IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL ANNE BLIZZARD, Plaintiff,	:	CIVIL ACTION
v.	:	
FEDERAL INSURANCE CO., et al. Defendants	:	NO. 05-5283

MEMORANDUM AND ORDER

McLaughlin, J. February 27, 2007

The plaintiff instituted this declaratory judgment action to establish her entitlement to benefits under an automotive insurance policy issued by defendant Federal Insurance Company (“Federal”) to the employer of her husband, who was killed in a motorcycle accident on May 1, 2005. Before the Court are the parties' cross motions for summary judgment.

The case requires the Court to determine whether Mr. Blizzard’s motorcycle was a "temporary substitute" for an insured company car within the meaning of the policy. Federal argues that it was not but asks in the alternative that the Court find that its liability is limited by the policy's "step-down" clause. The Court does not reach the “step-down” issue because it finds that the motorcycle was not a “temporary substitute” for the

company car.[1]

I. Factual Background

A. The Accident

David Blizzard, a Pennsylvania resident, worked for Bombardier, Inc. as a general manager of its Camden, New Jersey light rail operations. Bombardier provided Mr. Blizzard with a company-owned Ford Explorer, which was registered in New Jersey and insured by Federal. Mr. Blizzard used the vehicle to travel to work sites and for his personal use.

The Explorer was one of many cars that Bombardier insured with Federal, which issued a single, comprehensive policy with Bombardier as the named insured. A number of state-specific endorsements were added to this policy, one of which covered the Explorer, providing $1,000,000 in underinsured motorist (UIM) benefits.

Mr. Blizzard drove the Explorer regularly in the week preceding the accident. According to the plaintiff, on April 30, 2005, Mr. Blizzard realized, after looking under the hood of the car to investigate a "very loud rattling," that the Explorer was

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[1] The complaint names Federal, Chubb & Son, Inc., and Chubb Group of Insurance Companies as defendants. Federal's notice of removal argues that because Chubb Group is not a corporate entity and Chubb & Son is a division of Federal, neither is a proper party to this suit. Def's. Br. in Supp. Ex. B. ¶¶ 6-7. The Court's disposition of the current motions moots this issue.

overdue for inspection by approximately two months. Pl's. Br. in Supp. at 4. He took the insurance card and registration certificate out of the vehicle, but the car remained in his garage. The next day, Sunday, May 1, as Mr. Blizzard was driving his motorcycle in Bucks County, he was fatally injured when he was struck by another vehicle.

The parties dispute Mr. Blizzard's destination on the morning of the accident. The plaintiff maintains that he was headed to inspect a light rail line, while Federal asserts that Mr. Blizzard's trip may have been a social outing.

Ten days after the accident, George Fountain, a friend and co-worker of Mr. Blizzard, picked up the Explorer from the Blizzards' garage at the request of Bombardier. He returned the vehicle to the Bombardier lot, where it sat until June of 2005 when it was taken for inspection, which it passed.

The plaintiff collected $500,000 from the insurance policy of the driver who struck Mr. Blizzard, $100,000 in UIM benefits from the motorcycle's policy, and $35,000 from the UIM policy on the Blizzards' other car. The plaintiff now seeks to collect under the New Jersey UIM endorsement issued by Federal.

B. The New Jersey UIM Endorsement

Federal issued the endorsement to comply with New Jersey law, which mandates that an insurer offer a certain amount

of UIM benefits as an option to each policyholder who has a vehicle registered in the state. N.J. Stat. Ann. § 17:28-1.1(a), (b); French v. N.J. Sch. Bd. Assoc. Ins. Group, 694 A.2d 1008, 1010-11 (N.J. 1997). The policy terms of UIM coverage are subject to the approval of the New Jersey Commissioner of Banking and Insurance. N.J. Stat. Ann. § 17:28-1.1(d).

The endorsement provides in part that an individual is insured if he is "occupying a covered auto or a temporary substitute for a covered auto." Pl's. Br. in Supp. Ex. B § B(2)(a). In order for a vehicle to be a "temporary substitute," the covered auto (in this case, the Explorer) must be "out of service because of its breakdown, repair, servicing, loss, or destruction." Id.

The plaintiff concedes that at the time of the accident, there were no mechanical problems with the Explorer.[2] The question in this case, therefore, is whether a vehicle that is overdue for inspection but fully operable and in the insured's possession is "out of service because of its breakdown, repair, servicing, loss, or destruction" under the endorsement.

The defendants argue that even if the answer to this question is yes, a provision in the endorsement, called a "step-

[2] The plaintiff does not rely on the Explorer's "rattle" to bring the car within the temporary substitute vehicle clause, offering the noise only to explain Mr. Blizzard's discovery of the lapsed inspection. See Pl.'s Br. in Supp. at 2-3.

down" clause, limits its liability to $100,000.

II. Analysis

Before addressing whether the plaintiff can recover under the Federal policy, the Court must determine whether New Jersey or Pennsylvania law applies to the dispute. The Court must then consider whether the Explorer was "out of service because of its breakdown, repair, servicing, loss, or destruction" so that the motorcycle was a "temporary substitute." The Court holds that New Jersey law applies and that under the policy, a lapsed inspection does not, by itself, render a vehicle "out of service because of its breakdown, repair, servicing, loss, or destruction."

A. Choice of Law

The Court must apply the choice-of-law principles of Pennsylvania to determine whether New Jersey or Pennsylvania law applies because its jurisdiction is based on the diversity of citizenship of the parties. Berg Chilling Systems, Inc. v. Hull Corp., 435 F.3d 455, 462 (3d Cir. 2006). Under Pennsylvania law, a court confronted with a potential conflict of law must first determine whether the parties have implicitly or explicitly chosen a state's law to apply. Assicurazioni Generali, S.P.A. v. Clover, 195 F.3d 161, 164 (3d Cir. 1999).

Clover mandates the conclusion that the parties to the UIM endorsement chose New Jersey law to apply. Clover considered whether an arbitration clause, included in an Indiana-required endorsement which was titled "INDIANA UNINSURED AND UNDERINSURED MOTORISTS COVERAGE," should be interpreted under Indiana or Pennsylvania law. The contract did not have an explicit choice-of-law clause, but the United States Court of Appeals for the Third Circuit found that the parties had chosen Indiana law because the policy was drafted in accordance with, and was designed to track, Indiana law. Id. at 164-65. The parties' choice made a traditional choice-of-law analysis unnecessary.

In this case, the endorsement, which contains the policy provisions relevant to this dispute, is titled "NEW JERSEY UNINSURED AND UNDERINSURED MOTORISTS COVERAGE" and was written to comply with the requirement that New Jersey vehicles be offered UIM benefits. See N.J. Stat. Ann. § 17:28-1.1(a), (b). The endorsement does not contain a choice-of-law provision, but it is a state-specific add-on to the Federal policy, approved by the New Jersey Commissioner of Banking and Insurance.[3] The Court

[3] The oversight of the Commissioner would explain why the temporary substitute vehicle clause at issue in this case appears verbatim in the policies of other vehicles registered in New Jersey. See e.g., Dickson v. Selective Ins. Group, Inc., 833 A.2d 66, 69 (N.J. Super. Ct. App. Div. 2003); Macchi v. Conn. Gen. Ins. Co., 804 A.2d 596, 599 (N.J. Super. Ct. App. Div. 2002); N.J. Mfrs. Ins. Co. v. Breen, 688 A.2d 647, 652 (N.J. Super. Ct. App. Div. 1997). See also footnote 7.

concludes that the parties to the policy would consequently expect that it would be governed by New Jersey law, a determination strengthened by the endorsement's capital-letter, Clover-like label. See Todd v. Liberty Mut. Fire Ins. Co., 2001 WL 33771 (E.D. Pa. 2001).

The plaintiff argues that if the parties did choose New Jersey law, the Court should refuse to enforce the agreement because of Mr. Blizzard's lack of bargaining power and because of Pennsylvania's public policy of fully compensating accident victims.

As to the first argument, relative bargaining power is not an issue here. The Federal policy was negotiated with Bombardier, not with Mr. Blizzard, and a corporation paying a $615,554.33 annual premium cannot be said to suffer from the same lack of sophistication or leverage that might handicap an individual purchaser. See Clover, 195 F.3d at 165; Def's. Br. in Supp. Ex. E.

The plaintiff's invocation of Pennsylvania public policy is likewise unavailing. She believes that Pennsylvania's policy of fully compensating accident victims would be violated if New Jersey law controls because New Jersey applies a victim's other sources of recovery as a setoff against UIM coverage while Pennsylvania does not. This argument fails for several reasons.

First, the plaintiff has not pointed to any conflict

between the policies of the two states; New Jersey, like Pennsylvania, has an interest in seeing accident victims compensated. See, e.g., Gazis v. Miller, 892 A.2d 1277, 1281-82 (N.J. 2006). The purported policy dispute is simply a place where New Jersey and Pennsylvania UIM laws differ, illustrating not two public policies at loggerheads but varying approaches to a common concern. Clover, in holding that the conflicts analysis should end when the parties have chosen which state's law to apply, did not intend for a court nonetheless to consider variations in the states' laws in the guise of a discussion about "public policy."

Second, Clover implied that even a genuine policy dispute should not disturb the parties' choice of law. Clover disregarded the Clovers' argument that Pennsylvania law construed insurance contracts liberally in favor of coverage, observing that the question before it was simply one of choice of law "without regard for its ultimate effect on the outcome of the dispute." 195 F.3d at 166. The plaintiff's arguments about Pennsylvania's policies are similarly irrelevant to an analysis that concludes that Bombardier and Federal chose New Jersey law to apply to the endorsement.

B. Was the Motorcycle a "Temporary Substitute" for the Explorer?

The issue of whether the motorcycle was a "temporary

substitute" for the Explorer divides into one legal question and one factual issue. The legal question asks whether a lapsed inspection can render a car "out of service because of its breakdown, repair, servicing, loss, or destruction" so that the insured will be covered while driving a substitute vehicle.

If the answer to this question is yes, then the Court must consider whether there are disputes of material fact as to whether Mr. Blizzard rode the motorcycle as a "temporary substitute" for the Explorer on the day of the accident. This question asks whether Mr. Blizzard would have driven the Explorer were it not for its "breakdown, repair, servicing, loss, or destruction." See Ranger Ins. Co. v. Air-Speed Inc., 401 N.E.2d 872, 877 (Mass. App. Ct. 1980). See also Green v. Dawson, 397 A.2d 727, 729 (N.J. Super. Ct. App. Div. 1979); Spaulding v. Concord Gen. Mut. Ins. Co., 446 A.2d 1172, 1173-74 (N.H. 1982); 8A Couch on Insurance § 117:68.

The New Jersey Supreme Court has not addressed the question of whether a lapsed inspection can render a car "out of service because of its breakdown, repair, servicing, loss, or destruction." Consequently, the Court looks to all available data, including the decisions of New Jersey's lower courts, restatements of law, law review commentaries, and decisions from other jurisdictions to predict what New Jersey's highest court would decide if faced with the issue. See Gruber v. Owens-

Illinois Inc., 899 F.2d 1366, 1369 (3d Cir. 1990) (citation omitted).

Because of the lack of guidance from the New Jersey Supreme Court, the Court first outlines general principles of insurance policy interpretation under New Jersey law. New Jersey courts, recognizing that insurance contracts are contracts of adhesion, play a particularly vigilant role in ensuring the policies' conformity with public policy and principles of fairness. Progressive Cas. Ins. Co. v. Hurley, 765 A.2d 195, 201 (N.J. 2001). A policy should be construed liberally in the insured's favor to ensure that coverage is afforded to the full extent that a fair interpretation will allow. Id. Where there is any doubt regarding the existence of coverage, it is ordinarily resolved in favor of the insured. Id. Nonetheless, a court must interpret a policy according to its plain, ordinary meaning and should not rewrite an insurance contract to provide the insured a better policy than the one purchased. President v. Jenkins, 853 A.2d 247, 254 (N.J. 2004) (quotation omitted); Victory Peach Group, Inc. v. Greater N.Y. Mut. Ins. Co., 707 A.2d 1383, 1386 (N.J. Super. Ct. App. Div. 1998).

To ascertain the plain, ordinary meaning of the temporary substitute vehicle clause, the Court looks at its two constituent phrases: "out of service" and "because of its breakdown, repair, servicing, loss, or destruction." The

parties, in arguing for or against coverage, are not always scrupulous in distinguishing whether their reasoning hinges on the first phrase or the second. The plaintiff never analyzes "out of service" separately from the second phrase, and the defendant often argues that the Explorer was not "out of service" when its actual argument is that there was no "breakdown, repair, servicing, loss, or destruction" of the vehicle.

The Court finds it unnecessary to attach a specific interpretation to "out of service" because the case turns on a single question: whether there was "breakdown, repair, servicing, loss, or destruction" of the Explorer. The Court, as explained below, concludes that none of these words applies. Consequently, the Explorer could not be "out of service because of its breakdown, repair, servicing, loss, or destruction," regardless of the precise definition of "out of service."

The plaintiff claims that a future inspection can constitute "servicing" or "repair."[4] Because the words are not defined in the policy, the Court looks to the dictionary to ascertain their plain, ordinary meaning. See President v. Jenkins, 853 A.2d 247, 256 (N.J. 2004); Thiedemann v. Mercedes-Benz USA, LLC, 872 A.2d 783, 792 (N.J. 2005); M.J. Paquet, Inc. v. N.J. Dep't of Trans., 794 A.2d 141, 152 (N.J. 2002). Several

[4] At oral argument, the plaintiff's counsel stated that her argument for coverage rested on these two words. Tr. at 12.

New Jersey courts have referred to Webster's Dictionary for a definition of "servicing" or "repair." See Dowler v. Boczkowski, 691 A.2d 314, 317 (N.J. 1997); Sprenger v. Trout, 866 A.2d 1035, 1040 (N.J. Super. Ct. App. Div. 2005); Ambrosio v. Affordable Auto Rental, Inc., 704 A.2d 572, 576 (N.J. Super. Ct. App. Div. 1998).

Merriam-Webster defines "repair" as "to restore by replacing a part or putting together what is torn or broken" and defines "service" as "to repair or provide maintenance for." Merriam-Webster's Collegiate Dictionary (11th ed. 2005). Similarly, the Oxford English Dictionary defines "servicing" as "the action of maintaining or repairing a motor vehicle." Oxford English Dictionary (2d ed. 1989), available at http://www.oed.com.

Under these definitions, there was no "repair" or "servicing" of the Explorer at its inspection. In New Jersey, an inspection consists of a series of tests that examine a vehicle's emissions and its safety (checking its brakes, lights, and steering, for instance). N.J. Admin. Code §§ 7:27-15.5, 7:27B-5.7, 13:20-7.6. The Explorer passed these tests without the replacement or reassembly of any broken parts, and hence without "repair." Similarly, there was no "servicing" because the Explorer did not have maintenance or repair work performed. See Def's. Br. in Supp. Ex. D.2.

Nor was it happenstance that the Explorer did not undergo "servicing" or "repair" at its inspection. According to the New Jersey Administrative Code, when an inspection reveals the need for "adjustment, correction, or repair," it is incumbent upon the owner or lessee of the vehicle to have such adjustments, corrections, or repairs made and to present the motor vehicle for reinspection. N.J. Admin. Code §§ 13:20-7.5, 7.6(a). An inspection is therefore not "servicing" or "repair", but merely a determination of whether a vehicle needs servicing or repair, which the driver must ensure are performed.

This common-sense distinction between inspection and "servicing" or "repair" has legal effect. Under New Jersey law, private inspection facilities are forbidden from requiring that any repairs or adjustments be performed by the person, or at the facility, performing the inspection. N.J. Stat. Ann. § 39:8-13, 46. A private facility cannot perform adjustments or repairs on a vehicle that it inspects unless the driver signs a waiver stating that the driver understands his or her right to have the vehicle adjusted or repaired elsewhere. N.J. Admin. Code § 13:20-33.2(w). The plaintiff's argument that an inspection constitutes "servicing" or "repair" under New Jersey law runs counter to New Jersey's explicit differentiation between the

examination of the vehicle and its adjustment or repair.[5]

Because an inspection does not constitute "servicing" or "repair," the motorcycle was not a "temporary substitute" for the Explorer. This conclusion comports with secondary sources, which find that the primary vehicle needs to be unavailable or physically compromised for the temporary substitute vehicle provision to apply. See 8A Couch on Insurance § 117:74[6]; 42

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[5] The plaintiff argues that the words in the temporary substitute vehicle provision are ambiguous, but "servicing" and "repair" are two common words with dictionary definitions. The plaintiff has provided no explanation of how the words are ambiguous or why the wording of the clause would suggest to Mr. Blizzard that coverage extended to the case of a lapsed inspection.

The plaintiff argues that Federal could have been more specific about the scenarios it wished to include or exclude from the temporary substitute vehicle clause, but the insurer's ability to more clearly draft a policy is a consideration where, unlike here, the policy terms are found to be ambiguous. Progressive Casualty Ins. Co. v. Hurley, 765 A.2d 195, 202 (N.J. 2001).

Neither is it relevant that "servicing" and "repair" are not defined in the endorsement. Words are not automatically rendered ambiguous because they are not defined in a policy. Priest v. Roncone, 851 A.2d 751, 755 (N.J. Super. Ct. App. Div. 2004); Boddy v. Cigna Property & Casualty Cos., 760 A.2d 823, 826 (N.J. Super. Ct. App. Div. 2000). To hold otherwise would contradict New Jersey's rule that words in a contract are interpreted according to their "plain ordinary meaning."

[6] The New Jersey Supreme Court often cites Couch on Insurance on the interpretation of insurance contracts. See, e.g., Selective Ins. Co. of America v. Thomas, 847 A.2d 578, 581 (N.J. 2004)(citing Couch on the "stacking" of UIM benefits); Cumberland Mut. Fire Ins. Co. v. Murphy, 873 A.2d 534, 538 (N.J. 2005); Auto Lenders Acceptance Corp. v. Gentilini Ford, Inc., 854 A.2d 378, 393 (N.J. 2004); Benjamin Moore & Co. v. Aetna Casualty & Surety Co., 843 A.2d 1094, 1103, 1107 (N.J. 2004).

A.L.R.4th 1145 § 7[a].

Cases from other states agree, holding, for example, that refueling an automobile does not fall within the temporary substitute vehicle clause because it involves no repairs or mechanical adjustments. See 7 Am. Jur. 2d Automobile Insurance § 221; 8A Couch on Insurance § 117:76; State Farm Mut. Auto. Ins. Co. v. O'Brien, 534 P.2d 388, 389 (Cal. 1975); Iowa Mut. Ins. Co. v. Addy, 286 P.2d 622, 624 (Colo. 1955); Ransom v. Fidelity and Casualty Co. of N.Y., 108 S.E.2d 22, 25 (N.C. 1959).[7]

The cases cited by the plaintiff are consistent with this rule. In Sanz v. Reserve Insurance Co. of Chicago, Illinois, 172 So.2d 912 (Fla. Dist. Ct. App. 1965), the court found "servicing" applicable where the vehicle was having work performed on it in the form of painting. Similarly, in Carolina Casualty Insurance Co. v. Harmon, 420 S.W.2d 652 (Ct. App. Tenn. 1967), coverage was found where the primary vehicle was having its tires recapped and its bearings packed.

The conclusion that the vehicles in Sanz and Harmon

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[7] The temporary substitute vehicle provision at issue in these cases required that the primary vehicle be "withdrawn from normal use," while the provision at issue in this case states that the vehicle must be "out of service." The parties have not suggested, and the Court does not believe, that this difference affects the analysis here. The cases cited by the Court turn only on an interpretation of "breakdown, repair, servicing, loss, or destruction."

were undergoing “servicing” or “repair” is highlighted by the fact that unlike the car in this case, they were turned over to third parties. An inspection, as the New Jersey Administrative Code suggests, requires no such relinquishment of possession of the car and is therefore more akin to a stop to refuel, held not to constitute servicing by state supreme courts in O’Brien, Ransom, and Addy.

The vehicles in Sanz and Harmon are further distinguishable from the Explorer in that they were being serviced at the time the temporary substitute vehicles were used. Any “servicing” or “repair” of the Explorer, in contrast, had yet to occur when Mr. Blizzard drove the motorcycle on the day of the accident. The words of the temporary substitute vehicle clause do not suggest, however, that the provision applies when the “servicing” or “repair” will occur at some undetermined time in the future.

To the contrary, the vast majority of cases hold that in determining whether “servicing” or “repair” applies, the relevant question is whether the car is “being serviced” or “being repaired” at the time the driver elected to use a substitute vehicle. See, e.g., Indemnity Underwriters Ins. Co. v. Seal, 1992 WL 245620 at *2 (E.D. La. 1992); O’Brien, 534 P.2d at 389; Addy, 286 P.2d at 624; Ransom, 108 S.E.2d at 25; Sanz, 172 So.2d at 913; Transit Casualty Co. v. Giffin, 41 Cal. 3d 489,

492 (Cal. Ct. App. 1974); Economy Fire and Casualty Co. v. Dean-Colomb, 646 N.E.2d 288 (Ill. App. Ct. 1995) ("servicing" not applicable where the car had fuel injection problems but was in the owner's garage); Gov't Employees Ins. Co. v. Reilly, 441 A.2d 1139, 1141 (Md. Ct. Spec. App. 1982).

Only one of the cases cited by the plaintiff, O'Connor-Kohler v. United Services Automobile Assoc., 883 A.2d 673 (Pa. Super. Ct. 2005), found "servicing" applicable where the car was not "being serviced" when the insured drove a substitute vehicle. But the finding that "servicing" applied in O'Connor-Kohler was tied to the driver's fear that the car would malfunction in light of a predicted snowfall and the fact that the car's brakes were serviced numerous times in the past. There is no reason to think that the O'Connor-Kohler court would extend its holding to a case where the driver declines to use a car with no mechanical problems because of a potential civil offense.[8]

The other cases cited by the plaintiff do not support her case. In Indiana Lumbermens Mutual Insurance Co. v. State Farm Mutual Automobile Insurance Co., 511 S.W.2d 713, 714 (Tenn. Ct. App. 1972), coverage was found where the primary vehicle had operational defects (a front end out of alignment and a broken tail light). The court did not quote from the "temporary

[8] The New Jersey Administrative Code warns that driving with an expired inspection sticker "may result in a fine." N.J. Admin. Code § 17:15-2.19.

substitute" provision at issue and did not say, if the provision was identical to the one in this case, which of the five words applied.

Even more crucially, the Indiana Lumbermens court addressed only the issue of whether the alleged substitute vehicle was, in fact, a substitute for the primary car. Id. ("We find the preponderance of the evidence to support...the Chancellor's finding that Green was, in fact, driving a temporary substitute automobile..."). As explained above, the issue before the Court breaks into one legal question and one factual question. The plaintiff's case falters on the first, and Indiana Lumbermens addressed only the second.

Finally, the plaintiff cites Ambrosio v. Affordable Auto Rental, Inc., 704 A.2d 572 (N.J. Super. Ct. App. Div. 1998), but that case interpreted "breakdown," a word that the plaintiff concedes does not apply here. Further, in Ambrosio, the insured's car was "mechanically unreliable": the user had past difficulty starting it, and it "had been in and out of the shop." Id. at 576. At most, the case stands for the proposition that "breakdown" can mean "tendency to breakdown" and does not help the plaintiff wring "future servicing" out of "servicing."

In addition to being supported by the language of the policy, case law, and secondary sources, a finding that the motorcycle was not a "temporary substitute" accords with the

purpose of the temporary substitute provision, which is to afford continuous coverage to the insured while limiting the risk of the insurer to one operating vehicle at a time for a single premium. 8A Couch on Insurance § 117:62. See also Houston Gen. Ins. Co. v. American Fence Co., 115 F.3d 805, 806-07 (10th Cir. 1997); O'Quinn v. Md. Auto. Ins., 850 A.2d 386, 394 (Md. Ct. Spec. App. 2004); Nelson v. St. Paul Mercury Ins. Co., 153 N.W.2d 397, 399-400 (S.D. 1967).

In this case, Federal could have been exposed to double risk if the motorcycle were found to be covered because there was nothing preventing the Explorer from being used by another party. And in fact, Mr. Fountain was driving the Explorer soon after the motorcycle accident. Federal contended at oral argument, and the plaintiff did not dispute, that the lapsed inspection would not be a valid basis for denying coverage if the Explorer were involved in an accident. Tr. at 16. If Mr. Fountain had picked up the car from the plaintiff's house on the day of the accident as opposed to a week later, there would have been two cars on the road, with Federal potentially liable if anything happened to either.

The plaintiff points out that double risk was possible in Ambrosio because the car in that case, like the Explorer, sat in the insured's garage while the insured used a purported substitute. But the Ambrosio court never considered the purpose

of the temporary substitute vehicle clause. Even if it had, the chances of someone driving the primary vehicle in that case were remote because of its frequent failure to start and tendency to breakdown. The Explorer, in contrast, was fully operable, posing a greater possibility of double risk because there was no physical impediment to its use.

Even if Federal's risk were somehow limited to a single vehicle, the plaintiff's case founders on the language of the endorsement, which allows for coverage of a temporary substitute only in the circumstances specified. The plaintiff's argument for coverage relies on the vehicle's "illegality," but the possibility of a citation for driving with a lapsed inspection sticker is not one of those circumstances. Driving without an insurance card or a registration certificate can also subject a driver to a fine. N.J. Stat. Ann. § 39:3-29. One would not suggest, however, that losing one's insurance card or registration certificate constitutes a vehicle's "breakdown, repair, servicing, loss, or destruction" simply because it might expose the driver to a monetary sanction.

The possibility of a ticket may have dissuaded Mr. Blizzard from driving the Explorer, but as illustrated by the near-empty gas tank in State Farm Mutual Automobile Insurance Co. v. O'Brien, 534 P.2d 388, 389 (Cal. 1975), a deterrent to a driver's use of a vehicle is insufficient by itself to bring a

car within the temporary substitute provision. The question in determining coverage is not whether the driver has a good reason not to drive the primary vehicle but rather whether the car was "out of service because of its breakdown, repair, servicing, loss, or destruction." For the reasons stated above, none of these words applies, and therefore Mr. Blizzard was not covered while riding the motorcycle.

Because the Court holds that Mr. Blizzard was not covered as a matter of law, it does not reach the issue of whether Mr. Blizzard was in fact using the motorcycle as a substitute for the Explorer or whether Federal is entitled to the application of the "step-down" clause.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL ANNE BLIZZARD, Plaintiff,	:	CIVIL ACTION
v.	:	
FEDERAL INSURANCE CO., et al. Defendants	:	NO. 05-5283

ORDER

AND NOW, this 27th day of February, 2007, upon consideration of the parties' motions for summary judgment (Docket Nos. 13, 17) and the parties' opposition and reply briefs, and after oral argument on the motions heard on February 7, 2007, IT IS HEREBY ORDERED that defendant Federal's motion is GRANTED and the plaintiff's motion is DENIED. Judgment is entered in favor of Federal and against the plaintiff.

The Clerk of Court shall mark this case closed.

BY THE COURT:

/s/ Mary A. McLaughlin
Mary A. McLaughlin, J.