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Supreme Court Upholds Household Exclusion Despite No Waiver of Stacking

In *Erie Ins. Exchange v. Baker*, No. 26 WAP 2008, 2009 Pa. LEXIS 1197 (Pa. June 22, 2009), the Supreme Court upheld a household exclusion which excludes coverage for “damages sustained by anyone we protect while occupying or being struck by a motor vehicle owned by [the insured] or a relative, but not insured for Uninsured or Underinsured Motorists Coverage under this policy.” The Erie policy at issue covered three vehicles, with UIM limits of \$100,000/\$300,000, but the insured did not sign a waiver of stacked coverage. The insured was injured while riding his motorcycle, insured by a different company. The insured sought UIM coverage from Erie because the tortfeasor’s liability limits and his motorcycle UIM limits were insufficient. The Supreme Court addressed whether § 1738 of the Motor Vehicle Financial Responsibility Law precluded application of the household exclusion under these circumstances. Section 1738 provides that UIM coverage is stacked for all vehicles unless the insured signs a waiver form in compliance with the statute.

The insured argued that the household exclusion is a disguised waiver of stacking that does not conform with the requirements of the statute. While the Court recognized that the argument was an interesting one, it “conclude[d] that application of the household exclusion . . . does not involve ‘stacking’ at all. We hold instead that the Erie policy exclusion is a valid and unambiguous preclusion of coverage of unknown risks, and it was properly applied to the circumstances of this case.” *Id.* at *9.

The Court held that the statute was not implicated because no UIM coverage existed in this situation due to the exclusion and therefore, there was no coverage to stack. It noted that it had previously upheld the household exclusion in the face of attacks that the exclusion ran afoul of public policy and that a statute is a manifestation of public policy, thus those cases are not materially distinguishable. Justice Saylor’s concurring opinion also succinctly put the issue into perspective: “I believe it is most reasonable to treat these exclusions as going to the scope of the UM/UIM coverage in the first instance, before stacking questions are reached, rather than as an aggregation question arising under the stacking provisions.” *Id.* at *21-22.

The dissent was moved by the argument that insurers do not allow motorcycles to be insured on the same policy with autos, and motorcycles receive lower UIM limits; thus, selling stacked coverage with a household exclusion eliminates the benefit of the bargain for the common scenario of injury in a household vehicle. The majority opinion rejected these arguments and noted that the household exclusion does not bar all stacking; Baker could still stack coverage for the three vehicles insured by Erie.

For any questions on the topics addressed in this newsletter, please call Bridget M. Gillespie at 412-288-4017 or Alan S. Miller at 412-288-4004. ♦