

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Plaintiff

v:

JACOB HYMES, REBECCA HYMES
and WILLIAM HYMES,

Defendants

MEMORANDUM & ORDER OF COURT

FILED BY: JUDGE W. TERRENCE
O'BRIEN

GD 10 – 000201

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CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY, PA

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MEMORANDUM AND ORDER OF COURT

O'BRIEN, J.

This case is before me on plaintiff's Motion for Judgment on the Pleadings. The issue at this stage of the proceedings in this declaratory judgment action is whether defendants, in their Answer and New Matter, have alleged facts which indicate that Jacob Hymes suffered injuries in the instant accident "while in, on, getting into or out of " ¹ his motorcycle. If so, he cannot claim underinsured motorist benefits under the policy at issue because the "household exclusion" in the policy applies and plaintiff is entitled to judgment on the pleadings. According to defendants' New Matter, Jacob was struck by the tortfeasor's vehicle and suffered injuries when his body struck the tortfeasor's windshield and then the pavement. Defendants therefore argue he was not "on" the motorcycle when he was injured. The touchstone of any inquiry into the

¹ See page 20 of the insurance policy issued by plaintiff, attached as "Exhibit A" to plaintiff's Action for Declaratory Judgment.

meaning of an insurance policy is the reasonable expectation of the parties. Plaintiff argues on pages 5-6 of its brief as follows:

Mr. Hymes cannot possibly contend that his reasonable expectation of the meaning attached to the Allstate policy language of bodily injury "on" his motorcycle meant that in an accident with another vehicle he expected his injuries occurring while still "on" the vehicle to be excluded by his parents' policy, but any injuries he received after being thrown from his motorcycle were not excluded. The accident clearly involves a continuous chain of events from the impact until the vehicles and body came to rest. [Defendants' interpretation] would require the court to entertain expert testimony on the impossible task of separating which of [Jacob Hymes'] injuries occurred while still on the motorcycle at impact ... and which injuries occurred after [he] left contact with the motorcycle.

Defendants respond by pointing out that their New Matter alleges Jacob suffered no injuries until *after* he was ejected from his motorcycle and his body hit the tortfeasor's windshield. For defendants' interpretation of the exclusion language to be reasonable, however, it would have to make sense as applied to any accident in which a tortfeasor strikes a motoring insured, including those accidents involving injuries to the insured occurring both before and after ejection from the motorcycle or other vehicle the insured may have been driving. Defendants' interpretation would clearly not be reasonable as applied to such situations. Segmenting the accident under defendants' analysis would create an absurd result.

I agree with plaintiff and conclude that the clear, unambiguous language of the "household exclusion" bars defendants' UIM claim. Because on the facts averred, "the law says with certainty that no recovery is possible," plaintiff's Motion for Judgment on the Pleadings will be granted. *American International*

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AND NOW, this 22nd day of July, 2010, after consideration of plaintiff's Motion for Judgment on the Pleadings and the defendants' response thereto, and after oral argument, it is hereby ORDERED that the motion is granted. The Court declares that plaintiff does not owe underinsured motorist coverage to the defendant, Jacob Hymes, under the Allstate auto policy issued to Rebecca and William Hymes at policy number 908 923 696 for injuries and damages he sustained in the accident on April 25, 2009.

BY THE COURT

O'Brien

J.