WHEN BODILY INJURY LIMITS ARE STACKED, JURISPRUDENTIAL CONSISTENCY TOPPLES

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I. INTRODUCTION

Imagine the following scenario: Your client is the only person injured in a two-vehicle automobile accident. The other driver is at fault. His vehicle is insured by a policy that covers a total of three vehicles. The limit of liability on the policy is $50,000 per person and $100,000 per accident.[1] Your client undergoes several surgeries, incurring medical bills surpassing $200,000. Because the other driver was at fault, his policy covers at least a portion of those damages. Should your client be entitled to collect $150,000 – the product of the policy limits and the number of insured vehicles – from the tortfeasor's insurer, or should liability be limited to the stated $50,000 policy limits, in spite of the existence of three vehicles on the policy?

The answer depends on whether you can file your lawsuit in a jurisdiction that permits stacking of bodily injury liability (BI) coverage. In an automobile insurance context, "stacking" refers to the aggregation of coverages provided separately to multiple insured vehicles.[2] In some cases, the vehicles are all insured under the same policy.[3] In other cases, they are

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1. The *per-accident* limit applies only if more than one accident victim has injuries sufficient to command the $50,000 individual limit. Hereinafter, limits of liability per person and per accident, respectively, will appear as "$XX,XXX/$XX,XXX."
2. *See, e.g.*, Hobbs v. Hartford Ins. Co. of the Midwest, 823 N.E.2d 561, 561 (Ill. App. Ct. 2005).
3. *See id.*

insured under different policies issued to the same insured party.[4] This article focuses primarily on stacking of coverages within a single policy that insures more than one vehicle.[5]

Illinois jurisprudence is reasonably consistent regarding the stacking of uninsured motorist (UM) and underinsured motorist (UIM) coverage limits.[6] The Illinois appellate courts, however, appear to have come to significant disagreement regarding the application of UM/UIM stacking principles to the stacking of BI coverage limits.[7] Consequently, the Illinois Supreme Court should resolve the issue regarding whether BI coverage stacks in the face of anti-stacking language, regardless of the number of vehicles and premiums shown on the declarations page. Toward that end, this article will discuss the practical distinctions between BI coverage and UM/UIM coverage; the significance of anti-stacking language in judicial determinations regarding UM/UIM coverage; distinctions between BI coverage and UM/UIM coverage; the Fifth District of Illinois Court of Appeals' clash with the consensus; and the resultant need for redress by the Illinois Supreme Court.

II. THE PRACTICAL DISTINCTIONS BETWEEN BI COVERAGE AND UM/UIM COVERAGE

BI coverage provides an individual with indemnity for bodily injury to a third person.[8] For BI coverage to apply, the insured individual must be driving a vehicle defined as "insured" under the policy, or a replacement or temporary substitute.[9] The carrier bases BI premiums on consideration of the characteristics of the insured driver and the insured vehicle.[10] Illinois law mandates that policy limits for BI coverage meet or exceed a statutory minimum of $20,000/$40,000.[11]

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4. *See* BLACK'S LAW DICTIONARY 1534 (8th ed. 2004). In another possible circumstance, a claimant will attempt to stack coverages provided under multiple policies, each with a different insured.
5. For the purposes of this article, it is assumed that an at-issue insurance policy contains a standard anti-stacking clause, which is controlling as a matter of law. *See, e.g.,* McDonald v. Prudential Prop. & Cas. Co., 710 N.E.2d 556, 558 (Ill. App. Ct. 1999) ("If the policy is clear and unambiguous, . . . [it] must be applied as written.").
6. *See* discussion *infra* Part III. Hereinafter, UM and UIM coverages will be referred to in tandem as "UM/UIM."
7. *See* discussion *infra* Part IIIB.
8. *Bodily Injury Coverage,* BUSINESS DICTIONARY.COM, http://www.businessdictionary.com/definition/bodily-injury-BI-coverage.html (last visited Sept. 9, 2011).
9. Kopier v. Harlow, 683 N.E.2d 536, 539 (Ill. App. Ct. 1997).
10. *See, e.g., What Affects Car Insurance Price?,* STATE FARM INS., http://www.statefarm.com/insurance/auto_insurance/ins_auto_price.asp (last visited Oct. 3, 2011).
11. 625 ILL. COMP. STAT. 5/7-203 (2010). This mandate is part of the Illinois Safety and Family Financial Responsibility Law. *See* 625 ILL. COMP. STAT. 5/7-100 to -708 (2010). The legislative

UM coverage, on the other hand, protects an insured in the event he is legally entitled to recover damages from an at-fault driver who is not insured.[12] Illinois law requires that UM limits be at least as high as BI limits in the same policy, unless the insured rejects UM coverage.[13] Similarly, UIM coverage protects an insured in the event he suffers damages of an amount greater than the BI limits contained in the liable party's policy.[14]

For example, driver A negligently causes an accident that causes driver B to suffer damages of $100,000. B has UIM coverage of $50,000 per person. A's BI limits are equal to the statutory minimum of $20,000 per person. Under Illinois law, B's insurance carrier must provide coverage in the amount of its UIM limits ($50,000), to be offset by the amount of A's BI limits ($20,000) as paid out by A's insurer – a total of $30,000.[15] If an insured purchases UM coverage in an amount that exceeds the statutory minimum, Illinois law further requires that his UIM and UM policy limits be equal.[16]

Practically, UM/UIM coverages provide compensation for the negligence of an unknown driver who does not have insurance or has too little of it, whereas liability coverage provides benefits for the protection of the negligence of an identified individual named in the policy. An insurer can assess BI coverage premiums based on known drivers of known vehicles. Conversely, the insurer bases UM/UIM coverage premium assessments on unknown drivers of unknown vehicles. In addition to the practical distinctions between liability coverage and UM/UIM coverages, there are *legal* distinctions material to the concept of stacking.

III. THE STACKING JURISPRUDENCE

Case law addressing anti-stacking language in auto insurance policies is convoluted in jurisdictions across the U.S., and Illinois is no exception. Furthermore, Illinois courts have not sufficiently addressed the fact that the

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mandate that a minimum amount of coverage insure every operative automobile exists nationwide, even in the absence of the "Financial Responsibility" terminology. *See, e.g.*, KY. REV. STAT. ANN. § 304.39.110 (West 2005).

12. Roy C. McCormick, *Understanding how UM/UIM coverages apply*, ROUGH NOTES (Sept. 2003), http://findarticles.com/p/articles/mi_qa3615/is_200309/ai_n9241957/. *See also* 16 RICHARD A. LORD, WILLISTON ON CONTRACTS § 49:35 (4th ed. 2009).
13. 215 ILL. COMP. STAT. 5/143a-2 (2010).
14. *Underinsured Motorist Coverage*, INVESTOR WORDS.COM, http://www.investorwords.com/5123/underinsured_motorist_coverage.html (last visited Sept. 9, 2011).
15. This assumes the policy has sufficient set-off language. *See* 215 ILL. COMP. STAT. 5/143a-2(4) (2010).
16. *Id.*

logical justifications for the stacking of these types coverage are simply inapplicable in a liability coverage context.[17]

A. The Linguistic Maze – UM/UIM Anti-Stacking Clauses in Illinois

Most U.S. state courts allow UM[18] and UIM[19] limits to be stacked, at least in the absence of a valid anti-stacking provision.[20] Illinois courts are no different.[21] Courts in Illinois give effect to valid UM/UIM anti-stacking clauses where policies cover more than one vehicle.[22] But to be valid, these

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17. For its part, the court in *Kopier* did state, "courts, whether or not they allow the stacking of uninsured motorist coverage or medical payment coverage, do not allow the stacking of liability coverage." Kopier v. Harlow, 683 N.E.2d 536, 539 (Ill. App. Ct. 1999) (citations omitted). However, subsequent decisions from Illinois' Fifth District have inexplicably ignored *Kopier*'s referendum. *See, e.g.*, Profitt v. OneBeacon Ins., 845 N.E.2d 715 (Ill. App. Ct. 2006); Skidmore v. Throgmorton, 751 N.E.2d 637 (Ill. App. Ct. 2001).
18. *See* Hennen v. St. Paul Mercury Ins. Co., 250 N.W.2d 840 (Minn. 1977); Lambert v. Liberty Mut. Ins. Co., 331 So. 2d 260 (Ala. 1976); Gov't Emp. Ins. Co. v. Meehan, 324 So. 2d 649 (Fla. Dist. Ct. App. 1975); Andrews v. Johnson, 324 So. 2d 465 (La. Ct. App. 1975); Harker v. Pa. Mfr. Ass'n Ins. Co., 281 A.2d 741 (Pa. Super. Ct. 1971).
19. *See* Wiggins v. Nationwide Mut. Ins. Co., 434 S.E.2d 642 (N.C. Ct. App. 1993); Padilla v. Dairyland Ins. Co., 787 P.2d 835 (N.M. 1990); Tallman v. Aetna Cas. & Sur. Co., 539 A.2d 1354 (Pa. Super. Ct. 1988); Vadheim v. Cont'l Ins. Co., 734 P.2d 17 (Wash. 1987); Holman v. All Nation Ins. Co., 288 N.W.2d 244 (Minn. 1980); Gov't Employees Ins. Co. v. Farmer, 330 So. 2d 236 (Fla. Dist. Ct. App. 1976).
20. *See* Samora v. State Farm Mut. Auto. Ins. Co., 892 P.2d 600 (N.M. 1995); Rudder v. Farmers Ins. Exch., 165 Cal. Rptr. 562 (Cal. Ct. App. 1980); Trimble v. Safeco Ins. Co. of Am., 292 N.W.2d 193 (Mich. Ct. App. 1980); Yarmuth v. Gov't Employees Ins. Co., 407 A.2d 315 (Md. 1979); State Farm Mut. Auto. Ins. Co. v. Williams, 600 P.2d 759 (Ariz. Ct. App. 1979); Barnes v. Gov't Employees Ins. Co., 236 S.E.2d 9 (Ga. Ct. App. 1977); Marks v. Travelers Indem. Co., 339 So. 2d 1123 (Fla. Dist. Ct. App. 1976); Mountain W. Farm Bureau v. Neal, 547 P.2d 79 (Mont. 1976); McCarthy v. Preferred Risk Mut. Ins. Co., 454 F.2d 393 (9th Cir. 1972). Courts in several states, such as Missouri, preclude application of anti-stacking language in the UM/UIM context by statute or otherwise. *See, e.g.*, Hendrickson v. Cumpton, 654 S.W.2d 332, 334 (Mo. Ct. App. 1983).
21. *See* Bruder v. Country Mut. Ins. Co., 620 N.E.2d 355 (Ill. 1993) (UM coverage would stack but for unambiguous anti-stacking clause); Domin v. Shelby Ins. Co., 761 N.E.2d 746 (Ill. App. Ct. 2001) (UM coverage would stack but for unambiguous anti-stacking clause); Yates v. Farmers Auto. Ins. Ass'n, 724 N.E.2d 1042 (Ill. App. Ct. 2000) (UIM coverage can stack in absence of unambiguous anti-stacking clause); Pekin Ins. Co. v. Estate of Ritter, 750 N.E.2d 1285 (Ill. App. Ct. 2001) (UIM coverage would stack but for unambiguous anti-stacking clause); Prudential Prop. & Cas. Ins. Co. v. Kelly, 817 N.E.2d 1226 (Ill. App. Ct. 2004) (UIM coverage would stack but for unambiguous anti-stacking clause).
22. *See Bruder*, 620 N.E.2d 355. *See also* Grzeszczak v. Ill. Farmers Ins. Co., 659 N.E.2d 952 (Ill. 1995). Typically, an insurance policy will contain some variation of the following anti-stacking language:

> The limit of liability shown in the Declarations for each person for coverage 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 one person in any one accident. . . . This is the most we will pay regardless of the number of: * * * 1. Insured; * * * 2. Claims made; * * * 3. Vehicles or premiums shown in the Declarations; or * * * 4. Vehicles involved in the accident.

clauses must be unambiguous.[23] Courts determine whether or not to allow UM/UIM stacking by reading a policy's limit of liability language in light of the rest of the policy – specifically, the declarations page.[24] The policy as a whole must unambiguously prohibit stacking for an anti-stacking clause to be upheld.[25]

Bruder v. Country Mutual Insurance Company is an oft-cited decision on the construction of anti-stacking language in Illinois.[26] There, the Illinois Supreme Court indicated in dicta that if an anti-stacking clause purported to limit coverage to the limit "shown in the declarations," and the declarations separately listed a limit for each covered vehicle, ambiguity would likely exist.[27] In *Bruder*, the plaintiffs, a husband and wife, respectively held a business auto policy covering two vehicles, each with limits of $100,000.00/$300,000.00 and a personal auto policy covering one vehicle with the same limits.[28] They argued that the limits of all three vehicles should stack.[29] The business policy's limits provision read: "The 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.'"[30] The plaintiffs argued the provision was ambiguous because one could interpret the declarations page – which listed a $100,000 limit only once, separately from the vehicle listings – as providing the limits separately for each vehicle listed.[31] The court disagreed, holding that the limits provision unambiguously precluded stacking when read alongside the declarations page's single listing of the limits.[32] However, the court noted in dicta that the limit of liability provision would likely be ambiguous if it listed the limits amount in columnar fashion, with the premium listings.[33]

Since *Bruder*, Illinois courts have treated this dicta as a *de facto* rule of policy construction.[34] And while comparing a policy's declarations page

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See Hobbs v. Hartford Ins. Co. of the Midwest, 823 N.E.2d 561, 564-65 (Ill. 2005).

23. *See, e.g.*, *Grzeszczak*, 659 N.E.2d at 956. A clause is ambiguous if subject to more than one reasonable interpretation. *Bruder*, 620 N.E.2d at 362.
24. *See, e.g.*, *Hobbs*, 823 N.E.2d at 563.
25. *See, e.g.*, *id.*
26. *Bruder*, 620 N.E.2d 355.
27. *Id.* at 362.
28. *Id.* at 357.
29. *Id.*
30. *Id.* at 360.
31. *Id.* at 362.
32. *Id.*
33. *Id.*
34. *See* Hobbs v. Hartford Ins. Co. of the Midwest, 823 N.E.2d 561, 561 (Ill. 2005); Skidmore v. Throgmorton, 751 N.E.2d 637 (Ill. App. Ct. 2001); Domin v. Shelby Ins. Co., 761 N.E.2d 746 (Ill. App. Ct. 2001); Yates v. Farmers Auto. Ins. Co., 724 N.E.2d 1042 (Ill. App. Ct. 2000). The court in *Hobbs* recognized that stacking of UM/UIM coverage should be reviewed on a case-by-case basis and that there is not a *per se* rule governing stacking any time the policy lists the limits more

with its applicable anti-stacking provision seems to provide a reasonable method of determining whether UM/UIM coverage stacks, it is a legal and logical mistake to apply the *Hobbs/Bruder* rationale where the anti-stacking clause at issue purports to limit *BI* coverage.

B. The Lack of Importance of Anti-Stacking Language in the Context of BI Coverage

Most U.S. courts hold that policy language purporting to prevent BI stacking is irrelevant in determining whether or not BI coverage should stack with other coverages. This is because courts in very large part do not allow claimants to stack BI coverage regardless of anti-stacking language.

1. Few Cases Allow Stacking of BI Coverage in the Face of Anti-Stacking Language

A small minority of courts permit stacking of BI coverage where anti-stacking language is absent or ambiguous.[35] In *Jackson v. State Farm Mutual Automobile Insurance Co.*, the plaintiff sought to stack non-owned vehicle coverage provided in four separate policies.[36] The court held the policy limits of each policy could not be stacked because non-owned vehicle coverage was not mandated by statute.[37] However, the court indicated in dicta that a policy could not by its terms prohibit stacking of coverage mandated by statute, including bodily injury coverage.[38] The South Carolina Supreme Court would later invalidate this proposition.[39]

In *Goodman v. Allstate Insurance Co.*, the plaintiff sought a declaration allowing him to stack BI coverage under two separate policies.[40] The insurer, when extending coverage to the second vehicle, insisted that the extension occur under a second policy.[41] That policy contained an

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than once. *Hobbs*, 823 N.E.2d at 569 n.1. Still, Illinois appellate courts have been quick to distinguish anti-stacking language that differs from the "shown in the declarations" terminology. For example, in the UIM context, courts have upheld clauses limiting coverage to the limit "applicable to any one auto," and the limit shown in an *endorsement* (rather than in the declarations). *See* Estate of Striplin v. Allstate Ins. Co., 807 N.E.2d 1255, 1257 (Ill. App. Ct. 2004); Pekin Ins. Co. v. Estate of Ritter, 750 N.E.2d 1285, 1286 (Ill. App. Ct. 2001).

35. *See* Goodman v. Allstate Ins. Co., 523 N.Y.S.2d 391 (NY App. Div. 1987); Jackson v. State Farm Mut. Auto. Ins. Co., 342 S.E.2d 603 (S.C. 1986); Karscig v. McConville, 303 S.W.3d 499 (Mo. 2010).

36. *Jackson*, 342 S.E.2d at 604.

37. *Id.* at 605.

38. *Id.* at 604.

39. *See* Ruppe v. Auto-Owners Ins. Co., 496 S.E.2d 631, 632 (S.C. 1998) ("A review of current cases . . . indicates that [the *Jackson* dicta] is an oversimplification of our stacking law and we decline to apply it here.").

40. *Goodman*, 523 N.Y.S.2d at 392.

41. *Id.* That second vehicle was the one involved in the accident underlying the case.

"other insurance" clause, which stated, "If more than one policy applies to an accident involving your insured auto, we will bear our proportionate share without other collectible liability insurance."[42] As such, the court had to determine whether the original policy's coverage, which covered an uninvolved vehicle, fell under the language of the second policy's "other insurance" clause.[43] The court answered affirmatively pursuant to a clause wherein the policy purported to automatically cover any additional vehicle the insured purchased during the premium period.[44]

In allowing stacking, the court disregarded two anti-stacking clauses in the pertinent policy. The first, which purported to prevent stacking of liability limits for more than one vehicle "covered by this policy," was deemed inapplicable because coverage was only sought for one vehicle covered by *that policy*.[45] The second clause read, "The limits shown on the declarations page are the maximum we will pay for any single auto accident. . . . The limits . . . won't be increased if you have other . . . policies that apply."[46] The court found this clause not to prohibit stacking across policies, but rather to indicate that *this* policy's limits would not increase.[47]

In *Karscig v. McConville*, after already receiving benefits under defendant's parents' policy, the plaintiff claimed entitlement to the BI limits under the defendant's individual policy.[48] The insurer denied coverage based on a policy exclusion for household vehicles other than that listed in the declarations.[49] The court found the exclusion did not apply and turned to the pertinent anti-stacking provision: "We will pay no more than [the policy limits] no matter how many vehicles are described in the declarations, or insured persons, claims, claimants, policies, or vehicles are involved."[50] The Missouri Supreme Court held that the provision violated the Missouri Motor Vehicle Financial Responsibility Law (MVFRL), which requires all auto insurance policies in the state to provide minimum coverage of $25,000 per person.[51]

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42. *Id.* at 393.
43. *Id.* (emphasis omitted).
44. *Id.* The original policy required satisfaction of several conditions – all of which had occurred – for coverage to apply to a newly purchased vehicle.
45. *Id.* at 394-95.
46. *Id.* at 395.
47. *Id.* The court stated that if an insurer intended that, where one policy provided coverage, the other could not also provide coverage, the insurer should specifically state the intention of one or both policies. *Id.* at 395.
48. Karscig v. McConville, 303 S.W.3d 499, 500 (Mo. 2005).
49. *Id.* at 501.
50. *Id.* (emphasis omitted).
51. *Id.* at 504.

As indicated above, the South Carolina Supreme Court ultimately invalidated the pro-stacking legal conclusion in *Jackson*. With regard to *Goodman* and *Karscig*, the two cases share a clear common thread: specificity to individual facts. The Missouri Supreme Court seemingly intended to limit *Karscig* to the circumstance in which the claimant wants to stack BI limits under "two distinct policies purchased by two separate parties."[52] Further, the reasoning in *Goodman* seems anomalous, as the case has never been cited favorably and had its reasoning dismissed by the court in *Stevenson ex rel. Stevenson v. Anthem Casualty Insurance Group*,[53] discussed more fully herein.

2. The Majority of Jurisdictions Deny Stacking of BI Coverage

A large majority of courts across jurisdictions will barely, if at all, reach an ambiguity analysis in deciding whether or not BI coverage stacks—they simply deny stacking in the BI context.[54] In the Maryland case of *Oarr v. Government Employees Insurance Co.*, for example, the claimant had already received the BI limits under her husband's policy with respect to one of the two vehicles it insured.[55] She appealed the lower court's decision denying her claim for the limits with respect to the other vehicle, arguing that the BI limits language was ambiguous.[56] The limits provision stated that regardless of the number of vehicles insured under the policy, "the limit stated in the declarations as applicable to 'each person'" would be the total limit of coverage for any accident.[57] In addition, the policy made coverage conditional, such that when it insured two or more vehicles, "the terms of this policy [applied] separately to each."[58] Assessing the appellant's contention in light of the limit of liability

52. *Id.* at 505.
53. 15 S.W.3d 720 (Ky. 1999).
54. *See* Kopier v. Harlow, 683 N.E.2d 536 (Ill. App. Ct. 1997); Payne v. Weston, 466 S.E.2d 161 (W. Va. 1995); Hilden v. Iowa Nat'l Mut. Ins. Co., 365 N.W.2d 765 (Minn. 1985); Hendrickson v. Cumpton, 654 S.W.2d 332 (Mo. Ct. App. 1983) (distinguishing earlier Missouri Supreme Court opinion in which court found ambiguous a medical payments limits provision with language identical to the BI limits provision at issue in *Karscig*); Butler v. Robinette, 614 S.W.2d 944 (Ky. 1981); Emick v. Dairyland Ins. Co., 519 F.2d 1317 (4th Cir. 1975); Allstate Ins. Co. v. Mole, 414 F.2d 204 (5th Cir. 1969); Greer v. Assoc. Indem. Corp., 371 F.2d 29 (5th Cir. 1967) (applying Florida law); Gov't Emps. Ins. Co. v. Lally, 327 F.2d 568 (4th Cir. 1964) (applying Maryland law). Generally, the distinct nature of BI coverage is the basis for the courts' decisions.
55. Oarr v. Gov't Emp. Ins. Co., 383 A.2d 1112, 1113 (Md. Ct. Spec. App. 1978).
56. *Id.* The court stated that the terms of the policy control in the absence of any provision of Maryland law requiring a policy to stack coverage where a single policy provides coverage with respect to more than one vehicle. *Id.* at 1113-14.
57. *Id.* at 1114. The declarations showed a $20,000 limit for "each person" with respect to both vehicles insured under the policy. *Id.*
58. *Id.*

provision, the court found that no ambiguity existed and, therefore, declined to permit stacking of BI coverage.[59] In so ruling, the court set out a lengthy analysis regarding the distinction of *first-party* medical payments and UIM coverages from *third-party* BI coverage, resulting in pro-stacking rationales applicable to the former being rendered inapplicable to the latter.[60]

In *Ruppe v. Auto-Owners Insurance Company*, the insured held a policy covering two vehicles, each with BI limits of $100,000 per person.[61] The carrier paid out the limits with respect to the vehicle involved in the accident, and the claimant sought a declaratory judgment allowing stacking of the other vehicle's limits.[62] Without looking to the pertinent anti-stacking provision, the court held it valid and preclusive of stacking of BI coverage.[63] The court's primary rationale was that, unlike UM and UIM coverages, BI coverage "is limited to the particular vehicle for which it is purchased."[64]

The Wisconsin case of *Rozar v. General Insurance Company of America* similarly involved a policy that covered two vehicles, one of which the policyholder's son was operating when the accident occurred.[65] The plaintiff wanted to stack both vehicles' BI limits.[66] The policy terms regarding the limit of liability and the conditions of coverage were identical to those in *Oarr*, and, in ruling against BI stacking, the court similarly distinguished other types of coverage from third-party liability coverage.[67]

In *North River Insurance Company v. Dairyland Insurance Company*, the injured party fell from a trailer that was attached to a truck insured by Dairyland, on a farm insured by North River.[68] Dairyland denied coverage, and North River brought a declaratory action against both Dairyland and Great Central Insurance, which insured the farm owner's three vehicles.[69] Great Central wrote two policies to cover the three vehicles.[70] The trial

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59. *Id.* at 1118.
60. *Id.* at 1115-18. The court adopted this view "not as much because it represents the near unanimous view of the courts that have considered it, but because it is based on sound reasoning." *Id.* at 1118. Specifically, with regard to the language of the policy "condition" at issue, the court held it "intend[s] to do nothing more, and indeed does nothing more, than to assure the applicability of the policy to whichever car is involved in the accident."
61. Ruppe v. Auto-Owners Ins. Co., 496 S.E.2d 631, 631 (S.C. 1998).
62. *Id.*
63. *Id.* at 633.
64. *Id.* ("The extent of liability coverage is thus statutorily defined by the amount of coverage on the insured vehicle and does not encompass coverage applicable to other vehicles.")
65. Rozar v. Gen. Ins. Co. of Am., 163 N.W.2d 129, 129 (Wis. 1969).
66. *Id.* In this case, the limits of liability were $10,000 per person for each vehicle. *Id.*
67. *Id.* at 131-32 (citing Pac. Indem. Co. v. Thompson, 355 P.2d 12 (Wash. 1960)).
68. N. River Ins. Co. v. Dairyland Ins. Co., 346 N.W.2d 109 (Minn. 1984). The truck was owned by a man named Appel. *Id.* at 110.
69. *Id.*
70. *Id.* at 111.

court held that, with regard to the trailer, only one of the Grand Central policies provided coverage, and both North River and Great Central appealed.[71] The Minnesota Supreme Court held that both policies provided coverage, but that it "ma[de] no difference in the action" because "[BI] coverage follows the vehicle and not the person and there can be no stacking of [BI] coverage."[72]

In *Rando v. California State Automobile Association*, the minor tortfeasor caused an accident while driving a non-owned vehicle.[73] The owner of the vehicle had four vehicles, including the vehicle involved in the accident, insured with California State Automobile Association (CSAA) under one policy.[74] CSAA also issued a policy to the minor's mother, insuring three vehicles. After suit was brought against both the minor tortfeasor and her mother, CSAA filed a declaratory judgment. In the declaratory action, CSAA moved for and obtained summary judgment on the position that it owed coverage only once under each policy.[75] The sole issue on appeal was whether BI coverage stacked under the mother's policy.[76] The appellate court stated that, because Nevada law neither required that an insured maintain BI coverage in excess of the statutory minimum nor that coverage increase in cases where an insured owns multiple vehicles, "[t]here . . . is no ascertainable public policy supporting appellants' contention that liability policies covering multiple vehicles must be construed to allow stacking of vehicle coverages in order to increase limits of liability protection beyond the minimums provided by law."[77]

The court also rejected the plaintiffs' attempts to analogize UIM cases and no-fault stacking, finding that "no . . . parity exists" between BI and those coverages.[78] The court distinguished UIM and no-fault – "first-person coverages" – from BI – "third-party liability coverage available to an insured as a result of the ownership or use . . . of a vehicle."[79]

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71. *Id.* The trial court decided and the supreme court considered several other matters not relevant to this discussion.
72. *Id.* at 115. Note that the court's reasoning behind finding coverage under both policies was based on ambiguity of policy definitions and did not concern anti-stacking language. The court found that the Dairyland policy also provided coverage because an ambiguity caused the trailer to be legally "attached to" Appel's truck. Note the distinction from stacking, however; the court found coverage to apply because it deemed the covered vehicle to be "attached to" the vehicle that caused the injury, and not merely because the insurer provided coverage for other vehicles owned by an insured. *Id.* at 115-16.
73. Rando v. Cal. St. Auto. Ass'n, 684 P.2d 501, 502 (Nev. 1984).
74. *Id.*
75. *Id.* The trial court rejected the claimants' argument that coverage should stack under the driver's policy.
76. *Id.*
77. *Id.* at 503.
78. *Id.* at 503-04.
79. *Id.* at 504.

Emphasizing that BI coverage "focuses on a particular vehicle without which the protection would not exist," the court denied the plaintiffs' attempt to stack their coverages, without regard to any anti-stacking language contained in the policy.[80]

In *Hilden v. Iowa National Mutual Insurance Company*, Iowa National insured Hilden's three vehicles in one policy.[81] After Hilden's grandson, operating one of the covered vehicles, caused an accident that injured a passenger, Hilden demanded that Iowa National provide $300,000.00 in coverage – the aggregate of the BI limits for each insured vehicle.[82] Iowa National contended it owed only $100,000.00, which it paid to the injured party; Hilden then sought a declaration allowing stacking, which the trial court denied, granting summary judgment for Iowa National.[83] On appeal, Hilden contended that policy language precluding stacking of coverages contravened public policy.[84] The court countered that the risk to the insurer of providing first-party coverages "does not increase with the number of vehicles owned or policies issued" because the insured intends for coverage to apply without regard to a specific vehicle.[85] As such, allowing policyholders to stack first-party coverages, for which they pay separate premiums for each additional covered vehicle, prevents the windfall that would otherwise result from collection of additional premiums without incurrence of additional risk.[86] The court added that insurers *do* incur additional risk in providing BI coverage for additional vehicles, because BI coverage applies strictly to the use of the covered vehicle.[87] On the basis of this distinction, the court rejected the request for a ruling in favor of stacking.[88]

A decade later, in *Stevenson v. Anthem Casualty Insurance Group*, Stevenson suffered injuries as a passenger in one of four vehicles that Anthem insured.[89] Each vehicle had BI limits of $100,000.00.[90] Stevenson sought a court declaration allowing her to stack the BI limits for all four

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80. *Id.* at 504, 506.
81. Hilden v. Iowa Na'l Mut. Ins. Co., 365 N.W.2d 765, 766 (Minn. 1985).
82. *Id.* at 767. Each vehicle had BI limits of $100,000.00. *Id.* at 766-67. The plaintiffs made the demand because the injured party offered to settle for $300,000.00. *Id.* at 767.
83. *Id.*
84. *Id.* The plaintiffs first argued that the policy's separability clause gave rise to ambiguity, which the court summarily rejected. *Id.*
85. *Id.*
86. *Id.* at 768-69.
87. *Id.* at 769.
88. *Id.*
89. Stevenson *ex rel*. Stevenson v. Anthem Cas. Ins. Group., 15 S.W.3d 720, 720-21 (Ky. 1999).
90. *Id.* at 721. The insureds paid a separate premium with regard to each vehicle. *Id.*

vehicles, and the lower court denied stacking.[91] On review, the Kentucky Supreme Court looked to *Butler v. Robinette*,[92] which held that BI coverage did not stack because a state statute mandated BI coverage for each *vehicle*, rather than each *policy*, and the coverage therefore followed the covered vehicle, rather than the insured individual.[93] The court affirmed the preclusion of stacking, citing the absence of "any trend away from the general rule [precluding stacking in the BI context] represented by [its] opinion in *Butler* . . . ."[94]

Around the same time as *Stevenson*, the West Virginia Supreme Court decided *Payne v. Weston*, in which the Paynes sued Allstate, which insured two of the tortfeasor's vehicles, claiming the policy permitted stacking of BI coverage.[95] After the lower court held that the policy prohibited stacking, the Paynes appealed on the ground that West Virginia courts held anti-stacking language to be in violation of public policy when applicable to UM/UIM coverage.[96] In line with other courts, the court dismissed this theory as inapposite in the BI context.[97] The court further stated that a plaintiff aiming to stack BI coverage must prove that there is "clear language in the policy that permits stacking or . . . some language that leaves a reasonable doubt as to whether stacking was intended by the parties" and that "the mere absence of anti-stacking language" is not enough.[98] On this basis, the court held that the policy did not permit stacking.[99]

In 2001, a Massachusetts appellate court confronted the issue of whether to allow an insured to stack BI coverage.[100] In *Maher v. Chase*, the plaintiff suffered injuries while riding as a passenger in the vehicle of the

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91. *Id.* Each policy also provided $30,000.00 in personal injury protection (PIP) coverage, and Stevenson sought to stack that as well, for a total of $120,000.00. However, PIP coverage is not relevant to the subject matter of this article.
92. Butler v. Robinette, 614 S.W.2d 944 (Ky. 1981).
93. *Stevenson*, 15 S.W.3d at 721 (citing *Butler*, 614 S.W.2d at 947). The statute determinative in *Butler* had been repealed, but the replacement statute contained materially identical language. *Id.*
94. *Id.* at 722 ("The overwhelming majority of jurisdictions which have addressed the issue prohibit stacking of [BI] coverages . . . .").
95. Payne v. Weston, 466 S.E.2d 161, 163-64 (W. Va. 1995).
96. *Id.* at 164, 166-67.
97. *Id.* at 167 ("[W]e [have] emphasized that the public policy reasons behind the prohibition of anti-stacking language in the [UM/UIM] coverage context do not exist when [BI] coverage is at issue.") (citations omitted).
98. *Id.* at 168.
99. *Id.* The pertinent limit of liability language stated that the limit was "the total limit of Allstate's liability for all damages as the result of any one occurrence . . . ." The other pertinent language, in the policy's general conditions, provided that "[w]hen two or more automobiles are insured . . ., the terms of the policy shall apply separately to each . . . ." *Id.*
100. Maher v. Chase, 749 N.E.2d 717 (Mass. App. Ct. 2001).

defendant, a New Hampshire resident.[101] The pertinent policy insured two other vehicles as well, and the plaintiff claimed entitlement to the stacked aggregate of the BI liability limits for all three vehicles.[102] The court began its analysis by distinguishing, with regard to stacking, UM/UIM coverages from BI coverage, noting that "[a]n apparent majority of jurisdictions that have considered this issue have concluded that bodily injury liability coverage is not subject to stacking."[103] The court emphasized that UM/UIM coverages "provide direct benefits to the insured, . . . and are provided pursuant to a contract with the insured."[104] By contrast, the court reasoned, the plaintiff—and, by implication, any like-situated claimant seeking to collect benefits pursuant to a tortfeasor's BI coverage—"did not purchase the policy and was not a party to the contract. She, therefore, could have no expectation of benefit in the policy."[105]

In response, the plaintiff argued that the policy was ambiguous, in that the UM/UIM and medical payments endorsement contained anti-stacking language while the BI endorsement did not, and that the court had to resolve such ambiguity in her favor.[106] The court rejected this argument on the ground that "the declarations page expressly stated the per person . . . limits and the bodily injury coverage provision clearly stated that it limited the bodily injury coverage to the . . . limits in the declaration[s]."[107] Accordingly, the court denied stacking.[108]

This sampling of cases from jurisdictions across the U.S. makes clear that most U.S. courts treat attempts to stack BI coverage with little favor. Illinois courts, however, seem to have decided not to take the same approach.

3. Illinois Courts' Decisions with Regard to BI Stacking Are Inconsistent

In 1997, the Illinois Court of Appeals for the Second District rendered an opinion that seemed to indicate that Illinois courts would, to some extent, follow that majority of U.S. courts.[109] In *Kopier v. Harlow*, three insurance policies, all held by the defendant's parents and each covering

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101. *Id.* at 717-18. As such, the applicable insurance policy, which belonged to the defendant's parents – the owners of the pertinent car – was written and negotiated in New Jersey and the parties stipulated that New Jersey law controlled the issues in the case. *Id.* at 718.
102. *Id.*
103. *Id.* at 719, 719 (citations omitted).
104. *Id.* at 719. The court noted that the policy set forth the premiums for each coverage separately for each automobile.
105. *Id.* at 719-20.
106. *Id.* at 720.
107. *Id.*
108. *Id.* at 721.
109. *See* Kopier v. Harlow, 683 N.E.2d 536 (Ill. App. Ct. 1997).

one vehicle, covered the defendant's vehicle use.[110] The policy that covered the pertinent vehicle had BI limits of $25,000.00 per person.[111] However, one of the other policies had limits of $100,000.00 per person.[112] "The parties agreed to settle for the policy limits, but disagreed over which policy limit applied."[113]

Even though the parties were not debating stacking of coverage, the court analyzed the plaintiff's position from a stacking perspective because "the rationale behind not allowing stacking of [BI] coverage – that liability policies insure particular cars – is contrary to plaintiff's position."[114] The court stated in dicta that it is because BI coverage relates to the use of a particular vehicle that "courts, whether or not they allow the stacking of [other] coverage, do not allow the stacking of [BI] coverage."[115] Although the court ultimately looked to the policy to ensure no provision therein gave rise to an ambiguity, the court's endorsement of anti-stacking rhetoric in the BI context suggested Illinois appellate courts would fall in line with the majority.

However, the Illinois Court of Appeals for the Fifth District has, on more than one occasion, held that BI limits could stack in the absence of an unambiguous anti-stacking clause.[116] The 2001 case of *Skidmore v. Throgmorton*[117] marked the first occasion. In *Skidmore*, two applicable Safeco insurance policies each covered two vehicles; all four vehicles had per-person BI limits of $400,000.00, and both policies contained anti-stacking clauses.[118] The plaintiff moved for a judgment allowing him to stack the limits for all four vehicles, which Safeco contested.[119] The trial court rendered a judgment in Safeco's favor, after which the plaintiff moved the court to reconsider.[120] The court granted the motion and reversed its earlier order, ruling that the plaintiff could stack all four limits, and Safeco appealed.[121] Based on cases in line with the *Bruder* dicta, the appellate court held that an ambiguity existed in each policy because, in each, the declarations page set out a limit of liability for each vehicle

110. *Id.* at 538.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.* at 539.
115. *Id.* (citations omitted).
116. *See* Profitt v. OneBeacon Ins., 845 N.E.2d 715 (Ill. App. Ct. 2006); Skidmore v. Throgmorton, 751 N.E.2d 637, 637 (Ill. App. Ct. 2001).
117. *Skidmore*, 751 N.E.2d 637.
118. *Id.* at 638. Both policies provided coverage to the defendant: one was her personal policy, and one covered a vehicle her parents owned, which she was driving at the time of the accident. *Id.*
119. *Id.* at 639.
120. *Id.*
121. *Id.*

listed.[122] In so ruling, the court failed to consider any anti-BI stacking jurisprudence or theory.[123] In fact, the court adhered to a line of cases in which the ruling courts construed *UIM* coverage, *despite* Safeco's plea that the court give effect to the distinction between BI and UM/UIM coverages.[124] The court responded to Safeco thusly:

> While the difference in coverage is a factual distinction, we note that the insurer employed the same policy language for both the [BI] and [UM/UIM] coverages. The reasoning . . . in *Bruder* [] cannot be limited to [UM/UIM] coverage, and it must be applied in situations involving the identical policy language, located elsewhere in the policy.[125]

Five years later, in *Profitt v. OneBeacon Insurance*,[126] the Fifth District acted with similar disregard for the confluence of state-level anti-BI stacking jurisprudence. OneBeacon insured three vehicles for Phyllis Johnson, who injured Profitt in an accident.[127] In April of 2001, Johnson renewed the policy and received a declarations page memorializing the renewal and setting forth the vehicles' BI limits.[128] In June she replaced one of the covered vehicles, and received an additional declarations page memorializing the change.[129] Later, Profitt's attorney requested a copy of Johnson's declarations page, and OneBeacon sent both the pre-change and post-change versions.[130] Profitt argued the existence of two declarations pages gave rise to ambiguity that would permit stacking of the BI limits.[131] In rendering in opinion on the issue, the court confined its analysis to whether an ambiguity existed – it did not make any mention of the general jurisprudential prohibition against stacking of BI limits.[132]

Furthermore, in *Grinnell Select Insurance Company v. Baker*, the Seventh Circuit Court of Appeals posited that the Illinois Supreme Court

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122. *Id.* at 642-43 (citing Allen v. Transamerica Ins. Co., 128 F.3d 462 (7th Cir. 1997)). The court stated that, as a result, when a reader viewed the anti-stacking provision, which referred the reader to the "limit of liability *shown in the Declarations*," the reader would not know to which vehicle's limit the language referred. *Id*. at 642 (emphasis added).
123. *Id*. at 642-44.
124. *Id*.
125. *Id*. at 644. The authors are not aware of another case, in Illinois or otherwise, that has followed this reasoning with respect to the distinction between first- and third-person coverages.
126. Profitt v. OneBeacon Ins., 845 N.E.2d 715 (Ill. App. Ct. 2006).
127. *Id*. at 716.
128. *Id*.
129. *Id*. at 716-17.
130. *Id*. at 717.
131. *Id*. at 717-18.
132. *Id*. at 718-19. The court rejected Profitt's argument that *Bruder* and like cases, in which courts found ambiguity where a declarations page listed limits of liability multiple times, applied in this case. *Id*. at 719.

would entertain claimants' efforts to stack BI coverage in the same fashion.[133] The court denied stacking of two BI limits under one policy because of the existence of a valid anti-stacking clause.[134] The analysis denied stacking on the basis that the Seventh Circuit did not believe the Illinois Supreme Court would find listing multiple cars, premiums and coverages on a declarations page to be ambiguous.[135] However, the court did not differentiate between BI coverage and UM/UIM coverage with regard to stacking.[136]

The Fifth District, and the Seventh Circuit in *Grinnell*, diverge greatly from the majority of U.S. state courts in analyzing BI stacking in the same manner courts analyze stacking of UM/UIM and other first-party types of coverage.[137] The reason for this divergence can only be that, in rendering their decisions, these courts failed to recognize three fundamental distinctions between liability coverage and UM/UIM coverages.

a. Treatment within the Statutory Scheme

As the Kentucky Supreme Court found in *Stevenson*, UM statutes mandate that policies contain minimum UM coverage "for the protection of persons insured thereunder."[138] The court explained that policyholders could stack UM coverage for each vehicle because UM coverage applied to the named insured.[139] However, the court would not analogously permit stacking of BI coverage limits.[140] It reasoned that the state statutory mandate of a minimum amount of BI liability coverage applied only as to

133. Grinnell Select Ins. Co. v. Baker, 362 F.3d 1005 (7th Cir. 2004).
134. *Id*. at 1007-08.
135. *Id*.
136. *Id.* at 1007-08. In fact, in support of its position, the court cited three cases from other jurisdictions in which UM or UIM coverage was at issue. *Id.* at 1007.
137. *See* Kopier v. Harlow, 683 N.E.2d 536 (Ill. App. Ct. 1997); Payne v. Weston, 466 S.E.2d 161 (W. Va. 1995); Hilden v. Iowa Nat'l Mut. Ins. Co., 365 N.W.2d 765 (Minn. 1985); Hendrickson v. Cumpton, 654 S.W.2d 332 (Mo. Ct. App. 1983) (distinguishing earlier Missouri Supreme Court opinion in which court found ambiguous a medical payments limits provision with language identical to the BI limits provision at issue in *Karscig*); Butler v. Robinette, 614 S.W.2d 944 (Ky. 1981); Emick v. Dairyland Ins. Co., 519 F.2d 1317 (4th Cir. 1975); Allstate Ins. Co. v. Mole, 414 F.2d 204 (5th Cir. 1969); Greer v. Assoc. Indem. Corp., 371 F.2d 29 (5th Cir. 1967) (applying Florida law); Gov't Emps. Ins. Co. v. Lally, 327 F.2d 568 (4th Cir. 1964) (applying Maryland law). Generally, the distinct nature of BI coverage is the basis for the courts' decisions.
138. Stevenson ex rel. Stevenson v. Anthem Cas. Ins. Group, 15 S.W.3d 720, 721 (Ky. 1999) (citing Ohio Cas. Ins. Co. v. Stanfield, 581 S.W.2d 555 (Ky. 1979); KY. REV. STAT. ANN. § 304.20-020(1) (West 2005)).
139. *Stevenson*, 15 S.W.3d at 721.
140. *Id.*

each insured vehicle, and, therefore, BI coverage only applied to the insured vehicle involved in a given accident.[141]

Illinois' statutory scheme regarding minimum UM and BI coverage mandates is the same as Kentucky's in all material respects. The two states' UM statutes are materially identical,[142] and the legislative intent that BI coverage apply to a singular covered vehicle is apparent in each state's section mandating minimum coverage.[143] Consequently, it seems logical that the Illinois Supreme Court would follow the Kentucky Supreme Court's lead in declining to permit stacking of BI coverage.

b. The Person or Thing Each Coverage is Meant to Insure

A plethora of courts and insurance law practitioners and scholars have for years argued that UM/UIM coverages follow the insured *person*, whereas BI liability coverage follows an insured *vehicle*.[144] "Obviously, any one insured can operate but one automobile at a time. Bodily injury liability coverage . . . is therefore designed to attach to whichever automobile an insured happens to be driving . . . ."[145] As such, in order for coverage to apply, an insured must be driving a particular vehicle.

Precisely because of this concept, the multiple-limits rationale derived from *Hobbs* and the *Bruder* dicta should not apply to determinations involving stacking of BI limits. It is common for insurance policies to contain different limits for each covered automobile, each limit reflecting the risk to the insurer of insuring the particular vehicle.[146] For example, a primary vehicle that both husband and wife drive on a daily basis to

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141. *Id.* at 721 (citing *Butler v. Robinette*, 614 S.W.2d 944 (Ky. 1981); KY. REV. STAT. ANN. § 187.490(2)(b) (West 1970) (current version at KY. REV. STAT. ANN. § 304.39.110 (West 1975)).

142. *Compare* 215 ILL. COMP. STAT. 5/143a(1) (2010), *with* KY. REV. STAT. ANN. § 304.20-020(1) (West 2010). Notably, both statutes contain the material "protections of persons insured thereunder" language cited in *Stevenson*.

143. *Compare* 625 ILL. COMP. STAT. 5/7-203 (2010), *with* KY. REV. STAT. ANN. § 304.39.110(1)(a)(1).

144. *See* Slack v. Robinson, 71 P.3d 514 (N.M. Ct. App. 2003); Windham v. Cunningham, 902 S.W.2d 838 (Ky. Ct. App. 1995); Knight v. Stewart, 388 S.E.2d 9 (Ga. Ct. App. 1989); Wood v. State Farm Mut. Ins. Co., 766 P.2d 269 (Nev. 1988); Hilden v. Iowa Nat'l Mut. Ins. Co., 365 N.W.2d 765 (Minn. 1985); N. River Ins. Co. v. Dairyland Ins. Co., 346 N.W.2d 109 (Minn. 1984); Rando v. Cal. State Auto. Ass'n, 684 P.2d 501 (Nev. 1984); Hendrickson v. Cumpton, 654 S.W.2d 332 (Mo. Ct. App. 1983); Oarr v. Gov't Emps. Ins. Co., 383 A.2d 1112 (Md. Ct. Spec. App. 1978); Emick v. Dairyland Ins. Co., 519 F.2d 1317, 1326 (4th Cir. 1975) ("[The] basic purpose [of liability coverage] has 'always been conceived to be the protection of the policyholder against loss resulting from legal liability caused by his operation of a motor vehicle' and, as such, 'pertain(s) fundamentally to the vehicle.'").

145. *Hendrickson*, 654 S.W.2d at 335-36.

146. Note that the same should never be true as to UM/UIM limits pertaining to each vehicle—UM/UIM limits need never be different from one vehicle to another, because the risk posed by UM/UIM coverage to the insurer does not change from one vehicle to another. *See* discussion *supra* Part IIIC.

multiple destinations may have limits of $100,000.00/$300,000.00, while a utility truck that husband uses only one or two days per month may have limits of $20,000.00/$40,000.00. Because these limits are different, they will necessarily be listed separately on a declarations page, corresponding individually to the two vehicles. Consequently, under the rationale in *Hobbs* and *Bruder*, a court would determine an anti-stacking clause with standard language to be ambiguous.[147]

Some argue that the conception that liability coverage follows the vehicle is "outmoded," positing that it can also follow the person, as in cases involving "other" and "non-owned" vehicle policy provisions.[148] However, in this sort of circumstance, the coverage still could be said to follow the vehicle—either an owned vehicle covered specifically within the declarations, or a non-owned vehicle covered otherwise.[149]

The focus of BI coverage is the vehicle the insured operates; whereas, in the UM/UIM context, the focus is the negligence of an unaffiliated, third-party "other driver." UM/UIM coverage insures an individual with respect to injury he or she may incur because of the fault of any other driver who is uninsured or underinsured. As such, eligibility for coverage has nothing to do with the insured even *being in a vehicle* at the time of injury, much less driving one.

c. The Insurer's Risk in Insuring Additional Vehicles

Another rationale for permitting stacking of UM/UIM coverage, but which is not applicable with regard to liability coverage, is that stacking prevents insurers from reaping a windfall by collecting premiums for additional coverage and then not paying the limits according to the premiums paid.[150] Insurance companies charge additional premiums for UM/UIM coverage for each additional automobile listed on the policy, but "the risk [to the insurer in providing additional UM/UIM coverage] does not increase with the number of vehicles owned or policies issued . . . ."[151] In the absence of increased risk to the insurer, it would be inequitable to

147. *See* discussion *supra* Part IIIB.

148. *See, e.g.*, 12 LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INS. § 169:109 (3d ed. 2004).

149. *See Emick*, 519 F.2d at 1326 ("Bodily injury liability coverage is linked to the ownership, maintenance or use of an owned automobile or a non-owned automobile by the insured and others to whom the coverage is extended.").

150. *See* Hilden v. Iowa Nat'l Mut. Ins. Co., 365 N.W.2d 765, 768–69 (Minn. 1985).

151. *Id.* at 768 (citing, e.g., Yeager v. Auto-Owners Ins. Co., 335 N.W.2d 733, 737 (Minn. 1983)). The court explained that the risk in providing UM/UIM coverage does not increase with each additional covered vehicle because the invocation of such coverage is independent of the use of any insured vehicle. *Id.*

allow an insurer to take additional premiums for additional vehicles, unless it will pay the limits for *all coverages* for which a premium is paid.[152]

This rationale does not apply to liability limits because liability coverage is invoked only if an accident involves a vehicle covered by the terms of the policy.[153] As such, the risk to the insurer *does* increase with each additional insured vehicle, the operation of which could result in an accident for which coverage was not provided prior to the addition.[154] Therefore, the payment of additional premiums, without the insured being afforded coverage over and above that provided for the added vehicle, does not result in a windfall for the insurer.[155] Thus, another rationale in favor of stacking coverages fails when applied to liability coverage.

V. CONCLUSION – SEEKING THE ATTENTION OF THE ILLINOIS SUPREME COURT

The Second District of Illinois recognized in 1997 that BI coverage does not stack. This realization appeared in unison with similar realizations in courts throughout the rest of the country. However, in 2001, and later in 2006, the Fifth District of Illinois determined that BI coverage can be stacked. Both times, the court failed to discuss *Kopier*, the distinction between UM/UIM coverage and BI coverage, or the contradictory jurisprudence throughout the U.S. For these reasons, as well as others enumerated herein, the Illinois Supreme Court should resolve this issue. It is time for Illinois courts to be bound by a sensible, practical rule prohibiting the stacking of BI coverage.

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152. *Id.*
153. *See id.*
154. *Id.*
155. *Id.* at 769.