

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

KENSEY SHANFELT,  
Plaintiff

Vs.

PROGRESSIVE ADVANCED INSURANCE  
COMPANY,  
Defendant

No. 21-1614

Gerald F. Strubinger, Jr., Esquire  
James W. Watson, Esquire

Counsel for Plaintiff  
Counsel for Defendant

AMENDED MEMORANDUM OPINION<sup>1</sup>

Matika, J. - June 22, 2022

Before the Court is "Defendant's Motion for Judgment on the Pleadings" filed by the Defendant, Progressive Advanced Insurance Company (hereinafter "Defendant" or "Progressive Insurance"), against Plaintiff, Kensey Shanfelt, (hereinafter "Plaintiff" or "Kensey"). In this action, Defendant seeks an order that intrapolicy stacked underinsured motorist (hereinafter "UIM") coverage<sup>2</sup> does not apply as a matter of law, as Plaintiff's Insurance Policy had a valid stacking waiver and thus there are no UIM stacked benefits for Plaintiff to collect. An argument was held on the Judgment on the Pleadings on March 21, 2022. Based

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<sup>1</sup> This Opinion is being amended to correct a scrivener's error brought to the attention of the Court by counsel. The corrections are noted in bold on page 10 on the body of this Opinion.

<sup>2</sup> Intrapolicy Stacking is defined as the aggregation of multiple insurance coverages or limits to cover a single loss. *McGovern v. Erie Ins. Grp.*, 796 A.2d 343, 345 (Pa. Super. 2002).

upon that argument, the pleadings filed, the applicable case law and governing statute, and briefs lodged, Defendant's Motion for Judgment on the Pleadings is **GRANTED**. As a result, Plaintiff's Complaint for Declaratory Judgment shall be dismissed with **PREJUDICE**.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff commenced this action on July 23, 2021 by filing a Declaratory Judgment Complaint against Defendant. On or about June 4, 2012, Plaintiff's Father, Kenneth W. Shanfelt, purchased a Pennsylvania automobile insurance policy, identified by policy number 14183889 (hereinafter referred to as the "Policy") from Defendant. The Policy identified Kenneth W. Shanfelt (hereinafter "Kenneth") as the named insured and Holly J. Shanfelt (hereinafter "Holly"), Plaintiff's Mother, and Plaintiff herself as insured drivers. All three (3) insured drivers on the Policy, resided together. The Policy identified both Kenneth and Holly as owners of three (3) insured vehicles: 2010 Ford Focus, 2008 Ford Escape, and 2000 Ford Taurus. This Policy's declarations page outlines UIM Benefits in the amount of \$100,000 each person/ \$300,000 each accident for "underinsured motorist - nonstacked" coverage<sup>3</sup> for all three (3) automobiles identified on the Policy. On June 4,

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<sup>3</sup> This particular coverage is identified as such throughout each change made to the Policy as referenced herein.

2012, Kenneth, the named insured, executed an UIM Stacking Waiver for the Policy, which states:

By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy **for myself and members of my household** under which the limits of coverage available would be the sum of limits **for each motor vehicle insured under the policy**. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

Progressive Insurance Form 8058, Plaintiff's Ex. B. (emphasis ours). Further, the Policy outlined relevant definitions and clauses, including Joint and Individual Interests on Page 31 which states:

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy. Any rejection of coverage available under Part III - Uninsured/Underinsured Motorist Coverage should be made by the first named insured.

Pennsylvania Auto Policy, page 31.

On or about April 23, 2015, Kenneth requested the 2000 Ford Taurus to be removed and a 2014 Ford Edge, owned by Kenneth and Holly, be added to the Policy. During this replacement of the vehicle, no additional changes were made to the Policy. On or about July 2, 2015, Kenneth requested the 2010 Ford Focus be removed and a 2012 Ford Escape, owned by Kenneth and Holly, be added to the Policy. As a result of the switching of the vehicles, no other

additional changes were made to the Policy. On or about June 12, 2017, Holly requested the 2012 Ford Escape to be removed and a 2013 Ford Edge, owned by Plaintiff and Holly, be added to the Policy. Again, no other additional changes were made to the Policy. At all times since the purchase of the Policy, the declarations pages issued by Progressive have reflected the vehicle replacements as well as indicating the benefits were non-stacked. All of the policies issued by Defendant covered three (3) vehicles, and there were never more or less than three (3) vehicles insured.

On or about April 13, 2021 at approximately 11:20 A.M., Plaintiff was operating her 2013 Ford Edge in a westerly direction on State Route 248, Lehigh Township, Northampton County. At the same time, Shelly Carney was operating her 2019 Nissan Rogue in an easterly direction on State Route 248, when she crossed the center line causing her Nissan Rogue to violently collide with the 2013 Ford Edge operated by Plaintiff. As a direct and proximate result of the violent collision, Plaintiff sustained serious and permanent injuries which have required and will continue to require in the future, medical assistance, care, and treatment. The collusion has caused Plaintiff to incur medical bills, fees, and costs while simultaneously causing her to suffer a loss of income and earning capacity which will continue into the future.

The Nissan driver, Shelly Carney was insured by Geico Secure Insurance Company (hereinafter "Geico") with a policy for a Bodily

Injury Liability limit of \$100,000 each person/ \$300,000 each accident. Geico tendered their individual policy limit of \$100,000 to Plaintiff. Prior to accepting the policy limit off of \$100,000, Plaintiff requested and obtained consent to settle from Defendant. Plaintiff made a demand of "stacked" UIM benefits in the amount of \$300,000 from Defendant. Defendant declined to tender to Plaintiff the UIM benefits in the amount of \$300,000 claiming that stacking was waived on the date of the aforementioned motor vehicle collision.

#### **LEGAL DISCUSSION**

Rule 1034 of the Pennsylvania Rules of Civil Procedure, entitled "Motion for Judgment on the Pleadings," provides that "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for judgment on the pleadings" and that "[t]he court shall enter such judgment or order as shall be proper on the pleadings" See Pa.R.C.P. 1034. A Judgment on the Pleadings is very similar to a demurrer in that it is only appropriate when "there are no disputed facts and the moving party is entitled to judgment as a matter of law." *Sw. Energy Prod. Co. v. Forest Res., LLC*, 83 A.3d 177, 185 (Pa.Super. 2013). "A trial court must confine its consideration to the pleadings and relevant documents. The court must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against

whom the motion is filed, considering only those facts which were specifically admitted." *Coleman v. Duane Morris, LLP*, 58 A.3d 833, 836 (Pa.Super. 2012). Essentially, a judgment on the pleadings is only appropriate when the moving party's case is so strong that a trial would be fruitless. *Sw. Energy Prod. Co. v. Forest Res., LLC*, *supra* at 185.

### **Waiver of Stacking**

Defendant argues that Plaintiff cannot recover stacked UIM benefits under the Progressive policy because stacking benefits are not implicated here. The option to recover more than a single limit is deemed waived under 75 Pa.C.S.A. § 1738 when the policy holder executes a waiver of such benefits and his or her premiums are accordingly reduced. Defendant argues that because Plaintiff's Policy has a valid UIM stacking waiver and the Policy reflects a reduced premium, the ability to stack does not apply here. 75 Pa.C.S.A § 1738 addresses the stacking of UIM benefits, along with how to waive such coverage, specifically providing, in relevant part, that:

**(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 coverages 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.

**(b) Waiver.**

Notwithstanding the provisions of subsection (a), a named insured may waive coverage providing stacking of uninsured or underinsured coverages in which case the limits of coverage available under the policy for an insured shall be the stated limits for the motor vehicle as to which the injured person is an insured.

**(c) More than one vehicle.**

Each named insured purchasing uninsured or underinsured motorist coverage for more than one vehicle under a policy shall be provided the opportunity to waive the stacked limits of coverage and instead purchase coverage as described in subsection (b). The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

**(d) Forms.**

(2) The named insured shall be informed that he may exercise the waiver of the stacked limits of underinsured motorist coverage by signing the following written rejection form:

**UNDERINSURED COVERAGE LIMITS**

By signing this waiver, I am rejecting stacked limits of underinsured motorist coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead, the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

. . . .

**(e) Signature and date.**

The forms described in subsection (d) must be signed by the first named insured and dated to be valid. Any rejection form that does not comply with this section is void.

75 Pa.C.S. § 1738(a)-(e)

Plaintiff argues that Defendant was required to offer Plaintiff and her Mother, Holly, a new UIM Stacking Waiver when they added the 2013 Ford Edge to the Policy. Plaintiff asserts that because the first named insured, Kenneth, did not own the vehicle that this addition equates to a newly acquired vehicle which requires a new stacking waiver.<sup>4</sup> Plaintiff claims that because Kenneth did not own the vehicle, that the 2013 Ford Edge is considered a new vehicle and not a replacement vehicle. The Court finds Plaintiff's argument without merit. In *Shipp v. Phoenix Insurance Company*, 510 A.3d 219 (Pa.Super.2012), the court held that a new stacking waiver is not required when a vehicle is replaced and the number of vehicles insured on the policy and the insured's UIM coverage remained the same. In the case of a replacement vehicle, there is no change whatsoever in the amount

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<sup>4</sup> Plaintiff relies on the *Sackett* Trilogy to make her argument. In *Sackett*, Appellant issued an automobile insurance policy to the Sacketts, insuring two vehicles. On that same date, Victor M. Sackett executed a valid waiver declining to stack UIM coverage on the two vehicles. Two years later, the Sacketts purchased a third vehicle and the Sacketts requested coverage identical to the two vehicles already on the Policy. Appellant issued a corrected declarations/endorsement page adding the third vehicle, but declined to offer or obtain a new stacking waiver signed by the Sacketts for the new vehicle. *Sackett* held that a new waiver was required under those circumstances. That is dissimilar to the facts of the case *sub judice*. Plaintiff's argument that because the 2013 Ford Edge was not owned by the named insured a new waiver is necessary. This is not analogous to the *Sackett* holding. In *Sackett v. Nationwide Mut. Ins. Co.*, the Supreme Court held that an insurer must obtain a new signed stacking waiver from the insured when the insured **adds a new vehicle** to an existing policy . . . . *Sackett v. Nationwide Mut. Ins. Co.*, 880 A.2d 1243 (Pa.Super. 2005), *rev'd*, 919 A.2d 194 (Pa. 2007), *modified*, 940 A.2d 329 (Pa. 2007), *appeal after remand*, 4 A.3d 637, 639-640 (Pa.Super. 2010). The Court declines to further analyze the case *sub judice* under *Sackett III* because the 2013 Ford Edge added by Holly and Kensey does not equate to a **new vehicle** but is instead a **replacement vehicle**. Therefore, *Sackett III* is inapplicable and *Shipp* is the more appropriate law that governs this case.

of UIM coverage. *Id.* The only change is in the identity of the covered vehicle. *Id.* The present case is comparable to *Shipp* because both before and after the acquisition of the 2013 Ford Edge, the UIM coverage limits of the Policy remained the same, \$100,000 each person/ \$300,000 each accident.<sup>5</sup> Lastly, since there was no new insurance coverage purchased, there is no need to re-obtain a waiver of stacked coverage.

Plaintiff further argues that because the first named insured, Kenneth, was not the owner of the vehicle, a new stacking waiver was required. The Court finds this argument without merit as well, noting that there is nothing precedential that supports Plaintiff's argument that because Plaintiff and Holly were the owners of the 2013 Ford Edge and not the first named insured, then Defendant was required to provide Plaintiff and Holly with a new stacking waiver for them to execute. If Plaintiff was interested in changing the amount of UIM coverage she could have purchased her own policy at a raised premium price. However, in this instance, Holly and Kensey agreed to keep the Policy at the discount rate for waived UIM stacking benefits. Lastly, pursuant to page 31 of the Pennsylvania Auto Policy, the action of one insured is binding upon the other insured and rejection of coverage

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<sup>5</sup> *Shipp's* stacking coverage remained at \$100,000 unstacked, and \$200,000 stacked. *Shipp v. Phoenix Ins. Co.*, 51 A.3d 219, 224 (Pa.Super. 2012).

should be made by the first named insured, which Kenneth did validly execute.

In summation, the Court finds that, as a matter of law, Plaintiff is precluded from recovering **stacked** UIM benefits under the Progressive Automobile Insurance Policy number 14183889 issued to Kenneth, Holly, and Kensey Shanfelt, because the named insured, Kenneth, rejected **stacked** UIM benefits, meaning that there is no ability to 'stack' individual policy limits upon one another.

#### CONCLUSION

After having reviewed the pleadings in this matter in accordance with Rule 1034 of the Pennsylvania Rules of Civil Procedure and for the reasons set forth herein, the Court enters the following order:

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Gerald F. Strubinger, Jr., Esquire  
James W. Watson, Esquire

Counsel for Plaintiff  
Counsel for Defendant

FILED  
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CARBON COUNTY  
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ORDER OF COURT

AND NOW, this ~~22<sup>nd</sup>~~ day of June, 2022, upon consideration  
of

- the July 23, 2021 "Declaratory Judgment Complaint" filed by Plaintiff Kensey Shanfelt,
- the September 17, 2021 "Answer and New Matter to Complaint in Declaratory Judgment" filed by Defendant Progressive Advanced Insurance Company,
- the September 27, 2021 "Plaintiffs' Reply to Defendant's New Matter" filed by Plaintiff Kensey Shanfelt,
- the January 27, 2022 "Defendant's Motion for Judgment on the Pleadings" filed by Defendant Progressive Advanced Insurance Company,
- the January 27, 2022 "Memorandum of Law in Support of Defendant's Motion for Judgment on the Pleadings" filed by Defendant Progressive Advanced Insurance Company,
- the February 18, 2022 "Plaintiff's Reply to Defendant's Motion for Judgment" filed by Plaintiff Kensey Shanfelt,

and upon consideration of any argument thereon it is hereby **ORDERED**  
**and DECREED** Defendant's Motion for Judgment on the Pleadings is

[FM-17-22]

GRANTED. Plaintiff's Complaint for Declaratory Judgment is denied and dismissed with **PREJUDICE**.

BY THE COURT:

  
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Joseph J. Matika