

[J-23-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOSEPHINE GENERETTE,	:	No. 16 MAP 2007
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court at No. 1153 MDA 2003, entered
	:	September 9, 2005, Affirming the Order of
v.	:	the York County Court of Common Pleas,
	:	Civil Division at No. 99-SU-01159-08,
	:	dated June 23, 2003.
DONEGAL MUTUAL INSURANCE	:	
COMPANY,	:	884 A.2d 266 (Pa. Super. 2005)
	:	
Appellee	:	ARGUED: March 6, 2008

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: October 23, 2008

I respectfully dissent from the majority’s reversal of the Superior Court’s order. I believe Plaintiff maintained a right to stack coverage from the Donegal and Nationwide policies,¹ and Plaintiff, as an “insured,” waived this right.

Section 1738(b) of the MVFRL provides “a named insured may waive coverage providing stacking of [UM/UIM] 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.” 75 Pa.C.S § 1738(b) (emphasis added). As

¹ See 75 Pa.C.S. § 1738(a); see also id., § 1702 (defining “insured”); Craley v. State Farm and Casualty Company, 895 A.2d 530, 540 (Pa. 2006) (insured can waive both intra and inter-policy stacking).

the majority noted, Plaintiff is a class one, named insured under the Donegal policy. See Majority Slip Op., at 8. As a named insured under her own policy, Plaintiff could waive her stacking rights. 75 Pa.C.S. § 1738(b).

In Craley, this Court noted “single-vehicle policy holders ... obtain a real benefit from ... stacking ... where the individual is injured in vehicle other than his own insured vehicle and is an insured under the non-owned vehicle’s policy, which also has [UIM] coverage” Id., at 537. Here, Plaintiff received a benefit from the non-owned vehicle policy – Nationwide indemnified her \$50,000 in UIM benefits – she was an insured under this policy as well, but she remained an insured who waived her inter-policy stacking rights; Plaintiff’s coverage limits are thus the stated limits in the Nationwide policy. See 75 Pa.C.S. § 1738(b).

I would not hold the “other insurance clause” void as against public policy; it does not contradict the MVFRL, which requires excess coverage. In Pennsylvania National Mutual Casualty Company v. Black, 916 A.2d 569 (Pa. 2007), we explained:

It is not clear whether the MVFRL mandates the offer of [UIM] coverage for guest passengers While the MVFRL does not define the class of persons for which [UIM] coverage must be offered, it does inform those desiring to waive ... coverage that “[UIM] coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have enough insurance to pay for all losses and damages” 75 Pa.C.S. § 1731 (emphasis added). This statement makes no reference to guest passengers. Absent any statement by the legislature requiring a minimum of [UIM] coverage to guest passengers ... we are unwilling to declare the unambiguous set-off provision in this policy void as against public policy.

Id., at 581 n.8. The majority resolves this matter by characterizing Plaintiff as a “guest passenger.” Majority Slip Op., at 15. Since it is unclear whether the MVFRL mandates the offer of UIM coverage for guest passengers, a violation of an expressed public policy is not apparent. Thus, the heavy burden to declare the “other insurance clause”

void is not met. See id., at 16 (citing Prudential Property & Casualty Insurance Company v. Colbert, 813 A.2d 747, 750 (Pa. 2002)).

Further, a central policy behind “other insurance clauses” following the MVFRL’s enactment was to keep insurance premiums low while providing sufficient coverage to the insured. See id., at 18. We have often emphasized the propriety of the cost-containment policy underlying the enactment of the MVFRL: “The repeal of the No-Fault Act and the enactment of the MVFRL reflected a legislative concern for the spiraling consumer cost of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways.” Black, at 580 (quoting Paylor v. Hartford Insurance Co., 640 A.2d 1234, 1235 (Pa. 1994)).

Here, the “other insurance clause” guaranteed Plaintiff would receive sufficient coverage as guaranteed by her policy and enabled Donegal to offer reduced premiums. See 75 Pa.C.S. § 1738(c) (“Each named insured purchasing [UIM] coverage ... shall be provided the opportunity to waive the stacked limits of coverage The premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.”) (emphasis added). As a result, the provision furthered the cost-containment policy underlying the MVFRL. Based on the foregoing, I would hold the “other insurance clause” is enforceable and precludes recovery here.

Accordingly, I would affirm the Superior Court’s order.