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Rush v. Erie Ins. Exch.

Supreme Court of Pennsylvania

May 23, 2023, Argued; January 29, 2024, Decided

No. 77 MAP 2022

Reporter
2024 Pa. LEXIS 123 *; 308 A.3d 780; 2024 WL 316407

MATTHEW RUSH AND KATHLEEN MCGROGAN-RUSH, Appellees v. ERIE INSURANCE EXCHANGE, Appellant

Prior History: [*1] Appeal from the Order of the Superior Court dated October 22, 2021 at No. 1443 EDA 2020 Affirming the Order of the Northampton County Court of Common Pleas, Civil Division, dated June 26, 2020 at No. C-48-CV-2019-01979.

Rush v. Erie Ins. Exch., 2021 PA Super 215, 265 A.3d 794, 2021 Pa. Super. LEXIS 646, 2021 WL 4929434 (Pa. Super. Ct., Oct. 22, 2021)

Core Terms

coverage, insured, regular use, stacked, household, portability, benefits, public policy, policies, regular-use, violates, motorcycle, motor vehicle, universal, invalid, automobile policy, circumstances, decisions, non-owned, insurance policy, underinsured, waive, insurance company, unknown risk, limits, void, plain language, unenforceable, provisions, regularly

Case Summary

Overview
HOLDINGS: [1]-Where a detective sustained serious injuries following a motor vehicle accident, the Pennsylvania Supreme Court held that the "regular use" exclusion was a permissible limitation of UIM coverage under the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7; [2]-With decades of reliance by insureds and insurers and no justification to allow the supreme court to depart from decades of established law, the court maintained its course unless and until the General Assembly or the Insurance Department should act in a way that would suggest the court do otherwise.

Outcome
Order reversed.

LexisNexis® Headnotes

Insurance Law > ... > Motor Vehicle Insurance > Coverage > Underinsured Motorists

Torts > ... > Motor Vehicles > Particular Actors, Circumstances, & Liabilities > Personal Vehicle Operators & Owners

HN1[] **Coverage, Underinsured Motorists**

Underinsured motorist coverage is designed to protect the insured and his additional insureds from the risk that a negligent driver of another vehicle will cause injury to the insured or his additional insureds and will have inadequate coverage to compensate for the injuries caused by his negligence.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN2[] **Standards of Review, De Novo Review**

Where the issue presented is one of pure law. The court's scope of review is plenary and the court's standard of review is de novo.

Contracts Law > Contract Interpretation > Intent

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Judicial Review

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Unambiguous Terms

HN3[] Contract Interpretation, Intent

When reviewing an insurance policy, the court applies general principles of contract interpretation in order to ascertain the intent of the parties as manifested by the terms used in the written insurance policy. However, insurance contract provisions are invalid and unenforceable if they conflict with statutory mandates, as contracts cannot violate existing statutory law. Even clear and unambiguous insurance policy language may conflict with an applicable statute. In such situations, the superior court cannot give effect to the contractual provision.

Insurance Law > ... > Coverage > Underinsured Motorists > Liens & Setoffs

Insurance Law > ... > Coverage > Underinsured Motorists > Mandatory Coverage

Insurance Law > ... > Coverage > Uninsured Motorists > Mandatory Coverage

Insurance Law > ... > Coverage > Underinsured Motorists > Rejection of Coverage

Insurance Law > ... > Coverage > Uninsured Motorists > Rejection of Coverage

HN4[] Underinsured Motorists, Liens & Setoffs

The Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S. §§ 1701-1799.7, is comprehensive legislation governing the rights and obligations of the insurance company and the insured under liability insurance policies covering motor vehicles. The provisions of the MVFRL pertaining to the required scope of coverage and content of automobile insurance policies, and benefits payable thereunder, impose mandatory obligations applicable to all automobile insurance providers in the Commonwealth of Pennsylvania. 75 Pa.C.S. § 1731 governs the scope of underinsured motorist coverage (UIM) coverage. 75 Pa.C.S. § 1731 provides, in relevant part, that absent a voluntary rejection of coverage, UIM 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 therefore from owners or operators of underinsured motor vehicles. 75 Pa.C.S. § 1731(c). Insurers in Pennsylvania are obligated to offer UIM coverage to their customers. However, to afford insurers more control over the costs of insurance, the General Assembly made the purchase of uninsured/underinsured motorist (UM/UIM) coverage optional when it passed the MVFRL.

Insurance Law > ... > Coverage > Uninsured Motorists > Mandatory Coverage

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Regular Use

Insurance Law > ... > Coverage > Compulsory Coverage > Proof of Financial Responsibility

Insurance Law > ... > Coverage > Underinsured Motorists > Mandatory Coverage

HN5[] Uninsured Motorists, Mandatory Coverage

A "regular use" exclusion, presents the type of circumstances in which an insurer may not be required to provide underinsured motorist coverage benefits to the insured. That is, of course, contingent upon whether the exclusion violates the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7.

Insurance Law > ... > Coverage > No Fault Coverage > Loss of Earnings

Transportation Law > Private Vehicles > Operator Licenses > Infirmities

Insurance Law > ... > Coverage > Compulsory Coverage > Proof of Financial Responsibility

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > Medical Benefits

HN6[] No Fault Coverage, Loss of Earnings

The Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7, defines "first party benefits" as medical benefits, income loss benefits, accidental death benefits and funeral benefits. 75 Pa.C.S. § 1702 (Benefits or First party benefits). Such benefits are recovered in the following priority: (1) for a named insured, the policy on which he is the named insured; (2) for an insured, the policy covering the

insured; and (3) for the occupants of an insured motor vehicle, the policy on that motor vehicle. 75 Pa.C.S. § 1713 (Source of benefits).

Contracts Law > Contract Interpretation

Evidence > Burdens of Proof > Allocation

Contracts Law > Defenses > Public Policy Violations

HN7[] Contracts Law, Contract Interpretation

A challenger who asserts that clear and unambiguous contract provisions are void as against public policy carries a heavy burden of proof. This is because public policy is more than a vague goal which may be used to circumvent the plain meaning of the contract. Nevertheless, while the supreme court is wary to declare contractual language invalid as against public policy, the court is obliged to find contractual language to be contrary to public policy when it violates statutory language. Thus, stipulations in a contract of insurance in conflict with, or repugnant to, statutory provisions which are applicable to, and consequently form a part of, the contract, must yield to the statute, and are invalid, since contracts cannot change existing statutory laws. However, public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest. Thus, while decisions resolving public policy and those solely construing statutory text may, at times, present distinct questions and analyses, even when addressing questions of public policy, the court must look to the law and the relevant statutory language.

Insurance Law > ... > Coverage > Underinsured Motorists > Mandatory Coverage

Insurance Law > ... > Coverage > Underinsured Motorists > Rejection of Coverage

Insurance Law > ... > Coverage > Underinsured Motorists > Stacking Provisions

HN8[] Underinsured Motorists, Mandatory Coverage

An insured can waive the ability to stack underinsured motorist coverage.

Insurance Law > ... > Coverage > Uninsured Motorists > Mandatory Coverage

Insurance Law > ... > Coverage > Compulsory Coverage > Proof of Financial Responsibility

Insurance Law > ... > Coverage > Underinsured Motorists > Mandatory Coverage

HN9[] Uninsured Motorists, Mandatory Coverage

Only "first party benefits," which are explicitly defined in the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7, can follow the person, as demonstrated by its statutorily prescribed priority of coverage. The same is simply not true of underinsured motorist coverage. It is not defined as a first party benefit, nor does it follow the person in all circumstances based on 75 Pa.C.S. § 1733's priority of recovery.

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For Pennsylvania Association for Justice, Amicus Curiae: George Gerasimos Rassias, Schmidt, Kirifides & Rassias, PC, Media, PA.

For Insurance Federation of Pennsylvania Inc., et al., Amicus Curiae: Peter James Speaker, Thomas, Thomas & Hafer, LLP, Pittsburgh, PA; Louis C. Long, Thomas, Thomas & Hafer LLP, Pittsburgh, PA.

Judges: TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ. Chief Justice Todd and Justice Dougherty join the opinion. Justice Wecht files a concurring opinion. Justices Mundy and Brobson did not participate **[*2]** in the consideration or decision of this matter.

Opinion by: DONOHUE

Opinion

JUSTICE DONOHUE

This appeal requires the Court to determine whether a "regular use" exclusion contained in a motor vehicle insurance policy violates the express language of the Motor Vehicle Financial Responsibility Law ("MVFRL").[1] We hold that as presented in this case, the "regular use" exclusion does not violate the MVFRL. Thus, we reverse the order of the Superior Court.

I. Background

Matthew Rush is a detective for the City of Easton ("City"). On November 28, 2015, Rush sustained serious injuries following a motor vehicle accident in which two drivers crashed into his unmarked 2010 Ford Fusion police car ("Ford"). The Ford was owned by the City's police department and was insured under the City's Business Auto Policy/Fleet Auto Policy issued by Travelers Insurance ("City's Policy"), providing for, inter alia, $35,000 in underinsured motorist coverage ("UIM").[2]

Rush and his wife (collectively, the "Insureds") owned three personal vehicles on two insurance policies through Erie Insurance ("Erie"). The Insureds paid for stacked UIM coverage on both policies ("Erie Policies"). The first policy provided for $250,000 of UIM coverage on one vehicle and the second policy provided for $250,000 **[*3]** of UIM coverage stacked on the other two vehicles. The Erie Policies both included identical "regular use" exclusion clauses, which limited the scope of UIM coverage under the policies. Specifically, under the "regular use" exclusion, UIM coverage does not apply to

> Bodily injury to "you" or a "resident" using a non-owned "motor vehicle" or a "non-owned" miscellaneous vehicle which is regularly used by "you" or a "resident," but not insured for uninsured [("UM")] or [UIM] Coverage under this policy.

Trial Court Opinion, 6/26/2020, at 3. The parties have agreed that the Insureds did not own or insure the Ford on their Erie Policies, and that Rush regularly used the car for work.

The insurance companies for the other drivers and the City provided Insureds with their policy limits. However, because Rush's injuries and damages exceeded the liability insurance limits of the tortfeasors and the UIM coverage limits of the City's Policy, the Insureds subsequently filed a claim for UIM benefits under the Erie Policies. Erie denied coverage based on the "regular use" exclusion.

On March 7, 2019, the Insureds commenced the underlying declaratory judgment action in the Northampton County Court of Common **[*4]** Pleas, seeking a determination of whether Erie can limit the scope of its UIM coverage through the "regular use" exclusion. On December 9, 2019, the parties filed cross-motions for summary judgment. On June 26, 2020, the trial court entered partial summary judgment in favor of the Insureds, holding that the "regular use" exclusion in the Erie Policies violates the MVFRL. Trial Court Order, 6/26/2020, at 1. Erie appealed to the Superior Court, which unanimously affirmed the trial court's order in a published opinion. *Rush v. Erie Ins. Exch., 2021 PA Super 215, 265 A.3d 794 (Pa. Super. 2021)*.

In its opinion, the Superior Court observed that *Section 1731 of the MVFRL* governs the scope of UIM coverage in Pennsylvania. *Id. at 796* (citing *75 Pa.C.S. § 1731*).[3]

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[1] *75 Pa.C.S. §§ 1701-1799.7*.

[2] *HN1*[↑] UIM coverage is designed "to protect the insured (and his additional insureds) from the risk that a negligent driver of another vehicle will cause injury to the insured (or his additional insureds) and will have inadequate coverage to compensate for the injuries caused by his negligence." *Paylor v. Hartford Ins. Co., 536 Pa. 583, 640 A.2d 1234, 1236 (Pa. 1994)*.

[3] *Section 1731* provides in relevant part:

> **(a) Mandatory offering.**--No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto in amounts as provided in *section 1734* (relating to request for lower limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.
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> * * *
>
> **(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 **[*6]** 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

Specifically, it highlighted that *Section 1731(c)* provides that "absent a rejection of coverage, insurers shall provide UIM coverage that 'protect[s] 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.'" *Id.* (citing *75 Pa.C.S. § 1731(c)*). Based upon this language, the Superior Court concluded that *Section 1731(c)* "mandates" insurers to provide coverage when the insured: (1) suffers injuries arising out of the maintenance or use of a motor vehicle, (2) is legally entitled **[*5]** to recover damages from the at-fault underinsured driver; and (3) has not rejected UIM benefits by signing a valid rejection form. *Id. at 796-97*.

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does not have enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.

Signature of First Named Insured

—

Date

—

(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)* **[*7]** shall be precluded from claiming liability of any person based upon inadequate information.

(d) Limitation on recovery.--

(1) A person who recovers damages under uninsured motorist coverage or coverages cannot recover damages under underinsured motorist coverage or coverages for the same accident.

(2) A person precluded from maintaining an action for noneconomic damages under *section 1705* (relating to election of tort options) may not recover from uninsured motorist coverage or underinsured motorist coverage for noneconomic damages.

75 Pa.C.S. § 1731.

The Superior Court further emphasized that *Section 1731* defines the scope of UIM coverage broadly, as such coverage is required whenever an insured suffers injuries "arising out of the ... use of **a** motor vehicle." *Id. at 797* (quoting *75 Pa.C.S. § 1731(c)*) (emphasis in original) (internal quotations omitted). According to the court, *Section 1731* considers neither the owner of the vehicle nor the frequency with which the insured uses it. *Id.* The Superior Court concluded that the "regular use" exclusion conflicts with the broad language of *Section 1731(c)*'s coverage mandate because it limits "the scope of UIM coverage required by *Section 1731* by precluding coverage if an insured is injured while using a motor vehicle that the insured regularly uses but **[*8]** does not own." *Id.*

Additionally, the court rejected Erie's reliance on this Court's decision in *Williams v. GEICO Government Employees Insurance Co., 32 A.3d 1195, 613 Pa. 113 (2011)*, in which we addressed "whether the regular-use exclusion, as applied to a state trooper is void as against a public policy that favors protecting first responders." *Id. at 1199*. According to the intermediate appellate court, in *Williams*, this Court held that a state trooper did not meet his burden of establishing that the "regular use" exclusion violated the public policy supporting the MVFRL. *Rush, 265 A.3d at 797* (citing *Williams, 32 A.3d at 1206*). Although the Superior Court observed that the *Williams* Court stated that the "regular use" exclusion clause in that case did not violate the express terms of the MVFRL, the Superior Court determined that this comment in *Williams* constituted non-binding dicta[4] because it was not subsumed by the issue granted for review. *Id. at 797-98*. Moreover, the Superior Court observed that in reaching its conclusion, the *Williams* Court relied upon *Erie Insurance Exchange v. Baker, 601 Pa. 355, 972 A.2d 507 (Pa. 2008)* (plurality) (upholding the validity of the household vehicle exclusion to preclude UIM coverage), which this Court abrogated in *Gallagher v. GEICO Indemnity Co., 650 Pa. 600, 201 A.3d 131 (Pa. 2019)*.

Erie filed a petition for allowance of appeal of the Superior Court's decision, which we granted to address the following **[*9]** issue, as phrased by Erie:

> Whether the decision of the three-judge panel of the Superior Court is in direct conflict with the Pennsylvania Supreme Court decisions in *Burstein v. Prudential Prop.*

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[4] *Obiter dictum*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).").

> *& Cas. Ins. Co., 570 Pa. 177, 809 A.2d 204 (Pa. 2022)* and *Williams v. GEICO Gov't Emps. Ins. Co., 613 Pa. 113, 32 A.3d 1195 (Pa. 2011)*, and whether the Superior Court erred as a matter of law by finding that the "regular use exclusion" contained in Pennsylvania auto insurance policies violates the [MVFRL]?

Rush v. Erie Ins. Exch., 281 A.3d 298 (Pa. 2022) (per curiam).

II. Parties' Arguments

Erie's Arguments

In its brief to this Court, Erie argues that by finding that a "regular use" exclusion violates the MVFRL, the Superior Court has disregarded decades of precedent. Erie's Brief at 12-13. According to Erie, the first time this Court considered the validity of the "regular use" exception was in *Burstein v. Prudential Property & Casualty Insurance Co., 570 Pa. 177, 809 A.2d 204 (Pa. 2002)*, wherein the Court held that the "regularly used, non-owned car exclusion and its contractual restraint on UIM portability comport with the underlying policies of the MVFRL." Erie's Brief at 15 (quoting *Burstein, 809 A.2d at 210*). Nine years later, this Court reaffirmed *Burstein* in *Williams*, wherein this Court rejected a claimant's challenge that a "regular use" exclusion violated *75 Pa.C.S. § 1731*. Erie insists that *Burstein* and *Williams* remain controlling law. Erie's Brief at 15-17.

Erie proceeds to argue that the Superior Court misunderstood and **[*10]** misapplied the controlling precedent, highlighting that the court ignored *Burstein* and its progeny. *Id.* at 18. This, it emphasizes, is demonstrated by the intermediate appellate court's suggestion that the issue before it was one of "first impression," wholly ignoring *Burstein* and "inexplicably label[ing]" this Court's finding regarding "regular use" exclusions in *Williams* as dicta. *Id.* at 18-19. Erie insists that the language in *Williams* does not constitute dicta because the claimant in that matter "expressly argued that the 'regular use exclusion' violates *75 Pa.C.S. § 1731*." *Id.* at 20 (citing *Williams, 32 A.3d at 1199*). The Superior Court's labeling *William*'s finding as dicta, according to Erie, was erroneous and disregarded the principles of stare decisis. *Id.* at 23.

Building on this premise, Erie argues that the Superior Court incorrectly questioned whether *Williams* was overruled by *Gallagher*, as *Gallagher* dealt with a "household exclusion," not a "regular use" exclusion, and involved different facts. *Id.* at 24-25. As Erie argues, *Gallagher* said nothing about *Section 1731*, as it dealt specifically with *Section 1738 of the MVFRL*, i.e., the stacking provision. *Id.* at 25. To Erie, the only explanation for the Superior Court's reasoning is that *Gallagher* essentially **[*11]** overruled *Baker*, and the *Williams* Court relied on *Baker* in finding that a "regular use" exclusion did not violate the MVFRL. *Id.* at 25-26. Erie argues that the Superior Court's conclusion that *Gallagher* overruled *Williams* sub silentio "necessitates multiple logical leaps that ignore the verbiage of both *Williams* and *Gallagher* entirely." *Id.* at 25. Further, Erie asserts that the Superior Court overstated the *Williams* Court's reliance on *Baker*, as *Baker* was merely cited as an example of a case where a different exclusion had been upheld as valid against arguments concerning violations of unrelated statutory provisions. *Id.* at 26. Thus, in Erie's view, *Baker* being overruled has no bearing on the validity of *Williams*.

Erie then takes the position that the Superior Court misapplied *Section 1731 of the MVFRL*, accusing the court of "conjur[ing] a three-prong test" from the language of *Section 1731*.[5] *Id.* at 27. According to Erie, this is a misapprehension of the language of the statute and its underlying policy goals. *Id.* at 28. It is Erie's position that the Superior Court conflated *Section 1731*'s requirements that insurers offer UIM coverage in the policies it issues with a requirement that insurers are mandated to pay such coverage in every **[*12]** circumstance. *Id.* at 31. Erie, however, asserts that that the statute does not even remotely suggest that if a person purchases UIM coverage, it must be paid regardless of the circumstances. *Id.* at 32. As Erie contends, "UM/UIM benefits are offered and purchased, [and] they are recoverable absent valid limitations and exclusions, including the 'regular use exclusion.'" *Id.* at 33.

Erie then highlights that in *Hall v. Amica Mutual Insurance Co., 538 Pa. 337, 648 A.2d 755 (Pa. 1994)*, this Court explained "that the mere absence of an exclusion within the MVFRL does not serve to invalidate it." Erie's Brief at 34 (citing *Hall, 648 A.2d at 759*). In other words, the MVFRL

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[5] As Erie states the Superior Court's test:

> [I]n order for payment of such benefits to become mandatory, regardless of policy provisions or exclusions, an insured must demonstrate that they:
>
> (1) have suffered injuries arising out of the maintenance or use of a motor vehicle;
>
> (2) be legally entitled to recover damages from the at-fault underinsured driver; and
>
> (3) have not rejected UIM coverage by signing a valid rejection form.

Erie's Brief at 27.

allows insurers to set forth exclusions in policies, so long as they do not conflict with express statutory mandates. *Id.* at 34-35. With respect to the "regular use" exclusion, Erie asserts that, consistent with this Court's holdings, nothing **[*13]** in the MVFRL either precludes reasonable policy limitations such as the "regular use" exclusion from being administered or requires UM/UIM benefits to be paid under all circumstances. *Id.* at 37.

Erie then shifts its focus to the underlying purpose of *Section 1731*. According to Erie, the General Assembly added *Section 1731* to the MVFRL to make UM/UIM benefits optional, evincing a desire to cut the cost of automobile insurance. *Id.* at 40. In finding that *Section 1731* mandates UM/UIM coverage when elected and triggered, the Superior Court effectively created "unlimited and unmitigated risk to insurers not previously seen or recognized in the Commonwealth of Pennsylvania, or anywhere else for that matter." *Id.* Erie argues that the Superior Court's decision will incentivize insurers to raise premiums to cover the possibility that people can regularly drive non-owned cars with gratis UM/UIM coverage. *Id.* at 40-41.

Lastly, Erie points out that, throughout this litigation, the Insureds have challenged the "regular use" exclusion by invoking other provisions of the MVFRL, namely *Sections 1733*[6] and *1738*.[7] *Id.* at 47-48. As Erie explains, *Section 1733* addresses priority of recovery of UM/UIM coverage and the interplay between UM/UIM policies, and *Section 1738* is the stacking **[*14]** statute. *Id.* at 48. Erie submits that neither of these statutes are implicated in this case and further observes that the Superior Court appears to have reached this conclusion, as it did not address these statutes. *Id.* at 47-48.

Regarding *Section 1738*, Erie explains that, per this Court's decision in *Generette v. Donegal Mutual Insurance Co., 598 Pa. 505, 957 A.2d 1180 (Pa. 2008)*, when a claimant is a "guest passenger" occupying a non-owned vehicle, the concept of stacking under *Section 1738* is immaterial because guest passengers are not covered "insured" drivers for purposes of the statute. *Id.* at 50-53. Then focusing on *Section 1733*, Erie notes that the Insureds isolate the statutory phrase "payment shall be made" in arguing that the regular use

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[6] *Section 1733*, entitled "Priority of recovery," provides as follows:

> **(a) General rule.**--Where multiple policies apply, payment shall be made in the following order of priority:
>
> (1) A policy covering a motor vehicle occupied by the injured person at the time of the accident.
>
> (2) A policy covering a motor vehicle not involved in the accident with respect to which the injured person is an insured.
>
> **(b) Multiple sources of equal priority.**--The insurer against whom a claim is asserted first under the priorities set forth in *subsection (a)* shall process and pay the claim as if wholly responsible. The insurer is thereafter entitled to recover contribution pro rata from any other insurer for the benefits paid and the costs of processing the claim.

75 Pa.C.S. § 1733.

[7] *Section 1738*, entitled "Stacking of uninsured and underinsured benefits and option to waive," provides, in relevant part, as follows:

> **(a) Limit for each vehicle.**--When more than one vehicle is insured under one or more policies providing uninsured or underinsured motorist coverage, the stated limit for uninsured or underinsured coverage shall apply separately to each vehicle so insured. The limits of coverages available under this subchapter **[*15]** for an insured shall be the sum of the limits for each motor vehicle as to which the injured person is an insured.
>
> (b) **Waiver.**--Notwithstanding the provisions of *subsection (a)*, a named insured may waive coverage providing stacking of uninsured or underinsured coverages in which case the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured.
>
> **(c) More than one vehicle.**--Each named insured purchasing uninsured or underinsured motorist coverage for more than one vehicle under a policy shall be provided the opportunity to waive the stacked limits of coverage and instead purchase coverage as described in *subsection (b)*. The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.
>
> **(d) Forms.--**
>
> * * *
>
> **UNDERINSURED COVERAGE LIMITS**
>
> By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead, the limits of coverage that I am purchasing shall be reduced to the limits **[*16]** stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

75 Pa.C.S. § 1738.

exception violates *Section 1733* because it circumvents this mandatory language. *Id.* at 56-57. Erie argues that this premise leads to the same absurd results of voiding all exclusions and policy limits, undoing decades of precedent, an argument, Erie asserts, this Court has rejected on numerous occasions, including in *Burstein*. *Id.* at 57-58.

The Insureds' Arguments

In response, the Insureds argue that the "regular use" exclusion violates *Section 1731(c) of the MVFRL*, and thus Erie's use of the "regular use" exclusion to deny them coverage is improper. Insureds' Brief at 8. In particular, the Insureds emphasize the mandatory nature of the term "shall" as it is used in *Section 1731*: "[UIM] coverage **[*17] 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." *Id.* at 17 (quoting *75 Pa.C.S. § 1731(c)*) (emphasis added by Insureds) (internal quotations omitted). Accordingly, they agree with the Superior Court's assessment that *Section 1731* expressly mandates UIM coverage be provided to an insured when the insured satisfies the three requirements. *Id.* In addition, the Insureds agree with the Superior Court's finding that "*Section 1731* does not consider who owns the vehicle and the frequency with which the insured uses it." Insureds' Brief at 17 (quoting *Rush, 265 A.3d at 796*). The application of the "regular use" exclusion, according to the Insureds, limits the scope of the UIM coverage that Erie is required to provide, and thus it is unenforceable. *Id.* at 18.

Moreover, the Insureds highlight that since the Superior Court decided this case, two federal courts have determined that the Superior Court's analysis and reasoning were sound, further predicting that this Court would reach the same conclusion. *Id.* at 18-19. *See Evanina v. First Liberty Ins. Corp., 587 F.Supp.3d 202 (M.D. Pa. 2022)*; *Johnson v. Progressive Advanced Ins. Co., 587 F.Supp.3d 277 (W.D. Pa. 2022)*. To the Insureds, this demonstrates that the General Assembly placed **[*18]** no limit on the scope of coverage out of recognition of that the fact that "everyday citizens regularly use vehicles they do not own and do not insure under their personal auto policies." Insureds' Brief at 19-20. This, they argue, runs contrary to Erie's concerns that the "regular use" exclusion is needed to insure against the "unknown." *Id.* at 20. The Insureds then contend that Erie's position is absurd in light of the fact that it acknowledges that it must cover injuries sustained when an insured is a passenger in a non-owned vehicle, but not when the insured is the driver. *Id.* at 21 (citing *Erie Ins. Exch. v. E.L., 2008 PA Super 5, 941 A.2d 1270 (Pa. Super. 2008)* (finding that the term "use" as used in an insurance policy's "regular use" exclusion does not include occupancy of the regularly used non-owned vehicle as a passenger)); *see also* Erie's Brief at 33 n.14 (acknowledging that it would afford coverage to "a passenger of any vehicle").

The Insureds argue that, based on this Court's decision in *Generette*, their interpretation of *Section 1731* is bolstered by the language employed in *Section 1733 of the MVFRL*. Insureds' Brief at 24-25. To the Insureds, by placing the primary obligation for payment of UIM benefits on the insurer of the non-owned vehicle, and then placing an additional **[*19]** obligation upon the issuer of the insured's personal policy, the General Assembly demonstrated that it knew insureds would be "occupying"[8] non-owned vehicles and that it intended for personal policies to provide coverage under those circumstances. *Id.* The Insureds further challenge Erie's argument by highlighting that the Superior Court followed this Court's lead in *Gallagher*, insofar as we found that an insurer can no longer argue that it was unaware of its insureds' use of other vehicles to justify an exclusion when it is clear that the insurer knows of the risk. *Id.* at 27-28.

As for the cases relied upon by Erie, the Insureds argue that the Superior Court correctly concluded that the language in *Williams* constituted mere dicta, as *Williams*, like *Burstein*, only addressed a general public policy issue with respect to the "regular use" exclusion. *Id.* at 30-31. The Insureds assert that they are not raising a public policy issue, but rather that the "regular use" exclusion is in direct violation of *Section 1731(c)*'s express mandates. *Id.* at 32-33. According to them, "this Court has repeatedly held that it applies a very different analysis with a very different burden of proof when the **[*20]** issue is whether an exclusion violates the express terms of the statute, as opposed to general public policy." *Id.* at 33 (citing *Sayles v. Allstate Ins. Co., 656 Pa. 99, 219 A.3d 1110, 1122-23 (Pa. 2019)*).

Alternatively, the Insureds argue, if this Court finds that *Williams* did hold that a "regular use" exclusion does not violate *Section 1731*, it still does not constitute binding precedent. *Id.* at 39. The Insureds note that, to the extent that the *Williams* Court held that a "regular use" exception did not violate the MVFRL, it did so by relying on *Baker*. *Id.* at 39-41. *Gallagher* explicitly disavowed and otherwise overruled *Baker*. *Id.* at 42-43. Consequently, the Insureds argue, that

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[8] *Generette* involved an insured guest passenger in a non-owned vehicle, whereas the instant matter involves the driver of the non-owned vehicle, and the "regular use" exclusion was not invoked in *Generette*.

Williams' reliance on *Baker* undermines the continuing validity of *Williams*. *Id.* at 45-46.

The Insureds further argue that the "regular use" exclusion violates *Section 1733(a)(2) of the MVFRL*, because it deprives them of second priority UIM coverage from their policies simply because Rush was injured while operating a non-owned vehicle that he did not insure. *Id.* at 51-52 (citing *Generette, 957 A.2d at 1189*).[9] In addition, the Insureds claim that the exclusion violates *Section 1738 of the MVFRL*, i.e., the stacking provision. *Id.* at 53. In support, they highlight that they purchased stacked coverage; thus, in their view, they are entitled to both inter-and intra-policy stacking **[*21]** of the coverages, meaning that their limits of coverage "shall be the sum of the limits for each motor vehicle as to which the injured person is an insured." *Id.* at 53 (quoting *75 Pa.C.S. § 1738*). However, because the "regular use" exclusion reduces the available limits of coverage to "S0," the Insureds contend that they are denied the stacked coverage for which they have paid. *Id.* They urge this Court to find that the regular use exclusion is an improper, disguised waiver of stacked UIM coverage, which is prohibited under *Gallagher*. *Id.* at 54-55.

Lastly, the Insureds argue that Erie's interpretation of *Section 1731* would lead to absurd results. *Id.* at 55. They argue that if Erie's position were valid, then Erie could add UIM exclusions to preclude coverage in any number of circumstances, such as if an insured drives in an urban area because the risk of accident increases when the insured "regularly drives in traffic." *Id.* at 59. Permitting insurance companies to "arbitrarily determine the standard for the 'unacceptable unknown risk'" by including these types of exceptions in light of the statutes that make up the MVFRL would be, according to the Insureds, absurd. *Id.* at 60.

Amicus

The Insurance Federation **[*22]** of Pennsylvania, the Pennsylvania Association of Mutual Insurance Companies, and the Pennsylvania Defense Institute filed a joint amici brief in support of Erie. Their argument is almost exclusively that this Court is bound by its prior decisions, such as *Burstein* and *Williams*, and that this Court should favor principles of stare decisis by continuing to hold that the "regular use" exclusion does not violate the MVFRL. Amici Brief at 5-14.

In support of the Insureds, the Pennsylvania Association for Justice ("PAJ") submitted an amicus brief arguing that this Court should apply our holding in *Gallagher* broadly to hold that the "regular use" exclusion, like the "household" exclusion at issue in *Gallagher*, is violative of the express and unambiguous terms of the MVFRL. PAJ's Amicus Brief at 7-13.

III. Discussion

The question before this Court is whether the "regular use" exclusion in a motor vehicle insurance policy violates the express terms of the MVFRL. *HN2*[⬆] The issue presented is one of pure law. Thus, our scope of review is plenary and our standard of review is de novo. *Generette, 957 A.2d at 1189*.

HN3[⬆] When reviewing an insurance policy, we apply general principles of contract interpretation in order to "ascertain the **[*23]** intent of the parties as manifested by the terms used in the written insurance policy." *Gallagher, 201 A.3d at 137* (quoting *401 Fourth St., Inc. v. Inv. Ins. Grp., 583 Pa. 445, 879 A.2d 166, 171 (Pa. 2005)*). However, insurance contract provisions are invalid and unenforceable if they conflict with statutory mandates, as contracts cannot violate existing statutory law. *Prudential Prop. & Cas. Ins. Co. v. Colbert, 572 Pa. 82, 813 A.2d 747, 750-51 (Pa. 2002)*; *see also Miller v. Allstate Ins. Co., 2000 PA Super 350, 763 A.2d 401, 404* ("Even clear and unambiguous insurance policy language may conflict with an applicable statute. ... In such situations, we cannot give effect to the contractual provision.") (citation omitted)). As the parties do not dispute that the "regular use" exclusion is unambiguous insofar as it would preclude the Insureds from receiving UIM benefits under the language of the Erie Policies, we turn our discussion to whether Erie's "regular use" exclusion runs afoul of the MVFRL.

HN4[⬆] By way of necessary background, we note that the "[MVFRL] is comprehensive legislation governing the rights and obligations of the insurance company and the insured under liability insurance policies covering motor vehicles." *Sayles, 219 A.3d at 1124*. Accordingly, "the provisions of the MVFRL pertaining to the required scope of coverage and content of automobile insurance policies, and benefits payable thereunder, impose mandatory obligations applicable to all automobile **[*24]** insurance providers in this Commonwealth[.]" *Id.* As relevant to this matter, *Section 1731 of the MVFRL* governs the scope of UIM coverage. *Section 1731* provides, in relevant part, that absent a voluntary rejection of coverage, "[UIM coverage] shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally

[9] We again clarify that *Generette* involved neither an operator of a non-owned vehicle, nor did it implicate a "regular use" exclusion.

entitled to recover damages therefor from owners or operators of underinsured motor vehicles." *75 Pa.C.S. § 1731(c)*. Insurers in Pennsylvania are obligated to offer UIM coverage to their customers.[10] However, to afford insurers more control over the costs of insurance, the General Assembly made the purchase of UM and UIM coverage optional when it passed the MVFRL. *Lewis v. Erie Ins. Exch., 568 Pa. 105, 793 A.2d 143, 150 (Pa. 2002)*.

Erie concedes that it is obligated **[*25]** by law to offer UIM coverage to its insureds, but it contends that the MVFRL does not require insurance companies to pay out UIM benefits under any particular circumstance. Erie's Brief at 32. *HN5*[↑] A "regular use" exclusion, like the one instantly before this Court, presents the type of circumstances in which an insurer may not be required to provide UIM benefits to the insured. That is, of course, contingent upon whether the exclusion violates the MVFRL. As the parties rightfully identify, this Court has previously upheld the validity of "regular use" exclusions in *Burstein* and *Williams*. The Insureds have not expressly asked that we overrule these decisions. Nonetheless, their request would require us to do so if we find that those decisions to uphold the exclusion are controlling. Thus, as a threshold matter, we must determine whether those decisions control the outcome of this appeal.

In *Burstein*, Mrs. Burstein was injured in a collision with an underinsured motorcyclist while driving a work-issued vehicle that was available for her use both at work and at home. *Burstein, 809 A.2d at 205*. After the accident, the Bursteins submitted a claim for UIM benefits under their household policy, which contained a "regular **[*26]** use" exclusion. Although the Bursteins maintained UIM coverage on the household policy, Mrs. Burstein's employer had waived UIM coverage on the work-issued vehicle involved in the accident. *Id.* Following the insurer's denial of UIM coverage, the Bursteins sued their insurance provider, challenging the "regular use" exclusion on the basis that it violated public policy. *Id.* In support of this claim, the Bursteins made "broad claims about the universal portability of UM and UIM coverage[,]"[11] considering it to be "first party coverage" that follows the person, rather than the vehicle. *Id. at 208-09*.

Addressing the case on appeal, we focused primarily on the public policy that led to the enactment of the MVFRL, i.e., the increasing cost of automobile insurance. *Id. at 207-08*. The *Burstein* Court reasoned that to invalidate an otherwise valid insurance contract exclusion with that public policy in mind would be "arduous." *Id. at 208*. However, it recognized that such a policy concern could "not validate any and every coverage exclusion; rather, it functions to protect insurers against forced underwriting of unknown risks[.]" *Id.* The *Burstein* Court found that to void the "regular use" exclusion would frustrate this **[*27]** public policy concern of cost containment, reasoning that insurers "would be compelled to underwrite unknown risks that it has not been compensated to insure" and that insureds would be encouraged to obtain UIM coverage on one car and then "drive an infinite number of non-owned vehicles, and receive gratis UIM coverage on all those vehicles[.]" *Id.* To invalidate the "regular use" exclusion, according to the *Burstein* Court, would force insurers "to increase the cost of insurance, which is precisely what the public policy behind the MVFRL strives to prevent." *Id.*

In reviewing the Bursteins' broad portability claims, i.e., that UIM insurance constituted first party coverage that followed the person, the Court turned to the priority of recovery of first party benefits[12] under the MVFRL's statutory scheme. *Id. at 209*. In so doing, the Court gleaned that first party benefits truly "follow the person." *Id.* In comparing the priority of first party benefits to the priority of UIM coverage, the *Burstein* Court found that "the MVFRL provides an inverse priority of recovery for UM and UIM benefits." *Id.* Specifically, based

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[10] *Section 1731(a)* provides:

> **(a) Mandatory offering.**--No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto in amounts as provided in *section 1734* (relating to request for lower limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.

75 Pa.C.S. § 1731(a).

[11] As then-Justice Saylor opined in his concurring and dissenting opinion in *Generette*, for purposes of *Section 1731*, there is no discernible basis to distinguish UM and UIM coverage with respect to limitations of coverage. *See* ***Generette, 957 A.2d at 1195 n.6*** (Saylor, J., concurring and dissenting).

[12] *HN6*[↑] The MVFRL defines "first party benefits" as "[m]edical benefits, income loss benefits, accidental death benefits and funeral benefits." *75 Pa.C.S. § 1702* ("Benefits" or "First party benefits"). Such benefits are recovered in the following priority: (1) for a named insured, the policy on which he is the named insured; (2) for an insured, the policy covering the insured; and (3) for the occupants of an insured motor vehicle, the policy on that motor vehicle. *75 Pa.C.S. § 1713* ("Source of benefits").

on *Section 1733 of the MVFRL*, an injured claimant must first recover UIM coverage from any policy covering the **[*28]** "**motor vehicle**" occupied by the injured person at the time of the accident, *id.* (citing *75 Pa.C.S. § 1733(a)(1)*) (emphasis in original), and as a "**secondary**" source of recovery, claimants could then recover from a policy on a motor vehicle that was not involved in the accident, *id.* (citing *75 Pa.C.S. § 1733(a)(2)*) (emphasis in original). Thus, it reasoned, that, under the statute, UIM benefits did not necessarily "follow the person" in the same manner as first party benefits. *Id.*

The Court made clear that the "only issue" before it was whether the "regular use" exclusion "violate[s] a clearly expressed public policy." *Id.* In finding it did not, we upheld the "regular use" exclusion on public policy grounds, i.e., cost containment. In doing so, we rejected the argument that UIM coverage was intended to be portable based upon a textual analysis of the MVFRL.

Then-Justice Saylor authored a dissenting opinion, in which he set forth a detailed discussion of the history of motor vehicle coverage in the Commonwealth, the evolution of UIM coverage, and the concept of portability. *Id. at 210-34* (Saylor, J., dissenting). The principal basis for Justice Saylor's dissent was that contrary to the *Burstein* Majority's suggestion that the General Assembly "was **[*29]** content to delegate to insurers" the ability to dictate the parameters of coverage in Pennsylvania, *id. at 210*, it intended for the Pennsylvania Insurance Department to promulgate and enforce regulations with respect to UIM coverage, *id. at 230*.[13]

Justice Saylor opined that the question at the "center of [the] appeal" was whether the General Assembly intended to incorporate a fixed concept of portability in the MVFRL, thereby foreclosing the use of coverage exclusions. *Id. at 221*. To answer this question, Justice Saylor tracked the evolution of portability and coverage exclusions in Pennsylvania, ultimately determining that this Court's interpretation of the MVFRL demonstrated that the General Assembly did not intend to fix a concept of portability in the MVFRL. *Id. at 230*. Critical of the courts for relying primarily on the policy of cost containment and ignoring the other remedial purposes underlying the MVFRL to reach this conclusion,[14] Justice Saylor observed that such judicial preference for cost containment in rejecting portability afforded insurers effectively unlimited authority to include any exclusion of coverage they so desired. *Id. at 229-30*. However, Justice Saylor highlighted that while the General Assembly **[*30]** did leave open plenty of issues in the MVFRL, he reasoned that the legislative delegation of authority to the Insurance Department functioned as a limitation on an insurer's ability to fully dictate coverage. *Id. at 230*. In support of this position, Justice Saylor highlighted the many tools and functions that the General Assembly afforded the Insurance Department under the MVFRL, indicating its intent to have the agency fill in the MVFRL's gaps as opposed to the insurance industry or the courts. *Id. at 230-31*. Based on the limited regulations promulgated by the Insurance Department, Justice Saylor found that the Insurance Department did not authorize the "regular use" exclusion, and thus it was not an available coverage exclusion to be employed by insurance companies. *Id. at 231*.

Nine years later in *Williams*, this time with Justice Saylor agreeing with the Majority, we again upheld the "regular use"

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[13] Justice Saylor set forth an alternative basis to decide in the Bursteins' favor, contending that based on the definition of "non-owned car" in the Bursteins' policy that the "regular use" exclusion was inapplicable. Recognizing that "regular use" exclusion only applies to non-owned vehicles that are furnished for an insured's regular use, Justice Saylor looked to the definitions set forth in the Bursteins' policy in which it defined a "non-owned car" as "a **car** which is not owned by, registered in the name of or furnished or available for the regular or frequent use of **you** or a **household resident**[.]" *Burstein, 809 A.2d at 232-33* (Saylor, J., dissenting) (emphasis in original). Given that it was "undisputed that the company car in which the Bursteins were injured was available for their regular use, such a car [was] simply not a 'non-owned car' for purposes of the policy." *Id. at 233*.

[14] In recent years, a majority of the members of this Court have repeatedly critiqued the view that "cost containment" is the predominant goal of the MVFRL. *See, e.g., Safe Auto Ins. Co. v. Oriental-Guillermo, 654 Pa. 293, 214 A.3d 1257, 1268 (Pa. 2019)* (noting that "a majority of members of this Court have indicated that cost containment should not be considered the dominant public policy underlying the MVFRL"); ***Williams, 32 A.3d at 1209-10*** (Saylor, J., concurring) ("I would also once and for all abandon the rubric that cost containment was the overarching policy concern of the [MVFRL][.]"); ***id. at 1210-11*** (Baer, J., concurring) ("I join my colleagues in calling for advocates and the judiciary to cease their continued reliance on the unthinking perpetuation of the long-ameliorated concern for cost containment[.]"); ***id. at 1211-13*** (Todd, J., concurring) ("I join those Justices who eschew the mantra of cost containment—used by various courts to rotely limit the rights of the insureds—in favor of a recognition of other equally important policies and goals that are foundational to the MVFRL, such as the remedial objectives of the statute and the coverage rights of the insureds."); *Heller v. Pa. League of Cities and Muns., 613 Pa. 143, 32 A.3d 1213, 1222 (Pa. 2011)* ("[T]he cost containment objective cannot be mechanically invoked as justification for every contractual provision that restricts coverage and purportedly lessens the cost of insurance.").

exclusion. *Williams, 32 A.3d 1195*. Williams, a Pennsylvania State Police Trooper, was seriously injured in an automobile accident while operating a vehicle owned and maintained by the Pennsylvania State Police. *Id. at 1197*. At the time of the accident, Williams also maintained a household policy on his personal automobile which included UIM **[*31]** coverage subject to a "regular use" exclusion. *Id.* Williams sought to recover UIM benefits from his household policy; however, his insurer denied coverage due to the "regular use" exclusion. *Id.*

On appeal to this Court, we limited our review to "[w]hether, under the MVFRL and our decision in *Burstein*[], the 'regular-use' exclusion to [UIM] coverage ... is valid where the insured is a police officer, who has sustained bodily injury in the course of performing his duties while driving a police vehicle, for which vehicle he could not have obtained [UIM] coverage." *Williams v. GEICO Gov't Emp. Ins. Co., 604 Pa. 321, 986 A.2d 45 (Pa. 2009)* (per curiam). The insurer in *Williams* presented the same cost containment arguments that were asserted in *Burstein*. *Williams, 32 A.3d at 1199*. The *Williams* Court, just as the *Burstein* Court, was principally focused on public policy. *Id.* Although Williams, as a first responder and a member of law enforcement, attempted to distinguish the facts of his case from the facts of *Burstein*, this Court reasoned that the "crucial factors underlying *Burstein* and [*Williams*] [were] identical[.]" *Id. at 1206*. Thus, we found that Williams' position conflicted with the cost containment policies of the MVFRL and there was no clear overriding policy favoring first responders under **[*32]** this scenario, and we "reaffirm[ed] *Burstein* and [held] that the regular-use exclusion is not void against public policy." *Id.*

Following this analysis, the Court shifted to Williams' argument that "the regular-use exclusion violates *75 Pa.C.S. § 1731*, specifically with regard to *subsections (c)* and *(c.1)*."[15] *Id. at 1207*. In finding that it did not, the *Williams* Court analogized the case to *Baker* which involved another exclusion justified by the insurers under the same policy rationale. *Id. at 1208-09*. *Baker* addressed *Section 1738 of the MVFRL*, otherwise known as the "stacking provision,"[16] which contained language similar to that of *Section 1731*.[17] *Id.* Specifically, *Baker* addressed the "household" exclusion, which excludes stacking of UIM coverage when injuries sustained by anyone protected under the policy is occupying a vehicle owned by the insured that is not listed under that same policy. *Baker, 972 A.2d at 509*. The insured in *Baker* had an automobile policy through Erie to cover his three vehicles, and the policy included stackable UIM coverage. *Id. at 508-09*. Baker also had a motorcycle that was covered under a separate policy issued by a different insurance company, and he also opted for UIM coverage under his motorcycle policy. *Id at 509*. Baker was injured in an accident while operating his motorcycle, and after receiving **[*33]** the UIM coverage limits from his motorcycle policy, he sought to stack coverage from his automobile policy; however, Erie declined based on the "household" exclusion contained in its policy. *Id.* Although Baker argued that the "household" exclusion operated as a "disguised waiver," given that the MVFRL provides the exclusive procedure to waive stacking of coverage, a plurality of this Court disagreed. *Id. at 511*. Therein, the *Baker* plurality reasoned that the "household" exclusion does not involve "stacking" at all and that it operates as "a valid and unambiguous preclusion of coverage of unknown risks." *Id.*

Relying on the rationale set forth in *Baker* validating the "household" exclusion, the *Williams* Court found that the "regular use" exclusion resulted in "neither an implicit waiver of coverage nor an improper limitation on the statutorily mandated coverage." *Id. at 1208*. Instead, the *Williams* Court found that the "regular use" exclusion served the same cost containment concerns of precluding coverage of "unknown risks." *Id. at 1207-08*.

In addressing the question of whether it was time to reconsider the *Burstein* holding, the Court found that to do so would violate the rules of statutory construction **[*34]** and the principles of stare decisis. *Id.* (citing *Commonwealth v. Mitchell, 588 Pa. 19, 902 A.2d 430 (Pa. 2006)* ("The 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.")). Noting that the General Assembly had not amended *Section 1731* in the years since

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[15] *Section 1731(c)* defines UIM coverage and sets forth the statutorily prescribed rejection of coverage form, and *Section 1731(c.1)* contains the requirements for the form of waiver of coverage. *See* supra note 3.

[16] Paradoxically, the Court rejected Williams' reliance on extra-jurisdictional cases to support his argument that the "regular use" exclusion acted as an implicit waiver of UIM coverage argument because those cases "relate[d] to stacking of UIM benefits, which [was] not at issue" in *Williams*. ***Williams, 32 A.3d at 1207 n.20***. However, it then proceeded to analogize to *Baker*, a Pennsylvania case related to the stacking of UIM benefits.

[17] Specifically, the *Williams* Court noted that *Section 1738(d)* contained a specific written waiver form to reject stacking of UM/UIM coverage similar to the required written waiver form identified in *Section 1731(c)*. ***Williams, 32 A.3d at 1208***.

Burstein, the *Williams* Court found this to be an indication that our decision in *Burstein* comported with legislative intent recognizing that *Burstein* ruled that the express language of the MVFRL does not preclude a "regular use" exclusion. *Id. at 1209*.

Then-Justices Saylor, Baer, and Todd all authored concurring opinions to discuss the policy objectives of the MVFRL and suggested that the Court should reevaluate its position that cost containment served as the predominant policy underlying the MVFRL. *Williams, 32 A.3d at 1209-13*. Then-Justice Saylor also addressed his dissent in *Burstein* which recognized that UIM coverage was not intended to be universally portable but indicated that he was taking a step back from the position that the "regular use" exclusion violated public policy. *Id. at 1209-10*. Given that neither the General Assembly nor the **[*35]** Insurance Department had made any changes to the insurance landscape since *Burstein*, Justice Saylor reasoned that "rightly or wrongly, much latitude has been left to the insurance companies in determining the appropriate degree of portability." *Id. at 1210*.

There is no doubt that this Court held in both *Burstein* and *Williams* that the "regular use" exclusion is permissible under the MVFRL, and that the interpretation has persisted for two decades without a legislative response. We recognize that our analyses with respect to questions of statutory violations and those of public policy are different.[18]

> HN7[↑] [A]s a general matter, a challenger who asserts that clear and unambiguous contract provisions, such as the ones at issue in this case, are void as against public policy carries a heavy burden of proof. *Generette, 957 A.2d at 1190*. This is because public policy "is more than a vague goal which may be used to circumvent the plain meaning of the contract." *Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 711 A.2d 1006, 1008 (1998)*. Nevertheless, "[w]hile we are wary to declare contractual language invalid as against public policy, we are obliged to find contractual language to be contrary to public policy when it violates statutory language." *Generette, 957 A.2d at 1190-91*. Thus, "stipulations in a contract of insurance in conflict **[*36]** with, or repugnant to, statutory provisions which are applicable to, and consequently form a part of, the contract, must yield to the statute, and are invalid, since contracts cannot change existing statutory laws." *Id.* (quoting *Prudential Property, 813 A.2d at 750*).

Sayles, 219 A.3d at 1122-23. However, "[p]ublic policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest." *Paylor v. Hartford Ins. Co., 536 Pa. 583, 640 A.2d 1234, 1235 (Pa. 1994)* (citing *Guardian Life Ins. Co. v. Zerance, 505 Pa. 345, 479 A.2d 949, 954 (Pa. 1984)*). Thus, while decisions resolving public policy and those solely construing statutory text may, at times, present distinct questions and analyses, even when addressing questions of public policy, we must look to the law and the relevant statutory language.

At its core, the question before us concerns the universal portability of UIM coverage, a debate which began with *Burstein* where the insured first set forth the argument that the MVFRL supports such a concept. Although the challenge in *Burstein* was concerned with a question of whether the

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[18] While the Concurring Opinion suggests that we "fail[] to appreciate the difference between public policy decisions (like *Burstein*) and plain language decisions (like *Gallagher* and the decision below)[,]," Concurring Op. at 12 (Wecht, J.), it is the Concurring Opinion that fails to acknowledge that the *Burstein* Court relied on the plain language of the MVFRL in its rejection of the Bursteins' argument in favor of universal portability of UIM coverage. *Burstein, 809 A.2d at 209*.

As discussed, the *Burstein* court addressed the UIM portability claim by analyzing the text of the MVFRL. *See* supra p. 19 & n.12. It did so in a straightforward textual comparison highlighting the General Assembly's designation of a list of insurance benefits that follow the person by virtue of the priority of the insurance policies under which the insured is entitled to recover benefits. *Burstein, 809 A.2d at 209* (discussing *75 Pa.C.S. §§ 1702* and *1713*). While first party benefits are recoverable in the first instance from the policy on which the insured is the named insured under *Section 1713(a)(1)*, UIM benefits are first recoverable under the policy covering the motor vehicle occupied by the injured person at the time of the accident pursuant to *Section 1733(a)(1)*. Thus, under the statute, UIM benefits do not "follow the person," i.e., they are not universally portable in the same manner as first party benefits. *Burstein, 809 A.2d at 209*. In so ruling, this Court rejected the intermediate appellate court's contrary textual interpretation that UIM coverage is a universally portable first party benefit. *Burstein v. Prudential Prop. & Cas. Ins. Co., 1999 PA Super 285, 742 A.2d 684, 688 (Pa. Super. 1999)*, *reversed by Burstein, 809 A.2d at 210*.

We do not "overstat[e]" *Burstein*'s significance at the risk of foreclosing novel interpretations of the MVFRL, which "the *Burstein* Court never even had occasion to consider." Concurring Op. at 13 & 15 (Wecht, J.). To be clear, we do not say *Burstein* forecloses all novel plain language arguments, as the Concurring Opinion would suggest; however, we do read it to reject the precise argument directly before us. The Insureds' argument is not novel, but merely a recitation of one of the same arguments previously rejected by this Court.

"regular use" exclusion violated public policy,[19] this Court still looked to the entirety of the MVFRL to reject the Bursteins' universal portability claim. *Burstein, 809 A.2d at 208-09*. Similarly, the *Williams* ***[*37]*** Court relied on *Burstein* to reject Williams' argument that *Section 1731* promoted universal portability, as well.[20]

Regardless of its failure to acknowledge the broad implications of its construction of *Section 1731*, the Superior Court's decision in this matter undoubtedly stands for the proposition that UIM coverage is universally portable. In other words, by finding that UIM coverage is mandatory in virtually all instances, absent an insured's voluntary waiver of such coverage, the coverage would necessarily have to follow the person. *Rush, 265 A.3d at 796* (reasoning that UIM coverage applies broadly whenever an insured suffers injuries arising out of the use of a motor vehicle regardless of vehicle ownership); *Burstein, 809 A.2d at 209* (explaining that, pursuant to the concept of universal portability, UIM coverage "follows the person, not the vehicle"). If UIM coverage must follow the person in all circumstances, then an insurer cannot exclude coverage in any situation. The Insureds ignore this fact, insisting that the Superior Court's holding does not invalidate all exclusions. Insureds' Brief at 56. Instead, the Insureds somehow read the Superior Court as "only" holding that an exclusion that violates the language of the MVFRL is invalid, and that **[*38]** the "regular use" exclusion is one such exclusion. *Id.* However, this ignores the Superior Court's actual conclusion that UIM coverage must be available in all circumstances, no matter what motor vehicle is used, except when UIM coverage is waived by the insured. *Rush, 265 A.3d at 797*. Given the nature of the arguments before us and the Superior Court's holding, we cannot ignore the relevance of *Burstein's* discussion to our current analysis. The Superior Court in this matter viewed *Section 1731* in a vacuum. However, this Court understood in *Burstein* that the coverage scheme is not limited to one provision, but rather the entirety of the MVFRL.

In addressing UIM portability and the MVFRL as a whole, the *Burstein* Court was responding directly to the Bursteins' argument that "UIM coverage is a first party benefit which is personal and portable ... in nature without limitation[,]" and specifically that *Section 1731(c)* expressly "allow[ed] the insured to be using any motor vehicle" for the purposes of receiving UIM coverage. Bursteins' Brief, 11/28/2000, at 21-22. The Bursteins viewed the insurer's "regular use" exclusion as violative of public policy because it "change[d] the personal and portable nature of UIM coverage and rewr[o]te **[*39]** the MVFRL." *Id.* at 22. Thus, the public policy question resolved by this Court encompassed the rejection of the Bursteins' statutorily-based universal portability argument, including reliance on *Section 1731(c)*. The *Williams* Court considered *Burstein* to stand for the ruling that "the express language of the MVFRL does not preclude the regular-use exclusion." *Williams, 32 A.3d at 1209*. The only portion of the *Burstein* opinion addressing the text of the MVFRL was its rejection of UIM portability in light of *Section 1733* and the statutory definition of first party benefits and their priority of payment, and the *Williams* Court embraced that analysis. *Id.* ("We ruled in *Burstein* that the express language of the MVFRL does not preclude the regular-use exclusion ... . [W]e affirm the decision in *Burstein*[.]").

Contrary to the Superior Court's assertion,[21] one of the questions directly before the *Williams* Court was whether the "regular use" exclusion violated the express terms of the MVFRL. *See Williams, 32 A.3d at 1207* ("Appellant ... also assert[s] that the regular-use exclusion violates the express language of the MVFRL."); *Williams, 986 A.2d 45* ("Whether, under the MVFRL ... the 'regular-use' exclusion to [UIM] coverage ... is valid[.]"). The *Williams* Court embarked on answering the very **[*40]** same question before this Court today.[22] While the *Williams* Court did not engage in an analysis of the text of *Section 1731(c)-(c.1)*, its failure to do so can be explained by its affirmance of *Burstein*'s conclusion that other, more pointed provisions of the MVFRL precluded a finding that UIM coverage is universally portable.

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[19] *Burstein, 809 A.2d at 209* ("[T]he only issue in this appeal is whether the regularly used, non-owned car exclusion and its contractual restraint on UIM portability violate a clearly expressed public policy.").

[20] Although Williams did not explicitly argue that MVFRL promoted universal portability, he asserted that "[t]he plain, unambiguous language in *75 Pa.C.S.[] §1731* imposes a mandatory requirement on the insurer to obtain an insured's signature if opting out of UM/[UIM] coverage. Excluding an insured's UM/[UIM] coverage without the written rejection requirement of *75 Pa.C.S.[] § 1731* is a violation of the statute." Williams' Brief, 1/14/2010, at 21. In other words, Williams argued that absent a waiver of coverage, an insurer is mandated to provide coverage, including in a regularly used, non-owned vehicle. This is precisely what the Superior Court held in the instant matter, effectively concluding that UIM coverage is portable.

[21] *Rush, 265 A.3d at 797-98* (stating that whether "a 'regular use' exclusion clause ... violate[d] the express terms of the MVFRL ... was not the issue before the [*Williams*] Court on appeal.").

[22] In advancing his UIM portability argument, Williams relied heavily on then Justice Saylor's dissent in *Burstein*. ***Williams, 32 A.3d at 1199***.

While the *Williams* Court affirmed *Burstein*'s holding that UIM coverage is not universally portable, it also turned to what it viewed as analogous claims resolved by this Court in *Baker*.[23] *See Williams, 32 A.3d at 1207* ("We recently addressed a similar argument involving the household exclusion to UIM coverage [in *Baker*]."). The Superior Court in the instant matter, viewing this discussion as the sole basis for the decision in *Williams*, stated that *Baker* has since been abrogated by this Court in *Gallagher*, *Rush, 265 A.3d at 798*, a position that this Court has similarly expressed. *See Erie Ins. Exch. v. Mione, 289 A.3d 524, 528 & n.10 (Pa. 2023)* (citing to *Baker* as having been overruled by *Gallagher*).

In *Gallagher*, we addressed the validity of a "household" exclusion as applied to the stacking of coverage prescribed in *Section 1738 of the MVFRL*. *Gallagher, 201 A.3d 131*. The insured in that case had two insurance policies both of which were issued by the same company: one policy for his motorcycle and the other for two automobiles. **[*41]** *Id. at 132-33*. *HN8*[⬆] An insured can waive the ability to stack UIM coverage.[24] The insured accepted and paid for stacked UM/UIM coverage for both policies. *Id. at 133*. After being injured in a motorcycle accident, the insured was paid UIM coverage under the motorcycle policy, but he was denied stacked coverage under the automobile policy based on the "household" exclusion contained in it.[25] *Id.* Unlike the plurality in *Baker*, this Court held that the "household" exclusion contained in the policy violated *Section 1738 of the MVFRL*. *Id. at 132*. In examining *Section 1738*, we reasoned that stacked UM/UIM coverage is the default coverage absent express waiver. *Id. at 137*. There was no dispute that the insured in *Gallagher* had opted and paid for stacked coverage on his policies, and thus the "household" exclusion "act[ed] as a de facto waiver of stacked UIM coverage provided for in the MVFRL, despite the indisputable reality that Gallagher did not sign the statutorily-prescribed UIM coverage waiver form." *Id. at 138*. Moreover, we determined that the insurer in that case could not invoke the "unknown risk" argument that it "as the insurer of the passenger cars is unaware of the potentiality of stacking between the car policy and the motorcycle policy" because (unlike in *Baker*) the same insurance **[*42]** company "sold both of the policies to Gallagher and collected premiums for stacked coverage from him." *Id.*

We rejected the argument advanced by the insurer that stacking was not implicated because the "household" exclusion in Gallagher's policy dictated that UIM coverage **[*43]** did not exist under the circumstances of this case. Agreeing, Justice Wecht, in dissent, espoused the view that the appropriate analysis required a determination in the first instance as to whether the insurance contract provided UIM coverage under the circumstances. Only if an exclusion of coverage was not applicable did the question of stacking come into play. *Id. at 142* (Wecht, J., dissenting).

The Insureds argue that *Gallagher* stood for the proposition that the "household" exclusion was invalidated in its entirety as it conflicted with the language of the MVFRL. *See* Insureds' Brief at 39 ("[T]he *Gallagher* Court invalidated the [household] exclusion entirely, without exception, holding that 'the household vehicle exclusion violates the MVFRL;

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[23] In *Baker*, the insurer argued that the household exclusion was justified by the cost containment public policy. *Baker, 972 A.d at 511*. Baker countered by arguing that the exclusion was invalid because it was an implicit waiver of coverage without him having executed a written waiver. *Id. at 510*. Specifically, Baker claimed that the exclusion violated *Section 1738(d)*'s requirement that the insured be provided with a written waiver to reject stacking of coverage. *Id. at 511-12*. A plurality of the Court in *Baker* held that the household exclusion was not a waiver, but rather "a valid and unambiguous preclusion of coverage of unknown risks." *Id. at 511*.

[24] *Section 1738(d)* provides, as follows:

> **(d) Forms.--**
>
> (1) The named insured shall be informed that he may exercise the waiver of the stacked limits of uninsured motorist coverage by signing the following written rejection form:
>
> **UNINSURED COVERAGE LIMITS**
>
> By signing this waiver, I am rejecting stacked limits of uninsured motorist coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

75 Pa.C.S. § 1738(d).

[25] Specifically, the "household" exclusion in *Gallagher* provided:

> This coverage does not apply to bodily injury while occupying or from being struck by a vehicle owned or leased by you or a relative that is not insured for Underinsured Motorists Coverage under this policy.

Gallagher, 201 A.3d at 133.

therefore, these exclusions are unenforceable as a matter of law.'"). With this understanding of the holding in *Gallagher*, Insureds argue that we should follow its analysis and conclude that absent a waiver of coverage under Section 1731(c)-(c.1), UIM coverage is available without regard to the "regular use" exclusion, similar to *Gallagher*'s "household" exclusion. However, in this Court's recent and unanimous decision in *Mione*, we upheld the validity of a "household" exclusion, **[*44]** clarifying the scope of *Gallagher*'s holding.

In *Mione*, the insured waived UM/UIM coverage on his motorcycle policy, but he and his wife paid for stacked UM/UIM coverage on their separate automobile policy. *Id. at 525-26*. The insured sustained injuries following a motorcycle collision and sought to recover UIM benefits under the automobile policy. He was denied coverage because of the "household" exclusion contained in that policy. *Id. at 526*. The *Mione* Court distinguished the case from *Gallagher* by noting that the insured could not stack coverage, as he had not received UIM benefits under the motorcycle policy. Instead, he was seeking UIM benefits under the automobile policy in the first instance. *Id. at 529*. Thus, the "household" exclusion in the automobile policy was enforceable in that it excluded coverage for the injuries sustained when he was operating his motorcycle, a vehicle that was not insured for UIM coverage under his automobile policy. The Court found that for the "household" exclusion to act as an impermissible de facto waiver of stacking, the insured must have received UIM coverage under some other policy first, or else Section 1738 is not implicated. *Id. at 530*. This Court made clear that "the holding in *Gallagher* was based **[*45]** upon the unique facts before us in that case, and that the decision there should be construed narrowly." *Mione, 289 A.3d at 530* (citing Gallagher, 201 A.3d at 139 n.8 ("As in every case, we are deciding the discrete issue before the Court and holding that the household vehicle exclusion is unenforceable because it violates the MVFRL.")).

Particularly salient to the issue before us is the *Mione* Court's implicit rejection of the notion that UIM coverage is universally portable and not susceptible to exclusions from coverage. We unanimously rejected Mione's argument that because he was an insured under the automobile policy, its UIM coverage was applicable to him while operating his motorcycle, i.e., the coverage followed him regardless of the vehicle he was driving. Instead, we recognized the enforceability of the "household" exclusion in the automobile policy. Thus, the Insureds' argument and some federal courts' predictions[26] that *Gallagher* controls the enforceability of the "regular use" exclusion to UIM coverage conflates issues surrounding stacked UIM coverage under Section 1738 with the issue of portability of UIM coverage arising under Section 1731.

What does control the resolution of the issue before us is our precedent directly addressing **[*46]** the validity of the "regular use" exclusion. The Superior Court in *Burstein* arrived at effectively the same conclusion as the Superior Court in the instant matter: "[I]f an individual purchases [UIM] coverage, that individual will be protected from negligent drivers with inadequate coverage regardless of the vehicle in which he or she happens to be injured." Burstein v. Prudential Prop. & Cas. Ins. Co., 1999 PA Super 285, 742 A.2d 684, 688 (Pa. Super. 1999), *reversed by* Burstein, 809 A.2d at 210. The Superior Court in *Burstein* mischaracterized UIM coverage as "first-party coverage and therefore necessarily follows the person, not the vehicle." *Id.* In other words, it held that UIM coverage is universally portable. Here, the Superior Court resurrected that holding by construing Section 1731 in isolation, concluding that UIM coverage is mandatory in "situations where an insured is injured arising out of the use of **a** motor vehicle." Rush, 265 A.3d at 797 (emphasis in original) (internal quotations omitted). In other words, the Superior Court in this matter reasoned that UIM coverage follows the person, not the vehicle. In so doing, it provided the same answer as the Superior Court in *Burstein* under the guise of answering a different question. There is no material difference between the Superior Court's holding in *Burstein* and its holding in **[*47]** the instant matter, and this Court rejected that conclusion based on the provisions of the MVFRL that directly address the portability of coverage.

HN9[↑] In *Burstein*, we recognized that only first party benefits, which are explicitly defined in the MVFRL, can follow the person, as demonstrated by its statutorily prescribed priority of coverage. Burstein, 809 A.2d at 209 (citing 75 Pa.C.S. § 1702). The same is simply not true of UIM coverage. It is not defined as a first party benefit, nor does it follow the person in all circumstances based on Section 1733's priority of recovery. *Id.* (citing 75 Pa.C.S. § 1733(a)(1)). Despite the Superior Court's construction of 1731, we cannot conjure universal portability from a single provision.[27] Thus, we follow the *Burstein* Court's lead and

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[26] *See, e.g.*, Evanina, 587 F.Supp.3d at 209 (predicting, based on *Gallagher*, "that the Pennsylvania Supreme Court will find the regular use exclusion is contrary to the unambiguous provisions of the MVFRL and therefore invalid and unenforceable, as it did with respect to the household vehicle exclusion").

[27] Moreover, we question the Superior Court's interpretation of

accept its rationale in rejecting universal portability in light of the entirety of the MVFRL and its express language.[28]

Once it is decided that UIM coverage is not universally portable—given the express non-priority of an insured's UIM policy coverage in Section 1733 and the contrary priority of coverage for first party benefits—any argument that Section 1731 prohibits exclusions from coverage in **[*48]** the insurance contract must fail. If the MVFRL does not require that UIM coverage follow the insured in all circumstances, then the MVFRL cannot be read to prohibit exclusions from UIM coverage. Consequently, the insurance contract controls the scope of UIM coverage and the "regular use" exclusion is enforceable.

The *Burstein* Court, by rejecting the argument that UIM coverage is not amenable to insurance policy exclusions because the coverage is universally portable, directly addressed the question before us. We would further note that the Insureds have not asked us to overrule either *Burstein* or *Williams* cases, but rather that we distinguish them. This is in

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Section 1731(c). To determine that UIM coverage was mandatory under all circumstances, unless waived, i.e., that it is universally portable, the Superior Court had to change the actual language of the provision by ignoring the word "person" and instead rewriting it to read "insured." *See, e.g.*, Rush, 265 A.3d at 796-97 ("Section 1731 mandates that insurers provide **insureds** coverage when the **insured** satisfies three requirements.") (citing 75 Pa.C.S. §§ 1731(c)-(c.1)) (emphasis added). The first sentence of Section 1731(c), which served as the basis for the Superior Court's conclusion, does not reference "insureds" but rather discusses UIM coverage and its applicability to "persons" who sustain injuries in motor vehicle accidents. To our reading, Section 1731(c) describes the basic concept of UIM coverage, but it cannot be read as a formula or a mandate that UIM coverage be provided to any person—a named insured or anyone else. That would be an absurd result.

[28] The textual basis for the claim of universal UIM portability in *Burstein* was the same as the basis in this case.

In ruling in favor of the Bursteins, the Superior Court in that matter found "[t]he statutory language of the MVFRL" to be "key" to its holding that public policy supported the notion that UIM coverage is a universally portable first party benefit. Burstein, 742 A.2d at 688 (Pa. Super 1999). In support of that rationale, the Superior Court in *Burstein* reasoned that "[i]f the tortfeasor's policy limits are inadequate, the individual is ... entitled to recover [UIM] coverage from his or her personal insurance carrier, provided that the individual did not waive such coverage." *Id.* Although the Superior Court in *Burstein* did not cite to any provision of the MVFRL for the proposition that insurers are "entitled" to UIM coverage, it is clear that it was referring to Section 1731, as that is the only provision that refers to the effect of waiving UIM coverage. This reasoning mirrors the Superior Court's interpretation in this matter, wherein the Superior Court concluded that the plain language of Section 1731 "mandates" that insurers provide UIM coverage so long as the insured "[(1)] ha[s] suffered injuries arising out of the maintenance or use of a motor vehicle; (2) [is] legally entitled to recover damages from the at-fault underinsured driver; and (3) ha[s] not rejected UIM coverage[.]" Rush, 265 A.3d at 796-97.

Moreover, following the appeal from the Superior Court, the Bursteins argued in favor of universal portability of UIM coverage based on the statutory language of Section 1731 of the MVFRL. The Bursteins asserted that, under Section 1731, "[UIM] coverage is extended to persons who are injured by underinsured motor vehicles when they are using a 'motor vehicle.'" Bursteins' Brief, 11/28/2000, at 21. According to the Bursteins, this meant that the MVFRL "allows the insured to be using any motor vehicle" to receive UIM coverage. *Id.* Specifically, the Bursteins argued that "the wording of ... [Section] 1731(c) indicates that the legislature intended UIM coverage to be personal and portable in nature without limitation." *Id.* at 21-22. While the other arguments made by the Bursteins were strictly public policy arguments against the "regular use" exclusion itself, their argument in favor of universal portability of UIM coverage was specifically tied to their interpretation of Section 1731, in which they likened UIM coverage to "a first party benefit which is personal and portable." *Id.* at 21. This interpretation served as the basis for the "broad claims about the universal portability" of UIM coverage that this Court rejected in *Burstein*. Burstein, 809 A.2d at 208-09. And we rejected the notion that Section 1731 mandated universal portability of UIM coverage by examining how first party benefits actually "follow the person, not the vehicle," as opposed to the priority of recovery set forth in the MVFRL for UIM coverage. Id. at 209; *see also* supra note 18. It is true that the *Burstein* Court did not cite to Section 1731 when rejecting the Bursteins' universal portability argument. Concurring Op. at 13 n.37 (Wecht, J.). However, given that the **only** textual argument explicitly in support of finding universal portability of UIM coverage was an interpretation of Section 1731, the *Burstein* Court decided that the broader import of the meaning of first party benefits in the context of the totality of the MVFRL took precedence over the language of Section 1731.

Despite the Concurring Opinion's position that it is "utter fiction" that the only textual argument explicitly in favor of finding universal portability of UIM coverage was the one discussed above, Concurring Op. at 13-14 n.37, this is a fact. The Concurring Opinion is correct that several other arguments were presented to the *Burstein* Court, including a range of public policy arguments. *Id.* None of those were textual arguments in favor of finding universal portability of UIM coverage. We are in no way characterizing this as the "only relevant argument" raised before the *Burstein* Court, *id.*, but rather the only one that is identical to the textual argument currently before us in support of universal portability of UIM coverage. The Concurring Opinion suggests that it is improper to consider the arguments presented in the briefs of the parties submitted to this Court in order to give context to the decision issued in the appeal. This is curious since the arguments presented by the parties set the parameters for the resolution of appeals.

spite of the fact that by affirming the Superior Court's decision, we would be required to not only upend *Burstein* and *Williams* but every case upholding a UM/UIM coverage exclusion. Erie's Brief at 43 (observing that the Superior Court's "reasoning would render the validity of **all** UM/UIM exclusions and policy limitations in Pennsylvania void"). Ultimately, because we find that *Burstein* and *Williams* resolved the issue presented in this appeal, we continue to hold that the "regular use" exclusion is a permissible limitation of UIM **[*49]** coverage under the MVFRL. With decades of reliance by insureds and insurers, and no justification to allow this Court to depart from decades of established law, we maintain our course unless and until the General Assembly or the Insurance Department acts in a way that would suggest we do otherwise.[29]

To conclude, we are bound by our prior decisions in *Burstein* and *Williams* in upholding the "regular use" exclusion as a permissible limitation of UIM coverage. Accordingly, the Superior Court's conclusion that the "regular use" exclusion violates the language of the MVFRL is erroneous. Thus, we hold that the "regular use" exclusion in the Insureds' policy is valid and enforceable,[30] and we reverse the order of the Superior Court.

Chief Justice Todd and Justice Dougherty join the opinion.

Justice Wecht files a concurring opinion.

Justices Mundy and Brobson did not participate in the consideration or decision of this matter.

Concur by: WECHT

Concur

CONCURRING OPINION

JUSTICE WECHT

I agree that the Superior Court misinterpreted *Section 1731 of the Motor Vehicle Financial Responsibility Law ("MVFRL")*. I write separately for two reasons. First, I do not agree that *Burstein v. Prudential Property & Casualty Insurance Co., 570 Pa. 177, 809 A.2d 204 (Pa. 2002)*, controls the outcome of this appeal. Second, I emphasize that, despite today's *Section 1731* holding, the regular-use **[*50]** exclusions at issue here nevertheless may be unenforceable under *Section 1738*, as the trial court held. Given that the Superior Court affirmed the trial court on an alternative basis—and given that today we reject that alternative basis—I would remand this matter to the Superior Court for consideration of the *Section 1738* issue.

I.

Section 1731 of the MVFRL requires automobile insurers to offer their customers uninsured and underinsured motorist

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[29] We observe that such a limitation of coverage is seemingly consistent with the Insurance Department's historical and current treatment of regularly used, non-owned vehicles. Although the last time the Insurance Department updated the relevant regulations was in 1979 and those regulations make no reference to UIM coverage, as they only apply to UM coverage, there is no discernible basis to distinguish UM and UIM coverage in terms of limitations of coverage. *See* ***Generette, 957 A.2d at 1195 n.6*** (Saylor, J., concurring and dissenting). From what little we do have from the Insurance Department, we can discern that the Insurance Department did not view regularly used, non-owned vehicles as automobiles afforded coverage under an insurance policy. Through reference to a national standard form, the Insurance Department set forth a definition of "insured automobile," which "shall not include" "an automobile furnished for the regular use of the principal named insured or any resident of the same household." *31 Pa. Code § 63.2, Exhibit C § II(b)(3)(iv)*. In his dissent in *Burstein*, Justice Saylor read this language as only "allow[ing] for a limited regularly used non-owned car exclusion pertaining to persons who are not named insureds or household family members." *Burstein, 809 A.2d at 231 n.38* (Saylor, J., dissenting). Contrary to Justice Saylor, we read this language to suggest that a non-owned automobile furnished for regular use of the insured or household residents shall not be considered a covered automobile. Thus, to our reading, it appears that the "regular use" exclusion has the blessing of the Insurance Department.

[30] We need not address the Insureds' claim that the "regular use" exclusion violates *Section 1733* at length, as we find no mandate of UIM coverage or prohibition of coverage exclusions within that provision. Moreover, despite the Insureds' reliance on *Generette*, we do not agree that the "regular use" exclusion operates similarly to the "other-insurance" limitation at issue in that case, as the latter provision unlawfully created "gap coverage" by subtracting the amount of available coverage. *Generette, 957 A.2d at 1191*. In fact, we reasoned that the language of *Section 1733* was "silent" with respect to other insurance limitations. ***Id. at 1191 n.15***.

The Insured's final statutory argument is that the "regular use" exclusion violates *Section 1738 of the MVFRL*, which governs stacking of UIM coverage. Given that the facts of this case do not implicate stacking of coverage, we need not address this claim.

coverage ("UM" and "UIM," respectively).[1] Though these coverages must be *offered*, they are entirely optional. An insured who wishes to waive UM/UIM coverage can do so by signing a *Section 1731* waiver form.[2]

Separate and apart from *Section 1731*'s waiver-of-coverage provision, *Section 1738 of the MVFRL* provides that, when multiple vehicles are insured on one or more policies, any UM/UIM coverage is "stacked" by default, meaning that the amount of coverage "shall be the sum of the limits for each motor vehicle as to which the injured person is an insured."[3] While UM/UIM coverage is stacked by default, named insureds may elect to waive stacked limits of coverage in exchange for a reduced premium by signing a *Section 1738* waiver form.[4]

In many decisions spanning the decades, this Court considered and rejected the argument that the General Assembly intended **[*51]** to forbid household vehicle exclusions, regular use exclusions, and other similar provisions that limit the scope of the policy's included UM/UIM coverage.[5] These cases fall into two broad categories: plain language decisions and "public policy" decisions.[6] The plain language cases address whether the exclusion at issue violates the text of the MVFRL, whereas the contention in "public policy" cases is that the challenged exclusion is void as against some nebulous "public policy" that assertedly favors one side or the other.

One of our earliest public policy cases, *Eichelman v. Nationwide Insurance Co., 551 Pa. 558, 711 A.2d 1006 (Pa. 1998)*, involved a motorcyclist struck by an underinsured driver. The motorcycle was covered under its own policy, issued by Aegis Security Insurance Company ("Aegis"). Though the Aegis policy lacked UM/UIM coverage altogether, Eichelman lived with his parents, who owned two cars, each of which was covered under its own Nationwide insurance policy that included UM/UIM coverage.

When Eichelman tried to collect UIM benefits under the Nationwide policies as a resident relative, the insurer denied the claim, citing household-vehicle exclusions **[*52]** in both of the policies stating that coverage does not apply to "[b]odily injury suffered while occupying a motor vehicle owned by you or a relative not insured for [UM/UIM] coverage *under this policy*; nor to bodily injury from being hit

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[1] *75 Pa.C.S. § 1731(a)* (providing that "[n]o motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth . . . unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto").

[2] *Id. § 1731(b)* ("The named insured shall be informed that he may reject uninsured motorist coverage by signing the following written rejection form . . . .").

[3] *Id. § 1738(a)*.

[4] *Id. §§ 1738(b)-(c)*.

[5] The Majority refers to provisions limiting the scope of UM/UIM coverage as "portability" restrictions given that they prevent the insurance from "following the person." Majority Opinion at 26 ("[B]y finding that UIM coverage is mandatory in virtually all instances, absent an insured's voluntary waiver of such coverage, the coverage would necessarily have to follow the person[.]"); *see generally* Theodore J. Smetak, *Underinsured Motorist Coverage in Minnesota: Old Precedents in a New Era*, *24 Wm. Mitchell L. Rev. 857, 905 (1998)* (stating that "[g]eographic exclusions prevent the insurance from 'following the person'").

[6] While the rule that courts should decline to enforce contracts that are against public policy is, of course, a well-established common law principle, this Court's MVFRL decisions have strained the doctrine beyond recognition. Correctly understood, the doctrine merely allows courts to invalidate contractual provisions if they "conflict[t] with a statutory enactment, a long-established governmental practice, or obvious ethical or moral standards." *Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 711 A.2d 1006, 1008 (Pa. 1998)*; *Hall v. Amica Mut. Ins. Co., 538 Pa. 337, 648 A.2d 755, 760 (1994)* ("Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.").

In the MVFRL arena, however, this Court routinely entertains the argument that an insurance policy provision is unenforceable because it conflicts not with the text of the MVFRL, but with the supposed intent behind the law. *See, e.g., Safe Auto Ins. Co. v. Oriental-Guillermo, 654 Pa. 293, 214 A.3d 1257, 1265 (Pa. 2019)* (considering the argument that unlisted resident driver exclusions are unenforceable because they undermine "the Commonwealth's objective of limiting the number of uninsured motorists on Pennsylvania roadways"). As I have explained in the past, this approach is problematic. Courts should not "invalidate contractual provisions based upon vague and nebulous public policy concerns, not even if the General Assembly most likely shared (though failed to codify) those same concerns." *Id. at 1271* (Wecht, J., concurring). To make matters worse, the Justices of this Court have never agreed regarding the General Assembly's putative intent in enacting the Motor Vehicle Financial Responsibility Law, leading the Court to issue conflicting decisions on the subject. *See id. at 1268* (recounting our Court's various conflicting pronouncements and noting that, "while a majority of the members of this Court have indicated that cost containment should not be considered the dominant public policy underlying the MVFRL, it is clear that it remains one of the policy concerns to be considered").

by any such motor vehicle."[7] Because Eichelman was injured while occupying his motorcycle—a vehicle not insured for UM/UIM coverage "under this policy"—Nationwide denied the claim.

On appeal, our Court unanimously upheld the denial of coverage and rejected the insured's argument that the household-vehicle exclusion violated public policy. We explained that the exclusion was unambiguous, and we discerned no clear public policy that would require judicial invalidation of the provision. We also noted that the cost-containment rationale underlying the MVFRL weighed in favor of enforcing the exclusion, since invalidating it "would allow an entire family living in a single household with numerous automobiles to obtain underinsured motorist coverage for each family member through a single insurance policy on one of the automobiles in the household," which "would most likely result in higher insurance premiums on all insureds[.]"[8]

While *Eichelman* stands for the **[*53]** proposition that a household vehicle exclusion is enforceable against an insured who waives UM/UIM coverage in the first instance, a different situation arises when the insured has not waived UM/UIM coverage. That was the fact pattern in *Erie Insurance Exchange v. Baker, 601 Pa. 355, 972 A.2d 507 (Pa. 2008)* (OAJC), where the named insured owned three automobiles (all insured by Erie Insurance) and one motorcycle (insured by Universal Underwriters Insurance Company). Unlike in *Eichelman*, both the motorcycle policy and the automobile policy included stacked UIM coverage. While operating his motorcycle, the insured was injured by an underinsured motorist. Universal Underwriters paid UIM benefits under the motorcycle policy, but Erie denied the insured's claim for stacked UIM benefits because the automobile policy included a household-vehicle exclusion.

While the appellant in *Eichelman* challenged the household vehicle exclusion on general public policy grounds, the argument in *Baker* was a plain language one. The question was whether the household vehicle exclusion constitutes a "disguised waiver" of stacking that violates *Section 1738 of the MVFRL*, which contains strict rules for waiving stacking. Baker's argument was that, because he did not sign the mandatory stacking-waiver, the **[*54]** household vehicle exclusion could not take away coverage that the statute says insurers must provide if not waived.

The *Baker* OAJC—authored by Justice Greenspan and joined by Chief Justice Castille and Justice Eakin—rejected Baker's disguised-waiver argument. The lead opinion held that "application of the household exclusion in this case does not involve 'stacking' at all."[9] Rather, "the Erie policy exclusion is a valid and unambiguous preclusion of coverage of unknown risks, and it was properly applied to the circumstances of this case."[10]

Besides *Eichelman*, there are two other public policy decisions relevant here: *Burstein v. Prudential Property & Casualty Insurance Co., 570 Pa. 177, 809 A.2d 204 (Pa. 2002)*, and *Williams v. GEICO, 613 Pa. 113, 32 A.3d 1195 (Pa. 2011)*, both of which involved regular-use exclusions.[11] In *Burstein*, a husband and wife were struck by an underinsured motorist while occupying a company vehicle that was owned and insured by the wife's employer. Because the employer's insurance policy did not include UIM coverage, the Bursteins sought UIM benefits from their own insurer, Prudential, which denied coverage based on the regular-use exclusion in the couple's policy.

The Bursteins then sued Prudential, arguing that the regular-

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[7] *Eichelman, 711 A.2d at 1007* (emphasis added).

[8] *Id. at 1010* ("[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.").

[9] *Baker, 972 A.2d at 511* (OAJC).

[10] *Id.* Then-Justice Saylor concurred in the result and supplied the fourth vote in support of the Court's general holding that Erie's household vehicle exclusion was valid and enforceable. *Id. at 514* (Saylor, J., concurring). Justice Saylor opined that "it is most reasonable to treat these exclusions as going to the scope of the UM/UIM coverage in the first instance, before stacking questions are reached, rather than as an aggregation question arising under the stacking provisions." *Id. at 515* (Saylor, J., concurring) (stating that the General Assembly likely regarded the enforceability of exclusionary clauses as an issue "separate and apart from priority-of-recovery and stacking questions"). Though the lead opinion in *Baker* was a three-Justice OAJC, a majority of the Court agreed that the household vehicle exclusion is not a "disguised waiver" of stacking that skirts the express waiver requirements of the MVFRL. *See id.* (Saylor, J., concurring) (agreeing that "the amendments to the MVFRL codified at *Section 1738* do not invalidate long-standing policy exclusions").

[11] A regular-use exclusion resembles a household-vehicle exclusion, except that it carves out from the scope of UM/UIM coverage accidents occurring while the insured occupies a vehicle that the insured regularly uses but which is not covered under the policy in question.

use exclusion is void on public policy grounds. The case made its way to [*55] our Court, and we enforced the exclusion. We rejected the argument that some implied "public policy" favoring "universal portability" could be discerned from the MVFRL.[12] We also noted that voiding the exclusion would seemingly *frustrate* one of the MVFRL's primary objectives, since insurers "would be compelled to underwrite unknown risks," which in turn would lead to premium increases across the board.[13]

After *Burstein* came *Williams*.[14] There, a Pennsylvania State Police ("PSP") trooper was injured while operating a vehicle owned by the PSP. When the trooper sought UIM benefits under his personal auto insurance policy, GEICO denied the claim based on the policy's regular-use exclusion. The trooper argued, contrary to *Burstein*, that the clause was void as against public policy. But the argument was slightly different from the one advanced in *Burstein*. Williams essentially asked our Court to carve out a narrow public policy exception for emergency first responders. The trooper argued that statutory provisions such as the Heart and Lung Act, the Workers' Compensation Act, the Pennsylvania Occupational Disease Act, and the Emergency Medical Services System Act, all illustrate the legislature's [*56] desire to protect and provide benefits for first responders.[15] Thus, the trooper argued that denying him UIM benefits would violate the general "public policy" underlying those statutes.

The *Williams* Court rejected this argument. The Court stated that, "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."[16] The Court therefore held that, even if the trooper was correct concerning the legislature's desire to protect first responders, this would not allow invalidation of the regular-use exclusion. The Court emphasized that it is "not the proper function of this Court to weigh competing public policy interests;" that task is "best suited for the legislature."[17] We also analogized the case to *Burstein*, stating that:

> 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. In that regard, we find that Appellant's position conflicts with the overall policies [*57] 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.[18]

While *Williams* was primarily a public policy decision, we also briefly addressed the argument that the regular-use exclusion violates the plain language of *Section 1731*, which requires insurers "to obtain written waivers of UIM coverage signed by the insured on the form established in the statute."[19] *Williams* rejected the argument that the regular-use exclusion at issue was acting as a "disguised waiver" of UM/UIM coverage under *Section 1731*. Our analysis of the question noted that a plurality of the Court had rejected a similar disguised-waiver argument in *Baker*, albeit in the context of *Section 1738*. We therefore concluded that, as in *Baker*, the exclusion "as applied here is neither an implicit waiver of coverage nor an improper limitation on the statutorily mandated coverage."[20] Instead, we opined that the exclusion was operating as "a reasonable preclusion of coverage of the unknown risks associated with operating a regularly used, non-owned vehicle."[21]

That brings me [*58] to *Gallagher v. GEICO, 650 Pa. 600, 201 A.3d 131 (Pa. 2019)*, where this Court veered off course. *Gallagher* ignored precedent and accepted the exact same

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[12] *Burstein, 809 A.2d at 209* (concluding that "UM and UIM benefits do not necessarily 'follow the person'"); *id. at 208-09* (explaining that "universal portability," in this context, means that the insurance always "follow[s] the person, not the vehicle").

[13] *Id. at 208* ("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.").

[14] *Williams v. GEICO, 613 Pa. 113, 32 A.3d 1195 (Pa. 2011)*.

[15] *See 53 P.S. §§ 631-640* (the ***Heart and Lung Act***); *77 P.S. §§ 1-2710 (the Workers' Compensation Act)*; *77 P.S. §§ 1201-1603 (the Pennsylvania Occupational Disease Act)*; *35 Pa.C.S. §§ 8101-8158 (the Emergency Medical Services System Act)*.

[16] ***Williams, 32 A.3d at 1203***.

[17] ***Id. at 1204***.

[18] ***Id. at 1206*** (citation modified).

[19] ***Id. at 1207***.

[20] ***Id. at 1208***.

[21] *Id.*

disguised-waiver argument that we rejected in *Baker* and *Williams*. The insured in *Gallagher* was injured when his motorcycle was struck by an underinsured motorist. At the time of the accident, GEICO insured Gallagher's motorcycle under a policy that included $50,000 of UM/UIM coverage. Gallagher also owned two automobiles, which GEICO insured under a separate policy that included UM/UIM coverage of $100,000 per vehicle. Gallagher did not waive stacking on either of his GEICO policies. After Gallagher's accident, GEICO paid out the policy maximum under the motorcycle policy, but rejected Gallagher's claim for stacked benefits under the automobile policy, citing a household vehicle exclusion. The lower courts, citing *Baker*, enforced the exclusion as GEICO requested.

There was one key difference between *Gallagher* and *Baker*: Gallagher's vehicles were insured by a single company (GEICO), whereas Baker had one insurer for his motorcycle and a different insurer for his automobiles. Before our Court, Gallagher tried to distinguish *Baker* on this basis. He argued that GEICO's household-vehicle exclusion **[*59]** should be invalidated specifically because it was GEICO that unilaterally decided to issue separate policies for the Gallagher household. Gallagher emphasized that the *Baker* OAJC stressed that the household vehicle exclusion in that case operated to protect the insurer from being forced to cover a risk (*i.e.*, the insured's motorcycle) about which it did not know and which it did not collect sufficient premiums to underwrite. In *Gallagher*, however, such concerns did not exist given that GEICO knew about Gallagher's motorcycle.

Instead of simply distinguishing *Baker* on this basis, the *Gallagher* majority overturned *Baker* and embraced the long-rejected disguised-waiver argument.[22] I dissented in *Gallagher*, essentially agreeing with then-Justice Saylor's conclusion in *Baker* that "[i]t is far more likely that the General Assembly intended for courts to evaluate the scope of applicable coverage before considering whether the limits of that coverage should be stacked or unstacked."[23] I also noted that, elsewhere in the MVFRL, the General Assembly unambiguously prohibited certain kinds of exclusions.[24] This suggests that, had the General Assembly intended to prevent insurers from including household-vehicle **[*60]** exclusions in their policies, it would have said so explicitly. I also emphasized that the *Gallagher* majority's rationale necessarily would prohibit the enforcement of *any* exclusion that prevents an insured from collecting stacked UM or UIM benefits, since any contractual provision other than a *Section 1738* waiver similarly could be characterized as a "*de facto* waiver" of stacking.[25]

II.

In the instant case, the trial court below held that, like the household-vehicle exclusion in *Gallagher*, the regular-use exclusions at issue here are disguised waivers of stacking that violate the plain language of *Section 1738 of the MVFRL*.[26] Agreeing with my dissent in *Gallagher*, the trial court stated: "Clearly, logic dictates that if [GEICO's] household exclusion violates the language of the [MVFRL], then so does Erie's regular-use exclusion."[27]

The Superior Court affirmed the trial court's decision, albeit on an alternative basis. The Superior Court held that the exclusion violates *MVFRL Subsection 1731(c)*, which the panel emphasized "requires UIM coverage in those situations where an insured is injured arising out of the 'use of a motor vehicle.'"[28] In the Superior Court's view, enforcing the regular-use exclusions in this case would limit **[*61]** *Subsection 1731(c)*'s "coverage mandate to situations where an insured is injured arising out of [the] 'use of an owned or occasionally used motor vehicle,'" which is inconsistent with the text of *Subsection 1731(c)*.[29]

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[22] *Gallagher, 201 A.3d at 138* (holding that the household vehicle exclusion "is inconsistent with the unambiguous requirements *Section 1738 of the MVFRL* under the facts of this case insomuch as it acts as a *de facto* waiver of stacked UIM coverage provided for in the MVFRL").

[23] *Id. at 142* (Wecht, J., dissenting).

[24] *75 Pa.C.S. § 1724(b)* ("Provisions of an insurance policy which exclude insurance benefits if the insured causes a vehicular accident while under the influence of drugs or intoxicating beverages at the time of the accident are void.").

[25] *Gallagher, 201 A.3d at 142* (Wecht, J., dissenting) ("If GEICO's household vehicle exclusion is unenforceable because, as the Majority tells us, it 'acts as a *de facto* waiver of stacking,' then all UM/UIM exclusions must necessarily be unenforceable.").

[26] Trial Court Opinion, 6/29/2020, at 14 ("[U]nder the *Gallagher* rationale, Erie's exclusion operates as a disguised waiver UIM coverage which circumvents the MVFRL requirement to obtain the insured's written waiver.").

[27] *Id.* at 11.

[28] *Rush v. Erie Ins. Exch., 2021 PA Super 215, 265 A.3d 794, 797 (Pa. Super. 2021)* (quoting *75 Pa.C.S. § 1731(c)*; emphasis supplied by the Superior Court).

[29] *Id.*

I agree with the Majority that the Superior Court's statutory interpretation bases far too much upon far too little.[30] As I explained in my dissent in *Gallagher*, if the General Assembly truly intended to prohibit certain kinds of exclusions, it most likely would have said so explicitly, as it did in other contexts. It is not realistic to suggest that the General Assembly intended to ban all UM/UIM exclusions when it used the phrase "use of **a** motor vehicle."[31] It strains credulity to maintain that the General Assembly would have expressed something so important in such a cryptic fashion.

Notwithstanding that area of agreement, I must distance myself from the bulk of the Majority's analysis. As the Majority sees it, the Superior Court's novel reading of *Subsection 1731(c)* directly conflicts with our holding in *Burstein*, where we rejected the argument that there exists some nebulous "public policy" favoring "universal portability of UM and UIM coverage."[32] In the Majority's telling, because the Superior Court's interpretation of **[*62]** *Subsection 1731(c)* would lead to the conclusion that all UM/UIM exclusions are unenforceable, "[t]here is no material difference between the Superior Court's holding in *Burstein* and its holding in the instant matter[.]"[33]

The Majority's mistake is that it fails to appreciate the difference between public policy decisions (like *Burstein*) and plain language decisions (like *Gallagher* and the decision below). The Majority's error is, to some extent, understandable. Our decisions stress that public policy is to be ascertained "through long governmental practice[,] *statutory enactments*, [or] violations of obvious ethical or moral standards[.]"[34] Ergo, our holding in *Burstein*, where we said that there exists no apparent public policy requiring universal portability of UM/UIM coverage, theoretically should also foreclose the Superior Court's plain language holding that *Subsection 1731(c)* bars all UM/UIM exclusions.[35]

At the same time, it would be a complete fiction to suggest that, in declining to find an unstated "public policy" underlying the MVFRL favoring universal portability, we necessarily rejected every conceivable plain language argument that would result in all UM/UIM exclusions being unenforceable. Each **[*63]** plain language argument must be evaluated on its own terms. It is not enough to invoke *Burstein* as a sort-of analytical shortcut. In *Williams*, for example, when we addressed the argument that a regular-use exclusion conflicted with the plain language of *Section 1731(c)*, we did not merely cite *Burstein* for the proposition that UM/UIM coverage is not universally portable. While we did discuss *Burstein*, we also engaged in statutory interpretation and held that the regular-use exclusion was "neither an implicit waiver of coverage nor an improper limitation on the statutorily mandated coverage," but was rather "a reasonable preclusion of coverage of the unknown risks associated with operating a regularly used, non-owned vehicle."[36]

All of this is to say that, while I agree with the Majority that the Superior Court's interpretation of *Section 1731* was incorrect, I fear that the Majority's analysis creates a real risk that future courts will misread *Burstein* and conclude that the decision forecloses all sorts of novel interpretations that the *Burstein* Court never even had occasion to consider.[37]

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[30] *See* Majority Opinion at 33 n.26 (stating that "*Section 1731(c)* describes the basic concept of UIM coverage, but it cannot be read as a formula or a mandate that UIM coverage be provided to any person—a named insured or anyone else").

[31] *75 Pa.C.S. § 1731(c)* (emphasis added).

[32] *Burstein, 809 A.2d at 208-09*.

[33] Majority Opinion at 33.

[34] *Eichelman, 711 A.2d at 1008* (quoting ***Hall, 648 A.2d at 760***).

[35] *See* Majority Opinion at 34 ("The *Burstein* Court, by rejecting the argument that UIM coverage is not amenable to insurance policy exclusions because the coverage is universally portable, directly addressed the question before us."); *id.* at 33 (stating that the panel below "provided the same answer as the Superior Court in *Burstein* under the guise of answering a different question").

[36] *Williams, 32 A.3d at 1208*. The *Williams* Court's analysis is notable given that it relied upon *Baker*, which our Court subsequently overturned in *Gallagher*. *Id.* (concluding that the insured's "disguised waiver" argument failed for the same reason that the argument failed under *Section 1738* in *Baker*).

[37] The Majority proves my point when it incorrectly claims that the statutory argument before us is "one of the same arguments" that we rejected in *Burstein*. Majority Opinion at 25 n.18. Again, the *Burstein* court simply did not consider whether—as the Superior Court below held—the exclusion is unenforceable because it conflicts with *Section 1731(c)*'s coverage mandate. *Burstein* merely rejected the "broad" and "wide" public policy argument that UIM coverage is personal in nature and therefore ought to be "essentially portable" without being limited by insurance policy exclusions. And while it's true that the *Burstein* court rejected this public policy argument by analyzing the text of the MVFRL, the Court discussed only *Section 1713* (the "source of benefits" provision) and *Section 1733* (the "priority of recovery" provision). The *Burstein* Court's analysis does not cite, let alone discuss, *Section 1731*. *Compare Burstein, 809 A.2d at 209* ("[T]he only issue in this appeal is whether the regularly used, non-owned car exclusion and its contractual

III.

Finally, I emphasize that the Majority's decision today is fairly narrow. The decision merely holds that the Superior Court's interpretation of Section 1731 was incorrect. The Majority does not meaningfully address the trial court's conclusion that Erie's regular-use exclusions violate Section 1738 of the MVFRL under the reasoning of *Gallagher*. As explained above, the *Gallagher* Court held that any contractual provision other than a Section 1738 waiver that operates to deprive an insured of stacked UM/UIM coverage is an unenforceable "*de facto* waiver of stacked UIM coverage provided for in the MVFRL[.]"[38] This holding, we were told, was based on the plain and unambiguous language of Section 1738.[39] That being the case, it logically makes no difference whether the exclusion in question is a household-vehicle exclusion, a regular-use exclusion, a dangerous-activities exclusion, or any other kind of exclusion. If it's not a Section 1738 waiver, it's not a Section 1738 waiver.

The Section 1738 issue in this case is complicated somewhat by *Erie Insurance Exchange v. Mione, 289 A.3d 524 (Pa. 2023)*, a decision which came out after the lower courts ruled in this matter. *Mione* explained that *Gallagher*'s *de facto* waiver rationale applies only when the insured is actually **[*65]** attempting to *stack* UM/UIM benefits under Section 1738.[40] Here, I would remand this matter so that the Superior Court can consider the trial court's Section 1738 analysis in the first instance and determine how our decision in *Mione* applies under these specific facts. Along these lines, I note that, although Matthew Rush received UIM benefits under the City of Easton's insurance policy, it does not appear that he was a named insured under that policy.[41] Regardless, even if it turns out that the regular-use exclusions here do not violate Section 1738 under these facts, there is no question

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restraint on UIM portability violate a clearly expressed public policy."), *with* Rush, 265 A.3d at 797 ("This exclusion conflicts with the broad language of Section 1731(c), which requires UIM coverage in those situations where an insured is injured arising out of the 'use of a motor vehicle.'"), *and* Majority Opinion at 33-34 (claiming that "[t]he *Burstein* Court, by rejecting the argument that UIM coverage is not amenable to insurance policy exclusions because the coverage is universally portable, directly addressed the question before us.").

The Majority concedes that *Burstein* did not even mention Section 1731(c), but nevertheless persists in the belief that the *Burstein* court must have meant something other than what it said. The Majority cherry-picks a section from one of the appellate briefs in *Burstein* (the appellee's, no less) and insists that the Section 1731(c) issue that the Court never addressed was the only relevant argument raised in *Burstein* ***[*64]*** . Majority Opinion at 35 n.28. That's simply wrong. A far larger share of the brief that the Majority selectively quotes is dedicated to arguing that the challenged exclusion is contrary to the "liberal compensatory intent" underlying the MVFRL and its predecessor legislation. *See* The Bursteins' Brief, 2000 WL 35831075, at 7; *id.* at 11 ("[M]otorists that act responsibly in purchasing insurance should continue to reap the benefits of a liberal compensatory scheme."); *id.* at 12 ("The policy exclusion in the instant case is contrary to the public policy considerations behind both the MVFRL and the [Uninsured Motorist Act] and it is not advantageous to the insured."). Indeed, the Bursteins' brief—just like the *Burstein* Court's opinion—states in no uncertain terms that "[t]he only issue in this appeal is whether the enforcement of Prudential's 'regularly used non-owned car' exclusion would be violative of public policy." *Id.* at 6.

Besides that broad public policy argument, the Bursteins also made textual arguments that go well beyond the one that the Superior Court below embraced. For example, the Bursteins relied upon the language of Section 1731(b) in one argument and in another offered a *de facto* waiver rationale similar to the one that a majority of this Court would later accept in *Gallager* in the context of Section 1738. *Id.* at 22; *id.* at 24 ("Since the Bursteins neither owned nor were a named insured on the vehicle that they occupied at the time of the accident, there was never a valid offer or rejection of UIM coverage as is required by 75 Pa.C.S. § 1731."). Furthermore, the appellant in *Burstein* challenged the Superior Court's decision with a laundry list of distinct textual arguments. *See* Brief for Prudential, 2000 WL 35462353, at 23 (discussing MVFRL Sections 1711, 1712, 1786, and 1733). It is therefore utter fiction to suggest that the "**only** argument explicitly in support of finding universal portability of UIM coverage" in *Burstein* was the precise textual argument that the Superior Court below accepted. Majority Opinion at 35 n.28 (emphasis in original). Thus, even if one believes that it is a useful exercise to rake through twenty-three-year-old appellate briefs in an effort to retrospectively revise this Court's past decisions, the Majority's argument nevertheless remains baseless.

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[38] Gallagher, 201 A.3d at 138 (concluding that the policy's household-vehicle exclusion "is inconsistent with the unambiguous requirements Section 1738 of the MVFRL under the facts of this case insomuch as it acts as a *de facto* waiver of stacked UIM coverage provided for in the MVFRL, despite the indisputable reality that Gallagher did not sign the statutorily-prescribed UIM coverage waiver form").

[39] *Id.*

[40] ***Mione, 289 A.3d at 531*** ("[F]or a household vehicle exclusion to be acting as an impermissible waiver of stacking, the insured must have received UM/UIM coverage under some other policy first, or else Section 1738 is not implicated at all."); ***see also Generette v. Donegal Mutual Insurance Co., 598 Pa. 505, 957 A.2d 1180, 1190 (Pa. 2008)*** (holding that Section 1738 applies "only to 'insureds' as defined by Section 1702, which does not include guest passengers").

[41] R.R. 553a. (listing the named insured as "City of Easton").

that *Gallagher*'s misguided *de facto* waiver rationale will render the exclusions unenforceable in other circumstances. While certain parts of the Majority opinion read like a celebration of regular-use exclusions broadly, it should be acknowledged that blanket enforcement of such exclusions is not guaranteed in a post-*Gallagher* world.[42]

In sum, while I believe that the Majority overstates the significance of our holding in *Burstein*, I ultimately agree that the Superior Court's interpretation of *Section 1731* was incorrect. I note, however, that the Superior Court has yet to review the trial court's conclusion that the challenged exclusions **[*66]** are unenforceable under *Section 1738*. Thus, I would remand this matter to the Superior Court for further review.

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[42] *See, e.g.*, Majority Opinion at 34 (mentioning the "decades of reliance by insureds and insurers"); *id.* at 35 (referring to the regular-use exclusion as "a permissible limitation of UIM coverage").