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Insurance - Statutes - Stacking of Uninsured Motorist and No-Fault Coverages as Determined by Legislative Intent

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INSURANCE — STATUTES — STACKING OF UNINSURED MOTORIST AND NO-FAULT COVERAGES AS DETERMINED BY LEGISLATIVE INTENT

Eileen Andrews, qualifying as an insured[1] under an automobile insurance policy providing mandatory uninsured motorist coverage and no-fault benefits,[2] received serious injuries in an automobile accident involving an uninsured motorist.[3] Ms. Andrews' father, the principal insured, submitted a claim attempting to stack[4] the applicable insurance coverages. Andrews' insurer, the St. Paul Mercury Insurance Company, then initiated a suit to determine the extent of its liability.[5] The issues presented to the North Dakota Supreme Court involved whether North Dakota law prohibited the stacking of certain insurance benefits.[6] The

1. St. Paul Mercury Ins. Co. v. Andrews, 321 N.W.2d 483 (N.D. 1982). Conrad Andrews, the principal insured, identified his daughter Eileen as an "occasional operator" of his 1976 Honda Hatchback. *Id.* at 484. Eileen qualified as an insured under the terms of the appropriate insurance policy. *Id.*

2. *Id.* Conrad Andrews owned three automobiles, all insured under a single policy issued by the plaintiff and appellant, St. Paul Mercury Insurance Company. *Id.*

3. *Id.* at 484-85. On July 15, 1979, Eileen sustained serious injuries in a one-car accident. She was a passenger in a car owned by Randy Johnson and driven by Dale Anderson. The car involved in the accident was an uninsured motor vehicle, and no insurance was applicable to Randy Johnson or Dale Anderson. Eileen's injuries far exceeded the total benefits payable, even if North Dakota law permitted the stacking of uninsured motorist and no-fault coverage. *Id.*

4. *See* Comment, *When Enough Isn't Enough: Supplementing Uninsured Motorist Coverage in Pennsylvania, 54* TEMP. L.Q. 281 (1981). The Comment defines stacking as follows:

> The stacking or pyramiding of coverages usually denotes the availability of more than one policy to the same insured. The effect of allowing dual [uninsured motorist] recovery is to permit stacking. "Stacking," where permitted, makes more than one policy fully available to the injured party without proration between the companies held liable. The word "stacking," as used in the argot of the insurance industry, implies and is intended to be used when one policy's limit is "stacked" on top of another and possibly a third is "stacked" on top of the second. The claim is not paid by slicing through the stack like a piece of wedding cake but is paid by first using one layer, then another, and so on.

Id. at 282 n.5 (quoting P. PRETZEL, UNINSURED MOTORISTS 87-88 (1972)).

5. 321 N.W.2d at 485.

6. *Id.* at 484. The North Dakota Supreme Court addressed the issues presented by the stacking

court *held* that North Dakota law did not prohibit stacking of uninsured motorist coverage,[7] that North Dakota law prohibited stacking of no-fault insurance benefits,[8] and that an insurance policy provision that prohibited stacking of uninsured motorist coverage was valid and enforceable in North Dakota.[9] *St. Paul Mercury Insurance Co. v. Andrews,* 321 N.W.2d 483 (N.D. 1982).

The concept of stacking, which allows an insured to recover under multiple insurance coverages, involves an area of the law in which no majority rule has developed.[10] Because of the split in authority it is important to grasp the basic ideas presented by both uninsured motorist and no-fault insurance coverages.

The objective of uninsured motorist coverage is to provide a source of indemnification for an injured insured when no liability insurance coverage is applicable to the negligent motorist.[11] An insurer pays the uninsured motorist coverage proceeds to the insured when the insured receives personal injuries as a result of the negligence of an uninsured motorist.[12]

Uninsured motorist coverage varies from liability coverage in three significant ways. The most significant distinction is that uninsured motorist coverage is direct or first-party coverage because the payments of the insurance benefits go directly to the insured.[13] Liability insurance is third-party coverage because the insurance payments go to the injured third party as a result of

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of uninsured motorist and no-fault coverages. *Id.* Section 26-02-42 of the North Dakota Century Code defines the extent of uninsured motorist coverage, and chapter 26-41 of the North Dakota Century Code addresses no-fault coverage. *Id.* (construing N.D. CENT. CODE § 26-02-42 (1978); *id.* ch. 26-41).

7. 321 N.W.2d at 486. The North Dakota Supreme Court agreed with the District Court of Cass County and concluded that there was no legislative intent to prohibit the stacking of uninsured motorist coverage. *Id.*

8. *Id.* at 489. The North Dakota Supreme Court reversed the Cass County District Court's opinion and concluded that the no-fault statute was a no-stacking statute. *Id.*

9. *Id.* The North Dakota Supreme Court concluded that the policy limitation violated no established public policy and was enforceable. *Id.*

10. *Id.* at 486. The North Dakota Supreme Court concluded that decisions from other jurisdictions were not persuasive because no majority rule has developed. *Id. See also* Comment, *Intra-Policy Stacking of Uninsured Motorist and Medical Payments Coverages: To Be or Not To Be,* 22 S.D.L. REV. 349 (1977). The author points out the split in authority regarding the allowance of intrapolicy stacking of uninsured motorist coverages. *Id.* at 351. Of the 23 states that have dealt with the issue of intrapolicy stacking of uninsured motorist coverages, 13 have refused to allow such stacking. *Id.*

11. A. WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE § 1.1 (1969). The author indicates that the need to recover damages for injuries suffered in an automobile accident historically developed from an allocation of fault theory. After World War II, however, the need to provide a source of indemnification for injuries suffered because of the negligence of financially irresponsible individuals greatly increased. The current uninsured motorist provisions are attempts to meet the need for indemnification. *Id.*

12. M. WOODROOF, F. FONSECA & A. SQUILLANTE, AUTOMOBILE INSURANCE AND NO-FAULT LAW §§ 7.2, 7.3 (1974 & Supp. 1981) [hereinafter cited as M. WOODROOF]. The authors point out that uninsured motorist coverage is a means of protecting the insured and his family from the negligence of those individuals who do not carry liability insurance. Uninsured motorist coverage differs from no-fault coverage and is available only if the insured is not negligent. *Id.* § 7.1.

13. *Id.* § 1.18.

liability incurred by the insured first party.[14] Therefore, liability coverage protects innocent third parties from the negligent driving of an insured first party, while uninsured motorist coverage protects the insured first party from an uninsured third party.[15] The second distinction is that uninsured motorist coverage is personal to the insured, while liability coverage follows a particular insured automobile.[16] A third distinction is that uninsured motorist coverage extends coverage to any passengers in the vehicle insured under the uninsured motorist policy.[17] Liability insurance extends coverage only to the negligent operation of an automobile by the insured or his permittee.[18]

In 1971 the North Dakota Legislature mandated that each liability insurance policy issued within North Dakota must include an endorsement for uninsured motorist coverage.[19] In 1975 the legislature mandated that liability coverage must be in effect before any vehicle may be driven in this state.[20] Thus, North Dakota strictly requires all residents obtaining insurance on their

14. *Id.* § 1.19. The authors contend that the nature of liability insurance is now thought of as protection for the potential victim of the accident, rather than insurance providing protection for the party found liable. *Id.*

15. *See* Note, *Twenty-Five Years of Uninsured Motorist Coverage: A Silver Anniversary Cloud with a Tarnished Lining,* 14 IND. L. REV. 671 (1981). It is important to distinguish uninsured motorist coverage from liability coverage because of the practice of including uninsured motorist coverage as a part of, or an endorsement to, an automobile liability policy. *Id.* at 676.

16. A. WIDISS, *supra* note 11, § 2.8. It is important that uninsured motorist coverage is personal to the insured because this insurance may be available to an insured if he sustains injuries in a nonowned automobile. *Id.*

17. A. WIDISS, *supra* note 11, § 2.8.

18. Note, *supra* note 15, at 676-77. The basic differences between liability and uninsured motorist coverages illustrate that the risk involved in insuring against loss is vastly different under each coverage. *Id.*

19. Mandatory Uninsured Motorist Coverage Act, ch. 279, § 1, 1971 N.D. Sess. Laws 633 (codified at N.D. CENT. CODE § 26-02-42 (1978)). The Act provides:

> No motor vehicle liability policy of insurance against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in amounts not less than that set forth in section 39-16.1-11 for bodily injury or death, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

Id.

20. Driving Without Insurance Act, ch. 340, § 2, 1975 N.D. Sess. Laws 967 (codified at N.D. CENT. CODE § 39-08-20 (1980)). Originally, § 39-08-20 provided as follows:

> No person shall drive a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of such vehicle in the amount required by chapter 39-16.1. No statutory fee shall be assessed for a violation of this section.

N.D. CENT. CODE § 39-08-20 (1980) (amended 1981). The 1981 legislature removed the last sentence from § 39-08-20. Liability Insurance Act, ch. 391, § 3, 1981 N.D. Sess. Laws 1125 (codified at N.D. CENT. CODE § 39-08-20 (Supp. 1981)).

automobiles to carry uninsured motorist coverage in their liability policies.[21] Neither the company nor the individual may waive the coverage.[22] The uninsured motorist legislation in effect at the time of Ms. Andrews' accident provided that an insurer must provide a minimum of $25,000 coverage for bodily injuries suffered by one individual in an automobile accident.[23]

The 1975 legislative session also mandated that insurers must provide no-fault automobile insurance.[24] The North Dakota Auto Accident Reparations Act,[25] North Dakota's legislative enactment of no-fault insurance law, took effect on January 1, 1976.[26] The Act provides that when a person sustains bodily injuries in a motor vehicle accident, he will recover from the insurance applicable to the motor vehicle in which he receives his injuries, regardless of fault or negligence.[27] North Dakota's no-fault insurance law applies

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21. N.D. CENT. CODE § 39-08-20 (Supp. 1981). *See* M. WOODROOF, *supra* note 12, § 7.2. All states require uninsured motorist coverage, but three different definitions exist that explain the term "require." Many states require that the insurance companies make uninsured motorist coverage available to those who specifically request it. Some states require that the insurance companies include the uninsured motorist coverage as a part of the policy, but allow the insured to refuse the coverage by an endorsement. The other states strictly require residents to carry uninsured motorist coverage in their automobile insurance policies. *Id.*

22. M. WOODROOF, *supra* note 12, § 7.2.

23. N.D. CENT. CODE § 39-16.1-11(2)(b) (1980). Subsection (2)(b) provides:

> 2. Such owner's policy of liability insurance:
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> . . . .
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> b. Shall insure the person named therein and any other person, as insured, using such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and subject to said limit for one person, fifty thousand dollars because of bodily inury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

Id.

24. Auto Accident Reparations Act, ch. 265, 1975 N.D. Sess. Laws 796-810 (codified at N.D. CENT. CODE ch. 26-41 (1978 & Supp. 1981)). The Act authorized no-fault automobile insurance when it provided in part:

> AN ACT to provide for the compensation of injured persons resulting from motor vehicle accidents; for security for motor vehicles on a compulsory basis; for certain mandatory minimum insurance or self-insurance protection benefits payable regardless of fault in cases of accidental bodily injury; for an exemption for secured persons from general damages; for subrogation, intercompany arbitration, and offset of benefits paid against judgments; for an assigned claims plan; for a mandatory offering of excess optional no-fault benefits; to create and enact new subsections to sections 39-04-05 and 39-04-06 relating to the suspension or revocation of motor vehicle registration for failure to have security in effect as required by this Act; providing an effective date; and providing an appropriation.

Id. at 796.

25. N.D. Cent. Code ch. 26-41 (1978 & Supp. 1981).

26. Auto Accident Reparations Act, *supra* note 24, at 810.

27. N.D. CENT. CODE § 26-41-07 (1978). *See* Smith, *"North Dakota Auto Accident Reparations Act" — North Dakota's No-Fault Insurance Law*, 52 N.D.L. REV. 147 (1975). The author examines the no-

only to bodily injuries and does not provide compensation for property damage.[28]

Pure no-fault insurance coverage "envisions a change in our present system of auto accident reparation."[29] Pure no-fault is "compulsory and exclusive of our present tort liability system."[30] No-fault insurance, through first-party insurance coverage, compensates accident victims for economic loss regardless of fault.[31] No-fault insurance also abolishes tort liability for economic loss except in certain situations.[32] The Uniform Motor Vehicle Accident Reparations Act,[33] from which North Dakota's no-fault laws developed, proposes a complete system of reparations for injuries and losses arising from motor vehicle accidents.[34]

The occasion to stack insurance coverages occurs only when an insured has suffered damages that exceed the coverage limits provided in an insurance policy.[35] Stacking insurance coverages becomes an issue in three basic situations.[36]

The first example of an occasion to stack insurance coverages arises because North Dakota law requires an insured to have insurance coverage on his motor vehicle, and many of the nonowned motor vehicles in which the insured rides provide insurance coverage for passengers. If the insured sustains injuries while riding as a passenger in a nonowned vehicle, the insured may qualify as an insured under both policies.[37] If the insured suffers damages in excess of the policy limits applicable to the motor vehicle in which the insured was riding, the insured probably will seek the additional benefits of his own insurance policy. Thus, the insured may attempt to stack the benefits of his own policy on top of the benefits attributable to the nonowned vehicle.[38]

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fault insurance requirements for North Dakota and attempts to provide answers for no-fault insurance questions that may arise. *Id.*

28. Smith, *supra* note 27, at 149. *See* N.D. CENT. CODE § 26-41-03(2) (1978).

29. M. WOODROOF, *supra* note 12, § 14.1.

30. M. WOODROOF, *supra* note 12, § 14.1. The authors maintain that a direct compensation plan of payments, made without regard to fault, replaces the right to sue in tort based on fault. *Id.*

31. M. WOODROOF, *supra* note 12, § 14.41.

32. *See* M. WOODROOF, *supra* note 12, § 14.44.

33. UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT, 14 U.L.A. 41 (1980 & Supp. 1982). In 1972 the National Conference of Commissioners on Uniform State Laws approved the Uniform Motor Vehicle Accident Reparations Act (UMVARA). *Id.* UMVARA has not received approval from the American Bar Association, however, and no state legislature has adopted UMVARA in its entirety. *Id.*

34. *Id.* For a list of the appropriate statutes and the states that have enacted various types of no-fault legislation, see M. WOODROOF, *supra* note 12, ch. 18, at 189 (Supp. 1982).

35. For example, if an insured suffers damages of $50,000 and qualifies as an insured under two policies, each providing a maximum of $25,000 coverage, the issue of insurance stacking arises. Conversely, if the insured suffers damages of $15,000 and is an insured on the same two policies, the issue of stacking does not arise.

36. Note, *supra* note 15, at 679.

37. Note, *supra* note 15, at 679.

38. Note, *supra* note 15, at 679.

A second example of an occasion to stack insurance benefits occurs when the insured owns more than one motor vehicle, with each insured by a separate insurance policy. The insured qualifies as an insured under each of the policies. If the insured sustains injuries in an accident involving one of the insured motor vehicles, the insured may attempt to stack the coverage limit for each motor vehicle.[39] Such an attempt at stacking is known as interpolicy stacking.[40]

The third example of an occasion for stacking insurance coverages involves intrapolicy stacking.[41] This situation occurs when the insured owns more than one motor vehicle, but one insurance policy covers all the motor vehicles. If the insured sustains injuries while occupying one of his vehicles, he may attempt to stack the coverages applicable to each motor vehicle covered under the single insurance policy.[42]

The factual situation presented to the North Dakota Supreme Court in *Andrews* involved intrapolicy stacking of uninsured motorist and no-fault coverages.[43] Eileen Andrews sustained injuries while riding as a passenger in an uninsured motor vehicle driven by an uninsured motorist.[44] Andrews' insurer paid uninsured motorist and no-fault benefits because of the accident, but did not stack the coverages of three vehicles insured under the policy.[45]

The first issue presented to the court in *Andrews* was whether North Dakota law prohibited the stacking of uninsured motorist coverage.[46] An interpretation of section 26-02-42 of the North Dakota Century Code[47] revealed to the court that North Dakota law did not prohibit stacking of uninsured motorist coverages.[48]

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39. Note, *supra* note 15, at 679.

40. Comment, *Intra-Policy Stacking of Uninsured Motorist and Medical Payments Coverages: To Be or Not to Be*, 22 S.D.L. REV. 349, 350 (1977). Interpolicy stacking involves the stacking of more than one policy and allows the aggregation of insurance coverages to compensate the insured for damages sustained. *Id.*

41. *Id.* Intrapolicy stacking involves an attempt to stack coverages provided by a single policy. *Id.*

42. *Id.* The author indicates that a split in authority exists regarding the allowability of intrapolicy stacking. *Id.* at 351.

43. St. Paul Mercury Ins. Co. v. Andrews, 321 N.W.2d 483, 484 (N.D. 1982). St. Paul Mercury Insurance Company issued an insurance policy to Mr. Andrews that covered his 1976 Honda Hatchback. The company later amended the policy to provide coverage for Mr. Andrews' 1970 Chevrolet Camaro and 1979 Honda station wagon. *Id.*

44. *Id.* at 485.

45. *Id. See* Smith, *supra* note 27, at 153. The primary obligation to pay no-fault benefits falls on the insurer of the vehicle in which the injuries were sustained. *Id.* Only when an insured occupies an uninsured motor vehicle and sustains injuries will the insured's insurer be liable for both uninsured motorist and no-fault benefits. *Id.*

46. 321 N.W.2d at 485.

47. N.D. CENT. CODE § 26-02-42 (1978). For the text of § 26-02-42, see *supra* note 19.

48. 321 N.W.2d at 486.

Previous North Dakota case law raised only peripherally the issue of stacking. The court in *St. Alexius Hospital v. Eckert*[49] allowed the stacking of uninsured motorist coverages in dictum, based on the premise that an insured could take advantage of his paid up coverage.[50] Because the language from *St. Alexius Hospital v. Eckert* was dictum, the court in *Andrews* looked to other areas of North Dakota law to verify the stacking of uninsured motorist coverage.[51]

The court's analysis centered around a judicial interpretation of the legislation authorizing compulsory uninsured motorist coverage.[52] Statutory guidelines exist that govern the court's authority to interpret legislation enacted by the North Dakota Legislature.[53] The occasion for judicial interpretation occurred because the legislation did not specifically address the stacking issue.[54]

The court determined that the wording of the uninsured motorist coverage statute was not ambiguous, and thus, no extrinsic evidence was necessary to explain the intent of the legislation.[55] The court recognized the established legislative practice of placing specific words of prohibition in legislation when the legislature intended a prohibition.[56] Because the uninsured

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49. 284 N.W.2d 441 (N.D. 1979). The court held that "coordination of benefits" within North Dakota's no-fault legislation could be construed as preventing duplication of payments. St. Alexius Hosp. v. Eckert, 284 N.W.2d 441, 445 (N.D. 1979). The "coordination of benefits" did not prevent an allocation of losses among different insurers in situations in which total economic loss exceeded no-fault benefits. *Id.* at 446.

50. *Id.*

51. 321 N.W.2d at 485. The *Andrews* court noted that the federal court in Hughes v. State Farm Mut. Auto. Ins. Co., 604 F.2d 573, 580 (8th Cir. 1979), raised the stacking issue, but did not analyze it. 321 N.W.2d at 485.

52. 321 N.W.2d at 485.

53. N.D. CENT. CODE §§ 1-02-05, -39 (1975). Section 1-02-05 provides: "When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Id.* § 1-02-05.

Section 1-02-39 provides:

> If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:
> 1. The object sought to be attained.
> 2. The circumstances under which the statute was enacted.
> 3. The legislative history.
> 4. The common law or former statutory provisions, including laws upon the same or similar subjects.
> 5. The consequences of a particular construction.
> 6. The administrative construction of the statute.
> 7. The preamble.

Id. § 1-02-39.

54. *See* N.D. CENT. CODE § 26-02-42 (1978). Section 26-02-42 does not address the stacking issue. For the text of § 26-02-42, see *supra* note 19.

55. 321 N.W.2d at 485.

56. *Id.* at 486 (citing N.D. CENT. CODE § 26-30-03 (1978) (unfair methods of competition or unfair and deceptive acts or practices are specifically prohibited)); *id.* §§ 26-05-06 to -08 (procurement of double insurance is specifically prohibited); *id.* §§ 26-03-48, 26-04-04, 26-26-15, 26-27-15 (over insurance prohibited).

motorist coverage statute did not specifically prohibit stacking of coverages, the court concluded that North Dakota law permitted stacking of uninsured motorist coverage.[57]

The *Andrews* court also examined the uninsured motorist coverage statute as if a latent ambiguity did exist.[58] The court stated that most of the statutory guidelines of section 1-02-39 of the North Dakota Century Code[59] were inapplicable.[60] The court, thus, concentrated its analysis on the appropriateness of following the contemporaneous construction of similar statutes by other jurisdictions.[61] This analysis was inconclusive because of the lack of uniformity among the statutes that have mandated uninsured motorist coverage.[62] The court continued the analysis by examining judicial decisions regarding the appropriateness of stacking uninsured motorist coverages.[63] Judicial stacking decisions failed to establish a "bright line" of majority rule.[64] Because a majority rule failed to appear, the court did not accept the judicial interpretations of other jurisdictions that had dealt with the stacking issue.[65]

Because an examination of the law of other jurisdictions was inconclusive,[66] the ascertainment of legislative intent was the most important factor in the court's decision.[67] Stacking was never described as inherently wrong and the legislature did not specifically prohibit stacking, therefore, the court concluded that

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57. 321 N.W.2d at 486. The court concluded that "the legislature did not intend to prohibit 'stacking' of uninsured motorist coverage." *Id.*

58. *Id.* at 485-86.

59. For the text of N.D. CENT. CODE § 1-02-39 (1975), see *supra* note 53.

60. 321 N.W.2d at 485-86.

61. *Id.* at 486. In Federal Land Bank of St. Paul v. State, 274 N.W.2d 580 (N.D. 1979), the court stated, "The presumption is still valid that when we adopt a statute from another jurisdiction, we adopt the contemporaneous construction of its provisions by the courts of that jurisdiction." *Id.* at 582 (citing Hermanson v. Morrell, 252 N.W.2d 884 (N.D. 1977)). The court in *Andrews,* however, did not follow the established rule concerning contemporaneous construction of similar statutes because of a lack of uniformity among existing uninsured motorist legislation. 321 N.W.2d at 486.

62. 321 N.W.2d at 486. For a discussion of various uninsured motorist requirements, see *supra* note 21 and acompanying text.

63. 321 N.W.2d at 486.

64. *Id.* The following are a few of the recent decisions decided in favor of stacking uninsured motorist coverages: Davis v. Hughes, 229 Kan. 91, 622 P.2d 641 (1981) (intrapolicy stacking of uninsured motorist coverages allowed); Chaffee v. United States Fidelity & Guar. Co., 181 Mont. 1, 591 P.2d 1102 (1979) (insured allowed to stack uninsured motorist coverages when insured paid separate premiums for three vehicles); Richardson v. Allstate Ins. Co., 619 P.2d 594 (Okla. 1980) (intrapolicy stacking of uninsured motorist coverages allowed).

The following cases did not allow the stacking of uninsured motorist coverages: Holland v. Hawkeye Sec. Ins. Co., 230 N.W.2d 517 (Iowa 1975) (uninsured motorist coverage on nine vehicles owned by insured was not stackable); Pettid v. Edwards, 195 Neb. 713, 240 N.W.2d 344 (1976) (stacking of uninsured motorist coverages not allowed because antistacking policy limitations were valid); Cunningham v. Wester Casualty & Sur. Co., 90 S.D. 530, 243 N.W.2d 172 (1976) (appropriate statutes did not allow stacking of uninsured motorist coverages).

65. 321 N.W.2d at 486.

66. *Id.*

67. *Id.*

the legislature did not intend to prohibit the stacking of uninsured motorist coverages.[68]

The second issue presented to the court in *Andrews* was whether North Dakota law prohibited the stacking of basic no-fault provisions.[69] This was another issue of first impression for the North Dakota Supreme Court, and thus, the court cited no case law to support its final decision.[70] The court interpreted the North Dakota Auto Accident Reparations Act[71] to prohibit the stacking of no-fault benefits.[72]

The court interpreted the language of the North Dakota Auto Accident Reparations Act according to the established guidelines for interpreting uniform laws.[73] The North Dakota Auto Accident Reparations Act is a uniform law, derived from the Uniform Motor Vehicle Accident Reparations Act (UMVARA).[74] Various states have adopted portions of UMVARA, but no state has adopted UMVARA in its entirety.[75] Because no-fault laws vary from state to state, the court could not turn to another jurisdiction for guidance in deciding the stacking issue.[76]

The court searched for alternate sources to answer the stacking question because of the lack of uniformity among state statutes and judicial stacking decisions.[77] The court quoted extensively from Appleman's treatise, *Insurance Law and Practice*, to justify its decision

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68. *Id.*

69. *Id.* at 486-87.

70. *Id.* at 486-89. The court based its decision entirely upon an interpretation of chapter 26-41 of the North Dakota Century Code and the incorporated analysis of John Appleman, an insurance law treatise author. *Id.*

71. N.D. CENT. CODE ch. 26-41 (1978 & Supp. 1981).

72. 321 N.W.2d at 489. In reversing the trial court's decision, the court specifically dealt with § 26-41-03(2) of the North Dakota Century Code. *Id.* at 488-89. Section 26-41-03(2) provides:

> "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident shall not exceed fifteen thousand dollars, regardless of the number of persons entitled to such benefits or the number of basic no-fault insurers obligated to pay such benefits. Basic no-fault benefits payable shall not exceed one hundred and fifty dollars per week per person prorated for any lesser period for work loss or survivors income loss, or one thousand dollars for funeral, cremation, and burial expenses.

N.D. CENT. CODE § 26-41-03(2) (1978).

73. 321 N.W.2d at 487. The court interpreted the North Dakota Auto Accident Reparations Act according to the guidelines established in § 1-02-13 of the North Dakota Century Code. *Id.* Section 1-02-13 provides: "Any provision of code which is part of a uniform statute shall be so construed to effectuate its general purpose to make uniform the law of those states which enact it." N.D. CENT. CODE § 1-02-13 (1975).

74. 321 N.W.2d at 487. The court stated, "[U]nless one believes in a miraculous coincidence in choice of words or widespread plagiarism, it is difficult to escape the conclusion that North Dakota and many other jurisdictions have enacted parts of the Uniform Motor Vehicle Accident Reparations Act, and efforts ought to extend toward uniform construction." *Id.*

75. *See supra* notes 33-34 and accompanying text.

76. 321 N.W.2d at 487.

77. *Id.*

that the legislature intended to prohibit the stacking of no-fault insurance benefits.[78] Appleman's no-fault stacking analysis concentrated on the various justifications given by courts that allowed the stacking of no-fault benefits.[79]

One major justification for allowing the stacking of no-fault benefits is the argument that if a person pays for insurance benefits, that person should be able to recover the benefits.[80] In *Wasche v. Milbank Mutual Insurance Co.*[81] the Minnesota Supreme Court adopted this justification and allowed the stacking of no-fault benefits.[82] Appleman, however, criticized courts that rely upon that reasoning to allow stacking of insurance coverages.[83] Appleman stated, "[T]he proper rule remains that liability is not increased by the fact that a separate premium was charged for each such coverage relating to the several vehicles, or for nonowned coverage."[84] Various courts had allowed the insured to recover increased benefits in this situation because of public policy.[85] The Nevada Supreme Court in *Cooke v. Safeco Insurance Co.*[86] stated that public policy prevented the insurance company from limiting liability to single recovery when the insured paid two premiums for two separate no-fault coverages.[87]

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78. *Id.* 8D J. APPLEMAN, INSURANCE LAW AND PRACTICE § 5192, at 613 (1981). The discussion of the various courts that lump the different problems of interpolicy stacking and intrapolicy stacking into a single category is confusing and inaccurate from an insurance law point of view. The author recommends that courts employ greater selectivity of judicial language in the future, depending upon the circumstances presented. *Id.*

79. 8D J. APPLEMAN, *supra* note 78, at 608-12.

80. 8D J. APPLEMAN, *supra* note 78, at 608. The author states that prostacking decisions hold that an insured may recover under each coverage regardless of the number of policies issued. *Id. See also* Esler v. United Serv. Auto. Ass'n, 273 S.C. 259, 255 S.E.2d 676 (1979) (intrapolicy stacking of no-fault benefits allowed to compensate a bicyclist injured when struck by an automobile).

81. 268 N.W.2d 913 (Minn. 1978). Mrs. Wasche, a Minnesota resident, sustained injuries in an automobile accident while visiting in California. Mrs. Wasche subsequently died with medical bills totaling $46,913.40 and funeral expenses totaling $1,966. Mrs. Wasche was a resident of her daughter-in-law's household, and her daughter-in-law had two automobiles, each covered by no-fault insurance. The court allowed the stacking of coverages to the policy limits to provide $40,000 for medical expenses and $1,966 for funeral expenses. Wasche v. Milbank Mut. Ins. Co., 268 N.W.2d 913, 915, 920 (Minn. 1978).

82. *Id.* at 919. The court concluded:

> [W]e hold that under the present statute the injured person shall be allowed to recover basic economic loss benefits under each no-fault coverage applicable to him as an insured to the extent of actual losses up to the stacked policy limits of all policies applicable on a single priority level.

Id.

83. 8C J. APPLEMAN, *supra* note 78, § 5106, at 528-31.

84. 8C J. APPLEMAN, *supra* note 78, § 5106, at 531.

85. 8D J. APPLEMAN, *supra* note 78, § 5192, at 608-15. The author stated that one prostacking justification cited by state courts was that state public policy did not permit the enforcement of certain policy limitations. *Id.* at 612.

86. 94 Nev. 745, 587 P.2d 1324 (1978). Mrs. Cooke died as a result of serious injuries suffered in an automobile accident. The court allowed the stacking of two no-fault policies to defray the greater portion of medical bills incurred by Mrs. Cooke before she died. Cooke v. Safeco Ins. Co., 94 Nev. 745, ____, 587 P.2d 1324, 1325 (1978).

87. *Id.*

The North Dakota Supreme Court apparently agreed with Appleman's criticism of the prostacking arguments and concluded that public policy did not require the stacking of no-fault coverages.[88] Thus, the ascertainment of legislative intent was the key determinant in deciding that the North Dakota Auto Accident Reparations Act prohibited stacking.[89] The *Andrews* court believed the intent of the legislature was clear[90] when the North Dakota Legislature stated, "[T]he maximum amount of basic no-fault benefits payable . . . shall not exceed fifteen thousand dollars."[91] The court was unwilling to judicially expand the legislative language and concluded that the legislature intended to prohibit the stacking of no-fault benefits.[92]

The final issue in *Andrews* was whether North Dakota law permitted the enforcement of an insurance policy limitation[93] that barred the stacking of uninsured motorist coverage.[94] The insurance policy was an adhesion contract, and thus, was construed most strongly against the insurance company.[95] The review of an adhesion contract requires special scrutiny to assure that an application of the contract does not occur in an unfair and unconscionable manner against the party who did not participate in its drafting.[96] The *Andrews* court determined that the insurance

88. *Andrews*, 321 N.W.2d at 488.

89. *Id.*

90. *Id.* The court concluded the legislature intended to limit the availability of no-fault insurance because of the limiting provisions of the North Dakota Auto Accident Reparations Act. *Compare* N.D. CENT. CODE § 26-41-03(2) (1978) (basic no-fault benefits apply to economic loss resulting from accidental injury and are limited to $15,000 per accident) *with* MICH. COMP. LAWS ANN. § 500.3107 (1983) (personal protection insurance benefits are payable for all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation) *and* UNIFORM MOTOR VEHICLE ACCIDENT REPARATIONS ACT. § 1(a)(2) (1972) (basic reparation benefits means benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle).

91. N.D. CENT. CODE § 26-41-03(2) (1978).

92. 321 N.W.2d at 489.

93. *Id.* The insurance policy provides in part:

> "The limit of liability shown in the Declarations for 'each person' for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one auto accident. Subject to this limit for 'each person,' the limit of liability shown in the Declarations for 'each accident' for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident.
>
> This is the most we will pay regardless of the number of covered persons, claims made, vehicles or premiums shown in the Declarations, or vehicles involved in the auto accident."

Id.

94. *Id.*

95. *Id.* In Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870 (N.D. 1976), the insured sustained injuries while riding a snowmobile. The court determined that the snowmobile was a motor vehicle, and thus, the insurer was responsible for providing coverage. *Id.* at 886. The rule regarding interpretation of adhesion contracts was developed in Bekken v. Equitable Life Assurance Soc'y, 70 N.D. 122, 293 N.W.200 (1940). *Hughes*, 236 N.W.2d at 885.

96. *See* State v. Bismarck Tire Center, Inc., 234 N.W.2d 224 (N.D. 1975). An employment

policy limitation provisions were enforceable,[97] even though the special scrutiny standard of review existed. Therefore, Eileen Andrews received only the $25,000 single policy limit instead of the $75,000 stacked limit of uninsured motorist coverage.[98]

The enforcement of the limitation provision reinforces the court's urgent call for legislative action. In each of the three issues addressed by the court, the court invited legislative action to either affirm or disaffirm the court's decisions.[99] The decisions in *St. Paul Mercury Insurance Co. v. Andrews* leave the entire area of insurance policy stacking unsettled. Until legislative action is taken, the rulings in *Andrews* stand to permit stacking of uninsured motorist coverage and to prohibit stacking of no-fault benefits.

The issue of stacking may not arise in North Dakota in the future because of the ruling regarding the enforceability of insurance policy limitation provisions. Insurance companies likely will put an antistacking provision in all automobile insurance policies. Because these contractual limitations are valid in North Dakota, stacking, even though permitted by judicial decision, will not be allowed. The decision in *Andrews* stresses the urgent need for legislative direction in the area of insurance policy stacking.

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contract entitled an employee to vacation time, and the employee's termination of employment did not forfeit his vested right to vacation time. The court stated that an employment contract was a contract of adhesion. *Id.* at 225. The court concluded, "An agreement which is essentially a 'contract of adhesion' should be examined with special scrutiny by the courts to assure that it is not applied in an unfair or unconscionable manner against the party who did not participate in its drafting." *Id.* at 225-26 (quoting Farmers Union Grain Terminal Ass'n v. Nelson, 233 N.W.2d 494, 497 (N.D. 1974)).

97. 321 N.W.2d at 489.

98. *See id.* The undisputed facts state that Eileen Andrews received damages in excess of the insurance coverages, even if stacked. The enforceability of the policy limitation provision arguably leads to an unfair and unconscionable result against the party who did not participate in the drafting of the insurance policy.

99. *Id.* at 486, 489. Some courts that have addressed stacking "have arbitrarily stated that 'public policy' prohibits 'stacking,' while other courts have arbitrarily stated that 'public policy' permits 'stacking.' This merely illustrates how clearly legislative the determination is and should be." *Id.* at 489.