IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

NATIONWIDE INSURANCE CO.,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-00,835
	:	
MAXINE L. WASSON, Executrix of the	:	
Estate of Roy E. Walters, Jr.,	:	
Defendant	:	

OPINION and ORDER

In this action for declaratory judgment Nationwide Insurance Company has asked the court to decide the interesting and complex legal issue of whether a panel of arbitrators may consider the fault of three other tortfeasors when deciding whether an insured can collect for the negligence of a "phantom vehicle" under an uninsured motorist policy. That is precisely the type of juicy legal question this court relishes sinking its teeth into. Unfortunately, we must resist that temptation because the parties have previously agreed to resolve such disputes through arbitration.

The American legal system, although excellent in many ways, is not without flaws. Time, expense, and procedural complexity are only a few of the problems that have sent litigants in search of alternative ways to resolve their disputes. Arbitration is one of the most popular methods, and it has received support from the legislature as well as the courts. Therefore, when two parties enter into a valid agreement to arbitrate their disputes, a court must enforce that agreement and decline to hear the case–even when, as here, one party later changes its mind.

Facts

This case arose out of an accident in which Roy E. Walters, Jr. was struck and killed by a car driven by William McClintock while he was crossing Route 87 after exiting the Loyalsock Hotel. Mr.

McClintock, the sole witness, claims that a "phantom vehicle," which has never been identified, ran a stop sign and pulled out in front of him, distracting his attention and forcing him to swerve. Maxine Wasson, executrix of Mr. Walter's estate, filed suit against Mr. McClintock, the Loyalsock Hotel, and the Pennsylvania Department of Transportation. After a tortured history the case finally went to trial in June 1999, only to end up in an award of a new trial granted by this court in August 1999.

Meanwhile, Ms. Wasson also attempted to collect from Mr. Walters' insurance company, Nationwide, for the negligence of the phantom vehicle under the uninsured motorist provision of the policy. Pursuant to the policy's arbitration clause, the parties prepared for arbitration. At some point, however, Nationwide realized Ms. Wasson intended to argue that in considering the comparative negligence of Mr. Walters the arbitrators should take into consideration the negligence of not only the phantom vehicle, but the other three tortfeasors, as well.[1] Ms. Wasson also apparently intends to argue that the phantom vehicle is a joint tortfeasor with PennDOT, the Loyalsock Hotel, and Mr. McClintock, and so should be jointly and severally liable for the full damages. Nationwide, however, believes the arbitrators should merely compare the negligence of Mr. Walters with the negligence of the phantom vehicle.

Leery of having the arbitrators decide this issue, Nationwide filed this declaratory judgment action asking the court to determine which defendants' culpability the arbitrators may measure. In response, Ms. Wasson filed a motion for summary judgment, arguing that the court has no jurisdiction to decide the question because it must be submitted to arbitration.

DISCUSSION

The Declaratory Judgment Act expressly provides that a party is not entitled to declaratory relief with respect to any "proceeding within the exclusive jurisdiction of a tribunal other than a court." 42

[1] Presumably, Ms. Wasson is hoping to thereby dilute any finding of comparative negligence on behalf of the pedestrian, Mr. Walters.

Pa.C.A. § 7541(c)(2). This provision undoubtedly applies to arbitration proceedings. See Jewelcor, Inc. v. Pre-Fab Panelwall, Inc., 397 Pa. Super. 78, 579 A.2d 940, 942 (1990).

Under Pennsylvania law the determination of whether an issue must be submitted to arbitration depends on two factors: (1) whether the parties entered into a valid agreement to arbitrate, and (2) whether the dispute falls within the scope of that agreement. Rocca v. Pennsylvania General Ins. Co., 358 Pa. Super. 67, 516 A.2d 772, 772-73 (1986). Since neither party attacks the agreement to arbitrate, the sole question is whether the dispute over who's negligence may be compared is within the scope of the agreement.

Our Supreme Court forcefully expressed its thoughts on this issue in the case of Brennan v. General Accident Fire & Life Assurance Corp., 524 Pa. 542, 574 A.2d 580 (1990), where it gave a very expansive interpretation to an arbitration provision similar to the one signed by the parties in this case. In Brennan, an insurance company wanted to set off against the underinsured motorist claim the amount the insureds received from another carrier. The company claimed that legal issue was outside the scope of the arbitration provision, but the Supreme Court disagreed. The court stated, "The instant dispute, in its broadest sense, involves a disagreement as to the amount of damages which Appellant would and could possibly receive under the policy." Id. at 583. The court also pointed out that "since the insurance policy was written by the Appellee, any ambiguity will be interpreted against the Appellee." Id. Finally, the court concluded, "Given the broad scope of authority given the arbitrators, we have little difficulty in concluding that the dispute herein is a matter specifically within the scope of the arbitration clause." Id.

After Brennan, Pennsylvania courts followed suit, generally finding that questions concerning the existence and extent of insurance coverage are within the scope of arbitration clauses unless there is language specifically excluding an issue. See Baverso v. State Farm Ins. Co., 407 Pa. Super. 164, 595 A.2d 176 (1991); Erie Insurance Exchange v. Mason, 406 Pa. Super. 520, 594 A.2d 741 (1991); Lamar

v. Colonial Penn Ins. Co., 396 Pa. Super. 527, 578 A.2d 1337 (1990); Nationwide Mutual Ins. Co. v. Pitts, 400 Pa. Super. 269, 583 A.2d 489 (1990).

The Nationwide policy issued to Mr. Walters stated that the parties shall arbitrate "If we and the insured do not agree about the insured's right to recover damages or the amount of damages." Nationwide now attempts to wriggle out of the clutches of its own clause by characterizing the issue as whether the arbitrators can decide the liability of the other three Defendants in the action. That, however, is nothing more than another way of asking of whether this dispute falls within the scope of arbitration, and we find that it does.

The dispute boils down to two simple questions: whether Ms. Wasson can collect under the uninsured motorist policy and if so, how much. The method the arbitrators employ to arrive at those decisions is a legal issue within the jurisdiction of the panel, for arbitrators are the judges of legal as well as factual issues. Nationwide, fully aware of this, included the arbitration clause in its policy. Now, however, the company has apparently grown nervous about trusting the arbitrators with this sticky legal issue, and prefers to have the court decide.

To put it simply, Nationwide wants it both ways: arbitration *and* judicial involvement. After jilting the court for an arbitration panel, Nationwide regrets the loss of our presence and has proposed a menage-a-trois. Unfortunately, the court must decline the invitation for as everyone knows, three's a crowd.

O R D E R

AND NOW, this _____ day of August, 1999, for the reasons stated in the foregoing opinion, the Motion for Summary Judgment filed by the defendant is granted and the complaint filed in this matter is dismissed with prejudice.

BY THE COURT,

Clinton W. Smith, P.J.

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