

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 4, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1955

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARK DONKERSGOED,

Plaintiff-Appellant,

v.

**ECONOMY PREFERRED INSURANCE
COMPANY,**

Defendant-Respondent,

**LYNDON WEBERG AND THRESHERMEN'S
MUTUAL INSURANCE COMPANY,**

Defendants.

APPEAL from a judgment of the circuit court for Pierce County:
ROBERT W. WING, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Mark Donkersgoed appeals a summary judgment that dismissed his underinsured motorist lawsuit against his own liability insurer, Economy Preferred Insurance Company. The Economy policy

supplied underinsured motorist coverage for an accident with another motor vehicle with liability coverage less than the liability coverage limits provided by the Economy policy itself. Donkersgoed had an accident with a vehicle having the same liability limits as the Economy policy, not lower liability limits.

On appeal, Donkersgoed argues that his underinsured motorist coverage is invalid for deviating from the rational expectations of a reasonable insured. He also argues that the trial court should have stacked the liability limits of the two policies he had from Economy Preferred insuring his two motor vehicles. The trial court correctly granted summary judgment if Economy showed no dispute of material fact and a right to judgment as a matter of law. *Powalka v. State Mut. Life Assur. Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). Donkersgoed acknowledges that both his arguments contradict prior appellate court decisions on the same issues. He asks us not to apply those decisions or, alternatively, to certify the issues to the Wisconsin Supreme Court. We reject Donkersgoed's arguments and therefore affirm the summary judgment.

First, the Wisconsin Supreme Court has held that an identical underinsured coverage provision furnished no coverage. *Smith v. Atlantic Mut. Ins. Co.*, 155 Wis.2d 808, 811, 456 N.W.2d 597, 599 (1990). This decision binds this court, *State v. Dowe*, 197 Wis.2d 848, 854, 541 N.W.2d 218, 220-21 (Ct. App. 1995), and modification of the *Smith* decision must come from the Wisconsin Supreme Court. Second, we have already held that underinsured claimants may not stack the liability limits of two policies for two cars. *Krech v. Hanson*, 174 Wis.2d 170, 172-73, 473 N.W.2d 600, 601-02 (Ct. App. 1991). As a published court of appeals decision, *Krech* has statewide precedential effect, see § 752.41(2), STATS., and is generally binding on future court of appeals cases. See *State v. Solles*, 169 Wis.2d 566, 570, 485 N.W.2d 457, 459 (Ct. App. 1992). We see no reason to depart from it here.

By the Court. — Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.