

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

THE ROYAL INSURANCE COMPANY	:	CIVIL ACTION
OF AMERICA, AN ILLINOIS	:	
STOCK CORPORATION	:	
Plaintiff,	:	
	:	
v.	:	
	:	
KEVIN BEAUCHAMP	:	
Defendant.	:	NO. 01-5657

M E M O R A N D U M

Newcomer, S.J.

April , 2002

The parties' cross motions for summary judgment are presently before the Court.

I. BACKGROUND

Plaintiff, the Royal Insurance Company of America, an Illinois Stock Corporation ("Royal" or "Plaintiff") filed this declaratory judgment action against Defendant Kevin Beauchamp ("Defendant"), an individual residing in Boothwyn, Pennsylvania. In its Complaint, Plaintiff seeks a declaration that Defendant is not eligible to receive underinsured motorist benefits ("UIM") under an insurance policy (the "Policy") that Defendant issued to Frank and Diane Beauchamp, Defendant's brother and sister in law.

Defendant sustained injuries in a July 13, 1999 motor vehicle accident. On that day, while driving a motorcycle he owned and insured through Universal Underwriters Insurance Company, Defendant collided with an automobile. Defendant has

since recovered the policy limits of both the automobile driver's insurance, and the underinsured motorist benefits covering Defendant's motorcycle. Defendant has filed an underinsured motorist claim against Royal under the Policy.

The Policy expressly covers the two vehicles that Frank and Diane Beauchamp own, and provides underinsured motorist bodily injury coverage for \$100,000 per accident with stacking. Further, under the Policy, Royal agreed to: "[P]ay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident." The Policy, at 2. "Insured" as used in the preceding quote means "[y]ou or any 'family member' for the ownership, maintenance or use of any auto or trailer." Id. A "family member" is defined in relevant part as "a person related to you by blood, marriage or adoption who is a resident of your household." Id., at 1.

Defendant's motorcycle was not insured under the Policy, and the Policy has a provision commonly referred to as the "household exclusion" or "family member" exclusion. That exclusion states:

- A. We do not provide Underinsured Motorist Coverage for "bodily injury" sustained:
 2. By a "family member":
 - a. Who owns an auto while "occupying" or when struck by, any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy. This includes a trailer of any

type used with that vehicle.

The parties agree that Defendant qualifies as a family member within the meaning of the Policy, and they do not dispute that Defendant also owned a 1997 Dodge Truck at the time of the accident. Additionally, the parties do not dispute that neither Defendant's motorcycle nor his truck were listed on the Policy. With these facts as background, the Court turns to the parties' cross motions.

II. DISCUSSION

A. Legal Standard

The standards by which a court decides a summary judgment motion do not change when the parties file cross motions. Southeastern Pa. Transit Auth. v. Pennsylvania Pub. Util. Comm'n, 826 F. Supp. 1506, 1512 (E.D. Pa. 1993). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) (1994). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through

affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324.

A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

B. The Parties' Motions

Plaintiff argues that the "family member" exclusion of the Policy prohibits Defendant from recovering underinsured motorist benefits under it. In response, Defendant argues that the "family member" exclusion is void as against public policy. Thus, as Defendant does not dispute that the plain meaning of the "family member" exception prohibits Defendant from recovering underinsured motorist benefits under it, the only issue for the

Court is whether the "family member" exception is void as against public policy.

Courts should determine Pennsylvania's public policy by reference to the laws and legal precedents and not from general considerations of supposed public interest. Guardian Life Insurance Co. v. Zerance, 479 A.2d 949, 954 (1984). A court may proclaim itself to be the voice of the public 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." Mamlin v. Genoe, 17 A.2d 407, 409 (1941).

Pennsylvania enacted the MVFRL, in part, to establish a liberal compensatory scheme of UIM. Kmonk-Sullivan v. State Farm Mutual Automobile Ins. Co., 746 A.2d 1118, 1123 (Pa. Super. Ct. 1999) (en banc), appeal granted, 771 A.2d 1285 (2001)(citing Marroquin v. Mutual Benefit Ins. Co., 591 A.2d 290 (Pa. Super. Ct. 1991). "The policy of liberally construing the MVRFL is based upon the policy of indemnifying victims of accidents for harm they suffer on Pennsylvania highways." Id. (citing Allwein v. Donegal Mut. Ins. Co., 671 A.2d 744 (Pa. Super. Ct. 1996) (en banc) (other citations omitted). Accordingly, one purchases UIM to protect oneself from drivers whose liability insurance purchasing decisions are beyond one's control. Paylor v. Hartford Insurance Co., 640 A.2d 1234, 1238 (1994). Thus, UIM is meant to protect individuals injured by a tortfeasor with

inadequate insurance coverage. Kmonk-Sullivan, 746 A.2d at 1123.

The exclusion at issue here has been the subject of substantial litigation in the Pennsylvania state courts and in this district. Indeed, in three recent cases from this district, exclusions similar to the one at issue here have been held valid and enforceable. See Shelby Casualty Insurance Co. v. Statham, 158 F. Supp.2d 610 (E.D.Pa. 2001)(Van Antwerpen, J.); Nationwide Mutual Insurance Co. v. Ridder, 105 F. Supp.2d 434 (E.D.Pa. 2000)(Joyner, J.); Liberty Mutual Insurance Co. v. Wark, 2000 WL 1539083 (E.D.Pa. October 19, 2000)(Buckwalter, J.). Upon a review of those cases, and the Pennsylvania Supreme Court precedent which this Court's colleagues correctly applied, the Court finds that the "family member" exclusion clause here is valid and enforceable.

In Paylor v. Hartford Ins. Co., 640 A.2d 1234, 1240 (Pa. 1994), the appellant's parents were killed in a car crash while driving in a motor home that was insured under a policy issued by Foremost Insurance Company ("Foremost"). At the time of the crash, the decedents also maintained insurance on three other vehicles under a separate policy with Hartford Insurance Company ("Hartford"). After recovering the liability limits on the Foremost Policy, the wife's estate attempted to recover UIM benefits under the Hartford policy. Relying on an exclusion similar to the one in this case, Hartford refused to pay UIM.

The Pennsylvania Supreme Court held that the household exclusion was valid and did not violate public policy or the MVFRL. Id., at 1234.

After reviewing several cases on the issue, the Court in Paylor concluded that the exclusion there did not violate public policy because the decedents specifically chose to insure the motor home for substantially less than they insured their three other automobiles. Thus, allowing the insureds to recover UIM would allow them to effectively convert the underinsured coverage in the Hartford policy into additional liability coverage on the motor home, an allowance the Court refused to make. When interpreting the Paylor Court's conclusion, Judge Van Antwerpen concluded that "UIM coverage prevents the insured from being penalized for another driver's poor choice of insurance coverage, not from the insured's own voluntary decision to carry less coverage or lower limits." Shelby, 158 F. Supp.2d at 615.

Just months later, the Pennsylvania Court upheld another similar exclusion in Windrim v. Nationwide Insurance Co., 641 A.2d 1154 (1994). The Windrim Court stated that the MVFRL was enacted to induce drivers to insure their cars and make obtaining insurance easier by controlling its increasing costs. Accordingly, the Court found that if it invalidated the exclusion, drivers, like the appellant in that case, would be discouraged from obtaining insurance because they could look to

the uninsured or underinsured motorist coverage of a family member. Id., 641 A.2d at 1157-1158. Then, in Hart v. Nationwide Insurance Co., 663 A.2d 682 (1995), the Pennsylvania Supreme Court allowed enforcement of the household exclusion even where the claimant had not failed to obtain insurance, but had chosen not to carry UIM coverage on the car involved in the accident. Id. 663 A.2d at 682; Statham, 158 F. Supp.2d at 616.

Since that time, the Supreme Court again upheld a household exclusion in Eichelman v. Nationwide Insurance Co., 551 711 A.2d 1006 (1998). In Eichelman, the appellant was driving his motorcycle when he was negligently struck by a pick-up truck. 711 A.2d at 1007. After recovering the full liability amount from the truck driver's policy, appellant sought to collect UIM benefits from an insurance policy issued to his parents. However, his parents' UIM provisions contained a household exclusion which barred his recovery. Id.

When upholding the exclusion, the Court reasoned that "underinsured motorist coverage serves the purpose of protecting innocent victims from underinsured motorists who cannot adequately compensate the victims for their injuries. That purpose, however, does not rise to the level of public policy overriding every other consideration of contract construction." Id. at 1010. Because the appellant had voluntarily chosen not to purchase UIM coverage, the Eichelman Court found that upholding

the exclusion would further the policy behind the MVFRL because it would hold insured drivers to their voluntary choices and because it would help keep the cost of insurance down. Id., at 1009-1010. The Court reasoned that invalidating the exclusion would allow one family member to purchase UIM coverage on one vehicle and thereby obtain coverage on an unlimited number of vehicles for the entire family. Id. Thus, the Court concluded that upholding the exclusion was consistent with the MVFRL.

In his brief in response, Defendant concedes that "the case law set forth under the trilogy of cases in **Statham, Ridder and Wark** would militate in favor of upholding [the "family member"] exclusion." Defendant's Brief in Support of His Cross Motion for Summary Judgment, at 2. However, Defendant contends that because of the facts here, and because of Richmond v. Prudential Property and Casualty Insurance Company, 798 A.2d 271 (2001), a recent Pennsylvania Superior Court case, this Court should interpret the "family member" exclusion in Defendant's favor.

The Court has reviewed the Richmond decision, and is not persuaded by it. There, the appellant suffered injuries while riding as a passenger on a motorcycle operated by a third party, the tortfeasor. Richmond, 798 A.2d at 273. Appellant then made a claim against the tortfeasor's liability insurance policy and recovered the available policy limits. However, this

recovery was inadequate to fully compensate appellant for her injuries, and she made a claim for UIM under the Prudential policy purchased by her father, with whom she was residing at the time of the accident. Id. In that case, the Court found it particularly persuasive that Plaintiff had done all she could to have UIM coverage on the vehicles she owned, but was injured on a vehicle she did not own. Id. at 279.

After reviewing the Pennsylvania Supreme Court's decisions in Paylor, Windrim, Hart, and Eichelman, and the decisions from this district in Statham, Ridder and Wark, the Court finds that the family exception here is valid and enforceable. Indeed, Defendant is attempting to recover UIM under a policy that is not his own, and which did not list his motorcycle as an insured vehicle. Further, and unlike the appellant in Richmond, Defendant was injured on his own motorcycle for which he purchased UIM. That Defendant purchased inadequate UIM was his voluntary choice.

Another fact further persuades the Court that the "family exclusion" is valid here. In Statham, Ridder and Wark, the party seeking UIM sought UIM under policies issued to the party, but simply did not list the party's vehicle under the policy. In this case, Defendant not only voluntarily chose to insure his motorcycle with UIM that proved inadequate, he also seeks coverage under a policy that did not list Defendant's

motorcycle, and expressly precludes him from collecting UIM under it. Thus, as in the Eichelman case, invalidating the exclusion here would allow family members to purchase UIM coverage on one vehicle and thereby obtain coverage on an unlimited number of vehicles for the entire family. Under these circumstances, the Court will not invalidate the exclusion.

AND IT IS SO ORDERED

Clarence C. Newcomer, S.J.