

TIMOTHY A. BADER, Plaintiff, v. JEFFREY ALLEN O'TOOLE,
Defendant, C.P. Franklin County Branch, Civil Action No. 2000-1689

*Discovery – Rule 4003.2 of the Pennsylvania Rules of Civil Procedure –
Insurance Policy*

1. Rule 4003.2 allows discovery of insurance policies so long as the carrier may be liable to satisfy all or part of the judgment.
2. If a claimant is denied coverage by its insurance carrier, the rules of civil procedure do not make that insurance policy itself undiscoverable to a party later sued by claimant.

Appearances:

David S. Keller, Esq.

Barry A. Kronthal, Esq.

OPINION AND ORDER

Walker, P.J., September 27, 2000

Case History

This action arises out of an automobile accident involving Plaintiff Timothy A. Bader and Defendant Jeffrey Allen O'Toole. After the accident, the defendant submitted a claim to his insurance carrier, Kemper Insurance Companies (hereinafter "Kemper"), which was subsequently denied. Thereafter, on June 30, 2000, plaintiff served a subpoena upon Kemper ordering it to produce the complete insurance policy of defendant, numbered HB511789, regarding claim number 253AM114217. Kemper now comes before the court to quash the subpoena by way of a motion for protective order, filed July 24, 2000. Plaintiff filed his response to Kemper's motion on July 26, 2000, and the issue is now ripe for resolution.

Discussion

Kemper first maintains that the subject matter subpoenaed by plaintiff is essentially irrelevant because it denied coverage on the claim at issue. Therefore, it is suggested, Kemper is absolved of all feasible liability regarding the auto accident and any inquiry into the policy is not reasonably calculated to lead to the discovery of admissible evidence. See Pa.R.C.P. No. 4001. Kemper also proposes that the policy is plainly undiscoverable under Rule 4003.2 of the Pennsylvania Rules of Civil Procedure, which allows discovery of insurance agreements so long as the insurance carrier may be liable to satisfy all or part of the judgment. See Pa.R.C.P. No. 4003.2.

While the terms of the policy may serve to exonerate Kemper of all liability in the instant action, it is altogether unrealistic and nonsensical for Kemper to insist that the plaintiff and this court simply take its word for it. Kemper has denied coverage to defendant on the claim, but who is to say that the denial was proper under the terms of the policy? If the law disallowed discovery of policies every time an insurance company denied coverage on a claim, the adversary system would be turned on its head. Furthermore, such a law would encourage insurance companies to immediately deny coverage to possible plaintiffs, perhaps even in bad faith, in order to avoid any future liability under the claim. This court does not see how the plaintiff's examination of the policy in toto will prejudice Kemper instantly if its averments are legitimate, and does not expect plaintiffs in general to roll over and acquiesce when insurance companies do not cooperate.

ORDER OF COURT

September 27, 2000, having considered the motion for protective order and the response thereto, it is hereby ordered that Kemper Insurance Companies must comply with plaintiff's subpoena and produce policy number HB511789 in toto, as its motion for protective order is denied.