

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

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CAROLE HEENAN

Plaintiff,

v.

THE PHOENIX INSURANCE COMPANY

Defendant.

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May Term 2005

No. 3604

Commerce Program

Control No. 011499

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**ORDER and MEMORANDUM**

**AND NOW**, this 24<sup>th</sup> day of April, upon consideration of the Defendant's Motion for Judgment on the Pleadings, the response in opposition, all matters of record and in accordance with the contemporaneous Memorandum Opinion, it hereby is **ORDERED** that said Motion is **GRANTED**.

Judgment is entered in favor of Defendant The Phoenix Insurance Company and against Plaintiff Carole Heenan.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**

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CAROLE HEENAN	:	May Term 2005
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Plaintiff,	:	No. 3604
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THE PHOENIX INSURANCE COMPANY	:	Control No. 011499
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Defendant.	:	

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**MEMORANDUM OPINION**

***HOWLAND W. ABRAMSON, J.***

Currently before the court is the Motion for Judgement on the Pleadings of Defendant The Phoenix Insurance Company ("Phoenix"). For the reasons fully set forth below, said Motion is granted.

**I. Background**

On August 18, 2004, Carole Heenan ("Plaintiff"), a pedestrian, was struck by an uninsured motorist and suffered bodily injury. On the date of the accident, Plaintiff was a named insured under an automobile policy issued by the Travelers Indemnity Company ("Travelers Policy"). The Travelers Policy covered three vehicles and provided stacked uninsured motorist ("UM") coverage in the amount of \$15,000.000. At the time of the accident, Plaintiff was also insured under a commercial automobile policy with Phoenix which provided non-stacked UM coverage in the amount of \$50,000.00 per accident ("Phoenix Policy"). Following the accident, Plaintiff collected UM benefits under the Travelers Policy in the amount of \$45,000.00, representing the maximum limits of UM coverage available under that policy.

Plaintiff then made a UM claim under the Phoenix Policy. Phoenix offered \$5,000.00, taking the position that, pursuant to the Phoenix Policy Language, it was entitled to apply a setoff of the benefits that Plaintiff received from the Travelers Policy. Plaintiff rejected Phoenix's offer and filed the instant declaratory judgment action, seeking a declaration that Phoenix is not entitled to a setoff and obligated to provide her with a full limit of UM coverage under the Phoenix Policy. Phoenix disagrees and has filed the instant motion, seeking judgment in its favor as a matter of law.

## **II. Discussion**

A motion for judgment on the pleadings will only be granted where “the moving party’s right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise.” Conrad v. Bundy, 2001 Pa. Super. 142, 777 A.2d 108 (2001). This court finds that Phoenix has satisfied this burden. The Phoenix Policy language clearly supports Phoenix's position, not that of the Plaintiff. The Phoenix Policy contains an "Other insurance" clause which provides, in pertinent part:

### 4. Other Insurance

- a. If there is other applicable similar insurance available under more than one Coverage Form or policy, the following priorities of recovery apply:
  - First            The Uninsured Motorist Coverage applicable to the Vehicle the "insured" was "occupying" at the time of the "accident".
  - Second        The Coverage Form or policy affording Uninsured Motorists Coverage to the "insured" as an individual Named Insured or "family member".
- b. Where there is no applicable insurance available under the first priority, the maximum recovery under all Coverage Forms or policies in the second priority **shall not exceed the highest applicable limit for any one vehicle under any one Coverage Form or policy.**

*See* Phoenix Policy, Form CA 21 92 08 02, pp. 2-3 (emphasis added).

Interpretation of an insurance contract is a matter of law and is to be performed by the court. Hutchinson v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385, 390 (1986). Where the policy language is clear and unambiguous, as here, the court must give effect to that language. Madison Construction Co. v. The Harleysville Ins. Co., 557 Pa. 595, 735 A.2d 100, 106 (1999); Pennsylvania Mfrs' Asso. Ins. Co. v. Aetna Casualty & Surety Ins. Co., 426 Pa. 453, 233 A.2d 548 (1967). It is apparent under the clear and unambiguous language of the Phoenix Policy, that Phoenix is entitled to apply a setoff of the benefits that Plaintiff received under the Travelers Policy. This result is also supported by Pennsylvania case law. *See* Generette v. Donegal Mutual Ins. Co., 2005 Pa. Super. 314, 884 A.2d 266 (2005)(holding that setoff under such circumstances was consistent with Pennsylvania Motor Vehicle Financial Responsibility Law and did not violated public policy). Based on the foregoing, Phoenix's Motion for Judgment on the Pleadings is granted.

### **III. Conclusion**

For the reasons fully set forth above, judgment is entered in favor of Defendant The Phoenix Insurance Company and against Plaintiff Carole Heenan.

**BY THE COURT:**

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**HOWLAND W. ABRAMSON, J.**