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

PROGRESSIVE HALCYON INS. CO.	:	November Term 2004
Plaintiff,	:	No. 0369
v.	:	Commerce Program
ANTHONY KENNEDY	:	Control No. 080013
Defendant.	:	

ORDER and MEMORANDUM

AND NOW, this 22ND day of September 2005, upon consideration of the Motion for Summary Judgment of Plaintiff Progressive Halcyon Insurance Company ("Progressive"), the response in opposition, the respective memoranda, all matters of record and in accordance with the Memorandum Opinion being contemporaneously filed with this Order, it hereby is **ORDERED** and **DECREED** that said Motion is **granted in part** and **denied in part** as follows:

1. It is the declaration of this court that Progressive owes no obligation to provide first-party medical benefits or income loss benefits to Defendant Anthony Kennedy

2. The court further declares that Anthony Kennedy is deemed to have full-tort coverage for any uninsured motorist claim.

BY THE COURT:

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HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

HOWLAND W. ABRAMSON, J.

Currently before the Court is the Motion for Summary Judgment of Plaintiff Progressive Halcyon Insurance Company ("Progressive"). For the reasons fully set forth below, said Motion is granted in part and denied in part.

BACKGROUND

This is an action for declaratory judgment concerning the provisions of a policy of automobile insurance issued by Plaintiff to Defendant Anthony Kennedy ("Kennedy"). The undisputed facts are as follows. The policy issued by Progressive, bearing policy no. 56249249-4, provides $5,000 in medical benefits per accident and also includes uninsured motorists coverage in the amount of $100,000 per person and $300,000 per accident (the "Policy"). Kennedy selected full-tort coverage under the Policy. The Policy listed two vehicles for coverage, a 1997 Ford Expedition and a 1989 Toyota Cressida.

On or about January 28, 2004, while driving the 1997 Ford Expedition, Kennedy was involved in a motor vehicle accident with an unidentified vehicle, in which he sustained personal injuries (the "Accident"). As a result, Kennedy applied for first-party medical benefits and has

also presented an uninsured motorists claim. It is also undisputed that, at the time of the Accident, Kennedy was the owner of a registered motor vehicle, a 1986 Nissan Coupe, that was not insured under any policy of insurance.

The parties currently are seeking a declaration from this court as to whether Kennedy is eligible for first party benefits and full-tort coverage for the Accident.

DISCUSSION

While the specific facts of this case have not been addressed by an appellate court in Pennsylvania, the Superior Court and the Pennsylvania Motor Vehicle Responsibility Law ("MVFRL") provide sufficient guidance to ensure a proper result under the current state of the law.

The Superior Court has plainly held that, under § 1714 of the MVFRL, an owner of a currently registered uninsured motor vehicle can not recover first party benefits, even if the uninsured vehicle was not actually involved in the accident. 75 Pa. C.S.A. § 1714; Swords v. Harleysville Ins. Co., 2003 Pa. Super. 302, 831 A.2d 641 (2003); Mowery v. Prudential Property & Casualty Ins. Co., 369 Pa. Super. 494, 535 A.2d 658 (1988). Such an interpretation is also supported by the language of the Progressive Policy, which specifically states "[Progressive] does not provide any First Party Benefits under this Part II for bodily injury:…sustained by any person who, at the time of the accident: (a) is the owner of one or more registered motor vehicles which do not have in effect the security required by the [MVFRL]…" Compl., Exh. A at 14. As such, this court finds that Progressive owes no obligation to provide first-party medical benefits or income loss benefits to Kennedy.

However, this court finds that Kennedy is entitled to full-tort coverage for his uninsured motorist claim, based on the Superior Court's holding in Berger v. Rinaldi, 438 Pa. Super. 78,

651 A.2d 553 (1994), which currently remains binding upon this court. In Berger, the Superior Court held that § 1705 (a)(5) of the MVFRL did not apply to situations, as here, where the claimant was not operating his uninsured vehicle at the time of the accident. Id. at 86.

In addition to being bound by its holding, this court is persuaded by the Superior Court's reasoning in Berger. Section 1705 (a)(5) of the MVFRL, which Progressive seeks to apply at bar, states that "[a]n owner of a currently registered private passenger vehicle who does not have financial responsibility shall be deemed to have chosen the limited-tort alternative." "Financial responsibility" is defined by the MVFRL as:

> [t]he ability to respond to damages for liability on account of accidents arising out of the maintenance or use of a motor vehicle in the amount of $15,000 because of injury to one person in any one accident, in the amount of $30,000 because of injury to two or more persons in any one accident and in the amount of $5,000 because of damage to property of others in any one accident. . . ."

75 Pa.C.S.A. § 1786 (a). At bar, Kennedy has "the ability to respond to damages for liability" as specified by the MVFRL because he possess a valid policy of insurance; the fact that his claim for first-party benefits is barred by § 1714 does not change this fact.

CONCLUSION

Based on the foregoing, it is the declaration of this court that Progressive owes no obligation to provide first-party medical benefits or income loss benefits to Kennedy, however, Kennedy is deemed to have full-tort coverage for any uninsured motorist claim. These two results are not inconsistent, but rather effectuate the separate public policy concerns behind each.[1]

BY THE COURT:

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HOWLAND W. ABRAMSON, J.

1 The public policy behind § 1714 clearly serves to encourage drivers to secure insurance for all registered vehicles and to impose punitive consequences for failure to do so. This policy is not – and need not -- be served by obviating an insured's right to bring a UIM claim, for which he paid specific premiums.