

Circuit Court for Prince George's County  
Case No. CAL15-04350

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1401

September Term, 2016

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GEICO GENERAL INSURANCE CO.

v.

ANDREA BARNES-SIMMONS, et al

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Graeff,  
Friedman,  
Thieme, Raymond G., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: January 8, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The facts of this case are stipulated. Appellees, Andrea Barnes-Simmons and her husband, Antoine Simmons owned two cars: a 2002 Mercury Mountaineer, insured by State Farm with uninsured/underinsured (UM/UIM) limits of \$50,000, and a 2004 Mitsubishi Galant, insured by Appellant, GEICO with UM/UIM limits of \$100,000. While driving the Mountaineer, Ms. Barnes-Simmons was involved in a motor vehicle accident with Brian Dies. Because Mr. Dies’s insurance carrier, Nationwide, offered its full policy limits of \$50,000 in settlement, there was no underinsured motorist claim under Barnes-Simmons’ State Farm policy. Barnes-Simmons and Simmons thereafter proceeded against GEICO for the coverage in excess of the Nationwide/State Farm policy limits. GEICO declined coverage based on the “owned-but-otherwise-insured” exception. The sole issue for review is whether this common law exclusion applies under the facts presented.

Barnes-Simmons’ argument proceeds in three steps: (1) courts do not permit non-statutory exclusions to mandatory insurance coverage; (2) under the Maryland Insurance Code (“IN”) the only two statutory exclusions to UM/UIM coverage are the “owned-but-uninsured” exclusion and the “named driver” exclusion, IN §19-509(f); therefore (3) the provision in GEICO’s policy that excludes coverage for vehicles “owned-but-otherwise-insured” is invalid.

Despite the apparent logic of this position, it is foreclosed by mandatory precedent. *GEICO v. Comer*, 419 Md. 89 (2011); *Powell v. State Farm Ins. Co.*, 86 Md. App. 98 (1991). The clear holding of these cases is that despite the absence of explicit statutory authority, Maryland law permits UM/UIM carriers to exclude coverage for vehicles

“owned-but-otherwise-insured.” *Comer*, 419 Md. at 100; *Powell*, 86 Md. App. at 112; *see also* Andrew Janquitto, *Uninsured Motorist Coverage in Maryland*, 21 U. BALT. L. REV. 171, 240, 243-45 (1992).

The Insurance Code authorizes the exclusion of uninsured motorist coverage for “a named insured ... for an injury that occurs when the named insured ... is occupying ... an *uninsured* motor vehicle that is owned by the named insured.” IN § 19-509(f)(1) (emphasis added). In *Comer*, however, the Court of Appeals recognized that for purposes of section 19-509, “uninsured” includes “underinsured” by definition. *Comer*, 419 Md. at 91 n.1, 98; *see also* IN § 19-509(a)(2)(i) (defining “uninsured motor vehicle” as a motor vehicle “for which the sum of the limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death ... is less than the amount of coverage provided under this [policy]”). The purpose of this policy exclusion is to “prohibit a person from purchasing insurance for one car only and utilizing that coverage as to other vehicles owned by the insured through the ‘in any accident’ provision of the policy.” *Powell*, 86 Md. App. at 107. Maryland courts have determined that allowing this exclusion advances the public policy interest of encouraging “families to obtain coverage for *all* of their vehicles and thus maximize compliance with the purpose of the statute.”<sup>1</sup>

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<sup>1</sup> In recognizing the “owned-but-otherwise-insured” exception, one of the motivating public policy concerns was that allowing multi-vehicle families to insure one vehicle to excess while leaving any others either under- or uninsured would “play havoc with premium determinations and otherwise be detrimental to the process of providing

*Comer*, 419 Md. at 99 (quoting *Powell*, 86 Md. App. at 108-09). Even if we agreed with Appellees, it would be inappropriate for us to reject the clear and mandatory precedent of *Comer* and *Powell*. Therefore, we reverse the decision of the Circuit Court for Prince George’s County and remand with instructions to enter judgment for the Appellant, GEICO.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
REVERSED. COSTS TO BE PAID BY  
APPELLEES.**

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liability protection.” *Powell*, 86 Md. App. at 107. To be explicit, this Court in *Powell* felt that it wouldn’t be fair to the insurance companies if a household could buy full coverage on one vehicle and, through that, without paying premiums, obtain full coverage on their other cars. That concern doesn’t seem to apply here, as Barnes-Simmons and Simmons have apparently been paying premiums to each insurer on each vehicle all along. Whether that should present an exception to the judicially-created “owned-but-otherwise-insured” exclusion was not presented to us and, in any event, is a limitation on the exception that we are not prepared to impose in light of the clear mandate from the Court of Appeals in *Powell*.