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The Meaning, Scope and Validity of the Other Insurance Provisions Which Apply to the Uninsured Motorist Endorsement

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INTRODUCTION

The "Other Insurance" clause of an Uninsured Motorist endorsement is a reduction provision similar to the provisions for reductions due to receipt of workmen's compensation benefits or medical payment benefits. Its purpose, as reflected in the policy language and limits, is to limit the insured's recovery in an uninsured motorist situation to the recovery of a sum equal to the minimum financial responsibility limits of that state. That purpose has been secured in a majority of jurisdictions. However, a strong minority of jurisdictions has rejected that purpose as repugnant to Uninsured Motorist legislation.

In jurisdictions where these policy provisions have not been considered, ample precedent exists for each side to bolster its arguments for or against limiting recovery. This paper is a collation of that precedent. In the jurisdictions where a final determination has been reached in regard to the pertinent policy provisions, the way is open for creative policy revision by the insurance industry or legislative amendment to allow attainment of the limitation.

The policy provisions regarding "Other Insurance" are as follows: [taken from the 1963 Countrywide Endorsement; a comparison of the various provisions is provided in Appendix A]

> Other Insurance: With respect to bodily injury to an insured while occupying an automobile not owned by the named insured this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.
>
> Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

While variances in policy language prevent airtight classification, the problems involving the "Other Insurance" provisions can be separated into two groups:

1. Where the claimant is an insured under clause II (a) (1) of the Uninsured Motorist endorsement as a named insured or additional insured, and also is an insured under clause II (a)

(2) of another policy providing uninsured motorist coverage as an occupant of an insured vehicle.

2. Where the claimant is an insured under clause II (a) (1) of a Uninsured Motorist endorsement as a named insured or additional insured in two or more policies providing uninsured motorist protection.

This paper will thus be organized into two sections around those groups. Within each section majority and minority positions will be analyzed separately, and within those positions each jurisdiction will be treated separately.

When considering the "Other Insurance" question it must be kept in mind that "Other Insurance" clauses are not found exclusively in Uninsured Motorist endorsements. Such clauses are prevalent in all insurance policies. While an analysis of the existing law in each jurisdiction as to "Other Insurance" clauses in non-uninsured motorist situations is beyond the scope of this article, that law must be researched before an attempt is made to construe the Uninsured Motorist "Other Insurance" clause in a particular fact situation.

I. Case I: Where the Claimant Is an Insured Under Clause II (a) (1) of the Uninsured Motorist Endorsement as a Named Insured or Additional Insured, and also Is an Insured Under Clause II (a) (2) of Another Policy Providing Uninsured Motorist Coverage as an Occupant of an Insured Vehicle.

The usual case involves an injured party who is a passenger in an automobile covered by an Uninsured Motorist endorsement, and the passenger also has Uninsured Motorist coverage on his own automobile.

Paragraph 1 of the "Other Insurance" clause of both policies will probably provide that:

> With regard to bodily injury to an insured *while occupying an automobile not owned* by the principal named insured, the insurance under this endorsement *shall apply only as excess insurance* over any other similar insurance available to such insured *and applicable to such automobile as primary insurance,* and this insurance shall then apply only in the amount by which the limit liability for this coverage exceeds the sum of the applicable limits of liability of such other insurance. (Emphasis added.)

The first section of this clause is the excess clause, which limits liability to situations where the primary coverage has been completely exhausted; the second section is the escape clause, by which the company will avoid any liability even where the primary coverage is exhausted unless its coverage limit exceeds the limits of the primary coverage. Thus, the clause is known as an "excess-escape" clause.

In actuality the clause is almost always an escape clause. The limits of Uninsured Motorist coverage are generally the same as the limits imposed by the financial responsibility laws. Thus, both the host and

the guest, if from the same state, *will* have the same Uninsured Motorist coverage limits, and the second section in the guest's own policy will relieve his own insurer of liability.[1] The excess-escape clause therefore merely works to provide recovery only under the host's policy, and works no hardship on the guest-insured. Of course, where there are several injured parties or where the guest-insured's damages exceed the host's Uninsured Motorist limits, the possibility of reduced recovery exists. However, that same possibility is present where the negligent party carries liability insurance.

The majority of jurisdictions where the "Other Insurance" clause has been the subject of litigation have held that the clause is clear, unambiguous, and therefore enforceable. The leading case on this point is *Burcham v. Farmers Insurance Exchange.*[2] Here the insured-passenger settled with the host's carrier under its Uninsured Motorist endorsement and then proceeded against his father's insurer under three policies containing the 1956 Uninsured Motorist endorsement. In upholding the defendant's contention that the first paragraph of the "Other Insurance" clause creates an excess-escape clause the court said:

> Under this construction plaintiff is entitled to all it was contracted that he should receive . . . . It is clear the companies intended to sell less coverage and the insureds to buy less coverage, "while occupying an automobile not owned by a named insured."[3]

This view of the "Other Insurance" clause as an excess-escape clause has been followed in eleven jurisdictions.[4] Whether the Unin-

[1] *See* Appendix, *infra* at p. 409.
[2] 255 Ia. 69, 121 N.W.2d 500 (1963).
[3] *Id.* at ——, 121 N.W.2d at 503.
[4] Harris v. Southern Farm Bureau Casualty Insurance Co., 448 S.W.2d 652 (Ark. 1970); M.F.A. Mutual Insurance Company v. Wallace, 245 Ark. 230, 431 S.W.2d 742 (1968); Pinkus v. Southern Farm Bureau Casualty Insurance Co., 292 F. Supp. 141 (E.D. Ark. 1968); State Farm Automobile Insurance Company v. De La Cruz, 283 Ala. 711, 214 So. 2d 909 (1968); Phoenix Assurance Company of N.Y. v. Larsen, 50 Cal. Rptr. 111 (Cal. App. 1966); Fidelity & Casualty Co. of N.Y. v. Phoenix Assurance Co. of N.Y., 49 Cal. Rptr. 238 (Cal. App. 1966); Gainfeld v. Pacific Automobile Insurance Company, 42 Cal. Rptr. 516 (Cal. App. 1965); Kirby v. Ohio Casualty Insurance Company, 42 Cal. Rptr. 509 (Cal. App. 1965); Cricto v. State Farm Mutual Automobile Ins. Co., 74 Cal. Rptr. 472 (Cal. App. 1969); Bitnam v. New Amsterdam Casualty Company, 110 Ill. App. 2d 103, 249 N.E.2d 159 (1969); Tindall v. Farmers Auto Management Corp., 83 Ill. App. 2d 165, 226 N.E.2d 397 (1967); Vignali v. Farmers Equitable Ins. Co., 71 Ill. App. 2d 114, 216 N.E.2d 827 (1966); Burcham v. Farmers Insurance Exchange, note 2 *supra;* Lott v. Southern Farm Bureau Casualty Insurance Co., 223 So. 2d 492 (La. App. 1969); LeBlanc v. Allstate Ins. Co., 194 So. 2d 791 (La. App. 1969); Broussard v. State Farm Mutual Auto Ins. Co., 188 So. 2d 111 (La. App. 1966); Maryland Casualty Co. v. Howe, 106 N.H. 422, 213 A.2d 420 (1965); Globe Indemnity Co. v. Estate of Baker, 22 App. Div. 2d 658, 253 N.Y.S.2d 170 (1964); Garcia v. Motor Vehicle Accident Corp., 18 App. Div. 2d 62, 238 N.Y.S.2d 195 (1963); Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 541 (1964); Russell v. Paulson, 18 Utah 2d 157, 417 P.2d 658 (1966); Miller v. Allstate Ins. Co., 66 Wash. 2d 871, 405 P.2d 712 (1965).

sured Motorist statute involved gives the insured a "right of rejection" seems to be immaterial, since four of these jurisdictions[5] have mandatory coverage while seven jurisdictions have a "right of rejection."[6]

In *Burcham,* the Iowa court did not discuss the effect of the statutory Uninsured Motorist requirement. However, the requirement has been considered and the policy provisions found not to be repugnant to the statutes in Arkansas, California, Illinois, New Hampshire, Utah and Washington.[7] The California cases, however, can be distinguished somewhat because of the particular statutory language of Section 11580.2 (d), California Insurance Code, which makes a special provision for this type of clause.

In *Childers v. Southern Farm Bureau Cas. Ins. Co.*[8] and *Safeco Ins. Co. of America v. Robey,*[9] federal courts initially had held that the excess-escape clauses were violative of the Arkansas statutory requirements of minimum protection to be afforded under the Uninsured Motorist statutes and therefore allowed the aggregating of two policies affording Uninsured Motorist coverage. In *M.F.A. Mutual Insurance Co. v. Wallace*[10] the Arkansas state court reversed the federal courts in holding:

> The cases interpreting uninsured motorist statutes go both ways on the issue of stacking multiple policies covering the same accident or injury. However, in looking at the terms and purposes of our statute, we find that the other insurance clause is not repungnant to Arkansas statute, Section 66-4003, supra. Here M.F.A. furnished uninsured motorist coverage "in not less than limits described . . ." in the safety responsibility act. Furthermore, since the purpose of the statute is one "for the protection of persons injured . . . who are legally entitled to recover damages from owners or operators of uninsured motor vehicles . . ." it is obvious that the statute was not designed to provide the insured with greater insurance protection than would have been available had the insured been injured by an operator with a policy containing the minimum statutory limits required by the motor vehicle safety responsibility act . . .[11]

The following federal cases arrived at the same result but were overruled by later state court decisions: Chandler v. Gov't Emp. Ins. Co., 342 F.2d 420 (5th Cir. 1965); Travelers Indemnity Co. v. Well, 209 F. Supp. 784 (W.D. Va. 1962).

[5] ILL. INS. CODE 755a. § 143a(1) (Supp. 1970); N.H. REV. STATS. ANN. § 268:15-a(1) (Supp. 1969); N.Y. INS LAWS §§ 600 et seq. (Supp. 1970); S.C. CODE OF LAWS § 46-750.33 (Supp. 1969).

[6] ARK. I&S. CODE § 66-4003 (1966); CAL. INS. CODE § 11580.2(a) (Supp. 1969); IOWA INS. CODE § 516 A.1 (Supp. 1970); LA. INS. CODE § 1406 D (1) (Supp. 1964); UTAH CODE ANNO. § 41-12-12.1 (1968); WASH. REV. CODE § 48.22.030 (Supp. 1969).

[7] *See* note 4, *supra.*

[8] 282 F. Supp. 866 (G.D. Ark. 1968).

[9] 399 F.2d 330 (8th Cir. 1968), effectively overruled with *Childers,* note 8 *supra,* by M.F.A. Mutual Insurance Co. v. Wallace, 245 Ark. 230, 431 S.W.2d 742 (1968).

[10] 245 Ark. 230, 431 S.W.2d 742 (1968).

[11] *Id.* at 744.

The decision in *Childers* was later vacated on the basis of the *Wallace* decision.[12] Some confusion still seems to exist in Arkansas, however. Two decisions in the Arkansas Federal Courts have distinguished *Wallace* from *Robey* and have allowed aggregation of coverage.[13]

In the Alabama case of *State Farm Automobile Insurance Co. v. DeLaCruz*[14] the court held in accord with the majority position:

> In the present case, we hold that the language in the policy is clear and unambiguous, and means that if the insured can recover under any other insurance policy, the present policy would only provide excess coverage in the amount by which the applicable limit of liability of the present policy exceeds the applicable limits of all other insurance. In the present case the applicable limits of the appellant's policy and the Allstate policy, under which the plaintiff recovered, are the same. Therefore, this provision precludes the plaintiff from recovery under the apellant's policy.[15]

The Louisiana decision in *LeBlanc v. Allstate Ins. Co.*[16] points out one of the principal reasons for upholding the "Other Insurance" clauses:

> The purpose of the statute in making uninsured motorist coverage compulsory, it has been said is to give the same protection to the person injured by an uninsured motorist as he would have had if he had been injured in an accident caused by an automobile covered by a standard liability insurance policy.[17]

The rationale of the court is that if the clause is not upheld the insured could effectively receive greater protection by aggregating Uninsured Motorist coverage than he would have received if the uninsured motorist had carried the minimum financial responsibility limits of liability insurance.

In New York the court has stressed the clarity and unambiguous nature of the language of the policy:

> The applicable limits of liability on both Norman and Abraham's policy were $10,000/$20,000. Thus the applicable limits of Norman's policy did not exceed the applicable limits of Abraham's policy. The language is clear and free of ambiguity that since the limits of Norman's policy did not exceed Abraham's excess coverage cannot be applied to Norman's policy.[18]

As will be seen, the minority view attacks the "Other Insurance" clause as ambiguous because both policies purport to limit liability to

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[12] *Id.*
[13] Treece v. Home Insurance Co., 295 F. Supp. 262 (E.D. Ark. 1967) and Woolston v. State Farm Mutual Automobile Insurance Co., 306 F. Supp. 738 (W.D. Ark. 1969) *distinguished* from *Wallace.*
[14] 283 Ala. 711, 214 So. 2d 909 (1968).
[15] *Id.* at 912.
[16] 194 So. 2d 791 (La. App. 1967).
[17] *Id.* at 796.
[18] Globe Indemnity v. Estate of Baker, 22 N.Y.2d 658, 253 N.Y.S.2d 170, 172 (1964).

damages in excess of another policy. What the minority viewpoint overlooks is that the clause providing that the policy will only apply where the insured is occupying a non-owned automobile effectively solves the problem. The policy that covers the non-owned automobile clearly is the primary coverage.

If public policy declares a need for overriding this unambiguous language in the policy, then the legislature should be the one to change the contract, and not the courts. In this regard, however, it might be best for the insurance industry to add a section to this clause which effectively restates its purpose in view of the decisions in the minority jurisdictions.

Two theories have been used by those courts which refuse to enforce the "Other Insurance" clause.

The *Lamb-Weston* doctrine, as developed by the Oregon supreme court, declares (1) "Other Insurance" clauses in two policies are repugnant to each other and, (2) there is no logical basis on which to decide which policy is primary insurance and which is secondary insurance. Thus, says the court, both clauses ought to be completely disregarded and recovery should be allowed up to the maximum limits of both policies. *Lamb-Weston, Inc. v. Oregon Automobile Insurance Co.*[19]

In Wisconsin, in *Ermis v. Federal Windows Manufacturing Co.*,[20] the court held that where two mutually repugnant excess clauses were present they would be disregarded; rather than allowing recovery on both policies, however, the court ruled ". . . that the liability must be pro-rated between the companies." Although *Ermis* was not uninsured motorist case, the doctorine was applied in an uninsured motorist situation in *Reetz v. Werch.*[21]

The second ground used by courts as a basis for invalidating the "Other Insurance" clause is that the clause is repugnant to the statutory language requiring Uninsured Motorist coverage in a given amount. The view is that if the company is not liable for the statutory amount, the insurance does not conform to the statute.

The leading case supporting this position is *Bryant v. State Farm Mutual Automobile Ins. Co.*[22] Here the insured was covered by two Uninsured Motorist endorsements issued by the defendant. Under one he was a named insured and under the other he was a permissive user of his father's truck. The judgment against the uninsured motorist

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[19] Lamb-Weston, Inc. v. Oregon Automobile Insurance Co., 219 Ore. 110, 341 P.2d 110 (1959). *Lamb-Weston* was not itself an uninsured motorist case but the philosophy was followed in two uninsured motorist cases: Smith v. Pacific Automobile Insurance Co., 240 Ore. 167, 400 P.2d 512 (1965) and Spurling v. Allstate Insurance Co., 249 Ore. 471, 439 P.2d 616 (1968).

[20] 7 Wis. 2d 549, 97 N.W.2d 485 (1959).

[21] 8 Wis. 2d 388, 98 N.W.2d 924 (1959).

[22] 205 Va. 897, 140 S.E.2d 817 (1965).

was greater than the combined limits of both policies. The court declared the "Other Insurance" provisions to be repugnant to the state's Uninsured Motorist statute and allowed recovery up to the combined limits of each endorsement available to the injured insured. The *Bryant* case effectively overruled *Travelers Ind. Co. v. Wells*,[23] a federal case arising under Virginia Law. The *Bryant* decision has been followed in six and possibly seven jurisdictions.[24]

Of the eight jurisdictions holding this view, only Virginia has mandatory Uninsured Motorist coverage. The other states have "right of rejection" statutes.

In the Arizona case of *Transport Insurance Co. v. Wade*[25] the plaintiff's decedent was a passenger in a vehicle owned by the decedent but driven by his brother. The vehicle was struck by an uninsured motorist whose negligence was the sole cause of the plaintiff's decedent's death. At the time of the accident the decedent had insurance with Farmers Insurance Exchange, providing Uninsured Motorist coverage up to $10,000 and the plaintiff had been paid the maximum amount under that policy. Damages to the plaintiff as a result of the accident exceeded $10,000. The brother also had a policy in force at the time of the accident which provided Uninsured Motorist coverage. The plaintiff made a claim against this policy. The defendant Transport Insurance Co. refused to pay the claim, invoking the "Other Insurance" clause of the policy. The court, holding that there was coverage and invalidating the "Other Insurance" clause, said:

> In this case the policy provision seeks not to offset *liability coverage* against *uninsured motorist* coverage as in *Geyer,* but is seeking to offset uninsured motorist coverage against uninsured motorist coverage. In each situation, however, it is the uninsured motorist coverage that the company is attempting to reduce or deny.
>
> It is our opinion that Arizona's uninsured motorist statute is designed to protect the insured as to his actual loss within such limits and his recovery shall not extend past his actual loss. However, our statute does not limit an insured to only one $10,000 recovery where his loss exceeds that amount and he is benefi-

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[23] 316 F.2d 770 (4th Cir. 1963).

[24] Guthrie v. State Farm Mutual Automobile Ins. Co., 279 F. Supp. 837 (D.S.C. 1968); White v. Nationwide Mutual Insurance Co., 361 F.2d 785 (4th Cir. 1966); Pulley v. Allstate Insurance Co., 242 F. Supp. 330 (E.D. Va. 1965); Geyer v. Reserve Insurance Co., 8 Ariz. App. 464, 447 P.2d 556 (1968); Transport Insurance Company v. Wade, 11 Ariz. App. 14, 461 P.2d 190 (1969); Kraft v. Allstate Insurance Company, 6 Ariz. App. 276, 431 P.2d 917 (1967); Sturdy v. Allied Mutual Insurance Co., 203 Kan. 783, 457 P.2d 34 (1969); Traveler's Indemnity Co. v. Williams, 119 Ga. App. 414, 167 S.E.2d 174 (1969); Sellers v. United States Fidelity and Guaranty Company, 185 So. 2d 689 (Fla. 1966); Moore v. Hartford Fire Insurance Company Group, 270 N.C. 532, 155 S.E.2d 128 (1967); Harleysville Mutual Casualty Company v. Blumling, 429 Pa. 389, 241 A.2d 112 (1968); and cases at note 13, *supra.*

[25] 11 Ariz. App. 14, 461 P.2d 190 (1969).

> ciary of more than one policy issued under A.P.R.S. Sec. 20-259.01. While a minimum amount is set by the statute, nowhere does the act place a limit on the total amount of recovery.[26]

In a Kansas case, *Sturdy v. Allied Mutual Insurance Co.*, [27] the court touched on the problem of extra premiums for the extra coverage under each of the policies:

> It must be borne in mind the purpose of uninsured motorist insurance is to provide compensation for personal injury to the innocent victim of the uninsured motorist. As to the named insured the coverage is a contract benefit for which he is paid. Here the damages to the insured have been determined and now he seeks indemnity for it. He is not seeking any windfall as a result of his injury but is seeking full indemnity based on payment of two separate premiums.
> Defendant argues that what plaintiff is seeking amounts to pyramiding coverage but nothing is said about pyramiding the premiums which effectuate the coverages. We would not be understood as implying that an injured insured can pyramid separate coverages in the same policy so at to recover more than his actual loss.[28]

However, what the court neglected to consider is that with each additional automobile there is an increased risk and increased exposure and that this increased risk and exposure is the consideration for the extra premium.[29]

One caveat inserted by all of the courts agreeing with the minority viewpoint is that no claimant can recover more than his actual losses. For example, in *Harleysville Mutual Casualty Company v. Blumling*,[30] the Pennsylvania supreme court said:

> We do not wish to imply that injured parties may be permitted to pyramid separate coverages so as to recover more than the actual loss. Such a ruling is not necessary to the decision of this case and we do not make it.[31]

There is some broad language in a Florida case, *Sellers v. United States Fidelity & Guaranty Company*,[32] which caused some commentators to fear that Florida might allow double recoveries. However, later cases in Florida have apparently limited this type of pyramiding of coverages to actual indemnification.[33]

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[26] *Id.* at 192.

[27] 203 Kan. 783, 457 P.2d 34 (1969).

[28] *Id.* at 41, 42.

[29] *See* Ringenburger v. General Accident F. & L. Assur. Corp., 214 So. 2d 376 (Fla. App. 1968).

[30] 429 Pa. 389, 241 A.2d 112 (1968).

[31] *Id.* at 115.

[32] 185 So. 2d 689 (Fla. 1966).

[33] *But see* Mid-Central Mut. Cas. Co. v. Spanjer, 101 Ill. App. 2d 468, 243 N.E.2d 452 (1968).

Those who disagree with the minority position argue that allowing a claimant to recover under more than one Uninsured Motorist endorsement puts the claimant in a better position than he would have been against an insured negligent motorist with only the minimum coverage. Professor Alan I. Widiss in his book, *A Guide to Uninsured Motorist Coverage* (1969), takes issue with this criticism by alleging that the conclusion that an insurer should therefore be allowed to reduce his liability is a *non sequitor*. What Professor Widiss overlooks is that the conclusion does follow from the terms of the contract of insurance and that the premium was underwritten on the basis of the terms of that contract. Professor Widiss apparently recognizes this fact later in his book when he admits, "To the extent that risk is thereby increased, companies can seek an increase in their premiums." Professor Widiss also suggests that the optimum solution would be a redrafting of the "Other Insurance" clause so that it would only become operative after a claimant has been fully compensated by "Other Insurance." Assuming that the motoring public is willing to pay the type of premium necessary for this type of insurance and also assuming that the insurance industry can underwrite this type of coverage, Professor Widiss's suggestion has merit. However, whether this result is properly achieved by judicial redrafting of an insurance contract is open to serious doubt.

II. CASE II: WHERE THE CLAIMANT IS AN INSURED UNDER CLAUSE II (a) (1) OF AN UNINSURED MOTORIST ENDORSEMENT AS A NAMED INSURED OR ADDITIONAL INSURED IN TWO OR MORE POLICIES PROVIDING UNINSURED MOTORIST PROTECTION.

The policy provisions in this regard are as follows:

> Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

Usually the same company has issued both policies to the insured so that the most important consideration is not the proration provision, but rather the provision which deems damages to be no greater than the limits of the applicable policies. This is supposed to limit the recovery to $10,000 and not $20,000 where there are two policies.

There are two types of situations involved in this area:

1. Where the claimant has one policy which provides coverage for two or more vehicles and a single Uninsured Motorist endorsement and only one premium is charged therefor.

2. Where the claimant has two distinct policies on two automobiles with an Uninsured Motorist endorsement on each and has paid a separate premium for each of the endorsements.

In the first situation the following jurisdictions have held that the claimant is only entitled to one Uninsured Motorist protection and is not allowed to aggregate coverage for two or more vehicles.

A conflict in the Florida Appelate Court decisions between *Sellers v. Government Employees Insurance Company*[34] and *Ringenberger v. General Accident F. and L. Assur. Corp.*[35] was resolved by the supreme court in *Morrison Assurance Company, Inc. v. Pollak*,[36] when it held that the insurance company liability is "clearly and unambiguously" limited to the statutory minimum for one person for one accident. The *Morrison* case involved one insurance policy covering two automobiles, including Uninsured Motorist protection in the amount of $10,000. A premium of $7.00 was charged for Uninsured Motorist coverage on the first automobile and $5.00 for the Uninsured Motorist coverage on the second vehicle. When the plaintiff's husband was killed in an automobile accident involving an uninsured motorist she filed a claim for $20,000, the aggregate amount of coverage on both cars. Morrison would only pay $10,000. The trial court found for the insured and its decision was affirmed on appeal to the Circuit Court of Appeals; but on appeal to the Supreme Court that judgment was reversed.[37]

The same result has been reached in New York in *Polland v. Allstate Insurance Company*.[38] Here, however, the court based its decision on language in the policy that provided, "When two or more automobiles are insured by this policy, the terms of this policy shall apply separately to each . . ." This is the type of clear policy language which should be used to prevent conflict. In *Polland* the infant plaintiff was injured while riding as a passenger in an automobile owned by one DiVesto and operated by Thomas Haynes. A verdict of $36,800 was returned. The plaintiff's father, with whom he resided at the time of the accident, was the owner of an Allstate Insurance Company automobile insurance policy with limits of liability of $10,000 per person and $40,000 per occurrence. The policy covered both a Thunderbird and a Volkswagen owned by the father. Following the entry of judgment, defendant paid to the plaintiff $9,086.42, her proportionate share of the $10,000 coverage under said policy. The action was brought to compel the defendant to pay an additional $10,000 on the theory that

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[34] 185 So. 2d 689 (Fla. 1966).

[35] 214 So. 2d 376 (Fla. App. 1968).

[36] 230 So. 2d 6 (Fla. 1969).

[37] *See also* Hilton v. Citizen's Insurance Company of New Jersey, 201 So. 2d 904 (Fla. App. 1967).

[38] 25 App. Div. 2d 16, 266 N.Y.S.2d 286 (1966).

the defendant had, in effect, issued two separate policies. The recovery was limited to $10,000.

The Oregon supreme court also considered this question and denied aggregation of coverage. In *Castle v. United Pacific Insurance Group*,[39] the court distinguished the *Lamb-Weston* doctrine on the basis that this was "not a situation of two or more policies applying to the same vehicle. It was just the opposite in that it involved two distinct policy coverages, all in one policy, extending to two separate vehicles." The court went on to say that "the premium paid and the coverage extended to each of the two automobiles was simply to provide this form of coverage for each of the insured's vehicles."

Washington has also joined the majority in this regard in two cases.[40]

In two jurisdictions, Illinois and Louisiana, claimants have been allowed to aggregate coverage for each vehicle for one accident. In *Deterding v. State Farm Mutual Automobile Ins. Co.*[41] the insured was operating a pick-up truck when he was fatally injured. The insurer had issued to the insured two automobile liability policies, one on the pick-up truck and another on his automobile. The insurance company argued that the "Other Insurance" provisions of the policies were applicable and that the policies would have to be prorated, resulting in the payment of $5,000 under each policy. The court held that:

> This situation was somewhat different since the insured was not occupying an automobile which he did not own since he did own the automobile that was involved in the accident. The exclusions apply only if bodily injury occurred while the insured was occupying an automobile not owned by a named insured under this coverage.[42]

In the Louisiana case of *Fremin v. Collins*[43] the court held that:

> We are likewise convinced that the payment of $5,000 by one of the insurers herein to the insured under its contract of insurance did not in any way exonerate the other company from such payment under its respective policy.[44]

Here the court reasoned that since there were separate and distinct acts and agreements which applied to each separate and distinct automobile, recovery should be allowed on each policy.

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[39] 448 P.2d 357 (Ore. 1968).

[40] Pacific Indemnity Company v. Thompson, 56 Wash. 2d 715, 355 P.2d 12 (1960); State Farm Mutual Automobile Ins. Co. v. Bafus, ____ Wash. ____, 466 P.2d 159 (1970).

[41] 78 Ill. App. 29, 222 N.E.2d 523 (1966).

[42] *Id.* at 527.

[43] 194 So. 2d 470 (La. App. 1967).

[44] *Id.* at 474.

In the second situation two jurisdictions, Arkansas[45] and Michigan,[46] have not allowed the claimant to aggregate coverage under separate policies on separate cars; one jurisdiction[47] has allowed aggregation.

It seems clear to this writer that where there is but one policy on two automobiles with but one premium for the Uninsured Motorist endorsement, there should be only one policy coverage. Even where there are two premiums charged in one policy for two automobiles, the rationale of *Ringenberger* should be adopted: that ". . . [T]he premiums represent the increased risk assumed with respect to the additional owned automobile of the insured." For the same reasons, where there are separate policies with separate premiums, the same result should follow because of the increased exposure due to the second car. That is the basis on which the contract was written and the desire to fully indemnify the insured should not be allowed to cause a rewriting of that contract.

III. Conclusions

What began as minimum protection against the Uninsured Motorist is slowly becoming total first party protection against the uninsured motorist. While a majority of jurisdictions hold the line, a strong minority have applied the principal of indemnification to aggreate policies which contain clear and unambiguous language designed precisely to avoid that result.

The ultimate effect of such decisions is best stated by J. Cris Soich in his article, *Uninsured Motorist Coverage: Past, Present and Future*:

> Once it has been determined that an innocently injured motorist may recover under the terms of the uninsured motorist coverage up to the total of the available limits or to the limit of his actual loss, the potential aftermath of this decision must be considered. Clearly a decision of this sort must have an impact upon the general public in the economic sphere. It is submitted that the insurance industry must, in view of . . . [these] decision [s], undertake a careful and thorough study of its underwriting procedures relative to this particular coverage. . . . it is clear that the industry can no longer treat the uninsured motorist coverage as excess liability coverage. It is equally clear that, since every uninsured motorist coverage is now of a primary nature, the premium to be charged must be adjusted accordingly. This eventual adjustment must also have an immediate impact upon the general motoring public, for they will be the ones required to absorb the additional cost of the coverage.[48]

James R. Gass

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[46] Horn v. Detroit Automobile Inter. Insurance Exchange, 379 Mich. 562, 153 N.W.2d 655 (1967).

[47] Drewry v. State Farm Mutual Automobile Insurance Co., 204 Va. 231, 129 S.E.2d 681 (1963).

[45] M.F.A. Mutual Insurance Company v. Wallace, 245 Ark. 230, 431 S.W.2d 742 (1968).

[48] 6 Duq. L. Rev. 341 (1968).

1956 *		With respect to bodily injury to an insured while occupying an automobile
SF *	Under coverage U	with respect to bodily injury to an insured while occuping a motor vehicle
1963 *		With respect to bodily injury to an insured while occupying an automobile
NN *		With respect to bodily injury to an insured while occupying an automobile
1965 NY *		With respect to bodily injury to an insured while occupying an automobile

1956	not owned by a named insured under this endorsement, the insurance hereunder
SF	not owned by a named insured under this coverage, the insurance hereunder
1963	not owned by the principal named insured, the insurance under this endorsement
NN	not owned by the named insured, the insurance under Part IV.
1965 NY	not owned by the named insured, this insurance

1956	shall apply only as excess insurance over any other similar insurance available to such occupant
SF	shall apply only as excess insurance over any other similar insurance available to such occupant
1963	shall apply only as excess insurance over any other similar insurance available to such insured
NN	shall apply only as excess insurance over any other similar insurance available to such insured
1965 NY	shall apply only as excess insurance over any other similar insurance available to such insured

1956	and this insurance shall then apply only
SF	and this insurance shall then apply only
1963	and applicable to such automobile as primary insurance, and this insurance shall then apply only
NN	and applicable to such automobile as primary insurance, and this insurance shall then apply only
1965 NY	and applicable to such automobile as primary insurance, and this insurance shall then apply only

1956	in the amount by which the applicable limit of liability of this endorsement exceeds the
SF	in the amount by which the applicable limit of liability of this coverage exceeds the
1963	in the amount by which the limit of liability for this coverage exceeds the
NN	in the amount by which the limit of liability for this coverage exceeds the
1965 NY	in the amount by which the limit of liability for this coverage exceeds the

1956	sum of the applicable limits of liability of all such other insurance.
SF	sum of the applicable limits of liability of all such other insurance
1963	appicable limit of liability of such other insurance
NN	applicable limit of liability of such other insurance
1965 NY	applicable limit of liability of such other insurance

1956	With respect to bodily injury to an insured while occupying or through being struck by an uninsured
SF	
1963	
NN	
1965 NY	

1956	automobile, if such insured is a named insured under
SF	Subject to the foregoing paragraph, under coverage U if the insured has
1963	Except as provided in the foregoing paragraph, if the insured has
NN	Except as provided in the foregoing paragraph, if the insured has
1965 NY	Except as provided in the foregoing paragraph, if the insured has
1956	other similar insurance available to him, then
SF	other similar insurance available to him against loss covered by this coverage, then
1963	other similar insurance available to him and applicable to the accident,
NN	other similar insurance available to him against loss covered by this,
1965 NY	other similar insurance available to him and applicable to the accident,
1956	the damages shall be deemed not to exceed the higher of the applicable limits of liability of this
SF	the damages shall be deemed not to exceed the higher of the applicable limits of liability of this
1963	the damages shall be deemed not to exceed the higher of the applicable limits of liability of this
NN	the damages shall be deemed not to exceed the higher of the applicable limits of liability of this
1965 NY	the damages shall be deemed not to exceed the higher of the applicable limits of liability of this
1956	insurance and such other insurance, and the company shall not be liable under this endorsement for
SF	insurance and such other insurance, and the company shall not be liable under this coverage for
1963	insurance and such other insurance, and the company shall not be liable for
NN	insurance and such other insurance, and the company shall not be liable for
1965 NY	insurance and such other insurance, and the company shall not be liable for
1956	a greater proportion of the applicable limit of liability of this endorsement than such limit bears
SF	a greater proportion of the applicable limit of liability of this coverage than such limit bears
1963	a greater proportion of any loss to which this coverage applies than the limit of liability
NN	a greater proportion of the applicable limit of liability of this coverage limit than such
1965 NY	a greater proportion of any loss to which this coverage applies than the limit of liability
1956	to the sum of the applicable limits of liability of this insurance and such other insurance.
SF	to the sum of the applicable limits of liability of this insurance and such other insurance.
1963	hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.
NN	hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.
1965 NY	hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

In the 1956 policy, the following third paragraph was inserted, but later deleted in all other policies:
Subject to the foregoing paragraphs, if the insured has other similar insurance available to him against a loss covered by this endorsement, the company shall not be liable under this endorsement for a greater proportion of such loss than the applicable limits of liability hereunder bears to the total applicable limits of liability of all valid and collectible insurance against such loss.

1956*	1956 Countrywide Uninsured Motorist Endorsement
SF*	State Farm Mutual Automobile Ins. Co. Uninsured Motorist Endorsement
1963*	1963 Countrywide Uninsured Motorist Endorsement
NW*	Northwestern National Insurance Co. Uninsured Motorist Endorsement
1965 NY*	1965 New York Automobile Accident Indemnification Endorsement