

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02221

ORDER

RECEIVED

Oct 25 2022

SC Court of Appeals

INTRODUCTION

This matter came before the Court on February 1, 2022 for a hearing on the parties' Motions for Judgment on the Pleadings. Plaintiff's attorney Bert G. Utsey, III argued in favor of Plaintiff's motion and against Defendant's motion. Defendant's attorney M. Dawes Cooke, Jr. argued in favor of Defendant's motion and against Plaintiff's motion. At the conclusion of the hearing, the Court took the matter under advisement.

After careful consideration of the issues, the parties' arguments, and the applicable law, the Court now grants Plaintiff's Motion for Judgment on the Pleadings and denies Defendant's Motion for Judgment on the Pleadings for the reasons discussed below.

BACKGROUND¹

On November 1, 2017, Defendant issued an automobile insurance policy, policy number ACS 0048016 ("the Policy"), to Plaintiff. Among other coverages, the Policy provided \$250,000 per person in bodily injury liability ("BI") coverage, \$250,000 per person in uninsured motorists ("UM") coverage, and \$250,000 per person in underinsured motorists ("UIM) coverage. The Policy insured three vehicles.

¹ Via their cross-Motions for Judgment on the Pleadings, the parties do not dispute the facts.

On January 22, 2018, Plaintiff was a passenger in one of the vehicles insured under the Policy. Her husband, Eric Steineman, was driving. The Steineman vehicle was involved in a collision with another vehicle (“the Collision”). The other vehicle was driven by Sarah Smith, an uninsured driver.²

Plaintiff sustained bodily injuries as a result of the Collision. Plaintiff alleges Eric Steineman and Sarah Smith were negligent, caused the Collision, and are therefore liable for her damages.

Accordingly, Plaintiff made demand on Defendant for payment of the limits of the Policy’s \$250,000.00 in BI coverage based on Eric Steineman’s alleged negligence, \$750,000 in UIM coverage (\$250,000 UIM limits stacked for the three insured vehicles) based on Eric Steineman’s alleged negligence, and \$750,000 in UM coverage (\$250,000 UM limits stacked for the three insured vehicles) based on Sarah Smith’s alleged negligence.

Defendant tendered the Policy’s \$250,000 BI limits to Plaintiff but denied her demands for UM and UIM coverages. The denial was based on Defendant’s argument that Plaintiff cannot collect UM or UIM coverages under the Policy because she has already received BI coverage under the Policy. Defendant cited the “duplicate payments” provisions of the Policy in support of its position.

Specifically, the “duplicate payments” provisions, which are included under the BI, UM, and UIM coverage sections of the Policy, are worded similarly and state:

No one will be entitled to receive duplicate payments for the same elements of loss under this [BI] coverage and: 1. [UM coverage] of this policy; or 2. Any Underinsured Motorists Coverage provided by this policy.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UM] coverage and: 1. [BI coverage] of this policy; 2. Any Underinsured Motorists Coverage provided by this policy.... We will not make a duplicate payment under this [UM] coverage

² Although the names of the two drivers are not specified in Plaintiff’s Complaint, the Court takes judicial notice from filings in a related tort action that Plaintiff’s husband is named Eric Steineman and the uninsured driver is named Sarah Smith. The parties do not dispute that these are the names of the drivers involved in the subject collision and in fact used these names at the motion hearing. Therefore, the Court refers to the drivers by name in this Order.

for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UIM] coverage and: [BI coverage or UM coverage] of this policy.... We will not make a duplicate payment under this [UIM] coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

The Policy does not define the terms “duplicate payments” and “elements of loss.”

Plaintiff filed this action seeking a declaratory judgment as to the parties’ rights with respect to UM and UIM coverages under the Policy. Defendant removed this action to federal court but the federal court remanded it to this Court for resolution. Each party thereafter filed a Motion for Judgment on the Pleadings.

STANDARDS FOR JUDGMENT ON THE PLEADINGS

A judgment on the pleadings is proper when the pleadings raise no issue of fact that, if resolved in favor of the non-moving party, would entitle it to judgment.

Here, the parties agree there are no determinative factual issues. Rather, the dispute in this action centers on the construction and application of the Policy, including the legal validity of the “duplicate payments” provisions at issue. This dispute is therefore a question of law and is properly before the Court on the cross-motions.

ANALYSIS

1. Questions presented.

Defendant’s denial of UM and UIM coverages raises two questions: First, does the instant contract deny such UIM and UM payments pursuant to the Policy’s “duplicate payments” provisions, and second, if so, would such provisions be valid under SC insurance law?

The holding of this Court is UIM and UM payments are not barred by the “duplicate” language, and as an additional ground as to UM only, any such provision would be contrary to public policy in South Carolina.

2. The policy language does not bar coverage in this situation

Defendant’s denial of UM and UIM coverage fails is because the Policy’s “duplicate payments” provisions do not achieve the result Defendant seeks to achieve.

As a threshold matter, “duplicate payments” is different than “payments.” “Duplicate” is defined in Black’s Law Dictionary as to double, to repeat, or to copy exactly. South Carolina cases in other contexts have applied the term consistent with that definition. *See, e.g., also Williamson v. U.S. Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) (The court enforced a policy provision offsetting UIM coverage by workers compensation benefits received because the provision was authorized by statute. The court noted the policy of avoiding duplication prohibited *double recovery* and authorized the offset.); *Harvey v Art Metal, Inc.*, 247 S.C. 443, 147 S.E.2d 697 (1966) (In a workers compensation case, the court discussed the effect of a claimant’s receipt of unemployment compensation while out of work due to an injury. It referred to cases that “have allowed some form of credit or setoff so as to avoid duplicate payments for the same lost wages.” This clearly means the court was focused on the amount paid, not the fact of payment.).

This distinction is also consistent with South Carolina law on offsets, which permits a tortfeasor to get credit for payments a claimant receives from another tortfeasor for the same injury – which prohibits a double recovery by the claimant – but does not totally bar the claim against the non-paying tortfeasor.

To achieve the result for which Defendant argues, the Policy provisions did not need to use the term “duplicate” but could only have said “payments.” The fact that Defendant included the term

“duplicate” in the provisions demonstrates the language means a claimant cannot recover twice for the same amount, not that a claimant cannot recover under different coverages until fully compensated for her damages (or until coverage is exhausted). Otherwise, Defendant could achieve an offset equal to potentially millions by paying only a nominal amount of BI coverage.

While there are no South Carolina appellate decisions construing similar “duplicate payments” provisions, holdings from other jurisdictions have addressed this issue and have rejected arguments like the one Defendant makes here.

In *Argonaut Great Cent. Ins. Co. v. Casey*, 701 F.3d 829 (8th Cir. 2012), the claimants sought to recover UIM coverage and the insurer denied the claims based on a duplicate payments provision. The court there held that the provision only prohibited a double recovery by providing for an offset but did not affect the claimants’ ability to aggregate recoveries across different types of coverage. It explained:

[T]he reference to “duplicate payments” mean[s] “being paid twice for the same damages.” That conclusion is consistent with the plain meaning of the word “duplicate.” *See* New Oxford Am. Dictionary 539 (3d ed. 2010). Thus, both Policy provisions only prohibit *double* payments, from any coverage source, for the same claimant injuries. Here, no claimant seeks to recover more than his or her damages incurred in the accident.

Id. at 834 (emphasis in original).

Similarly, in *Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905, 460 P.3d 683 (2020), another case involving a denial of UIM coverage based on a duplicate payments provision, the court also concluded the provision simply prohibits double payments for the same injury by effecting an offset but did not constitute a bar to recovery of UIM benefits. *Id.* at 929-30, 460 P.3d 683, 695-96.

Government Emps. Ins. Co. v. Sherlock, 140 A.D.3d 872, 32 N.Y.S.3d 635 (2016), is yet another UIM case that distinguishes between double recovery and excess recovery. Construing a “duplicate payments” provision labeled “condition 11” in the insurance policy at issue, the court there noted:

The key to a proper understanding of condition 11 is the recognition that “shall not duplicate” is not aimed at preventing an insured from seeking full compensation by combining partial recoveries from several tortfeasors, but at preventing double recoveries for their bodily injuries.

Id. at 875, 32 N.Y.S.3d at 637.

Finally, in *Fischer v. Midwest Security Ins. Co.*, 268 Wis. 2d 519, 673 N.W.2d 297 (2003), the court rejected the insurer’s argument that the policy’s duplicate payments provision (which was essentially identical to the provisions at issue in the present case) barred the claimants’ claim for UIM coverage.

Like the Plaintiff here, the claimants in *Fischer* were injured while passengers in a vehicle operated by an at-fault motorist. Their driver was uninsured, so the insurer paid its UM coverage to the claimants. Another driver was also negligent in causing the collision. That driver was insured and his insurer paid its BI limits. The claimants sought UIM coverage for their claim against the at-fault insured (underinsured) motorist.

The court rejected the insurer’s denial of UIM coverage, noting:

The Fischers contend that they seek payment for uncompensated damages. The parties stipulated that the Fischers’ damages exceeded the limit of the UM coverage. Thus, the Fischers did not receive payments for some of their losses. The parties agree that the policy does not define “duplicate payment” or “same elements of loss.” The Fischers contend that the plain meaning of “duplicate payment” is double or two-fold payment. ... [W]e conclude that subsec. C does not render payments under separate UM and UIM coverage duplicate payments for the same elements of loss. ... A plain reading of subsec. D leads one to expect that a “duplicate payment” would be one where both a tortfeasor and an insurer compensate the insured for the same element of loss. Subsection D guards against profiting beyond the damages actually incurred.

Id. at 531, 673 N.W.2d at 302.

Here, Plaintiff is not seeking to recover twice for the damages paid by the BI coverage but is simply attempting to obtain full compensation for her damages via additional payments under the UM and UIM coverages. Defendant (as well as the defendants in the tort action) will receive full credit and an offset for the amount of the BI payment, so there is no risk of a double recovery by Plaintiff.

At best, Defendant’s argument that recovery of Plaintiff’s damages under the UIM and UM provisions would be “duplicate” even though Plaintiff is only being compensated once for the loss suggests an ambiguity in the policy language. This reading is no more plausible than Plaintiff’s reading. “Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655 (2008).

Based on the foregoing, the Court concludes that the Policy’s “duplicate payments” provisions would not preclude Plaintiff’s UM and UIM claims, even if they were able to do so validly under South Carolina law. Rather, these provisions simply ensure that Defendant does not have to pay Plaintiff twice for the same damages.

3. With regard to UM coverage, but not UIM coverage, an additional basis for judgment for the Plaintiff is reading the contract as Defendant proposes is void as contrary to public policy.

Plaintiff argues that Meridian's position violates public policy because it would eliminate statutorily-mandated UM coverage and UM/UIM coverages that statutes required Meridian to offer. South Carolina law requires that all policies of automobile insurance include UM coverage of \$25,000/\$50,000. See S.C. Code § 38-77-150(A). The statute further requires that insurers offer optional UIM coverage and additional UM coverage (up to the limits of liability coverage). See S.C. Code § 38-77-160 (emphasis added).

UM coverage in this State is controlled by the UM statutes so that any inconsistent policy provisions are void. *Southern Farm Bureau Cas. Ins. Co. v. Fulton*, 244 S.C. 559, 564-65, 137 S.E.2d 769, 771 (1964). Specifically, as the South Carolina Supreme Court noted, almost 50 years ago:

The general rule is that *an insurer may not limit its liability under uninsured motorist coverage by setoffs or limitations* through “other insurance,” excess insurance, or medical payment reduction clauses, and this is true even when the setoff for the reduction is claimed with respect to a separate, independent policy of insurance (workmen’s compensation) *or other*

insured motorist coverage. And this is true because the insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance.

Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 101-02, 198 S.E.2d 522, 525 (1973), quoting *Stephens v. Allied Mut. Ins. Co.*, 182 Neb. 562, 156 N.W.2d 133 (1968) (emphasis added).

UM coverage in South Carolina is mandated by S.C. CODE ANN. § 38-77-150(A) (1976, as amended), which states that a policy providing UM coverage shall “pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,” subject to the policy’s coverage limits. Here, if Plaintiff demonstrates she is legally entitled to recover damages from Sarah Smith, an admitted uninsured motorist, the Policy must by law provide UM coverage for the net amount Plaintiff is entitled to recover.³ Any contrary provision of the Policy would have the effect of defeating this statutorily required coverage and would instead allow Defendant to limit its liability under the Policy’s UM coverage based upon limitations for other insured motorist (BI) coverage, which is expressly prohibited by the rule set forth in *Ferguson*. The contractual provision in this case regarding “duplicate payments” is therefore void, at least as to UM payments under the interpretation of the provision advanced by Defendant.

On the other hand, with regard to UIM coverage, Plaintiff relies primarily on *Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987). Plaintiff’s argument is that this case prohibits any limitation on UIM coverage at all unless expressly provided by statute. However, viewing *Bratcher* in the context of the insurance statutes and the cases interpreting them, this Court must conclude that *Bratcher* (and Section 38-77-160) cannot be extended to preclude parties from

³ Any verdict Plaintiff may obtain in the tort action would, of course, be reduced by the \$250,000 in BI coverage Plaintiff already received. See *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012). However, while that payment would reduce the amount of the verdict, it would not reduce the amount of UM coverage.

agreeing to a nonduplication provision. First, the *Bratcher* court did not address nonduplication clauses and did not express any intention to do so.

Further, this issue has been addressed persuasively in *Sibert v. State Auto Mut. Ins. Co.*, No. CV 8:20-4000-HMH, 2021 WL 3514000 (D.S.C. Aug. 10, 2021). The *Sibert* court found that a similar non-duplication provision did not offend South Carolina UIM law. Primarily, the *Sibert* court relied on South Carolina cases subsequent to *Bratcher* which upheld limits on UIM coverage not mentioned in a statute. See *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 380 (2021) (“Knight also argues the policy provision violates section 38-77-160 of the South Carolina Code ... because it excludes statutorily required UIM coverage. We disagree on this point as well”) and *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 42, (2007) (“We hold that public policy is not offended by an automobile insurance policy provision which limits the portability of basic ‘at-home’ UIM coverage when the insured has a vehicle involved in the accident”). This Court agrees with the *Sibert* that non-duplication provisions limiting UIM coverage are permissible.

CONCLUSION AND ORDER

For the reasons discussed above, the Court finds, as a matter of law, that Defendant cannot validly rely upon the Policy’s “duplicate payments” provisions to deny UM or UIM coverage to Plaintiff for her claims resulting from the collision as the policy language does not support this reading. Additionally, Defendant’s denial of UM coverage (but not UIM) is contrary to South Carolina public policy.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Judgment on the Pleadings is hereby granted; and

IT IS THEREFORE FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings is hereby denied; and

IT IS THEREFORE FURTHER ORDERED that Plaintiff is awarded a declaratory judgment in her favor that the Policy provides \$750,000 in UM coverage for Plaintiff's claims against Sarah Smith as a result of the Collision and \$750,000 in UIM coverage for Plaintiff's claims against Eric Steineman as a result of the Collision.



York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge