

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

CHRISTOPHER JIONGO and	:	CIVIL ACTION
MAGDALENE DOREE JIONGO	:	
	:	
v.	:	
	:	
NATIONWIDE INSURANCE CO.	:	NO. 97-2437

MEMORANDUM AND ORDER

Yohn, J. August , 1997

Plaintiffs filed the instant suit to recover uninsured motorist benefits from their insurance company, the defendant, in connection with an automobile accident that occurred on October 20, 1994. The parties dispute the amount of uninsured/underinsured ("UM/UIM") benefits provided by the policy. Plaintiffs claim that the policy provides UM/UIM coverage of \$100,000 per accident / \$300,000 per occurrence ("\$100,000/\$300,000"). Defendant claims that on April 7, 1992, plaintiff Christopher Jiongo requested, in writing, that his uninsured motorist benefits be reduced to \$25,000/\$50,000. Defendant has moved for summary judgment on the basis of this writing. Because the court finds the writing to be ambiguous, a genuine issue of material fact remains as to the meaning of the plaintiff's intent as embodied in the April 7, 1992 letter and the motion for summary judgment will be denied.

BACKGROUND

Plaintiffs purchased a policy of automobile insurance from

the defendant in 1989. See Def.'s Supplemental Mem. of L. in Supp. of Mot. for Summ. J. at exh. A [hereinafter "Supplemental Mem."]. That policy originally provided for \$25,000/\$50,000 in UM/UIM benefits. The policy was amended at some point between the initial purchase of the policy in 1989 and March 1992, such that the policy issued with an effective date of March 25, 1992, provided \$100,000/\$300,000 in UM/UIM benefits. See id. at exh. G.

In April of 1992, plaintiffs considered various options to lower their insurance premiums. See Statement Under Oath of Christopher Jiongo at 72-76 [hereinafter "Jiongo Statement"]. Christopher Jiongo then sent a letter to his Nationwide agent, dated April 7, 1992, which requested certain changes in his automobile coverage. The letter stated, in pertinent part:

I have also received and reviewed the policy declarations and associated charges. At their current levels, the premiums are just too high for me to carry in view of the fact that certain other expenses involving my two oldest children are materializing at the same time. I must therefore make some changes in the liability limits to reduce the cost of insuring two vehicles.

I am enclosing copies of the policy declaration for the 1985 Nissan Pick-up and the 1989 Doge [sic] Caravan with the changes to the liability limits I want effectuated noted thereon. Obviously it's better to have more coverage than less but I am forced to cut costs wherever possible.

Supplemental Mem. at exh. J.

Attached to this letter was a copy of the plaintiffs' declaration sheet for March 25, 1992 through August 1, 1992 with various coverages crossed out and replaced with other numbers.

See id. at exh. I. The property damage liability number of \$50,000 was crossed out, and next to it was written "\$10,000." The bodily injury liability of \$250,000/\$500,000 was crossed out and replaced with \$100,000/\$300,000. The uninsured and underinsured motorist coverages of \$100,000/\$300,000 were crossed out and next to them appeared "\$25,000/\$50,000." Finally, the income loss benefits figure of \$5,000 was circled. "Eliminate" had been written next to this circled figure, but that word was crossed out and substituted with "retain."

Defendant argues that this letter constituted a written request to reduce the plaintiffs' uninsured motorist coverage from \$100,000/\$300,000 to \$25,000/\$50,000. Defendant accordingly changed the plaintiff's policy. See id. at exh. K. Subsequent statements sent to the plaintiffs from Nationwide indicated that the coverage for UM/UIM benefits was now \$25,000/\$50,000. See id. at exh. M, N, P, R, S, T, U, V, W, X, Y. Plaintiffs' premiums were based on these coverage limits.

Plaintiffs claim that they never intended to reduce their UM/UIM benefits. Rather, Christopher Jiongo testified that he and his wife contemplated various changes to their policy, and marked the declaration sheet as they were planning possible changes. See Jiongo Statement at 84-85. He further testified that they decided to change only the liability limits of the policy because those seemed to be the most expensive. See id. at 82. He testified that in the April 7, 1992 letter, he specifically requested his agent to reduce his "liability

limits," believing that the changes noted on the declaration page would only be made insofar as they affected his liability limits. See id.

Plaintiffs now claim that they are entitled to the \$100,000/\$300,000 coverage in uninsured motorist benefits for an accident which occurred on October 20, 1994, between Christopher Jiongo and an uninsured motorist.¹ Defendant's summary judgment motion is based solely on its belief that the April 7, 1992 letter constituted a valid election to lower the plaintiffs' UM/UIM benefits under the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. § 1701 et seq. ("MVFRL").

DISCUSSION

"The purpose of underinsured motorist coverage is to protect the insured (and his additional insured) from the risk that a negligent driver of another vehicle will cause injury to the insured (or his additional insured) and will have inadequate liability coverage to compensate for the injuries caused by his negligence." Nationwide Ins. Co. v. Resseque, 980 F.2d 226, 231 (3d Cir. 1992). While the MVFRL expresses a legislative determination favoring UM/UIM insurance as a matter of public

¹ This accident involved the plaintiffs' 1986 BMW. Although the letter referring to changes in the April 7, 1992 letter refers to the plaintiffs' coverage for a Nissan and Dodge, without mentioning a BMW, the parties have apparently not found an important distinction between the BMW and the Nissan and Dodge. I will, therefore, assume that the distinction has no importance in resolving this motion.

policy, see Johnson v. Concord Mut. Ins. Co., 300 A.2d 61, 64
(Pa. 1973), the purchase of UM/UIM benefits is not mandatory. 75
Pa. C.S.A. § 1731(a) provides:

No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein or supplemental thereto in amounts provided in section 1734 (relating to request for lower limits of coverage). Purchase of uninsured motorist or underinsured motorist coverages is optional.

75 Pa. C.S.A. § 1731(a).

75 Pa. C.S.A. § 1734 provides, in turn:

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

75 Pa. C.S.A. § 1734.

Because the reduction of UM/UIM benefits detracts from the public policy expressed in the MVFRL, the Third Circuit has predicted "that the Pennsylvania Supreme Court would narrowly and strictly construe the provision of the MVFRL that allows an insured to request lower UIM coverage limits than are mandated by § 1731." Resseque, 980 F.2d at 232. Under this statutory scheme, in order to validly reduce UM/UIM benefits under a policy of insurance, two elements must be shown--that the (1) "insured have notice as to the limits and coverages available" and (2) that "the insured voluntarily signed a waiver reducing her UM/UIM coverage." Breuninger v. Pennland Ins. Co., 675 A.2d 353, 357 (Pa. Super. 1996) see also Resseque, 980 F.2d at 232-33 (actual

knowledge of lower coverage insufficient if not accompanied by written waiver).

The court will assume without deciding that the Jiongos had "notice as to the limits and coverages available" to them when selecting their UM/UIM insurance coverage.² Nevertheless, a genuine issue of material fact remains as to whether the Jiongos "voluntarily signed a waiver reducing" their UM/UIM coverage as required by § 1734.

The cases do not clearly define what type of "writing" is required to satisfy § 1734. It is clear from Breuninger and other cases, however, that the writing must be "voluntary"--the insured must intend to lower his or her UM/UIM benefits.³ While bearing in mind that "reduction of UM/UIM coverage is determined by stricter than traditional rules of waiver and estoppel," Tukovits v. The Prudential Ins. Co. of Am., 672 A.2d 786, 790 (Pa. Super.), appeal denied, 685 A.2d 547 (Pa. 1996), the court is guided by traditional rules of contract law in interpreting written instruments to determine whether summary judgment is appropriate in this case. Under Pennsylvania law, if a writing is clear and unambiguous, the court will decide the meaning of

² Providing the insured with the notice stated in 75 Pa. C.S.A. § 1791 creates a conclusive presumption that the insured had notice of the benefits available to him. See Prudential Property & Cas. Ins. Co. v. Pendleton, 858 F.2d 930, 936 (3d Cir. 1988). There is no evidence in the record as to whether the plaintiffs received this notice.

³ Black's Law Dictionary defines "voluntary" as "Done by design or intention." Black's Law Dictionary 1575 (6th Deluxe ed. 1990).

the writing as a matter of law, see Marcinak v. S.E. Green Sch. Dist., 544 A.2d 1025, 1027 (Pa. Super. 1988), and the parties' intent must be gathered solely from the writing itself. See Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613 (3d Cir. 1995). Where the language of the writing is ambiguous, however, the intent of the parties is to be determined by the finder of fact via extrinsic evidence. See id. ("[W]here the writing is ambiguous . . . the factfinder may examine all the relevant extrinsic evidence to determine the parties' mutual intent."). Thus, summary judgment is appropriate only if the language of the purported waiver clearly and unambiguously requests a reduction in UM/UIM benefits.

"[A] contract will be found ambiguous 'if, and only if, it is reasonably or fairly susceptible of different constructions and is capable of being understood in more senses than one and is obscure in meaning through indefiniteness of expression or has a double meaning.'" Duquesne Light, 66 F.3d at 614 (quoting Samuel Rappaport Family Partnership v. Meridian Bank, 657 A.2d 17, 21-22 (Pa. Super. 1995)). The April 7, 1992 letter is susceptible of more than one interpretation. It does not clearly and unambiguously request Nationwide to lower the Jiongo's UM/UIM benefits. The cover letter states that the Jiongos wanted to make "changes to the liability limits" in their insurance policy. See Supplemental Mot. at exh. J. Because the purported waiver refers to liability limits, which are distinct from and different than UM/UIM benefits, the letter could reasonably be interpreted

as requesting that only the changes to the declaration sheet dealing with liability limits were to be made to the Jiongo's policy. Thus, the court will not conclude as a matter of law that the letter constitutes a waiver under § 1734.

Indeed, Mr. Jiongo testified that he specifically included the words "liability limits" in the cover letter to instruct Nationwide that it was only these limits which he sought to reduce. See Jiongo Statement at 82. A reasonable jury could believe that, although the Jiongos included a declaration sheet which crossed out the UM/UIM benefits of \$100,000/\$300,000 and replaced them with \$25,000/\$50,000, the cover letter evidences the fact that the Jiongo's did not actually intend to lower their UM/UIM benefits. Because the writing requirement of § 1734 is designed to show a "voluntary" waiver of UM/UIM coverage, Breuninger, 675 A.2d at 357, a genuine issue of material fact remains as to whether the Jiongo's by their April 7, 1992 letter intended to reduce their UM/UIM benefits and, therefore, "voluntarily" waived those benefits under § 1734.

Nationwide relies heavily on the fact that, after the April 7, 1992 letter, policy statements were sent to the plaintiffs indicating that their UM/UIM coverage was \$25,000/\$50,000. This certainly constitutes evidence that the defendants intended to change their UM/UIM coverage in April 1992, and thereafter knew of and acquiesced in that change, and a reasonable jury could so find. See Tukovits, 672 A.2d at 791; Groff v. Continental Ins. Co., 741 F. Supp. 541, 548 (E.D. Pa. 1990). Nevertheless, the

law is clear that informing the plaintiffs of their lower coverage is not in and of itself sufficient to satisfy the requirements of the MVFRL--even if the defendants knew that they were receiving lower UM/UIM benefits after April 1992 and acquiesced in that lower level, the change is not effective unless the plaintiff voluntarily waived those benefits in writing in accordance with § 1734. See Ressequie, 980 F.2d at 232-33; Byers v. Amerisure Ins. Co., 745 F. Supp. 1073, 1076 (E.D. Pa. 1990) (holding that "duty to read" which usually applies to contracts, including insurance contracts, does not apply to waivers of UM/UIM benefits because the statutory scheme provides a specific mechanism for waiving those benefits which must be followed), aff'd without opinion, 935 F.2d 1280 (3d Cir. 1991). Even if the defendant reasonably believed that the April 7, 1992 letter requested lower UM/UIM coverage, the change is not effective under § 1734 unless the insured voluntarily requested those lower limits in writing. See Motorist Ins. Co. v. Emig, 664 A.2d 559, 569 (Pa. Super. 1995) ("[I]n order for the conclusive presumption of § 1791 to be effective, an insured must have actually selected coverage(s), and the selection process must be in conformity with the law, i.e., in this case, with Section 1734." (emphasis added)). Absent a writing which clearly and unambiguously expresses such an intent, the court cannot conclude as a matter of law that § 1734 has been satisfied.

Because the letter of April 7, 1992 does not clearly and unambiguously request a reduction in their UM/UIM benefits, a

genuine issue of material fact remains as to whether the Jiongo's intended to lower their UM/UIM benefits by that letter.⁴ Defendant's motion for summary judgment will, therefore, be denied. An appropriate order follows.

⁴ It should be emphasized that the court does not hold that the writing itself must be clear and unambiguous in order to satisfy § 1734. The court holds only that if the writing is not clear and unambiguous, it is for the jury, rather than the court, to decide whether the insured actually intended to lower his UM/UIM benefits.

