

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

NATIONWIDE INSURANCE	:	
COMPANY	:	June Term 2004
	:	
Plaintiff,	:	No.: 3064
	:	
v.	:	Commerce Program
	:	
ELLEN HENRY and AMERICAN	:	Control No.: 112829
INDEPENDENT INSURANCE COMPANY	:	
	:	
Defendants.	:	

**ORDER and MEMORANDUM**

**AND NOW**, this 9<sup>TH</sup> day of February 2005, upon consideration of Plaintiff's Motion for Summary Judgment and the response and reply thereto, it is hereby **ORDERED** and **DECREED** as follows:

- 1) The Motion for Summary Judgment of Nationwide Insurance Company is **GRANTED**; and
- 2) Judgment is entered in favor of Nationwide Insurance Company and Ellen Henry has no right to pursue an underinsured motorist claim against the policy of insurance (Number 58 37 D 234760) issued by Nationwide Insurance Company.

**BY THE COURT,**

\_\_\_\_\_  
**GENE D. COHEN, J.**

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

NATIONWIDE INSURANCE	:	
COMPANY	:	June Term 2004
	:	
Plaintiff,	:	No.: 3064
	:	
v.	:	Commerce Program
	:	
ELLEN HENRY and AMERICAN	:	Control No.: 112829
INDEPENDENT INSURANCE COMPANY	:	
	:	
Defendants.	:	

**MEMORANDUM OPINION**

**COHEN, J.**

Presently before the court is the Motion for Summary Judgment of Plaintiff Nationwide Insurance Company (“Nationwide”). Defendants are Ellen Henry (“Henry”) and American Independent Insurance Company, which is not a party to this motion.

Nationwide issued an insurance policy to Henry. Subsequently, Henry was injured in an automobile accident. Nationwide filed a declaratory judgment action seeking a ruling that Henry has no right to pursue an underinsured motorist claim against the policy.

Pursuant to Pa. R.C.P. 1035.2, a party may move for summary judgment when there is no genuine issue of material fact as to a necessary element of the cause of action or defense. The court must review the entire record in the light most favorable to the nonmoving party and resolve all genuine issues of material fact against the moving party.

Basile v. H & R Block, Inc., 563 Pa. 359, 365, 761 A.2d 1115, 1118 (2000).

Henry's sole challenge to Nationwide's motion is that this court lacks jurisdiction due to an arbitration clause in the insurance policy. Nationwide argues that Henry has waived this defense, which places this matter properly before the court.

A party can waive the right to assert arbitration as a defense to a lawsuit. Under Pa. R.C.P. 1032(a), a party waives its right to assert arbitration as a defense if it does not present such defense in a preliminary objection, answer, or reply. Henry failed to raise the defense in both her preliminary objections and her answer. See Samuel J. Marranca Gen. Contracting Co. v. Amerimar Cherry Hill Assocs. Ltd. Partnership, 416 Pa. Super. 45, 610 A.2d 499 (1992). Therefore, she has waived her right to assert arbitration as a defense.

Nationwide argues that the insurance policy issued to Henry does not offer underinsured motorist coverage because Henry waived such coverage. An insured party may reject such coverage by signing a waiver that complies with 75 Pa. C.S. §1731. The waiver form attached to the insurance policy contains the language required by the statute. In addition, the waiver was on a different sheet than the waiver form for uninsured motorist coverage, it was signed by Henry, the first named insured, and it was dated. Nothing more need be shown to establish that Henry has validly waived underinsured motorist coverage. Winslow-Quattlebaum v. Maryland Ins. Group, 561 Pa. 629, 637, 752 A.2d 878, 882 (2000).

**BY THE COURT,**

---

**GENE D. COHEN, J.**