



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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April 15, 2021

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Re: Elephant Insurance Company v. Thomas Garrett Herbst, et al.
Case No. CL-2019-15732

Dear Counsel:

This matter came before the Court on January 21, 2021, and April 14, 2021, on cross-motions for summary judgment filed by Plaintiff/Counterclaim Defendant, Elephant Insurance Company (“Elephant”), and Defendant/Counterclaim Plaintiff, Fawad Fafa. Both parties seek a declaratory judgment from the Court as to the amount of underinsured motorist (“UIM”) coverage in a policy available to Mr. Fafa for bodily injuries allegedly sustained in a vehicular collision.

The Court finds that there are no material facts in dispute, and thus summary judgment is an appropriate vehicle for resolving this matter. The Court finds that the bodily injury coverage is up to \$25,000 per person and \$50,000 per accident under the policy. The Court finds that the policy clearly and unambiguously prevents stacking of the coverage for the five vehicles insured under

OPINION LETTER

the policy. Elephant's motion for summary judgment is granted. Fawad Fafa's motion for summary judgment is denied.

I. Procedural History

On December 22, 2016, Mr. Fafa was involved in an automobile collision with Thomas Garrett Herbst. Mr. Fafa filed suit against Mr. Herbst in a separate action in this Court, seeking \$1,500,000 in damages. Mr. Herbst's insurance policy with State Farm had a \$25,000 limit, which was tendered to Mr. Fafa in exchange for a release from further liability.

Mr. Fafa seeks UIM coverage from two Elephant policies. One policy (the "Fardin Policy") insured the vehicle that Mr. Fafa was driving the day of the accident, along with four other vehicles, each with a separate premium. A second policy (the "Khatrah Policy") was purchased by Mr. Fafa's sister, Khatrah Fardin, and insured Mr. Fafa as a household member. The Fardin policy is first in priority pursuant to the policy provisions set forth in Virginia Code § 38.2-2206(B), and the Khatrah policy is second in priority.

On November 19, 2019, Elephant filed this suit asking this Court to state the rights and obligations under the Fardin Policy, and Mr. Fafa filed a Counterclaim on December 3, 2019. Elephant asserts that the UIM bodily injury coverage available to Mr. Fafa is \$25,000 and that the anti-stacking provision contained in the Fardin Policy prohibits combining the coverage amount on each of the five vehicles insured under the policy. Mr. Fafa asserts that the UIM bodily injury coverage available is \$375,000. His position is that the Fardin Policy has a \$75,000 single policy limit and the anti-stacking provision for the five vehicles insured does not apply to UIM bodily injury coverage.

II. Analysis

In Virginia, summary judgment may only be entered when there is no genuine dispute as to a material fact. Va. Sup. Ct. R. 3:20. In this case, the parties agree that there are no material facts in dispute and that the disagreement focuses on an issue of law, namely, contract interpretation of the Fardin Policy. The parties dispute two issues: (1) the per person/per accident base coverage and (2) whether the anti-stacking language contained in the Fardin Policy applies to uninsured/underinsured motorist ("UM/UIM") coverage for bodily injuries.

Courts interpret insurance policies based on the intention of the parties, which can be gleaned from the words contained in the policy. *Floyd v. Northern Neck Ins. Co.*, 245 Va. 153, 158 (1993). "[T]he provisions of a contract of insurance should be considered and construed together and seemingly conflicting provisions

harmonized when that can be reasonably done, so as to effectuate the intention of the parties....” *Suggs v. Life Ins. Co. of Va.*, 207 Va. 7, 11 (1966). Terms that are unambiguous will be assigned their plain meaning. *Virginia Farm Bureau Mut. Ins. Co. v. Williams*, 278 Va. 75, 81 (2009) (internal citations omitted). Because insurance policies ordinarily are drafted by the insurer and not the policyholder, the meaning of ambiguous language is construed in favor of granting coverage rather than withholding it. *St. Paul Fire and Marine Ins. Co. v. S.L. Nusbaum & Co., Inc.*, 227 Va. 407, 411 (1984). Under Virginia law, “stacking”, or combining, the coverage for each vehicle insured under an automobile policy is permitted unless clear and unambiguous language on the face of the policy precludes such multiple coverage. *Goodville Mut. Cas. Co. v. Borrer*, 221 Va. 967, 970 (1981).

Part C of the Fardin Policy applies to UM/UIM coverage and contains the following language:

LIMIT OF LIABILITY

- A. The limit of Bodily Injury Liability shown in the Declarations for each person for Uninsured Motorist Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of “bodily injury” sustained by any one person in any one accident. Subject to this limit for each person, the limit of Bodily Injury Liability shown in the Declarations for each accident for Uninsured Motorist Coverage is our maximum limit of liability of all damages for “bodily injury” resulting from any one auto accident. [page break]

The limit of Property Damage Liability shown in the Declarations for each accident for Uninsured Motorist Coverage is our maximum limit of liability for all “property damage” resulting from any one accident. This is the most we will pay regardless of the number of:

1. “Insureds”;
2. Claims made; or
3. Vehicles or premiums shown in the Declarations.

Fardin Policy, pp. 8-9.

The Auto Insurance Coverage Summary Policy Declaration Page (“Fardin Declaration”) contains the following coverage limits for the 2012 Hyundai Elantra, which is the vehicle involved in the collision between Mr. Fafa and Mr. Herbst:

Coverage Type	Limits
Bodily Injury Liability	\$25,000/\$50,000
Property Damage Liability	\$20,000
Uninsured/Underinsured Motorist – Bodily Injury	\$25,000/\$50,000
Uninsured/Underinsured Motorist – Property Damage	\$20,000

Fardin Declaration, p. 3.

Identical coverage exists for the other four vehicles covered under the Fardin Policy, with separate and differing premiums for each vehicle. *Id.* at pp. 1-4.

A. The Per Individual and Per Accident Coverage Issue

Mr. Fafa's position is that because the monetary figures in the Fardin Declaration do not include "per person/per accident" language to correspond with \$25,000/\$50,000, it is unclear which figure relates to an individual's coverage and which figure relates to the total coverage per accident for UM/UIM bodily injury. Therefore, the Court should determine that the individual coverage is \$75,000. Elephant argues that the figures track the language of the Limit of Liability provision of Part C of the Fardin Policy. When harmonizing the two sections, \$25,000 unambiguously is the per individual coverage and \$50,000 unambiguously is the per accident coverage.

The Court agrees with Elephant's position. The Limit of Liability provision refers the reader to the Fardin Declaration and discusses coverage in the order of "each person" and then "each accident." As such, \$25,000 applies to each person, and \$50,000 applies to each accident. The Court does not perceive any ambiguity.

B. The Stacking Issue

Mr. Fafa argues that the anti-stacking language found in the last sentence of the above Limit of Liability section does not unambiguously prevent stacking for UM/UIM coverage for bodily injury because it is placed in a paragraph only referencing property damage.

Elephant argues that the following anti-stacking language applies to both bodily injury and property damage: "This is the most we will pay regardless of 1. 'Insureds'; 2. Claims made; or 3. Vehicles or premiums shown in the Declarations." In support of this argument, Elephant notes that the language "This is" has been interpreted by other courts to be tantamount to "These are" in similar challenges to anti-stacking provisions in insurance policies.

In addition, Elephant directs the Court's attention to the following provision titled "Limits of Liability" in Part A of the Fardin Policy.

LIMITS OF LIABILITY

The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of “bodily injury” sustained by any one person in any one auto accident. Subject to this limit for each person, the Limit Of Liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability of all damages for “bodily injury” resulting from any one auto accident. However, subject to this limit of liability for each accident, when one auto accident involves more than one “insured” against whom claim is made or brought, the Limit Of Liability shown in the Declarations for each person for Bodily Injury Liability applies separately to each “insured”. The limit of liability shown [page break]

in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all “property damage” resulting from any one auto accident.

This is the most we will pay regardless of the number:

1. “Insureds”;
2. Claims made; or
3. Vehicles or premiums shown in the Declarations.

Fardin Policy, pp. 3-4.

As it pertains to the coverage limits listed in the Fardin Declaration, *supra*, this Part A Limits of Liability section corresponds to the Fardin Declaration’s Bodily Injury Liability (\$25,000/\$50,000) and Property Damage Liability (\$20,000) limits. The Part C Limit of Liability section, *supra*, corresponds to the Fardin Declaration’s Uninsured/Underinsured Motorist—Bodily Injury (\$25,000/\$50,000) and Uninsured/Underinsured Motorist—Property Damage (\$20,000) limits. Collectively, the Part A and Part C Limit(s) of Liability sections address the four types of coverage listed in the Fardin Declaration, which Elephant asserts must be harmonized with one another.

Elephant notes that Part A does not have the paragraph indentation issue that Mr. Fafa raises concerns about in Part C. Elephant argues that any reasonable attempt to harmonize these provisions should result in reading the anti-stacking language to apply to the four types of coverage in the above Fardin Declaration, rather than applying it to all but UM/UIM bodily injury coverage. Otherwise, UM/UIM bodily injury coverage would exceed bodily injury liability coverage, which Elephant argues would violate Virginia Code § 38.2-2206(A).

The Court finds that the anti-stacking language clearly and unambiguously applies to UM/UIM bodily injury coverage. As UM/UIM bodily injury coverage cannot exceed bodily injury liability coverage pursuant to Virginia Code § 38.2-2206(A), this interpretation harmonizes the two Limit(s) of Liability provisions of the Fardin Policy to best effectuate the intent of the parties. This determination is consistent with rulings of other courts that have assessed challenges to anti-stacking language based on paragraph and indentation discrepancies. *E.g., Lloyd v. Travelers Property Cas. Ins. Co.*, 727 F.Supp.2d 452 (E.D. Va. 2010); *Hostetler v.*

Auto-Owners Ins. Co., 744 F.Supp.2d 543 (E.D. Va. 2010); *Trigo v. Travelers Commercial Ins. Co.*, 755 F.Supp.2d 749 (W.D. Va. 2010); *Clous v. Cutright*, 81 Va. Cir. 289 (Norfolk 2010); *Collier, et al. v. Erie Insurance Exchange, et al.*, CL-10-86 (Page County 2010). These other courts have found that similar formatting issues do not create meaningful ambiguities to call into question the intent of the parties.

Consistent with this finding, the Court discerns no basis for why the parties would intend to prohibit stacking for bodily injury liability, property damage liability, and UM/UIM property damage, but not for UM/UIM bodily injury. If the Court were to adopt Mr. Fafa's reasoning, this would be the outcome.

III. Conclusion

The Court grants summary judgment in favor of Elephant and denies Mr. Fafa's motion for summary judgment. Mr. Fafa's UIM coverage for bodily injury is \$25,000 per person and \$50,000 per accident. Moreover, the anti-stacking language applies to both bodily injury and property damage.

The Court directs counsel for Elephant to draft an Order consistent with this ruling, circulate it to opposing counsel for endorsement, and submit it to the Court within twenty-one days of receipt of this letter opinion.

Sincerely,

A large black rectangular redaction box covers the signature of Stephen C. Shannon.

Stephen C. Shannon