

STATE OF MAINE
Androscoggin, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-99-51

RECEIVED & FILED TED-AND-5/30/2001

DAVID BERGERON and
JOANNE BERGERON,

MAY 30 2001
ANDROSCOGGIN
SUPERIOR COURT

Plaintiffs

v.

ORDER ON MOTIONS
FOR SUMMARY JUDGMENT

UNIVERSAL UNDERWRITERS
INSURANCE COMPANY and
BLUE RIDGE INSURANCE CO. *et als.*,

Defendants

Universal Underwriters Insurance Company and Blue Ridge Insurance Company have each filed a motion for summary judgment asking the court to determine the amounts for which each company is responsible for plaintiffs' damages of \$326,560.

After hearing and a review of information submitted, including the relevant portions of the insurance policies, the court finds that there are no material facts in dispute and that summary judgment is appropriate.

The policy issued by Blue Ridge addresses the application of insurance proceeds in the event that other insurance is available.

OTHER INSURANCE

If there is other applicable similar insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. *However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.*
(Emphasis added)

It is undisputed that the plaintiff was operating a vehicle owned by another person. Under a plain reading of the policy, the "pro-rata" formula of the policy issued by Blue Ridge is inapplicable. The policies issued by both companies are therefore treated as excess and cancel each other out. *See Carriers Ins. Co. v. Am. Policyholders Ins. Co. et al.*, 404 A.2d 216 (Me. 1979) (where there are conflicting excess insurance claim provisions they are to be disregarded as mutually repugnant and each policy is then governed by its general terms). Each policy is then treated as primary coverage. Each insurer then contributes equally to the loss until the limits of the smaller policy are exhausted. The remaining portion of the loss is paid from the larger policy up to its limits. *Id.* at 221 and *York Mutual Ins. Co. v. Continental Ins.Co.* 560 A.2d 571, 573 (Me. 1989).

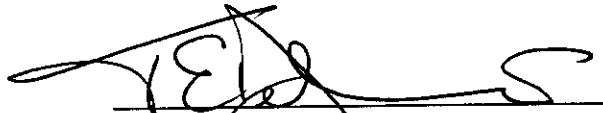
The court declares that the unpaid damages of plaintiffs David Bergeron and Joanne Bergeron, in the amount of \$326,560, shall be paid by defendants Universal Underwriters and Blue Ridge pursuant to the general terms of their respective policies for uninsured and underinsured motorist coverage: Universal shall pay \$226,560 and Blue Ridge shall pay \$100,000.

The clerk will make the following entries as the judgment of this court:

- A. Motion for Summary Judgment by Universal Underwriters Insurance Company is granted.
- B. Motion for Summary Judgment by Blue Ridge Insurance Company is denied.
- C. Judgment is entered for plaintiffs David Bergeron and Joanne Bergeron against Universal Underwriters in the amount of \$226,560 plus interest and costs.

- D. Judgment is entered for plaintiffs David Bergeron and Joanne Bergeron against Blue Ridge Insurance Company in the amount of \$100,000 plus interest and costs.
- E. Costs recoverable by plaintiffs are to be divided equally by defendant Universal Underwriters and defendant Blue Ridge.

DATED: May 30, 2001



Thomas E. Delahanty II
Justice, Superior Court