

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**MAY 6, 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, 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. 96-3087**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**ABRAHAM JAHNKE, LOWELL JAHNKE AND JEANNE  
JAHNKE,**

**PLAINTIFFS,**

**v.**

**PROGRESSIVE NORTHERN INSURANCE COMPANY AND WEA  
INSURANCE CORPORATION,**

**DEFENDANTS.**

---

**ABRAHAM JAHNKE, LOWELL JAHNKE AND JEANNE  
JAHNKE,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**ALLSTATE INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

---

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. Abraham Jahnke, Lowell Jahnke and Jeanne Jahnke appeal a summary judgment that dismissed their underinsured motorist lawsuit against the Jahnkes' own liability insurer, Allstate Insurance Company. The Allstate policy supplied underinsured motorist coverage for an accident with another motorist whose liability coverage limits were less than the limit of Allstate's underinsured coverage. Abraham Jahnke had an accident with a motorist who had the same liability coverage limits as Allstate's underinsured coverage. On appeal, the Jahnkes argue that the underinsured coverage limits are invalid for deviating from his rational expectations. They also argue that the trial court should have stacked the underinsured motorist limits of the three policies they had with Allstate insuring three motor vehicles. The trial court correctly granted summary judgment if Allstate showed no dispute of material fact and a right to judgment as a matter of law. *Powalka v. State Mut. Life Assurance Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). The Jahnkes also ask that we certify this matter to the Wisconsin Supreme Court. We reject Jahnkes' arguments and therefore affirm the summary judgment.

First, the Wisconsin Supreme Court has held that similar underinsured coverage provisions provide no coverage. See *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 coverage limits of two policies for two cars. *See Krech v. Hanson*, 164 Wis.2d 170, 172-73, 473 N.W.2d 600, 601-02 (Ct. App. 1991). As a published decision, *Krech* has statewide precedential effect, § 752.41(2), STATS., and is binding on future court of appeals cases, including this three-policy case. *See State v. Solles*, 169 Wis.2d 566, 570, 485 N.W.2d 457, 459 (Ct. App. 1992). Modification of *Krech* must come from the Wisconsin Supreme Court.

We see nothing in *Allstate Ins. Co. v. Gifford*, 178 Wis.2d 341, 504 N.W.2d 370 (Ct. App. 1993), or *Sobieski v. Farmers Ins. Exch.*, 181 Wis.2d 324, 510 N.W.2d 796 (Ct. App. 1993), that requires a different result. These decisions do not alter the fundamental principle laid down in *Smith* that insurers may limit underinsured motorist coverage by reference to the liability coverage of the alleged underinsured motorist. Allstate's underinsured provision is unambiguous in this regard. In addition, we reject the Janke's argument that the Allstate policy's merger of uninsured and underinsured coverages created an ambiguity on coverage limits. The policy's combined treatment of uninsured and underinsured coverages left unimpaired the policy's basic tenet on underinsured coverage limits: underinsured coverage does not apply to motorists with liability coverage limits equal to the underinsured coverage limits. Last, the Jahnkes may not cite the policy's declaration page as a source of policy ambiguity; the declaration's failure to mention underinsured motorist coverage would not induce a reasonable insured to expect underinsured motorist coverage in excess of the underinsured coverage that the policy actually provided. The trial court correctly granted Allstate summary judgment.

*By the Court.*—Judgment affirmed.

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

