

STATE OF MICHIGAN  
COURT OF APPEALS

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STEVEN WAYNE FICK,

Plaintiff-Appellant,  
Counter-Defendant,

v

No. 102267

TRANSAMERICA INSURANCE COMPANY,

Defendant-Appellee,  
Counter-Plaintiff,

v

MYRNA RESTAINER, Personal  
Representative of the Estate of  
LYNETTE ELLIS, Deceased, and  
JOHN TOCARCHICK and PATRICIA  
TOCARCHICK,

Counter-Defendants.

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Before: Beasley, P.J., and Sawyer and T.J. Foley,\* JJ.

PER CURIAM

Plaintiff, Steven Wayne Fick, appeals as of right from a September 2, 1987, order dismissing his action for a declaratory judgment against defendant, Transamerica Insurance Company.

On July 4, 1986, plaintiff suffered serious bodily injury when his vehicle collided with an automobile driven by Maurice Scott Lybeer with the permission of the car's owners, Maurice J. Lybeer and Connie Kay Lybeer, the driver's parents. Defendant insured the Lybeer automobile under a no-fault policy covering three vehicles owned by Maurice J. Lybeer, the policy's "named insured". The policy provided \$100,000 bodily injury liability coverage to each of the three automobiles. When plaintiff commenced a civil action against the Lybeers, defendant assumed their defense.

Plaintiff then brought the within declaratory judgment action, claiming that the \$100,000 liability limit applicable to

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\* Circuit judge, sitting on Court of Appeals by assignment.

each Lybeer automobile should be stacked to provide \$300,000 coverage for his bodily injury. Plaintiff, citing Powers v DAIE, 427 Mich 602; 398 NW2d 411 (1986), argued that paragraphs V.(a) and V.(d)(1) of the policy create an ambiguity that should be construed against the insurer, thereby entitling him to stack the policy limits. The policy provided:

"I. Coverages.

"Coverage A - Bodily Injury Liability. To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily or personal injury, sickness or disease, including death at any time resulting therefrom, and including damages for care and loss of services sustained by any person or persons, and arising out of the ownership, maintenance, or use of the insured automobile, including the loading and unloading thereof. \* \* \*

"III. Definition of Insured. Except as provided under Insuring Agreement V and Coverage C-Section(2), the unqualified word 'Insured' includes the Named Insured and, if the Named Insured is an individual, his spouse, and also includes any other person while using the automobile or any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the Named Insured or spouse or with the permission of either . . . \* \* \*

"IV. Automobile Defined. Except where specifically stated to the contrary, the word 'automobile' wherever used shall include its equipment, and other equipment permanently attached thereto and shall mean the described automobile, a land motor vehicle, trailer, semi-trailer or house trailer, not operated on rails or crawler treads, but, except with respect to Section (2) Coverage C. Medical Payments, none of the foregoing shall include a motorcycle unless specifically described in the Policy, and except while actually upon public roads, does not mean a farm type tractor or equipment designed for use principally off public roads. When two or more automobiles are insured hereunder, the terms of this Policy shall apply separately to each, but as respects limits of Bodily Injury Liability and Property Damage Liability a motor vehicle and a trailer, or trailers, attached thereto shall be held to be one automobile. \* \* \*

"V. Use of Other Automobiles. For the purpose of this Insuring agreement, the 'Named Insured' shall be the Insured designated in Item 1 of the Declarations if an individual, or a husband and wife residing in the same household, or if other than an individual or husband and wife the 'Named Insured' shall be the first individual named therein, and such insurance as is afforded by this Policy under Coverages A, B, C, D, E, F and G with respect to the described automobile applies with respect to any other automobile being used with permission of the owner, subject to the following provisions.

"(a) With respect to Coverages A and B such insurance applies to (1) the Named Insured and if residents of the same household as the Named Insured, his spouse and relatives of either, (2) any other person or organization legally responsible for the use by such Named Insured or spouse or such relative of an automobile not owned or hired by any such other person or organization. Insuring Agreement III, Definition of Insured does not apply to this insurance. \* \* \*

"(d) This Insuring Agreement does not apply  
"(1) To any automobile owned in full or in part  
by the Named Insured or spouse or a member of their  
household other than a private chauffeur or a domestic  
servant of such Named Insured or spouse or such member  
of their household; \* \* \*

"LIMITATIONS

"1. The limit of liability stated in the  
Declarations under Coverage A 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 to or death of  
one person in any one occurrence, the limit of such  
liability expressed in the Declarations as applicable  
to 'each occurrence' is subject to the above provisions  
respecting each person, the total limit of the  
Company's liability for all damages, including damages  
for care and loss of services, arising out of bodily  
injury to or death of two or more persons in any one  
occurrence. The inclusion herein of more than one  
Insured shall not operate to increase the limits of the  
Company's liability."

Plaintiff moved for summary disposition pursuant to MCR  
2.116(C)(10). In a July 17, 1987, opinion, the trial court  
denied the motion, holding that the contract unambiguously  
prohibited stacking. In a subsequent order, the court dismissed  
the case.

On appeal, plaintiff re-argues the case presented to  
the trial court. We agree with the analysis and conclusion of  
the trial court's July 17, 1987 opinion and, consequently, affirm  
its order dismissing the case.

Affirmed.

/s/ William R. Beasley  
/s/ David H. Sawyer  
/s/ Thomas J. Foley