

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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April 25, 2008

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RE: Haneef Salaam and Cedric Thomas v. Sentry/Dairyland Insurance
Civil Action No. 05C-05-333 WCC

On Plaintiff's Motion for Judgment as a Matter of Law
and/or Motion for New Trial - DENIED

Submitted: February 25, 2008

Decided: April 25, 2008

Dear Counsel:

The trial of this matter was held on January 28, 2008 and a verdict was returned in favor of the Defendant. The issue now before the Court relating to the Plaintiffs' Motion for Judgment as a Matter of Law and/or For New Trial centers around the same issue that was at the core of the dispute at that trial. That is, whether the

insurance agent had provided sufficient information to the plaintiff Cedric Thomas's mother, Victoria Thomas, who owned the vehicle involved in the accident, regarding the cost and availability of uninsured motorist coverage. The Court finds the Plaintiffs have failed to sufficiently meet their burden under either motion¹ and will deny them.

First, there is no dispute that on each occasion when Ms. Thomas met with her insurance agent to purchase the insurance or add another vehicle, uninsured motorist coverage was discussed with her. Ms. Thomas confirmed this during her testimony and the documents introduced at trial support that contention. Second, Ms. Thomas testified that this was an economically difficult time for her as she was paying college tuition, and as such, it is a fair inference for the jury to find that adding coverage at an additional cost was not something that she was particularly interested in doing.

With these facts largely undisputed, the Plaintiffs were left, in an attempt to establish their case, to argue that the specific cost of the insurance was not disclosed by the agent as the insurance documentation did not reflect the breakdown of costs to add the uninsured benefit. However, this issue became a jury question as soon as Ms. Thomas gave the following testimony:

- Q. Did you understand that if you did get uninsured motorist coverage you would have to pay extra premiums in order to?
- A. Yes, I did.
- Q. And that was what the agent told you, that it would cost?
- A. It would cost extra.
- Q. Would you agree she would tell you how much it would cost to get this coverage?
- A. I'm sure she told me, but, like I said, I couldn't remember.

¹On a motion for a new trial, a judge "should not set aside a verdict. . . unless, on review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result." *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979). On a motion for judgment as a matter of law, a judge must "view the evidence in the light most favorable to the nonmoving party and, drawing all reasonable inferences therefrom, determine if a verdict may be found for the party having the burden." *Gass v. Truax*, 2002 WL 1426537 (Del. Super. June 28, 2002).

While the Court does not dispute that at times Ms. Thomas gave responses that would perhaps conflict with the above testimony, that is not sufficient for the Court to now second guess the jury's credibility assessment or to hold their decision was against the great weight of the evidence.

This issue was fairly presented to the jury, and the respective positions of the parties were forcefully argued by counsel to them. What the plaintiffs are now asking the Court to do is to substitute its judgment for that of the jury. The Court is not willing to do so, and perhaps more importantly, if it was to independently make the decision, it would agree with the jury's assessment.

As a result, the Plaintiffs' Motions are denied.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Christy Starkey, Civil Case Manager