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, Deceased,

Plaintiffs-Appellees,

v.

STATE AUTO INSURANCE COMPANIES d/b/a MERIDIAN SECURITY INSURANCE COMPANY,

Defendant-Appellant,

and

THE ESTATE OF TJAY KLAMM,

Defendant.

On Appeal from the Appellate Court of Illinois,
Fifth Judicial District, Case No. 5-18-0220.
There Heard On Appeal from the Circuit Court of the Second Judicial Circuit,
Franklin County, Illinois, No. 16 L 25.
The Honorable **Erik J. Dirnbeck**, Judge Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT

ROBERT MARC CHEMERS
rchemers@pretzelstouffer.com
JONATHAN L. FEDERMAN
jfederman@pretzelstouffer.com
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Suite 2500
Chicago, Illinois 60606
(312) 346-1973

Of Counsel:
ROBERT MARC CHEMERS
JONATHAN L. FEDERMAN

Attorneys for Defendant-Appellant Meridian Security Insurance Company

ORAL ARGUMENT REQUESTED

ARGUMENT

Plaintiffs argue that there are multiple ambiguities in the Meridian policy, including: (1) multiple statements of liability limits within the same Declarations; (2) the Declarations state that coverage, not insurance, is provided where a premium is shown for the coverage; (3) the liability coverage does not have a single limit restriction as uninsured ("UM") and underinsured coverage ("UIM") have a single limit; and (4) the policy does not restrict coverage to the automobile involved in the accident (BR. OF APPELLEES at 8).

Notably, the Plaintiffs no longer claim that the Amended Declarations or the Second Amended Declarations apply.

Plaintiffs fail to propose any reasonable alternative interpretation of the policy from the sole reasonable interpretation which Meridian presents. "Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation. Although 'creative possibilities' may be suggested, only reasonable interpretations will be considered." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11, 17 (2005). Listing potential sources of an ambiguity does not suggest an alternative interpretation. "Courts should not strain to find ambiguity where none exists." *Justin Time Transp., LLC v. Harco Nat'l Ins. Co.*, 2014 IL App (5th) 130124, ¶ 39; *Striplin v. Allstate Ins. Co.*, 347 Ill.App.3d 700, 702 (2d Dist. 2004). Plaintiffs do not present even a creative possibility of an alternative interpretation, let alone a reasonable

alternative interpretation. As such, Meridian asks this Court to reverse the Appellate Court's holding that the Meridian policy bodily injury liability limit stacks twice.

A. The Meridian Policy Clearly Prohibits the Stacking of Bodily Injury Limits of Liability.

Plaintiffs offer no response to Meridian's argument that the policy contains a clear and unambiguous anti-stacking provision which prohibits the stacking of the bodily injury limit of liability. The policy states:

> **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, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit 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.
>
> * * *
>
> 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.

(C141-42; C252-53).[1]

Courts have consistently upheld and enforced anti-stacking provisions. See *Hanson v. Lumley Trucking, LLC*, 403 Ill.App.3d 445, 449 (5th Dist. 2010) (upholding the clear and unambiguous anti-stacking provision in the policy); *Busch v. Country Financial Ins. Co.*, 2018 IL App (5th) 140621 (holding that the insurer was entitled to enforcement of its unambiguous antistacking provisions to the extent that such provisions represented terms to which the parties had agreed to be bound); *Domin v. Shelby Ins. Co.*, 326 Ill.App.3d 688, 694 (1st Dist. 2001) (holding that the anti-stacking provision was unambiguous and the that the insureds could not stack coverage).

The policy's anti-stacking language is clear and unambiguous. There can be no stacking or aggregating of the limit of liability, and the limit of liability for only one auto applies. There can be no interpretation of this language other than a claimant cannot add the limit of liability for the other covered autos listed on the Declarations to obtain more coverage than provided for the one auto involved in the accident. Even though there are four vehicles listed on the Declarations, the only bodily injury limit of liability available here is that for the 2006 Chevrolet Cobalt which was operated at the time of the accident.

Plaintiffs ignore this provision of the policy and fail to offer even a skeletal argument that the anti-stacking provision does not apply.

[1] "(C__)" is a reference to the Common Law Record.

Pursuant to the unambiguous anti-stacking language, only the bodily injury limit of liability for the Chevrolet Cobalt is applicable to the Plaintiffs' claims as that was the auto involved in the accident.

1. Bodily Injury/Liability Coverage Limits of Liability should not be Stacked.

i. Meridian did not Waive or Forfeit its Argument that Liability Coverage should not be Stacked.

Plaintiffs claim that the question of whether bodily injury liability coverage may be stacked has been forfeited (BR. OF APPELLEES at 22-23). Plaintiffs misapply the forfeiture doctrine. "Forfeiture is the failure to comply timely with procedural requirements in preserving an issue for appeal." *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill.2d 455, 475 (2010).

Meridian did not forfeit or waive any argument that the bodily injury limits of liability may not be stacked. Rather, Meridian has consistently argued that the bodily injury limit of liability may not be stacked because the Declarations and the policy provisions are unambiguous (C298-318). Meridian continues to argue that the Declarations and the policy provisions are unambiguous so that the bodily injury coverage may not be stacked. Contrary to the Plaintiffs' argument, Meridian is not raising the issue for the first time.

Meridian has consistently argued that the Declarations and policy provisions are unambiguous as there is no reasonable alternative interpretation other than the only limit of liability available to the

Plaintiffs is that for the Chevrolet Cobalt, as that was the vehicle involved in the accident. The argument that the bodily injury limit of liability may never be stacked, as it attaches to the vehicle and not the insured so there can never be an ambiguity, further demonstrates the merits of Meridian's position. As detailed below, every jurisdiction that has considered whether bodily injury limits of liability in one policy covering multiple vehicles has uniformly held that no ambiguity existed. Those authorities clearly support Meridian's argument that there is no ambiguity to permit stacking bodily injury liability coverages. Plaintiffs' claim that the issue has been forfeited is meritless and should be rejected.

In the alternative, even if Meridian forfeited the issue, which Meridian denies, waiver and forfeiture is a limitation on the parties, not the Court. *People v. Bolden*, 197 Ill.2d 166, 178 (2001). The Court may, in its discretion, and on such terms as it deems just, enter "any judgment and make any order that ought to have been given or made *** that the case may require." Ill. Sup. Ct. R. 366(a)(5). A "court of review may override considerations of waiver or forfeiture in the interests of achieving a just result and maintaining a sound and uniform body of precedent." *Jackson v. Bd. of Election Comm'rs*, 2012 IL 111928, ¶ 33. Each jurisdiction that has considered whether bodily injury limits of liability in one policy covering multiple vehicles has uniformly held that there is no ambiguity. In the interests of achieving a just result, this Court should

consider whether bodily injury limit of liability should ever be stacked as the only limit of liability applicable is that associated with the vehicle involved in the accident.

Meridian has not forfeited any argument and has consistently claimed that there is no reasonable interpretation of the policy to support stacking. In the alternative, in the interest of achieving a just result, this Court should consider the issue.

ii. Bodily Injury/Liability Coverage Limits of Liability should not be Stacked.

Plaintiffs argue that there is no *per se* rule to prohibit stacking of liability coverages (BR. OF APPELLEES at 27). This argument misconstrues Meridian's position. Meridian claims that bodily injury coverage limits of liability may not be stacked because there is no reasonable interpretation of the policy in which the claimant could ever conclude that the liability limits of a vehicle not involved in the accident would apply. Plaintiffs' argument focuses on the very few exceptions in which courts have permitted stacking of liability coverages (none with facts similar to those here). Plaintiffs ignore that other jurisdictions have uniformly rejected stacking bodily injury liability limits when one policy covers multiple vehicles and only one of the covered vehicles was involved in the accident, as here. Those jurisdictions demonstrate that there is no reasonable alternative interpretation of the policy to support stacking.

Plaintiffs cite *Nationwide Agribusiness Ins. Co. v. Dugan*, 810 F.3d 446 (7th Cir. 2015) (BR. OF APPELLEES at 25-26, 28). *Dugan* involved

separate UIM limits of liability, not bodily injury coverage. *Id.* at 448-49. *Dugan* does not support Plaintiffs' position as it does not involve bodily injury coverage.

Plaintiffs cite *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538 (Mo. 1976) (BR. OF APPELLEES at 29). Yet, in *Madden*, the Court considered whether medical coverage could be stacked, not bodily injury. *Id.* at 545. Plaintiffs ignore *Dutton v. Am. Family Mut. Ins. Co.*, where the Missouri Supreme Court barred stacking as to two separate policies' liability limits purchased by the same insured as only one vehicle was involved in the accident. 454 S.W.3d 319, 327 (Mo. 2015). *Madden* does not support the Plaintiffs' argument, and *Dutton* supports that bodily injury liability limits may not be stacked as there is no ambiguity.

Plaintiffs cite another Missouri case, *Karscig v. McConville*, 303 S.W.3d 499 (Mo. 2010) (BR. OF APPELLEES at 27). Yet, in *Karscig*, the operator of the vehicle had an "operator's policy" while the owner of the vehicle maintained a separate "owner's policy" and the Court permitted the two individual's separate $25,000 policies to be stacked, as the Missouri statutory scheme mandated each of those policies have a minimum of $25,000 coverage. *Id.* at 505. Once again, the Plaintiffs fail to acknowledge that in *Dutton*, the Missouri Supreme Court barred stacking as to two separate policies' liability limits purchased by the same insured as only one vehicle was involved in the accident. 454 S.W.3d at 327. Here, unlike in *Karscig*, there is no separate policy at issue with a

statutorily required liability limit and, as in *Dutton*, only one vehicle was involved in the accident. *Karscig* does not support the Plaintiffs' claim and *Dutton* supports Meridian's position.

Plaintiffs cite *Owners Ins. Co. v. Anderson*, 756 So. 2d 29 (Fla. 2000) (BR. OF APPELLEES at 27), however, in *Anderson*, the policy covered both a tractor and a trailer involved in the same accident. *Id.* at 31. The Florida Supreme Court first held that the tractor and trailer should each be considered a separate covered automobile and then held that both limits of liability applied as there were multiple insured automobiles in the same accident. *Id.* at 34. Here, it is undisputed that only the Chevrolet Cobalt was involved in the accident, and none of the other covered vehicles were involved. *Anderson* does not support Plaintiffs' position as it is distinguishable.

Plaintiffs falsely claim that most of the cases cited by Meridian do not involve liability coverage on a single policy (BR. OF APPELLEES at 7). See *Stevenson v. Anthem Casualty Ins. Group*, 15 S.W.3d 720, 722 (Ky. 1999) (barred stacking of liability coverages of four separate vehicles covered under a single policy); *Cross v. Warren*, 2019 MT 51, ¶ 15 (same); *Oarr v. Government Employees Ins. Co.*, 39 Md. App. 122, 132-33 (barred stacking of liability coverages of two separate vehicles covered under a single policy); *Ruppe v. Auto-Owners*, 329 S.C. 402, 407 (S.C. 1998) (same); *Payne v. Weston*, 195 W. Va. 502, 509 (W. Va. 1995) (same); *Grinnell Select Ins. Co. v. Baker*, 362 F.3d 1005, 1007 (7th Cir. 2004)

(same); *Hilden v. Iowa Nat'l Mut. Ins. Co.*, 365 N.W.2d 765, 769 (Minn. 1985) (barred stacking of liability coverages of three separate vehicles covered under a single policy); *Maher v. Chase*, 52 Mass.App.Ct. 22, 26 (2001) (same); See also, *Houser v. Gilbert*, 389 N.W.2d 626, 629 (N.D. 1986) (barred stacking of liability coverages of two vehicles both involved in the same accident covered under a single policy (the policy covered six total vehicles)).

Plaintiffs do not cite any authority to support an argument that bodily injury limits of liability may be stacked for an accident involving one covered vehicle under a single policy which covers multiple vehicles, as here.

Plaintiffs attempt to distinguish the persuasive authority cited by Meridian by claiming that none of those cases held that bodily injury liability may not be stacked (BR. OF APPELLEES at 26). Plaintiffs again fail to cite any authority permitting bodily injury liability limits to be stacked when one covered vehicle was involved in an accident and there were multiple vehicles covered under the same policy, as here. Furthermore, the Plaintiffs' argument is demonstrably wrong.

The Kentucky Supreme Court noted that the "overwhelming majority of jurisdictions which have addressed the issue prohibit stacking of liability coverages ***" and held that the liability coverages of four separate vehicles in one policy could not be stacked. *Stevenson*, 15 S.W.3d at 722 n.1-n.3.

The Maryland Court of Special Appeals recognized that "where the issue of 'stacking' liability coverage has been considered and decided, the courts, with near uniformity, have held the first party coverage cases to be inapplicable and have found the policy to be unambiguous and to preclude 'stacking.'" *Oarr*, 39 Md. App. at 130.

The Wisconsin Supreme Court noted that stacking "is logical when the insured has two or more insurance policies protecting against the same loss" but liability coverage only insures "against liability arising from the operation of the vehicle specified in the policy owned by the policyholder" and barred stacking of liability coverages. *Agnew v. Am. Family Mut. Ins. Co.*, 150 Wis. 2d 342, 349-50 (Wis. 1989).

The Nevada Supreme Court held that "the stacking of coverages determined by this Court to be applicable to uninsured motorist coverage and basic reparation benefits has no application to motor vehicle bodily injury liability insurance" and barred stacking such coverages. *Rando v. California State Auto, Ass'n*, 100 Nev. 310, 317-18 (Nev. 1984).

The Montana Supreme Court barred liability coverage as it follows the vehicle and does not follow the insured to provide coverage outside of an accident arising out of the use of a vehicle. *Cross*, 2019 MT 51, ¶ 18. See also, *Hilden*, 365 N.W.2d at 769 (noting liability coverage follows the vehicle and not the person and there can be no stacking of liability coverage); *Maher*, 52 Mass.App.Ct. at 26 (only one of three automobiles

involved in the accident and only that automobile's bodily injury coverage available).

Plaintiffs cite the South Carolina Appellate Court decision in *Ruppe v. Auto-Owners Ins. Co.*, 323 S.C. 425 (Ct. App. 1996), erroneously claiming that in South Carolina stacking of liability coverages is allowed but can be prohibited by contract (BR. OF APPELLEES at 26). The South Carolina Supreme Court overruled the Appellate Court in *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 407 (S.C. 1998). In fact, the South Carolina Supreme Court noted that liability coverage "**is limited to the particular vehicle for which it is purchased**" and that the "extent of liability coverage is thus statutorily defined by the amount of coverage on the insured vehicle and does not encompass coverage applicable to other vehicles." *Id.* at 406 (emphasis in original).

Contrary to the Plaintiffs' argument, the afore foreign authorities clearly barred stacking of liability coverages. These persuasive authorities will assist this Court to find that the bodily injury limit of liability cannot be stacked as the Plaintiffs could never reasonably conclude that the limits of liability for any vehicle, other than the one involved in the accident, would ever apply to their claims.

Plaintiffs cite *Lucero v. Northland Ins. Co.*, 2015-NMSC-011, claiming that the opinion is distinguishable (BR. OF APPELLEES at 28). Meridian did not cite *Lucero* and it is not clear why the Plaintiffs attempt

to distinguish a case not relied on by Meridian. In any event, *Lucero* does not support that bodily injury limits of liability may be stacked.

Plaintiffs fail to respond to Meridian's argument that the Illinois Legislature has created a statutory scheme to differentiate between UM/UIM and liability coverage, similar to other states, in which liability coverages have not been permitted to be stacked. See *Stevenson*, 15 S.W.3d 721-22; *Dutton*, 454 S.W.3d at 322; *Ruppe*, 329 S.C. at 406.

Plaintiffs argue that the Legislature, and not this Court, should determine whether bodily injury liability limits may be stacked (BR. OF APPELLEES at 23). This argument is meritless. Plaintiffs' argument relies on canons of statutory interpretation (BR. OF APPELLEES at 24), yet the issue before the Court does not involve statutory interpretation. This Court previously provided the proper legal framework to determine whether stacking is appropriate, and that framework is whether there is an ambiguity to support stacking. *Bruder v. Country Mutual Insurance Co.*, 156 Ill.2d 179 (1993); *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11 (2005).

Meridian's position is that the Court should continue to apply the same framework to find that the bodily injury limit of liability is not ambiguous, because there is no reasonable reason that a claimant would ever look to the bodily injury limit of liability for a vehicle which was not involved in the accident. Contrary to the Plaintiffs' claim, Meridian is not asking the Court to make or change public policy. Rather, Meridian is

asking the Court to apply public policy as proscribed by the Legislature which differentiates UM/UIM and liability coverages. This Court has already held that anti-stacking provisions do not contravene public policy. *Hobbs*, 214 Ill.2d at 17-18. As more fully articulated in Meridian's opening Brief, the Legislature also set forth a statutory scheme in which bodily injury coverage attaches to a vehicle, while UM/UIM coverage attaches to the individual. As bodily injury coverage attaches to the specific vehicle, there can be no ambiguity as to whether multiple limits of liability may possibly apply, and claimants, such as the Plaintiffs, can only reasonably conclude that the limit of liability associated with the vehicle involved in the accident applies.

B. The Declarations are not Ambiguous.

1. There is no Ambiguity as to the Limit of Liability Listed Within the Declarations.

Curiously, the Plaintiffs first attempt to claim Meridian's argument is "a referendum on *Bruder*" (BR. OF APPELLEES at 7). Meridian does not argue that *Bruder v. Country Mutual Insurance Co.*, 156 Ill.2d 179, 193 (1993), is incorrect or should be overturned. Rather, Meridian argues that the *Bruder dicta* does not support stacking here, because there is no ambiguity within the Declarations.

Plaintiffs agree that no *per se* rule exists in Illinois that the listing of multiple limits of liability automatically creates an ambiguity (BR. OF APPELLEES at 7). Plaintiffs concede that the policy and Declarations

language "is nearly identical to the analysis in a multitude of other cases construing antistacking language" but claim 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" (BR. OF APPELLEES at 12). Plaintiffs then argue that because the limits are listed twice in the Declarations, "[n]o real interpretation of the Meridian policy language is needed, reasonable or otherwise" as the "policy states the limit is shown in the Declarations and the Declarations has multiple limits reflected (BR. OF APPELLEES at 14). Plaintiffs' position would create a *per se* rule that multiple limits of liability create an ambiguity, which this Court has expressly cautioned against. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11, 26 n.1 (2005). Rather, the proper framework is whether the policy language is subject to more than one reasonable interpretation. *Id.* at 17; *Bruder*, 156 Ill.2d at 193.

Plaintiffs cite to the lower courts holdings in support of claiming that an ambiguity exists (BR. OF APPELLEES at 12-13). Yet, the Plaintiffs agree that the standard of review is *de novo* (BR. OF APPELLEES at 8). Under *de novo* review, the reviewing court does not have to give the lower court's ruling any deference. *Brunton v. Kruger*, 2015 IL 117663, ¶ 72. Rather, this Court must determine whether the policy offers only one reasonable interpretation. Furthermore, neither the trial court nor the Appellate Court identified any ambiguity and Meridian contends that the lower

courts erred by incorrectly applying a *per se* rule and each failed to utilize the appropriate framework set forth in *Bruder* and *Hobbs*.

In its opening Brief, Meridian argued that the Declarations, which consists of two relevant physical pages, has only one reasonable interpretation, which is that the Declarations unambiguously provides the maximum limit of liability for all four covered vehicles is $100,000 per person and $300,000 per accident.

Plaintiffs' position requires a finding that either Meridian's interpretation is not reasonable, or that there is an alternative reasonable interpretation to create an ambiguity. Notably, the Plaintiffs do not argue that Meridian's interpretation in unreasonable. Plaintiffs also fail to present any alternative interpretation, let alone a reasonable alternative interpretation. Rather, the Plaintiffs contend that there is an ambiguity because the limit of liability is listed one time each on two consecutive pages in the Declarations (BR. OF APPELLEES at 15). What then is the ambiguity? There is none.

The anti-stacking provision informs the reader that the limit of liability shown in the Declarations for each person for bodily injury is the maximum limit of liability for all damages and is the most Meridian will pay regardless of the number of vehicles or premiums shown in the Declarations. Turning to the Declarations, the Chevrolet Cobalt is listed as "Auto 2." Below that, the Declarations provide that "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE" and

lists "Auto 2" as a premium for "LIABILITY – BODILY INJURY" as $100,000 EACH PERSON/$300,000 EACH ACCIDENT." The only reasonable interpretation is that the limit of liability for bodily injury for an accident involving the Chevrolet Cobalt is $100,000 per person. The anti-stacking provision clearly limits the maximum liability, regardless of the number of vehicles or premiums shown in the Declarations.

2. The Table in the Declarations is not Ambiguous.

Plaintiffs argue that the Declarations table is ambiguous (BR. OF APPELLEES 15-18). This argument is meritless. This Court has already expressly approved the same format used in the Declarations in *Bruder v. Country Mut. Ins. Co.*, 156 Ill.2d 179, 191 (1993). Plaintiffs claim that the difference here is that there are multiple pages of declarations with multiple limits and statements of coverage (BR. OF APPELLEES at 15-16).

Plaintiffs cite *Hall v. General Cas. Co.*, 328 Ill.App.3d 655 (5th Dist. 2002), attempting to distinguish that decision (BR. OF APPELLEES at 17). However, Meridian did not cite *Hall* and this Court expressly overruled *Hall* in *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11, 27 (2005). It is unclear why the Plaintiffs offer argument based on *Hall*. Plaintiffs incorrectly imply that *Hobbs* overruled *Hall* because the declarations in *Hall* used language such as "insurance is provided" instead of "coverage is provided" (BR. OF APPELLEES at 17). In fact, *Hobbs* overruled *Hall* because the interpretation adopted in *Hall* read the antistacking clause completely out of the policy. *Hobbs*, 214 Ill.2d at 27.

Plaintiffs also concede that the language used in the Declarations here, does not create an ambiguity, but instead argue that the policy "restates the limits more than once" (BR. OF APPELLEES at 17). As argued, *supra*, there is no *per se* rule that multiple listings of liability limits automatically create an ambiguity, but rather there must be a reasonable alternative interpretation.

Plaintiffs also claim that the liability limit for one vehicle should be aggregated four separate times (BR. OF APPELLEES at 18). Plaintiffs fail to provide any alternative interpretation, let alone a reasonable interpretation to support stacking the coverages twice, let alone four times. Plaintiffs fail to offer even a feeble explanation as to how the policy and Declarations could be read to support stacking the bodily injury limit of liability four times, as it is undisputed the limits of liability are listed only once and repeated on two separate physical pages of the Declarations. Rather, the Plaintiffs appear to argue that the inclusion of a premium within the table supports stacking the coverages (BR. OF APPELLEES at 18), yet Plaintiffs fail to cite any authority in support of their argument, which has been expressly rejected by this Court.

In *Bruder*, this Court considered virtually the same table as in the Meridian Declarations. 156 Ill.2d at 189. This Court noted that the declarations page consisted of a series of columns. *Id.* at 191. From left to right, the columns were structured so that reading to the right from the entry for the year and make of each covered vehicle at the left, the

premium charged and the total for each vehicle appeared in a line, like words in a sentence. *Id.* The only difference is that, here, the table was repeated on a separate physical page to include a fourth auto.

In *Bruder*, the Court also noted that "[u]nderstanding the arrangement of entries in the columns is important in determining the effect of what is not there included." *Id.* at 192. The limits of liability were not set out within the column arrangements in the same manner as the declaration page listed the premium amounts and totals of each covered vehicle. *Id.* There was no column "for which the limit of liability for bodily injury is to be listed like a premium amount so that the $100,000 limit for each person would appear in both sentence-like lines for the pickup trucks." *Id. Bruder* held that the declarations page was subject to only one reasonable interpretation, limiting recovery to the sole limit of liability which appeared outside of the columns, "no matter how many vehicles are listed in the column arrangement and no matter how many premiums are paid." *Id.* at 194.

As in *Bruder*, there is no ambiguity in the Declarations. The Declarations track the precise format this Court expressly approved in *Bruder*. As in *Bruder*, Meridian used columns indicating the vehicles for which a premium was paid for coverage. As in *Bruder*, there is only one reasonable interpretation which is that the policy provides only $100,000 each person/$300,000 per accident for bodily injury coverage no matter how many vehicles are listed in the column arrangement and no matter

how many premiums were paid. Plaintiffs' argument is unsupported by any authority and relies entirely on the false premise that merely listing the limits of liability more than once creates an ambiguity.

3. It is Irrelevant that the Declarations Lists the Uninsured/Underinsured Limit Differently than the "Bodily Injury" Limit.

Plaintiffs argue that there is no reason to restate the table on the second physical page of the Declarations, acknowledging that the policy does not duplicate the previously listed "autos" or "premiums" (BR. OF APPELLEES at 11). Plaintiffs point out that the UM/UIM limit of liability is not repeated on the separate physical pages of the Declarations (BR. OF APPELLEES at 11). Plaintiffs repeat this argument in an apparent attempt to claim that the difference between UM/UIM and bodily injury limits of liability creates an ambiguity (BR. OF APPELLEES at 14-15, 18-21).

Plaintiffs' argument here is meritless as there is no reason that the Plaintiffs would have looked to the second physical page of the Declarations to determine the limit of liability available for bodily injury sustained in an accident involving the Chevrolet Cobalt, which is listed as "Auto 2" in the Meridian policy. There is no reasonable interpretation that the coverage associated with Auto 4 on the second physical Declarations page could apply to an accident involving the Chevrolet Cobalt. This argument ignores that Meridian simply did not have space to list four automobiles within the table on one physical page.

Plaintiffs argue that the separate listing as to UM/UIM coverage and bodily injury liability indicates an intent to aggregate liability limits (BR. OF APPELLEES at 18). Plaintiffs' argument ignores the distinction between UM/UIM coverage and bodily injury liability coverage. As articulated in Meridian's opening Brief, bodily injury coverage attaches to the specific vehicle, while UM/UIM attaches to the insured. *Kopier v. Harlow*, 291 Ill.App.3d 139, 142 (2d Dist. 1997); *West v. Am. Std. Ins. Co.*, 2011 IL App (1st) 101274, ¶ 10. There is no possibility of an ambiguity as to bodily injury coverage as a claimant should only look to the vehicle involved in the accident to determine if there is coverage and if so, what the limits of liability are for the specific vehicle involved in the accident. For UM/UIM coverage, however, the claimant must determine the limits of liability available, and if there are multiple limits listed, there is a reasonable alternative interpretation that each separate limit may apply. Plaintiffs ignore the distinction between bodily injury coverage and UM/UIM coverage, and their argument should fail.

Plaintiffs also claim that the format is a violation of the premium rule (BR. OF APPELLEES at 19). The "premium rule" provides that "it is unfair to permit an insurer to collect premiums, be it for coverage afforded under separate policies or for separate vehicles under one policy, and thereafter apply a provision limiting or absolving liability." *Bruder v. Country Mut. Ins. Co.*, 156 Ill.2d 179, 184 (1993). *Bruder* expressly rejected that anti-stacking provisions conflict, *per se*, with the "premium

rule." *Id.* See also, *Busch v. Country Financial Ins. Co.*, 2018 IL App (5th) 140621, ¶ 14 (the premium rule is not violated by barring stacking as "it is the law in Illinois that an insurer is entitled to the enforcement of unambiguous provisions to the extent that such provisions represent terms to which the parties have agreed to be bound"). Plaintiffs offer no argument as to why it would be reasonable to conclude that the limits of liability as to the three other vehicles insured by Meridian, which were not involved in the accident, could possibly apply to an accident involving the Chevrolet Cobalt. Plaintiffs' argument should be rejected.

Plaintiffs mistakenly claim that there are three reasonable interpretations, as demonstrated by: (1) the trial court's holding; (2) the Appellate Court's holding; and (3) Meridian's position (BR. OF APPELLEES at 19-20). Plaintiffs' argument is meritless as neither the trial court nor the Appellate Court identified any ambiguity, but rather simply held there was an ambiguity. Plaintiffs fail to cite to the Record in support of any findings made by the trial court, likely because the trial court made no express findings, but stated that "[f]or the reasons presented and set forth in Plaintiffs' oral and written arguments, the policy herein taken as a whole, is ambiguous and will therefore be construed in a manner most favorable to Plaintiffs" (C355-56).

Meridian's position is that the lower courts erred by essentially adopting a *per se* rule that the separate listing of the limits of liability on two physical pages results in an ambiguity. The proper framework,

however, is to determine whether there are multiple reasonable interpretations of the policy to support stacking. Furthermore, the standard of review is *de novo* and this Court owes no deference to the lower courts' rulings. *Brunton v. Kruger*, 2015 IL 117663, ¶ 72.

Plaintiffs fail to offer any alternative interpretation, let alone a reasonable interpretation, to conclude that the limits of liability for three vehicles not involved in the accident could be stacked with the bodily injury liability coverage for the Chevrolet Cobalt.

C. Meridian did not Violate any Industry Standard.

Plaintiffs argue that Meridian violated a "known industry standard" (BR. OF APPELLEES at 8, 13, 20).

First, while it is unclear what industry standard Meridian supposedly violated, the Plaintiffs have forfeited or waived this argument as they did not previously raise this argument. See *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 430 (2006) (argument made for the first time on appeal was forfeited).

Second, the Plaintiffs do not identify what the "known industry standard" is, nor do they explain how Meridian violated this supposed standard. Plaintiffs do not cite to any authority in support as to what this mythical standard is and they fail to explain how the failure to conform to some unstated standard created an ambiguity to permit stacking the bodily injury liability coverage for the Chevrolet Cobalt with three separate vehicles' coverages as there is no dispute those three separate

vehicles were not involved in the accident. A "court of review is entitled to have the issues clearly defined and to be cited pertinent authority." *Dillon v. Evanston Hosp.*, 199 Ill.2d 483, 494 (2002). Plaintiffs' argument is unclear, unsupported by authority, and meritless as there is only one reasonable interpretation of the policy: that only the Chevrolet Cobalt involved in the accident provides coverage for bodily injury liability, and the limit of liability for bodily injury coverage is $100,000 per person/$300,000 per accident. As the Plaintiffs have not properly developed this argument nor cited any relevant authority, they have waived the argument. See *Canteen Corp. v. Dep't of Revenue*, 123 Ill.2d 95, 112 (1988) (failure to cite to relevant authority supporting the argument resulted in waiver of argument).

Plaintiffs forfeited any argument as to failure to conform to some unstated industry standard or, in the alternative, waived such argument as they fail to properly develop or cite support regarding the argument. In any event, there is only one reasonable interpretation of the policy, which is that the $100,000 per person/$300,000 per accident bodily injury limit of liability for the Chevrolet Cobalt applies to the bodily injury suffered in the accident involving the Chevrolet Cobalt.

D. *Stare Decisis* does not Apply as the Supreme Court has Never Held that Bodily Injury Limits of Liability may be Stacked.

Plaintiffs cite a litany of opinions regarding the rules as to *stare decisis* (BR. OF APPELLEES at 32-33). Reliance on these citations is misplaced as Plaintiffs have failed to cite any Illinois Supreme Court

decision that permitted stacking of bodily injury coverages. Absent precedent to support the Plaintiffs' claim, *stare decisis* is inapplicable. See *People v. Smith*, 163 Ill.App.3d 806, 809 (3rd Dist. 1987) (*stare decisis* inapplicable as previous decisions not squarely on point and distinguishable). Meridian's position is based on the absence of any reasonable interpretation of the policy to support stacking. Plaintiffs' contention should be disregarded as *stare decisis* is inapplicable to this dispute.

CONCLUSION

For each the aforesaid reasons, this Court should reverse the Appellate Court's judgment modifying the circuit court's judgment to stack the limit of liability twice as the policy clearly and unambiguously prevents stacking of bodily injury limits of liability. This Court should enter judgment for Meridian Security Insurance Company and tax costs against the Plaintiffs.

Respectfully submitted:

/s/ Robert Marc Chemers
Robert Marc Chemers
(rchemers@pretzelstouffer.com)
Jonathan L. Federman
(jfederman@pretzelstouffer.com)
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Suite 2500
Chicago, IL 60606
(312) 346-1973
Attorneys for Defendant-Appellant
Meridian Security Insurance Company

Of Counsel:
Robert Marc Chemers
Jonathan L. Federman

Supreme Court Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b), and 343. The length of this brief, excluding the words containing the Rule 341(d) cover, 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 5,795 words.

/s/ Robert Marc Chemers
Robert Marc Chemers

Robert Marc Chemers
(rchemers@pretzelstouffer.com)
Jonathan L. Federman
(jfederman@pretzelstouffer.com)
PRETZEL & STOUFFER, CHARTERED
One South Wacker Drive
Suite 2500
Chicago, Illinois 60606
(312) 346-1973
Attorneys for Defendant-Appellant
Meridian Security Insurance Company

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

LORETTA HESS, etc., et al.,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 124649
	)	
STATE AUTO INSURANCE COMPANIES d/b/a MERIDIAN SECURITY INSURANCE COMPANY,	)	
	)	
Defendant-Appellant,	)	
and	)	
	)	
THE ESTATE OF TJAY KLAMM,	)	
	)	
Defendant.	)	

The undersigned, being first duly sworn, deposes and states that on September 11, 2019, there was electronically filed and served upon the Clerk of the above court the Reply Brief of Defendant-Appellant. Service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

SEE ATTACHED SERVICE LIST

Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Robert Marc Chemers
Robert Marc Chemers

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.

/s/ Robert Marc Chemers
Robert Marc Chemers

SERVICE LIST

P. Jay Schafer
Winters, Brewster, Crosby and Schafer LLC
111 West Main
P.O. Box 700
Marion, Illinois 62959
Phone: (618) 997-5611
Fax: (618) 997-6522
Email: jschafer@winterslaw.com
(Counsel for Loretta Hess, as Guardian of the Estate of Meadow Hess)

Aron Hopkins
402 East Main
West Frankfurt, Illinois 62896
Phone: (618) 932-3900
Email: hoplaw1@gmail.com
(Counsel for Leonard Klamm and Doris Klamm)

Joseph Bleyer
Bleyer & Bleyer
P.O. Box 487
601 West Jackson Street
Marion, Illinois 62959
Phone: (618) 997-1331
Fax: (618) 997-6559
Email: jableyer@bleyerlaw.com
(Counsel for Dawn Keller)