

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|---|---|-----------------------------|
| ANTHONY ALOISIO and DEBORAH ALOISIO,    | : | NO. 08 - 00,733             |
| Plaintiffs                              | : |                             |
|   | : | CIVIL ACTION - LAW          |
| vs.                                     | : |                             |
|   | : |                             |
| CATHY WALTER and PROGRESSIVE INSURANCE, | : |                             |
| Defendants                              | : | Motion for Summary Judgment |

**OPINION AND ORDER**

Before the Court is Defendant's Motion for Summary Judgment, filed March 6, 2009. Argument on the motion was heard April 21, 2009, at which time the Court directed Plaintiffs' counsel to provide to Defendants' counsel a letter from Health Assurance which verified counsel's claim that the health insurance plan was an ERISA plan. Progressive indicated it would pay Health Assurance's subrogation claim if its status as an ERISA plan could be confirmed, and such would resolve the matter. At the time of the pre-trial conference, May 5, 2009, counsel indicated a letter had been provided but that it did not resolve Plaintiff's claim.

Plaintiffs were involved in an accident with Defendant Walter, who was insured by Defendant Progressive, while they were riding a motorcycle. The parties entered into a release of all claims. According to the Complaint, the release required Progressive to pay a Health Assurance lien (for medical bills) but "Defendants have refused to pay the afore-mentioned lien and a representative of the Defendant-Progressive Insurance indicated that Defendant-Progressive Insurance never intended to pay the lien in direct contravention of the Release." Plaintiffs assert that "entering into a Release contract with an express desire that the Defendants would not be able to abide by the terms of the Release constitutes a material breach of the contract." Plaintiffs seek to rescind the release.

In their Answer, Defendants deny that Progressive "refused" to pay the lien and that they "never intended to pay the lien". It is also asserted that "Defendant advised both the health carrier with the alleged and its alleged attorney, Joseph Orso, that upon receipt of proof of a valid subrogation clause by the carrier that the lien would be paid." In New Matter,

Defendants contend that Health Assurance has not provided proof that it has a subrogable interest against Plaintiffs and that if and when Plaintiffs provide proof of a subrogable lien, the lien will be paid.

In the instant motion for summary judgment, Defendants contend that there are no issues of material fact and that since the evidence shows that Health Assurance does not have a valid lien, they are not in breach of the release and are entitled to summary judgment. The Court agrees.

The release contains a “promise to pay additional related reasonable and necessary medical and/or dental expenses and/or lost wages associated with treatment provided for by Health Assurance and Health America, and for which a lien is placed against this settlement and subject to the requirements of the PA MVFRL (Pennsylvania Motor Vehicle Financial Responsibility Law)<sup>1</sup>, up to a maximum of Six Thousand Three Hundred Twenty-five and 57/100 dollars”. According to the letter provided by counsel from Health Assurance, the plan is an insured ERISA plan. As such, it is subject to the anti-subrogation provision of the PA MVFRL. See FMC Corporation v. Holliday, 498 U.S. 52 (1990)(employee benefit plans that are insured are subject to indirect state insurance regulation). That provision precludes subrogation claims such as the instant one for “actions arising out of the maintenance or use of a motor vehicle”. 75 Pa.C.S. Section 1720. Plaintiffs argue nevertheless that a motorcycle is not a motor vehicle for purposes of the PA MVFRL. Section 1786 requires financial responsibility for every motor vehicle of the type required to be registered under the Vehicle Code,<sup>2</sup> however, and motorcycles are of such a type.<sup>3</sup> Therefore, since the lien is not subrogable, Defendants did not breach the terms of the release by not paying such and are entitled to summary judgment.

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<sup>1</sup> 75 Pa.C.S. Sections 1701 et seq.

<sup>2</sup> 75 Pa.C.S. Section 1786.

<sup>3</sup> 75 Pa.C.S. Section 1301(a).

**ORDER**

AND NOW, this 7<sup>th</sup> day of May 2009, for the foregoing reasons, Defendants' Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in favor of Defendants and against Plaintiffs.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Orso, III, Esq.  
James Flood, Esq., 2200 Stafford Avenue, Suite 500, Scranton, PA 18505  
Gary Weber, Esq.  
Hon. Dudley Anderson