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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. L-5379-20

YONY LIRIANO, JR.,

Plaintiff,

v.

LIBERTY MUTUAL
INSURANCE COMPANY,

Defendant.

APPROVED FOR PUBLICATION

July 11, 2022

COMMITTEE ON OPINIONS

Decided: March 22, 2021

Robert H. Baumgarten, for plaintiff (Ginarte Gallardo Gonzalez Winograd LLP, attorneys).

Meagan McElroy Nardone, for defendant (Lamb Kretzer, LLC, attorneys).

PASSAMANO, J.S.C.

This matter comes before the court by way of a motion for summary judgment filed by defendant Liberty Mutual Insurance Company. The court has considered the pleadings and papers filed in support of and in opposition to that motion and has heard oral argument of counsel. Following are the court's findings of fact and conclusions of law.

I.

The facts necessary for consideration of defendant's motion are largely uncontested. Those facts show that on October 10, 2016, plaintiff was involved in an automobile accident, which led to the filing by him of two lawsuits. The first was filed on May 2, 2018, in New Jersey Superior Court, Union County. In the Union County suit, plaintiff sought relief against the tortfeasor and, as plaintiff believed at the time that the tortfeasor was uninsured, he asserted a claim against Liberty Mutual (defendant) for uninsured motorist (UM) coverage. The policy plaintiff sued under contained provisions for both UM and underinsured motorist (UIM) coverage.

A.

In his complaint in Union County, plaintiff alleged that:

FIRST COUNT

1. On or about December 10, 2016, Plaintiff Yony Liriano, Jr., was a passenger in the motor vehicle owned by Nissan Infiniti LT and operated by Vanessa Guevara that was parked on Cherry Street in the city of Elizabeth, in the County of Union, in the State of New Jersey.

2. On the same date, Carlos Munoz-Rendon, was the operator of the motor vehicle owned by Guadalupe Landscaping that was traveling through 3143 Route 10 East towards Sunoco Gasoline Station in the city of Denville, in the County of Morris, in the State of New Jersey.

....

5. Defendant's[,] Carlos Munoz-Rendon, vehicle struck the motor vehicle in which the Plaintiff was a passenger from behind.

6. As a direct and proximate result of the aforesaid negligence of the Defendant, Carlos Munoz-Rendon, the Plaintiff has suffered severe and permanent injuries, suffered and in the future will suffer great pain and distress, was caused to curtail his usual activities and pursuits, and has and will incur medical expenses and has and will incur lost wages.

....

FIFTH COUNT

....

3. Defendant, Liberty Mutual Insurance Company under policy . . . , provided uninsured motorist (UM) benefit coverage for the Plaintiff, Yony Liriano, Jr., on the date of the accident.

4. Plaintiff made proper demand for uninsured motorist (UM) benefits coverage of the defendant Liberty Mutual Insurance Company, which has been unlawfully denied by said defendant.

....

WHEREFORE, Plaintiff, Yony Liriano, Jr., demands judgement against all of the Defendants including Liberty Mutual Insurance Company for an Order compelling uninsured motorist (UM) benefits to be resolved by way of Trial, or alternatively, on consent of all parties, by way of UM Arbitration

As it turned out, and contrary to plaintiff's initial belief, the tortfeasor was insured and counsel that was provided by the insurance carrier filed an answer in the Union County suit. Defendant then requested a stipulation of dismissal, as it was apparent that there was no basis to continue the claim for UM coverage - the only claim asserted. Plaintiff did not agree to that request. In fact, during the entirety of the Union County suit, plaintiff neither stipulated to dismissal of his UM claim, nor sought to amend his complaint to assert a UIM claim.

On November 13, 2019, while the Union County suit was pending, plaintiff sent to defendant a "Longworth notice"¹ concerning a proposed settlement with the tortfeasor. In relevant part, the notice stated that:

The accident described above resulted in a lawsuit. We have recently received a settlement offer from the tortfeasor's insurer, Progressive, in the amount of \$26,000.00 to settle the bodily injury claim of Yony Liriano, Jr., although there is \$29,000 in benefits remaining on that policy. It is our present intention to accept the \$26,000.00 in exchange for providing the tortfeasor with a General Release and then to proceed with the UIM claim. I enclose herein a copy of the plaintiff's answers to interrogatories for your review.

We ask that you review [Longworth v. Van Houten], 223 N.J. Super. 174 (App. Div. 1988), and choose among the following options with respect to the offer of settlement we received

¹ Referred to as such based on the Appellate Division's opinion in Longworth v. Van Houten, 223 N.J. Super. 174 (App. Div. 1988).

....

Please provide a response to this letter within thirty (30) days of receipt hereof. If we fail to hear from you within that time as to either (1) your decision of (2) a request for additional time to evaluate the situation, and your potential for subrogation, we will extend a general Release and proceed with our client's Uninsured Motorist claim.

On December 26, 2019, before it had responded to the Longworth notice, defendant moved for summary judgment in Union County seeking dismissal of plaintiff's claims. That motion was granted on February 28, 2020.² In granting defendant's motion, the court held that:

This motion is unopposed. Defendant Liberty Mutual provided potential UM benefits to Plaintiff as the insurer for the vehicle Plaintiff was occupying at the time of the accident. However, Defendant Munoz-Rendon's carrier has stepped in and there is no longer a cognizable UM claim in the absence of an uninsured motorist. Therefore, Defendant Liberty Mutual's motion for summary judgment is hereby granted.

² In the Union County suit, plaintiff named, among others, Liberty Mutual Mid-Atlantic Insurance Company and Liberty Mutual Insurance Company. In this suit, plaintiff names only Liberty Mutual Insurance Company. In the order granting summary judgment in Union County, the court noted that "LM General Insurance Company [had been] improperly designated as Liberty Mutual Insurance Company." There was no amendment changing any of the parties in that suit, and an answer had been filed in that case for Liberty Mutual Insurance Company. No party in this proceeding has taken the position that the parties in the Union County litigation were different than the parties in this case. Based on the pleadings, defendant herein was a defendant in the Union County suit.

On April 14, 2020, after being dismissed from the Union County suit, but before the suit closed, defendant responded to the plaintiff's Longworth notice as follows:

I am writing to advise you that Liberty Mutual will be waiving its rights of subrogation against the tortfeasor in this case along with the landscaping company which owned the vehicle. We will be extending consent for Mr. Yony Liriano to resolve his liability case at this time.

Please advise as to whether the medical documentation you recently submitted via email . . . represents all of the medical information available on this claim or if I should be awaiting additional information from which to complete my UIM evaluation.

Notwithstanding that the Union County suit remained open at the time, plaintiff did not seek to amend his complaint to assert a UIM claim or take any other action in the suit in which he had named defendant as a party. Approximately two months later, on June 18, 2020,³ the Union County suit was closed.

B.

On August 11, 2020, after summary judgment had been granted in defendant's favor and the Union County suit closed, plaintiff filed his second

³ The court records show the final disposition of the Union County suit. The court takes judicial notice of those records. N.J.R.E. 201(b)(4).

lawsuit, the one now before this court. The complaint includes a certification that “the within action is not the subject of any other action or arbitration proceeding nor is any contemplated.”

In the suit before this court, plaintiff now asserts a claim for UIM coverage. In particular, plaintiff alleges that:

FIRST COUNT

2. On or about December 10, 2016, Plaintiff, Yony Liriano, Jr., was a passenger in the motor vehicle owned by Nissan Infiniti LT and operated by Vanessa Guevara that was parked on Cherry Street in the City of Elizabeth, County of Union, and State of New Jersey.

3. On the same date, Carlos Munoz-Rendon, was the operator of a motor vehicle owned by Guadalupe Landscaping that was traveling on Cherry Street, at or near its intersection with Sayre Street, in the City of Elizabeth, County of Union, and State of New Jersey.

4. The vehicle operated by Defendant Carlos Munoz-Rendon (the “Munoz-Rendon vehicle”) struck the motor vehicle in which plaintiff was a passenger from behind.

5. As a direct and proximate result of the aforesaid negligence, plaintiff has suffered severe and permanent injuries, suffered and in the future will suffer great pain and distress, was caused to curtail his usual activities and pursuits, has and will incur medical expenses and has and will incur lost wages.

6. At the time of the subject accident, the Munoz-Rendon vehicle was insured by Progressive Insurance Company (“Progressive”) under an

automobile policy with limits of \$35,000 combined single limit.

7. At all times herein mentioned, Progressive tendered a substantial portion of the remaining liability limits on behalf of the Munoz-Rendon vehicle.

8. At the time of the subject accident, plaintiff was insured with Liberty Mutual Insurance Company (“Liberty Mutual”).

9. Defendant Liberty Mutual’s policy of insurance contained an underinsured motorist bodily injury clause (UIM/BI) that obligated it to compensate plaintiff for damages in excess of any liability policies otherwise available from Progressive in the underlying bodily injury claim.

10. At the time of the accident, Defendant Liberty Mutual’s endorsement provided for coverage limits of \$100,000 per person/\$300,000 per accident.

11. As a result of the subject accident, plaintiff has sustained damages which exceed the monies already received from Progressive.

12. At all times mentioned herein, Liberty Mutual was formally notified of the UIM/BI claim, and the matter was assigned claim number

13. At all times mentioned herein, in accordance with Longworth[] v. Van Houten[,] 223 N.J. Super. 174 (App. Div. 1988), Defendant Liberty Mutual was advised that Progressive was offering to settle the claim tendering a substantial portion of its policy limits.

14. Defendant Liberty Mutual thereafter gave permission to plaintiff to resolve his claims against Munoz-Rendon and Guadalupe. Upon resolution of the

aforementioned claim, plaintiff attempted to resolve his UIM/BI claim with Defendant Liberty Mutual, but was unsuccessful in do[ing] so.

WHEREFORE, plaintiff demands judgment on this count pursuant to his UIM/BI coverage against Liberty Mutual for damages, interest and costs of suit.

A comparison of the two complaints shows that both arise out of the same October 10, 2016, incident. Both suits also make claims against defendant under a policy of insurance that provided for both UM and UIM coverage.

In the present motion, defendant asserts that plaintiff is barred by the entire controversy doctrine from now asserting a claim for UIM coverage.⁴ Defendant bases that assertion on the fact that plaintiff filed suit in Union County, on the same accident and policy of insurance as the present suit, which suit was concluded by summary judgment on the merits prior to his filing the within litigation. Plaintiff holds to the contrary. Plaintiff argues that the entire controversy doctrine does not apply, that even if the doctrine could apply, its use in this case would be inequitable, and that the Longworth notice

⁴ The court notes that defendant also sought relief under the doctrine of res judicata. Defendant did not, however, assert res judicata as an affirmative defense in its answer as required by the Rules of Court. R. 4:5-4. As such, the court finds that the issue was not properly raised in the present motion. Brown v. Brown, 208 N.J. Super. 372, 384 (App. Div. 1986).

served to preserve the UIM claim against the effect of the entire controversy doctrine.⁵

For the reasons set forth herein, the court finds that the matter is ripe for summary judgment. The court also finds that there are no genuine issues of material fact and that as a matter of law plaintiff's claim is barred by the entire controversy doctrine. As such, the court now grants defendant's motion and dismisses plaintiff's complaint.

II.

A.

Under R. 4:46-1, "[a] party seeking any affirmative relief may, at any time after the expiration of 35 days from the service of the pleading claiming such relief, move for a summary judgment or order on all or any part thereof or as to any defense." When a motion for summary judgment is filed:

The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by

⁵ The exact issue now before the court concerning the application of the entire controversy doctrine with respect to UM and UIM claims in these circumstances has not been the subject of any published opinions from the New Jersey courts.

the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. The court shall find the facts and state its conclusions in accordance with R. 1:7-4.

[R. 4:46-2.]

In considering a summary judgment motion, the court makes a “determination whether there exists a ‘genuine issue’ of material fact” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In making that determination, the court must:

consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” [Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)]. Credibility determinations will continue to be made by a jury and not the judge. If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2. Liberty Lobby, [] 477 U.S. at 250. The import of our holding is that when the evidence “is so one-sided that one party must prevail as a matter of law,” Liberty Lobby, [] 477 U.S. at 252, the trial court should not hesitate to grant summary judgment.

[Ibid.]

This standard requires the trial court to undertake a searching review of the motion record. Id. at 541. This framework ensures that the court does not invade on the province of the jury. Id. at 536-37. “A jury resolves factual, not legal, disputes. If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party on the issue of liability or damages or both.” Id. at 537. In this way, summary judgment serves both to protect the right of “every litigant who has a bona fide cause of action or defense the opportunity to fully expose his case” and to allow litigants to avoid the “expense of protracted litigation” Id. at 541-42 (citing to Robbins v. Jersey City, 23 N.J. 229, 240 (1957)).

The court now considers the facts of this case and application of the entire controversy doctrine in light of the summary judgment standard.

B.

The entire controversy doctrine “seeks to assure that all aspects of a legal dispute occur in a single lawsuit.” Olds v. Donnelly, 150 N.J. 424, 431 (1997). The doctrine requires that “litigants to consolidate their claims arising from a single controversy whenever possible.” Thornton v. Potamkin Chevrolet, 94 N.J. 1, 5 (1983). In this way, the doctrine serves “to encourage complete and final dispositions through the avoidance of piecemeal decisions

and to promote judicial efficiency and the reduction of delay.” Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 610 (2015).

The doctrine looks to address concerns of “(1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay.”

Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). The analysis is case specific, and the courts are guided by concerns for fairness.

As a practical matter, the doctrine cannot be dealt with on an a priori basis. It must be applied empirically. That is to say, an evaluation must be made of each potential component of a particular controversy to determine the likely consequences of the omission of that component from the action and its reservation for litigation another day. If those consequences are likely to mean that the litigants in the action as framed will, after final judgment therein is entered, be likely to have to engage in additional litigation in order to conclusively dispose of their respective bundles of rights and liabilities which derive from a single transaction or related series of transactions, then the omitted component must be regarded as constituting an element of the minimum mandatory unit of litigation. That result must obtain whether or not that component constitutes either an independent cause of action by technical common-law definition or an independent claim which, in the abstract, is separately adjudicable.

[William Blanchard Co. v. Beach Concrete Co., 150 N.J. Super. 277, 293-294 (App. Div. 1977).]

The entire controversy doctrine is “an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases.” Highland Lakes Country Club & Cemetery Ass'n v. Nicastro, 201 N.J. 123, 125 (2009) (quoting Oliver v. Ambrose, 152 N.J. 383, 395 (1998)).

Under Rule 4:30A of the New Jersey Court Rules:

Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by R. 4:64-5 (foreclosure actions) and R. 4:67-4(a) (leave required for counterclaims or cross-claims in summary actions). Claims of bad faith, which are asserted against an insurer after an underlying uninsured motorist/underinsured motorist claim is resolved in a Superior Court action, are not precluded by the entire controversy doctrine.

[R. 4:30A.]

In considering whether a claim is barred by the entire controversy doctrine, “the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transactions.” DiTrollo v. Antiles, 142 N.J. 253, 268 (1995). The common set of facts is the central focus for application of the entire controversy doctrine. Wadeer, 220 N.J. at 605-06. The doctrine does not require “that there be a ‘commonality of legal issues.’” Id. at 605 (quoting DiTrollo, 142 N.J. at 271.)

“[T]he determinative factor is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.” DiTrolino, 142 N.J. at 271.

i.

In this case, the court finds that the two lawsuits arise from related facts and transaction or series of transactions. As detailed in Part I of this opinion, plaintiff brought suit in Union County seeking damages arising out of the October 10, 2016, automobile accident. In that suit, plaintiff asserted a claim against defendant for UM coverage.

During the Union County litigation, plaintiff learned that although the tortfeasors had insurance coverage, the coverage was less than his claimed damages. In other words, plaintiff was aware that while he did not have a UM claim, he did have a UIM claim arising out of the same accident and the same insurance policy. “[T]he UIM claim is a contractual one, arising out of the insurance policy issued to plaintiff by his own insurer.” Bardis v. First Trenton Ins. Co., 199 N.J. 265, 275 (2009). After the Union County suit closed, plaintiff filed the within lawsuit based on the same accident and the same insurance policy.

In opposing defendant’s motion, plaintiff argues that the UIM claim did not accrue until after settlement in the Union County suit for the limit of the

tortfeasor's policy. He further argues that the entire controversy doctrine does not apply to unknown or unaccrued claims. Dimitrakopoulos, 237 N.J. at 99. While that may be, the court does not see that argument as being persuasive in this case.

The critical factor in this case is that plaintiff was in litigation with defendant when he reached settlement with the tortfeasor and became aware that he had a UIM claim. This is not a situation where the claim accrued after the first litigation was concluded, or where a litigant was unaware of a claim. Plaintiff was aware of his UIM claim while he was litigating with defendant in Union County.

In considering situations where claims arise during litigation, the Appellate Division held that:

if during the pendency of litigation, a constituent claim arises which is part of the entire controversy, the claimant must seek leave to file a supplemental pleading thereby submitting to judicial discretion the determination of whether the claim should be joined in that action or reserved for a subsequent suit, and if the claimant fails to so move, he will ordinarily be barred from raising the claim in a subsequent suit

[McNally v. Providence Wash. Ins. Co., 304 N.J. Super. 83, 92 (App. Div. 1997).]

Plaintiff chose to bring Liberty Mutual into the Union County litigation when he filed his complaint. While that litigation was ongoing, plaintiff

settled for the limit of the tortfeasor's insurance coverage. In so doing, plaintiff knew that the tortfeasor was underinsured and that he had a UIM claim. Plaintiff's actions violate the entire controversy doctrine, one effect of which "is to preclude a party from withholding from the action for separate and later litigation a constituent component of the controversy even where that component is a separate and independently cognizable cause of action."

Brown, 208 N.J. Super. at 378.

For the reasons set forth herein, the court finds that the entire controversy doctrine applies.

ii.

The court next considers plaintiff's argument that the Longworth notice serves to insulate his UIM claim from the entire controversy doctrine. For the following reasons, the court rejects that argument.

First, the issues addressed in Longworth did not involve claim preclusion. Longworth provides a framework for an insured to settle litigation and obtain the benefits of their UIM coverage while protecting the insurer's subrogation rights. Rutgers Cas. Ins. Co. v. Vassas, 139 N.J. 163 (1995). The Appellate Division in Longworth, addressed the "difficulty . . . that the insurance contract's exhaustion, subrogation, and consent-to-settle clauses thrust insured victims of auto accidents into a contractual impasse that

frustrated the intent and policy of the Legislature in authorizing UIM coverage.” Id. at 171-172.

In Rutgers, the Supreme Court held that:

If the insured receives a settlement offer or arbitration award that does not completely satisfy the claim, because the tortfeasor is under-insured, the UIM insurer then has two options: offer to pay the insured the amount of the tortfeasor's settlement offer or the arbitration award, usually the tortfeasor's policy limit, in exchange for subrogation of the insured's rights against the tortfeasor; or, allow the insured to settle. In either case, the UIM insurer must further allow the insured the benefit of the UIM coverage.

. . . .

The Longworth procedure balances the interests of insureds and insurers, injured victims and tortfeasors. It provides the insured victim an opportunity both to assert liability against the tortfeasor and to determine the liability of the UIM insurer. In addition, it appries the UIM insurer of pending litigation by one of its insureds, which may obligate it to provide UIM coverage under the insured's policy.

[Id. at 174-75.]

The issues in Longworth involved settlement and subrogation rights. The court does not read Longworth as impacting on the manner in which the entire controversy doctrine might apply in the case now before the court.

Second, the Longworth notice actually militates against plaintiff's position. At the time that the notice was sent, plaintiff was in litigation with

defendant concerning coverage for injuries arising out of the October 10, 2016, accident. The Longworth notice shows that plaintiff was aware, during the time that the Union County litigation was pending, and defendant was a party thereto, that he had a UIM claim. The court finds that the Longworth notice does not prevent application of the entire controversy doctrine in this case.

In reaching this decision, the court is mindful of the distinction between UM and UIM claims. In Longworth, the Appellate Division held that:

The essential distinction between UM and UIM coverage is that if an uninsured tortfeasor is involved, his victim is able to seek initial and primary recourse from his own liability carrier. If an underinsured tortfeasor is involved, however, his victim may not pursue his contractual UIM right against his own liability insurer until he has first recovered the tortfeasor's liability limit by settlement or judgment. That recovery is then offset against the maximum UIM coverage provided for by the policy. Thus, the UIM, but not the UM, coverage has essential attributes of excess rather than primary protection. It is this distinction which creates the conceptual and practical problems presented by these cases.

[Longworth, 223 N.J. Super. at 177-78.]

The court does not, however, see the distinction between the two types of claims as having any impact in this case. The parties were in litigation and defendant remained in the case through the time that plaintiff served his Longworth notice and up until summary judgment was granted. Plaintiff did

not stipulate to dismissal, seek to amend his complaint to add a UIM claim, or take any action when defendant moved for summary judgment.

The court finds that Longworth does not save plaintiff's complaint from the entire controversy doctrine. As detailed herein, the entire controversy doctrine applies, and plaintiff's claim is barred.

C.

Last, the court considers plaintiff's argument that it would be inequitable to apply the entire controversy doctrine in this case. In considering whether to apply the entire controversy doctrine, the polestar is fairness. Wadeer, 220 N.J. at 605-06.

The court considers fairness "to the court system as a whole, as well as to all parties." DiTrollo, 142 N.J. at 273-74. In the context of the entire controversy doctrine, fairness requires that:

plaintiff should have "a fair and reasonable opportunity to have fully litigated that claim in the original action," [DiTrollo, 142 N.J. at 274], 662 A.2d 494 (quoting Cafferata v. Peyser, 251 N.J. Super. 256, 261, 597 A.2d 1101 (App.Div.1991)), the doctrine "does not apply to unknown or unaccrued claims." Ibid. Put simply, "[f]airness in the application of the entire controversy doctrine focuses on the litigation posture of the respective parties and whether all of their claims and defenses could be most soundly and appropriately litigated and disposed of in a single comprehensive adjudication." Id. at 277, 662 A.2d 494.

[Wadeer, 220 N.J. at 606.]

In Dimitrakopoulos, the Supreme Court addressed the type of considerations that warrant using “principles of equity” to limit application of the entire controversy doctrine. 237 N.J. at 99. The Supreme Court held that a litigant “may avoid the entire controversy doctrine by demonstrating that the prior forum did not afford ‘a fair and reasonable opportunity to have fully litigated’ the . . . claim.” Ibid. (citing Gelber v. Zito P'ship, 147 N.J. 561, 565 (1997) (quoting Cafferata v. Peyser, 251 N.J. Super. 256, 261 (App. Div. 1991))).

In the case now before the court, there is nothing inequitable about applying the entire controversy doctrine. Plaintiff had the opportunity to litigate his claims in Union County. Plaintiff was aware of his claims, and he has not shown that the Union County proceedings did not provide him with a fair and reasonable opportunity. Plaintiff could have sought a judicial determination with respect to amending his complaint to assert the UIM claim or preserving the claim notwithstanding a disposition on the merits as to his UM claim. In considering issues concerning amendment of pleadings, the Appellate Division in Brown, held that:

The significance of having to seek leave to file a supplemental pleading lies, of course, in the policy reasons for submitting that question to judicial discretion in the first instance. Ordinarily judicial discretion should be exercised in favor of permitting the

filing of germane supplemental pleadings. See generally 2 Schnitzer & Wildstein, New Jersey Rules Service, A IV-409 (1954). Clearly, adjudication of the controversy without consideration of the supplemental claim may, depending on the circumstances, frustrate any practical utility of the adjudication, result in a duplicative and wasteful second litigation, and subject the litigants and the court to all of the burdens of successive litigation which the entire controversy doctrine was intended to avoid without affording any offsetting legitimate advantages to anyone. Indeed, the relationship between supplemental pleading and the entire controversy doctrine was perceived by Schnitzer & Wildstein, *supra*, who pointed out that if a germane supplemental pleading were not allowed, “the policy which favors the use of a single action to resolve all existing controversies between the parties is impaired, if not frustrated.” Ibid.

[Brown, 208 N.J. Super. at 380.]

Plaintiff had “a fair and reasonable opportunity to have fully litigated [his UIM] claim in the original action.” Cafferata, 251 N.J. Super. at 261.

For the reasons set forth herein, the court finds that there are no genuine issues of material fact, that the entire controversy doctrine applies, and that defendant is entitled to summary judgment as a matter of law.

III.

The court will issue an order in accordance with this opinion.