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## NATURE OF PROCEEDINGS

Appellees filed a motion for Summary Judgement which was granted by the Superior Court, based upon stare decisis. The issue of whether the applicability of Del. C. 18 §3902 (c)'s anti-stacking provision of underinsured benefits was addressed fourteen years ago in *Bromstad – Detruk v. State Farm mut. Auto. Ins. Co.*, 974, A.2d 857 (Del. 2009) by this Court and the Superior Court followed that precedent. Appellants appealed.

This is Appellee's responsive brief.

## SUMMARY OF ARGUMENTS

1. Denied. The trial court appropriately determined that the holding in *Bromstad – Detruk* is controlling precedent. As such the language in Del. C. 18 §3902 (c) prohibits the stacking of underinsured benefits as applied to the facts of this case.
2. Denied. Appellant limited its coverage as prescribed by statute. Any ambiguity in the insurance contract provisions cannot lead to the conclusion that the contracts are impermissible. The law permits it, and the anti-stacking provisions were properly reflected in the policies.
3. Appellants voluntarily executed a Full General Release as part of Appellees tendering the \$100,000 policy limits for uninsured motorist benefits available under Lisa Davis' policy of insurance. As such Appellants are prohibited as a matter of law from reinstating the same suit against the same parties, but merely changing the policy number in an attempt to collect money from a non-applicable policy.

## STATEMENT OF FACTS

On September 23, 2020, Lisa Davis and her then minor son, Brandon Zoladkiewicz, were involved in a motor vehicle collision caused by Jordan Griffith in Newark, Delaware. At the time of the accident, Griffith was driving under the influence of alcohol in addition to being uninsured. Ms. Davis did not survive, and Brandon suffered serious injuries.

When the accident occurred, Ms. Davis was insured by Defendant Harleysville Worcester Insurance Company (“Harleysville”), a Nationwide affiliate, under Policy Number PAAB76109 (“Davis Policy”) and was also insured by Harleysville under Policy Number PAAB82705 (“Ginsberg Policy”) as a household member. Both policies set Uninsured/Underinsured Motorist Bodily Injury (“UM/UIM”) limits at \$1000,000 each person and \$3000,000 each accident. Exhibit A. Lisa Davis policy No. PAAB76109. Exhibit E. Mark Ginsberg policy No. PAAB82705.

Under the Davis Policy, Harleysville tendered \$1000,000 in UIM benefits. Those \$1000,000 in benefits, in exchange for a release of all claims arising from the death of Ms. Davis, flowed to the husband of Ms. Davis, Mark Ginsberg, receiving \$40,000, and the two sons of Ms. Davis, Brandon and Bryce Zoladkiewicz, each receiving \$30,000. Brandon was also insured under his father’s policy through a separate unaffiliated insurer, Geico. Geico and Harleysville

entered into a settlement agreement with Brandon that reflected “UIM” benefits were paid out from both insurers.

As to the Davis Policy, on November 1, 2021, Appellant Ginsberg, signed in his individual capacity, a release of claims in exchange for \$40,000. The release, titled Uninsured/Underinsured Motorist Release and Trust Agreement Claim #S1396913-005 states, in pertinent part:

[f]or the sole consideration of Forty Thousand Dollars (\$40,000)...to me *in hand paid* by Harleysville Preferred Insurance Company/Nationwide Insurance Company, under Policy No. S1396913-005, *the receipt of which is hereby acknowledged....*

forever discharge[s] Harleysville. . ./Nationwide. . . for all Uninsured/Underinsured Motorist Benefits and medical claims, demands, damages, actions, claims... causes of action...as a result of, resulting from, or related to an automobile accident...in which Lisa Davis was killed....

The parties further understand that this Release is made as a compromise to avoid expense and to terminate the controversy as set forth in the ...*claim referred to above*. Exhibit B. Ginsberg Release

On October 10, 2022, Appellants filed the Amended Complaint, alleging that Nationwide’s failure to pay UM benefits under the Ginsberg Policy constituted a breach of contract. Exhibit C. Underlying Complaint.

Thereafter, Appellee Harleysville filed a Motion to Dismiss under Superior Court Civil Rule 12(b)(6). Plaintiffs then filed a Cross-Motion for Summary Judgment and response opposing the Motion to Dismiss. After full briefing and

supplemental clarifications on factual and legal issues, the Superior Court granted Harleysville's Motion to Dismiss.

Regarding Lisa Davis' UM/UIM Policy, the entire policy was exhausted, such that no additional funds are available for any Plaintiff.

As a result, even if damages could be awarded in the instant action, the Estate could not collect said damages through Defendant Harleysville, as all contractual payments were exhausted.

As Mark Ginsburg was lawfully acting as the Executor of the Estate, Mr. Ginsburg's signing and agreement to the Release is binding on the Estate.

Exhibit B. Brandon Zoladkiewicz once he reached the age of majority signed a Release containing the same language. Exhibit D. Brandon Zoladkiewicz Release.

Additionally, Brandon Zoladkiewicz has reached the age of majority, so Ron Zoladkiewicz no longer is Ad Litem Guardian. Bryce Zoladkiewicz did not file any additional complaint and is not a party to the underlying action.



## ARGUMENT I

### A. Question Presented

Has Plaintiff's claim that Del. C. 18 §3902 (c) is against public policy been already decided by this Court?

**Answer: Yes.**

### B. SCOPE OF REVIEW

A claim on appeal involving statutory interpretation is reviewed de novo to determine if the trial court erred as a matter of law in formulating or applying legal precepts. *Wilson v. Sico*, 713 A.2d 923 (Del. 1998) All arguments involve statutory interpretation.

### C. MERITS OF ARGUMENT

The Delaware Supreme Court has upheld the anti-stacking limitation in *Bromstad – Detruk v. State Farm mut. Auto. Ins.Co.*, 974, A.2d 857 (Del. 2009). In *Bromstad-Detruk*, the Court expressly stated that “Section 3902 (c) clearly and unambiguously allows the type of anti-stacking provision found in *Bromstad-Detruk's* policies. We will not encroach upon the General Assembly's apparent intent...to preclude stacking multiple policies issued by the same insurer.” *Id.* At \*4.

Lisa Davis was involved in a motor vehicle accident on September 28, 2020, which caused her death. Ms. Davis owned an insurance policy with

Harleysville, Policy number PAAB76109, which provided \$100,000 in uninsured motorist coverage. *See* Harleysville Policy attached hereto as Exhibit A. Lisa Davis Policy PAAB76109

Harleysville has tendered the \$100,000 in policy limits.

Mark Ginsberg and Ron Zoladkiewicz, as Ad Litem guardian of Brandon Zoladkiewicz, brought suit attempting to stack UM policies by the same insurer despite the clear language of Del. C. 18 §3902 (c).

In relevant part, Del. C. 18 §3902 (c) states the providing of insurance to multiple persons or vehicle in the same household “shall not operate to increase the limits of the insurer’s liability.... [T]he limits of liability shall apply separately to each vehicle as stated in the declaration sheet but shall not exceed the highest limit of liability applicable to any 1 vehicle.”

Mark Ginsberg owned a Nationwide policy, number PAAB82705, at the time of Ms. Davis’ death. That policy provides uninsured motorist benefits in the amount of \$100,000. *See* Exhibit E. Mark Ginsberg Policy PAAB82705

The two or more Auto Policies provision is replaced by the following:

Two or more policies:

If this policy and any other auto insurance policy issued to you or any resident of your household, by us or any company affiliated with us, apply to the same accident, the maximum limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.”

Exhibit E, Mark Ginsberg Policy PAAB82705 Section II, Part F -General Provisions, Paragraph B, p. 4.

Harleysville is an insurance company which is affiliated with Nationwide.

The Harleysville policy, policy number PAAB76109, issued to Lisa Davis has limits of 100/300. The Nationwide policy, policy number PAAB82705, issued to Mark Ginsberg has limits of 100/300.

As the Harleysville and Nationwide policies have the same limits of 100/300, the maximum coverage for this loss would be \$100,000 per person.

The \$100,000 limit per person has already been tendered and disbursed to the three survivors of Lisa Davis in exchange for fully executed releases. Thus, under the language of Del. C. 18 §3902 (c) Harleysville has satisfied its contractual obligations as a matter of law.

Pursuant to the Delaware Supreme Court's ruling and dicta in *BromStad-Detruk*, any fairness arguments any public policy grounds Appellants may put forward are not enough to change this precedent, as the court considered these issues in *BromStad-Detruk* in both the Superior and Supreme Courts. Likewise, there is no need to look to foreign jurisdiction caselaw, as cited in Appellants' brief, for helping determining public policy for Delaware. This Court is able to consider Delaware public policy issues and in fact has already done so in regards to this issue.

For this Court to accept Appellant's position would require this Court to violate two separate statutes.

First, as described above, the non-stacking provision of Del. C. 18 §3902 (b) which has already been considered by this Court would be violated.

Secondly, to allow Appellants to receive a second \$100,000 policy payout would violate Del. C. 18 §3902 (b).

The insurance policy bought by Lisa Davis had a \$100,000 bodily injury limit per person. An uninsured policy of \$100,000 is the only amount allowable under Delaware law. The legislature apparently has set the public policy that an individual cannot protect itself more than they are willing to protect those to whom they may cause harm.

To follow Appellants' scheme, more uninsured amounts would be paid (\$200,000) to Appellants under a policy that bought \$100,000 in bodily injury protection for other citizens. This would be in direct violation of Del. C. 18 §3902 (b).

## ARGUMENT II

### A. Question Presented

Did the Court below properly apply the rules of construction in interpreting the subject insurance contracts?

**Answer: Yes.**

### B. SCOPE OF REVIEW

A claim on appeal involving statutory interpretation is reviewed de novo to determine if the trial court erred as a matter of law in formulating or applying legal precepts. *Wilson v. Sico*, 713 A.2d 923 (Del. 1998) All arguments involve statutory interpretation.

### C. MERITS OF ARGUMENT

A court's interpretation of an insurance contract must rely on a reading of all the pertinent provisions of the policy as a whole, and not on any single passage in isolation. The court must examine all relevant portions of the policy, rather than reading a single passage in isolation. *Stoms v. Federated Serv. Ins. Co.*, 2015 Del. LEXIS 551(Del. September 30, 2015).

Hence, if we examine the insurance policy issued to the deceased, Lisa Davis (PAAB76109,). it's clear that throughout the document Harleysville has clearly stated:

“If this policy or any other auto insurance policy issued to you, or any resident of your household, by us, or any company, affiliated with us, apply to the same accident, the maximum limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy. Exhibit A. Lisa Davis Policy PAAB76109, 2677, (06-19), page 4 of 14.

The Uninsured Motorist Coverage Endorsement is found at Part C: Limit of Liability. The limit of liability shown in the declarations for each person for Uninsured Motorist Coverage is our maximum limit of liability for all damages....

This is the most we will pay regardless of the number of:

1. “Insureds”
2. Claims made.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage.

Additionally, under the General Provisions portion of this endorsement the following languages found:

Two or more auto policies.

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the

policy shall not exceed the highest applicable limit of liability under any one policy.

The Delaware Supreme Court has upheld these anti-stacking limitations in the *Bromstad – Detruk v. State Farm mut. Auto. Ins. Co.*, 974, A.2d 857 (Del. 2009). The policy owned by the decedent Miss Davis did not provide less than minimum coverage statutorily required, and the language is clear and unambiguous on the point of the \$100,000 applicable policy limits being the most that can be recovered for an uninsured motorist claim, even if another policy written by Harleysville/Nationwide was owned by another household member, which could potentially apply to the same claim or loss.

Likewise, the Ginsberg policy carries an uninsured limit of \$100,000 per claim and \$3000,000 per accident. The Ginsberg Harleysville policy has identical language as the Davis policy in regard to the treatment of two or more auto policies. Exhibit E. Mark Ginsberg Policy PAAB82705.

Clear language is contained at the end of the endorsement that Appellants cite as support for Their argument. Appellants ask this Court to examine only one section of the contract rather than reading it in its entirety, as is required under the law.

Under the same endorsement, cited by Appellants as supposed support for their interpretation of the contract language, found at the last paragraph of the

Uninsured Endorsement. “The two or more auto policy’s provision is replaced by the following:

Two or more auto policies.

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policy shall not exceed the highest applicable limit of liability under any one policy.

Hence, both of the policies under scrutiny clearly state that there can be no stacking of uninsured policies from the two contracts. There’s nothing ambiguous about the language.

As this Court held in the *Stoms* case, “An insurance contract is not ambiguous simply because the parties do not agree on it’s proper construction. Rather, the language in issue must be read in the context of the policy. If a provision is unambiguous, the court will not destroy or twist policy language under the guise of construing it”.

Appellants’ reliance on one paragraph of the contract dealing with “other insurance” is in direct contradiction with the contract construction principles espoused in *Stoms*.

A plain reading of the entire endorsement clearly states what will happen if there are two or more policies issued by Harleysville which could apply to the same accident. “The maximum limit of liability under all the policies shall not



exceed the highest limit of liability under any one policy”. Since both policies have underinsured issued limits of \$100,000 per claim, and \$300,000 per accident, then only immediately upon the claim being made \$100,000 can be recovered for this loss.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK GINSBERG, Individually and the	:	
Executor of the ESTATE OF LISA DAVIS,	:	
And RON ZOLADKIEWICZ, as Ad Litem	:	No. 431, 2023
Guardian of BRANDON ZOLADKIEWICZ,	:	
A Minor Child,	:	
	:	
	:	
Plaintiffs-Below,	:	ON APPEAL FROM THE
Appellants,	:	SUPERIOR COURT
	:	No.: N22C-08-165 VLM
v.	:	
	:	
HARLEYSVILLE WORCESTER	:	
INSURANCE COMPANY, n/k/a	:	
NATIONWIDE PROPERTY AND	:	
CASUALTY INSUANCE COMPANY.	:	
	:	
	:	
Defendant-Below,	:	
Appellee.	:	

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT  
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using Word.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2817 words, which were counted by Word.

REGER RIZZO & DARNALL LLP

/s/Cynthia G. Beam, Esquire

Cynthia G. Beam, Esquire (BAR ID#2565)

Dated: April 18, 2024