

Pa. Embraces Alternative Automobile Insurance Coverage

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The Pennsylvania Supreme Court's recent denial of allocatur made final the Pennsylvania Superior Court's decision in *An v. Victoria Fire & Casualty Co.*, 113 A.3d 1283 (Pa. Super. 2015), alloc. denied, 2015 Pa. LEXIS 2831 (Dec. 8, 2015). In *An*, the Superior Court ruled that a "named driver only" automobile insurance policy does not violate Pennsylvania public policy, as embodied in the Motor Vehicle Financial Responsibility Law (MVFRL). A named driver only insurance policy provides no liability coverage when the insured vehicle is driven by someone other than the named driver. Declining to usurp the role of the legislature in determining Pennsylvania's public policy, the court concluded that the "provision of low-cost, affordable policies in return for motor vehicle liability coverage of only the named driver, and the concomitant risk reduction, does not violate public policy." 113 A.3d at 1292. The Superior Court's decision in *An* signals that innovative, economical insurance products have a place in Pennsylvania.



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The Pennsylvania Superior Court took pains to distinguish "named driver only" policies, which provide insurance coverage only for the named driver, from policies that provide broader coverage, but contain liability exclusions for specific, identified drivers, also known as "named driver exclusions." *Id.* at 1290. A "named driver only" policy might be a wise, low-cost policy choice for a single parent whose children are too young to drive. By contrast, a "named driver exclusion" could be a valid, economical coverage choice where a family member has a history of DUI violations that would make automobile insurance insuring that person either financially prohibitive or altogether unavailable.

The public policy tested in the *An* litigation was 75 Pa. Cons. Stat. § 1718(c). Facially, § 1718(c) limits the circumstances under which a person "can be excluded from benefits" under 75 Pa. Cons. Stat. §§ 1711 (relating to required first-party benefits) and 1712 (relating to available first-party benefits). See *DeBiasi v. Erie Insurance Exchange*, 37 Pa. D. & C.4th 1, 3 (Allegheny Co. 1997) (Wettick, J.) (noting that § 1718(c) provides "that an insurer or a first named insured may exclude any person from first-party benefits."). However, in *Donegal Mutual Insurance Co. v. Fackler*, 835 A.2d 712 (Pa. Super. 2003), the Superior Court applied § 1718(c) to liability exclusions, although it ultimately found a named driver exclusion valid where not all the requirements of § 1718(c) had been satisfied.

The plaintiff in *An* argued that § 1718(c) should apply to named driver only policies. If § 1718(c) did apply, the denial of coverage would be permissible only with a showing that: 1) the "first named insured has requested that the person be excluded from coverage"; and 2) "the excluded person is insured on another policy of motor vehicle liability insurance." 75 Pa. Cons. Stat. § 1718(c). This two-part showing suggests that § 1718(c) was intended to apply only to exclusions from first-party benefits and not to exclusions from liability coverage. In Pennsylvania, "financial responsibility" for the operation of a motor vehicle is required — typically by way of an automobile insurance policy. However, the requirement in § 1718(c) for "another policy" covering the "excluded person" could not provide any additional liability

coverage for an accident except in the unlikely scenario where both policies (the policy with the named driver exclusion and the other policy covering the driver) cover the same vehicle. Thus, the only sensible reading of § 1718(c) is that it prescribes the showing for exclusions from first-party benefits, not exclusion from liability coverage.

The Pennsylvania Superior Court concluded that § 1718(c) was inapplicable for the simple reason that the policy at issue involved a “named driver only” policy, rather than a “named driver exclusion,” noting that the two are “entirely different creatures.” *An*, 113 A.3d at 1290. The court explained that a “named driver exclusion” ... excludes coverage in a situation where coverage under the policy would otherwise be extended,” and that § 1718(c) “addresses such exclusions.” *Id.* at 1288. By contrast, the policy at issue “provided coverage only for the driver named in the policy,” *Id.* at 1290; thus, no exclusion in the policy acted to curtail the otherwise available coverage contained in the policy.

The Superior Court went on to address separately the plaintiff’s public policy argument. It reasoned that it was required to apply and give plain meaning to contractual provisions of a contract of insurance unless the provision violates a clearly expressed public policy. *Id.* at 1291. The court first noted that Pennsylvania public policy had been codified by the MVFRL. It then relied on *Progressive Northern Insurance Co. v. Schneck*, 813 A.2d 828 (Pa. 2002), which held that a named driver exclusion that barred underinsured and uninsured motorist protection was not void against public policy since cost containment and consumer choice were important public policies embraced by Pennsylvania’s MVFRL, and *Donegal Mutual Insurance Co. v. Fackler*, 835 A.2d 712, 717 (Pa. Super. 2003), which held that the named driver exclusion was consistent with the MVFRL’s public policy. The *An* court suggested that the named driver policy was in accord with Pennsylvania’s public policy favoring cost containment and consumer choice. The court concluded that the policy was not “so obviously for or against the public health, safety, morals or welfare” as to declare it against Pennsylvania public policy. 113 A.3d at 1292.

The *An* decision ratifies cost containment and consumer choice as valid public interests in the design of innovative automobile insurance products. The decision signals that insureds who knowingly purchase an economical but limited insurance product should not expect reformation after coverage is denied. *An* appears to suggest that Pennsylvania is open to automobile insurance coverage alternatives, designed to reduce the cost of automobile insurance policies.

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