

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LIBERTY MUTUAL INSURANCE	:	CIVIL ACTION
COMPANY,	:	
	:	NO. 00-841
Plaintiff,	:	
	:	
v.	:	
	:	
PETER WARK,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

October 18, 2000

This declaratory judgment action has been brought before the Court by plaintiff Liberty Mutual Insurance Company's ("Plaintiff" or "Liberty") and defendant Peter Wark's ("Defendant") cross-motions for summary judgment. The only issue is the enforceability of an exclusion clause in an automobile insurance policy Plaintiff issued to Defendant. For the reasons stated below, Plaintiff's motion is granted and Defendant's motion is denied.

I. STATEMENT OF FACTS

The parties have stipulated to the following facts:

Plaintiff is a Massachusetts company with its principal place of business in Boston, Massachusetts and conducts business in the Commonwealth of Pennsylvania. Defendant is an individual who is a citizen of and resides in the Commonwealth of Pennsylvania. There is

jurisdiction under 28 U.S.C. § 1332(a) because there is diversity of citizenship and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Defendant was involved in a motor vehicle accident on or about August 23, 1999 in Havertown, PA, and suffered serious personal injuries as a result of the accident. At the time of the accident, Defendant was operating a Harley Davidson motorcycle which he owned and which was insured under a motorcycle insurance policy issued to Defendant by a nonparty, Universal Underwriters Insurance Company (“Universal”). This Universal policy provided for underinsured motorist bodily injury coverage in the amount of \$15,000.00 per person/\$30,000.00 per accident. Defendant collected under this Universal policy.

Defendant also has filed an underinsured motorist claim against Plaintiff. Plaintiff had issued to Defendant a motor vehicle insurance policy which was in effect on or about August 23, 1999. Three vehicles were insured under this policy, but not one of those vehicles is the motorcycle. This Liberty policy contains the following exclusion:

We do not provide Underinsured Motorist Coverage for “bodily injury” sustained: []While “occupying” a motor vehicle owned by you or a “family member” not insured for Underinsured Motorist Coverage under this policy; nor to “bodily injury” from being hit by any such motor vehicle.

II. DISCUSSION

Defendant does not dispute that the exclusionary clause set forth above bars recovery for the accident that gave rise to this action. Rather he asks the Court to find that the exclusion is void and unenforceable under the provisions of Pennsylvania’s Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1701 (“MVFRL”) *et. seq.* and the public policy considered by the Pennsylvania legislature when enacting the law. This public policy issue has

been thoroughly considered by my colleague Judge J. Curtis Joyner in Nationwide Mut. Ins. Co. v. Ridder, 105 F. Supp. 2d 434 (E.D. Pa. 2000). Both the facts and the exclusion clauses implicated in that case are virtually identical to the facts and clauses of the instant action. Like Judge Joyner, I believe, under the facts of this case, the exclusionary clauses are valid and do not offend Pennsylvania's public policy.

In Ridder, the defendant Ridder ("Ridder") was injured when his motorcycle collided with an uninsured motor vehicle. Like Defendant in the instant action, Ridder had an insurance policy for the motorcycle from a nonparty insurance company which provided uninsured motorist coverage. Ridder collected under that policy. Also like Defendant, Ridder attempted to collect under other policies, one he and his wife carried for their two personal automobiles and one covering Ridder's commercial vehicle. Both of those policies were provided by the same insurance company and carried uninsured motorist benefits. That company denied Ridder's claims based upon exclusion clauses virtually identical to the exclusion clauses involved in the instant case. The exclusion in Ridder's personal policy stated that:

This coverage does not apply to:

. . . 6. Bodily injury suffered while occupying a motor vehicle owned by you or a relative but not insured for Uninsured Motorists coverage under this policy; nor to bodily injury from being hit by any such motor vehicle.

The policy covering Ridder's commercial vehicle was similar. It read:

This insurance does not apply to any of the following:

. . . 5. "Bodily injury" sustained by [] you while "occupying" or when struck by any vehicle owned by you that is not a covered "auto" for Uninsured Motorists Coverage under this Coverage form.

In his well reasoned opinion, Judge Joyner explored Pennsylvania law and explained that these exclusions must be upheld in factual situations like these because to hold

otherwise “would be to require [insurance companies] to underwrite a risk of which [they] likely had no knowledge and for which [they] neither contracted nor [were] paid. Ridder, F. Supp. 2d at 438. Further, as explained in Ridder, enforcement of these exclusionary clauses under these factual scenarios bolsters Pennsylvania’s public policy regarding automobile insurance and the legislative intent behind the enactment of Pennsylvania’s Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1701 (“MVFRL”) *et. seq.* because insurance premiums will be less expensive if insurance companies know their liability is limited in some fashion. Id. at 437, citing Eichelman v. Nationwide Ins. Co., 711 A.2d 1006 (1998).

In accordance with Judge Joyner’s decision in Ridder, notwithstanding minor factual dissimilarities between Ridder and the instant action, the Court finds the exclusionary clause in the insurance contract between Plaintiff and Defendant valid and enforceable.

III. CONCLUSION

For the reasons stated above, Plaintiff’s motion is granted and Defendant’s motion is denied.

An appropriate order follows.

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ORDER

AND NOW, this 18th day of October, 2000, upon consideration of plaintiff Liberty Mutual Insurance Company's Motion for Summary Judgment (Docket No. 7), defendant Peter Wark's Motion for Summary Judgment (Docket No. 8), and plaintiff Liberty Mutual Insurance Company's supplemental filings (Docket Nos. 9 and 10), it is hereby **ORDERED** that plaintiff Liberty Mutual Insurance Company's motion is **GRANTED** and defendant Peter Wark's motion is **DENIED**.

This case is marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.