ERIE INSURANCE V. MARTIN, C.P. Franklin County Branch, No. A.D. 1990-641

Declaratory Judgment - Stacking - Motorist

1. Stacking of underinsured motorist coverage may exceed the maximum liability coverage available under a given insurance policy.
2. If stacking key and liability limits was not permitted, the insurance company would receive a windfall for separate premiums charged with no additional protection provided to the insured.

John W. Keller, Esq., Attorney for Plaintiff
Bradley R. Bolinger, Esq., Attorney for Defendant

OPINION AND ORDER

KAYE, J., June 19, 1991:

Erie Insurance Exchange (hereinafter "Plaintiff") has filed an action for declaratory judgment [1] in which it seeks a ruling regarding the issue of "stacking" of underinsured motorist coverage pursuant to an insurance policy which it issued to Dorothy K. and Ronald W. Martin (hereinafter "Defendants"), covering their three automobiles. As there are no contested issues of fact, the parties have filed cross motions for summary judgment rendering the sole legal issue presented ripe for the Court's resolution. For the reasons which follow, we conclude that stacking of underinsured motorist coverage is permissible, and that Defendants' motion for summary judgment must be granted. The specific issue before the Court is whether Defendants are entitled to "stack" their underinsured motorists coverage of $100,000 per vehicle, for a total of $300,000, when to do so would result in a recovery amount greater than the $100,000 bodily injury liability coverage available under their policy. Plaintiff contends that stacking in excess of liability limits would conflict with the intent of Section 1736 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa.C.S.§1736, which limits underinsured motorist coverage to an amount not greater

[1]This action was filed pursuant to the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541.

than policy liability limits. As is acknowledged by counsel for both parties, two divergent lines of case law have developed in Pennsylvania Federal and Common Pleas Courts in an attemt to resolve the issue here presented. To date, no Pennsylvania Superior or Supreme Court decisions have been rendered on this issue.

The undisputed factual averments set forth in this complaint reveal that Dorothy K. Martin was injured in a two-car accident on July 20 1988 while driving one of the three cars insured by Plaintiff. The insurance carrier for the driver of the vehicle which collided with Defendant paid the $50,000 limit of liability coverage available under its insurance policy. Defendants have presented a claim for underinsured motorist coverage to Plaintiff based on their contention that the driver of the other vehicle is liable and has insufficient insurance coverage to satisfy Defendants' losses.[2] Counsel for Plaintiff acknowleged at oral argument that separate premiums were paid by Defendants for underinsured motorist coverage on their three vehicles.

Plaintiff contends that stacking of underinsured motorist coverage, while not invalid *per se,* must not exceed the maximum liability coverage available under a given insurance policy. Support for this position is asserted to be found in Section 1736 of the MVFRL, 75 Pa.C.S. §1736, which provides as follows:

> The coverages provided under this subchapter may be offered by insurers in amounts higher than those required by this chapter but may not be greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy. [Emphasis added].

[2]We note that the pleadings in this matter do not allege that Defendants' claim for underinsured motorist coverage has, in fact, been denied by Plaintiff. Instead, the pleadings are drafted in terms of the "contentions" of the parties regarding their respective positions. "'Declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur. It is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation.'" *Avrich v. General Accident Insurance Co.,* 367 Pa. Super. 248, 251, 532 A.2d 882, 884 (1987) (quoting *Chester Upland School District v. Commonwealth,* 90 Pa.Cmwlth. 464, 468, 495 A.2d 981, 983 (1985). Given Plaintiff's clear present intention to deny Defendants' claim for stacked insurance coverage, we conclude that the pleadings are sufficient to allege an actual controversy between the parties so as to render declaratory relief appropriate in this case.

This provision has been interpreted in the case of *Chartan v. Chubb Corp.*, 725 F. Supp. 849 (E.D.Pa. 1989) to limit the amount of underinsured benefits available under an insurance policy to an amount no greater than the amount of liability coverage. The Court in *Chartan* based its decision on its view of the Legislature's intent in enacting Section 1736 of MVFRL. The intent in limiting uninsured and underinsured coverage limits to those less than or equal to liability limits was to "'prevent the new insurance system from degenerating into a purely first-party insurance system, where each driver [was] insured against his or her own loss, but no driver insure[d] against the damage he or she may do to others.'" *Id.* at 853 (quoting J. Ronca, L. Sloane & J. Mundy, *An Analysis of the Financial Responsibility Law,* 104, §6:11 (1986)). The Court concluded that to permit stacking of uninsured and underinsured motorist coverage beyond liability limits would effectively undermine the legislature's intent to equalize coverage limits.

The reasoning in *Chartan,* though followed in a recent Erie County Common Pleas Court case,[3] has been criticized and rejected by numerous subsequent United States District Court cases, including another decision from the Eastern District of Pennsylvania in *Byers v. Amerisure Insurance Co.,* 745 F. Supp. 1073 (E.D. Pa. 1990). The Court in *Byers* began its analysis by noting that Section 1736 of the MVFRL does not directly address the issue of stacking, but rather, "caps the uninsured and underinsured motorist coverage in a single policy at the policy's bodily liability coverage limit." *Id.* at 1078. The Court reviewed Pennsylvania case law and noted that our courts have uniformly approved of stacking for class one insureds such as Defendant in the instant case. *State Farm Mutual Automobile Insurance Co. v. Williams,* 481 Pa. 130, 392 A.2d 281 (1978). *See also, Harleysville Mutual Casualty Co. v. Blumling,* 429 Pa. 389, 241 A.2d 112 (1968). The Court further observed that the legislature is presumed to be familiar with case law when it enacts new legislation. *Wallaesa v. Wallaesa,* 174 Pa. Super. 192, 100 A.2d 149 (1953).

> Because Pennsylvania law uniformly allowed stacking when the MVFRL was passed, it is reasonable to presume that its provisions were crafted with this predisposition in mind. Indeed, the MVFRL specifically proscribes the stacking of first-party benefits. 75 Pa.Cons. State. Ann. §1717 (Purdon Supp. 1990). This court must thus assume that the legislature would have barred stacking explicitly elsewhere if it had wished to do so, and that its failure to do so implicitly ratifies the pro-stacking doctrine in place when the MVFRL was enacted.

Byers, 745 F. Supp. at 1078-79. The Court further noted that, as in the case presently before this Court, the insurance company in *Byers,* had charged a separtate premium for uninsured and underinsured coverge for each vehicle included in the policy. Thus, if stacking beyond liability limits was not permitted, the insurance company would receive a windfall for separate premiums charged with no additional protection provided to the insured. The Court, accordingly, rejected the holding of *Chartan* and concluded that stacking of uninsured and underinsured motorist coverage beyond liability limits is, indeed, permissible under the MVFRL. Other courts have reached the same determination, applying similar reasoning. *Crum v. Taylor,* F. Supp. (E.D. Pa. 1991) (No. 90-6385, filed February 6, 1991); *Aetna Casualty and Surety Co. v. Kauffman,* F. Supp. (E.D.Pa. 1991) (No. 90-6585, filed January 4, 1991); *Maryland Casualty Co. v. Fitze,* 744 F. Supp. 628 (M.D. Pa. 1990); *North River Insurance Co. v. Tabor,* 744 F. Supp. 625 (M.D. Pa. 1990); and *Ober v. Aetna Casualty and Surety Co.,* F.Supp. (W.D. Pa. 1990)(No. 89-2473, filed October 31, 1990).

Confirmation of the validity of the statutory construction undertaken in the *Byers* opinion is found in recent amendments to the MVFRL which now expressly approve of stacking of uninsured and underinsured motorist coverage. Section 1738 of the MVFRL, 75 Pa.C.S. §1738, which became effective July 1, 1990, provides, in pertinent part, as follows:

> (a) *Limit for each vehicle.* - When more than one vehicle is insured under one or more policies providing uninsured or underinsured motorist coverage, the stated limit for uninsured or underinsured coverage shall apply separately to each vehicle so insured. The limits of coverage available under this subchapter for an insured shall be the sum of the limits for each motor vehicle as to which the injured person is an insured.

[3] *Erie Indemnity Co. v. McGaughey,* Erie County Law Journal (No. 1013 - A - 1990, filed October 11, 1990).

The amendments further permit an insured to waive coverage which provides for stacking, and require a commensurate reduction in premiums for individuals who so waive stacked limits of coverage. While these amendments are not applicable to the case at bar, we believe that the new provisions lend additional support to our decision to adopt the reasoning in those cases which have found stacking of underinsured motorist coverage to be permissible.

We will, accordingly, order that Defendants' motion for summary judgment be granted and Plaintiff's motion be denied.

ORDER OF COURT

NOW, this 19th day of June, 1991, the motion for summary judgment filed by Defendants in the above-captioned matter is hereby GRANTED and the motion for summary judgment filed by Plaintiff is DENIED.

BONEBRAKE VS. HENRY, ET AL. C.P. Franklin County Branch, No. A.D. 1989-129

Malpractice Action - Prior General Release - Summary Judgment

1. Where plaintiff is injured in an auto accident, a general release discharging the driver may also release the physician in a medical malpractice action arising out of treatment of injuries sustained in the accident.
2. Tortfeasors may be released even though they are not specifically named in the release.

Neil J. Rorner, Esquire, Attorney for Plaintiff
Francis E. Marshall, Jr., Esquire Attorney for Defendant
Jame Saxton, Esquire, Attorney for Defendant

OPINION AND ORDER

KAYE, J., June 27, 1991:

OPINION

Jack F. Bonebrake, Jr. (herinafter "plaintiff") instituted the present medical malpractice action against Albert L. Henry, M.D., Surgical Associates of Waynesboro, Ltd. and Waynesboro Hospital (hereinafter "defendants"), by filing a complaint on April 12, 1989. Defendants, by way of New Matter, have alleged that the existence of a General Release executed by plaintiff on April 28, 1989 serves to release them from any and all liability in the present action. Defendants' motions for summary judgment on the basis of the aforementioned release are currently before the Court for disposition. For the reasons which follow, we conclude that defendants are entitled to the entry of summary judgment in this matter.

In ruling on a motion for summary judgment, the Court must accept as true all well-pleaded facts asserted by the non-moving party, as well as all reasonable inferences to be drawn therefrom. In order to grant summary judgment there must be an absence of genuine factual issues and clear entitlement to judgment as a matter of law. *Borysowski v. State farm Mutual Automobile Insurance Co.*, 368 Pa. Super. 399, 534 A.2d 496 (1987). The record must be read in a light most favorable to the non-moving party, resolving all doubts and ambiguities in his favor. *Wheeler v. Johns-Manville Corp.*, 342 Pa.Super. 473, 493 A.2d 120 (1985).

The complaint reflects that plaintiff was injured in a motorcycle accident on May 9, 1987, sustaining a comminuted open fracture of his right tibia and fibula. The complaint proceeds to detail the medical treatment provided to plaintiff from the time of the accident until March 7, 1988, when plaintiff underwent a below the knee amputation of his right leg at Hershey Medical Center. The complaint contains numerous allegations of medical malpractice by defendants, which focus on the care provided by Dr. Henry and his failure to properly diagnose a right leg infection during the course of his treatment of plaintiff.

Plaintiff concedes that, on April 28, 1989, he signed a general release discharging Doris M. Spangler, the driver of the automobile with which he collided, and her insurance carrier from further liability involving the May 9, 1987 accident. The release contains the following pertinent language: