

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

CHRISTOPHER JIONGO and	:	
MAGDALENE DOREE JIONGO, h/w,	:	CIVIL ACTION
Plaintiffs	:	
	:	
	:	
v.	:	
	:	
	:	NO. 97-2437
NATIONWIDE INSURANCE CO.,	:	
Defendant.	:	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Yohn, J. July , 1998

Christopher and Magdalene Jiongo bring this declaratory judgment action to determine the amount of uninsured/underinsured motorist ("UM/UIM") coverage available to them under an insurance policy issued by Nationwide Insurance Company ("Nationwide"). Plaintiffs seek a declaration that the policy provided UM/UIM coverage in the amount of \$100,000 per accident / \$300,000 per occurrence ("\$100,000/\$300,000") (stacked) for two vehicles. Nationwide has filed a counterclaim seeking a declaratory judgment that the policy provided UM/UIM coverage in the amount of \$25,000/\$50,000 (stacked) for two vehicles. The court conducted a bench trial. The court makes the following findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure:

## I. FINDINGS OF FACT

### A. Background

1. Mr. and Mrs. Jiongo are citizens of Virginia.
2. Nationwide is a corporation, organized and existing under the laws of Ohio, with its principal place of business in Ohio.
3. Mr. Jiongo graduated from Southern Methodist University Law School in 1987. He has since been employed by three law firms: Montgomery McCracken Walker & Rhoads; Blank Rome Comisky & McCauley; and Jones Day.
4. Plaintiffs purchased a policy of motor vehicle insurance (# 58 C 157314) from Nationwide in 1989 ("the policy"). As initially purchased, the policy provided for \$25,000/\$50,000 in UM/UIM benefits for the Jiongos' 1983 Datsun. See Def's Exh. 1, at 1.
5. On May 27, 1989, plaintiffs added a 1989 Dodge Caravan to the policy. The policy containing a renewal date of August 1, 1989 provided \$25,000/\$50,000 in UM/UIM coverage and \$100,000/\$300,000 in liability coverage for the 1983 Datsun and the 1989 Dodge Caravan. See Def's Exh. 1, at 2.
6. The policy for the period August 1, 1990 through February 1, 1991 provided \$50,000/\$100,000 in UM/UIM coverage and \$100,000/\$300,000 in liability coverage for the 1983 Datsun and the 1989 Dodge Caravan. See Def's Exh. 2.
7. On June 15, 1991, the Jiongos removed the 1983 Datsun from the policy. Effective June 15, 1991, the policy provided \$100,000/\$300,000 in UM/UIM coverage and \$250,000/\$500,000 in liability coverage for the 1989 Dodge Caravan. See Def's

Exh. 3.

8. The policy with a renewal date of August 1, 1992 provided \$250,000/\$500,000 in UM/UIM coverage and \$250,000/\$500,000 in liability coverage for the 1989 Dodge Caravan. See Def's Exh. 8.

9. In March of 1992, the Jiongos purchased a Nissan pick-up truck. Mr. Jiongo added the Nissan pick-up to his insurance policy. Effective March 25, 1992, the policy (with a renewal date of August 1, 1992) provided \$100,000/\$300,000 in UM/UIM coverage and \$250,000/\$500,000 in liability coverage for the 1985 Nissan and the 1989 Dodge Caravan. See Def's Exh. 8.

B. The April 7, 1992 Letter and Accompanying Declaration Pages

10. Sometime between March 25, 1992 and April 7, 1992, plaintiffs received copies of their then current declaration pages (Def's Exh. 9) and contemplated reducing coverages on their policy in order to reduce their premiums.

11. As a general matter, Mrs. Jiongo preferred to purchase motor vehicle insurance that would give her the greatest coverage because she had worked in a hospital emergency room and was aware of the difficulties faced by accident victims who lacked sufficient insurance, and because she often had children with her when she drove their vehicles. As a general matter, Mr. Jiongo preferred to have the lowest possible insurance premiums.

12. Mr. and Mrs. Jiongo typically discussed their conflicting preferences before making a final decision as to the amount of UM/UIM coverage to purchase.

13. Mr. Jiongo was in charge of contacting Nationwide in order to make the

arrangements necessary to change the level of their insurance coverage. Mrs. Jiongo took care of the book-keeping, and made all of the payments to Nationwide.

14. Sometime between March 25, 1992 and April 7, 1992, after reviewing and discussing the declaration pages for the Dodge Caravan and the Nissan pick-up with his wife, Mr. Jiongo took the declaration pages, drew lines in red pen through certain listed coverages, and wrote different coverage amounts next to the crossed out amounts. Mr. Jiongo testified that when he made these decisions, he did not have any information concerning the premiums for the lower coverages.

15. The declaration page for the Nissan pick-up shows that Mr. Jiongo initially circled the income loss benefit coverage and wrote the word "eliminate" next to it. However, he later crossed out the word "eliminate" and wrote in the word "retain." See Def's Exh. 10, at 3.

16. Mr. Jiongo crossed out the UM/UIM coverages of \$100,000/\$300,000 (stacked) on the declaration pages for both the 1985 Nissan pick-up and the 1989 Dodge Caravan. Next to the crossed-out numbers, Mr. Jiongo indicated that he desired UM/UIM coverage in the amount of "\$25,000 [each person]" and "\$50,000 [each occurrence]." See Def's Exh. 10, at 3-4.

17. The marked reductions for the UM/UIM coverages are not crossed out. Mr. Jiongo did not write the word "retain" next to the original UM/UIM coverages of \$100,000 each person and \$300,000 each occurrence. See Def's Exh. 10, at 3-4.

18. Mr. Jiongo crossed out the bodily injury liability coverage of \$250,000/\$500,000 on the declaration pages for both the 1985 Nissan and the 1989 Dodge Caravan, and indicated that he desired coverage in the amount of "\$100,000

[each person]" and "\$300,000 [each occurrence]." See Def's Exh. 10, at 3-4.

19. The marked reductions for the bodily injury liability coverage are not crossed out. Mr. Jiongo did not write the word "retain" next to the original bodily injury liability coverage of \$250,000 each person and \$500,000 each occurrence. See Def's Exh. 10, at 3-4.

20. On the declaration page for the 1985 Nissan pick-up, Mr. Jiongo crossed out the property damage liability insurance of \$50,000 each occurrence and indicated next to it that he desired property damage liability insurance in the amount of \$10,000 each occurrence. See Def's Exh. 10, at 3. On the declaration page for the 1989 Dodge Caravan, Mr. Jiongo crossed out the property damage liability insurance of \$50,000 each occurrence, and indicated next to it that he desired property damage liability insurance in the amount of \$25,000 each occurrence. See Def's Exh. 10, at 4.

21. The marked reductions for the property damage liability insurance are not crossed out. Mr. Jiongo did not write the word "retain" next to the original property damage liability insurance of \$50,000 each occurrence. See Def's Exh. 10, at 3-4.

22. On April 7, 1992, Mr. Jiongo sent Mr. Polidoro a letter requesting that he make certain changes to the Jiongos' insurance policy:

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

Def's Exh. 10, at 1 (emphasis added).

23. Mr. Jiongo enclosed the marked-up declaration pages with his April 7 letter.

24. Mr. Jiongo testified that he sent the marked-up declaration pages with the letter because he thought that they would enable Mr. Polidoro more clearly to understand the changes that he wanted made.

25. The heading at the top of each declaration page reads: "Vehicle Coverages and Limits of Liability." See Def's Exh. 10. The words "Limits of Liability" refer to the limits of Nationwide's liability.

26. Mr. Polidoro reasonably concluded that Mr. Jiongo wanted to make all of the changes that he had indicated in red pen on the declaration pages.

27. Mr. Jiongo testified that in his letter, he used the words "liability limits" to refer only to the property damage and bodily injury liability coverages. Mr. Jiongo testified that he intended to reduce only these coverages, and not the UM/UIM coverages.

28. Had Mr. Jiongo wanted to lower only the property damage and bodily injury liability coverages, he could have simply stated so in his letter, and would not have needed to enclose the declaration pages.

29. At the time in question, Mr. Jiongo was very familiar with the different types of automobile insurance coverages.

30. On April 10, 1992, Mr. Polidoro sent a letter to Mr. Jiongo, indicating that he had made the requested policy changes and that he had enclosed "hot-prints" from his computer showing the changes that he had made and the resulting premiums. See

Def's Exh. 11. Mr. Jiongo testified that he did not recall receiving the letter or the hot-prints.

31. The hot-prints contain abbreviations. See, e.g., Def's Exh. 1, 3, 8, 12. However, these abbreviations are readily understandable to a person, like Mr. Jiongo, who is knowledgeable about automobile insurance coverages.

32. On March 25, 1992, Mr. and Mrs. Jiongo had signed option forms provided to them by Nationwide, indicating that they wanted to purchase UM/UIM coverages with limits of \$100,000/\$300,000. See Pl's Exh. 1. After receiving Mr. Jiongo's April 7 letter and the accompanying declaration pages, Mr. Polidoro whited-out the "x" marks that the Jiongos had placed next to the "\$100,000/\$300,000" option on these forms, and placed a new "x" mark next to the "\$25,000/\$50,000" option. See Pl's Exh. 3, 4. Mr. Polidoro did not send the Jiongos a new form to sign because the Pennsylvania Motor Vehicle Financial Responsibility Law requires only something "in writing" from the named insured, and he reasonably concluded that the marked up declaration pages were sufficient for his records.

C. The Jiongos' Insurance Policy: April 7, 1992 to October 20, 1994

33. Nationwide sends its policy holders a declaration page and a premium notice every six months. Nationwide also sends its policy holders a new declaration page each time that they add or delete a vehicle or otherwise change their coverage.

34. Nationwide is no longer able to retrieve from its computers copies of the declaration pages that are issued to policyholders every six months or copies of the declaration pages that are issued when changes are made. Nationwide can now obtain

only those records that are on microfilm--which consist of the declaration pages that are issued when claims are made.

35. Mr. Jiongo admitted that between 1992 and 1994, he received declaration pages and premium notices every six months, and that he never complained to Mr. Polidoro that the UM/UIM coverages were incorrect.

36. Even though Nationwide routinely sent Mr. Jiongo these declaration pages and premium notices indicating the reduced UM/UIM coverages, Mr. Jiongo testified that he did not realize that Nationwide had reduced his UM/UIM coverages until after he filed a claim in October 1994.

37. Mr. Jiongo did not maintain a file for his insurance policies. Rather, the Jiongos kept their insurance policy, declaration pages, and insurance card in the glove compartment of their covered vehicles. They threw these items away when the period of coverage expired.

38. Mr. Jiongo testified that he never looked at the amount of his insurance coverages when he received the six-month notices. He testified that he looked at the amount of coverages only when he wanted to make changes to the policy.

39. Mrs. Jiongo testified that every time she and her husband changed vehicles on the policy, they also discussed whether or not they wanted to change the amount of their coverages.

40. On April 18, 1994, the plaintiffs added a third vehicle, a 1986 BMW 325E, to their policy. See Def's Exh. 12.

41. On April 27, 1994, at plaintiffs' request, Nationwide removed the 1989 Dodge Caravan and added a 1994 Dodge Caravan to the policy. See Stipulation of

Facts ¶ 17; Def's Exh. 13.

42. On May 27, 1994, at plaintiffs' request, Nationwide removed the 1985 Nissan from the policy. See Stipulation of Facts ¶ 18; Def's Exh. 13.

43. On May 31, 1994, at plaintiffs' request, Nationwide reinstated the coverage on the 1985 Nissan. See Stipulation of Facts ¶ 19.

44. On September 2, 1994, Mr. Jiongo changed the lienholder on the BMW. See Stipulation of Facts ¶ 20; Def's Exh. 14, at 1.

45. By Mrs. Jiongo's testimony, she and her husband would have reviewed their UM/UIM coverages when they added the 1986 BMW, removed the 1989 Dodge Caravan, added the 1994 Dodge Caravan, removed the 1985 Nissan, reinstated coverage on the 1985 Nissan, and changed the lienholder on the BMW.

46. Despite receiving declaration pages at six month renewal intervals, and despite making at least five other changes to their automobile insurance policy between April 7, 1992 and October 20, 1994, plaintiffs never requested that their UM/UIM coverage be increased to \$100,000/\$300,000.

47. Mr. Jiongo testified that he always wanted his bodily injury liability coverage to be the same as his UM/UIM coverages. However, most of the time, this was not true. The Jiongos typically increased the amount of their UM/UIM coverages when they had only one car insured, and decreased the amount of their UM/UIM coverages when they had two cars insured in order to keep the premium at a consistent level. See Def's Exh. 1-3, 8. It was common for the Jiongos to have different bodily injury liability and UM/UIM coverages. See id.

48. The Jiongos changed their coverages more often than any other

customers that Mr. Polidoro serviced.

D. The Jiongos' Insurance Policy: October 20, 1994 to June 11, 1996

49. On October 20, 1994, Mr. Jiongo sustained personal injuries in a motor vehicle accident with an uninsured motorist. Mr. Jiongo filed a claim to recover uninsured motorist benefits from Nationwide.

50. Nationwide paid Mr. Jiongo \$50,000 in uninsured motorist coverage (\$25,000 stacked for 2 vehicles).

51. On November 18, 1994, plaintiffs requested that Nationwide reduce their collision deductible. See Stipulation of Facts ¶ 22.

52. On July 5, 1995, plaintiffs removed the 1994 Dodge Caravan and added a 1996 Dodge Caravan to the policy. See Stipulation of Facts ¶ 23.

53. In a letter dated May 31, 1996, Nationwide informed plaintiffs that, as of June 11, 1996, their automobile policy would be canceled. See Def's Exh. 15.

54. Plaintiffs did not seek to increase the \$25,000/\$50,000 (stacked) UM/UIM coverage at any time from April 7, 1992 through June 1996.

55. On March 3, 1997, plaintiffs filed this action in the Court of Common Pleas of Delaware County. On April 9, 1997, Nationwide removed the action to this court.

56. Mr. Jiongo's April 7, 1992 letter and the attached, marked-up declarations pages constituted a written request, by a named insured, for \$25,000/\$50,000 (stacked) UM/UIM coverage, in accordance with 75 PA. CONS. STAT. ANN. § 1734.

57. When plaintiffs decided to reduce their UM/UIM coverages in April 1992, they had notice of the higher UM/UIM coverages that were available to them. See Pl's

Exh. 1; Def's Exh. 2, 3, 8.

58. The Jiongos' actions with respect to the Nationwide policy, both prior and subsequent to April 7, 1992, evidence their knowing and intelligent election of UM/UIM coverages in the amount of \$25,000/\$50,000 (stacked).

59. On October 20, 1994, the Nationwide policy provided \$25,000/\$50,000 (stacked) in UM/UIM coverages. See Def's Exh. 14.

60. Nationwide has tendered and paid in full to Mr. Jiongo uninsured motorist coverage limits of \$50,000.

## II. CONCLUSIONS OF LAW

1. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.

2. Pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), every motor vehicle liability insurance policy issued or renewed in the Commonwealth of Pennsylvania must offer the option to purchase UM/UIM coverage. Specifically, § 1731(a) of the MVFRL provides:

§ 1731. Availability, scope and amount of coverage:

(a) Mandatory offering.--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 as provided in section 1734 (relating to request for lower or higher limits of coverage). Purchase of uninsured motorist and underinsured motorist coverages is optional.

75 PA. CONS. STAT. ANN. § 1731(a) (1996).

3. Section 1734 of the MVFRL governs requests for lower limits of coverage.

It provides that "[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 injury.” 75 PA. CONS. STAT. ANN. § 1734 (1996) (emphasis added).

4. Section 1791 of the MVFRL additionally provides:

It shall be presumed that the insured has been advised of the benefits and limits available under this chapter provided the following notice in bold print of at least ten-point type is given to the applicant at the time of application for original coverage . . . .

**IMPORTANT NOTICE**

Insurance companies operating in the Commonwealth of Pennsylvania are required by law to make available for purchase the following benefits for you, your spouse or other relatives or minors in your custody or in the custody of your relatives, residing in your household, occupants of your motor vehicle or persons struck by your motor vehicle:

. . . .

(6) Uninsured, underinsured and bodily injury liability coverage up to at least \$100,000 because of injury to one person in any one accident and up to at least \$300,000 because of injury to two or more persons in any one accident or, at the option of the insurer, up to at least \$300,000 in a single limit for these coverages, except for policies issued under the Assigned Risk Plan . . . . Additionally, insurers may offer higher benefit levels than those enumerated above as well as additional benefits. However, an insured may elect to purchase lower benefit levels than those enumerated above. 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.

75 PA. CONS. STAT. ANN. § 1791.

5. In order to show that an insured validly reduced UM/UIM benefits under a policy of insurance, an insurance company must show that: (1) the insured had notice as to the limits and coverages available to him; and (2) the insured voluntarily requested in writing that the limits of his UM/UIM coverage be lowered. See Jiongo v. Nationwide Ins. Co., No. 97-2437, 1997 WL 560132, at \*3 (E.D. Pa. 1997); Breuninger v. Pennland Ins. Co., 675 A.2d 353, 357 (Pa. Super. Ct. 1996).

6. An insured's signature on a notice that complies with § 1791 or his payment of any renewal premium after receiving such a notice establishes a conclusive presumption that he had actual knowledge of the coverage available to him under the MVFRL. See Motorists Ins. Cos v. EMIG, 664 A.2d 559, 562 (Pa. Super. Ct. 1995); Shipe v. Allstate Ins. Co., 791 F. Supp. 109, 111 (M.D. Pa. 1992).

7. If the insurance company does not strictly comply with the mandates of § 1791, it bears the burden of proving that the insured knowingly and intelligently waived, in writing, the benefit of the higher coverage available under the MVFRL. See Shipe, 791 F. Supp. at 111; Allwein v. Donegal Mut. Ins. Co., 671 A.2d 741, 756 (Pa. Super. Ct. 1996) (“[A]ny waiver or reduction in underinsurance benefits must . . . be knowing and intelligent . . .”).

8. Moreover, in order to satisfy § 1734, a request for lower coverage must be in writing by a named insured. See Nationwide Ins. Co. v. Resseguie, 980 F.2d 226, 228 (3d Cir. 1992); Breuninger, 675 A.2d at 357.

9. The parties have produced no evidence as to whether Nationwide provided Mr. Jiongo with an “Important Notice” that complied with § 1791. Therefore, Nationwide must prove that Mr. Jiongo knowingly and intelligently waived, in writing, the higher UM/UIM coverages available to him.

10. The court must conduct a two-step analysis to determine whether an insured made a knowing and intelligent election in writing for lower UM/UIM coverages. First, in order for the writing to evidence “an express agreement or acquiescence on the part of the insured” to elect an amount of UM/UIM coverage less than the statutory mandate, the insured must have been made aware of the coverage that was available.

See Tukovits v. Prudential Ins. Co., 672 A.2d 786, 789-90 (Pa. Super. Ct.), appeal denied, 685 A.2d 547 (Pa. 1996).

11. Second, upon finding initial evidence that the insured was made aware of the coverage available, the court may look to events that occurred prior to and after the election in writing for lower UM/UIM coverage for evidence that the insured acted knowingly and intelligently. See Tukovits, 672 A.2d at 790. Relevant events may include “whether the insured previously obtained the same level of UM/UIM coverage, whether the premiums paid reflected the reduced level of UM/UIM coverage, whether the insured ever questioned the level of UM/UIM coverage, whether the insured amended or added vehicles to the[] policy, and whether the forms that evidence such transactions reflect the level of UM/UIM coverage.” Id. (citing Groff v. Continental Ins. Co., 741 F. Supp. 541, 548 (E.D. Pa. 1990)).

12. The court found that plaintiffs were aware of the higher UM/UIM coverages that were available to them. See Pl's Exh. 1; Def's Exh. 2, 3, 8.

13. The court found that Mr. Jiongo's April 7, 1992 letter and the attached, marked-up declarations pages constituted a written request, by a named insured, for \$25,000/\$50,000 (stacked) UM/UIM coverage, in accordance with 75 PA. CONS. STAT. ANN. § 1734.

14. The court found that the Jiongos' actions with respect to the Nationwide policy, both prior and subsequent to April 7, 1992, evidence their knowing and intelligent election of UM/UIM coverages in the amount of \$25,000/\$50,000 (stacked).

15. The court found that on October 20, 1994, the Nationwide policy provided \$25,000/\$50,000 (stacked) in UM/UIM coverages. See Def's Exh. 14.

16. The court found that Nationwide has tendered and paid in full to Mr. Jiongo uninsured motorist coverage limits of \$50,000.

An appropriate order is hereby entered by the court.

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

CHRISTOPHER JIONGO and	:	
MAGDALENE DOREE JIONGO, h/w,	:	CIVIL ACTION
Plaintiffs	:	
	:	
	:	
v.	:	
	:	
	:	NO. 97-2437
NATIONWIDE INSURANCE CO.,	:	
Defendant.	:	

**ORDER**

AND NOW, this        day of July, 1998, upon consideration of plaintiffs' complaint and defendant's answer and counterclaim, and after trial, IT IS HEREBY ORDERED

AND DECLARED that:

1. At the the time of the accident, on October 20, 1994, the Jiongos' insurance policy provided UM/UIM coverage in the amount of \$25,000 per accident / \$50,000 per occurrence (stacked) for two vehicles.
2. Nationwide Insurance Company is not obligated to provide underinsured motorist benefits to or on behalf of Christopher A. Jiongo and Magdalene Doree Jiongo in any amount greater than the amount previously tendered and paid in connection with any injuries allegedly sustained in the October 20, 1994 motor vehicle accident.
3. Judgment on plaintiffs' claim is entered in favor of the defendant, Nationwide Insurance Company, and against the plaintiffs, Christopher A. Jiongo and Magdalene Doree Jiongo. Judgment on defendant's counterclaim is entered in favor of Nationwide and against Christopher A. Jiongo and Magdalene Doree Jiongo.
4. The clerk is directed to mark this action closed for statistical purposes.

---

William H. Yohn, Jr., Judge