

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION

ERIE INSURANCE EXCHANGE,
Plaintiff

v.

DONNA M. LARRIMORE and
CHARLES LARRIMORE, H/W,
Defendants

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:
:
:

No. 07-1991

Karl L. Stefan, Esquire, and
David R. Friedman, Esquire
Steven J. Margolis, Esquire

Counsel for Plaintiff
Counsel for Defendants

Civil Law - Motor Vehicle Financial Responsibility Law -
Underinsured Motorist Benefits - Reducing UIM
Coverage - Section 1734

1. Under the MVFRL the amount of UM/UIM coverage provided to protect an insured against the risk of being injured by an uninsured or underinsured motorist is presumed to be the same as that selected by the insured to protect himself against third party personal injury liability.
2. Two requirements must be met for an insured to validly reduce the amount of UM/UIM coverage below the limits of bodily injury liability provided for in his policy: (1) the insured must have had notice of his rights under the MVFRL; and (2) the insured must have voluntarily requested in writing that the limits of his UM/UIM coverage be reduced.
3. The first requirement is met by showing compliance with Section 1791 of the MVFRL. Section 1791 requires the insurer to provide the insured with a statutorily-mandated form "Important Notice" advising the insured of the available benefits and limits of coverage which must be offered to him under the MVFRL and of his right to select or reject higher or lower limits of coverage. When complied with, the "Important Notice" forms a conclusive presumption that the insured had notice of the UM/UIM limits and coverages which were available.
4. The second requirement is determined by compliance with Section 1734 of the MVFRL. Section 1734 requires that the insured make a written request to reduce the amount of UM/UIM benefits. No specific form or particular language is required to comply with Section 1734.

5. As construed by our courts, requests for specific limits of UM/UIM coverage less than those for bodily injury liability must (1) manifest the insured's desire to purchase UM/UIM coverage in amounts equal to or less than the bodily injury limits; (2) be signed by the named insured; and (3) include an express designation of the amount of UM/UIM coverages requested.
6. In order for an application for motor vehicle insurance to meet the requirements of a Section 1734 writing, it must clearly and unambiguously demonstrate on its face that the insured intended to and did request a reduced amount of UM/UIM coverage and expressly designated an amount of UM/UIM coverage requested. If these conditions are not met, the amount of UM/UIM coverage will be deemed equivalent to the bodily injury liability limits.

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Plaintiff	:	
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v.	:	No. 07-1991
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DONNA M. LARRIMORE and	:	
CHARLES LARRIMORE, H/W,	:	
Defendants	:	
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David R. Friedman, Esquire		Counsel for Plaintiff
Steven J. Margolis, Esquire		Counsel for Defendants

MEMORANDUM OPINION

Nanovic, P.J. - January 13, 2009

On July 25, 2006, Donna M. Larrimore ("Larrimore") was injured in a motor vehicle accident. Larrimore has settled her bodily injury claim against the third party defendant responsible for the accident and seeks in these proceedings additional compensation through the Underinsured Motorist

Coverage ("UIM") contained in her own automobile insurance policy with Erie Insurance Exchange.¹ At issue is the amount of UIM coverage which her policy provides; specifically, whether she made a written request for UIM coverage limits below the coverage requested for bodily injury liability. Both parties have filed cross motions for summary judgment on this issue.

¹ Larrimore's claim against the third party defendant was settled with Erie's consent.

PROCEDURAL AND FACTUAL BACKGROUND

On April 24, 2000, Larrimore, who was then single and known as Donna Green, dated and executed a Private Passenger Auto Application ("Application") for insurance coverage on her vehicle. The Application listed the types and amounts of coverage applied for as follows:

<u>COVERAGES</u>	<u>LIMITS OF PROTECTION</u>
Bodily Injury Liab	300,000 - 300,000
Property Damage Liab	50,000
First Party Med Exp	50,000
First Party Income	1,500/Mo - 25,000 Max
First Party Acc Death	25,000
First Party Funeral	2,500
UM Bodily Injury	15,000 - 30,000 Unstacked
UIM Bodily Injury	15,000 - 30,000 Unstacked
Comprehensive	50,000 Ded - ACV
Road Service	Yes

Application, page 2. On page 8 of the Application, the following language appears immediately above Larrimore's signature:

APPLICANT TO EXCHANGE - SIGN HERE.

I certify that I have given true and complete answers to the questions in this application. I also certify that I have been offered alternative coverage limits and *those listed on this application reflect my choices.*

* * *

Subscriber: /s/Donna Green Date: 4/24/00

(emphasis added).

The policy application was based on a telephone contact. The eight page Application was prepared by a

representative of the Englert Insurance Agency, the agency Larrimore contacted to obtain insurance, and completed in advance for Larrimore's signature. All of the information contained in the Application was typed in by the insurance agent before the Application was signed by Larrimore.

The Application was accompanied by a number of other forms also signed by Larrimore on the same date, April 24, 2000, and included the statutorily-mandated "Important Notice" required by Section 1791 of the Motor Vehicle Financial Responsibility Law ("MVFRL"), 75 Pa.C.S.A. §§ 1701-1799.7. This form, which consists of one page and contains Larrimore's signature at the bottom, provides in relevant part:

- - - NOTICE OF AVAILABLE BENEFITS AND LIMITS - - -

IMPORTANT NOTICE

Insurance companies operating in the Commonwealth of Pennsylvania are required by law to make available for purchase the following benefits for you

* * * * *

(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

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.

If you have any questions or you do not understand all of the various options available to you, contact your agent or company.

If you do not understand any of the provisions contained in this notice, contact your agent or company before you sign.

Applicant's signature /s/ Donna Green

Date 4/24/00

At the time the Application was signed by Larrimore, Erie Insurance Forms UF-2044 and UF-2047 were made available to applicants to request limits of uninsured and underinsured motorist coverage in an amount less than the limits of bodily injury liability coverage they selected and, in conjunction therewith, to specifically insert the amount of uninsured and underinsured motorist coverage which they wished to purchase from Erie. This form, when used, was to be signed and dated by the insured. Whether such a form was in fact signed by Larrimore, or even presented to her for signature, is unknown. Erie has admitted, however, that it has been unable to locate either a form UF-2044 or a form UF-2047 signed by Larrimore.

The original Policy issued to Larrimore upon receipt of the Application provided bodily injury liability coverage of \$300,000.00 per person and \$300,000.00 per accident, and UM/UIM

coverage in the amount of \$15,000.00 per person and \$30,000.00 per accident, for each vehicle covered. Prior to the motor vehicle accident in which Larrimore was injured on July 25, 2006, the policy was amended to also include her husband, Charles Larrimore, as a named insured, and to add a second vehicle. The policy in effect at the time of the accident provided stacked UM/UIM coverage in the same amounts as originally applied for by Larrimore on April 24, 2000, for two vehicles.

On June 22, 2007, Erie commenced the instant declaratory judgment action with respect to Larrimore's claim for underinsured motorist benefits. Larrimore contends that she is entitled to UIM benefits equal to the amount of her bodily injury liability limits stacked for two vehicles, an amount totaling \$600,000.00. Erie claims that Larrimore's UIM coverage is limited to the amount of UM/UIM coverage she requested in the application on which the issuance of the policy was based, \$15,000.00 per person and \$30,000.00 per accident, an amount which was never requested to be changed and the amount on which Larrimore's premium payments have been determined.

DISCUSSION

Pennsylvania's Motor Vehicle Financial Responsibility Law requires insurers who issue motor vehicle liability policies in this Commonwealth to offer their customers UM/UIM coverage in amounts equal to the bodily injury liability limits of the customer's policy. In order to reduce the amount of UM/UIM coverage beneath the bodily liability limits of the policy, a written request must be made by the insured. See Lewis v. Erie Ins. Exchange, 793 A.2d 143, 150 (Pa. 2002). Section 1731 of the MVFRL provides in pertinent part:

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 limits of coverage)....

Section 1734 of the MVFRL provides:

Request for lower limits of coverage

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.

Section 1791 of the MVFRL requires an insurer doing business in this Commonwealth to furnish the policy applicant with a copy of the "Important Notice" mandated by that section.

This notice must advise the applicant of the types and amounts of coverages which are required to be offered to him/her. This notice must also inform the applicant that he/she may purchase or reject these coverages. The applicant must also be made aware that he/she may purchase coverages in higher or lower amounts than those set forth in the "Important Notice."

Motorists Insurance Co. v. Emig, 664 A.2d 559, 561-62 (Pa.Super. 1995). The intent of Section 1791, in part, is "to ensure that motorists act knowingly and voluntarily when they choose reduced UM/UIM coverage." Nationwide Mutual Insurance Company v. Heintz, 804 A.2d 1209, 1215 (Pa.Super. 2002), *appeal denied*, 818 A.2d 505 (Pa. 2003).

When the "Important Notice" required by Section 1791 is provided to an applicant, the notice "operates as a conclusive presumption [provided] the insurer strictly follows the mandate of that section." Emig, 664 A.2d at 562. This conclusive presumption extends both to the applicant's knowledge and understanding of available benefits and limits as well as her knowledge and understanding of the benefits and limits of coverage she has selected. "However, in order for the conclusive presumption of Section 1791 to [apply to the benefits and limits of the coverage requested], an insured must have actually selected coverage(s), and the selection process must first be in conformity with the law, i.e., in this case, with Section 1734." Id. at 569. In the instant case, it is not disputed that the "Important Notice" provided to Larrimore and

signed by her on April 24, 2000, complies with the statutory wording dictated by Section 1791. That Larrimore had notice of the UM/UIM limits and coverage available to her under the MVFRL must therefore be conclusively presumed.

Section 1734's requirement of a written request to reduce UM/UIM coverage limits below the limits of bodily injury liability coverage does not mandate the use of a specific form or particular language to effect a valid waiver or acknowledgement of reduced benefits. See Lewis v. Erie Ins. Exchange, 753 A.2d 839, 850-51 (Pa.Super. 2000) ("The plain meaning [of Section 1734] contains no standards concerning the language or form that a named insured uses to 'request in writing' the issuance of reduced UM/UIM coverages."), *aff'd*, 793 A.2d 143 (Pa. 2002).² However, to be valid and enforceable the writing required by Section 1734 must:

- (1) Manifest the insured's desire to purchase UM/UIM coverage in amounts equal to or less than the bodily injury limits;
- (2) Be signed by the named insured; and

² Section 1734 applies when the insured wants to reduce the limits of UM/UIM coverage below those provided for bodily injury liability and, in conjunction therewith, designates specific alternative UM/UIM coverage limits. In contrast, when it is the insured's intent to waive or reject UM/UIM coverage in total, the technical requirements of Section 1731(c.1) must be strictly complied with. See Lewis v. Erie Ins. Exchange, 793 A.2d 143, 155 (Pa. 2002). "Accordingly, Section 1731 (c.1) applies to the outright waiver/rejection of UM/UIM coverage, and Section 1734 applies to the selection of specific limits of UM/UIM coverage." Brethren Mutual Ins. Co. v. Triboski-Gray, 2008 WL 2705539, *5 (M.D.Pa. 2008).

(3) Include an express designation of the amount of UM/UIM coverages requested.

See Hartford Insurance Company v. O'Mara, 907 A.2d 589, 602-603 (Pa.Super. 2006) (en banc), *appeal denied*, 920 A.2d 833 (Pa. 2007). If these conditions are not met, as a matter of law, the amount of UM/UIM coverage will be deemed equivalent to the bodily injury liability limits. See Emig, 664 A.2d at 563.

It is Erie's position that Larrimore's signature on the Application, in conjunction with her receipt and signed acknowledgement of the statutory "Important Notice", operates as a conclusive presumption that she actually knew and understood the limits of her UM/UIM coverage. Larrimore disagrees and claims that the Application she signed does not meet the necessary prerequisites to qualify as a valid Section 1734 writing and, therefore, the conclusive presumption of Section 1791, as it relates to a requested reduction in UM/UIM benefits, does not apply. Specifically, Larrimore argues that the Application does not evidence her intent to select reduced UM/UIM benefits or that she actually selected such benefits. Consequently, the issue to be decided is whether the Application signed by Larrimore on April 24, 2000, both manifests her desire to purchase UIM coverage less than the limits of the third party bodily injury coverage provided for in the policy and contains an express designation of the amount of such reduced coverage.

Section 1734's requirement for a written request to reduce UM/UIM coverage benefits below those mandated by Section 1731, is to be narrowly and strictly construed. See Nationwide Ins. Co. v. Resseguie, 980 F.2d 226, 232 (3d Cir. 1992), *cited with approval* in Blood v. Old Guard Ins. Co., 934 A.2d 1218, 1226 (Pa. 2007). At the same time, the MVFRL in general is to be liberally construed to afford an injured claimant the greatest possible coverage. See Emig, 664 A.2d at 566. "In close or doubtful cases, we must interpret the intent of the legislature and the language of insurance policies to favor coverage for the insured." Id. at 566.

From this perspective, we are not convinced that the Application objectively manifests that a request for reduced UM/UIM coverage was made by Larrimore, as opposed to a selection made by the insurance agent. The question is not whether Larrimore had notice of her rights under the MVFRL or was provided adequate information upon which to make an informed decision. She was. When compliance with the statutorily mandated "Important Notice" requirement of Section 1791 has occurred,

[i]t shall be presumed that the insured has been advised of the benefits and limits available under this chapter . . . , and no other notice or rejection shall be required[.]

75 Pa.C.S.A. § 1791.

In Heintz, the Court explicitly held that "to the extent that § 1734 contains a requirement that insureds elect reduced UIM reduction benefits in a knowing and voluntary manner, this requirement can be satisfied only by complying with § 1791, *assuming the writing requirement of § 1734 has been met.*" 804 A.2d at 1221 (emphasis added). While compliance with Section 1791 ensures that a request to reduce the amount of UM/UIM coverage is knowing and voluntary, the Heintz Court also observed that Section 1734 "requests for specific limits coverage, in contrast to outright waiver/rejection, require not only the signature of the insured, but also, an express designation of the amount of coverage requested, thus lessening the potential for confusion." Id.; see also Breuninger v. Pennland Ins. Co., 675 A.2d 353, 357 (Pa.Super. 1996) ("[I]n order for the conclusive presumption of Section 1791 to be effective, an insured must have actually selected coverage, and the selection process must be in conformity with Section 1734, i.e., the insured must have requested in writing a lower UM/UIM coverage.") (noting also that an insured's payment of premiums for several years computed on reduced policy limits for UM/UIM coverage will not operate as a waiver under Sections 1734 or 1791).

The requirement that the Section 1734 writing manifest the insured's desire to purchase reduced UIM benefits is

separate and distinct, albeit overlapping with any requirement that the election be made in a knowing and voluntary manner. In order for the writing to manifest the insured's desire to purchase reduced coverage, it must be apparent from the face of the writing that a selection process has in fact been engaged in by the insured and that the amount of coverage selected represents a choice made by the insured. The Application before us does not reveal such an election. To the contrary, all of the information on the Application was inserted and completed by the insurance agent. The Application does not conspicuously and unambiguously evidence that the request is for reduced UIM benefits in relation to what benefits are available. See O'Mara, 907 A.2d at 602. Nor does the Application on its face permit Larrimore to make a choice among various options or to insert the limits of coverage sought.

Moreover, the preprinted language on page 8 of the Application, stating that Larrimore has been offered alternative coverage limits and that the amounts listed on the Application reflect her choice of limits, does not strictly and unambiguously reveal that such was in fact the case with respect to the limits of UM/UIM benefits listed on the Application rather than applying to one or more of the other types and limits of coverage which appear on page 2 of the Application. Such a showing might be made, for instance, by a separate form

specific to UM/UIM benefits and providing for the selection of coverage amounts, or by a separate heading and section in the Application itself with respect to UM/UIM benefits and directing the insured to designate the amount of benefits selected and to initial her choice. See, e.g., Young v. State Farm Mut. Auto. Ins. Co., 54 Fed.Appx. 365, 367-68 (2002 WL 31846193) (3d Cir. 2002) (insured signed Section 1791 Important Notice and binder portion of the application acknowledging that he had read the application and chose the limits himself, and insured's initials directly below UIM box with "15/30" written in was a valid waive down under Section 1734). Here, Larrimore's signature on the Application is separated from the listing of coverage types and amounts by six pages of intervening information.

In O'Mara, the Court analyzed the Coverage Option Form before it to determine whether it reflected a valid request for the reduction of UM/UIM coverage limits. 907 A.2d at 603. In pertinent part, the Court stated:

In our view, the language of the Coverage Options Form satisfies this requirement. The form notifies the insured that "Uninsured and Underinsured Coverages are optional in Pennsylvania" and that the insured may reject such coverage. In the "Uninsured and Underinsured Motorist Coverage Selections" Section of the form, the language directs that the insured must "[u]se this sheet to select your coverage limits" and that the failure to make a selection indicates that his/her "policy will include limits equal to the Liability limits (unless [the insured] has returned the rejection form)". The sheet then provides two headings, "Uninsured

Motorist Coverage limits" and "Underinsured Motorist Coverage limits", and three options underneath each of the headings. The first option permitted the insured to select the "Maximum amount available (an amount equal to the Liability Limits of [the] policy)." The second option permitted the insured to choose and specify an amount. The third option permitted the insured to select the "Minimum amount available (\$15,000 per person/\$30,000 per accident)." The form reveals a handwritten "X" next to the third option under both the uninsured and underinsured headings. Additionally, Elizabeth O'Mara signed the bottom of this form. This form, viewed as a whole, indicates Mrs. O'Mara's decision to select uninsured and underinsured coverage in an amount less than the amount of her liability limits, namely, \$15,000 per person and \$30,000 per accident.

Id. In contrast, the language and format of the Application signed by Larrimore does not clearly manifest her desire "to purchase uninsured and underinsured coverage in amounts less than or equal to bodily injury limits and the amount of the requested coverage." Id. at 603.

In Brethren Mut. Ins. Co. v. Triboski-Gray, the issue before the Court was virtually identical to that presented here: whether the insured's signature on an application completed by the insurance company's agent constituted a written request in accordance with the requirements of Section 1731 for UM/UIM coverage limits in an amount less than the limits of coverage requested for third party bodily injury. 2008 WL 2705539, *1 (M.D.Pa. 2008). "The dispositive question here is not whether [the insured] was aware of the coverage limits; the controlling

question is whether she made a written request for UM/UIM coverage limits below the coverage limits for third party bodily injury." Id. at *3. In Triboski-Gray, the insurer also argued, as here, that "the designation of UM/UIM limits . . . made by [the agent] became [the insured's] written request for such limits when she signed the insurance application." 2008 WL 2705539 at *6.

The language of the application in Triboski-Gray appears, in all material respects, to be identical with the subject application in these proceedings. In finding that the application before it was not a "written request" as contemplated by Section 1734 of the MVFRL, the Court relied heavily on the Pennsylvania Superior Court's decision in Emig, which held that an insured's signature at the end of a policy change request form, similar to an insured's signature at the end of an insurance policy application, "merely evidences the insured's acceptance of the policy . . . , and cannot amount to a statutorily enforceable waiver of insured/underinsured motorist coverage limits equal to bodily injury limits." Id. (quoting Emig, 664 A.2d at 565) (internal quotation marks omitted). In short, "requests for specific limits coverage . . . require not only the signature of the insured, but also, an express designation of the amount of coverage requested"

Lewis, 793 A.2d at 153.³ While the rationale of Triboski-Gray focuses primarily on the third element required by O'Mara for a valid Section 1731 writing, rather than the first element upon which we place primary emphasis, it, together with Emig, provides additional support for our decision to nullify the lower UM/UM coverage limits stated in the policy, thus deeming the UM/UM coverage equivalent to the bodily injury liability coverage limits.

CONCLUSION

In accordance with the foregoing, we find the underinsured motorist coverage limits in Larrimore's policy with Erie to be equal to the bodily injury limits, that is \$300,000.00 per person and \$300,000.00 per occurrence, stacked for two vehicles, for a total of \$600,000.00 in benefits.

BY THE COURT:

P.J.

³ In Triboski-Gray, the Court found it significant that several months after the insured purchased her insurance policy, the insurer began using UM/UM selection forms which required the insured to specify the limits of UM/UM coverage being selected, with the insured's signature coming immediately under the amount selected, finding that this removed the ambiguity found by the Court in that case. 2008 WL 2705539 at *7 n.10. Similarly, had Erie Insurance Forms UF-2044 and UF-2047 been used here, there would be no question that Larrimore had actually selected a reduced amount of UM/UM coverage and designated the specific limits of coverage requested.

