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

GEORGE SCARINO	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 04-5878
THE STANDARD FIRE INSURANCE COMPANY	:	

Baylson, J. **November 28, 2005**

MEMORANDUM

This is an insurance coverage dispute regarding a personal automobile insurance policy. Plaintiff George Scarino ("Scarino") was injured while riding as a passenger in an automobile owned and driven by William Miller ("Miller"). In this action, Scarino seeks excess coverage from Defendant, Standard Fire Insurance Company ("Standard Fire"), under the automobile liability policy issued by Standard Fire to Miller's uncle, Bradford Dickerson, with whom Miller was living at the time of the accident.[1]

Presently before the Court are Cross-Motions for Summary Judgment. For the reasons that follow, the Court will deny Plaintiff's Motion for Summary Judgment and grant the Defendant's Motion for Summary Judgment.

II. Jurisdiction and Legal Standard

A. Jurisdiction

This suit was initially brought in the Court of Common Pleas of Philadelphia County, Pennsylvania, on October 25, 2004. On December 14, 2004, the case was removed to this Court

[1] Scarino has standing as a plaintiff in this matter by virtue of an assignment of all rights under the relevant insurance policy by Miller to Scarino.

pursuant to 28 U.S.C. § 1441, on the basis of the diversity of citizenship between the parties.[2] Scarino is Pennsylvania resident. Standard Fire is a Connecticut corporation with its principal place of business located there.

B. 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 judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party's initial burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the

[2] Plaintiff originally named Travelers Property Insurance Casualty Companies as the defendant in the complaint filed with the Court of Common Pleas. The Court subsequently granted a motion filed by the defendant to amend the caption to name Standard Fire Insurance Company as defendant.

non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on these motions in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

III. Facts

Both parties have stipulated to the facts; there are no genuine issues as to any material fact. On April 18, 2003, Scarino was in the passenger seat of a 2003 Acura RSX, owned and operated by Miller, when the vehicle struck a tree on the side of a roadway. Scarino suffered injuries as a result of the accident. Scarino thereafter made a bodily injury claim against Miller and Miller's personal automobile insurer, Allstate Insurance Company. Allstate paid Scarino $25,000, the liability limit of Miller's policy. Scarino also collected from his own under-insurance coverage with Allstate.

At the time of the accident, Miller was residing with his aunt and uncle, Bradford and Nancy Dickerson, in Media, Pennsylvania. Mr. Dickerson had a personal automobile insurance policy with Standard Fire that provided a single liability limit of $305,000 per accident. The Dickersons had no ownership interest in Miller's 2003 Acura RSX, and it was not listed as a covered automobile on the Declarations Sheet to the Standard Fire policy issued to Mr. Dickerson at the time of the accident or at any time prior thereto. At no time prior to the date of

the accident did Mr. Dickerson inform Standard Fire that Miller was residing with them in their home in Media or that Miller owned, insured and was driving his own car while residing there.

Scarino made an excess liability claim against Miller under the liability provisions of the policy issued by Standard Fire to Mr. Dickerson. Miller qualified as an "insured" under the liability provisions of Mr. Dickerson's Standard Fire policy because he was residing with the Dickersons at the time of the accident. Standard Fire denied coverage based upon the "other household vehicle" exclusion from liability coverage contained in the policy.

IV. Discussion

The task of interpreting an insurance contract is performed by the Court. Standard Venetian Blind Co. v. Amer. Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). When interpreting an insurance policy, the basic inquiry a court must make is whether the contract's disputed terms are ambiguous. St. Paul Marine Ins. Co. v. Lewis, 935 F.2d 1328 (3d Cir. 1991).[3] A clear and unambiguous contract provision must be given its plain meaning unless to do so would be contrary to a clearly expressed public policy that is more that a vague goal. Estate of Demutis v. Erie, 851 A.2d 172, 178 (Pa. Super. Ct. 2004) (quoting Rudloff v. Nationwide Mutual Ins. Co., 806 A.2d 1270, 1273 (Pa. Super. Ct. 2002)).

[3] A provision is ambiguous only if reasonable persons could honestly differ as to its meaning. Imperial Casualty Indemnity Co. v. High Concrete Structures, Inc., 858 F.2d 128, 131 (3d Cir. 1988).

A. The "Other Household Vehicle" Exclusion

The Standard Fire policy issued to Mr. Dickerson excludes from liability coverage as follows:

> **Exclusions**
>
> * * * *
>
> B. We do not provide Liability Coverages for the ownership, maintenance or use of:
>
> * * * *
>
> 3. Any vehicle, other than "your covered auto," which is:
>
> a. owned by any "family member;" or
>
> b. furnished or available for the regular use of any "family member."

Def's Motion for Summary Judgment, Exhibit D at 3.

The policy defines the following terms as follows:

> A. Throughout this policy, "you" and "your" refer to:
>
> 1. The "named insured" shown in the Declarations; and
>
> 2. The spouse if a resident of the same household.
>
> * * * *
>
> F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.
>
> * * * *
>
> J. "Your covered auto" means:
>
> 1. Any vehicle shown in the Declarations.
>
> 2. Any of the following types of vehicles on the date you become the owner:
>
> a. a private passenger auto; or
>
> b. a pickup or van.

Id. at 1.

The Court finds that this language is clear and unambiguous, and accordingly, will give effect to its ordinary meaning – namely, that Mr. Dickerson's Standard Fire policy excludes

liability coverage for the ownership or use by any "family member" of any vehicle other than Mr. Dickerson's "covered auto." According to the plain language of the definitions cited above, (1) Miller was a "family member" as defined by the policy because he was related to Mr. Dickerson by blood and a resident of Mr. Dickerson's household, and (2) the Miller-owned 2003 Acura RSX was not a "covered auto" because it was neither listed on the policy's Declaration Sheet nor owned by Mr. Dickerson.

The Court therefore concludes that Mr. Dickerson's Standard Fire policy unambiguously excludes liability coverage for the ownership and use by Miller of Miller's 2003 Acura RSX.

B. Public Policy

Because the "other household vehicle" exclusion in question is clear on its face and governs the instant scenario, the only remaining legal question for the Court is whether the application of the exclusion here violates Pennsylvania public policy.

Pennsylvania public policy concerning motor vehicle insurance is articulated by the Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa. C.S.A. §§ 1701 et seq. The Pennsylvania Supreme Court has emphasized that the overriding and clear public policy behind the MVFRL is the desire to control the rising costs of automobile insurance. Burstein v. Prudential Prop. Casualty Ins. Co., 809 A.2d 204, 208 (Pa. 2002).

It is axiomatic that increased liability for unanticipated risk is passed along to consumers in the form of higher insurance costs. Insurers contend that "other household vehicle" exclusions are one means to limit liability for unanticipated risk, and that they therefore serve the public policy underlying the MVFRL by helping to control consumers' insurance costs. Injured claimants, on the other hand, argue that such exclusions arbitrarily and unfairly preclude

justifiable recovery. Over time, the Pennsylvania Supreme Court has developed a method by which it evaluates whether invocation of a particular "other household vehicle" exclusion serves or conflicts with the public policy of the MVFRL. Rather than setting a blanket rule, the Court focuses on the specific policy goal of controlling costs and looks to the unique facts of a case to determine whether the exclusion at issue functions to protect "against forced underwriting of unknown risks that insureds have neither disclosed nor paid to insure." Id. Where it does, the Court has found that the exclusion does not conflict with public policy.

The Pennsylvania Supreme Court's first significant decision regarding an "other household vehicle" exclusion came in Paylor v. Hartford Insurance Company, 640 A.2d 1234 (Pa. 1994). In Paylor, a husband and wife died in an accident involving their motor home. Id. at 585. The motor home was insured under one policy; the other family cars were insured under a separate policy. The couple's daughter, acting as administratrix of the wife's estate, recovered the maximum liability coverage under the motor home policy and then sought under-insured motorist ("UIM") coverage under the other policy. The insurer of that other policy denied the claim based on a "family car" exclusion contained in the policy. Id. at 585-86. The Pennsylvania Supreme Court upheld the exclusion and expressed the specific concern that voiding the exclusion at issue might allow the family to purchase inexpensive UIM motorist coverage for one vehicle and effectively use it as liability coverage for another vehicle. Id. at 597-98. Stated differently, the Court found that voiding the exclusion could impose increased liability on the insurer of the other policy for a risk that the insured had not paid and the insurer had not anticipated.

The Court was faced with another "other vehicle exclusion" again in 2002. In Burstein,

a husband and wife were injured in an accident involving the employer-provided car of the wife. Id. at 205. The wife regularly drove the car but was unaware that her employer only maintained liability coverage for the car. Id. The liability coverage of the motorist who caused the accident did not fully meet the Bursteins' needs, however, and they subsequently sought UIM motorist benefits under a separate policy they maintained for their personal vehicles. The insurer of that policy denied the claim under a "regularly used, non-owned car" exclusion contained in the policy. Id. The Court upheld application of the exclusion, finding that it served the purpose of preventing individuals from driving a variety of vehicles and receiving gratis UIM coverage on all of them if they merely purchased UIM coverage for one. Id. at 208. Focusing on the specific public policy question, the Court held that, in the scenario at bar, "voiding the exclusion would frustrate the public policy concern for the increasing costs of automobile insurance, as the insurer would be compelled to underwrite unknown risks that it has not been compensated to insure." Id.[4]

More recently, the Court upheld an "other household vehicle" exclusion in the context of

[4] The Court notes that Plaintiff contends that because in Burstein the individual seeking coverage was the driver of an "other household vehicle," not a passenger, the Burstein holding is limited to only those who "regularly drive" other household vehicles. In support of this argument, Plaintiff relies on a recent Superior Court holding that stated concerns from Burstein do not apply when the claimant is a passenger because the passengers do not own the vehicle they are riding in and therefore are unable to insure it. See Richmond, 856 A.2d at 1271. While acknowledging this language, the Court finds the specific fact posture that led to the holding in Richmond to be distinguishable from this case. In Richmond, the plaintiff did not own any vehicle and therefore had no insurance of her own. Id. at 1263. As such, the plaintiff sought liability coverage from her father's policy in the first instance. Application of the "other household vehicle" exclusion would therefore have prevented the plaintiff from obtaining any compensation for the injury. Here, however, Scarino has been able to obtain $25,000 from Miller's Allstate policy and to collect from his own under-insurance coverage; he seeks to impose the burden of additional recovery on the insurer of a third, distinct policy.

another UIM claim. In Prudential Property & Casualty Insurance Company v. Colbert, 813 A.2d 747 (Pa. 2002), the plaintiff was involved in an accident in his own car. He received compensation pursuant to UIM coverage under his own policy and sought to recover additional UIM benefits under his parents' insurance policy. The court refused to void the exclusion because the parents' insurer had never been informed about the plaintiff's car – concluding that, if the insurer was forced to pay the claim, it would be made liable for a risk that it had neither known about nor been paid to insure. Id. Specifically, the Court cautioned that

> voiding the "other household vehicle" would empower insureds to collect UIM benefits multiplied by the number of insurance policies on which they could qualify as an insured, even though they only paid for UIM coverage on one policy. As a result, insureds would receive benefits far in excess of the amount of coverage for which they paid . . . .

Id. at 754. Voiding the exclusion in that particular scenario, the Court concluded, would lead to higher insurance rates – which would cut directly against the policy objectives of the MVFRL. Id.[5]

This Court finds the case at bar is most closely analogous to Colbert. Scarino, much like the plaintiff in Colbert, has collected UIM benefits from his own insurance policy, in addition to the liability coverage he collected from Miller's Allstate policy. Having been assigned all rights under the Standard Fire policy by Miller, Scarino seeks additional coverage on the basis of Miller having resided with the Dickersons. Applying the Pennsylvania Supreme Court's analytical rubric to this particular factual scenario, the Court concludes that the "other household vehicle"

[5] The Plaintiff asserts that Colbert is irrelevant because that court was specifically concerned about the freeloading of a family member, which Scarino is not. However, the Court's reading of Colbert does not find that the case turned on such a distinction. See Colbert, 813 A.2d at 754.

exclusion at issue protects Standard Fire from liability for an unanticipated risk of exactly the sort that it would pass along to consumers in the form of increased insurance costs. Stated differently, voiding the exclusion in this case would allow Scarino to collect additional coverage for which he never paid (and of which risk Standard Fire was never aware),[6] and that result would conflict with Pennsylvania's stated public policy goals of restraining insurance costs.[7]

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[6] The Court does not agree with Plaintiff's contention that "[i]f the exclusion is enforced against passengers like Scarino, then an entire class of individuals injured in auto accidents will routinely be deprived of the ability to obtain compensation for, inter alia, lost wages and unpaid medical expenses." Plaintiff's Mem. in Support of Mot. for Summary Judgment at 10. Passengers like Scarino will be able to collect up to the liability limit of the insured car owner as well as up to the liability limit of their own under-insurance coverage. These limits, which vary by policy and are directly determined by the individuals, may (or may not) provide the appropriate level of compensation sought by injured individuals; there is certainly no basis to predetermine that they will not (and that, as a result, resort to sources of additional coverage will be necessary). Furthermore, injured individuals have the prerogative to bring lawsuits, where appropriate, against relevant tortfeasors.

Most importantly, however, and in keeping with the doctrine of the Pennsylvania Supreme Court, the purpose of this Court's decision is not to establish a general rule regarding "other household vehicle" exclusions, but is simply a determination as to whether this exclusion, in this factual posture, serves or conflicts with the policy underlying the MVFLA.

[7] See also, e.g., Demutis, 851 A.2d at 172, wherein the Pennsylvania Superior Court upheld an "other household vehicle" exclusion where the claimant was a passenger in a vehicle and was seeking additional UIM benefits. In Demutis, the plaintiff was involved in an accident while he was a passenger in his father's car. Importantly, he had recovered UIM benefits from his own insurance policy, and then sought additional compensation in the form of UIM benefits from his father's insurance policy. The Court in Demutis specifically noted:

> In allowing the household exclusion, our courts and the general assembly have implicitly agreed that multiple vehicles in a single household represents a statistically higher risk . . . . As such, an insurer is not obligated to provide coverage for that higher risk of which it was unaware and uncompensated. It is obvious that had Demutis insured his vehicle under this father's policy, that premium would have increased by some amount for the additional . . . coverage. That higher premium represents the risk for which the insurer was not compensated but is now being asked to assume.

Demutis, 851 A.2d at 173-74.

V. Conclusion

The Court concludes that the terms of the "other household vehicle" exclusion are clear and unambiguous. The exclusion is applicable in this case and precludes the demanded liability coverage. Standard Fire thus had a reasonable basis for denying benefits under the policy. The Court further concludes that Standard Fire's application of the "other household vehicle" exclusion here does not violate Pennsylvania public policy because, in the instant situation, the exclusion serves the policy goals of the MVFLA by protecting Standard Fire from increased liability based on an unanticipated risk, and thereafter passing the costs of that liability on to consumers. Accordingly, the Court will grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment. An appropriate order follows.

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GEORGE SCARINO	:	CIVIL ACTION
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v.	:	
	:	NO. 04-5878
THE STANDARD FIRE INSURANCE COMPANY	:	

ORDER

AND NOW, this 28th day of November, 2005, it is hereby ORDERED that Defendant's Motion for Summary Judgment (Docket No. 11) is GRANTED, Plaintiff's Motion for Summary Judgment (Docket No. 15) is DENIED, and Judgment is entered in favor of Defendant and against Plaintiff.

The Clerk shall mark this case closed for statistical purposes.

BY THE COURT:

/s/ MICHAEL M. BAYLSON

MICHAEL M. BAYLSON, U.S.D.J.

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