

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

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.	:	August Term, 2006
	:	
<i>Plaintiff</i>	:	
	:	
v.	:	No. 2752
	:	
AVIS RENT-A-CAR SYSTEMS LLC, <i>et al.</i>	:	Commerce Program
	:	
<i>Defendants</i>	:	Control Nos. 042487,
	:	052213.

ORDER

AND NOW, this 10th day of July 2007, upon consideration of the Motion for Summary Judgment filed by defendants, Avis Rent-A-Car Systems, LLC *et al.*, the Motion for Judgment on the Pleadings filed by plaintiff, State Farm Mutual Automobile Insurance Company, the respective memoranda of law in support and opposition, all other matters of record and in accord with the Opinion being filed contemporaneously, it is **ORDERED** that:

1. Defendant's Motion for Summary Judgment is **DENIED**; and
2. Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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<i>Defendants</i>	:	Control Nos. 042487,
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OPINION

Albert W. Sheppard, Jr., J. July 10, 2007

The parties’ cross motions require this court to decide whether a waiver of uninsured-motorist coverage is valid, where the waiver lacks a specific heading provided by the Motor Vehicle and Financial Responsibility Law, 75 Pa. §§ 1701 *et seq.* (“MVFRL”). For the reasons discussed, the court concludes that the waiver is invalid.

Accordingly, defendants’ Motion for Summary Judgment is **denied**. Plaintiff’s Motion for Judgment on the Pleadings is **granted**.

Background

Avis Rent-A-Car Systems, LLC (“Avis”), provides car rental services to business and leisure customers. Pursuant to the MVFRL, Avis is required to provide its clients with uninsured-motorist coverage, unless its clients waive such coverage by signing a clause captioned “REJECTION OF UNINSURED MOTORIST PROTECTION.”¹ Under the pertinent MVFRL section, the waiver must mirror the words specifically provided by the

¹ 75 PA. C.S. §§ 1787, 1731(b.1).

statute, and its language may only be changed grammatically to reflect a difference in verb tense.²

On October 31, 2004, Avis rented a 2004 Buick to Mr. Gilbert Pender. Upon entering into the car-rental contract with Avis, Mr. Pender signed a waiver that tracked the statutory language, but lacked the heading set forth by the statute. On the same day, a hit-and-run driver crashed into Mr. Pender's rented Buick. Mr. Pender filed an uninsured-motorist coverage claim against Avis, but Avis, relying on the signed waiver, denied the claim. After Avis disclaimed, Mr. Pender filed a similar claim with his secondary insurer, State Farm Mutual Insurance Company ("State Farm"). State Farm granted Mr. Pender's claim, and paid him damages in the amount of \$9,500.

In this action, State Farm seeks to recover the \$9,500 from Avis. State Farm asserts that Avis may not disclaim uninsured-motorist coverage because the waiver that Mr. Pender signed was not captioned with the language required by the MVFRL.

Discussion

Pennsylvania Rule of Civil Procedure 1035 instructs 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."³ Under the Rule, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law.⁴ For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions, and affidavits."⁵

² 75 PA. C.S. §§ 1731(b.1), 1731(b.2).

³ Scalice v. Pa. Empls. Benefit Trust Fund, 584 Pa. 161 171 (2005) (citing Pa. R.C.P. 1035.2(1)).

⁴ Id. (citing Note to PA. R.C.P. 1035.2).

⁵ Id. (citing PA. R.C.P. 1035.1).

The law on summary judgment on the pleadings is also clear: “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.”⁶ If the pleadings show that there is no disputed material fact, trial becomes unnecessary, and judgment on the pleading is appropriate.⁷

I. The Waiver of Uninsured Motorist Coverage is Invalid.

State Farm asserts that the Pender-Avis waiver is invalid, because it lacks the header supplied by the MVFRL. Conversely, Avis argues that the waiver is valid because its language, though lacking the header, tracks the statutory language, and placed Mr. Pender on notice that he was waiving his right to uninsured-motorist coverage. The MVFRL states:

(b.1) Limitation of rejection.—Uninsured motorist protection may be rejected for the driver and passengers for rental or lease vehicles ... but such coverage may only be rejected if the rental or lease agreement is signed by the person renting or leasing the vehicle and contains the following rejection language:

REJECTION OF UNINSURED MOTORIST PROTECTION

I am rejecting uninsured motorist coverage under this rental or lease agreement, and any policy of insurance or self-insurance issued under this agreement, for myself and all other passengers of this vehicle. Uninsured coverage protects me and other passengers in this vehicle for losses and damages suffered if injury is caused by the negligence of a driver who does not have any insurance to pay for losses and damages.

(b.2) Rejection Language Change.—The rejection language of subsection (b.1) may only be changed grammatically to reflect a difference in tense in the rental agreement or lease agreement.⁸

When called upon to interpret a statute, this court is required to give effect to the

⁶ PA. R.C.P. 1034(a).

⁷ *Travelers Casualty & Surety v. Castegnaro*, 772 A.2d 456, 459 (Pa. 2001).

⁸ 75 PA. C.S. §§ 1731(b.1), 1731(b.2).

intent of the General Assembly.⁹ Whenever possible, the court will construe a statute by giving effect to every word contained therein.¹⁰ The language of the MVFRL states that in a car rental contract, uninsured motor-vehicle coverage may be waived only if the agreement contains the rejection language supplied by the General Assembly. The rejection language supplied by the General Assembly includes a capitalized header that reads: “REJECTION OF UNINSURED MOTORIST PROTECTION.”

In Pennsylvania, a waiver of coverage that mirrors the language supplied by the statute, including the capitalized header, is valid.¹¹ In Smith v. The Hartford, Mr. Smith, an insured, waived the underinsured-motorist coverage supplied by his insurer, The Hartford Insurance Company (“Hartford”). An underinsured motorist crashed into Smith’s car, and Smith sought underinsurance coverage from Hartford. Hartford declined to provide coverage, and Smith sued Hartford. The trial court granted Hartford’s motion for summary judgment.

On appeal, the Superior Court was asked to determine whether the language in the waiver had placed Smith on notice that he was giving-up his right to underinsured-motorist coverage. Affirming, the Superior Court held that the waiver had given notice to Smith because the language not only tracked the words in the statute, but also contained a capitalized heading that mirrored the caption supplied by the General Assembly.¹²

In this case, the Pender-Avis waiver tracks the language in the statute, but does not include the capitalized heading supplied by the General Assembly. Thus, the Pender-Avis waiver does not mirror the requirements of the MVFRL. Because the waiver does not

⁹ Mishoe v. Erie Ins. Co., 573 Pa. 267, 272 (Pa. 2003) (citing 1 PA. C.S. § 1921; Pantuso Motors, Inc. v. CoreStates Bank, 798 A.2d 1277, 1281-82 (Pa. 2002).

¹⁰ Id.

¹¹ Smith v. The Hartford Insurance Company, 849 A.2d 277, 279 (Pa. Super. 2004).

¹² Smith v. The Hartford, 849 A.2d at 279.

mirror the language supplied by the General Assembly it is invalid.

II. Avis is the Primary Provider of Uninsured Motorist Coverage.

State Farm argues that Avis is the primary provider of uninsured motorist coverage pursuant to the Motor Vehicle and Financial Responsibility Law. The law states:

(a) **General rule.**—Where multiple policies apply, payment shall be made in the following order of priority:

- (1) A policy covering a motor vehicle occupied by the injured person at the time of the accident.
- (2) A policy covering a motor vehicle not involved in the accident with respect to which the injured person is an insured.¹³

In this case, the 2004 Buick occupied by Gilbert Pender at the time of the accident was covered by the uninsured motorist policy provided by Avis. Therefore, Avis is the primary provider of uninsured motorist coverage in the Pender-Avis rental contract.

Defendants' Motion for Summary Judgment is denied, and plaintiff's Motion for Summary Judgment on the Pleadings is granted. A contemporaneous Order consistent with this Opinion will be issued.

BY THE COURT,

ALBERT W. SHEPPARD, JR. J.

¹³ 75 Pa. C.S. § 1733.