Krewson, 764 F. Supp. 1012, 1014 (E.D. Pa. 1991) ("The purpose of uninsured/underinsured coverage is to enable the insured to recover under his policy of insurance for damages for which the negligent motorist is legally liable.").

entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury." That language does not contemplate hypothetical recovery from a hypothetical Missouri driver. Instead, it plainly contemplates actual recovery from the actual at-fault driver for an actual accident that occurred in Colorado. That amount of recovery can only be determined by applying Colorado law.

III. Conclusion

Therefore, the Court GRANTS Plaintiff's Rule 56 motion for partial summary judgment and concludes that Colorado law will control the amount that Plaintiff is legally entitled to recover from the at-fault driver under the Safeco insurance policy.

DONE AND SIGNED this 1st day of October, 2019.

BY THE COURT:

s/ David M. Ebel

U. S. Circuit Court Judge