

No. 32895 – *Carolyn Jenkins, Administratrix of the Estate of Roy L. Jenkins, deceased v. State Farm Mutual Automobile Insurance Company*

**FILED**

**July 11, 2006**

released at 3:00 p.m.

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Starcher, J., dissenting:

I dissent to the conclusion reached by the majority opinion.

Plaintiff Carolyn Jenkins purchased an underinsured motorist insurance policy with limits of \$100,000 per person. This policy – by law, and by its own terms – protected her husband, Roy Jenkins, regardless whose car he was riding in. Roy Jenkins was then killed in an automobile accident by a driver who was, indisputably, under-insured.

But even though Ms. Jenkins bought \$100,000.00 in coverage, paid State Farm premiums for \$100,000.00 in coverage, she is barred from claiming her \$100,000.00. Why? Because Mr. Jenkins was killed while driving a car – owned by his mother – which only had \$25,000.00 in underinsured motorist coverage with State Farm.

The plaintiff in this case isn't trying to "stack" the various automobile insurance policies. The fact that these policies were purchased separately on separate vehicles for separate premiums is, as a matter of law, irrelevant. The plaintiff cannot collect under each policy, but can collect only under one policy. This Court and the Legislature persist in letting the insurance industry get away with this "criminal enterprise," and I will not once again waste valuable ink railing against this modern variation of the "robber baron."

The plaintiff in this case only wanted what she paid for: \$100,000.00 in coverage. She contracted for it, she paid the premiums for it, State Farm promised to pay it, and she should get it. The majority disagrees.

Instead, the majority opinion decides that Ms. Jenkins' contract could be altered by the existence of someone else's contract. Because Mr. Jenkins' mother also bought a policy from State Farm with \$25,000.00 in coverage, then Ms. Jenkins couldn't get what she paid for; she could only get what her husband's mother paid for.

Let's put this in concrete, non-insurance terms we can all understand. Say a car dealer owns a car lot. I walk onto the lot and pay the dealer \$100,000.00 for a shiny, new, gas-guzzling luxury vehicle. The same day, my wife walks onto the same new car lot and buys a mid-sized sedan for \$25,000.00. My son (who still lives at home) comes by a few days later and buys a beat up, used jalopy sitting on the back of the lot for \$5,000.00. Should I get the luxury vehicle, my wife the sedan, and my son the jalopy? Not under the majority's reasoning.

The majority reasons that we get to drive home together in the beat up jalopy. And, the car dealer gets to keep all of the money for the three vehicles. Why? Because, buried in the fine print of each car's purchase contract is a clause saying this: if anyone in the *same family* buys a different car from the same dealer, then the family can only drive home whichever car is cheapest.

In any other context, this Court would find such a contract void for unconscionability and for absurdity. But in the realm of insurance, this Court finds that

which is absurd to be “good public policy.” The repeated threat from the insurance industry is that “if the Court rules against an insurance company, then every West Virginian will pay more for insurance.” The Court should not kowtow to this threat. Making insurance companies provide what people paid for is not bad public policy.

I therefore respectfully dissent.