

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

TICO INSURANCE COMPANY : CIVIL ACTION  
v. :  
LARRY TURPIN : NO. 00-5140  
O'NEILL, J. : JANUARY , 2002

MEMORANDUM

On Saturday, June 28, 1997, defendant Larry Turpin was operating his motorcycle when he was struck by an automobile driven by Joyce Williams. Turpin was injured and received \$15,000 from Williams' insurance company in settlement for his claims against her. Turpin also collected \$15,000 in uninsured motorist coverage under a policy of National Grange Insurance Co. covering his motorcycle. In addition, Turpin filed a claim with plaintiff TICO Insurance Co. seeking underinsured motorist benefits under a policy issued to his wife, Diane Turpin. TICO initiated this suit seeking a declaratory judgment validating its denial of benefits to Turpin because they arose out of his operation of a motorcycle and under the terms of Diane Turpin's policy uninsured motorist benefits are not available to any insured injured "while occupying a vehicle with less than four wheels."

On November 29, 2001 Turpin moved for summary judgment claiming: (1) the waiver of underinsured motorist protection signed by Diane Turpin was void because it did not provide language required under Pennsylvania law, and (2) that the denial of coverage for accidents involving vehicles with less than four wheels violated the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. Cons. Stat. §§ 1701 et seq. ("MVFRL"). Turpin also contended that this matter was not properly before me due to an arbitration provision in the policy. On

November 30, 2001 plaintiff filed a cross-motion for summary judgment. On December 20, 2001 I issued an Order entering judgment in favor of plaintiff, finding that the provision excluding vehicles of less than four wheels did not violate public policy or the MVFRL.<sup>1</sup> Currently before me is Turpin's request that I vacate my prior Order and enter judgment in his favor.<sup>2</sup>

#### DISCUSSION

Turpin points out that in my prior Order I quoted the Court of Appeals' statement in McCallister v. Sentry Ins. Co., 958 F.2d 551, 554 (3d Cir. 1992): "[i]t appears logical to us . . . that a court of law should first decide the applicability of those policy provisions claimed to be contrary to legislative intent or against public policy." (Def.'s Mot. for Rel. ¶ 8). Turpin then states that the Court of Appeals has held that there are two inquiries to be made in cases such as the one before me: first I must determine whether the challenged provision violates the intent of the legislature and, if not, then I must determine if the provision is contrary to public policy. Id. Turpin argues that I erred in "mov[ing] directly to the alternate question of whether [TICO's] exclusion . . . was . . . against public policy . . . rather than . . . initially answer[ing] the question of whether the exclusion violates the MVFRL." Id.<sup>3</sup>

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<sup>1</sup> Since I held that motorcycles properly could be excluded from uninsured motorist coverage I did not reach Turpin's contention that Diane Turpin's waiver of the coverage was void.

<sup>2</sup> Although the motion is made pursuant to Fed. R. Civ. P. 60(b), I will consider it as one for reconsideration pursuant to Local Rule 7.1(g).

<sup>3</sup> Inexplicably, Turpin refers to TICO as Kemper Insurance Co. throughout his motion.

In my prior Order I relied on McCallister only for the purpose of responding to Turpin's contention that I lacked jurisdiction and the matter had to be submitted to arbitration. The McCallister Court adopted the holding of the Pennsylvania Superior Court in Daley-Sand v. West American Insurance Co., 564 A2d. 965, 969 (1989), which stated:

The law is clear that, although a case turning on the application or construction of an uninsured motorist clause is within the exclusive jurisdiction of the arbitration system, when the issue is whether a particular provision of the contract is contrary to a constitutional, legislative or administrative mandate, the courts properly exercise their jurisdiction over the entire matter.

McCallister, 958 F.2d at 554. Paragraph sixteen of Turpin's motion for summary judgment states that one of the reasons why he is entitled to uninsured motorist benefits is that TICO's denial of coverage for vehicles with less than four wheels is "unenforceable, contrary to statutory provision and against public policy." Under McCallister I have jurisdiction of this matter and reject Turpin's argument that this controversy must be submitted to arbitration.

I further disagree with Turpin's contention that in my prior Order I failed to determine whether TICO's exclusion of vehicles with less than four wheels from coverage is valid under the MVFRL, but instead turned directly to the question of whether the provision violates public policy. My prior Order stated: "The exclusion is not contrary to public policy and does not violate the Pennsylvania Motor Vehicle Financial Responsibility Law." This conjunctive holding addressed both of Turpin's arguments. The order in which the issues were listed has no legal significance.

Under the MVFRL an insurer must offer underinsured motorist coverage providing protection for people suffering injuries arising out of accidents involving "motor vehicles" owned or operated by those with insurance that is inadequate to compensate the insured. 75 Pa.

Cons. Stat. § 1731. Turpin’s principle argument is that since motorcycles are considered “motor vehicles” under a number of state laws TICO’s exclusion of vehicles with fewer than four wheels is in violation of the MVFRL. I rejected this contention in my prior Order.

Turpin now directs my attention to the recent Pennsylvania Supreme Court case, Kmonk-Sullivan v. State Farms Insurance Co., No. 1 WAP 2001, 2 WAP 2001, 2001 WL 1628172 (Pa. Dec. 21, 2001), which he characterizes as “identical in issue” to the case before me. (Def.’s Mot. for Rel. ¶ 9). According to Turpin, the Kmonk Court held that under the MVFRL if a vehicle requires registration in Pennsylvania an insurer is automatically required to offer underinsured motorist benefits for accidents involving such a vehicle. I disagree. The Kmonk Court invalidated policy language excluding government vehicles from the definition of “underinsured motor vehicles,” holding that such exclusions impermissibly conflicted with the provisions of the MVFRL. The Kmonk Court’s decision was based on a lack of evidence that the MVFRL was meant to exclude government vehicles.<sup>4</sup>

Turpin relies on the Kmonk Court’s statement: “the legislature expressly made the MVFRL applicable to all vehicles required by state law to be registered (75 Pa C.S. § 1712) knowing that [state-owned government] vehicles are required to be registered by statute.” Turpin argues that since motorcycles must be registered under state law TICO’s exclusion of vehicles with less than four wheels violates the MVFRL. However, the section cited by the Kmonk Court and relied on by Turpin specifically excepts coverage for injuries arising out of the maintenance or use of motorcycles. Section 1712, entitled “availability of benefits,” states in relevant part:

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<sup>4</sup> The Kmonk Court noted that an explicit exclusion of federally owned vehicles was included in the MVFRL. The Court stated that this exclusion was “a strong indication that the legislature did not intend to exclude unexpressed items.”

“An insurer issuing or delivering liability insurance policies covering any motor vehicle of the type to be registered under this title except . . . motorcycles, motor-driven cycles, or motorized pedacycles or like type vehicles registered in this Commonwealth, shall make available for purchase first party benefits. . . .” (emphasis added). As the Court in Pennland Insurance Co. v. Thomas, 35 Pa. D. & C.4th 212, 215 (1997), noted this distinction reappears throughout the MVFRL in order to “relieve insurance companies of being required to provide insurance benefits otherwise required for vehicles on account of the increased risk associated with motorcycles.”<sup>5</sup>

Counsel for Turpin quotes the Kmonk Court as relying on 75 Pa. Cons. Stat. § 1712 without informing me of the express exception in that section of the statute for motorcycles. This submission is lacking in the candor owed by an officer of the Court to the Court.

For the foregoing reasons Turpin’s motion for reconsideration of my Order of December 20, 2001 will be denied.

An appropriate Order follows.

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<sup>5</sup> § 1703 - Financial Responsibility Requirements - limited to “private passenger motor vehicle” liability insurance policies, defined in § 1702 as “[a] four wheel motor vehicle. . . .”

§ 1711 - Medical Benefit - “An insurer issuing . . . policies covering any motor vehicle of the type registered under this title, except . . . motorcycles . . . shall include coverage providing a medical benefit in the amount of \$5,000.00.”

§ 1714 - Ineligible Claimants - “An owner of a currently registered motor vehicle who does not have financial responsibility or an operator . . . of a . . . motorcycle . . . required to be registered under this statute cannot recover first party benefits.”

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**ORDER**

AND NOW, this        day of January, 2002, for the reasons stated in the accompanying memorandum defendant Larry Turpin's motion for reconsideration of my Order of December 20, 2001 is DENIED.

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THOMAS N. O'NEILL, JR., J.