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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION -CIVIL

MARQUITTA HIGGINS, individually and on
behalf of a class of similarly situated persons,

February Term 2023

Plaintiff

v.

No. 20101722

NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA,

Commerce Program

Defendant.

Control Nos. 22095057;22100092

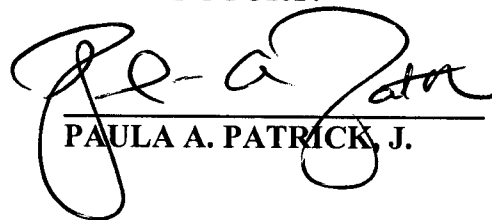
ORDER

AND NOW, this 7th day of March 2023, upon consideration of Plaintiff, Marquita Higgins's, individually and on behalf of a class of similarly situated persons, Motion for Partial Summary Judgment (Control No. 22095057) and Defendant Nationwide Affinity Insurance Company of America's Motion for Summary Judgment (Control No. 22100092), all Responses in Opposition, all matters of record and in accord with the attached Opinion, it hereby is **ORDERED and DECREED** that:

1. Plaintiff Marquita Higgins's, individually and on behalf of a class of similarly situated persons, Motion for Partial Summary Judgment **DENIED** and,
2. Defendant Nationwide Affinity Insurance Company of America's, Motion for Summary Judgment **GRANTED**.

Judgment is hereby entered in favor of Defendant Nationwide Affinity Insurance Company of America and against Plaintiff Marquita Higgins, individually and on behalf of a class of similarly situated persons, on all claims set forth in the Amended Complaint.

BY THE COURT:


PAULA A. PATRICK, J.

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R. POSTELL
COMMERCE PROGRAM

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION -CIVIL**

MARQUITTA HIGGINS, individually and on behalf of a class of similarly situated persons,	:	February Term 2023
	:	
Plaintiff	:	
v.	:	No. 20101722
	:	
NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA,	:	Commerce Program
	:	
Defendant.	:	Control Nos. 22095057;22100092
	:	

OPINION

This action arises from a motor-vehicle insurance policy. Plaintiff Marquitta Higgins, individually and on behalf of a class of similarly situated persons, (“Higgins”) is seeking Partial Summary Judgment for Declaratory Relief and a return of premiums paid, alleging that Defendant Nationwide Affinity Insurance Company of America (“Nationwide”) improperly charged Higgins for stacked uninsured and underinsured motorists’ (“UM/UIM”) coverage as a single-vehicle policyholder with no other policies in the household where no stacking benefit coverage was provided by that policy.¹ Nationwide filed a Motion for Summary Judgment in response to Higgins’ claims for declaratory relief, return of premiums, injunctive relief, unjust enrichment, fraud, and Unfair Trade Practices and Consumer Protection Law (“UTPCPL”).

For the reasons set forth below, Plaintiff’s Motion for Partial Summary Judgment is **DENIED**, and Defendant’s Motion for Summary Judgment is **GRANTED**.

¹ Plaintiff’s Motion for Partial Summary Judgment ¶1

BACKGROUND

Higgins is a Pennsylvania resident seeking to represent a class of similarly situated persons. During the application process for an auto-insurance policy (“Nationwide Policy”), Nationwide gathered information about Higgins, which indicated that Higgins owned one vehicle and that there were no other drivers, vehicles, or policies in Higgins’ household. Higgins elected to stack UM/UIM coverages and was charged a premium for stacking. UM/UIM coverage allows an individual to recover from a third party that has either no auto insurance or has insufficient auto insurance, which does not fully cover an injured victim. “Stacking” coverage benefits allow an individual to combine coverage limits on a vehicle in order to increase the potential recovery. Here, Higgins argues that there is no stacking coverage benefit under a single-vehicle policy where there are no other policies in the household.² Higgins further alleges that Nationwide knowingly sold Higgins stacked coverage benefits that did not exist. Thus, Higgins is seeking a return of premiums paid for the alleged non-existent coverage. Higgins is seeking partial summary judgment for Declaratory Relief and a return of premiums paid. Nationwide filed a Motion for Summary Judgment in response to Higgins’ claims for Declaratory Relief, return of premiums, injunctive relief, unjust enrichment, fraud, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”). This Court notes that there have been two identical lawsuits with indistinguishable legal issues filed in the Eastern District, both of which have both been dismissed following Motions to Dismiss, as explained in greater detail *supra*.³

² Plaintiff’s Motion for Partial Summary Judgment ¶ 2

³ See *Berardi v. USAA Gen. Indem. Co. et al*, F.Supp.3d (E.D. Pa. June 10, 2022); See also *Jones v. Geico Choice Insurance Company*, F.Supp.3d (E.D. Pa. July 27, 2022).

DISCUSSION

I. Higgins' Assertion that Stacked UM/UIM Coverage Confers No Benefit is Incorrect and Higgins is Not Entitled to Declaratory Relief or Return of Premiums.

Higgins argues that per the Decision of the Insurance Commissioner,⁴ there are only two scenarios in which a single-vehicle policy holder may confer a benefit upon stacking UM/UIM benefits: the guest passenger situation and the additional household policy situation. However, Higgins states that the guest passenger situation has been eliminated, and the charge of stacking by an insurance company under a single-vehicle policy can only be justified by the additional household policy situation.⁵ Higgins' claims must fail. Higgins' mischaracterizes the statements made by the Insurance Commissioner, and the holding in *Generette*. Higgins' claims must fail, because a single-vehicle policy holder may confer a benefit from stacking UM/UIM coverage benefits. Accordingly, Higgins' claims have failed as a matter of law.

In *Craley*, the Court noted that a single-vehicle policy holder could benefit from stacking “where the individual is injured in a vehicle other than his own insured vehicle and is an insured under the non-owned vehicle's policy, which also has uninsured motorist coverage (such as an employer's vehicle).”⁶ In discussing the finding of the Insurance Commissioner, the Court found

⁴ Plaintiff's Exhibit I.

⁵ Higgins' assertion that the guest passenger situation has been eliminated relies on *Generette v. Donegal Mutual Insurance Company*, 505 A.2d 1180 (Pa. 2008). Higgins mischaracterizes the holding of that case by stating that the case eliminated the guest passenger situation, however, *Generette* only held that plaintiff's recovery under her policy was not barred by her waiver of stacking. *Id.* citing *Jones*, see also *Vensko v. Encompass Home & Auto Ins. Co.*, No. 1316 WDA 2014, 2015 WL 6549225, at *3 (Pa. Super. Ct. Sept. 11, 2015) (“The decision in *Generette* changed the law by holding [that] waiver of stacked UIM coverage only applied to policies between statutorily defined insureds.” (quoting *A. LaCaffinie v. Standard Fire Ins. Co.*, 55 A.3d 132 (Pa. Super. Ct. July 11, 2012) (unpublished memorandum at 5–6))).

⁶*Berardi* citing 895 A.2d at 537.

another instance in which a single-vehicle policy owner may confer a benefit from stacking UM/UIM coverages. Similarly, in *Jones* the Court named additional scenarios in which a single-vehicle policy holder may confer a benefit from stacking UM/UIM coverages. The Court notes a specific scenario:

[C]onsider a mother-in-law about to move in with one of her adult children and that child's spouse who owns two vehicles and has policies with stacking coverage. The mother-in-law purchases a car and her own single vehicle insurance policy with stacking coverage knowing that she will soon be joining her adult child's "household." As soon as she moves in, she and her adult child will both benefit from *interpolicy* stacking in the event of an accident.⁷

Here, Higgins' assertion that the household policy situation is the only situation where the charge of stacking by an insurance may be justified, and Higgins reliance on the Insurance Commissioners statement is incorrect. Stacked UM/UIM coverage does confer a benefit, and accordingly, Higgins is not entitled to Declaratory Relief, return of premiums, or injunctive relief.⁸ Accordingly, Higgins' claims have failed as a matter of law.

II. Higgins Failed to State a Claim for Unjust Enrichment.

Higgins' claims that the fact that there was a valid contract between Higgins and Nationwide does not bar this claim for unjust enrichment. Higgins argues that Nationwide Policy, the contract at issue, conferred a benefit on Nationwide but conferred no benefit on Higgins, as there is no stacking benefit conferred on a single-vehicle policy holder who stacks UM/UIM coverages with no other vehicles, or policies in the household. Higgins' claims must fail, as the relevant case law demonstrates stacking UM/UIM coverage does confer a benefit on a single-

⁷ *Jones* at 6.

⁸ See *Berardi*, See also *Jones*.

vehicle policy holder as discussed *infra*. Moreover, Higgins entered into a binding contract, Nationwide Policy, with Nationwide. A claim for unjust enrichment cannot be made when the parties enter into a binding contract. Accordingly, Higgins' claims fail as a matter of law.

In order to prevail on an unjust enrichment claim, a plaintiff must establish that 1) the plaintiff conferred benefits on the defendant, 2) the defendant appreciated such benefits, and 3) the benefits were accepted and retained under such circumstances that would be inequitable for the defendant to retain the benefit without payment of value.⁹ An unjust enrichment claim may not be based on a contract.¹⁰

Here, Higgins entered into a binding contract with Nationwide for a motor-vehicle insurance policy.¹¹ Since this claim is based on a contract, Higgins failed to state a claim for unjust enrichment.¹² The case law makes clear that a claim for unjust enrichment cannot be made when the parties enter into a binding contract. Additionally, as stated *infra*, stacked UM/UIM coverage does confer a benefit upon a single-vehicle policy holder where there are no other vehicles, or policies in the household.

III. Higgins Claim that Nationwide and Committed Fraud Fail as a Matter of Law.

Higgins claims that Nationwide knew that stacked UM/UIM coverage conferred no benefit on a single-vehicle policy holder with no other vehicles or policies in the household, and Nationwide intentionally mislead Higgins into believing that Nationwide Policy provided a

⁹ *Berardi*, citing *Mitchell v. Moore*, 729 A.2d 1200, 1203 (Pa. Super. 1999) (citing *Schenck v. K.E. David, Ltd.*, 666 A.2d 327, 328 (Pa. Super. 1995)).

¹⁰ *Wilson Area Sch. Dist. v. Skepton*, 895 A.2d 1250, 1254 (Pa. Super. 2006); *see also Khawaja v. RE/MAX Cent.*, 151 A.3d 626, 633 (Pa. Super. 2016) (“A cause of action for unjust enrichment may arise only when there is no express contract between the parties.”).

¹¹ Defendant's Motion for Summary Judgment ¶ 24.

¹² *See Berardi; Jones.*

stacked benefit. Higgins' claims that on the reliance of Nationwide's misrepresentations, Higgins paid premiums for non-existent coverage. Higgins' claims fail, because of Higgins' mischaracterization of the holding in *Generette*, and the incorrect assertion that stacked UM/UIM coverage provides no benefits.¹³ Nationwide was required to stack UM/UIM coverage as the default, and Higgins had a duty to question Nationwide before entering into Nationwide Policy. Accordingly, Higgins' claims once again fail as a matter of law.

For a claim for fraud in Pennsylvania, a plaintiff must allege "(1) a representation; (2) material to the transaction at issue; (3) made falsely, with either knowledge or reckless disregard of its falsity; (4) with the intent to misleading another person or inducing justifiable reliance; and (5) an injury caused by the reliance."¹⁴

Here, Higgins relies on the incorrect holding of *Generette* in claiming that Nationwide made a false representation. Higgins' assertion that stacked coverage provides no benefit is incorrect, and since there is a benefit to stacked UM/UIM coverage on a single-vehicle policy as stated *infra*, Nationwide did not make a false representation when providing stacked UM/UIM coverage. Per the MVFRL, Nationwide was required to stack UM/UIM coverage absent a signed waiver from Higgins. "Each insured has the right and obligation to question his insurer at the time the insurance contract is entered into as to the type of coverage desired and the ramifications arising therefrom. Once the insurance contract takes effect, however, the insured must take responsibility for his policy."¹⁵ Higgins had an obligation to question Nationwide about Nationwide Policy, before entering into the contract. Therefore, Higgins claim that Nationwide committed fraud fails

¹³ *See Infra*.

¹⁴ *Berardi* at 164 citing *Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 152 n.5 (Pa. Super. 2012) (citing *Bortz v. Noon*, 729 A.2d 555, 560 (Pa. 1999)).

¹⁵ *Id.*, citing *Treski v. Kemper Nat. Ins. Cos.*, 674 A.2d 1106, 1114 (Pa. Super. 1996) (quoting *Kilmore v. Erie Ins. Co.*, 595 A.2d 623, 627 (Pa. Super. 1991)).

as a matter of law. Accordingly, Higgins' claims fail as a matter of law and Defendant is entitled to Summary Judgment.

IV. Higgins Claim that Nationwide Violated the UTPCPL Fails as a Matter of Law.

Higgins claims that Nationwide violated the following sections of the UTPCPL:

- (v) Representing that goods or services have ... benefits ... that they do not have;
...
- (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; ...
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

Higgins' claims must fail, because of Higgins' mischaracterization of the holding of *Generette*.¹⁶ Nationwide was required to provide stacking UM/UIM coverage benefits to Higgins, absent a signed, statutorily prescribed waiver. Additionally, Higgins' provides no evidence that Nationwide engaged in any deceptive conduct.

To state a claim under Pennsylvania's UTPCPL, a plaintiff must allege facts from which the court can plausibly infer: (1) deceptive conduct or representations by the defendant, and (2) justifiable reliance by the plaintiff on the defendant's deceptive conduct that caused the plaintiff's harm.¹⁷ Deceptive conduct is viewed through the eyes of the "reasonable consumer."¹⁸

Here, Higgins relies on the incorrect holding of *Generette* in claiming that Nationwide engaged in deceptive conduct or representations. Nationwide was required by the MVFRL to provide stacked coverage absent an express waiver from Higgins, and Nationwide did not deceive

¹⁶ See *Infra*.

¹⁷ *Jones at 10* citing *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 208 (Pa. 2007); *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 438 (Pa. Super. 2004).

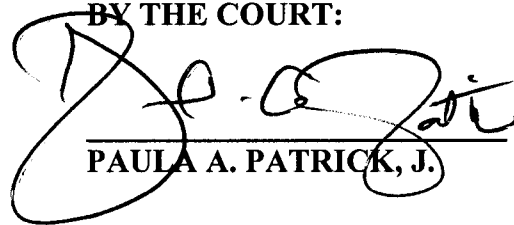
¹⁸ *Landau v. Viridian Imaging*, 223 F. Supp. 3d 401 (E.D. 2016).

Higgins because there are benefits to stacking UM/UIM coverage as stated *infra*. Higgins had an obligation to question Nationwide prior to entering into the contract. Accordingly, Higgins failed to state a claim for a violation of UTPCPL, and Higgins' claims fail as a matter of law.

CONCLUSION

For the foregoing reasons, Nationwide's Motion for Summary Judgment is **GRANTED**, and judgment is entered in favor of Nationwide and against Higgins on the claims set forth in the Complaint. Higgins Motion for Partial Summary Judgment is **DENIED**.

BY THE COURT:



PAULA A. PATRICK, J.