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Docket NO. 124649

IN THE
SUPREME COURT OF ILLINOIS

LORETTA HESS, as GUARDIAN OF THE ESTATE OF MEADOW HESS, A Minor Child; CHAD HESS, Individually and as Independent Administrator of THE ESTATE OF SIERRA HESS, Deceased; and PAULINE KISELEWSKI, as Independent Administrator of THE ESTATE OF RICHARD KISELEWSKI,	**On Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-18-0220**
Plaintiffs-Appellees,	**There heard on appeal from the Circuit Court of the Second Judicial Circuit, Franklin County, Illinois, No. 16-L-25**
v.	
STATE AUTO INSURANCE COMPANIES, d/b/a MERIDIAN SECURITY INSURANCE COMPANY,	
Defendant-Appellant,	**Honorable Eric J. Dirnbeck, Judge Presiding**
and	
THE ESTATE OF TJAY KLAMM,	
Defendant.	

BRIEF OF PLAINTIFFS-APPELLEES. CROSS-RELIEF REQUESTED.

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

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E. Even if this Court overlooks Meridian's forfeiture, our Legislature has not passed any laws contrary to the *Bruder* dicta nor the cases springing therefrom and the doctrine of Stare Decisis combined with national recognition of Illinois' jurisprudence support stacking this policy to $400,000.00/$1,200,000.00.

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NATURE OF THE CASE

Plaintiffs filed an action against State Auto Insurance Companies, d/b/a Meridian Security Insurance Company, to determine the amount of liability coverage available under a single policy of insurance issued by them to Dawn Keller. A certified copy of the policy was attached to the Complaint. The policy contained three pages of declarations listing four (4) vehicles and the nature and limits of coverages. Bodily injury coverage was triggered due to an accident caused when TJay Klamm, who was driving one of the vehicles listed in the declarations, struck Plaintiffs' vehicle causing the deaths of Plaintiffs Richard Kiselewski and Sierra Hess and injury to Meadow Hess.

Cross-motions for summary judgment were filed and the trial court declared there was $400,000.00 per person/$1,200,000.00 per accident in coverage available under the single policy at issue. The matter was appealed, and the Appellate Court modified the judgment aggregating the coverage to $200,000.00 per person/$600,000.00 per accident. Meridian filed a Petition for Leave to Appeal which was granted, and Plaintiffs now seek cross-relief pursuant to Illinois Supreme Court Rule 318(a).

STATEMENT OF THE ISSUES

Whether the policy as issued by Meridian, when read as a whole, is ambiguous and allows aggregation of the limits of liability coverage listed in the Declarations for the following reasons:

A. To determine the "Limits of Liability" the policy directs you to the amount "shown in the Declarations" and then the Declarations restate the limits of liability more than once;

B. The Declarations page(s), for Liability Coverage only, sets forth in

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columns, multiple vehicles with multiple premiums and states, "Coverage is provided where a premium is shown for the coverage;"

C. For "LIABILITY" coverage, the Declarations page does not have a single limit restriction as it does for UM/UIM coverage because the premium and limit are only listed once, regardless of the number of automobiles so that when read as a whole, together with Sections "A" and "B" above, the policy is ambiguous and should stack to $400,000.00/$1,200,000.00;

D. The issue of whether liability coverage should be permitted to be stacked as a matter of law was not raised by Meridian before the trial court, the Appellate Court, or even in their Petition for Leave to Appeal, and issues raised for the first time on appeal are forfeited, and failure to raise an issue in a petition for leave to appeal forfeits the issue on the merits; and/or

E. Even if this Court overlooks Meridian's forfeiture, our Legislature has not passed any laws contrary to the *Bruder* dicta nor the cases springing therefrom and the doctrine of Stare Decisis combined with national recognition of Illinois' jurisprudence support stacking this policy to $400,000.00/$1,200,000.00.

STATEMENT OF FACTS

The Parties

On April 17, 2015 at approximately 8:22 p.m., Richard Kiselewski was driving a 2001 Dodge Grand Caravan with his twin six-year-old granddaughters in the back seat, in

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a southerly direction on Illinois Route 148, near the intersection of Route 148 and North County Line Road, near Sesser, Franklin County, Illinois. (R. C198) At said time and place, TJay Klamm, now deceased, was driving a 2006 Chevrolet Cobalt in a northerly direction on Illinois Route 148, near the intersection of Route 148 and North County Line Road, near Sesser, Franklin County, Illinois. (R. C198) Richard and Sierra were killed and Meadow was seriously injured when the auto driven by Klamm crossed the centerline and struck them. (R. C81)

Tjay Klamm was the son of Dawn Keller, named insured under an automobile policy issued by Meridian. (R. C81) Loretta Hess is the natural mother of the minor, Meadow Hess, and has been appointed Guardian of the Estate of Meadow Hess in 15-P-79, Jefferson County, Illinois. (R. C200) Chad Hess is the natural father of Sierra Hess and has been appointed Independent Administrator of the Estate of Sierra Hess, Deceased, in 15-P-78, Jefferson County, Illinois. (R. C57) Pauline Kiselewski is the wife and widow of Richard Kiselewski and brings this case on her own behalf and on behalf of the next of kin, and has been appointed as the Independent Administrator of the Estate of Richard Kiselewski, Deceased, in 15-P-57, Jefferson County, Illinois. (R. C60-61) State Auto Insurance Companies, d/b/a Meridian Security Insurance Company, insured the 2006 Chevrolet Cobalt being driven by TJay Klamm at the time of this incident, along with three other autos, under its policy AIL 0042307 with an effective policy date of March 30, 2015 through September 30, 2015. (R. C62) State Auto Insurance Companies is a group of related companies, including Meridian Security Insurance Company, which issued the policy in question.

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The Insurance Coverage

A certified copy of the Meridian policy at issue was attached to the Second Amended Complaint as "Exhibit D," hereinafter "the policy," with page one of said Exhibit D being Meridian's sworn certification. (R. C101) The certification attached to the policy says that the undersigned claims adjuster at State Auto, having been duly cautioned and sworn, states that: "the attached materials fairly and accurately represent the insurance policy AIL 0042307 with effective dates of 3/30/2015 to 9/30/2015 issued by Meridian Security Ins Company to Dawn Keller **as it would have appeared on 4/17/2015.**" (R. C101) (emphasis added)

While there are two versions of the policy certified by Meridian, the relevant language appears in both. In bold and all capitalized letters, at the front of the policies, the reader finds "**IMPORTANT NOTICE PERTAINING TO YOUR PRIVATE PASSENGER AUTOMOBILE POLICY**". (R. C108 & C229) The last paragraph of said Notice begins with "Please consult your declaration page for complete details on policy limits and coverages."

The initial declarations are found near the beginning of the policy and in consecutive pages captioned in all caps, "RENEWAL DECLARATIONS." (R. C114-115) The header, again on consecutive pages, states: "THIS POLICY CONSISTS OF THE DECLARATIONS PAGE, ..." Just as in the Notice, the word "page" is singular, not plural. (R. C114-115) Next, the vehicles are listed on consecutive Declarations pages

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upon which state, "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE." (R. C114-115 & C235-236)

In reviewing the initial seventy-seven (77) page policy certified by Meridian and provided to Plaintiffs, you find seven (7) pages with the word "Declarations" in the caption comprising three different versions, BEFORE you come to the insuring agreement that is the "Personal Auto Policy." (R. C101-177) Meridian later certified a fifty-one (51) page version of the policy. Unlike the initial certification, the second certification does not aver that the second policy is as it would have appeared on the date of loss. It also does not contain any previously issued renewal Declarations pages.

Finally, the relevant portion of the coverage and antistacking language of the policy reads as follows:

Part A – Liability Coverage

INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident…

B. "Insured" as used in this Part means:
   1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
   2. Any person using "your covered auto".

(R. C140 & C251)

Said coverage is restricted in the policy by:

LIMIT OF LIABILITY

A. The limit of liability **shown in the Declarations for each person** for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death,

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> arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident. **Emphasis added.**
>
> ...
>
> This is the most we will pay regardless of the number of:
> 1. "Insureds";
> 2. Claims made;
> 3. Vehicles or premiums shown in the Declarations; or
> 4. Vehicles involved in the auto accident.
>
> (R. C141-142 & C252-253)

Procedure

Cross-Motions for Summary judgement were filed and argued. (R. 2-50) The trial court entered its judgment finding that the policy, taken as a whole, was ambiguous and aggregating the limits to $400,000.00/$1,200,000.00. (R. C355-356) Meridian appealed and the Fifth District Appellate Court issued an opinion modifying the judgment to $200,000.00/$600,000.00. 2019 IL App (5th) 180220.

TJay Klamm was an "insured" who became legally responsible because of an auto accident for damages for bodily injury to the three Plaintiffs herein. (R. C278) Meridian has accepted liability and tendered $100,000.00 per claimant. (R. C278) The sole question remaining is whether ambiguities exist within the policy, when read as a whole, that require the aggregation of the limits of liability coverage as shown in the Declarations.

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ARGUMENT

Contrary to the manner in which Meridian tries to frame the Appellate Court's opinion, this case is not a referendum on *Bruder v. Country Mut. Ins. Co.*, 156 Ill. 2d. 179, 620 N.E.2d 355 (1993), the existence of a "per se" rule on ambiguities, or whether the Appellate Court applied such a rule in its construction of Meridian's policy. No authority is cited for the premise that a "per se" rule exists. The Appellate Court herein did not apply such a rule, but rather examined the Meridian policy as a whole, referenced policy language other than the Declarations page, and then found the policy ambiguous and subject to more than one construction. If a clause is ambiguous, it must be construed in favor of the insured. *Grzeszczak v. Illinois Farmers Insurance Co.,* 168 Ill. 2d 216, 223, 659 N.E.2d 952 (1995). Illinois law provides that if an insurance contract contains inconsistent or conflicting clauses, the clause which affords greater or more inclusive benefit for the insured will govern. *Sentry Ins. v. Hogan,* 111 Ill. App. 3d 638, 444 N.E.2d 761 (1982). That is why, just as the trial court found, the inherent ambiguity of the policy supports this Court's reinstatement of the judgment of the trial court. Plaintiffs therefore seek cross-relief, pursuant to Illinois Supreme Court Rule 318(a), of the Appellate Court's Judgment modifying same and ask this Court to enter judgment finding that the coverage available to Plaintiffs is $400,000.00 per person/$1,200,000.00 per accident and taxing costs against Defendant.

Unlike most of the cases cited by Meridian, the case at bar construes liability coverage on a single policy. The trial court properly stacked the liability coverages herein due to ambiguities contained within the policy. The Fifth District Appellate Court correctly identified the ambiguities, but failed to construe the policy in the light most

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favorable to Plaintiffs when it refused to aggregate all four "coverages" reflected in the Declarations at the time of the accident. However, review is de novo and this Court can affirm for any ambiguity or grounds it identifies. *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 419, 751 N.E.2d 637 (5th Dist. 2001).

The law in this area is clear, longstanding, and on point. There are multiple ambiguities existing in the Meridian policy, including: 1) Liability coverage that for policy limits directs you to a declarations page containing multiple statements of Liability limits within the same declarations; 2) Columns within the Declarations containing multiple vehicles with multiple premiums, stating that coverage, not insurance, is provided where a premium is shown for the coverage; 3) The Declarations do not have a single limit restriction for Liability as it does for UM/UIM coverage where the UM/UIM premium and limit is only listed once, regardless of the number of automobiles; and 4) The policy does not restrict said coverage to the automobile involved in the accident despite longstanding case law showing that it is an industry standard.

In their Petition for Leave to Appeal, Meridian tried to frame this appeal as a referendum on the issue of whether *Bruder* creates a per se rule that multiple statements of liability limits within a policy creates an ambiguity. (Defendant's PLA at Page 1) However, it is not the existence of a single fact that creates the ambiguity. It is the contents of the policy as a whole, read in its entirety, that gives rise to the ambiguity in the case at bar. Meridian wants the reader to focus on a single section, read that alone, and understand that the language is clear. Meridian does not want the reader to place that section in context with the policy as a whole. In determining whether an ambiguity exists, all of the provisions in an insurance contract should be read together and not in

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isolation. *Johnson v. Davis,* 377 Ill. App. 3d 602, 883 N.E.2d 521 (5th Dist. 2007), *citing Glidden v. Farmers Auto. Ins. Ass'n*, 57 Ill. 2d 330, 336, 312 N.E.2d 247, 250 (1974). Meridian could have worded the policy differently, but they did not.

The issue of whether the policy may be stacked, arising from stipulated facts, presents a question of law. *Bruder v. Country Mut. Ins. Co.,* 156 Ill. 2d. 179, 185, 620 N.E.2d 355 (1993). An insurance policy is a contract, and general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies. *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 521 (2005). The public policy of Illinois reminds us that insurance is not necessarily a private matter between an insurer and its insured. *Skidmore*, 323 Ill. App. 3d at 421. The reasoning of the Illinois Supreme Court in *Bruder*, cannot be limited to uninsured- or underinsured-motorist coverage. *Id.* at 425.

Stacking is not precluded by any of the myriad of laws passed by our Legislature. To the contrary, it has been contemplated by the Legislature, and authorized by the passage of laws allowing the placement of "anti-stacking" language within policies. Meridian even goes so far as to endeavor to use such language within the policy at issue, just not artfully. There is a crucial difference between clear and understandable language read alone, and language that becomes ambiguous when read together with the rest of the policy or even a section of a policy. Meridian tries to restrict the review to a single sentence. However, that is not how this type of interpretation/construction works.

"The touchstone in determining whether ambiguity exists regarding an insurance policy, however, is whether the relevant portion is subject to more than one reasonable

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interpretation..." *Bruder*, 156 Ill. 2d at 193. If terms are ambiguous, they should be construed against the insurer, which drafted the policy. *In re Estate of Striplin*, 347 Ill. App. 3d 700, 702, 807 N.E.2d 1255 (2nd Dist. 2004). "If an ambiguity exists in an insurance contract, the courts will adopt a liberal construction of the language used in favor of the insured..." *Yates v. Farmers Auto. Ins. Ass'n*, 311 Ill. App. 3d 797, 800, 724 N.E.2d 1042 (5th Dist. 2000). Ambiguous policy terms that limit an insurer's liability will be liberally construed in favor of coverage. *Hobbs*, 214 Ill. 2d at 17.

A. TO DETERMINE THE "LIMITS OF LIABILITY" THE POLICY DIRECTS YOU TO THE AMOUNT "SHOWN IN THE DECLARATIONS" AND THEN THE DECLARATIONS RESTATE THE LIMITS OF LIABILITY MORE THAN ONCE.

When you look at Meridian's policy for the Limits of Liability, it states "The limit of liability shown in the Declarations... is our maximum limit of liability..." (R. C141) Then when you turn to the Declarations, you find several statements that, when read together, create an ambiguity. First, you find a statement that "Coverage is provided where a premium is shown for the coverage." (R. C114) Second, you also find on page one of the Declarations an indication that there is $100,000.00 each person/$300,000.00 each accident for each of three covered vehicles, each with a separate premium listed. (R. C114) That begs the question of, for which coverage is the insured paying said premium. The insured is not paying for insurance, but rather "Coverage." Next, on page two, you find the statement repeated, "Coverage is provided where a premium is shown for the coverage," and that there is $100,000.00 each person/$300,000.00 each accident in "Coverage", but this time only for one car with one premium. (R. C115) Finally, below that, you find uninsured/underinsured motorist coverage saying total limits for all

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vehicles covered under this policy are $100,000.00 each person/$300,000.00 each accident with a single premium. (R. C115)

It is important at this stage to note the distinction between insurance and coverage. Obviously, you can have insurance and still not have coverage. Unlike past courts, we do not have to answer that question as the Meridian policy clearly tells us there is in fact coverage for each car because in the Declarations there is a premium shown for coverage for each auto listed.

There is no other reason to restate the same information on Page 2 and also restate the Limits of Liability. The policy does not duplicate autos or premiums. Books are continued on subsequent pages as are newspapers and menus. None of the aforementioned, however, repeat the story or contents. To do so would cause confusion and be unclear.

The UM/UIM Limits are not repeated anywhere on page 1 or 3 of the Declarations, and yet autos are repeated on pages 1 and 2 of the Declarations, but only one premium is reflected for UM/UIM. That makes the UM/UIM coverage clear and unambiguous. The statement of Limits of Liability is neither clear nor unambiguous.

What would be the impact if the Declarations did not restate the Limits of Liability a second time on page 2? There would be no confusion and it would lead to an easy application of longstanding Illinois case law. Multiple autos and premiums, but only one statement of Limits of Liability reconciles with all previous analysis by this Court and many other courts.

Bruder has been on the books for years and the concept of stacking is not unknown in the insurance industry. Where does the burden of clarity lie? Had Meridian

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wished to avoid stacking all they had to do is write a policy that only states the limit once within the Declarations and include a *Striplin* restriction regarding multiple vehicles. *In re Estate of Striplin*, 347 Ill. App. 3d 700, 807 N.E.2d 1255 (2nd Dist. 2004).

The analysis of the policy language making up the Limits of Liability language and declarations page(s) in the case at hand is nearly identical to the analysis in a multitude of other cases construing antistacking language. The significant difference is that unlike those policies where the per person bodily injury limit was only listed once, in this case, it is listed twice with four individual premiums. The antistacking clause refers you to the declarations page to determine the limit, just as it did in *Bruder, Hobbs*, and *Yates*. Meridian agrees to pay the limit of liability shown in the Declarations for each person as their maximum limit for bodily injury.

This Court in *Bruder*, when writing about a situation where the coverages appeared twice, a fact pattern eerily similar, wrote what became famously known as the *Bruder* dicta. Justice Fitzgerald wrote, "that had the limit of liability for bodily injury been listed twice on the declarations page, '[i]t would not be difficult to find an ambiguity.'" *Hobbs*, 214 Ill.2d at 21 (citing *Bruder*, 156 Ill. 2d at 192). "*Bruder* held that when the anti-stacking clause was read in conjunction with the declarations page, no ambiguity arose because the limit of the underinsured-motorists coverage was set forth only one time on the declarations page, instead of two times." *Johnson v. Davis*, 377 Ill. App. 3d 602, 607, 883 N.E.2d 521 (5th Dist. 2007). That is the key. The anti-stacking clause must be read in conjunction with the rest of the policy. Meridian wants to make the argument one in which the decision is forced to turn on a per se rule, and that simply is not the case. Both

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the trial court and the Appellate Court examined the policy language as a whole to determine that the anti-stacking clause, when read with the liability limits set forth in the Declarations, and the UM/UIM single policy limit, created an ambiguity. The fact that multiple statements of limits within a declarations page have appeared in prior constructions of other policies by Illinois' Appellate Courts does not render it a "per se" rule.

Just as in *Bruder* and *Hobbs*, the limits of liability herein are not set out within the columnar arrangement in the same manner as the page lists the premium amounts. Rather, you pay a premium for multiple vehicles, for what one could reasonably assume is $100,000.00 in coverage on each vehicle but for restricting language. Meridian has repeatedly argued that only the limit for the Chevy Cobalt that was involved in the accident is available, but the policy is silent about coverage only existing for the car being driven. Drafting a policy in such a manner was a violation by Meridian of a known industry standard. They certainly could have included such language had they so intended. Meridian has a contractual duty to state the policy terms clearly. Meridian is aware of the construction that allows stacking premised on ambiguities caused by a lack of express language limiting available damages to the vehicle involved in the accident when combined with Declarations that show multiple entries for Limits of Liability.

The limit of liability is listed multiple times. The Meridian policy herein does not specify which declarations "page" applies nor does it restrict the number of times the limits are set forth within a multi-page group of declarations. The policy also does not restrict the number of autos appearing within a policy, but, in fact, directs you to the

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Declarations to determine coverage. Further, there is no *Striplin* restriction on combining declaration pages.

Justice Fitzgerald's analysis in *Hobbs*, of *Yates*, is directly on point. In *Yates,* rather than listing the limits once, the declarations page listed the limits twice, and therefore was distinguishable from *Bruder* and *Hobbs* in which the limit was only stated once in the declarations. *Yates v. Farmers Auto. Ins. Ass'n*, 311 Ill. App. 3d 797, 724 N.E.2d 1042 (5th Dist. 2000). No real interpretation of the Meridian policy language is needed, reasonable or otherwise. The policy states the limit is shown in the Declarations and the Declarations has multiple limits reflected. Even if you do not construe it with the rest of the policy, the double inclusion creates an ambiguity. Absent policy language limiting coverage to the vehicle involved in the accident, the statement that there is coverage where a premium is shown coupled with multiple listings of liability limits, creates an ambiguity.

Contrary to Meridian's argument, nowhere in *Bruder* did the Court say a separate limit of liability has to appear next to each covered auto. To the contrary, what the Court has said is it would not be difficult to find an ambiguity "had the limit of liability for bodily injury been listed twice on the declarations page." *Hobbs*, 214 Ill. 2d at 21 (citing *Bruder*, 156 Ill. 2d at 192.) In the case at bar, when looking at Meridian's three-page set of declarations, we have four automobiles, the limits of liability appearing twice, premiums set forth separately for all four automobiles, but only a single limit and premium for UIM. As argued below, one need only ask, how are the UIM limits formatted, and how do you reconcile the single limit listed for UIM with the multiple limits listed for liability given Meridian's intent to have a single premium and limit for

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UIM, but "Coverage" for multiple premiums for liability. Even without considering the rest of the policy, liability coverage would stack solely on the difference in the way limits for liability coverage and UM/UIM are listed in the Declarations. A reader cannot reconcile the policy at liability limits of $100,000 per vehicle and accident when four premiums are charged for four vehicles with UM/UIM coverage where only one premium is charged for what is clearly a single limit on the same four autos.

In this policy, it states under "LIMITS OF LIABILITY": "The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident." Then, when you turn to the Declarations page, you find there are multiple pages of Declarations (R. C114 & C115 or C235 & 236) and that the limit of liability is restated on two subsequent pages. Unlike *Bruder*, the limit of liability is noted more than once within the Declarations, is noted on consecutive pages listing multiple automobiles, and is listed differently for different coverages. The antistacking clause limits liability to the limits shown, and the limits are shown more than once. When construed with the rest of the policy, that is an ambiguity.

B. THE DECLARATIONS PAGE(S), FOR LIABILITY COVERAGE ONLY, SETS FORTH IN COLUMNS, MULTIPLE VEHICLES WITH MULTIPLE PREMIUMS AND STATES, "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE."

Courts have repeatedly been faced with construing policies where the declarations page sets up columns containing autos, coverages, and premiums. The main difference in those cases and the case at bar is that the Meridian policy has multiple pages of

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declarations with multiple limits and statements of coverage. In addition, as set forth in greater detail below, we have different formats for different coverages, which bolsters the argument that the policy intended more coverage for liability than for UM/UIM. Once an ambiguity is identified, the contract must be construed in the Plaintiffs' favor, stacking the limits of the four vehicles shown in the Declarations, as four separate premiums are listed and were paid.

Pages one and two of the Declarations show "Vehicles Covered", "Coverage", "Limits of Liability" and "Premiums". (R. C114-115 & C235-236) On each page, under vehicles, but before the columns begin, it says in all caps, "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE." Thereafter, there is a three column arrangement consisting of "Coverage", "Limits of Liability", and "Premiums". Coverage A is Liability-Bodily Injury. The Limits of Liability are $100,000 each person/$300,000 each accident. The final column, "Premiums", contains three separate additional columns for Auto 1, 2, and 3. Under each auto number is set forth a separate premium for each of the three autos. (R. C115 & C235) Page two of the Declarations is identical to the first in all ways relevant except it only contains one auto. As such, you have four premiums for four autos on two separate pages with each separate page containing a statement of liability limits of $100,000 each person/$300,000 each accident and a notice that "Coverage is provided where a premium is shown for the coverage." Under Coverage A, Liability, a premium is shown in four places. The only question for the Court, the insured, or any other reader would seem to be, if coverage is provided in the amount $100,000/$300,000 where a premium is shown, and a premium is

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shown for each auto, how much total coverage is reflected for bodily injury on the Declarations.

As it was overruled by this Court in *Hobbs*, the facts of *Hall v. Gen. Cas. Co. of Illinois*, 328 Ill. App. 3d 655, 766 N.E.2d 680 (5th Dist. 2002) are so similar that distinction from the case at bar is required. In *Hall*, there was identical antistacking language as with which we are faced, and very similar statements in the declarations page. *Hall's* Declarations, however, said "Insurance is provided where a premium is shown." You can frequently have "insurance" but no coverage. We do not have to worry about that here as the Meridian policy states affirmatively, there is "coverage" if evidenced by premium. In *Hall*, there was an almost identical arrangement of columns with coverage, limits, and autos/premiums. *Id.* at 657. General Casualty argued therein that the phrasing "insurance is provided..." did not refer to the extent of coverage, but rather only to its existence for that particular vehicle. *Id.* at 658. While *Hobbs* overruled the Appellate Court in *Hall* and indicated that the policy language therein was not ambiguous, the case at bar has two important differences. *Hobbs*, 214 Ill. 2d 11. First, we do not even have to reach the "insurance" versus "coverage" question as in the case at bar the Meridian policy does not state "insurance is provided..."; rather the declarations herein clearly states, "Coverage is provided..." (R. C114/115 & C235/236) Thus, we need not determine if the language or wording indicates there is coverage. It says so. We are only left to determine how much coverage. Second, this policy in fact restates the limits more than once.

In truth, *Hall* artfully set forth most of the analysis and arguments herein. It analyzes *Bruder* and distinguishes this language. However, unlike in *Hall*, the Meridian policy

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also has multiple statements of limits which is the touchstone of the *Bruder* dicta. Additionally, a statement of coverage, not insurance, is provided and multiple limits set forth within the declarations. The coverage statement, when combined with multiple vehicles shown with multiple premiums, and the directive language that "coverage" is provided where premiums are shown, support the construction that the coverage aggregates the $100,000/$300,000 per person liability limit for the four autos listed to $400,000/$1,200,000.

C. FOR "LIABILITY" COVERAGE, THE DECLARATIONS PAGE DOES NOT HAVE A SINGLE LIMIT RESTRICTION AS IT DOES FOR UM/UIM COVERAGE BECAUSE THE PREMIUM AND LIMIT ARE ONLY LISTED ONCE, REGARDLESS OF THE NUMBER OF AUTOMOBILES SO THAT WHEN READ AS A WHOLE, TOGETHER WITH SECTIONS "A" AND "B" ABOVE, THE POLICY IS AMBIGUOUS AND SHOULD STACK TO $400,000.00/$1,200,000.00.

As noted above, the first page of the Declarations, unlike for Liability, has no limit of liability or premium listed for UM/UIM coverage. (R. C114 & C235) Instead, it says, "(SEE BELOW)." For Liability there is a limit and multiple premiums for multiple autos. On the second page of the Declarations, UM/UIM coverage is set out as $100,000/$300,000 together with the statement "TOTAL LIMIT FOR ALL VEHICLES COVERED UNDER THIS POLICY." Is this indicative of an intent to provide a single policy limit for UM/UIM coverage and an aggregate limit for Liability? It certainly appears to be if you compare it to the UM/UIM coverage as discussed. Does Meridian list multiple limits on multiple pages for UM/UIM coverage? No! There is an entirely different structure for UM/UIM, and a limit is listed only once, on the second page, after all four cars. Further, as indicated for UM/UIM it states, "TOTAL LIMIT FOR ALL

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VEHICLES COVERED UNDER THIS POLICY", but is devoid of any such restriction for Liability-Bodily Injury. (R. C115 & C236) It certainly would be reasonable based upon the structure of the Declarations to conclude the liability limits are an aggregate limit. Obviously, Meridian could have utilized identical language if it desired to make the policy clear that a single liability limit was available. Instead, they used the restrictive language only for UM/UIM. Such a format, coupled with Meridian's argument, seems to be a direct violation of the premium rule. They have collected four premiums for liability, unlike UM/UIM where they only collect one, but contend the limits are the same. It is grossly unfair to collect premiums and thereafter apply a provision limiting their liability. *Bruder*, 156 Ill. 2d at 184.

Any reader is left with the obvious question, if there is only a single limit of liability coverage available, just as there obviously is for UM/UIM, why doesn't it say so? Why are the liability limits listed twice? Why does it say "coverage" and not "insurance" is provided where a premium is shown?

Obviously, there are totally different statements of coverage in liability and UM/UIM, open to a multitude of reasonable interpretations, not the least of which have previously been arrived at herein.

1. First, we have the Plaintiffs' and trial court's belief that four cars with four premiums for "coverage", when coupled with the statement that "Coverage is provided where a premium is shown for the coverage" and the direction to the reader that "The limit of liability shown in the Declarations..." read with two limits of liability existing in said Declarations, all compared to the clear and

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concise statement of limits for UM/UIM of a single limit, requires aggregation of all four autos liability limits to $400,000.00/$1,200,000.00 in "Coverage."

2. Second, we have the Appellate Court's conclusion, after reviewing the exact same language and quoting it all, that the statements of coverage for liability, especially when compared to the UM/UIM coverage, create an ambiguity resulting in $200,000.00/$600,00.00 in coverage as the relevant limits are restated twice within the policy.
3. Finally, while self-serving, we have Defendant's position that the policy is clear and there should only be a single $100,000.00/$300,000.00 in coverage.

Meridian argues that neither multiple declarations pages, nor multiple statements of liability limits, creates an ambiguity. What nobody has been able to answer to date, is if Meridian intended there to only be insurance, and not coverage, and if they only intended a single limit like they did for UM/UIM, why didn't they write the liability section the same as UM/UIM? Why didn't they include any of the other industry standard language on multi-vehicle policies, thus precluding these issues? While we will never know the answer to those questions, we do know Meridian's failure to include such language contributes to the creation of ambiguities within this policy resulting in a situation where coverage must be construed in Plaintiffs' favor.

Meridian is correct that four limits next to four autos would have created an even bigger mess, but that is a red herring as it neither exists, nor is needed. The format of the Declarations and the two coverages, when read with the policy as a whole, creates an ambiguity.

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Because such a limitation easily could have been included had Meridian so intended, and because any ambiguity must be resolved in favor of Plaintiffs, construction must be resolved in Plaintiffs' favor, entitling Plaintiffs to aggregate the coverage. Plaintiffs contend the Appellate Court missed the fact that once the ambiguity was identified, it does not become an endeavor to reach the most likely of the ambiguities, but rather the law requires the policy and coverage to be construed in the light most favorable to Plaintiffs. There can be no doubt an ambiguity exists. To date we have had four elected judges identify several. The only question they disagree on is the number of times the policy stacks. Plaintiffs argue that given the insurance versus coverage argument, there can be no other way to read the policy than providing $400,000.00/$1,200,000.00 in "coverage." The policy on its face says so right in the Declarations page. If there is a premium, there is coverage. That is why there is only one premium in UM/UIM.

D. THE ISSUE OF WHETHER LIABILITY COVERAGE SHOULD BE PERMITTED TO BE STACKED AS A MATTER OF LAW WAS NOT RAISED BY MERIDIAN BEFORE THE TRIAL COURT, THE APPELLATE COURT, OR EVEN IN THEIR PETITION FOR LEAVE TO APPEAL, AND ISSUES RAISED FOR THE FIRST TIME ON APPEAL ARE FORFEITED, AND FAILURE TO RAISE AN ISSUE IN A PETITION FOR LEAVE TO APPEAL FORFEITS THE ISSUE ON THE MERITS.

The only issue raised by Meridian in their Motion for Judgment on the Pleadings before the trial court was ambiguity. (R. C296-377) Before the Fifth District, Meridian raised only the same issue of ambiguity and the application of the policy's anti-stacking language. In Meridian's Petition for Leave to Appeal, they raise the question of whether there is a per se rule to find an ambiguity in an automobile policy of insurance which lists the limit of liability more than once and whether the decision to stack the bodily injury

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limit of liability created an irreconcilable conflict of decisions within the Illinois appellate courts.

The two cases Meridian relies upon in their Petition for Leave to Appeal for creating a conflict with the case at bar are *Koppier v. Harlow*, 291 Ill. App. 3d 139 (2d Dist. 1997) and *West v. American Standard Ins. Co.*, 2011 IL App (1st) 101274. Neither *Koppier* nor *West* stand for the premise that liability policies cannot be stacked. The question in *Koppier* was whether the policy language was ambiguous, and based upon exclusions contained within the American Family policy, the court found that it was not. *Koppier v. Harlow*, 291 Ill. App. 3d 139 (2nd Dist. 1997). In *West*, the plaintiff attempted to stack two separate policies covering two separate vehicles and the First District Appellate Court applied general contract law and considered the policy as a whole to determine that the policy on the second vehicle was not available for recovery as it was not involved in the accident. *West*, 2011 IL App (1st) 101274. The American Standard policy had an exclusion precluding recovery arising out of the use of any other vehicle. *Id.* That exclusion was nearly identical to the exclusion in *Koppier*, and thus the court concluded that the liability coverage in the separate policy did not apply. *Id.* Both of those cases involve the construction of two separate policies, a totally distinguishable fact pattern from Meridian's single policy covering four autos.

No argument or case law was provided to support the argument that liability coverage cannot be stacked. Rather, all cases construe each policy separately, as a whole and the courts determine whether it is clear and free of ambiguities. This Court, in repeated decisions, has enunciated the rule that an appellant is not entitled to raise questions here which were not raised or presented for decision by the trial court and

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properly preserved upon appeal. *Sec. Bank of Mt. Carmel v. Pollard*, 3 Ill. 2d 153, 119 N.E.2d 777 (1954), *citing Darley v. Thompson*, 299 Ill. 122, 132 N.E. 536, *Bryant v. Lakeside Galleries, Inc.*, 402 Ill. 466, 84 N.E.2d 412, *Bownman v. Pettersen*, 410 Ill. 519, 102 N.E.2d 787, *Bittner v. Field,* 354 Ill. 215, 188 N.E. 342. Issues raised for the first time on appeal are forfeited. *Lazenby v. Mark's Construction, Inc.,* 236 Ill. 2d 83, 923 N.E.2d 735 (2010). Failure to raise an issue in a petition for leave to appeal forfeits the issue on the merits. *Id.* There is no conflict within the districts and the body of precedent on the construction of insurance policies and ambiguities therein is sound and uniform. Therefore, the issue of stacking liability coverage as a matter of law is another red herring as no such rule exists, and there is no reason for this Court to overlook the forfeiture as it is not necessary in maintaining a sound and uniform body of precedent.

E. EVEN IF THIS COURT OVERLOOKS MERIDIAN'S FORFEITURE, OUR LEGISLATURE HAS NOT PASSED ANY LAWS CONTRARY TO THE *BRUDER* DICTA NOR THE CASES SPRINGING THEREFROM AND THE DOCTRINE OF STARE DECISIS COMBINED WITH NATIONAL RECOGNITION OF ILLINOIS' JURISPRUDENCE SUPPORT STACKING THIS POLICY TO $400,000.00/$1,200,000.00.

If the Legislature of the State of Illinois wanted a hard and fast rule against stacking liability policies, they have had ample opportunity to create one. To the contrary, they have passed and revised a multitude of insurance related Acts without ever addressing the issue. Courts in a multitude of other states have passed on the language of dozens of polices. However, one thing remains clear. In Illinois, an insurance policy is a contract, and general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies. *Hobbs* at 214 Ill. 2d 17. There is no argument that it is not in the best interest of every insured to have the maximum amount

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of coverage available under their policy. No insured would knowingly choose to be faced with an excess judgment. Our legislature has seen fit to draft language allowing stacking and allowing the inclusion of "anti-stacking" language in policies.

This Court has stated that its job is to do justice under the law, not to make the law. *Lebron v. Gottlieb Meml. Hosp.*, 237 Ill. 2d 217, 930 N.E.2d 895, 933 (2010). It assumes that not only does the General Assembly act with full knowledge of previous judicial decisions, but also that its silence on this issue in the face of decisions consistent with those previous decisions indicates its acquiescence to them. *See People v. Villa*, 2011 IL 110777, ¶ 36 ("the judicial construction of the statute becomes a part of the law, and the legislature is presumed to act with full knowledge of the prevailing case law and the judicial construction of the words in the prior enactment").

Skidmore, Hobbs, Bruder, Yates and many other stacking cases have been on the books for years and the legislature has chosen not to act. We assume not only that the General Assembly acts with full knowledge of previous judicial decisions, but also that its silence on this issue in the face of decisions consistent with those previous decisions indicates its acquiescence to them. *In re Marriage of Mathis*, 2012 IL 113496. When we determine that our answer to a question of law must be based on public policy, it is not our role to make such policy. Rather, we must discern the public policy of the State of Illinois as expressed in the Constitution, statutes, and long-standing case law. *In re Est. of Feinberg*, 235 Ill. 2d 256, 919 N.E.2d 888, 894 (2009) (citing *O'Hara*, 127 Ill. 2d 333, 341, 537 N.E.2d 730 (1989)).

The body of law in Illinois has evolved over the years and has been shaped by the legislature along the way. While not binding, the Seventh Circuit in *Nationwide*

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Agribusiness Ins. Co. v. Dugan, 810 F.3d 446, 452 (7th Cir. 2015) succinctly summarized the Illinois case law which finds ambiguity inherent in declarations listing the limit multiple times:

"Three cases in particular, and the Illinois Appellate Courts' subsequent treatment of these three cases, convince us that the Illinois Supreme Court would consider the "Limit of Liability" provision to be ambiguous.

The seminal case in the interpretation of anti-stacking clauses is *Bruder v. Country Mutual Ins. Co.*, 156 Ill. 2d 179, 620 N.E.2d 355, 189 Ill. Dec. 387 (Ill. 1993). In what has now become known as the "*Bruder* dicta," the Illinois Supreme Court stated that "[i]t would not be difficult to find an ambiguity" where an anti-stacking provision ties the limit of liability to the limit shown on the declarations page, and the declarations page lists multiple vehicles along with the separate coverage limit applicable to each vehicle and the separate premium charged for each vehicle. *Id.* at 362. The court noted that, in such a case, it is "reasonable to assume that the parties intended" that, in return for each premium paid, the coverage limit corresponding to each premium may be stacked, regardless of language indicating otherwise in the policy. *Id.* Then, in *Yates v. Farmers Auto. Ins. Ass'n*, 311 Ill. App. 3d 797, 724 N.E.2d 1042, 244 Ill. Dec. 154 (Ill. App. Ct. 2000), the Illinois Appellate Court faced the situation contemplated by the *Bruder* dicta. The *Yates* court held that the "Limit of Liability" provision... was rendered ambiguous when read in conjunction with the declarations page, which listed multiple vehicles along with separate coverage limits and separate premiums for each vehicle. *Id.* at 1044-45. Five years later, in *Hobbs*, the Illinois Supreme Court reaffirmed its commitment to *Bruder's* reasoning and the *Bruder* dicta. *See Hobbs*, 823 N.E.2d at 566-69. The court also approved the Illinois Appellate Court's decision in *Yates,* finding that, "[u]nder *Bruder*, the policy at issue in *Yates* was ambiguous." *Id.* at 569. In reaching this conclusion, the court explained: 'The declarations page in *Yates* ... listed the underinsured-motorist limits twice— once for each of the two covered vehicles. Although the Appellate Court in the instant case [*Hobbs*] found this factual distinction immaterial, we do not. As noted above in our discussion of *Bruder*, where the anti-stacking clause limits liability to the limit shown on the declarations page, and the declarations page lists the limit of liability twice, it would not be difficult to find an ambiguity.' *Id.*

Since *Hobbs* was decided, every Illinois appellate district that has faced the issue presented in the case at bar has held, in line with *Bruder's* dicta and *Hobbs'* discussion of the *Bruder* dicta, that an anti-stacking provision... which refers to the limit of liability shown on the policy declarations page, is rendered ambiguous when the declarations page lists multiple limits. *See Bowers v. General Cas. Ins. Co.,* 2014 IL App (3d) 130655, 386 Ill. Dec. 467, 20 N.E.3d 843, 848 (Ill. App. Ct. 2014) (3d District); *Progressive Premier Ins. Co. v. Kocher*, 402 Ill. App. 3d 756, 932 N.E.2d 1094, 1102, 342 Ill. Dec. 633 (Ill. App. Ct. 2010) (5th District); *Johnson v. Davis*, 377 Ill. App. 3d 602, 883 N.E.2d 521, 529, 318 Ill. Dec. 290 (Ill. App. Ct. 2007) (5th District); *McElmeel v. Safeco Ins. Co. of*

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Am., 365 Ill. App. 3d 736, 851 N.E.2d 99, 103, 303 Ill. Dec. 201 (Ill. App. Ct. 2006) (1st District)."

Meridian's interpretation of the case law from other states is flawed. The cases from other states do not say, "you cannot stack liability policies." That is what Meridian would have you believe. However, in reality, courts from other states use the exact same analysis that courts in Illinois utilize. In fact, in many instances it is identical. While you have to get past their individual state laws and whether or not they are a no-fault state, they apply contract law, look for ambiguities, and consider anti-stacking language.

In West Virginia, insurance policies are controlled by the rules of construction that are applicable to contracts generally. *Payne v. Weston*, 195 W. Va. 502, 466 S.E.2d 161, 166 (W. Va. 1995). They construe all of the parts of the document together and then answer the question of whether the contract is ambiguous. *Id.* Some, like South Carolina, recognize that stacking of additional coverage for which the insured has contracted is permitted unless limited by valid policy provisions, and recognize that parties are free to choose their terms to the extent not controlled by statute and thus stacking of liability coverages, including non-owned liability coverage, is allowed but can be prohibited by contract. *Ruppe v. Auto-Owners Ins. Co.,* 323 S.C. 425, 475 S.E.2d 771 (S.C. 1996), *Jackson v. State Farm Mut. Auto Ins. Co.*, 288 S.C. 335, 342 S.E. 2d 603 (S.C. 1986). In Florida, just as in Illinois, if the relevant policy language is susceptible to more than one reasonable interpretation, the policy is ambiguous. *Auto-Owners Ins. Co. v. Anderson,* 756 So. 2d 29 (Fla. 2000). It should then be construed liberally in favor of the insured and strictly against the drafter who prepared the policy. *Id.* In fact, in Florida, exclusionary clauses are construed even more strictly against the

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insurer than coverage clauses. *Id.* In *Auto-Owners*, the Supreme Court of Florida could easily have been applying Illinois law and construing our facts along with *Bruder* and *Hobbs*. They had anti-stacking language, multiple declarations of liability coverage and multiple premiums. *Auto-Owners,* 756 So. 2d at 34. Thus they combined the two limits because Auto-Owners failed to prohibit same "unambiguously." *Id.*

In our neighboring state of Missouri, in *Karscig v. McConville*, The Missouri Supreme Court, in construing a liability policy on a non-owned vehicle, expressly allowed the stacking of multiple policies despite two anti-stacking provisions. *Karscig v. McConville*, 303 S.W.3d 499 (Mo. 2010). There is no per se prohibition against stacking liability policies, just as there is no per se rule stacking them. Arguably, the only per se rule that does exist is that if there is an ambiguity, it works to the favor of the insured.

The law in almost all jurisdictions, including Missouri and Illinois, is uniform as to the analysis used to interpret the meaning of an insurance policy. In determining whether a policy is ambiguous, the policy must be read as a whole. *Cf. National Union Fire Ins. Co. of Pittsburgh v. Maune*, 277 S.W.3d 754, 758 (Mo. Ct. App. 2009) and *Crum & Forster Managers Corp. v. Resolution Trust Corp.,* 156 Ill. 2d 384, 391, 620 N.E.2d 1073, 1078 (1993). Ambiguity exists when there is duplicity, indistinctness or there exists uncertainty in the meaning of the language of the policy. *Id.* If the language of the policy is reasonably open to more than one construction, it is ambiguous. *Id.* When determining the meaning of words and phrases of an insurance policy, a court will not read a phrase in isolation, "but will read the policy as a whole giving every clause some meaning if it is reasonably able to do so." *Cf. Watters v. Travel Guard Intern.,* 136

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S.W.3d 100, 108 (Mo. Ct. App. 2004) and *Gen. Ins. Co. of America v. Robert B. McManus, Inc.*, 272 Ill. App. 3d 510, 514, 650 N.E.2d 1080, 1083 (1995). In construing the terms of an insurance policy, the court will apply "the meaning [that] would be attached by an ordinary person of average understanding if purchasing insurance[.]" *Cf. Shahan v. Shahan*, 988 S.W.2d 529, 535 (Mo. en banc 1999) with *Yates v. Farmers Auto. Ins. Ass'n,* 311 Ill. App. 3d 797, 724 N.E.2d 1042 (2000). When determining whether an ambiguity exists, the key is whether the alternate construction advanced by the policyholder is "reasonable." *Id.* If the alternate construction is a reasonable construction of the policy language, there is an ambiguity. *Id.*

Each time, the question remains, is there an ambiguity, and if so, what is it? The Supreme Court of New Mexico in *Lucero, Jr. v. Northland Inc. Co.*, 2015-NMSC-011 and the Seventh Circuit in *Grinnell Select Ins. Co. v. Baker*, 362 F.3d 1005 (7th Cir. 2004), both considered the issue.

However, neither *Lucero* nor *Grinnell* found an ambiguity due to the listing of multiple limits in the Declarations. *Lucero* was decided in favor of Northland Insurance Company because the per accident limit was stated only once in the Declarations, and therefore was found unambiguous. (emphasis added.) In *Lucero*, the Northland policy, like the Meridian Policy in this case, had a Limitation of Insurance clause that directed the reader to the policy limit shown in the Declarations. However, unlike the Declarations in the Meridian Policy, the Northland Declarations page in *Lucero* stated its per accident maximum of $1,000,000.00 only once. *Id.* at 1156. The Supreme Court of New Mexico did, however, distinguish its interpretation of the policy from those Illinois cases which recognize ambiguity as to the policy limit where the Declaration lists multiple liability

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limits for each insured vehicle. The court took note of the established Illinois law (which Plaintiffs argue should apply to the interpretation of the Meridian Policy). The New Mexico Supreme Court distinguished its ruling from the Illinois' cases which allowed stacking where multiple limits are set forth in the Declarations, by expressly noting the Northland policy in *Lucero* only listed the limit amount once. *Lucero, Jr. v. Northland Inc. Co.*, 2015-NMSC-011.

The Seventh Circuit in *Nationwide Agribusiness Ins. Co. v. Dugan*, 810 F.3d 446, 452 (7th Cir. 2015) recognized that *Grinnell* was not relevant to interpreting auto policies whose declarations list liability limits multiple times. The Seventh Circuit made clear that where the anti-stacking provision refers the reader to the Declarations to find a coverage limit, multiple listings of limits in the Declarations has consistently been found ambiguous in Illinois. The Seventh Circuit recognized a long line of Illinois' authority dictating that, where the anti-stacking provision refers to the limit of liability listed on the declarations page as the maximum the insurer will pay, and the declarations page lists separate limits for each of the covered vehicles, the anti-stacking provision is ambiguous and stacking is permitted. *Id.* at 451. The Seventh Circuit succinctly summarized the Illinois case law which finds ambiguity inherent in declarations listing the limit multiple times.

The Missouri Supreme Court case of *Cameron Mut. Ins. Co. v. Madden,* 533 S.W.2d 538 (Mo. en banc 1976), applied the multiple listing rationale to Medical coverage. The logic applied by the Missouri Supreme Court in finding the Cameron Mutual policy ambiguous is the same employed by this Court's ambiguity analysis in *Bruder* and *Hobbs*. In *Cameron*, the Missouri Supreme Court examined the effect of

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ambiguous policy language and determined the indefinite language allowed stacking of medical payments coverage limits for each auto listed in the declarations that also had a limit amount and premium listed. Cameron Mutual argued that the policy limited medical payments to the "each person" amount specified in the Declarations section for medical payments coverage, namely, $500.00. *Id.* at 545. In response, Madden asserted the combination policy, which listed multiple vehicles with $500.00 medical payment limits in its declarations, did not clearly and unambiguously provide for separate coverages and limit amounts.

As one basis for allowing stacking in *Cameron*, the Missouri Supreme Court noted the ambiguity that led to stacking the medical payment limits could have been cured and avoided by the insurance company's use of clear and unambiguous language. *Id.* at 546. *Cameron* made clear "it is possible to clearly and explicitly spell out an intention to limit liability to single coverage even though multiple vehicles are listed." *Id.* at 547. The Missouri Supreme Court recognized the ambiguity inherent in multiple auto insurance policies where "language employed with respect to limits of liability is exactly the same as that used when only a single vehicle is listed: 'It is not sufficient to limit Madden to a single medical payments coverage in this case.'" *Id. Cameron* strongly emphasized that policies in which the declarations list separate limits and separate premiums for each of the multiple covered vehicles are very susceptible to being stacked due to ambiguity. *Id.* at 546. The Court in *Cameron* admonished that had the insurer intended to limit coverage when two or more vehicles are covered under a single policy, the insurer, as drafter of the policy, would have so stated in clear and unambiguous language. *Id.*

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An example of unambiguous antistacking/severability language is *Auto. Club Inter-Ins. Exch. v. Diebold,* 511 S.W.2d 135 (Mo. App. 1974). ("Regardless of the number of automobiles insured under this policy or other policies issued to the named assured or spouse by the exchange, if the automobile involved in an event making coverage applicable is one described in the declarations, the limit for each and every coverage afforded shall be that stated in the declaration for such automobile and the limits for other automobiles described in the declarations shall not be applicable.") *Auto. Club Inter-Ins. Exch. v. Diebold,* 511 S.W.2d 135 (Mo. App. 1974). In contravention of the *Cameron* court's admonition, language in the Meridian policy fails to contain the "clear and unambiguous" language clarifying the listing of multiple liability limits by explaining the limit of coverage is only that of the auto involved in the accident. Rather, it directs you to the declarations page and then the declaration lists the limits twice.

Given interstate application of insurance policies, it is important to be cognizant of conflicting interpretations between states. It was in consideration of comity in the construction of auto insurance policies that the Supreme Court of New Mexico acknowledged the Illinois multiple limit construction and noted its decision did not involve the Illinois law. An effort to assure uniform application of legal principles led the Seventh Circuit to clarify in *Nationwide* that its *Grinnell* opinion did not impact established Illinois' authority that dictates, where a policy's anti-stacking provision refers to the limit of liability listed on the declarations page as the maximum the insurer will pay, and the declarations page lists separate limits for each of the covered vehicles, the anti-stacking provision is ambiguous and stacking is permitted. Nobody has said this Court's analysis and the *Bruder* and *Hobbs* rationale is wrong. The Meridian policy

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is ambiguous because there exists another reasonable construction of the Limit of Insurance. It thus must be construed in favor Plaintiffs and stacked to provide $400,000.00/$1,200,000.00 in coverage.

This Court handed down its decision in *Bruder* over twenty-five years ago. Seven years later, in *Yates*, they used the same multi-limit analysis and stacked the policy. In 2005, some twelve years after its initial ruling, in *Hobbs*, this Court reaffirmed the *Yates* ruling and overruled *Hall* expanding upon and restating the original *Bruder* dicta. In all of that time, with *Bruder* on the books and a litany of cases following its line of thought in Illinois and abroad, in a classic example of legislative acquiescence, our legislature never saw fit to change the law or public policy, a clear endorsement of the rulings on stacking in the State of Illinois.

The doctrine of stare decisis "'expresses the policy of the courts to stand by precedents and not to disturb settled points.'" *People v. Caballes*, 221 Ill. 2d 282, 313, 851 N.E.2d 26 (2006), (citing *Neff v. George*, 364 Ill. 306, 308–09, 4 N.E.2d 388 (1936), overruled on other grounds by *Tuthill v. Rendelman*, 387 Ill. 321, 56 N.E.2d 375 (1944)). In other words, "'a question once deliberately examined and decided should be considered as settled and closed to further argument'" *Wakulich v. Mraz*, 203 Ill. 2d 223, 230, 785 N.E.2d 843 (2003), (citing *Prall v. Burckhartt*, 299 Ill. 19, 41, 132 N.E. 280 (1921)), so that the law will not change erratically, but will develop in a principled, intelligible fashion. *People v. Mitchell*, 189 Ill. 2d 312, 338, 727 N.E.2d 254 (2000), *People v. Colon*, 225 Ill. 2d 125, 866 N.E.2d 207, 219 (2007).

This court will not depart from precedent merely because it might have decided otherwise if the question were a new one. *People v. Lopez*, 207 Ill. 2d 449, 459, 800

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N.E.2d 1211 (2003). As we recently reiterated, any departure from stare decisis must be "'specially justified.'" *People v. Suarez,* 224 Ill. 2d 37, 50, 862 N.E.2d 977 (2007), (citing *People v. Sharpe,* 216 Ill. 2d 481, 520, 839 N.E.2d 492 (2005)). Thus, prior decisions should not be overruled absent "good cause" or "compelling reasons." *Suarez,* 224 Ill. 2d at 50, (citing *Sharpe,* 216 Ill.2d at 520). In general, a settled rule of law that does not contravene a statute or constitutional principle should be followed unless doing so is likely to result in serious detriment prejudicial to public interests. *Suarez,* 224 Ill. 2d at 50 (citing *Sharpe,* 216 Ill. 2d at 520), *People v. Colon,* 225 Ill. 2d 125, 866 N.E.2d 207 (2007).

The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee,* 501 U.S. 808, 827, 111 S.Ct. 2597, 2609 (1991); see also *Prall,* 299 Ill. at 41. (Stare decisis is "indispensable to the due administration of justice"). *Wakulich v. Mraz*, 203 Ill. 2d 223, 785 N.E.2d 843, 848 (2003).

The doctrine of stare decisis in conjunction with our legislature's failure to take any action contrary to this Court's prior rulings, and the application of those rulings by lower courts, when coupled with the following: (1) a policy that directs you to the Declarations page for the "Limits of Liability"; (2) multiple statements of liability limits within the Declarations page; (3) liability coverage set forth in columns with multiple autos and premiums stating, "Coverage is provided where a premium is shown for coverage."; and (4) UM/UIM with a single premium and a single limit of liability without

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regard to the number of autos, leads to the inescapable conclusion that the policy should stack four times, as the trial court ruled.

CONCLUSION

In reviewing for an ambiguity, we must consider the policy as a whole. When you take the statement, "Coverage is provided where premium is shown for the coverage," together with multiple statements of liability limits on multiple pages of declarations, and multiple columns of premium for liability coverage for multiple autos shown on multiple pages, together with the obvious distinction for UM/UIM coverage restricting you to a single limit regardless of number of autos, and you consider all portions of the policy together, how do you reconcile the above? Plaintiffs argue that you cannot. Obviously UIM and liability coverage/limits are different. If you read the relevant portions of the policy as a whole, and you are directed to the Declarations page, you would note (1) the statement that coverage is provided where premium is shown; (2) that there is $100,000.00 per person for three cars with three premiums; and (3) that there are neither limits nor premiums shown for UIM coverage. Then you turn to the second page of the Declarations and find (1) $100,000.00 per person for liability limits for a single auto with one premium, that also reflects no limit or premium for UIM for that single auto and (2) a single limit and a single premium for UIM, regardless of the number of cars near the bottom. You cannot assume you had less than $100,000.00 in UM/UIM. You cannot conclude you had the same limit for liability as you have for UM/UIM as they are not even remotely set up the same. The only logical conclusion is you have $100,000.00 for UM/UIM as there is one limit and one premium and that you have $100,000.00 for each

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premium paid for each auto for liability coverage for a total of $400,000.00/$1,200,000.00.

For all of the foregoing reasons, the Plaintiffs' prayer for cross-relief should be granted, the Appellate Court's judgment should be modified by entry of judgment in this Court stacking the coverage available to Plaintiffs to $400,000.00 per person/$1,200,000.00 per accident and taxing costs against Defendant.

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that the Brief of Plaintiffs-Appellees, Cross-Relief Requested, conforms to the requirements of Rule 341(a) and (b). The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirty-five (35) pages.

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WINTERS, BREWSTER, CROSBY and SCHAFER LLC
Attorneys at Law
111 West Main, P.O. Box 700
Marion, IL 62959
Phone: (618)997-5611
Fax: (618)997-6522
Email: jschafer@winterslaw.com

124649

NO. 124649

IN THE
SUPREME COURT OF ILLINOIS

LORETTA HESS, as GUARDIAN OF THE ESTATE OF MEADOW HESS, A Minor Child; CHAD HESS, Individually and as Independent Administrator of THE ESTATE OF SIERRA HESS, Deceased; and PAULINE KISELEWSKI, as Independent Administrator of THE ESTATE OF RICHARD KISELEWSKI,	**On Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-18-0220**
Plaintiffs-Appellees,	**There heard on appeal from the Circuit Court of the Second Judicial Circuit, Franklin County, Illinois, No. 16-L-25**
v.	
STATE AUTO INSURANCE COMPANIES, d/b/a MERIDIAN SECURITY INSURANCE COMPANY,	
Defendant-Appellant,	**Honorable Eric J. Dirnbeck, Judge Presiding**
and	
THE ESTATE OF TJAY KLAMM,	
Defendant.	

NOTICE OF FILING

To:

Mr. Robert M Chemers and
Jonathan L. Federman
Pretzel & Stouffer, Chartered
One S. Wacker Dr., Ste 2500
Chicago, IL 60606-4673
E-Mail: rchemers@pretzel-stouffer.com
and jfederman@pretzel-stouffer.com

Mr. Joseph Bleyer
Bleyer & Bleyer
601 West Jackson Street
P.O. Box 487
Marion, IL 62959
E-Mail: jableyer@bleyerlaw.com

Mr. Aaron M. Hopkins
Aaron Hopkins Law
402 E. Main
West Frankfort, IL 62896:
E-Mail: hoplaw1@gmail.com

124649

PLEASE TAKE NOTICE that on the 28 day of August, 2019, I caused the foregoing, Brief of Plaintiffs-Appellees, Cross-Relief Requested to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey E-File system, a copy which is attached and hereby served upon you.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY: _____
Paul J. Schafer
Attorneys for Plaintiffs-Appellees
ARDC No. 6226013

WINTERS, BREWSTER, CROSBY and SCHAFER LLC
Attorneys at Law
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Marion, IL 62959
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Fax: (618)997-6522
Email: jschafer@winterslaw.com

E-FILED
8/28/2019 4:38 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

124649

CERTIFICATE OF FILING/SERVICE BY E-MAIL

I, Paul J. Schafer, an attorney, hereby certify that on 28 day of August, 2019, I caused the foregoing *Brief of Plaintiffs-Appellees, Cross-Relief Requested* to be electronically filed with the Clerk of the Supreme Court of Illinois by using the E-File System and I further certify that I have electronically delivered the foregoing Notice to the following:

Mr. Robert M Chemers and
Jonathan L. Federman
Pretzel & Stouffer, Chartered
One S. Wacker Dr., Ste 2500
Chicago, IL 60606-4673
E-Mail: rchemers@pretzel-stouffer.com
and jfederman@pretzel-stouffer.com

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Mr. Aaron M. Hopkins
Aaron Hopkins Law
402 E. Main
West Frankfort, IL 62896:
E-Mail: hoplaw1@gmail.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

WINTERS, BREWSTER, CROSBY and SCHAFER LLC

BY: Paul J. Schafer
Paul J. Schafer
Attorneys for Plaintiffs-Appellees
ARDC No. 6226013

WINTERS, BREWSTER, CROSBY and SCHAFER LLC
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APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

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STATE AUTO®
Insurance Companies

RENEWAL DECLARATIONS
PERSONAL AUTO POLICY

THIS POLICY CONSISTS OF THE DECLARATIONS PAGE, POLICY FORMS, ENDORSEMENTS AND YOUR REPRESENTATIONS ON THE APPLICATION THAT ARE HEREBY INCORPORATED INTO THE POLICY. UPON VALID PAYMENT OF THE PREMIUM WHEN DUE, THIS POLICY WILL REMAIN IN FORCE FOR THE PERIOD INDICATED.

POLICY NUMBER	POLICY PERIOD FROM	POLICY PERIOD TO	COVERAGE IS PROVIDED IN THE FOLLOWING COMPANY	AGENCY	PROD
AIL 0042307	03/30/15	09/30/15	MERIDIAN SECURITY INS COMPANY	55397	00

NAMED INSURED AND ADDRESS

DAWN KELLER
618 N DIVISION ST
DU QUOIN IL 62832

AGENT

LINZEE INS & R/E AGENCY
PO BOX 350
DU QUOIN IL 62832

TELEPHONE 618/542-2251

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM	MP/PIP SYM	CLASS	ST	AM
01	IL	54G	02	FORD F-150 SUPE	1FTRW08L22KC33891	15	15	310	485	84G150		
02	IL	54G	06	CHEVR COBALT LT	1G1AL15F567671719	18	18	320	515	84G150		
03	IL	54G	00	FORD MUSTANG	1FAFP4040YF145781	18	18	305	505	84G150		

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	PREMIUMS AUTO 1	2	3
A LIABILITY-BODILY INJURY	$ 100,000 EACH PERSON/ $ 300,000 EACH ACCIDENT	90.00	98.00	90.00
A LIABILITY-PROPERTY DAMAGE	$ 100,000 EACH ACCIDENT	56.00	61.00	57.00
B MEDICAL PAYMENTS	$ 10,000 EACH PERSON	19.00	26.00	24.00
C UNINSURED MOTORISTS/UNDERINSURED MOTORISTS BODILY INJURY	(SEE BELOW)			
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	$ 100 DEDUCTIBLE	141.00	213.00	
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	$ 500 DEDUCTIBLE			99.00
COLLISION	$ 500 DEDUCTIBLE	86.00	136.00	86.00
TRANSPORTATION EXPENSES	$20 PER DAY/$600 MAXIMUM	INCL	INCL	INCL
TOWING AND LABOR	$100 PER DISABLEMENT	9.00	9.00	9.00
	TOTAL BY AUTO	401.00	543.00	364.00

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

*** GOLD PLUS DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1***
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 1,2,3
MULTI-CAR DISCOUNT APPLIED TO AUTO 1,2,3
ANTI-THEFT DISCOUNT APPLIED TO AUTO 1,2,3
SAFE DRIVING = INSURANCE SAVINGS FOR AUTOS 1,2,3
FINANCIAL STABILITY DISCOUNT APPLIES
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 1,2

*****CONTINUED ON NEXT PAGE*******PAGE 1

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DU QUOIN IL 62832

AGENT

LINZEE INS & R/E AGENCY
PO BOX 350
DU QUOIN IL 62832

TELEPHONE 618/542-2251

VEHICLES COVERED #	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM	MP/PIP SYM	CLASS	ST	AM
04	IL	54G	14	KIA SPORTAGE L	KNDPB3ACXE7620825	17	15	999	999	84G150		

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	PREMIUMS AUTO 4
A LIABILITY-BODILY INJURY	$ 100,000 EACH PERSON/ $ 300,000 EACH ACCIDENT	81.00
A LIABILITY-PROPERTY DAMAGE	$ 100,000 EACH ACCIDENT	51.00
B MEDICAL PAYMENTS	$ 10,000 EACH PERSON	23.00
C UNINSURED MOTORISTS/UNDERINSURED MOTORISTS BODILY INJURY	(SEE BELOW)	
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	$ 100 DEDUCTIBLE	181.00
COLLISION	$ 500 DEDUCTIBLE	170.00
TRANSPORTATION EXPENSES	$20 PER DAY/$600 MAXIMUM	INCL
TOWING AND LABOR	$100 PER DISABLEMENT	9.00
	TOTAL BY AUTO	515.00

UNINSURED/UNDERINSURED MOTORISTS - TOTAL LIMIT FOR ALL VEHICLES COVERED UNDER THIS POLICY

BODILY INJURY $ 100,000 EACH PERSON
$ 300,000 EACH ACCIDENT
PREMIUM: $86.00

TOTAL TERM PREMIUM $1,911.00

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

*** GOLD PLUS DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1***
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 4
MULTI-CAR DISCOUNT APPLIED TO AUTO 4
ANTI-THEFT DISCOUNT APPLIED TO AUTO 4
SAFE DRIVING = INSURANCE SAVINGS FOR AUTOS 4
FINANCIAL STABILITY DISCOUNT APPLIES
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 4

DRV. ID	DRIVER NAME	VEH. ASSIGNED PRINC. 1 2 3	OCC. 4	GENDER	MARITAL STATUS
01	DAWN KELLER			F	S

FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO
PP0001	01/05	ALL	PP001A	01/13	ALL	PP0001B	01/07	ALL	AU154IL	01/07	ALL
AU101	01/09	ALL	AU651IL	08/98	ALL	AU706	01/11	ALL	PP1301	12/99	ALL
AU0174	01/15*	ALL	PPAU23	12/14*	ALL	PP0301	08/86	ALL	AU1017	10/06	ALL
AU122IL	12/14*	ALL	PP2316	10/13*	ALL	PP0447	01/15*	001	PP0303	04/86	001
PP0305	08/86	001	PP0447	01/15*	002	PP0303	04/86	002	PP0305	08/86	002

*****CONTINUED ON NEXT PAGE*******PAGE 2

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PP0447 01/15* 003 PP0303 04/86 003 PP0305 08/86 003 PP0447 01/15* 004
PP0303 04/86 004 PP0305 08/86 004

LOSS PAYEE FOR AUTO #001
SCOTT CREDIT UNION
PO BOX 690590
SAN ANTONIO, TX 78269

LOSS PAYEE FOR AUTO #002
SCOTT CREDIT UNION
PO BOX 690590
SAN ANTONIO, TX 78269

LOSS PAYEE FOR AUTO #003
SPRINGLEAF FINANCIAL
PO BOX 3893
EVANSVILLE, IN 47737

LOSS PAYEE FOR AUTO #004
LN# 384475530
BANK OF THE WEST
PO BOX 513
AMELIA, OH 45102

THE PREMIUM FOR YOUR POLICY IS BASED ON THE RESIDENTS IN YOUR HOUSEHOLD DECLARED ON THE ORIGINAL APPLICATION OR OTHERWISE REPORTED TO YOUR AGENT. PLEASE KEEP YOUR AGENT INFORMED OF ANY ADDITIONAL DRIVERS IN YOUR HOUSEHOLD.

03/01/15
DATE

POLICY PERIOD 12:01 AM STANDARD TIME

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**********PAGE 3 (LAST PAGE)

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