IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2005 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 32573

**PAMELA E. HOWE, individually,
and as adoptive parent and next friend of
TREY J. HOWE, a minor,
Appellant**

v.

**DUANE A. HOWE, AMERICAN STANDARD
INSURANCE COMPANY OF OHIO and
AMERICAN FAMILY INSURANCE COMPANY,
Appellees**

**Appeal from the Circuit Court of Marion County
Honorable David R. Janes, Judge
Civil Action No. 02-C-232**

AFFIRMED

**Submitted: September 14, 2005
Filed: November 17, 2005**

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JUSTICE BENJAMIN delivered the Opinion of the Court.

CHIEF JUSTICE ALBRIGHT dissents and reserves the right to file a dissenting opinion.
JUSTICE STARCHER dissents and reserves the right to file a dissenting opinion.
JUSTICE DAVIS concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. "A circuit court's entry of summary judgment is reviewed *de novo*." Syllabus Point 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

2. "Determination of the proper coverage of an insurance contract when the facts are not in dispute is a question of law." Syllabus Point 1, *Tennant v. Smallwood*, 211 W. Va. 703, 568 S.E.2d 10 (2002).

3. "'The law of the state in which a contract is made and to be performed governs the construction of a contract when it is involved in litigation in the courts of this state'. Syl. pt. 1 (in part) *Michigan National Bank v. Mattingly*, W. Va., 212 S.E.2d 754 (1975)." Syllabus Point 2, *General Electric Co. v. Keyser*, 166 W. Va. 456, 275 S.E.2d 289 (1981).

4. "The provisions of a motor vehicle policy will ordinarily be construed according to the laws of the state where the policy was issued and the risk insured was principally located, unless another state has a more significant relationship to the transaction and the parties." Syllabus Point 2, *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988).

5. "Where a choice of law question arises with regard to the interpretation of coverage provisions in a motor vehicle insurance policy executed in another state, the

public policy considerations inherent in the fact that the substantive law of the other state differs from our own will ordinarily be adequately addressed by application of the significant relationship conflict of laws test enunciated in Syllabus Point 2 of *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988)." Syllabus Point 4, *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992).

6. The conflicts of law principles announced in Syllabus Point 2 of *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988) and Syllabus Point 4 of *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992), applicable to the interpretation of coverage under a motor vehicle insurance policy are also applicable to the interpretation of coverage under a motorcycle insurance policy, a homeowner's insurance policy and a personal liability umbrella insurance policy.

7. "The mere fact that the substantive law of another jurisdiction differs from or is less favorable than the law of the forum state does not, by itself, demonstrate that application of the foreign law under recognized conflict of laws principles is contrary to the public policy of the forum state." Syllabus Point 3, *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992).

Benjamin, Justice:

In the instant appeal we are asked to review the Circuit Court of Marion County's July 20, 2004 Opinion Order Denying in Part Plaintiff's Motion for Summary Judgment on the Declaratory Judgment Action and Granting in Part American Standard Insurance Company of Ohio and American Family Insurance Company's Motion for Summary Judgment. In that Order, the circuit court, applying Ohio law, held that liability coverage did not exist under several policies of insurance issued in the State of Ohio to Ohio residents for injuries sustained in a motorcycle accident occurring on September 13, 2000 in Farmington, Marion County, West Virginia. Appellant primarily argues that the "intra-insured suit" exclusions contained in the policies, admittedly valid under the law of the State of Ohio, are unenforceable in this State because they violate West Virginia public policy. Appellant also argues that the circuit court erred in finding liability coverage did not exist under a homeowner's insurance policy for claims arising from an alleged negligent entrustment of a motorcycle helmet due to the policy's exclusion for claims "arising out of the ownership, supervision, entrustment, maintenance, operation, use, loading or unloading of any type of motor vehicle . . . [.]" After due consideration of the record below, the arguments raised by the parties and the relevant legal precedent, we affirm the judgment of the Circuit Court of Marion County.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Pamela E. Howe married Appellee Duane Howe on September 9, 2000, in the State of Ohio. Both were at the time, and continue to be, Ohio residents. On September 13, 2000, while traveling through Marion County, West Virginia, Mr. and Mrs. Howe were involved in a motorcycle accident which resulted in Mrs. Howe sustaining serious injuries. The accident occurred when Mr. Howe, who was operating the motorcycle on which Mrs. Howe was a passenger, allegedly struck the rear of a vehicle which was stopped at a red light. The motorcycle involved in the accident was a 1996 Harley Davidson, owned by Mr. Howe, which was garaged, licensed, registered and maintained in the State of Ohio.

At the time of the September 13, 2000 motorcycle accident, Mr. Howe possessed four insurance policies issued by American Standard Insurance Company ["ASIC"] and/or American Family Insurance Company ["AFIC"]. These policies include: (1) ASIC Motorcycle Policy No. 0749-9531-04-SCYC-OH (insuring the 1996 Harley Davidson involved in the accident); (2) AFIC Ohio Homeowners Policy No. 34-P10307-01; (3) AFIC Family Car Policy No. 0749-9531-07-03-FPPA-OH (insuring a 1995 Dodge Dakota); and (4) AFIC Personal Liability Umbrella Policy No. 34-U-00995-01.

On September 3, 2002, Appellant initiated a civil action in the Circuit Court of Marion County alleging damages arising from Mr. Howe's negligence both in operating

the motorcycle at the time of the accident and in not providing her with a proper safety helmet. Her complaint also sought a declaration of the liability and underinsured motorist coverage available under the four policies of insurance listed above. After certain discovery was conducted, the parties filed cross-motions for summary judgment relating to the coverage issues.

In her November 18, 2003 Motion for Partial Summary Judgment on the Declaratory Judgment Action, Appellant argued that ASIC and AFIC improperly relied upon Intra-Insured Suit (or "household") exclusions[1] contained in each of the respective policies to deny coverage for the claims asserted against her husband. Appellant asserted in her motion that the validity of these exclusions was unsettled under Ohio law[2] and that they violate the public policy of this State and should not be enforced in any event. Appellant also argued she was entitled to uninsured motorist coverage[3] under the motorcycle policy, the family car policy and the umbrella policy. Conversely, ASIC and AFIC filed their Motion for Summary Judgment on November 20, 2003 arguing that Ohio law applied to determine

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[1] The specific exclusions at issue are set forth below and will be referred to interchangeably as "household" exclusions throughout this opinion.

[2] Subsequent to the filing of her motion before the circuit court, Appellant apparently conceded that "household" exclusions are valid and enforceable under Ohio law.

[3] The September 3, 2002 complaint did not include the availability of uninsured motorist coverages under the motorcycle, family car and umbrella policies within the scope of the declaratory judgment action. On January 20, 2004, a Stipulation and Agreed Order was entered to include such coverages within the scope of the declaratory judgment action.

the scope of coverage, if any, provided by the policies and that, under Ohio law, the policies do not provide either liability or underinsured motorist coverage for Appellant's claims arising from the September 13, 2000 motorcycle accident.

After a May 17, 2004 hearing on the respective motions, the circuit court entered an Opinion Order on July 20, 2004. Invoking West Virginia conflicts of law principles, the circuit court held that the determination as to what coverages were available under the various insurance policies was to be governed by Ohio law as the policies were issued in the State of Ohio to Ohio residents to insure risks principally located in Ohio. The circuit court noted that the only relationship West Virginia has to the parties or transaction was that the motorcycle accident occurred in West Virginia. The circuit court rejected Appellant's argument that West Virginia law should apply because the exclusions at issue violate our public policy. The circuit court distinguished our decision in *Paul v. National Life*, 177 W. Va. 427, 352 S.E.2d 550 (1986), wherein we refused to apply Indiana's guest passenger statute, by noting that *Paul* involved a foreign statute which, if applied, would operate to immunize the tortfeasor from liability. By contrast, the instant action involved the determination of coverage available under foreign insurance contracts, not immunization from liability. Thus, the circuit court determined application of Ohio law was justified as Ohio had a more significant relationship to the parties and transactions at issue and West Virginia's relationship to the parties and transactions was minimal. Moreover, the circuit court found West Virginia public policy did not forbid application of Ohio law.

Applying Ohio law, the circuit court found coverage did not exist under any of the policies at issue.[4] Central to the circuit court's findings was the recognition that "household" exclusions, which were included in each of the policies at issue, are valid under Ohio law.[5] The "household" exclusion contained in the motorcycle policy issued to Mr. Howe provides:

PART I - LIABILITY COVERAGE

Exclusions:
This coverage does not apply to:

. . .

9. **Bodily injury** to:
   b. **You** or any person related to you and residing in your household.
   c. Any person related to the operator and residing in the household of the operator.

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[4] Although the circuit court's order addressed several provisions under the four policies, the instant appeal is limited to the circuit court's application of Ohio law to enforce the various "household" exclusions contained within the policies and its ruling on coverage for Appellant's negligent entrustment claim under the homeowner's policy. Additionally, even though each of the four policies contain "household" exclusions, Appellant is not challenging the circuit court's finding that coverage does not exist under the family car policy. With respect to the family car policy, the circuit court found coverage did not exist based upon two exclusions, the "household" exclusion and an exclusion barring "liability coverage for bodily injury arising out of the use of any motorized vehicle with less than four wheels." Appellant does not assert error with the circuit court's finding that coverage does not exist based upon the "less than four wheels" exclusion. Thus, the validity and enforcement of the "household" exclusion in the family car policy is moot as coverage does not exist regardless of its inclusion in the policy.

[5] Although the homeowner's policy contains a "household" exclusion and its validity was raised in the parties' motions before the circuit court, the circuit court did not address the same in its Opinion Order. In her filings before this Court, Appellant concedes that our ruling on the applicability of Ohio law would also, necessarily, impact the enforcement of the "household" exclusion contained within the homeowner's policy.

Similarly, the umbrella policy contains the following provisions:

DEFINITIONS

. . .

9. **Insured** means:
   a. The **named insured**;
   b. **Your relatives**;

. . .

18. **Relative** means a resident of **your** household who is:
   a. Related to **you** by blood, marriage or adoption, including **your** ward or foster child;

. . .

EXCLUSIONS

This policy does not cover:

. . .

10. **Intra-Insured Suits. We** will not cover **personal injury** to the **named insured** or anyone within the meaning of part a or b of the definition of **insured**.

Finally, the following provisions contained within the homeowner's policy are relevant:

DEFINITIONS

. . .

9. **Insured**
   a. **Insured** means **you** and, if residents of **your** household:
      (1) **your** relatives;

. . .

14. **You** and **your** refer to the person or people shown as the named **insured** in the Declarations. These words also refer to **your** spouse who is a resident of **your** household.

. . .

EXCLUSIONS - SECTION II

Coverage D - Personal Liability and Coverage E - Medical Expense do not apply to:

. . .

11. **Intra-insured Suits. We** will not cover **bodily injury** to any **insured.**

. . .

16. **Vehicles**
   a. **We** will not cover **bodily injury** or **property damage** arising out of the ownership, supervision, entrustment, maintenance, operation, use, loading or unloading of any type of motor vehicle, motorized land conveyance or trailer[.]

In its July 20, 2004 Opinion Order, the circuit court found neither the motorcycle policy nor the umbrella policy provided coverage for Appellant's claims due to the "household" exclusions. Further, the circuit court found coverage did not exist under the

homeowner's policy due to the vehicle exclusion.

On July 23, 2004, Appellant moved the circuit court, pursuant to Rule 54(b) of the *West Virginia Rules of Civil Procedure*, to amend the July 20, 2004 Opinion Order to include the language "that there is no just reason for delay" and permit immediate appeal of the July 20, 2004 Opinion Order.[6] The circuit court granted the motion by Order dated September 9, 2004. Appellant timely filed her Petition for Appeal with this Court, which we accepted by Order dated March 25, 2005. Upon review of the record below, the arguments of the parties and the pertinent legal authorities, we affirm the Circuit Court of Marion County, West Virginia.

II.

STANDARD OF REVIEW

In the instant matter, Appellant seeks reversal of the Circuit Court of Marion County's July 20, 2004, Opinion Order granting partial summary judgment in favor of ASIC

[6] Appellant also filed a Rule 59(e) motion to alter or amend the Opinion Order with respect to the circuit court's finding regarding rejection of uninsured and underinsured motorist coverage under the umbrella policy. That motion was granted and the circuit court's finding with respect to rejection of such coverage was stricken as premature from the July 20, 2004 Opinion Order by Order dated September 9, 2004. Thereafter, by letter dated October 12, 2004, Appellant's counsel informed the circuit court of Supreme Court of Ohio's September 29, 2004 decision in *Kyle v. Buckeye Union Ins. Co.*, 814 N.E.2d 1195 (2004), which, according to counsel, "disposes of [Appellant's] claim for uninsured motorist benefits under Ohio law." Appellant also informed the circuit court that the only remaining issue pending before the circuit court was Mr. Howe's liability for his wife's injuries.

and AFIC regarding various insurance coverage issues. "A circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). Likewise, the "[d]etermination of the proper coverage of an insurance contract when the facts are not in dispute is a question of law." Syl. Pt. 1, *Tennant v. Smallwood*, 211 W. Va. 703, 568 S.E.2d 10 (2002). *See also Payne v. Weston*, 195 W. Va. 502, 506-07, 466 S.E.2d 161, 165-66 (1995)("The interpretation of an insurance contract . . . is a legal determination which . . . is reviewed *de novo* on appeal." (citation omitted)). Recognizing our plenary review, we turn now to the issues presented in the instant appeal.

III.

DISCUSSION

The primary issue on appeal is whether the circuit court erred by applying Ohio law to determine the scope of coverage available, if any, under the motorcycle policy, the homeowner's policy and the umbrella policy issued to Mr. Howe, an Ohio resident, to insure risks principally arising in the State of Ohio, for injuries sustained by Appellant, Mr. Howe's wife, during a motorcycle accident occurring in the State of West Virginia in September 2000. The parties agree that if Ohio law applies, coverage does not exist under the policies for Appellant's claims. Thus, we begin our discussion, as we must, with a review of our law governing the resolution of conflicts of law applicable to questions of insurance coverages.

This Court has repeatedly recognized that questions of policy *coverage* as

opposed to *liability* are governed by conflicts of law principles applicable to contracts. *Lee v. Saliga*, 179 W. Va. 762, 766, 373 S.E.2d 345, 349 (1988); *Liberty Mut. Ins. Co. v. Triangle Indus., Inc.*, 182 W. Va. 580, 583, 390 S.E.2d 562, 565 (1990); *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 334, 424 S.E.2d 256, 261 (1992). Our general rule with respect to conflicts of law was set forth within Syllabus Point 2 of *General Electric Co. v. Keyser*, 166 W. Va. 456, 275 S.E.2d 289 (1981), wherein we held:

> "'The law of the state in which a contract is made and to be performed governs the construction of a contract when it is involved in litigation in the courts of this state'. Syl. pt. 1 (in part) *Michigan National Bank v. Mattingly*, W. Va., 212 S.E.2d 754 (1975)."

In *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988), we modified this general rule when addressing coverage available under a motor vehicle policy of insurance and adopted a modified modern "more significant relationship" test, which combines the principles set forth in Sections 6 and 193 of the Restatement (Second) of Conflict of Laws with our prior case law. The "more significant relationship" test adopted in *Lee* provides that "[t]he provisions of a motor vehicle policy will ordinarily be construed according to the laws of the state where the policy was issued and the risk insured was principally located, unless another state has a more significant relationship to the transaction and the parties." Syl. Pt. 2, *Lee*.

Though not presented with a public policy argument in *Lee*, we acknowledged a conflicts of law principle which permits a state to ignore the law of another state where that law is contrary to the state's own public policy. *Lee*, 179 W. Va. at 770, 373 S.E.2d at 353,

n. 19. Four years later, in *Nadler v. Liberty Mutual Fire Insurance Company*, 188 W. Va. 329, 424 S.E.2d 256 (1992), we squarely addressed the effect an argument that application of a foreign jurisdiction's law violates our public policy has on a conflicts of law analysis. In *Nadler*, we held:

> Where a choice of law question arises with regard to the interpretation of coverage provisions in a motor vehicle insurance policy executed in another state, the public policy considerations inherent in the fact that the substantive law of the other state differs from our own will ordinarily be adequately addressed by application of the significant relationship conflict of laws test enunciated in Syllabus Point 2 of *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988).

Syl. Pt. 4, *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992).

Both *Lee* and *Nadler* involved the interpretation of motor vehicle insurance policies entered into in foreign jurisdictions. In those cases, we considered the importance of promoting the parties' reasonable expectations when entering into an insurance contract in formulating our rules governing the interpretation of coverage under foreign motor vehicle insurance policies. *Lee*, 179 W. Va. at 768-69, 373 S.E.2d at 351-2; *Nadler*, 188 W. Va. at 337, 424 S.E.2d at 264. In *Lee*, we looked to such factors as the residency of the parties, the principle location of the risk insured and where the policy was issued to determine the parties' reasonable expectations and noted:

> The usual coincidence of the insurance agent, insured, and the risk in the same state dictates that the parties would be more familiar with that state's insurance statutes, which often supplement or control the policy provisions. This law should

> control the reasonable expectation[s] of the parties, rather than that of another state whose only connection to the dispute is the fortuity that the accident occurred there.

Lee, 179 W. Va. at 769, 373 S.E.2d at 352. Implicit in our analysis was the recognition that a motor vehicle may engage in interstate travel and that the coverage provided under the policy insuring the motor vehicle should not vary according to the state where the vehicle may happen to be located at the time of an accident. We did, however, provide an exception to the general rule of applying the law of the state where the policy was issued and the risk insured was principally located where another state has a more significant relationship to the transaction and the parties.

In the instant matter, we are not presented with a motor vehicle insurance policy, but with a motorcycle insurance policy, a homeowner's insurance policy and an umbrella policy. A motorcycle insurance policy is very similar to a motor vehicle policy such as those at issue in *Lee* and *Nadler*. Both insure a motorized method of transportation, one with two wheels, the other with four. Therefore, we believe the reasoning supporting the conflicts of law principles announced in *Lee* and *Nadler* governing motor vehicle insurance policies is equally applicable to motorcycle insurance policies.

As noted, in formulating the conflicts of law analysis applicable to motor vehicle policies, we have focused primarily upon the reasonable expectations of the parties when entering the contract for insurance. We believe the reasoning underlying the adoption

of our conflicts of law analysis in *Lee* is stronger when considering the reasonable expectations of the parties in entering a contract for homeowner's insurance. Unlike a motor vehicle or motorcycle policy, which principally insure movable methods of transportation, a homeowner's insurance policy principally insures an immovable object, a home, and liability arising from the ownership thereof. Likewise, the purpose of a personal liability umbrella policy is to insure against liabilities incurred which exceed the limits of coverage available under motor vehicle and homeowner's insurance policies. If the parties can reasonably expect that the law of the state where a motor vehicle or homeowner's insurance policy is issued would govern the interpretation of available coverages under the policies, it is equally reasonable for the parties to expect the same law to govern the interpretation of coverage afforded under a personal liability umbrella insurance policy, a policy which ordinarily affords coverage which is excess to that afforded under the motor vehicle and homeowner's policies. Thus, we see no reason to distinguish between the conflicts of law principles applicable to interpretations of coverages available under motor vehicle policies of insurance, motorcycle policies of insurance, homeowner's policies of insurance and personal liability umbrella policies of insurance in light of the parties' reasonable expectations. Accordingly, we now hold that the conflicts of law principles announced in Syllabus Point 2 of *Lee v. Saliga*, 179 W. Va. 762, 373 S.E.2d 345 (1988) and Syllabus Point 4 of *Nadler v. Liberty Mut. Fire Ins. Co.*, 188 W. Va. 329, 424 S.E.2d 256 (1992), applicable to the interpretation of coverage under a motor vehicle insurance policy are also applicable to the interpretation of coverage under a motorcycle insurance policy, a homeowner's

insurance policy and/or a personal liability umbrella insurance policy.[7]

Thus, the circuit court correctly invoked the principles announced in *Lee* and *Nadler* to determine that Ohio has a more significant relationship to the parties and transactions at issue. Both Appellant and her husband were (and continue to be) Ohio residents, the policies of insurance at issue were all issued in the State of Ohio to insure risks principally located in the State of Ohio and there is no question relating to a West Virginia resident's liability or ability to collect a judgment. The only relationship West Virginia has to the parties or transactions at issue is the "mere fortuity" that the accident at issue occurred within our borders.[8] Clearly, as admitted by Appellant, Ohio has a more significant

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[7] We also note the similarity of this holding to that in *Liberty Mutual Insurance Company v. Triangle Industries, Inc.*, 182 W. Va. 580, 380 S.E.2d 562 (1990), which involved the law applicable to interpretation of coverage under an insurance contract made in one state to be performed in another and adopted a test similar to that announced in *Lee* and *Nadler*. In the Syllabus of *Liberty Mutual*, we held:

> In a case involving the interpretation of an insurance policy, made in one state to be performed in another, the law of the state of the formation of the contract shall govern, unless another state has a more significant relationship to the transaction and the parties, or the law of the other state is contrary to the public policy of this state.

[8] The underlying facts of this case are strikingly similar to those presented in *Nadler* where we upheld the application of Ohio law in determining the scope of underinsured motorists coverage available under a motor vehicle policy of insurance. In *Nadler*, we noted:

> It is apparently undisputed that Ohio has the more significant relationship with the parties and the transaction at issue in this case. The plaintiffs and their decedents were residents of Ohio

relationship to the coverage issues presented. Having recognized the significance of Ohio's interest in the resolution of the coverage issues under Ohio law, we must address Appellant's argument that Ohio law violates our public policy.

Appellant admits the "'household' exclusion is valid and enforceable under Ohio law." Appellant urges this Court to reject application of Ohio law as contrary to our public policy. In order to prevail on this argument, Appellant must demonstrate more than a mere difference in substantive law. As we held in *Nadler*:

> The mere fact that the substantive law of another jurisdiction

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> at the time of the accident. The insurance policy in question was issued in Ohio, and it appears that the vehicles covered thereby were registered and garaged in Ohio. In the absence of evidence to the contrary, we can assume that Ohio was "the principal location of the insured risk during the term of the policy." Rest. (Second) Conflict of Laws § 193.
>
> By comparison, the parties' contacts with West Virginia were minor. The accident occurred here, and the owner and driver of the truck were West Virginia residents. These occurrences, however, have no bearing on the extent of the coverage afforded the plaintiffs under the terms of their insurance contract issued in Ohio. Upon these facts, we conclude that the parties reasonably expected the law of Ohio to control the interpretation of the insurance contract rather than the law of West Virginia, "whose only connection to the dispute is the fortuity that the accident occurred there." *Lee v. Saliga*, 179 W. Va. at 769, 373 S.E.2d at 352. *See Johnson v. Neal*, 187 W. Va. 239, 418 S.E.2d 349 (1992); *Liberty Mut. Ins. Co. v. Triangle Indus., Inc.*, *supra.*

Nadler, 188 W. Va. at 335, 424 S.E.2d at 262. However, in the instant matter, unlike *Nadler*, no West Virginia residents were involved in the underlying accident.

> differs from or is less favorable than the law of the forum state does not, by itself, demonstrate that application of the foreign law under recognized conflict of laws principles is contrary to the public policy of the forum state.

Syl. Pt. 3, *Nadler*.

Appellant cannot point to any decision of this Court that declares "household" exclusions are a violation of West Virginia public policy. Indeed, none exist. Nor does she address or acknowledge prior decisions of this Court *upholding* similar family use exclusions as valid and not against the public policy of this State in the context of underinsured motorist coverage. *See* Syl. Pt. 2, *Thomas v. Nationwide Mut. Ins. Co.*, 188 W. Va. 640, 425 S.E.2d 595 (1992); Syl. Pt. 4, *Cantrell v. Cantrell*, 213 W. Va. 372, 582 S.E.2d 819 (2003)(per curiam). Instead, Appellant primarily relies upon our decision in *Paul v. National Life*, 177 W. Va. 427, 352 S.E.2d 550 (1986), for the proposition that West Virginia has a strong public policy in favor of compensating persons injured by the negligence of others. While Appellant is correct that *Paul* does recognize such a public policy, she takes the holding of *Paul* too far and fails to acknowledge the distinction between *precluding liability* and *excluding coverage*.

In *Paul*, we held that foreign automobile guest passenger statutes, which operate to immunize a tortfeasor from liability, violate the public policy of this State and will not be applied in our courts. Syl. Pt. 2, *Paul*. *Paul* involved *West Virginia residents* who

were killed in a single vehicle automobile accident in Indiana. The estate of the passenger brought a wrongful death action against the driver's estate in West Virginia. The estate raised Indiana's guest passenger statute, which immunized a driver from liability for the injury death of a passenger in the vehicle. This Court, relying on our abolition of tort immunities in various circumstances, refused to apply the statute based on our strong public policy against providing tort immunity. *Paul*, 177 W. Va. at 433-34, 352 S.E.2d at 556. Specifically, we stated "It is the strong public policy of this State that persons injured by the negligence of another should be able to recover in tort." *Id.* at 433, at 556. *Paul* simply did not involve the issue of insurance coverage to facilitate such recovery. In the instant matter, application of Ohio law does not immunize Mr. Howe from liability. Instead, application of Ohio law merely precludes coverage for Mr. Howe's liability under the various policies of insurance. The ability to collect insurance proceeds does not diminish his liability.

We likewise reject Appellant's argument that Informational Letter No. 140 promulgated by the West Virginia Insurance Commissioner in 2002 evidences a strong public policy against "household" exclusions in policies of insurance. In Informational Letter No. 140, the Insurance Commissioner declared "household" exclusions in automobile liability insurance policies void up to the mandatory policy limits set forth in W. Va. Code § 33-6-31. The letter went on to recognize the potential validity of the exclusions in some circumstances not involving mandatory liability limits. Thus, we do not see how this letter evidences the strong public policy suggested by Appellant.

This Court does not take a request to invoke our public policy to avoid application of otherwise valid foreign law lightly. As we stated in *Nadler*:

> We adhere to the general principle that a court should not refuse to apply foreign law, in otherwise proper circumstances, on public policy grounds unless the foreign law is contrary to pure morals or abstract justice, or unless enforcement would be of evil example and harmful to its own people.

Id. at 338, at 265 (internal citations and quotations omitted). Appellant has not demonstrated the strong public policy necessary to avoid application of Ohio law in this matter. Therefore, we affirm the decision of the Circuit Court of Marion County to apply Ohio law in determining the scope of coverages available under the various policies of insurance.

We summarily dispose of Appellant's second assignment of error. Appellant argues the circuit court erred in denying coverage under the homeowner's policy based upon the motor vehicle exclusion. However, Appellant acknowledges that the homeowner's policy also included a "household" exclusion not addressed by the circuit court. Because we find the circuit court correctly applied Ohio law to enforce the "household" exclusions in the motorcycle and umbrella policies, we likewise conclude that the "household" exclusion contained within the homeowner's policy would preclude coverage for Appellant's claims.[9]

[9] We have long held that we "may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." Syl. Pt. 3, *Barnett v. Wolfork*, 149 W. Va. 246, 140 S.E.2d 466 (1965). Thus, the failure of the circuit court to address the "household" exclusion in the homeowner's policy does not preclude us from finding the policy's "household" exclusion precludes

Thus, we need not address the propriety of the circuit court's ruling on the motor vehicle exclusion's application to Appellant's negligent entrustment claims as coverage does not exist under the homeowner's policy due to the "household" exclusion.

IV.

CONCLUSION

Upon plenary review of the issues presented, we find the Circuit Court of Marion County did not err in its application of Ohio law and its finding that the various policies of insurance at issue do not afford coverage for Appellant's claims against her husband. Accordingly, we affirm the Circuit Court of Marion County's July 20, 2004 Opinion Order Denying in Part Plaintiff's Motion for Summary Judgment on the Declaratory Judgment Action and Granting in Part American Standard Insurance Company of Ohio and American Family Insurance Company's Motion for Summary Judgment.

AFFIRMED

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coverage under Ohio law for Appellant's injuries as the issue was raised and briefed by the parties below.