IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DAVID SAMMARCO,	)	
Plaintiff,	)	
	)	
v.	)	C.A. 04C-07-112 PLA
	)	
USAA CASUALTY INSURANCE COMPANY,	)	
	)	
Defendant.	)	

Submitted: October 20, 2004
Decided: October 20, 2004

UPON DEFENDANTS'
MOTION FOR JUDGMENT ON THE PLEADINGS
GRANTED

Bernard A. Van Ogtrop, Esquire, Seitz, Van Ogtrop & Green, P.A., Wilmington, Delaware, Attorney for Plaintiff

Stephen P. Casarino, Esquire, Casarino, Christman & Shalk, Wilmington, Delaware, Attorney for Defendants

ABLEMAN, JUDGE

ORDER

On this 20th day of October, 2004, it appears to the Court that:

1. Plaintiff David Sammarco was involved in a motor vehicle accident with an uninsured motorist ("UM"). Sammarco's UM coverage with Defendant USAA Casualty Insurance Company ("USAA") amounted to less than the damages that he sustained in the accident. Sammarco brought this action, claiming that USAA violated 18 *Del. C.* § 3902(b) by failing to inform him, in a meaningful way, that he had the option to purchase additional UM coverage up to his regular policy limit.

2. USAA agrees that it did not properly inform the plaintiff of his right to purchase additional UM coverage, and that reformation of the insurance contract between the parties is warranted. The only question is how much additional coverage Sammarco is entitled under the statute. Sammarco claims that he should receive UM coverage equal to his base policy limit of $300,000 per person, $500,000 per incident. USAA argues that the statute limits mandatory UM insurance, including that required by contract reformations like this one, at $100,000 per person, $300,000 per incident.

3. 18 Del. C. § 3902(b) reads as follows:

> Every insurer shall offer to the insured the option to purchase additional coverage for personal injury or death up to a limit of $100,000 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.

The statute is plainly worded and easily understandable; mandatory UM insurance is limited to $100,000/$300,000. The statute does not, as Sammarco argues, say that insurance contracts must be reformed to the maximum UM coverage offered in any of the insurer's policies. Nor does it say that carriers must offer to match in UM insurance what the insured has chosen to purchase in bodily injury coverage if that coverage is greater than $100,000/$300,000. Indeed, it is difficult to imagine how the General Assembly could have more clearly indicated its intention to create a cap than by using the phrase "up to a limit of."

4. If the unequivocal language of the statute were not enough, there is also Supreme Court precedent directly on point. In *USAA v. Knapp*[1], a case involving nearly identical facts and this same insurance company, the Supreme Court held that, "[t]he statute, in plain language, requires insurers to offer UM/UM coverage 'up to a limit of' $100,000/$300,000 or $300,000 for single limit coverage (or such lesser amount as are contained in the basic policy)."[2] The Supreme Court reversed the trial court's finding that the statute required the carrier to match the insured's greater bodily injury policy, the exact argument that Sammarco makes here.[3]

[1] 708 A.2d 631 (Del. 1998).
[2] *Id*.
[3] *See also McKamey v. Nationwide Mutual Insurance Company*, 1999 WL 743561 (Del. Super. 1999) at *2 (finding that *Knapp* established the maximum mandatory UM coverage that insurers must offer to be $100,000/$300,000.)

5. Sammarco offers only two cases that he believes to be contrary, both of which are inapposite. In *Humm v. Aetna Casualty and Surety Company*[4], the Supreme Court upheld the Superior Court's determination that § 3902 parts (a) and (b) had different purposes and altered the normal form of contracting, via offer and acceptance, in different ways. USAA admits that it failed to properly offer Sammarco additional UM insurance, making this interpretation of the contractual process irrelevant. Moreover, the Supreme Court again reaffirmed the statutory maximums at issue here, saying that "[§ 3902] (b) requires the availability of additional uninsured/underinsured coverage between the minimum required by [subsection] (a) and the lesser of $100,000/$300,000, or the limits of the basic liability policy."[5]

In *Mason v. USAA*[6], the Supreme Court reversed the Superior Court's grant of summary judgment to the defendant. The Supreme Court found that the defendant's frequent mailings to the plaintiff did not constitute offers to increase his UM coverage within the meaning of § 3902. The Court did not, however, find that this fact meant that the plaintiff should be entitled to the maximum amount of UM coverage that he could have purchased from USAA had he been properly informed. Mr. Mason had only sued to reform the contract to the clear statutory

[4] 656 A.2d 712 (Del. 1995).
[5] *Id*. at 716.
[6] 697 A.2d 388 (Del. 1997).

maximum of $100,000/$300,000, so a further increase was not at issue. If it were, it seems reasonable to assume that the Supreme Court would have acted in accordance with the plain language of the statute, and its own case law, to reject the claim.

6. Both the General Assembly and the Delaware Supreme Court have made it unmistakably clear that the maximum UM coverage required by §3902(b) is $100,000/$300,000. Since there are no issues outstanding in the case beyond this simple question of law, Sammarco has failed to state a claim upon which relief can be granted.[7] Defendant's Motion For Judgment On The Pleadings is therefore **GRANTED**, provided that USAA reforms the contract, as it has already agreed to do, to $100,000/$300,000.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Prothonotary

[7] Sup. Ct. Civ. Rule 12(b)(6).