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.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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NATURE OF THE CASE

The underlying action arose out of an automobile collision. Richard Kiselewski and his passengers, Meadow Hess and Sierra Hess ("the Plaintiffs") were injured when an automobile driven by TJay Klamm ("Klamm") crossed the center line and struck their vehicle. At the time of the accident, Klamm was insured under an automobile liability policy issued by Meridian Security Insurance Company ("Meridian").

The Plaintiffs filed suit against Klamm, and later amended their complaint to include claims against Meridian. They sought a declaratory judgment to stack and aggregate liability limits under the Meridian policy. The Plaintiffs contended that the Declarations contains an ambiguity, as the limit of liability for four vehicles is listed on two separate physical pages of the Declarations. The Plaintiffs also contended that the policy contains an ambiguity, as the policy includes an amended Declarations and a second amended Declarations.

Following briefing on Meridian's motion for judgment on the Pleadings, and Plaintiffs' cross-motion for summary judgment, the circuit court heard oral argument. On March 14, 2018, the circuit court issued a written order finding that Meridian has a duty to aggregate the bodily injury liability limits such that the limit of liability will be $400,000 per person/$1,200,000 per accident. On April 5, 2018, the

circuit court granted Meridian's motion for a Rule 304(a) finding. Meridian timely filed its Notice of Appeal on April 6, 2018.

The Appellate Court modified the judgment, holding that "because the relevant bodily injury liability limits of $100,000 per person and $300,000 per accident are listed twice on the declarations pages, and the antistacking clause refers the reader to the declarations for the applicable liability limits, such limits are to be stacked twice, for total limits of $200,000 per person and $600,000 per accident." *Hess v. State Auto Insurance Companies*, 2019 IL App (5th) 180220, ¶ 20.

QUESTIONS PRESENTED FOR REVIEW

(1) 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 to support stacking coverages. Or whether an ambiguity will only be found if there is more than one reasonable interpretation of the policy provisions.

(2) Whether stacking bodily injury coverage limits of liability is permitted.

JURISDICTION

This Court has jurisdiction pursuant to Illinois Supreme Court Rule 304(a). On March 14, 2018, the circuit court ruled that Meridian has a duty to aggregate the bodily injury coverage limits such that the limit will be $400,000 per person/$1,200,000 per accident. On April 5, 2018, the circuit court ruled that its Judgment of March 14, 2018 is

final and appealable and that there is no just reason to delay either enforcement or appeal. On February 11, 2019, the Appellate Court issued its published Opinion modifying the circuit court's ruling. There are no questions on the pleadings.

STATEMENT OF FACTS

On April 17, 2015, Richard Kiselewski and his passengers, Meadow Hess and Sierra Hess, were injured when an automobile driven by Klamm struck their vehicle at or near the intersection of Route 158 and North County Line Road in or near Sesser, Illinois (C212; C288).[1] Richard Kiselewski and Sierra Hess were killed in the accident, as was Klamm. Meadow Hess sustained serious personal injuries (C212; C288).

At the time of the accident, Klamm was insured under an automobile liability policy issued by Meridian to his mother, Dawn Keller, for a 2006 Chevrolet Cobalt vehicle which he was operating at the time of the accident (C212; C288). Following the accident, Meridian offered its $100,000 each person limit of liability to counsel for the Kiselewski estate, the Sierra Hess estate, and Meadow Hess (C212; C288-89). The letters from Meridian to counsel for the Plaintiffs dated July 9, 2015 were attached to Meridian's Counterclaim (C273-78). The Plaintiffs rejected Meridian's offer (C288-89).

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

Meridian issued its policy of insurance numbered AIL0042307 to Dawn Keller as the named insured for the effective policy period of March 30, 2015 to September 30, 2015 (C211; C288).

On March 28, 2016, Loretta Hess, as Guardian of the Estate of Meadow Hess, filed her Complaint (C6). Count I alleged negligence against the Estate of Klamm (C6-9). Count II was brought against Dawn Keller, Leonard Klamm, and Doris Klamm as Respondents in Discovery (C9-10).

On March 23, 2017, the Complaint was amended to add Chad Hess, Individually and as the Independent Administrator of the Estate of Sierra Hess, Deceased, and Pauline Kiselewski, as Independent Administrator of the Estate of Richard Kiselewski, Deceased, as Plaintiffs (C53). The Estate of Sierra Hess brought a wrongful death count, a survival count and a family expense count against the Estate of Klamm (C57-60). The Estate of Richard Kiselewski also brought a wrongful death count against the Estate of Klamm (C60-61). The Estate of Meadow Hess, the Estate of Sierra Hess and the Estate of Richard Kiselewski also brought a declaratory judgment count against State Auto Insurance Companies (C62-67).[2]

[2] State Auto Insurance Companies is a group of related companies, and the policy here was issued by Meridian Security Insurance Company, a member of that group.

On April 18, 2017, the Plaintiffs filed a Second Amended Complaint (C80). The Second Amended Complaint added a claim by Chad Hess, individually, as a family expense count against the Estate of Klamm (C87-88). The Plaintiffs each brought a declaratory judgment count against Meridian (C90-96).

The Plaintiffs made a demand on Meridian for the liability limits under the policy in connection with the April 17, 2015 accident and contended that the limit of liability stacks or aggregates from $100,000 each person and $300,000 each accident to $400,000 each person and $1,200,000 each accident due to the Declarations listing the limit of liability on two separate physical pages, as well as a limit of liability being listed on the amended Declarations and another on the second amended Declarations (C215).

Meridian's policy in its Insuring Agreement in an endorsement provides:

> **Part A – Liability Coverage**
>
> Part **A** is amended as follows:
>
> **INSURING AGREEMENT**
>
> We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily

injury" or "property damage" not covered under this policy.

(C118; C239).

Meridian's policy also provides:

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.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" 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).

In the Limit of Liability provision, the reference is to the Declarations, which identifies "VEHICLES COVERED" to include a 2002

Ford F-150 (Auto 1), a 2006 Chevrolet Cobalt (Auto 2), a 2000 Ford Mustang (Auto 3), and on the continued next page, a 2014 Kia Sportage (Auto 4) (C114-15; C235-36).

The applicable Declarations contains three physical pages, though for this dispute only two physical pages are relevant. The following appears under the words "VEHICLES COVERED:"

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM SYM	MP/PIP	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

(C114; C235).

At the bottom of the page on which the above appeared, it states, "CONTINUED ON NEXT PAGE," and on the following page the fourth vehicle is listed as follows:

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM SYM	MP/PIP	CLASS	ST	AM
04	IL	54G	14	KIA SPORTAGE L	KNDPB3ACXE7620823	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	

(C115; C236).

The policy contains an amended Declarations, which at the top of the page states "THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS AMENDS THE POLICY EFFECTIVE 4/18/15." (C131). The amended Declarations deleted the vehicle which was involved in the April 17, 2015 collision, which was no longer operable and thus insurance was no longer needed. The amended Declarations consists of one physical page and provides, in relevant part, as follows:

> THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS AMENDS THE POLICY EFFECTIVE 4/18/15
>
> REASON FOR AMENDMENT (*sic*) DELETE VEHICLE

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM SYM	MP/ PIP	CLASS	ST	AM
01	IL	54G	02	FORD F-150 SUPE	1FTRW08L22KC33891	15	15	310	485	84G150		
03	IL	54G	00	FORD MUSTANG	1FAFP4040YF145781	18	18	305	505	84G150		
04	IL	54G	14	KIA SPORTAGE L	KNDPB3ACXE7620823	17	15	999	999	84G150		

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE		LIMITS OF LIABILITY	PREMIUMS		
			AUTO 1	3	4
A	LIABILITY-BODILY INJURY	$100,000 EACH PERSON/ $300,000 EACH ACCIDENT	90.00	90.00	81.00
A	LIABILITY-PROPERTY DAMAGE	$100,000 EACH ACCIDENT	56.00	57.00	51.00

(C131).

The policy contains a second amended Declarations, which at the top of the page states "THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS AMENDS THE POLICY EFFECTIVE 06/23/15." (C135). The second amended Declarations removed another vehicle from policy coverage. The second amended Declarations consists of one physical page and provides, in relevant part, as follows:

> THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS AMENDS THE POLICY EFFECTIVE 06/23/15
>
> REASON FOR AMENDMENT (*sic*) MULITPLE CHANGES

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM SYM	MP/PIP	CLASS	ST	AM
01	IL	54G	02	FORD F-150 SUPE	1FTRW08L22KC33891	15	15	310	485	84G150		
04	IL	54G	14	KIA SPORTAGE L	KNDPB3ACXE7620823	17	15	999	999	84G150		

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	PREMIUMS AUTO 1	4
A LIABILITY-BODILY INJURY	$100,000 EACH PERSON/ $300,000 EACH ACCIDENT	90.00	81.00
A LIABILITY-PROPERTY DAMAGE	$100,000 EACH ACCIDENT	56.00	51.00

(C135).

On May 25, 2017, Meridian answered and filed its counterclaim for declaratory judgment against each of the Plaintiffs (C195-220). In each count of its counterclaim, Meridian for example, claimed:

> a. That the $100,000 limit of liability shown in the Declarations for each person for bodily injury liability is Meridian's maximum limit of liability for all damages arising out of bodily injury sustained by any one person in any one auto accident.

b. That Meridian properly offered its $100,000 each person limit of liability to the Kiselewski Estate, and to the Sierra Hess estate, and to Meadow Hess.

c. That the limit of liability shown in the Declarations for each accident for bodily injury, namely $300,000, is Meridian's maximum limit of liability for all damages for bodily injury resulting from any one auto accident.

d. That the limit of liability for each accident is the most Meridian will pay regardless of the number of claims made or regardless of the number of vehicles or premium shown in the Declarations.

e. That Meridian properly offered to the Claimants collectively its $300,000 each accident limit of liability on July 9, 2015 as that is the most Meridian will pay regardless of the number of claims made and regardless of the number of vehicles or premiums shown in the Declarations.

f. That the Declarations which lists the purchased limit of liability only once and identifies the premium paid for each vehicle, is appropriate in the light of the policy's anti-stacking provisions.

g. That Exhibit D to the Second Amended Complaint is not the applicable policy because the amended declarations effective April 18, 2015, the day after the April 17, 2015 motor vehicle accident, reflects the removal of Auto 2, that is, the removal or deletion from the policy of the 2006 Chevrolet Cobalt, as that vehicle was involved in the April 17, 2015 accident, and the amended declarations effective June 23, 2015, some two months after the accident in question, which amended declarations reflect the removal of Auto 3 from the policy such that Meridian as of June 23, 2015 only

> insured what had been earlier identified as Auto I and Auto 4.

(C216-17).

On June 12, 2017, the Plaintiffs filed their answer to Meridian's counterclaim for declaratory judgment (C286-95). On June 22, 2017, Meridian filed its motion for judgment on the pleadings and memorandum of law in support (C296-318).

On July 25, 2017, the Plaintiffs filed their response to Meridian's motion for judgment on the pleadings and cross-motion for summary judgment (C330-40). On August 16, 2017, Meridian filed its reply in further support of its motion for judgment on the pleadings and response to Plaintiffs' cross-motion for summary judgment (C342-52).

On August 28, 2017, a hearing was held on the motions (R1-50).[3] Also on August 28, 2017, Meridian's counsel tendered to Plaintiffs' counsel three separate $100,000 checks, as those amounts are not in dispute (R47-48).[4]

On March 14, 2018, the circuit court issued a written Judgment, which provides as follows, without caption and signature:

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[3] "(R__)" is a reference to the Report of Proceedings.

[4] Meridian paid and Plaintiffs accepted the undisputed limit of liability pursuant to *Millers Mutual Ins. Ass'n of Illinois v. House*, 286 Ill.App.3d 378 (5th Dist. 1997) and *Worley v. Fender*, 2017 IL App (5th) 160110, ¶ 30.

1) There are no disputed facts regarding the Motions before the Court.

2) Accordingly, the issue of whether limits of coverage under the insurance policy in question herein may be stacked is a question of law ripe for summary determination.

3) For 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.

WHEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

A. Meridian Security Insurance Company has a duty under its policy to aggregate the bodily injury coverage limits.

B. The coverage limits shall therefore be stacked and aggregated such that the limit will be $400,000.00 per person/$1,200,000.00 per accident.

C. Each party is to bear their own costs.

(C355-56).

On March 23, 2018, Meridian filed a motion for a Rule 304(a) finding (C357-58). On April 5, 2018, the circuit court granted Meridian's motion for a Rule 304(a) finding, ordering that its Judgment of March 14, 2018 is not only final but that there is no just reason to delay either enforcement or appeal thereof (C371-72).

On February 11, 2019, the Appellate Court, Fifth District, issued its published Opinion. The Appellate Court modified the judgment, holding that "because the relevant bodily injury liability limits of

$100,000 per person and $300,000 per accident are listed twice on the declarations pages, and the antistacking clause refers the reader to the declarations for the applicable liability limits, such limits are to be stacked twice, for total limits of $200,000 per person and $600,000 per accident." *Hess*, 2019 IL App (5th) 180220, ¶ 20.[5]

STANDARD OF REVIEW

The issue of whether liability limits of insurance policies may be stacked or aggregated presents a question of law. *Bruder v. Country Mut. Ins. Co.*, 156 Ill.2d 179, 185 (1993). *De novo* review is the appropriate standard for a reviewing court to consider whether an insurance policy limit of liability may be stacked or aggregated. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11, 17 (2005).

ARGUMENT

The Plaintiffs argued before the Appellate Court that the Meridian policy contains four ambiguities. The Plaintiffs listed the alleged ambiguities as (1) multiple statements of liability limits; (2) columns within the declarations; (3) no listed single limit restriction for liability; and (4) that two different versions of the policy were certified, with multiple declarations pages.

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[5] Meridian only disputes the Appellate Court's ruling to permit stacking of liability coverages twice. Meridian does not dispute any other portion of the Appellate Court's Opinion.

Before both the circuit court and Appellate Court, the Plaintiffs failed to propose any alternative interpretation of the policy from the sole reasonable interpretation which Meridian presented. "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*, 214 Ill.2d at 17. Listing potential sources of an ambiguity does not suggest an alternative interpretation. Courts should not strain to find ambiguity in an insurance policy where none exists. *Id.* In the lower Courts, the Plaintiffs failed to present even a creative possibility of an alternative interpretation, let alone a reasonable interpretation.

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

1. The Policy Clearly Prohibits Stacking.

Although there are four vehicles listed on the Declarations, the only bodily injury limit of liability available to the Plaintiffs in this case is that for the 2006 Chevrolet Cobalt involved in the accident because the policy language clearly prohibits stacking or aggregating the limit of liability for more than one automobile. The applicable limit of liability is $100,000 per person and $300,000 per accident. Meridian has paid each Plaintiff $100,000 (R47-48).

The policy clearly prohibits the stacking of the bodily injury limits of liability by stating:

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.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" 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).

This language is clear and unambiguous. There can be no stacking or aggregating of the limits 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 the vehicle operated at the time of the accident.

The Meridian policy is clear; the limit of liability of $100,000 per person and $300,000 per accident applies and the limit may not be stacked or aggregated. Meridian paid the undisputed limit of liability to the Plaintiffs to avoid any bad faith exposure pursuant to *Millers Mutual Ins. Ass'n of Illinois v. House*, 286 Ill.App.3d 378 (5th Dist. 1997) and *Worley v. Fender*, 2017 IL App (5th) 160110, ¶ 30.

When construing an insurance policy, a court's "primary objective is to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill.2d 11, 17 (2005). "If the policy language is unambiguous, the policy will be applied as written, unless it contravenes public policy." *Id.* "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." *Id.* citing *Bruder v. Country Mutual Insurance Co*, 156 Ill.2d 179, 193 (1993). A Court will "not strain to find an ambiguity where none exists." *Id.* "Although policy terms that limit an insurer's liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous." *Id.*

Antistacking clauses do not contravene public policy. *Bruder*, 156 Ill.2d at 184; *Hobbs*, 214 Ill.2d at 17-18. The "Illinois Insurance Code expressly authorizes the use of antistacking provisions in motor vehicle insurance policies." *Id.* at 18 *citing* 215 ILCS 5/143a-2(5). Antistacking clauses that are unambiguous will be given effect. *Id.* "[A]n insurer is entitled to enforcement of unambiguous antistacking provisions to the extent that such provisions represent terms to which the parties have agreed to be bound." *Bruder*, 156 Ill.2d at 186. "The touchstone in determining whether ambiguity exists regarding an insurance policy [] is whether the relevant portion is subject to more than one reasonable interpretation [citation omitted], not whether creative possibilities can be suggested. Reasonableness is the key." *Id.* at 186.

Meridian's policy provision entitled "LIMIT OF LIABILITY" explicitly provides that the "limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages ***" sustained by any one person in any one accident. The Declarations unambiguously provides the limit of liability for all four covered vehicles is $100,000 per person and $300,000 per accident. Absent any ambiguity, the policy must be enforced as written and the Plaintiffs are not entitled to stack or aggregate the limits of liability.

2. Bodily Injury/Liability Coverage Limits of Liability Should not be Stacked.

Neither *Bruder* nor *Hobbs* considered whether bodily injury coverage may be stacked. Rather, *Bruder* and *Hobbs* considered whether uninsured and underinsured coverages could be stacked, respectively.

Bodily injury, or liability coverage, should not be permitted to be stacked as it attaches to the vehicle, not the individual. The statutory scheme set forth by the legislature demonstrates that liability coverage attaches to the vehicle. As such, liability coverage limits of liability cannot be reasonably construed to apply together, and stacking should not be permitted. Outside of Illinois, an overwhelming majority of jurisdictions either bars stacking of liability coverages outright or requires an explicit statute or policy provision to allow for stacking such coverages.

Our legislature, in enacting 625 ILCS 5/7-203 and 215 ILCS 5/143(1), set forth a statutory scheme to demonstrate that liability insurance attaches to the motor vehicle, while uninsured/underinsured attaches to the individual.

In *Kopier v. Harlow*, the Appellate Court, Second District, considered whether an insured was entitled to the applicable liability limits associated with the car that was involved in the accident or for a separate car with a higher liability limit that was not involved in the accident. 291 Ill.App.3d 139, 140 (2d Dist. 1997). The insured claimed

that he could choose the highest liability limit, arguing that liability coverage follows the named insured, regardless of the vehicle he drove. *Id.* at 142. The Court disagreed, holding that liability insurance attaches to the particular vehicle. *Id.* The Court also noted that the rationale was the same for barring stacking of liability coverages, citing other jurisdictions in support. *Id.* Likewise, in *West v. Am. Std. Ins. Co.*, the Appellate Court, First District, held that liability insurance attaches to a specific vehicle. 2011 IL App (1st) 101274, ¶ 10.

The purpose of uninsured and underinsured motorist coverage is to "place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance." *Sulser v. Country Mut. Ins. Co.*, 147 Ill.2d 548, 555 (1992); *State Farm Mut. Auto. Ins. Co. v. Villicana*, 181 Ill.2d 436, 444 (1998). If an insured has suffered damages and the at fault driver does not have insurance, or has inadequate insurance, it is reasonable that the insured would review his or her own policy to determine whether he or she may be entitled to coverage. In that scenario, it is reasonable that the insured would attempt to determine whether he or she is entitled to coverage on separate automobiles. If there are multiple limits of liability listed, the insured may reasonably believe that each automobile's coverage limits may apply. Thus, in the context of uninsured or underinsured coverage, an insured will reasonably: (1) review his or her policy; (2) consider whether he or she is entitled to coverage on each automobile's listed

limit of liability: and (3) conclude, if the policy lists multiple limits of liability, each separate limit of liability applies.

However, in the context of a liability claim, those same considerations are not present. That is, for liability coverage, there is no reason that an injured party would review the at fault driver's insurance policy. There is no reason for the injured party to believe that any vehicle's coverage could apply, other than the coverage for the vehicle driven by the at fault driver at the time of the accident. *Kopier* and *West* support that liability insurance attaches to a specific car. There can be no possible ambiguity that any other vehicle's coverage listed on a declarations page could apply, if that vehicle was not involved in the accident. The injured party would not reasonably: (1) review the at fault driver's insurance policy; (2) review any vehicle's liability limit, other than for the vehicle which was involved in the accident; or (3) believe that any other vehicle's liability limit, other than for the vehicle involved in the accident, could possibly apply. Unlike in an uninsured or underinsured context, it is not reasonable to find that bodily injury coverage limits of liability could ever be stacked.

The authority in Illinois which supports that bodily injury coverage may be stacked is *Skidmore v. Throgmorton*, 323 Ill.App.3d 417, 425 (5th Dist. 2001). In *Skidmore*, the Appellate Court, Fifth District, held that *Bruder* "cannot be limited to uninsured- or underinsured-motorist coverage, and it must be applied in situations

involving the identical policy language, located elsewhere in the policy." *Id. Skidmore* did not consider whether liability coverage attaches only to a specific car, as compared to uninsured or underinsured coverage. *Skidmore* did not conduct an analysis to determine whether the factual distinction between uninsured/underinsured coverage and liability coverage *should* result in a different conclusion as to stacking. Rather, *Skidmore* summarily determined that there was no reason to limit *Bruder* to uninsured/underinsured coverage. *Skidmore* was incorrectly decided and should be overturned.

Outside of Illinois, an overwhelming majority of jurisdictions that have considered stacking as to bodily injury coverage have rejected that such coverage may be stacked.

Certain jurisdictions note that, unlike uninsured or underinsured coverages, liability coverage attaches to the specific automobile, as opposed to the person. Meridian is aware that decisions from other jurisdictions are not binding, however, they are persuasive authority and entitled to respect. *Mt. Vernon Fire Ins. Co. v. Heaven's Little Hands* Day Care, 343 Ill.App.3d 309, 320 (1st Dist. 2003); *Kostal v. Plukus Dermatopathology Lab, P.C.*, 357 Ill.App.3d 381, 395 (1st Dist. 2005).

In *Stevenson v. Anthem Casualty Ins. Group*, the Kentucky Supreme Court considered whether liability coverages of four separate vehicles covered under a single policy could be stacked. 15 S.W.3d 720, 721 (Ky. 1999). The Court noted that the "overwhelming majority of

jurisdictions which have addressed the issue prohibit stacking of liability coverages, whether the claim is made with respect to owned vehicle coverage, either in the context of multiple vehicles insured by the same policy in the context of multiple policies insuring separate vehicles or whether the claim is made with respect to nonowned vehicle coverage." *Id.* at 722 n.1-n.3. The Court reaffirmed prior Kentucky precedent and held that stacking liability coverage is improper. *Id.* at 722.

In *Cross v. Warren*, the Montana Supreme Court considered whether liability coverages of four vehicles under a single policy could be stacked. 2019 MT 51, ¶¶ 4. The Court held that the policy specifically and unambiguously provided that the stacking of coverages would not be permitted. *Id.* at ¶ 15. The Court also held that liability coverage is not portable and applicable in all circumstances, noting that "liability coverage is applicable only 'with respect to an accident arising out of the ownership, maintenance, or use of an auto or trailer.' The policy does not follow the insureds to provide coverage in other scenarios." *Id.* at ¶ 18. The Court concluded that it was not "reasonable to expect the policy would pay more" than the coverage limit for the vehicle involved in the accident as liability coverage is not personal and portable, the policy liability coverage was not illusory, and the policy unambiguously barred stacking of coverages. *Id.* at ¶ 23. The Court

further noted its holding was consistent with many other jurisdictions and authorities on the issue. *Id.* at ¶ 24.

In *Oarr v. Government Employees Ins. Co.*, the Maryland Court of Special Appeals considered whether liability limits of two separate vehicles under a single policy could be stacked. 39 Md. App. 122, 124 (1978). The Court noted that, unlike uninsured motorist coverage, liability coverage "is directly related to, and requires the involvement of, one of the vehicles specifically mentioned in the policy *** for which a specific premium is charged." *Id.* at 130. The Court noted that "[m]ost of the courts permitted the 'stacking' of first party coverages have recognized, either implicitly or explicitly, that the rationale used by them to support that result would not be applicable with respect to liability coverage" and "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.'" *Id.* The Court barred stacking of liability coverage. *Id.* at 132-33.

In *Gordon v. Gordon*, the Oklahoma Supreme Court considered whether the plaintiff was entitled to stack liability coverages for two separate vehicles on two separate policies. 2002 OK 5, ¶ 4. The Court stated "we hold, as have virtually all courts that have considered the issue, that there is no public policy basis for refusing to enforce clear and unambiguous terms of automobile liability insurance policies that

serve to prohibit the stacking of liability coverages" as the rationale to support stacking in uninsured motorist cases "do not apply in cases involving liability coverage." 2002 OK 5, ¶ 12

In *Agnew v. Am. Family Mut. Ins. Co.*, the Wisconsin Supreme Court considered whether three separate policies covering separate vehicles' liability coverages could be stacked. 150 Wis. 2d 342, 343-44 (Wis. 1989). The Court held, in contrast to uninsured liability, each "policy insures against a different loss and only one policy insureds the insured against the loss incurred. Each American Family policy insures against liability arising from the operation of the vehicle specified in the policy owned by the policyholder." *Id.* at 349. The Court barred stacking of the liability coverages. *Id.* at 350-51.

In *Rando v. California State Auto. Ass'n*, the Nevada Supreme Court considered whether liability coverages of three vehicles covered under a single policy could be stacked. 100 Nev. 310, 312 (Nev. 1984). The Court distinguished decisions permitting stacking in uninsured motorist coverage as liability coverage is "available to an insured as result of the ownership, use or maintenance of a vehicle." *Id.* at 314. The Court added that liability coverage:

> essentially focuses on a particular vehicle without which the protection would not exist. Typical underwriting practices would lead a reasonable person to understand that if he or she owned two or more vehicles, and only one of the vehicles was covered by a motor vehicle liability policy, the

> protection afforded under that policy would not extend to the vehicles which were uninsured.

Id. at 315. The Court barred stacking. *Id.*

In *Ruppe v. Auto-Owners Ins. Co.*, the South Carolina Supreme Court considered whether two separate vehicles' liability limits, covered under one policy, could be stacked. 329 S.C. 402, 403-04 (S.C. 1998). The Court stated that "[l]iability coverage, therefore, while statutorily required, **is limited to the particular vehicle for which it is purchased**." *Id.* at 406 (emphasis in original). Stacking was not permitted. *Id.* at 407.

In *Hilden v. Iowa Nat'l Mut. Ins. Co.*, the Minnesota Supreme Court considered whether three separate vehicles' liability limits covered under one policy could be stacked. 365 N.W.2d 765, 766-67 (Minn. 1985). The Court distinguished between uninsured /underinsured coverages and liability coverage as liability coverage attaches to the vehicle. *Id.* at 768-69. The Court noted that the "insurance against liability arising out of the ownership, maintenance or use of that automobile is not applicable to liability arising out of the ownership, maintenance or use of some other automobile, whether or not the second automobile is insured under the same policy." *Id.* at 769. The Court barred stacking of liability coverage. *Id.*

In *Maher v. Chase*, the Appeals Court of Massachusetts, construing New Hampshire law, considered whether three separate

vehicles' liability limits covered under one policy could be stacked. 52 Mass.App.Ct. 22, 22-23 (2001). The Court noted that the principle of stacking had only been applied to uninsured, underinsured and medical payment coverage, citing the majority of jurisdictions which concluded that bodily injury liability coverage is not subject to stacking. *Id.* at 24 n.1. The Court held that New Hampshire case law only permitted stacking to uninsured and underinsured coverages as bodily injury liability coverage only applied to the car which was involved in the accident. *Id.* at 26.

The referenced jurisdictions do not permit stacking of bodily injury coverages limits outright as liability coverage applies to the vehicle, not the individual.

Other jurisdictions have considered policy provisions and any applicable statutes to determine whether the policy contains an ambiguity to permit stacking of such coverages.

In *Slack v. Robinson*, the Court of Appeals of New Mexico considered whether two separate policies which insured the same two vehicles could each have the liability coverages stacked for each of the two listed vehicles. 2003-NMCA-083, ¶ 5. The Court noted that both policies "clearly and expressly set out the liability coverages and coverage limits for each of the two listed vehicles." *Id.* at ¶ 12. The Court further cited the majority of jurisdictions prohibit stacking of liability coverages when one of the listed vehicles is involved in an accident. *Id.*

at 12 n.3. The Court held that the liability coverage limits for the vehicle involved is the only limit available. *Id.* at 26. The Court further held that the policy provisions unambiguously limited the liability to bar stacking. *Id.*

In *Houser v. Gilbert*, the North Dakota Supreme Court considered whether stacking liability coverages twice of a policy which covered six vehicles, two of which were involved in the accident at issue, was proper. 389 N.W.2d 626, 628-29 (N.D. 1986). The Court noted that "[p]reclusion of stacking is sensible where only one of the insured vehicles is involved" and that generally, "bodily injury coverage is automobile-based, rather than person based" and "is clearly insurance on the vehicle …" *Id.* at 629. The Court considered the policy provisions and held that the limit of liability for the two vehicles involved in the accident could not be stacked, even though both vehicles were involved in the accident. *Id.*

In *Payne v. Weston*, the West Virginia Supreme Court considered whether two separate vehicles' liability limits insured under one policy could be stacked. 195 W. Va. 502, 505 (W. Va. 1995). The Court first noted that "in the absence of a contrary or controlling statute, the coverage in insurance cases is determined by the language of the policy itself." *Id.* at 508. The Court held that there was no authority to support that the policy limits should be multiplied by the number of vehicles covered by that policy. *Id.* The Court further held that the policy

revealed no clear language permitting stacking nor any ambiguity and the Court did not permit stacking. *Id.* at 509.

In *Grinnell Select Ins. Co. v. Baker*, the Seventh Circuit Court of Appeals considered whether two separate vehicles' liability limits covered under a single policy could be stacked. 362 F.3d 1005 (7th Cir. 2004). The Court considered the limit of liability, which is virtually identical to the provision contained in the Meridian policy. *Id.* at 1006. The Court stated that "[i]t is hard to imagine clearer language." *Id.* The Court held that the unambiguous anti-stacking clause barred stacking. *Id.* As former Chief Judge Easterbrook succinctly stated, the Illinois Appellate Court, Fifth District:

> stands alone among the 50 state judicial systems. The policy Grinnell issued-with a declarations page listing multiple cars, premiums, and coverages separately, and then a clause stating that the limit for one car and one accident is the total available no matter how many vehicles or premiums are shown in the declarations-is the standard autoliability form devised by the Insurance Services Office and is in use across the nation. Defendants did not cite, and we could not find, any decision outside the Fifth District allowing stacking. Plenty of decisions in other states hold that this or similar language forecloses stacking. [citations omitted]. We expect the Supreme Court of Illinois to follow them.

Id. at 1007.

The referenced jurisdictions demonstrate that stacking of bodily injury coverage limits of liability is not generally permitted, and unambiguous anti-stacking provisions bar stacking of liability coverage.

Here, bodily injury limits of liability should not be permitted to be stacked. When the Court considers the policy provisions, the unambiguous provisions do not support stacking.

The few times that Courts have permitted stacking of liability coverages involve unique situations which are not present here.

In *Auto-Owners Ins. Co. v. Anderson*, a policy covered both a tractor and a trailer involved in the same accident. 756 So. 2d 29, 31 (Fla. 2000). The Florida Supreme Court first held that the tractor and trailer should each be considered as a separate covered automobile. *Id.* at 33. The Court then considered whether the policy unambiguously barred stacking the liability coverage limits associated with both the tractor and trailer. *Id.* at 34. The Court held that the liability coverage provision provided that the insurer agreed to pay for damages which involved the insured's automobile, and the tractor and trailer were each considered separate automobiles. *Id.* As there were multiple insured automobiles involved in the same accident, both limits of liabilities applied. Unlike *Anderson*, here, there was only one covered vehicle involved in the accident.

In *Goodman v. Allstate Ins. Co.*, a New York Supreme Court judge considered whether an insured could stack liability coverage provided in two separate policies issued to the same insured by the same insurer, when the insurer insisted upon two policies rather than one. 523 N.Y.S.2d 391, 392 (N.Y. Sup. Ct. 1987). The Court noted that the

insurer required the insured to purchase a separate policy to cover a newly acquired vehicle, depriving the insured of an otherwise available two-car discount. *Id.* at 394. The Court also noted that the purchase of an additional policy did not alter the terms of the original policy, which provided coverage for a newly acquired vehicle. *Id.* As the insured was driving the newly acquired vehicle at the time of the accident, the Court held the insured could recover under both policies. *Id.* at 396. Unlike in *Goodman*, here, there was only one policy and no potential of additional coverage. Furthermore, in *Polland v. Allstate Ins. Co.*, the Supreme Court of New York, Appellate Division barred stacking of coverage in a single policy with multiple vehicles covered by the policy. 25 A.D.2d 16,17-18 (N.Y. App. Div. 1966). *Polland* supports no stacking here and demonstrates why *Goodman* does not apply.

In *Karscig v. McConville*, the Missouri Supreme Court considered whether an insured could stack two separate policy's liability limits. 303 S.W.3d 499, 500 (Mo. 2010). The Missouri statutory scheme mandated certain coverage depending on whether the policy was an operator or owner policy. *Id.* at 502-03. The Court determined that the driver had an operator's policy and the owner had an owner's policy. The Court held each policy's $25,000 liability limits could be stacked, as the relevant statute required each owner's and operator's policy to provide minimum liability of $25,000. *Id.* at 505. Unlike in *Karscig*, here, there is only one policy, and, as will be discussed, the Illinois

statutory scheme supports barring stacking of liability coverages. Furthermore, in *Dutton v. Am. Family Mut. Ins. Co.*, the Missouri Supreme Court barred stacking as to two separate policy's liability limits purchased by the same insured for two separate vehicles as only one vehicle was involved in the accident. 454 S.W.3d 319, 327 (Mo. 2015). *Dutton* supports no stacking liability coverages and demonstrates why *Karscig* does not apply.

Other jurisdictions have considered the statutory scheme difference between uninsured/underinsured coverage and liability coverage to find that stacking of liability coverage is inappropriate.

Stevenson is particularly applicable. The vehicle involved in the accident was insured under a policy which insured four separate vehicles. 15 S.W.3d at 721. Each vehicle was insured with bodily injury liability coverage of $100,000 per person/$300,000 per accident. *Id.* The insurer paid the injured party $100,000 under the liability coverage. *Id.* The injured party filed a declaratory judgment action asserting that the coverages for all four vehicles should be stacked to $400,000 under the liability coverage. *Id.* The liability provision contained a virtually identical anti-stacking provision as found in the Meridian policy. *Id.* The Kentucky Supreme Court noted that it had previously permitted stacking of uninsured motorist coverages contained in separate policies, because the uninsured motorist coverage statute required each policy of automobile liability insurance to provide

minimum limits of uninsured coverage for the protection of persons insured thereunder. *Id.* The Court noted that it extended stacking to uninsured coverage applicable to multiple vehicles insured by one policy. *Id.* The Court declined to extend stacking to bodily injury liability coverage. *Id.* The Court noted that, unlike the statute involved regarding uninsured coverage, the liability insurance statute required minimum liability coverage for the insured *vehicle*. *Id.* at 722 (emphasis added).

Illinois' statutory scheme as to uninsured and bodily injury coverage is similar to Kentucky's in all material respects. *See* Kevin P. Clark and Chris Vanderbeek, When Bodily Injury Limits Are Stacked, Jurisprudential Consistency Topples, 36 S. ILL. U. L.J. 89, 104-05 (2011) (discussing similarities to Illinois' and Kentucky's statutory schemes by comparing Illinois Statute 215 ILCS 5/143(1) with Kentucky Statute Ky. Rev. Stat. § 304.20-020(1), and 625 ILCS 5/7-203 with Ky. Rev. Stat. § 304.39.110(1)(a)(1)).

Likewise, in *Dutton*, the Missouri Supreme Court considered whether two separate policies of insurance purchased by the same individual for two different vehicles could be stacked when only one of the vehicles was involved in an accident. 454 S.W.3d 319, 322 (Mo. 2015). The Court considered the statutory scheme which required a minimum of coverage as a matter of public policy. *Id.* The Court noted that the bodily injury statute concerns what vehicles are covered, not which individuals are covered. *Id.* at 324. The Court held that the

separate policies could not be stacked. *Id.* at 327. The Court distinguished *Karscig*, because in *Karscig*, a second policy applied because the operator did not own the accident vehicle and the statutory scheme required her to be covered for her operation of that non-owned car. *Id.*

In *Ruppe*, the South Carolina Supreme Court has also considered stacking of bodily injury coverage within the statutory scheme. The Court held the policy provisions prohibiting stacking of liability coverage was consistent with statutory insurance requirements regarding liability coverage. 329 S.C. at 406.

As in Kentucky, Missouri and South Carolina, Illinois' liability insurance statute (625 ILCS 5/7-203) requires minimum coverage for the insured vehicle, not an individual. As in *Stevenson*, bodily injury coverages should not be permitted to be stacked as the coverages attach to the vehicle, not the individual.

Here, the Plaintiffs could not reasonably conclude that the liability limit of any vehicle, other than the 2006 Chevrolet Cobalt which was involved in the accident, could possibly provide coverage. There is no reasonable interpretation that the limit of liability associated with the Kia Sportage could apply to the Plaintiffs' claim, as the Kia Sportage was not involved in the accident. There is no reasonable reason as to why the Plaintiffs: (1) would have reviewed the Meridian policy; (2) reviewed any vehicle's limit of liability, other than for the 2006

Chevrolet Cobalt; or (3) conclude that the Kia Sportage, or any other vehicle's limit of liability, could possibly apply. The statutory scheme enacted by the legislature demonstrates that liability coverage attaches to the vehicle, not to the individual. Other jurisdictions support that bodily injury coverage limits of liability may not be stacked. Meridian asks the Court to overrule the Appellate Court's holding and find that the bodily injury limit of liability cannot be stacked.

B. The Declarations are not Ambiguous.

Even if the Court determines that liability coverage limits of liability may be stacked, which Meridian denies, stacking would still be inappropriate, here, as the Declarations are not ambiguous.

The Court in *Bruder v. Country Mutual Insurance Co.* considered whether an insured could stack uninsured motorist coverages listed under a business auto policy. 156 Ill.2d 179, 181 (1993). The policy provided that "[t]he most we will pay for all damages resulting from bodily injury to any one person caused by any one accident is the limit of Bodily Injury shown in the declarations for 'Each person.'" *Id.* at 189. The Court noted the declarations of the business auto policy included reference to two separate trucks for which the policy was issued and for which separate premiums were paid. *Id.* at 191. The Court stated that "[t]he question is whether the meaning of the provision limiting liability is ambiguous in light of that fact." *Id.*

The Court noted that the declarations page consisted of a series of columns. *Bruder*, 156 Ill.2d 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 Court in *Bruder* 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 arrangement 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.*

The Court then, in what has become known as the "*Bruder dicta*," stated:

> It would not be difficult to find an ambiguity created by such a listing of the bodily injury liability limit for each person insured. It could easily be interpreted that an insured should enjoy a total limit $200,000 in coverage because a figure of $100,000 would be shown for each pickup truck. There would be little to suggest in such a listing that the parties intended that coverage was to be limited to that provided for only one of the two pickup trucks. It would be more reasonable to assume that the parties intended that,

> in return for two premiums, two $100,000 coverage amounts were afforded.

Id. at 192. The Court held that such a situation was not present, as the "limit of liability for $100,000 for bodily injury for 'each person' is noted only once on the page." *Id.* The limit was set forth outside and above the column for bodily injury. *Id.* The Court held:

> The declarations page here is subject to only one interpretation which is reasonable. Although two entries are found in the column "PART IV BODILY INJURY" for the premiums paid for each pickup truck, there is only one corresponding amount of liability for bodily injury for each person appearing on the page. That is the $100,000 amount appearing outside and above that column. The only reasonable interpretation is that the policy provides only $100,000 of liability for bodily injury occasioned to each person insured no matter how many vehicles are listed in the column arrangement and no matter how many premiums are paid. The representation of the limit of liability for bodily injury for each person on the declarations page is consistent with the language of the antistacking provision. It is also consistent with the language in the policy that the antistacking provision would apply "regardless of the number of covered autos."

Id. at 193-94.

The Court in *Hobbs v. Hartford Insurance Co. of the Midwest*, in consolidated appeals, determined "whether an insured may 'stack' *i.e.*, aggregate, the limits of liability for underinsured motorist-coverage where multiple vehicles are covered under one policy." 214 Ill.2d 11, 14 (2015). In the first case, the insured carried underinsured motorist coverage for two vehicles under a single policy issued by its insurer in

the amount of $100,000 per person and $300,000 per occurrence. *Id.* at 15. The insured settled claims against the driver of the other vehicle for $50,000 and the insurer tendered a check in the amount of $50,000, as that amount represented the difference between the $100,000 per person underinsured motorist coverage and the settlement. *Id.* The insured maintained that she was entitled to an additional sum, claiming she should be allowed to stack the underinsured motorist coverage for the two vehicles, which would have produced a per person limit of $200,000. *Id.*

The policy contained a limit of liability provision that provided:

> The limit of liability shown in the Declarations for each person for Underinsured Motorists Coverage is our maximum limit of liabilities 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 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 accident.

Id. at 18. The declarations listed the coverages, the limits of liability and the premiums by auto as "COVERAGE IS PROVIDED ONLY WHERE A PREMIUM IS SHOWN FOR THE AUTO AND COVERAGE." *Id.*

In *Hobbs*, after considering *Bruder*, the Court noted the declarations page listed the premiums for the two vehicles separately,

but only listed the relevant limit of liability once. The policy also indicated that the antistacking provision applied regardless of the number of covered vehicles. *Id.* at 21. The Court concluded that there was no ambiguity and the policy's coverage could not be stacked. *Id.* The Court also cautioned against a *per se* rule "that an insurance policy will be deemed ambiguous as to the limits of liability any time the limits are noted more than once on the declarations," instead noting such a decision requires case-by-case review. *Id.* at 26 n.1.

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

The Plaintiffs argued below that there is an ambiguity because the limit of liability is stated more than once within the Declarations. 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.

The 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. Again, the Plaintiffs have never argued that Meridian's interpretation is unreasonable. Likewise, the Plaintiffs have never presented an alternative interpretation. Rather, the Plaintiffs have simply argued that it would not be difficult to find an ambiguity because the limit of liability is

repeated on two separate physical pages. What then, is the ambiguity? There is none.

The anti-stacking provision informs the reader that the limit of liability shown on 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 provides that "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE" and lists "Auto 2" with 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 from an accident involving the Chevrolet Cobalt is $100,000 per person and $300,000 per accident. The anti-stacking provision clearly limits the maximum liability regardless of the number of vehicles or premiums shown in the Declarations.

The Appellate Court held that "because the relevant bodily injury liability limits of $100,000 per person and $300,000 per accident are listed twice on the declarations pages, and the antistacking clause refers the reader to the declarations for the applicable liability limits, such limits are to be stacked twice, for total limits of $200,000 per person and $600,000 per accident." *Hess v. State Auto Insurance Companies*, 2019 IL App (5th) 180220, ¶ 20. The Appellate Court's

holding requires finding that the coverage of the Chevrolet Cobalt may be stacked with the coverage of the Kia Sportage, listed as "Auto 4."[6] Such an interpretation requires that there is a *per se* rule that listing multiple limits of liability creates an ambiguity. Yet in *Hobbs*, this Court explicitly cautioned against such a *per se* rule to determine whether an ambiguity exists regarding a limit of liability. 215 Ill.2d at 26 n.1. In *Striplin v. Allstate Ins. Co.*, the Appellate Court, Second District, also expressly rejected such an argument, holding "we cannot accept a *per se* rule that any listing of multiple limits of liability creates an ambiguity." 347 Ill.App.3d 700, 703 (2d Dist. 2004). In *Profitt v. OneBeacon Ins.*, the Appellate Court, Fifth District, rejected the argument that the mere existence of two declarations pages made the amount of coverage ambiguous because the limits of liability were listed once on each page. 363 Ill.App.3d 959, 963 (5th Dist. 2006).

Rather, the appropriate test is whether the two physical pages of the Declarations create a reasonable alternative interpretation. Here, there is only one reasonable interpretation, which is the limit of liability may not be stacked, regardless of the number of vehicles or premiums shown in the Declarations.

This conclusion is further demonstrated as liability coverage attaches to the vehicle, not the individual. *Kopier v. Harlow*, 291

[6] As cited, *supra*, an overwhelming majority of jurisdictions outside of Illinois hold that bodily injury coverage may never be stacked.

Ill.App.3d 139, 142 (2d Dist. 1997); *West v. Am. Std. Ins. Co.*, 2011 IL App (1st) 101274, ¶ 10. Contrary to *Bruder* and *Hobbs*, there is no possibility of a reasonable alternative interpretation as to the limit of liability of the bodily injury coverage of the 2006 Chevrolet Cobalt. Here, the 2006 Chevrolet Cobalt is listed as "Auto 2" on the insured's Declarations. Assuming the Plaintiffs would even have reason to read the insured's policy, there is no reason for the Plaintiffs to look at a limit of liability associated with any other vehicle. It is not reasonable for the Plaintiffs to conclude that any other vehicle, including the Kia Sportage, listed as "Auto 4" and located on a separate physical page of the Declarations, would apply to the accident involving the Chevrolet Cobalt. If the Plaintiffs had no reason to consider any other covered vehicle, there is no reasonable interpretation as to whether any other liability limit that is listed could possibly apply.

Following the accident, the Plaintiffs only needed to consider the bodily injury limit of liability listed for the 2006 Chevrolet Cobalt. The column, as articulated, *supra*, includes a premium for "Auto 2" to demonstrate that the limit of liability for bodily injury is $100,000 per person and $300,000 per accident. There is no valid basis for the Plaintiffs to have looked at any other vehicle, including the separate page of the Declarations that lists the Kia Sportage as "Auto 4." As such, there is no reasonable alternative interpretation of the policy

because the limit of liability for the 2006 Chevrolet Cobalt is only listed once.

A Court's "primary objective is to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Hobbs*, 214 Ill.2d at 17. "If the policy language is unambiguous, the policy will be applied as written, unless it contravenes public policy." *Id.* Here, there is no ambiguity and the only reasonable interpretation is that the limit of liability is $100,000 per person and $300,000 per accident.

2. The Table in the Declarations is not Ambiguous.

The Plaintiffs argued below that the Declarations table is ambiguous. This argument is meritless. This Court has already expressly ruled on and approved the same format used in the Declarations in *Bruder v. Country Mut. Ins. Co.*, 156 Ill.2d 179, 191 (1993). The Plaintiffs claimed that the difference here is that there are multiple pages of declarations with multiple limits and statements of coverage.

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 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.*

As in *Bruder*, there is no ambiguity in the Declarations. The Declarations track the precise format this Court expressly approved in *Bruder*.

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

The Plaintiffs argued below that the Declarations list the limit of liability for uninsured and underinsured coverage differently than the limit of liability for "bodily injury." There is no authority to support that such a listing creates an ambiguity.

The proper test is to determine whether there is an ambiguity in the Declarations. If there is a reasonable interpretation that the "bodily injury" limit of liability may be stacked, then that ambiguity will be

resolved in favor of the insured. Yet, here, there is no ambiguity. The Plaintiffs have never presented an alternative interpretation, let alone a reasonable alternative interpretation. There is only one reasonable interpretation of the policy. The "bodily injury" limit of liability for the Chevrolet Cobalt is $100,000 per person and $300,000 per accident, and the limit may not be stacked, regardless of the number of vehicles or premiums listed in the Declarations.

C. It is Clear that the Amended Declarations and the Second Amended Declarations do not Apply.

The Plaintiffs argued below that there are multiple Declarations with limits of liability due to two separate amended Declarations. There is no dispute that the amended Declarations and the second amended Declarations were not in existence at the time of the accident.

The Plaintiffs' argument is essentially that, because the certified policy contains an amended Declarations and a second amended Declarations, the limit of liability listed on those pages should be stacked twice to double and triple the limit of liability listed in the Declarations.

In *Profitt v. OneBeacon Ins.*, the Appellate Court, Fifth District, rejected such an argument. 363 Ill.App.3d 959, 963 (5th Dist. 2006). The claimant in *Profitt* alleged that the existence of two declarations pages permitted stacking of policy limits. *Id.* at 960. The claimant had a renewal policy which covered three vehicles. *Id.* Prior to the accident,

the claimant asked the insurer to cover a new vehicle and remove a separate vehicle from the policy. *Id.* The insurer issued another declarations page, which noted that it was a "change endorsement" effective on June 26, 2001, resulting from a vehicle substitution. *Id.* The limits of liability set forth in the amended declarations page were the same as in the renewal policy. *Id.* The insurer provided both declarations and certified the policy to be accurate on the date of the accident. *Id.* The Court rejected the claimant's argument that the mere existence of two declarations pages made the amount of coverage ambiguous because the limits of liability were listed once on each page. *Id.* at 963. The policy declarations were subject to only one reasonable interpretation. *Id.* The first page was issued with a renewal policy, and the subsequently issued declarations page expressly provided that it was a change endorsement resulting from the substitution of vehicles, which the insured had requested. *Id.* The Court noted that the limits of liability are listed only one time on each page and that they were identical, and that the limits were not listed separately for each vehicle covered under the policy. *Id.* The Court held that:

> No reasonable person would understand this policy to provide double bodily injury liability limits under these facts. The circumstances presented here are not subject to the interpretation urged by [the claimant], and we will not look for an ambiguity where none exists, especially where that interpretation would require us to completely disregard the unambiguous antistacking provision and clear intention of the parties.

Id. at 964.

Profitt is directly on point. Just as in *Profitt*, here, the policy at issue was a renewal policy. Just as in *Profitt*, there is no dispute that the insured requested an amendment to the policy on April 18, 2015, the day after the accident, and requested an additional amendment to the policy which took effect on June 23, 2015. Both the amended Declarations and the second amended Declarations unambiguously and expressly provide that the Declarations were amended to remove vehicles from coverage. As in *Profitt*, no reasonable person would understand the policy to provide double or triple bodily injury liability limits under these facts.

CONCLUSION

For the aforementioned reasons, this Court should reverse the Appellate Court's ruling modifying the circuit court's judgment to stack the limit of liability twice as the policy clearly and unambiguous prevents stacking of limits of liability. The Court should enter judgment for Meridian Security Insurance Company and tax costs against the Plaintiffs.

Respectfully submitted:

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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 10,745 words.

/s/ Robert Marc Chemers
Robert Marc Chemers

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APPENDIX

Appendix

078274.0347 (207) RMC:vkc

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT
FRANKLIN COUNTY, 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,	)	**FILED** **Franklin Co. Circuit Court** **2nd Judicial Circuit** **Date: 4/6/2018 10:30 AM** **Jim Muir**
Plaintiffs,	)	
v.	)	**No. 16 L 25**
THE ESTATE OF TJAY KLAMM and STATE AUTO INSURANCE COMPANIES, d/b/a MERIDIAN SECURITY INSURANCE COMPANY,	)	
Defendants.	)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Defendant, MERIDIAN SECURITY INSURANCE COMPANY, by its attorney, ROBERT MARC CHEMERS of PRETZEL & STOUFFER, CHARTERED, appeals to the Appellate Court of Illinois, Fifth Judicial District, from the judgment of the Circuit Court entered on March 14, 2018 and the order of April 5, 2018, which rendered the aforesaid judgment final and appealable pursuant to Supreme Court Rule 304(a).

A-1

In the Appellate Court of Illinois, the Defendant-Appellant, MERIDIAN SECURITY INSURANCE COMPANY, shall pray that the aforesaid judgment be reversed and that judgment be entered in the Appellate Court of Illinois for the Defendant-Appellant. In the alternative, the Defendant-Appellant, MERIDIAN SECURITY INSURANCE COMPANY, shall pray that the aforesaid judgment be reversed and that the cause be remanded to the Circuit Court for the entry of judgment. In the further alternative, the Defendant-Appellant, MERIDIAN SECURITY INSURANCE COMPANY, shall pray that the aforesaid judgment be reversed and that the cause be remanded for further proceedings. In the further alternative, the Defendant-Appellant, MERIDIAN SECURITY INSURANCE COMPANY, shall pray that the aforesaid judgment be reversed and that it be granted such other and further relief as the Court deems fit and proper under the circumstances.

Respectfully submitted:

PRETZEL & STOUFFER, CHARTERED

BY: _____
Robert Marc Chemers

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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, 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,	)	
v.	)	**No. 16 L 25**
THE ESTATE OF TJAY KLAMM and STATE AUTO INSURANCE COMPANIES, d/b/a MERIDIAN SECURITY INSURANCE COMPANY,	)	
Defendants.	)	

NOTICE OF FILING

TO: All Counsel of Record
(See Attached Service List)

PLEASE TAKE NOTICE that on the **6th** day of **April, 2018**, we have filed with the Clerk of the Circuit Court of Franklin County, Illinois, **Defendant Meridian Security Insurance Company's Notice of Appeal.**

PRETZEL & STOUFFER, CHARTERED

By:_____
Robert Marc Chemers

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Attorney for Defendant

The undersigned hereby certifies that under penalties of perjury as provided by law pursuant to 735 ILCS § 5/1-109, that this notice and the attached pleadings were served upon counsel and/or party of record on the **6th** day of **April, 2018** by the following method:

_____	delivered by messenger
_____	delivered by UPS Next Day Air
X	delivered by first class U.S. Mail
X	delivered by e-mail
_____	delivered Certified Mail Return Receipt Requested
_____	delivered by facsimile transmission

Victoria K. Cox

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2019 IL App (5th) 180220

NO. 5-18-0220

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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,	)	Appeal from the Circuit Court of Franklin County.
Plaintiffs-Appellees,	)	
v.	)	No. 16-L-25
THE ESTATE OF TJAY KLAMM and STATE AUTO INSURANCE COMPANIES, d/b/a Meridian Security Insurance Company,	)	
Defendants	)	
(State Auto Insurance Companies, d/b/a Meridian Security Insurance Company, Defendant-Appellant).	)	Honorable Eric J. Dirnbeck, Judge, presiding.

JUSTICE MOORE delivered the judgment of the court, with opinion.
Justices Welch and Chapman concurred in the judgment and opinion.

OPINION

¶ 1 The defendant, State Auto Insurance Companies d/b/a Meridian Security Insurance Company (Meridian), appeals from the March 14, 2018, order of the circuit court of Franklin County, which granted the cross-motion for summary judgment filed by the plaintiffs, 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. In granting the plaintiffs' motion, the circuit court issued a declaratory judgment that Meridian, as an insurer of the defendant, the estate of TJay Klamm, had the duty to stack the bodily injury liability limits of a policy covering four automobiles as a result of an automobile collision in which Klamm was involved when driving one of the four automobiles, resulting in coverage for the collision in the amount of $400,000 per person and $1.2 million per accident. The March 14, 2018, order also effectively denied Meridian's motion for judgment on the pleadings. For the reasons that follow, we modify the judgment, finding coverage in the amount of $200,000 per person and $600,000 per accident.

¶ 2 FACTS

¶ 3 The facts necessary to our disposition of this appeal follow. On April 18, 2017, the plaintiffs filed their second amended complaint and jury demand (the complaint), which is the pleading at issue in this appeal. Therein, of relevance to this appeal, the plaintiffs assert several causes of action, sounding in tort, against Klamm, all resulting from an automobile accident that (1) occurred on April 17, 2015, on Illinois Route 148 near the boundary between Franklin County and Jefferson County; (2) resulted in the deaths of the plaintiffs, Richard Kiselewski and Sierra Hess, as well as defendant Klamm, and in serious injuries to the plaintiff, Meadow Hess; and (3) was alleged by the plaintiffs to have been proximately caused by the "careless and negligent acts or omissions" of Klamm while driving a 2006 Chevrolet Cobalt.

¶ 4 Counts VII, VIII, and IX of the complaint contain requests for declaratory judgments in favor of each of the plaintiffs and against Meridian regarding coverage for the accident on a policy issued by Meridian on the 2006 Chevrolet Cobalt driven by Klamm at the time of the accident. These requests for declaratory judgments allege that there is an ambiguity in the policy

as to whether the liability limits on the Cobalt can be stacked with the liabilitiy limits for the three other vehicles listed in the policy. Thus, the plaintiffs request that the circuit court declare the ambiguity to be resolved against Meridian and that the $100,000 per person and $300,000 per accident liability limit on each vehicle be stacked to provide coverage in the amount of $400,000 per person and $1.2 million per accident.

¶ 5 Exhibit D to the complaint is a certified copy of the Meridian policy at issue and effective at the time of the accident. The certification states the policy fairly and accurately represents the policy at issue "as it would have appeared on [the date of the accident]." The policy contains three pages of declarations, which, for sake of clarity, are contained in an appendix to this opinion. Each page of the declarations contains the same headings, with the insurance company name, policy number, policy period, named insured and address, and agent at the top. Below these headings, the first page of the declarations begins by listing the "VEHICLES COVERED": (1) 2002 Ford F-150, (2) 2006 Chevrolet Cobalt LT (the vehicle involved in the accident at issue), and (3) 2000 Ford Mustang. Under this listing of vehicles, the first declarations page states, "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE." Immediately below this statement, coverages, limits of liability, and premiums are listed, in relevant part, as follows: [1]

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	$100,000	56.00 61.00 57.00

[1]The formatting on our examples is not exact. Please refer to the copy of the policy's declarations pages included in this opinion's appendix for an exact replica.

DAMAGE	EACH ACCIDENT	
B MEDICAL PAYMENTS	$10,000 EACH PERSON	19.00 26.00 24.00
C UNINSURED MOTORISTS/UNDERINSURED MOTORISTS BODILY INJURY	(SEE BELOW)	

¶ 6 Below the above-stated information, the first page of the declarations lists, in similar fashion, the coverage, limits of liability, and premiums for comprehensive and collision damage, along with deductibles, transportation expenses, and towing for autos one, two, and three, with the "TOTAL BY AUTO" listed under the "PREMIUMS" column. Following this, the first page of the declarations contains a statement of discounts that have been applied to the policy.

¶ 7 The second page of the declarations contains the same headings as the first and the same format. Under the headings, it again lists "VEHICLES COVERED": (4) 2014 KIA Sportage. Under this, the second page again states "COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE." Immediately under this statement, coverages, limits of liability, and premiums are listed, in relevant part, as follows:

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)	

¶ 8 As on the first page, below the above-stated information, the second page of the declarations lists, in similar fashion, the coverage, limits of liability, and premiums for

comprehensive and collision damage, along with deductibles, transportation expenses, and towing, for Auto 4, with the "TOTAL BY AUTO" listed under the "PREMIUMS" column. Under this information, the following is set forth:

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

BODILY INJURY $100,000 EACH PERSON

$300,000 EACH ACCIDENT

PREMIUM: $88.00"

¶ 9 Directly below the box described above, the second page lists the "TOTAL TERM PREMIUM," which equals the sum of the amounts shown as "TOTAL BY AUTO," for the three vehicles listed on the first page of the declarations and the second page of the declarations, plus the premium shown for uninsured/underinsured coverage. Below this, the second page of the declarations sets forth, exactly as the first, the discounts that apply to the policy. Immediately thereafter, there is other information regarding the insured driver of the vehicles and a list of forms and the automobile to which they apply. On the third page of the declarations, there is a list of lienholders for each vehicle. The bottom right corner of pages one and two of the declarations states, "*****CONTINUED ON NEXT PAGE*******." The bottom right corner of page three of the declarations states, "**********PAGE 3 (LAST PAGE)."

¶ 10 The policy contained in Exhibit D, as certified by Meridian, contains two other declaration pages, entitled "amendments to the declarations." The first of these amends the policy effective April 18, 2015, and deletes auto two, which was involved in the accident at issue. The second amends the policy effective June 23, 2015, and deletes auto three. Under a section of the policy entitled, "PART A - LIABILITY COVERAGE," there is a section entitled "LIMIT OF LIABILITY," which states as follows:

"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 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.

***

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."

¶ 11 On May 25, 2017, Meridian filed its answer to the complaint and counterclaim for declaratory judgment. In its counterclaim, Meridian asked the court to declare that the policy is unambiguous and prohibits stacking of the limits for bodily injury liability, making the applicable limits for the accident $100,000 per person and $300,000 per accident. On June 22, 2017, Meridian filed a motion for a judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure. 735 ILCS 5/2-615(e) (West 2016). On July 25, 2017, the plaintiffs filed a cross-motion for summary judgment as to the declaratory judgment counts of their complaint. On August 28, 2017, the circuit court held a hearing on the cross-motions.

¶ 12 On March 14, 2018, the circuit court entered a judgment order finding coverage limits to be stacked at $400,000 per person and $1.2 million per accident. On March 23, 2018, Meridian filed a motion for a finding, pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016),

that there is no just reason to delay an appeal from the judgment order, which the circuit court granted on April 5, 2018. Meridian filed a timely notice of appeal on April 6, 2018.

¶ 13 ANALYSIS

¶ 14 "In an appeal from the grant of a summary judgment, we conduct a *de novo* review." *Cherry v. Elephant Insurance Co.*, 2018 IL App (5th) 170072, ¶ 10 (citing *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 390 (1993)). "The construction of an insurance policy is a question of law and is an appropriate subject for disposition by way of a summary judgment." *Id.* "An insurance policy is a contract, and the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies." *Id.* ¶ 11 (citing *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005)). "In general, antistacking clauses do not contravene public policy." *Id.* (citing *Grzeszczak v. Illinois Farmers Insurance Co.*, 168 Ill. 2d 216, 229 (1995)).

¶ 15 "Where the terms of a policy are clear and unambiguous, the language used will be given its plain meaning; however, if a provision is subject to more than one reasonable interpretation, it is ambiguous and should be construed against the insurer and in favor of the insured." *Id.* ¶ 12. "In determining whether an ambiguity exists, all of the provisions in an insurance contract should be read together." *Id.* ¶ 13 (citing *Glidden v. Farmers Automobile Insurance Ass'n*, 57 Ill. 2d 330, 336 (1974)). "Reasonableness is the key, and the touchstone is whether the provision is subject to more than one reasonable interpretation, not whether creative possibilities can be suggested." *Id.* (citing *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 193 (1993)).

¶ 16 Our supreme court has twice considered antistacking clauses identical to the one set forth in the policy at issue in light of the coverages listed on the policy's declarations page. First, in *Bruder*, "[t]he court held that there was no ambiguity when the antistacking clause was read in conjunction with the declarations page because the limit of the bodily injury for 'each person'

*** was set forth only once on the declarations page, despite listing two vehicles." *Id.* ¶ 15 (citing *Bruder*, 156 Ill. 2d at 193-94). However, in what has come to be called the "*Bruder dicta*," the court noted that multiple printings on a declarations page of policy limits for various covered automobilies could create an ambiguity. *Bruder*, 156 Ill. 2d at 192.

¶ 17 In *Hobbs*, the court read the same antistacking provision in conjunction with a declarations page that limited the premiums for two vehicles separately "but, importantly, list[ed] the relevant limit of liability only once." *Hobbs*, 214 Ill. 2d at 21. As this court set forth in *Cherry*, the *Hobbs* court, making reference to the "*Bruder dicta*," "noted that listing multiple numerical limits on the policy's declaration page does not *per se* result in aggregation, and variances in policy language 'frequently require case-by-case review.' " *Cherry*, 2018 IL App (5th) 170072, ¶ 17 (quoting *Hobbs*, 214 Ill. 2d at 26 n.1). "However, the court reiterated its statement in *Bruder* that 'where the antistacking clause limits liability to the limit shown on the declarations page, and the declarations page lists the limit of liabililty twice, it would not be difficult to find an ambiguity.' " *Id.* (quoting *Hobbs*, 214 Ill. 2d at 25, citing *Bruder*, 156 Ill. 2d at 192).

¶ 18 Since the supreme court's decision in *Hobbs*, this court has had several occasions to consider whether insurance policies containing similar to identical antistacking clauses were ambiguous when compared to the declarations page of such policies. See *Profitt v. OneBeacon Insurance*, 363 Ill. App. 3d 959 (2006); *Johnson v. Davis*, 377 Ill. App. 3d 602 (2007); *Cherry*, 2018 IL App (5th) 170072.[2] In *Profitt*, this court considered whether an insurance company's

[2]Because of antistacking clauses that are markedly different than those in the instant case, or construction of antistacking language between multiple policies, rather than within a single policy as in the instant case, we find little relevancy in the following cases that otherwise might appear relevant: *In re Estate of Striplin*, 347 Ill. App. 3d 700 (2004); *Hanson v. Lumley Trucking, LLC*, 403 Ill. App. 3d 445 (2010); *State Farm Mutual Automobile Insurance Co. v. McFadden*, 2012 IL App (2d) 120272; *Busch v. Country Financial Insurance Co.*, 2018 IL App (5th) 140621; *Barlow v. State Farm Mutual Automobile*

inclusion of two declarations pages in its certified copy of the policy, with the limits of liability listed once per page, created an ambiguity. *Profitt*, 363 Ill. App. 3d at 962. We found that it did not, as the first declarations page was issued with the policy, and the second page expressly provided that it was a change endorsement resulting from the substitution of vehicles. *Id.* at 963. *Profitt* was not a case where limits of liability were listed separately for each vehicle covered under the policy and thus did not fit within the ambit of the "*Bruder dicta*."

¶ 19 In *Johnson*, there was an antistacking clause virtually identical to the one in the instant case, and the relevant limits of liability were listed four times, once for each vehicle on the declarations pages of the policy, which encompassed the first three pages of the policy. *Johnson*, 377 Ill. App. 3d at 603. Based on the "*Bruder dicta*," we found an ambiguity, construed that ambiguity in favor of the insured, and stacked the coverages four times. *Id.* at 610. Most recently in *Cherry*, we construed another identical antistacking clause in favor of the insured, stacking the relevant coverage four times, where the declarations page listed the relevant coverage under four different vehicles. *Cherry*, 2018 IL App (5th) 170072, ¶ 20.

¶ 20 In the instant case, we are again asked to construe an identical antistacking provision, which limits liability to that shown on the declarations pages. The relevant limits of liability, which are for bodily injury at $100,000 per person and $300,000 per accident, are listed twice on the three pages of declarations. They are listed once on page one, under a listing of the first three vehicles covered by the policy, including the vehicle involved in the accident at issue. They are listed again on page two, under the fourth vehicle covered by the policy. While Meridian argues that such formatting is necessitated by the number of covered vehicles on the policy, which requires the fourth vehicle to be listed on a second declarations page, we are not persuaded,

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Insurance Co., 2018 IL App (5th) 170484. In addition, we do not discuss our decision in *Progressive Premier Insurance Co. of Illinois v. Kocher*, 402 Ill. App. 3d 756 (2010), as that case involved stacking of coverage for two vehicles that were both involved in the same accident.

based on our prior precedent set forth above, that this explanation serves to solve the ambiguity recognized in the "*Bruder dicta*." This is especially true when comparing the listing for uninsured and underinsured limits on the declarations pages with the listing for the liability limits. In the case of the uninsured and underinsured limits, the listing under the first three covered vehicles directs the reader to "SEE BELOW," and the listing on page two, after all covered vehicles are listed, specifically indicates that $100,000 per person and $300,000 per accident is the "TOTAL LIMIT FOR ALL VEHICLES COVERED UNDER THIS POLICY." For these reasons, we find that, because the relevant bodily injury liability limits of $100,000 per person and $300,000 per accident are listed twice on the declarations pages, and the antistacking clause refers the reader to the declarations for the applicable liability limits, such limits are to be stacked twice, for total limits of $200,000 per person and $600,000 per accident.

¶ 21 Despite the foregoing, the circuit court entered a declaratory judgment finding the bodily injury liability limits of $100,000 per person and $300,000 per accident are to be stacked four times, for total limits of $400,000 per person and $1.2 million per accident. The circuit court's order includes no reasoning behind its finding. However, in their submissions to the circuit court and on appeal, as well as in oral argument before the circuit court, the plaintiffs pointed to the two other declaration pages included with the certified copy of the policy, entitled "amendments to the declarations." The first amends the policy effective April 18, 2015, and deletes auto two, which was involved in the accident at issue. The second amends the policy effective June 23, 2015, and deletes auto three. The plaintiffs cite this court's decision in *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, as authority for the proposition that these declarations pages should be considered as part of the policy on the date of the accident because they were certified as such. We reject this proposition. Our decision in *Miller* was completely unrelated to the issue of stacking and wholly inapposite to the case at bar. While a part of the

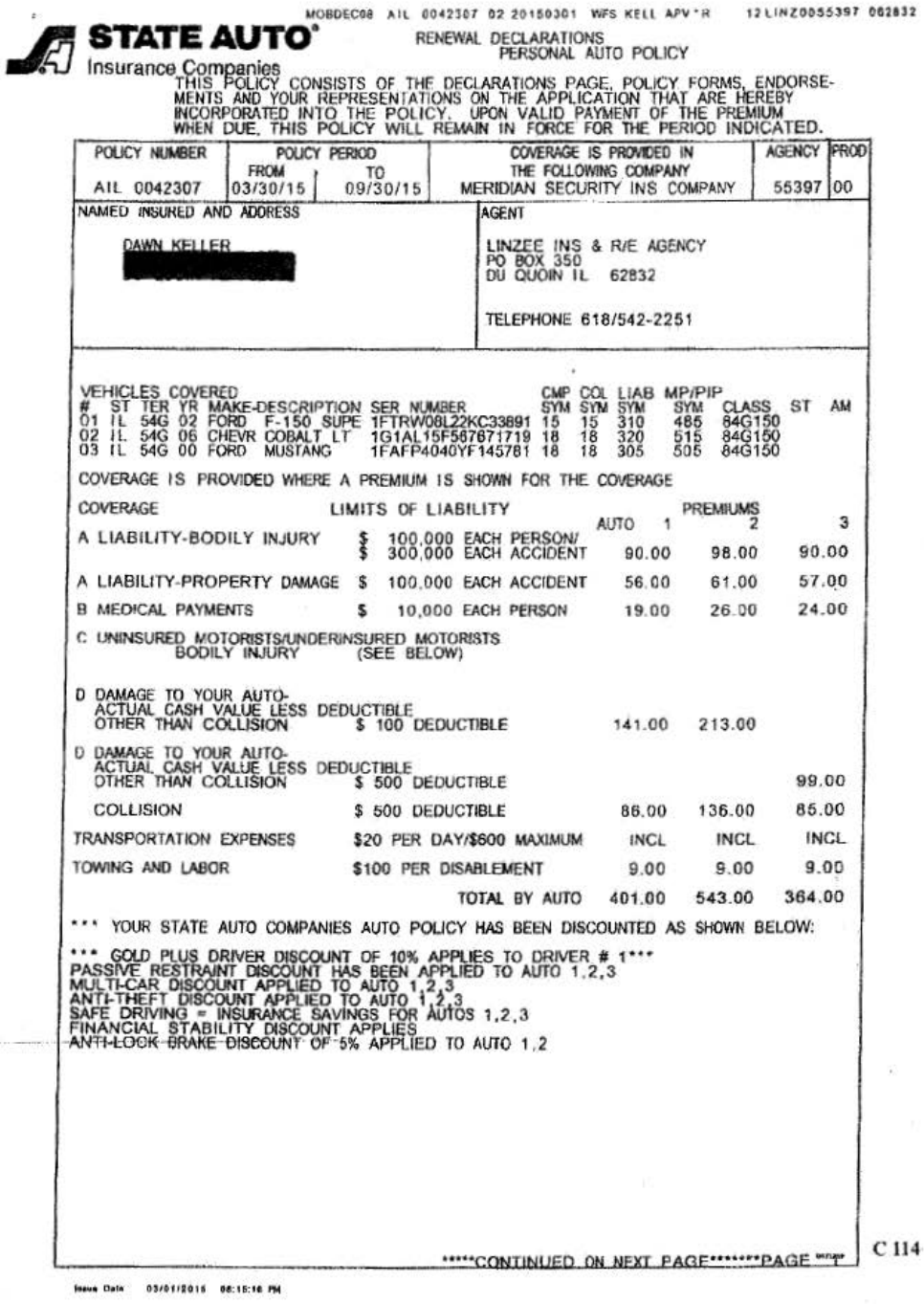
policy certified by Meridian to be in effect on the date of accident, these declarations are clearly postaccident amendments to the policy. On the contrary, we find this scenario more analogous to our decision in *Profitt*, where we found no ambiguity where extra declarations pages in the certified copy of the policy were clearly inapplicable. *Profitt*, 363 Ill. App. 3d at 963. There is nothing in our decision in *Miller* to warrant additional stacking of bodily injury limits based on amendments to the declarations that were clearly made postaccident. For these reasons, we modify the circuit court's order that declared that the plaintiffs are entitled to total coverage of $400,000 per person and $1.2 million per accident. The modified judgment declares that the plaintiffs are entitled to a total coverage of $200,000 per person and $600,000 per accident.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we modify the judgment, finding coverage in the amount of $200,000 per person and $600,000 per accident.

¶ 24 Affirmed as modified.

¶ 25 APPENDIX



MOBDEC08 AIL 0042307 02 20150301 WFS KELL APV R 12 LINZ0055397 062832

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
[redacted]

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	85.00
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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Issue Date 03/01/2015 08:15:16 PM

MOBDEC08 AIL 0042307 02 20150301 WFS KELL APV *R 12 LIN20055397 062832

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
[redacted]

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: $88.00

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 4	OCC.	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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Issue Date 03/01/2015 08:16:16 PM

MOBDEC08 AIL 0042307 02 20150301 WFS KELL APV *R 12LINZ0055397 052832

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
[redacted]

AGENT

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

TELEPHONE 618/542-2251

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.

POLICY PERIOD 12:01 AM STANDARD TIME

03/01/15
DATE

C 116

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

Issue Date 03/01/2015 06:15:16 PM

2019 IL App (5th) 180220
NO. 5-18-0220
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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. THE ESTATE OF TJAY KLAMM and STATE AUTO INSURANCE COMPANIES, d/b/a Meridian Security Insurance Company, Defendants (State Auto Insurance Companies, d/b/a Meridian Security Insurance Company, Defendant-Appellant).	)	Appeal from the Circuit Court of Franklin County. No. 16-L-25 Honorable Eric J. Dirnbeck, Judge, presiding.

Opinion Filed: February 11, 2019

Justices: Honorable James R. Moore, J.

Honorable Thomas M. Welch, J., and Honorable Melissa A. Chapman, J., Concur

Attorneys for Appellant Robert Marc Chemers, Jonathan L. Federman, Pretzel & Stouffer, Chartered, One South Wacker Drive, Suite 2500, Chicago, IL 60606

Attorney for Appellees Paul J. Schafer, Winters, Brewster, Crosby & Schafer, 111 West Main Street, P.O. Box 700, Marion, IL 62959

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS

HESS, LORETTA	)	
Plaintiff/Petitioner	)	Appellate Court No: 05-18-0220
	)	Circuit Court No: 2016L25
	)	Trial Judge: ERIC DIRNBECK
v	)	
	)	
	)	
KLAMM, TJAY ET AL	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 2

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS

HESS, LORETTA	)	
Plaintiff/Petitioner	)	Appellate Court No: 05-18-0220
	)	Circuit Court No: 2016L25
	)	Trial Judge: ERIC DIRNBECK
v	)	
	)	
	)	
KLAMM, TJAY ET AL	)	
Defendant/Respondent	)	

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 2

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS

HESS, LORETTA	)	
Plaintiff/Petitioner	)	Appellate Court No: 05-18-0220
	)	Circuit Court No: 2016L25
	)	Trial Judge: ERIC DIRNBECK
v	)	
	)	
	)	E-FILED Transaction ID: 5-18-0220 File Date: 4/19/2018 3:00 PM John J. Flood, Clerk of the Court APPELLATE COURT 5TH DISTRICT
KLAMM, TJAY ET AL	)	
Defendant/Respondent	)	

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

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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 July 10, 2019, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix 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

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Winters, Brewster, Crosby and Schafer LLC
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Marion, Illinois 62959
Phone: (618) 997-5611
Fax: (618) 997-6522
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(Counsel for Loretta Hess, as Guardian of the Estate of Meadow Hess)

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

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Fax: (618) 997-6559
Email: jableyer@bleyerlaw.com
(Counsel for Dawn Keller)