UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERI SCHLEICK, a legally incapacitated person, by her Guardian and Conservator, GERTRUDE SCHLEICK, DEREK SCHLEICK, a Minor, by his Guardian, GERTRUDE SCHLEICK, and GERTRUDE SCHLEICK, Individually,

Plaintiffs,

vs.

AMERICAN STATES INSURANCE COMPANY, an Indiana corporation,

Defendant.
_____/

CASE NO. 87-CV-74471-DT

HONORABLE LAWRENCE P. ZATKOFF

MEMORANDUM OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 20th day of May, 1988.

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Before the Court are motions for summary judgment filed by both parties. The parties agree on the underlying facts and that the issues for this Court's determination are purely legal questions. Thus, summary judgment is appropriate. F.R. Civ. P. 56.

Plaintiffs were involved in an automobile accident. Plaintiffs' automobile was struck by an automobile insured by the Defendant. At the time, the insured automobile was owned by Douglas Bailow and was operated with his consent by Charles Lechowicz. Plaintiffs initially commenced this action in Wayne County Circuit Court against Bailow and Lechowicz. The underlying action was resolved by a proposed consent judgment whereby Defendant agreed to

immediately pay Plaintiffs' $100,000.00 if it is determined by this action that additional coverage is not available on Defendant's policy issued to Bailow. Thus, the issue before this Court is whether the Defendant's policies on Bailow's vehicle may be stacked so that available liability protection is $200,000.00, rather than the single policy limits of $100,000.00.

Essentially, this matter requires this Court to address two cases decided by the Michigan Courts. In State Farm Mutual Insurance Co. v. Ruuska, 412 Mich. 321 (1982), the owner of the vehicle involved in the accident and the driver were father and daughter, respectively. Each owned a vehicle and both were insured by the defendant insurance company. The plaintiff sued and sought to "stack" the two policies. Although the defendant insurance company did not contest coverage under the father's policy, it did object to coverage under the daughter's policy. The defendant claimed that the driven automobile was excluded under the daughter's policy by the "non-owned" automobile clause. Four justices of the Ruuska Court held that the stacking was permissible because the exclusionary policy operated to exclude coverage of an insured by her own policy.

In Miller v. Detroit Automobile Inter-Insurance Exchange, 129 Mich. App. 382 (1983), lv den. 422 Mich. 957 (1985), the plaintiff was struck by an automobile owned by the William Golemba and driven by Steven Golemba, the principal operator insured on the vehicle. At the time William Golemba owned three vehicles, including the automobile involved in the accident, and all were insured by the defendant insurance company. Plaintiff sought to stack the policies covering the three vehicles. In denying Plaintiff's request, the Miller Court held that the policy involved operated to preclude stacking of benefits under a

policy other than the insureds and that it would not be reasonable to expect coverage from policies on vehicles not involved in the accident. In distinguishing Ruuska, the Miller Court stated:

> While it may be reasonable for a policy holder, such as [the daughter in Ruuska], to expect portable coverage under her own policy, it would not be reasonable for a policy holder or an additional insured to expect coverage with respect to the liability of a non-policy holder from a policy covering a vehicle not involved in the accident.

Id. at 387.

In their truest forms, both cases are distinguishable. Ruuska involved a policy holder driving another's vehicle where both were insured by the same company. In Miller, there was one policy for three vehicles, and the driver was insured as the principal operator of the vehicle involved in the accident. In this matter, however, the driver was not in the same household, was not insured as the principal on any of the vehicles, and there is no evidence as to what his insurance was. In this case Plaintiff has obtained a judgment on the policy covering the vehicle involved in the accident, and is seeking coverage on the vehicles which were not involved in the accident. This case is entirely different from Ruuska because in that matter plaintiff was seeking coverage under the driver's policy and the owner's policy. The only factor which bound the two was the fact that both were insured by the same company. In this matter, Plaintiff is not seeking relief under two separate policies but instead is seeking relief on the Defendant's insurance of three vehicles owned by one person.

Further, Miller is of no value to the Court's determination. There, the driver of the vehicle was the principal operator insured on

the vehicle. There is no claim here that Lechowicz was the principal operator insured on the vehicle owned by Bailow. Thus, the facts of Miller do not settle this dispute.

Thus, the Court must determine what the policy issued herein insures. The policy defines the following as persons insured:

> Persons Insured: The following are insureds under Part I:
> (a) With respect to the owned automobile, (1) the named insured and, if the named insured is an individual or husband and wife, any resident of the same household. (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;
> (b) If the owned automobile is a family car, with respect to a non-owned automobile, (1) the named insured. (2) any relative, but only with respect to a private passenger automobile or trailer, provided, under (b)(1) and (2) above, his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permisssion, and (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b)(1) or (2) above.

(emphasis added). Defendant asserts that the following language in the policy is an anti-stacking provision:

> The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

(emphasis added). This language clearly states that each insured is covered by the policy, but that including one or more insured in a

single suit will not operate to increase the insurer's liability. Thus, a party can name everyone who is insured on the policy in a civil suit but the insurer has unambiguously stated that this will not increase the maximum amounts of liability.

The Court finds this case indistinguishable from Auto Club Ins. Ass'n. v. Lanyon, 142 Mich. App. 108 (1985). In Lanyon, the defendant Lanyon was injured when his motorcycle was struck by an automobile driven by Carole Gertensberger, owned by her father, Clayton, and insured by the plaintiff. Clayton had five vehicles insured under his "master member" policy. Carole was not an owner of any of these vehicles. Lanyon requested that he be allowed to stack the policies of two, if not all five, vehicles under the master member policy. The Lanyon Court disagreed and prevented the stacking of the policies.

The liability provision of the policy in this matter provides as follows:

> PART I -- LIABILITY
>
> Bodily Injury Liability Coverage: Property Damage Liability Coverage: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:
>
> A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called 'bodily injury,' sustained by any person;
>
> * * *
>
> arising out of the ownership, maintenance or use of the owned automobile or, if the owned automobile is a family car, the maintenance of any non-owned automobile.
>
> * * *
>
> The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability. [Emphasis added].
>
> * * *

> Limits of Liability. The limit of bodily injury liability stated in the declarations as applicable to 'each person' is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence: the limit of such liability stated in the declarations as applicable to 'each occurrence' is subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence. [Emphasis added.]

The Court finds the policy clear and unambiguous. The policy explicitly limits the liability arising out of one occurrence to the liability of one automobile, no matter how many insureds are named in the suit. The Court holds that the anti-stacking provision is valid and that Plaintiffs are not entitled to relief. Therefore, Defendant's motion for summary judgment is GRANTED and Plaintiffs' motion for summary judgment is DENIED.

IT IS SO ORDERED.

L. P. Zatkoff

Lawrence P. Zatkoff
United States District Judge

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on May 20, 1988
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