J.A. ABBOTT, III AND LOIS ABBOTT VS. UNITED STATES FIDELITY AND GUARANTY COMPANY, C.P., Franklin County Branch, No. A.D. 1994-393

Civil Action-Law- Uninsured Motorist Claim-Arbitration

1. Where an insurance policy contains an agreement to arbitrate, any dispute about the availability and extent of coverage must be submitted to an arbitrator for decision and not to the Court.

2. The courts have consistently held that the arbitrator's scope of authority is extremely broad.

3. Where the policy was written by the insurer, any ambiguity should be interpreted against it and not the insured.

Richard J. Walsh, esquire, Attorney for Petitioners
James G. Nealon, III, esquire, Attorney for Respondent

OPINION AND ORDER OF COURT

HERMAN, J., April 12, 1995:

On October 5, 1991, Emily A. Abbott, the 14-year old daughter of the petitioners J. A. Abbott III and his wife Lois Abbott, was killed in a one-vehicle accident. On November 5, 1990, the respondent United States Fidelity and Guaranty Company issued a commercial insurance policy with a coverage period of November 5, 1990 through November 5, 1991. The policy contained an uninsured motorists coverage endorsement. The insurance carrier providing coverage for the vehicle occupied by Emily Abbott denied coverage to the driver of that vehicle. On May 4, 1993, the petitioners submitted a claim with the respondent for payment of the uninsured motorist policy limits, and the respondent denied that claim on December 13, 1993. The petitioners made two written demands for arbitration under the policy, but the respondent has yet to identify its choice of an arbitrator. On October 13, 1994, the petitioners filed a petition to compel arbitration and rule to show cause. The respondent filed an answer with new matter on November 10, 1994 in which it alleges that the commercial policy did not provide coverage for Emily Abbott and that the petition to compel arbitration was premature. The parties submitted legal memoranda to the Court

and argument was held on January 5, 1995. This matter is ready for decision.

DISCUSSION

The parties disagree as to which entity, the Court or a Board of Arbitrators, has the authority to decide whether Emily Abbott is an insured individual under the policy issued November 5, 1990. The petitioners argue that the policy's arbitration provision requires an insurer and insured to submit to arbitration where they disagree about the interpretation or application of coverage clauses, including those involving uninsured motorists. The respondent argues that it is the Court's role to make the initial finding as to whether a person is an uninsured before compelling the insurer to submit to arbitration under the terms of the policy. The respondent contends that any disputes over the extent of coverage should be subject to arbitration only after the Court has determined that the individual is covered under the policy.

There is no dispute that the policy contains the following arbitration clause under the endorsement entitled "Pennsylvania Uninsured Motorists Coverage - Stacked":

> *ARBITRATION*
>
> a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "Uninsured motor vehicle" or do not agree as to the amount of damages, either party may make a written demand for arbitration. Each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Paragraph E(5).

The Common Policy Declarations page of the policy (Exhibit A of respondent's answer and new matter; petitioner's tab #1 attached to their brief) indicates that the named insured is Abbro Realty Co. Immediately under this listing of the named insured, the policy states: See CL/00 9901(1-87). At the bottom of the page is paragraph 5: "Forms and Endorsement Applicable to All Coverage Parts: CL/00 9901(1-87)". The policy also contains an

endorsement which modifies the terms of insurance coverage by extending coverage to the following persons and/or entities: "Abbro Realty Co. And/Or Carolyn S. Abbott, Diane A. Maring, J. A. Abbott III And/Or Diane A. Martin & J. A. Abbott III Trustees And/Or Northaven Mobile Homes, Inc." (Exhibit A. of respondent's answer and new matter; petitioner's tab #2 attached to their brief).

The endorsement entitled "Pennsylvania Uninsured Motorists Coverage Stacked" includes the following provision:

> B. WHO IS AN INSURED
> 1. You.
> 2. If you are an individual, any "family member." ...

The petitioners argue that since J. A. Abbott III was added as a named insured in his individual capacity, Emily was also a named insured under the policy. The respondent does not dispute that endorsement CL/00 9901 (1-87) extended coverage to J. A. Abbott; however, they nevertheless maintain that such coverage does not extend to Emily Abbott because the policy remains a corporate one, as evidenced by the page entitled "Garage Coverage Part - Declarations" where the form of business to be insured is listed as being a corporation as opposed to a joint venture, partnership or individual business. (Exhibit A of respondent's answer and new matter). The respondent urges us to decide whether Emily Abbott is an insured and to conclude that she does not, in fact, qualify as such under the terms of the policy. Our analysis of the case law on this subject, however, leads us to conclude that we may not take such action.

Where an insurance policy contains an agreement to arbitrate, any dispute about the availability and extent of coverage must be submitted to an arbitrator for decision and not to the Court. Where there is no disagreement that an arbitration provision exists,

> ... arbitration is mandated whenever the insured and the insurer disagree as to when a party is legally entitled to recover damages. There is no limit to the jurisdiction of the arbitrators over what issues may be submitted and in fact the policy declares that all disputes between the insurance company and the insured will be arbitrated. The instant

> dispute, in its broadest sense, involves a disagreement as to the amount of damages which [the insured] would and possible could receive under the policy ...

Brennan v. General Accident Fire and Life Assurance Corp., 524 Pa. 542, 549, 574 A.2d 580 (1990). This language has been relied upon in several cases where an insurer resisted the insured's petition to compel arbitration. *Lamar v. Colonial Penn Insurance Company*, 396 Pa. Super. 527, 578 A.2d 1337 (1990); *Nationwide Mutual Insurance Company v. Pitts*, 400 Pa. Super. 269, 583 A.2d 489 (1990); *Erie Insurance Exchange v. Mason*, 406 Pa. Super. 520, 594 A.2d 741 (1991); *Marino v. General Accident Insurance Company* 416 Pa. Super. 1, 610 A.2d 477 (1992); *McAlister v. Sentry Insurance Company*, 958 F.2d 550 (3d. Cir. 1992). The courts have consistently held that the arbitrator's scope of authority is extremely broad. The arbitration provision in the case *sub judice* features the same key elements as those in the *Brennan* policy and the later cases. Furthermore, it is well-established that where the policy was written by the insurer, any ambiguity should be interpreted against it and not the insured. *Brennan; National Grange Mutual Insurance Co. v. Kuhn*, 428 Pa. 179, 236 A.2d 758 (1968).

The respondent cites *Patton v. Hanover Insurance Company*, 417 Pa. Super. 351, 612 A.2d 517 (1992) to support its contention that the issue of whether an individual is an insured under a policy is one for the Court to decide before the matter is submitted to arbitration. As the petitioners correctly point out, in that case the insurer denied that an arbitration agreement existed and the Superior Court noted that the threshold question of whether such an agreement existed is one which the lower court should address. Contrary to the respondent's contention, *Patton* does not limit the scope of the *Brennan* holding, particularly in relation to the instant case in which the existence of the arbitration provisions is not disputed by the respondent.

In *Federal Kemper Insurance Company v. Wales*, 430 Pa. Super. 208, 633 A.2d 1212 (1993) cited by the respondent, Wales received workmen's compensation benefits after being injured in a car accident on her employer's property by a co-worker. She then filed an action against the co-worker, seeking benefits under his own insurance policy, which the trial court found was precluded

under the workmen's compensation law. Wales then made a claim for uninsured benefits under her employer's policy, arguing that her inability to sue the co-worker converted him from an insured to an uninsured motorist. In disputing Wales' eligibility for coverage under its policy, the employer's insurer argued that arbitration was not required because there were no issues to submit to arbitration. The Superior Court agreed, stating:

> There is no dispute as to the facts. Spangler [the co-worker] was insured under a policy issued by State Farm. He was not an uninsured motorist. Nothing transpired that converted Spangler from an insured to an uninsured motorist. The provisions of the Workman's Compensation Statute prevent appellee from proceeding in tort against Spangler. This does not render Spangler an uninsured motorist... The solution to appellee's situation lies with the Pennsylvania Legislature, not the judicial system.

Id. 211.

The key factor distinguishing *Wales* from the instant case is the Workmen's Compensation Statute which precluded Wales, as a matter of law, from suing Spangler. In that situation there were no issues to be submitted to arbitration.

The respondent makes an identical argument to that made by the insurer in *Baverso v. State Farm Insurance Company,* 407 Pa. Super. 164, 595 A.2d 176 (1991). The lower court had held that arbitration could commence only if the claimant's status as an insured was not in dispute. If such a dispute existed, the court would decide the claimant's status before arbitration commenced. The Superior Court, citing *Brennan* and its progeny, disagreed: "While the issue of whether . . . Baverso is an insured under the contract is seemingly a prerequisite to arbitration under . . . [the] policy, all issues under this type of arbitration clause must be determined by the panel of arbitrators." *Baverso v. State Farm Insurance Company*, 407 Pa. Super. at 169. If an insurer wishes to exclude questions of coverage from the scope of arbitration, it can do so by altering the arbitration provisions it places in its policies. *Id.* at 170. The court also noted:

> If this [Court] were to find that all questions relating to coverage were properly raised in a judicial proceeding rather

> than in arbitration, a claimant would be subject to the cumbersome process of litigating issues before a judge. Such a procedure would undoubtedly cost insureds countless amounts of money and time to compel arbitration. The objective of arbitration is to rid the claims process of precisely that tedious procedure...

Id. at 170. The same reasoning applies to the instant respondent's position.

Having determined that there are no jurisdictional limits on the issues which may be considered by the arbitrators, there is no need for us to decide whether Emily Abbott is an "insured" under the policy. The respondent must proceed to arbitration by selecting its arbitrator as required by the policy.

For the reasons stated herein an appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 12th day of April, 1995, the petition of J. A. Abbott, III and his wife, Lois Abbott, to Compel respondent United States Fidelity & Guaranty Company to Arbitrate is GRANTED. Respondent will proceed to arbitration by selecting its arbitrator as required by the insurance policy at issue in this case.