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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court No. 48018-2020

PROGRESSIVE NORTHWEST INSURANCE COMPANY, a foreign Corporation doing business in the State of Idaho

Plaintiff/Respondent

v.

DEAN LAUTENSCHLAGER and LAURA LAUTENSCHLAGER, husband and wife, and the marital community comprised thereof,

Defendants/Appellants,

RESPONDENT'S BRIEF

Appeal from the District Court of the Second Judicial District for Nez Perce County.

Honorable Jay P. Gaskill, Presiding.

Paul L. Kirkpatrick
Alison M. Turnbull
Kirkpatrick & Startzel, P.S.,
Spokane, Washington
On behalf of Plaintiff/Respondent
Progressive Northwest Insurance
Company

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I. STATEMENT OF THE CASE

Nature of the Case

This is a Declaratory Judgment Action filed by Respondent Progressive Northwest Insurance Company seeking a declaration that its total liability for a two-vehicle accident under the combined single limit policy issued to Dean and Laura Lautenschlager is $500,000. Payments have been made to the Lautenschlagers for both of their injuries under the Progressive policy and the policy of the other driver involved in the accident. Progressive has paid Laura $375,000, for injuries caused by Dean. The policy of the other driver involved in the accident has paid Dean $15,000 and Laura $15,000 (policy limits). After subtracting these payments from the Progressive policy limits of $500,000, and pursuant to offset provisions of the Lautenschlager's policy with Progressive, the remaining policy limits which were available to the Lautenschlagers for an underinsured motorist claim was $95,000. This amount has also been paid to the Lautenschlagers by Progressive. The Lautenschlagers now assert that the offset provisions violate public policy and that they are entitled to an additional $500,000. This claim is contrary to the clear wording of their policy and was rejected by the district court. Progressive respectfully requests that the ruling of the district court be affirmed and the recovery by the Lautenschlagers be limited to a total of $500,000, which has been paid to the Lautenschlagers.

Procedural History

Progressive filed this declaratory judgment action on July 1, 2019, seeking the following declarations from the court:

1. Idaho law should resolve the dispute between the parties;[1]

[1] As indicated in Appellants' Opening Brief, the application of Idaho law was not contested in the trial court and not an issue for this appeal.

2. Progressive is entitled to offsets of the coverage limits for all amounts paid under liability coverage on behalf of persons legally responsible for the accident giving rise to the claims;
3. The limits of liability of Progressive under the policy issued to Defendants is $500,000; and
4. The offsets Progressive is entitled to take reduce the available limits of liability under the policy to $95,000.

R. pp. 6-10.

The parties filed competing Motions for Summary Judgment agreeing that all of the issues presented are questions of law. Progressive argued, and the District Court agreed, that the plain language of the policy allowed Progressive to offset the UIM limits by all amounts received from the legally responsible parties, leaving $95,000 remaining in UIM coverage available under the combined single limit policy for both Dean and Laura Lautenschlager. R. pp. 17-27 and pp. 182-185. The District Court did not find persuasive the Lautenschlagers' public policy argument. R. pp. 89-108 and pp. 182-185. The Lautenschlagers timely filed this appeal.

Statement of Facts

On February 23, 2017, Appellants Dean and Laura Lautenschlager were involved in a motorcycle versus vehicle accident in Arizona. At the time of this accident the Lautenschlagers were riding a 2006 Harley-Davidson FLHX Street Glide motorcycle that was licensed in and insured as an Idaho motorcycle. Dean Lautenschlager was driving with Laura as his passenger. They collided with a vehicle driven by a Glenda Mike when she was attempting to make a left turn and Mr. Lautenschlager was attempting to pass her vehicle on the left. R. pp. 18-20.

Progressive issued a policy providing coverage for the subject motorcycle for a period of April 29, 2016 to April 29, 2017, to Dean and Laura Lautenschlager. R. p. 18. The Lautenschlagers initially applied for this policy in 2009. The original application was for a split limit policy. At some point after submitting the policy application, the Lautenschlagers requested that the policy be converted to the combined single limit policy. R. pp. 85-88. The insurance policy issued by Progressive, policy number 36964913-7, provided coverage with a combined single limit for liability and underinsured motorist coverage of $500,000.00. Policy number 36964913-7 specifically states:

> **PART III – UNINSURED/UNDERINSURED MOTORIST COVERAGE**
> If you pay the premium for this coverage, we will pay for damages that an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury:
> 1. sustained by an insured person;
> 2. caused by an accident; and
> 3. arising out of the ownership, maintenance, or use of an underinsured motor vehicle.
>
> * * *
>
> An "underinsured motor vehicle" does not include any vehicle or equipment:
> a. owned by you or a relative or furnished or available for the regular use of you or a relative;
> e. that is a covered motorcycle.
>
> * * *
>
> If the declarations page shows that "combined single limit" or "CSL" applies, the amount shown is the most we will pay for the total of all bodily injury damages resulting from any one accident.
> The limits of liability for bodily injury under this Part III will be reduced by all sums:
> 1. paid because of bodily injury by or on behalf of any persons or organizations that may be legally responsible;
> 2. paid under Part I – Liability to Others.

R. pp. 48-52.

Both Lautenschlagers were injured in the accident and asserted claims against the driver of the other vehicle, Ms. Mike. They each collected the $15,000 per person limit of Ms. Mike's insurance policy. Laura Lautenschlager also asserted a claim against her husband, Dean Lautenschlager. Laura Lautenschlager recovered $375,000.00 from their Progressive combined single limit motorcycle policy. Dean and Laura Lautenschlager then each asserted additional claims under their policy for underinsured motorist benefits. Pursuant to the terms of the Progressive policy at issue, the amounts paid to date on behalf of those legally responsible for the accident, reduced the remaining available coverage under the Progressive policy to $95,000 ($500,000 - 375,000 - 30,000 = $95,000). R. pp. 19-20. This amount has been paid to the Lautenschlagers.

II. ISSUE PRESENTED ON APPEAL

1. Whether the trial court erred in granting Progressive's Motion for Summary Judgment finding that the offset provided in the Lautenschlagers' combined single limit policy reduced the available UIM coverage to $95,000.
2. Whether the trial court erred in denying the Lautenschlagers' Motion for Summary Judgment finding that the offsets provided in the Lautenschlagers' combined single limit policy did not violate public policy.

III. ATTORNEY FEES ON APPEAL

The Lautenschlagers are not entitled to recover attorney fees on appeal. They claim the right to fees under I.C. § 41-1839. However, this statute does not support their request for fees. *Rogers v. Household Life Ins. Co.,*150 Idaho 735, 740, 250 P.3d 786 (2011). To the extent the Lautenschlager assert they may be entitled to fees under section I.C. § 41-1839 (1), they have not instituted an action, either by filing a lawsuit or invoking binding arbitration for underinsured

motorist benefits under the policy, and thus section (1) is not applicable. *Certain Underwriters At Lloyds, London v. Wolleson*, 141 Idaho 740, 118 P.3d 72 (2005). Moreover, Progressive has paid the remaining $95,000 of limits available under the policy. To the extent the Lautenschlagers may assert they are entitled to an award of attorney fees under section I.C. § 41-1839 (4) on the basis that Progressive's pursuit of this action was frivolous, unreasonable, or without foundation, such a claim is clearly without merit. Progressive prevailed before the District Court based on the clear wording of its policy. Further, as indicated by this Court in *Slaathaug,* "this Court will not award attorney fees on appeal unless 'all claims brought or all defenses asserted' meet the criteria above." *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 711, 979 P.2d 107 (1999). Accordingly, since it was necessary for Progressive to file this action to seek confirmation of their liability under the policy, the Lautenschlagers' request for attorney fees must be denied.

IV. ARGUMENT

A. Standard of Review

In an appeal from an order of summary judgment, this Court's standard of review is the same as the standard used by the trial court. *Weeks v. E. Idaho Health Servs.*, 143 Idaho 834, 836–37, 153 P.3d 1180 (2007) (internal citation omitted). In construing the facts, the court must draw all reasonable factual inferences in favor of the nonmoving party. *Mackay v. Four Rivers Packing Co.,* 145 Idaho 408, 410, 179 P.3d 1064 (2008). "Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court . . . demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Brewer v. Washington RSA No. 8 Ltd. P'ship.,* 145 Idaho 735, 738, 184 P.3d 860 (2008). If there is no genuine issue of material fact, only a question of law remains, over which this Court

exercises free review. *Weeks v. E. Idaho Health Servs.*, 143 Idaho 834, 836–37, 153 P.3d 1180 (2007) (internal citation omitted).

Here, the parties do not dispute any of the material facts and agree that there are only legal issues to be resolved.

B. <u>The offsets to UIM coverage in the Lautenschlagers' combined single limit policy do not violate Idaho public policy</u>.

The Lautenschlagers are arguing that the policy provisions which clearly state that Progressive is entitled to offsets for all payments made by or on behalf of those legally responsible for the damages, is against public policy. However, this Court has recently addressed the public policy argument regarding the offset language for UIM coverage in *Wood v. Farmers Ins. Co. of Idaho,* 166 Idaho 43, 454 P.3d 1126 (2019). In *Wood*, this Court held that the offset language contained in Ms. Wood's UIM coverage did not violate public policy. In that case, Ms. Wood's policy with Farmers Insurance Company provided for offsets for "**<u>any</u>**" amounts available from liability coverage. Specifically, the offset language at issue in *Wood* states, "The amount of UNDERinsured Motorist Coverage we will pay shall be reduced by the full amount of ***any bodily injury liability bonds or policies available to any party held liable*** for the accident …" *Wood,* 166 Idaho (emphasis added). Similarly, the offset language in the Lautenschlagers' policy with Progressive regarding UIM coverage provides, "The limits of liability for bodily injury under this Part III will be reduced by all sums:

1. paid because of bodily injury ***by or on behalf of any persons or organizations that may be legally responsible***." (emphasis added).

Just as in the case at hand, this Court in *Wood* was asked to analyze whether the public policy considerations used in *Hill* and *Eastman*, to invalidate a requirement to recover the policy

limits of the at-fault driver and a non-owned vehicle exclusion in UIM coverage, applied to the offset language in Ms. Wood's UIM coverage. In holding that the public policy underlying the mandate for UIM coverage was not violated by the offset language in Ms. Wood's UIM coverage, this Court stated "the public policy considerations that led the Court to hold that the provisions at issue in *Hill* and *Eastman* were contrary to public policy do not lead to the same result when applied to Wood's UIM offset coverage." *Wood,* 166 Idaho.

In *Hill v. Am. Family Mut. Ins. Co.*, 150 Idaho 619, 249 P.3d 812, 820 (2011), the purpose of the UIM mandate was noted as: "The Legislature clearly enacted the UIM amendments to protect the citizens of this State from being undercompensated for their injuries." This Court in *Wood* further explained, "unlike the provisions in *Hill* and *Eastman,* the offset provision at issue does not *eliminate* UIM coverage if a certain contingency occurs (the contingency being failure to recover the limit of the at-fault driver's policy in *Hill* and injury in a non-owned vehicle with UIM coverage in *Eastman*). Rather, it *reduces* UIM coverage by the limit of the at-fault driver's bodily injury insurance." *Wood,* 166 Idaho (emphasis in original).

As noted in *Wood,* there are two types of UIM coverage, "offset" and "excess," both of which were contemplated as being available in Idaho by the Legislature when adopting the UIM mandate. *Id.* Offset type UIM coverage provides that the total an insured can receive for any one accident is the amount of the UIM coverage which is a combination of payments from the at-fault drivers and the UIM coverage. *Id.* Whereas excess coverage floats on top of whatever is received from the at-fault drivers. *Id.* This Court determined that the offset type coverage was recognized as a type of coverage offered in Idaho when the Legislature passed the mandate. Therefore, Ms. Wood's offset UIM coverage did not violate public policy.

The Lautenschlagers attempt to distinguish *Wood* and limit its holding to a finding that the offset language is not in violation of public policy only when the offsets are limited to payment from an underinsured motorist. While the factual scenario in *Wood* was that there was only one at-fault party, the offset language at issue provided for offset for "**any** party held liable," which clearly contemplates that there could be more than one at-fault party. *Wood,* 166 Idaho. Further, the same analysis of the public policy argument will apply no matter the number of at-fault parties. As cited above, the offset language was not contrary to public policy as it *reduced* the coverage and did not *eliminate* the coverage based on a contingency. The Lautenschlagers have provided no reasoning as to why this same analysis should not apply to their situation except that they believe it would leave them undercompensated. But just as in *Wood* where Ms. Wood's actual damages greatly exceeded the available insurance coverage, the remedy is to purchase more or a different type of insurance. Having damages that exceed the available insurance coverage does not make an insurance provision contrary to public policy.

The Lautenschlagers set forth hypotheticals in their brief in an effort to create scenarios in which the available insurance does not compensate them for arbitrarily presumed damages. In the Lautenschlagers' first hypothetical they presume that Laura has $750,000 in damages and that Ms. Mike and Dean are equally responsible for the accident, so each is liable for $375,000. *Appellant's Brief* at 14. They argue that between their policy with Progressive and Ms. Mike's policy there is not enough insurance. *Id.* While they acknowledge in this scenario that there is still UIM coverage available under the Progressive policy, and Laura would receive a total of $500,000 of insurance for her injuries, they argue that Laura is still not compensated for all of her presumed damages. *Id.* at 14-15. The fact that an insured is not fully compensated does not make a policy or policy provision invalid. Insurance policies do not always provide complete

coverage for all of an insured's damages. The real problem set forth in this hypothetical is that the limits are inadequate, not that the offset provisions violate public policy. In order to compensate Laura under this hypothetical, the Lautenschlagers should have purchased an umbrella policy.

In the Lautenschlagers' second hypothetical Dean is riding the motorcycle by himself and is involved in an accident with Ms. Mike. *Appellant's Brief* at 17-18. The hypothetical does not explain the amount of fault of each driver or how that fault would reduce or bar any potential recovery. *Id.* Further, it does not appreciate any setoffs the would be available. Regardless, in this hypothetical Ms. Mike asserts a claim against Dean. *Id.* Payment is then made under the Progressive policy to extinguish the claim made against Dean by Ms. Mike. *Id.* The hypothetical then concludes that it is illogical that the payment made to Ms. Mike for Dean's share of the fault should reduce his UIM limits. *Id.* However, the policy clearly and unambiguously states that there is $500,000 of coverage that is available to pay for liability claims against the Lautenschlagers and/or any claims they may have for their own injuries. For example, the policy would have provided Dean with liability coverage if Ms. Mike had made a claim against him for $500,000 in damages. A split limit of $250/500 would not have given him that level of protection. Likewise, if Ms. Mike had been at fault and completely uninsured, Dean could recover $500,000 in uninsured coverage from his policy. Again, a split limit coverage may not have provided him this level of protection. The Lautenschlagers' policy can also provide both liability and UIM protection for the same accident, as it did in this case.

The fact that endless hypotheticals can be imagined which could result in more or less recovery, does not mean that the Lautenschlagers' coverage violates public policy. The hypotheticals only demonstrate that there are different types of insurance policies and levels of

coverage that are available and could result in different recoveries under various scenarios. However, insurance is not intended to provide coverage for all damages under all possible situations. The issues presented to this Court in this case must be analyzed based on the facts before the court. In this case, the Lautenschlagers requested a combined single limit policy with $500,000 of coverage. They have been paid $500,000[2]. Instead of purchasing a different type of coverage with higher limits, the Lautenschlagers are asking this Court to rewrite their policy to provide more limits than what they elected to purchase.

Finally, the Lautenschlagers argue that the only offset that should be allowed under their UIM coverage is an offset for the amount received from the underinsured motorist. This argument conflicts with the policy they purchased which clearly provides offset type UIM coverage and the protection they requested for any claim of liability against them. As indicated above, offset type UIM coverage guarantees a person can recover up to their UIM policy limits for their injuries by payments from the at-fault drivers and UIM coverage. Moreover, the Lautenschlagers' argument ignores that they purchased a combined single limit policy providing a total of $500,000 in coverage under the policy. If the full $500,000 is paid out under as liability coverage, they are still getting what they bargained for, $500,000 of coverage. Or if a portion of the $500,000 is paid out under the liability coverage and portion paid out under the underinsured motorist, they are still getting what they bargained for, $500,000 in coverage. Accordingly, a combined single limit policy with offset type UIM coverage is not against public policy simply because an insured elected to purchase coverage with a single limit to protect an insured from liability and also provide coverage to compensate the insured for injuries.

[2] The Lautenschlagers received $30,000 from Ms. Mike's policy, Laura received $375,000 from Progressive for Dean's fault and $47,500 from Progressive in underinsured motorist benefits, and Dean also received $47,500 in underinsured motorist benefits from Progressive. ($30,000 + $375,000 + $47,500 + $47,500 = $500,000.)

C. There is no authority to support the Lautenschlagers' argument that they should be able to double their policy limits.

The Lautenschlagers argue that because a specific portion of their premium is attributed to liability coverage and underinsured motorist coverage, they are entitled to ignore the offset provisions which are unambiguous and should recover $500,000 under the liability coverage and another $500,000 under the underinsured motorist coverage. The Lautenschlagers are asking to double the amount of coverage which was provided under the terms and conditions of their policy. This argument is without support and is contrary to Idaho law. See *Sublimity Ins. Co. v. Shaw,* 127 Idaho 707, 905 P.2d 640 (1995); *Mut. of Enumclaw v. Box*, 127 Idaho 851, 854, 908 P.2d 153, 156 (1995); *Wood v. Farmers,* 166 Idaho 43, 454 P.3d 1126 (2019). Payment of a separate premium does not guarantee payment under underinsured motorist coverage in Idaho. In *Wood, supra,* Ms. Wood's UIM policy limits matched the policy limits of the tortfeasor's liability coverage. The offset provision, which was upheld by this Court, precluded any compensation under the UIM provision of the policy despite Ms. Wood paying a premium for UIM coverage. *Wood,* 166 Idaho. Moreover, the Lautenschlagers' argument ignores the type of policy they purchased, a combined single limit policy. The policy clearly defines a combined single limit to mean that "the amount shown is the most we will pay for the total of all bodily injury damages resulting from any one accident." R. p. 52.

The Lautenschlagers rely on *Gearhart v. Mutual of Enumclaw Ins. Co.,* 160 Idaho 664, 378 P.3d 545 (2016) to support their argument that the policy limits in question should actually be double what the policy provides because portions of the premium they pay are attributed to different types of coverage. *Gearhart* does not support the Lautenschlagers' argument. In *Gearhart,* the Court was presented with an issue of whether an injured minor could recover UIM

benefits under both his mother's and father's UIM coverage in two separate policies. Each of the Mutual of Enumclaw policies contained an anti-stacking provision which Enumclaw argued prevented the minor from recovering under both of his parents' policies. The anti-stacking provision relied on by Mutual of Enumclaw was found in the Other Insurance Provision of the UIM coverage and stated:

> If there is other applicable similar insurance, we will pay our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. If this policy and any other policy providing similar insurance apply to the accident, the maximum limit of liability under all the policies shall be the highest applicable limit of liability under any one policy. However, insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

Gearhart at 667. The Court affirmed the district court's holding but "on the ground that the actual language employed in the Enumclaw policies is confusing to the extent that it is ineffective to establish a barrier to recovery." *Gearhart* at 668. The Court in *Gearhart* did not invalidate all anti-stacking provisions, nor did the Court hold that anti-stacking provisions violated Idaho's public policy. Instead, the Court only found that the particular policy used by Enumclaw was ineffective to limit what the insured could recover.

The ruling in *Gearhart* is specific to wording of the clause used by Enumclaw. The clause at issue in the current matter is not an anti-stacking clause. *Gearhart* is limited to its facts and is not instructive, as it deals with two separate policies owned by two separate individuals who each pay a premium. Accordingly, the Lautenschlagers' argument that public policy prohibits Progressive from reducing the UIM coverage limits by those amounts paid for Dean's liability on the basis that the Lautenschlagers paid a premium that was attributed to different types of coverage is without support. Based on the clear wording of the policy the Lautenschlagers chose to purchase, the total coverage they have been provided is $500,000.

Additionally, the Lautenschlagers argue that there is some ambiguity in the Progressive policy based on the idea that their premium is apportioned to different types of coverage. An insurance policy provision is ambiguous if "it is reasonably subject to conflicting interpretations." *North Pac. Ins. Co. v. Mai,* 130 Idaho 251, 253, 939 P.2d 570 (1997) (internal citation omitted). Unambiguous policy language is construed as written, "and the [c]ourt by construction cannot create a liability not assumed by the insurer nor make a new contract for the parties, or one different from that plainly intended, nor add words to the contract of insurance to either create or avoid liability." *Armstrong v. Farmers Ins. Co. of Idaho,* 147 Idaho 67, 69, 205 P.3d 1203 (2009) (internal citation omitted). "Unless contrary intent is shown, common, non-technical words are given the meaning applied by laymen in daily usage—as opposed to the meaning derived from legal usage—in order to effectuate the intent of the parties." *Howard v. Ore. Mut. Ins. Co.,* 137 Idaho 214, 217, 46 P.3d 510 (2002).

"In determining whether there is ambiguity, the particular provision must be read within the context in which it occurs in the policy." *Armstrong,* 147 Idaho at 70 (internal citation omitted). "Insurance contracts are adhesion contracts, typically not subject to negotiation between the parties," therefore, "any ambiguity that exists in the contract must be construed most strongly against the insurer. *Arreguin v. Farmers Ins. Co. of Idaho*, 145 Idaho 459, 461, 180 P.3d 489 (2008) (internal citations omitted).

Again, the Lautenschlagers rely on *Gearhart* to support their ambiguity argument. But again, *Gearhart* is limited to its facts and the language of the anti-stacking provisions being analyzed. In order to advance this argument, the Lautenschlagers accuse Progressive of not reading the policy as a whole and "cherry picking" provisions to support its argument. However, the Lautenschlagers' interpretation in fact fails to read the policy as a whole. In their analysis

they fail to acknowledge that within the Uninsured/Underinsured coverage the policy clearly provides for offsets for amounts paid under "Part I - Liability to Others." They further ignore that Part I - Liability to Others provides for an offset for amounts paid under "Part III - Uninsured/ Underinsured Motorist Coverage." R. p. 44. Reading the policy as a whole, the policy language is consistent throughout the policy, and the offset language works to effectuate the consistent and unambiguous policy language.

Additionally, the Lautenschlagers' posit that because the "Liability to Others" section covers both bodily injury and property damages it somehow creates an ambiguity as to the combined single limit nature of the policy they purchased. In order to make this argument, the Lautenschlagers must ignore the offset language, which has consistently been held unambiguous in Idaho. Further, despite their premium being apportioned to "Liability to Others," "Uninsured Motorist Coverage," and "Underinsured Motorist Coverage," the Lautenschlagers are not arguing that they should be entitled to a $500,000 for each type of coverage. The combined single limit is the total liability of the insurer under the policy, no matter how many claims are made on the policy for one accident. In essence, the Lautenschlagers' argument is that the combined single limit coverage is ambiguous–not just a provision of the policy.

D. The Lautenschlagers have been provided all the coverage available under their combined single limit policy.

As indicated previously, combined single limit coverage means $500,000 is the most Progressive will pay under the policy. The Lautenschlagers could have purchased various other types of policies that exist, including split limit policies and umbrella policies if they did not like they type and amount of coverage provided by their CSL coverage. Instead of purchasing these other types of policies, they specifically requested a policy with a combined single limit which

was subject to offset provisions. If they wished to guarantee $500,000 in UIM coverage on top of what they received for all at-fault drivers, they could have purchased that type of coverage. Additionally, if the Lautenschlagers wanted to each be afforded a certain amount of coverage if they were in an accident together, they could have purchased a split limit policy or additional protection with an umbrella policy. Progressive cannot be responsible for more than the $500,000 limits of coverage simply because the Lautenschlagers elected to purchase coverage which they now feel was insufficient to cover their injuries and protect them from liability.

Moreover, the Lautenschlagers should not receive more than they bargained for simply because one of the insureds shared in the fault for causing the accident. If the circumstances were such that both the Lautenschlagers were faultless, they would only be able to recover $500,000 under the policy subject to the offset of the limits of the at-fault driver. Inexplicably, the Lautenschlagers seem to now be asserting that because Dean shared in the fault for causing the accident, the Lautenschlagers should recover more than what they bargained for under the policy. The public policy is to provide protection for individuals up to the amount they have elected to purchase, not more.

E. The terms of Progressive's policy are consistent and clearly limit coverage to $500,000.

The Lautenschlagers argue that Progressive has cobbled together policy provisions in order to make its arguments. This is simply not true. The offset language is clear, and there is no argument that it is ambiguous. The purpose of Progressive quoting the various sections of the policy was simply to show that the provisions all consistently state the total Progressive is required to pay.

Progressive's policy language in both Part I - Liability to Others and Part III - Uninsured/ Underinsured Motorist Coverage, clearly states a combined single limit policy means "the amount shown is the most we will pay." R. pp. 44, 52. Consistent with and in furtherance of this definition, the Liability to Others section provides, "any payment to a person under this Part I will be reduced by any payment to that person under Part III - Uninsured/Underinsured Motorist Coverage." R. p. 44. In the Uninsured/Underinsured Motorist Coverage, the limits are clearly reduced by amounts "paid under Part I - Liability to Others." R. p. 52. As indicated above, it appears the Lautenschlagers were aware of the policy they were purchasing, since they changed from a split limit policy to a combined single limit policy after submitting the application. The Lautenschlagers have made no argument that they did not understand the policy they were purchasing or that this language is ambiguous or unclear. The language limiting Progressive's liability is consistent throughout the policy, and the offset language in each section unambiguously works to create such limitation.

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V. CONCLUSION

The purpose behind a UIM mandate is not violated by the offset language in Progressive's combined single limit policy issued to the Lautenschlagers. To invalidate the offset language as contrary to public policy would ignore the clear and unambiguous policy language. The Lautenschlagers were aware of the type of coverage they were purchasing. Their request to have this Court re-write their insurance coverage so that they can double their policy limits should be rejected.

DATED this 21st day of October, 2020.

KIRKPATRICK & STARTZEL, P.S.

s/ Paul L. Kirkpatrick

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2020, I caused to be served a true and correct copy of the preceding document to the following attorneys of record as follows:

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s/ Paul L. Kirkpatrick

Kirkpatrick & Startzel, P.S.