DONEGAL MUTUAL INSURANCE,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 02-01,622
	:	
UNIVERSAL UNDERWRITERS,	:	PRELIMINARY OBJECTIONS
	:	
Defendant	:	

Date: March 26, 2003

OPINION and ORDER

Before the Court is Defendant's, Universal Underwriters Insurance Company (hereafter "Universal"), Preliminary Objections, filed October 21, 2002, which demur to Plaintiffs', Donegal Mutual Insurance Company (hereafter "Donegal") and Gordon L. Snyder's, (hereafter "Snyder") Complaint. The demurrer asserts Snyder's auto insurer, Donegal, cannot maintain a claim against Universal to indemnify it for the settlement of a claim involving Snyder because Snyder was not covered by the auto insurance policy Universal issued to Fairfield Auto Group, Inc. The Court will grant Universal's Preliminary Objections.

The central issue before the Court is whether Donegal can bring a claim for indemnification against Universal. To answer this question, the Court must determine whether Snyder was an insured under the Universal policy issued to Fairfield.

Facts

On or about June 19, 2001, Gordon L. Snyder was involved in a motor vehicle accident with Darcy D. Watson. The Fairfield Auto Group, Inc (hereafter "Fairfield") owned the vehicle driven by Snyder. Fairfield had loaned the vehicle to Snyder while Fairfield made repairs to his vehicle. Donegal had issued a personal auto policy to Snyder that identified him

as the named insured. Universal had issued to Fairfield a garage policy that covered the vehicle loaned to Snyder. The accident resulted in property damage to Watson's vehicle costing $2,208.14 in repairs. Donegal entered into a settlement agreement on behalf of Snyder with Watson. Donegal paid Watson $2,343.14 for the damage done to her vehicle.

Donegal instituted the present declaratory judgment action against Universal on September 16, 2002. Donegal alleges that Snyder is as an insured covered under the garage policy issued by Universal to Fairfield. Donegal alleges that the Universal policy covering the loaned vehicle is the primary and sole source of liability coverage for the automobile accident. As such, Donegal seeks indemnification from Universal for the $2,343.14 paid to Watson for the property damage to her vehicle arising form the June 19, 2001 accident.

The Universal garage policy defines "insured," with respect to the AUTO HAZARD as:

> (1) YOU;
>
> (2) Any of YOUR partners, paid employees, directors, stockholders, executive officers, a member of their household or a member of YOUR household, while using an AUTO covered by this Coverage Part, or when legally responsible for its use. The actual use of the AUTO must be by YOU or within the scope of YOUR permission;
>
> (3) any CONTRACT DRIVER;
>
> (4) Any other person or organization required by law to be an insured while using an AUTO covered by this Coverage Part within the scope of Your permission. (Emphasis in the original)

Universal contends that Snyder is not covered by the garage policy issued to Fairfield because he is not an insured as defined by that policy. According to Universal, Snyder was not a named insured under the policy, nor was Snyder a Fairfield partner, paid

employee, director, stockholder, executive officer, or a member of those individuals' household. Universal also asserts that Snyder was not under contract with Fairfield to drive the vehicle. Finally, Universal contends that Snyder was not required by law to be insured under the garage policy while using the loaner car. For this proposition, Universal cites to ***State Farm Ins. v. Universal Underwriters Ins. Co.***, 701 A.2d 1330 (Pa. 1997). Universal acknowledges that a footnote in ***State Farm*** states that the decision was based on the Motor Vehicle Financial Responsibility Law (MVFRL) prior to the 1990 amendments. However, Universal argues that the reasoning and holding of ***State Farm*** applies to the post-1990 MVFRL with the same force since the 1990 amendments did not materially change the sections of the MVFRL relied upon in ***State Farm***. Therefore, Universal argues that the MVFRL does not require a permissive user, who has his own automobile insurance, to be covered as an insured under the vehicle owner's policy.

Donegal counters by arguing that the MVFRL does require a permissive user to be covered as an insured under the vehicle owner's policy, despite having his own automobile insurance. Donegal contends that the 1990 amendments to the MVFRL created this requirement and did in fact materially change the sections of the MVFRL relied upon in ***State Farm***. Donegal states that the 1990 amendments to §1786 changed the name of the section from "Self-Certification of Financial Responsibility" to "Required Financial Responsibility," and added subparagraph (a). Donegal argues that these changes indicate a "specific legislative intention to require financial responsibility to be 'vehicle oriented' rather then 'person oriented.'" Plaintiff's Brief in Opposition to Defendant's Preliminary Objections, at 5. This change, according to Donegal, is especially clear when one considers that "prior to 1990, §1786

only contained subparagraph (b), which required each motor vehicle registrant to provide financial responsibility, whereas subparagraph (a) provides that 'each motor vehicle' shall be covered by financial responsibility." ***Ibid.*** (Emphasis added.) Based on these changes, Donegal argues that ***State Farm*** has no precedential value and does not preclude Snyder from being an insured under the Universal garage policy issued to Fairfield.

Discussion

A preliminary objection, in the nature of a demurrer, should only be granted when it is clear from the facts that the party has failed to state a claim upon which relief can be granted. ***Sunbeam Corp. v. Liberty Mut. Ins. Co.***, 781 A.2d 1185, 1191 (Pa. 2001). The reviewing court in making such a determination "is confined to the content of the complaint." ***In re Adoption of S.P.T.***, 783 A.2d 779, 781 (Pa. Super. 2001). "The court may not consider factual matters; no testimony or other evidence outside the complaint may be adduced and the court may not address the merits of matter represented in the complaint." ***Ibid***. The court must admit as true all well pleaded material, relevant facts and any inferences fairly deducible from those facts. ***Willet v. Pennsylvania Med. Catastrophe Loss Fund***, 702 A.2d 850, 853 (Pa. 1997). " 'If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.'" ***Ibid***.

The Court will grant Universal's preliminary objections because the Court believes that ***State Farm*** controls and mandates that a permissive user is not required by law to be an insured under the vehicle owner's policy when the permissive user has his own insurance. The starting point in analyzing the case *sub judice* is the ***State Farm*** decision. In ***State Farm***,

the Supreme Court of Pennsylvania held that the MVFRL, specifically §1786, did not require a permissive user, with his own insurance, to be included as an insured under the vehicle owner's policy. 701 A.2d at 1333. In a footnote, the Supreme Court stated that the opinion was "not meant to be controlling precedent in interpretation of the provisions of the post-1990 MVFRL." ***Id***. at 1330, n.2. The Supreme Court had based its decision on the pre-1990 amendment MVFRL. The relevant pre and post 1990 language of § 1786 is as follows:

> The pre-1990 language:
>
> section head – "Self-certification of financial responsibility"
>
> text – The Department of Transportation shall require that each motor vehicle registrant certify that the registrant is financially responsible at the time of registration or renewal thereof. The department shall refuse to register or renew the registration of a vehicle for failure to comply with this requirement or falsification of self-certification.
>
> The post-1990 language:
>
> section head – "Required financial responsibility"
>
> text (a) General rule – Every motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility.
>
> (b) Self-certification – The Department of Transportation shall require that each motor vehicle registrant certify that the registrant is financially responsible at the time of registration or renewal thereof. The department shall refuse to register or renew the registration of a vehicle for failure to comply with this requirement or falsification of self-certification.

The question before the Court is would the result in ***State Farm*** be the same if the Supreme Court analyzed the issue under the post-1990 MVFRL. To answer that question, this Court will follow the approach utilized by the Supreme Court in ***State Farm***. First, the

Court will determine whether Snyder is an insured as defined by the MVFRL. Second, the Court will examine the post 1990 MVFRL to determine whether there is a requirement that permissive users of vehicles, who have their own insurance, must be insured under the vehicle owner's policy. Finally, the Court will determine if such a requirement can be implied from the post 1990 MVFRL, specifically §1786.

Addressing the first step, Snyder is not an insured as defined by the MVFRL. Under the MVFRL, an insured is defined as "(1) An individual identified by name as an insured in a policy of motor vehicle liability insurance or (2) If residing in the household of the named insured (i) a spouse or other relative of the named insured; or (ii) a minor in the custody of either the named insured or a relative of the named insured." 75 Pa.C.S.A. §1702. Clearly, Snyder is not an insured as defined by the MVFRL. Snyder is not a named insured in the Universal policy. There is no indication from the complaint that Snyder is a spouse or relative of a named insured in the Universal policy. And being an adult, Snyder could hardly be considered a minor in the custody of a named insured or relative of a named insured. Thus, Snyder is not an insured as defined by §1702 of the MVFRL.

As to the second step in the Court's analysis, the post-1990 MVFRL does not contain an explicit requirement that permissive users be insured under a vehicle owner's insurance policy. The post-1990 MVFRL requires that "[e]very motor vehicle of the type required to be registered under this title which is operated or currently registered shall be covered by financial responsibility." 75 Pa.C.S.A. §1786(a). This requirement makes no distinction between owners and permissive users. Therefore, it cannot be read as an explicit mandate to require permissive users to be included as insureds under the vehicle owner's

automobile insurance policy. But this does not resolve the issue before the Court. The Court must determine whether the language of §1786(a) implicitly requires a permissive user, with his own insurance, to be included as an insured under the vehicle owner's policy.

This Court finds that the post-1990 MVFRL does not impose such a requirement. The 1990 amendments did not materially change the sections of the MVFRL relied upon by the Supreme Court in ***State Farm***, and thus its reasoning and holding are equally valid and applicable to the post-1990 MVFRL. The 1990 amendments to the MVFRL added subparagraph (a) to §1786 which states:

> [e]very motor vehicle of the type required to be registered under this title, which is operated or currently registered, shall be covered by financial responsibility.

75 Pa.C.S.A. §1786(a). Donegal contends that this shifted the focus from "person oriented" to "vehicle oriented" financial responsibility, and consequently primary liability follows the vehicle rather then the person. Whether or not the addition of subparagraph (a) shifted the focus of the MVFRL from "person oriented" to "vehicle oriented," the Supreme Court appears to have considered a more "vehicle oriented" approach when it decided ***State Farm***.

In ***State Farm***, the Supreme Court said, "[s]ection 1786 required that the owner's *vehicle* be covered by financial responsibility, but is utterly silent as to whom the coverage of the owner's policy runs." 701 A.2d at 1333 (emphasis added). This statement would indicate that the Supreme Court had the possibility of a "vehicle oriented" MVFRL in mind when it decided ***State Farm***. However, despite the requirement that §1786 required a vehicle to be covered, the Supreme Court did not require a permissive user to be included in the owner's vehicle insurance policy. This is because the requirement that the vehicle be insured is

just that. The insurance requirement of the MVFRL is designed to ensure that someone operating the vehicle has insurance so that any medical injuries or property damage sustained in an accident can be compensated. This is in line with one of the purposes of the MVFRL, which is to "indemnify victims of accidents for harm they suffer on Pennsylvania highways." ***Richmond v. Prudential Prop. & Cas. Ins. Co.***, 789 A.2d 271, 276 (Pa. Super. 2001), *app. granted*, 812 A.2d 1230 (Pa. 2002); ***Allwein v. Donegal Mut. Ins. Co.***, 671 A.2d 744, 751 (Pa. Super. 1996), *app. denied*, 685 A.2d 541 (Pa. 1996).

Subparagraph (a) of the post-1990 §1786 merely took the implied statement of the pre-1990 MVFRL, that each motor vehicle be covered by financial responsibility, and articulated it. Subparagraph (b) requires that a vehicle registrant certify that he is financially responsible at the time of registration or renewal. The objective of this requirement was to have each vehicle covered by financial responsibility. The objective behind the addition of subparagraph (a) is that subparagraph (a) was enacted to articulate what was implied in subparagraph (b). The 1990 amendments to the MVFRL did not materially alter §1786, but instead amplified and clarified §1786.

The changes in §1786 do not attempt to state who is to be responsible for providing the primary insurance coverages applicable in the instance of a vehicle being operated by a permissive user. The post-1990 changes in the MVFRL could easily have required that the policies of insurance issued under the statute include that the defined insured would include any permissive user. The Legislature chose not to do so. The reasons they chose to avoid that kind of change are sound and are, at least in part, reflected by the ***State Farm*** decision.

Despite the requirement of §1786 that a vehicle be covered by insurance, the Supreme Court in ***State Farm*** refused to extend that requirement to mandate that a permissive user, who had his own insurance, be included as an insured under the vehicle owner's policy because it would be redundant. If this Court adopted the view that §1786 of the post-1990 MVFRL required a permissive user, who has insurance, to be insured under the vehicle owner's policy, then it would be requiring the owner to provide double coverage. And this was specifically rejected by the Supreme Court in ***State Farm*** and was the linchpin of the decision**.** Even if the 1990 amendments have changed the MVFRL to a more "vehicle oriented" approach, the Supreme Court would likely reach the same result because the main concern is that there is financial responsibility covering the operation of the automobile. The MVFRL does not differentiate between owner and permissive user. As long as one possesses the liability coverage, that is all that matters. If the vehicle owner was required to include a permissive user in his policy, then he would be paying for twice the required coverage. This is a result not intended by the MVFRL.

The real risk being insured by an automobile insurance policy is the manner in which the operator drives the motor vehicle. The risk and consequently the cost of insuring that risk is best determined by the insurance company of the operator. This insurance company is in a better position to assess the risk posed by the operator and set the appropriate rates. This insurance company could also anticipate that the operator could be driving not only his own but other vehicles, such as loaners. If the operator's insurance company wanted it could exclude all or certain permissively used vehicles from the coverage extended by the operator's policy.

In contrast, it would be virtually impossible for insurers of automobile dealerships and garages to assess the myriad of possible bad drivers that could be using the loaner vehicles. It would be difficult if not impossible for them to determine who is a good and who is a bad driver, and therefore who is a bigger risk. This would force insurers of automobile dealerships and garages to assume the worst, thereby resulting in exorbitant premiums. The risk posed by the operator is best determined and absorbed by the operator's insurance company. Therefore, this Court will not find that §1786 of the post 1990 MVFRL requires a permissive user that has his own insurance to be included as an insured under the vehicle owner's policy.

This result is especially appropriate when one considers the main purpose behind the MVFRL. The legislature enacted the MVFRL because of the increasing cost of insurance and the rise in numbers of uninsured motorists on public highways. ***Burstein v. Prudential Prop. & Cas. Ins. Co.***, 809 A.2d 204, 207 (Pa. 2002). But, the "dominant and overarching public policy" underlying the MVFRL was the " 'legislative concern for the spiraling consumer cost of automobile insurance.'" ***Burstein***, 809 A.2d at 208, n.3 (quoting ***Paylor v. Hartford Ins. Co.***, 640 A.2d 1234, 1235 (Pa. 1994). It is this concern over the increasing cost of automobile insurance that must be "advanced when interpreting the statutory provisions of the MVFRL." ***Donnelly v. Bauer***, 720 A.2d 447, 452 (Pa. 1998).

A requirement to include permissive users that have their own insurance as insureds under the vehicle owner's policy would not be in line with the policy of keeping down the cost of insurance. If anything such a requirement would increase the cost of insurance. An owner would likely have to pay more in premiums because of the added possibility of liability

incurred by the addition of the permissive user. This would be an added risk that the insurance companies would want compensation for if they were to insure it. This in turn would drive up the cost of insurance.

Conclusion

The Court must grant Universal's preliminary objection. Snyder was not an insured under the policy issued by Universal to Fairfield either under the terms of the policy or under the MVFRL. Since Snyder was not an insured under the Universal policy, Universal had no obligation to him and Donegal cannot seek indemnification from Universal for the cost of settlement.

O R D E R

It is hereby ORDERED that Defendant's, Universal Underwriters Insurance Company, Preliminary Objections to Plaintiffs', Donegal Mutual Insurance Company and Gordon L. Snyder, Complaint filed October 21, 2002 are granted.

Plaintiffs' Complaint is dismissed.

BY THE COURT:

William S. Kieser, Judge

cc: Robert E. Dapper, Jr., Esquire
Dapper, Baldasare, Benson & Kane, P.C.
Three Gateway Center, Suite 1375; Pittsburgh, PA 15222
Rick Long, Esquire
Koslorf Stoudt; 2640 Westview Drive; P. O. Box 6286; Wyomissing, PA 19610
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)