

Civil Litigation Update 2019

Pa. Motor Vehicle Law Update

Mechanicsburg

March 21, 2019





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HOUSEHOLD EXCLUSION

Gallagher v. GEICO –

(1) Whether the “household vehicle exclusion” violates Section 1738 of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL) where GEICO issued all household policies and unilaterally decided to issue two separate policies, when the insured desired stacking, elected stacking, paid additional premiums for stacking and never knowingly waived stacking of underinsured motorist benefits?

Gallagher v. GEICO (cont'd)–

(2) Whether the “household vehicle exclusion” impermissibly narrows or conflicts with the statutory mandates of the Pennsylvania Motor Vehicle Financial Responsibility Law and the evidence of record is that GEICO was fully aware of the risks of insuring a motorcycle in the same household as other family vehicles but unilaterally decided to write a separate motorcycle policy?

Baer, J. (Jan. 23, 2019)

- The exclusion violates the mandates of Section 1738
- Footnote 6 – Companies will adapt
- Footnote 7 – Legislature duty to act
- Footnote 8 – Applies to all cases



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Section 1738 Rejection of Stacking

Sackett – I, II, or III

Barnard v. Travelers

(Pa. Supreme Ct. - Certification from Third Circuit)

If an insured under a policy of insurance subject to the Pennsylvania Motor Vehicle Financial Responsibility Law has waived stacking but later secures an increase in the limit of her UIM coverage on her existing policy, must her insurance carrier obtain a separate waiver of her right to stack the coverage or does a prior waiver of the right to stack the coverage remain in effect?

Unlisted Driver Exclusion

Safe Auto v. Oriental

(Pa. Supreme Ct. - Argument December 2018)

- 1. Did the Superior Court err as a matter of law in finding that the unlisted resident driver exclusion in a Personal Auto Policy is valid and enforceable and not violate of the terms and provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1701, *et. seq.*?

- 2. Did the Superior Court err as a matter of law in finding that the unlisted resident driver exclusion in a Personal Auto Policy is valid and enforceable and not violate of the public policy of the Commonwealth of Pennsylvania as embodied in § 1786 of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. § 1786, which implicitly directs that all permissive users of an insured vehicle be insured under the owner's insurance policy?

Assignability of Third Party Claim

The Hartford Insurance Company v. Kamara

(Baer, J. Pa. 11/21/18)

- Employer May NOT Assert Employee's Injury Claim on Its Own

First Party Exams

Sayles v. Allstate/Scott v. Travelers (Pa. Supreme Court - Certification of law from Third Circuit)

- Whether, under Pennsylvania law, a contractual provision in a motor vehicle insurance policy that requires an insured to submit to an independent medical examination by a physician selected by the insurer, when and as often as the insurer may reasonably require, as a condition precedent to the payment of first-party medical benefits under that policy, conflicts with the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. Section 1796(a), and is therefore void as against public policy.”

UM/UIM Statute of Limitations

Legos v. Travelers

Bristol v. Erie Ins. Co.

UM/UIM Post-Koken Issues

1. Arbitrate v. Litigate
2. Joinder, Severance, etc.
3. Insurance Disclosure Issues
4. Jury Instructions
5. Delay Damages

The End

See Ya
Next Year!

