

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

ALLSTATE INSURANCE COMPANY	:	CIVIL ACTION
	:	
v.	:	No. 05-158
	:	
MARY B. HRIN	:	

MEMORANDUM OPINION

Savage, J.

August 31, 2006

In this declaratory judgment action, the jury determined that the defendant Mary B. Hrin (“Hrin”) did not reside at the named insured’s residence as required by the automobile insurance policy issued by Allstate Insurance Company (“Allstate”), but that Allstate had failed to provide the insurance coverage that had been requested, which would have covered her regardless of her residence. Consistent with the jury’s verdict, an order declaring that Hrin is entitled to uninsured motorist and first party medical benefits was entered. Allstate now challenges that verdict, moving for judgment notwithstanding the verdict or a new trial.

In its motion for post-trial relief, Allstate raised three issues. At oral argument, it withdrew one. The remaining grounds are: (1) the verdict on the coverage question cannot be sustained because it rests upon improperly admitted parol evidence presented by Hrin’s husband regarding his discussion with the Allstate agent prior to the policy being issued; and (2) the jury instructions on the elements of Hrin’s contract claim were erroneous and the verdict form was incomplete.

The central issue raised by the motion is the admissibility of parol evidence to determine the reasonable expectations of the parties to an insurance contract where the

policy language is not ambiguous. This case presents the distinction between evidence offered to change the terms of an insurance policy and evidence of the circumstances surrounding the transaction relevant to discerning the parties' reasonable expectations. It necessarily implicates the Pennsylvania view that insurance transactions are fundamentally different from common law contracts.

In light of the record, I conclude that the verdict should not be disturbed. The parol evidence was relevant and admissible to determine the reasonable expectations of the parties, the focal point of the insurance transaction. The jury instructions were consistent with Pennsylvania insurance law and the evidence. Therefore, Allstate's motion will be denied.

Standard of Review

Where a motion for a new trial addresses an issue other than that the jury verdict was against the weight of the evidence, district courts possess wide discretion in determining whether to grant it. *Klein v. Hollings*, 992 F.2d 1285, 1289-90 (3d Cir. 1993); *Henry v. Hess Oil Virgin Is. Corp.*, 163 F.R.D. 237, 243-44 (D.V.I. 1995).

Judgment as a matter of law can be granted only where there is no legally sufficient evidentiary basis for a reasonable jury to find in favor of the verdict winner. *See Foster v. Nat'l Fuel Gas Co.*, 316 F.3d 424, 428 (3d Cir. 2003) (citing FED. R. CIV. P. 50(a)(1)). Thus, a jury verdict will not be disturbed unless the record is "critically deficient of that quantum of evidence from which a jury could have rationally reached its verdict." *Feldman v. Phila. Hous. Auth.*, 43 F.3d 823, 829 (3d Cir. 1994) (quoting *Swineford v. Snyder County*, 15 F.3d 1258, 1265 (3d Cir.1994)).

Facts¹

Because Travelers Insurance Company (“Travelers”), which had insured Hrin and her husband, Charles Cahill (“Cahill”), announced that it would no longer offer automobile insurance in Pennsylvania, Hrin and Cahill sought coverage through another company. Cahill, acting on behalf of Hrin and himself, met with an Allstate agent to get substitute coverage. Providing the agent with the Travelers policy, he specifically requested identical coverage. Cahill testified that the Allstate agent agreed to duplicate the Travelers’ policy. The agent then completed an application for insurance and accepted payment for the insurance. Hrin paid her share of the premium.

Allstate issued the policy on April 20, 2001, and mailed the insurance cards and the declaration page to 716 Pecan Drive, Philadelphia, Pennsylvania, the address listed on the policy. Unlike the Travelers policy, the Allstate policy listed only Cahill as the named insured. However, both Cahill and Hrin were listed drivers, and Hrin’s car was listed as an insured vehicle on the Allstate policy. Cahill testified that after reading the Allstate documents, he believed that Hrin had the same coverage as she had had under the Travelers policy.

On June 18, 2001, Hrin was severely injured when she was run off the road by a phantom vehicle while riding her bicycle. At the time of the accident, Hrin and her husband were separated. From January 25, 2001 until after the accident, Hrin also maintained an apartment a few blocks from the marital home. However, most of her belongings remained

¹ In evaluating a motion for judgment as a matter of law following a jury verdict, the court must “review all the evidence presented during the course of the trial in the light most favorable to the prevailing party. . . and must draw all inferences in its favor.” *Farra v. Stanley-Bostitch, Inc.*, 838 F. Supp. 1021, 1026 (E.D. Pa. 1993) (citing *Laskaris v. Thornburgh*, 733 F.2d 260, 264 (3d Cir. 1984)); see also *Mosley v. Wilson*, 102 F.3d 85, 89 (3d Cir. 1996).

at the Pecan Drive home which she visited daily. She spent nights there when Cahill worked the night shift at the Philadelphia Fire Department.

Following her accident, Hrin submitted a claim for first party and uninsured motorist benefits. Allstate denied the claim and initiated this declaratory judgment action, claiming that Hrin was not entitled to the benefits because she was not a resident at 716 Pecan Drive at the time of the accident as required by the policy. Hrin counterclaimed that if she was not covered under the policy, Allstate was liable for breach of its contract to provide coverage identical to the Travelers policy. Allstate does not dispute that Hrin would have been covered for benefits had the policies been identical.

Parol Evidence Rule

In its earlier Motion for Partial Summary Judgment on the Counterclaim, Allstate had asserted that Hrin could not prove her counterclaim because the parol evidence rule barred admission of Cahill's discussion with the Allstate agent regarding his request for coverage duplicating the Travelers policy. Allstate's motion was denied because the evidence was being offered to establish the existence and/or interpretation of the oral contract to provide certain coverage and not to modify the written insurance policy.² Allstate then filed a motion in limine to preclude Hrin and Cahill from testifying that the coverage provided by Allstate was not what had been requested. That motion was also denied. Consequently, evidence of Cahill's discussion with the Allstate agent was admitted at trial.

Allstate conflates evidence establishing the reasonable expectations of the insured

² See *Order*, (E.D. Pa. Sept. 14, 2005)(Document No.17).

with evidence interpreting and modifying the terms of a contract. Allstate argues that the policy terms are clear and unambiguous, and can not be altered by parol evidence of prior negotiations or agreements. Hrin never disputed the meaning of the Allstate policy language. Her contention was that it was not what had been requested. Thus, evidence of Cahill's discussion with the Allstate agent was admitted, not to modify the policy, but to explain the dynamics of the transaction necessary to determine the reasonable expectations of the insured.

Contrary to Allstate's contention, traditional contract principles are not always applied in insurance transactions. *Pressley v. Travelers Prop. Cas. Corp.*, 817 A.2d 1131, 1139 (Pa. Super. Ct. 2003), (citing *Collister v. Nationwide Life Ins. Co.*, 388 A.2d 1346, 1351 (Pa. 1978)); *see also Tran v. Metropolitan Life Ins. Co.*, 408 F.3d 130, 136 (3d Cir. 2005). The guiding principle is the reasonable expectations of the insured, not the literal policy language. Under Pennsylvania law, even if the terms of the insurance contract are clear and unambiguous, the insured's reasonable expectations may prevail over the express language of the insurance contract. *See Bensalem Twp. v. Int'l Surplus Lines Ins. Co.*, 38 F.3d 1303, 1309 (3d Cir. 1994). Therefore, application of traditional contract principles will not defeat the reasonable expectations of the insured.

Allstate's argument is similar to the insurers' in *Bensalem Township v. International Surplus Lines Ins. Co.*, 38 F.3d 1303 (3d Cir. 1994). In that case, the Third Circuit rejected the argument that evidence of the parties' reasonable expectations is precluded under Pennsylvania law where the policy terms are clear and unambiguous. Noting that insurance transactions are "fundamentally different" from ordinary contracts, the court concluded that "the insured's reasonable expectations will be allowed to defeat the express

language of an insurance policy.” *Id.* at 1309. Remanding the case, the appellate court observed that the insured could present evidence showing that it had been misled regarding the coverage despite contrary language in the policy. *Id.* at 1312.

Discovering the reasonable expectations of the insured necessarily requires an examination of “the dynamics of the insurance transaction.” *Pressley*, 388 A.2d at 1140. Conversations between the insured and the insurer’s agent that took place prior to the signing of the insurance contract are a relevant component of the totality of the circumstances surrounding the transaction. *Bensalem Twp.*, 38 F.3d at 1308-09 (“While Township may have known of the change in the language of the exclusion clause when it renewed the policy, it should nevertheless have the opportunity to discover and submit evidence that Insurers had created in it a reasonable expectation that the policy would cover claims [at issue].”); *see also UPMC Health Sys. v. Metropolitan Life Ins. Co.*, 391 F.3d 497, 503 (3d Cir. 2004) (district court erred in excluding parol evidence in determining parties’ reasonable expectations).

Because the insured’s reasonable expectations are the focal point of the insurance transaction under Pennsylvania law, evidence of Cahill’s discussion with the agent prior to the policy being issued was necessary to define his reasonable expectations when he entered into the contract. The fact that Cahill later read the insurance agreement and noticed that Hrin was not named as an insured does not preclude his relying on the Allstate agent’s representations to the contrary. Cahill testified that because the agent had represented that the contract was identical to the Travelers policy, he thought nothing of the omission of her name as a “named insured” from the policy which listed her as a driver and her vehicle as insured. Reliance upon the agent’s representations over the actual

contents of the policy is a common consumer practice in complicated insurance transactions. *Bensalem Twp.*, 38 F.3d at 1310. Consequently, the agent's representations may prevail over contrary terms in the contract. *Id.* at 1311.

In this case, a reading of the insurance agreement does not readily reveal the difference in uninsured motorist coverage between the Travelers and Allstate policies. Each part of the Allstate policy uses different definitions of who is covered. "You," "insured," and "eligible person" are interchangeably used throughout the policy, each having its own specific definition contained within different portions concerning different types of coverages. One could be covered under one part of the policy and not under another. Indeed, at oral argument, Allstate's counsel stated that under any other portion of the policy, Hrin would have been covered. The confusing nature of this insurance agreement exemplifies the rationale behind the rule justifying an insured's reliance upon the agent's representations over the actual contents of the policy. *See, e.g., Rempel v. Nationwide Life Ins. Co., Inc.*, 370 A.2d 366, 368 (Pa. 1977) ("Consumers . . . view an insurance agent . . . as one possessing expertise in a complicated subject. It is therefore not unreasonable for consumers to rely on the representations of the expert rather than on the contents of the insurance policy itself."). As the *Bensalem Township Court* observed "[t]hrough the use of lengthy, complex and cumbersomely written . . . policies . . . the insurance industry forces the insurance consumer to rely upon the oral representations of the insurance agent. . . . [T]herefore the insurer is often in a position to reap the benefit of the insured's lack of understanding of the transaction." 38 F.3d at 1309.

Arguing that evidence of Cahill's discussion with the agent violated the parol evidence rule, Allstate refuses to recognize that the evidence was not proffered for the

purpose of changing the terms of the Allstate insurance policy. Rather, the evidence was essential to discovering Cahill and Hrin's reasonable expectations when entering into the agreement. Thus, evidence of Cahill's discussions with the Allstate agent was properly admitted.

Jury Charge and Verdict Slip

Allstate argues that the jury instructions were erroneous and the jury interrogatories were incomplete because they did not address the obligation of the insured. It contends that the jury should have been instructed that Cahill had an obligation to review the insurance contract; and, the jury verdict sheet should have included a question regarding whether Cahill's not complaining to Allstate after noticing that Hrin was not listed as an insured on the declarations page, constituted acceptance of the Allstate policy as issued.

Under Rule 49 of the Federal Rules of Civil Procedure, district courts have broad discretion to formulate special interrogatories for submission to the jury. *See Moyer v. Aetna Life Ins. Co.*, 126 F.2d 141, 145 (3d Cir. 1942); *see also Kornicki v. Calmar S.S. Corp.*, 460 F.2d 1134 (3d Cir. 1972) (citing *R.H. Baker v. Smith-Blair, Inc.*, 331 F.2d 506, 508 (9th Cir. 1964)) ("A trial judge has wide discretion in determining whether to use special verdicts upon written interrogatories, . . . 'and this discretion extends to determining the form of the special verdict and interrogatories.'").

Allstate's argument is premised on Cahill's testimony that he had noticed that Hrin was not listed as the "named insured," but as a "driver." However, he also testified that he did not believe that it was different from the coverage he had requested because Hrin was

listed on the policy, they were married, and he “knew she was covered.”³ Allstate argues that because Cahill recognized that the policy he received from Allstate was different from his previous policy with Travelers, he was bound by the insurance agreement. Accordingly, Allstate claims that the jury should have been instructed that Cahill had an obligation to read the policy and that his failure to advise Allstate of the differences in coverage constituted acceptance of the contract as written by Allstate.

Allstate again ignores the relevance of its agent’s representations that the coverage was identical to that which had been provided by Travelers. Due to the complicated nature of insurance transactions and the insured’s reliance on the insurance agent’s expertise, an insured may justifiably rely upon the agent’s representations rather than on the contents of the insurance policy itself. *Pressley*, 817 A.2d at 1141. Therefore, under Pennsylvania law, the insured has no duty to read the policy to discover undisclosed unilateral modifications.

Recently, in *Tran v. Metropolitan Life Ins. Co.*, 408 F.3d 130 (3d Cir. 2005), the Third Circuit reiterated Pennsylvania precedent that an insured has no obligation to read a policy unless it would be unreasonable not to do so. *Id.* at 137-38. The court observed that *Pressley* had clarified that *Standard Venetian Blind* did not apply to a policyholder who did not get the coverage she had requested and that the policyholder did not have an obligation to read the policy. *Id.* at 137. The “crucial distinction” is “between cases where one applies for a specific type of coverage and the insurer unilaterally limits that coverage,

³ Regarding Hrin’s coverage, Cahill stated at trial: “I saw her name on the policy, so I knew she was covered. That’s all I was worried about, whether or not she was covered.” *Trial Transcript* (October 17, 2005), at 19.

resulting in a policy quite different from what the insured requested, and cases where the insured received precisely the coverage that he requested but failed to read the policy to discover clauses that are the usual incident of the coverage applied for.” *Reliance Ins. Co. v. Moessner*, 121 F.3d 895, 903 n.7 (3d Cir. 1997) (quoting *Tonkovic v. State Farm Mut. Auto Ins. Co.*, 521 A.2d 920, 925 (Pa. 1987)). This case fits the former type of insurance transaction.

Allstate’s position, if accepted, would have imposed a duty on the insured which Pennsylvania law does not. As stated earlier, “[N]ormal contract principles are no longer applicable in insurance transactions.” *Tran v. Metropolitan Life Ins. Co.*, 408 F.3d 130, 136 (3d Cir. 2005). Therefore, there was no basis for including the misleading instruction and the interrogatory Allstate requested.

Similarly, there was no basis to charge the jury that Cahill was deemed to have accepted changes in the coverage because he had not objected to them after the policy was issued. This is especially so in light of the fact that Cahill had no obligation to review the contract after it was received and coverage was bound. See *Pressley*, 817 A.2d at 1141 (“Without any indication of change, we agree with the trial court that [the insured] was under no obligation to read the policy.”). In any event, as previously discussed, he testified that even though he noticed that Hrin was not listed as an insured, he believed that she was covered. There was no evidence, direct or indirect, that he understood that Allstate had provided coverage different from what he had requested. Consequently, Allstate’s proffered jury instruction had no basis in law or fact.

Conclusion

The parol evidence regarding the discussions with the Allstate agent during the

application process was relevant to discerning the reasonable expectations of the parties, and its admission was not improper. The jury instructions and jury verdict form were consistent with Pennsylvania law. Therefore, Allstate's post trial motion will be denied.