STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14, Plaintiffs, vs. USAA General Indemnity Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-23-04630 **ORDER GRANTING USAA'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING CROSS-MOTIONS RELATED TO DISCOVERY DISPUTES AS BEING MOOT**

This matter came before the Court on September 24, 2018 for a hearing on Defendant USAA General Indemnity Company's ("USAA") Motion for Summary Judgment, USAA's Motion for a Protective Order and Plaintiff Tyrin Young, Sr.'s Motion to Compel Deposition. Appearing at the hearing were Attorney Patrick "Trey" Still, III on behalf of USAA and Attorneys Richard Allen and Russell Guest for the Plaintiff. As stated more fully below, the Court hereby grants USAA's Motion for Summary Judgment on the grounds that the insured vehicle, a 2006 KIA, was not located in the State of South Carolina and not involved in the subject accident, and therefore, there is insufficient contacts with the State of South Carolina for this Court to take the drastic measure of reforming the California Insurance Policy to make it conform to South Carolina law. Having determined that there are no issues of material fact related to the KIA's status that would affect this Court's decision, the Court dismisses USAA's Motion for Protective Order and Plaintiff's Motion to Compel as being moot.

The Court's Findings of Fact

It appears to the Court that the Plaintiff initiated this declaratory judgment action

as a result of a coverage dispute with his automobile insurer, USAA, after a motor vehicle accident ("the accident") on or about August 30, 2015, which occurred in Greenville, South Carolina. On that date, Kamika Young, the Plaintiff's wife, was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. The Parties to this litigation stipulated to the facts of that accident, which consist of Mrs. Young failing to yield to oncoming traffic as she attempted to make a left turn into the northbound lane on N. Pleasantburg from a private parking lot. It is undisputed that Mrs. Young was at fault for causing this accident. The initial collision between the vehicles caused Mrs. Young's vehicle to proceed across the northbound lane, strike a building and catch on fire. Tragically, two of Plaintiff's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. A third child, minor J.Y. suffered personal injuries, but he survived the accident.

Thereafter, the Plaintiff made claims against his wife and his personal policy with USAA on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering the Ford was issued in South Carolina, with policy number 1FMFU18L71LB10185 ("the SC Policy"). USAA tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured the Plaintiff's Ford. This Court approved the settlements on behalf of the Plaintiff individually, as Guardian of J.Y., and as the Personal Representative of the estates of the two deceased minors. The covenant not to execute signed in exchange for that initial settlement included a provision that would allow the Plaintiff to pursue other excess liability and/or UIM coverage.

While the Plaintiff's wife and children returned to South Carolina in mid-2014, the Plaintiff and his 2006 KIA Spectra ("the KIA") remained in California until he was deployed to Guam in late summer or early fall of 2014. At some point prior to this accident, the KIA was transported to Guam for the Plaintiff's use during his deployment. The Plaintiff was deployed in Guam when this accident occurred. The KIA never returned to the Continental United States after this accident as it was sold to avoid shipping costs.

In addition to the facts discussed above, the parties stipulated to the following facts:

- At all times relevant hereto, the Plaintiff considered himself to be a citizen and permanent resident of the State of South Carolina even though he was stationed in other states while in the Navy;
- The Plaintiff and his wife paid South Carolina income taxes every year since getting married in 2008;
- The Ford and KIA were registered in the State of South Carolina;
- The Plaintiff and his wife paid property taxes on the Ford and KIA in the State of South Carolina;
- The Plaintiff's wife and children were physically residing in the State of South Carolina at the time of this accident;
- The KIA had not been located within the State of South Carolina since at least 2009;
- The KIA was insured under a California Policy at the time of the accident;
- The KIA was located in Guam at the time of the accident; and
- The Plaintiff nor his wife ever requested that the KIA be insured under a South Carolina policy after it left the State in 2008.

Legal Argument

This scope of this declaratory judgment action is limited to whether this Court

should reform the California Policy into a South Carolina policy that provides stackable UIM benefits to be paid in addition to the $100,000 already paid in liability and UIM benefits, which was paid to the Plaintiff under the SC Policy on the Ford driven by the Plaintiff's wife at the time of this accident. The Court notes that all of the facts that would be considered in determining whether a policy should be reformed have been stipulated to and/or are not in dispute. As a result, this Court finds that the case is ripe for consideration for summary judgment on the issue of whether the policy should be reformed. In viewing the facts of this case in the light most favorable to the Plaintiff, it is clear that the 2006 KIA has financial ties to the State of South Carolina. However, it is also clear that not only was the KIA not involved in the accident that is the subject of this suit, the vehicle was not in the State of South Carolina within at least 6 years of the accident.

Discussion of the California Policy

The Court notes that the Parties agreed that the California Policy was in place at the time of the accident. The Plaintiff has not argued and the Court does not find there to be any ambiguity in the language of the California Policy. Therefore, this Court will not address the actual policy language in this Order. Further, the Plaintiff does not argue that the California Policy is void or unenforceable under California law. In fact, the Court notes that the California Policy mirrors the California Statute on the issue of stacking. *See generally* California Insurance Code §115580.2(d)&(q)(stating "in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons"). Therefore, this Court holds that the California Policy, if

not reformed, precludes stacking of UIM Benefits and is enforceable under California law to the extent that California law applies. *See generally Wagner v. State Farm Mut. Auto. Ins. Co.*, 40 Cal. 3d 460, 466, 220 Cal. Rptr. 659, 662, 709 P.2d 462, 465 (1985)(holding that the insured was not entitled to stack two UM policies by the same carrier pursuant to California Insurance Code §115580.2); *Calfarm Ins. Co. v. Wolf*, 86 Cal. App. 4th 811, 821, 103 Cal. Rptr. 2d 584, 591 (2001)(noting that California law precludes the stacking of UM benefits and instead limits the injured party's recovery to the single highest limit of applicable UM coverage).

Discussion of Choice of Law

Insurance policies are subject to the general rules of contract construction. *Nationwide Mut. Ins. Co. v. Commercial Bank*, 479 S.E.2nd 524 (S.C. 1996). Under general contract law, South Carolina generally follows the legal theory that the controlling law is *lex loci contractus* or the location where the contract was entered. *Yeager v. Allstate Ins. Co.*, Civil Action No. 9:09-860-MBS, 2010 U.S. Dist. LEXIS 15843 (D.S.C. Feb. 22, 2010). To the extent that the Court were to apply this general concept, it is clear that California law would apply and the Plaintiff would not be entitled to stack any additional coverage onto the $100,000 that he has already received. However, South Carolina legislature has enacted Section 38-61-10 of the South Carolina Code to specifically address insurance policies' insured property or lives located in the State of South Carolina. Section 38-61-10 provides:

> All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

S.C. Code Ann. § 38-61-10. Importantly, the party moving to reform the policy has the burden to establish that Section 38-61-10 applies. Courts interpreting this statute have held that "what is solely relevant is where the property, lives, or interests insured are located [at the time of the loss]." *Hartsock v. Am. Auto. Ins. Co.,* 788 F.Supp. 447 (2011 DSC). The Plaintiff argues that the underinsured motorist coverage is meant to insure the Plaintiff and his family in case of harm. However, the Plaintiff does not cite any case law to support the proposition that Section 38-61-10 intended to reform policies offering voluntary coverage on out-of-state vehicles not otherwise subject to the insurance laws and requirements of the State of South Carolina. Instead, the Court notes the California Insurance Policy's principle purpose is to provide insurance for the use of the KIA, which has not been in this State since 2009. As a result, the insurance policy was issued to cover "property" that was not located in the State of South Carolina either at the time of the issuance of the policy or at the time of the accident. The Court would further note that South Carolina's courts have held numerous times that automobile polices should not be reformed where the policies sole connection to the State of South Carolina is that the insured was injured in an accident while in the State of South Carolina. *See Bowman v. The Continental Ins. Co.*, 229 F.3d 1141 (finding that § 38-61-10 was not applicable to an insurance coverage dispute because at the time of the automobile accident the insured person and property were located in Georgia and the insured's sole connection with South Carolina was the automobile accident); *Unisun Ins. Co. v. Hertz Rental Co.,* 312 S.C. 549, 436 S.E.2d 182, 184 (S.C. 1993) (applying the rule of *lex loci contractus* after finding that § 38-61-10 was not applicable in a case where the property insured was located outside of South Carolina). Therefore, this

Court finds that S.C. Code § 38-69-10 does not apply this loss.

Having determined that S.C. Code § 38-61-10 cannot be invoked based upon the location of the insured property, the Court need not address the "connections" that the Plaintiff, his family, and the car had to the State of South Carolina.

Since Section 38-61-10 does not apply, the Court must apply California law to determine whether the Plaintiff is entitled to stack UIM benefits. As noted above, the Plaintiff has not argued that he would be entitled to stack under California law. Nevertheless, the Court notes that it is clear that California law would not allow stacking under a California policy in circumstances where an accident occurred in a different state that allowed stacking. In *Cal. Cas. Indem. Exch. v. Pettis*, 193 Cal.App. 3d 1597 (Cal. Ct. App. 1987), the plaintiffs were injured while operating a non-owned vehicle in Hawaii. As a result of that accident, the plaintiffs received no-fault insurance proceeds, which was the only mandatory insurance required by the State of Hawaii. Upon returning to California, the plaintiffs filed a claim with their insurer seeking to stack their UM benefits onto the no-fault proceeds that they already received. In applying a "weighing of interests" test, the Court of Appeals of California determined that California's interests in the loss outweighed those of Hawaii. As a result, it determined that California law applied and the insureds could not stack UIM coverage. In reaching this decision, the court noted that California had enacted specific laws to prohibit stacking of UM benefits. The court stated that these laws were enacted with the express intent to prevent double recovery by the claimant and to ensure that insurance premiums remained low and affordable. The court further noted that Hawaii's interests were centered "on compliance with its own statutory requirements. Once those have

been satisfied Hawaii has little, if any, other interests in this case." *Id.* at 1606. The court went on to note that "the vehicle for which the defendants purchased insurance are registered, garaged, and principally used in California. The insurance policies at issue were purchased to fulfill California's financial responsibility law." *Id.* Therefore, the court held that the State of California had more substantial interests in enforcing a policy issued in California when compared to a different state where the claimant had already received insurance proceeds that complied with that state's minimum requirements. As a result, it is clear that California law would not allow stacking under these circumstances.

Discovery Motions Are Rendered Moot

In addition to USAA's Motion for Summary Judgment, the parties also had cross-motions related to USAA's 30(b)6 Deposition before the Court. It appears to the Court that the information sought in that deposition would not affect this Court's decision as to USAA's Motion for Summary Judgment. In fact, the Court finds that all of the facts pertinent to whether the California Policy should be reformed, which is the sole issue in this Declaratory Judgment Action, are not in dispute. As a result, the Court finds that no other discovery is needed and that the USAA's Motion for Summary Judgment should be granted. As a result, the cross-motions related to the 30(b)6 Deposition of USAA are rendered moot.

Conclusion

This matter came before the Court on USAA's Motion for Summary Judgment and Cross-Motions related to the Plaintiff's 30(b)6 Deposition Notice for USAA. Having reviewed the pleadings, the discovery submitted by the respective parties, the motions

submitted by the parties, and the memoranda submitted in support of those motions, the Court finds that all of the facts relevant to the issue of whether the California Policy should be reformed are not in dispute and have otherwise been stipulated to by USAA for the purposes of this hearing. The Court holds that S.C. Code § 38-61-10 is not implicated based upon the fact that the subject of the California Policy, the KIA, was not located in the State of South Carolina or involved in any way in the accident that occurred on August 30, 2015. Therefore, the Court applies California law to this dispute and determines that the Plaintiff is not entitled to stack UIM benefits to the insurance benefits he has already received pursuant to the policy on the involved vehicle. Therefore,

THE COURT HEREBY GRANTS USAA'S MOTION FOR SUMMARY JUDGMENT AND DISMISSES THE CROSS-MOTIONS RELATED TO THE 30(B)6 DEPOSITION OF USAA AS BEING MOOT.

It is so ordered.

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The Honorable Perry H. Gravely,
Presiding Judge for the 13th Judicial Circuit

October ____, 2018

Greenville Common Pleas

Case Caption: Tyrin S Young Sr , plaintiff, et al vs. USAA General Indemnity Company

Case Number: 2017CP2304630

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755