

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTOMOBILE : CIVIL ACTION
INSURANCE COMPANY :
 :
v. :
 :
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JOSEPH CICCARELLA and :
JOAN CICCARELLA, as Executors :
of the Estate of Danielle :
Cicarella : No. 01-1211

M E M O R A N D U M

WALDMAN, J.

May 1, 2002

Introduction

This is a declaratory judgment action. Plaintiff State Farm seeks a declaration that it is only liable for \$75,000 in under-insured motorist coverage ("UIM") under three insurance policies which covered the decedent, Danielle Ciccarella. At issue is whether the decedent and her mother, defendant Joan Ciccarella, validly elected lower UIM coverage under their respective policies.

This case was placed in suspense by the Hon. Edmund Ludwig, to whom it was then assigned, pending a decision by the Pennsylvania Supreme Court in Lewis v. Erie Insurance Exchange. That decision was filed on March 21, 2002.

Presently before the court is plaintiff's motion for summary judgment.

II. Legal Standard

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." See Anderson, 477 U.S. at 248. All reasonable inferences from the record must be drawn in favor of the non-movant. See id. at 256.

The movant has the burden of demonstrating the absence of genuine issues of material fact. The non-movant must establish the existence of each element on which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). A non-movant cannot avert summary judgment with speculation or conclusory allegations, but must point to evidence from which a jury could reasonably find in his favor. See Anderson, 477 U.S. at 248; Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Williams v. Borough of

West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

III. Facts

From the competent evidence of record, as uncontroverted or otherwise viewed in the light most favorable to defendants, the pertinent facts are as follow.

On August 27, 1996, Danielle Ciccarella signed an application for automobile insurance from State Farm. The policy provided for bodily injury liability in the amount of \$25,000 per person and \$50,000 per accident.

On April 29, 1998, Joan Ciccarella, decedent's mother, signed an application for automobile insurance from State Farm covering her, her husband and her daughter, Danielle. That policy provided for bodily injury liability in the amount of \$100,000 per person and \$300,000 per accident.

In the portion of the applications captioned "Underinsured Motor Vehicle Limits" the box labeled "Same as BI [Bodily Injury]" was empty, the box entitled "Other" was checkmarked and UIM coverage was specified in the amount of \$15,000 per person and \$30,000 per accident. Just underneath these dollar amounts are the words "Initials of a Named Insured" followed by a line measuring one-half inch. On this line in the respective applications are the initials "DC" and "JC." The

insurer's agent filled in the numbers. Defendants acknowledge the authenticity of the insureds' initials.¹

To the right of the UIM coverage section, each application contains a statement followed by each insured's signature which reads:

"I apply for the insurance indicated and state that (1) I have read this application, (2) any statements made on this application are correct, (3) statements made on any other applications on this date for automobile insurance with this company are correct and are made part of this application, (4) I am the sole owner of the described vehicle except as otherwise stated, and (5) the limits and coverages were selected by me."

Both Danielle and Joan Cicarella also signed a section captioned "Important Notice" which specified the available amounts and limits on coverage including UIM coverage, as required by § 1791, which provided the following:

"Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected."

On December 24, 1998, Danielle Ciccarella was killed in an automobile accident while a passenger in an automobile driven

¹ State Farm had separate printed forms for reduction, as well as waiver, of UIM limits. These were not used in connection with the Ciccarellas' applications.

by Robert Fort. The Estate of Danielle Ciccarella received \$25,000 from Mr. Fort.²

Plaintiff maintains that the decedent and her mother selected reduced UIM coverage and it is thus liable for a total of \$75,000 in UIM benefits.³ Defendants contend that the election of lower UIM coverage was not valid and thus UIM coverage under Joan and Danielle Ciccarella's policies should be deemed equal to the \$255,000 of combined bodily injury coverage.⁴

IV. Discussion

Defendants initially assert that plaintiff has not satisfied the requisite jurisdictional amount. Defendants argue that "[p]laintiff seeks no monetary amount and therefore has failed to satisfy the amount in controversy requirement," and "the matter in controversy is one of additional insurance

² The decedent was also covered under the policy of her sister and brother-in-law, Gina and Timothy Nagy, issued by State Farm and providing \$30,000 in UIM coverage as to which there is no dispute.

³ The \$75,000 figure results from adding \$30,000 from the Nagy policy, \$15,000 from Danielle Ciccarella's policy and \$30,000 from Joan Ciccarella's two-car policy under which stacking was elected.

⁴ Pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFL"), an insurer must provide UIM coverage in an amount equal to the bodily injury liability coverage unless such is waived or reduced. See 75 Pa. C.S.A. §§ 1731 and 1734.

coverage and not a substantive matter involving the amount of that coverage or the value of damages."

The amount in controversy in a declaratory judgment action is measured by the value of the object of the litigation or of the right for which protection is sought. See Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 347 (1977). See also Samuel-Bassett v. Kia Motors Am., Inc., 143 F. Supp. 2d 503, 507 n.3 (E.D. Pa. 2001); Pohl v. NGK Metals Corp., 117 F. Supp. 2d 474, 478 n.3 (E.D. Pa. 2000).

At issue is whether Danielle and Joan Ciccarella effectively reduced their UIM coverage. If they did, plaintiff is liable for a total of \$45,000 under their policies. If not, plaintiff is liable for \$225,000. The amount in controversy is \$180,000. The court has subject matter jurisdiction.

On the merits, defendants contend that the means by which Danielle and Joan Ciccarella lowered their UIM coverage did not comply with the requirements of 75 Pa. C.S.A. § 1734 which provides:

A named insured may request in writing the issuance of coverages under section 1731 (relating to availability, scope and amount of coverage) in amounts equal to or less than the limits of liability for bodily coverage.

Defendants argue that their initialing of the lower limits did not constitute a "request in writing" for reduced UIM coverage.

The Pennsylvania Supreme Court recently resolved the question of whether there must be compliance with the technical requirements of § 1731 to effect a valid election of reduced UIM coverage under § 1734. See Lewis v. Erie Ins. Exch., 793 A.2d 143 (Pa. 2002). The Court held that the technical requirement of § 1731 providing for a signed reduction form separate from the application does not apply to § 1734. See Lewis, 793 A.2d at 155. The Court discussed the difference between waiver of UIM coverage and mere reduction of such coverage. See also Duncan v. St. Paul Fire & Marine Ins. Co., 129 F. Supp. 2d 736, 741 (M.D. Pa. 2001) (invalid coverage rejection form irrelevant if policyholder elects reduced coverage).

It follows that defendants' reliance on National Union Fire Ins. Co. v. Irex, 713 A.2d 1145 (Pa. Super. 1998) and Insurance Co. of the State of Pennsylvania v. Miller, 627 A.2d 797 (Pa. Super. 1993) which involved the validity of an insured's waiver or rejection of UIM insurance is misplaced. Insofar as the Court in Irex suggested that § 1731 and § 1734 should be read in pari materia, this was dicta and squarely rejected by the state Supreme Court. See Lewis, 793 A.2d at 155.⁵

Also misplaced is defendants' reliance on Nationwide Insurance Company v. Resseque, 980 F.2d 226 (3d Cir. 1992) and

⁵ That an insurer prior to Lewis may have had a separate form to request lower UIM limits is thus immaterial.

Botsko v. Donegal Mut. Ins. Co., 620 A.2d 30 (Pa. Super. 1993).

At issue in Ressequie was whether an "oral" request to lower UIM coverage satisfied the "written request" requirement of § 1734.

See 980 F.2d at 232. In Botsko, the insured had never received a § 1791 notice of available coverage. See 620 A.2d at 33.

Motorist Insurance Companies v. Emig, 664 A.2d 559 (Pa. Super. 1995), app. denied, 685 A.2d 545 (1996) is also distinguishable. The Court in Emig found that where the space in an application for an insured to request reduced UIM limits was blank, there was no "writing" by the insured requesting lower coverage. See id. at 565. The Court found that the filling in of reduced UIM amounts by the insurance agent in an inapplicable section of the application did not constitute a written request by the insured. See id. at 565-66.⁶ The issue in the instant case is whether the insureds' initialing of reduced amounts in the proper section, in conjunction with their signing of the applications and Important Notice section, constituted a "request in writing" pursuant to § 1734.

Defendants contend that plaintiff has not demonstrated that the insureds' election of lower UIM benefits was "knowing and intelligent." Such an inquiry, however, is unnecessary where

⁶ The Court in Emig suggested that it may have found a valid written request by the insured for lower UIM coverage if the applicable section of the form had been filled in and the insured had initialed the amounts inserted by the agent. See id. at 565.

the insurer has complied with the MVFRL. See Salazar v. Allstate Ins. Co., 702 A.2d 1038, 1044 (Pa. 1997). See also Clifford v. Prudential Property & Casualty Ins. Co., 2001 WL 1076582, *8 (M.D. Pa. Aug. 28, 2001) ("the Pennsylvania Supreme Court no longer employs the 'knowing and intelligent' analysis").⁷

Even prior to the Salazar decision on October 30, 1997, it was clear that an insured's acknowledgment of a § 1791 "Important Notice" provision conclusively established her knowledge of available coverage. See Shipe v. Allstate Ins. Co., 791 F. Supp. 109, 111 (M.D. Pa. 1992) ("[a]n insured's signature on the notice establishes a conclusive presumption that he has actual knowledge of the coverage available to him under the MVFRL"). See also Prudential v. Property & Casualty Ins. Co. v. Pendleton, 858 F.2d 930, 936 (3d Cir. 1988)(insured who voluntarily signs § 1791 form "cannot be heard to rebut it"); Breuninger, 675 A.2d at 356 (providing insured with § 1791 notice creates conclusive presumption he had notice of benefits available to him).

Section 1734 does not specify any particular language or form which must be used to constitute a "request in writing"

⁷ Under the prior test a reduction of UIM coverage was deemed valid where an insured, with notice of available coverage and limits, requested lower coverage in writing. See Breuninger v. Pennland Ins. Co., 675 A.2d 353, 357 (Pa. Super. 1996). It would appear that an insurer which complied with § 1791 and § 1734 would have effectively satisfied this test.

for reduced UIM coverage. See Lewis, 753 A.2d at 850. In contrast, § 1731(c.1) requires that a waiver or rejection of coverage must be effected on a form "signed" by the insured. The legislature chose not to mandate the same requirement for the election of lower UIM coverage under § 1734.

The court has found and the parties have identified no Pennsylvania case where the sufficiency of initials on an insurance application to indicate election of lower UIM coverage was at issue. Initials, however, are recognized as the equivalent of a signature in circumstances of equal or greater import. See, e.g., Triffin v. Dillabough, 716 A.2d 605, 609 (Pa. 1998) (negotiable instrument may be authenticated by initials); In re Estate of Dotterrer, 579 A.2d 952, 954 (Pa. Super. 1990) (trust agreement validly amended by instrument executed only with grantor's initials). See also Restatement (Second) of Contracts § 134 and Comment a (2000) (legal document may be signed with initials or any symbol made with actual or apparent intent to authenticate writing as that of signer); Champagne v. Clarendon National Ins. Co., 774 So. 2d 1286, 1288 (La. App. 2000) (insured's initialing of lower UM limits typed in by insurer's agent evidenced clear intent to select lower limits and effected valid election); McNeme v. Estate of Hart, 860 S.W. 2d 536, 540 (Tex. App. 1993) (initials satisfy statutory requirement of signed written agreement).

The court believes that the Pennsylvania Supreme Court would recognize the placement of initials on a line in an insurance application expressly denoted for that purpose as equivalent to a signature, and would hold that such initialing of lower UIM limits in the section provided for that purpose satisfies the requirement of a written request for such limits.⁸

V. Conclusion

The insureds signed a § 1791 Important Notice declaring they understood the available benefits as well as the limits they selected. Each insured acknowledged that "the limits and coverages were selected by me." Each placed their initials next to the reduced UIM limits noted.

The initialing by the insured of the reduced UIM limits in the section provided for selecting that option, in conjunction with the signed acknowledgments that they understood the benefits available and had made the selections noted, satisfies the written request requirement of § 1734. The respective agreements

⁸ Defendants' alternative suggestion that the election of reduced UIM coverage by Joan Ciccarella was ineffective because such coverage is not specified by vehicle is fatuous. Where the same coverage limits are selected for each vehicle, there is no reason to specify coverage by vehicle. The absence of each specification no more affects UIM coverage than it does the bodily injury coverage selected by the insured. The insured elected the option of stacking. The only amounts which could be stacked are the single set of coverage limits specified in the application. Defendants do not disclaim their entitlement to \$30,000, rather than \$15,000, in UIM benefits should plaintiff prevail.

for coverage were clear and unambiguous and demonstrate the parties' intent that UIM coverage would be provided for the limits noted. See Pacitti v. Macy's, 193 F.3d 766, 773 (3d Cir. 1999) (parties' intent is derived solely from express language of clear and unambiguous agreement); Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613 (3d Cir. 1995) (same).⁹

Plaintiff is entitled to summary judgment. Its motion will be granted. An appropriate order will be entered.

⁹ Plaintiff contends with some force that in any event § 1734 does not provide for the remedy of reformation and courts should refrain from implying a remedy which the legislature has declined to provide. See Nationwide Mut. Ins. Co. v. Buffetta, 230 F.3d 634, 641-42 (3d Cir. 2000); Clifford, 2001 WL 1076582 at *8-9. There is no need to address this contention here as the requirements of § 1734, as well as § 1791, were clearly satisfied in this case.

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O R D E R

AND NOW, this day of May, 2002, upon
consideration of plaintiff's Motion for Summary Judgment (Doc.
#6) and defendants' response thereto, consistent with the
accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is
GRANTED and **JUDGMENT** is **ENTERED** in the above action for the
plaintiff. Accordingly, it is declared that the total
underinsured motorist coverage by plaintiff of Danielle
Cicarella in effect on December 24, 1998 is \$75,000.

BY THE COURT:

JAY C. WALDMAN, J.