



Stacking of Automobile Insurance Coverages in West Virginia

*A tale of
soaring birds, wicked dragons, and
quizzical balloons*

Presented at the 1995
West Virginia Trial Lawyers Annual Seminar

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Legend

Birds are good.



Dragons are bad.

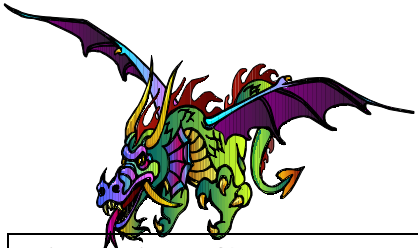


Balloons are undecided.



Medical Payments Coverage

If there is unambiguous anti-stacking language in the policy, medical payments coverages can't be stacked. *Keiper v. State Farm Mut. Auto Inc. Co.*, 429 S.E.2d 66 (W.Va. 1993).



Liability Coverage

If there is unambiguous anti-stacking language in the policy, liability coverages cannot

be stacked. *Shamblin v. Nationwide Mut. Ins. Co.*, 332 S.E.2d 639 (W.Va. 1985).

Uninsured Motorist Coverage

Uninsured motorist coverages can be stacked despite unambiguous anti-stacking language in the policy. *Bell v. State Farm Mut. Auto. Ins. Co.*, 207 S.E.2d 147 (W.Va. 1974), *Tulley v. State Farm Mut. Auto Ins. Co.*, 345 F.Supp 1123 (W.Va. 1972), *Moomaw v. State Farm Mut. Auto Ins. Co.*, 379 F.Supp. 679 (S.D.

W.Va. 1974.



The *Bell*, *Tulley*, and *Moomaw* trilogy is under attack in *Miller v. Lemon & Federal Kemper*, W.Va. S.Ct. No.

22589. *Miller* was submitted for decision on May 2, 1995, and a decision is expected in July, 1995. In *Miller*, the insurance company is advancing the same multi-car discount theory which was successful in the underinsured context in *Russell v. State Auto. Mut. Ins. Co.*, *infra*.



See the per-person, per-accident discussion *infra* for its applicability to underinsured coverage.



Underinsured Motorist Coverage

UIM: THE BASIC PRINCIPLE



Underinsured motorist endorsement can be stacked despite unambiguous anti-stacking language in the policy. *State Auto. Mut. Ins. Co. V. Youler*, 396 S.E.2d 737 (W.Va. 1990).

UIM: MULTICAR DISCOUNT



Underinsured motorist coverages cannot be stacked if there is unambiguous anti-stacking language in the policy, and if a multi-car premium discount as to underinsured motorist coverage has in fact been given. *Russell v. State Auto. Mut. Ins. Co.*, 422 S.E.2d 803 (W.Va. 1992), *Arbogast v. Nationwide Mut. Ins. Co.*, 427 S.E.2d 461 (W.Va. 1993).



The West Virginia Supreme Court is considering whether underinsured coverages can be stacked, where there is unambiguous anti-stacking language in the policy, but where a multi-car premium discount as to underinsured coverage was not given. *Marvin v. Jackson & Westfield Ins. Co.*, No. 22536, and *Tiller v. Blevins*, No. 22535. *Marvin* and *Tiller* were submitted on May 2, 1995; decisions are expected in July, 1995.



UIM: CLASS 1 AND CLASS 2

A person who isn't a named insured can't stack underinsured coverages bought by a named insured. Example: a passenger who isn't a family member of the owner of the vehicle in which the passenger is riding can get the owner's underinsured coverage applicable to the specific vehicle in which the passenger was injured, but the passenger can't get the underinsured coverage applicable to other vehicles owned by the owner of the vehicle in



which the passenger was injured. Named insureds and their resident family members are Class 1 beneficiaries, and status insureds (insured because of their status as occupants of a vehicle) are Class 2 beneficiaries. *Starr v. State Farm Fire &*

UNINSURED LIABILITY

Cas. Ins. Co., 423 S.E.2d 922 (W.Va. 1992).

In a single vehicle collision, a passenger in the vehicle cannot get liability coverage and underinsured coverage from the policy covering the vehicle. *Alexander v. State Auto. Mut. Ins. Co.*, 415 S.E.2d 618 (W.Va. 1992), *Thomas v. Nationwide*, 425 S.E.2d 595 (W.Va. 1992).

In a collision involving two vehicles, where both operators were negligent, a passenger can get liability coverage from the policy covering the vehicle in which the passenger was riding (based on the negligence of the operator of the vehicle in which the passenger was riding), and the passenger can get underinsured motorist coverage from the policy covering the vehicle in which the passenger was riding (based on the negligence of the operator of the other vehicle) if the passenger's damages exceed the combined limits of both liability coverages. *Dairyland Insurance v.*

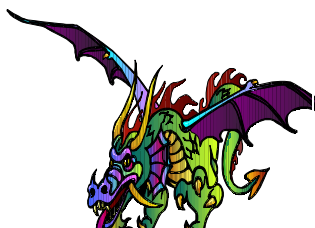
Bradley, 1994 W.Va. LEXIS 175.



Per Person and Per Accident

A loss of consortium claim does not get a separate "per person" limit in a split limit policy with unambiguous "per person" language. *Federal Kemper Ins. Co. V. Karlet*, 428 S.E.2d 60 (W.Va. 1993), regardless of whether the coverage in question is liability coverage, uninsured motorist coverage, or underinsured coverage.

A wrongful death claim cannot be fractionalized into





separate “per person” limits for those suffering loss on account of a death in a split limit policy with unambiguous “per person” language, regardless of whether the coverage is liability coverage, uninsured coverage, or underinsured coverage. *Davis v. Foley & Westfield Ins. Co.*, W.Va. S.Ct. No. 22361 (April 14, 1995).

Summary

The law has way too many dragons in it, not nearly enough birds, and its balloons don't seem to be floating our way.