

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

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	:	
Robert L. Moy, III, <i>et al.</i>	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	NO. 04-4783
The St. Paul Travelers Company,	:	
Inc., <i>et al.</i>	:	
Defendants.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 14th, 2005

Plaintiff Robert Moy was in a motor vehicle accident in 2001; he settled his liability claim with the insurance company for the responsible party and then presented an underinsured motorist (UIM) claim to his own insurer. The UIM claim was settled in 2002 or 2003 for the \$100,000 policy limits, and Plaintiffs signed a full and final release. Plaintiffs now sue alleging that the insurer misrepresented or failed to disclose the actual amount of insurance available.

Defendants move to dismiss the Complaint because it names "The St. Paul Travelers, Company, Inc. and John Doe (1-5)" and not The Phoenix Insurance Company, which Defendants contend issued the policy in question. The Travelers name appears on several of the insurance documents, and Phoenix appears to be a subsidiary or affiliate of the named Defendant. There is no dispute as to the relevant insurance policy. I will order the

caption amended to name Phoenix Insurance Company in place of Defendant John Doe 1.

Defendants also move to dismiss several counts of the Complaint. I agree that Count I must be dismissed as the Pennsylvania Insurance Practices Act does not provide for a private cause of action. In all other respects the motion is denied; the issues raised are better left to disposition at the summary judgment stage, when more is known about the circumstances of the release.

An order follows.

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AND NOW, this 14th day of March, 2005, upon consideration of Defendants' Motion to Dismiss the Complaint and the response thereto,

It is hereby ORDERED that the Motion is GRANTED IN PART and DENIED IN PART as follows:

1. The Caption is amended to substitute The Phoenix Insurance Company for John Doe 1.
2. Count I is DISMISSED.
3. In all other respects, the Motion is DENIED.

BY THE COURT:

/s/John P. Fullam, Sr. J.
Fullam, Sr. J.