

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>NATIONWIDE MUTUAL INSURANCE COMPANY, Plaintiff,</p> <p style="text-align:center">v.</p> <p>JOHN JOSEPH REIDLER and JANET M. REIDLER, h/w, Defendant.</p>	<p>CIVIL ACTION NO. 99-4463</p>
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MEMORANDUM & ORDER

Katz, S.J.

April 19, 2000

Before the court are cross-motions for summary judgment in this declaratory action addressing insurance coverage. Because neither the policy language nor public policy considerations require coverage, the plaintiff's motion will be granted.

I. Background¹

On April 12, 1996, defendant John Joseph Reidler was a passenger in the 1955 Chevrolet Belair he owned. His son, John James Reidler, was driving with his permission. The defendant was injured when the Belair was involved in a single-vehicle accident. John Joseph Reidler and his wife Janet Reidler subsequently made claim on their son for recovery of tort damages.

At the time of the accident, the defendants were covered by a personal automobile policy issued by Nationwide Mutual Insurance, the plaintiff. This policy provided \$250,000.00/\$500,000.00 in liability coverage and \$250,000.00/\$500,000.00 in stacked underinsured motorist (UIM) coverage for three vehicles. One of the vehicles covered under this

¹All facts are taken from the parties' jointly submitted stipulation of facts.

policy was the Belair. Although the defendants' son was driving the vehicle at the time of the accident, the son did not live with his parents, and the vehicle was not regularly made available for his use. The Belair was, however, made available for the regular use of the defendant father.

John James was also covered by a personal automobile policy issued by Nationwide. This policy provided \$50,000.00/\$100,000.00 in liability coverage and \$15,000.00/\$30,000.00 in stacked UIM coverage for one vehicle.

After the defendants filed a tort claim against their son, Nationwide offered them \$300,000. This sum represented the liability limits under both the father's policy and the son's policy. Mr. and Mrs. Reidler have refused to accept these limits of coverage and have made a claim for \$50,000 in liability coverage under their son's policy and \$750,000 in full UIM benefits under their own policy. Nationwide has refused to pay any UIM benefits based on certain policy language and case law discussed subsequently.

As the matter presently stands, pursuant to an agreement entitled "partial release," see Stip. Facts Ex. B, the parties agreed that Nationwide would pay the liability limits under the son's policy (\$50,000) to the defendants, and the tort claim filed in the Bucks County Court of Common Pleas would be marked settled. The parties also agreed that Nationwide would pay \$250,000 to the defendants under the father's policy, with the understanding that it would be considered either the liability limits of that policy if Nationwide prevailed in this declaratory action claim or the first \$250,000 of payable UIM benefits under the policy if the defendants prevailed.

II. Standards

In interpreting an insurance policy in a declaratory action, the court must apply Pennsylvania's clear, well-settled rules governing the interpretation of an insurance contract. Normally, the court rather than the jury interprets the contract with the goal of determining the intent of the parties as indicated by the language of the contract itself. When the language of the contract is unambiguous, the court must give effect to that language. See Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999); Madison Const. v. Harleysville Mut. Ins., 735 A.2d 100, 106 (Pa. 1999); Gene and Harvey Builders v. Pennsylvania Mfrs. Ass'n, 517 A.2d 910, 913 (Pa. 1986); Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983).

“The courts have held, however, that if the policy provision is reasonably susceptible to more than one interpretation, it is ambiguous. In determining whether a contract is ambiguous, the court must examine the questionable term or language in the context of the entire policy and decide whether the contract is reasonably susceptible of different constructions and capable of being understood in more than one sense.” Medical Protective Co., 198 F.3d at 103 (citations, internal punctuation omitted); see also Madison Const., 735 A.2d at 106 (same). That is, if there are two reasonable interpretations, one of which is offered by the insured, one of which is offered by the insurer, the provision is ambiguous and should be construed against the insurer. See, e.g., Medical Protective Co., 198 F.3d at 103-04; Standard Venetian Blind Co., 469 A.2d at 566. However, the court should read policy provisions so as to avoid ambiguity and not twist the language or rewrite the contract to create doubts where none exist. See Medical

Protective Co., 198 F.3d at 103; Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 372 (3d Cir. 1982); Madison Const., 735 A.2d at 106.

III. Discussion

The question before the court is whether the defendants may recover UIM benefits from their own policy under the facts of this case. The court does not believe that the present matter is truly one of first impression, as the facts are similar to those of previous decisions. However, to the extent that prior holdings are not precisely on point, the court must attempt to predict how the Pennsylvania Supreme Court would rule. See, e.g., 2-J Corp. v. Tice, 126 F.3d 539, 541 (3d Cir. 1997).

Plaintiff contends that the defendants' liability, rather than UIM, coverage applies; that liability coverage generally is intended to be primary, while UIM coverage is intended to be excess; and that the policy language precludes UIM recovery. In response, defendants argue that the applicable policy language is ambiguous and that, even if it is not, it is against public policy to bar their recovery of UIM benefits.

A. The Policy Language

The defendants' policy states, under "auto liability coverage agreement," that

We will pay for damages for which you are legally liable as a result of an accident arising out of the:

- (a) ownership;
- (b) maintenance or use; or
- (c) loading or unloading;

of your auto. A relative also has this protection. So does any person or organization who is liable for the use of your auto while used with your permission.

Policy at 6.² The Belair is included under the policy definition of “your auto.” See id. at 2 (“ ‘Your auto’ means the vehicle(s) described in the Declarations.”); Decl. Item 3 (listing 1955 Chevy Belair).

The disputed provisions of the defendants’ policy are found in the UIM coverage endorsement. First, under the policy, Nationwide agrees to

pay compensatory damages, including derivative claims, which are due by law to you or a relative from the owner or driver of an underinsured motor vehicle because of bodily injury suffered by you or a relative. Damages must result from an accident arising out of the

1. ownership;
 2. maintenance; or
 3. use;
- of the underinsured motor vehicle.

UIM Endorsement at 1 (“Coverage Agreement”). An “underinsured motor vehicle” is subsequently defined as a

motor vehicle for which bodily injury liability coverage, bonds or insurance are in effect. However, their total amount is insufficient to pay the damages an insured is entitled to recover. We will pay damages that exceed such total amount. We will not consider as an underinsured motor vehicle:

.....

- e) any motor vehicle insured under the Auto Liability coverage of this policy; nor
- f) any motor vehicle furnished for the regular use of you or a relative.

²The son is not a “relative” for policy purposes because he did not regularly live with the defendants. See Policy at 2 (definition nine). However, as he was using the vehicle with his father’s permission, he falls under the other portion of that clause.

Id. (“Additional Definitions”). Finally, the UIM endorsement states, “The insured may recover for bodily injury under the Auto Liability coverage or the Underinsured Motorists coverage of this policy, but not under both coverages.” Id. at 3 (“Limits of Payment”).

B. Application of the Policy Language

Under a plain reading of the policy language, the defendants may not recover UIM benefits under their own policy because a vehicle insured under the liability coverage of the policy or that is furnished for the regular use of one of the insureds cannot be an underinsured vehicle.

Initially, as does plaintiff, it is important to stress that UIM coverage is primarily intended as excess coverage. The applicable statute defines an “underinsured motor vehicle” as a “motor vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages.” 75 Pa. C.S. § 1702. As the Pennsylvania Superior Court explained,

The purpose of underinsured motorist coverage is to protect the insured (and his additional insureds) from the risk that a negligent driver of another vehicle will cause injury to the insured (or his additional insureds) and will have inadequate liability coverage to compensate for the injuries caused by his negligence. Thus, an insured who purchases \$100,000.00 of liability coverage to protect others from his negligence, must, by law, be offered the option of purchasing up to \$100,000.00 of underinsured motorist coverage to protect himself and his additional insureds from the risk that they will be severely injured by a negligent driver who had liability coverage in an amount insufficient to fully compensate them for their injuries.

Wolgemuth v. Harleysville Mut. Ins. Co., 535 A.2d 1145, 1149 (Pa. Super. 1988). This, however, is not a predicament in which the claimants found themselves. Unlike that hypothetical

motorist, they were able to control the amount of coverage they wished to purchase for the risk that they might be injured while riding as passengers in their own vehicle.

Apparently in acknowledgment that the plain language of these provisions precludes UIM recovery, the defendants argue that the policy as a whole is ambiguous. In support of their argument, defendants focus on the following provisions contained in the UIM endorsement:

Coverage Exclusions

This [UIM] coverage does not apply to:

.....

5. Bodily injury suffered while occupying or struck by a motor vehicle owned by you or a relative but not insured for auto liability coverage under this or any other policy.
6. Bodily injury suffered while occupying a motor vehicle owned by you or a relative but not insured for Underinsured Motorists Coverage under this policy; nor to bodily injury from being hit by any such motor vehicle.

UIM Endorsement at 2. Defendants contend that because these provisions specifically preclude recovery for bodily injuries sustained while occupying a car owned by the insured if it is not insured under any insurance policy or does not carry UIM coverage, the converse must be true. This would lead to the following proposition: If an individual is injured while a passenger in an automobile owned by the insured that is insured under the liability policy or the UIM policy, UIM coverage must be provided. According to defendants, this converse provision is in conflict with the policy language stating that one may not consider a vehicle insured under the policy or available for regular use as an underinsured vehicle.

These arguments twist the language of the policy and attempt to create conflict where none exists. Neither the case law nor logic supports this “converse” reading; in fact, the

plain language of UIM coverage exclusions five and six is quite consistent with the earlier provisions. All of the quoted provisions place the obligation on the insurance purchaser to insure him- or herself adequately for accidents involving his or her own vehicle and state, in various ways, that the buyer may not seek to recover UIM benefits for accidents involving his or her own vehicles whether insured under that policy or not. More particularly, exclusions five and six preclude an insurance purchaser from buying coverage for only one of several family cars and then claiming UIM benefits if injured by a vehicle that he or she chose not to insure.

The court is also persuaded that there is no conflict by the considerable body of Pennsylvania case law upholding similar provisions barring UIM recovery when the claimant was injured by an un- or underinsured family vehicle. See Eichelman v. Nationwide Ins. Co., 711 A.2d 1006 (Pa. 1998)³; Hart v. Nationwide Ins. Co., 663 A.2d 683 (1995) (per curiam decision reversing lower court's holding that similar exclusion was void against public policy when applied to individual whose injuries were not compensated fully by other driver's liability insurance and who sought to recover under daughter's policy when he had failed to purchase un- or underinsurance coverage for the vehicle); Windrim v. Nationwide Ins. Co., 641 A.2d 1154

³The Eichelman plaintiff was injured while riding his motorcycle, which, while insured, did not carry UIM coverage. Claiming that the other driver's liability coverage was insufficient, the plaintiff sought to recover UIM benefits from his mother's policy and her husband's policy. In ruling that the coverage denial did not violate public policy, the court stated that the provision was consistent with the parties' understanding of the contract, as a purchaser who chose to waive UIM coverage received lower premiums and should not hope to rely on other family members to mitigate his risk. See 711 A.2d at 1010. The court also noted that a contrary decision would encourage families to purchase only one UIM policy to cover a large number of individuals and vehicles for which the coverage had been waived. See id.

(Pa. 1994) (ruling that a similar provision did not violate public policy)⁴; see also Troebs v. Nationwide Ins. Co., Civ. A. No. 98-3556, 1999 WL 79555, at *4-5 (E.D. Pa. Jan. 20, 1999) (same).⁵ While the precise issue raised by plaintiff was not considered in any of those cases, it is noteworthy that none of them held the policy exclusions to be ambiguous, whether alone or read in conjunction with other provisions. See Eichelman, 711 A.2d at 1008 (noting that there was no claim of ambiguity); Windrim, 641 A.2d at 1157 (same).

The defendants also refer to their reasonable interpretation of the policy, which the court understands to be a variant of the “reasonable expectation” doctrine. This theory does not advance the claimants’ position. The policy language usually provides the best indication of the parties’ expectations, see, e.g., Medical Protective Co., 198 F.3d at 100, and the court has already concluded that the contract is not ambiguous. While “even the most clearly written exclusion will not bind the insured where the insurer or its agent has created in the insured a reasonable expectation of coverage,” id., there is no evidence that Nationwide created any such

⁴The Windrim plaintiff was injured by an unknown driver while driving his uninsured vehicle and sought coverage under his mother’s policy, which contained a household exclusion clause. The Pennsylvania Supreme Court held that a provision barring the recovery of underinsured or uninsured motorist benefits if the injuries were suffered while riding in a family vehicle that did not have such coverage did not violate public policy, noting that a contrary result would give an incentive for individuals to purchase insurance coverage for only one of several family cars. See 641 A.2d at 1158.

⁵The Troebs plaintiff was injured in an accident with an unknown driver and recovered UM benefits from his own policy. As they were insufficient to cover his injuries, he sought coverage for UM benefits under a policy issued to his father, which contained a provision barring payments of UM coverage for injuries suffered while occupying a motor vehicle owned by a relative that was not insured for UIM coverage under that policy. In holding that the provision did not violate public policy, the court stated that to allow recovery under the father’s policy would encourage purchasers to buy insufficient UIM or UM coverage for their vehicles in hopes of relying on another family member’s coverage. See id. at *4-5.

belief. Mrs. Reidler's deposition testimony suggests only that she was told that she could not have underinsured motorist coverage without purchasing liability coverage, see Def. Mot. for Summ. J. Ex. B. at 25-26, not that she was given contradictory information about the policy provisions at issue here. Also, there appears to be a growing tendency by the lower Pennsylvania courts to find that "an insured may not complain that his or her reasonable expectations were frustrated by policy limitations which were clear and unambiguous." Northern Ins. Co. of N.Y. v. Dottery, 43 F. Supp.2d 509, 512 (E.D. Pa. 1998) (citations omitted); see also Insurance Co. of Pa. v. Hampton, 657 A.2d 976, 978 (Pa. Super. 1995) (same); St. Paul Mercury Ins. Co. v. Corbett, 630 A.2d 28, 30 (Pa. Super. 1993) (same).⁶

C. Public Policy

Defendants argue, in the alternative, that the exclusion barring UIM recovery in an accident involving their own insured vehicle is void as against public policy. The defendants argue that no such exclusion is found in the Motor Vehicle Financial Responsibility Law (MVFRL), and, relying on Burnstein v. Prudential Property and Casualty Insurance, Co., 742 A.2d 684 (Pa. Super. 1999), they contend that the exclusion should not be enforced.

⁶The exact status of the doctrine is not entirely clear. Notwithstanding the statements of the Pennsylvania Superior Court, there is both Third Circuit and Pennsylvania Supreme Court precedent suggesting the reasonable expectations doctrine should be applied in limited circumstances to protect individuals who are forced to rely on the oral representations of an insurance agent because of the documents' complexity. See, e.g., Medical Protective Co., 198 F.3d at 100; Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 926 (Pa. 1987) (holding that insurer may not unilaterally change coverage "without an affirmative showing that the insured was notified of, and understood the change, regardless of whether the insured read the policy"); Collister v. Nationwide Life. Ins. Co., 388 A.2d 1346, 1353-54 (Pa. 1978) (addressing reasonable expectations as to when policy took effect). In any event, it is clearly inappropriate to contemplate any expansion of the doctrine without considerable caution and full briefing. See Madison Const., 735 A.2d at 109 n.8.

“ ‘Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.’ ” Paylor v. Hartford Ins. Co., 640 A.2d 1234, 1235 (Pa. 1994) (quoting Guardian Life Ins. Co. v. Zerance, 479 A.2d 949, 954 (Pa. 1984)); see also Ridley v. State Farm Mut. Auto. Ins. Co., 745 A.2d 7, 10 (Pa. Super. 1999) (same). The Pennsylvania Supreme Court explained that it “is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in declaring what is or is not in accord with public policy.” Paylor, 640 A.2d at 1235 (citations, punctuation omitted); Ridley, 745 A.2d at 10 (same). Only in the clearest of cases should a court strike down a contractual provision under this doctrine; otherwise, courts must “ ‘await legislative action.’ ” Ridley, 745 A.2d at 10 (quoting Eichelman, 711 A.2d at 1008).

Pennsylvania courts have held that while some family car exclusions are invalid as against public policy, such exclusions are allowed “in cases where a plaintiff is attempting to convert underinsured coverage into liability coverage[.]” Paylor, 640 A.2d at 1240 (citation omitted). Obviously, then, the enforceability of such provisions is heavily dependent on the facts of each case. See Paylor, 640 A.2d at 1240.

Initially, several cases have explicitly found that the provision barring the recovery of UIM benefits from a policy that also provides liability benefits for that same vehicle does not violate public policy. See Wolgemuth, 535 A.2d at 1145 (holding that provision did not violate public policy when applied to passenger killed in a single vehicle accident covered by a liability policy that excluded insured vehicle from definition of an underinsured vehicle); Newkirk v. United Serv. Auto. Assoc., 564 A.2d 1263 (Pa. Super. 1989) (holding that provision

did not violate public policy when applied to a wife who was injured while a passenger in a vehicle driven by her husband and insured under a policy naming both as insureds); Kelly v. Nationwide Ins. Co., 606 A.2d 470 (Pa. Super. 1992) (holding that provision was valid when applied to a wife who was injured as a passenger in a vehicle driven by her husband and who sought to recover UIM benefits under the same policy on the theory that it covered a separate vehicle and that she was a separate policyholder); Ridley, 745 A.2d at 7 (holding that exclusion was properly applied in case in which a child and her father were injured while riding in a vehicle driven by the mother when they attempted to recover UIM benefits from additional policy after receiving full liability from mother's policy). Each decision focused on the fact that a contrary holding would permit the conversion of UIM insurance into liability insurance or would otherwise permit the claimant to obtain coverage he or she had not actually purchased. See Wolgemuth, 535 A.2d at 1152; Newkirk, 564 A.2d at 1265, 1268-69; Kelly, 606 A.2d at 475-77; Ridley, 745 A.2d at 12-14.

In their papers and at the hearing, the defendants argued that these cases are inapplicable because they primarily hold that a claimant may not recover both liability and UIM benefits from a single policy. They contend that by essentially waiving liability benefits, they are entitled to recover under their UIM coverage. What this position fails to acknowledge is that the case law addressing these issues has focused on the general impermissibility of converting relatively less expensive UIM coverage into relatively more expensive liability coverage or in some other way attempting to benefit from coverage for which the claimant did not pay. While, as defendants note, the decisions from Wolgemuth forward have emphasized that there must be two policies in play before UIM coverage is permissible, see, e.g., Newkirk, 564 A.2d at 1265

(quoting Wolgemuth, 535 A.2d at 1149), none of those cases held that the existence of two policies, without more, is a sufficient basis for claiming UIM benefits.

Instead, it is the element of choice that is crucial. In Kelly, the court emphasized that the decisions in this area reinforced the notion that UIM benefits are intended to protect a claimant “against the risk that a tortfeasor over whom the claimant has no control purchases an inadequate amount of liability coverage.” Kelly, 606 A.2d at 476. In this case, as in Kelly, the defendants could have purchased additional liability coverage for their own vehicle but chose not to do so. The Kelly court also noted that while certain cases have suggested that policies that exclude family members from protection may be void as against public policy, it is not impermissible to exclude a family vehicle from consideration as an underinsured vehicle, see id. at 477, which, again, is the effect of the policy provision here. For example, in Paylor, 640 A.2d at 1234, the estate of a woman killed in an accident in which her husband was driving challenged the insurance company’s refusal to pay UIM benefits under other policies. In upholding the validity of the exclusion, the court reiterated the language of Newkirk, stating,

If [the claimant] wishes greater protection while riding as a passenger in her own car, she should increase her liability insurance. Underinsured motorist insurance is purchased to protect oneself from other drivers whose liability insurance purchasing decisions are beyond one’s control. Underinsured motorist coverage is not meant as insurance in case a person underinsures his [or her] own vehicle.

Id. at 1237-38 (quoting Newkirk, 564 A.2d at 1268); see also Ridley, 745 A.2d at 14

(emphasizing degree of control implied by fact that mother and father of child, though not married, owned vehicle together and chose how much liability coverage to buy to cover risk of injury to a family member while riding in the car).

The Burnstein case does not require a contrary holding. First, the facts are readily distinguishable. The applicable exclusion in that case stated that there could be no UIM benefits for bodily injury sustained from “using a non-owned car not insured under this part, regularly used by you or a household resident.” 742 A.2d at 686 & n.3. The claimants were injured in a vehicle provided to the wife by her employer that was properly used for personal purposes, and the wife was unaware that her employer had not purchased UIM coverage. See id. at 690, 691. The claimants consequently attempted to recover UIM benefits from their own policy. In holding that the policy provision was against public policy under those facts, the court stressed that even had the wife been aware of the lack of coverage, she would not have been able to change the policy, see id. at 690, and that she and her husband had dutifully attempted to provide full coverage for each of their own vehicles. See id. In contrast, in the present case, the claimants were in full control of the amount of liability coverage they chose to provide for their own vehicle.

Also, to the extent that the Burnstein court relied on the public policy principle that the “MVFRL was enacted in order to establish a liberal compensatory scheme of underinsured motorist protection” and that it is in the “public’s best interest for insurance companies to provide underinsured motorist coverage,” these principles are decidedly qualified by Pennsylvania Supreme Court precedent. For example, in Eichelman, while the court acknowledged that one of the goals of the MVFRL was to protect victims, “[t]hat purpose . . . does not rise to the level of public policy overriding every other consideration of contract construction.” 711 A.2d at 1010. An equally significant public policy goal is to reduce automobile insurance premiums, see id.; Windrim, 641 A.2d at 1158, a goal that would be

thwarted by permitting policy holders to convert less expensive coverage into more expensive coverage. Particularly given the previous decisions that have repeatedly held that it is permissible to exclude a vehicle insured under the liability portion of a policy or that is regularly made available for the insured's use, this court simply cannot rule that the provisions at issue are against public policy.

IV. Conclusion

The policy language clearly states that the defendants may not seek to recover underinsured motor benefits under their policy when the vehicle involved in the accident was covered under the liability portion of that same policy and when the vehicle was regularly available for the use of the defendant father. The language is not ambiguous when construed alone or in conjunction with other policy language, and there is no public policy against application of these provisions.

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ORDER

AND NOW, this 19th day of April, 2000, upon consideration of the cross-motions for summary judgment, the responses thereto, and after a hearing, it is hereby **ORDERED** that Plaintiff's motion is **GRANTED**, and Defendants' motion is **DENIED**.

BY THE COURT:

MARVIN KATZ, S.J.

**IN THE UNITED STATES DISTRICT COURT
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<p>NATIONWIDE MUTUAL INSURANCE COMPANY, Plaintiff,</p> <p style="text-align:center">v.</p> <p>JOHN JOSEPH REIDLER and JANET M. REIDLER, h/w, Defendant.</p>	<p style="text-align:center">CIVIL ACTION NO. 99-4463</p>
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J U D G M E N T

AND NOW, this 19th day of April, 2000, it is hereby **ORDERED** that judgment is entered in favor of plaintiff, Nationwide Mutual Insurance Company, and against defendants, John Joseph and Janet Reidler.

BY THE COURT:

MARVIN KATZ, S.J.