

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

ERIKA FERNANDEZ,)	
)	
Plaintiff,)	
)	C.A. No. 07C-10-102 PLA
v.)	
)	
GOVERNMENT EMPLOYEES)	
INSURANCE COMPANIES,)	
)	
Defendant.)	

**ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
DENIED**

Submitted: November 19, 2009

Decided: January 12, 2010

James A. Erisman, Esquire, THE ERISMAN LAW FIRM, LLC,
Wilmington, Delaware, Attorney for Plaintiff.

Nicholas E. Skiles, Esquire, SWARTZ CAMPBELL LLC, Wilmington,
Delaware, Attorney for Defendant.

ABLEMAN, JUDGE

I. Introduction

Plaintiff Erika Fernandez (“Fernandez”) obtained motor vehicle insurance from defendant Government Employees Insurance Companies (“GEICO”). In July 2007, while her GEICO policy was in effect, Fernandez was injured in a motor vehicle accident. Fernandez filed the instant suit to recover no-fault Personal Injury Protection (PIP) benefits for expenses allegedly related to that accident. GEICO denied coverage on the basis that her PIP policy was subject to a \$10,000 deductible election made in 2005.

For the reasons discussed more fully herein, GEICO has satisfied the requirements of 21 *Del. C.* § 2118(a)(2)(f) to establish that Fernandez made a valid PIP deductible election for her 2005 policy. The Court concludes, however, that the form Fernandez signed to make that election did not demonstrate her assent to the continued application of the deductible to future policy periods. Accordingly, the Court cannot conclude as a matter of law that Fernandez’s policy at the time of the accident was subject to a PIP deductible. GEICO’s Motion for Summary Judgment must therefore be **DENIED.**

II. Factual Background

In May 2005, Fernandez apparently approached GEICO about applying a PIP deductible to her existing automobile insurance policy. GEICO provided Fernandez with an amended version of Delaware Form A, which is a coverage election form. The form provided to Fernandez listed all available PIP coverage plans, along with the applicable deductible and premium for each level of coverage.¹ The form indicated that the insured should select one plan from the options provided and then complete and return the form “or your current Personal Injury Protection selection will be adjusted to non-deductible.”²

Fernandez returned two copies of the form to GEICO. On May 10, 2005, she submitted a copy of the form on which she had marked two selections, possibly as a result of confusion over how to complete the form accurately.³ On May 13, 2005, Fernandez faxed GEICO a properly-completed form on which she selected the minimum \$15,000/\$30,000 PIP coverage, with a \$10,000 deductible and monthly premium of \$110.⁴

¹ Def.’s Mot. for Summ. J., Exs. B, C.

² *Id.*

³ *Id.*, Ex. B.

⁴ *Id.*, Ex. C.

On the completed form, Fernandez signed in the space provided beneath the following statement: “I understand that my policy will be issued to reflect the option I have chosen above or on the first page with respect to No-Fault Personal Injury Protection. By my signature below, I acknowledge receipt of a copy of this form.” Below this first signature, Fernandez separately signed an acknowledgement of her deductible, which reads as follows: “This is to acknowledge that I have selected Personal Injury Protection (PIP) with a \$10,000 deductible. The total PIP premium (as shown above or on the first page) for the policy with this deductible is \$110.00.” The dollar amounts of both the \$10,000 deductible and the \$110.00 premium were hand-written by Fernandez in provided spaces.⁵

In September 2006 and March 2007, GEICO sent Fernandez policy renewal packets. Both the 2006 and 2007 renewal statements indicated that the PIP portion of Fernandez’s policy was subject to a \$10,000 deductible. The renewal statements also included a more comprehensively-worded version of the coverage election form, which stated in relevant part:

My selection [of a PIP deductible or no PIP deductible] *shall apply to any renewal*, reinstatement, substitute amended, altered, modified or replacement policy with this or any affiliated or successor company unless I or a named insured

⁵ *Id.*

shall submit a written request to change the deductible and pay such lesser or greater premium that may apply to such change.⁶

Although GEICO began including this additional language in its coverage election forms in 2006, it appears that Fernandez has never signed a copy of this revised form.

III. Parties' Contentions

GEICO's Motion for Summary Judgment argues that Fernandez's PIP policy was subject to a \$10,000 deductible, which her claimed expenses do not exceed. In response, Fernandez disputes that the PIP deductible applied to the policy in effect at the time of her accident. Her argument is two-fold. First, Fernandez denies that her initial deductible election was valid. Fernandez suggests that Delaware law requires that the insurer be able to produce three separate documents to demonstrate that the insured has agreed to subject her policy to a PIP deductible: (1) a signed election; (2) a signed confirmation that the insured has received an explanation of all available deductible options; and (3) a signed statement from the insured acknowledging the specific deductible she has selected.⁷ According to Fernandez, GEICO cannot satisfy the statutory requirements of 21 *Del. C.* § 2118(a)(2)(f) with a single document containing separate signatures to

⁶ *Id.*, Ex. F (emphasis added).

⁷ Pl.'s Resp. to Def.'s Mot. for Summ. J.

acknowledge the election of a deductible, the particular deductible amount selected, and the receipt of a document explaining all deductible options. Second, even if the twice-signed GEICO coverage election form constitutes a valid deductible election, Fernandez contends that GEICO has not shown that the 2005 election form applies to her 2007 policy. Although GEICO included language in her 2006 and 2007 policy renewal packets that selection of a PIP deductible would apply to renewal policies, Fernandez notes that she never assented in writing to this condition when she allegedly elected to apply a deductible to her policy in 2005.

IV. Standard of Review

When considering a motion for summary judgment, the Court examines the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.⁸ Summary judgment will not be granted if, after viewing the evidence in the light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.⁹

⁸ Super Ct. Civ. R. 56(c).

⁹ *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879-80 (Del. Super. 2005).

V. Analysis

1. Fernandez Made a Valid Deductible Election for Her 2005 Policy

Section 2118(a)(2)(f) of Delaware Code Title 21 permits a vehicle owner to elect deductibles for her coverage and provides the method by which a valid deductible election is to be accomplished:

This election must be made in writing and signed by the owner of the vehicle; insurers issuing such policies may not require such reductions. For all policies having a deductible pursuant to this paragraph the insured shall receive in writing as a separate document a full explanation of all deductible options available, and the insured shall sign such written explanation acknowledging receipt of a copy of same. In addition the insured shall sign a separate statement acknowledging the specific deductible the insured is selecting and the related cost for the policies with such deductible. . . .

The plain language of § 2118 imposes three requirements: (1) a document for the insured fully explaining the deductible options; (2) a copy of this document signed by the insured to acknowledge her receipt of the explanatory material; and (3) a signed separate statement acknowledging the insured's specific deductible election and the policy cost associated with that deductible. The parties dispute whether the second and third requirements can be met within the same document. The Court concludes that they can.

Contrary to Fernandez's position, the Court parses the three requirements described above as the means by an election is made "in writing and signed by the owner of the vehicle." The statute requires the

insured to sign two statements, but does not mandate that the statements be divided between two documents. Section 2118 uses the term “separate document” to distinguish the insured’s copy of the explanation of available deductible options and the signed copy to be returned to the insurer. By contrast, the term “separate statement” is employed to refer to the insured’s signed acknowledgement of the deductible she selects and its price. Nothing in the plain meaning of the term “statement,” nor in the language of § 2118, suggests that this statement cannot be printed and signed on the copy of deductible options to be returned to the insurer.¹⁰ If the legislature intended to require that the insured’s signed acknowledgement of her specific deductible be contained in a “separate document” from the explanatory statement, it had that phrase readily available and presumably would have used it.

In this case, Fernandez does not deny that she received a document explaining all available deductible options prior to making her deductible election in May 2005. She acknowledged receipt by signing a copy of that explanation. On the same page, Fernandez acknowledged her election of a deductible, the specific deductible selection, and the associated premium by

¹⁰ See *Eliason v. Engleheart*, 733 A.2d 944, 946 (Del. 1999) (“The goal of statutory construction is to determine and give effect to legislative intent. If a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the statutory language controls.” (citations omitted)).

hand-writing the deductible and premium amounts into a signed statement. GEICO has therefore demonstrated that the requirements of § 2118 for a valid deductible election were met with regard to Fernandez's 2005 policy period.

2. GEICO Has Not Established as a Matter of Law that Fernandez's Election Applied to Her 2007 Policy

Fernandez raises a more difficult question as to whether her 2005 PIP deductible election still applied to her policy in 2007. The Court agrees with Fernandez that her signature on Geico's 2005 coverage election form cannot be construed as expressing her agreement to have a deductible applied to her PIP coverage in future renewal policies. Summary judgment is therefore precluded by a material dispute as to whether a deductible applied to Fernandez's PIP coverage at the time of her accident.

The motorist protection provisions of the Delaware Administrative Code¹¹ govern coverage election forms and provide as follows:

The coverage election form (Delaware Form A) . . . shall be properly presented by the insurer, broker, or agent to the policyholder, and acknowledged by the policyholder's signature. . . . The language or context [of] Form A shall be as shown [in an attachment to the regulations] unless, in accordance with filings made with [the Delaware Insurance commissioner's office], the insurer offers options, deductibles, etc., other than those described on the approved form. Any amended Form A shall clearly describe all additional options of

¹¹ 18 Del. Admin. C. § 603.

coverage and must be filed with [the Insurance Department] prior to use. Any version of the coverage election form which deviates [in its text] from Delaware Form A must be filed with the Department prior to its use¹²

Thus, insurers can either use Delaware Form A in its unaltered state or file an amended Form A for approval by the Insurance Department. At the time Fernandez made her deductible election in 2005, GEICO was using an approved amended Form A. As described above, this amended Form A was silent as to whether an insured's election was applicable to policy renewals. By contrast, an insured completing the default Delaware Form A would sign a statement that "My selection shall apply to any renewal, reinstatement, substitute amended, altered, modified, or replacement policy . . . unless I or a named insured shall submit a written request to change the deductible and pay such lesser or greater premium that may apply to such change."¹³ The 2006 and 2007 renewal packets mailed to Fernandez adopted this language, but GEICO has not demonstrated that Fernandez signed a statement acknowledging that her deductible election would apply to renewal policies, even after the Court inquired as to whether such a document existed.

The Court recognizes that the amended Form A that Fernandez signed in 2005 was approved by the Insurance Department, which apparently did

¹² *Id.* § 603(11).

¹³ *Id.* § 603 ("Form A" Attachment).

not object to GEICO's elimination of any reference to renewal policies. Nevertheless, given that § 2118(a)(2)(f) and its associated regulations are designed to ensure that the insured is fully aware of the precise terms and consequences of any PIP deductible election,¹⁴ GEICO departed from the text of Delaware's standard Form A at its own risk. Indeed, the motorist protection regulations countenance amendments to Form A for the purpose of permitting the insurer to present its insureds with "options, deductibles, etc., other than those described on the approved form." The regulations do not indicate that amendments may properly alter the insured's statement of acknowledgement for other purposes, and the Court is at a loss as to why GEICO would make changes to the Form A language that would *reduce* the clarity of the information conveyed to the insured.

Nothing in the amended Form A that Fernandez signed in 2005 stated that her deductible election would remain in effect for future policy terms. Although the renewal packets Fernandez received in 2006 and 2007 stated that her policy was subject to a \$10,000 PIP deductible and instructed her how to initiate changes in her policy, her mere receipt of these documents and continued premium payments are insufficient to establish that GEICO is

¹⁴ See 18 Del. Admin. C. § 603(6.3) ("The requirement of an election in writing may be satisfied by a statement on the application for insurance, or other form *which shall clearly convey the effect of his/her option selected.*" (emphasis added)).

entitled to judgment as a matter of law given that Fernandez apparently disputes that she intended and understood the deductible to apply to her renewal policies.¹⁵

The Court cautions the plaintiff that its conclusion is premised on the record before it, and relates only to the effect of GEICO's attempt to use its 2005 amended Form A to establish that Fernandez's deductible election applied in 2007. GEICO remains free to argue through other evidence that Fernandez actually intended to purchase her 2007 policy subject to a \$10,000 PIP deductible. The record submitted to the Court, however, does not establish this intent as an undisputed fact, and therefore does not entitle GEICO to summary judgment.

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: James A. Erisman, Esq.
Nicholas E. Skiles, Esq.

¹⁵ See, e.g., *Penn. Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1151 (Del. 1997) (noting that unclear or ambiguous terms in an insurance contract are to be construed in favor of coverage for the insured).