IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

UNITED FIRE AND CASUALTY COMPANY, Plaintiff, vs. FENTON CONSTRUCTION, INC.; AD LLC; AND CASEY FENTON, Defendants.	NO. LACV172878 AMENDED RULING
FENTON CONSTRUCTION, INC.; AD LLC; AND CASEY FENTON, Counterclaimants, vs. UNITED FIRE AND CASUALTY COMPANY, Defendant to Counterclaim.	

Now on this 7th day of July, 2017, the above matter comes before the court. The plaintiff appeared through counsel Mr. Chozen. The defendants appeared through counsel Mr. Stoos. The matter was reported.

Pending before the Court are cross Motions for Summary Judgment in this declaratory judgment action.

On March 24, 2016, Casey Fenton was operating a 2015 Ford F350 Super Duty pickup owned by AD LLC. A collision with another vehicle occurred. Mr. Fenton

sustained injuries. Mr. Fenton made a claim against the third-party tortfeasor and recovered damages. He then asserted a claim against United Fire for underinsured motorist benefits.

United Fire filed this declaratory judgment action alleging that Mr. Fenton did not have any underinsured coverage for the March 24, 2016, accident because the particular vehicle he was driving was owned by AD LLC but was not an insured vehicle.

Fenton Construction Inc. and AD LLC had purchased insurance covering their multiple vehicles through Central Insurance Agency/Cochran-Bray for years. The undisputed facts set out in both parties' motions set out the details as to why the vehicle Mr. Fenton was driving a March 24, 2016, was not covered under the policies. United Fire maintained that the "owned-but-not-insured" exclusion under the policy precluded underinsured coverage for Mr. Fenton's injuries arising out of the accident of March 24, 2016.

In its motion, United Fire maintained that the only issue before the Court in this declaratory judgment action was the validity of United's claim that the vehicle driven by Mr. Fenton was not covered under the insurance policy for the reasons previously stated. United asserted that any allegations by the defendants relative to the fault of Cochran-Bray, the agent handling the defendant's insurance at the Central Insurance Agency, are not relevant to the issue of whether Mr. Fenton had underinsured motorist coverage for the injuries sustained in the accident of March 24, 2016. United Fire maintained that any issues of fault Central Insurance Agency/Cochran-Bray should be addressed in a separate action wherein Mr. Fenton, the plaintiff, and Central Insurance Agency/Cochran-Bray, as well as United Fire would be the defendants. United Fire

maintained that in such proceeding, Cochran-Bray's alleged negligent conduct would be compared to any alleged negligent conduct of Mr. Fenton.

United Fire admitted that Central Insurance Agency/Cochran-Bray was their agent for the purposes of procuring insurance for their clients from United Fire.

The defendants, in their answer to the declaratory judgment action, filed a counterclaim alleging that United Fire was required to provide underinsured coverage for Mr. Fenton's injuries because of the alleged negligent failure of Central Insurance Agency/Cochran-Bray to procure the policy that would have provided such coverage in regards to the vehicle Mr. Fenton was driving the time the accident. The defendants maintain that Untied Fire was liable for any negligence of Central Insurance Agency/Cochran-Bray under the principle of respondeat superior.

The defendants also claimed that United Fire was estopped from denying coverage because of the alleged negligent failure of the insurance agengy/Cochrah-Bray to procure the policy for the subject vehicle.

The Court discussed the above positions of the parties with counsel. At the conclusion of its discussion, counsel for all parties agreed that there was no underinsured motorist coverage for Mr. Fenton in regards to the March 26 accident because the vehicle he was operating was an owned but not insured vehicle as that term is used in the insurance policy covering the other vehicles owned by the defendants. Mr. Chozen admitted that United Fire admits that Central Insurance Agency/Cochran-Bray is an agent of United Fire and that it would be liable for the agent's alleged negligent failure to procure the policy in question so long as the agent's negligence was 50% or greater of the total negligence.

Both counsel agreed that the issue of whether or not the agent and/or the insured were negligent in regards to the failure to procure the coverage for the vehicle that Mr. Fenton was operating at time of the accident needs to be submitted to a jury in a separate proceeding brought by the defendants against the insurance agency, Cochran-Bray, and United Fire.

Both counsel agreed that if the factfinder determines that the insurance agency/Cochran-Bray was negligent and such negligence was 50% or greater of the total negligence when comparing the actions of the insurance agency/Cochran-Bray and the insured, United Fire would be liable under the theory of respondeat superior for Mr. Fenton's claim for negligent failure to procure a policy that would have provided underinsured coverage for Mr. Fenton for the March 24, 2016, accident.

Both counsel agreed that United Fire has not admitted that the insurance agency/Cochran-Bray was negligent or that the insured was not at fault in regards to the transaction and that said issues will be resolved in a subsequent action as described above.

Both counsel admitted that the Court could enter an order granting United Fire's Motion for Summary Judgment on the grounds that the policy issued to the defendants does not provide underinsured's motorist coverage for Mr. Fenton in regards to the accident in March 26, 2016, and that if a subsequent action it is determined that the insurance agency/Cochran-Bray's alleged negligence was 50% or greater of the total negligence, then United Fire would be liable for the appropriate amount of damages under the theory of respondeat superior.

IT IS THEREFORE ORDERED that United Fire's insurance policy issued for the

defendants' vehicles did not provide underinsured motorist coverage for Mr. Fenton because the vehicle he was driving was an owned-but-not-insured vehicle and coverage is precluded under the provisions of the policy.

IT IS FURTHER ORDERED that in the event of any subsequent proceeding the insurance agency/Cochran-Bray is found to be negligent and his negligence is 50% or greater of the total negligence when compared to the actions of the insured, that United Fire is liable for the damages sustained by Mr. Fenton pursuant to the comparative fault provisions of Iowa law.

IT IS FURTHER ORDERED that the costs of this action are assessed equally as between the plaintiff and the defendant.

IT IS FURTHER ORDERED that this Order shall replace the Court's order filed July 7, 2017.

SO ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACV172878	UNITED FIRE & CASUALTY V. FENTON CONSTRUCTION ETAL

So Ordered

John D Ackerman

John D. Ackerman, District Court Judge, Third Judicial District of Iowa