STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: AUGUST 1, 2012)

PROVIDENCE MUTUAL FIRE INSURANCE COMPANY	:	
v.	:	**C.A. No. WC 11-0236**
KEVIN NEARY; INEZ NEARY; PAMELA METRO, Individually and in her capacity as Administratrix of the Estate of Luke R. Metro; and PAUL METRO, Individually and as Father and Next of Kin to Luke Metro	:	

DECISION

STERN, J. This matter is before this Court on Plaintiff Providence Mutual Fire Insurance Company's Motion for Summary Judgment seeking declarations from this Court that no coverage exists under the Providence Mutual homeowners' insurance policy for claims by Defendants Pamela and Paul Metro against the homeowners and policyholders, Defendants Kevin and Inez Neary.

I

Facts and Travel

Providence Mutual issued a Homeowners Insurance Policy for the period of June 25, 2008 to June 25, 2009, policy number HP 0122788-01 (the "Policy"), to Defendants Kevin and Inez Neary for their home in North Kingstown, Rhode Island. The Policy included personal liability coverage for "bodily injury" caused by an "occurrence," but certain exclusions applied during the policy period. One such exclusion contained in the Policy entailed that the personal

liability and medical payments coverage did not apply to "bodily injury" if it occurred in connection with a business.

Inez Neary and Pamela Metro have known each other since elementary school and were family friends. See Inez Neary Dep. at 30-32. The Nearys and the Metros knew each other socially. See Paul Metro Dep. at 14, 15-17; Inez Neary Dep. at 30-32. Approximately six months before Luke was born, the Metros began to make arrangements for a babysitter, and Inez Neary agreed to watch him for payment of $25 per day. See Inez Neary Dep. at 43-44, 46. Pamela Metro and Inez Neary later arranged the details. Id. at 45-46. Inez Neary first watched Luke about eight weeks after he was born. Id. at 48. Pamela Metro always paid Inez Neary by check, id. at 48-49, and certain days were prorated to a lesser amount if Inez Neary only watched Luke for part of the day. See id. at 53-54. Inez Neary does not dispute that she received and cashed checks from Pamela Metro that accounted for the days she watched Luke. See id. at 52-57 (discussion of each check received and cashed and the totals equaling the addition of the days for which Inez Neary watched Luke). Inez Neary did not watch Luke during April of 2008 because she had an externship with a doctor's office. See id. at 57. She testified that she used the money she received for watching Luke to pay for groceries and other household items. See id. at 63-67. She did not separate the money received for watching Luke from her general budget. See id.

Inez Neary watched four children, including Luke Metro, over the course of a number of years. See Inez Neary Dep. at 34. Inez Neary was paid $20 per day to watch her niece, Hanna Valley. See id. at 34, 37. She was paid $30 per day to watch Eric Burlingham, id. at 70-71, and $30 per day to watch Hanna Duva. Id. at 76-77.

On August 8, 2008, Luke R. Metro, approximately eighteen (18) months old at the time, was under the supervision of Inez Neary at her home, which is the home covered by the Policy. She agreed to watch him that day while his parents were at work, as had been her practice for the previous year. Sometime that morning, Luke Metro had been left unattended. He managed to leave the home through a sliding glass door that was found open to the outside. Inez Neary and her daughter searched for Luke Metro and found him in a Koi pond on the property. Despite rescue and revival efforts, Luke Metro died.

Pamela Metro and Paul Metro each filed separate complaints against the Nearys as a result of Luke Metro's death. See Pamela Metro, Individually and in her capacity as Administratrix of the Estate of Luke R. Metro v. Inez M. Neary and Kevin V. Neary, C.A. No. WC-2011-0156; Paul Metro, Individually and in his capacity as father and next of kin to Luke Metro v. Kevin and Inez Neary, C.A. No. WC-2011-0223. Plaintiff Providence Mutual Fire Insurance Company subsequently filed the instant declaratory judgment action pursuant to R.I. General Laws § 9-30-1, et seq., alleging that it does not owe Kevin and Inez Neary any defense or indemnity obligation under the Policy resulting from Luke Metro's death because of the business exclusion contained within the policy. Plaintiff seeks a declaration from this Court that it is not required to provide a defense or indemnity to Defendants with respect to either underlying action, C.A. No. WC-2011-0223 and WC-2011-0156. It also seeks costs and fees in association with this action.

Plaintiff submitted its Motion for Summary Judgment to this Court on March 2, 2012. Paul Metro filed a memorandum in support of his opposition to the motion on May 25, 2012, and Pamela Metro filed a memorandum in support of her opposition to the motion on June 7, 2012. Plaintiff filed a supplemental memorandum on June 15, 2012, which Paul and Pamela Metro

responded to by way of a joint response on July 5, 2012. Although Inez Neary and Kevin Neary were originally represented by counsel, a hearing justice of this Court granted counsel's motion to withdraw on June 18, 2012, which Order entered on June 29, 2012. See Order, dated June 29, 2012 (Thunberg, J.).

The parties, excepting Kevin Neary, appeared for argument on Plaintiff's motion on June 19, 2012. Although this Court heard argument, decision was reserved until July 10, 2012, to allow Inez and Kevin Neary to obtain representation or otherwise respond. The parties again appeared on July 10, 2012, and the Nearys were allowed until July 13, 2012, to respond. Inez Neary filed a response on behalf of herself and Kevin Neary, asserting that she was merely helping her family friend. After consideration of the briefs, arguments, and other papers filed, the Court issues the following decision.

II

Standard of Review

Summary judgment is only appropriate "'if, when viewing the evidence in the light most favorable to the nonmoving party, there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'" Iozzi v. City of Cranston, -- A.3d --, 2012 WL 2588509, at *2 (R.I. 2012) (quoting Henderson v. Nationwide Ins. Co., 35 A.3d 902, 905 (R.I. 2012) (quoting Trust of McManus v. McManus, 18 A.3d 550, 552 (R.I. 2011))). Further, "'[t]he party opposing summary judgment bears the burden of proving, by competent evidence, the existence of facts in dispute.'" New London Cnty. Mut. Ins. Co. v. Fontaine, 45 A.3d 551 (R.I. 2012) (quoting Higgins v. Rhode Island Hosp., 35 A.3d 919, 922 (R.I. 2012) (quoting McManus, 18 A.3d at 552)). However, "in deciding whether or not summary judgment should be granted, it must at all times be borne in mind that '[t]he purpose of the summary-judgment procedure is to

identify disputed issues of fact necessitating trial, not to resolve such issues.'" Employers Mut. Cas. Co. v. Arbella Prot. Ins. Co., 24 A.3d 544, 553 (R.I. 2011) (quoting Rotelli v. Catanzaro, 686 A.2d 91, 93 (R.I. 1996)) (citing Estate of Giuliano, 949 A.2d 386, 391 (R.I. 2008) and Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981))).

Thus, summary judgment or a declaration in this instance is only appropriate if there is no genuine issue of material fact, and Plaintiff has proven that the insurance policy and its provisions preclude coverage. Our Supreme Court has stated that "[i]t is well established that in 'interpreting the contested terms of [an] insurance policy, we are bound by the rules established for the construction of contracts generally.'" Empire Fire and Marine Ins. Companies v. Citizens Ins. Co. of America/Hanover Ins., 43 A.3d 56, 59 (R.I. 2012) (quoting Metro Properties, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 934 A.2d 204, 208 (R.I. 2007) (quoting Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249, 1259 (R.I. 2003))). Therefore, "'[w]hen the terms of an insurance policy are unambiguous, [the Superior Court] will give the words, when read in conjunction with the entire policy, their plain and ordinary meaning.'" Id. (quoting Metro Properties, Inc., 934 A.2d at 208). Finally, if "'the policy terms are ambiguous or capable of more than one reasonable meaning, the policy will be strictly construed in favor of the insured and against the insurer.'" Id. at 59-60 (quoting Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995)); see also Derderian v. Essex Ins. Co., 44 A.3d 122, 127 (R.I. 2012) ("Only when the insurance policy's terms are ambiguous will this Court depart from the literal language of the policy; and, upon such a determination, 'the policy will be strictly construed in favor of the insured and against the insurer.'" (quoting Sjogren v. Metro. Prop. and Cas. Ins. Co., 703 A.2d 608, 610 (R.I. 1997)). "A court should not, however, stretch its imagination in order to read ambiguity into a policy where none is present." Mullins v. Fed. Dairy Co., 568 A.2d 759,

762 (R.I. 1990) (citing McGowan v. Connecticut Gen. Life Ins. Co., 110 R.I. 17, 19, 289 A.2d 428, 429 (1972)).

III

Analysis

In its Motion, Plaintiff asserts that the undisputed facts include that Luke Metro was in the care of Inez Neary on August 8, 2008, when he managed to leave the home and drowned in a Koi pond on the property. Plaintiff argues that there is no coverage under the policy pursuant to any of the four definitions of a "business" contained within the Policy, even though only one definition need apply to preclude coverage. First, it argues that Luke Metro died while Inez Neary watched Luke "as a trade, profession or occupation in which she engaged on a full-time, part-time or occasional basis," which is the first definition of "business" in the Policy. Pl.'s Mem. in Supp. of Mot. for Summ. J. Additionally, Plaintiff contends that Inez Neary watched Luke for money or other compensation and earned more than $2,000 in total compensation for the year prior to the policy's effective date, and Luke was not a relative. See id. There is also no coverage, Plaintiff asserts, based upon the fact that Inez Neary regularly provided home day care services to Luke Metro as her trade, profession or occupation. See id. Finally, Plaintiff argues that Luke Metro died while being provided with home day care services in exchange for money or other compensation and that Inez Neary received more than $2,000 in total/combined compensation for watching Luke Metro and any other activity over the year prior to the policy period. See id.

Defendant Paul Metro responds that Inez Neary was not engaged in a "trade, profession, or occupation" by watching Luke Metro, because the phrase is not defined in the policy and is thus ambiguous or capable of having multiple meanings. As Inez Neary's primary occupation

was her position at K&I Improvements, Paul Metro asserts, the child care services were not her trade, profession or occupation. Additionally, Paul Metro argues that when Inez Neary cared for Luke Metro, her actions were "primarily . . . gratuitous," and thus do not constitute a trade, profession, or occupation pursuant to the Policy. Mr. Metro also asserts that the phrase "money or compensation" is undefined, is thus ambiguous, and should be interpreted in favor of the Nearys. The Plaintiff "estimates" that in the twelve months prior to the Policy effective date, Inez Neary earned more than $2,000, but Paul Metro contends that such amount does not include reimbursements or expenses, and thus does not exceed the $2,000 minimum requirement. Finally, Paul Metro asserts that K&I Improvements was not a business conducted at the Nearys' and therefore, any revenue derived from that business should not be included in any money requirement under the exclusion.

Defendant Pamela Metro adopted and expanded upon those arguments put forth by Paul Metro in opposition to Plaintiff's motion. Pamela Metro similarly contends that the policy provisions are ambiguous, and thus must be construed in favor of the Nearys, particularly based upon the reasonable expectations doctrine, which, Pamela Metro argues, allows for defining words within insurance policies based upon "what a reasonable person in the position of the insured would have understood it to mean." Def. Pamela Metro's Mem. of Law in Opp'n to Pl.'s Mot. for Summ. J. at 11 (citations omitted).

Although Inez Neary contends that she watched Luke as a favor to her friend Pamela Metro, while she was at work, she does not contest that she accepted checks from the Metros on a periodic basis and used those funds for her own private and family expenses. The parties here agree on the material facts at issue – notably that Inez Neary watched Luke Metro at her home in exchange for $25 per day. In fact, none of the parties dispute the payment, but only whether

such payment constitutes "compensation" insofar as the exclusion defines it. They differ, therefore, on the interpretation of those facts in regards to the exclusion. The dispositive issue thus becomes whether Inez Neary's activities watching Luke in her home almost daily for a fee constitute a "business" pursuant to her homeowner's policy such that it fits within the exclusion and precludes coverage. Plaintiff asserts that the business exclusion contained in the Policy precludes coverage in this instance because Inez Neary's activities constituted a "business."

A

Policy Provisions

Considering both the standards of insurance policy construction and the agreed-upon material facts, this Court thus considers the policy provisions at issue here. The Policy does not provide personal liability coverage or medical payments to others for a "'bodily injury' . . . arising out of or in connection with a 'business' conducted 'from an 'insured location' or engaged in by an 'insured', whether or not the 'business' is owned or operated by an 'insured' or employs an 'insured. Policy Section II-Exclusions, E.2. This Exclusion E.2 applies but is not limited to an act or omission, regardless of its nature of circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the business."' Id. The Policy in effect here provided as follows:

> A. "Business", as defined in the policy, means:
>
> 1. A trade, profession or occupation engaged in on a full-time, part-time, or occasional basis; or
> 2. Any other activity engaged in for money or other compensation, except the following:
>
> a. One or more activities:
>
> (1) Not described in b. through d. below; and
> (2) For which no "insured" receives more than $2000 in total compensation for the 12 months before the beginning of the policy period;

b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
d. The rendering of home day care services to a relative of an "insured".

B. If an "insured" regularly provides home day care services to a person or persons other than "insureds" as their trade, profession or occupation, that service is a "business".

C. If home day care service is not a given 'insured's' trade, profession or occupation but is an activity:
1. That an 'insured engages in for money or other compensation; and
2. From which an 'insured' receives more than $2,000 in total/combined compensation from it and any other activity for the 12 months before the beginning of the policy period;
the home day care service and other activity will be considered a business.

D. With respect to C. above, home day care service is only an example of an activity engaged in for money that may be a "business". Any single activity or combination of activities:
1. Described in A.2 above, and
2. Engaged in for money by a single "insured";
may be considered a "business" if the $2000 threshold is exceeded.

E. With respect to A. through D. above, coverage does not apply to or is limited with respect to home day care service which is a "business". For example, this policy:
1. Does not provide:
a. Section II coverages. This is because a "business" of an "insured" is excluded under E.2. of Section II-Exclusions;
b. Coverage, under Section I, for other structures from which any "business" is conducted. . . .

Policy Endorsement, No Section II – Liability Coverages for Home Day Care Business, Limited Section I – Property Coverages for Home Day Care Business.

Although our state Supreme Court has not yet had occasion to address the issue of whether or not babysitting or childcare constitutes a "business" so as to preclude coverage under

a business exclusion[1] (without exception), other courts have had such an opportunity. For instance, in Haley v. Allstate Insurance Company, 529 A.2d 394 (N.H. 1987) (per curiam), the policy provision in Haley differed from that in the instant case, and excluded "bodily injury or property damage arising out of the business pursuits of an injured person," but excepted "activities normally considered non-business" and "the occasional and part-time business activities of an insured person who is a student under 21 years of age." Id. at 395. The New Hampshire Supreme Court found that "a reasonable person would normally consider the provision of day care on a regular basis for profit to be a business pursuit rather than a non-business activity," and thus affirmed the denial of relief in a declaratory judgment action filed by the insured against her insurance company. 529 A.2d at 396.

Similarly, in Metropolitan Property and Casualty Insurance Company v. Fitchburg Mutual Insurance Company, 793 N.E.2d 1252, 1254 (Mass. App. Ct. 2003), the policy at issue read that there was no coverage for "bodily injury or property damage arising out of or in connection with your business activities. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the business." Even though this case did not concern babysitting, the Massachusetts Appeals Court held that summary judgment for the insurer was "appropriate" when the claim arose out of a business activity, namely, that the insured was injured while working at her home. See 793 N.E.2d at 1255-56.

[1] In fact, the only instance of which this Court is aware when a business type exclusion has been explicitly addressed is by this Superior Court in Metropolitan Property & Liability Insurance Company v. Malone, 1986 WL 714341 (R.I. Super. 1986), where the court found that the business pursuits exclusion did not preclude the case from proceeding because the Complaint satisfied the "pleadings test" standard. See 1986 WL 714341 at *1.

In Commerce Insurance Company v. Finnell, 673 N.E.2d 71 (Mass. App. Ct. 1997), a homeowner's policy "exclude[d] coverage for bodily injury: 'arising out of or in connection with a business engaged in by an insured. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed or implied to be provided because of the nature of the business. . . .'" 673 N.E.2d at 72. In Commerce, the homeowner baby-sat for the child more than once a week, and was paid fifteen dollars a day. Id. While she was watching the child, he burned himself with boiling water that the homeowner was heating to make herself lunch. Id. The court found that the homeowner's "business was to care for Sean and prevent him from being harmed." Id. Thus, the court noted that "the policy's exclusion applies to any 'act or omission' involving a service rendered or promised which arises out of the business of baby-sitting" and affirmed the grant of summary judgment and a declaration in the insurer's favor. Id.

In addition, in Carroll v. Boyce, 640 A.2d 298 (N.J. Super. Ct. App. 1994), the New Jersey Superior Court found that the business pursuit exclusion contained in the insured's homeowners policy applied to babysitting in the home, and thus no coverage was afforded under the policy. See 640 A.2d at 302. The court based its reasoning on the fact that the homeowner "was engaged in a permanent babysitting arrangement for an agreed upon compensation, [and thus] she was clearly involved in a 'business pursuit.' The very purpose of her business was to care for the infant and to protect him from the dangers of injury. . . . The injuries resulted from [insured's] failure to adequately discharge her business pursuit. Therefore, the policy exclusion applies and the exception to the exclusion must be deemed inapplicable." Id.[2]

[2] A case on which Defendant Pamela Metro relies, Gallo v. Grosvenor, 572 N.Y.S.2d 506, N.Y. Appellate Div. 1991), is inapplicable to the case at bar. In that instance, the business exclusion provision contained an exception to the exclusion for "injury resulting from business activities,

The instant Policy does not exclude coverage for "business pursuits," but rather excludes claims for injuries that occur during the course of performing a "business." It is clear and undisputed in this case that Inez Neary watched Luke Metro daily for a fee of $25, which was incorporated into the family budget and used for groceries and other household items, including those used to care for Luke. The only factual dispute over the payments is whether the payments for the year prior to the Policy period exceeded $2,000. The parties opposing Plaintiff's motion, however, have only suggested that there is no way to determine how much money Inez Neary received after subtracting the money actually spent caring for Luke. This Court finds that argument unavailing, in that it is clear that Inez Neary earned more than $2,000 for babysitting Luke, and if the payments from her husband's business are included, the total amount is even higher.

This Court finds that a "business" is clearly defined in four separate ways in the Policy, any one of which would preclude coverage.

Moreover, other courts have included babysitting within the definition of a "trade, profession or occupation." See Haley v. Allstate Ins. Co., 529 A.2d at 515; Commerce Ins. Co. v. Finnell, 673 N.E.2d at 72. This Court finds the analysis used by these courts to be persuasive, and finds that babysitting in this case was a "trade, profession or occupation engaged in" by Inez Neary on at least a part-time basis. Inez Neary watched Luke approximately five days a week from the time he was eight weeks old until the time of his death, when he was eighteen months

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but which were usually viewed as nonbusiness in nature," and the court held that the insured's negligent supervision of her own son was not incident to the business. Id. at 507. There is no such exception to the exclusion in the instant case. Pamela Metro's reliance on State Farm Fire & Casualty Company v. Moore, 430 N.E.2d 641 (Ill. App. 1981), is similarly misplaced. The policy provision in Moore was also a "business pursuits" exclusion with an exception for activities "ordinarily incident to nonbusiness pursuits," and was analyzed under the continuity and profit-motive test. See id. The court found that the exclusionary clause was ambiguous, and thus found in favor of the insured. Here, we have no such policy language.

old, excepting only one month. Therefore, it is clear that this activity falls within the exclusion contemplated by the Policy.

Even if the babysitting did not fall within the first definition, it is clear that when Inez Neary watched Luke, it was an "other activity engaged in for money or other compensation," because she was paid for her time. There are, however, exceptions to this rule, and this Court will address them in turn. It is clear that the activities at issue in this case were not "volunteer activities for which no money was received other than payment for expenses incurred to perform the activity," as Inez Neary testified that she did not use the money solely to pay for Luke's costs. Policy at A.2(b). Moreover, it is clear that Inez Neary received payment (or "compensation") which was not the "mutual exchange of [home day care] services," because there was no exchange of anything other than the service of watching Luke for payment. Policy Endorsement at A.2(c). Moreover, Luke Metro was not a relative of the Neary's. Id. at A.2(d). Additionally, it is clear from the facts that Inez Neary received more than $2,000 in "total compensation" between her services watching Luke and for K&I Home Improvements prior to the beginning of the policy period. Therefore, the activities performed by Inez Neary in watching Luke do not fall within any of the exceptions to the definition of a "business" within the Policy, and it might be considered a business even under A.2. See id. at A.2.

Moreover, Inez Neary regularly provided home day care services to Luke Metro (not an insured) as an occupation, even if it was not her sole occupation. See id. at B. Therefore, even if this Court were to assume that babysitting Luke Metro was not her primary "trade, profession or occupation," it certainly was an activity that she engaged in for money or other compensation and for which she received more than $2,000 (whether or not her other occupation/activity was included) for the 12 months prior to the policy period. See id. at C., D.

There is no doubt, therefore, that when Inez Neary started to watch Luke while Pamela and Paul Metro were at work, every day for over a year, for consistent payment, that the babysitting was a "business" contemplated by the Policy at issue here. See id. at A-D.

Here, this Court is persuaded by the reasoning in Commerce Insurance Company v. Finnell. 673 N.E.2d at 72. The policy provisions applicable to the insured in Finnell are similar to those at issue here, and it is clear from the terms of this policy that the bodily injury to Luke Metro arose out of an "act or omission, regardless of its nature of circumstance, involving a service or duty rendered, promised, owed or implied to be provided" because of the nature of Inez Neary's care for Luke. The facts overwhelmingly indicate, without refutation, that Inez Neary at least on a part-time or occasional basis, engaged in the care of Luke Metro, for which she received money or other compensation by way of check from Pamela Metro, despite her other occupation for her husband's contracting company. The evidence also indicates that she received at least $2,000 for her services from Pamela Metro, regardless of the money's eventual use by the Nearys. This Court finds that business is adequately defined by the policy, and the other challenged terms are clearly capable of understanding. Thus this Court must construe the policy by its terms, and finds that Plaintiff has met its burden on summary judgment to show that there is no genuine issue of material fact, and that there is no coverage provided by the Policy.

IV

Public Policy Considerations

This Court is mindful that this may open a "Pandora's box" for babysitting and raise an issue of which homeowners are unaware–that if an accident occurs when babysitting a child in their home, they may not be covered under their homeowner's insurance policy. On the one hand, homeowner's insurance coverage is between the homeowner and his/her insurance

company. The insurance company is willing to underwrite potential risks for a premium payment. This premium payment is calculated based upon the valuation of these risks. This valuation can only be calculated by analyzing the risks covered and the risks excluded under the policy. From the perspective of the insurance company, if the insured desires certain exclusions within the insurance policy to be covered, the insurer, upon request, after pricing for that potential loss, may choose to issue a rider, issue a different policy or decline to provide coverage.

On the other hand, the average homeowner does not sit down and review all of the provisions and exclusions in his/her homeowner's policy. Many homeowners may incorrectly assume that providing babysitting services either at their home or at the child's home is covered under the policy. Unfortunately, it is not until a tragic event, such as this, that the homeowner realizes that this activity was not covered. Unfortunately for the homeowner, the fact that they did not review the coverage and/or exclusions in their insurance policy is not a justification for a Court to determine that there is coverage when, in fact, none exists under the policy.

Not in this case, but for future cases, our legislature does have the ability to mandate certain coverage in a homeowners insurance policy or require that insurance companies bring this exclusion to the attention of policy holders upon the inception of the policy or renewal in bold on the cover sheet of the policy. In accordance with Rhode Island's General Laws, the legislature has the ability to make, and has made, the public policy determination that all policies in the State should contain coverage for certain acts. [3] Insurers have a choice that, if it wants to

[3] The Rhode Island General Laws set forth a number of mandatory requirements and restrictions for insurance policies, such as setting mandatory minimum coverage requirements, notification requirements, and other provisions that contemplate public policy issues. See, e.g., § 27-2-1.1 (requiring all insurance providers to have a toll free phone number); § 27-5-3.6 (requiring insurance companies to notify insureds that flood insurance may not be included in the policy); § 27-7-2.1 (requiring uninsured motorist coverage).

do business in this State, it must provide for such mandatory coverage in every homeowners policy issued. There is however a cost to mandating certain coverage. Homeowners that do not provide babysitting will be required to pay a higher insurance premium whether they want to or not, and in effect, it will raise homeowner's insurance rates on everyone. Ultimately, this difficult decision whether to take no action, require enhanced disclosure or mandate insurance coverage is a decision for the legislature. Until then, this Decision should serve as a "wake up call" to babysitters and the parents of the children in their care.

V

Conclusion

For the foregoing reasons, this Court grants Plaintiff's Motion for Summary Judgment and declares that there is no coverage based on the exclusion contained in the Policy. Counsel for Plaintiff shall submit the appropriate Order for entry.