

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

HIGHLANDS INSURANCE GROUP	:	CIVIL ACTION
	:	
v.	:	
	:	
GERALD JOSEPH VAN BUSKIRK,	:	
III, a minor by his Parents	:	
and Natural Guardians, GERALD	:	
JOSEPH VAN BUSKIRK, JR. and	:	
LORI ANN VAN BUSKIRK, a/k/a	:	
LORI ANN SHARP, et al.	:	
	:	
and	:	
	:	
THE WEST BEND COMPANY	:	
	:	
and	:	
	:	
GERALD VAN BUSKIRK, JR.	:	
LORI ANN VAN BUSKIRK.	:	NO. 98-CV-4847

MEMORANDUM AND ORDER

J.M. KELLY, J.

OCTOBER , 2000

Presently before the Court are the following post-trial motions: Plaintiff's Motion for Directed Verdict and Motion for Judgment as a Matter of Law pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, Plaintiff's Renewed Motion for Judgment as a Matter of Law pursuant to Rule 50(b), and Plaintiff's Motion for a New Trial. For the reasons that follow the Court denies each motion.

Highlands Insurance Group ("Highlands" or "insurance company") sought a declaratory judgment against Defendants Joseph and Lori Ann Van Buskirk (the "Van Buskirks"), claiming it had no duty to defend Mrs. Van Buskirk under the Van Buskirks' homeowner's policy.

Although the Van Buskirks' original homeowner's policy provided the coverage they sought to rely upon, a unilateral addition of a "family exclusion" clause precluded coverage. Highlands, relying upon a document that listed the exclusion among other changes, which it sent to all policyholders, argued that the Van Buskirks had been notified of the changes and the relevant exclusion should be enforced. At trial, the jury found that the document intended to notify the Van Buskirks of the policy alterations was inadequate. The exclusion on which Highlands relied was thereby unenforceable.

I. LEGAL STANDARD

In reviewing a motion for judgment as a matter of law pursuant to Rule 50(a) and a renewed motion for judgment as a matter of law pursuant to Rule 50(b), this Court must determine whether there is sufficient evidence to sustain the jury's verdict. See, e.g., Fineman v. Armstrong World Indus., Inc., 980 F.2d 171, 190 (3d Cir. 1992). The Court may grant a motion for judgment as a matter of law only where the record, viewed in the light most favorable to the non-moving party, is "critically deficient of that minimum quantum of evidence from which the jury might reasonably afford relief." Id. (quoting Link v. Mercedes-Benz of N. Amer., Inc., 788 F.2d 918, 921 (3d Cir. 1988)). The Court may not weigh the evidence presented, pass judgment on the credibility of the witnesses, or substitute its own findings of the facts for those of the jury. Parkway Garage, Inc. v. City of Phila., 5 F.3d 685, 691 (3d Cir. 1993) (citing Blair v. Manhattan Life Ins. Co., 692 F.2d 296, 300 (3d Cir. 1982)). "The question is not whether there is literally no evidence supporting the party against whom the motion is directed, but whether there is evidence upon which the jury could properly find a verdict for that party." Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993) (quoting Patzig v. O'Neil, 577 F.2d 841, 846

(3d Cir. 1978)). In other words, a motion for judgment as a matter of law may be granted only where there is no rational basis for the jury's verdict. Bhaya v. Westinghouse Elec. Corp., 832 F.2d 258, 259 (3d Cir. 1987).

Where a motion for judgment as a matter of law is accompanied by a motion for a new trial pursuant to Rule 59, the Court shall also rule on the motion for a new trial. Fed. R. Civ. P. 50(b); Montgomery Ward & Co. v. Duncan, 311 U.S. 243, 253 (1940). Because the Court may not substitute its own judgment of the facts or the credibility of the witnesses for that of the jury, it has limited discretion in granting a new trial. Williamson v. Consolidated Rail Corp., 926 F.2d 1344, 1352-53 (3d Cir. 1991). Similar to the standard under Rule 50, the Court should grant a motion for a new trial pursuant to Rule 59 only when, in its opinion, the verdict is contrary to the great weight of the evidence and where the record shows that there would be a miscarriage of justice if the verdict were to stand or where the jury's verdict "cries out to be overturned or shocks our conscience." Id. at 1352-53.

II. BACKGROUND

In February 1995, Gerald Joseph Van Buskirk, III, the minor son of the Van Buskirks, was injured in an accident involving a deep fat fryer manufactured by the West Bend Company ("West Bend"). The Van Buskirks commenced an action against West Bend on behalf of their son, seeking to recover for his injuries. West Bend then filed a third-party complaint against Mrs. Van Buskirk alleging that their negligent supervision of her son caused his injuries. The Van Buskirks requested that Highlands, their homeowner's policy provider, furnish a defense and indemnify Mrs. Van Buskirk. Although Highlands assumed the defense, they reserved the right to contest their obligation to cover Mrs. Van Buskirk. Highlands asserted that a family exclusion

clause, added to the homeowner's policy two years after the Van Buskirks first obtained the policy, excluded the requested coverage. In the present case, Highlands sought a declaratory judgment to be relieved of the duty to defend and indemnify Mrs. Van Buskirk in the action with West Bend.

The Van Buskirks obtained the homeowner's policy in dispute in 1990 when they learned their mortgage company required it. The Van Buskirks purchased the policy through the Christi Agency and made no special requests for conditions or restrictions. (Tr. of 4/7/99 at 124.) The one-year policy period began 11/29/90 and was renewed annually, paid for through their mortgage company. (Id. at 125, 129.)

Mrs. Van Buskirk received a copy of that policy in 1990, reviewed the first page, and placed it in her homeowner's insurance policy file at her home. (Id. at 124-25.) She received annual declaration sheets from Highlands during each renewal period. In 1992, Highlands made several unilateral changes to the policy, the most relevant of which was the insertion of a "family exclusion" clause. (Id. at 101.) Highlands made these changes to as many as 10,000 policies when they converted all homeowners policies known as HO-37-77 to a new edition known as HO-34-84 in 1992. (Id. at 94.) When such a change was made, the company's policy mandated that each policyholder be sent a declaration sheet, a copy of the new policy, and a notification of any changes. (Id. at 96-98.)

Under the homeowner's insurance policy purchased in 1990, Highlands would have provided the defense and indemnification sought by the Van Buskirks. Under the revised policy with the unilaterally inserted "family exclusion" clause, as written when Mrs. Van Buskirk sought coverage for her suit with West Bend, Highlands would not.

At trial, the jury found the Van Buskirks received the revised policy, which included the family exclusion clause. The jury also found, however, that the document intended to inform the Van Buskirks of the changes to their policy was an inadequate notification of the change in coverage. Highlands, in its three post-trial motions, contends that the jury should not have been asked whether the notice was adequate. They argue that the family exclusion should be enforced because the clause is unambiguous, the Van Buskirks received the policy, and because Pennsylvania law requires an insured to read their original policy and be bound by any clear and unambiguous language. This case presents two issues: whether Highlands had a duty to notify the Van Buskirks of the unilateral changes to their homeowner's policy and explain the significance of the changes, and if so, whether there was sufficient evidence produced at trial to support the jury's finding that the notice given to the Van Buskirks was inadequate, thereby rendering the unilaterally changed insurance contract unenforceable.

III. DISCUSSION

A. Insurer's Duty to Notify Of and Explain Unilateral Changes in Insurance Policies

Interpretation of insurance policies is slightly different than that of general contracts.¹ While courts must interpret insurance contracts consistent with the intent of the parties by generally focusing on the plain language, Standard Venetian, 469 A.2d at 566, Pennsylvania

¹ Generally, when interpreting contracts, it is the Court's responsibility to enforce contracts in such a manner that honors the intent of the parties. See, e.g., Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). Where contract language is clear and unambiguous, this goal is best achieved by giving contract language its plain and ordinary meaning. Pacific Indemnity Co. v. Linn, 766 F.2d 754, 760-61 (3d Cir. 1985) (citing Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 372 (3d Cir. 1982)); Standard Venetian, 469 A.2d at 566. The rationale behind this approach is that the written document best conveys the intent of the parties at the time they made the agreement. Dusquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613-14 (3d Cir. 1995).

courts have consistently emphasized the importance of the public's reasonable expectations. See, e.g., Reliance Ins. Co. v. Moessner, 121 F.3d 895, 903 (3d Cir. 1997) (stating “the proper focus for determining issues of insurance coverage is the reasonable expectations of the insured”); Bensalem Township v. International Surplus Lines Ins. Co., 38 F.3d 1303, 1309 (3d Cir. 1994) (indicating reasonable expectations are “the touchstone of any inquiry into the meaning of an insurance policy”); Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 926 (Pa. 1987) (finding “courts should be concerned with assuring that the insurance purchasing public's reasonable expectations are fulfilled”). The Court determines the reasonable expectations of the insured by examining “the totality of the insurance transaction.” Dibble v. Security of Am. Life Ins. Co., 590 A.2d 352, 354 (Pa. Super. Ct. 1991); see also Frain v. Keystone Ins. Co., 640 A.2d 1352, 1354 (Pa. Super. Ct. 1994).

The reasonable expectations doctrine developed because insurance policies, as written, do not always represent the true intent or understanding of both parties. See, e.g., Collister v. Nationwide Life Ins. Co., 388 A.2d 1346, 1353 (Pa. 1978); Rempel v. Nationwide Life Ins. Co., 370 A.2d 366, 371 (Pa. 1977). Often, insurance contracts are classified as contracts of adhesion wherein the contracting parties do not have equal bargaining power and one party, in this context, the insured, must adhere to the terms set by the other party. See, e.g., Brokers Title Co. v. St. Paul Fire & Marine Ins. Co., 610 F.2d 1174, 1179 (3d Cir. 1979). Contracts of adhesion “resemble[] an ultimatum of law rather than a mutually negotiated contract.” Id. (quoting J. Murray, Murray on Contracts § 350 (1974)). The insurance company drafts the agreement and there is often no indication that the insured is able to negotiate the terms. Where the policy's language is ambiguous, it is interpreted in favor of the insured and against the insurer. See, e.g.,

Standard Venetian, 469 A.2d at 566. Where, however, the language is clear and unambiguous, the court must enforce the contract as written. Id.

Unfortunately, neither the reasonable expectations doctrine nor the plain meaning approach, adopted in Standard Venetian and emphatically relied upon by Highlands, are precisely on point with this case. Highlands suggests this Court should read the family exclusion clause, find it facially unambiguous, and enforce it pursuant to the narrow holding in Standard Venetian. Although in Pennsylvania the family exclusion is considered clear and unambiguous, Electric Ins. Co. v. Rubin, 32 F.2d 814, 815, 818 (3d Cir. 1994), this Court finds that Highlands' analysis, which relies exclusively on Standard Venetian, without considering cases that involve the reasonable expectations of the insured when a unilateral change has been made, falls short of complete in this context. The analysis must go beyond the plain meaning approach to insurance contract interpretation set forth in Standard Venetian. Further consideration of Pennsylvania law illustrates that Highlands had an affirmative duty to notify the Van Buskirks of the changes in their insurance policy and explain their significance. Standard Venetian's relevance therefore is diminished, limited in this case only to its requirement that insureds read their initial policies and its effect of binding insureds to clear and unambiguous provisions.

In Standard Venetian, a small business owner purchased a general liability policy for personal injury and property damage. Standard Venetian, 469 A.2d at 565. The policy promised to provide a defense and indemnify the insured in any suit involving property damage or personal injury. Id. When a portico that the insured built for a customer collapsed and a lawsuit commenced, the insured sought a defense and indemnification from the insurance company. Id. The insurance company refused based on a provision in the original policy that excluded

coverage for property damage to work performed by the insured. Id. The insured admitted that he had received the policy but he never read it. The Supreme Court of the Commonwealth of Pennsylvania held that where the policy limitation denying coverage is clearly worded and conspicuously displayed, the insured may not avoid the consequences of that limitation by proof that he failed to read the limitation or that he did not understand it. Id. at 567.

In Standard Venetian, the issue revolved around an original policy that had not been revised or changed unilaterally by the insurance company during renewal. Id. at 565, 566. The insurance policy “was what it purported to be, and what the insured purchased.” Tonkovic, 521 A.2d at 923. In Tonkovic, by comparison, an insurance policy had been unilaterally changed by the insurer. The Pennsylvania Supreme Court held that where an individual applies and prepays for specific insurance coverage, the insurer may not unilaterally change the coverage without showing that the insured was notified of and understood the change, regardless of whether the insured read the policy. Tonkovic, 521 A.2d at 925. The Court in Tonkovic declined to apply the narrow holding in Standard Venetian, which called for a plain meaning interpretation of the insurance policy, and specifically found the Standard Venetian holding to be a narrow one, grounded in the factual context in which the case arose. The court distinguished between cases in which the insured received the requested coverage but failed to read the policy to discover standard limitations thereto and cases in which the insured applies for one type of coverage and the insurer unilaterally limits coverage. Id. at 925. The court, in declining to apply Standard Venetian, revived the reasonable expectations doctrine and found the exclusion unenforceable. The insurance policy in the present case, like the policy in Tonkovic, was unilaterally changed, resulting in different policy from that which the insureds believed they purchased. The

applicability of the reasonable expectations doctrine to the present case must therefore be considered.

The Court of Appeals for the Third Circuit has indicated that the reasonable expectations doctrine is generally applied when: (1) the insurer has made a unilateral change in a policy during a renewal, Reliance, 121 F.3d at 903; (2) the insured receives something other than what it thought it purchased, Bensalem, 38 F.3d at 1311, 1312; or (3) the insurer or its agent actively provides misinformation about coverage not supported by the language. Id. The Third Circuit in Bensalem allowed discovery where the insurer made a unilateral change and the insured might be able to prove that it had a reasonable expectation of coverage despite the unambiguous language of the policy added during a renewal that precluded coverage. Id. at 1312. In Bensalem, Bensalem Township (the “Township”) renewed its Public Officials’ and Employees’ Liability Insurance Policy with the insurers for a one-year period. Id. at 1305. The Township knew that an exclusion clause had been added to the policy, but claimed that they believed their coverage would be essentially the same as under their previous policy. Id. The court allowed the Township to show its expectation of coverage and refused to enforce the exclusion clause on its face, but “stress[ed] that [its] holding should not be overstated.” Id. at 1312. The added exclusion should not be enforced where the insured was aware of the change and the insurer made some representation that coverage would not be reduced or where the insured renewed the policy and the insurer failed to inform of any changes and explain their significance. Id.

Unfortunately, Standard Venetian, Tonkovic and Bensalem do not resolve the present case. Standard Venetian is distinguishable because the exclusion at issue was in the original policy and here the exclusion was unilaterally added to the Van Buskirks’ policy. Tonkovic is

distinguishable because the insurer issued a policy that excluded specifically requested coverage while the Van Buskirks made no specific requests for coverage. When they purchased their home and the requisite insurance policy, they asked only for a general homeowner's policy. Finally, Bensalem is distinguishable because the insured may have been able to show its reasonable expectation of coverage based upon prior dealings under the original policy. The record here, however, shows the Van Buskirks had no actual expectation of coverage. They admit they did not read their policy and had not specifically requested any type of coverage at the time of purchase.

This Court must reconcile the conflicting case law and determine the precise question posed by this case; whether an insurance company that unilaterally changes a policy has a duty under Pennsylvania law to adequately notify and explain such changes, regardless of whether the insured has an expectation of coverage. This Court finds that it does.²

Under Standard Venetian, insureds are responsible for reading their original policies and are bound by clear and unambiguous language limiting coverage. If the original policy contains an exclusion, the insureds are unable to avoid its application. If the limitation is added during a renewal, however, the law protects the insureds' reasonable expectations; there is no duty upon insureds to read renewed policies to discover changes. See Reliance, 121 F.3d at 903 (quoting Tonkovic, 521 A.2d at 926). Pennsylvania courts have given insurers the responsibility of

² Not present in Highlands' motions is the question of burden of proof. During trial the Van Buskirks argued, relying on Langer v. Monarch Life Insurance, 966 F.2d 786 (3d Cir. 1992), that Highlands had the burden of proving by clear and convincing evidence that the insured had no reasonable expectation of coverage. The Court rejected this argument because the Van Buskirks had no specific expectations of coverage. The Court instead held Highlands to the lesser preponderance of the evidence standard.

notifying policyholders of unilateral changes made to policies and explaining the consequences of such changes. See e.g., Bensalem, 38 F.3d at 1311.

Accordingly, under Standard Venetian, the Van Buskirks are assumed to have read and understood their policy. Highlands would thereby have believed that the Van Buskirks understood their original policy fully and were aware that there was no family exclusion clause contained therein. When Highlands unilaterally changed the policy by adding the family exclusion, it had a duty to give adequate notice.

“[C]ourts are to be chary about allowing insurance companies to abuse their position vis-a-vis their customers.” Id. Neither logic nor the policy of protecting insureds permit a result allowing the insurer to ignore Standard Venetian to deny coverage on the argument that the insured, because she failed to read the policy’s clear and unambiguous exclusion, had no reasonable expectation of coverage. Under Standard Venetian, both parties gain the benefit of enforcing original insurance contracts, regardless of whether or not the insured reads the policy. The insurer cannot chip away at this protection by arguing the insureds’ failure to read the policy deprives the insured of her reasonable expectations. Such an outcome would invalidate the protection enjoyed by the insured afforded by the reasonable expectations doctrine. The Court therefore finds no merit to Highlands’ argument that the question of adequate notice should not have been considered by the jury.

B. Sufficiency of Evidence that Notification was Inadequate

Having decided that Highlands had a duty to notify the Van Buskirks, this Court must next determine whether there was sufficient evidence produced at trial to support the jury’s finding that the notice sent to the Van Buskirks was inadequate, rendering the family exclusion

unenforceable. This Court finds that the jury had sufficient grounds to reach its conclusion.

The jury found that the Van Buskirks received a copy of the policy that contained the family exclusion in 1992. The record shows that together with the revised policy, a two-page document entitled, “What You Need to Know About Our New Improved Gold Seal and Easy Homeowner’s Policy,” was sent to the Van Buskirks. This document was intended to notify insureds of the changes in their policy. This “notice” may have informed insureds that changes have been made to the policy. It is reasonable, however, that a jury could find that it did not adequately notify policyholders that coverage had been taken away because: (1) no clear language states that coverage had been limited or excluded; (2) there is no indication that the exclusions were new exclusions to the policy; (3) the exclusion at issue had no illustrative example listed to clarify its meaning; and (4) it would be difficult for an insured to investigate whether the family exclusion was new or altered, or what the significance of the exclusion was.

The beginning of the first page of the document reads as follows:

When you review your Gold Seal or Easy Homeowner’s Policy this year, you will benefit from a newly revised policy. We have made changes to better meet your homeowner’s insurance needs. You will notice we have added coverage where homeowners tend to need it most and we have done away with coverage that impacts you less. The following is a quick, easy to read summary of how your basic homeowner’s coverage is improved and policy wording clarified to serve you better.

(Tr. of 4/7/99 at 64, 81). The first page of the document notes a change in deductible and then lists ten items that represent increases in policy limits. (Id. at 64, 80.) The second page also begins with a list of eight improvements to the policy. (Id.) It then lists three exclusions under the heading “Other ways your homeowner’s coverage is improved and clarified.” (Id. at 83.)

The evidence supports that the insured took “improved” and clarified literally, not recognizing

those terms as euphemistic signals that the rights under the policy were being restricted.

First, no express language indicates to the insured that coverage was being limited or taken away. There are arguably two indications that coverage had been eliminated: the first paragraph which states, “we have done away with coverage that impacts you less”, (*id.* at 64, 81), and the word “clarified” in the heading meant to separate the improvements from the exclusions. (*Id.* at 83.) A jury could conclude from these two portions of the document that it was an adequate notice; it could, and it did, however, conclude otherwise.

Second, there is no indication that the three exclusions listed in the notice, the watercraft coverage, the vicarious parental liability coverage and the family exclusion, were new additions to the policy as opposed to old exclusions that had been “clarified.” (*Id.* at 84.)

Third, there was no illustrative example regarding the practical effect of the exclusion. (*Id.* at 86.) There was, however, an example intended to clarify the effect of the vicarious parental liability exclusion, which the jury may have taken as an indication that the insurance company was aware of the potential need for explanations of the exclusions.

Finally, the jury could have found the wording of the family exclusion clause in the notice might make it difficult for the insured to investigate whether the exclusion was new or added, or to learn of its significance. Because the notice did not label or identify the three exclusions as such, the insured could not simply turn to the section marked “exclusions” in the policy; the insured would need to read and understand the entire original policy to realize that the exclusion was not listed to learn this exclusion was added. In addition, there was no cross-reference in the document to the corresponding page in the policy on which the exclusion could be found. (*Id.* at 87-88.) Furthermore, the wording was different from that in the policy, (*id.* at 85-86), so even if

the insured had a hunch that the notice was pointing out an exclusion, it is possible that the insured could not recognize the clause listed in the relevant portion of the fifteen-page policy.

IV. CONCLUSION

Because this is not a case in which there is but one reasonable conclusion as to the verdict, the Court must deny Highlands' two motions for judgment as a matter of law. O. Hommel Co. v. Ferro Corp., 659 F.2d 340, 354 (3d Cir. 1981) (holding a court may grant a Rule 50(b) motion only when . . . "there can be but one reasonable conclusion" as to the proper judgment). The jury had the responsibility of deciding which of two contentions to accept: was the document intended to inform and explain the unilateral changes to the Van Buskirks' policy adequate or inadequate? The jury found the notice inadequate. Upon review of the evidence presented at trial and drawing all inferences in favor of the Van Buskirks, the Court finds that the jury had sufficient evidence upon which to base their conclusion. Accordingly, judgment as a matter of law is not warranted. Highlands' third motion, which seeks a new trial in this matter, must also be denied for the jury's verdict is not against the great weight of the evidence, nor does it "cr[y] out to be overturned or shock[] our conscience." Williamson, 926 F.2d at 1352-53. Permitting the jury's verdict to stand will not result in a miscarriage of justice. Highlands' motion for a new trial must therefore also be denied.

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GERALD VAN BUSKIRK, JR.	:	
LORI ANN VAN BUSKIRK.	:	NO. 98-CV-4847

ORDER

AND NOW, this day of October, upon consideration of the following Motions filed by the Plaintiff, Highlands Insurance Group: (1) Motion for Directed Verdict and Motion for Judgment as a Matter of Law pursuant to Rule 50(a) of the Federal Rules of Civil Procedure (Doc. No. 33); (2) Renewed Motion for Judgment as a Matter of Law pursuant to Rule 50(b) (Doc. No. 31); and Motion for a New Trial (Doc. No. 32), the Responses of Defendants, Gerald

Van Buskirk, Jr. and Lori Ann Van Buskirk, Plaintiff's Reply thereto, and after further briefing by the parties, it is ORDERED that the MOTIONS are DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.