

RENDERED: February 27, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-3314-MR

TONYA J. SHEEHAN and
KEVIN C. SHEEHAN

APPELLANTS

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 95-CI-2950

STATE AUTOMOBILE MUTUAL
INSURANCE COMPANIES

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: DYCHE, HUDDLESTON, and MILLER, Judges.

DYCHE, JUDGE. We have examined the record of the trial court, and the briefs of the parties herein. We agree with appellee that the learned trial judge correctly and completely set out the applicable facts and law in his opinion, and we adopt it as our own.

BACKGROUND SUMMARY

Tonya J. Sheehan was seriously injured in an automobile accident on October 8, 1994. At that time, she had an automobile liability policy issued by State Auto, covering a 1989 Nissan and a

1982 Chevrolet vehicle. The Nissan vehicle was involved in the accident. The tortfeasor's liability insurer paid Mrs. Sheehan its bodily injury policy limit of \$25,000.

Mrs. Sheehan's policy with State Auto contained both uninsured motorist ("UM") and underinsured motorist ("UIM") coverage of \$100,000 per person/\$300,000 per accident. State Auto paid Mrs. Sheehan \$100,000 in UIM benefits, and brought this action on May 26, 1995, seeking a declaration as to whether or not she is entitled under the policy to stack the UIM coverage for an additional \$100,000 if required for uncompensated injuries.

On June 7, 1995, Mrs. Sheehan and her husband, Kevin C. Sheehan, filed a counterclaim against State Auto, alleging bad faith and violation of the Unfair Claims Settlement Practices Act.

On June 21, 1996, State Auto filed a motion for summary judgment on the legal issue of whether the policy provides for stacking of UIM coverage or limits UIM coverage to \$100,000. On July 1, 1996, the Sheehans filed a response to State Auto's summary judgment motion. State Auto filed a reply thereto on July 8, 1996, and the Sheehans filed a subsequent reply on July 18, 1996. On July 23, 1996 State Auto filed its last reply.

OPINION

State Auto argues that Mrs. Sheehan is limited to a single recovery of \$100,000 in UIM benefits under the policy, which it has already paid. The basis for State Auto's argument is its "per policy" instead of "per vehicle" charge for UIM coverage.

The Sheehans argue that where there is a single policy insuring multiple vehicles, Kentucky law allows stacking of

the UIM coverage limits notwithstanding any anti-stacking policy provision.

The Court agrees with the Sheehans that Kentucky courts have held anti-stacking provisions invalid in policies regarding items of UM and UIM coverage for which an insured has paid separate premiums. See Hamilton v. Allstate Insurance Company, Ky., 789 S.W.2d 751 (1990) and Allstate Insurance Company v. Dicke, Ky., 862 S.W.2d 327 (1993).

As stated in Dicke, 862 S.W.2d at 329, a reasonable expectation of multiple coverage arises when separate items of "personal" insurance (such as UIM coverage) are bought and paid for, and it is contrary to public policy to deny the insured such purchased coverage.

In this present action, State Auto argues that the Sheehans paid just one premium for UIM coverage and thus, there could not have been any reasonable expectation on their part for multiple coverage. Effective June 6, 1994, State Auto began charging a "per policy" rather than a "per vehicle" rate for UM and UIM coverage.

From the exhibits to the parties' various memoranda, Mrs. Sheehan began to insure her 1989 Nissan through State Auto beginning in October of 1992. She was initially listed as the only driver on the policy. Mr. Sheehan's name appears on the policy beginning with the policy period of January 2, 1993, but "N/A" is provided where his driver's license number should be.

Mrs. Sheehan paid a \$6.00 of \$7.00 premium for UIM coverage until July of 1994, when the premium was increased to the per policy rate of \$14.00 according to the renewal declarations sheet for the policy period from July 2, 1994 to October 2, 1994. Her premium for this policy period was \$190.91. The premium was \$185.55 for the prior policy period of April 2, 1994 to July 2, 1994.

The declarations sheet for the policy period from July 2, 1994 to October 2, 1994 was amended effective August 9, 1994 to add a second vehicle, i.e., the 1982 Chevrolet, to the policy. According to Mrs. Sheehan's January 18, 1996 deposition, her husband got his license back in May of 1994 after a prior DUI conviction and he brought a vehicle in August of 1994 (pp.14-15).

The per policy rate of \$14.00 for UIM coverage of \$100,000/\$300,000 did not increase when the second vehicle was added in August of 1994. The declarations sheets in the record also show that the per policy rate of \$14.00 for UIM coverage of \$100,000/\$300,000 did not decrease when the Nissan vehicle was dropped from the policy, effective October 9, 1994, leaving only the Chevrolet vehicle covered under the policy.

In order to stack UIM coverage under a single multi-vehicle policy, there must be a reasonable expectation of multiple coverage on the part of the insured. With the "per policy" charge for UIM coverage under their State Auto policy, there was not a payment of separate premiums by the Sheehans. This distinguishes the instant case from Hamilton and Dicke, where the insured paid additional premiums and thus had a reasonable expectation of increased coverage.

The Sheehans argue that they had such a reasonable expectation due to handwritten figures on a declarations sheet (premium notice) they received through the mail from State Auto. According to Mrs. Sheehan's deposition testimony, she received said notice in mid-September of 1994 (p. 22), and this was the first premium notice that she recalled receiving from State Auto that had handwritten numbers on it (p. 22).

The document at issue is a declarations sheet covering the policy

period from October 2, 1994 to January 2, 1995. It has the per policy rate of \$14.00 for UIM coverage of \$100,000/\$300,000 printed on it. It also has a handwritten figure of 7 next to the printed UIM per policy rate of \$14.00 and each printed total per auto is increased by \$7.00 to get a handwritten figure per auto.

The Sheehans' State Auto policy was procured through Old Colony Insurance Services, Inc. ("Old Colony"). According to the November 16, 1995 deposition testimony of Charles McHolan, the corporate claims manager for Old Colony, the handwritten numbers on the declaration sheets were something done by an employee in Old Colony's office (p. 26) because of the accounting system on its computer (p. 12).

Mr. McHolan testified that it was an internal breakdown for the Old Colony computer system (p. 13), it was only for Old Colony's internal use (pp. 11, 13 and 16), and no one, except for an employee at Old Colony, should have seen it (p. 13). He further testified that it was not anything that was sent out to any client or customer (p. 16), and that State Auto bills the customers directly and not Old Colony (p. 27).

The declarations sheet in question seems to be a copy of the "Agent Copy" which was in Old Colony's file and is an exhibit to Mr. McHolan's deposition. Said file exhibit shows that the declarations sheets used as the "Agent Copy" for Old Colony are in a different format than the declarations sheets sent to the Sheehans as their premium notice. A copy of the declarations sheet (premium notice) for the policy period of October 2, 1994 to January 2, 1995 is also an exhibit to Mr. McHolan's deposition.

Even assuming that in September of 1994 the Sheehans were sent the declarations sheet with the handwritten notations for the policy period of

October 2, 1994 to January 2, 1995, such cannot be said to [be] a basis for a reasonable expectation on their part of multiple UIM coverage under the State Auto policy. Mrs. Sheehan stated in her deposition that the handwritten notations thereon really did not mean anything to her (pp. 27 and 31).

Furthermore, the initial declarations sheet for the prior policy period from July 2, 1994 to October 2, 1994, which covered only the Nissan vehicle, showed a per policy rate of \$14.00 for \$100,000/\$300,000 UIM coverage. This declarations sheet was amended when the second vehicle was added in August of 1994, and it showed the same per policy rate of \$14.00 for the same UIM coverage. No handwritten notations were on these declarations sheets (premium notices).

Therefore the Court enters the following Order:

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the motion for summary judgment brought by Plaintiff, State Automobile Mutual Insurance Companies, is **GRANTED** as the underinsured motorist coverage under the insurance policy issued to Defendants, Tonya J. Sheehan and Kevin C. Sheehan, was limited to the sum of \$100,000 at the time of the October 8, 1994 automobile accident.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLEE

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