

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

LIBERTY MUTUAL INSURANCE	:	CIVIL ACTION
COMPANY,	:	
Plaintiff	:	
	:	
v.	:	
	:	
THOMAS CONSTANCE and	:	
KAREN CONSTANCE,	:	
Defendants	:	NO. 95-6791

Newcomer, J.

October , 1997

**M E M O R A N D U M**

This case is before the Court on remand from the Third Circuit. By Order dated February 21, 1996 this Court granted plaintiff's motion for summary judgment and denied defendants' cross motion for summary judgment. Now for the second time before this Court are plaintiff's Motion for Summary Judgment, defendants' Cross Motion for Summary Judgment, plaintiff's response thereto, and defendants' reply thereto. For the reasons that follow, plaintiff's Motion will be granted and defendant's Motion will be denied.

I.       Background

The facts in this case are not in dispute and have been fully set forth both in this Court's Memorandum of February 21, 1996 as well as the Third Circuit's Opinion of February 20, 1997. Relevant to the decision presently before this Court is the Third Circuit's framing of the pertinent issues. Plaintiff Liberty Mutual Insurance Company seeks a declaratory judgment that a certain release agreement signed by both parties to this lawsuit on February 18, 1992 is valid and binding. Under the terms of

the release the parties agreed to settle defendants' uninsured motorist claim for \$35,000, the amount of uninsured motorist benefits for which defendant Thomas Constance's employer, Associated Textile Rental Services, Inc., was allegedly insured. Defendants Thomas and Karen Constance on the other hand seek to rescind the release on the basis of mistake or misrepresentation.<sup>1</sup> Defendants contend that they settled their insurance claim against plaintiff for \$35,000 in the mistaken belief that the insured, Associated Textile, did not carry any more uninsured motorist coverage than \$35,000, when in fact Associated Textile was insured for \$1,000,000 worth of uninsured motorist benefits. They also claim that Liberty Mutual, the other party to the release agreement, was also mistaken as to the amount of uninsured motorist coverage for which Associated Textile was insured, or in the alternative, that Liberty Mutual concealed the true amount for which Associated Textile was insured. Liberty Mutual, on the other hand, maintains that Associated Textile was only insured for \$35,000 worth of uninsured motorist benefits and that therefore the release agreement is valid as there was no mistake and no misrepresentation. The validity of the release agreement thus depends on whether defendant's employer, Associated Textile, was actually insured for \$35,000, as plaintiff claims, or for

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1. See *Buttermore v. Aliquippa Hospital*, 561 A.2d 733, 735 (Pa. 1989) (stating that absent fraud, accident, or mutual mistake a release agreement between parties is the law of their case).

\$1,000,000, as defendants claim, in uninsured motorist benefits.

As framed by the Third Circuit, the pivotal issue in this case is whether as a matter of law Associated Textile validly waived its statutory right to uninsured motorist coverage in the same amount as its bodily injury coverage. See Liberty Mut. Ins. Co. v. Constance, No. 96-1184, slip op. at 4-5 (3d Cir. filed Feb. 20, 1997). Under the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVFRL"), insurance companies are required to provide uninsured motorist benefits in an amount equal to the insured's bodily injury liability coverage unless the insured makes a written request for less uninsured motorist coverage. See 75 Pa. Cons. Stat. Ann. §§ 1731, 1734. As a third-party beneficiary of the insured, the defendants are entitled to the amount of uninsured motorist benefits for which Associated Textile was insured. See General Accident Ins. Co. v. Parker, 665 A.2d 502, 504 (Pa. Super. Ct. 1995), alloc. denied, 675 A.2d 1249 (Pa. 1996) (noting that a third party beneficiary of an insurance contract is subject to the same policy limitations that bind the policy holder). Associate Textile was insured for \$1,000,000 in bodily injury coverage, so under the MVFRL, unless it validly waived its statutory right to receive uninsured motorist coverage in the same amount, its uninsured motorist coverage is also for \$1,000,000. Thus the validity of the release agreement between the parties turns on the validity of Associated Textile's waiver of its statutory right, which in turn determines whether Associated Textile was insured for

\$35,000 or \$1,000,000 in uninsured motorist benefits. If it is determined that Associated Textile's waiver was valid and therefore its uninsured motorist coverage was for \$35,000, then the release agreement signed by plaintiff and defendants is binding. If, on the other hand, it is determined that Associated Textile's waiver was not valid, and that therefore its uninsured motorist coverage was for \$1,000,000, then the release agreement is not binding and the parties may proceed to arbitration.

II. Summary Judgment Standard

A reviewing court may enter summary judgment where there are no genuine issues as to any material fact and one party is entitled to judgment as a matter of law. White v. Westinghouse Electric Co., 862 F.2d 56, 59 (3d Cir. 1988). The evidence presented must be viewed in the light most favorable to the non-moving party. Id. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

In the instant case both parties have moved for judgment as a matter of law. The facts are not in dispute, and the parties apparently agree that a determination regarding the validity of the waiver will decide the amount of uninsured motorist benefits for which Associated Textile was covered and in turn the validity of the release agreement between the parties.

III. Discussion

The Third Circuit has narrowed the issue in the instant case down to the inquiry whether there is sufficient basis for determining as a matter of law that Associate Textile knowingly and intelligently waived its statutory right to equal uninsured motorist and bodily injury coverage. See Liberty Mutual, No. 96-1184, slip op. at 10. In Tukovits v. Prudential Ins. Co., 672 A.2d 786, 789 (Pa. Super. Ct. 1996), alloc. denied, 685 A.2d 547 (Pa. 1996), the Pennsylvania Superior Court outlined a two-step test for determining whether the insured made a knowing and intelligent election of lower uninsured motorist coverage. First, the insured must have been made aware of the coverage that was available under the statute. Id. at 790. Second, after finding initial evidence that the insured was made aware of the coverage that was available to it, the trial court may look at events that occurred before and after the election for further evidence of a knowing and intelligent waiver. Id. Relevant events may include whether the insured previously obtained the same level of coverage, whether the premiums paid reflected the lower level of coverage, whether the insured ever questioned the level of coverage, whether the insured amended or added vehicles to the policy, and whether the forms involved in the transactions reflect the level of coverage. Id.

When this case was first before this Court plaintiff only introduced two documents as evidence that Associated Textile had knowingly and intelligently waived its right. The Third Circuit found that although one of the Liberty Mutual forms

signed by an Associated Textile representative satisfied the first step of the Tukovits test in that it informed the reader of the coverage available, it did not satisfy the second step because under Pennsylvania case law the mere signing of a form requesting lower coverage is not sufficient to show a knowing and intelligent waiver as a matter of law. See Liberty Mutual, No. 96-1184, slip op. at 7-8. Plaintiff submitted two affidavits with its supplemental briefing to the Third Circuit, but because these affidavits were not a part of the record before this Court, the Third Circuit could not consider them. Id. at 10-11. Plaintiff now submits the same affidavits into evidence before this Court.

The first of these affidavits is that of Robert Evans, the Vice President of Finance at Associated Textile who according to his affidavit was responsible for procuring insurance for Associated Textile during the years relevant to this case<sup>2</sup>. In his affidavit dated November 11, 1993, Mr. Evans states that for the insurance years effective May 1986, May 1987, and May 1988, Associated Textile placed its insurance with Liberty Mutual; that each year he reviewed the policy limits and insurance premiums with James Schaefer, a representative of Liberty Mutual; that each year he and Mr. Schaefer discussed specific automobile coverage as it related to uninsured motorist coverage; that in fact they had to sign separate statements for the uninsured

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2. The 1988 insurance policy is relevant to this case as defendant's accident occurred on November 18, 1988.

motorist coverage for certain states each year; that in all cases each year Associated Textile elected to take the Financial Responsibility Limit (Mandatory) or Statutory Limit Coverage because they believed that their workers' compensation and liability coverages were adequate to meet required needs if such incidents should arise; that he was aware that he could purchase uninsured motorist insurance in the same amount as liability coverage; that equal amounts were not desired; and that the policy limit as shown, in the amount of \$35,000 for uninsured motorist coverage, represents the amount of uninsured motorist coverage that Associated Textile desired. (Pl.'s Mot. for Summ. J. at Exh. B, ¶¶ 4-10.)

The second affidavit is that of James Schaefer, the Liberty Mutual representative responsible for the Associated Textile account. In his affidavit he recounts his yearly meetings with the Vice President of Finance at Associated Textile and states in pertinent part that Associated Textile consistently requested Uninsured Motorist coverage at minimum statutory limits, that they never requested increases of these coverages beyond the minimum requirement, and that the minimum statutory limits available through Liberty Mutual for Pennsylvania during years 1986 through 1989 was \$35,000. (Pl.'s Mot. for Summ. J. at Exh. C, ¶¶ 15-16.)

This Court finds that these affidavits constitute more than sufficient evidence of a knowing and intelligent waiver on the part of Associated Textile. In contrast to other insurance

cases where the insured makes a direct claim, here a third-party beneficiary made the claim. As such, plaintiff in this case has the advantage of the insured's cooperation in providing information regarding its waiver. This information, as presented to this Court through the affidavit of Associated Textile's Vice President of Finance, clearly demonstrates the insured's intention to waive equal uninsured motorist coverage. Mr. Evans, as an agent of the insured authorized to purchase the company's insurance policies, explicitly states that equal amounts were not desired. (See Pl.'s Mot. for Summ. J. at Exh. B, ¶ 9.) In fact, he explains that the company believed that its workers' compensation and liability coverage could handle such incidents. (Id. at ¶ 7.) As such this Court finds that plaintiff has fully satisfied both prongs of the Tukovits test and has thus proved as a matter of law that Associated Textile knowingly and intelligently waived its right to equal uninsured motorist and bodily injury coverage.

In Tukovits the court found that the insurer had not produced sufficient evidence to merit judgment as a matter of law despite evidence that the insured had elected lower uninsured motorist coverage in writing and had physically seen the policy at least twenty-two times before his death. Significant to the case at bar, the Tukovits court noted that "without any additional evidence regarding such issues as whether Mr. Tukovits ever read his insurance policy, ever had it explained to him and ever realized the magnitude of marking and signing the . . .

elective writing, we cannot hold that Prudential produced sufficient evidence to prove waiver as a matter of law." Tukovits, 672 A.2d at 791. In stark contrast, Liberty Mutual has provided clear evidence that Associated Textile, through its Vice President of Finance, not only read the insurance policy but fully realized the "magnitude" of marking and signing the elective writing. In unmistakable terms Mr. Evans states that equal amounts of coverage were not desired. (Pl.'s Mot. for Summ. J. at Exh. B, ¶ 9.) In view of the corporate nature of the insured in this case, the insured's desire to elect lower coverage and thus to save costs is understandable and even predictable, and in this instance not of very great "magnitude" to the employer/insured marking and signing the elective writing. This is evidenced in Mr. Evans' statement that Associated Textile considered its workers compensation benefits to be sufficient to meet the needs of its employees in the event of such incidents. As such, this Court finds that plaintiff has produced more than sufficient evidence to prove as a matter of law that Associated Textile knowingly and intelligently waived its statutory right to equal amounts of uninsured motorist and bodily injury coverage.

In the face of this evidence, defendants nevertheless argue that Associated Textile's waiver was not knowing and intelligent. Defendants argue that the waiver could not have been knowing and intelligent because (1) plaintiff insurer informed the insured, Associated Textile, that the minimum for uninsured motorist coverage was \$35,000 when the statutory

minimum was \$30,000, and (2) the policy was inherently ambiguous because the insured had to go outside of the four corners of the policy to ascertain the policy limits. This Court addresses both arguments.

Defendants' first argument is that Associated Textile did not validly waive its right to \$1,000,000 worth of uninsured motorist coverage because Liberty Mutual informed it that the minimum uninsured motorist coverage was for \$35,000 when in fact Associated Textile wanted and requested the least amount of coverage mandated by law, that is, \$30,000. To buttress their argument defendants also rely on an affidavit. The affidavit submitted by defendants is Mr. Evan's second affidavit, dated July 30, 1997, in which he clarifies his 1993 affidavit. His second affidavit states, in pertinent part, as follows:

Paragraph 7 of the November 29, 1993 Affidavit is correct, but it is incomplete. It would be most accurate to state that at all times material hereto, I wanted to spend as little money on UM coverage as possible. If I hadn't been required by law to buy UM coverage, I wouldn't have bought any UM coverage at all. Since I wanted to spend as little as possible for UM coverage, I chose to buy what I thought was the minimum amount of UM coverage I had to buy. I was told by Liberty Mutual that the minimum UM coverage was \$35,000. However, I never specifically asked for \$35,000 worth of UM coverage. I only asked for the minimum amount of coverage. If, in fact, the minimum had been less than \$35,000, I would have chosen that lesser amount rather than \$35,000 if Liberty Mutual had so advised me.

(Defs.' Mot. for Summ. J. at Exh. B, ¶ 4.)

Needless to say, this second affidavit further evinces Associated Textile's unequivocal desire and choice to waive equal

uninsured motorist benefits for lower coverage. In fact, according to Mr. Evans' second affidavit, he would have elected no uninsured motorist coverage if possible. Defendants, however, take the curious position that Associated Textile's waiver was invalid because Associated Textile wanted the minimum uninsured motorist coverage permissible--which defendants go to great lengths to show was \$30,000 under the statute--and instead Associated Textile got \$35,000 worth of uninsured motorist coverage, an amount that it did not specifically request or want. In short, according to defendants, Liberty Mutual failed to provide Associated Textile with what it wanted, the statutory minimum at \$30,000, and therefore Associated Textile's waiver was ineffective and its actual uninsured motorist coverage was for \$1,000,000, the same as its bodily injury coverage. Defendants call for strict construction of what constitutes a knowing and intelligent waiver and in support of its argument cite a single case, Lucas v. Progressive Cas. Ins. Co., 680 A.2d 873 (Pa. Super. Ct. 1996), as an example of strict construction.

To the extent that defendants are claiming intentional misrepresentation on Liberty Mutual's part regarding the statutory minimum coverage for uninsured motorist benefits, defendants have not produced any evidence so showing. Instead, the affidavits and policy forms before this Court, as well as mere common sense, lead to the rather obvious conclusion that \$35,000 was the minimum that Liberty Mutual offered for uninsured motorist coverage in the state of Pennsylvania during the

relevant time period. Mr. Schaefer's affidavit clearly states that the "Minimum Statutory limits of coverage for Uninsured and Underinsured coverage available through Liberty Mutual for the State of Pennsylvania during the years 1986 to 1989 was \$35,000." (Pl.'s Mot. for Summ. J. at Exh. C, ¶16 (emphasis added).)

To the extent that defendants are arguing that Liberty Mutual must have provided the insured with the choice for \$30,000 worth of uninsured motorist coverage, defendants cite no law and this Court is unaware of any law requiring insurance companies to offer the statutory minimum per se. Companies presumably may offer much higher amounts as their minimum if they can afford to conduct business accordingly. Apparently Liberty Mutual decided to offer its minimum uninsured motorist coverage at \$35,000 instead of \$30,000. To the knowledge of this Court there is no requirement that Liberty Mutual or any other insurer is obligated to offer \$30,000 worth of minimum uninsured motorist coverage. According to Mr. Evans' second affidavit, submitted by defendants, Mr. Evans asked for the minimum amount of uninsured motorist coverage and was told by Liberty Mutual that the minimum coverage was for \$35,000. (See Defs.' Mot. for Summ. J. at Exh. B, ¶ 4.) In neither affidavit does he ask for the minimum amount mandated by statute, and even if he had, Liberty Mutual would have been under no obligation, aside from the obligation to please a client, to offer \$30,000 as opposed to \$35,000 as the minimum for uninsured motorist coverage. Mr. Evans thus received what he asked for since Liberty Mutual's minimum coverage for

uninsured motorist benefits was \$35,000. In this Court's opinion, it would appear ludicrous to take the unequivocally stated intention of an insured to have as little uninsured motorist coverage as possible, and find that because it did not receive a rate which the insurer did not even offer, it should instead be deemed to be insured for the maximum.

Lucas, the sole case cited by defendants, involves the failure of the insurer to comply with § 1731 of the MVFRL, a statutory provision not implicated in the case at bar. To the extent that defendants cite this case solely for purposes of arguing strict construction, this Court is not persuaded that in the face of such overwhelming evidence of a knowing and intelligent waiver, the waiver should nevertheless be held invalid because Liberty Mutual's minimum uninsured motorist coverage was for \$35,000 as opposed to \$30,000. Even if, arguendo, Liberty Mutual mistakenly believed the statutory minimum to be \$35,000, such a mistake would not render invalid Associated Textile's knowing and intelligent waiver which satisfies the Tukovits test more than adequately. Accordingly this Court finds defendants' first argument to be groundless.

Defendants' second argument is that Liberty Mutual's insurance policy is ambiguous on its face because the insured must go outside of the four corners of the policy to determine the policy limits and that therefore the policy should be construed against Liberty Mutual. Defendants cite Worldwide Ins. Co. v. Brady, 973 F.2d 192 (3d Cir. 1992) for this proposition.

On the relevant form for uninsured motorist coverage on which Associated Textile elected the "Financial Responsibility Limit (Mandatory)," the actual dollar amount of the limit is not stated. Instead, on a separate document which lists all the states and the liability limits for each state in which Associated Textile was being insured, "\$35,000" appears next to Pennsylvania. (See Pl.'s Mot. for Summ. J. at Exh. I.) Defendants, ignoring this document and relying on its first argument, claim that the policy is ambiguous because it required the insured to go outside of the policy to the statute itself to determine the actual statutory minimum.

Defendants' second argument fails not only because it relies on its first argument which this Court found to be groundless, but also because the insurance policy in this case is not ambiguous. The insured did not have to go beyond the four corners of the policy as the liability limits for uninsured motorist coverage for all states in which Associated Textile was insured were stated on a document that was part and parcel of the policy. This document distinctly shows that the liability limit for Pennsylvania as elected by Associated Textile was \$35,000. And as this Court has already determined that the "Financial Responsibility Limit (Mandatory)" coverage of \$35,000 was the minimum offered by Liberty Mutual, defendants' argument that the policy obligates the insured to go to the statute to determine the statutory minimum is unfounded.

Worldwide, the case on which defendants rely to buttress their argument that the policy is ambiguous, involved an insurance policy in which the dollar limit for liability as to the insured's family was nowhere in the policy. See Worldwide, 973 F.2d at 195. The policy only stated that the liability limit was the statutory minimum without mentioning the actual dollar amount of the statutory minimum, \$15,000. Id. The Court found that the failure to disclose the actual dollar amount rendered the clause ambiguous, and because the policy failed to explicitly inform the insured of the elements of the limited coverage, the insured was entitled to the full policy benefits. Id. at 196.

Clearly Worldwide does not stand for the proposition that an insurer must offer the statutory minimum, but rather for the proposition that failure to disclose the dollar amount of a limit on liability renders the policy ambiguous. In the case at bar, there is no dispute that the policy explicitly informed the insured, Associated Textile, that the liability limit for uninsured motorist benefits as elected by Associated Textile was \$35,000. The dollar amount is documented in the policy, and clearly Associated Textile knew that it was insured for \$35,000 worth of uninsured motorist benefits. Thus Associated Textile's policy with Liberty Mutual was not ambiguous, and as such, defendants' second argument must also fail.

#### Conclusion

As this Court finds that Associated Textile did validly waive its right to uninsured motorist coverage in the same amount

as bodily injury coverage and that therefore Associated Textile's uninsured motorist coverage was for \$35,000 and not \$1,000,000, the release agreement signed by the parties is valid and binding. Accordingly this Court will grant plaintiff's Motion for Summary Judgment, deny defendant's Cross Motion for Summary Judgment, and enter judgment in favor of plaintiff and against defendant.

An appropriate Order follows.

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Clarence C. Newcomer, J.

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

LIBERTY MUTUAL INSURANCE	:	CIVIL ACTION
COMPANY,	:	
Plaintiff	:	
	:	
v.	:	
	:	
THOMAS CONSTANCE and	:	
KAREN CONSTANCE,	:	
Defendants	:	NO. 95-6791

**O R D E R**

AND NOW, this           day of October, 1997, upon consideration of plaintiff's Motion for Summary Judgment, defendants' Cross Motion for Summary Judgment, plaintiff's response thereto, and defendants' reply thereto, and consistent with the foregoing Memorandum, it is hereby ORDERED as follows:

1. Plaintiff's Motion for Summary Judgment is GRANTED.
2. Defendants' Cross Motion for Summary Judgment is DENIED.
3. JUDGMENT is ENTERED in favor of plaintiff and against defendant.
4. Associated Textile made a knowing, voluntary, and intelligent waiver of its statutory right to equal limits of uninsured motorist coverage and bodily injury liability coverage, and therefore its uninsured motorist policy was for \$35,000.
5. The Release and Trust Agreement executed on February 18, 1992 is valid and binding upon the parties thereto.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, J.