STACKING OF MEDICAL PAYMENTS LIMITS UNDER THE FAMILY AUTOMOBILE POLICY

INTRODUCTION

Four types of coverage are provided by a typical automobile liability policy: liability coverage, medical payments coverage, collision coverage and uninsured motorist coverage. Medical payments coverage provides payment to the named insured and his relatives for reasonable medical expenses incurred in connection with an accident covered by the policy. The medical payments coverage, which is a contract divisible and separate from the liability coverage, is absolute agreement to pay the medical expenses of the named insured regardless of fault in causing the accident.

When the medical expenses of a covered individual exceed the policy limit, some courts deny recovery of the excess. A majority of courts, however, favor recovery by allowing "stacking." Stacking is the aggregation of the limits of medical payments coverage when the insured owns two or more automobiles insured under a single Family Automobile Liability Policy.

INITIAL CONSIDERATIONS IN POLICY INTERPRETATION: NATURE OF FAMILY AUTOMOBILE POLICY PROVISIONS

The Family Automobile Policy is designed to provide under a single policy automobile liability coverage in a family setting involving multiple automobiles as well as multiple drivers. The ob-

5. Id. at 761.
7. The Family Automobile Policy, available only to individuals for insuring private passenger automobiles, is the most widely sold automobile coverage and provides the broadest coverage of all the standard automobile liability policies. This package policy provides liability coverage, medical payments coverage, physical damages coverage, and uninsured motorist coverage. C. ELLIOTT & E. VAUGHAN, FUNDAMENTALS OF RISK AND INSURANCE 457-59 (1972).
8. Id. at 459.
ject of this arrangement is to provide the same coverage for each automobile as would have been attained through the purchase of separate policies for each automobile. Standard wording has evolved for medical payments provisions as well as for the other policy provisions contained in the Family Automobile Policy.

The medical payments provision provides coverage for necessary medical, surgical, dental and funeral expenses that are incurred within one year from the date of an accident. Coverage is provided to the named insured and resident relatives for injuries caused by an accident while occupying an owned automobile, while occupying a non-owned automobile, or being struck by any automobile. Limitations are imposed on the total amount of coverage provided by this provision. When only one automobile is covered by the policy the total amount of coverage for medical expenses is stated along with the amount of the premium paid for that coverage. Several limiting provisions contained within the contract clearly indicate the maximum coverage to be the amount stated in conjunction with the premium charge. However, when the same language (amount stated) is used to limit the coverage provided by a policy insuring two or more automobiles, the effect of the language of limitation is uncertain. This fact is clearly evidenced by the number of cases on both sides of the stacking controversy.

16. Representative of cases holding against stacking are the following: Sullivan v. Royal Exch. Assurance, 181 Cal. App. 2d 644, 5 Cal. Rptr.
Two policy provisions which bear directly on the limit of recovery for medical expenses compound the uncertainty. The limit of liability clause appears to limit the recovery allowed under the medical payments provision to the maximum limit stated for a single automobile.\(^\text{17}\) The separability clause\(^\text{18}\) has the effect of repeating all the terms of the policy for each car insured, just as if a separate policy had been issued for each vehicle.\(^\text{19}\) It can be argued that due to the limit of liability clause the insured should understand that he is limited to a single recovery in the amount stated as applicable to one automobile. But it is just as reasonable for the insured to assume that the separability clause has the effect of repeating the limit of liability clause for each vehicle insured which would entitle him to recovery under each policy with the total recovery being the same as if a separate policy had been issued on each automobile.\(^\text{20}\)

**INTERPRETATION OF MEDICAL PAYMENTS PROVISION OF FAMILY AUTOMOBILE POLICY**

General rules of contract interpretation govern the determination of the limit of recovery under medical payments provision of

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17. A typical example of this provision is:

The limit of liability for medical payments stated in the declarations as applicable to “each person” is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident. Comment, 14 VILLANOVA L. REV. 279, 281 (1969).

18. The result of the operation of the separability clause is that [W]hen two or more automobiles are insured under the same policy, the terms of the policy apply separately to each automobile.


the Family Automobile Policy. When ambiguous, equivocal or uncertain provisions appear in an insurance policy those provisions are to be construed strongly against the insurance company to allow the greatest recovery by the insured. It should be noted that ambiguity in the terms of a policy is not established merely by a disagreement between the parties as to the meaning of a particular provision. No ambiguity exists unless, in the opinion of the court, the language of the policy is fairly and reasonably susceptible to either of the constructions contended by the parties.

OPPOSITION TO STACKING OF MEDICAL PAYMENTS COVERAGE

Courts which have not allowed stacking of medical payments limits have generally relied on one of three arguments. The first argument involves the generally recognized rule that courts should not indulge in a forced construction of an insurance policy in order to cast liability upon the insurer if he has not assumed such liability. The California District Court of Appeal, Second District, in Sullivan v. Royal Exchange Assurance addressed a situation in which an insurance company had issued a Family Automobile Policy covering two automobiles which provided medical payments coverage of "$2,000 each person." While the policy was in force, the insured's child was struck by an automobile sustaining injuries

26. A separate premium was charged for each automobile.
in excess of $4,000. The insured argued that the separability clause rendered the $2,000 limit separately and individually applicable to each automobile resulting in a total limit of $4,000 in the present situation.\textsuperscript{27} While disagreeing with the argument, the court reasoned that the separability clause, being applicable to all the policy provisions, was a general provision while the limit of liability clause relied on by the insurance company applied specifically to medical payment coverage.\textsuperscript{28}

The second argument takes into account the fact that the insured paid an additional premium for the inclusion of a second vehicle. Opponents of stacking argue that the additional premium paid by the insured does not provide higher total limits of liability but merely removes the added car from its non-owned status by making it an owned vehicle.\textsuperscript{29} In effect, the added premium is paid as consideration for the insurance company increasing its risk by extending the general policy coverage to another vehicle.\textsuperscript{30} The Louisiana Court of Appeal in Guillory v. Grain Dealers Mutual Insurance Co.,\textsuperscript{31} concluded that the additional premium paid by the insured for the second automobile did not provide a higher limit of liability but merely acted to change the status of the second car from non-owned to owned.\textsuperscript{32}

The third argument views the separability clause as not effecting two separate contracts, but rather one contract insuring two automobiles. In line with this argument it has been held that the separability clause merely renders the policy applicable to whichever car was involved in the accident and does not double the limits of liability.\textsuperscript{33} In Wachovia Bank & Trust Co. v. Westchester Fire Insurance Co.,\textsuperscript{34} the court stated that even if the separability clause were interpreted differently than suggested above, the coverage would be mutually exclusive.\textsuperscript{35}

\textsuperscript{27} 181 Cal. App. 2d 644, —, 5 Cal. Rptr. 878, 879 (1960).
\textsuperscript{28} Id. at —, 5 Cal. Rptr. at 880.
\textsuperscript{30} Comment, 10 WAKE FOREST L. REV. 737, 750 (1974).
\textsuperscript{31} 203 So. 2d 762 (La. App. 1967).
\textsuperscript{34} 276 N.C. 348, 172 S.E.2d 518 (1970).
\textsuperscript{35} Id. at —, 172 S.E.2d at 523.
The remaining cases in which courts have ruled against stacking involved policy language which clearly prohibited the stacking of medical payment limits.36 In these cases the decisions were based on clear and explicit language denying multiple coverage.37

ARGUMENTS FOR STACKING OF MEDICAL PAYMENTS COVERAGE

The majority of courts which have considered the issue have allowed stacking of medical payments limits.38 Three distinct lines of reasoning have developed. The first rationale embodies the generally recognized doctrine that where the terms of the insurance contract are ambiguous and susceptible to two conflicting interpretations, the policy should be construed strictly against the insurer and liberally in favor of the insured.39 Within the Family Automobile Policy, the separability clause and the limit of liability clause are said to create an ambiguity.40 The separability clause, which


37. Under "Limits of Liability," the policy provided as follows:
Regardless of the number of (1) persons or organizations who are insureds under the policy, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) automobiles or trailers to which this policy applies, . . . (B) the limit for Medical Expense Coverage stated in the declarations as applicable to "each person" is the limit of the company's liability for all medical expense incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.


38. 7 U. RICHMOND L. REV. 385, 386 (1972).


40. The court in Central Sur. & Ins. Corp. v. Elder, 204 Va. 192, —, 129 S.E.2d 651, 655 (1963), noted that the conflict between the separability clause and the limit of liability clause is clearly evidenced by the fact that . . . [c]ourts have not been in accord in their construction of the policy provisions with which we are concerned

[limit of liability clause and separability clause]. Citing Central Sur. and Ins. Corp. v. Elder, supra, with approval, the Supreme Court of Virginia in Virginia Farm Bureau Mut. Ins. Co. v. Wolfe, 212 Va. 162, —, 183 S.E.2d 145, 147 (1971), held:

Thus, when the medical payments section, Part II of the present
states that the policy terms should apply separately to each vehicle, appears to repeat the limits of coverage for each automobile which would result in maximum protection for the insured. An ambiguity is apparent when, within the same policy, the limit of liability clause attempts to limit the insured to a single recovery when more than one automobile is insured under the single policy.

Since these two provisions were designed for use in a policy which insured only one car, the use of this policy, without modification, to insure two or more cars in a combination automobile liability policy naturally results in ambiguity. The facts in Central Surety and Insurance Corp. v. Elder indicate that use of the Family Automobile Policy to insure two automobiles creates an ambiguity. Shortly after injury was sustained in a covered accident an agent of the insurer indicated that double recovery would be allowed under the policy. Such is a reasonable conclusion given the terms of the policy as designed to cover a single vehicle.

The second argument focuses on the fact that an insured who has paid an additional premium has a right to expect corresponding additional benefit. In Southwestern Fire & Casualty Co. v. Atkins, a leading case in favor of stacking, the insured's minor daughter sustained injuries in excess of $1,000 when struck by an automobile. The stated limit of coverage for each car was $500. In allowing stacking the court noted that the limit of liability would have been $1,000 if there had been two separate policies in existence:

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41. 7 U. Richmond L. Rev. 385 (1972).
43. 204 Va. 192, 129 S.E.2d 651 (1963).
44. Id. at —, 129 S.E.2d at 653.
47. Id. at 893.
If he can collect only $500, he is no better off for having taken out medical payments on both cars than on one car, since he could recover the same amount had he taken out medical payments on only the one car.48

The language of the separability clause considered with the fact that separate premiums are paid for each car has persuaded several courts, following this approach, to hold in favor of stacking.49

The third rationale centers around the very nature of medical payments coverage. Medical payments coverage has been described as a non-fault insurance.50 The medical payments coverage is not based on who caused or was at fault in the accident, which vehicle is involved, or the use of the vehicle. Rather, the insurance carrier is obligated to pay medical bills incurred through the occupancy or use of an automobile or through a person being struck by an automobile owned or driven by an insured driver.51

The separability clause which attempts to make the medical payments coverage applicable to each automobile is in direct conflict with medical coverage which, by its very nature, is inapplicable to a particular vehicle.52 Such a conflict should be resolved in favor of the policyholder and the interpretation of the policy giving the most coverage should be adopted.

**NEBRASKA: STATUS OF STACKING**

Although the Nebraska Supreme Court has not faced the issue presented here,53 the District Court of Douglas County, Nebraska

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   A dissent against stacking noted that under the majority decision, a person who owns two or more automobiles would be forced to insure each car separately to attain the coverage intended. Wachovia Bank & Trust Co. v. Westchester Fire Ins. Co., 276 N.C. 348, —, 172 S.E.2d 518, 527 (1970) (Bobbitt, C.J. dissenting).
   Similarly, another court stated: It is reasonable to think that the additional premium charge for the inclusion of a second car was intended to afford some corresponding added benefit to the insured. To this end the policy provided that its terms should apply separately to each car.
has on several occasions ruled in favor of stacking medical payments limits. In Greene v. Aetna Casualty & Surety Co.,\textsuperscript{54} the insured's son was injured while occupying a non-owned automobile. The policy provided coverage for three automobiles for which three separate premiums were paid.\textsuperscript{55} Judge Patrick W. Lynch in his memorandum opinion stated that:

...it is impossible to relate coverage to any particular automobile described in the Aetna policy, when the insured is injured in a non-owned automobile.

...the only reasonable interpretation of the Aetna policy would be to treat the policy as three separate contracts of insurance when the insured is injured while occupying a non-owned automobile. Had Aetna intended to limit the medical-pay coverage to the coverage applicable to only one automobile insured under the Aetna policy, when an insured was occupying a non-owned automobile, it could have done so by use of clear and unambiguous language.\textsuperscript{56}

In Pettid v. Edwards,\textsuperscript{57} District Court Judge Samuel Caniglia held in favor of stacking under similar conditions. Judge Caniglia based his decision on the fact that the insured reasonably expected total coverage on both automobiles upon payment of separate premiums for each vehicle listed and that the policy did not unambiguously negate that expectation of double recovery.\textsuperscript{58} The court construed the policy most strongly against the insurance company who was responsible for the language of the policy.

CONCLUSION

The medical payments provision of a Family Automobile Policy is open to many and varied interpretations. Clearly the insured who pays separate premiums for medical payments coverage on a separate vehicle is justified in expecting coverage in addition to that which he would have received had he paid only a single premium.


\textsuperscript{55} Id.

\textsuperscript{56} Id.

\textsuperscript{57} Pettid v. Edwards, Doc. 663, No. 60 (March 12, 1975) District Court for the Fourth Judicial District of Nebraska.

\textsuperscript{58} Id.
Clarification is of paramount importance. If insurance companies clearly word their policies to preclude stacking of medical payment coverage, the insured will at least know his policy limits and can buy insurance commensurate with his needs. In addition, the insurance companies will be better able to predict their potential liability, and hopefully avoid increased premiums.

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