MARIE WARTELLA,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 04-02,095
	:	
	:	
	:	
ERIE INSURANCE EXCHANGE,	:	
	:	
Defendant	:	MOTION FOR SUMMARY JUDGMENT

Date: October 24, 2005

OPINION and ORDER

Before the court for determination are the Motion for Summary Judgment of Defendant Erie Insurance Exchange (hereafter "Erie") filed June 21, 2005 and the Motion for Summary Judgment of Plaintiff Marie Wartella filed June 15, 2005. For the reasons discussed infra, Erie's motion will be granted and Wartella's motion will be denied.

I. BACKGROUND

A. Facts

Marie Wartella (hereafter "Wartella") and Richard Speicher (hereafter "Speicher") are husband and wife. They were married on July 31, 2001. On January 18, 2004, Speicher was operating a 1998 Jeep Grand Cherokee (hereafter "Grand Cherokee") on McCall Dam Road in Clinton County, Pennsylvania. Wartella occupied the rear passenger seat of the vehicle. Speicher veered to avoid a snowmobile, and lost control of the vehicle. The Grand Cherokee went down a steep embankment and struck two trees. As a result of the accident, Wartella suffered personal injuries.

Speicher owns and has title to the Grand Cherokee. Progressive Insurance Company insured the Grand Cherokee. The Progressive policy had liability limits of $100,000 per person and a total of $300,000 per accident. Wartella was not a named insured on the Progressive policy.

At the time of the accident, Wartella owned and had title to a 2000 Jeep Cherokee Sport (hereafter "Cherokee Sport"). Erie insured the Cherokee Sport. In 2003, the Erie policy was amended to include Speicher as a named insured. However, the Erie policy did not cover Speicher's Grand Cherokee. The only vehicle the Erie policy covered was Wartella's Cherokee Sport. At the time of the amendment, Erie had information in its possession that Wartella and Speicher were married, that Speicher owned a 1998 Jeep Grand Cherokee, and that the prior Erie policy did not cover this Grand Cherokee.

Wartella made a claim to Erie for underinsured (hereafter "UIM") benefits under her policy asserting that her injuries exceeded the liability coverage provided by Speicher's Progressive policy. The Erie policy included UIM benefits in the amount of $100,000 per person and $300,000 per accident unstacked. In a letter dated June 15, 2004, Erie denied Wartella's UIM benefits claim citing to what is commonly referred to as the "household or family car exclusion" in her policy. The exclusion reads:

> **LIMITATIONS ON OUR DUTY TO PAY**
>
> **What We Do Not Cover – Exclusions**
>
> This insurance does not apply to:
>
> ***

> 3. damages sustained by anyone we protect while occupying or being struck by a motor vehicle owned or leased by you or a relative, but not insured for Uninsured or Underinsured Motorists Coverage under this policy.

Stipulation of Facts, Exhibit 1 (Erie Insurance Policy No. Q10 0506412 endorsement AFPU01 (ed. 4/03) UF-8805).

On December 15, 2004, Wartella filed a complaint instituting the present declaratory judgment action. Wartella seeks a declaration that the household exclusion in the Erie policy is invalid and unenforceable. Wartella also seeks an order directing Erie to provide the UIM benefits once the household exclusion is declared unenforceable.

B. Issue

Whether, under the forgoing facts, the household exclusion of the Erie policy violates public policy, and, therefore, is enforceable?

II. ARGUMENTS OF THE PARTIES

A. Erie's Position

Erie argues that Wartella's claim for UIM benefits under the policy must be denied because the household exclusion is enforceable. Erie asserts that the household exclusion is clear and unambiguous. As such, Erie contends that it must be enforced unless to do so would violate public policy. Erie argues that rather then violate public policy the household exclusion is consistent with the public policy underlying the Motor Vehicle Financial Responsibility Law (hereafter "MVFRL"). Erie asserts that the public policy underlying the MVFRL is cost containment of insurance premiums. Erie contends that the household exclusion allows an insurer to guard against being obligated to cover a risk it was unaware of or for which it was not paid to insure. Without the exclusion, an insurer would have to increase premiums to

insure that there are funds available to cover any possible risks that were previously unknown and unpaid for, which the insurer must now cover. Accordingly, Erie argues that the household exclusion is in accord with public policy and enforceable.

B. Wartella's Position

Wartella does not contest the conclusion that the household exclusion is clear and unambiguous. Instead, Wartella asserts that the household exclusion violates public policy and is unenforceable for three reasons.

First, Wartella argues that the household exclusion conflicts with the provision of the MVFRL concerning UIM coverage. Section 1731(c) of the MVFRL states that, "[u]nderinsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages thereof from owners or operators of underinsured motor vehicles." 75 Pa.C.S.A. §1731(c). Wartella argues that the UIM provision must be liberally construed to provide the greatest possible coverage. Wartella argues that the household exclusion limits the availability of UIM coverage and frustrates this goal.

Second, Wartella contends that Pennsylvania courts, in giving effect to the cost containment public policy of the MVFRL, have limited the enforceability of the household exclusion to three factual categories. They are where: (1) an individual is attempting to convert UIM coverage on one policy into liability coverage on another; (2) an individual fails to purchase UIM coverage and relies upon the policies of relatives to fill the gap in his coverage; and (3) an individual has received UIM coverage and is attempting to obtain a second layer of UIM coverage from another policy. Wartella argues that the facts of this case

do not bring it within one of the classifications. Therefore, Wartella argues that enforcing the household exclusion would not serve the public policy of cost containment.

Third, Wartella argues that enforcing the household exclusion does not further the public policy of cost containment since Erie is not being obligated to cover an unknown or unpaid for risk. Wartella asserts that Erie was aware that she resided with Speicher and that he owned and operated the Grand Cherokee. Therefore, Wartella argues that Erie was aware of the possibility that it she might operate/occupy the Grand Cherokee. Wartella also asserts that she paid Erie to provide her with UIM coverage. Wartella asserts that she chose to purchase UIM coverage and has paid the premiums for that coverage. Wartella argues that it is unfair for Erie to deny coverage she paid for and to now attempt to avoid a risk of which it had been aware.

III. DISCUSSION

The first part of this opinion's discussion will set forth the standard by which the motions for summary judgment must be decided. Next, the discusion will set forth the general rules and principles regarding the public policy analysis of the household exclusion. The discusion will then apply those general rules and principles to determine whether the Erie policy household exclusion violates public policy and is unenforceable. The final part of the discussion will address each of Wartella's arguments regarding the enforceability of the household exclusion.

A. Summary Judgment Standard

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "… when the uncontraverted allegations

in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." ***Rauch v. Mike-Mayer***, 783 A.2d 815, 821 (Pa. Super. 2001); ***Godlewski v. Pars Mfg. Co.***, 597 A.2d 106, 107 (Pa. Super. 1991). The movant has the burden of proving that there are no genuine issues of material fact. ***Rauch***, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record " '… in the light most favorable to the non-moving party, accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences ….'" ***Godlewski***, 597 A.2d at 107 (quoting ***Banker v. Valley Forge Ins. Co.***, 585 A.2d 504, 507 (Pa. Super. 1991)). Summary judgment will only be entered in cases that are free and clear from doubt and any doubt must be resolved against the moving party. ***Garcia v. Savage***, 586 A.2d 1375, 1377 (Pa. Super. 1991).

B. Public Policy and the Household Exclusion

1. General Rules and Principles

"Generally, courts must give plain meaning to a clear and unambiguous contract provision unless to do so would be contrary to a clearly expressed public policy." ***Prudential Prop. & Cas. Ins. Co. v. Colbert***, 813 A.2d 747, 750 (Pa. 2002); ***Burstein v. Prudential Prop. & Cas. Ins. Co.***, 809 A.2d 204, 206 (Pa. 2002). Public policy is more than a vague goal that may be used to circumvent the plain meaning of a contract. ***Old Guard Ins. Co. v. Houck***, 801 A.2d 559, 566 (Pa. Super. 2002), *app. denied*, 818 A.2d 505 (Pa. 2003). The Pennsylvania Supreme Court has said that:

> 'Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed

> public interest. As the term "public policy" is vague, there must be found definite indications in the law of the sovereignty to justify the invalidation of a contract as contrary to that policy … Only dominant public policy would justify such action. In the absence of a plain indication of that policy through long governmental practice or statutory enactments, or of violations of obvious ethical or moral standards, the court should not assume to declare contracts … contrary to public policy. The courts must be content to await legislative action.'
>
> ***
>
> 'It is 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, that a court may constitute itself the voice of the community in so declaring [that the contract is against public policy.]'

Eichelman v. Nationwide Ins. Co., 711 A.2d 1006, 1008 (Pa. 1998) (change in original) (quoting ***Hall v. Amica Mut. Ins. Co.***, 648 A.2d 755, 760 (Pa. 1994) and ***Mamlin v. Genoe***, 17 A.2d 407, 409 (Pa. 1941)).

Pennsylvania courts have turned to the MVFRL, 75 Pa.C.S.A. 1701 et seq., in order to determine public policy as would relate to automobile insurance policies. The General Assembly repealed the No Fault Act, 40 P.S. 1009.101 et seq., and enacted the MVFRL "… out of concern for the spiraling consumer cost of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways." ***Colbert***, 813 A.2d at 753; ***Burstein***, 809 A.2d at 207. "The legislative concern for the increasing cost of insurance is the public policy that is to be advanced by statutory interpretation of the MVFRL." ***Colbert***, 813 A.2d at 753; ***Burstein***, 809 A.2d at 207. Other public policies may underlie the MVFRL, but the legislative concern for the spiraling costs of automobile insurance is the dominant and overreaching public policy. ***Burstein***, 809 A.2d at 208, n.3; ***Nationwide Mut.***

Ins. Co. v. Harris, 826 A.2d 880, 882 (Pa. Super. 2003), *app. denied*, 847 A.2d 1287 (Pa. 2004); ***Rudloff v. Nationwide Mut. Ins. Co.***, 806 A.2d 1270, 1274 (Pa. Super. 2002), *app. denied*, 818 A.2d 505 (Pa. 2003).

With regard to this policy and insurance policy exclusions, the Supreme Court has said:

> 'In light of the primary public policy concern for the increasing costs of automobile insurance, it is arduous to invalidate an otherwise valid insurance contract exclusion on account of that public policy. This policy concern, however, will not validate any and every coverage exclusion; rather, *it functions to protect insurers against forced underwriting of unknown risks that insureds have neither disclosed nor paid to insure*. Thus, operationally, insureds are prevented from receiving gratis coverage, and insurers are not compelled to subsidize unknown and uncompensated risks by increasing insurance rates comprehensively.'

Colbert, 813 A.2d at 753 (quoting ***Burstein***, 809 A.2d at 208) (emphasis in original).

Thus, if the facts of a case demonstrate that an exclusion functions to protect against forced underwriting of unknown risks that the insured has neither disclosed nor paid to insure, then the exclusion is enforceable. *See*, ***Ibid***; *See also*, ***Alderson v. Nationwide Mut. Ins. Co.***, 2005 Pa. Super. LEXIS 3448, at *4 ("Indeed, the [Pennsylvania Supreme] Court emphasized that the public policy goals of the Motor Vehicle Financial Responsibility Law would be undermined by forcing insurers to underwrite risks for which insureds have not paid a premium.").

Household exclusion provisions are not automatically void as inconsistent with the public policy of the MVFRL. ***Stelea v. Nationwide Mut. Ins. Co.***, 830 A.2d 1028, 1032 (Pa. Super. 2003), *app. denied*, 845 A.2d 819 (Pa. 2004). A presumption of their invalidity no longer exists. In ***Paylor v. The Hartford Insurance Company***, the Supreme Court said, "Allowing

the "family car exclusion" to bar coverage in cases where a plaintiff is attempting to convert underinsured coverage into liability coverage is a limited exception to the *general rule that such provisions are invalid as against the po*licy *of the MVFRL*." 640 A.2d 1234, 1240 (Pa. 1994) (emphasis added); *See also*, ***Marroquin v. Mut. Benefit Ins. Co.***, 591 A.2d 290 (Pa. Super. 1990), *reconsideration denied*, 1991 Pa. Super. LEXIS 3997. However, in the subsequent case of ***Eichelman v. Nationwide Mutual Insurance Company***, 711 A.2d 1006 (Pa. 1998), the Supreme Court appeared to have abandoned the presumption as it made no mention of the presumption in its analysis of the household exclusion. ***Old Guard***, 801 A.2d at 566 ("Conspicuously absent from the Supreme Court's analysis in ***Eichelman*** is any mention of the presumption that the household exclusion was invalid as against public policy and that an exception to this rule existed for cases in which a claimant sought to convert UIM benefits into liability benefits."). Since ***Eichelman***, the Supreme Court has not set forth the presumption in any case in which it was called upon to determine whether the household exclusion was unenforceable as against public policy. *See e.g.*, ***Colbert***, 813 A.2d 747 (Pa. 2002); ***Burstein***, 809 A.2d 204 (Pa. 2002). Accordingly, no presumption of invalidity may be made and the household exclusion must be judged against the particular facts of the case to determine whether it functions to protect against forced underwriting of unknown risks that the insured has neither disclosed nor paid to insure.

2. <u>Application</u>

The household exclusion of the Erie policy does not violate public policy and is enforceable. The facts of this case demonstrate that the household exclusion protects against the forced underwriting of a risk for which Wartella did not pay Erie to insure. Wartella's need

for UIM benefits arose out of her occupation of the Grand Cherokee. The need for UIM benefits arising out of the occupation of the Grand Cherokee is a risk associated with that particular vehicle. Wartella has not paid Erie to insure risks associated with the operation/occupation of the Grand Cherokee. Wartella has only paid Erie to insure risks associated with the operation/occupation of the Cherokee Sport.

The Erie policy provides, inter alia, the following coverage: liability - $100,000 per person, $300,000 per accident (bodily injury), $100,000 per accident (property); uninsured motorist - $100,000 per person, $300,000 per accident unstacked; and UIM - $100,000 per person, $300,000 per accident unstacked. Wartella paid an annual premium of $912 for this coverage. The Erie policy identified only Wartella's Cherokee Sport as a covered automobile. The premium for the coverage was likely based upon the risks associated with the operation/occupation of this vehicle. Accordingly, when Wartella paid the premium she was paying Erie to insure the risks associated with the operation/occupation of the Cherokee Sport.

The premium paid to cover the risks associated with the Cherokee Sport does not equate to a payment to cover the risks associated with the Grand Cherokee. The risks covered by the UIM benefits for operating/occupying the Cherokee Sport are different from the risks covered by UIM benefits for operating/occupying the Grand Cherokee. "[T]he amount of the premium that an insured pays for UIM coverage bears a correlation to the amount of risk assumed for insuring someone while operating certain types of vehicles." ***Old Guard***, 801 A.2d at 567. Some factors that affect an insurer's risks are the type of car, the safety features of the car, the cost of repairing and maintaining the car, the miles regularly logged on the car. ***Burstein***, 809 A.2d at 209. While the two vehicles are similar, they are different and each has

its own unique characteristics that must be evaluated in determining the risks that must be insured and the corresponding premiums. Accordingly, the premium Wartella paid under the Erie policy only paid for the risks associated with the operation/occupation of the Cherokee Sport. As such, the risks associated with the operating/occupying the Grand Cherokee, including UIM coverage, were not paid for under the Erie policy. To require Erie to pay the UIM benefits now would require it to underwrite a risk for which it was not paid to insure.

Accordingly, the household exclusion does not violate public policy and is enforceable against Wartella to bar her claim for UIM benefits under the Erie policy.

3. The Household Exclusion Does Not Conflict with the MVFRL's UIM Provision

Wartella's argument that the household exclusion violates public policy because it conflicts with the MVFRL's UIM provision must fail. The Pennsylvania Supreme Court addressed and rejected the same argument in ***Eichelman v. Nationwide Insurance Company***, 711 A.2d 1006 (Pa. 1998). In ***Eichelman***, the Supreme Court recognized that the purpose of uninsured motorist coverage was to protect innocent victims from underinsured motorists who could not adequately compensate the victims for their injuries. 711 A.2d at 1010. However, the Supreme Court stated that this purpose "… does not rise to the level of public policy overriding every consideration of contract construction." ***Eichelman***, 711 A.2d at 1010. According to ***Eichelman***, the UIM provision of the MVFRL is not an expression of public policy such that it may be used to invalidate a contract provision. Since the UIM provision of the MVFRL is not an expression of public policy, a contract provision, such as a household exclusion, cannot be said to violative of public policy if it is in conflict with the UIM provision.

Furthermore, Wartella is not the "innocent victim" with whom ***Eichelman*** was concerned. Wartella and Speicher are married and living in the same household. They elected to insure their vehicles with particular coverage and with particular limits. Wartella could have sought to have Speicher's Grand Cherokee added to her policy and paid Erie for this coverage if Wartella was concerned about protecting herself from the risks of being a passenger in her husband's vehicle. But, she did not do so.

Therefore, the household exclusion of the Erie policy cannot be violative of public policy because it may conflict with the UIM provision of the MVFRL.

4. Enforceability of the Household Exclusion is not Limited to Three Factual Categories

Wartella's argument that enforcing the household exclusion would not serve the public policy of cost containment because the facts of this case do not fall into one of the three factual categories which Pennsylvania Courts have limited the enforceability of such an exclusion must fail. The enforceability of the household exclusion is not dependent upon it meeting the criteria of one of the three factual categories identified by Wartella. In ***Colbert***, the Pennsylvania Supreme Court rejected an attempt to distinguish the case from ***Burstein***, 809 A.2d 204 (Pa. 2002), on the basis that the plaintiff in ***Colbert*** owned the vehicle in which he was injured. 813 A.2d at 754. The Supreme Court said, "The reasoning in Burstein, however, was not predicated upon ownership of the vehicle in which the claimant was injured; rather, it focused upon whether the insurer was compelled to underwrite unknown risks that it has not been compensated to insure." ***Ibid***. It is true that "… the application of public policy concerns in determining the validity of an insurance exclusion is dependent upon the factual circumstances presented in each case." ***Id***. at 752; ***Burstein***, 809 A.2d at 207. However, the

Pennsylvania Supreme Court made it clear in ***Colbert*** that the salient facts are those that determine whether the insurer is being compelled to underwrite unknown risks that it has not been compensated to insure. 813 A.2d at 754. Thus, while the facts of this case may not bring it within the factual categories identified by Wartella, the household exclusion is still enforceable because requiring Erie to provide Wartella the UIM benefits for her injuries resulting from her occupation of the Grand Cherokee would be obligating Erie to insure a risk Wartella did not compensate it to insure.

5. <u>Erie Knew of but was not Compensated to Insure the Risks Associated with the Occupation/Operation of the Grand Cherokee</u>

Wartella's argument that enforcing the household exclusion does not further the public policy of cost containment since Erie is not being obligated to cover an unknown or unpaid for risk must fail. The household exclusion is enforceable, because, while Erie may have been aware of the risks associated with the operation and occupation of the Grand Cherokee, Wartella did not compensate Erie to insure those risks. "'[T]here is a correlation between premiums paid by the insured and the coverage the claimant should reasonably expect to receive." ***Eichelman***, 711 A.2d at 1010 (quoting ***Hall***, 648 A.2d at 761). The premium Wartella paid was for coverage, including UIM benefits, related to the operation/occupation of her Cherokee Sport. That premium was calculated with regard to the occupation/operation of that vehicle. Because of this, it cannot be said that Wartella compensated Erie to insure the UIM risk associated with the operation/occupation of the Grand Cherokee. Wartella paid Erie for a very specific type of UIM coverage, and that did not include UIM coverage as would relate to the operation/occupation of the Grand Cherokee.

The fact that Erie knew that the Grand Cherokee was another vehicle in Wartella's household does not affect the enforceability of the household exclusion. A similar argument was advanced in ***Alderson v. Nationwide Mutual Insurance Company***, 2005 Pa. Super. LEXIS 3448. In ***Alderson***, the insured was involved in an accident while driving his motorcycle. The insured collected the liability limits on the tortfeasor's policy. ***Alderson***, 2005 Pa. Super. LEXIS 3448, at *2. The insured had a policy with Nationwide covering the motorcycle that was involved in the accident as well as other Nationwide policies which covered the insured's other household vehicles. ***Ibid***. The insured received the UIM benefits under the policy covering the motorcycle involved in the accident, and then sought to recover the UIM benefits under the other Nationwide policies. ***Ibid***. Nationwide denied the insured's claim for UIM benefits under those policies because of the household exclusion contained therein. The insured challenged the household exclusion as unenforceable as against public policy.

The Superior Court held that the exclusion was enforceable and did not violate public policy. The Superior Court noted that the public policy goals of the MVFRL would be undermined if insurers were required to underwrite risks for which insureds had not paid a premium. Accordingly, the Superior Court determined that "… providing additional UIM coverage to Alderson under the Nationwide policies that expressly did not apply to the 1974 Harley Davidson motorcycle would hold Nationwide responsible for a risk it did not get paid to insure under those policies." ***Alderson***, 2005 Pa. Super. LEXIS, at *5.

The Superior Court also determined that Nationwide's knowledge about the 1974 Harley Davidson motorcycle did not alter the validity of the household exclusion in the other

Nationwide policies. ***Alderson***, 2005 Pa. Super. LEXIS, *5. Nationwide was not paid to insure the risks associated with the 1974 Harley Davidson motorcycle under those policies. The Superior Court noted that the risks of operating this motorcycle were rated separately and separate premiums were paid to cover the risks associated with the various vehicles. ***Ibid***. The Superior Court also noted that additional coverage was not purchased under the other policies to insure the risks associated with the operation/occupation of the 1974 Harley Davidson motorcycle. ***Ibid***. While Nationwide may have known about the risks associated with operating the 1974 Harley Davidson motorcycle, it was not paid to cover those risks under the other policies, and this fact was dispositive.

The result reached in ***Alderson*** is the same result that must be reached in this case. The fact that Erie may have known about the Grand Cherokee does not alter the fact that it was not compensated to insure the risks associated with its operation/occupation. The Erie insurance policy only insured risks associated with the operation/occupation of the Cherokee Sport. The premiums for this policy reflected the assessment of risks associated with the operation/occupation of that vehicle. Wartella did not purchase additional coverage to insure the risks associated with her operation/occupation of the Grand Cherokee. Thus, while Erie may have known of the possibility that Wartella may operate/occupy the Grand Cherokee, Wartella did not compensate Erie to insure the risks associated with its operation/occupation. This fact is dispositive of this case.

IV. CONCLUSION

Erie's motion for summary judgment will be granted. Wartella's motion for summary judgment will be denied.

ORDER

It is hereby ORDERED that the Motion for Summary Judgment of Plaintiff Marie Wartella filed June 15, 2005 is DENIED. The claims of Marie Wartella are DISMISSED.

It is hereby ORDERED that the Motion for Summary Judgment of Defendant Erie Insurance Exchange filed June 21, 2005 is GRANTED. Judgment is hereby entered in favor of Erie Insurance Exchange.

BY THE COURT:

William S. Kieser, Judge

cc: Craig Murphey, Esquire
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