IN THE COURT OF COMMON PL§EAS OF LYCOMING COUNTY, PA

FRED LILLEY & KAREN LILLEY, Plaintiffs	: :	
v.	:	NO.: 98-00,805
BLUE CROSS OF NORTHEASTERN PENNSYLVANIA	: :	

OPINION and ORDER

In this declaratory judgment action the court is asked to determine whether Blue Cross of Northeastern Pennsylvania has a right of subrogation against the proceeds of a settlement received by its insured, Fred Lilley, in his third party action against Emily Barr, the driver who injured him. That settlement contained only a lump sum amount, with no indication whether any portion was attributable to medical expenses.

The court finds that §1720 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S.A. §1701 et seq., does not prevent Blue Cross from subrogation because Mr. Lilley was driving a motorcycle when the accident occurred. Therefore, if Mr. Lilley had recovered medical benefits from Ms. Barr, Blue Cross would have a right to reimbursement for those expenses.[1]

However, the court finds that the settlement does not contain a recovery for medical expenses because §1722 of the MVFRL law prevents a plaintiff from recovering damages in a tort action which were already paid by the plaintiff's own insurance company. This prohibition exists to further one of the primary purposes of the MVFRL: to hold down the skyrocketing costs of automobile insurance in the

[1] Subrogation normally permits an insurance company to recover benefits it has paid from the tort-feasor who caused the harm. However, the theory of equitable subrogation applies here, which permits the insurance company to be reimbursed by an insured who has already recovered from a tort-feasor. Allstate Insurance Company v. Clarke, 364 Pa. Super. 196, 201, 527 A.2d 1021, 1024 (1987).

Commonwealth. Since Mr. Lilley could not recover from Ms. Barr the amount of medical expenses paid by Blue Cross, the settlement must be deemed to contain no recovery for those medical expenses. Therefore, there is nothing to subrogate, and Blue Cross is entitled to no funds from Mr. Lilley.

Factual Background

On May 20, 1997 a motorcycle operated by Mr. Lilley collided with an automobile operated by Ms. Barr and insured by Allstate Insurance Company. Mr. Lilley incurred medical expenses as a result of that accident and Blue Cross paid those expenses pursuant to his health insurance policy with the company. That policy contained a subrogation provision allowing Blue Cross to recover medical payments made to Mr. Lilley if he recovered from a tort-feasor.

Mr. and Mrs. Lilley sued Ms. Barr and Allstate in a third party action. On 10 March 1998 Blue Cross informed them it was seeking subrogation. The Lilleys then filed this declaratory action against Ms. Barr, Allstate, and Blue Cross, requesting the court to decide whether they could recover medical benefits from the tort-feasor and whether Blue Cross had a right to subrogation. The third party action was settled, with a lump sum payment made to the Lilleys. Allstate and Ms. Barr were released from this declaratory action, leaving the Lilleys and Blue Cross to fight over the proceeds. Both parties have filed motions for summary judgment and agree summary judgment is now appropriate.[2]

Discussion

The Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S.A.

[2] A motion for summary judgment pursuant to Pa.R.C.P. 1035.1 et seq. may be granted when, as here, there is no dispute as to any material fact.

§1701 et seq., has two primary purposes: to reduce the escalating costs of purchasing motor vehicle coverage in the Commonwealth and to provide prompt and adequate basic loss benefits for motor vehicle accident victims. Danko v. Erie Ins. Exchange, 428 Pa. Super. 223, 630 A.2d 1219, 1223 (1993). The attempt to hold down costs clashes with an injured victim's desire to receive multiple benefits when more than one insurance policy applies to a motor vehicle accident. This collision threatens one of the most basic principles of American tort law: that a wrongdoer should not benefit from the fact that his victim has purchased an insurance policy to cover his injuries. This policy is embodied in the "collateral source" rule, which has traditionally prevented the introduction of evidence of compensation from a source other than the tort-feasor because it is irrelevant to the damages the tort-feasor owes the victim.[3] The collateral source rule is also based on the standard contract law principle that when an individual pays for a policy he or she is entitled to the benefits due under that policy, regardless of how many other policies the insured purchased. The carriers who have promised to pay certain expenses–and who have received premiums in exchange–will be held to their promises.

The MVFRL, as interpreted by this court, strikes a balance between the policies served by the collateral source rule and the legislature's desire to hold down automobile insurance costs. It does this by permitting individuals injured in an automobile accident to recover from multiple policies which they have purchased. *See* §1719. However, it also prohibits plaintiffs from recovering those same benefits from another person's insurance policy. *See* §1722. Although Blue Cross argues that this

[3] This is the flip side of the "eggshell plaintiff" rule, under which a tort-feasor must take his victim as he is–if the victim is unusually fragile and incurs greater injury than the average person, the tort-feasor must nonetheless pay the damages.

prohibition applies to automobile insurance policies only, and not health insurance policies, the court finds it is a broad prohibition covering health insurance policies, as well. The bottom line is that a plaintiff is entitled to all applicable benefits from the policies he or she has purchased–automobile insurance as well as health insurance–but a plaintiff cannot command a double recovery by receiving those same benefits from *someone else's* insurance policy.

From this basic plan the legislature, for whatever reason, has exempted motorcycles. Under the MVFRL, motorcycle insurance policies are not required to provide the same first party benefits as automobile insurance policies. *See* §1711, §1712, §1715. And the Act also does not prohibit subrogation when the insured was driving a motorcycle. *See* §1720. However, the Act prevents *all* plaintiffs–including motorcyclists–from recovering from the tort-feasor benefits already received under a plaintiff's own insurance policies. §1722. Therefore, the Lilleys' settlement could not include payment for those medical expenses and so there are no medical expenses from which Blue Cross may obtain reimbursement. The court reached this conclusion from the following analysis.

I. Right to Subrogation

Section §1720 of the MVFRL upholds the collateral source rule by prohibiting subrogation, and thus reimbursement from a claimant's tort recovery, in four instances. Both parties agree that the first three[4] do not apply in this case because Mr.

[4] (1) Benefits available under §1711 (relating to required benefits), (2) benefits available under §1712 (relating to availability of benefits), and §1715

Lilley was driving a motorcycle. The final instance, however, is at issue. That portion of §1720 states that there is no right to subrogation for "benefits paid or payable by a program, group contract or other arrangement whether primary or excess under section 1719 (relating to coordination of benefits)." The Lilleys argue that this provision applies to Blue Cross.

The court does not agree. As its heading suggests, §1719 addresses "Coordination of benefits," and it applies only where an individual has received first party benefits from more than one insurance policy. When that has occurred, §1719 directs how the benefits are to be coordinated.[5] Here, however, Mr. Lilley is not entitled to any first party benefits from his automobile insurance policy because he was driving a motorcycle. *See* §1714.

The Lilleys argue that §1720 applies to Blue Shield simply because §1720 refers to §1719, and §1719 includes the phrase, "Any program, group contract or other arrangement for payment of benefits," which is defined in §1719(b) to include hospital corporation plans such as Blue Cross.[6] But just because Blue Cross is a

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(relating to availability of adequate limits). All three specifically exempt policies covering motorcycles.

[5] §1719(a) states:

> Except for workers' compensation, a policy of insurance issued or delivered pursuant to this subchapter shall be primary. Any program, group contract or other arrangement for payment of benefits such as described in section 1711 (relating to required benefits) 1712(1) and (2) (relating to availability of benefits) or 1715 (relating to availability of adequate limits) shall be construed to contain a provision that all benefits provided therein shall be in excess of and not in duplication of any valid and collectible first party benefits provided in section 1711, 1712, or 1715 or workers' compensation.

[6] Blue Cross advances the weak argument that §1720 does not apply to it because that section does not "specifically refer and apply to" a hospital plan

hospital plan corporation does not mean the statute applies to the instant case. On the contrary, the language of §1720 indicates it does not. Section 1720 states that subrogation is prohibited for benefits *paid or payable under* §1719. The medical benefits Blue Cross provided were not paid under §1719 because there were no benefits to coordinate with. The benefits were paid without ever referring to §1719 for direction. Therefore, none of the provisions set forth in §1720 apply to Blue Cross and Blue Cross is not prevented from subrogation under that section.[7]

II Tort Recovery

In the complaint requesting declaratory judgment the plaintiffs asked this court to determine whether they could recover medical benefits in its third party action. In their motion for summary judgment, the plaintiffs state that this issue has now been resolved. But although the third party action has been settled, the issue is still relevant in this case because the answer to that question guides the court in determining whether the settlement may be construed as containing medical expense

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corporation, as required under 75 Pa.C.S.A. §1720 (1999) in order for a statute to apply to a hospital plan corporation. This argument must fail because §1720 refers to §1719, and §1719(b) specifically mentions hospital plan corporations. To require §1720 to also specifically mention hospital plan corporations would be a hyper-technical application of 75 Pa.C.S.A. §1720 (1999), not to mention a waste of space in Purdon's.

[7] This conclusion is supported by the Superior Court's memorandum decision in Blue Cross/Blue Shield v. Platt, No. 69 Harrisburg 1989 (Pa. Super. 1990), in which the court stated that because the insureds were on a motorcycle at the time of the accident, subrogation would not be precluded under any section of the Act.

reimbursement.[8]

As discussed above, although the MVFRL permits individuals to benefit from all the policies they have purchased, it prohibits them from benefitting from other individual's policies at the same time. Thus §1722 precludes plaintiffs in a motor vehicle tort action from recovering money they have already received under another policy, including benefits defined in §1719.[9]

Blue Cross makes a valiant attempt to wriggle out of §1722 by trotting out the same argument it used to explain why §1720 does not apply: no benefits were received under §1719. However, this time the argument must fail because the language in §1722 is quite different from the language in §1720. Whereas §1720 applies to benefits *paid or payable* under §1719, §1722 applies to *a person* who is eligible to receive benefits under any program, group contract or other arrangement for payment of benefits *as defined in §1719*.[10] That statement obviously refers to the

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[8] It is interesting to note that although the plaintiffs originally maintained they could recover medical benefits from the tort-feasor, they abruptly changed their tune once that action was settled and Blue Cross requested reimbursement.

[9] Section 1722 states:

> In any action for damages against a tort-feasor, or in any uninsured or underinsured motorist proceeding, arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the coverages set forth in this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719 (relating to coordination of benefits) shall be precluded from recovering the amount of benefits paid or payable under this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719.

[10] §1719(b) states:
> Definition.–As used in this section the term "program, group contract or other arrangement" includes, but is not limited to, benefits payable by a hospital plan corporation or a professional health service corporation subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan

definition set forth in §1719(b), which specifically mentions benefits payable by a hospital plan corporation subject to 40 Pa.C.S. Ch. 61. Therefore, the prohibition of §1722 applies to Blue Cross medical benefits received–whether or not the insured also received first party benefits from another policy. The reference to §1719 is merely a shortcut to include the benefits already described in that section. Rather than restating those benefits, §1722 merely refers to the definition already given in §1719.

Nor does §1722 exclude plaintiffs who were driving motorcycles. When the legislature wanted to exclude motorcycles it knew exactly how to do so; it specifically stated "except . . . motorcycles." See §1711 and §1712. By contrast, §1722 states that it applies to actions arising out of "the maintenance or use of a motor vehicle." "Motor vehicle" is defined in §102 of the Motor Vehicle Code, 75 Pa.C.S.A. as, "A vehicle which is self-propelled except one which is propelled solely by human power or by electric power obtained from overhead trolley wires, but not operated upon rails." "Motorcycle" is defined as "A motor vehicle having a seat or saddle for the use of the rider and designed to travel on no more than three wheels in contact with the ground." Id.

The legislature's intent in §1722 was clear: to prevent individuals who have received first party benefits from recovering the same benefits in a tort action. And not just first party automobile insurance benefits–*all* benefits defined in §1719, which includes health insurance benefits. One need only look at the former version of the law to affirm this conclusion. The old statute only precluded double recovery of benefits set forth in §1711 and §1715(a)(1.1). The new law, by contrast, precludes *all medical bills paid by any insurance program defined in §1719.* See Stroback v.

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corporations) or 63 (relating to professional health services plan corporations).

Camaioni, 674 Pa. Super. 257, 674 A.2d 257 (1996) ([A]s a result of the Act 6 amendments effective July 1, 1990, the right to recover such excess medical expenses was extinguished where those expenses were paid by any entity identified in the amended Section 1722.").

Blue Cross has pointed to the case of Carroll v. Kephart, 717 A.2d 554 (Pa. Super. 1998) to support their position that plaintiffs are not prohibited from recovering medical expenses received under a medical insurance policy. In that case the Superior Court held that benefits a plaintiff has paid for or earned through his or her employment are not included in the category of benefits paid or payable under "any program, group contract or other arrangement" language in § 1719, and thus § 1722 does not apply to these benefits. That decision is not pertinent to this case, however, because sick pay is not mentioned in § 1719, whereas benefits provided by a hospital plan corporation or professional health service corporation are specifically listed in § 1719(b).

One could argue that the prohibition should be interpreted to cover only benefits received under motor vehicle insurance policies because the MVFRL is directed solely toward automobile insurance. However, that would be to ignore the reality behind automobile accident torts. As every plaintiff's attorney knows, when one sues an automobile driver, the ultimate payer will probably be that driver's automobile insurance carrier. Therefore, the inclusion of medical benefits paid by a health insurance provider directly affects automobile insurance companies too, and will hopefully help hold down insurance rates.

Section §1922 is, no doubt, the Pennsylvania Legislature's way of striking a balance between the conflicting policies of the collateral source rule and the desire to

reign in auto insurance rates. Under the compromise embodied in the MVFRL one is free to purchase as many policies as one likes, and may recover from all of them. However, one may not recover first party benefits under these policies *and also* recover those same benefits from *someone else's policy*. The legislature has obviously decided that an automobile accident should not be an open-ended opportunity for profiteering by a plaintiff or a plaintiff's attorney. Instead of allowing a few individuals to benefit from this sort of double recovery, the legislature chose to allow all Pennsylvania auto owners to benefit from lower auto insurance rates.

Because the Lilleys could not recover from Ms. Barr or her insurance company the medical benefits they had received from Blue Cross, the settlement must be deemed to not include those medical benefits. Therefore, although Blue Cross is not precluded from subrogation because Mr. Lilley was driving a motorcycle, Blue Cross may not subrogate for the simple reason that there is no medical expense payment to subrogate from.

O R D E R

AND NOW, this _____ day of June, 1999, the motion for summary judgment filed by Blue Cross of Northeastern Pennsylvania is denied. The motion for summary judgment filed by the Fred and Karen Lilley is granted, and Blue Cross is precluded from subrogation or reimbursement from the settlement proceeds of the tort action in the case filed to Lycoming County Docket Number 97-00,929.

BY THE COURT,

Clinton W. Smith, P.J.

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