IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MICHELLE JOHNSON,	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 03C-09-222 WCC
	)	
AIG INSURANCE COMPANY,	)	
Defendant.	)	

Submitted: March 31, 2004
Decided: July 26, 2004

Upon Defendant' s Motion for Summary Judgment. Granted

MEMORANDUM OPINION

Donald R. Kinsley, Esquire, Marks, O' Neill, O' Brien & Courtney, P.C., 913 North Market Street, #800, Wilmington, Delaware 19801. Attorney for Defendant.

Kenneth M. Roseman, Esquire, Ciconte, Roseman & Wasserman, 1300 King Street, Wilmington, Delaware 19801. Attorney for Plaintiff.

CARPENTER, J.

I. Introduction

This suit involves Plaintiff Michelle Johnson's ("Plaintiff") claim for uninsured motorist benefits following a motor vehicle accident with an unknown motor vehicle operator. At the time of the accident, Plaintiff had an insurance policy with Defendant AIG Insurance Company ("Defendant"). Presently before the Court is Defendant's Motion for Summary Judgment pursuant to Superior Court Civil Rule 56. Upon review of Defendant's Motion, Plaintiff's Response and arguments made at the hearing on this Motion, it appears to this Court that Defendant's Motion should be **GRANTED**.

II. Background

On February 14, 2002, Plaintiff applied for insurance through Delaware's "assigned risk plan" as established by Title 18, section 2527 of the Delaware Code.[1] On the assigned risk application, Plaintiff specifically rejected uninsured motorist coverage on the bottom of the first page, where it states "Uninsured Motorist" and

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[1]Section 2527 provides,

> [t]he [Insurance] Commissioner of Delaware shall promulgate the necessary regulations to effect (1) an equitable apportionment among all the insurers writing automobile insurance in . . . [Delaware] of insurance which shall be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods, (2) reasonable rates for such insurance, and (3) such other rules as are necessary to effect and maintain an assigned risk plan.

DEL. CODE ANN. tit. 18, § 2527 (2004).

two boxes are checked, one stating "Reject Uninsured/Underinsured Motorist Coverage" and the other stating "Reject Loss of Use Coverage."[2] Moreover, on Form A, which accompanied the insurance application, Plaintiff indicated that she rejected Uninsured/Underinsured Motorist Coverage by checking the box at item number four, which stated, "I want . . . to reject this coverage entirely."[3] The Plaintiff purchased the basic liability coverage of $15,000/$30,000, property damage of $10,000 for each accident and basic personal injury protection of $15,000/$30,000 with a $500 deductible. The annual premium was $1,100 and the Plaintiff submitted $278 with the application. Thereafter, Plaintiff's assigned risk plan application was assigned to Defendant.

On July 4, 2002,[4] Plaintiff was the operator of her motor vehicle and was involved in an accident with another vehicle that was operated by an unknown person. At the time of the accident, Plaintiff's policy with Defendant was in effect and Plaintiff initiated this suit asserting coverage under the policy. Defendant seeks summary judgment against Plaintiff because as Defendant alleges, Plaintiff

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[2] *See* Defendant's Motion for Summary Judgment, Ex. B.

[3] *See id.*

[4] In the Complaint, Plaintiff alleged incorrectly that the accident occurred on October 28, 2002. The correct date of the accident is July 2, 2002. *See* Defendant's Motion for Summary Judgment, Ex. A (police report).

sufficiently rejected uninsured motorist coverage on the assigned risk application and as a consequence, Plaintiff cannot recover uninsured motorist benefits. In response, Plaintiff argues that while she rejected the uninsured motorist coverage, she did so without being meaningfully informed of the cost of that coverage. Therefore, Plaintiff contends that Defendant failed to meet the requirements of Title 18, Delaware Code, section 3902(a) relying upon the "meaningful offer" language found in *Mason v. United States Automobile Association.*[5]

III. Standard of Review

Summary judgment is appropriate when the moving party has shown there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.[6] In considering such a motion, the Court must evaluate the facts in the light most favorable to the non-moving party.[7] Summary judgment will not be granted when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.[8]

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[5] 697 A.2d 388 (Del. 1997).

[6] *See Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

[7] *See id.*

[8] *See Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962).

IV. Discussion

Section 3902(a) of Title 18 states:

> (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 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 . . .[9]

The purpose behind subsection (a) is to provide that any individual who does not expressly opt out of the uninsured coverage in writing will be assured of at least a minimum pool of resources from which to seek compensation for injuries inflicted by an uninsured motorist equal to the comprehensive liability coverage in that person's policy.[10] The Plaintiff argues that the purpose of this subsection will be negated when the offer of uninsured motorist coverage does not include a reasonable

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[9] DEL. CODE ANN. tit. 18, § 3902(a)(1) (2004).

[10] *See Humm v. Aetna Cas. & Sur. Co.,* 656 A.2d 712 (Del. 1995).

explanation of the cost of that coverage so that the consumer can make an informed decision.

Plaintiff's argument relies heavily on the Delaware Supreme Court decision, *Mason v. United States Automobile Association* where the court held, in part, that under Title 18, § 3902(b), an insurer has a duty to make a meaningful offer of additional uninsured motorist coverage and that duty is not met where the language detailing the nature and availability of that coverage was not highlighted nor in a separate section within the document and where no oral representations as to the nature and availability of uninsured motorist coverage were made.[11] There, the court explained that elements of an offer are as follows: (1) an explanation of the cost of the coverage, and (2) a communication that clearly offers the specific coverage in the same manner and with the same emphasis as was on the insured's other coverage.[12]

However, the court's decision in *Mason* is distinguishable from the instant facts on several grounds. First, the court in *Mason* considered the affirmative duties imposed on an insurance carrier by § 3902(b), as opposed to this case where the Court is asked to determine the affirmative duties imposed on an insurance

[11] *See Mason*, 697 A.2d at 394.

[12] *Id.* at 393 (citing *Bryant v. Federal Kemper Ins. Co.*, 542 A.2d 347, 351 (Del. 1988)).

carrier pursuant to § 3902(a). Subsection (b) imposes a significantly different obligation on the insurance carrier, as this section of the statute is predicated on the belief that there is an existing relationship between the insured and its insurance company. Secondly, as previously mentioned, in *Mason*, the insured obtained insurance from USAA through traditional means, whereas here, the Plaintiff obtained insurance through an assigned risk plan. This difference is also significant. In a traditional relationship, the customer applies for and obtains insurance directly from an insurance company and there is an opportunity for the customer and insurance company to communicate prior to the issuance of the policy. The relationship between an insurer and an insured under an assigned risk plan is vastly different because an assigned risk plan insurer has no contact with the insured prior to the policy going into effect. In fact, the insurer is not aware of the insured's existence until the Insurance Commissioner notifies the insurance company of the assignment. When the insured completes the assigned risk plan application, the coverage goes into effect, but the insurance company is not designated until some time thereafter. In other words, there is no business/consumer relationship between the parties at the time the application is made, and once assigned, the company is obligated to write that insurance.

Finally, and perhaps most significant, subsection (a) in the Court' s opinion merely reflects a legislative mandate that if liability automobile insurance is written by a company, it is legally obligated to include, unless waived by the insured, a minimum threshold of uninsured motorist coverage. If this occurs, the company has fulfilled its responsibility under this section of the statute. It does not require an " offer" like subsection (b) nor a detailed listing of the cost of the various insurance coverages available to the insured. While perhaps it would be a benefit to the consumer if such pricing notice was required, the Court can find no support for imposing such a requirement in the absence of a clear legislative mandate to do so.

This is particularly true as to insurance written under the assigned risk program. As an outgrowth of the no fault insurance legislation, it provides a mechanism for an individual who is unable to obtain insurance through traditional means to apply through the assigned risk program and in effect be assigned an insurance company without knowledge or input as to the identify of that company. For the companies, it is simply a cost of doing business and for writing insurance in this state, but for the insured, it is in all likelihood the only way for them to obtain insurance so they can legally operate a motor vehicle. Because of the risks associated with these " non-traditional" drivers, it would not be unusual for an individual to waive the uninsured coverage simply to assist in reducing the overall

cost of this very expensive insurance. It appears from the limited facts available to the Court that this is likely what occurred here. Unfortunately for Ms. Johnson, her decision has now placed her in a difficult position as coverage is not available. While the Court can sympathize with her plight, it cannot provide relief simply because it is sympathetic to her situation nor can it interpret the law simply to minimize her unfortunate error in judgment.

As such, this Court holds that § 3902(a) simply requires that uninsured coverage be included in insurance written by a carrier unless specifically waived in writing by an applicant. Why one decides to waive the coverage or their knowledge of its costs simply is not relevant.

V. Conclusion

Therefore, for the reasons stated above, the Defendant's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.