

parties is diverse and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. On May 23, 1995 Jeffrey L. Troebs was involved in a motor vehicle accident on Castor Avenue and Bristol Road, Philadelphia, Pennsylvania.

6. At the time of the accident Jeffrey Troebs was driving a 1987 Pontiac Grand Am, which was registered in the Commonwealth of Pennsylvania.

7. Jeffrey Troebs was the sole owner of the Pontiac Grand Am.

8. Jeffrey Troebs claims the accident occurred when an unknown vehicle traveling on Bristol Avenue cut him off, causing him to swerve to avoid a collision, as a result of which Troebs lost control of his car and struck a parked vehicle.

9. Troebs sustained various injuries in the accident.

10. As of the date of the accident the Pontiac Grand Am was insured with United Services Automobile Association (USAA).

11. Attached and marked Exhibit "A" is a true and correct copy of the USAA declaration sheet for the aforesaid insurance policy.

12. Under the USAA policy, Mr. Troebs had bodily injury liability coverage of \$50,000 per person, \$100,000 per accident and had uninsured motorist coverage in the same amounts.

13. Troebs made a claim for uninsured motorist benefits under the USAA policy on the basis that the accident was caused by a "phantom" vehicle, the operator of which is considered to be uninsured under Pennsylvania law.

14. Troebs' claim for uninsured motorist benefits against USAA was settled on or about June 4, 1996 in exchange for the USAA per person uninsured motorist limit of \$50,000. Attached and marked exhibit "B" is a true and correct copy of the release he executed in settlement of that claim.

15. Thereafter, Troebs demanded coverage for uninsured motorist benefits under a Nationwide policy issued to his father, Charles Troebs, Jr.

16. As of the date of the accident, Charles Troebs, Jr. had a Century II auto policy with Nationwide, policy number 58 37 C 297031. A true and correct copy of the declaration page for that policy is attached and marked Exhibit "C".

17. Charles Troebs, Jr. was the only named insured or policyholder for the aforementioned Nationwide policy.

18. The Nationwide policy covered a 1995 Pontiac Bonneville owned by Charles Troebs, Jr.

19. The Nationwide policy provided, inter alia, uninsured motorist coverage of \$100,000 per person, \$300,000 per occurrence. Attached and marked Exhibit "D" is a true and correct copy of the Century II insurance policy issued by Nationwide to Charles Troebs, Jr. and the pertinent endorsements to same.

20. On page two, paragraph six of Endorsement 2359 is the following exclusion:

[Uninsured] coverage does not apply to:

* * * *

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

21. Endorsement 2359 pertaining to uninsured motorist coverage states:

We will pay compensatory damages . . . which are due by law to you or a relative from the owner or driver of an uninsured 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 uninsured vehicle.

22. The term "you" as used in the Nationwide policy includes only the policyholder and the policyholder's spouse.

23. Jeffrey L. Troebs was not the policyholder or spouse of the policyholder of the Nationwide policy.

24. The term "relative" is defined in the Nationwide policy as "one who regularly lives in [the policyholder's] household, related to you by blood, marriage or adoption. . . . A relative may live temporarily outside your household."

25. Jeffrey Troebs has claimed that he was a relative of Charles Troebs, Jr., as the term is defined in the policy, i.e. on the date of the accident he regularly lived with the policyholder (Charles Troebs) and was related to him by blood.

26. Nationwide denies that Jeffrey Troebs resided at the home of Charles Troebs and has averred that he maintained a separate residence and regularly lived at 2126 East Cumberland Street, Philadelphia, Pennsylvania.

27. For purposes of this motion and this motion only the parties assume that Jeffrey Troebs was a "relative" of Charles Troebs (as that term is defined in the policy) as the parties believe that resolution of the matter presents a genuine issue of material fact not susceptible to summary judgment.

28. The parties agree that the issues presented in this case are to be decided under the substantive law of the Commonwealth of Pennsylvania.

Discussion

The issue is whether under Pennsylvania law an automobile insurance household exclusion clause is void where the owner/operator of a vehicle with uninsured benefits claims excess uninsured benefits under a household relative's insurance policy. Under plaintiff's policy, the uninsured benefits coverage was \$50,000 – and, under his father's policy, \$100,000. There appears to be no decision on point. The question therefore becomes how the Pennsylvania Supreme Court would rule if presented with the same facts. See 2-J Corp. v. Tice, 126 F.3d 539, 541 (3d Cir. 1997). "In attempting to forecast state law, we must consider relevant state precedents, analogous decisions, considered dicta, scholarly works, and any other reliable data tending convincingly to show how the highest court in the state would decide the issue at hand." Id.

I.

"The enforceability of the [household] exclusion is dependent upon the factual circumstances presented in each case." Paylor v. Hartford Ins. Co., 536 Pa. 583, 595, 640 A.2d 1234, 1240 (1994). However, as a general rule, household exclusions in Pennsylvania are invalid as contravening the underlying purposes of the Pennsylvania Motor Vehicle Financial Responsibility Law

(MVFRL), 75 Pa. Cons. Stat. Ann. §§ 1701-1799.7 (1998).³ See id. There is an exception "where a plaintiff is attempting to convert underinsured coverage into liability coverage." Id. This results when benefits are sought under the liability and underinsured motorist provisions of the same policy, Kelly v. Nationwide Ins. Co., 414 Pa. Super. 6, 606 A.2d 470 (1992); Newkirk v. United Servs. Auto. Ass'n, 388 Pa. Super. 54, 564 A.2d 1263 (1989), Wolgemuth v. Harleysville Mut. Ins. Co., 370 Pa. Super. 51, 535 A.2d 1145 (1988);⁴ or, when a single named insured makes claims on multiple policies all of which are issued in the insured's name, Paylor, 536 Pa. at 597-98, 640 A.2d at 1241.⁵

Here, plaintiff is not attempting to convert underinsured coverage into liability coverage.⁶ Plaintiff claims underinsured coverage from two separate policies – USAA and Nationwide – not the same policy. See stipulated facts ¶¶ 10, 13-15. Moreover, the two policies were not issued to the same name insured. The policy

³Plaintiff does not argue that the exclusion language in his father's policy is unclear or ambiguous.

⁴Patterson v. Nationwide Mut. Ins. Co., No. 93-CV-1033, 1993 WL 405846 (E.D. Pa. Sept. 29, 1993) reached the same result.

⁵Paylor cites with approval the following Minnesota cases: Myers v. State Farm Mut., 336 N.W.2d 288 (Minn. 1983) (single-vehicle accident victim could not recover both liability and underinsured motorist benefits under the same policy); Eisenschenk v. Miller's Mut. Ins. Co., 353 N.W.2d 662 (Minn. Ct. App. 1984) (insured may not recover underinsured motorist benefits on a non-involved automobile insured under the same policy as the involved automobile); Linder v. State Farm Mut. Auto. Co., 364 N.W.2d 481 (Minn. Ct. App. 1985) (family car exclusion enforceable against single-vehicle accident victim who sought underinsured motorist benefits from insured who had other vehicles that were covered under separate policies).

⁶Liability coverage is not an issue, in that the tortfeasor is deemed to have been driving an uninsured vehicle.

in question, the Nationwide policy, was issued to his father. See id. ¶ 17.

Pennsylvania courts also will enforce household exclusions where the claimant was the operator of an uninsured vehicle, Windrim v. Nationwide Ins. Co., 537 Pa. 129, 641 A.2d 1154 (1994), or had waived first-party coverage, Eichelman v. Nationwide Ins. Co., ___ Pa. ___, 711 A.2d 1006 (1998). Neither situation exists here. See stipulated facts ¶¶ 10, 12; ex. A.

II.

Three recent Pennsylvania Supreme Court decisions, including Windrim and Eichelman, suggest that the household exclusion clause would be enforced in this case.

In Windrim v. Nationwide Ins. Co., 537 Pa. 129, 641 A.2d 1154 (1994),⁷ plaintiff, while operating his uninsured automobile, was injured by an unknown driver. He sought uninsured coverage under his mother's policy, which contained a household exclusion clause. The Pennsylvania Supreme Court enforced the exclusion, citing the intent of the MVFRL to encourage the insuring of all vehicles. To have voided the household exclusion would have served as a disincentive for relatives of a named insured to obtain their own insurance.

The following year, Hart v. Nationwide Ins. Co., 541 Pa. 419, 663 A.2d 683 (1995) (per curiam) reversed a Superior Court decision that had voided a household exclusion. Unlike plaintiff Windrim, Hart was insured but had elected not to purchase uninsured

⁷When presented with similar facts, our Court of Appeals reached the same conclusion as Windrim. See Nationwide Mut. Ins. Co. v. Hampton, 935 F.2d 578, 587-90 (3d Cir. 1991).

and underinsured coverage, as permitted by the MVFRL.⁸ Windrim was found to be controlling. As observed in Justice Cappy's dissent, this decision cannot rest narrowly on encouraging compliance with the MVFRL inasmuch as plaintiff had insured his vehicle. See Hart, 541 Pa. at 421-22; 663 A.2d at 683. Hart reflects the further goal of universal uninsured and underinsured coverage.

This point was emphasized in Eichelman, a 1998 decision, in which the household exclusion was enforced against an insured motorist who declined underinsured motorist coverage.

"[T]here is a correlation between premiums paid by the insured and the coverage the claimant should reasonably expect to receive." Here, [the insured] voluntarily chose not to purchase underinsured motorist coverage. In return for this choice, appellant received reduced insurance premiums. . . . Thus, this Court concludes that giving effect to the "household exclusion" in this case furthers the legislative policy behind underinsured motorist coverage in the MVFRL since it will have the effect of holding [the insured] to his voluntary choice.

Allowing the "household exclusion" language to stand in this case is further bolstered by the intent behind the MVFRL, to stop the spiraling costs of automobile insurance in the Commonwealth. If [plaintiff's] position were accepted, it would allow an entire family living in a single household with numerous automobiles to obtain underinsured motorist coverage for each family member through a single insurance policy on one of the automobiles in the household. If this result were allowed, it would most likely result in even higher insurance premiums on all insureds, . . . since insurers would be required to factor expanded coverage cost into rates charged for underinsured motorist coverage.

⁸A 1990 amendment of the MVFRL eliminated the requirement that uninsured and underinsured motorist coverages be included in every policy. See 75 Pa. Cons. Stat. Ann. § 1731(a) (West 1998).

Eichelman, 711 A.2d at 1010 (quoting Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 349, 648 A.2d 755, 761 (1994))

The same considerations and concerns apply to motorists who purchase insufficient uninsured or underinsured coverage. Enforcing the exclusion keeps insurance costs in check because the insurer can accurately calculate the extent of its risk – as limited to named family vehicles. Lower costs are a major objective of the MVFRL. See Eichelman, 711 A.2d at 1008 (repeal of no-fault system and enactment of MVFRL demonstrated a legislative “concern for the spiraling consumer cost of automobile insurance and resultant increase in the number of uninsured motorists driving on public highways”). Declaring the exclusion void could encourage household members to rely on whichever insurance policy had the largest uninsured/underinsured coverage. Following the Hart-Eichelman rationale, relatives would have an incentive to purchase minimal first-party coverage, knowing that they could avail themselves of the highest limits within their household.⁹ According to this reasoning, the result would be higher premiums because insurers would charge for the added risk of inadequately insured family members. These strong public policy considerations – as perceived by the Pennsylvania Supreme Court – favor enforcement of the household exclusion.

“[I]t is only in the clearest of cases that a court may make an alleged public policy the basis of judicial decision.” Eichelman, 711 A.2d at 1010. The Pennsylvania Supreme Court’s

⁹Economists refer to this as “free-riding.” However, whether that thesis is more than marginally realistic here would appear to be a matter of speculation.

public policy analysis of automobile insurance cost reduction and increased coverage has now been repeatedly utilized to set aside the general rule against household exclusions. The same analysis applies here. Accordingly, the household exclusion in this case will be upheld and declared to be enforceable.

Edmund V. Ludwig, J.

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

JEFFREY L. TROEBS	:	CIVIL ACTION
	:	
v.	:	
	:	
NATIONWIDE INSURANCE CO.	:	NO. 98-CV-3556

O R D E R

AND NOW, this 20th day of January, 1999, the motion of plaintiff Jeffrey L. Troebs for partial summary judgment is denied. The motion of defendant Nationwide Insurance Co. for summary judgment is granted.

A memorandum accompanies this order.

Edmund V. Ludwig, J.