STATE OF MICHIGAN

COURT OF APPEALS

GUISEPPE DE MARIA, Administrator of the Estate of Maria T. DeMaria, Deceased,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

OCT 15 1987

No. 99820

ON REMAND

Before: Cynar, P.J., D.F. Walsh, D.E. Holbrook, Jr., JJ.

PER CURIAM

This case is before us on remand from the Supreme Court for further consideration in light of Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1987). Also on remand, this Court is requested to further consider defendant's argument concerning double stacking.

We first note that the decision in Powers was not a majority decision. The lead opinion was written by then Chief Justice Williams, with Justice Archer concurring. Justice Williams held that although an "owned-vehicle" exclusion does not violate the no-fault act, the method of exclusion which defines terms with technical definitions that are at variance with commonly understood meanings of those terms renders the exclusion invalid. Justices Brickley and Cavanagh concurred in the result only, with Justice Levin concurring in part and dissenting in part in a separate opinion. Justices Riley and Boyle also concurred in part and dissented in part in a decision by Justice Riley. Justice Riley would hold the exclusion enforceable. Thus, a majority of the Justices in Powers agreed on the result, and the exclusion was therefore held invalid as applied in those cases. However, no single rationale for the decision commanded

a majority. The decision in Powers is, therefore, not binding precedent for other cases.

"The clear rule in Michigan is that a majority of the Court must agree on a ground for decision in order to make that binding precedent for future cases. If there is merely a majority for a particular result, then the parties to the case are bound by the judgment but the case is not authority beyond the immediate parties." People v Anderson, 389 Mich 155, 170; 205 NW2d 461 (1973).

Even though Powers is not binding on us, we find the reasoning in Justice Williams' opinion persuasive and we rely on that opinion to support the result that the insurance for the uninvolved vehicles applies to the accident in the instant case.

Having found coverage to be available from the policies on the two vehicles not involved in the accident, we next consider the extent of that coverage.

The "coverage applicability endorsement" found in the amendments and endorsements to the insurance contract states in part:

"Regardless of the number of automobiles insured under this policy, or the types, amounts, or limits of any coverage purchased in connection with any such automobile identified on the Declaration Certificate by a specific Vehicle Reference Number:

* * *

"In the event a loss occurs to which this policy applies that does not involve an automobile identified on the Declaration Certificate by a specific Vehicle Reference Number or a temporary substitute therefore, the Company will only make payment for such loss in accordance with and subject to those coverages purchased in connection with any one automobile insured hereunder, the insured having the right to select the automobile whose coverages will be applied to the loss from any automobile insured hereunder with reference to which he would otherwise be entitled to coverage for such loss.

"Under no circumstances will the Company be required to pyramid or duplicate any types, amounts, or limits of coverages purchases in connection with any automobile insured hereunder by virtue of the fact that more than one automobile is insured under this policy. However, this condition does not apply to Death Indemnity Coverage."

The language is not ambiguous. This section clearly states that if this insurance applies in a situation where the Corvette or the Swinger were not involved, the insurance from only one vehicle will be applicable, regardless of the number of vehicles insured. See Inman v Hartford Ins Corp, 132 Mich App

29; 346 NW2d 885 (1984), lv den 419 Mich 937 (1984). In the case before us, the contract said that if the policy applied to a loss that did not involve the vehicles named in the policy, then the coverage for only one car was applicable, regardless of the number of cars insured under the policy. The coverage under the contract for the uninvolved automobiles applies, however, the coverage is limited to $20,000 per person, the limit for either the Corvette or the Swinger.

Affirmed in part and reversed in part, in accordance with this opinion.

/s/ Walter P. Cynar
/s/ Daniel F. Walsh
/s/ Donald E. Holbrook, Jr.