

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WEST AMERICAN INSURANCE CO./	:	NO. 04-00,414
OHIO CASUALTY GROUP,	:	
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
JEFFREY and SHIRLEY RAISCH,	:	
Administrators of the Estate of Lance Raisch,	:	
Defendants	:	Motions for Summary Judgment

OPINION AND ORDER

Before the Court are cross-motions for summary judgment¹ through which the Court is requested to enter judgment on Plaintiff's Declaratory Judgment action, filed in response to a dispute which arose between the parties over the amount of underinsured motorist benefits available to Defendants under their automobile insurance policy. Argument on the motions was heard November 7, 2005.

The issue raised by Plaintiff's Complaint is simple: are Defendants entitled to stacked underinsured motorist benefits in connection with a vehicle accident which fatally injured their son, an additional insured under their policy? The answer turns on whether the rejection of stacking signed by Defendant Jeffrey Raisch on November 29, 1995, remained in effect at the time of the accident.

Defendant Jeffrey Raisch applied for the policy at issue on November 29, 1995, and at that time requested the minimum liability limits allowed by law, rejected uninsured and underinsured motorist coverage and rejected stacking. At some point thereafter, in renewing the policy, Defendants were issued uninsured and underinsured motorist coverage but without stacking. The premiums were based on unstacked coverage. At the time of the accident on August 13, 2000, the policy still provided for minimum underinsured, unstacked coverage. Defendants nevertheless contend they are entitled to stacked benefits because Plaintiff cannot

¹ Plaintiff's motion was filed August 25, 2005. At argument, Defendants made an oral motion for summary judgment inasmuch as the only issue raised in the Complaint is that presented by Plaintiff's motion, the facts are

produce a written waiver of stacking dated subsequent to November 29, 1995, arguing that a new waiver was required at the time the policy was changed to add uninsured and underinsured coverage. The Court does not agree.

In Sackett v. Nationwide Mutual Insurance Company, 880 A.2d 1243 (Pa. Super. 2005), the Superior Court held that a new waiver of stacking was not required when a third vehicle was added to the policy, even though the limits of uninsured/underinsured motorist coverage are potentially affected by such a change. The Court relied on the reasoning in Smith v. The Hartford Insurance Co., 849 A.2d 277 (Pa. Super. 2004), wherein it was held that even when the limits of liability coverage are explicitly changed, no new uninsured/underinsured motorist coverage rejections are required, based in large part on the declaration in Section 1791 of the Motor Vehicle Financial Responsibility Law that “[i]t shall be presumed that the insured has been advised of the benefits and limits available under this chapter” where the statutory notice is given and “no other notice or rejection shall be required.” 75 Pa. C.S. Section 1791. Acknowledging that Smith involved a waiver of uninsured/underinsured motorist coverage rather than a waiver of stacking, and that an insured’s choice with respect to stacking is not one of the items required to be disclosed by Section 1791’s notice provision, the Sackett Court nevertheless, as was done in Smith, applied Section 1791 to the facts before it. The Court sees no reason why the same reasoning should not be applied in the instant case. Adding uninsured/underinsured coverage is a change substantially similar to adding a new vehicle or changing liability limits. Thus, the initial waiver signed by Jeffrey Raisch at the initiation of the policy continued in effect and Defendants are entitled to only unstacked underinsured motorist benefits.

ORDER

AND NOW, this 28th day of November 2005, for the foregoing reasons,
Plaintiff’s motion for summary judgment is hereby granted and Defendants’ motion for

not in dispute, and resolution of this question ends the matter for all intents and purposes. Plaintiff agreed the Court could consider the oral motion in the interest of judicial efficiency and economy.

summary judgment is hereby denied. Judgment is hereby entered in favor of Plaintiff and against Defendants on the complaint for declaratory judgment.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Robert Gallagher, Esq.
Peter Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson