

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

ERIE INSURANCE EXCHANGE,	:	
Plaintiff,	:	No. CV 23-00,668
	:	
vs.	:	CIVIL ACTION
	:	
MELISSA HARDING, BRAD HARDING,	:	
and ESTATE OF DANIEL BLAKE	:	
HARDING,	:	
Defendants.	:	

**OPINION AND ORDER**

AND NOW, this 8<sup>th</sup> day of January, 2024, upon consideration of the parties' cross-motions for judgment on the pleadings, it is hereby ORDERED and DIRECTED that Plaintiff's motion is GRANTED and that the Defendants' motion is DENIED, as explained below.

***I. BACKGROUND.<sup>1</sup>***

Plaintiff Erie Insurance Exchange commenced this action by Complaint filed June 21, 2023,<sup>2</sup> seeking a declaratory judgment concerning insurance coverage. Plaintiff is an unincorporated reciprocal insurance exchange.<sup>3</sup> The Defendants are Melissa Harding, Brad Harding and the Estate of Daniel Blake Harding.<sup>4</sup> Daniel Blake Harding was the son of Melissa and Brad Harding, who are the administrators of his estate (the "Estate").<sup>5</sup> Daniel Blake Harding died as a result of injuries

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<sup>1</sup> Because of the stage of the proceedings, the facts recited here are drawn from the pleadings and from the other submissions of the parties to this Court and are not findings by the Court, unless specifically so indicated. The foregoing does not apply to official records of this Court or any other governmental entity, however.

<sup>2</sup> Complaint – Declaratory Judgment filed by Plaintiff on June 21, 2023 ("Complaint"). Defendants filed their Answer, New Matter and Counterclaim on July 21, 2023 ("Answer").

<sup>3</sup> Complaint & Answer, ¶ 1.

<sup>4</sup> *Id.*, ¶¶ 2-4.

<sup>5</sup> *Id.*, caption & ¶¶ 4, 12, 14.

sustained in a vehicle accident that occurred while he was operating a motorcycle in Hughesville Borough, Lycoming County, on April 7, 2023.<sup>6</sup>

The Estate made tort claims against the operator of the other vehicle which were resolved, pre-litigation, for \$1.5 million policy limits.<sup>7</sup> It also made underinsured motorist ("UIM") claims against the policies of insurance issued by Plaintiff to both of the decedent's parents.<sup>8</sup> Plaintiff tendered the full, stacked UIM limits of \$300,000 available under the policy issued to the decedent's father, which covered vehicles not involved in the accident, based, Plaintiff claims, upon the representation that the decedent resided full time with his father.<sup>9</sup> The motorcycle decedent was operating at the time of the accident was insured under his mother's policy, and Plaintiff has offered \$100,000 in UIM benefits associated with the motorcycle.<sup>10</sup>

The controversy here arises out of Plaintiff's refusal to offer stacked UIM benefits for other, non-accident vehicles insured under the decedent's mother's policy.<sup>11</sup> Plaintiff contends that stacked UIM coverage is available only to the "named insured" and her "resident relatives" and that the decedent did not qualify as either at the time of the accident.<sup>12</sup> Therefore, Plaintiff contends that it is not required to offer stacked benefits for other vehicles insured under the mother's automobile insurance policy (the "Policy").<sup>13</sup> Defendants disagree, contending that stacked benefits are available because the decedent is listed under the subject policy both as a "driver" of the accident motorcycle and as an "insured."<sup>14</sup>

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<sup>6</sup> *Id.*, ¶¶ 8-9.

<sup>7</sup> *Id.*, ¶ 10.

<sup>8</sup> *Id.*, ¶¶ 11-15.

<sup>9</sup> *Id.*, ¶¶ 12-13.

<sup>10</sup> *Id.*, ¶¶ 14-16.

<sup>11</sup> *Id.*, ¶¶ 14-34.

<sup>12</sup> Complaint, ¶¶ 19-30.

<sup>13</sup> *Id.*, ¶¶ 28-30.

<sup>14</sup> Answer, ¶¶ 19-30; see also Defendants' New Matter and Counterclaim.

The pleadings closed on August 7, 2023,<sup>15</sup> and Plaintiff filed its motion for judgment on the pleadings on August 24, 2023.<sup>16</sup> Defendants responded to the Plaintiff's motion and filed a cross-motion for judgment on the pleadings on September 25, 2023.<sup>17</sup> Plaintiff responded to the Defendants' cross-motion on September 28, 2023,<sup>18</sup> and the parties fully briefed their respective positions.<sup>19</sup> The Court heard argument on October 6, 2023, and the motions are now ripe for disposition.

## **II. LAW AND ANALYSIS.**

### **A. Legal standard.**

Pursuant to the Pennsylvania Rules of Civil Procedure, "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings."<sup>20</sup> Here, the pleadings are closed,<sup>21</sup> and the parties filed their respective motions within such time as not to delay trial unreasonably.<sup>22</sup> Accordingly, the Court finds that the motions are timely.

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<sup>15</sup> "[T]he pleadings in an action are limited to ... a complaint and an answer thereto ... [and] a reply if the answer contains new matter...." Pa. R. Civ. P. 1017(a). Plaintiff filed its Complaint – Declaratory Judgment on June 21, 2023. Defendants filed their Answer, New Matter and Counterclaim on July 21, 2023. Plaintiff thereafter filed its Reply to New Matter and Answer and New Matter to Counterclaim on August 1, 2023. Finally, on August 7, 2023, Defendants filed their Reply to New Matter. Thus, all relevant, authorized pleadings have been filed.

<sup>16</sup> Motion for Judgment on the Pleadings of Plaintiff and Counterclaim Defendant, Erie Insurance Exchange, filed August 24, 2023.

<sup>17</sup> Defendants' Response to Plaintiff's Motion for Judgment on the Pleadings and Cross-Motion for Judgment on the Pleadings, filed September 25, 2023.

<sup>18</sup> Plaintiff, Erie Insurance Exchange's, Response in Opposition to Cross Motion for Judgment on the Pleadings of Defendants, filed September 28, 2023.

<sup>19</sup> See Plaintiff and Counterclaim Defendant, Erie Insurance Exchange's, Brief in Support of Motion for Judgment on the Pleadings, filed August 24, 2023; Defendants' Brief in Opposition to Plaintiff's Motion for Judgment on the Pleadings and In Support of Defendants' Motion for Judgment on the Pleadings, filed September 25, 2023; Plaintiff, Erie Insurance Exchange's, Brief in Opposition to Defendants' Cross Motion for Judgment on the Pleadings, filed September 28, 2023; Reply Brief in Support of Motion for Judgment on the Pleadings of Plaintiff, Erie Insurance Exchange, filed September 28, 2023.

<sup>20</sup> Pa. R. Civ. P. 1034(a).

<sup>21</sup> See, *supra*, Part I., n. 15.

<sup>22</sup> This Court's Scheduling Order of August 4, 2023 provides, *inter alia*, that the cut-off date for filing dispositive motions is July 15, 2024. Plaintiff filed its Motion on August 24, 2023 and Defendants filed their Cross-Motion on September 25, 2023, both well before the cut-off date.

"A ... motion for judgment on the pleadings can be used as a motion to test whether such a cause of action as pleaded exists at law, and in that way 'is in the nature of a demurrer.'"<sup>23</sup> The motion is limited to the pleadings themselves, and no outside factual material may be considered.<sup>24</sup> The court must accept as true all well-pleaded facts in favor of the non-moving party.<sup>25</sup> "Judgment on the pleadings may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law."<sup>26</sup>

### ***B. The policy language.***

Plaintiff first argues that the language of the Policy bars stacked UIM benefits. "[G]eneral principles of contract interpretation [apply to interpretation of the Policy], as, at base, an insurance policy is nothing more than a contract between an insurer and an insured."<sup>27</sup> As such, this Court must "ascertain the intent of the parties as manifested by the terms used in the written insurance policy."<sup>28</sup> If "the language of the policy is clear and unambiguous, [this Court] is required to give effect to that language."<sup>29</sup> Notwithstanding this, however, if a provision of the Policy conflicts with statutory mandates, it is invalid and unenforceable, because "contracts cannot alter existing laws."<sup>30</sup>

"Stacking" is "the ability to add the coverages available from different vehicles and/or different policies to provide a greater amount of coverage available under any

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<sup>23</sup> *Bensalem Tp. School Dist. v. Commonwealth*, 544 A.2d 1318, 1321 (Pa. 1988) (quoting *Bata v. Central Pa. Nat'l Bank of Philadelphia*, 224 A.2d 174, 178 (Pa. 1966)).

<sup>24</sup> *Id.* (quoting *Goodrich Amran*, 2d § 1035:1, p. 423).

<sup>25</sup> *Baumbach v. Lafayette College*, 272 A.3d 83, 88 (Pa. Super. 2022) (citing *Wakeley v. M.J. Brunner, Inc.*, 147 A.3d 1, 5 (Pa. Super. 2016)).

<sup>26</sup> *Monroe v. CBH20, LP*, 286 A.3d 785, 796 (Pa. Super. 2022) (quoting *Baumbach, supra*, 272 A.3d at 88).

<sup>27</sup> *Gallagher v. GEICO Indemnity Co.*, 201 A.3d 131, 137 (Pa. 2019) (citing *401 Fourth St., Inc. v. Inv'rs Ins. Grp.*, 879 A.2d 166, 171 (Pa. 2005)).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* (citing *Prudential Prop. & Cas. Ins. Co. v. Colbert*, 813 A.2d 747, 751 (Pa. 2002)).



one vehicle or policy.”<sup>31</sup> Intra-policy stacking,<sup>32</sup> which is at issue here, is governed by Section 1738 of the Motor Vehicle Financial Responsibility Law (the “MVFRL”),<sup>33</sup> which provides that, when more than one vehicle is insured under a single vehicle insurance policy, the limit for UIM coverage applies separately for each vehicle; however, the limits available for an insured are the sum of the limits for each vehicle as to which the injured person is an insured, unless a named insured waives such stacking.<sup>34</sup>

The Policy provides that stacked coverage is limited to “you” and a “relative.”<sup>35</sup> It defines “you” as a person identified as a “Named Insured” on the “Declarations,”<sup>36</sup> and “relative” as a “resident” of a Named Insured’s household who is related to the Named Insured by blood, marriage or adoption or who is a ward or other person under age 21 who is in a Named Insured’s care.<sup>37</sup> Plaintiff contends that the decedent is not a Named Insured, because the Policy’s Declarations list “Melissa A. Harding” under the field labeled “Named Insured.”<sup>38</sup> Defendants disagree, pointing out that Daniel Harding is listed on the Declarations as driver and co-owner of the accident motorcycle and is specifically identified as “Child/Insured.”<sup>39</sup> Plaintiff contends that the decedent is not a “relative” because he did not reside with his mother at the time of the accident.<sup>40</sup> Defendants admit that

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<sup>31</sup> *McGovern v. Erie Ins. Group*, 796 A.2d 343, 344 (Pa. Super. 2002) (citing *In re: Insurance Stacking Litigation*, 754 A.2d 702 (Pa. Super. 2000)).

<sup>32</sup> “Intra-policy” stacking involves adding the limits of multiple vehicles insured under a single insurance policy, whereas “inter-policy” stacking involves adding the limits for vehicles insured under more than one insurance policy. *Id.*, at 344-345.

<sup>33</sup> 75 Pa. C.S. §§ 1701, *et seq.*

<sup>34</sup> See 75 Pa. C.S. § 1738.

<sup>35</sup> Complaint, Exh. A, UM/UIM Endorsement, p.4.

<sup>36</sup> *Id.*, Policy change Endorsement, p.1.

<sup>37</sup> *Id.*, Policy, p.2.

<sup>38</sup> *Id.*, Declarations, p.1.

<sup>39</sup> *Id.*, Declarations, p.3.

<sup>40</sup> Complaint, ¶¶ 26-27.

the decedent resided with his father and not with his mother at the time of the accident, but they do not concede he is not a “relative” under the Policy.<sup>41</sup>

Ultimately, Plaintiff contends that the decedent is not entitled to stacked benefits because he is not an “insured” as defined by the MVFRL.<sup>42</sup> Plaintiff cites *Generette v. Donegal Mutual Insurance Company*<sup>43</sup> for the proposition that recovery of stacked benefits is limited to persons defined as “insureds” under the MVFRL,<sup>44</sup> i.e., to “named insureds” and to “resident relatives” of named insureds. Thus, Plaintiff reasons, since the decedent is neither a “named insured” nor a “resident relative” of a named insured, he is not entitled to stacked benefits.<sup>45</sup>

### **C. Defendants’ Request for Lower Limits.**

Insurers in Pennsylvania are required to offer UIM coverage with every vehicle liability insurance policy.<sup>46</sup> The amount of such coverage must be equal to or less than the limits of liability for bodily injury.<sup>47</sup> There are specific statutory requirements for rejecting UIM coverage entirely,<sup>48</sup> but an insured may elect coverage in a lesser amount than the limit for bodily injury merely by means of a

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<sup>41</sup> Answer, ¶¶ 26-27.

<sup>42</sup> 75 Pa. C.S. § 1702 (“Insured. Any of the following: (1) An individual identified by name as an insured in a policy of motor vehicle liability insurance. (2) If residing in the household of the named insured: (i) a spouse or other relative of the named insured; or (ii) a minor in the custody of either the named insured or relative of the named insured.”).

<sup>43</sup> *Generette v. Donegal Mut. Ins. Co.*, 957 A.2d 1180 (Pa. 2008).

<sup>44</sup> *Id.*, at 1190.

<sup>45</sup> Plaintiff’s Brief, pp. 6-7.

<sup>46</sup> See 75 Pa. C.S. § 1731(a) (“Mandatory offering.—No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto in amounts as provided in section 1734 (relating to request for lower limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.”).

<sup>47</sup> See 75 Pa. C.S. § 1734 (“A named insured may request in writing the issuance of coverages under section 1731 (relating to availability, scope and amount of coverage) in amounts equal to or less than the limits of liability for bodily injury.”).

<sup>48</sup> 75 Pa. C.S. §§ 1731(c), (c.1).

written request containing “not only the signature of the insured, but also, an express designation of the amount of coverage requested.”<sup>49</sup>

Plaintiff contends that on March 15, 2021, Melissa Harding, Named Insured on the Policy, applied to Plaintiff for the Policy.<sup>50</sup> In connection with her application, she executed a form entitled, “Request for Lower Limits of Underinsured Motorist Benefit.”<sup>51</sup> Pursuant to that Request, the Named Insured purchased UIM coverage with limits of “\$100,000.00 Each Person” and “\$300,000.00 Each Accident.” Plaintiff contends that this is a valid and enforceable election of coverage by Defendants made in exchange for lower premiums on the Policy and that Defendants are thereby barred from recovery of benefits in excess of those elected.<sup>52</sup> Defendants disagree with Plaintiff’s contention, primarily on the basis that the decedent, Daniel Blake Harding, is neither Melissa Harding nor a resident relative of hers but, instead, is named as insured in his own right under the Policy.<sup>53</sup> As such, Defendants contend the decedent is entitled to full UIM benefits under the Policy.

***D. Daniel Blake Harding’s status under the Policy.***

***1. Whether the Policy defines the decedent as an insured.***

Defendants’ argument starts with their claim that Daniel Blake Harding was explicitly named as an insured under the Policy and, as such, he is entitled to stacked UIM coverage under the plain language of the MVFRL.<sup>54</sup> Under the MVFRL, an “insured” includes “[a]n individual identified by name as an insured in a

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<sup>49</sup> *Orsag v. Farmers New Century Ins.*, 15 A.3d 896, 901 Pa. 2011 (quoting *Lewis v. Erie Ins. Exchange*, 793 A.2d 143, 153 (Pa. 2002)).

<sup>50</sup> Plaintiff’s New Matter to Defendants’ Counterclaim, ¶¶ 61-62.

<sup>51</sup> *Id.*, ¶¶ 63-64 & Exh. 2.

<sup>52</sup> *Id.*, ¶¶ 65-67.

<sup>53</sup> Defendants’ Reply to Plaintiff’s New Matter to Defendants’ Counterclaim, ¶¶ 61-67.

<sup>54</sup> *See, supra*, Part II.B.



policy of motor vehicle liability insurance.”<sup>55</sup> Defendants contend that the decedent is named as an insured in the Policy, by virtue of the listing on the Declarations of “DANIEL & MELISSA HARDING–CHILD/INSURED” under the heading of “Co-Owner(s)” of “Vehicle 3,” which is the accident motorcycle.<sup>56</sup> Accordingly, Defendants’ contend, the decedent, as an insured, is entitled to stacked coverage under the MVFRL.<sup>57</sup>

Plaintiff disagrees, contending that mere listing of a person’s name on a policy of insurance does not “render him a ‘designated insured’ eligible for stacked UIM benefits.”<sup>58</sup> Indeed, Plaintiff correctly points out that simply being named on a policy does not make one a “class one” insured.<sup>59</sup> Plaintiff directs this Court’s attention to *Grix v. Progressive Specialty Insurance Company*,<sup>60</sup> an unpublished decision of the Superior Court, wherein the Court found that the daughter, who had been named as a driver and household resident in the policy at issue but who subsequently had moved out of the household, was insured under the policy but was

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<sup>55</sup> 75 Pa. C.S. § 1702.

<sup>56</sup> Complaint, Exh. A, Declarations, p.3. Defendants maintain that the virgule (*i.e.*, the “/” or “slash”) does not indicate that Daniel is the “Child” and that Melissa is the “Insured,” because Melissa is listed elsewhere in the Policy as an “Insured” and a second identification as such would be superfluous. Defendants’ Brief, p.6. Moreover, they point out that Plaintiff uses the virgule elsewhere in the Policy to identify Daniel both as the “owner” and as the “Principal Driver” of the motorcycle, and, so, they reason, the virgule used in this context identifies Daniel both as the “Child” and as the “Insured.” *Id.*, at 7.

<sup>57</sup> See 75 Pa. C.S. § 1738(a) (“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.”) (emphasis added).

<sup>58</sup> Plaintiff’s Brief, p.8.

<sup>59</sup> See, *e.g.*, *Caron v. Reliance Ins. Co.*, 703 A.2d 63, 68 (Pa. Super. 1997). “Class one” beneficiaries are a policy’s “named insured and any designated insured and, while residents of the same household, the spouse and relatives of either,” while “class two” beneficiaries include “any other person while occupying an insured highway vehicle.” “Class one” insureds are the specifically intended beneficiaries of insurance contracts entitled to stacked coverage, while “class two” claimants are not specifically intended beneficiaries of an insurance policy, and cannot reasonably expect stacked coverage. *Grix v. Progressive Specialty Ins. Co.*, 2020 WL 618557, \*5 (Pa. Super. 2020) (citing *Pennsylvania Nat. Mut. Cas. Co. v. Black*, 916 A.2d 569, 572 n.3 (Pa. 2007) (citing *Utica Mutual Ins. Co. v. Contrisciane*, 473 A.2d 1005, 1010 (Pa. 1984))).

<sup>60</sup> *Grix*, *supra*, 2020 WL 618557.



not a “class one” insured and, therefore, was not eligible for stacked UIM limits under the policy, since she was neither a “named or designated insured” on the declarations page nor a household resident.<sup>61</sup> While *Grix* is non-precedential,<sup>62</sup> the Court finds it highly persuasive<sup>63</sup> in light of the remarkable similarity of the facts there to those here.

The Court agrees with the Plaintiff. The plain language of the Policy’s Declarations lists “Melissa A. Harding” as the “Named Insured.”<sup>64</sup> It does not list any other person under the field “Named Insured.”<sup>65</sup> The Policy provided insurance coverage for Daniel Harding, but he was not the “Named Insured.” As explained above, the mere mention of a person’s name in the policy of insurance does not make that person a class-one insured entitled to stacked UIM benefits. Under the plain language of the Policy, the decedent was entitled to coverage but was not entitled to stacked UIM benefits.

## ***2. Whether the Policy is ambiguous concerning the decedent.***

A contractual provision is ambiguous if it reasonably could be construed in more than one way or reasonably could be understood in more than one sense.<sup>66</sup> The words of a contract are not to be read in a vacuum, however. “Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts,”<sup>67</sup> and “the ordinary meaning of words cannot be distorted to establish an ambiguity” in the first instance.<sup>68</sup> In the

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<sup>61</sup> *Id.*, at 5-6.

<sup>62</sup> See Superior Court I.O.P. § 65.37; Pa. R.A.P. 126(b)(1).

<sup>63</sup> Pa. R.A.P. 126(b)(2) (“Non-precedential decisions ... may be cited for their persuasive value.”).

<sup>64</sup> *Id.*, Declarations, p.1.

<sup>65</sup> *Id.*

<sup>66</sup> *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004).

<sup>67</sup> *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999) (citations omitted); see also *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d 418, 430 (Pa. 2001).

<sup>68</sup> *Anstead v. Cook*, 140 A. 139, 140 (Pa. 1927); see also *Madison Constr.*, *supra*, 735 A.2d at 106 (citing *Stewart v. McChesney*, 444 A.2d 659, 663 (Pa. 1982)).

context of an insurance policy, “[i]t is well-settled that ‘[w]here a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement’”<sup>69</sup> in order “‘to further the contract’s prime purpose of indemnification.’”<sup>70</sup>

Defendants argue in the alternative that if the Court does not find the language of the Policy to be clear and unambiguous in identifying the decedent as an “Insured,” the Policy’s use of a virgule in identifying “DANIEL & MELISSA HARDING – CHILD/INSURED,” is ambiguous, at the very least.<sup>71</sup> They point out that our courts have recognized the ambiguity of a virgule<sup>72</sup> because a virgule can be interpreted to mean “and,” “or” or “and/or.”<sup>73</sup> Since ambiguities in an insurance contract are to be construed against the insurer, Defendants reason that, in the event the Court finds that the Policy is ambiguous concerning the status of Daniel Harding, the ambiguity must be resolved in his favor.

The Court does not find the Policy to be ambiguous. As explained above, the Court concludes that under the plain language of the Policy the decedent is not a “Named Insured” and is not otherwise entitled to stacked UIM benefits. Further, Defendant is creating ambiguity where none exists. There is but one unambiguous

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<sup>69</sup> *Windows v. Erie Insurance Exchange*, 161 A.3d 953, 957 (Pa. Super. 2017) (citing *Prudential Prop. & Cas. Ins. Co. v. Sartno*, 903 A.2d 1170, 1174 (Pa. 2006) (quoting *Standard Venetian Blind Co. v. Am. Empire Ins. Co.*, 469 A.2d 563, 566 (Pa. 1983))); see also *Egyptian Sands Real Estate, Inc. v. Polony*, 294 A.2d 799, 803 (Pa. Super. 1972) (“Under general contract rules, a promise ... if ambiguous, [ ] will be construed [c]ontra proferentum, against the party having drafted it.”) (italics added) (footnote omitted).

<sup>70</sup> *Pennsylvania Nat. Mut. Cas. Ins. Co. v. St. John*, 106 A.3d 1, 14 (Pa. 2014) (quoting *401 Fourth St.*, *supra*, 879 A.2d at 171).

<sup>71</sup> Defendants’ Brief, pp. 10-11.

<sup>72</sup> See, e.g., *City of Philadelphia v. Brantner*, 437 A.2d 1277, 1279 (Pa. Commw. 1981) (“Both parties in this case have frustrated clarity by using ‘and’ plus ‘or’ in their pleadings, linked by the ambiguity of a virgule. The city averred the taxpayer’s failure to file returns ‘and/or’ to pay taxes; Brantner’s speaking demurrer inexplicably answered that she filed returns ‘and/or’ paid taxes. The courts are entitled to straightforward fact pleading, not obfuscatory wording and punctuation, leaving multiple interpretations open.”).

<sup>73</sup> Defendant’s Brief, p. 10 (citing *Lighton Indus., Inc. v. Allied World Nat’l Assurance Co.*, 348 F. Supp. 3d 167 (E.D.N.Y. 2018)).

reading of the Policy language: that the word that precedes the virgule, "CHILD," refers to Daniel, and the word that follows the virgule, "INSURED," refers to Melissa Harding.

**3. *Whether the decedent had an expectation of coverage.***

"[T]he proper focus regarding issues of coverage under insurance contracts is the reasonable expectation of the insured."<sup>74</sup>

When insurance policy language is ambiguous, courts examine whether a finding of coverage is consistent with the objectively reasonable expectations of the insured. In making this determination, courts must examine the totality of the disputed policy language.<sup>75</sup>

As such, Defendants also claim in the alternative that, reviewing the Policy as a whole and construing all language in the decedent's favor, the decedent had a reasonable expectation that stacked UIM benefits were available to him.<sup>76</sup>

The Court disagrees. An insured cannot claim that his reasonable expectations are frustrated by policy provisions that are clear and unambiguous.<sup>77</sup> The decedent is not a "Named Insured" and is not otherwise entitled to stacked UIM benefits. Therefore, he cannot claim a reasonable expectation to receive the same.

***E. Applicability to Daniel Blake Harding of Melissa Harding's request for lower limits.***

Defendants do not contest that Melissa Harding elected lower limits of coverage for stacked UIM benefits under the Policy.<sup>78</sup> Instead, they focus on the language of her request, contending that it does not apply to the decedent, and

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<sup>74</sup> *Universal Teleservices Arizona, LLC v. Zurich American Ins. Co.*, 879 A.2d 230, 234 (Pa. Super. 2005) (citing *Kvaerner Metals Div. v. Commercial Union Ins. Co.*, 825 A.2d 641, 644 (Pa. Super. 2003)).

<sup>75</sup> *Ungarean v. CNA*, 286 A.3d 353, 363 (Pa. Super. 2022) (citing *Bishops, Inc. v. Penn Nat. Ins.*, 984 A.2d 982, 990 (Pa. Super. 2009)).

<sup>76</sup> Defendant's Brief, p. 12.

<sup>77</sup> See, e.g., *Universal Teleservices*, *supra*, 879 A.2d at 234.

<sup>78</sup> See, *supra*, Part II.C.

argue that because there was no rejection, waiver or request for lower UIM benefits as to the decedent, he is entitled to full UIM limits equal to the bodily injury limits.<sup>79</sup> Specifically, the election signed by Melissa Harding states that

By signing this form, I am requesting for myself and members of my household underinsured motorist coverage in an amount less than the limits of my bodily injury coverage.<sup>80</sup>

Defendants contend that by the express language of her request, Melissa Harding requested lower UIM limits only for herself and for members of her household. Since the decedent is neither Melissa nor a member of her household, Defendants reason that the lower limits do not apply to him.<sup>81</sup>

Defendants urge this Court to apply the maxim *expressio unius est exclusio alterius*, which “translates into the proposition that the mention of particular items implies the purposeful exclusion of other items of the same general character,”<sup>82</sup> to construction of Melissa Harding’s request for lower limits of UIM coverage. Specifically, Defendants contend that because Melissa Harding elected reduced limits for herself and for members of her household, her failure to make explicit reference to other categories of persons, such as to other persons not in her household, means that she did not intend to make such an election for the decedent, a supposed insured who is neither Melissa Harding nor a member of her household.<sup>83</sup>

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<sup>79</sup> *Cebula v. Royal & SunAlliance Ins. Co.*, 158 F. Supp. 2d 455, 459 (M.D. Pa. 2001) (holding that where plaintiffs originally purchased a policy with liability and uninsured motorist/underinsured motorist (“UM/UIM”) limits of \$300,000 and later raised liability coverage to \$500,000 without increasing UM/UIM coverage or signing a request to reduce UM/UIM coverage, plaintiffs were entitled to reformation of the policy to include UM/UIM coverage equal to the increased liability coverage).

<sup>80</sup> Plaintiff’s New Matter to Defendants’ Counterclaim, Exh. 2.

<sup>81</sup> Defendants’ Brief, p. 13.

<sup>82</sup> *Empire Sanitary Landfill, Inc. v. Riverside School Dist.*, 39 A.2d 651, 655 (Pa. Commw. 1999) (quoting *Dep’t of Transp. v. Mosites Constr. Co.*, 494 A.2d 41, 43 (Pa. Commw. 1985)).

<sup>83</sup> Defendant’s Brief, p. 13.



In response, Plaintiff contends that Defendants' claim that Melissa Harding's election does not apply to decedent is contrary to the MVFRL,<sup>84</sup> as well as to longstanding precedent that third party beneficiaries are bound by the same limitations in the contract as its signatories.<sup>85</sup> The Court agrees with the Plaintiff's position on this question. Under the MVFRL, a named insured may reject UIM coverage,<sup>86</sup> waive stacking,<sup>87</sup> or request lower limits<sup>88</sup> for all persons covered by the policy.<sup>89</sup> Melissa Harding's election of UIM limits available under the Policy was directly tied to the premiums charged for that Policy.<sup>90</sup> As such, it is entirely sensible that the election of benefits by the person who is financially responsible for the Policy is applicable to all persons covered by the Policy. Furthermore, regardless of whether the decedent is an insured, he is a third party beneficiary of the Policy,

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<sup>84</sup> Plaintiff's Reply Brief, pp. 5-6. Melissa Harding validly elected lower UIM limits under 75 Pa. C.S. Section 1734, in that she signed a writing that expressly states the limits elected. See, *supra*, Part II.C. Plaintiff also properly points out that the language used mirrors that employed by the legislature to reject UM/UIM coverage under 75 Pa. C.S. Section 1731 and to reject stacked coverage under 75 Pa. C.S. Section 1738. Reply Brief, p.6.

<sup>85</sup> Defendant's Reply Brief, pp. 9-11.

<sup>86</sup> See 75 Pa. C.S. § 1731(c) ("The named insured ... may reject underinsured motorist coverage....") (emphasis added); 75 Pa. C.S. § 1731(c.1) ("The [rejection] forms must be signed by the first named insured and dated to be valid.") (emphasis added).

<sup>87</sup> See 75 Pa. C.S. § 1738(b) ("[A] named insured may waive coverage providing stacking of ... 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.") (emphasis added).

<sup>88</sup> 75 Pa. C.S. § 1734 ("A named insured may request in writing the issuance of coverages under section 1731 ... in amounts equal to or less than the limits of liability for bodily injury.") (emphasis added).

<sup>89</sup> See, e.g., *General Acc. Ins. Co. of America v. Parker*, 665 A.2d 502, 504 (Pa. Super. 1995) ("Parker contends that because she is not a resident relative of the policy holder, neither General Accident nor their named insured can reject uninsured motorist benefits on her behalf. Consequently, General Accident cannot claim that the policy holder's waiver of the uninsured benefits applies to Parker. This argument is without merit.... Parker's rights, as a third party beneficiary, are therefore subject to the same limitations in the policy as are Moore's, the policy holder. Since Moore waived uninsured motorist benefits, Parker cannot make a claim for uninsured motorist benefits pursuant to the terms of the General Accident policy.")

<sup>90</sup> See, e.g., 75 Pa. C.S. § 1731(a) ("... Purchase of uninsured motorist and underinsured motorist coverages is optional.") (emphasis added); 75 Pa. C.S. § 1738(c) ("... The premiums for an insured who exercises such waiver [of stacked benefits] shall be reduced to reflect the different cost of such coverage.") (emphasis added).


which is owned by his mother.<sup>91</sup> As such, the decedent is entitled only to the benefits available under the Policy.<sup>92</sup>

### III. CONCLUSION.

For the reasons explained above, the Court finds that Daniel Blake Harding was not a "Named Insured" under the Policy and was not a resident relative of a "Named Insured." As such, he is not entitled to stacked UIM benefits. Furthermore, he is bound by the coverage elections made by his mother, Melissa Harding, who is the "Named Insured" on the Policy. Accordingly, the Plaintiff's motion for judgment on the pleadings is GRANTED, and the Defendants' cross-motion for judgment on the pleadings is DENIED. This is a final Order,<sup>93</sup> entitling Defendants to appeal, should they so desire.

IT IS SO ORDERED.

BY THE COURT,

  
Eric R. Linhardt, Judge

ERL/bel

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<sup>91</sup> *Petty v. Federated Mutual Ins. Co.*, 152 A.3d 1020, 1026 n.3 (Pa. Super. 2016) (citing *Egan v. USI Mid-Atlantic, Inc.*, 92 A.3d 1, 20 (Pa. Super. 2014)) ("A claim for UIM benefits under a policy to which the injured person is not a signatory would be considered under principles pertaining to third party beneficiaries.").

<sup>92</sup> *Id.* (citations omitted) ("The alternate basis suggested by Appellee is that Appellants have no legally cognizable claim for UIM benefits because they 'are not the named insureds on the policy at issue.' ... We agree. A claim for UIM benefits under a policy to which the injured person is not a signatory would be considered under principles pertaining to third party beneficiaries.... However, 'one may not create UM/UIM coverage where none exists.' Here, McQuillen was the named insured and it had properly elected not to have UIM coverage. Because Appellants were not named insureds, and McQuillen had properly waived UIM coverage, Appellants had no legally cognizable claim to a UIM benefit that did not exist."); see also *Parker, supra*, 665 A.2d at 504 ("Parker's rights, as a third party beneficiary, are therefore subject to the same limitations in the policy as are Moore's, the policy holder.").

<sup>93</sup> Pa. R.A.P. 341(b)(1) ("A final order ... disposes of all claims and of all parties"); see also, e.g., *Venema v. Moser Builders, Inc.*, 284 A.3d 208, 211 n.1 (Pa. Super. 2022).