

NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiff,  vs.  SHEREE L. RYMAN, as Administratrix of the Estate of WYATT J. RYMAN, Deceased, YVONNE ENT and FRANKLIN ENT, JR., Defendants.	: IN THE COURT OF COMMON PLEAS : OF THE 26 <sup>TH</sup> JUDICIAL DISTRICT : COLUMBIA COUNTY BRANCH : : CIVIL ACTION – LAW : : DECLARATORY JUDGMENT : : NO. 673-CV-2019 : : :
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APPEARANCES:  
 ✓ John A. Anastasia, Esq., for the Plaintiff  
 Ryan M. Molitoris, Esq., for the Defendants

November 27, 2019                      Norton, J.

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## OPINION AND ORDER

### OPINION

Before the Court is the Defendants' Motion for Judgment on the Pleadings (the "Motion").

Plaintiff filed its Complaint on May 28, 2019, seeking a declaration that Underinsured Motorist ("UIM") coverage is not owing to Defendant Ryman under Defendant Ent's UIM policy. Plaintiff issued separate motor vehicle insurance policies to both Defendant Ryman's Decedent and to Defendants Ent. Both policies included UIM coverage. Both Defendant Ryman's Decedent and Defendants Ent purported to waive stacking, but, because of Defendants' denials of that waiver at paragraphs 26. and 32. of their Answer, that remains an open question at this procedural juncture.

Defendant Ryman's Decedent was a relative of the Defendants Ent and resided in their household. Defendant Ryman's Decedent was involved in a motor vehicle

accident on February 2, 2019, and later died of complications from injuries suffered in that accident. Defendant Ryman Estate has made a claim for UIM benefits under both policies. Plaintiff has denied coverage under the Defendants Ent policy, citing the “household vehicle exclusion” from coverage, which reads, in relevant part:

This coverage does not apply to:

... 5. bodily injury suffered while occupying a motor vehicle owned by your or a relative but not insured for Underinsured motorist coverage under this policy.... If you purchased ‘Underinsured motorist - bodily injury Stacked’ coverage, this exclusion does not apply....

Policy, p. UI2 and Endorsement 3590 (hereafter, the “Household Exclusion”).

In the Motion, Defendants assert that the Household Exclusion is not enforceable as a matter of law based upon the uncontested facts in the pleadings. “A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law.” Kelly v. Nationwide Ins. Co., 414 Pa.Super. 6, 9, 606 A.2d 470, 471 (1992); Pa.R.C.P. 1034.

Defendants cite Gallagher v. GEICO Indem. Co., \_\_\_ Pa. \_\_\_, 201 A.3d 131 (2019) for the proposition that a Household Exclusion is never enforceable. We decline to read Gallagher that broadly. In Gallagher, the plaintiff purchased two (2) separate vehicle policies from the Defendant. The plaintiff purchased the right to stack UIM coverage under both policies, and, of course, paid a greater premium for the right. The Pennsylvania Supreme Court then noted that the plaintiff argued that “because he purchased stacked UIM coverage as part of the Automobile Policy, GEICO is required to provide that coverage.” Gallagher, 201 A.3d at 133.

In its analysis, the Supreme Court initially noted the language of §1738 of the Motor Vehicle Financial Responsibility Law (“MVFRL”):

§ 1738. Stacking of uninsured and underinsured benefits and option to waive.

(a) Limit for each vehicle. — 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.

(b) Waiver. — Notwithstanding the provisions of subsection (a), a named insured may waive coverage providing stacking of uninsured or 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.

75 Pa.C.S. § 1738. In holding that the Household Exclusion was not enforceable in Gallagher, and that UIM benefits were required to be paid, the Supreme Court stated:

This policy provision, buried in an amendment, is inconsistent with the unambiguous requirements Section 1738 of the MVFRL under the facts of this case inasmuch as it acts as a de facto waiver of stacked UIM coverage provided for in the MVFRL, despite the indisputable reality that Gallagher did not sign the statutorily-prescribed UIM coverage waiver form. Instead, Gallagher decided to purchase stacked UM/UIM coverage under both of his policies, and he paid GEICO premiums commensurate with that decision. He simply never chose to waive formally stacking as is plainly required by the MVFRL.

Gallagher, 201 A.3d at 138.

It is clear that the undisputed fact that the plaintiff in Gallagher selected and paid for stacking rights was pivotal in the Gallagher decision by the Supreme Court. Defendants in the present case point to the final paragraph in Gallagher for their

expansive reading: "For all of these reasons, we hold that the household vehicle exclusion violates the MVFRL; therefore, these exclusions are unenforceable as a matter of law." Gallagher, 201 A.3d at 138. Giving effect to the language "For all of these reasons..," which included the fact that the plaintiffs paid for and secured stacking benefits in both policies, we believe Defendants' expansive reading of Gallagher is in error. The most fair interpretation of Gallagher is to read it in the context of its facts and in view of the all of the language used by the Supreme Court, especially in citing the importance of the fact that the plaintiff selected and paid for the right to stack benefits under both policies.

In the present case, looking only at the pleadings, there is an issue of fact as to whether the Defendant Ryman's Decedent and the Defendants Ent waived the right to stack UIM coverage. This fact is material. If a fact finder should later determine that both sets of Defendants legitimately waived stacking, this case is more akin to Craley v. State Farm & Cas. Co., 586 Pa. 482, 895 A.2d 530 (2006) than to Gallagher. In Craley, the plaintiff's decedent maintained UIM coverage under her own vehicle policy, and her husband maintained UIM coverage under his own policy. As in the present case, the insurer paid UIM benefits under the decedent's policy, but denied UIM benefits under the decedent's husband's (analogous to Defendant Ent in the present case) policy, citing a Household Exclusion. As alleged in the present case, both the decedent and her husband waived the right to stack UIM benefits. As in the present case, the insured sought to stack benefits between two (2) policies, called "inter-policy stacking." On those facts, which may be the facts of the present case, the Supreme Court stated:

Therefore, we hold that inter-policy stacking can be waived and, in fact, was waived under the facts of this case. The waiver thus prevents the Craleys from recovering the "sum of the limits for each motor vehicle as to which the injured person is an insured." 75 Pa.C.S. § 1738(a).

Craley, 895 A.2d at 542. Thus, where there has been a valid waiver of stacking UIM benefits as to both policies, inter-policy stacking may be legitimately prohibited in a motor vehicle insurance policy.

Since the pleadings demonstrate that a genuine issue of material fact may exist, the Defendants' Motion will be denied.

**ORDER**

AND NOW, to wit, on this 27<sup>th</sup> day of November, 2019, upon consideration of the Defendants' Motion for Judgment on the Pleadings filed on October 3, 2019, on the basis of the analysis set forth in the foregoing Opinion, said Motion is hereby DENIED.

BY THE COURT:

  
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HONORABLE GARY E. NORTON, J.

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