

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

TERRANCE P. MEEHAN : CIVIL ACTION
 :
 v. :
 :
 AMERICAN GUARANTEE AND :
 LIABILITY INSURANCE COMPANY :
 d/b/a ZURICH NORTH AMERICA : NO. 04-354

MEMORANDUM

Bartle, J.

April 20, 2005

On March 7, 2005, we granted the defendant's motion for summary judgment as unopposed. Upon receiving our Order, plaintiff's counsel notified the court that he failed to respond because he never received notification of the summary judgment motion. Plaintiff now seeks reconsideration of our Order, and both parties have filed and served additional briefs.

Plaintiff, an employee of Tubular Steel, Inc., ("Tubular") was injured in Pennsylvania on November 18, 1999 while operating a motor vehicle in the course of his employment. He obtained payment of the limits of the tortfeasor's insurance coverage and sought underinsured motorist's ("UIM") benefits from his employer's insurer, the defendant American Guarantee and Liability Insurance Company. The defendant denied his claim. It did so on the ground that Tubular's Vice President-Finance and Secretary, James A. Morgan, had rejected such coverage on April 16, 1999 by signing a "Rejection of Underinsured Motorist

Protection" form. Plaintiff argues that on that same day Morgan signed a form titled "Commercial Consumer Information and Coverage Selection Form" in which he elected UIM coverage. Moreover, plaintiff contends that Tubular prepaid for such coverage and was never issued a refund after the UIM coverage was allegedly cancelled. Thus, he maintains, UIM coverage must be provided.

The policy in issue, #BAP7946931-02, provides coverage for Tubular throughout the United States. Overall, general forms are utilized for the various coverage options. However, certain states, including Pennsylvania, require that specific forms be utilized in connection with certain coverage options. In Pennsylvania, an insured will have UIM coverage unless a rejection form specified by statute is utilized. 75 PA. CONS. STAT. ANN. §§ 1731(c) and (c.1). Morgan, on behalf of Tubular, signed the proper rejection form. At his deposition, Morgan testified that he intended to reject UIM coverage. The specific Pennsylvania rejection form overrides any general form which is part of a multi-state policy insuring a commercial entity.

Plaintiff also argues that UIM coverage was in effect because Tubular's insurer charged it a premium for that coverage. Even assuming without deciding that Tubular paid more than it should, this cannot be the basis for requiring UIM coverage under the present circumstances. Tubular exercised its option not to have UIM coverage by executing Pennsylvania's mandated form. Plaintiff, who did not pay the premium and who was not a party to

the insurance contract, cannot rely on any premium overpayment to obtain coverage that Tubular specifically declined. Any premium dispute is a matter between Tubular and its insurer.

Consequently, we are denying plaintiff's motion for reconsideration.

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

TERRANCE P. MEEHAN	:	CIVIL ACTION
	:	
v.	:	
	:	
AMERICAN GUARANTEE AND	:	
LIABILITY INSURANCE COMPANY	:	
d/b/a ZURICH NORTH AMERICA	:	NO. 04-354

ORDER

AND NOW, this 20th day of April, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of plaintiff Terrance P. Meehan for reconsideration is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.