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COBB COUNTY, GA
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DIANE B. WEBB
STATE COURT CLERK-02

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

STEFANIE VENABLE,)
)
Plaintiff,)
)
v.)
)
CON-ROC CORPORATION AND)
KATHERINE A. STURGIS,)
)
Defendant.)

CIVIL ACTION FILE
NUMBER: 12A77-3

ORDER ON MOTION FOR SUMMARY JUDGMENT FILED BY
GEICO GENERAL INSURANCE COMPANY

The court has considered the motion for summary judgment filed by Geico General Insurance Company, ("Geico"), all responses, briefs, arguments, evidence before the court, and matters of record. The motion is GRANTED.

The evidence has been construed most favorably to the non-movant plaintiff.

This is a personal injury lawsuit filed January 10, 2012 arising from a vehicular collision on July 4, 2010. Plaintiff seeks damages from defendants for her injuries she contends were proximately caused by defendants' negligence.

Plaintiff had uninsured-underinsured motorist ("UM") coverage under a policy with Geico, and she also served Geico with the complaint and summons.

On or about June 14, 2011 plaintiff's counsel made plaintiff's first written notice to Geico that plaintiff had been involved in a collision on July 4, 2010 and intended to make a claim under her UM policy.

Geico sent plaintiff's counsel three letters: (1) June 28, 2011, a Reservation of Rights Letter stating that plaintiff had not complied with the notice provisions of her policy and, therefore, was not entitled to UM coverage for the injuries she allegedly sustained in the July 4, 2010 incident; (2) July 12, 2011, a second letter restating and renewing its first letter; and (3) July 22, 2011, a Qualified Denial letter.

Geico argues in this motion that the notice requirement in its policy is a condition precedent to coverage and that plaintiff failed to comply with the notice requirement by waiting until eleven months after the incident to notify Geico. Geico further argues that the notice was not timely as a matter of law and that plaintiff is not entitled to UM coverage for damages she sustained in the subject incident.

Defendant contends notice was given to Geico as soon as possible and that any delay in notification was justified because plaintiff did not think there was a need

to notify her insurer until she saw her attorney¹.

Plaintiff had been a passenger in a van owned by a third party and was not aware until she saw her attorney that she would have any coverage on her own policy since she was not in her own vehicle. Plaintiff had thought that only the insurance of the defendants, whom she considered to be at fault, and the insurance on the van in which she was a passenger would offer any coverage.

Pertinent parts of the Geico policy relating to UM coverage provide that Geico "will pay compensatory damages for bodily injury and property damage caused by an accident which the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle or hit-and-run auto arising out of the ownership, maintenance or use of that motor vehicle as a motor vehicle."

The policy also provides:

"CONDITIONS

The following conditions apply only to the Uninsured Motorists Coverage:

1. NOTICE

As soon as possible after an accident notice must be given us or our authorized agent stating:

- (a) The identity of the insured,
- (b) The time, place and details of the accident;
- (c) The names and addresses of the injured, and of any witnesses."

¹ It is not known when plaintiff first saw an attorney.

The policy further provides:

"3. ACTION AGAINST US

Suit will not lie against us unless the insured or his legal representative has fully complied with all policy terms.

4. PROOF OF CLAIM AND MEDICAL REPORTS

As soon as possible, the **insured** or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of injuries, treatment, and other facts which may affect the amount payable.

Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us: at our expense, as we may reasonably require. In the event of the **insured's** incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records."

"An insurance policy is simply a contract, the provisions of which should be construed as any other type of contract. The construction of an unambiguous contract is a question of law for the court." Lankford v. State Farm Mutual Automobile Insurance Co., 307 Ga. App. 12 (2010), cert. denied, S11C0544, September 6, 2011.

In this case, plaintiff's policy with Geico required that plaintiff must give notice to Geico or its authorized agent, as soon as possible after an accident, stating the name of the insured, the time, place and details of the

accident, and the names and addresses of the injured and any witnesses. Additionally, the policy requires notice as a condition of insurance and that there is no right of action against Geico unless there is compliance with the policy's terms.

The point from which time begins running to give the notice is from the time of the accident, not from the time in which plaintiff discovered that coverage was available under the policy. Lankford at 14; Manzi v. Cotton States Mutual Ins. Co., 243 Ga. App. 277, cert. denied September 28, 2000.

The court is aware that the "jury generally determines whether the excuse or justification was sufficient and whether the insured acted diligently in giving the notice according to the nature and circumstances of each individual case. (cite omitted). An unexcused significant delay in notifying an insurer...may be unreasonable as a matter of law. (cite omitted). Allstate Insurance Co. v. Walker, 254 Ga. App. 315.

The language "as soon as possible after an accident" in the Geico policy is closely akin to the language "as soon as reasonably possible" in the Lankford case.

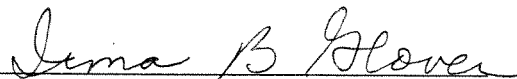
"While the language 'as soon as reasonably possible' affords some leeway in providing notice of a claim or suit or occurrence to an insurer, a lengthy, unjustifiable delay may be found as a matter of law to be so unreasonable as to foreclose coverage." Lankford at 15.

A one year long delay has been found unreasonable. Allstate Insurance Co. v. Walker, 254 Ga. App. 315. A ten month delay has been so found where insured was unsure which company provided coverage. Snow v. Atlanta International Insurance Company, 182 Ga. App. 1.

The court finds plaintiff's eleven month delay in providing notice was unreasonable. Plaintiff's reason for timing of the notice has been rejected in other cases as a justifiable excuse. Plaintiff was not unaware of her "accident" or her injuries or that she may have a claim against defendants. She simply claims unawareness of the coverage or provisions of her own policy.

The court finds that not knowing that her policy with Geico would provide coverage until she talked to her attorney does not provide a justifiable excuse to delay notice for eleven months.

SO ORDERED, This 15th day of March, 2013.


IRMA B. GLOVER, JUDGE
STATE COURT OF COBB COUNTY

CERTIFICATE OF SERVICE

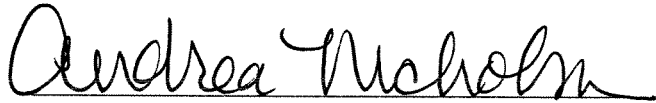
This is to certify that I have this date served counsel and other interested parties in the within and foregoing matter with a copy of the **ORDER**, dated the 15 day of MARCH 2013 by depositing a copy in the regular United States Mail in a properly addressed envelope with adequate postage thereon addressed as follows:

PETER M. BLACKFORD, ESQ.
4493 AUSTELL ROAD
AUSTELL, GA 30106

J. ROBB CRUSER, ESQ.
275 SCIENTIFIC DRIVE
MERIDIAN II, SUITE 2000
NORCROSS, GA 30092

JAMES W. HARDEE, ESQ.
100 GLENRIDGE POINT PARKWAY
SUITE 500
ATLANTA, GA 30342

This 15 day of MARCH, 2013.



Andrea Nicholson
Judicial Administrative Specialist
to Irma B. Glover, JUDGE
State Court of Cobb County

