STATE OF MICHIGAN

COURT OF APPEALS

MARIANNE WATSON, Individually and as Conservator of the Estate of SYLVIA LAVIOLETTE, DAN LAVIOLETTE, MARLENE KORN BONNIE ANDREE, MILTON LAVIOLETTE, SHARON TURSCAK and NANCY JENKINS,

Plaintiff-Appellant,

v

No. 108182

COLONIAL PENN INSURANCE COMPANY, a foreign corporation,

Defendant-Appellee.

Before: Sullivan, P.J., and Gribbs and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by right from a Wayne Circuit Court order limiting defendant's liability on an insurance policy to $100,000. We affirm.

It is undisputed that the insurance policy issued by defendant to Elsie and Robert Holland applies to the accident in this case. The policy covered two cars owned by Mr. Holland, and Mrs. Holland was included as a named insured. Mrs. Holland was driving the car that was involved in the accident here. Her passenger, plaintiff Sylvia Laviolette, was severely injured.

Under the terms of the policy, personal injury liability coverage is limited to $100,000 per person and $300,000 per occurrence. Plaintiff contends that $200,000 coverage is available in this case, since Mr. Holland's coverage as owner of the car can be "stacked" with Mrs. Holland's coverage as the driver.

At issue is the validity of an "other insurance" clause in the insurance policy which purports to deny "stacking", or duplication of coverage under more than one policy issued by defendant. The clause limits the total dollar amount payable to the highest amount applicable under any one policy. The clause

is found at paragraph 4 of the section entitled "Conditions". It reads:

"Other Automobile Insurance in the Company: With respect to any occurrence, accident, death or loss in which this and any other automobile insurance policy issued to the named insured by the Company also applies, the total limit of the Company's liability under all such policies shall not exceed the highest applicable limit of liability or benefit amount under any one such policy.

"When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part II of this policy, including any deductible provisions applicable thereto."

Plaintiff relies on Powers v DAIIE, 427 Mich 602; 398 NW2d 11 (1986), in construing the clause at issue here. The Powers decision is not binding upon us, as it was not a majority decision. However, we find the reasoning in Justice Williams' opinion persuasive, as did the panel in DeMaria v Auto Club Ins Ass'n (On Remand), 165 Mich App 251, 254; 418 NW2d 398 (1987). The Powers opinion sets forth six rules for construing automobile insurance policies:

1) "[E]xceptions in an insurance policy to the general liability provided for are to be strictly construed against the insurer."

2) An insurer may not "escape liability by taking advantage of an ambiguity . . . ." "'[W]herever there are two constructions that can be placed upon the policy, the construction most favorable to the policyholder will be adopted.'"

3) An insurer must "so . . . draft the policy as to make clear the extent of nonliability under the exclusion clause."

4) An insurer may not "escape liability by taking advantage of . . . a forced construction of the language in a policy . . . ." "[T]echnical constructions of policies of insurance are not favored. . ."

5) "The courts have no patience with attempts by a paid insurer to escape liability by taking advantage of an ambiguity, a hidden meaning, or a forced construction of the language in a policy, when all question might have been avoided by a more generous or plainer use of words."

6) "[N]ot only ambiguous but deceptive." "[T]he policyholder must be protected against confusing statements in policies. . . ." Powers, 427 Mich at 623-624 [citations omitted].

In her brief on appeal, plaintiff argues that the anti-stacking clause in this case is ambiguous and deceptively placed in the policy. However, at oral argument, plaintiff's counsel conceded that "the language itself is not ambiguous. . . it's very clear". Consequently, we need only consider whether the clause is hidden in the insurance policy, as plaintiff contends. Plaintiff argues that an insured would reasonably expect such a clause to be listed under the "Exclusions" section of the policy.

We agree that an insured may have some reasonable expectations concerning an insurance policy. Powers, 427 Mich at 631-634. In this case, however, page two of the policy contains a table of contents which lists each section, including "Other Automobile Insurance in the Company". In view of the clear listing at the beginning of the policy, we reject plaintiff's claim that the "other insurance" clause here is deceptively placed and impossible to find.

Affirmed.

/s/ Joseph B. Sullivan
/s/ Roman S. Gribbs
/s/ Martin M. Doctoroff