

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARK BANASZAK,)	
)	
Plaintiff,)	
)	C.A. No. 08C-03-022 PLA
v.)	
)	
PROGRESSIVE DIRECT)	
INSURANCE COMPANY,)	
)	
Defendant.)	

ON PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
GRANTED in part; DENIED in part
ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
DENIED

Submitted: June 12, 2009
Decided: August 17, 2009

Beverly L. Bove, Esq. and Vincent J. X. Hedrick, II, Esq., LAW OFFICE OF BEVERLY L. BOVE, Wilmington, Delaware, Attorneys for Plaintiff.

Michael C. Rosendorf, Esq., LAW OFFICES OF MICHAEL C. ROSENDORF, Stanton, Delaware, Attorney for Defendant.

ABLEMAN, JUDGE

Introduction

This is a declaratory judgment action wherein Plaintiff Mark Banaszak (“Banaszak”) seeks reformation of a motorcycle insurance policy issued by Defendant Progressive Direct Insurance Company (“Progressive”) to include underinsured motorist coverage in the amount of \$100,000.00, the liability limits under the policy. Progressive argues that it is entitled to summary judgment because Banaszak knowingly waived uninsured/underinsured (UM/UIM) motorist coverage. Banaszak has filed his Motion for Summary Judgment based upon the contention that Progressive did not satisfy its statutory affirmative duty to make a meaningful offer to him of additional uninsured motorist coverage. For the reasons discussed herein, the Court concludes that Banaszak rejected additional UM/UIM coverage, but that Progressive supplied Banaszak with policy documents that would have misled him or any other reasonable customer into believing that his policy included the statutory minimum UM/UIM coverage. Accordingly, Progressive’s Motion will be **DENIED**, and Banaszak’s policy will be reformed to reflect UM/UIM coverage in the amount of the statutory minimum of \$15,000.00 per person/\$30,000.00 per accident.

Facts and Procedural Background

On May 26, 2007, Banaszak was severely injured as a result of an accident with a motorist who was underinsured at the time of the collision. Banaszak was riding his motorcycle, for which he had obtained a liability policy from Progressive in July 2005. The parties have stipulated that the damages exceed the \$100,000.00 liability limits of Banaszak's policy.

The policy that Banaszak purchased provided for liability limits of \$100,000.00 per person/\$300,000.00 per accident, as well as personal injury protection of \$15,000.00 per person/\$30,000.00 per accident. It did not include coverage for uninsured/underinsured bodily injury. Since Banaszak's damages exceeded the tortfeasor's \$15,000.00 minimum liability coverage, Banaszak is presently seeking underinsured coverage from his own insurer. Relying upon the fact that Banaszak rejected in writing any UM/UIM coverage, Progressive has refused to reform the insurance policy, claiming that it has fulfilled its obligation under 18 *Del. C.* § 3902(a), the subsection that it contends is applicable.

The sequence of events by which Mr. Banaszak purchased his insurance policy from Progressive is reflective of the high-tech world in which we live. Despite the extensive briefing, however, the questions of whether Progressive made a meaningful offer of additional UM/UIM

coverage and whether Banaszak affirmatively rejected such an offer are not the appropriate focus of the Court's analysis in this case. Rather, the Court must consider whether the communications between the parties reasonably led Banaszak to believe he was rejecting the minimum UM/UIM coverage automatically provided by law unless the insured takes affirmative steps to reject it in writing.

Banaszak's first communication with Progressive was initiated by him when he completed an on-line application obtained from Progressive's website to receive information regarding insurance on a motorcycle that he was contemplating purchasing. According to Plaintiff, he went on the Internet for the purpose of obtaining a quotation but did not actually formalize the purchase of a policy electronically. Somewhat surprisingly, Progressive has no record (or at least it was unable to provide one to the Court at its request) of the actual on-line communications that occurred between the parties. According to Banaszak, no UM/UIM coverage was offered to him that was equal to his liability coverage through his Internet contacts with Progressive. After the initial electronic contact, Banaszak called Progressive by telephone, stating that he was "interested in getting a quote and possibly getting some motorcycle insurance." The agent with whom Plaintiff spoke, identified only as "Mike," was apparently able to

retrieve the on-line information that Banaszak had preliminarily provided and the following dialogue occurred between Banaszak and Progressive's agent:

Mike: Okay. So you do have your bodily injury, guest passenger liability set at \$15,000 per person up to \$30,000 per accident.

Mr. Banaszak: Right.

Mike: And up to \$10,000 of property damage liability.

Mr. Banaszak: Okay.

Mike: There is no uninsured motorist or uninsured motorist property damage selected.

Mr. Banaszak: Okay.

Mike: Last time you did the quote. But you have personal injury protection, which is required in Delaware, \$15,000 per person not to exceed \$30,000 per accident, which is unrestricted.

Mr. Banaszak: Right.

Mike: Let's see. Not extra medical payment coverage. You have the collision deductible set at \$500 and comprehension deductible at \$500. Right?

Mr. Banaszak: Right.

Mike: Okay. You're just going to go with comprehensive and collision?

Mr. Banaszak: From what I remember, yeah.

Mike: Yeah. No problem.¹

A review of the entire transcript of the conversation reveals that although the two discussed all sorts of unrelated matters, including their wives and mid-life crises, there was never any further mention of UM/UIM coverage, with the exception of Mike's comment that "I think if it was 100,

¹ Docket 27, Ex. A, at 9:13-10:15.

300 for liability and keeping everything else the same like personal injury protection, uninsured and everything.” Moreover, while the question of UM/UIM coverage was not again mentioned or even suggested as a safe idea, Mike did take the time to suggest and even encourage the plaintiff to purchase additional liability insurance:

Mike: But even if you bumped up to 100, 300 for liability, the premium difference would only be like 33 bucks for the year.

Mr. Banaszak: Wow. Really?

Mike: Yeah. 100, 300 coverage as opposed to 15, 30.

Mr. Banaszak: And the 100, 300 is the liability coverage.

Mike: Right. For what you cause—other people’s injuries that you—any accidents that you caused.

Mr. Banaszak: Hell, yeah. For 33 bucks that would be well worth it.

Mike: The down payment would be like 95.25.

Mr. Banaszak: Yeah. That’s probably a better idea then. Because that’s usually where you get burned the most on that.

Mike: Yeah. If you hit somebody or cause injuries, they come back.

Mr. Banaszak: Right.

Mike: 15, 30, Delaware has very low state minimums. It doesn’t even cover somebody[’s] broken finger.

Mr. Banaszak: Yeah.

Mike: You know.

Mr. Banaszak: Exactly. That’s definitely worth 30 bucks. Hell.

Mike: Yeah. And like I said, the uninsured and the personal injury—if you have good health coverage, generally, that pays primary.²

² *Id.* at 17:14-19:2.

Mike then advised that he would be sending out a contract package in the mail that would include a few items requiring Banaszak's signature or verification. During the entire telephonic conversation, there was no offer of UM/UIM coverage and no discussion at all concerning Banaszak's rejection of this coverage.

Policy documents were thereafter mailed to Banaszak for his signature with the coverages that he had earlier requested already filled in by Progressive. In the section summarizing and outlining the coverage afforded to Banaszak under the policy, the columns for "Uninsured/Underinsured Motorist Bodily Injury" and for "Uninsured/Motorist Property Damage" are both labeled as "REJECTED" in type that was pre-inserted by Progressive before the documents were mailed to Banaszak.³

Banaszak also received a six-page document, the first of which stated "Important Information Regarding Coverage Selections." Because the language describing the UI/UIM coverage contained in this document is critical to the issue in this case, it bears quoting in its entirety:

Important Information Regarding Your Coverage Selections:
As required by law, we offer the following coverages for your protection:
Uninsured/Underinsured Motorist Coverage

³ Docket 11, Ex. 1A.

Uninsured Motorist Coverage, if purchased, protects you, your resident relatives, and occupants of a covered vehicle if any sustain bodily injury, including any resulting death, or incur property damage in an accident in which the owner or operator of a motor vehicle who is legally liable:

1. does not have insurance;
2. has insurance, but:
 - a. coverage is denied;
 - b. the company is insolvent; or
 - c. its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which a covered vehicle is principally garaged; or
3. cannot be identified and causes an accident resulting in bodily injury or property damage.

A \$250 deductible will apply for property damage claims.

Underinsured Motorist Bodily Injury Coverage, if purchased, protects you, your resident relatives, and occupants of a covered vehicle if any sustain bodily injury, including any resulting death, in an accident in which the owner or operator of a motor vehicle who is legally liable does not have enough insurance.

By law, your motor vehicle insurance policy must provide Uninsured Motorist Coverage with minimum limits of \$15,000 for bodily injury or death each person/\$30,000 bodily injury or death each accident/\$10,000 property damage each accident. Additional limits of coverage are available for a modest increase in premium. You may purchase additional limits of Uninsured/Underinsured Motorist Coverage up to limits selected for your Liability Coverage.

Available limits of coverage and the associated premium are as follows (split limits shown as: bodily injury or death each person/bodily injury or death each accident/property damage each accident)⁴

⁴ Docket 11, Ex. 3.

On page 3 of the materials, UI/UIM vehicle coverage is pre-marked “NONE,” and a block provided to signify rejection of this coverage had already been pre-checked by the insurance company.

Finally, the last page of the informational package provided to Banaszak consisted of the “form furnished by the insurer describing the coverage being rejected.” Under “required action,” Banaszak was instructed to “sign, date and return the enclosed form(s)” and to “sign, date and return the enclosed Uninsured/Underinsured Motorist Coverage Form.” It is undisputed that Plaintiff signed the form verifying his insurance purchase on July 8, 2005.

The policy insuring Banaszak’s 2004 Honda motorcycle became effective on July 2, 2005. Within ten months of his purchase of the vehicle, Banaszak was involved in a serious accident when an underinsured motorist failed to stop at a red light and collided with his bike. The parties agree that Banaszak’s damages exceed the limits of the tortfeasor’s liability policy, as well as the \$100,000.00 liability limits of Banaszak’s Progressive Direct Policy.

Banaszak has filed this action seeking to reform his insurance policy to increase his UM/UIM coverage up to the limits of his liability coverage. Earlier in this litigation, the parties filed cross-motions for summary

judgment. At that time the facts were not as fully developed as the Court deemed necessary and therefore both motions were denied, with leave to refile for summary relief at the conclusion of discovery. In particular, the Court believed then that the Internet communications between the parties would shed some light on the process whereby the policy was procured. The on-line communications were never provided to the Court, as Progressive claims that it has no documentation of them.⁵ In its renewed Motion for Summary Judgment, however, Progressive was able to provide additional factual information through its submission of a certified transcript of the July 1, 2005 telephone conversation between Plaintiff and defendant's agent "Mike," during which the terms of Banaszak's insurance policy were discussed.

Now before the Court is a second round of summary judgment motions. Defendant has renewed its Motion for Summary Judgment, while Plaintiff has filed his own Summary Judgment Motion seeking relief. The parties concede that there are no genuine issues of material fact and that, even with a scheduled trial date set shortly, the issues presented by these motions are appropriate issues of law for decision by the Court.

⁵The Court considers it almost inconceivable that Progressive would not be able to provide the material on its website whereby it solicits motorists to purchase insurance from it.

Contentions of the Parties

In support of his motion for summary judgment, plaintiff Banaszak asserts that the undisputed facts establish that Progressive did not clearly communicate any offer of additional underinsured motorist coverage to him so as to constitute an adequate and meaningful offer as required by 18 *Del. C.* § 3902(b). Therefore, he submits that this Court must treat the offer as a continuing offer for additional coverage, which may be accepted by the insured even after he has been injured in an accident. Thus, he contends that the Court must reform the policy to increase his UM/UIM coverage to match his liability coverage.

Progressive does not suggest that any meaningful offer of increased coverage was ever conveyed to Banaszak, but relies instead upon the distinction between subsections (a) and (b) of Section 3902, and asserts that this case does not implicate the burden placed upon the insurer under 3902(b) to make a meaningful offer. Instead, it contends that this case falls squarely within subsection (a) of the statute, since the policyholder has rejected uninsured motorist coverage altogether. Thus, Progressive submits that Plaintiff's argument misses the point when it relies entirely upon subsection (b).

Standard of Review

The instant cross-motions for summary judgment are within the purview of Superior Court Civil Rule 56(h), which provides as follows:

Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.

Because both parties agree that there are no genuine issues of material fact remaining to be litigated, the Court's decision as to the merits of their motions will be made on the record.

Discussion

In a sense, the respective arguments of the parties in these motions are like the proverbial "ships passing in the night." On the one hand, the plaintiff argues that Progressive did not meet its burden under 18 *Del. C.* § 3902(b) of making a meaningful offer of underinsured motorist coverage, without addressing the language of Section 3902(a), which imposes no such duty upon the insurer when the insured rejects any amount of coverage whatsoever. Progressive, on the other hand, implicitly concedes the absence of an offer and acceptance but contends instead that the duty to extend a meaningful offer of additional coverage is simply not imposed upon it in a case where the insured has totally rejected any UM/UIM coverage. In

essence, Progressive does not even make an effort to analyze the telephonic discussion between the parties nor any of the documents sent to Banaszak, taking the position that under Section 3902(a) it does not matter whether UM/UIM coverage was discussed meaningfully, or even at all, because subsection (a) clearly does not impose such a requirement. As a result, the Court is left to its own resources in analyzing whether the facts of this case demonstrate compliance with Section 3902(a) exclusively on the basis of the signed waiver.

The relevant portions of 18 *Del. C.* § 3902, the Delaware Uninsured and Underinsured Motor Vehicle Insurance Coverage Statute, are as follows:

(a) No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle shall be delivered or issued for delivery in this State with respect to any such vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or hit-and-run vehicles for bodily injury, sickness, disease, including death, or personal property damage resulting from the ownership, maintenance or use of such uninsured or hit-and-run motor vehicle.

(1) No such coverage shall be required in or supplemental to a policy when rejected in writing, on a form furnished by the insurer or group of affiliated insurers describing the coverage being rejected, by an insured named therein, or upon any renewal of such policy or upon any reinstatement, substitution, amendment, alteration, modification, transfer or replacement thereof by the same insurer unless the coverage is then requested in writing by the named

insured. The coverage herein required may be referred to as uninsured vehicle coverage.

* * *

(b) Every insurer shall offer to the insured the option to purchase additional coverage for personal injury or death up to a limit of \$100,00 per person and \$300,000 per accident or \$300,000 single limit, but not to exceed the limits for bodily injury liability set forth in the basic policy. Such additional insurance shall include underinsured bodily injury liability coverage

The Delaware Supreme Court has interpreted 18 *Del. C.* § 3902(a) and (b) as setting forth two different procedures for the provision of insurance in addition to the primary liability coverage purchased by an insured.⁶ Subsection (a) imposes a duty on the insurance carrier who issues a motor vehicle liability coverage policy to include in the policy a minimum level of uninsured coverage that the insured will be deemed to have accepted, unless he rejects the coverage in writing. Subsection (b) imposes a further duty on the insurance carrier to offer UM/UIM coverage in addition to that mandated by subsection (a). The text therefore clearly shows that there is a difference between the coverage mandated by each subsection.

The mechanism under subsection (a), by which a motor vehicle liability insurance policy is issued with or without the minimum uninsured coverage, does not therefore require the traditional offer and acceptance

⁶*Humm v. Aetna Cas. and Sur. Co.*, 656 A.2d 712, 714 (Del. 1995).

normally necessary to form a contract.⁷ Instead, the additional minimum uninsured coverage is automatically included in the primary liability policy as default coverage with the onus placed on the insured to execute a written rejection of that coverage.

The Delaware Supreme Court in *Humm v. Aetna Casualty and Surety Co.* explained why there exist two distinct legislative purposes underlying the two subsections:

. . . The intent of subsection (a) is to provide that “any individual who does not expressly opt out [of the minimal uninsured coverage] in writing will be assured of the same minimum pool of resources from which to seek compensation for injuries inflicted by an uninsured motorist as he would have in the event of injuries inflicted by a person having the minimum [liability] coverage permitted under Delaware law[.]” Thus subsection (a) is designed to promote a mandatory minimum of uninsured motorist coverage.

The intent of subsection (b), however, is to assure that insureds have the right to purchase additional uninsured/underinsured coverage beyond the minimum provided in subsection (a), and assure that they are aware of the extra coverage. This Court has approved the *O’Hanlon* court’s reasoning that subsection (b) is a “disclosure mechanism [that] promoted informed decisions on automobile insurance coverage.” The focus of subsection (b) is to make additional coverage available above the basic minimum uninsured coverage and then allow the insurer and the insured to engage in traditional means of contracting; that is, by an offer and an acceptance. Conversely, the focus of subsection (a) is to

⁷ *Id.* at 715.

change the traditional means of contracting by requiring a certain coverage unless the insured rejects it in writing.⁸

The issue in this case is not, as the plaintiff has framed it, whether his policy should be reformed so that his uninsured motorist coverage limits match his bodily injury liability coverage limits because of the alleged failure of Progressive to have made a meaningful offer of additional uninsured motorist coverage as required by 18 *Del. C.* § 3902(b). Rather, the focus of the inquiry now before the Court is whether Plaintiff is entitled to reformation under Section 3902(a) when he has, in writing, rejected any UM/UIM coverage, and whether the same affirmative duty imposed upon the insurance company in 3902(b) is also required under 3902(a).

Progressive's sole argument in this case is premised upon its calling the Court's attention to the distinction between subsections (a) and (b) of Section 3902 and the differing requirements imposed in those sections. In so doing, Progressive assumes that in the case of signed rejection of any UM/UIM coverage by the insured, its duty under the statute has been fulfilled without any oversight by the Court for the manner in which Plaintiff's signature was obtained, the misleading literature that was provided to the insured to obtain his signed rejection, the pre-checked forms

⁸ *Id.* at 716 (citations omitted).

that were completed, or the legislative policy underlying the statute as a whole.

To be sure, Progressive is correct in its assertion that this case falls under subsection (a), not (b), and that the myriad of cases upon which Banaszak relies to interpret the requirement of a meaningful offer of additional UM/UIM coverage simply do not apply in this instance. But the Court's conclusion that this case falls within the ambit of subsection (a) rather than (b) of Section 3902 does not end the inquiry. Progressive still has a duty under subsection (a), albeit a different one, to furnish a form "describing the coverage being rejected."⁹ And while neither party has argued the sufficiency of the language in the packet mailed to Plaintiff, the Court is obliged, in the context of this case, to review the text for the purpose of determining whether the plaintiff had the facts reasonably necessary for him to have been adequately informed to make a rational and meaningful decision. In essence, then, the Court disagrees with the insurer's blanket assumption that, in the case of a signed rejection of any UM/UIM coverage, it has no further duty under the statute to assure that the rejection is based upon a forthright and clear explanation of what is being rejected.

⁹ See 18 Del. C. § 3902(a)(1).

Having carefully reviewed the relevant documents, the Court finds that the literature that was sent to Banaszak was ambiguous at best, and deliberately misleading at worst. Since Progressive's package did not accurately and forthrightly explain the consequences of Banaszak's signature on the dotted line, and misled him into believing that at least minimum coverage would be *provided* by law, the plaintiff's signed rejection of coverage is invalid and he is entitled to reformation of the policy to provide him with the minimum coverage limits of \$15,000.00. In the Court's judgment, this result is appropriate in light of the insurance carrier's overall duty of good faith and the general principle that, if an insurance contract is ambiguous, it must be construed against the insurance company that drafted it.¹⁰

The primary reason for this finding is that the information packet contains an unfortunate choice of words that lures the insured into believing that the policy will automatically provide the basic minimum UM/UIM coverage because such coverage is required by law. Page 1 contains the following:

Underinsured Motorist Bodily Injury Coverage, if purchased, protects you, your resident relatives, and occupants

¹⁰ See, e.g., *Pacific Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1256 & n.37 (Del. 2008).

of a covered vehicle if any sustain bodily injury, including any resulting death, in an accident in which the owner or operator of a motor vehicle who is legally liable does not have enough insurance.

By law, your motor vehicle insurance policy *must provide* Uninsured Motorist Coverage with minimum limits of \$15,000 for bodily injury or death each person/\$30,000 bodily injury or death each accident/\$10,000 property damage each accident. Additional limits of coverage are available for a modest increase in premium. You may purchase additional limits of Uninsured/Underinsured Motorist Coverage up to limits selected for your Liability Coverage.¹¹

The foregoing language, when juxtaposed against the first sentence on that same page, which states “as required by law, we *offer* the following coverages for your protection” leaves the reader to assume that the minimum coverage is built into every policy—or “provided” because the law in Delaware requires it. And, while the Webster’s Dictionary definition of “provide” technically includes “to make available,” the more commonly accepted meaning is “to give or supply.” In the Court’s judgment, the deficiency in this description is not insignificant because any individual, other than the most exacting consumer, would be more likely than not to assume that the minimum of \$15,000.00/\$30,000.00 UM/UIM coverage is automatically “provided” in every Delaware policy rather than just “offered” for purchase. And, while the Court agrees that Progressive does not have to

¹¹ Docket 11, Ex. 3 (emphasis added).

make a “meaningful offer” of additional UM/UIM under subsection (a) as it does regarding the minimal UM/UIM coverage in subsection (b), it nevertheless cannot mislead or confuse the policyholder by the use of conflicting terminology that suggests coverage is not just offered, but actually furnished.

The Court’s decision here is consistent with the policy considerations that prompted the passage of the statute in the first place. The legislative purpose embodied in Delaware’s uninsured motorist statute is the requirement that Uninsured Motorist Coverage be available for the protection of innocent persons from the negligence of an unknown or financially irresponsible driver.¹² Indeed, the Delaware Supreme Court has, on several occasions, emphasized that the intent of Section 3902 (both subsections (a) and (b)) is to assure that uninsured motorist coverage be available to all members of the public, and any efforts by insurance companies to reduce, limit, or restrict such coverage are frequently invalidated.¹³ For example, in *Frank v. Horizon Assurance Co.*, the Supreme Court stated that “[i]nsurance policy provisions designed to reduce

¹²See, e.g., *Frank v. Horizon Assurance Co.*, 553 A.2d 1199, 1202 (Del. 1989); *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670, 672 (Del. 1978).

¹³*Humm*, 656 A.2d at 716; *Frank*, 553 A.2d at 1202; see also *Cropper v. State Farm Mut. Auto. Ins. Co.*, 671 A.2d 423, 426-27 (Del. Super.), *aff’d*, 676 A.2d 907 (Del. 1995).

or limit the coverage to less than that prescribed by the Delaware statute, 10 *Del. C. § 3902*, are void.”¹⁴ In invalidating an “owned-but-uninsured vehicle” exclusion, the Court relied for its rationale upon language from a New Jersey Supreme Court decision involving similar circumstances:

Selected [insurance company] has drafted an insurance policy which by its terms provides coverage for members of the named insured’s household. It has conceded that the claimants here all qualify as insureds under the terms of the insurance contract. Defendant’s attempt to restrict the scope of its liability under the insurance contract, which it has made available to its insureds, weakens the statutory objective of encouraging full protection against uninsured and finally irresponsible motorists. Its attempted evasion of its contractual liability is therefore repugnant to the intent of the Legislature.¹⁵

And, as the Delaware Supreme Court so aptly stated the statutory purpose in the *Frank* case:

[T]he public policy underlying section 3902 is to permit an insured to protect himself from an irresponsible driver causing injury or death. This public policy is achieved by making available coverage that mirrors his liability insurance through the purchase of uninsured motorist coverage. Again, this policy goal is not advanced by restricting, in the policy providing the insurance, the class of persons to be protected.¹⁶

¹⁴ *Frank*, 553 A.2d at 1201.

¹⁵ *Id.* at 1202 (quoting *Fernandez v. Selected Risks Ins. Co.*, 412 A.2d 755, 757 (N.J. 1980)).

¹⁶ *Id.* at 1205 (citation omitted).

In this case, Progressive has correctly focused the Court's attention on subsection (a) of Section 3902 of Title 18 and has properly identified the duty to provide to the purchaser of a motor vehicle liability insurance policy certain minimal uninsured motor vehicle coverage. Progressive has further fulfilled the requirement of assuring any rejection of the coverage be in writing. In the Court's judgment, however, neither the telephonic conversation that Plaintiff had with a Progressive agent, nor the pre-checked form already completed by the insurer, nor, most importantly, the language of the explanatory documentation provided to Plaintiff, adequately fulfilled Progressive's duty of good faith.

Therefore, the Court will reform the contract so as to provide the minimum level of UM/UIM coverage of \$15,000.00/\$30,000.00. It specifically declines, however, to reform the contract to expand coverage to the limits of Banaszak's basic policy as the facts of this case do not trigger the requirement of an offer and acceptance as provided under subsection (b) of Section 3902 of Title 18.

Conclusion

For the foregoing reasons, Banaszak's Motion for Summary Judgment is **GRANTED in part and DENIED in part**, and his policy with Progressive is reformed to provide UM/UIM coverage in the amount of \$15,000.00/\$30,000.00. Progressive's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

/s/

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Beverly L. Bove, Esq.
Vincent J.X. Hedrick, II, Esq.
Michael C. Rosendorf, Esq.
Angus R. Everton, Esq.