

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>ELHAM BEHZAD</b>	)	
Plaintiff,	)	
	)	
v.	)	Case No. CA 2021-003365 B
	)	
<b>THE CINCINNATI INSURANCE COMPANIES</b>	)	
	)	
and	)	
	)	
<b>MARVIN HARVISON</b>	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANT CINCINNATI INSURANCE COMPANIES’  
MOTION TO DISMISS**

COMES NOW Plaintiff, by counsel, and files this, her Memorandum in Opposition to Defendant Cincinnati Insurance Companies’ Motion to Dismiss, and in support thereof, states as follows:

**A. Summary of Argument**

Defendant Cincinnati Insurance Companies (“Cincinnati”) seeks dismissal because Plaintiff has failed to provide “any factual allegations” supporting her breach of contract claim and has improperly sued “in both tort and contract.” (Def’s Memorandum at pp 3-4). Without actually addressing the applicable case law, Defendant further confuses the issue by suggesting that Plaintiff is suing Cincinnati under the Unfair Claims Act. She is not; but its not a bad idea.

The District of Columbia allows a Plaintiff to bring a direct action against her insurer in a UIM case. *Allstate Insurance Company v. Ramos*, 782 A.2d 280 (D.C. 2001)(Plaintiff was not

required to join actual tortfeasor in his UIM contract claim against insurer). As the District of Columbia is a notice pleading state, Plaintiff has sufficiently pled the elements of both a breach of contract and UIM claim. In fact, as there is also a UIM claim against John Doe, it would be impossible to litigate this case without including Cincinnati as a party.

## **B. Argument**

### **1. The District of Columbia Permits Direct UIM Claims Against Insurers**

Defendant conveniently fails to inform this Court of binding precedent that directly contradicts their position. While some states do not allow direct actions against insurers, a majority of states<sup>1</sup> and the District of Columbia, permit such claims. *Allstate Insurance Company v. Ramos*, 782 A.2d 280 (D.C. 2001); *Contech v. Allstate Ins. Co.*, 782 A.2d 748 (D.C. 2001)(Noting that Virginia's law against direct claims, which is based on statute, represents a minority view adopted by only a few states).

Although not addressed by Defendant's Motion, Plaintiff was a resident of Maryland at the time of the accident. Since Maryland also allows direct claims against UIM insurers, a choice of law analysis is unnecessary.<sup>2</sup>

---

<sup>1</sup> *State Farm Mutual Automobile Ins. Co., Inc. v. Griffin*, 51 Ala.App. 426, 286 So.2d 302, 305 (1973); *Transnational Ins. Co. v. Simmons*, *supra*; *Hartford Accident & Indem. Co. v. Warren*, 246 Ark. 323, 438 S.W.2d 31 (1969); *Indiana Ins. Co. v. Noble*, 148 Ind.App. 297, 265 N.E.2d 419, 432 (1970); *Winner v. Ratzlaff*, 211 Kan. 59, 505 P.2d 606 (1973); *Puckett v. Liberty Mut. Ins. Co.*, 477 S.W.2d 811 (Ky.App.1972); *Harthcock v. State Farm Mut. Auto. Ins. Co.*, 248 So.2d 456 (Miss.1971); *Hill v. Seaboard Fire & Marine Cas. Ins. Co.*, 374 S.E.2d 606 (Mo. App. 1963); *Selected Risks Ins. Co. v. Dierolf*, 138 N.J.Super. 287, 350 A.2d 526 (1975); *Travelers Indemnity Co. v. Debose*, Sup., 226 N.Y.S.2d 16 (1962); *Wright v. Fidelity and Cas. Co. of New York*, 270 N.C. 577, 155 S.E.2d 100, 105, 107 (1967); *Associated Indem. Corp. v. Cannon*, 536 P.2d 920 (Okl.1975)(Insured may sue UIM insurer directly, without first obtaining a judgment).

<sup>2</sup> *King v. State Farm Mutual Automobile Insurance*, 157 Md. App. 287, 850 A.2d 428 (2004)(In UIM case involving State Farm, the trial court committed reversible error in concealing State Farm's identity and role in the case).

## **2. Plaintiff has Sufficiently Pled a Breach of Contract Claim**

A complaint can be dismissed under Rule 12(b)(6) if it does not satisfy the pleading standard in Rule 8(a). Rule 8(a) only requires that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>3</sup>

Plaintiff has alleged more than sufficient facts to support a breach of contract claim in the District. The essential elements including a valid contract, defendant’s breach of its obligations and resulting damages, are all properly alleged in paragraphs thirteen through seventeen. *Qualls v. Rumsfeld*, 357 F.Supp.2d 274 (D. D.C. 2005)(In a breach of contract action, Plaintiff must allege the existence of valid contract, a breach of defendant’s obligations thereunder and resulting damages).

A trial court should be circumspect in assessing the sufficiency of a complaint in any case where the substantive legal standard requires a fact-intensive inquiry. See *Hornstein v. Barry*, 560 A.2d 530, 537–38 (D.C.1989). Here, without reference to the actual UIM contract terms, the Court is not able to adjudicate the merits of this dispute. That is the role of a jury.

## **3. Defendant’s Arguments Misconstrue the Nature of Plaintiff’s Simple UIM Claim**

In an attempt to muddy clear waters, Defendant argues that it is “unclear under what specific legal standard Behzad attempts to put forth her claims against Cincinnati Insurance.” (Def’s Mem. at 3). However, any fair reading of the complaint makes it clear that it was Defendant’s alleged failure to honor their “contractual” obligations under Plaintiff’s UIM “insurance policy” that forms the basis for her claim. (Complaint, ¶¶ 14-17). If Cincinnati had actually answered the complaint, it would have likely admitted these facts.

---

<sup>3</sup> Rule 8(a) mirrors Rule 8(a) of the Federal Rules of Civil Procedure. Consistent with the requirement of D.C. Code § 11-946, a trial court should “construe rules that are substantially identical to the corresponding federal rule in light of the meaning given to the federal rule.” *Behradrezaee v. Dashtara*, 910 A.2d 349, 356 n. 8 (D.C.2006).

In a further attempt to complicate a simple pleading, Defendant suggests that Plaintiff is attempting to allege a breach of statutory obligations under D.C. Code § 31-2231.17.<sup>4</sup> While Defendant's failure to make any offer on a UIM claim they accepted responsibility for after nine months might qualify for relief under the Act, Plaintiff has not even referenced the statute nor filed an administrative proceeding.

#### **4. It would be Impossible to Litigate this Case without Cincinnati**

The Defendant driver, Marvin Harvison, was uninsured and criminally prosecuted for this accident due to his alleged drug impairment. His participation in this case is unlikely.<sup>5</sup> At the scene of the accident Mr. Harvison blamed a phantom vehicle for causing the accident, which necessitated the filing of a John Doe claim. Cincinnati is obligated to defend the John Doe claim and protect their UIM interests in the underlying claim against Defendant Harvison. In fact, Plaintiff was required to provide notice to Cincinnati of this UIM claim and an opportunity to defend its interest, or Cincinnati would have denied coverage under their policy.

#### **C. Conclusion**

In determining whether a complaint states a plausible claim for relief a trial court should draw on its own judicial experience and common sense. *D. Potomac Dev. Corp. v. Dist. of D.C.*, 28 A.3d 531 (D.C. 2011). In this Court, UIM claims are commonly brought directly against insurers and there is no precedent supporting their dismissal. In their Motion Cincinnati seeks to be "released from this action." (Def's Mem. at p. 5). The granting of such relief would only

---

<sup>4</sup> The Unfair Claim Settlement Practices Act allows one to file an administrative proceeding for *inter alia*, unreasonable delays in the investigation or payment of claims or compelling an insured to file suit to recover amounts due and owing under its policy.

<sup>5</sup> To date Plaintiff has been unable to track down Defendant Harvison and has recently requested this Court extend the 60-day service deadline so she can continue her search.

interject reversible error in this matter and further delay the resolution of Ms. Behzad's UIM claim.

Prior to filing this Motion to Dismiss, defense counsel, who is based in Virginia, was informed by Plaintiff's counsel of the status of the law in the District, as allowing direct UIM claims against insurers. Rather than allege a good faith basis for changing the current law, Defendant chose simply to ignore it.

Wherefore, these and other premises considered, Plaintiff moves this Court for an order denying Defendant's Motion to Dismiss. A proposed order is attached.

Dated: November 17, 2021

Respectfully submitted, Plaintiff,  
By Counsel,

---

Jeffrey J. Downey (DC Bar 427010)  
The Law Office of Jeffrey J. Downey, P.C.  
8270 Greensboro Drive, Suite 810  
McLean, VA 22102  
Phone: 703-564-7318  
Fax: 703-883-0108  
e-mail: [jdowney@jeffdowney.com](mailto:jdowney@jeffdowney.com)  
*Attorney for Plaintiff*

#### **Certificate of Service**

I hereby certify that on this 17<sup>th</sup> day of November, 2021, this Memorandum in Opposition to Defendant's Motion to Dismiss was served upon the defendant Cincinnati Insurance Companies, by sending an electronic copy, to the following:

Rebecca Dannenberg  
Franklin & Prokopik  
2325 Dulles Corner Blvd  
Herndon, VA 20171  
Counsel for Defendant Cincinnati Insurance Companies

I hereby certify that on this 17<sup>th</sup> day of November, 2021, counsel mailed a copy of this Memorandum in Opposition to Defendant's Motion to Dismiss to defendant Marvin Harvison, as his last known address:

Marvin Harvison  
3308 6<sup>th</sup> Street, SE  
Washington DC 20032  
Pro Se

---

Jeffrey J. Downey

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<b>ELHAM BEHZAD</b>	)	
Plaintiff,	)	
	)	
v.	)	Case No. CA 2021-003365 B
	)	
<b>THE CINCINNATI INSURANCE COMPANIES</b>	)	
	)	
and	)	
	)	
<b>MARVIN HARVISON</b>	)	
	)	
	)	
Defendants.	)	
	)	

**ORDER**

THIS MATTER comes before the Court this day on Defendant Cincinnati Insurance Companies’ Motion to Dismiss Counts II and III of Plaintiff’s complaint and be dismissed from this case as a Party;

Upon review of the legal memoranda of the Parties, the Court finds that Plaintiff has sufficiently pled a breach of Cincinnati Insurance Companies’ UIM contractual obligations under Counts II and III. As direct actions are permitted against Uninsured Motorists in the District of Columbia, there is no basis to dismiss Defendant Cincinnati Insurance Companies from this case. It is hereby,

ORDERED that Defendant Cincinnati Insurance Companies’ Motion to Dismiss is hereby denied.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon. Judge Fern Flanagan Saddler

cc:

Jeffrey J. Downey  
Law Office of Jeffrey J. Downey, PC  
8270 Greensboro Drive, Suite 810  
McLean, VA 22102  
Phone 703-564-7357  
Email: jdowney@jeffdowney.com  
*Counsel for Plaintiff*

Rebecca Dannenberg  
Franklin & Prokopik  
2325 Dulles Corner Blvd  
Herndon, VA 20171  
Phone: 571-612-5936  
Email: rdannenberg@fandpnet.com  
*Counsel for Defendant Cincinnati Insurance Companies*

Marvin Harvison  
3308 6<sup>th</sup> Street, SE  
Washington DC 20032  
*Pro Se*