SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSEPH R. SLIGHTS, III
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
Suite 10400
WILMINGTON, DE 19801
PHONE: (302) 255-0656
FACSIMILE: (302) 255-2274

August 29, 2011

Jeffrey M. Gentilotti, Esquire
Bifferato Gentilotti LLC
100 Biddle Avenue, Suite 100
Newark, DE 19702

Colin M. Shalk, Esquire
Casarino Christman Shalk Ransom & Doss, P.A.
405 N. King Street, Suite 300
P.O. Box 1276
Wilmington, DE 19899

Re: ***Diana Purnell-Charleston v. State Farm Fire and Casualty Co.***
C.A. No. 10C-05-243 JRS

Dear Counsel:

To follow is my decision after bench trial regarding Plaintiff's claim for reformation of her automobile insurance policy. This decision supplements my oral findings of fact as stated on the record following the conclusion of the trial on July 11, 2011.

Plaintiff, Diana Purnell-Charleston, seeks reformation of her automobile insurance policy with State Farm and Casualty Company ("State Farm") to reflect

uninsured/underinsured motorist ("UM/UIM") coverage in an amount equal to her bodily injury liability limits. She alleges that the State Farm agent who sold her the policy, Charles Redstone, failed to meet his statutory obligation to make a meaningful offer of UM/UIM coverage up to her bodily injury liability limits and that she is entitled, therefore, to have the Court reform the policy to reflect such coverage. State Farm does not deny its statutory obligation to make a meaningful offer of UM/UIM coverage equal to Plaintiff's bodily injury liability limits, nor does it dispute that reformation of Plaintiff's automobile insurance policy is the appropriate remedy should the Court determine that State Farm did not make a meaningful offer of such coverage to Plaintiff. The sole issue for the Court to determine, therefore, is whether the evidence supports Plaintiff's demand for a judgment declaring that State Farm failed to comply with its statutory obligation to make a meaningful offer of UM/UIM coverage equal to Plaintiff's bodily injury liability limits.

The parties agree that State Farm bears the burden of proof in this case.[1] To carry its burden, the insurer must demonstrate that the offer included: "(1) the cost of the additional coverage; (2) a communication to the insured which clearly offers uninsured motorist coverage; and (3) an offer for uninsured motorist coverage made

[1] *Drenth v. Colonial Penn Ins. Co.*, 1997 WL 720459, at *3 (Del. Super. Sept. 15, 1997).

in the same manner and with the same emphasis as the insurer's other coverage."[2] If the insurer cannot meet this burden, then Delaware courts treat the offer as a continuing offer for additional coverage, which the insured may accept even after the insured's accident.[3] It is presumed that the policy holder would accept this offer.[4] If no meaningful offer has been made, the Court must reform the policy to increase the policy holder's UM/UIM coverage to match her liability coverage limits.[5]

The Court made several factual findings at the conclusion of the bench trial on July 11. In summary, the Court determined that neither Ms. Purnell-Charleston nor Mr. Redstone had a clear memory of the discussion during which Mr. Redstone reviewed the various coverages available under State Farm's automobile insurance policy and Ms. Purnell-Charleston, in turn, indicated which coverages (and in what amounts) she wished to acquire. This lack of memory is not surprising given that the meeting occurred on May 14, 2007, more than four years prior to trial. Notwithstanding their general lack of memory, the Court did find that both Ms. Purnell-Charleston and Mr. Redstone had testified that Mr. Redstone reviewed the

---

[2] *Hudson v. Colonial Penn Ins. Co.*, 1993 WL 331168, at *3 (Del. Super. July 21, 1993).

[3] *Drenth*, 1997 WL 720459, at *3.

[4] *See Shukitt v. United Services Automobile Association*, 2003 WL 22048222, at * 3 (Del. Super. Aug. 13, 2003).

[5] *Id.*

Delaware Motorists' Protection Act ("Form A")[6] with Ms. Purnell-Charleston during the meeting on May 14, 2007. Beyond recalling that the form was discussed, however, the Court concluded that neither Mr. Redstone nor Ms. Purnell-Charleston were able to offer a reliable description of the specifics of their discussion.

Within Form A, State Farm outlines the available coverages in its automobile insurance program, and provides places within the form for the customer to indicate which coverages she would like to purchase and at what coverage limits. Specifically, Form A lists the following available coverages: "(1) bodily injury liability; (2) property damage liability; (3) no-fault; (4) physical damage; (5) car rental expense; and (6) uninsured motor vehicle coverage."[7] With respect to each coverage, the customer may elect the minimum limits required by law or some greater limit as specified on Form A. With regard to UM/UIM in particular, Form A states that the customer may elect "Minimum Limits ($15,000/$30,000)" or may elect to purchase additional coverage "[a]vailable in limits up to the Bodily Injury Liability Limits or $250,000/$500,000 whichever is less."[8] Also with regard to UM/UIM, Form A explains:

---

[6]Joint Ex. 4.

[7]*Id.*

[8]*Id.*

> Uninsured Motor Vehicle Coverage is not mandatory, but it is required the coverage be offered to all policy holders. This coverage protects the insured legally entitled to recover damages for bodily injury, including death, from the owner or operator of a hit and run or an uninsured motor vehicle (no liability coverage or coverage is denied) or an undersinsured motor vehicle (insured for liability but the limits are less than the limits of this coverage). This coverage includes $10,000 property damage protection for uninsured losses only, subject to a $250 deductible.
>
> . . .
>
> I [ ] understand and agree that my selection of the Uninsured Motor Vehicle Coverage as shown above, shall be applicable to the policy of insurance on the vehicle described and on all future renewals of the policy. If I have rejected coverage, such rejection shall apply to any renewal of the policy or any reinstatement, substitution, amendment, alteration, modification, transfer or replacement, unless I subsequently request such coverage in writing.[9]

According to Form A, Ms. Purnell-Charleston elected "Minimum Limits ($15,000/$30,000)" for her UM/UIM coverage and "$25,000/$50,000 Bodily Injury Limits."[10] Ms. Purnell-Charleston signed and dated Form A, albeit in the wrong signature block.[11]

Form A is persuasive evidence that Mr. Redstone did discuss the fact that UM/UIM coverage was "available [to Plaintiff] in limits up to the Bodily Injury Liability Limits" she elected to purchase. While it is true that Form A is not

---

[9] *Id.*

[10] *Id.*

[11] *See Id.*

dispositive evidence that State Farm made a "meaningful offer" of UM/UIM coverage,[12] it is certainly probative of what was discussed when Mr. Redstone met with Ms. Purnell-Charleston to discuss her automobile insurance coverages and may be considered in the mix of evidence presented during the trial. Stated differently, Form A may be placed on State Farm's side of the evidentiary scale as evidence tending to support State Farm's contention that a meaningful offer of UM/UIM coverage was made to Plaintiff.

As noted, in addition to Form A, State Farm presented the testimony of Mr. Redstone who was, at the relevant time, an insurance agent for State Farm. Mr. Redstone testified regarding his meeting with Ms. Purnell-Charleston on May 14, 2007 at the Brian Hartle Insurance Agency. Although Mr. Redstone could not recall the specifics of his conversation with Ms. Purnell-Charleston, he did testify that it was State Farm's standard practice, Brian Hartle Insurance Agency's standard practice and his own standard practice to review with automobile insurance customers all available coverages, including UM/UIM coverage. He testified that it was also his standard practice to explain to automobile insurance customers that they may

[12] *Drenth*, 1997 WL 720459, at * 2 (holding that 18 *Del. C.* § 3902(b) requires the insurer to make a "meaningful offer as UM/UIM coverage."); *Pattila v. Aetna Life & Cas. Ins. Co.*, 1993 WL 390256, at * 3 (Del. Super. Apr. 18, 1995) (holding that Insurance Commissioner Form A standing alone was not sufficient evidence to establish that the insurer made a proper offer of UM/UIM coverage).

purchase UM/UIM coverage up to the limits of liability coverage they elected to purchase. Mr. Redstone testified that he had no reason to believe that he would have deviated from his standard practice and that, although he cannot specifically recall doing so, he believes that he would have followed his standard practice during his meeting with Ms. Purnell-Charleston.

With regard to the costs of the various coverage, Mr. Redstone testified that he did not use the cost breakdown that appears on the back of Form A. Rather, it was his standard practice to "pull up" the specific and most current costs on his computer screen and then to show the screen to the customer so that he could review the costs coverage-by-coverage. He believes that he followed his standard practice during his meeting with the plaintiff. For her part, Ms. Purnell-Charleston testified that she recalled reviewing information on Mr. Redstone's computer screen, although she could not recall specifically what that information was.

Here again, Delaware case law is clear that general testimony regarding an insurance company's standard practices with regard to offering UM/UIM coverage is not sufficient to allow the insurance company to carry its burden of establishing

that a meaningful offer was made in a particular case.[13] The evidence of "routine practice" is more persuasive in this case, however, since State Farm was able to present the testimony of the agent who met directly with the plaintiff as opposed to a corporate-level or agency-level manager who could not speak to the specific interaction between the agent and customer. In this case, Mr. Redstone's testimony regarding his standard practice - - including his practices in reviewing both coverages, coverage limits and costs of coverage - - suggests to the Court that it was more likely than not that he followed his standard practice during his interaction with Ms. Purnell-Charleston.

Finally, the Court notes that other circumstantial evidence points to a conclusion that Plaintiff was offered UM/UIM coverage up to her liability coverage limits and that she knowingly rejected such coverage. Ms. Purnell-Charleston acknowledged at trial that, at the time she met with Mr. Redstone, she had just given up her automobile insurance coverage with AAA Mid-Atlantic Insurance Company ("AAA") with substantially higher limits for liability and UM/UIM coverage ($100,000/$300,000). It is reasonable to conclude from Plaintiff's election of lower

[13] *See Pattila*, 1993 WL 189473, at *3 (holding that testimony of an insurance agency's manager that the agency routinely discussed increasing limits of UM/UIM coverage with customers was not alone sufficient to carry the insurer's burden of proving that a meaningful offer of UM/UIM coverage was made); *Humm v. Aetna Life & Cas. Ins. Co.*,1994 WL 465553 (Del. Super. July 20, 1994), *aff'd*, 656 A.2d 712 (Del. 1995) (same); *Margavage v. GEICO*, 1997 Del. Super. LEXIS 228, at *5-6 (same).

limits on her State Farm automobile insurance policy (for both liability and UM/UIM) that she was seeking to pay less money for her new coverage. It is, therefore, reasonable to conclude that Ms. Purnell-Charleston made a knowing election to purchase minimum UM/UIM coverage as a means to save money.

In summary, upon considering all of the evidence, the Court finds that the following factors, in combination, make it more likely than not that Mr. Redstone made a meaningful offer of UM/UIM coverage up to the limits of liability coverage on behalf of State Farm, and that Ms. Purnell-Charleston elected to purchase the minimum limits of UM/UIM coverage: (1) Form A, signed by Plaintiff, makes clear that Plaintiff could purchase UM/UIM coverage up to the limits of liability coverage she elected to purchase; (2) Form A reflects that Ms. Purnell-Charleston elected to purchase liability coverage with limits of $25,000/$50,000 but expressly elected to purchase the minimum limits ($15,000/$30,000) of UM/UIM coverage; (3) Mr. Redstone testified that his standard practice was to review all available coverages, including the extent of UM/UIM coverage required by law, with all of his customers, including pricing for such coverages; (4) Mr. Redstone testified clearly that he would have had no reason to deviate from his standard practice when he met with Ms. Purnell-Charleston; (5) Ms. Purnell-Charleston could not definitively and reliably state that Mr. Redstone did not make a meaningful offer of UM/UIM coverage to her;

(6) Ms. Purnell-Charleston acknowledged that Mr. Redstone did review some information with her on his computer screen which is consistent with Mr. Redstone's testimony regarding his standard practice; and (7) the evidence revealed that Ms. Purnell-Charleston was attempting to save money by switching from AAA to State Farm and by lowering her coverage limits.

An insurer need not present "written verification" that enhanced UM/UIM coverage was offered to a customer in order to sustain its burden of establishing a "meaningful offer."[14] Rather, it is sufficient if, in the totality of the evidence, the insurer establishes that the insurer's offer "provided the insured with the opportunity to make an informed decision based upon the information provided."[15] Here, the preponderance of the evidence indicates that Mr. Redstone provided Ms. Purnell-Charleston with information regarding the cost of the additional UM/UIM coverage, offered her the opportunity to purchase UM/UIM coverage up to the limits of the liability coverage she had purchased, and did so in the same manner and with the same emphasis that was utilized in connection with the other offers of coverage. Accordingly, the Court finds that State Farm made a meaningful offer of UM/UIM coverage as required by Delaware law and that Plaintiff has available to her the

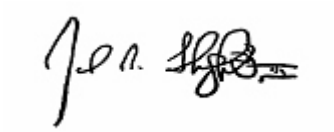
---

[14] *Margavage v. GEICO*, 1997 Del. Super. LEXIS 213, at * 4.

[15] *Margavage*, 1997 Del. Super. LEXIS 228, at * 6.

amount of UM/UIM coverage she was offered and accepted - - $15,000/$30,000.

IT IS SO ORDERED.



Judge Joseph R. Slights, III