[J-26-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN JJ.

ROBERT C. WILLIAMS,	:	No. 29 WAP 2009
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered December 29, 2008 at No.
v.	:	931 WDA 2007, affirming the Order of the
	:	Court of Common Pleas of Lawrence
GEICO GOVERNMENT EMPLOYEES	:	County, entered May 9, 2007 at Nos.
INSURANCE COMPANY,	:	10995 of 2006 and 11130 of 2006.
	:	
Appellee	:	
	:	
	:	ARGUED: April 14, 2010
GEICO GOVERNMENT EMPLOYEES	:	
INSURANCE COMPANY,	:	
	:	
Appellee	:	
	:	
v.	:	
	:	
ROBERT C. WILLIAMS,	:	
	:	
Appellant	:	

OPINION

MADAME JUSTICE ORIE MELVIN **DECIDED: October 19, 2011**

This is a discretionary appeal from the December 29, 2008 Superior Court order, which affirmed the trial court's grant of summary judgment to Appellee, GEICO Government Employees Insurance Company ("GEICO"). We granted review to address whether the "regular-use" exclusion contained in a personal automobile insurance policy is valid to preclude payment of underinsured motorist ("UIM") benefits to a police officer injured in the course of employment while operating a police vehicle for which the officer did not have the

ability to obtain UIM coverage. In light of our precedent and in consideration of Pennsylvania's Motor Vehicle Financial Responsibility Law ("MVFRL"),[1] we affirm.

The facts are undisputed. Appellant Robert C. Williams ("Williams") has been a Pennsylvania State Police Trooper since 1994. On June 23, 2004, Williams was seriously injured in an automobile accident while operating a Ford Crown Victoria owned and maintained by the Pennsylvania State Police.[2] Williams has been unable to return to his duties due to his injuries.

At the time of the accident, Williams maintained a personal automobile insurance policy with GEICO. Appellant's policy included UIM coverage with limits of $50,000 per person and $100,000 per accident with stacking available. Williams sought to recover UIM benefits from GEICO for the June 23, 2004 accident. GEICO denied coverage, citing the regular-use exclusion contained in the policy, which provided:

> When This Coverage Does Not Apply:
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> 9. When using a motor vehicle furnished for the regular use of you, your spouse, or a relative who resides in your household, which is not insured under this policy.

GEICO's Motion for Summary Judgment and Brief in Support, 1/26/07, Ex. C at 19.

On May 19, 2006, Appellant instituted a civil action[3] against Joseph Stickley, the driver of the other vehicle. On July 21, 2006, Williams filed a petition to compel UIM

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[1] 75 Pa.C.S. § 1701 et seq.

[2] As the Commonwealth is a self-insured entity, the Department of General Services is the insurer.

[3] The record does not indicate the ultimate resolution of that separate litigation but states only that Stickley "did not have sufficient insurance coverage available to reimburse [Williams] for the injuries and damages that he sustained." Appellant's Petition to Compel Arbitration, 7/21/06, at ¶ 5.

arbitration against GEICO. GEICO answered the petition and filed a declaratory judgment action seeking a judicial determination that its policy did not cover the accident because of the regular-use exclusion.

GEICO filed a motion for summary judgment in the declaratory judgment action, which the trial court consolidated with the petition to compel arbitration. Thereafter, the trial court granted GEICO's motion for summary judgment, finding that the regular-use exclusion precluded Appellant's recovery. The court also denied Appellant's petition to compel arbitration. Williams filed a timely appeal to the Superior Court.

The Superior Court affirmed in an unpublished memorandum. Williams v. GEICO Government Employees Ins. Co., No. 931 WDA 2007 (Pa. Super. December 29, 2008) (unpublished memorandum). The court found that it was bound by a prior panel decision in Brink v. Erie Ins. Group, 940 A.2d 528 (Pa. Super. 2008), in which the Superior Court held that a Swatara Township police officer could not recover UIM benefits under his personal automobile policy for injuries sustained in an accident that occurred in the course and scope of his employment because of the regular-use exclusion.[4] The Superior Court

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[4] The Superior Court panel herein stated that "left with a blank slate on this issue, we would conclude that the distinctions noted in footnote 7 of Brinks [sic] are sufficient distinguishing circumstances to invalidate the application of the policy exclusion to the facts in this case." Williams, No. 931 WDA 2007, at 6. The Brink court discussed our prior decision in Burstein v. Prudential Property & Cas. Ins. Co., 809 A.2d 204 (Pa. 2002) and stated in relevant part:

> The [Supreme] Court, in effect, said that the employee has the responsibility to inquire as to the extent of UIM coverage provided by the employer on its provided vehicles. Once the employee determines that the employer does not have the hoped-for coverage, the [Supreme] Court said the employee has one of three options: (1) the employee can drive without the UIM coverage (because Pennsylvania does not require it); (2) the employee can attempt to obtain UIM coverage by either negotiating with the employer to provide it or privately

(continued…)

concluded that Brink was directly on point and found that the regular-use exclusion was not against public policy applied to a police officer injured while driving a police vehicle in the line of duty.

This Court granted Appellant's petition for allowance of appeal, limited to whether public policy requires permitting a police officer to recover UIM benefits under his personal automobile insurance policy, when the recovery would be otherwise precluded by the policy's "regular use" exclusion.[5] Williams presently argues that because of the unique

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(…continued)

> purchasing coverage; or (3) the employee can refuse to drive an employer-provided vehicle.
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> The Burstein options may not be available to police officers. Unlike private sector employees, police officers may not be able, as members of a union, to make such inquiry of an employer, to try to negotiate with the employer or to refuse to drive the municipality-provided police vehicles. Further, private purchase of UIM benefits may not be a realistic option because such insurance may not be available.
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> We decline to do more than make the above observations. While the issue is better addressed by the legislative or the executive branch, we do observe that the facts of Burstein are different from the facts in this case.

Brink, 940 A.2d at 538 n.7 (internal citations omitted).

[5] We note that in our order granting allowance of appeal, we rephrased the question on appeal and assumed that Appellant could not have obtained UIM coverage for his police vehicle. See Williams v. GEICO Government Employees Ins. Co., 986 A.2d 485 (Pa. 2009). Indeed, this rephrasing was based on the Superior Court's conclusion that Appellant, as part of a collective bargaining unit, could not individually bargain with the Pennsylvania State Police to obtain UIM coverage from them for the vehicle, nor could he purchase his own coverage for that vehicle. See Williams, No. 931 WDA 2007, unpublished memorandum at 5 (citing Brink, 940 A.2d at 538 n.7). However, as we discuss below, the record is devoid of any evidence as to whether Appellant could have purchased additional UIM coverage that could apply in regularly-used vehicles as a rider on his personal policy from Appellee.

(continued…)

factual circumstances and challenges he faces as a Pennsylvania state trooper, his insurer should provide him with UIM coverage despite the unambiguous policy exclusion because Pennsylvania has a strong public policy of protecting police officers and other first responders such that they are entitled to special treatment. Consistent with that view, Williams submits that the factual distinctions between himself and the insured in Burstein are sufficient to require a different outcome.[6] Williams further argues that the exclusion violates the plain language of the MVFRL because it excludes UIM coverage without a written rejection as required by 75 Pa.C.S. § 1731. In advancing his position, Appellant relies heavily on Mr. Justice Saylor's dissenting opinion in Burstein.

The Pennsylvania Association for Justice ("PAJ")[7] filed an amicus curiae brief in support of Appellant. PAJ argues that the regular-use exclusion should never apply to any employee operating an employer's fleet vehicle to which the employee is not regularly assigned. In support of its position, PAJ relies on published and unpublished federal decisions. Similarly, the Pennsylvania State Trooper's Association ("PSTA") filed an amicus curiae brief in support of Trooper Williams, emphasizing the policy considerations that favor extending private UIM benefits to police officers injured in motor vehicle accidents that occur in the line of duty. The PSTA asserts that citizens of this Commonwealth recognize the important role police officers play in protecting the public and, in turn, unanimously agree that their rights should be safeguarded.

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[6] In his brief, Appellant discusses the distinctions between his circumstances and those in Burstein before addressing the public policy concern. For ease of discussion, we address the general public policy concerns first.

[7] Formerly known as the Pennsylvania Trial Lawyers' Association.

GEICO responds that we have previously approved of the regular-use exclusion in similar circumstances and that no valid reason exists to invalidate the exclusion generally. GEICO also contends that although the legislature has seen fit to afford police officers and other first responders special protections under the law, it specifically decided not to require their private insurers to provide UIM coverage while first responders operate their work vehicles. Therefore, GEICO submits, we should not infringe on the legislature's prerogative to enact such a policy. Finally, GEICO argues that we previously rejected Appellant's broad reading of the MVFRL in Burstein.

The Pennsylvania Defense Institute ("PDI") submitted an amicus curiae brief in support of GEICO. PDI suggests that Pennsylvania law has consistently recognized the regular-use exclusion and its applicability to the instant facts beginning with Burstein and continuing through Superior Court opinions including Brink. PDI also contends that Trooper Williams' status as a police officer should not exempt him from existing law. PDI concedes, however, that the legislature retains the prerogative to allow first responders to recover benefits from their private automobile insurance policies if injured in a work vehicle. Finally, PDI refutes Appellant's argument regarding the conflict between the exclusion and the MVFRL, noting that a plethora of decisions by this Court and the Superior Court have all recognized the validity of exclusions to the mandatory offering of UIM coverage.

In the instant case, we must determine whether the regular-use exclusion, as applied to a state trooper, is void as against a public policy that favors protecting first responders. The issue presented is purely legal; thus our scope of review is plenary and our standard of review is de novo. Generette v. Donegal Mut. Ins. Co., 957 A.2d 1180, 1189 (Pa. 2008).

In construing a policy of insurance, we are required to give plain meaning to a clear and unambiguous contract provision unless such provision violates a clearly expressed public policy. Burstein, 809 A.2d at 206 (citing Eichelman v. Nationwide Ins. Co., 711 A.2d 1006, 1008 (Pa. 1998)); Prudential Prop. and Cas. Ins. Co. v. Colbert, 813 A.2d 747, 750

(Pa. 2002) (same). Here, Appellant concedes that the policy language is unambiguous, thereby challenging the exclusion solely on the grounds of public policy. We consistently have been reluctant to invalidate a contractual provision due to public policy concerns. In Eichelman, we stated:

> Generally, a clear and unambiguous contract provision must be given its plain meaning unless to do so would be contrary to a clearly expressed public policy. When examining whether a contract violates public policy, this Court is mindful that public policy is more than a vague goal which may be used to circumvent the plain meaning of the contract. As this Court has stated:
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> > 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.
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> This Court has further elaborated that:
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> > 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, 711 A.2d at 1008 (internal citations omitted). Therefore, Appellant must meet a high burden to invalidate a contractual provision due to a conflict with public policy.

In Eichelman, we also addressed the general policy underlying underinsured motorist coverage. We stated:

> [U]nderinsured motorist coverage serves the purpose of protecting innocent victims from underinsured motorists who cannot adequately compensate the victims for their injuries. That purpose, however, does not rise to the level of public policy overriding every other consideration of contract construction. As this Court has stated, "there is a correlation between premiums paid by the insured and the coverage the claimant should reasonably expect to receive." Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 349, 648 A.2d 755, 761 (Pa. 2004).

Id. at 1010.

Moreover, in his Concurring and Dissenting Opinion in Colbert, then-Justice, now-Mr. Chief Justice Castille noted:

> The overriding concern powering the decisions in Burstein, Eichelman, and the earlier cases is to ensure that both insurer and insured receive the benefit of what is statutorily required and contractually agreed-upon (consistently with statutory requirements) and nothing more. As this Court recognized in Eichelman, an insured should not be permitted to demand coverage for a risk for which coverage was not elected or premiums paid.

Colbert, 813 A.2d at 759 (Castille, J., concurring and dissenting).

With this framework in mind, we review Appellant's argument that applying the regular-use exclusion to police officers and other first responders violates public policy. In recent years, litigants have claimed that specific policy provisions, including the regular-use exclusion, violate the policies expressed in or underlying the MVFRL. Pennsylvania Nat. Mut. Cas. Co. v. Black, 916 A.2d 569, 578 (Pa. 2007). In the present case, however,

Appellant asserts that the application of the regular-use exclusion to first responders violates an overwhelming public policy in favor of protecting first responders as a class. In support of his position, Appellant cites several statutory provisions outside the MVFRL that apply to first responders, including the Heart and Lung Act,[8] the Workers' Compensation Act,[9] the Occupational Disease Act,[10] and the Emergency Medical Services Act.[11]

Appellant relies upon section 637 of the Heart and Lung Act, which applies to a wide variety of individuals Appellant recognizes as "first responders," including state police troopers such as Appellant. 53 P.S. § 637.[12] Under section 637, if any enumerated individual is injured or temporarily incapacitated in the line of performing his duties, such individual is entitled to receive his full rate of salary until the disability ceases. 53 P.S. § 637(a). Further, the Commonwealth or the authority responsible for employing the individual is responsible for all medical and hospital bills related to the injury. Id. If the individual recovers workers' compensation while receiving benefits under section 637, the workers' compensation benefits must be transferred to the employer or deducted from the salary payments to avoid a windfall to the employee. Id. Moreover, if the individual is employed in that capacity for a continuous four years and develops "diseases of the heart and tuberculosis of the respiratory system, contracted or incurred by any of them after four years of continuous service as such, and caused by extreme overexertion in times of stress

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[8] Act of June 28, 1935, P.L. 477 §§ 1-2, as amended, 53 P.S. §§ 637-638.

[9] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.1; 2501-2626.

[10] Act of June 21, 1939, P.L. 566, as amended, 77 P.S. § 1201 et seq.

[11] Act of August 18, 2009, P.L. 308, as amended, 35 Pa.C.S. § 8101 et seq.

[12] Other enumerated beneficiaries include "enforcement officers and investigators for the Pennsylvania Liquor Control Board, parole agents, corrections officers, psychiatric security aides, drug enforcement agents, policemen, firemen, and park guards." 53 P.S. § 637.

or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment," the Heart and Lung Act creates a rebuttable presumption that the injuries or disease were caused by the employment. 53 P.S. § 637(b).

We have stated that the Heart and Lung Act must be strictly construed because it varies the common law by imposing liability on employers regardless of fault for their employees' injuries. City of Erie v. Workers' Compensation Appeal Board (Annunziata), 838 A.2d 598, 604 (Pa. 2003). The benefits are designed to compensate temporary rather than permanent disability. Id. In Annunziata, we recognized that the statute was enacted to protect the municipality rather than the responder by enticing the most qualified individuals to undertake such employment. We stated, "Efficient firemen and police officers must take chances; the performance of their duties are hazardous. The prospect of uninterrupted income during periods of disability well may attract qualified persons to these vocations." 838 A.2d at 603 (quoting Kurtz v. City of Erie, 133 A.2d 172, 177 (Pa. 1957) (citation and quotation omitted)). Stated differently, we concluded that the legislature intended to incentivize employment in the enumerated occupations to ensure the highest qualified persons would accept the positions, therefore benefitting the municipality. Based on our prior interpretation of the Heart and Lung Act, we cannot conclude that it represents a public policy decision by the legislature to protect first responders.

Appellant also claims that section 108(m.1) of the Workers' Compensation Act demonstrates a legislative intent to provide special protection to first responders.[13] Section

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[13] Section 108(m.1) is codified at 77 P.S. § 27.1(m.1) and states:

> (m.1) Hepatitis C in the occupations of professional and volunteer firefighters, volunteer ambulance corps personnel, volunteer rescue and lifesaving squad personnel, emergency medical services personnel and paramedics, Pennsylvania State Police officers, police officers requiring certification under 53 Pa.C.S. Ch. 21 (relating to employees), and Commonwealth

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108 of the Workers' Compensation Act limits the scope of "occupational diseases" to an enumerated list of physical ailments. Relevant to Appellant's argument, section 108(m.1) recognizes Hepatitis C as an "occupational disease" for purposes of workers' compensation benefits relative to certain emergency personnel including state police officers. 77 P.S. § 27.1(m.1). It further establishes a rebuttable presumption that the disease was caused by the employee's duties. Id. Appellant asserts that section 108(m.1) operates in concert with section 301(e) of the Occupational Disease Act to establish the rebuttable presumption of causation.[14] However, section 301(e) states:

> If it be shown that the employe, at or immediately before the date of disability, was employed in any occupation or industry in which the occupational disease is a hazard, it shall be presumed that the employe's occupational disease arose out of

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> and county correctional employes, and forensic security employes of the Department of Public Welfare, having duties including care, custody and control of inmates involving exposure to such disease. Hepatitis C in any of these occupations shall establish a presumption that such disease is an occupational disease within the meaning of this act, but this presumption shall not be conclusive and may be rebutted. This presumption shall be rebutted if the employer has established an employment screening program, in accordance with guidelines established by the department in coordination with the Department of Health and the Pennsylvania Emergency Management Agency and published in the Pennsylvania Bulletin, and testing pursuant to that program establishes that the employe incurred the Hepatitis C virus prior to any job-related exposure.

[14] Appellant's citation to 77 P.S. § 301(e) as the Occupational Disease Act actually is a section of the Workmen's Insurance Board Act that was repealed in 1996. Act of June 24, 1996, P.L. 350. Section 301(e) is contained in the Workers' Compensation Act and codified at 77 P.S. § 413. We analyze Section 301(e) of the Workers' Compensation Act accordingly.

> and in the course of his employment, but this presumption shall not be conclusive.

77 P.S. § 413.

Finally, Appellant contends that the Emergency Medical Services Act ("EMSA") demonstrates added protection for first responders.[15] The EMSA provides that emergency medical technicians, paramedics, and other health professionals acting as emergency medical personnel will be exempt from civil liability for damages, absent a showing that the personnel acted with either "gross negligence or willful misconduct." 35 Pa.C.S. § 8151. The EMSA, however, does not reference police officers. Id. Therefore, we fail to see the relevance to the instant matter.

Appellant asks us to weigh the alleged unanimous public policy evident in the above-referenced statutes against the overriding public policy concerns we have recognized underlying the MVFRL— namely, cost containment. See Generette, 957 A.2d at 1192. However, while we agree that there is a strong public policy in favor of protecting first responders, the statutory provisions Appellant cites demonstrate that the public policy is narrower than Appellant suggests. Examining the statutes, there is no cohesive intent by the legislature to provide special "protections" to first responders applicable to the facts of the instant case. The provisions refer neither to insurance coverage nor to automobiles generally. Therefore, we are compelled to conclude that Appellant's suggested public policy does not exist in the statutes.

Moreover, to the extent that we can glean a coherent public policy from these individual statutory provisions,[16] such policy does not evince any intent by the legislature to

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[15] In his brief, Appellant cites to 35 P.S. § 6931(j). That section was repealed in August 2009, effective February 16, 2010, and replaced with 35 Pa.C.S. § 8151.

[16] The holding in Annunziata casts doubt upon the policy of "protection" identified by Appellant, as we have stated unequivocally since 1957 that Heart and Lung Act benefits (continued…)

protect first responders from the consequences of their private contractual agreements. Indeed, if any public policy can be derived from these statutes, it is clear that the statutes favor requiring the first responder's employer to protect its employee, rather than any private person or entity.

Even if those statutes could be read to provide some general "protection" for first responders, as Appellant suggests, he has failed to establish any unanimity of opinion that private insurers should provide coverage for unknown risks that may arise out of their insureds' employment simply because an insured may be a police officer. Appellant does not cite to any provisions that place a burden on private entities such as GEICO in these situations. Therefore, we decline to hold that such unanimity exists.

Having found that there is no unanimity of opinion favoring expanding the scope of a first responder's private UIM insurance, we must determine whether the regular-use exclusion, applied to a police officer injured in the line of duty, is so against the public health, safety, morals, or welfare to warrant invalidating the contractual provision on public policy grounds. Eichelman, 711 A.2d at 1009. In the instant case, Appellant has not presented any argument that binding him to the terms of his private contractual agreement in this scenario is contrary to public health, safety, welfare, or morals. Rather, he contends that applying the exclusion violates a statutory scheme of protection that we have already concluded is narrower than Appellant argues.

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were not designed to protect first responders but rather to protect the municipality. Kurtz, 133 A.2d at 177; Iben v. Borough of Monaca, 43 A.2d 425, 427 (Pa. Super. 1945). This recognition, however, is not a diminishment of the importance of first responders and police officers to their community. Rather, the question pertains to whether the legislature has demonstrated an intent to statutorily provide certain protections to first responders as a result of the important role they play in society. Based on our precedent and the legislative history, we cannot conclude that the General Assembly has chosen to protect first responders to the extent that Appellant claims.

Even if we were to find that the statutes reflect the public policy suggested by Appellant, we could not conclude that it requires invalidating the regular-use exclusion. Appellant asks us to weigh the protection of first responders against the recognized scheme of cost containment underlying the MVFRL. We have consistently held, however, that it is not the proper function of this Court to weigh competing public policy interests; rather that task is best suited for the legislature. Generette, 957 A.2d at 1192 (quoting Black, 916 A.2d at 580).

In addition to analyzing the overall policies, however, our final determination of whether the exclusion complies with public policy is dependent on the factual circumstances of each case. Colbert, 813 A.2d at 752 (citing Paylor v. Hartford Ins. Co., 640 A.2d 1234, 1240 (Pa. 1994)). In this regard, Appellant suggests that his circumstances are sufficiently distinguishable from those in Burstein to warrant recovery. Therefore, we briefly address the Burstein decision.

Sid and Doreen Burstein were injured in an automobile accident while operating a vehicle owned by Mrs. Burstein's employer and provided to her as a benefit of employment. The Bursteins recovered benefits from the tortfeasor involved in the accident but were not fully compensated for their injuries. Accordingly, they attempted to recover UIM benefits from her employer's insurer. The Bursteins discovered that the employer waived UM/UIM coverage on the policies. They then sought UIM benefits from their own insurer, Prudential, which denied coverage based on the regular-use exclusion.

The Bursteins sued Prudential, claiming the regular-use exclusion violated public policy. A panel of arbitrators found that the exclusion violated public policy as to Mr. Burstein but not as to Mrs. Burstein. Following a de novo trial, the trial court held the regular-use exclusion violated public policy as to both. Prudential appealed, and the Superior Court affirmed in an en banc decision. This Court granted allocatur on the issue of whether the regular-use exclusion was void as against public policy. Id.

On appeal, we recognized that the Bursteins' assertions of public policy necessarily competed with the policy concern underlying the MVFRL— the spiraling consumer costs of automobile insurance. Id. at 207-08. We specifically found that voiding the exclusion would frustrate the public policy of cost containment in the MVFRL because "the insurer would be forced to underwrite unknown risks that it has not been compensated to insure." Id. at 208.

In dissent, Mr. Justice Saylor analyzed the development of the law regarding UIM benefits from the time Pennsylvania repealed the No-Fault Motor Vehicle Insurance Act and replaced it with the MVFRL and stated:

> In my view, the specific question at the center of this appeal is whether the General Assembly intended to incorporate a fixed concept of portability into the statute, thus foreclosing the employment of geographic exclusions such as the [regular-use] exclusion.

Id. at 221 (Saylor, J., dissenting).

Following a thorough analysis of the development of UIM law and portability both in and outside Pennsylvania, Mr. Justice Saylor concluded that the General Assembly did not intend to incorporate such a fixed concept in the statute but that the Pennsylvania Insurance Department was to play a role in crafting regulations outlining the attributes of required UIM coverage. Id. Based on the Insurance Department's regulations pertaining to the portability of UM coverage and despite its silence regarding UIM coverage, Mr. Justice Saylor opined that he would hold that the regular-use exclusion violated public policy reflected in the regulations. Id. at 231.[17]

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[17] Specifically, Mr. Justice Saylor relied on 31 Pa.Code § 63.2, which states:

§ 63.2. Extent of coverage to be offered.

(continued…)

Distinguishing the instant matter from Burstein, Appellant directs us to the following excerpt from that decision:

> From a practical standpoint, Mrs. Burstein should have taken affirmative steps to determine whether the employer-provided vehicle was insured and, if so, with what types of coverage. This is especially glaring in view of Mrs. Burstein's use of employer-provided vehicles for over eight years. Stipulated Facts at 2. Once she would have discovered the

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(a) The extent of the coverage which shall be offered as ‘‘Uninsured Motorists Coverage’’ shall be at least that coverage contained in the sample form in Exhibit C, which is the National standard form for this insurance.

(b) An endorsement shall be issued by insurers to effect removal of an exclusion not listed in Exhibit C: Exclusions. A notice shall accompany each endorsement at the initial policy writing or at renewal which notice fully informs the insured of his right to reopen claims where a previous claim was denied under the exclusion on or after April 13, 1978.

(1) The endorsement and notice shall be submitted to the Bureau of Regulation of Rates and Policies for prior approval. Insurers or rating organizations on behalf of their members and subscribers shall make the filings not later than August 15, 1979.

(2) The following notice will be deemed to meet the requirements of this subsection:

> On April 13, 1978, the Superior Court of Pennsylvania declared void an exclusion which denies Uninsured Motorists coverage when an insured is injured while occupying an uninsured motor vehicle owned by that insured. Accordingly, insurers cannot deny coverage solely by reason of that exclusion for claims made or pending on or after April 13, 1978. Contact your agent if you think you are entitled to payment as a result of this change to your policy as of April 13, 1978.

> lack of UIM coverage, she would have had several options. First, she could have accepted the vulnerability of driving the vehicle without UIM coverage. While this may not have been the option preferred by Mrs. Burstein, this Commonwealth does not require UIM coverage. See 75 Pa.C.S. § 1731(a) (requiring the offer of UM and UIM motorist coverage, but declaring that such coverage is optional). Thus, tolerating the risk of injury from an underinsured motorist was a viable option for Mrs. Burstein. Second, she could have obtained UIM coverage for the vehicle in either of two ways: she could have negotiated with her employer for it to purchase UIM coverage on the vehicle; or, if the employer refused, there is no evidence of record suggesting that Mrs. Burstein could not have purchased the coverage herself. Lastly, if Mrs. Burstein could neither obtain the desired UIM coverage nor accept the risk of driving the employer-provided vehicle without UIM coverage, then she could have refused to drive the car.

Id. at 209-10.[18]

Here, Appellant contends that he could not purchase separate UIM insurance for coverage while driving a state police vehicle, nor could he negotiate with the Pennsylvania State Police to provide such coverage to its employees. He also notes that the Commonwealth, as a self-insured entity, is not required to offer UIM coverage. 75 Pa.C.S. § 1787. Finally, Trooper Williams underscores that he was required to use a state police vehicle while on duty, and he was not permitted to use a state police vehicle in any personal capacity while not on duty. As such, Appellant argues that the facts are distinguishable from those in Burstein, where Mrs. Burstein paid her employer a premium to use the vehicle at any time and could have either purchased UIM coverage for the vehicle

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[18] Appellant selectively quotes from Burstein in support of his claim that the above paragraph was crucial to our holding therein. Appellant's substitute brief at 12-13. As we conclude that this portion of Burstein was dicta, we have included the full quote herein.

or negotiated with her employer to provide UIM coverage. We find that these factual distinctions do not warrant a contrary conclusion.

We have recognized that a party seeking to void an unambiguous provision in an insurance contract on public policy grounds bears a heavy burden. See Generette, 957 A.2d at 1190 (citing Colbert, 813 A.2d at 750). In the instant case, Appellant attempts to meet this heavy burden and to distinguish Burstein by demonstrating that as a member of a collective bargaining unit, he could not have negotiated with his employer for UIM coverage in the Pennsylvania State Police vehicle. However, Appellant has not demonstrated by any evidence of record that he could not have purchased a supplemental rider from Appellee that would waive the regular-use exclusion. Therefore, because Appellant has failed to meet his burden by proving that he could not obtain any UIM coverage in effect while he operated his work vehicle, he has not sufficiently distinguished this matter from the facts of Burstein.

Moreover, we find Appellant's reliance on the selected language in Burstein unpersuasive, as it is dicta. Our discussion of Mrs. Burstein's practical options for achieving UIM benefits on her employer-owned vehicle was specific to the facts of her case. Burstein was decided on public policy grounds, and the key decisional language appears earlier in the opinion, wherein we stated:

> Here, voiding the exclusion would frustrate the public policy concern for the increasing costs of automobile insurance, as the insurer would be compelled to underwrite unknown risks that it has not been compensated to insure. Most significantly, if this Court were to void the exclusion, insureds would be empowered to regularly drive an infinite number of non-owned vehicles, and receive gratis UIM coverage on all of those vehicles if they merely purchase UIM coverage on one owned vehicle. The same would be true even if the insureds never disclose any of the regularly used, non-owned vehicles to the insurers, as is the case here. Consequently, insurers would be forced to increase the cost of insurance, which is precisely

> what the public policy behind the MVFRL strives to prevent. Such result is untenable.

Id. at 208.

The crucial factors underlying Burstein and the instant case are identical— an employee injured while driving his employer-owned vehicle attempted to recover UIM benefits from his private insurer without compensating the insurer for that unknown risk.[19] In that regard, we find that Appellant's position conflicts with the overall policies of the MVFRL, which include cost containment and the correlation between the scope of coverage and the reasonable premiums collected. Hall, 648 A.2d at 761. Therefore, we reaffirm Burstein and hold that the regular-use exclusion is not void as against public policy.

Appellant and the PAJ also assert that the regular-use exclusion violates the express language of the MVFRL. In advancing this argument, Appellant and the amici essentially seek to re-litigate Burstein. However, Appellant presents no compelling reason to revisit the prior decision.[20]

Next, Appellant claims that the regular-use exclusion violates 75 Pa.C.S. § 1731 specifically with regard to subsections (c) and (c.1).[21] Those subsections require the

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[19] Appellant asks this Court to take judicial notice of the fact that GEICO's insurance application requires applicants to disclose their employer, and Appellant complied with that mandate. We decline to do so because: (1) the application was not part of the record on appeal; and (2) we consider such a position irrelevant, as mere notice to GEICO that Appellant is employed by the Pennsylvania State Police does not equate to accepting the risk of coverage in those circumstances. This is especially true given the increased risk of accident that corresponds with the specialized driving required of a police officer.

[20] As part of this argument, Appellant relies on cases from other jurisdictions that limit the scope of insurance exclusions. Appellant's substitute brief at 22. However, our analysis of the relied-upon authority demonstrates that these decisions relate to stacking of UIM benefits, which is not at issue in the present case.

[21] 75 Pa.C.S. § 1731 provides, in relevant part:

(continued…)

insurer to obtain written waivers of UIM coverage signed by the insured on the form

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(…continued)

> (c) Underinsured motorist coverage.--Underinsured 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 therefor from owners or operators of underinsured motor vehicles. The named insured shall be informed that he may reject underinsured motorist coverage by signing the following written rejection form:
>
> REJECTION OF UNDERINSURED MOTORIST PROTECTION
>
> By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.
>
> * * *
>
> (c.1) Form of waiver.--Insurers shall print the rejection forms required by subsections (b) and (c) on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. Any rejection form that does not specifically comply with this section is void. If the insurer fails to produce a valid rejection form, uninsured or underinsured coverage, or both, as the case may be, under that policy shall be equal to the bodily injury liability limits. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. Any person who executes a waiver under subsection (b) or (c) shall be precluded from claiming liability of any person based upon inadequate information.

established in the statute. Appellant suggests that the regular-use exclusion violates these provisions because it removes the mandatory UIM coverage required by statute without complying with the written requirement of waiver on the form authorized by section 1731. Ultimately, however, Appellant's claim fails.

We recently addressed a similar argument involving the household exclusion to UIM coverage. In Erie Ins. Co. v. Baker, 972 A.2d 507 (Pa. 2009) (plurality), a policyholder who was denied coverage because of the household exclusion[22] to UIM coverage claimed that the exclusion amounts to an unsigned waiver of stacking in violation of 75 Pa.C.S. § 1738.[23] A majority of this Court held that the MVFRL's stacking provisions did not preclude application of the household exclusion. Id. at 513-14. In rejecting this argument, a plurality of this Court held that the exclusion was not a "waiver," but rather "a valid and unambiguous preclusion of coverage of unknown risks." Id. at 511. In his Concurring Opinion, Mr. Justice Saylor stated that he did not believe that the amendments to the MVFRL relating to stacking invalidated "long-standing policy exclusions (including regularly-used non-owned car, household, and territorial exclusions) rooted in ensuring the collection of reasonable premiums (with reasonableness being monitored by the Insurance Department)." Id. at 514-15.

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[22] The "household exclusion" to UIM coverage excludes coverage for any damages sustained by the insured while operating or being struck by a vehicle owned by the insured or a relative living in the insured's home who does not have UM/UIM coverage under the policy. In Baker, the claimant was injured in a motorcycle accident and sought UIM coverage from Erie Insurance Exchange, which provided coverage on three of the claimant's other vehicles but not the motorcycle. 972 A.2d at 508-09.

[23] Section 1738(d) requires the use of a specific written waiver form to reject stacking of UM/UIM coverage, which is similar to the required written waiver form identified in 75 Pa.C.S. § 1731. See Note 21, supra.

In the present case, Appellant's argument similarly fails. The regular-use exclusion as applied here is neither an implicit waiver of coverage nor an improper limitation on the statutorily mandated coverage. Rather, it functions as a reasonable preclusion of coverage of the unknown risks associated with operating a regularly used, non-owned vehicle. Indeed, an alternative reasoning would stifle the policies underlying the MVFRL and UIM coverage because the cost for UIM coverage would necessarily increase, and employers would have an incentive to underinsure their motor vehicles with the knowledge that injured employees could collect UIM benefits under their personal policies. We find both of these outcomes repugnant to the policy underlying the MVFRL.

Moreover, to the extent that Appellant and the PAJ ask us to reconsider the holding in Burstein and find that the regular-use exclusion itself violates public policy due to the conflict with the MVFRL, their arguments are misplaced. To re-interpret 75 Pa.C.S. § 1731 to preclude long-standing exclusions to UIM coverage on public policy grounds would violate the canons of statutory construction. Commonwealth v. Mitchell, 902 A.2d 430 (Pa. 2006), cert. denied, 549 U.S. 1169 (2007). In Mitchell, we recognized that under the Statutory Construction Act, the rule of stare decisis requires adherence to prior decisions interpreting specific statutory language. We stated:

> [I]n ascertaining the legislature's intent, "when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language." 1 Pa.C.S. § 1922(4). … [A]s we have recognized, "[t]he failure of the General Assembly to change the law which has been interpreted by the courts creates a presumption that the interpretation was in accordance with the legislative intent; otherwise the General Assembly would have changed the law in a subsequent amendment." Fonner v. Shandon, Inc., 555 Pa. 370, [377-78], 724 A.2d 903, 906 (1999) (citation omitted); 1 Pa.C.S. § 1922(4).

Id. at 462 n.20.

We decided Burstein in 2002. Since that time, the General Assembly has not amended section 1731 to preclude any of the long-standing exclusions to coverage. In that regard, it is clear that such exclusions are consistent with the legislature's intent. See Baker, 972 A.2d at 515 (Saylor, J., concurring) (referring to the household and regular-use exclusions as "long-standing policy exclusions … rooted in ensuring the collection of reasonable premiums"). Further, it is not the place of the judiciary to create an exception to the generally recognized rule in Burstein for "first responders."[24] Rather, our role is to interpret the laws as enacted by the General Assembly. We ruled in Burstein that the express language of the MVFRL does not preclude the regular-use exclusion. If the General Assembly wishes to implement a general policy in favor of "first responders," as it chooses to define the term, such determination remains the legislature's prerogative.

Finally, Appellant claims that Appellee is disingenuous when it suggests that employers such as the Pennsylvania State Police can purchase UIM coverage. Appellant argues that the employer's insurer would then decline coverage based on an exclusion for UIM coverage where workers' compensation benefits are received. While we believe such a claim ordinarily would be too speculative to consider, we simply note that we address the issue in Heller v. PA League of Cities and Municipalities, ___ A.3d ___ (Pa. 2011), also issued contemporaneously, finding that a workers' compensation exclusion to UIM coverage in an employer-purchased automobile insurance policy violates public policy.

In summary, we reaffirm the decision in Burstein, holding that the regular-use exclusion is not void as against public policy. A contrary decision is untenable, as it would

[24] In this regard, we are troubled by the slippery slope, as Appellant proposes no reasonable limitation on the scope of "first responders" to whom a judicially-crafted exception to the regular-use exclusion would apply. PAJ goes further, advocating that the exclusion should never apply to any employees who drive fleet vehicles. These policy arguments are best left to the legislature instead of the courts.

require insurers to compensate for risks they have not agreed to insure, and for which premiums have not been collected. The order of the Superior Court is affirmed. Jurisdiction relinquished.

Mr. Chief Justice Castille and Messrs. Justice Eakin and Baer join the opinion.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Baer files a concurring opinion.

Madame Justice Todd files a concurring opinion in which Mr. Justice McCaffery joins.