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

SELECTIVE INSURANCE GROUP, INC. a/k/a SELECTIVE INSURANCE and a/k/a SELECTIVE WAY INSURANCE COMPANY	:	CIVIL ACTION
v.	:	
BERKELEY MARTIN and KELLIE ANN ALLEN	:	NO. 99-CV-1590

MEMORANDUM

Giles, C.J. September _____, 1999

This is a petition to vacate an arbitrators' award entered in favor of the Respondents, Berkley Martin ("Martin") and Kellie Ann Allen ("Allen"), in an underinsured motorist ("UIM") arbitration. Presently before the court is the Petitioner's, Selective Insurance Group, Inc. ("Selective"), Motion to Vacate the Arbitration Award, and Respondents' Motion to Dismiss Petitioner's Motion to Vacate. For the reasons which follow, Petitioner's Motion to Vacate is granted, Respondents' Motion to Dismiss is denied and judgment is entered in favor of the Petitioner.

BACKGROUND

On August 5, 1995, while operating a motor vehicle, Martin was struck by a City of Chester police cruiser driven by Officer Jennifer Stanfield ("Stanfield"). At the time of the accident, Stanfield was acting within her course of employment and the vehicle was owned and insured by the City of Chester, PA ("Chester"). Martin and Allen, his wife, instituted a

negligence action against Stanfield and Chester for serious personal injuries, including brain damage, and loss of consortium. This case was ultimately settled.

A request for underinsured motorist benefits[1] ("UIM") was also made against the policy of the vehicle that Martin was driving. That policy, which was issued by Selective to Martin's employer, Al Finer Companies, contained a provision that excluded from underinsured coverage motor vehicles owned by "a governmental unit or agency." In those situations in which the policy did provide UIM coverage, it allowed "stacking."[2]

On August 19, 1997, Martin and Allen filed a petition to compel arbitration in the Philadelphia Court of Common Pleas. Selective removed the petition to compel arbitration to the United States District Court for the Eastern District of Pennsylvania on the basis of diversity. Pursuant to an order by this court, the matter was remanded to the Philadelphia Court of Common Pleas for the appointment of arbitrators.

The primary issue before the arbitrators was whether the Selective policy provision which excluded UIM coverage for "governmental" vehicles applied to the Chester police car involved in the Martin-Stanfield accident of August 1995 or merely to vehicles owned

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[1] An "underinsured motor vehicle" is a vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages. 75 Pa. C.S.A. § 1702. Under the Pennsylvania Political Subdivision Tort Claims Act ("PSTCA"), 42 Pa. C.S.A. § 8501, et seq., there is a $500,000 statutory cap on tort damages recoverable from a municipality. 42 Pa. C.S.A. § 8553. Therefore, Chester's police vehicle was only insured up to the $500,000 cap.

[2] "Stacking" is where a claimant adds all available policies together to create a greater pool in order to satisfy actual damages. West American Ins. Co. v. Park, 933 F.2d 126, 1237 n.1. (3d Cir. 1991). It permits the total amount of underinsured motorist coverage provided for all vehicles listed in an insurance policy to be applied to damages resulting from an accident involving only one of the vehicles. Id.

by the United States Government. Martin and Allen contended that to allow Selective to deny them UIM coverage under its "vehicles owned by a governmental unit or agency" provision (because Martin's accident was with a municipality-owned vehicle) was inconsistent with the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), 42 Pa. C.S.A. §1701, et seq., which only expressly excludes "vehicles owned by the United States" from UIM coverage. Further, to allow such an exclusion would be contrary to the public policy underlying the MVFRL's enactment. Selective asserted in opposition that because Chester's liability as a political subdivision is limited to $500,000 by the Political Subdivision Tort Claims Act ("PSTCA"), 42 Pa. C.S.A. 8501, et seq., and because Chester had sufficient coverage, Chester was not an "underinsured" as defined by § 1702 of the MVFRL. Moreover, it argued that the plain language of the Selective policy excluded vehicles "owned by a governmental unit or agency" from UIM coverage, and such an exclusion is not contrary to the MVFRL nor its underlying public policy concerns.

Following oral argument on the issue of exclusion, a 2-to-1 majority of the Arbitration Panel held that application of the UIM policy provision to all governmental vehicles, including those owned by states and municipalities, would be: (a) contrary to the provisions of the MVFRL, as such would provide less coverage to the insured than statutorily required, and (b) against public policy, because the result of this exclusion could not further the common goal of reducing insurance costs. (Op. of Arb., 2-10).

After the panel had made the exclusion determination but before it had determined either liability or damages, the Pennsylvania Superior Court decided the identical "governmental vehicle" exclusion issue in Midili v. Erie Insurance Group, 1999 Pa. Super. 17 (Jan. 22, 1999)

(slip opinion). The Midili court expressly held that the "governmental vehicle" exclusion did not apply solely to those vehicles owned by the federal government, but rather it also applied to state and municipal vehicles, like the Chester vehicle at issue, and did not violate the MVFRL or public policy. Midili, 1999 Pa. Super. 17 at ¶¶ 14-21.

DISCUSSION

Jurisdiction to Vacate the Arbitration Award

Petitioner contends that because the Arbitration Panel: (a) was aware of, but refused to use controlling law, *i.e.*, Midili; and (b) decided the "governmental vehicle" exclusion issue on public policy grounds, this Court has jurisdiction to vacate the arbitration award to the Respondents. Respondents assert in opposition that the panel's award was made pursuant to statutory interpretation, not on the basis of public policy, so this court lacks jurisdiction to vacate it.

Pennsylvania favors arbitration as an alternative means of dispute resolution. Gavlik Constr. Co. v. Wickes Corp., 526 F.2d 777, 783 (3d Cir. 1975). As such, the grounds for vacating an arbitration award are construed narrowly. Tanoma Mining Co., Inc. v. Local 1269, United Mine Workers, 896 F.2d 745, 747-48 (3d Cir. 1990). When parties agree to resolve their disputes outside of the traditional court system, part of their agreement is that such decision is "final and binding" and not subject to the usual right of appeal that accompanies cases that originate in court. Perna v. Barbieri, No. CIV. A. 97-5943, 1998 WL 181818, *1 (E.D. Pa. April 16, 1998). Thus, as "it is the arbitrator's view of the facts and [view] of [the] meaning of the contract" that the parties have agreed to accept, courts should not review arbitration decisions "as

an appellate court . . . review[s] decisions of lower courts." Tanoma Mining Co., 896 F.2d at 747 (quoting United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 37-38 (1987))

Nonetheless, despite the limited role of courts in reviewing arbitration awards, an award may be vacated in some circumstances. Tanoma Mining Co., 896 F.2d at 747. The narrow grounds for vacating an arbitration award are set out in the Pennsylvania Uniform Arbitration Act ("Arbitration Act"), Pa. C.S.A. § 7302, et seq.; provided, however, that the Act does not allow for the general review of errors of law and fact. Hawthorne v. Kemper Group, 758 F. Supp. 296, 298 (E.D. Pa. 1991).

This Court May Vacate the Arbitration Award on Grounds of "Irregularity."

The Arbitration Act states that a matter sent to arbitration is to be considered either a "statutory arbitration" or a "common law arbitration" depending on whether the parties' agreement to arbitrate was originated in the court system. 42 Pa. C.S.A. § 7302. Section 7314 of the Act provides that a court may vacate a statutory arbitration decision if the arbitration could be vacated at common law. 42 Pa. C.S.A. § 7314(a)(1)(i). The grounds for vacating a common law arbitration decision are "the clear[ ] show[ing] that a hearing [was denied] or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award." 42 Pa. C.S.A. § 7341. In an arbitration proceeding, an "irregularity" refers to the process employed in reaching the result of arbitration, not to the result itself. American Fed'n of State, County & Mun. Employees Local 2026 v. Borough of State College, 133 Pa. Cmwlth. 521, 529 (1990). An "irregularity" as grounds to vacate an arbitrator's award

has been defined by the Pennsylvania Supreme Court as an "arbitration award which imports such bad faith, ignorance of the law, or indifference to the justice of the result." Id. (quoting Allstate Ins. Co. v. Fioravanti, 299 A.2d 585, 589 (1973)). Moreover, "where relief has been awarded due to an egregious mistake of law on the part of the arbitrators, the award may be vacated." Ragin v. Royal Globe Ins. Co., 461 A.2d 856, 858 (Pa. Super. 1983).

Additionally, this court also agrees with the reasoning employed by the Pennsylvania Supreme Court in Runewicz v. Keystone Ins. Co., 383 A.2d 189 (Pa. 1978) when it stated that:

> Just as the courts should be steadfast in upholding the validity of arbitration awards against unwarranted appeals for judicial intervention, so should they be diligent to strike down an award which is palpably made in bad faith, ignorance of the law, [or] indifference to the justice of the result. For an arbitrator to say that an insured vehicle is uninsured is such a flagrant case. Judicial approval of [such] an award [would be] so irresponsible [that it would] . . . serve to erode the public confidence on which the arbitration system in the field of casualty insurance depends; such approval can only increase the resort to the courts that [arbitration] . . . help[s] [to] avert.

Runewicz, 383 A.2d at 467.

Here, the Arbitration Panel's declination to apply the then governing law, as announced in Midili, and its ruling that the "governmental vehicles" exclusion was inapplicable to Chester's police cars constituted "such a flagrant case." The Arbitration Panel had actual knowledge of the Midili decision. The parties briefed and argued to the Panel the ramifications of that case. The arbitrators knew that the controlling Midili decision was contrary to their ruling -- a ruling which was not "final." This was a palpable disregard for governing law is a plain

"irregularity" within the meaning of the Arbitration Act. As such, it is sufficient grounds for vacation of the arbitration award.

Also The Award was Impermissibly Based on Public Policy Decision.

In Pennsylvania, a court has the power to review an arbitration award which is based on the declaration that an insurance policy provision is against public policy. Hall v. Amica Mut. Ins. Co., 648 A.2d 755, 758 (Pa. 1994). Indeed, the Supreme Court of Pennsylvania has determined that where, as here, an insurance provision is being challenged as contrary to the common civic agenda, the court has jurisdiction to review the arbitrator's award pursuant to 42 Pa. C.S.A. § 7314(a)(1)(i). Id.

The Arbitration Panel stated that the language of the statutory provision -- "owned by a governmental unit or agency" -- makes it plain that the only vehicles which were intended to be excluded by the legislature from the statute are those vehicles owned by the federal government. (See Op. of Arb., at 3). Further, the arbitrators asserted that since all other motor vehicles had been "brought into the purview of the MVFRL and are bound by its mandates," it is clear that the legislature "*meant* to include [municipality] owned vehicles within the scope of the statute." Id. at 3-4 (emphasis added). The panel therefore concluded that allowing the Petitioner's provision which excluded vehicles "owned by a governmental agency or unit" from UIM coverage to cover the Chester police vehicle was contrary to the spirit of the MVFRL and therefore against public policy.

The Panel continued by declaring that "the Rules of Statutory Construction lead to

the same conclusion." Id. at 4. Though it is the object of statutory construction to give effect to legislative intent, the arbitrators did not cite legislative history or other evidence to support their *belief* as to the legislature's intent when it drafted the MVFRL. The Panel's attempted statutory interpretation, however styled, was its own conjecture about legislative intent based on public policy grounds. Therefore, this Court concludes that the Arbitration Panel's ruling was based on its interpretation of public policy. Thus the court may review the arbitration award.

Therefore, because the Arbitration Panel committed an "irregularity" within the meaning of the Arbitration Act by choosing to disregard governing law and based its decision squarely on public policy grounds, this court has jurisdiction to decide the coverage issue. Accordingly, the arbitration award is vacated.

Having Vacated the Arbitration Award, this Court Will Decide the Policy Exclusion Issue.

Having established that this court has jurisdiction over the arbitrators' decision, and that the arbitration award should be vacated, it becomes the duty of this court to determine whether the Petitioner's UIM coverage exclusion of the Chester police car as a "governmental vehicle" is valid. The court will decide this case under Midili as it was controlling at the time of the arbitrator's decision. The Pennsylvania Superior Court has since withdrawn its decision in Midili pending reargument en banc. However, this withdrawal has no effect on the present action; Midili was the law in Pennsylvania at the time of the arbitrators' March 3, 1999 decision. Further, since the Panel claimed to base its decision on statutory construction and alternatively, public policy, this court will also decide the issue by construing the exclusion provision in light

of the MVFRL, and by examining public policy.

The Respondents argue that the Petitioner's exclusion of motor vehicles "owned by governmental unit or agency" from the category of "underinsured vehicles" is in direct violation of the statutory requirements imposed upon Pennsylvania insurers by the MVFRL. The Petitioner asserts that its exclusion provision is enforceable and does not violate public policy. This court agrees with the Petitioner and holds that the governmental vehicle exclusion provision is both valid and consistent with public policy.

The Exclusion Provision is Valid Under the Midili Decision

In Midili, the estate of Arnold Midili sued the decedent's insurance company because the company asserted that the Allegheny County vehicle which stuck and killed Mr. Midili was excluded from UIM coverage because it was owned by a "governmental unit or agency." Midili, 1999 Pa. Super. 17 at ¶ 2. As in the case at bar, the insured argued that the policy exclusion could only apply to vehicles owned by the federal government because any other interpretation would be contrary to the spirit of the MVFRL and void as against public policy. Id. at ¶ 6. The plaintiff in Midili further asserted that because the MVFRL only expressly excluded vehicles "owned by the United States," see 75 Pa. C.S.A. § 1703, under the rule of statutory construction, it is wrong to exclude any vehicle not owned by the United States Government. Midili, 1999 Pa. Super. 17 at ¶ 13. The "Rule of Statutory Construction" specifically states that "exceptions expressed in a statute shall be construed to exclude all others." 1 Pa. C.S.A. § 1924

First, the Midili court decided that the rule of statutory construction was

inapplicable to the MVFRL provision at issue. Midili, 1999 Pa. Super. 17 at ¶ 13. It reasoned that because the MVFRL does not require that *all* motorists obtain UIM coverage for their vehicles, § 1703's "exclusion"of federal vehicles is not an exclusion at all.[3] See id. Indeed, if no vehicle owner is required to carry UIM coverage, explicitly exempting the federal government does not put it in a better position than anyone else. The Midili court further reasoned that the express exclusion of federal vehicles was borne of federalism concerns rather than of any attempt to implicitly include non-U.S. government vehicles. Id. at ¶ 14. Second, the court in Midili concluded that the governmental vehicle exclusion provision is not violative of the public policy. Id. at ¶ 20. After considering the legislative intent underlying the MVFRL and the general safety and welfare of the people of the Commonwealth in light of the Commonwealth's limited damages exposure pursuant to the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8501, et seq., the Midili court held that the government vehicle exclusion is not against the public concern. Id. at ¶ 18. Finally, the Midili court pointed out the Pennsylvania law is replete with examples of insurance policy limitations and/or exclusions which have been upheld -- even though they were not explicitly authorized by the MVFRL. Id. at n.4.[4] The Midili court therefore held that state and municipal vehicles, as "governmentally owned vehicles," are

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[3] Although the MVFRL requires that all registered vehicles carry minimum insurance coverage, it does not require that a motorist maintain UIM coverage. See 75 Pa. C.S.A. § 1731(a).

[4] See, e.g., Herr v. Grier, 671 A.2d 224 (Pa. Super. 1995) (holding exclusion of vehicles "[d]esigned mainly for use off public roads while not on public roads" did not violate MVFRL); Paylor v. Hartford Ins. Co., 640 A.2d 1234 (Pa. Super. 1994) (sustaining "family car" exclusion for insured while riding in motor home); Marino v. General Act. Ins. Co., 610 A.2d 477 (Pa. Super. 1992) (upholding UIM exclusion for vehicle used to transport people or goods for a fee).

properly excluded from UIM coverage without contravening the MVFRL or public policy. Id. at ¶ 20.

Here, the governmental vehicle exclusion provision is identical to the provision in Midili. It excludes from UIM coverage any vehicle "owned by a governmental agency or unit." Following the holding of Midili, such a provision does not violate the MVFRL nor the underlying public policy when applied to vehicles other than those owned by the federal government.

The Exclusion Provision is Valid Under Reasonable Construction of the MVFRL

Section 1702 of the MVFRL defines an "underinsured vehicle" as:

> A motor vehicle for which the limits of available liability insurance and self-insurance are insufficient to pay losses and damages.

42 Pa. C.S.A. § 1702.

In the motor vehicle context, the term "liability insurance" means a policy covering any motor vehicle of the type required to be registered with state, issued by an insurer to compensate any person who suffers injury arising out of the maintenance or use of the insured's motor vehicle. See Pa. C.S.A. §§ 1712-13. The Respondents argue that the Petitioner's exclusion of motor vehicles "owned by governmental unit or agency" from the category of "underinsured vehicles" is in direct violation of the statutory requirements imposed upon Pennsylvania insurers by the MVFRL. The Petitioner asserts that its exclusion provision is enforceable and does not violate public policy. This court agrees with the Petitioner and holds that the governmental vehicle exclusion provision is both valid and consistent with public policy.

"Liability caps," such as Chester's $500,000 cap, pursuant to the Political Subdivision Tort Claims Act, are not the equivalent of "liability insurance." Indeed, liability caps under the Political Subdivision Tort Claims Act are not "insurance" limits, but rather they are the limits of the sovereign's waiver of immunity from suit.

The Political Subdivision Tort Claims Act has an involved history that began with the Pennsylvania Supreme Court's abolition of sovereign immunity as a common law defense in Ayala v. Philadelphia Bd. of Pub. Educ., 305 A.2d 877 (1973). See Simmons v. City of Philadelphia, 947 F.2d 1042, 1086 (3d Cir. 1991). This doctrine of sovereign immunity, which has its roots in England, is basically the proposition that "the King [or the state or the U.S. government] cannot be sued." In 1978, the Pennsylvania legislature enacted the PSTCA to reinstate the sovereign immunity that Ayala had abolished. Id. at 1086-87. The PSTCA, however, was enacted with eight limited exceptions to the Commonwealth's general sovereign immunity. Id. at 1087. There are eight activities for which the Pennsylvania legislature has waived immunity and authorized individuals to sue the Commonwealth, or a subdivision therein. 42 Pa. C.S.A. § 8522(b). Damages arising from the "operation of a motor vehicle" is one of those eight exceptions. Id. The PSTCA's "waiver" of sovereign immunity with respect to the Commonwealth's liability in an automobile accident, however, has been capped at $500,000. 42 Pa. C.S.A. § 8553. This $500,000 cap is merely the upper limit that the Commonwealth has attached to its liability waiver. On the other hand, the $15,000/$30,000 bodily/$5,000 property liability insurance requirement imposed on the owners of motor vehicles required to be registered under the MVFRL is the minimum financial responsibility imposed on Pennsylvania motor vehicle owners. The two have no relation whatsoever to each other. While the MVFRL is

fashioned to protect those injured by drivers who do not have the minimum liability insurance of $15,000/$30,000 bodily/$5,000 property coverage, the liability cap of the PSTCA protects the Commonwealth from unlimited tort exposure. These are two separate and distinct systems designed to address two unique issues, issues that do not overlap under the circumstances of this case.

A basic component of the definition of "underinsured vehicle" requires that "a motor vehicle [has] insufficient liability insurance." See 42 Pa. C.S.A. § 1702. However, the $500,000 liability cap under the PSTCA is "sufficient" as a matter of law. There is no reasonable construction of the MVFRL that can render "insufficient" what has been deemed sufficient by the Pennsylvania legislature. Therefore, since "insufficient liability insurance" is a necessary element in the definition of "underinsured vehicle," and the PSTCA $500,000 cap is neither liability insurance nor "insufficient," the "underinsured vehicle" definition does not apply to the Chester police car.

Further, Chester was not "self-insured" under the definition of "underinsured vehicle." The phrase "self-insurance" reflects that the Commonwealth requires the owners of registered motor vehicles to "self-insure," *i.e.*, procure the insurance for themselves, and file evidence of such insurance with the Department of Transportation ("DOT"). See Pa. C.S.A. § 1787. While Chester, or any other governmental unit or agency in Pennsylvania, may own and register vehicles with Commonwealth, it is not required to insure them, nor is it required to file a self-insurance plan with the DOT. Therefore, a governmental unit or agency that owns a motor vehicle is not "self-insured." An essential element of the definition of "underinsured vehicle" is that the vehicle lacks sufficient "self-insurance." See 42 Pa. C.S.A. § 1702. Because Chester is

not "self-insured," the definition of "underinsured vehicle" is not applicable to the Chester police car.

Therefore, under the MVFRL definition, neither the Chester police car, nor any other vehicle owned by a governmental unit or agency, could rationally be termed an "underinsured vehicle."

The Provision is Consistent With Public Policy

Additionally, to allow claimants to declare governmental vehicles "underinsured" at the point at which the Commonwealth has chosen to limit its liability is contrary to the public policy rationale behind the rule of sovereign immunity. It is highly unlikely that the Pennsylvania legislature had the intent to construct the MVFRL so as to destroy the natural meaning of the PSTCA. Thus, any statutory construction that would lead to that result cannot be correct. This court will "not enlarge a waiver beyond the purview of the relevant statutory language, a[s] any ambiguities must be construed in favor of immunity." Poindexter v. IRS, No. 96-4404, 1997 WL 424462 (E.D. Pa. Apr. 29, 1997) (quoting United States v. Williams, 514 U.S. 527, 531 (1995)).

Conclusion

The police car that struck Martin is not an "underinsured vehicle" under Pennsylvania law, and is properly excluded from UIM coverage by the plain language of the Selective policy. The governmental vehicle exclusion in Selective's policy neither violates public policy nor conflicts with the provisions of the MVFRL. As such, the provision is valid.

Accordingly, judgment is entered in favor of Selective.[5]

An appropriate Order follows.

[5] The court does not reach the stacking issue since it is made moot by this ruling.