SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Vincent J. X. Hedrick, II, Esquire
Law Office of Beverly L. Bove
1020 West 18th Street
P.O. Box 1607
Wilmington, DE 19899-1607
Attorney for Plaintiff

Colin M. Shalk, Esquire
Casarino, Christman & Shalk, P.A.
800 N. King Street, Suite 200
P.O. Box 1276
Wilmington, DE 19899-1276
Attorney for Defendant

Re: Lori Bromstad-Deturk v. State Farm Mutual Automobile Insurance Company.
C.A. No.: 08C-02-118 RRC

Submitted: June 24, 2008
Decided: August 25, 2008

On Defendant's Motion to Dismiss.
GRANTED.

Dear Counsel:

Lori Bromstad-Deturk ("Plaintiff") was involved in a motor vehicle accident with a third-party underinsured motorist. Plaintiff was driving a vehicle at the time of the accident that was insured by State Farm Mutual Automobile Insurance Company ("Defendant"). The policy on that vehicle provided $100,000 for underinsured motorist coverage, which Defendant has tendered to Plaintiff. However, Plaintiff had two additional motor vehicles

insured by Defendant. All three policies were under separate insurance agreements, and all vehicles were within Plaintiff's household. The policies each provided $100,000 in underinsured motorist coverage, and all contained an "anti-stacking provision." The language of the anti-stacking provision in each policy reads as follows:

> [i]f two or more vehicles owned or leased by you, your spouse or any relative are insured for this coverage under one or more policies issued by us or an affiliated company, the total limit of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability.

The applicable statute is 18 *Del. C.* § 3902, governing "uninsured and underinsured vehicle coverage." Particularly at issue is 18 *Del. C.* § 3902(c), which provides:

> [w]hen 2 or more vehicles owned or leased by persons residing in the same household are insured by the same insurer or affiliated insurers, the limits of liability shall apply separately to each vehicle as stated in the declaration sheet, but shall not exceed the highest limit of liability applicable to any 1 vehicle.

The issue before the Court is whether 18 *Del. C.* § 3902(c) authorizes the anti-stacking provisions contained in the insurance policies between Defendant and Plaintiff. If so, that would have the effect of allowing Plaintiff to potentially receive $300,000 in uninsured motorist coverage, instead of $100,000.

The Court holds that the anti-stacking provisions in the insurance policies are permitted by the plain language of 18 *Del. C.* § 3902(c), and that therefore the terms of the insurance agreements preclude the Plaintiff from stacking her insurance policies. Defendant's motion to dismiss is therefore granted.

I. CONTENTIONS OF THE PARTIES

Defendant contends that 18 *Del. C.* § 3902(c) is directly applicable to the facts of this case, and permits the kind of anti-stacking provision contained in the insurance policies. Defendant maintains that the anti-stacking provisions operate to prevent Plaintiff from stacking her underinsured motorist coverage.

Plaintiff responds that, as a general policy matter, 18 *Del. C.* § 3902 is designed to protect individuals from underinsured motorists, and that 18 *Del. C.* § 3902(c), being "ambiguous," should be interpreted to reflect that policy and be thus construed to allow stacking.

II. STANDARD OF REVIEW

When deciding a motion to dismiss, "all factual allegations of the complaint are accepted as true."[1] A complaint will not be dismissed under Superior Court Civil Rule 12(b)(6) "unless it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the plaintiff be entitled to relief."[2] Therefore, the Court must determine "whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[3]

III. DISCUSSION

The issue is whether the anti-stacking provisions contained in the insurance policies are enforceable, and, if so, whether they preclude Plaintiff from stacking the three policies.

This Court has addressed this issue in at least three previous cases. In *Johnson v. Colonial Insurance Company of California*, this Court held that an insured could not stack the underinsured motorist coverage for two separate automobile insurance policies written by the same insurer, where the policies covered two separate motor vehicles in the insured's household.[4] In its analysis of 18 *Del. C.* § 3902(c), the *Johnson* Court examined the original Senate bill that amended the statute to bring 18 *Del. C.* § 3902(c) into its present form. The synopsis of that Senate bill states, in pertinent part:

> [r]egardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured motorist or underinsured motorist coverage shall not be added to or stacked upon

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[1] *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. 1972), *aff'd* 297 A.2d 37 (Del. 1972).

[2] *Id.*

[3] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[4] *Johnson v. Colonial Insurance Company of California*, 1997 WL 126994, at *3 (Del. Super.).

> limits for such coverages applying to other motor vehicles to determine the amount of coverage available to an insured injured in any one accident.[5]

The *Johnson* Court went on to hold that 18 *Del. C.* § 3902(c) unambiguously permitted anti-stacking provisions, and that the plaintiff-insured was precluded from stacking by the terms of the insurance policies from stacking coverage.

Later, this Court, in *Lewis v. American Independent Insurance Company*, endorsed the *Johnson* Court's holding that 18 *Del. C.* § 3902(c) is intended to prohibit stacking.[6] In *Lewis*, this Court held that an insurer "was not obligated to provide [underinsured motorist] coverage because [18 Del. C. § 3902(c)] precludes the stacking of multiple underinsured motorist coverages for the threshold purpose of establishing whether the tortfeasor is an underinsured motorist."[7] While factually different than the present case (in that it involved determining whether stacking was permitted to establish an amount greater than the amount offered by the underinsured motorist, thus triggering underinsured motorist coverage), the *Lewis* Court's interpretation of 18 *Del. C.* § 3902(c) is nonetheless persuasive.

Also instructive is *Justice v. Colonial Insurance Company*, where this Court again addressed the issue of stacking pursuant to 18 *Del. C.* § 3902(c).[8] The Court noted that stacking is permitted except where restricted by statute. The Court stated, in *dicta*:

> [a]n example of a statutory restriction on stacking not applicable here is 18 *Del. C.* § 3902(c) which prohibits stacking when "two or more vehicles owned or leased by persons residing in the same household are insured by the same insurer or affiliated insurers.[9]

Plaintiff did not address any of the above three cases (relied upon by Defendant in its original motion) in its Response to Defendant's motion to dismiss. However, at oral argument Plaintiff's counsel argued that *Johnson* was simply wrongly decided, and that *Lewis* is distinguishable, since it

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[5] Senate Bill No. 223, 135th General Assembly (1990).

[6] *Lewis v. American Independent Insurance Company*, 2004 WL 1426964, at *8 (Del. Super.).

[7] *Id.* at *1.

[8] *Justice v. Colonial Insurance Company*, 1998 WL 442717 (Del. Super.) (addressing the issue of whether separate insurance policies could be stacked to determine whether underinsured motorist coverage had been triggered).

[9] *Id.* at *2.

involved the question of whether policies could be stacked to determine whether underinsured motorist coverage was triggered.[10] Plaintiff urges the Court to find controlling a Delaware Supreme Court decision, *Deptula v. Horace Mann Insurance Co.*, 892 A.2d 1235 (Del. 2004), where it was held that an individual injured in a motor vehicle accident could to stack his personal policy with his employer's policy to determine whether underinsured motorist coverage was triggered. However, *Deptula* is distinguishable. In *Deptula*, unlike the present case, the insurance policies were issued by different insurers, and therefore 18 *Del. C.* § 3902(c) was not applicable.

"If [a] statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the Court's role is limited to an application of the literal meaning of those words."[11] As the *Johnson* and *Lewis* cases have held, 18 *Del. C.* § 3902(c) is unambiguous, and this case is falls precisely into the type of case in which 18 *Del. C.* § 3902(c) permits anti-stacking provisions. Defendant is correct that Plaintiff is prohibited from stacking under the terms of the insurance policies.

V. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED**.

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[10] Oral Arg. Tr. at 16, 15-17 (June 24, 2008).

[11] *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007) (citing *In re Adoption of Swanson*, 623 A.2d 1095, 1096-97 (Del. 1993)).

cc: Prothonotary