

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

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|--------------------------|---|--------------|
| YORK INSURANCE COMPANY | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| PERRY HILL and RENE WARD | : | 00-CV-3931 |
| | : | |
| Defendants. | : | |

MEMORANDUM AND ORDER

BUCKWALTER, J.

July 10, 2001

Presently before the Court are the following motions: (1) Defendant Rene Ward’s (“Ward”) Motion for Judgment on the Pleadings; (2) Defendant Perry Hill’s (“Hill”) Motion for Judgment on the Pleadings; (3) Ward’s Motion to Exclude Extraneous Materials from Consideration of the Defendant’s Motion for Judgment on the Pleadings; (4) Plaintiff York Insurance Company’s (“York”) Motion to Compel Defendant Rene Ward’s Answers to Interrogatories; (5) York’s Motion to Compel Defendant Perry Hill’s Answers to Interrogatories; (6) Ward’s Motion for Appointment of Guardian Ad Litem; and (7) Ward’s Motion for Protective Order Prohibiting the Deposition of Defendant Rene Ward. The Court will grant Ward’s and Hill’s Motions for Judgment on the Pleadings, will dismiss York’s Declaratory Complaint, and will deny as moot the remaining five motions currently before the Court.

In this Memorandum and Order the Court addresses the arbitrability of a dispute regarding coverage under a commercial automobile insurance policy. York believes the dispute is properly before this Court whereas Ward and Hill (collectively “Defendants”) argue that it

should be settled in arbitration, pursuant to an arbitration clause in the relevant insurance policy. Essentially, the underlying dispute is whether or not Defendants were “occupants” of a vehicle owned by Eden’s Corporation (“Eden’s”), a company that carried its commercial automobile policy through York. If Defendants are deemed occupants, then they would be considered “insureds” and would be eligible to recover damages under the underinsured motorist benefits provided for in Eden’s policy. If not considered occupants, then Defendants would not be insureds and would be precluded from collecting benefits under Eden’s policy. This dispute, however, is not now before the Court. As mentioned *supra*, the Court has the initial task of determining the threshold question of whether this dispute is properly before the Court or should be settled in arbitration. In making that determination, the Court must analyze the arbitration clause in Eden’s policy.

The Third Circuit recently addressed this dilemma and set forth a clear rule for settling this type of arbitrability issue in State Farm Auto. Ins. Co. v. Coviello, 233 F.3d 710 (3d Cir. 2000). In that case, the Third Circuit was presented with the exact same issue as the Court faces here: whether the parties’ coverage dispute fall within the scope of the relevant policy’s arbitration provision. The Coviello court decided the dispute did belong in court and not in arbitration because certain language in the policy limited the scope of the arbitration clause. The Coviello policy read in pertinent part:

Two questions must be decided by agreement between the insured and us: (1) Is the insured legally entitled to collect compensatory damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; and (2) If so, in what amount? If there is no agreement, these two questions shall be decided by arbitration at the request of the insured and us. *The arbitrators’ decision shall be limited to these two questions.*

Coviello, 233 F.3d at 717 (emphasis added). The Third Circuit explained that the last sentence of that clause “unambiguously declares that only those disputes involving fault and amount may be arbitrated” and that “[t]herefore, according to the language . . . pure questions of policy coverage . . . are not to be arbitrated.” Coviello, 233 F.3d at 719.

The arbitration provision in Coviello is almost identical to the provision in the instant case except here the Eden’s policy does not include language which limits or narrows the scope of the arbitration clause. The Eden’s policy reads:

If [York] and an ‘insured’ disagree whether the ‘insured’ is legally entitled to recover damages from the owner or driver of an ‘underinsured motor vehicle’ or do not agree as to the amount of damages that are recoverable by that ‘insured,’ then the matter may be arbitrated. Either party may make a written demand for arbitration

See York’s Response, Exhibit “A.”

The Third Circuit explains that the Pennsylvania Supreme Court, although it has retreated somewhat, has held “all disputes are arbitratable if the arbitration provision does not contain limiting language.” Coviello, 233 F.3d at 720 n.10. Because of the absence of the type of limiting clause relied upon in Coviello, and consistent with the current state of Pennsylvania common law, the Court believes the dispute over whether Defendants were occupants and therefore insureds should be settled in arbitration. The Court will dismiss York’s Complaint and, accordingly, will deny all other current motions.

AND NOW, this 10th day of July, 2001, it is hereby **ORDERED** as follows:

1. Defendant Rene Ward’s Motion for Judgment on the Pleadings (Docket No. 13) is **GRANTED**;

2. Defendant Perry Hill's Motion for Judgment on the Pleadings (Docket No. 16) is **GRANTED** ;

3. Plaintiff York Insurance Company's Declaratory Complaint (Docket No. 1) is **DISMISSED** with prejudice;

4. Defendant Rene Ward's Motion to Exclude Extraneous Materials from Consideration of the Defendant's Motion for Judgment on the Pleadings (Docket No. 15) is **DENIED** as moot;

5. Plaintiff York Insurance Company's Motion to Compel Defendant Rene Ward's Answers to Interrogatories (Docket No. 19) is **DENIED** as moot;

6. Plaintiff York Insurance Company's Motion to Compel Defendant Perry Hill's Answers to Interrogatories (Docket No. 20) is **DENIED** as moot;

7. Defendant Rene Ward's Motion for Appointment of Guardian Ad Litem (Docket No. 22) is **DENIED** as moot; and,

8. Defendant Rene Ward's Motion for Protective Order Prohibiting the Deposition of Defendant Rene Ward (Docket No. 23) is **DENIED** as moot.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.