

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
GENERAL DIVISION

COREY LANDERS,)	
)	
Plaintiff,)	Case No. 442573
)	
v.)	Judge Robert T. Glickman
)	
LUCENT TECHNOLOGIES, Inc., et al.,)	
)	<u>JOURNAL ENTRY</u>
Defendants.)	
)	

The defendant's Modified Motion for Summary Judgment filed 4/2/02 is hereby granted.

Rule 56(C) of the Ohio Rules of Civil Procedure provides that summary judgment shall be rendered where the pleadings, depositions, affidavits, and other documents "show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The defendant bears the burden of showing that there is no evidence to support the plaintiff's claim. Dresher v. Burt (1996), 75 Ohio St. 3d 280.

The plaintiff in this matter is the son of Frank and Diane Landers. On June 11, 1998, the plaintiff was involved in an automobile accident with tortfeasor Edward Markus in Beachwood, Ohio. After the accident, Mr. Markus' insurance company paid \$25,000.00 to the plaintiff for a full and final release of liability. That release was executed on February 25, 1999. At the time of the accident, Frank Landers was insured by Nationwide Insurance Co., who paid \$75,000.00 in underinsured motorist benefits to the plaintiff for a full and final release of liability. That release was executed on March

11, 1999. At the time of the accident, Diane Landers was employed by Lucent Technologies, Inc. Reliance National Indemnity Co. issued a Business Auto Policy to Lucent for the policy period of September 1, 1997 to September 30, 1998.

After the Plaintiff settled his claims with the tortfeasor and Nationwide, he filed this action under the Supreme Court's holding in Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St. 3d 660. However, the facts of the plaintiff's case are distinguishable from those in Scott-Pontzer.

Unlike the policy in Scott-Pontzer, Lucent's policy was purchased solely to allow the company to operate legally and efficiently in the fifty states. The policy in question had a \$2,500,000.00 liability limit and a \$2,500,000.00 deductible. Lucent was liable under this policy for all losses. The policy purchased by Lucent is a "fronting" policy, where no insurable risk is transferred to the insurance company. For all intensive purposes, Lucent was self-insured for its automobile liability, and R.C. 3937.18 has no application to self-insurance. Thomas J. Fonseca v. Richard J. Fetter (June 15, 2001), Lucas County Court of Common Pleas, Case No. CI 99-4712; Lafferty v. Reliance Ins. Co. (S.D. Ohio, 2000), 109 F. Supp. 837, 842. Even absent a certificate of self-insurance, the policy in question is obviously a "fronting" policy and Lucent is, de facto, self-insured. The U.M./U.I.M. provision of R.C. 3937.18 does not apply to self-insured companies, and the plaintiff's claim under Scott-Pontzer must fail. Grange Mut. Cas. Co. v. Refiners Transport (1986), 21 Ohio St. 3d 47, syllabus; Lafferty v. Reliance Ins. Co. (July 17, 2000), 109 F. Supp. 837.

The plaintiff attempts to use the holding in Scott-Pontzer to allow a claim against Lucent even though the plaintiff was never an employee of Lucent. The Scott-Pontzer

decision was based on a policy that had an ambiguous definition of an "insured". The Lucent policy does not extend coverage either explicitly or implicitly to family members. The plaintiff asks this court to hold that it was Lucent's obligation to specifically enumerate in the policy all individuals that were not covered. Under that theory, this court, and all courts in Ohio and the country, are covered under the policy. This extension of the holding in Scott-Pontzer defies any semblance of common sense. The plaintiff was not an employee of Lucent, and was not an insured under this policy. Therefore, his claim must fail.

The Lucent policy also required the employee to be acting in the scope of his employment to be insured under the policy. In this instance, the plaintiff, not even an employee, was not performing any duties for Lucent. The plaintiff was not an insured under this policy, and the defendant's Motion for Summary Judgment must be granted.

The plaintiff at bar would be unable to claim UIM coverage in any case, as he settled his claims with the tortfeasor prior to bringing this action. R.C. 3937.18(A)(1) states that coverage is afforded only for the protection of insureds that are legally entitled to recover damages from the owners or operators of uninsured vehicles. Mr. Landers settled his claim with the tortfeasor prior to making the claim that is the subject of this action and was not legally entitled to recover damages from the tortfeasor at the time he sought UIM coverage. Love v. Nationwide Mut. Ins. Co. (10th Dist. 1995), 104 Ohio App. 3d 804.

Further, the plaintiff is precluded from UM/UIM coverage from Legion Insurance Co., as he filed his action without timely notice and destroyed the defendant's subrogation rights. Mr. Landers was required to provide notice to Reliance Insurance "as

soon as practicable". He failed to comply with that duty. The plaintiff waited almost three (3) years to put Reliance Ins. on notice. This type of delay is prejudicial as a matter of law. Based on this late notice and prejudice, the plaintiff would not be entitled to U.M. coverage.

A subrogation clause in a policy is an enforceable precondition to UM/UIM coverage. Bogan v. Progressive Cas. Ins. Co. (1988), 36 Ohio St. 3d 22, 29. The plaintiff destroyed Lucent's subrogation rights without even putting Lucent on notice of a claim. The failure to provide notice of a potential settlement breached a condition of the policy and voided any claim for U.M. coverage that plaintiff alleges is implied in the policy. The plaintiff breached the conditions of the policy and cannot now claim U.M. coverage under that policy. Ferrando v. Auto-Owners Ins. Co. (August 31, 2001), Ashtabula App. No. 2000-A0038, unreported; Nickschinski v. Sentry Ins. Co. (1993), 88 Ohio App. 3d 185; Gibson v. State Farm Mut. Auto Ins. Co. (1997), 123 Ohio App. 3d 216.

For the reasons contained herein, the defendant's Modified Motion for Summary Judgment is granted.

Date

Judge, Court of Common
Pleas