

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

STATE FARM MUTUAL AUTOMOBILE	:	JULY TERM, 2004
INSURANCE COMPANY,	:	
	:	No. 03382
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 040169
AMERICAN INDEPENDENT INSURANCE	:	
COMPANY, and JOSE DELEON,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of July, 2005, upon consideration of plaintiff's Motion for Summary Judgment, the response in opposition, the briefs in support and opposition, all other matters of record, and in accord with the Opinion issued contemporaneously with this Order, it is **ORDERED** that said Motion is **DENIED**.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**

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**OPINION**

**ALBERT W. SHEPPARD, JR., J. .... July 11, 2005**

Presently before the court is a Motion for Summary Judgment filed by plaintiff State Farm Mutual Automobile Insurance Company (“State Farm”). For the reasons discussed, the court denies the Motion.

**BACKGROUND**

Defendant, American Independent Insurance Company (“AIIC”) issued an automobile insurance policy to defendant Jose DeLeon. AIIC is licensed to do business in Pennsylvania. DeLeon is a resident of Pennsylvania, and the policy was issued to him in Pennsylvania. On or about October 6, 2002, DeLeon’s car was involved in an accident in New York State with a car owned by Sandra Faison Miller and driven by Nikki Faison-Miller. Both of the Millers are New York residents, and the car was insured by State Farm in accordance with New York law. At the

time of the accident, Jose Pena was driving DeLeon's car. Pena did not show a valid driver's license to officials at the site of the accident. As a result of the accident, Nikki Faison-Miller filed a claim with State Farm, and State Farm, in the present action, seeks coverage from AIIC for that claim.

## **DISCUSSION**

State Farm filed this Motion, alleging that DeLeon is vicariously liable for any claims arising from Pena's negligent use of DeLeon's car, and therefore, that AIIC, as DeLeon's insurer, owes liability coverage for the accident. Summary Judgment is appropriate where there is no genuine issue of any material fact which is a necessary element of the cause of action. *See* Pa. R. Civ. P. 1035.2. In reviewing this Motion the court must "view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Ertel v. Patriot-News Co.*, 544 Pa. 93, 98-99, 674 A.2d 1038, 1041 (1996).

### **I. Pennsylvania Law Applies In This Matter.**

State Farm and AIIC dispute whether New York law or Pennsylvania applies in this matter. However, under Pennsylvania choice of law rules, it is clear that

[i]n this contract case, the state having the most vital contacts with the policy of insurance involved is [Pennsylvania.] The policy was issued in [Pennsylvania by AIIC] to a resident of [Pennsylvania]. It was issued for the twofold purpose of giving insurance protection to [DeLeon] and others as set forth in the policy, and to comply with the requirements [of Pennsylvania law]. No matter where [DeLeon] drove his car or gave consent to others to operate his vehicle, he had the right to expect that his policy conformed to [Pennsylvania] law and that the laws of [Pennsylvania] would apply in interpreting the policy. [New York] had no contact with the transaction involving the insurance policy. It was by mere happenstance that the automobile was involved in an accident while located in [New York]. . . .The site of the accident is purely fortuitous. . . . [State Farm] argues that [New York] had the most significant contacts because. . . the accident occurred in [New York and Ms. Miller is New York resident, but State Farm] overlooks the fact that these points of contact with [New York] pertain to the

alleged tort involved. We are concerned with the contract of insurance and as to the insurance policy [Pennsylvania] had the most significant contacts.

*Nationwide Mut. Ins. Co. v. Walter*, 290 Pa. Super. 129, 137-138, 434 A.2d 164, 167-168 (1981).

## **II. Summary Judgment Is Inappropriate Because There Are Still Disputed Issues of Material Fact To Be Resolved.**

Under Pennsylvania law, no person shall authorize or permit a motor vehicle owned by him to be operated by any person who is not licensed to drive it. *See* 75 Pa. C.S. § 1574(a). Any person who does so is liable, jointly and severally with the driver, for any damage caused by negligent operation of that vehicle. *Id.* at § 1574(b). However, in order for the owner of the vehicle to be liable for the driver's actions, the owner must have known or had reason to know that the driver was unauthorized by law to drive. *See Shomo v. Scribe*, 546 Pa. 542, 547, 686 A.2d 1292, 1295 (1996); *Burkholder v. Genway Corp.*, 432 Pa. Super. 36, 41, 637 A.2d 650, 653 (1994).

Although State Farm alleges that Pena was a permissive, unlicensed driver of DeLeon's car, there is no proof of this because apparently neither DeLeon nor Pena has been deposed in this action.<sup>1</sup> As a result, there exist unresolved issues of fact that preclude the granting of summary judgment, *i.e.* whether Pena was in fact an unlicensed driver at the time he was involved in the accident, and if so, whether DeLeon allowed Pena to use DeLeon's car knowing, or with reason to know that Pena lacked a valid drivers' license. Once those issues of fact are resolved, the court must then decide whether the policy that AIIC issued to DeLeon provides coverage for the accident.

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<sup>1</sup> AIIC alleges that DeLeon and Pena have breached their duty to cooperate with AIIC and therefore that AIIC may disclaim coverage. In order to do so, AIIC must prove not only that the insured failed substantially to cooperate in the insurer's investigation and defense of the claim, but also that the insurer suffered prejudice as a result. *See Forest City Grant Liberty Assocs. v. Genro II, Inc.*, 438 Pa. Super. 553, 559, 652 A.2d 948, 951(1995). "Whether there has been a material breach of the insured's duty to cooperate is an issue for the finder of fact to decide." *Id.*

## **CONCLUSION**

For the forgoing reasons, State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment is denied. The court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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**ALBERT W. SHEPPARD, JR., J.**