

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

2015 MAR 11 A 10: 09 C/A NO: 2014-CP-30-603

Juan Michael Ramirez,)

Plaintiff,)

LAURENS COUNTY
CLERK OF COURT

ORDER

vs.)

Progressive Northern Insurance Company,)

Defendant.)

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APR 13 2015

SC Court of Appeals

This matter came before me on Defendant Progressive Northern Insurance Company's (hereinafter "Progressive") Motion for Judgment on the Pleadings pursuant to Rule 12(c), SCRCP.¹ A hearing was held on February 2, 2015, in Laurens, South Carolina. Present in the courtroom were Edwin L. Turnage on behalf of the Plaintiff, and Bradley L. Lanford on behalf of Progressive. For the reasons set forth below, Progressive's motion is hereby granted and judgment awarded in its favor.

FACTUAL BACKGROUND

The facts of this declaratory judgment action are undisputed as demonstrated by the pleadings as well as the argument of counsel. The plaintiff was involved in a single car accident while a passenger in a vehicle owned by John S. Bryan, Jr. The plaintiff suffered numerous injuries in the accident and incurred substantial medical bills. Mr. Bryan had liability insurance through State Farm with limits of \$25,000. There was no underinsured motorist ("UIM") coverage on the Bryan vehicle. The plaintiff was also a named insured under his own personal automobile policy through Bristol West, which had UIM limits of \$25,000, and he also qualified

¹ Progressive had also filed a Motion to Strike and Motion to Dismiss and the Plaintiff had filed a Motion to Compel. In light of the disposition of Progressive's Motion for Judgment on the Pleadings, I find that the other Motions are rendered moot.

as an insured under a State Farm policy issued to his father and the subject Progressive policy issued to his mother.

The plaintiff recovered the \$25,000 liability limits from the State Farm policy on the Bryan vehicle and also recovered the \$25,000 UIM limits on his own State Farm policy as well as the Bristol West policy for a total recovery of UIM benefits of \$50,000. The plaintiff made a demand on Progressive for its UIM limits of \$25,000 which Progressive denied because the plaintiff had already received more than one UIM limit from his other policies. Progressive took the position that under South Carolina law the most the plaintiff would be able to recover would be one additional UIM coverage because he did not "have" a vehicle in the accident. Therefore, since there were three applicable policies, the most Progressive would be required to pay under its policy would be its pro rata share of \$25,000 or \$8,333.33. Progressive offered to pay the plaintiff that pro-rated amount in exchange for a partial release allowing the plaintiff to file a declaratory judgment action seeking the additional coverage.

The within action was filed seeking a declaration that Progressive owed its entire UIM policy limit. Progressive answered essentially admitting all of the factual allegations in the complaint and also filed its own counterclaim alleging that the plaintiff was in a non-owned vehicle and seeking a declaration that it owed no more UIM coverage under the policy. The plaintiff admitted Progressive's factual allegations but denied the conclusion to be drawn from those facts. After the close of the pleadings Progressive moved for judgment on the pleadings on the basis that it owed no further obligations on the policy under South Carolina law.

LEGAL STANDARD

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRPC. A judgment on the pleadings

shall be granted where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in the plaintiff's favor. *Home Builders Ass'n of S. Carolina v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 748 S.E.2d 230 (2013).

DISCUSSION

In South Carolina, an insured is generally allowed to stack UIM coverage on multiple policies or multiple vehicles within a policy when the insured is both a Class I insured, as has been defined both by statute and our courts, and when the insured has a vehicle involved in the accident. *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984); *Fireman's Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1993); S.C. Code Ann. § 38-77-160 (“[i]f 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”) (emphasis added); *Brown v. Continental Ins. Co.* 315 S.C. 393, 434 S.E.2d 270 (1993) (“[the statutory] language clearly restricts stacking by providing for coverage from ‘any one’ vehicle”).

The plaintiff in the within case was a Class I insured under the Progressive policy because he was a resident of his mother’s household and would be a resident relative under the policy despite not being a named insured under the policy. However, the plaintiff was a passenger in a vehicle he did not own and therefore did not “have” a vehicle in the accident, the second requirement to be able to stack multiple UIM coverages.

The plaintiff argued that this is not a stacking case because there was only one vehicle on the Progressive policy. The plaintiff further argued that public policy would favor the payment of the coverage since the plaintiff’s mother paid a premium for the coverage and protecting her family would be part of the reason that coverage was purchased.

In regards to the first argument, even though the plaintiff is attempting to recover from multiple policies rather than multiple vehicles within one policy, he is still attempting to stack multiple coverages. See *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 496 S.E.2d 631 (1998) (“Stacking does not depend upon number of automobile insurance policies issued, but on number of additional coverages for which insured has contracted.”); (“Portability,’ as distinguished from stacking, refers to a person’s ability to use his coverage on a vehicle not involved in an accident as a basis for recovery of damages sustained in the accident.”) *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283 (Ct. App. 2010).

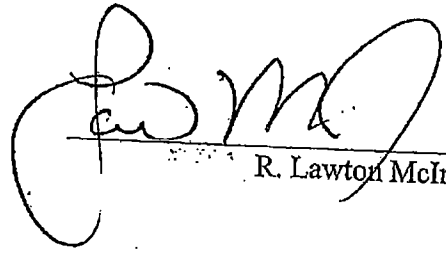
The plaintiff’s second argument in regards to public policy is also not persuasive. The limit on stacking that is at issue in this case was specifically enacted by the legislature in S.C. Code Ann. § 38-77-160. If the plaintiff’s position were to be adopted it would be in contravention of that statutory section as well as well-settled South Carolina case law. I find that there is no violation of public policy in following the existing statutory and case law.

CONCLUSION

For the reasons stated herein, the Court finds that since the plaintiff did not have a vehicle involved in the accident then he is limited to one UIM coverage which he has already recovered. Therefore, the plaintiff cannot recover any additional coverage from Progressive and Progressive’s Motion for Judgment on the Pleadings is **GRANTED**. Because the Court’s ruling on this motion is dispositive of the entire case, it is not necessary to rule on the parties’ remaining outstanding motions which are hereby moot.

IT IS SO ORDERED.

3-12, 2015
Anderson, South Carolina


R. Lawton McIntosh

TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Laurens County CCCP & GS



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Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	03/17/2015	Disposition Judge:	McIntosh, R Lawton
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

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Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Progressive Northern Insurance Company	Order/Order	Order		03/17/2015-12:11		
Ramirez, Juan Michael	Order/Order	Order		03/17/2015-10:10		
Ramirez, Juan Michael	Order/Form 4	Order		02/19/2015-15:22	03/17/2015-15:22	
Ramirez, Juan Michael	Order/Form 4-Mot Compel Denied/Mot Dismiss Under Advisement	Order		02/03/2015-09:42	03/17/2015-09:42	
Turnage, Edwin L.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
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