

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,  
PENNSYLVANIA  
CIVIL ACTION B LAW

MATTHEW RUSH and KATHLEEN  
McGROGAN-RUSH,

Plaintiffs

v.

ERIE INSURANCE EXCHANGE,  
Defendant

NO: C-48-CV-2019-1979

ORDER AND REASONS

AND NOW, this 1<sup>ST</sup> day of October, 2019, upon consideration of the Motion for Judgment on the Pleadings and Motion for Protective Order, filed by Defendant, Erie Insurance Exchange, it is hereby **ORDERED** and **DECREED** that Defendant's Motions are **DENIED**.

STATEMENT OF REASONS

1. This matter was assigned to the Honorable Stephen G. Baratta on the August 27, 2019 argument list.
2. Plaintiffs, Matthew Rush and Kathleen McGrogan-Rush, filed a Complaint on March 7, 2019, seeking a declaration that Plaintiffs are entitled to stacked underinsured motorist coverage pursuant to policies issued by Defendant, Erie Insurance Exchange, and arising out of a collision on November 28, 2015. Defendant filed an Answer, New Matter, and Counterclaim on May 22, 2019. Plaintiffs filed a reply to Defendant's New Matter and an Answer and New Matter to the Counterclaim on June 24, 2019. Defendant filed a reply to Plaintiffs' New Matter

on the Counterclaim on July 10, 2019.

3. Defendant, Erie Insurance Exchange, filed a Motion for Judgment on the Pleadings, and a brief in support thereof, on July 25, 2019.

4. Plaintiffs filed an Answer and brief in opposition to the Motion for Judgment on the Pleadings on August 22, 2019.

5. According to Pa. R.C.P 1034(a), any party may move for judgment on the pleadings after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial. The court shall then enter such judgment or order as shall be proper on the pleadings. Pa. R.C.P. 1034(b). In order to succeed on a motion for judgment on the pleadings, the moving party's right to prevail must be so clear that "a trial would clearly be a fruitless exercise." Coal Operators Cas. Co. v. Charles T. Easterby & Co., 269 A.2d 671, 673 (Pa. 1970), quoting Bata v. Central Penn Nat. Bank of Phila., 224 A.2d 174, 178 (Pa. 1966). A motion for judgment on the pleadings is similar to a demurrer. Rubin v. CBS Broadcasting Inc., 170 A.3d 560, 564 (Pa. Super. 2017). Furthermore, a "motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law." Hammerstein v. Lindsay, 655 A.2d 597, 600 (Pa. Super. 1995).

6. In the instant case, Erie Insurance Exchange, as Defendant and counterclaim Plaintiff, is requesting a declaratory judgment that Plaintiffs are not entitled to underinsured motorist coverage on their policies for the motor vehicle accident on November 28, 2015. Erie specifically argues that the Plaintiffs' requested underinsured motorist coverage is precluded by

the “regular use” exclusion contained within the policies.

7. In response, Plaintiffs aver that the regular use exclusion is in violation of both the Motor Vehicle Financial Responsibility Law, (“MVFRL”), 75 P.S. 1701, et. seq., and public policy. Plaintiffs concede that the question is one of law and not of fact, but contend that it is predicated upon disputed issues of fact, particularly relating to the availability of supplemental coverage and the manner in which Erie set its premiums in the instant case.

8. Considering the foregoing, and evaluating Erie’s motion for judgment on the pleadings in the nature of a demurrer, Plaintiffs have set forth a cognizable claim that the application of the regular use exclusion to deny their request for underinsured motorist coverage is in contravention of public policy. We agree with Plaintiffs that the recent decisions in Gallagher v. Geico Indem. Co., 201 A.3d 131 (Pa. 2019) (invalidating household vehicle exclusion) and Safe Auto Ins. Co. v. Oriental-Guillermo, 2019 WL 3933568 (Pa. 2019) (upholding unlisted resident driver exclusion) create a substantial question of law such that Erie’s right to prevail is not so clear that judgment on the pleadings would be appropriate in this matter.

9. Consequently, the Motion by Defendant/counterclaim Plaintiff, Erie Insurance Exchange, for Judgment on the Pleadings is denied.

10. As Defendant’s Motion for Judgment on the Pleadings is denied, we now turn to Defendant’s Motion for Protective Order, filed on July 15, 2019, seeking to limit the discovery sought by Plaintiffs on April 17, 2019. See Defendant’s Motion at Exhibit “B.”

11. Defendant contends that the requested discovery is overbroad, irrelevant, and unduly burdensome and expensive. In response, Plaintiffs argue that the requested discovery is relevant and necessary to their claim that the regular use exclusion is not in furtherance of the

public policy goal of cost containment. Plaintiffs argue that the requested discovery will establish that the cost containment rationale advocated by Erie is a ruse and that this exclusion was implemented only as a means to increase Erie's profits.

12. We note that the scope of permissible discovery is governed by the Pennsylvania Rules of Civil Procedure. Specifically, Rule 4003.1 provides: "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . ." Pa. R.C.P. No. 4003.1(a). Further, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Pa. R.C.P. No. 4003.1(b).

13. In assessing the reasonableness of the discovery request at issue, we agree with Plaintiffs that whether the public policy goal of cost containment is served by the regular use exclusion, and its application to Plaintiffs' specific claim, is a valid question. The requested discovery is relevant to Plaintiffs claim that the regular use exclusion should be invalidated, and therefore not a bar to their underinsured motorists coverage. Defendant narrowly construes the issue in this case as whether Plaintiffs' claims are barred by the regular use exclusion where Plaintiff admits the accident occurred in a vehicle provided by his employer for his regular use. Defendant purposefully ignores the broader question of whether the regular use exclusion, as applied, violates the MVFRL and public policy. Plaintiffs contend that the public policy basis for this particular exclusion, as reflected in Burstein v. Prudential Property and Casualty Insurance Co., 809 A.2d 204 (Pa. 2002), and its progeny, assumes that it furthers the goal of cost containment. The requested discovery is necessary to Plaintiffs' attempt to disprove that assumption.

14. Consequently, Defendant's Motion for Protective Order is denied. We further

note that Defendant's Motion for Protective Order generally objects to providing any of the requested discovery materials. To the extent that Defendant can articulate privilege exceptions for specific, identifiable documents, they may file a renewed Motion for Protective Order.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read 'S. Baratta', with a long horizontal line extending to the right.

**STEPHEN G. BARATTA, J.**