COURT OF APPEALS
DECISION
DATED AND FILED

October 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0860

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MARTY H. COOPMAN,

PLAINTIFF-APPELLANT,

v.

AMERICAN FAMILY INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: GEORGE A.W. NORTHRUP, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

EICH, C.J. Marty Coopman appeals from a judgment dismissing his action against American Family Insurance Company. Coopman, who was seriously injured in an automobile accident, sought additional recovery under the underinsured motorist provisions of four American Family policies held by his father. He collected $100,000 on each of the policies, but contended that the

policy terms and applicable statutes entitled him to an additional $200,000 on each policy. The trial court held that he was not entitled to the additional payments, concluding that the unambiguous language of each policy limited coverage to $100,000, and that the "stacking" statute, § 631.43, STATS., on which Coopman relied, was inapplicable. We agree and affirm the judgment.

Coopman was a passenger in a vehicle driven by a friend, Douglas Williquette, and was injured in a "road rage" incident in which the drivers of two other cars, Jeffrey Bostedt and Mark LaFortune, were pursuing the Williquette vehicle. A collision resulted in which Coopman suffered severe and disabling injuries.

Bostedt and LaFortune each carried liability insurance, but their policy limits fell far short of Coopman's damages. As a result, he turned to his father's policies with American Family, each one containing an underinsured motorist clause which provided as follows:

> We will pay … damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle. The bodily injury must be sustained by an insured person and must be caused by [an] accident and arise out of the use of the underinsured motor vehicle.[1]

The policy declarations limited liability for bodily injury to "$100,000 each person [and] $300,000 each occurrence," and each policy contained the following "Limitation of Liability" provisions:

> The limits of liability shown in the declarations apply, subject to the following:
>
> 1. The limit for each person is the maximum for bodily injury sustained by one person in any one accident.

[1] It is conceded that Coopman is an "insured person" within the meaning of the policies.

> 2. Subject to the limit for each person, the limit for each accident is the maximum for bodily injury sustained by two or more persons in any one accident.
>
> *We will pay no more than these maximums no matter how many* vehicles are described in the declarations, insured persons, claims, claimants or policies *or vehicles involved in the accident.*

(Emphasis added.)

As indicated, American Family paid Coopman $400,000—the $100,000 "per person" limit on the four policies. On appeal, Coopman renews the arguments he made in the trial court: (1) he is entitled to a total of $1,200,000—$300,000 on each of the four policies—because three underinsured motorists were involved in the accident (Williquette, Bostedt and LaFortune); and (2) if the policy terms are interpreted to deny him the extra coverage, they are invalid under § 631.43(1), STATS., which generally permits "stacking" of two or more insurance policies covering the same loss. The arguments raise questions of law—the interpretation of insurance contracts and the interpretation and application of statutes to undisputed facts—which we review *de novo*, owing no deference to the trial court's decision. ***Nelson v. McLaughlin***, 211 Wis.2d 487, 497, 565 N.W.2d 123, 128 (1997); ***Schult v. Rural Mut. Ins. Co.***, 195 Wis.2d 231, 237, 536 N.W.2d 135, 137 (Ct. App.1995).

Coopman argues first that the underinsured motorist provisions of the policies are "inherently ambiguous," and thus must be strictly construed in his favor. Pointing to a clause which states that American Family agreed to pay "compensatory damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle," he maintains that he is "legally entitled" to recover the policy limits from each of the three underinsured motorists involved in the accident. He stresses that no language in the policies expressly limits his recovery. "Nothing … told [him]," he

says, "that [American Family] would only pay for the act of one underinsured motorist, no matter how many other underinsured motorists acted negligently …."

In the policy declarations, American Family plainly agreed to pay damages caused by an underinsured motorist in the amount of $100,000 per person, and $300,000 per accident. When that language is read in conjunction with the "Limitation of Liability" clause stating that the policy "will pay no more than these maximums no matter how many … vehicles are involved in the accident," it is inescapable that an insured may *not* recover separately for each vehicle involved. The meaning of the limitation-of-liability language is obvious: an insured recovers only one time "per policy and per accident," as American Family argues, and as the trial court ruled.

We reached a similar conclusion on similar policy language in ***Schaefer v. General Casualty Co.***, 175 Wis.2d 80, 498 N.W.2d 855 (Ct. App.1993). While ***Schaefer*** involved an uninsured, rather than an underinsured, motorist clause, we think the case is persuasive here. The policy stated:

> The limit of liability shown in the Declarations for "each person" for Uninsured Motorist Coverage is our maximum limit of liability for all damages ... sustained by any one person in any one auto accident ....
>
> This is the most we will pay regardless of the number of "insureds," claims made, vehicles or premiums shown in the Declarations, or vehicles involved in the auto accident.

Id. at 83-84, 498 N.W.2d at 856.

The plaintiff in ***Schaefer*** was injured when he collided with a truck and sought recovery under his policy's uninsured motorist clause—which, like the policies at issue here, promised to pay "damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of 'bodily injury' … [s]ustained by an 'insured;' and … [c]aused by an

accident." ***Id***. at 83, 498 N.W.2d at 856. The plaintiff claimed that he was entitled to quadruple the per-occurrence policy limit because the truck was pulling a trailer (a second uninsured vehicle), and because the truck driver was employed by another person, thus creating two "owners" or "operators." We had little difficulty rejecting the argument, holding that the question was "resolved by looking to the plain language of the policies' 'Limit of Liability' provision," which contained a "regardless of the number of … vehicles involved in the auto accident" clause nearly identical to that in American Family's policies.[2] ***Id***. at 84, 498 N.W.2d at 856-57.

Ambiguity exists in the words or phrases of an insurance policy only "when they are susceptible to more than one reasonable construction." ***Id.*** at 84, 498 N.W.2d at 856. As we have said, the American Family policies are not ambiguous; the limitation of liability clause is plain on its face and may not be "rewritten by construction." ***Id***. The trial court correctly held that the policies did not entitle Coopman to the additional coverage.

Coopman next argues insofar as the policy provisions may deny him that additional coverage, they are void under § 631.43, STATS., which provides (in part) as follows:

> When 2 or more policies promise to indemnify an insured against the same loss, no "other insurance" provisions of the policy may reduce the aggregate protection of the insured below the lesser of the actual loss suffered by the

[2] Coopman argues in his reply brief that ***Schaefer*** is inapposite because only "one tortfeasor caused Schaefer's injuries." The point, however, is that in ***Schaefer*** we concluded that the plain and unambiguous language of the "Limitation of Liability" clause defeated the plaintiff's argument which, as we described it, sought to "open the door to a double recovery" because "two 'owners *or* operators' or two uninsured vehicles" were involved in the accident. ***Schaefer v. General Cas. Co.***, 175 Wis.2d 80, 84, 498 N.W.2d 855, 857 (Ct. App. 1993). We see our reasoning in ***Schaefer*** as equally applicable here.

> insured or the total indemnification promised by the policies if there were no "other insurance" provisions.

The plaintiff in ***Schaefer*** also argued that § 631.43(1), STATS., voided the "Limit of Liability" language insofar as that language "attempts to prevent the stacking of uninsured motorist policies." ***Schaefer***, 175 Wis.2d at 84, 498 N.W.2d at 857. Like Coopman, the ***Schaefer*** plaintiff pointed out that such limitation-of-liability clauses have been interpreted as "other insurance" within the meaning of the statute. ***Id***. We rejected the argument, concluding that even if the clause were to be held invalid "so far as it prevents stacking, or additional coverage promising to indemnify against the same loss," it is still valid "*so far as it limits coverage for other reasons*." ***Id***. at 85-86, 498 N.W.2d at 857 (emphasis added). Pointing to § 631.45(1), STATS.—which states in part that "[a]n insurance policy indemnifying an insured against loss may by clear language limit the part of the loss to be borne by the insurer to a specified or determinable maximum amount"—we concluded that § 631.43(1) did not void the liability limitation which, we said, "unambiguously provides that each person injured in the accident shall receive a maximum of $25,000 under each policy."[3] ***Id***. at 87-88, 498

[3] The policies at issue in ***Schaefer*** limited liability to $25,000 per person and $50,000 per accident. ***Schaefer***, 175 Wis.2d at 83, 498 N.W.2d at 856.

N.W.2d at 858. Here, too, we see ***Schaefer*** as persuasive authority on the points being argued to us.[4]

Coopman has already "stacked" the underinsured motorist coverages in his father's four policies, recovering the $100,000 policy limitation on each one. Under the plain and unambiguous limitations in the policies, he is not entitled to again triple those limits because three vehicles were involved in the accident.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

[4] Coopman has referred us to three cases that he claims struck down the same or similar limitation-of-liability clauses. We think each is distinguishable. In the first, ***Carrington v. St. Paul Fire & Marine Insurance Co.,*** 169 Wis.2d 211, 485 N.W.2d 267 (1992), the plaintiff sought to recover the policy limits for each policy issued. The insurer provided coverage for sixteen vehicles under one policy. Because sixteen vehicles were insured through separate premiums on one umbrella policy, the court concluded that sixteen policies had been issued, which could properly be "stacked." ***Id.*** at 224, 485 N.W.2d at 272. The second, ***Schult v. Rural Mutual Insurance Co.,*** 195 Wis.2d 231, 536 N.W.2d 135 (Ct. App. 1992), involved a plaintiff who was struck by an uninsured motorist while a passenger in another car. He sought to collect on the other driver's three insurance policies, and the insurer sought to limit recovery to the equivalent amount of one policy, relying on a "Limit of Liability" clause limiting recovery to a specified amount per person per accident. We rejected the argument, holding that "[w]here an insured pays separate premiums, he or she receives separate and stackable uninsured motorist protections." ***Id***. at 238, 536 N.W.2d at 138 (quoting ***Carrington***, 169 Wis.2d at 224, 485 N.W.2d at 272). The third case, ***Krause v. Massachusetts Bay Insurance Co.,*** 161 Wis.2d 711, 468 N.W.2d 755 (Ct. App.1991), addressed a similar issue, holding that when one insurance policy purports to cover two vehicles, the policy is treated as two separate policies and the coverages may be stacked to the extent of the number of vehicles owned. ***Id***. at 715, 468 N.W.2d at 757.

As we noted above, we held in ***Schaefer*** that even where a limitation of liability clause has been voided insofar as it might prohibit stacking, it retains its vitality for other purposes—specifically, "for determining [the] policy's proper limit of liability." ***Schaefer***, 175 Wis.2d at 86, 498 N.W.2d at 857.