STATE OF MICHIGAN

COURT OF APPEALS

JOYCE KUDLA, Personal Representative of the Estate of FRANK ROBERT KUDLA, Deceased,

Plaintiff-Appellee,

v No. 115091

MARK FRANCIS STOLTZ, FRANCIS HERMAN STOLTZ, and EMPLOYERS MUTUAL COMPANY,

Defendants-Appellants.

Before: Holbrook, Jr., P.J., and Hood and R. B. Burns,* JJ.

PER CURIAM.

This matter is before us on a delayed appeal from a December 16, 1988, order of the Wayne County Circuit Court, granting plaintiff's motion for summary disposition. By virtue of the trial court's ruling, plaintiff is allowed to stack liability coverage under a single policy issued to the individual defendants, and recover $100,000 in tort for the negligence of Mark Stoltz, who was the driver of the vehicle which collided with and killed Frank Robert Kudla. The vehicle driven by Mark Stoltz was owned by his father, Francis Stoltz. We reverse.

The insurance policy in question is for two vehicles, a 1971 Olds '98 owned by Mark Stoltz, and a 1977 Chevrolet Camaro owned by Francis Stoltz. The declarations page of the policy shows a $50,000 liability limit applicable to each vehicle.

The body of the policy provides the following information concerning "limit of liability":

> The limit of liability shown in the declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:
>
> 1. covered persons;
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> 2. claims made;
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> 3. vehicles or premiums shown on the declaration; or
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> 4. vehicles involved in the auto accident.

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*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> We will apply the limit of liability to provide any separate limits required by law for bodily injury and property damage liability. However, this provision will not change our total limit of liability.

Employers Mutual voluntarily paid $50,000 to plaintiff, pursuant to a consent order, leaving the question of stacking to be resolved by the court on motion. The trial court concluded that the limit of liability portion of the policy is ambiguous, therefore open to interpretation, and giving the policy the interpretation most favorable to the policy holder, ruled that the limits of liability could be stacked as plaintiff claims.

The sole issue on appeal is whether the trial court correctly applied Inman v Hartford Ins Group, 132 Mich App 29; 346 NW2d 885 (1984), in holding that the limits of liability afforded by defendants' insurance policy total $100,000.

Defendant contends that Inman, supra, is directly on point. Plaintiff contends that Inman is distinguishable. In Inman, the limit of liability language of the policy indicated that the limit of bodily injury liability stated in the schedule as applicable to "each person" is the limit of the company's liability for all damages. This Court in Inman held that such language was not ambiguous and therefore not subject to construction, and thus that the $100,000 limit per person of the policy applied and coverages could not be stacked.

Here, the limit of liability language of the policy is somewhat different, in that it refers to the declarations page, rather than to a specific amount "per person." In this respect, plaintiff is correct that Inman is distinguishable. But the distinction is without substance. The declarations page shows that the liability undertaken is $50,000; the fact that the same amount is indicated for both drivers and both vehicles is of no consequence, since the limit of liability language of the policy specifies that the limit shown in the declarations is the maximum irrespective of the number of covered persons, claims made, vehicles or premiums shown on the declarations, or vehicles

involved in the accident. In this respect, the language of the present policy thus tracks exactly the reasoning this Court adopted in Inman in rejecting the argument that stacking should be allowed:

> However, in both Greer [v Associated Indemnity Corp, 3071 F2d 29 (CA 5, 1967)] and Loerzel [v American Fidelity Fire Ins Co, 204 Mis 115, 120 NYS 2d 159 (1952), aff'd 381 App Div 735, 118 NYS 2d 180 (1952)], the insurance policies contained a separability clause. This is the source of the ambiguity. The policy in the instant case did not contain a separability clause or any similar language. Rather, it states that "[r]egardless of the number of automobiles to which [the] policy applies, * * * [the] limit of bodily injury liability stated in the schedule as applicable to "each person" is a limit of the company's liability for all damages * * * because of bodily injuries sustained by one person as a result of any one occurrence". The limit of bodily injury liability stated in the schedule as applicable to "each person" is $100,000. The event which resulted in injuries to the plaintiff was one occurrence. The plaintiff is one person. The fact that two automobiles were involved in the accident does not conjure up a separability clause. The stated limit of liability is exact and the policy clearly declares that the inclusion of more than one automobile does not affect that limit. Therefore, the policy limit of $100,000 must be enforced. 132 Mich App at 35-36.

The same reasoning was followed by this Court in DeMaria v Auto Club Ins Ass'n (On Remand), 165 Mich App 251, 255; 418 NW2d 398 (1987), citing Inman, where this Court similarly refused to find policy language preventing stacking ambiguous (in contrast to the original decision, before remand, allowing stacking, 151 Mich App 252 [1986]).

Reversed.

/s/ Donald E. Holbrook, Jr.
/s/ Harold Hood
/s/ Robert B. Burns