

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

<b>EMPLOYERS FIRE INSURANCE</b>	:	
<b>COMPANY,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	<b>NO. 02-CV-6567</b>
<b>ROSA ALVARADO</b>	:	
<b>Defendant.</b>	:	

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**Diamond, J.**

**Memorandum**

Plaintiff, Employers Fire Insurance Company, has brought this diversity action seeking a declaratory judgment limiting its obligations to Defendant Rosa Alvarado to a total of \$200,000 in underinsured motorist benefits under the terms of her automobile insurance policy. Plaintiff moves for summary judgment, arguing that under Pennsylvania law, the explicit terms of Defendant’s insurance policy limit her to a total of \$200,000 in underinsured motorist benefits. Significantly, Defendant concedes that there is no material factual dispute precluding the granting of summary judgment. Accordingly, I grant Plaintiff’s Motion.

**CHOICE OF LAW**

As federal jurisdiction in this case is based on diversity, I must apply substantive law as decided by the Pennsylvania Supreme Court. Erie R. Co. v. Tompkins, 304 U.S. 64, 78, 82 L.Ed. 1188, 58 S. Ct. 817 (1938); Commercial Union Ins. Co. v. Bituminous Casualty Corp., 851 F.2d 98, 100 (3d Cir. 1988). I must predict how the Pennsylvania Supreme Court would determine

unresolved questions of substantive law. Borman v. Raymark Indus., Inc., 960 F.2d 327, 331 (3d Cir. 1992). The decisions of Pennsylvania Superior and Commonwealth Courts, although not dispositive, “should be accorded significant weight in the absence of an indication that the highest state court would rule otherwise.” Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300, 304 (3d Cir. 1995).

## **STANDARD OF REVIEW**

Upon motion of any party, summary judgment is appropriate “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). The moving party must initially show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). In its review of the record, “the court must give the nonmoving party the benefit of all reasonable inferences.” Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir. 1995), cert. denied, 132 L. Ed. 2d 854, 115 S. Ct. 2611 (1995). An issue is material only if it could affect the result of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). If, after viewing all reasonable inferences in favor of the non-moving party, the court determines that there is no genuine issue of material fact, summary judgment is appropriate. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

Because a motion for summary judgment looks beyond the pleadings, factual specificity is required of the party opposing the motion. Celotex, 477 U.S. at 322-23. To prevail, the opposing party may not simply restate the allegations made in its pleadings. Mennen Co. v. Atlantic Mut. Ins. Co., 1999 U.S. Dist. LEXIS 21916, \*7-8 (D.N.J. Oct. 26, 1999) (citation

omitted). Nor may a party rely upon “self-serving conclusions, unsupported by specific facts in the record.” Id., at \*8 (citing Celotex, 477 U.S., at 322-23). The opposing party must support each essential element with concrete evidence in the record. Celotex, 477 U.S., at 322-23. If the party fails to cite to such evidence, then the moving party is entitled to summary judgment. Mennen Co., at \*8; FED. R. CIV. P. 56(e).

## **BACKGROUND**

In May 1995, the Erie Insurance Company was providing Defendant with \$300,000 in single limit liability insurance and \$100,000 in uninsured/underinsured motorist (UM/UIM) coverage. Defendant asked insurance agent Daniel Witwer to obtain “[s]omething cheaper. I mean, the same coverage but pay less money.” (Dep. of Defendant at 11). Defendant provided Witwer with her Erie policy, which he reviewed with her. (Dep. of Defendant at 13). After questioning Defendant about her coverage needs, Witwer obtained through a computer search quotes from several insurance companies for the coverage Defendant wanted. (Dep. of Defendant at 14). Witwer reviewed all the quotes with Defendant, who chose Plaintiff’s policy because it was the least expensive. (Dep. of Defendant at 14).

Witwer reviewed with Defendant each question on Plaintiff’s insurance policy application form. (Dep. of Witwer at 23). He then printed out a hard copy of the form, which he asked Defendant to review and sign. (Dep. of Defendant at 17). In the application, Defendant requested \$300,000 in single limit liability coverage and \$100,000 in UM/UIM coverage. (Plaintiff’s Motion for Summary Judgment, Exhibit D).

Plaintiff issued to Defendant an insurance policy effective from May 31, 1995 to December 1, 1995. It included the \$300,000/\$100,000 coverage Defendant had requested.

(Complaint, Exhibit A). Defendant renewed this policy every six months through June 1, 2001, three years after the 1998 accident that gave rise to this lawsuit. (Plaintiff's Motion for Summary Judgment, Exhibits E, F). Although Defendant made numerous changes to the policy over the six years, none pertained to the limits of liability or the UIM coverage. (Plaintiff's Motion for Summary Judgment, Exhibit B at 19-20, Exhibits C, E, F). Further, in the six policy renewals Defendant completed after the 1998 accident, she never asked Plaintiff to change the policy limits. (Plaintiff's Motion for Summary Judgment, Exhibit B at 19-20, Exhibit F).

On August 10, 1998, Defendant was involved in an automobile accident. Defendant sought UIM benefits from Plaintiff. Plaintiff agreed to pay Defendant \$200,000 in UIM benefits. Defendant here maintains that she is entitled to \$300,000 in UIM coverage, stacked for two vehicles, for a total of \$600,000 in benefits. Plaintiff seeks a declaratory judgment that Defendant is entitled to only the \$200,000 already paid, representing \$100,000 in UIM coverage stacked for two vehicles.

## **DISCUSSION**

Pennsylvania's Motor Vehicle Financial Responsibility Law "imposes the requirement that an insurer provide uninsured motorist coverage in an amount equal to the bodily injury liability unless the insured waives the requirement." Prudential Property and Casualty Co. v. Pendelton, 853 F.2d 930, 932 (3d Cir. 1988). The statute specifies that the waiver must be in writing. 75 Pa. C.S. §§ 1731(c), 1734 (2004). There is no dispute that Defendant made written application to Plaintiff for only \$100,000 in UM/UIM coverage and \$300,000 in liability coverage, and that the resulting insurance contract provided coverage in those amounts. Accordingly, Plaintiff contends that under the MVFRL, the terms of the insurance contract bind

Defendant and entitle the Plaintiff to summary judgment as to the amount of UIM coverage that is contractually available to Defendant.

Defendant opposes summary judgment on three grounds. First, she argues that her written application for reduced UIM benefits was not adequate under the MVFRL. (Defendant's Reply, at ¶ 21). Next, Defendant notes that there is a factual dispute precluding summary judgment: during her deposition, she testified that when she bought the policy from Plaintiff, she believed she was buying equal amounts of liability and UIM coverage. Finally, Defendant argues that "a mutual mistake was made in the preparation of the [insurance] policy documents as to Defendant's choice of UM/UIM coverage amounts." (Defendant's Memorandum at 2).

#### **I. Adequacy of Defendant's Written Application for Reduced UIM Coverage**

The MVFRL requires insurers to offer UM/UIM coverage in an amount equal to liability coverage when issuing motor vehicle liability insurance policies. 75 Pa. C.S. § 1731(a) (2004). If the insured does not want UIM insurance, or wishes to purchase a lesser amount of UIM coverage, he must provide the insurer with either a signed form outright rejecting UIM coverage, or a written request for reduced UIM coverage. 75 Pa. C.S. §§ 1731(c), 1734 (2004). Failure to obtain either writing obligates the insurer to provide equal UIM and liability coverage. 75 Pa. C.S. § 1731 (c.1). See Prudential, 853 F.2d at 932.

Defendant contends that the MVFRL imposes the same requirement on insurers providing no UIM coverage and those providing reduced UIM coverage: in both instances the insured must execute a separate, written form. Thus, in Defendant's view, her written application for reduced UIM benefits alone does not comply with the MVFRL. The Pennsylvania Supreme Court has rejected this contention, holding that §1731's requirement that the insured sign a rejection form

separate from the insurance application to reject UIM coverage altogether does not apply to the insured who wishes only to reduce UIM coverage. Lewis v. Erie Ins. Exch., 793 A.2d 143, 155 (Pa. 2002). In the Court's view, a written request for reduced UIM coverage necessarily informs the applicant of the coverage he is actually buying:

[R]equests for specific limits coverage, in contrast to outright waiver/rejection, require not only the signature of the insured, but also, an express designation of the amount of coverage requested, thus lessening the potential for confusion.

Id., at 153. See Leymeister v. State Farm Mut. Auto. Ins. Co., 100 F. Supp. 2d 269, 272 (M.D. Pa. 2000); State Farm Mut. Auto. Ins. Co. v. Ciccarella, 2002 U.S. Dist. LEXIS 7698, \*8 (E.D. Pa. May 1, 2002). Accordingly, under §1734, a valid reduction in UIM coverage requires a written request only. The statute is silent as to the exact form that this writing must take, "though the requirement seems only to be that the writing reflect the insured's choice of lower coverage." State Farm Auto. Ins. Co. v. Vollrath, No. 02-1257, 2004 U.S. Dist. LEXIS 12077, \*15 (E.D. Pa. June 28, 2004).

Here, Defendant signed an insurance application form in which she explicitly requested only \$100,000 in UIM coverage. Under Lewis, the MVFRL requires nothing more to constitute a valid request for lower UIM coverage. That holding controls here. Commercial Union Ins. Co., 851 F.2d at 100. Accordingly, I am compelled to reject Defendant's first argument against the granting of summary judgment.

## **II. Defendant's Understanding As To The Amount of UIM Coverage She Was Purchasing**

Defendant next contends that she did not understand that she was buying less UIM coverage than liability coverage. In Defendant's view, this creates a factual dispute as to whether she intended to purchase less UIM coverage, thus precluding the entry of summary judgment in

Plaintiff's favor. At oral argument, however, Defendant conceded that under Pennsylvania law, this is not a *material* factual dispute:

DEFENSE COUNSEL: [The Defendant] wanted bodily injury coverages to equal her UM/UIM coverages. And I think that that, I would simply argue that that creates a genuine issue of fact as to whether or not the contract --

THE COURT: But is it material under Pennsylvania law? It's not, is it?

DEFENSE COUNSEL: I would, I'd have to be candid and concede that under current Pennsylvania law, you're absolutely right. The intent isn't relevant.

(N.T. 1/19/05 at 7-8).

Defendant's concession is both admirable and obviously correct. As Defendant has stated, the Pennsylvania Supreme and Superior Courts have made clear that under the MVFRL, "[w]hat is relevant are the documents [Defendant] signed." (N.T. 1/19/05 at 9). See Prudential 853 F.2d at 933 (Section 1791 of the MVFRL "creates a presumption that an insured's signature . . . evidences 'actual knowledge and understanding of the availability of [coverage] benefits . . .").

In Kline v. Old Guard Ins. Co., the insureds signed a form rejecting all UIM coverage. Kline, 820 A.2d 783, 785 (Pa. Super. 2003). They subsequently were injured in a car accident, and sought a declaratory judgment that their waiver was not valid and that they were entitled to UIM benefits. The insurer sought summary judgment, arguing that the insured's written rejection of UIM benefits was binding. Both sides stipulated that at the time they signed the rejection form, the insureds did not "know or understand what UIM coverage was." Id. at 786. The Superior Court agreed with the insurer, holding that under the Pennsylvania Supreme Court's decisions in Lewis and Salazar v. Allstate Ins. Co., the MVFRL requires only a written rejection of UIM coverage:

[W]e reject the Kline's argument that they should be permitted to avoid the consequences of unambiguous policy language by proof that they failed to read or understand it.

Kline, at 787; Salazar, 702 A.2d 1038, 1044 (Pa. 1997).

The instant case presents even more compelling reasons to hold the Defendant to the terms of the contract she signed. Unlike the insureds in Kline -- who signed a form completely rejecting UIM coverage -- the Defendant here sought only a reduction in coverage. As the Superior Court noted in Nationwide v. Heintz (echoing the observation of the Pennsylvania Supreme Court in Lewis), a written request for reduced UIM coverage is necessarily an expression of the insured's choice respecting the amount of UIM coverage he wishes to buy. Heintz, 804 A.2d 1209, 1221 (Pa. Super. 2002), alloc. denied, 818 A.2d 505 (Pa. 2003).

It is, thus, clear that under Pennsylvania law, an insured will be held to the terms of his insurance contract providing lower UIM coverage as long as the insured made written application for such reduced coverage. Accordingly, I am obligated to enforce the resulting insurance policy as written -- including the UIM benefits Defendant explicitly requested and paid for every six months from 1995 through 2001. See Nationwide Mutual Insurance Co. v. Buffetta, 230 F.3d 634, 639-641 (3d Cir. 2000) (concluding that payment of lower premiums over a three year period before accident demonstrated insured's knowledge and acquiescence in selection of lower coverage); State Farm Mut. Auto. Ins. Co. v. Gillespie, 2004 U.S. Dist. LEXIS 21489, \*14 (E.D. Pa. Oct. 18, 2004) (citing State Farm Auto Ins. Co. v. Vollrath, No. 02-1257, 2004 U.S. Dist. LEXIS 12077, \*14 (E.D. Pa. June 28, 2004).

In these circumstances, there is no material factual dispute that precludes the granting of summary judgment.

### III. Meeting of the Minds/Mutual Mistake

Finally, Defendant argues that she “may be entitled to reformation of the [insurance] policy” based on the doctrine of mutual mistake. (Defendant’s Brief at 2). This is simply a restatement of the meritless argument respecting *her own* understanding as to the amount of UIM coverage she bought.

Under Pennsylvania law, courts have the power to reform a contract where mutual or unilateral mistakes have been made. Regions Mortg., Inc. v. Muthler, 844 A.2d 580, 582, 2004 PA Super 52 (Pa. Super. 2004); Kutsenkow v. Kutsenkow, 414 Pa. 610, 202 A.2d 68 (Pa. 1968). A party seeking reformation on the basis of mutual mistake “must establish in the clearest manner that the intention proffered as the basis for reformation . . . existed and continued concurrently in the minds of the parties.” Dudash, 460 A.2d at 326-327. Evidence of the mutual mistake must be “clear, precise and convincing.” Roth v. Old Guard Ins. Co., 850 A.2d 651, 653, 2004 PA Super 121 (Pa. Super. 2004) (citation omitted).

Defendant offers no evidence even suggesting that Plaintiff shared Defendant’s “mistaken” understanding as to the amount of UIM coverage it sold to Defendant. Accordingly, there is no *mutual* mistake here. Roth, 850 A.2d at 653. On the contrary, the record includes, at most, evidence of Defendant’s *unilateral* mistake. Under Pennsylvania law, a party’s mere mistake will not, alone, justify contract reformation:

If the mistake alleged is unilateral . . . the party seeking reformation must show, by clear and convincing evidence, that the party against whom reformation is sought had such knowledge of the mistake as to justify an inference of fraud or bad faith.

Regions Mortgage, Inc., 844 A.2d, at 582 (citing Dudash v. Dudash, 313 Pa. Super. 547, 460

A.2d 323, 327 (Pa. Super. 1983)). Here, Defendant does not allege that Plaintiff's bad faith or fraud somehow induced her into requesting reduced UIM coverage. Rather, she alleges that she apparently did not pay close attention to the explicit request she made for reduced UIM coverage, the explicit terms of the resulting insurance policy, or the explicit terms of her requested coverage renewals. The Third Circuit has held, however, that a "mere failure to read an instrument, thus giving rise to [a] unilateral mistake, is insufficient to obtain relief." Thomas v. Trans World Airlines, Inc., 457 F.2d 1053, 1056 (3d Cir. 1972) (citation omitted); Kline v. Old Guard Ins. Co., 820 A.2d 783, 787, 2003 PA Super 117 (Pa. Super. 2003). Accordingly, Defendant's unilateral mistake provides no grounds for reformation of the insurance policy. See e.g., McFadden v. American Oil Co., 257 A.2d 283, 289, 215 Pa. Super. 44 (Pa. Super. 1969) ("[g]enerally if a mistake is not mutual, but unilateral, and is not due to the fault of the party not mistaken, but to the negligence of the one who acted under the mistake, it affords no basis for relief.").

In these circumstances, Defendant cannot show that her mistake entitles her to reformation of her insurance policy. Accordingly, Plaintiff's Summary Judgment Motion is GRANTED.

An appropriate Order follows.

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Date

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Paul S. Diamond, J.

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

<b>EMPLOYERS FIRE INSURANCE</b>	:	
<b>COMPANY,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	<b>NO. 02-CV-6567</b>
<b>ROSA ALVARADO</b>	:	
<b>Defendant.</b>	:	

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**Order**

AND NOW, this 25th day of January, 2005, upon consideration of Plaintiff's Motion for Summary Judgment, Defendant's Response, Plaintiff's Reply, oral arguments, and all related materials, it is ORDERED that Plaintiff's Motion is GRANTED. Plaintiff has satisfied its contractual obligations to Defendant, having paid her \$200,000 in underinsured motorist benefits. It is further ordered that judgment is entered in favor of Plaintiff and against Defendant.

The Clerk of Court shall close this matter for statistical purposes.

**BY THE COURT:**

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**Paul S. Diamond, J.**