IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CHARMAINE SINGLETARY,	:	
AVERY SINGLETARY,	:	**C.A. NO: K09C-11-005(RBY)**
LAMONTE SMITH, by and through	:	
his Guardian ad litem	:	
CHARMAINE SINGLETARY,	:	
MARONICA SMITH by and through	:	
LYNTAISA SINGLETARY, by and	:	
through her Guardian ad litem,	:	
CHARMAINE SINGLETARY,	:	
JAMES SINGLETARY by and	:	
through his Guardian ad litem,	:	
CHARMAINE SINGLETARY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AMERICAN INDEPENDENT	:	
INSURANCE COMPANY,	:	
a foreign corp.,	:	
	:	
Defendant.	:	

Submitted: October 25, 2010
Decided: January 31, 2011
Upon Consideration of Defendant's
Motion to Dismiss
GRANTED
and Plaintiff's Cross Motion for Summary Judgment
MOOT
OPINION AND ORDER

Jeffrey J. Clark, Esq., Schmittinger & Rodriguez, P.A., Dover, Delaware for Plaintiffs.

Shae Chasanov, Esq., Swartz, Campbell, LLC, Wilmington, Dover for Defendant.
Young, J.

Singletary, et al., v. American Independent Insurance Company
C.A. No: K09C-11-005 (RBY)
January 31, 2011

SUMMARY

On April 15, 2007, Charmaine Singletary was injured in an automobile accident with an uninsured motorist. Charmaine's vehicle was insured through Avery Singletary's insurance policy with Defendant American Independent Insurance ("American"). Charmaine, as well as the passengers in the vehicle with her at the time of the accident, seek underinsured/uninsured motorist coverage ("UM/UIM") under American's policy. The case turns on whether American provided Avery Singletary with notice sufficient to satisfy Title 18 Del. C. §§ 3902(a) and 3902(b) with respect to his decision to reject UM/UIM coverage. Because American's notice was adequate, the Motion to Dismiss is **GRANTED**. Therefore, Plaintiff's Cross Motion for Summary Judgment is **MOOT.**

FACTS

American issued an automobile insurance policy to Avery Singletary in January 2006.[1] Singletary elected coverage in the amount of $15,000 per person and $30,000 per accident for bodily injury liability. American also provided Singletary with a separate form describing the nature of UM/UIM coverage. Singletary rejected UM/UIM coverage properly and entirely. The parties do not dispute that point.[2]

On February 1, 2007, Singletary added a 1999 Ford Windstar vehicle to his existing American policy. The question is whether, when Singletary did so, American sufficiently re-offered Singletary UM/UIM coverage, in accordance with

[1] (Def's Ex. A.)

[2] (Def's Ex. B.)

18 *Del. C.* § 3902(a). Instead of using the same document it provided in 2006, which fully explains UM/UIM coverage, American's 2007 form provided a checkbox where Singletary could either accept or reject UM/UIM coverage. Singletary again rejected UM/UIM coverage.[3]

STANDARD OF REVIEW

In a motion for summary judgment, the moving party bears the burden of proving "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[4] Summary judgment is only appropriate when, after viewing all the evidence in a light most favorable to the nonmoving party, the Court finds no genuine issue of material fact.[5] A genuine issue of material fact arises when "any rational trier of fact could infer that plaintiffs have proven the elements of prima facie case by clear and convincing evidence."[6] If a defendant, as the moving party, can establish that there is no genuine issue of material fact, and the defendant is entitled to judgment as a matter of law, the burden will shift to the plaintiff to show the existence of specific facts to support the plaintiff's claim.

DISCUSSION

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[3] (Def's Ex. C.)

[4] SUP. CT. CIV. R. 56(e); *see also Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[5] *Gill v. Nationwide Mut. Ins. Co.*, 1994 WL 150902, at *2 (Del. Super. Feb. 22, 1994).

[6] *Cerebus Intl. LTD. v. Apollo Mgmt., L.P.,* 794 A.2d 1141, 1149 (Del. 2002) (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 254 (1986)).

The analysis of this case highlights the differences between §§ 3902(a) and 3902(b). Both parties agree that 3902(a) governs the resolution of their dispute. Title Eighteen, Section 3902 of the Delaware Code provides that:

> (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...unless coverage is provided therein or supplemental thereto for the protection of persons...who are legally entitled to recovery damages from owners or operators of uninsured...vehicles for bodily injury...or personal property damage resulting from the ownership, maintenance or use of such uninsured...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 $100,000 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. Such additional insurance shall include underinsured bodily injury liability coverage.

The Delaware Supreme Court has long recognized that § 3902(a) and § 3902(b) set forth different legal standards for the sale and purchase of uninsured motorist

coverage and underinsured motorist coverage.[7] In *Humm v. Aetna*, the Court explained that the purpose of § 3902(a) is to ensure that any individual who does not expressly reject uninsured coverage will "be assured of the same minimum pool of resources from which to seek compensation" from an uninsured motorist as he would have from a motorist with the state's minimum insurance coverage.[8] Meanwhile, in *State Farm v. Arms*, the court noted that § 3902(b) serves as "a disclosure mechanism [to] promote informed decisions on automobile insurance coverage."[9]

A plain reading of the two subsections suggests that the insurer must (1) not deliver any insurance policy without the minimum uninsured coverage, unless rejected by the insured in writing; and must (2) make a meaningful offer supplying the insured with supplemental UM/UIM coverage up to the limits of an insured's bodily injury liability insurance.[10] Although the language of § 3902(a)(1), "[n]o such coverage shall be required in or supplemental to a policy when rejected in writing..." may suggest that an insured's initial rejection of uninsured coverage will not necessitate a later offer of underinsured motorist coverage pursuant to § 3902(b), nothing in the statute suggests that §§ 3902(a) and 3902(b) are dependent on one another or that one subsection is a prerequisite for another.[11]

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

[8] *Id.* at 716.

[9] 477 A.2d 1060, 1064 (Del.1984).

[10] *Banaszak v. Progressive Direct Ins. Co.,* 3 A.3d 1089, 1094 (Del. 2010).

[11] "The Courts may not engraft upon a statute language which has been clearly excluded therefrom by the legislature." *Humm,* 656 A.2d at 715 (explaining that § 3902(a) and (b) are not to be construed as dependant on one another since nothing in the language of the statutes

In *Banaszak v. Progressive*, the Delaware Supreme Court synthesized this statutory language with its prior precedents. The Court concluded that an insurer has an obligation, pursuant to the individual standards set forth in § 3902(a) and § 3902(b), to include the minimum uninsured motorist coverage in its policies, unless explicitly rejected by the insured, and to alert the insured that he may purchase supplemental underinsured motorist coverage.[12] Compliance with this statute requires that insurance companies make certain that an insured knows "[a]ll of the facts reasonably necessary for a person to be adequately informed to make a rational, knowledgeable and meaningful determination."[13]

Here, Singletary asserts that American failed in its duty under 18 *Del. C.* § 3902(a) to provide him with a form "describing the coverage being rejected" as to the policy at issue. Singletary contends that the form he signed in 2007 (when he added the Ford Windstar) does not meet the standard set by the Delaware Supreme Court in *Banaszak.* Singletary argues, and American concedes, that the addition of a new vehicle to his preexisting policy constituted a material change in his policy's terms. Accordingly, Singletary proposes that when a material change is made to an insured's policy it becomes a new policy, which requires an additional offer of UM/UIM coverage to be made pursuant to 18 Del. C. § 3902(a).[14]

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suggests otherwise).

[12] *Banaszak,* 3 A.3d at 1094.

[13] *Morris v. Allstate Ins. Co.,* 1984 WL 3641 (Del. Super. Ct. July 10, 1984); *See Patilla v. Aetna Life & Cas. Co. v. The Ins. Market,* 1993 WL 189473 (Del. Super. Ct. April 22, 1993).

[14] *State Farm Mut. Auto. Ins. Co. v. Arms*, 477 A.2d 1060 (Del. 1984).

Even assuming that Singletary's analysis is correct, American contends that it met its obligations under 18 *Del. C.* § 3902(a) by providing a written form and allowing Singletary to decide whether or not he wanted UM/UIM insurance. Singletary chose not to purchase this coverage. American does not dispute that its second offer of UM/UIM insurance was less comprehensive than its first offer, but argues that its second notice satisfies the Delaware Supreme Court's edict that the insured receive sufficient information to make an informed decision.

In the end, the legislative intent of §3902(a) resolves this issue in American's favor. As explained by the Delaware Supreme Court, the purpose of § 3902(a) is to ensure that any individual who does not expressly reject uninsured coverage will "be assured of the same minimum pool of resources from which to seek compensation" from an uninsured motorist as he would have from a motorist with the state's minimum insurance coverage.[15] Singletary expressly rejected UM/UIM coverage in 2006, and just as expressly rejected the same coverage in 2007.

Singletary cites *Humm v. Aetna*,[16] and *Banaszak v. Progressive*,[17] for the proposition that every change in an insured's policy must describe the nature of the coverage at issue. However, as American points out, those cases are inapposite, because neither case involved the same elements as this case. Here, we have: (1) an admittedly valid original offer of UM/UIM insurance; (2) the insured's rejection of that insurance; (3) a change in the insured's policy; and (4) another offer of UM/UIM

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[15] *Humm,* at 716.

[16] 656 A.2d 712 (Del. 1995).

[17] 2009 WL 2580317 (Del. Super. Ct. Aug. 17, 2009) *rev'd* 3 A.3d 1089 (Del. 2010).

insurance that was less detailed than the first offer.

In this case, therefore, there is a consumer who acquires a policy, expressly limiting it (and its cost) to coverage which does not include UM/UIM coverage. The process for doing that satisfied both the consumer and the statutory requirements as defined by Delaware law. Then Plaintiff, evidencing no suggestion that he somehow had been deprived of the knowledge he once had, or had desired any choice different from that one he had exercised just a year earlier with the self-same policy. He merely indicated that he wanted to add a vehicle to it. American complied with his request, even reminding him of his prior choice by seeing to Plaintiff's ability to re-confirm his desires through the checkbox marked by Singletary.

CONCLUSION

The central issue in this motion is whether American complied with 18 *Del. C.* § 3902(a) to provide Singletary with enough information to allow him to make an informed decision about whether to accept or reject UM/UIM Coverage. The requirements that insurance companies provide sufficient information to allow customers to make rational, knowledgeable, and meaningful determinations concerning the scope of their insurance policies is, by necessity, a general statement. Still, it does provide sufficient framework to guide this Court's decision. For the reasons set forth above, I find that American provided sufficient notice to comply with its obligations under §§ 3902(a) and 3902(b). Therefore, American's Motion to Dismiss is **GRANTED**.

SO ORDERED this 31st day of January, 2011.

/s/ Robert B. Young
J.

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