

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Joanne Costello, both individually and as
the Personal Representative of the Estate
of John Costello,

Plaintiff,

vs.

State Farm Mutual Automobile Insurance
Company,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-29-00003

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

RECEIVED

Jun 10 2026

SC Court of Appeals

This matter was heard by the Court on April 16, 2026, on cross-motions for summary judgment with stipulated facts. The matter is ripe for a determination by the Court. The basic issue in this case is whether the Costellos' underinsured motorist coverage "stacks" under the stipulated facts. State Farm requests an order holding the Costello's underinsured motorist coverage does not stack under the facts of this case. The plaintiff argues the underinsured motorist coverage from Costellos' two vehicle policies should stack. There is no dispute that the Costellos were entitled to recover from one at-home policy. State Farm has already paid the coverage from one vehicle to Mrs. Costello and to the Estate---\$250,000 bodily injury limits to each and \$100,000 in property damage coverage to Mrs. Costello---\$600,000 total. (Stipulation, ¶ 6).

The stipulated facts provide that the Plaintiff and her husband were on vacation in Hawaii operating a rental vehicle the couple had obtained for their 13-day vacation trip. (Stipulation, ¶ 3). Another motorist hit them head on, causing serious injury to Mrs. Costello and killing her husband. (Stipulation, ¶ 2). The Costellos had two vehicles

insured with State Farm which were both in South Carolina when the accident happened. The Costello's South Carolina vehicles were not out of service due to breakdown, repair, servicing, damage or theft. (Stipulation, ¶ 3). The coverage and policy language was identical as to both State Farm policies.

On page 27 of the State Farm policy under the heading "If Other Underinsured Motor Vehicle Coverage Applies" there are four statements that describe stacking rules of the policy.

Under scenario three, the policy states:

3. If:
 - a. **you** or any **resident relative** sustains **bodily injury** or **property damage**:
 - (1) while **occupying** a motor vehicle not **owned by you** or any **resident relative**; or
 - (2) while not **occupying** a motor vehicle; and
 - b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to **you** or any **resident relative** by the **State Farm Companies** apply to the same **bodily injury** or **property damage**, then

the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. **We** may choose one or more policies from which to make payment.

(Policy, p. 27)

Section 4 provides a different rule which allows stacking if the insured is occupying a motor vehicle "owned by" "you" or a "resident relative" as is consistent with South Carolina law. The term "owned by" is defined in the policy as "1. owned by; 2. registered to; or 3. leased, if the lease is written for a period of 31 or more consecutive days."

As established by multiple cases, underinsured stacking is required for policies when the policy holder or his resident relatives have a vehicle involved in the accident.

This is derived from S.C. Code § 38-77-160 which provides: “If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.” Conversely, if the named insured’s have a vehicle involved in the accident, stacking is not required.

In the recent case of State Farm Mut. Auto. Ins. Co. v. Windham, 438 S.C. 156, 882 S.E.2d 754 (2022), the South Carolina Supreme Court in a 3-2 decision held that S.C. Code § 38-77-160 does not require underinsured motorist coverage stacking when a rental vehicle is involved in an accident. The opinion is explicit in making this point, stating “[R]ental cars could be covered by the policy, but the statute in no way mandates that result.” Id. at 161, 882 S.E.2d at 756. But, the Court found State Farm’s policy language was ambiguous as applied to a temporary substitute car.

The Windham case found ambiguity in State Farm’s policy as it applied to a “temporary substitute” car because of the sentence in State Farm’s policy: “If a car qualifies as both a non-owned car and a temporary substitute car, then it is considered a temporary substitute car only.” The plaintiff attempts to apply this holding to the present case. However, the rental vehicle being used by the Costellos did not qualify as a “temporary substitute car” because a temporary substitute vehicle would require that the insured vehicle be out of service due to breakdown or repair. Bold terms are those defined in the policy.

Temporary Substitute Car means a **car** that is in the lawful possession of the **person** operating it and that:

1. replaces **your car** for a short time while **your car** is out of use due to its
 - a. breakdown;

- b. repair;
 - c. servicing;
 - d. damage; or
 - e. theft; and
2. neither **you** nor the **person** operating it own or have registered.

If a **car** qualifies as both a **non-owned car** and a **temporary substitute car**, then it is considered a **temporary substitute car** only.

But the temporary substitute language simply doesn't apply to the facts of this case. The Windham case specifically stated in a footnote, "To be clear, under the terms of this policy, 'temporary substitute cars' do not include all rental cars, but only those used while the insured's car is inoperable for one of the enumerated reasons. For example, vehicles rented while on vacation, for moving furniture or other goods, or while on a work trip would not qualify as temporary substitute cars under this policy." Id. at 158 n.1, 882 S.E.2d at 755, n.1.

Per the stipulated facts and policy language, the rental vehicle the Costellos occupied in this accident would not qualify as a "temporary substitute." And the ambiguity that the South Carolina Supreme Court found with respect to a "temporary substitute" vehicle simply doesn't apply to the present situation. The State Farm policy language unambiguously states that no stacking is allowed when there is not a vehicle "owned by" the insureds involved in the accident, which includes a vehicle leased for more than 30 days per State Farm's policy language. But this was a rental for less than 30 days.

Based on all the arguments and stipulated facts, the Court concludes that State Farm's motion for summary judgment should be granted and the Plaintiff's motion for summary judgment should be denied. South Carolina does not require underinsured motorist coverage to stack when rental vehicles are involved in accidents. State Farm's

policy does not provide for underinsured to stack under these stipulated facts. Judgment shall be entered in favor of the defendant, State Farm, subject to whatever appeals may be taken by either party.

AND IT IS SO ORDERED!

(Electronic Signature of Judge on Final Page)



Lancaster Common Pleas

Case Caption: Joanne Costello, Both Individually And As The Personal Representative , plaintiff, et al VS State Farm Mutual Automobile Insurance Company
Case Number: 2024CP2900003
Type: Order/Summary Judgment

So Ordered

Patrick C. Fant, III