



## Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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### Pennsylvania Supreme Court Again Enforces The Household Vehicle Exclusion, This Time Where The Same Carrier Insured All Vehicles Owned By The Claimant

The "household vehicle" exclusion is a common provision in uninsured motorist/ underinsured motorist ("UM/UIM") policies. It precludes the payment of UM/UIM benefits to a claimant injured while occupying a motor vehicle owned by someone in the claimant's household, but not insured for UM/UIM coverage on the policy from which he seeks benefits. Time and again the exclusion has been enforced by Pennsylvania's appellate courts, on the basis that it is plainly worded and does not violate public policy. Rather, it promotes a legitimate public policy as it prevents insurers from exposure to risks for which it did not collect a premium.

The most recent attack on the household vehicle exclusion came in *GEICO v. Ayers*, where the claimant's attorneys emphasized that GEICO insured both the motorcycle the claimant was occupying at the time of the injury and the other household vehicles, although on separate policies. The Superior Court found in GEICO's favor, and the Supreme Court allowed an appeal. Specifically, the Supreme Court of Pennsylvania agreed to decide the following question:

Does the application of a household vehicle exclusion violate Section 1738 of the Motor Vehicle Financial Responsibility Law ("MVFRL"), where the same insurance company insures all vehicles owned by an insured, and where the exclusion denies inter-policy stacking to the insured who has paid for stacking and has not executed a stacking waiver?

This Court addressed a very similar issue in 2008 in *Erie Insurance Exchange v. Baker*, 972 A.2d 507 (Pa. 2008), except in *Baker* Erie did not insure both vehicles. (MacDonald Illig successfully represented Erie Insurance in the *Baker* case.)

On April 28, 2011, the Supreme Court published its decision in *GEICO v. Ayers*, No. 26 WAP 2010, 2011 Pa. LEXIS 1021 (Pa. 2011). Only six justices participated. The six were evenly divided. Chief Justice Castille and Justices Saylor and Eakin voted in favor of enforcing of the exclusion, and thus to affirm the Superior Court's decision, while Justices Baer, Todd and McCaffery voted to reverse. In the case of an evenly divided Court, the order of the lower court is affirmed. Therefore, the Superior Court's decision in favor of GEICO remains in force.

In his Opinion in Support of Affirmance, Justice Saylor pointed out that in cases where the household exclusion precludes the extension of UM/UIM benefits from an auto policy to a motorcycle insured on a different policy, the exclusion is justified and should be enforced. He cited the aforementioned *Erie v. Baker* case, as well as the decisions in *Alderson v. Nationwide Mutual Insurance Co.*, 884 A.2d 288 (Pa. Super. 2005) and *Nationwide Mutual Insurance Co. v.*

*Roth*, 252 Fed. Appx. 505 (3d Cir. 2007). Justice Saylor did say that he would "disapprove utilization by an insurer of separate policies pertaining to multiple vehicles within the same household solely to subvert inter-policy stacking without any risk-based justification." This has been a concern of those who have attacked the household vehicle exclusion, but to our knowledge no evidence has been presented to any Pennsylvania court to suggest that insurers have made it a practice to insure multiple family vehicles on separate policies simply to avoid the stacking of coverages. To the contrary, insurers have legitimate ratings reasons to write vehicles on separate policies.

For further information about the *GEICO v. Ayers* decision or other Pennsylvania Motor Vehicle Financial Responsibility Law issues, contact Craig Murphey or any other lawyer with MacDonald Illig's Insurance Practice Group.

**For more information:**

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