

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

CAROL J. LONG,)

Plaintiff,)

v.)

LUCAS W. DRAY, and)
SHELTER INSURANCE COMPANIES,)

Defendants.)

Case No. 09CY-CV01134
Div. No. 2

ORDER

Before this Court are Plaintiff's Motion for Summary Judgment against Shelter on Stacking of Underinsured Motorist Coverage, Defendant Shelter's Motion for Summary Judgment and Plaintiff's Partial Motion for Summary Judgment against Shelter on Setoff of Underinsurance Coverage. The issues have been fully briefed by both parties and this Court heard oral arguments on August 27, 2009.

Plaintiff's Motion for Summary Judgment on Stacking of Underinsured Motorist Coverage and Shelter's Motion for Summary Judgment deal with the same issue. Both parties agree that there is no genuine issue of material fact. Both parties agree that this issue requires an application of Shelter's complete policy, including the excess clause and the other insurance clauses, with the applicable case law. After comparing the language from the Shelter insurance policy issued to the plaintiff with the case law of Farm Bureau v. Barker, 150 S.W.3d 103 (Mo. App. W.D. 2004), Niswonger v. Farm Bureau Town & Country, 992 S.W.2d 308, 314 (Mo. App. E.D. 1999), Chamness v. American Family Mut. Ins. Co., 226 S.W.3d 199 (E.D. Mo. 2007) and American Family Mut. Ins. Co. v. Ragsdale, 213 S.W.3d 51 (Mo. App. W.D. 2006), this Court

finds that the policy language, as argued by plaintiff, is ambiguous. The language is to be construed against Shelter and stacking of underinsurance is permissible. Additionally, this Court finds that the Shelter policy intertwined mandated coverages (such as uninsured motorist) with non-mandated coverages (such as underinsured motorist) by "lumping the two together and charging a single premium for both." See Niswonger, 992 S.W.2d at 320. As such, Plaintiff's Motion for Summary Judgment against Shelter on Stacking of Underinsured Motorist is granted and Defendant Shelter's Motion for Summary Judgment is denied.

As to the setoff argument by plaintiff, this Court compared the language of the Shelter policy with the Missouri Supreme Court's recent ruling in Jones v. Mid-Century, 2009 WL 1872113 (Mo. banc June 30, 2009). The Shelter policy, like that of the policy in Jones v. Mid-Century, can never pay the full \$100,000 in underinsurance coverage. Since the Shelter policy lacks the clear, unambiguous language suggested by the Supreme Court and since the policy can never pay the \$100,000 in underinsured motorist coverage listed on the declaration sheet, this Court finds that the setoff is not permissible under Jones v. Mid-Century or American Family Mut. Ins. Co. v. Ragsdale, 213 S.W.3d 51, 57 (Mo. App. W.D. 2006) (prohibiting a setoff off once an ambiguity is determined in regard to the excess clause). As such, Plaintiff's Partial Motion for Summary Judgment against Shelter on Setoff of Underinsurance Coverage is granted.

It is so Ordered.

A. Rex Gabbert

The Honorable Rex Gabbert
Circuit Judge
Division 2

ATTEST A TRUE COPY:

CLAY COUNTY CIRCUIT CLERK

By *Marty* D.C.