

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL SECTION**

JOELLE JOHNSON	:	JANUARY TERM 2011
	:	
	:	
vs.	:	NO. 02222
	:	
	:	
ALLSTATE INSURANCE COMPANY	:	1197 EDA 2011

OPINION

The Petitioner filed an appeal of this Court’s April 12, 2011 Order denying a Petition to Compel UIM Arbitration.

I. PROCEDURAL/FACTUAL HISTORY

1. Petitioner is seeking underinsured motorist benefits from Allstate Insurance Company as a result of injuries allegedly sustained in a March 14, 2006 motor vehicle accident. The Respondent-insurance carrier asserts that the applicable insurance policy does not provide UIM coverage as Petitioner rejected those benefits.

2. A Petition to Appoint a Defense and Neutral Arbitrator and to Compel Arbitration was filed on March 1, 2011.

3. Respondent filed an Answer in Opposition on March 21, 2011. Petitioner replied on April 5, 2011.

4. In an Order dated April 12, 2011, this Court denied the Petition to Appoint and Compel. The Order further provided that the denial “*was without prejudice to provide Petitioner*

the opportunity to seek a declaratory judgment in the appropriate forum on whether or not her applicable automobile insurance policy provides UIM coverage.”

5. A Notice of Appeal was filed on April 28, 2011.

II. DISCUSSION

Petitioner did not attach a copy of the applicable insurance policy in effect at the time of the subject March 2006 motor vehicle accident to her Petition to Appoint and Compel. The Respondent-carrier attached a copy of the policy¹, as well as a signed rejection of Underinsured Motorist Protection, to its’ response. Additionally, the Declaration Sheet for the policy states *You have rejected Underinsured Motorist Insurance.*

The applicable policy language provides the following regarding disputes over UIM coverage:

IF WE CANNOT AGREE

If insured person and we do not agree:

1. on that person’s right to receive damages, or
2. on the amount of those damages,

then upon the written request of either party the disagreement will be settled by arbitration as provided under the Pennsylvania Uniform Arbitration Act of 1927. **The arbitrators will not have the power to decide any dispute regarding the nature or amount of coverage provided by the policy** or claims for damages outside the terms of the policy including bad faith, fraud, misrepresentation, punitive or exemplary damages, attorney fees or interest.
(Emphasis added)

Petitioner challenges the documentation, noting some alleged discrepancies, and further asserts that there is no evidence to establish that the rejection was in force at the time of the

¹ The exhibits to the Response contained a notarized certification that the attached policy and declaration page provided the coverages that were available to Petitioner from Allstate at the time of the MVA. Petitioner has offered no documentation to counter the notarized documentation.

motor vehicle accident of March 25, 2006. According to the documents provided by the carrier, the policy, with the rejection of UIM benefits, was in force from October 14, 2005 to April 14, 2006.

Even if there were some validity to Petitioner's assertions challenging the carrier's contention that UIM coverage was rejected, the assertions involve a coverage dispute which is outside the arbitrators' purview since the policy language clearly states that *the arbitrators will not have the power to decide any dispute regarding the nature or amount of coverage provided by the policy.*

In Henning v. State Farm Mut. Auto.Ins.Co., 2002 PA Super 80; 795 A.2d 994; 2002 Pa.Super. LEXIS 352, the Superior Court considered a similar arbitration provision in a dispute over uninsured motorist coverage. In Henning, the insured's son sought to compel arbitration of his claim for UM benefits through his father's policy and the carrier challenged the request for arbitration, contending that since there was a named driver exclusion endorsement signed by the father excluding his son from coverage under his auto insurance policy, the claim was not subject to arbitration as it involved a coverage dispute.

The applicable policy language in Henning was:

Two questions must be decided by agreement between the insured and us:

1. Is the insured legally entitled to collect compensatory damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; and
2. If so, in what amount?

If there is no agreement, these two questions shall be decided by arbitration at the request of the insured or us. The arbitrators' decision shall be limited to these two questions. The arbitrators shall not award damages under this policy which are in excess of the limits of liability of this coverage as shown on the declarations page. The Pennsylvania Uniform Arbitration Act, as amended from time to time, shall apply.

795 A.2d 994 at 996.

The insurance carrier argued that since there was no dispute as to the insured's son's entitlement to collect damages from the uninsured driver or as to the amount of the damages he claimed was owed, his claim for UM benefits under his father's policy was not within the scope of the policy's arbitration provision. The Superior Court agreed, stating that *we have no hesitation in concluding that the arbitration clause is limited to the two issues expressly set forth under the terms of the policy and thus is inapplicable to the present dispute between the parties.*

In reaching this conclusion the Henning Court relied upon a decision from the U. S. Court of Appeals for the Third Circuit, State Farm Mutual Automobile Insurance Co. v. Coviello, 233 F.3d 710 (3rd Cir. 2000), which held:

Under Pennsylvania law, the determination of whether an issue must be submitted to arbitration depends upon (1) whether the parties entered into an agreement to arbitrate, and (2) whether the dispute falls within the scope of that agreement. See, e.g., Flightways Corp. v. Keystone Helicopter Corp., 459 Pa. 660, 331 A.2d 184, 185 (Pa. 1975); Patterson, 953 F.2d at 46. Furthermore, the scope of arbitration "is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally." Sley Sys. Garages v. Transp. Workers Union of Am., 406 Pa. 370, 178 A.2d 560, 561-62 (Pa. 1962).

* * * *

The clause specifically states that "the arbitrators' decision shall be limited to these two questions," meaning Questions (1) and (2), which describe fault and amount, respectively. ... The policy unambiguously declares THAT ONLY THOSE DISPUTES INVOLVING FAULT AND AMOUNT MAY BE ARBITRATED.

State Farm's terms unambiguously limit arbitration to questions of fault and amount, and therefore policy coverage disputes such as the one presented in the instant case should be excluded from arbitration. While we recognize that parties should be bound by an agreement to arbitrate, see, e.g., Allstate v. Taylor, 434 Pa. 21, 252 A.2d 618, at 620 [(1969)], we must also respect the countervailing principle that parties should not be required to arbitrate those issues that fall outside the scope of the agreement, see, e.g., Flightways Corp., 331 A.2d at 185. Id., 233 F.3d at 716, 719-720 (footnotes omitted) (emphasis supplied).

Id. at 995-996.

Similarly, in the matter presently before this Court the arbitration clause limits arbitration to questions of fault and amount regarding a claim for underinsured motorist benefits, and therefore since a coverage issue has been raised via the assertion that the Petitioner rejected underinsured motorist benefits, arbitration is not the appropriate forum to resolve the parties' dispute. Accordingly, this Court appropriately dismissed the Petition to Appoint Arbitrators and Compel Arbitration; as previously noted the dismissal was without prejudice to Petitioner's right to seek a declaratory judgment of the coverage dispute in the appropriate forum. Thus, the Court's April 12, 2011 Order should be affirmed.

III. CONCLUSION

As Petitioner's claim for UIM benefits involves a coverage dispute, which is not governed by the applicable arbitration provision in the policy, the Petition to Appoint Defense/Neutral Arbitrator and Compel Arbitration was properly dismissed. Appellate relief is not warranted.

BY THE COURT:

D. Webster Keogh, J.
Administrative Judge Trial Division

Date: _____