

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

AIU INSURANCE COMPANY,	:	March Term 2004
Plaintiff,	:	
v.	:	No. 4507
KLAUS BARXHA, A MINOR BY HIS	:	
OWN PARENT AND NATURAL	:	Commerce Program
GUARDIAN, HAMZA BARXHA AND	:	
HAMZA BARXHA, IN HIS OWN RIGHT,	:	Control Number 073377
Defendants.	:	

ORDER

AND NOW, this 24th day of August, 2004, upon consideration of the Motion for Judgment on the Pleadings filed by plaintiff AIU Insurance Company, defendants' response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion, it hereby is **ORDERED** that plaintiff's Motion is **GRANTED**.

It is further **ORDERED** that Klaus Barxha, a minor, and Hamza Barxha his parent and natural guardian, are not entitled to recover uninsured motorist benefits from AIU Insurance Company under the automobile liability policy issued to Suzanna Quinn for policy period January 22, 2001 through July 22, 2001 and are not entitled to proceed with an uninsured motorist arbitration hearing related to the accident of June 9, 2001.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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OPINION

SHEPPARD, JR. J......

Presently before the court is plaintiff AIU Insurance Company’s (“AIU”) Motion for Judgment on the Pleadings. For the reasons discussed, AIU’s Motion is Granted.

BACKGROUND

AIU filed this declaratory judgment action seeking a determination that defendants are not entitled to uninsured motorist benefits under AIU’s policy of insurance. On June 9, 2001, Klaus Barxha, a minor pedestrian, was struck by a Ford Taurus operated by David Maui a/k/a David Hawko. The Ford Taurus involved in the accident had been rented from Enterprise Leasing by Suzanna Quinn, AIU’s insured. AIU had issued a policy of automobile insurance to Suzanna Quinn and her husband covering the policy period January 22, 2001 through July 22, 2001. According to the pleadings, Maui a/k/a Hawko was not given permission by Quinn to use the vehicle.

Defendants made a demand for uninsured motorist benefits under the policy of insurance issued to the Quinns.

DISCUSSION

Entry of the judgment on the pleadings is permitted under Pa. R. Civ. P. 1034 which provides for such judgment after the pleadings are closed, but within such time as not to delay trial. A motion for judgment on the pleadings is similar to a demurrer.

It may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. Cole v. Lawrence, 701 A.2d 987, 988 (Pa. Super. 1997).

Further, neither party may be deemed to have admitted conclusions of law. Mellon Bank, N. A. v. National Union Fire Insurance Co. of Pitt., 768 A.2d 865, 868 (Pa. Super. 2001).

Plaintiff argues that it is entitled to judgment on the pleadings as a matter of law since defendants fail to satisfy the definition of persons eligible to receive uninsured motorist benefits pursuant to the provisions of the automobile liability policy issued by AIU to Suzanna Quinn. On the other hand, defendants argue that this matter is governed by Ector v. Motorist Insurance Companies, 391 Pa. Super. 458, 571 A.2d 457 (1990) and the applicable sections of the Uninsured Motorist Act, 42 Pa. C. S. § 2000 which entitle defendants to uninsured motorist benefits provided for in the policy in question.

Although the decision of Ector has not been overruled, the decision has been limited in scope by Jeffrey v. Erie Ins. Exchange, 423 Pa. Super. 483, 621 A.2d 635 (1993), allocatur denied, 537 Pa. 651, 644 A.2d 736 (1994) an en banc decision of the Superior Court. The Ector case is not controlling on this matter. This court submits that the Superior Court's reasoning in Frazier v. State Farm Mutual Automobile Insurance Company, 445 Pa. Super. 218, 665 A.2d 1 (1995) is controlling. Furthermore, the court

finds that the plain language of the AIU policy does not provide that an uninsured pedestrian is eligible for uninsured motorist benefits under the applicable policy.

Accordingly, AIU's Motion for Judgment on the Pleadings is Granted.

CONCLUSION

For these reasons, plaintiff AIU Insurance Companies Motion for Judgment on the Pleadings is Granted. An order contemporaneous with this opinion will be entered.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.