

STATE OF MICHIGAN
COURT OF APPEALS

JANICE KAMMERS and BRIAN KAMMERS,
Plaintiffs-Appellees,

UNPUBLISHED
April 19, 2012

v

PIONEER STATE MUTUAL INSURANCE CO.,
Defendant/Cross-Defendant-
Appellant,

No. 303726
Berrien Circuit Court
LC No. 2010-000257-CK

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO. and TAMMY SUE LONG,
Defendants/Cross-Plaintiffs-
Appellees,

and

MEEMIC INSURANCE CO., ROBERT LONG,
and ETHEL LONG,
Defendants-Appellees.

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

In this action for declaratory relief, appellant Pioneer State Mutual Insurance Company appeals the trial court's order granting summary disposition in favor of appellee, State Farm Mutual Automobile Insurance Company as of right. We reverse the trial court's order and remand for entry of an order consistent with this opinion.

This is a priority dispute between two insurers that arises out of a car accident that injured Janice Kammers. Kammers was a passenger in an automobile driven by Leann Dayton, and was injured when Dayton's automobile was struck by an automobile that was driven by Tammy Sue Long. Tammy Long was driving an automobile that belonged to Robert and Ethel Long, her

father-in-law and mother-in-law. At the time of the accident, Robert and Ethel Long were insured by Pioneer, and Tammy Long was insured by appellee. Robert and Ethel Long's policy with Pioneer provided residual liability coverage up to \$300,000. Tammy Long's policy with appellee provided excess coverage in the amount of \$50,000.

While the Pioneer policy provided up to \$300,000 in coverage if the named insureds or any family member, as defined by the policy, faced residual liability for use of a covered automobile, the policy limited the amount of available coverage to \$20,000, the minimum amount provided by MCL 257.520(2), if anyone else faced such liability.

Notwithstanding [sic] the coverage limits shown in the declarations page of this Insuring Agreement, any insurance for "bodily injury" under this coverage section with respect to "your covered auto" or "trailer" provided to any person or organization other than you or any "family member" using "your covered auto" or "trailer" is limited to the minimum limits of liability specified in the Financial Responsibility Law of the jurisdiction of the state or province in which the "auto accident" occurs.

The parties do not dispute that Tammy Long, who did not reside with her in-laws, was not a family member under Pioneer's policy. Likewise, they do not dispute that Pioneer has first priority with regard to residual liability coverage for an accident involving a covered automobile. They do, however, dispute the extent of Pioneer's priority. Pioneer argues that its residual liability coverage with regard to Tammy is limited to \$20,000. Appellee, who is in second priority and whose \$50,000 excess coverage only applies after Pioneer's coverage has been exhausted, disagrees. The trial court found in favor of appellee, and found that Pioneer's residual liability was \$300,000. We disagree with the trial court, and find that Pioneer's priority for residual liability is limited to \$20,000.

We review de novo the interpretation of an insurance contract. *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 72; 755 NW2d 563 (2008).

It is well-established that the owner of an automobile is primarily responsible for insuring the automobile, and that the automobile owner's insurer has first priority for residual liability arising out of the use of that automobile. *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 34; 549 NW2d 345 (1996); *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225, 229; 531 NW2d 138 (1995). Thus, when the owner of an automobile, or a driver of the automobile who uses the automobile with the owner's permission, faces residual liability, the owner's insurer has first priority for the residual liability. *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 435; 773 NW2d 29 (2009).

Because the insurer of the automobile has first priority, it may not attempt to shift this priority to other insurers, such as the insurer of the driver of the automobile. See, e.g., *id.* Indeed, the insurer of an automobile may not shift priority to the driver of the automobile by completely excluding coverage in situations where a non-owner driver faces residual liability. *Id.* Such an exclusion is void against public policy because it attempts to exclude coverage that the insurer of the automobile is required to provide under the no-fault act. *Id.* at 445. Moreover,

a complete exclusion is impermissible because it unilaterally shifts priority from the owner's insurer to another insurer who was not a party to the insurance contract. *Id.* at 449.

However, while the insurer of an automobile may not shift priority or completely exclude coverage that it is required by statute to provide, it may limit the extent of its coverage towards certain individuals under the policy. *Manier v MIC Gen Ins Corp*, 281 Mich App 485, 491-492; 760 NW2d 293 (2008); *Ryder Truck Rental, Inc v Auto-Owners Ins Co, Inc*, 235 Mich App 411, 414; 597 NW2d 560 (1999). In *Manier*, 281 Mich App at 487, the stated policy limits of \$100,000 for bodily injury coverage were reduced by a household policy exclusion that limited coverage for bodily injury to the insured or the insured's family member to "the minimum limits required by the Financial Responsibility laws of the state of Michigan." This restriction was valid because it provided the statutory minimum amount of coverage and did not completely exclude coverage. *Id.* at 491-492.

In light of our holdings in *Manier* and *Ryder Truck Rental, Inc*, we find that Pioneer's policy was valid and enforceable. The policy is enforceable because it does not completely exclude coverage when non-family members operate the automobile; rather, it merely limits the amount of coverage when such persons operate the automobile. Because this reduced amount is equal to the statutory minimum for such coverage, we find that the challenged provision does not violate public policy. *Manier*, 281 Mich App at 492. Moreover, we also find that the challenged provision does not impermissibly shift the order of priority for residual liability because, in spite of the fact that Pioneer limits the amount of coverage that is available, it nonetheless remains in first priority for residual liability. See *Ryder Truck Rental, Inc*, 235 Mich App at 416 (an insurer does not impermissibly shift priority by retaining its position of first priority and limiting the extent of that priority to a level at or above the statutory minimum). Thus, Pioneer's policy that limits coverage to \$20,000 with regard to non-family members is valid and enforceable. *Id.*

Accordingly, because we find that Pioneer's policy is valid and enforceable, we reverse the trial court's grant of summary disposition and remand for entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens