

[J-202-99]

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

CARMEN BORGIA ,	:	No. 14 E.D. Appeal Docket 1999
	:	
Appellant	:	Appeal from the Judgment entered on
	:	7/8/98, reargument denied 9/9/98 at No.
	:	570 Philadelphia 1997, which reversed
v.	:	and remanded the Judgment entered on
	:	1/2/97 by the Court of Common Pleas,
	:	Philadelphia County, Civil Division at No.
PRUDENTIAL INSURANCE COMPANY,	:	2872 August Term, 1995
	:	
Appellee	:	
	:	
	:	ARGUED: October 19, 1999
	:	
	:	

**CONCURRING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: May 19, 2000**

The automobile insurance policy issued by Prudential Property and Casualty Insurance to the father of Carmen Borgia, Jr. provided coverage for underinsured motorist benefits to the named insured, the spouse of the named insured living in the household of the named insured, and resident relatives in specific circumstances described by the terms of the policy. "Resident relative" was defined to include "someone who lives in your household and is related to you by blood, marriage, adoption or is a ward or foster child."<sup>1</sup>

---

<sup>1</sup> Under the definitional section of the policy, "you or your" was defined to mean "the person shown as the named insured on the Declarations of this policy, and your spouse, if he or she lives in your household."

As the son of the named insured, who lived in his father's household at the time of the accident, Carmen Borgia, Jr. qualified as a resident relative under the policy.

Borgia made a claim for underinsured motorist benefits which was denied by Prudential on the basis that Borgia was not an insured under the policy. Prudential subsequently filed its declaratory action seeking a determination that it had no obligation to afford underinsured motorist coverage to Borgia under the terms and conditions of the policy issued to Borgia's father. In turn, Borgia filed a petition for appointment of underinsured motorist arbitrators, requesting that an arbitration hearing be scheduled within sixty days.

In seeking to compel arbitration, Borgia relied upon the policy provision of his father's policy relating to arbitration which states,

If **we** and a covered person disagree on policy coverages or amounts payable, either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree on the third arbitrator within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and share the expenses of the third arbitrator equally. Unless both parties agree otherwise, arbitration will take place in the county and state in which the covered person lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two arbitrators will be binding if the award does not exceed the limits required under the Financial Responsibility Law of Pennsylvania.

If an arbitration award exceeds those limits, either party has a right to trial on all issues in a court of competent jurisdiction. This right must be exercised within 30 days of the award. Each party will pay their own expenses.

R.36a (emphasis supplied). "Covered person" is not defined in the policy.

The absence of a definition in the policy for covered person led to the conflicting interpretations offered in this case by Borgia and Prudential. Borgia contends he is a covered person because he is a resident relative to whom underinsured motorist coverage is extended under the terms of the policy, while Prudential contends that underinsured motorist coverage is inapplicable because Borgia was operating his own vehicle when the accident occurred and, therefore, was not a covered person.

The issue of whether Borgia was entitled to underinsured motorist coverage under the Prudential policy is separate from the issue of whether he was entitled to compel arbitration when the dispute over coverage arose. I find that Borgia was a covered person who was entitled to enforce the arbitration clause to resolve the dispute over coverage. Absent the use of that terminology, I would have concluded otherwise. Prudential's oversight in failing to define covered person gave rise to this result, as Borgia was clearly a resident relative covered by the insurance policy. Because the arbitration clause was enforceable, Prudential was subject to and bound by the arbitrator's interpretation of the coverage issues.

Were we able to review the arbitrators' decision for a mistake of law, however, I would join Justice Nigro's analysis of the coverage issue in his dissenting opinion because I would agree that Borgia was not entitled to receive underinsured motorist benefits for the reasons articulated therein.