

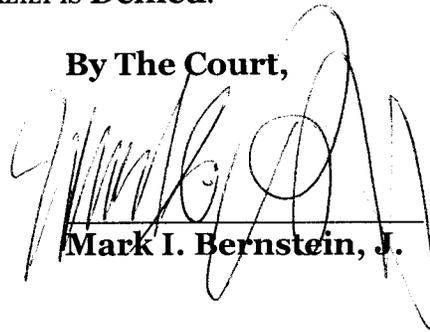
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

YAMA AZIZI	:	March Term, 2010
	:	No. 01609
<i>Plaintiff</i>	:	
v.	:	Commerce Program
ERIE INSURANCE COMPANY,	:	
	:	
RAHIMA AZIZI,	:	
	:	
TIM AVRAM, AND	DOCKETED :	Control Nos. 11070446,
	NOV 29 2011 :	11080917
SIMONA AVRAM	G. HART :	
	CIVIL ADMINISTRATION :	
<i>Defendants</i>	:	

ORDER

And Now, this 29TH day of November, 2011, upon the Cross Motions for Summary Judgment of Defendant Erie Insurance Company Exchange and Plaintiff Yama Azizi, the respective Responses in Opposition and memoranda of law, and the reply brief of Plaintiff Yama Azizi, it is **Ordered** that the Motion for Summary Judgment of Defendant Erie Insurance Company Exchange is **Granted**, and the Motion for Summary Judgment of Plaintiff Yama Azizi is **Denied**.

By The Court,



Mark I. Bernstein, J.

Azizi Vs Erie Insurance-ORDOP



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	:	
<i>Defendants</i>	:	

OPINION

The Cross Motions for Summary Judgment require this Court to determine whether Defendant, an insurance company, has a duty to defend or indemnify Plaintiff in an underlying action. For the reason below, the Court holds that Defendant insurer has no duty to defend or indemnify Plaintiff in the underlying action.

Plaintiff, Yama Azizi (“Plaintiff,”) is an individual residing in Pennsylvania. Defendant, ACC International, LLC (“ACC International,”) is a Pennsylvania entity engaged in the janitorial business. Defendant, Rahima Azizi (“Rahima,”) is a Pennsylvania resident and the mother of Plaintiff. At all times relevant to this action, Plaintiff and Rahima Azizi were employees of ACC International. Defendants Timote Avram (“Tim Avram”) and Simona Avram (“Simona Avram,”) husband and wife, are officers and members of ACC International. At all times relevant to this action, Tim Avram and Simona Avram privately owned a passenger van (the “Van,”) which was also

used for the business of ACC International. At all times relevant to this action, Tim and Simona Avram privately insured the Van under a policy issued by Progressive Insurance Company.¹ Coverage under this policy is not an issue in the instant action. Defendant, Erie Insurance Exchange (“Erie,”) is a corporation organized under the laws of Pennsylvania, and is authorized to conduct insurance business therein.

In July 2006, ACC International applied with Erie for workers compensation insurance and commercial general liability insurance.² Erie accepted the applications and issued a renewable Workers Compensation and Employers Liability Policy, and a renewable “Fivestar Contractors Policy” which included Commercial General Liability Insurance covering hired and non-owned automobiles, effective July 14, 2006.³

Subsequently, ACC International applied with Erie for a commercial insurance auto policy.⁴ In box No. 5, the application specifically requested information on any “hired autos” or “non-owned autos” which ACC International may have needed for business. ACC International did not fill-in box No. 5, and did not request coverage for any “hired autos” or “non-owned autos.” In response to the application, Erie issued a “Pioneer Auto Policy Declaration,” No. Q10-1130413, providing automobile insurance coverage effective October 11, 2006. The only automobile specifically insured under this policy was a 2005 Ford F150 truck.⁵ The complete policy stated:

Property Damage Liability

¹ Progressive Direct Auto Insurance Coverage Summary, Exhibit C to the Amended Complaint of Plaintiff Yama Azizi.

² Applications for Worker Compensation Insurance and Fivestar Commercial General Liability Insurance, Exhibits K, R to the Motion for Summary Judgment of Defendant Erie.

³ Workers Compensation and Employers Liability Insurance Policy Declarations, No. WCD—00-00-01A, Exhibit N to the Motion for Summary Judgment of Defendant Erie; Fivestar Contractors Policy Declarations No. Q31-1420705-H, Exhibit S to the Motion for Summary Judgment of Defendant Erie..

⁴ Commercial Non-Fleet / Fleet Auto Application, Exhibit Y to the Motion for Summary Judgment of Defendant Erie.

⁵ Pioneer Auto Policy Declarations, Exhibit H to the Motion for Summary Judgment of Defendant Erie.

We will pay all sums anyone we protect legally must pay as damages caused by an accident covered under this policy. The accident must arise out of the ownership, maintenance, use loading or unloading of an auto we insure.

* * *

Autos We Insure

The Declaration shows which of the following autos are autos we insure under this policy:

1. **Owned Autos.**

* * *

2. **Hired Autos.** These are **autos you**, or your employee while on business, hire, rent or borrow for use in your business, **but only for coverages for which a premium charge is shown....**

3. **Non-Owned Autos** (Employer's Non-Ownership Liability). These are autos you do not own, hire rent or borrow that are used in your business, **but only for coverages for which a premium charge is shown.** This includes autos owned by your partners, employees or members of their households....⁶

ACC International had an ongoing contract with a retail store located in Camden, Delaware.⁷ Under the contract, ACC International was required to strip and re-wax the floor of the retail store. Before any work could be performed, the retail store required proof that ACC International was properly insured. On October 8, 2007, the Reich Insurance Agency, a non-party in the instant action, forwarded to the retail store a "Certificate of Insurance" on behalf of its client, ACC international. The Certificate of Insurance disclosed that ACC International had coverage under a Workers Compensation Policy, a "Pioneer" Commercial General Liability Insurance Policy, and

⁶ "Pioneer" Commercial Auto Insurance Policy, Exhibit Z to the Motion for Summary Judgment of Defendant Erie, pp. 6, 5.

⁷ Master Environmental Agreement Services No. CW34201, Exhibit B to the Amended Complaint of Plaintiff Yama Azizi.

the “Pioneer” Automobile Liability Insurance Policy. Specifically, the Certificate of Insurance disclosed that the “Pioneer” policy provided ACC International with coverage “owned,” “**hired**,” and “**non-owned**” autos under the “Pioneer” policy.⁸ Thus, the Certificate of Insurance incorrectly stated that the “Pioneer” policy, not the “Fivestar” policy, provided ACC International had “**Hired**” and “**Non-Owned**” automobile coverage.

On February 20, 2008, Erie issued a notice of cancellation of the Workers Compensation Policy and “Fivestar” Commercial Liability Policy, effective February 2, 2008. The cancellation was made for failure by ACC International to pay sufficient funds to maintain the policies.⁹ Tim Avram received and read the notice of termination before March 13, 2008, the date of the events giving rise to the instant declaratory judgment action.¹⁰ Thus, with cancellation of the “Fivestar” Commercial Liability Policy, ACC International lost all coverage for “Hired” and “Non-Owned” autos. Notwithstanding the above cancellations, ACC International maintained its Pioneer Automobile Liability Policy in effect, even though that policy provided coverage only for the company’s truck, and no coverage whatsoever for “Hired” and “Non-Owned” autos.

On December 12, 2008, Plaintiff Azizi, his mother Rahima, and Raji, a co-employee, traveled to Camden, Delaware, to begin the stripping and re-waxing work on behalf of ACC International. To reach the destination, the three employees received permission from Tim Avram to use the privately-owned Van. Tim Avram gave permission for the use of his Van because the company truck was being used at a

⁸ Certificate of Insurance dated 10/08/07, issued by the Reich Insurance Agency to Wal-Mart Stores, Inc., Exhibit CC to the Motion for Summary Judgment of Defendant Erie.

⁹ Notice of Cancellation, Workers Compensation Policy and Fivestar Contractors Policy, Exhibit Q to the Motion for Summary Judgment of Defendant Erie.

¹⁰ Deposition of Timotel Avram, Workers Compensation Hearing, pp. 148:20-25, Exhibit C2 attached to the Motion for Summary Judgment of Defendant Erie.

different job site. Since the project required work to be performed over a number of days, Tim Avram booked hotel accommodations for the three employees near the site of the project. The workers would rest and spend the day at the hotel, and complete the project during the night.

The three employees began to strip the floor during the night hours of December 12-13, 2008. That night, Rahima was accidentally splashed on her face and mouth with a wax stripping agent. She became ill, was unable to continue her assignment, and awaited the end of the shift to be driven to the hotel. After the work was finished for the night, the three workers drove to the hotel.

In the off-time of March 13, 2008, Raji was scheduled to return briefly to Pennsylvania to attend an immigration hearing concerning his wife. Tim Avram, as a member of ACC International and a co-owner of the Van, gave Raji permission to use the vehicle to attend the hearing. Since Raji did not have a driver's license and could not drive, Plaintiff Azizi undertook the task of driving Raji to Pennsylvania. Rahima, unwilling to remain alone while her symptoms persisted, decided to ride to Pennsylvania with Plaintiff and Raji.

On the road, the party stopped for breakfast, then resumed the trip. However, Rahima's symptoms grew worse and she un-buckled her seat-belt to relieve her discomfort. Plaintiff and Raji made a decision: they would detour to deliver Rahima to a nearby emergency room, and resume their trip to Pennsylvania for the hearing. On the way to the emergency room, the car was involved in an accident: Rahima, lacking seat-belt protection, was thrown out of the car and landed on the street. As a result of the accident, she became a quadriplegic.

On March 9, 2010, Rahima filed a personal injury action, by summons only,

against ACC International, Tim and Simona Avram, and her son, Yama Azizi, in the Court of Common Pleas, Philadelphia County (the “Underlying Action”).¹¹ On the same day, Yama Azizi filed the instant declaratory judgment action against Defendants ACC international, Tim and Simona Avram, and his mother, Rahima. The Amended Complaint filed by Azizi asks this Court to declare that Erie owes a duty to defend or indemnify Azizi in the underlying action under the “Pioneer” auto policy. Defendant Erie filed an Answer with New Matter and a Declaratory Counterclaim to the Amended Complaint of Plaintiff Azizi. After Discovery closed, Defendant Erie and Plaintiff Azizi filed Cross Motions for Summary Judgment. Specifically, the Motion for Summary Judgment of Defendant Erie asserts that it owes no duty to defend or indemnify Plaintiff in the Underlying Action. According to Erie, there is no duty to defend or indemnify because there was no coverage for “Hired” or “Non-Owned” autos under the “Pioneer” policy maintained by ACC International at the time of the accident. In its own Motion for Summary Judgment, Plaintiff asserts that Erie should be estopped from denying the existence of “Hired” and “Non-Owned” coverage because Erie represented in its Certificate of Insurance that such coverage existed under the Pioneer Automobile Liability Policy.

Discussion

The [Pennsylvania Rules of Civil Procedure] instruct in relevant part that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Under the Rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. For purposes of summary judgment, the record includes any pleadings, interrogatory

¹¹ Rahima Azizi v. ACC International, LLC, Timotel Avram and Simona Avram, Case No. 1003-01605.

answers, depositions, admissions, and affidavits.... In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt.¹²

I. **The “Pioneer” policy purchased by ACC International did not provide coverage for “Hired” or “Non-Owned” automobiles.**

The Motion for Summary Judgment of Defendant Erie asserts that the “Pioneer” policy provided no “Hired” or “Non-Owned” automobile coverage because ACC International neither requested, nor paid for such coverage. Defendant Erie points to the specific language in the “Pioneer” policy which provided coverage for “Hired” or “Non-Owned” automobiles, only upon payment of a premium thereon.

The interpretation of an insurance policy is a question of law.... [The] primary goal in interpreting a policy, as with interpreting any contract, is to ascertain the parties' intentions as manifested by the policy's terms. When the language of the policy is clear and unambiguous, we must give effect to that language. Alternatively, when a provision in the policy is ambiguous, the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and controls coverage.¹³

In this case, ACC International did not request “Hired” or “Non-Owned” coverage in its “Pioneer” application for automobile insurance, and the resulting policy issued by Erie clearly and unambiguously stated that **“Hired” and “Non-Owned” “are ... insured under this policy,” “but only for coverages for which a premium**

¹² Scalice v. Pa. Emples. Benefit Trust Fund, 584 Pa. 161, 171-172; 883 A.2d 429, 435 (Pa. 2005).

¹³ Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 589 Pa. 317, 331; 908 A.2d 888, 897 (Pa. 2006).

charge is shown.”¹⁴ The record shows no premium paid for such forms of coverage, and this Court finds that ACC International did not obtain “Hired” or “Non-Owned” coverage under the “Pioneer” policy.

II. The incorrect statement in the Certificate of Insurance cannot trump the language of the actual insurance policy.

In its Motion for Summary Judgment, Plaintiff Azizi asserts that Erie should be estopped from denying “Hired” and “Non-Owned” because ACC International relied on the representations in the Certificate of Insurance which stated that “Hired” and “Non-Owned” automobile coverage was included in the “Pioneer” policy.

A “Certificate of Insurance ... is merely evidence of insurance under the ... policy, and not the policy itself.” Searfoss v. Avis Rent-A-Car Systems, Inc., 349 Pa. Super. 482, 488-89; 503 A.2d 950, 953 (Pa. Super. 1986).

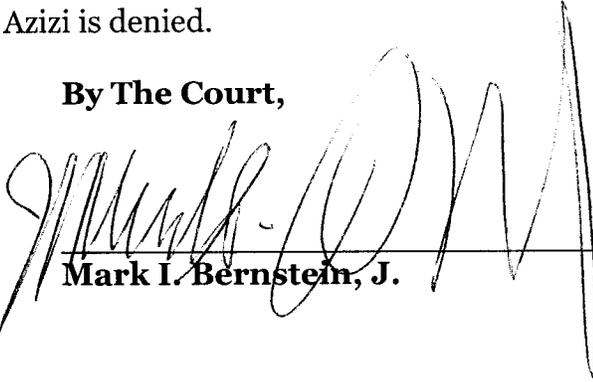
In Searfoss, Plaintiff rented a car from Defendant Avis. The rental contract specified that no person under the age of 21 should drive the car. Plaintiff permitted his son to drive the car, even though the son was not yet 21 years old. The son drove the car and was involved in an accident from which he died. Plaintiff filed a declaratory judgment action against Avis seeking coverage under the policy provided by Avis. The trial Court granted summary judgment in favor of Avis, and ruled that the son had no coverage. Plaintiff appealed on grounds that the language in the Certificate of Insurance was inconsistent with the provision excluding from coverage any driver below 21 years of age. Affirming, the Superior Court acknowledged the inconsistencies between the Avis contract and the Certificate of Insurance, but denied that the language in the Certificate of Insurance trumped the language in the contract. The Court held that the

¹⁴ “Pioneer” Commercial Auto Insurance Policy, Exhibit Z to the Motion for Summary Judgment of Defendant Erie, pp. 6, 5, (emphasis supplied).

Certificate of Insurance was “merely” evidence of insurance, and was not the policy itself.¹⁵

In this case, the “Pioneer” policy did not provide “Hired” and “Non-Owned” automobile coverage because ACC International had paid no premium to obtain such coverage. Although the Certificate of Insurance incorrectly stated that there was “Hired” and “Non-Owned” coverage under the “Pioneer” policy, this Court holds that the Certificate cannot trump the clear and unambiguous language in the found in the policy itself. The Motion for Summary Judgment of Defendant Erie is granted. The Motion for Summary Judgment of Plaintiff Azizi is denied.

By The Court,



Mark I. Bernstein, J.

¹⁵ Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co., 589 Pa. at 488-89; 908 A.2d at 953 (Pa. 2006).