

02/16/2007 “See News Release 14 for any Concurrences and/or Dissents.”

SUPREME COURT OF LOUISIANA

No. 06-CC-0363

TAMMY KAY DUNCAN

versus

U.S.A.A. INSURANCE COMPANY, JAMES S. CAMERON, MALONI R. SARTIN-WHITE, AND WESTERN HERITAGE INSURANCE COMPANY

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIFTH CIRCUIT
PARISH OF JEFFERSON*

WEIMER, J., would grant the rehearing application.

The legislature assigned the task of confecting a form for rejecting UM coverage to the Commissioner of Insurance. LSA-R.S. 22:680. To assist in the implementation of this legislative directive, the Commissioner has also, from time to time, issued bulletins, including LIRC 98-01 which provides instruction on the UM waiver form. See **Duncan v. U.S.A.A. Insurance Company**, 06-0363 (La. 11/29/2006), ___ So.2d ___ (Weimer, J., dissenting at p. 3 (LIRC 98-01 provides the policy number was for identification purposes, not to ensure validity of the UM rejection.)).

The attorneys who argued this case failed to direct the court’s attention to a subsequently issued bulletin, LIRC 98-03. Although we did not address this bulletin, the clear language of LIRC 98-03 further corroborates my dissent—placing the policy number on the waiver form is merely for identification purposes, as opposed to a requirement for validity of the waiver form.

LIRC 98-03 was issued to “provide assistance to insurers.” Significantly, the bulletin states:

Uninsured/Underinsured Motorist Bodily Injury Coverage Form -
Additional Instructions

The Uninsured/Underinsured Motorist Bodily Injury Coverage Form (hereinafter "UM Form") is promulgated as required by law and is to be used with all motor vehicle liability insurance policies delivered or issued for delivery in Louisiana. The following instructions are in addition to those provided in LIRC Bulletin 98-01.

....

* The policy number should be shown at the lower right-hand corner of the UM Form. In the case where a policy number is not available, the space for the policy number may be left blank or a binder number may be inserted.

It is obvious changes were made when LIRC 98-03 is compared to LIRC 98-01.¹ The instruction for inserting the policy number was changed from "must be placed" to "should be shown" in the lower right-hand corner. Additionally, insurers were advised that "the space for the policy number may be left blank" when the policy number is not available.

As indicated, the legislature delegated to the Commissioner of Insurance the responsibility to promulgate the UM waiver form. The bulletins provide instructions to insurers for proper completion of the UM form. We should consider these instructions issued by the Commissioner of Insurance regarding the form prepared by the Commissioner of Insurance. Insurers are entitled to rely on these instructions of the Commissioner in this matter. The instructions in the bulletin do not require inclusion of the policy number to ensure validity of the UM waiver form.

I would grant the rehearing.

¹ A subsequent Bulletin has been issued by the Commissioner of Insurance. See LIRC 01-05 and a Clarification Notice dated December 1, 2006. I note that the UM waiver was executed August 16, 2002, and the accident occurred May 16, 2003.