

[J-58-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

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| STATE FARM MUTUAL AUTOMOBILE | : | No. 7 MAP 2005 |
| INSURANCE COMPANY, | : | |
| | : | |
| Appellee | : | Appeal from the Order of the Superior |
| | : | Court entered on 1/22/04 at No. 1200 |
| | : | MDA 2002 which affirmed the Order of |
| v. | : | Huntington County Court of Common |
| | : | Pleas Civil Division entered on 7/15/02 at |
| | : | No. 2001-1382 |
| LORI FOSTER, | : | |
| | : | |
| Appellant | : | ARGUED: May 17, 2005 |

CONCURRING OPINION

MR. JUSTICE SAYLOR

Decided: December 30, 2005

I join the majority opinion, subject to two conceptual differences.

First, the majority suggests that police notification is required by the Motor Vehicle Financial Responsibility Law (“MVFRL”), 75 Pa.C.S.A §1701-1799.7. See, e.g., Majority Opinion, slip op. at 6. I believe, however, that the statute delineates the minimum amount of coverage that insurance carriers must offer to policyholders,¹ as well as the most restrictive terms that insurers can impose relative to aspects of automobile insurance coverage, including uninsured and underinsured motorist

¹ The purchase of the offered uninsured motorist coverage (or of additional coverage) is, of course, optional. See 75 Pa.C.S.A. §1731(a).

coverage. See 75 Pa.C.S.A §1731. From this frame of reference, it seems to me that nothing precludes an insurer from omitting a police notification provision from the terms of coverage for losses attributable to uninsured motorists that it may provide.

Second, I am of the belief that, although the cost-containment objective of the MVFRL is well recognized, the statute's remedial purposes should not be overlooked. Accord Burstein v. Prudential Property and Cas. Ins. Co., 570 Pa. 177, 203-04, 809 A.2d 204, 220 (2002) (Saylor, J., dissenting) ("In the UM/UIM arena, competing policy concerns have been clearly identified -- while frequently acknowledging the remedial purposes of the legislatively prescribed offer of UM/UIM insurance, the Court has repeatedly emphasized the legislative concern for the increasing cost of insurance as a central policy to be advanced by the MVFRL." (citation omitted)).² I agree with the majority, however, that the Legislature acted in furtherance of the cost-containment objective in structuring its requirement for insurers to offer uninsured motorist coverage in a way that authorizes policy terms withholding coverage in the absence of police notification. Further, I agree that such a plainly authorized coverage restriction may be enforced by the insurer consistent with the legislatively established public policy.

² I realize that I was in a dissenting position in Burstein; however, since Burstein's issuance, the Court has offered additional expressions that appear to vary the respective emphasis on the cost-containment and remedial objectives. Compare, e.g., Majority Opinion, slip op. at 3-4 (focusing solely on the MVFRL's cost-containment objective), with Hoffman v. Troncelliti, 576 Pa. 504, 839 A.2d 1013 (2003) (emphasizing the statute's remedial purposes and the requirement of liberal construction over the cost-containment objective in the context of the limited tort election under the MVFRL).