

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

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SURA EYNISFELD GLIKMAN	:	April Term 2005
	:	
Plaintiff,	:	No. 02729
	:	
v.	:	Commerce Program
	:	
PROGRESSIVE CASUALTY INS. CO.	:	Control No. 102535, 110636
	:	
Defendant.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 9<sup>TH</sup> day of March 2006, upon consideration of the parties' Cross-Motions for Summary Judgment, the responses thereto, the respective memoranda, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is **ORDERED** as follows:

1. The Motion for Summary Judgment of Progressive Casualty Insurance Company is **granted** and summary judgment is entered in favor of Progressive and against Plaintiff.
2. Plaintiff's Motion for Summary Judgment is **denied**.

**BY THE COURT:**

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**MARK I. BERNSTEIN, J.**

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Plaintiff,	:	No. 02729
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PROGRESSIVE CASUALTY INS. CO.	:	
	:	Control No. 102535, 110636
Defendants.	:	

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**MEMORANDUM OPINION**

***MARK I. BERNSTEIN, J.***

Currently before the court are the parties' Cross-Motions for Summary Judgment. For the reasons fully set forth below, the Motion of Progressive Casualty Insurance Company ("Progressive") is **granted** and Plaintiff's Motion is **denied**.

**BACKGROUND**

The following facts are undisputed. On or about October 23, 2004, Plaintiff was walking across Roosevelt Boulevard with her husband, who was struck and killed by a motor vehicle operated by Progressive's insured. The vehicle did not strike Plaintiff. At the time of the accident, Plaintiff did not own a motor vehicle, nor did she reside with anyone who did. As a result of witnessing her husband's accident, Plaintiff was diagnosed and treated for post-traumatic stress disorder. Plaintiff sought first party medical benefits under the Progressive Policy to pay for the cost of her treatment. Progressive denied coverage on the basis that Plaintiff's injuries "were not the result of a bodily injury." Thereafter, Plaintiff filed the instant lawsuit against Progressive for failing to pay first party benefits, asserting claims for breach of contract and declaratory judgment.

## DISCUSSION

The discreet issue before the court is whether Plaintiff is entitled to recover first party benefits for the cost of her treatment for post-traumatic stress disorder. Based upon the applicable case law and the language of the Progressive Policy, this court finds that Plaintiff is not entitled to recover such benefits.

Part II of the Progressive Policy states:

We will pay the following First Party Benefits, if shown on your Declaration Page, for loss or expense sustained by an insured person ***because of bodily injury caused by an accident*** arising out of the maintenance or use of a motor vehicle: 1) medical expenses; 2) income loss; 3) funeral benefits; and 4) accidental death benefit (*emphasis added*).

“Bodily injury” is defined by the Progressive Policy as “bodily harm, sickness, or disease, including death, that results from bodily harm, sickness or disease.” The definition of “injury” in § 1702 of the Pennsylvania Motor Vehicle Responsibility Law (“MVFRL”), which is consistent with the language of the Progressive Policy, defines injury as “accidentally sustained bodily harm to an individual and that individual’s illness, disease or death resulting therefrom.”

As previously stated, Progressive denied coverage on the basis that Plaintiff’s injuries “were not the result of a bodily injury,” but rather were the result of a mental injury, which is not covered. Progressive’s position is supported by Pennsylvania case law. The Superior Court addressed this very issue in Zerr v. Erie Insurance Company, 446 Pa. Super. 451, 667 A.2d 237 (1995). In Zerr, the plaintiff sought first party benefits for post-traumatic stress disorder and accompanying physical symptoms as a result of nearly being involved in an automobile accident. The Superior Court held that the language of the MVFRL and the insured’s automobile insurance policy,<sup>1</sup> which created a distinction between physical and psychological injuries,

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<sup>1</sup> The policy at issue in Zerr defined “bodily injury” as “accidental bodily harm to a person and that person’s

precluded recovery for mental injuries which were not the result of a bodily injury.<sup>2</sup>

At bar, Plaintiff claims she suffered mental injuries as a result of the automobile accident which killed her husband and that, as a result of those mental injuries, she subsequently experienced physical symptoms.<sup>3</sup> In other words, her injuries did not result in an illness, but rather her illness resulted in a bodily injury. Thus, based upon the Superior Court's holding in Zerr which remains binding upon this court, Plaintiff is not eligible for first party benefits under the Progressive Policy or the MVFRL.

Accordingly, summary judgment is entered in favor of Progressive and against Plaintiff.

**BY THE COURT:**

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**MARK I. BERNSTEIN, J.**

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resulting illness, death or disease.” 446 Pa. Super. at 455.

<sup>2</sup> See also Needleman v. Liberty Mutual Fire Ins. Co., 352 Pa. Super. 288, 507 A.2d 1233 (1986), in which the Superior Court reached the same conclusion under the No-Fault Motor Vehicle Insurance Act, which was later replaced by the MVFRL. The definition of “injury” in the No Fault Act was consistent with that found in § 1702 of the MVFRL.

<sup>3</sup> Defendant disputes that Plaintiff has suffered physical manifestations of symptoms related to her post-traumatic stress disorder. However, for purposes of the instant motion, the court will accept as true Plaintiff's allegation that she has suffered physical manifestations of her emotional injuries.