NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DANA HARLEY AND PAUL P. BUTLER	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
RIDERS' CLUB COOPERATIVE AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	:	
	:	
APPEAL OF: PAUL P. BUTLER	:	No. 3651 EDA 2017

Appeal from the Order Entered October 4, 2017
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2016-01325

DANA HARLEY AND PAUL P. BUTLER	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
RIDERS' CLUB COOPERATIVE AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	:	
	:	
APPEAL OF: RIDERS' CLUB COOPERATIVE	:	No. 3680 EDA 2017

Appeal from the Order Entered October 4, 2017
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2016-01325

BEFORE: GANTMAN, P.J., McLAUGHLIN, J., and RANSOM*, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED JUNE 21, 2018**

Appellants, Paul P. Butler and Riders' Club Cooperative ("RCC"), appeal from the order entered in the Montgomery County Court of Common Pleas, which granted summary judgment in favor of Appellee, State Farm Mutual Automobile Insurance Company, in this declaratory judgment action. We

* Retired Senior Judge assigned to the Superior Court.

affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history. Therefore, we have no need to restate them. We add that on November 2, 2017, Appellant Butler and Appellant RCC timely filed separate notices of appeal. The trial court ordered Appellant RCC on November 8, 2017, and Appellant Butler on November 9, 2017, to file respective concise statements of errors complained of on appeal per Pa.R.A.P. 1925(b); both Appellants timely complied on November 29, 2017. This Court consolidated the appeals on February 16, 2018.

Appellant Butler raises one issue for our review:

> WHEN A MEMBER PARTICIPANT OF A RIDESHARING ARRANGEMENT IS OPERATING A VEHICLE AS PART OF THE ARRANGEMENT AS DEFINED IN THE [RIDESHARING ARRANGEMENTS] ACT, 55 P.S. § 695.1 *ET SEQ*.…AND IS INVOLVED IN AN ACCIDENT MAY THE MEMBER'S INSURANCE COMPANY ENFORCE A HIRED CAR EXCLUSION TO DENY COVERAGE TO THE MEMBER AND THOSE WHO CLAIM INJURY ARISING OUT OF THE ACCIDENT, WHEN THE AFORESAID [RIDESHARING ARRANGEMENTS] ACT SPECIFICALLY PROVIDES THAT SUCH EXCLUSIONS SHALL NOT APPLY TO A VEHICLE USED IN A RIDESHARING ARRANGEMENT[?]

(Appellant Butler's Brief at 5).

Appellant RCC raises two issues for our review:

> WHETHER THE TRIAL COURT ERRED/ABUSED ITS DISCRETION IN DENYING [APPELLANT RCC]'S MOTION FOR SUMMARY JUDGMENT AND HOLDING THAT THE VEHICLE IN WHICH THE ACCIDENT AT ISSUE OCCURRED COULD NOT BE DEEMED TO BE "OPERATED BY" [APPELLANT RCC], SO AS TO BRING IT WITHIN THE CONFINES OF THE RIDESHARING ARRANGEMENTS ACT, 55 [P.S.] § 695.1 *ET*

> *SEQ.*, BECAUSE THE MEMBER-DRIVER OPERATING THE VEHICLE WAS AN INDEPENDENT CONTRACTOR, AND NOT AN EMPLOYEE OF [APPELLANT RCC], IN THE ABSENCE OF ANY STATUTORY LANGUAGE OR CASE AUTHORITY DICTATING SUCH A CONCLUSION?
>
> WHETHER THE TRIAL COURT ERRED/ABUSED ITS DISCRETION IN DENYING [APPELLANT RCC]'S MOTION FOR SUMMARY JUDGMENT AND HOLDING THAT THE EXCLUSION FOR "CAR FOR HIRE" SITUATIONS IN [APPELLANT BUTLER'S] STATE FARM INSURANCE POLICY IS ENFORCEABLE, NOTWITHSTANDING CLEAR LANGUAGE IN THE RIDESHARING ARRANGEMENTS ACT, 55 [P.S.] § 695.5, THAT "PROVISIONS IN AN INSURANCE POLICY WHICH DENY COVERAGE FOR ANY MOTOR VEHICLE USED FOR COMMERCIAL PURPOSES OR AS A PUBLIC OR LIVERY CONVEYANCE SHALL NOT APPLY TO A VEHICLE USED IN A RIDESHARING ARRANGEMENT"?

(Appellant RCC's Brief at 4).

Our standard of review of an order granting summary judgment requires us to determine whether the trial court abused its discretion or committed an error of law. ***Mee v. Safeco Ins. Co. of America***, 908 A.2d 344, 347 (Pa.Super. 2006).

> Judicial discretion requires action in conformity with law on facts and circumstances before the trial court after hearing and consideration. Consequently, the court abuses its discretion if, in resolving the issue for decision, it misapplies the law or exercises its discretion in a manner lacking reason. Similarly, the trial court abuses its discretion if it does not follow legal procedure.

Miller v. Sacred Heart Hospital, 753 A.2d 829, 832 (Pa.Super. 2000) (internal citations and quotation marks omitted). Our scope of review is plenary. ***Pappas v. Asbel***, 564 Pa. 407, 418, 768 A.2d 1089, 1095 (2001), *cert. denied*, 536 U.S. 938, 122 S.Ct. 2618, 153 L.Ed.2d 802 (2002). In

reviewing a trial court's grant of summary judgment,

> [W]e apply the same standard as the trial court, reviewing all the evidence of record to determine whether there exists a genuine issue of material fact. We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party.
>
> Motions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of [a] cause of action. Summary judgment is proper if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will **bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action** or defense which in a jury trial would require the issues to be submitted to a jury. In other words, whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, which could be established by additional discovery or expert report and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Thus, a record that supports summary judgment either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.
>
> Upon appellate review, we are not bound by the trial court's conclusions of law, but may reach our own conclusions.

Chenot v. A.P. Green Services, Inc., 895 A.2d 55, 61 (Pa.Super. 2006) (internal citations and quotation marks omitted) (emphasis added).

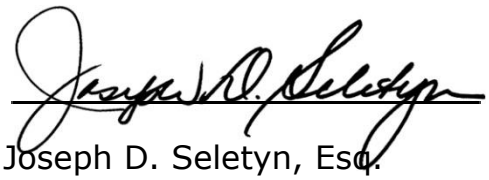
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Steven C. Tolliver, Sr., we conclude Appellants' issues merit no relief. The trial court

opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, filed October 4, 2017, at 8-15) (finding: sole consideration is whether Appellant Butler was acting as independent contractor at time of accident; Appellant Butler was not officer or employee of Appellant RCC; Appellant Butler's membership in Appellant RCC is irrelevant to whether Appellant Butler acted as agent or independent contractor of Appellant RCC; Appellant Butler's actions as independent contractor cannot be imputed to Appellant RCC; Appellant RCC did not operate Appellant Butler's vehicle *via* directives to or communications with Appellant Butler; Appellant RCC's only role was to ask Appellant Butler if he was available to drive Mses. McDonald and Harley to specific location on specific date at specific time for fee; Appellant RCC did not dictate routes and/or speed or any other aspect of incident; Appellant RCC had no other role except to collect and distribute fees paid for ride; Appellant RCC's Member Agreement, Additional Memorandum of Understanding, payment structure, and lack of control over activities of member drivers all indicate drivers are independent contractors; drivers' independent contractor status shields Appellant RCC from liability in event of accident; Appellant RCC designed its service to avoid potential legal liabilities, including *respondeat superior* tort liability, obligation to pay payroll taxes, and other responsibilities flowing from master-servant relationship; because Appellant RCC's arrangement with Appellant Butler did not constitute ridesharing agreement within meaning of Ridesharing Arrangements Act, "car

for hire" unambiguous exclusion in Appellee's automobile insurance policy applies in these circumstances to deny coverage and is enforceable; Appellee is legally permitted to disclaim coverage for accident and is entitled to summary judgment). The record supports the trial court's rationale, and we see no reason to disturb it. Accordingly, we affirm on the basis of the trial court opinion.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/21/18

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION

DANA HARLEY and PAUL BUTLER	:	
Plaintiffs	:	**No. 2016-01325**
	:	
V.	:	
	:	
RIDERS CLUB COOPERATIVE and	:	**Superior Court:** ***3680 EDA 2017***
STATE FARM MUTUAL AUTOMOBILE	:	
INSURANCE COMPA NY	:	
Defendants	:	

Tolliver, J. **December 1, 2017**

OPINION

Appellant-Defendant Riders' Club Cooperate ("Riders' Club") and Appellant-Plaintiff Paul P. Butler ("Mr. Butler") appeal from this Court's October 4, 2017 Order granting summary judgment in favor of Appellee-Defendant State Farm Mutual Automobile Insurance Company ("State Farm"), denying summary judgment in favor of Riders' Club, denying summary judgment in favor of Mr. Butler, and declaring that "the Ridesharing Arrangements Act 55 P.S. §§ 695.1.1 *et seq*. does not apply to the September 30, 2015 motor vehicle accident in which Paul P. Butler struck the rear of a school bus, and therefore State Farm's exclusionary provision for disclaiming coverage related to 'use of a vehicle while it is being used to carry persons for a charge' is enforceable."

On January 20, 2016 Plaintiff Dana Harley commenced this action by filing an action for Declaratory Judgment. On September 19, 2016 Mr. Butler filed a Petition to Intervene. On May 10, 2017 Plaintiff Dana Harley filed a Motion for Summary Judgment. On June 7, 2017 Defendant Riders' Club filed a Response in Support of Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment of Defendants, Riders' Club. On June 9, 2017 Mr. Butler filed a Motion Joining in Plaintiff, Dana Harleys', Motion for Summary Judgment and the Cross-Motion for Summary Judgment

of Defendant, Riders' Club Cooperate Together with His Motion for Summary Judgment. On June 19, 2017 Defendant State Farm filed its own Cross-Motion for Summary Judgment.

On November 2, 2017, Paul P. Butler and Riders' Club filed Notices of Appeal. On November 9, 2017, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), this Court Ordered Appellants to file a concise statement of errors complained of on appeal within 21 days.

Appellants filed its Concise Statement of Matters Complained of on Appeal on November 29, 2017. In its Concise Statement, Appellants claim, in more specific detail, that the trial court erred in its interpretation of the Ridesharing Arrangements Act 55 P.S. §§ 695.1.1 *et seq.*

This Court respectfully directs the Superior Court to the fifteen page Memorandum attached to its October 4, 2017 Order for this Court's rationale for its Order, a copy of which is attached hereto and marked Exhibit "A". This Court respectfully submits that the Memorandum sets forth the rationale for it's decision and addresses the errors complained of by the Appellants.

This Court's October 4, 2017 Order granting summary judgment in favor of State Farm was proper and, accordingly, should be **AFFIRMED**.

RESPECTFULLY SUBMITTED,

Steven C. Tolliver

STEVEN C. TOLLIVER, SR., J.

This Opinion has been E-Filed on 12// /17
Copy **by Interoffice Mail** to:
Court Administration – Civil Division

Judicial Secretary

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION

DANA HARLEY and PAUL BUTLER	:	
Plaintiffs	:	**No. 2016-01325**
	:	
v.	:	
	:	
RIDERS CLUB COOPERATIVE and	:	
STATE FARM MUTUAL AUTOMOBILE	:	
INSURANCE COMPA NY	:	
Defendants	:	

ORDER

AND NOW, this 4th day of October, 2017, upon consideration of Plaintiff Dana Harley's Motion for Summary Judgment, the response thereto of Defendant, State Farm Mutual Automobile Insurance Company, and argument of the parties held on September 25, 2017, it is hereby **ORDERED** that Plaintiff Dana Harley's Motion is **DENIED**.

IT IS FURTHER ORDERED that upon consideration of Defendant Riders' Club Cooperative's Motion for Summary Judgment, the response thereto and argument of the parties held on September 25, 2017, it is hereby **ORDERED** that said Motion is **DENIED.**

IT IS FURTHER ORDERED that upon consideration of Plaintiff Paul P. Butler's Motion for Summary Judgment, the response thereto and argument of the parties held on September 25, 2017, it is hereby **ORDERED** that said Motion is **DENIED.**

IT IS FURTHER ORDERED that upon consideration of Defendant State Farm Mutual Automobile Insurance Company's Cross-Motion for Summary Judgment, the responses thereto, and oral argument held on September 25, 2017, that State Farm Mutual Automobile Insurance Company's Cross Motion for Summary Judgment is **GRANTED**.

Exhibit "A"

IT IS FURTHER ORDERED AND DECREED that the Ridesharing Arrangements Act 55 P.S. §§ 695.1.1 *et seq.* does not apply to the September 30, 2015 motor vehicle accident in which Paul P. Butler struck the rear of a school bus, and therefore State Farm Mutual Automobile Insurance Company's exclusionary provision for disclaiming coverage related to "use of a vehicle while it is being used to carry persons for a charge" is enforceable.

BY THE COURT:

Steven C Tolliver

STEVEN C. TOLLIVER, SR., J.

This Order and Memorandum has been E-Filed on 10/4/17

Copy **By Interoffice Mail** to:
Court Administration – Civil Division

Mary E Davis

Judicial Secretary

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION

DANA HARLEY and PAUL BUTLER	:	
Plaintiffs	:	**No. 2016-01325**
	:	
v.	:	
	:	
RIDERS CLUB COOPERATIVE and	:	
STATE FARM MUTUAL AUTOMOBILE	:	
INSURANCE COMPA NY	:	
Defendants	:	

MEMORANDUM

Presently before the Court are Plaintiff Dana Harley's ("Ms. Harley") Motion for Summary Judgment dated May 10, 2017, Intervenor Plaintiff Paul Butler's ("Mr. Butler") Motion for Summary Judgment dated June 6, 2017, Defendant Riders' Club Cooperative's ("Riders' Club") Cross-Motion for Summary Judgment dated June 7, 2017, and Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") Cross-Motion for Summary Judgment dated June 9, 2017.

UNDISPUTED FACTS AND PROCEDURAL HISTORY

Riders' Club is a not-for-profit corporation which was formed in 1984 for the purpose of improving the quality of life for people who choose not to drive, for seniors, for families with young children and people with disabilities. The day-to-day operations of Riders' Club are conducted by James Wray, the President of the organization, with the assistance of two part-time employees and one part-time consultant.

Riders' Club service is provided by members (hereinafter referred to as "Drivers") who, as independent contractors,[1] agree to use their private automobiles to transport other members. Drivers

[1] All parties to this action agree that the Drivers are independent contractors. Thus, no party has asserted, and the court will not consider, whether Mr. Butler was the apparent agent of Riders' Club Cooperative by virtue of the Riders' Club placard being affixed magnetically to the side of Butler's vehicle at the time of the accident.

agree to obtain their own insurance coverage for their vehicles "in an amount at least equal in dollar value to that mandated in Pennsylvania for public livery vehicles of comparable size." *See* Riders' Club's Member Agreement Section VII Rights and Duties of Member-Driver.

Drivers receive seventy-five percent of the fee recovered for each ride they provide, and are provided with 1099s for tax purposes. Drivers do not receive any fringe benefits, such as worker's compensation insurance or healthcare from Riders' Club.

When a member requires a ride, the member calls Riders' Club to provide information as to the date, time and location to where he/she needs transport. Riders' Club then contacts a Driver to determine if that Driver is available and willing to transport the member. The Driver can decline and then Riders' Club would inquire with another Driver. The only directives provided to the Driver by Riders' Club are with regard to the name of the member and information regarding the transport, i.e. date/time/locations. If the Driver agrees, he then transports the client to the location requested, choosing his own route and operating his/her own vehicle as the Driver deems fit.

Succinctly put in the Additional memorandum of Understanding, ". . . membership of the riders' Club Cooperative shall and does constitute a self-enclosed market within which transportation services are offered by various screened and registered providers like the Contractor."

On September 30, 2015, Mr. Butler was a member and Driver of Riders' Club. Riders' Club provided Mr. Butler with a 1099 each year he drove.

Mr. Butler was not an employee of Riders' Club. Instead, like all Riders' Club Drivers, Mr. Butler was an independent contractor who agreed to use his own vehicle (a Honda fit) that he insured to transport various members. The Honda Fit operated by Mr. Butler for these transports was owned solely by him and not in any way by Riders' Club.

In September of 2014, in his capacity as an independent contractor for Riders' Club, Mr. Butler began to transport Erin McDonald and her nurse, Dana Harley, to and from Ms. McDonald's school. He transported Ms. McDonald and Ms. Harley in his own vehicle, the Honda Fit. The rides provided to Ms. McDonald and Ms. Harley were for compensation. Mr. McDonald confirmed that he selected the route to the school on his own and that it could change daily depending on traffic.

On September 30, 2015, Mr. Butler was involved in an accident while transporting Ms. McDonald and Ms. Harley in his Honda Fit. The sole purpose of this trip at the time of the accident was to take Ms. McDonald and Ms. Harley to Ms. McDonald's school. In that accident, Mr. Butler struck the rear end of a school bus stopped in a line of traffic.

At the time of the accident, Mr. Butler's Honda Fit was insured with State Farm[2]. Mr. Butler's automobile policy contained the following exclusionary provision:

> **Exclusions**
>
> THERE IS NO COVERAGE FOR AN ***INSURED***:
>
> 7. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY ***PERSONS*** FOR A CHARGE. This exclusion does not apply to the use of a ***private passenger car*** on a share-the-expense basis. (emphasis in original).

As a result of the collision, Ms. Harley suffered injuries and thereafter asserted a claim for damages against Mr. Butler. State Farm, by letter dated December 15, 2015, advised Mr. Butler's attorney that it would not provide coverage to Mr. Butler because, at the time of the accident, Mr. Butler's vehicle was being used to carry persons for a charge.

The instant declaratory action ensued in which Ms. Harley asks this court to declare the above exclusion for coverage void and unenforceable under the Ridesharing Arrangements Act. In their motions for summary judgment, Mr. Butler and Riders' Club joined in the request. State Farm filed its

[2] No information was provided by the parties that the premiums charged to Butler were for ridesharing vehicles and approved by the Insurance Commissioner. 55 P.S. Section 695.5(b).

cross-motion for summary judgment seeking judgment in its favor that the exclusionary language is valid, enforceable and applicable to the circumstances of the instant matter.

DISCUSSION

1. Standard for Summary Judgment

Summary judgment should be granted "wherever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report." Pa. R.C.P. 1035.2. Summary judgment should be granted "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. *Id.*

On a motion for summary judgment, the movant bears the burden of demonstrating that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 204 (1979) (citations omitted). Once the moving party establishes that a motion for summary judgment is properly submitted, the non-moving party then "must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial." *Marks v. Tasman*, 527 Pa. 132, 135 (1991).

Here, there is not a single fact in dispute. As described below, the entire case hinges on the interpretation of a single word in the Ridesharing Arrangements Act, and thus this action is ripe for disposition.

2. Provisions of the Ridesharing Arrangements Act Relevant to this Dispute

In 1982, in order to encourage ridesharing (or carpooling) in the Commonwealth, the General Assembly enacted "An act providing for ridesharing arrangements and providing that certain laws shall be inapplicable to ridesharing arrangements." Act of December 14, 1982 (P.L. 1211, No. 279). Those

laws are specifically set forth at 55 P.S. Section 695.2 and 695.3. Generally, these laws pertain to those affecting common carriers subject to regulation by the Public Utility Commission and the Workers' Compensation Act. The General Assembly amended the law, which is now known as the "Ridesharing Arrangements Act" on July 10, 2015 (P.L. 130, N. 22), 55 P.S. §§695.1.1 *et seq.*

Critically to the instant litigation, Section 695.5(a) of the Act provides:

> Provisions in an insurance policy which deny coverage for any motor vehicle used for commercial purposes or as a public or livery conveyance shall not apply to a vehicle used in a ridesharing arrangement.

55 P.S. § 695.5(a).

If this Court finds that Mr. Butler's vehicle was being used in a "ridesharing arrangement," State Farm's provision excluding coverage would be void.

In §695.1.2, the Act defines a "Ridesharing Operator" as:

> The person, entity or concern responsible for the existence and continuance of a ridesharing arrangement. The party responsible may or may not be the driver. The term includes, but is not limited to:
> (1) an employer;
> (2) an employer's agent
> (3) an employer organized association;
> (4) a State, regional or local agency;
> (5) a nonprofit organization; or
> (6) an entity that owns, rents or leases a vehicle used in a ridesharing arrangement.

It is undisputed by the parties that Riders' Club qualifies as a "Ridesharing Operator" under the Ridesharing Arrangements Act under subsection (5) as noted above.

A "Ridesharing Arrangement" is defined as:

> Any one of the following forms of transportation provided by a ridesharing operator:
>
> (1) The transportation of not more than 15 passengers where the transportation is incidental to another purpose of the driver who is not engaged in transportation as a business. The term includes a carpool and vanpool used in the transportation of employees to or from their place of employment.
> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.

(3) **The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public Agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.**

(4) A carpool or vanpool arrangement in which the driver is not engaged in transportation as a business and one or more groups are transported in a passenger motor vehicle between a place of abode or terminus near the place of abode and a place of employment or educational or other institution, provided that:

(i) The group consists of at least two persons, including the driver, and does not exceed 15 persons, including the driver.

(ii) The group does not consist of school-aged children in grades 12 and under being transported to or from an educational institution.

(iii) The gross vehicle weight of the passenger motor vehicle does not exceed 10,000 pounds, excluding special rider equipment.

(iv) The group is transported in a round trip where the driver is also driving to or from the driver's place of employment or other institution.

It is undisputed that Ms. Harley's trip doesn't fall under "Ridesharing Arrangement" Definitions 1, 2 or 4. Therefore, the Court's analysis is limited to definition 3.

It is further undisputed that the vehicle at issue held less than 15 people, that the transportation was for Riders' Club clientele and that the vehicle was not owned by Riders' Club. Therefore, the only remaining issue is whether Mr. Butler's vehicle could be legally described as being "operated" by Riders' Club.

If, at the time of the accident, Mr. Butler's vehicle was being "operated" by Riders' Club, an undisputed "Ridesharing Operator," then Mr. Butler's trip would fall under the third definition of a "Ridesharing Arrangement," and thus the exclusionary provision in State Farm's policy would be void. Conversely, if Riders' Club was not "operating" the vehicle, the Ridesharing Arrangements Act would not void State Farm's provision.

3. A "Ridesharing Arrangement" did not exist because Riders' Club did not operate the vehicle driven by Mr. Butler at the time of the September 30, 2015 motor vehicle accident.

The critical dispute between the parties is whether Riders' Club should be deemed to have been "operating" Mr. Butler's vehicle at the time of the accident. Mr. Butler, Ms. Harley and Riders' Club all assert that because Mr. Butler was a member of Riders' Club, his act of driving the car should be imputed to Riders' Club. During oral argument, attorneys for each of these parties said repeatedly that Mr. Butler was operating the vehicle "on behalf of" Riders' Club.

State Farm counters that Mr. Butler was acting as an independent contractor. Therefore, by definition, his actions cannot be legally imputed to Riders' Club. Moreover, State Farm asserts that the law does not state a ridesharing arrangement exists when the driver is operating the vehicle "on behalf of" a Rideshare Operator. It requires the vehicle to be operated "*by*" the nonprofit. Therefore, State Farm argues, Riders' Club was not "operating" the vehicle under the definition of the Ridesharing Arrangements Act.

This is a question of first impression in the Commonwealth and, for the reasons described below, the arguments forwarded by State Farm are ultimately more persuasive.

i. Mr. Butler was an independent contractor.

Mr. Butler was acting as an independent contractor. The Supreme Court articulated the legal distinction between an employee and an independent contractor in *Feller v. New Amsterdam Cas. Co.*:

> The legal distinction between an employee and an independent contractor is so well established as to require little if any discussion. The characteristic of the former relationship is that the master not only controls the result of the work but has the right to direct the way in which it shall be done, whereas the characteristic of the latter is that the person engaged in the work has the *exclusive control* of the manner of performing it, being responsible only for the result.
>
> *Feller v. New Amsterdam Cas. Co.*, 70 A.2d 299, 300 (1950)(emphasis added).

Because of the independent relationship between the independent contractor and the employer, the independent contractor's actions cannot be imputed to the employer.

> It is settled in Pennsylvania that a person is not liable for the acts of negligence of another, unless the relation of master and servant or principal and agent exists between them and that when an injury is done by a person exercising an independent employment the party employing him is not responsible to the person injured. The rationale of this rule is set forth in *Silveus v. Grossman*, 307 Pa 272, 278, 161 A. 362, 364: '**The very phrase 'independent contractor' implies that the contractor is independent in the manner of doing the work contracted for.** How can the party control the contractor who is engaged to do the work and who presumably knows more about it than the man who by contract authorized him to do it? **Responsibility goes with authority.**'"
>
> *Hader v. Coplay Cement Mfg. Co.*, 189 A.2d 271, 277 (Pa. 1963)(emphasis added).

Typically, as in *Hader,* it is the employer who is arguing that the contractor is independent because typically the employer is arguing that, therefore, the contractor's torts cannot be imputed to it. Here, ironically, the employer, Riders' Club, is the one forwarding the argument that its independent contractors' actions should, in fact, be imputed to it.

Ultimately, regardless of the motivations of the parties in forwarding their respective positions, independent contractor law is clear. Responsibility goes with authority and control. *Hader v. Coplay Cement Mfg. Co.*, 189 A.2d 271, 277 (Pa. 1963). Thus, since Riders' Club cannot be said to have been controlling Mr. Butler, it similarly cannot be said that Riders' Club was itself "operating" the vehicle that Mr. Butler was driving. Riders' Club no more "operated" Mr. Butler's vehicle than a homeowner operates a contractor's vehicle when the contractor goes to purchase supplies.

Moreover, it is black letter law that "a corporation can only act through its officers, agents, and employees." *Tayar v. Camelback Ski Corp., Inc.*, 47 A.3d 1190, 1196 (Pa. 2012). Mr. Butler was clearly not an officer or employee of Riders' Club. Moreover, "ordinarily a principal is not liable for the incidental acts of negligence in the performance of duties committed by an agent who is not a servant." *Com. V. Minds Coal Min. Corp.*, 60 A.2d 14, 17 (Pa. 1948)(stating that if independent

contractors are agents, they are by definition agents who are not servants). Therefore, under black letter corporations and agency law, it is just not appropriate to impute the actions of an independent contractor to his employer.

This Court cannot see a legally relevant distinction between the case law quoted above and the matter at hand simply because in the instant matter, it is the employer who is asking the court to impute the actions of its independent contractor to it. Moreover, the Court additionally sees no relevance to the fact that the independent contractor was a "member" of the employing organization. No party has provided any case law that suggests that the Driver's status as a member is a relevant consideration under either corporations or agency law.

ii. Giving an instruction or directive to a diver does not constitute operation of the vehicle.

Courts of this Commonwealth have routinely defined the term "operate" with regard to a motor vehicle as actually putting the vehicle in motion, i.e. driving it. *Love v. City of Philadelphia*, 543 A.2d 531, 533 (Pa. 1988). "Merely preparing to operate a vehicle, or acts taken at the cessation of operating a vehicle are *not* the same as actually operating the vehicle." *Id.* at 533. Indeed, any acts other than actually putting the vehicle in motion, such as getting into or out of the vehicle, have been deemed ancillary to the actual operation of the vehicle. *Id.*

Moreover, our Commonwealth Court has already determined that the mere giving or failure to give instructions or directives to a driver does not constitute operation of a vehicle. *Keesey v. Longwood Volunteer Fire Co.*, 601 A.2d 921 (Pa. Cmwlth. 1992).

In *Keesey*, an accident occurred when the driver of the Longwood fire truck failed to slow down while entering an intersection, causing it to collide with plaintiff's vehicle and leaving plaintiff with severe brain damage. Plaintiff argued that the county dispatchers were negligent in not communicating an order they had received to the fire truck to slow down and that this failure came

within the vehicle exception to immunity provided to political subdivisions in the Commonwealth. In determining whether immunity applied, the court found that the only person operating the fire truck at the time of the accident was the driver. In so doing, the court held that the mere failure of the dispatch operators to provide the slow down directive did not constitute "operation of a vehicle". *Id.* at 473-74.

Similarly, in *Regester v. Longwood Ambulance Co. Inc.*, the estate of a patient brought a negligence action against a hospital and township volunteer fire company for failing to take directives given to them by a 911 dispatcher which would have allowed them to reach the patient quicker and potentially save his life. *Regester*, 751 A.2d 694, 703 (Pa. Cmwlth. 2000). The Commonwealth Court again concluded that a 911 dispatcher's directive to an ambulance driver was not an act with respect to operation of the vehicle. *Id.*

The facts in the case at issue demonstrate that Riders' Club's only role was to initially inquire with Mr. Butler as to whether he was available to drive Erin McDonald and her nurse, Ms. Harley, to a specific location on a specific date and at a specific time for a fee. Riders' Club did not provide any directive to Mr. Butler as to routes to be taken and/or the speed to be traveled or anything else. Moreover, once Mr. Butler advised that he would be able to drive the members to their desired location, Riders' Club had no other role except to potentially collect fees paid by the members for the transport and distribute them accordingly.

Thus, under well-established case law of this Commonwealth, it cannot be said that Riders' Club "operated" the vehicle via its directives to or communications with Mr. Butler.

iii. Riders' Club has organized itself in such a way to avoid personal liability in the event of a Driver accident; it cannot have its proverbial cake and eat it too.

Riders' Club has ensured through its Member Agreement, its Additional Memorandum of Understanding, its payment structure with its Drivers, and its lack of control over the activities of its Drivers, that its Drivers will legally be considered independent contractors.

For instance, in the Rider's Club Cooperative Additional Memorandum of Understanding the last sentence of paragraph 2 states: "The Contractor further agrees that his or her relationship to the Riders' Club Cooperative is in the capacity of sole proprietor or ***independent contractor*** only and that the Contractor is not an employee of the Riders' Club Cooperative ***for any purposes***" (emphasis added).

This is important to Riders' Club because its Drivers' independent contractor status acts to shield Riders' Club from liability in the event of an accident. The reason that Riders' Club is shielded from tort liability is precisely because, since they employ independent contractors, they are not deemed to be operating the vehicle under the law. *Hader v. Coplay Cement Mfg. Co.*, 189 A.2d 271, 277 (Pa. 1963)("The very phrase 'independent contractor' implies that the contractor is independent in the manner of doing the work contracted for.... Responsibility goes with authority."). Importantly, Riders' Club is not arguing that the law should deem it to have been operating the vehicle for purposes of its direct tort liability to the plaintiff. It maintains that it should be shielded from liability because of the Driver's status as an independent contractor by virtue of entering into the Riders' Club Member Agreement.

It makes sense for Riders' Club, a non-profit organization, to attempt to insulate itself from liability just as the Ridesharing Act affords protection for employers from the applicability of the Workers' Compensation Act when co-employees participate in carpooling activities to get to and from work. The purpose of the Ridesharing Act is not fulfilled by allowing Riders' Club to avoid risk where it purposefully created a "self-enclosed free market within which transportation services are offered by various screened and registered providers like the Contractor." (See the Riders' club Additional Memorandum of Understanding) The arrangement does not meet the spirit of the law. *Cf. Community*

Car Pool Service, Inc. v. Pennsylvania Public Utility Commission, 533 A2d 491, (Pa. Cmwlth 73;National Casualty Company v. Kinney, 90 A3d 747 (Pa. Super. 2014)

Indeed, Riders' Club undoubtedly designed its service precisely in this fashion to avoid a host of potential legal liabilities including *respondeat superior* tort liability, the obligation to pay payroll taxes, and other legal responsibilities flowing from a master-servant relationship. If it wishes to escape those various legal liabilities by constructing itself in such a way that it cannot be deemed to be operating its Drivers' vehicles under traditional agency law, it must also accept the consequences as well: namely, because it does not "operate" Mr. Butler's vehicle, the arrangement does not constitute a "Ridesharing Arrangement" within the meaning of the statute.

Because Riders' Club was not "operating" the vehicle in which Ms. Harley was riding when the accident occurred, she was not being transported pursuant to a ridesharing arrangement as that term is defined by the statute's third definition. Thus, it is evident that a ridesharing arrangement could not have existed between Mr. Butler and Riders' Club on September 30, 2015.

4. The State Farm policy exclusion for using a vehicle to carry persons for a charge must be enforced.

The State Farm policy issued to Paul Butler contains the following relevant policy exclusion:

Exclusions

THERE IS NO COVERAGE FOR AN ***INSURED***:

7. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY ***PERSONS*** FOR A CHARGE. This exclusion does not apply to the use of a ***private passenger car*** on a share-the-expense basis. (emphasis in original).

When interpreting contract provisions, Pennsylvania courts have determined that where the language of a contract is clear and unambiguous, a court is required to give effect to that language. *Gene & Harvey Builders, Inc. v. Penn. Mfrs. Ass'n Ins. Co.*, 517 A.2d 910, 912 (Pa. 1986). Contract

language is only determined to be ambiguous "if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." *Hutchinson v. Sunbeam Co. Corp.*, 519 A.2d 385, 390 (Pa. 1986).

The aforementioned exclusion is often referred to as the "car for hire" exclusion and has been deemed enforceable by Pennsylvania courts quite often. *See, e.g., Ratush v. Nationwide Mut. Ins. Co.*, 619 A.2d 733 (Pa. Super. 1992).

The exclusion in the State Farm policy is unambiguous, and in fact, none of the parties opposed to State Farm's Motion for Summary Judgment argued that State Farm is not legally entitled to disclaim coverage if the exclusion is, in fact, enforceable.

Accordingly, Defendant State Farm Mutual Automobile Insurance Company is entitled to judgment as a matter of law. There is no coverage under its policy with Mr. Butler for the accident that occurred on September 30, 2015.