

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

ALFRED J. DANDURAND,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 97-4167
	:	
CNA INSURANCE COMPANY,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, J.

APRIL 14, 1998

This action arose out of an automobile accident for which the Plaintiff seeks underinsured motorist coverage. The parties have filed cross-motions for summary judgment. For the reasons that follow, the Plaintiff's Motion will be denied and the Defendant's Motion will be granted.

Background

On June 4, 1995, the Plaintiff was returning from weekend maneuvers conducted by his National Guard Unit in Doylestown, Pennsylvania. He was a passenger in a high-mobility, multi-purpose wheeled vehicle ("humvee") manufactured by AM General Corporation ("AM General") and owned by the United States Army. While heading north on Route 611, the humvee was involved in an accident with a car driven by James Castener. The Plaintiff sustained serious injuries in the accident. After Castener's insurer tendered the full policy limits of \$25,000 to the Plaintiff, the Plaintiff demanded underinsured motorist

coverage from the Defendant.

At the time of the accident, the Plaintiff was employed by CNA Financial, a subsidiary of the Defendant.¹ As part of his compensation package, the Plaintiff was given an automobile for business and personal use. The vehicle was insured under a policy issued by the Defendant to the Plaintiff's employer. The policy provides coverage if a claimant is injured while a passenger in a vehicle only if the vehicle is a covered "auto" as the term is defined in the policy. The policy defines an "auto" as "a land motor vehicle, trailer or semitrailer designed for travel on public roads but does not include 'mobile equipment.'" (Def.'s Mot. for Summ. J. Ex. A.) It further provides:

"Mobile Equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads[.]

(Id.)

The Plaintiff brought this action seeking a declaratory judgment that the Defendant must provide underinsured motorist

¹The Defendant contends that the Plaintiff has provided incorrect names of the parties. According to the Defendant, the correct name of the Plaintiff's employer is Continental Casualty Company, and the correct name of the insurer providing coverage for the company-leased vehicle issued to the Plaintiff is Transportation Insurance Company. The Defendant further notes that no entity called "CNA Insurance Company" exists. The Plaintiff does not address these allegations, but they are irrelevant for purposes of these Motions.

coverage. The Plaintiff further seeks damages for negligent misrepresentation based upon his employer's alleged statement that the Plaintiff "was personally covered by \$300,000.00 in underinsured motorist coverage." (Compl. at ¶ 45.)

Standard

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. Summary judgment will not be granted "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Discussion

The parties agree that this case rests upon a determination of whether the humvee was an "auto" or "mobile equipment" for purposes of the insurance policy. The interpretation of an insurance contract is a question of law to

be decided by the Court. Reliance Ins. Co. v. Moessner, 121 F.3d 895, 900 (3d Cir. 1997). Under Pennsylvania law, where the language of an insurance policy is clear and unambiguous, a court must give the policy its plain and ordinary meaning. Groff v. Continental Ins. Co., 741 F. Supp. 541, 549 (E.D. Pa. 1990).

At the outset, it is important to distinguish the humvee in which the Plaintiff was injured from the Hummer, a non-military vehicle similar to the humvee that is also manufactured by AM General for commercial sales to the general public. The commercial Hummer has several features not present in the military humvee, including a placard inside the vehicle warning the driver of the unique handling properties of the Hummer when driven on paved roads, head restraints on the tops of the seats, back-up lamps, license plate lamps, turn signals that turn off automatically, and a "park" position on its automatic transmission. (See Def.'s Mot. for Summ. J. Ex. C at 20-23.) Further, the interior of the military humvee has exposed sheet metal on the inside of the roof, doors, floors, and instrument panel areas, whereas the Hummer has vinyl, carpeting, and plastic trim covering the sheet metal. (Id.)

AM General manufactured the humvee according to specifications prepared by the United States Army Tank and Automotive Command. The specifications provide that the "vehicle application" for the military humvee is "high speed off-road

usage." (Def.'s Mot. for Summ. J. Ex. B at § 3.3.5.) Military Standard 1180 sets forth safety standards for "high mobility tactical wheeled vehicles" such as the humvee. It provides that these vehicles "are expressly designed and built to Government specifications for the purpose of handling cargo while negotiating very rough terrain." (Def.'s Mot. for Summ. J. Ex. D at § 3.1.2.)

The Plaintiff argues that, in interpreting this insurance contract, this Court should consider whether the military humvee meets the definition of a "motor vehicle" under the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa. C.S. § 1701 et seq. While the MVFRL does not define "motor vehicle," courts have looked to the term as defined in the Pennsylvania Motor Vehicle Code, 75 Pa. C.S. § 101 et seq. See Callahan v. Federal Kemper Ins. Co., 568 A.2d 264, 266 (Pa. Super. 1989). The Motor Vehicle Code defines a "motor vehicle" as "a vehicle which is self-propelled, except one which is propelled solely by human power or by electrical power obtained from overhead trolley wires, but not operated upon rails." 75 Pa. C.S. § 102.

While the military humvee would be a motor vehicle under the Motor Vehicle Code (as would bulldozers, farm machinery, and forklifts, all of which are specifically mentioned in the policy as mobile equipment), this definition is not

relevant to the instant case. In this case, the issue is whether the humvee is an "auto" or "mobile equipment" under the insurance policy. Whether or not the humvee is a "motor vehicle" under the Motor Vehicle Code or the MVFRL has no effect on this issue.

The Plaintiff also argues that, applying the doctrine of eiusdem generis, a military humvee is not "mobile equipment" under the policy. Under the doctrine of eiusdem generis, general terms following an enumeration of specific terms should be construed as applying only to the persons or things of the same general kind or class as those specifically mentioned. Steele v. Statesman Ins. Co., 607 A.2d 742, 743 (Pa. 1992). The relevant portion of the policy defines "mobile equipment" as "Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads."² But the Plaintiff does not define exactly what general class bulldozers, farm machinery, and forklifts constitute, other than to state that this equipment "in no way equates to the Humvee." (See Mem. in Supp. of Pl.'s Mot. for Summ. J. at 8-9.) The items specifically mentioned are not

²The Plaintiff argues that the relevant list of enumerated items should also include such items as vehicles on crawler treads, shovels, loaders, and diggers. These items are listed separately in the policy, apart from the portion relating to "vehicles designed for use principally off public roads." (See Def.'s Mot. for Summ. J. Ex. A at 8.) Thus, reading the contract language in context, the only specific terms that can be included under the Plaintiff's eiusdem generis argument are bulldozers, farm machinery, and forklifts as these are the only specific terms preceding the phrase "and other vehicles designed for use principally off public roads."

similar to one another, except perhaps to the extent that all three are vehicles capable of being used on public roads though not principally designed for such use. Construed in this way, the military humvee does fall within the definition of "mobile equipment" in the policy.

The Plaintiff further argues that the military humvee's specifications provide that it "shall be capable of operating off-road, on trails, and on secondary and primary roads." (Pl.'s Mot. for Summ. J. Ex. J at § 3.1.) But the fact that the humvee is capable of operating on secondary and primary roads is not relevant to this Court's determination of the principal use for which the humvee was designed.

Based upon the specifications for the military humvee, as well as the differences between it and the commercial Hummer, it is clear that the humvee in which the Plaintiff was injured was designed principally for off-road use. Thus, it is not an "auto" as defined by the insurance policy, and the Defendant is not required to provide underinsured motorist coverage in this case.

The Plaintiff has also brought a claim for negligent misrepresentation, alleging that the Defendant's employee assured him that he was personally covered by \$300,000.00 in underinsured motorist coverage. The Plaintiff now seeks to withdraw this claim. Accordingly, the Plaintiff's negligent misrepresentation

claim will be dismissed with prejudice.

An appropriate Order follows.

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	:	
CNA INSURANCE COMPANY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 14th day of April, 1998, upon consideration of the parties' Cross-Motions for Summary Judgment, and all responses thereto, it is hereby ORDERED that:

1. the Defendant's Motion is GRANTED;
2. the Plaintiff's Motion is DENIED;
3. the Clerk of Court is directed to list this case as CLOSED.

BY THE COURT:

Robert F. Kelly, J.