

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

JUN 24 2011

Allan LaCaffinie,

Plaintiff

vs.

NO. 2156 of 2009, G.D.

The Standard Fire Insurance Co.,

Defendant

NOTICE OF ORDER, JUDGMENT OR DECREE

Plaintiff William M. Radcliffe

You are hereby notified that the following Order, Judgment
~~or Decree~~ has been entered against you on the

Defendant David B. White

22nd day of June, 20 11
in the above case.

- Judgment in the amount of _____ Plus costs.
- Decree in Divorce
- Decree Nisi in Equity
- Final Decree in Equity
- Justice of the Peace Transcript of Judgment in Trespass in the amount of _____ Plus costs.
- If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Department of Transportation, Bureau of Traffic Safety, Harrisburg, PA

- Entry of Judgment of
 - Non-Suit or
 - Non-Pros
 - Default
 - Verdict
 - Arbitration Award

- Justice of the Peace Transcript in Assumpsit in the amount of _____ Plus costs.
- Order , Copy Enclosed.

LANCE WINTERHALTER, PROTHONOTARY

By: V. Wheeler,

Clerk

Deputy

(Applicable blocks have been checked)

-THIS NOTICE IS NOT A DEMAND FOR PAYMENT-

If you have any questions concerning the above please contact:

Mailed: June 22, 2011

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

ALLAN LaCAFFINIE,

PLAINTIFF,

v.

THE STANDARD FIRE INSURANCE CO.,

DEFENDANTS.

CIVIL ACTION – CLASS
ACTION

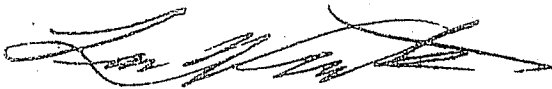
No. 2156 of 2009, G.D.

ORDER

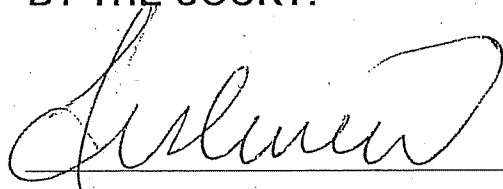
And NOW, this 22nd day of June, 2011, it is hereby ORDERED and DECREED that the Motion for Summary Judgment filed by the Defendant Standard Fire Insurance Company is GRANTED as the Court finds that there exist no genuine issues of material fact as noted in the preceding Opinion, and that the Defendant is entitled to judgment as a matter of law. As this is a final Order disposing of all currently pending claims, it is subject to an immediate appeal.

BY THE COURT:

ATTEST:



PROTHONOTARY



STEVE P. LESKINEN, JUDGE

TRUE AND ATTESTED COPY

PROTHONOTARY

LARGE PRINTED
PROTHONOTARY

2011 JUN 22 P 2:28

FILED

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

ALLAN LaCAFFINIE,

PLAINTIFF,

v.

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DEFENDANTS.

CIVIL ACTION – CLASS
ACTION

No. 2156 of 2009, G.D.

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FILED

Opinion

LESKINEN, J.

William M. Radcliffe, Esq. for Plaintiff

David B. White, Esq., and Dean F. Falavolito, Esq. for Defendant

Before this Court is a Motion for Summary Judgment filed by the Defendant Standard Fire Insurance Company [hereinafter "Standard"] on November 29, 2010. The Plaintiff in this case is Allan LaCaffinie [hereinafter "LaCaffinie"]. A Petition to Certify Class Action is pending this Court's ruling on Defendant's Motion for Summary Judgment.

BACKGROUND

LaCaffinie is a single vehicle policyholder with Standard or its predecessor for over ten years. (Complaint ¶ 4). During this period, LaCaffinie has paid a premium for stacked uninsured/underinsured [hereinafter "UM/UIIM"] coverage on the single vehicle policy. (Complaint ¶ 5). LaCaffinie argues that the "policy issued by Standard to LaCaffinie, according to its terms, prohibited UM/UIIM stacking as defined by the MVFRL [Motor Vehicle Financial Responsibility Law], and further, the stacking UM/UIIM coverage sold to LaCaffinie was identical to Standard's non-stacking UM/UIIM

coverage.” (Complaint ¶ 7). Per LaCaffinie, “Standard engaged in deceptive conduct which created a likelihood of confusion or of misunderstanding, which conduct was a violation of the Consumer Protection Law.” (Complaint ¶ 11). It is further alleged that from August 1, 2003, to the date of the filing of its complaint, Standard issued identical UM/UIM coverage to single vehicle policyholders across the state and charged this class of insureds a premium for this illusory coverage. (Complaint ¶ 14).

In response, Standard argues that the policy does provide “the Plaintiff with ‘stacked’ UIM benefits he would not have received had he waived stacking.” (Defendant’s Motion for Summary Judgment ¶ 2). Further, “[a]s the Plaintiff has been provided with stacked UIM benefits and received a distinct ‘stacking’ benefit under his policy, his claims for Breach of Contract and violation of the Unfair Trade Practices and Consumer Protection Law fail as a matter of law.” (Defendant’s Motion for Summary Judgment ¶ 8).

DISCUSSION

Summary Judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. *Rauch v. Mike-Mayer*, 783 A.2d 815 (Pa. Super. 2001). The moving party has the burden of proving that no genuine issues of material fact exist. *Rush v. Philadelphia Newspapers, Inc.*, 732 A.2d 648, 650 (Pa. Super. 1999). In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. *Potter v. Herman*, 762 A.2d 1116 (Pa. Super. 2000). In sum, summary judgment is

appropriate only when the facts are so clear that reasonable minds cannot differ.

Rausch, 783 A.2d at 821.

LaCaffinie purchased stacked uninsured motorist coverage in the amount of \$250,000 and stacked underinsured motorist coverage in the amount of \$250,000. (Policy Declarations p. 1). Stacking permits "an individual to increase the amount of coverage she can receive in the event of an accident by totaling the UM coverage for each vehicle covered by a policy." *Heller v. State Farm Insurance Companies*, 2010 WL 1778629 (Pa.Com.Pl. 2010). The relevant code section provides as follows:

Stacking of uninsured and underinsured benefits and option to waive

(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 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.

72 Pa.C.S. § 1738.

Under section 1738, if an insured had three vehicles with stacked UM/UIM coverage of \$15,000 on each, then the insured could stack the coverage for each vehicle and receive up to \$45,000 of UM/UIM coverage. See *Heller v. State Farm*

Insurance Companies, 2010 WL 1778629 (Pa.Com.Pl. 2010). Such stacking, which covers multiple vehicles under a single policy, is known as intra-policy stacking. *Id.* In contrast to intra-policy stacking, inter-policy stacking occurs with “the stacking of benefits provided by two or more policies.” *Craley v. State Farm Fire and Casulty Co.*, 895 A.2d 530, 532 (Pa. 2006).

In the present case, LaCaffinie cannot intra-policy stack as he owns a single vehicle policy. However, Standard maintains it can charge a premium for inter-policy stacking. LaCaffinie claims the coverage is illusory because of a household exclusion providing as follows:

B. We do not provide Uninsured Motorists Coverage or Underinsured Motorist Coverage for bodily injury sustained:

1. By you while “occupying” or when struck by, any motor vehicle you own which is not insured for this coverage under this policy. This includes a “trailer” of any type used with that vehicle.
2. By a “family member”:
 - a. Who owns an auto while “occupying”, or when struck by, any motor vehicle owned by you or any “family member” which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
 - b. Who does not own an auto, while “occupying”, or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

(Policy Endorsements p. 2).

A similar issue was recently before this Court in *Shultz v. Erie Indemnity Company*, No. 1753 of 2006, G.D. (July 22, 2010). In that case, the household exclusion provided “this insurance does not apply to . . . damages sustained by anyone we protect while occupying . . . a motor vehicle owned by you or a relative, but not

insured for Uninsured or Underinsured Motorists Coverage under this policy." *Id.* at 2-3. Based on that specific provision, this Court denied the insurer's Motion for Summary Judgment concluding that the benefits of stacking under the Erie policy with its household exclusion may actually be illusory and must be explored at trial. *Id.* at 5.

An important distinction exists between the household exclusion currently at issue and the one in *Shultz*. The Erie provision does not distinguish between who is making the claim and bars coverage when the vehicle involved in an accident was "owned by you or a relative." The Standard exclusion only bars coverage when the vehicle involved is owned by the policyholder.

In support of this distinction, Standard submits the following example in which it would not deny stacking coverage but Erie would.

1. Scenarios which allow for Inter-Policy Stacking under Standard's Policy.

a. Claim made by policyholder

- Brother A is a Standard policyholder.
- He lives with his brother, Brother B (not a Standard policyholder).
- Both brothers have single-vehicle policies with their respective insurers.
- Brother A has \$200,000 in UM/UIM limits.
- Brother B has \$100,000 in UM/UIM limits.
- Brother A is struck by an uninsured motorist while driving Brother B's car.
- Brother A has over \$300,000 in damages.
- Brother A first goes to Brother B's policy and collects \$100,000 in UM benefits
- Brother A then goes to his own policy for UM benefits.
- The "Household Exclusion" that the Plaintiff claims would bar Brother A's claim against his own policy would NOT bar coverage.
 - As Brother A is a "you" under the Policy, Exclusion B.1. would be relevant – **however, coverage would not be barred as Brother A was not driving a car that he "owned"** . . .
- In summary then, there is a distinct and discernable benefit in this situation:
 - If Brother A had NOT waived stacking and paid the full premium, he would have received **\$200,000** from Standard.
 - If Brother A had WAIVED stacking and received a discounted

premium he would have received **\$100,000** from Standard.

(Defendant's Br. in Support of Motion for Summary Judgment p. 10) (emphasis in original). Although the above example comes from Defendant's Brief, the Court finds that it is supported by the Plaintiff's policy, which is a document of record.¹

The Plaintiff argues that Standard is required to provide \$200,000 to Brother A regardless of any waiver or non-waiver of the stacking benefit. If accurate, then there would be no apparent difference between a stacked and non-stacked policy. In support of this position, Plaintiff cites *Generette v. Donegal Mutual Insurance Company*, 957 A.2d 1180 (Pa. 2008). The facts of *Generette* are as follows:

Appellant suffered injuries while riding as a **guest passenger** in a motor vehicle that collided with a third-party tortfeasor's vehicle. Appellant recovered \$25,000 under the third-party tortfeasor's liability insurance policy. As her injuries exceeded the liability coverage provided by the tortfeasor, Appellant also recovered \$50,000 from Nationwide Insurance Company, which provided underinsured motorist ("UIM") coverage for the car in which she was a guest passenger Appellant sought coverage for her remaining claims under her own policy with Donegal for underinsured motorist coverage As relevant to the issues at bar, Appellant contracted for \$35,000 of UIM coverage on the single vehicle insured through her Donegal-UIM policy and waived her ability to "stack" her coverage.

Donegal denied coverage for the April 1997 accident based on a provision in the policy entitled "Other Insurance." The "Other Insurance" clause was included in her policy to implement the waiver of stacked UIM benefits. It limited recovery of UIM coverage under the Donegal-UIM policy to the amount by which the Donegal-UIM policy's coverage limit exceeded the coverage of the UIM policy at the first priority level. Accordingly, Donegal denied coverage claiming that her \$35,000 coverage limit on her Donegal-UIM policy did not exceed the \$50,000 of coverage provided by the Nationwide-UIM policy, the first priority policy.

¹ Defendant provides two additional examples including a situation where a father who does not own a vehicle is injured while driving a vehicle owned by one of his sons living in the same household and a situation where an insured, while acting as a pedestrian, is injured by a motorist. The Court does not consider these examples in detail as the Defendant can show it did not sell wholly illusory coverage using the example provided above.

Generette, 957 A.2d at 1182-83. (emphasis added).

The Pennsylvania Supreme Court first analyzed the Appellant's status as a guest passenger under 75 Pa.C.S. § 1702. The section defines an "insured" as follows:

(1) An individual identified by name as an insured in a policy of motor vehicle liability insurance.

(2) If residing in the household of the named insured:

(i) a spouse or other relative of the named insured; or

(ii) a minor in the custody of either the named insured or relative of the named insured.

75 Pa.C.S. § 1702. Under this section, the Court found that a guest passenger was not an "insured" as defined by the relevant code section saying:

[T]he application of the stacking waiver in this case turns on whether the use of the term 'insured' in the stacking and stacking waiver section, 75 Pa.C.S. § 1738, is limited to the definition of 'insured' as provided in the MVFRL's definition section, 75 Pa.C.S. § 1702, which does not include guest passengers.

Generette, 957 A.2d at 1189-90. Because the Appellant was not an "insured" by statute, "the relevant provision relating to the waiver of stacking, does not apply to injuries received as a guest passenger." *Id.* at 1190.

Using the Defendant's example set forth above, Brother A is injured while driving Brother's B car. Brother A is an "insured" as defined by section 1702 because he and his brother are related and reside in the same household. See 75 Pa.C.S. § 1702. Recently, the Venango Court of Common Pleas Court noted in a similar case that the *Generette* court "did not issue a broad assertion that waiver of stacking was invalid in all cases. The waiver of stacking in *Generette* was held to be invalid solely on the grounds that Ms. Generette, as a guest passenger, was simply outside the definition of "insured" required to validly waive stacking." *Heller v. State Farm Insurance Companies*, 2010

WL 1778629 (Pa.Com.Pl. 2010).

The Court notes that LaCaffinie received the stacking benefit after an accident he was in on February 7, 2009. (Plaintiff's Reply to New Matter ¶ 4). The Plaintiff was driving a truck owned by his brother when it was rear ended by a third party tortfeasor. (Plaintiff's Reply to New Matter ¶ 6). LaCaffinie owned the same single vehicle policy currently at issue. (Plaintiff's Reply to New Matter ¶ 5). LaCaffinie suffered various personal injuries and recovered \$50,000 from the tortfeasor's policy, \$100,000 from the policy insuring his brother's truck, and over \$100,000 in UM/UIM benefits from the Standard policy. (Plaintiff's Reply to New Matter ¶ 5). Although not properly a part of the record because it is attached to Defendant's Brief in Support of Motion for Summary Judgment, LaCaffinie admitted in his deposition to receiving \$245,000 from Standard. (LaCaffinie Deposition pp. 21-22).

LaCaffinie's UM/UIM benefits are stacked at \$250,000 limits. Under the facts of the February 7, 2009, accident, if he had executed a valid stacking waiver, then the most he could receive in total from both his brother's and his own policy would be \$250,000 (\$100,000 from his brother's and \$150,000 from his own). However, because he pays for stacking he can receive the total amount from each policy totaling \$350,000 (\$100,000 from his brother's and \$250,000 from his own). It appears that LaCaffinie actually did collect \$345,000 from these two policies plus the original \$50,000 from the tortfeasor.

The Plaintiff, however, argues that he would be entitled to coverage up to the \$350,000 regardless of any stacking waiver because of *Generette*. After the *Generette* Court discussed the impact of the Plaintiff's status as a guest passenger, it considered "whether the 'Other Insurance' clause [in the policy] violates the asserted public policy

mandating that UIM coverage be excess rather than gap coverage.” *Generette v. Donegal Mutual Insurance Company*, 957 A.2d 1180, 1191 (Pa. 2008). “[E]xcess UIM gives to the injured insured a fund that supplements the fund provided by the tortfeasor’s liability coverage, up to the injured insured’s UIM policy limits or until he is compensated for his losses.” *Id.* at note 12. On the other hand, “gap UIM coverage gives to the injured insured a fund that fills in any gap between the tortfeasor’s liability coverage and the injured insured’s UIM policy limit.” *Id.* The Court concluded that the “Other Insurance” provision violated the public policy of providing excess rather than gap insurance. *Id.* at 1192. The Court noted “this decision merely provides Appellant with the coverage that she purchased. She paid full premiums for \$35,000 coverage to protect her in the event that she was injured by an underinsured driver; she now seeks only to recover that amount.” *Id.*

Although the “Other Insurance” provision in the present case is nearly identical to the one in *Generette*, the key distinction is that *Generette* relied on the injured party’s status as a guest passenger who was not an “insured” as defined by 75 Pa.C.S. § 1702. The *Heller* Court, *supra*, reached the same conclusion noting as follows:

In the present case, Mr. Heller is an individual identified by name as an insured in a policy of motor vehicle liability insurance, and therefore, unlike Mr. *Generette*, falls within the statutory definition of “insured” found in § 1702.

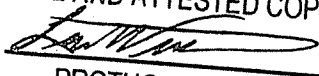
The valid waiver of stacking found in the present case is the key distinction from *Generette*. To find that State Farm’s “Other Insurance” clause was a violation of public policy, in spite of a valid waiver of stacking, would require this Court to essentially rewrite the MVFRL.

Heller, 2010 WL 1778629. Under the facts of *Heller*, the Plaintiff recovered \$25,000 from the tortfeasor, \$45,000 from an Erie policy he carried with three vehicles on it (\$15,000 from each vehicle), and \$55,000 from a non-stacked Standard policy with

\$100,000 in UM/UIM benefits. *Id.* Because the Standard policy was non-stacked, Plaintiff only recovered the gap coverage of \$55,000. *Id.*

Because LaCaffinie would be an "insured" as defined by section 1702 while driving vehicles owned by other family members in his household, he has a distinct benefit of being able to stack his coverage if he is injured by an uninsured or underinsured tortfeasor. The Court finds, as a matter of law, that there is a difference between Standard's stacked and non-stacked single vehicle policies. The Court declines to extend the holding in *Generette* to apply to those defined as "insureds" under section 1702. The *Generette* Court based its holding on the Plaintiff's status as a non-"insured" guest passenger. The Court must grant Defendant's Motion for Summary Judgment as the insurance contract at issue provides a distinct "stacking" benefit that is absent in an insurance contract where the insured executes a valid waiver of stacking coverage.

For all of the above reasons, this Court enters the following order:

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PROTHO NOTARY