IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH P. CLIFFORD; and JOSEPH P. CLIFFORD, Administrator to the Estate of Christopher J. Clifford, Deceased,	:	
Plaintiffs	:	**No. 3:99cv1788**
v.	:	**(Judge Munley)**
PRUDENTIAL PROPERTY AND CASUALTY INSURANCE CO., a subsidiary of the PRUDENTIAL INSURANCE CO. OF AMERICA,	:	
Defendant	:	

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MEMORANDUM

The instant non-jury trial requires us to determine whether the plaintiffs are entitled to $75,000.00 or $500,000.00 in underinsured motorist insurance coverage (hereinafter "UIM coverage"). The plaintiffs are Joseph Clifford and Joseph Clifford, Administrator of the Estate of Christopher Clifford (hereinafter "plaintiff"[1]), and the defendant is Prudential Property and Casualty Insurance Company, a subsidiary of the Prudential Insurance Co. of America, Royal & SunAlliance Insurance Co. (hereinafter "defendant" or "Prudential"). This case was removed from the Luzerne County Court of Common Pleas on October 12,

[1]Although there are two party plaintiffs, they will hereinafter be referred to as plaintiff.

1999.[2] The plaintiff filed a declaratory judgment action seeking to have the court reform the plaintiff's insurance policy to provide UIM limits equal to the limits of the liability coverage. The parties agreed that the merits of the plaintiff's complaint would be addressed at a non-jury trial. A trial was held on October 20, 2000, addressing the plaintiff's declaratory judgment complaint. At that time, the parties formally presented their recommended stipulated facts and their respective legal theories. Following the one-day non-jury trial, and upon review of the parties' submissions, we rule as follows.

Facts

Based upon the record, we find as follows:

1. Plaintiff Joseph P. Clifford, Administrator of the Estate of Christopher J. Clifford, Deceased, is an adult individual resident of Pennsylvania.

2. The Defendant, Prudential Property and Casualty Insurance is a corporation organized and existing under the laws of the State of Indiana, duly authorized to conduct business within the Commonwealth of Pennsylvania.

3. This court properly asserts jurisdiction over this matter on the basis of 28 U.S.C. § 1332(a), governing diversity jurisdiction and the Declaratory Judgment Act, 28 U.S.C. § 2201.

4. On May 15, 1999, Plaintiff's insured decedent, Christopher J. Clifford, was a passenger in a 1998 Toyota Tacoma pickup truck that was being driven by

[2]The plaintiff filed this case in the Court of Common Pleas of Luzerne County on September 20, 1999.

James Binnall. An accident occurred and the plaintiff's son, Christopher Clifford, was killed.

5. The Binnall vehicle maintained liability insurance; however, the amount of liability insurance was inadequate to fully compensate the Estate of Plaintiff's decedent for all damages.

6. At the time of this accident, there existed, in full force and effect, a personal automobile insurance policy issued by Prudential to Joseph P. Clifford, and insuring Christopher J. Clifford.

8. The Prudential policy declarations sheet, for the Clifford policy, during the relevant policy period, provided for liability benefits with limits of $100,000.00 per person, $300,000.00 per accident.

9. The Prudential policy declarations sheet, for the same relevant policy period, provided for UIM benefits with limits of $15,000.00 per person, $30,000.00 per accident, with stacking.

10. "The purpose of underinsured motorist coverage is to protect the insured and his additional insured from the risk that a negligent driver of another vehicle will cause injury to the insured or his additional insured and will have inadequate liability coverage to compensate for the injuries caused by his negligence." Nationwide Ins. Co. v. Resseguie, 980 F.2d 226, 231 (3d Cir. 1992).

11. The plaintiff made a timely claim for UIM benefits.

12. On renewal declaration sheets between 1990 to 1999, the Underinsured Motorists Bodily Injury Limits were stated as $15,000 each person, and $30,000 each accident.

13. Mr. Clifford stated that he "would have read" the indications of UIM coverage shown on each declaration sheet. Clifford Dep. 29-30.

14. The cover letter on every renewal declarations sheet from 1994 to 1999 advised Mr. Clifford to:

> Please review it immediately to make sure it shows exactly the types and amounts of coverage you want . . . Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to the basic coverages.

15. The parties agree that there is a minimum UIM coverage in the amount of $15,000.00, for each of the five vehicles insured. The plaintiff asserts that the UIM coverage should be reformed to equal the bodily injury limit of $100,000.00 per person, therefore, bringing the total available UIM coverage to $500,000.00.

16. When plaintiff's policy became effective in January 1978, Pennsylvania law did not provide for mandatory underinsurance coverage., and none was sold to the plaintiff at that time.

17. Under Pennsylvania law, UM/UIM benefits cannot be lower than bodily injury

liability limits unless an insured makes a written request under 75 Pa.C.S.A. § 1734.

18. Prudential acknowledges that it does not have a copy of a § 1791 "Important Notice" form signed by Mr. Clifford in 1984.

19. From January 30, 1978 through and including the present, plaintiff has maintained automobile insurance with Prudential.

20. In November 1994, Prudential mailed a letter and form to Plaintiff Joseph Clifford regarding UM/UIM coverage.

21. The letter began with the salutation "Dear Policyholder" and contained the following language:

> **PLEASE READ CAREFULLY**
> **If these forms are not completed and returned to us, your next renewal offer will include Stacked Uninsured and Underinsured Motorist Coverages at limits equal to your policy's Bodily Injury Liability Coverage limits. This will result in higher premiums, as follows:**

STACKED UNINSURED MOTORIST COVERAGE WILL INCREASE YOUR PREMIUM BY, $34
STACKED UNDERINSURED MOTORIST COVERAGE WILL INCREASE YOUR PREMIUM BY, $5
YOUR TOTAL INCREASE PREMIUM DUE TO THESE CHANGES WILL BE, $39

22. Included with the November 12, 1994 letter was a sheet of paper containing a request for lower limits of coverage for uninsured motorist insurance (option 1) and a request for lower limits of coverage for underinsured motorist insurance (option 2).

23. Mr. Clifford acknowledges receipt of page 1 of the November 12, 1994 letter as well as the page showing option 2 referred to below. See Attachment; executed option sheet.

24. On November 20, 1994, Joseph P. Clifford signed his name and wrote the date below both option 1 and option 2 and mailed the form back to Prudential.

25. Option 2 stated that :

> By signing this request, I am asking for lower limits of coverage for underinsured motorist insurance under this policy. The limits of coverage on the policy are to be: $15,000 each person, $30,000 each accident.

See Attachment (emphasis added)

26. Prudential provided the § 1791.1 "Disclosure of premium charges and tort options" notices (prepared by Prudential) to Joseph Clifford with each renewal package in 1994, 1995, 1996, 1997, 1998, and 1999.

Discussion

Pennsylvania law governs this dispute. "Under Pennsylvania law, it is the province of the court to interpret contracts of insurance." Nationwide Mut. Ins. Co. v. Cosenza, 120 F. Supp.2d 489, 493 (E.D.Pa. 2000) (citing Niagara Fire Ins. Co. v. Pepicelli, Pepicelli, Watts and Youngs, P.C., 821 F.2d 216, 219 (3d Cir.1987)). The Court is to read the insurance policy as a whole and construe it according to its plain meaning. C.H. Heist Caribe Corp. v. American Home Assurance Co., 640 F.2d 479, 481 (3d Cir.1981).

On October 1, 1984, Pennsylvania enacted the Motor Vehicle Financial Responsibility

Law (hereinafter "MVFRL"). 75 Pa.C.S.A. § 1701, *et seq.* This law had a significant impact on the obligations of insurance companies where Uninsured and Underinsured Motorist Coverage (hereinafter "UM/UIM coverage") is concerned. In regard to the required UM/UIM coverage, section 1731 of the MVFRL mandates that all policies issued or renewed after October 1, 1984 must contain UM/UIM coverage "in amounts equal to the bodily injury liability coverage except where the named insured requests, in writing, coverage in amounts less than the limits of liability for bodily injury, as provided in Section 1734." 75 Pa.C.S.A. § 1731(a); see Government Employees Insurance Co. v. Benton, 859 F.2d 1147, 1149 (3d Cir. 1988).

MVFRL further requires that insurance companies provide their customers with a one-time "IMPORTANT NOTICE", at the time of application for original coverage or at the time of first renewal after October 1, 1984, informing them of benefits available. 75 Pa.C.S.A. § 1791. The statute also provides the language for this "IMPORTANT NOTICE," and states "[y]our signature on this notice or your payment of any renewal premiums evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected." Id. In the instant case, the defendant concedes that it cannot produce plaintiff's § 1791 "Important Notice" form.

In order to have less UM/UIM coverage than bodily injury liability coverage, an insured must sign a § 1734 writing. Section 1734 of the statute provides that:

> [a] named insured may request in writing the issuance of coverages under section 1731 (relating to scope and amount of

> coverage) in amounts less than the limits of liability for bodily injury but in no event less than the amounts required by this chapter for bodily injury. If the named insured has selected uninsured and underinsured motorist coverage in connection with a policy previously issued to him by the same insurer under section 1731, the coverages offered need not be provided in excess of the limits of liability previously issued for uninsured and underinsured motorist coverage unless the named insured requests in writing higher limits of liability for those coverages.

75 Pa.C.S.A. § 1734 (emphasis added).

Thus, § 1734 basically allows a named insurer to request in writing, lower UM/UIM coverage limits than the bodily injury liability amounts.

Summarizing, the plaintiff originally purchased an automobile policy from the defendant with liability limits of $100,000.00 per person and $300,000.00 per accident and UM/UIM limits of $15,000.00 per person and $30,000.00 per accident, with stacking. The plaintiff argues that the UIM limit in question should be reformed to be $100,000.00 rather than $15,000.00. Initially, the plaintiff contends that he did not receive the § 1791 "Important Notice" as required by the statute; second, that there was no knowing and intelligent waiver and no compliance with § 1734; and third, that as a result, the UIM limits should be reformed so that the plaintiff will be entitled to UIM coverage of $100,000 on five vehicles, resulting in a total of $500,000.00.

1. Compliance with § 1791

The first assertion by the plaintiff is that there was no "Important Notice" issued, as is required under 75 Pa. C.S.A. § 1791. The MVFRL requires that insurance companies provide their customers with a one-time "IMPORTANT NOTICE", at the time of application

for original coverage or at the time of first renewal after October 1, 1984, informing them of the benefits available under the MVFRL. 75 Pa.C.S.A. § 1791. The statute supplies the language for this "IMPORTANT NOTICE," and states "[y]our signature on this notice or your payment of any renewal premiums evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected." Id.

In the instant case, the defendant concedes that it cannot produce a writing from the plaintiff in relation to section 1791. Plaintiff Clifford argues that since the defendant has no record of receiving back a signed copy of the § 1791 form, that the defendant therefore did not strictly follow the mandate of § 1791.[3] We disagree.

An insurance company does not have to produce a signed § 1791 form in order to establish that one was sent to the insured. See Nationwide Ins. Co. v. Tantorno, 1991 WL 24921 (E.D.Pa.) (finding that mailing established a presumption of receipt and that it was more likely than not that the defendants received the § 1791 form, even though they did not return the form or have any recollection of receiving the form); see also Breuninger v. Pennland Ins. Co., 675 A.3d 353 (Pa. Super. Ct. 1996) (finding that where an insured did not sign or return a § 1791 form, and did not specifically deny that she received the form, that it

[3]The "Important Notice" states that: "Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected." Def. Trial Brief, Ex. A, No. 1. The defendant argues that it had no control over whether the plaintiff regularly received the documents sent to him and dutifully signed or returned the notice, but states that Mr. Clifford did in fact pay his renewal premiums. Stipulations of Fact 15, 18, 27.

could be found that the insurer strictly followed the mandates of § 1791).

Defendants have established that they had a general procedure established in 1984 to provide the "Important Notice" to its customers. According to the defendant's Underwriting Procedures Bulletin, the issuance of § 1791 form in 1984 was specifically set forth as follows:

> F. Six Month RSO Renewal Package (T-38)
> This package will be sent from ERSO 38 days before the renewal effective date beginning August 23rd. It contains the following items:
> 1. An "Important Notice"(PCD 2229X Ed. 8/84) required by law in at least 10 point type to make sure policyholders understand their coverage option.

See Def. Brief, Ex. A, No. 17.

The general policy of mailing the notice to its insureds called for the defendant to mail the notice to the instant plaintiff in 1984. See e.g. Metropolitan Prop. and Liab. Ins. Co. v. Streets, 1990 WL 4429 (E.D.Pa.). The record demonstrates that unless signed by Mr. Clifford, the § 1791 form would not have been specially retained in Mr. Clifford's file. Lorrie Reynolds Deposition (hereinafter "Reynolds Dep.") at 26. The defendant argues that it does not have the capacity to retain duplicate information, going back to 1984, for the many Prudential policyholders. Id. at 16-27. We find this argument to be compelling.

Moreover, the plaintiff does not specifically deny having received the form, he merely states that he has no recollection of receiving a mailing in 1984.[4] It is likely that a person

[4]The plaintiff has no memory of receiving many of the forms and documents that were sent to him by Prudential. We do not find that to be evidence, in and of itself, that the plaintiff did not receive such documents. The record has demonstrated that the plaintiff signed his declaration sheets

might not remember that he received a certain document in the mail some fifteen years earlier.

Further, the plaintiff was not required to sign the form and return it to be retained in the defendant's files. The closing sentence of § 1791, provides: "Your signature on this notice **or** your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits, as well as the benefits and limits you have selected." 75 Pa.C.S.A. § 1791 (emphasis added). Accordingly, the fact that the defendant does not have a signed § 1791 form in its file does not establish that one was not sent to the plaintiff.

Because the defendant had a general policy of mailing out the forms, and that the plaintiff would have been one of the insureds that would have been on the mailing list for such forms, and the fact that duplicates of the mailed forms were not kept in the insureds' files, together with the case law cited above, we find that the defendant has established that it complied with the "Important Notice" requirement of § 1791.

2. § 1734 Waiver

Having found that the defendant provided the section 1791 "Important Notice", we now must simply determine whether the plaintiff waived his right to UM/UIM limits equal to the liability for bodily injury limits pursuant to section 1734. Under section 1734 an insured is required to request such a waiver in writing. Id. at 228; Breuninger, 675 A.2d at 357.

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and signed a §1734 reduction of UM/UIM benefits which he returned to Prudential.

We find in the instant case, that there was a written request. On November 20, 1994, Plaintiff Clifford signed an option in which he expressly selected lower UIM limits. Def. Brief, Ex. A, p. 8. He signed and dated a form that he had received from Prudential. The language in the form stated that he was clearly selecting lower limits of UM/UIM coverage, and that they would now be $15,000 per person and $30,000 per accident.[5] He signed directly below option 2, which stated that: "By signing this request, I am asking for lower limits of coverage for underinsured motorist insurance under this policy. The limits of coverage on the policy are to be: $15,000 each person, $30,000 each accident." Def. Brief, Ex. A, p. 8. The defendant sent this form along with a document that stated that if the plaintiff did not sign any of the options, according to the law, his UM/UIM coverage would be issued at limits equal to his bodily injury liability coverage. The plaintiff did not choose that option nor did he choose limits 3 and 4 which would have rejected UM/UIM coverage, but rather decided to sign and date immediately below both options 1 and 2, which requested the lower limits of UM/UIM coverage that he had prior to the change in law in 1994. Plaintiff Clifford signed that form and mailed it back to Prudential on his own. It appears that he clearly understood that he was choosing lower UM/UIM coverage so that he would have lower premiums. We find that this was a valid § 1734 election.

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[5]We do not find that it was unusual that the defendant had pre-typed lower limits of $15,000/$30,000 into options 1 and 2 of the form that the plaintiff had received. These limits were not chosen, merely because they were the minimum, but were rather chosen, because they were the UM/UIM limits that the plaintiff had prior to that mailing in 1994. By signing that form, he consented to have lower UM/UIM limits than his bodily injury liability limits and was confirming that his UM/UIM coverage would remain at $15,000/$30,000.

Both the plaintiff and defendant agree that § 1734 is the law in Pennsylvania. However, the plaintiff alleges that in addressing this issue, there is a burden on the defendant to demonstrate that the plaintiff "knowingly and intelligently" elected a lower limit of coverage. We disagree.

The plaintiff alleges that the "knowing and intelligent" standard first set out in Johnson v. Concorde Mutual Ins. Co., 300 A.2d 61 (Pa. 1973) should be applied in the instant case. Prior to 1997, the lower courts of Pennsylvania applied a two step analysis to determine whether a request for lower UIM coverage was valid. First it was necessary to demonstrate that the insured had elected an amount of UM/UIM less than the statutory mandate by showing that the insured had been made aware of the coverage available. Tukovits v. Prudential Ins. Co. of America, 672 A.2d 786, 789 (Pa. Super. Ct. 1996). Second, if there was evidence that the insured was made aware of the coverage available, the trial court can look to events which occurred prior to and after the election in determining whether the insured acted knowingly and intelligently. Id. In the instant case, the plaintiff asserts that is the standard which is to be used in the instant case. However, the defendant asserts that the knowing and intelligent analysis originally set out in the Johnson case should not be applied.

In 1997 the Pennsylvania Supreme Court held that such an inquiry is not necessary where the insurers follows the rules set forth in the MVRFL. The Supreme Court held in Salazar that:

> The MVFRL was enacted subsequent to Johnson. Sections 1731, 1791, and 1791.1 set forth the information which an insurer is required to provide in order that the insured may make a knowing and intelligent decision on whether to waive UM benefits coverage. There was no need for a Johnson analysis under the section of the MVFRL at issue here; the question was whether the Appellants have a remedy pursuant to the MVFRL for Appellee's failure to comply with section 1791.1.

Salazar v. Allstate Ins. Co., 702 A.2d 1038, 1044 (Pa. 1997).

Although Salazar dealt primarily with § 1791.1, we find that it clearly stated that since the MVFRL was enacted after the Johnson case that the Johnson analysis is no longer applicable and rather the question should be whether a remedy is available under the MVFRL.[6] See, e.g., Nationwide Mutual Ins. Co. v. Murphy, 1998 WL 964212 (E.D.Pa.) (holding that it would follow the precedent of the Pennsylvania Supreme Court in Salazar, and finding that since no remedy was available for a violation of § 1791, that the Johnson waiver analysis was unnecessary in determining whether reformation was possible).

However, even if we were to apply the Johnson analysis, we would conclude that the plaintiff made a valid waiver. As stated above, the plaintiff clearly signed and dated a form and sent it to Prudential, which stated that he wished to have UM/UIM limits of $15,000/$30,000. The plaintiff has presented no case law and our research has uncovered no cases finding that contract reformation (the remedy he seeks) is available in the situation where a form had been signed and mailed to the insurance company requesting lower

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[6]The question of whether a remedy is available in the instant case will be addressed in the following section.

UM/UIM limits than bodily injury liability limits. This type of submission is, in fact, the requirement of section 1734 in order to find a valid waiver. Therefore, signing the waiver forms constitutes sound evidence of a knowing and intelligent waiver.

Moreover, the plaintiff acknowledges that he received a declarations sheet every six months with a bill. Pl. Dep. at 34.[7] He stated in his deposition that he did not know what UIM was and did not understand it. Id. at 41. However, the plaintiff does acknowledge that he received his policy booklet, which included an extensive explanation of UIM. Id. at 42. In response to a question as to whether he ever read his policy booklet for an explanation of UIM benefits, he stated that he had ". . . looked at the booklet with specifically each of them. I can't recall going to that specific issue." Id. at 41.

Further, plaintiff's actual knowledge and understanding of the availability of benefits and the limits can be seen in the fact that he continued to pay his premiums even after receiving the § 1791 notice. As stated above, the closing sentence of § 1791, provides: "Your signature on this notice **or** your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits, as well as

[7]The plaintiff argues that certain declaration sheets between 1988 and 1990 did not have the amount of UIM limits listed. The plaintiff admits that the UM limits, which have always had the same limit as the UIM coverage on the plaintiff's declaration sheets, were always listed. Upon review of the record, we find that only the three declaration sheets issued between February 1989 and August 1990 only listed the UM limits. In addition, at least one of those sheets did reference the UIM coverage on the second page that was sent to the insured. In any case, between August 1990 and the time of the accident in May 1999, the plaintiff's request to have underinsured motorist coverage of $15,000/$30,000 was clearly marked on all of the declaration sheets that he received. We find that if the insured was not satisfied with that coverage, he could have made a change or inquired as to the coverage during those nine years, and any accidental omission of the specific limits on a couple of older declaration sheets is not significant.

the benefits and limits you have selected." 75 Pa.C.S.A. § 1791 (emphasis added). The continued payment of premiums here by Plaintiff Clifford demonstrates actual knowledge and understanding of the availability of benefits. See Streets, 1990 WL 4429, *10; see also Nationwide Mutual Ins. Co. v. Buffetta, 230 F.3d 634 (3d Cir. 2000) (finding that the payment of renewal premiums evidences actual knowledge and understanding of the availability of these benefits and limits)[8]. We find that the plaintiff received the coverage for which he had been paying. There is no evidence presented that the defendant in any way deceived the plaintiff as to the UM/UIM coverage he was receiving.[9] The defendant presented the plaintiff with documents with which to make an educated decision as to what coverage he desired. If an insured has questions about his policy and the forms he receives, surely he should have those questions answered, but we find that the plaintiff made no such request in the instant case.

The plaintiff does allege that he sent a letter complaining about the quality of service that he was receiving from the defendant. Upon review of the record, we find that the plaintiff did send a letter to Prudential, primarily to state that he was having trouble with two

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[8]The instant case is distinguishable from Botsko v. Donegal Mut. Ins. Co., 620 A.2d 30 (Pa. Super. Ct. 1993), where the payment of premiums was insufficient to show a knowing and voluntary waiver under §§ 1734 and 1791. In that case there was no evidence that the insured had ever been advised of the coverage mandated by the MVFRL. In contrast, in the present case, the plaintiff was sent the important notice and several later mailings, including the policy booklet. In addition, the insured was given the choice of having less UM/UIM coverage than bodily injury liability and sent a writing reflecting his choice to Prudential.

[9]The plaintiff alleges that the some of the forms that he received that dealt with UM/UIM coverage were confusing. Contrariwise, we find that the forms are relatively self-explanatory insurance documents.

agents and that he wanted a response from the company. Pl. Exhibits, at 126-27. Prudential did reply in a letter, and there is no evidence presented by the plaintiff, that defendant's representative did not promptly call, once the plaintiff returned from a foreign trip in May 1994. Id. at 128. This letter is insufficient to demonstrate that plaintiff could not get information from Prudential throughout the term of his policy. It was later that year, in November, that the plaintiff, signed the form requesting lower UM/UIM limits. If the plaintiff was unsure of what he was signing at that time, he could have called Prudential's toll free number, or he could have submitted a written inquiry requesting further information regarding his UIM coverage. Rather, he immediately decided to send in the form in order to receive lower premiums.

Pennsylvania courts have held that insurance policies, like other contracts, must be read in their entirety and the intent must be gathered from a consideration of the entire instrument. Smith v. Cassida, 169 A.2d 539, 541 (Pa. 1961); see also Koenig v. Progressive Ins. Co., 599 A.2d 690 (Pa.Super.Ct. 1991). The Third Circuit Court of Appeals has also held that an insured:

> . . . could have contacted the insurance company, informed them of the dissatisfaction with the amount of uninsured/underinsured coverage and requested it be corrected or obtained another policy on [their] own . . . remaining silent on the issue of increased coverage, while reaping the benefits of reduced rates, would be to reward inaction.

Buffetta, 230 F.3d 634.

In Buffetta, a mother had made the §1734 election, and the plaintiff daughter argued

that she should not be bound by the lower UM/UIM limits, while in the instant case, it was the plaintiff, himself, who sent back the form requesting lower UM/UIM limits. Id. We are bound by the Court of Appeals' holding and find that we too cannot reward inaction in the instant case. In any case, as noted above, we find that the Pennsylvania Supreme Court, no longer employs the "knowing and intelligent" analysis in matters such as the instant one, and that we therefore do not need to employ it. As stated above, we find that the plaintiff did make a valid § 1734 election in the present case, in the form that he signed and dated and sent to Prudential in November 1994.

3. Reformation of the Policy

Finally, the plaintiff argues that his insurance coverage should be reformed, so that plaintiff's decedent be entitled to UIM coverage of $100,000 on five (5) vehicles with the applicable stacking of each vehicle which represents coverage in the amount of $500,000. The defendant argues that even if this court found violations of § 1791 and § 1734, the plaintiff's request for reformation of the existing policy should be denied because the text of the MVFRL provides no remedy for non-compliance with the provisions therein that apply to this situation. Although it is our finding above, that there was compliance with § 1791 and § 1734 and that the "knowing and intelligent" analysis is not applicable to the instant case, even if it were, we find that reformation would not be available under the MVFRL in this case.

The federal district court in the Buffetta case addressed the question of whether §1734

provided for a remedy. Nationwide Mutual Ins. Co. v. Buffetta, 1999 WL 740395 (E.D.Pa. Sep.20, 1999), aff'd Nationwide Mutual Ins. Co. v. Buffetta, 230 F.3d 634 (3d Cir. 2000). The Buffetta court concluded that the requirements of § 1731 were not incorporated into § 1734. The court noted that § 1734 was revised in 1990 to delete a remedy clause. The district court reasoned that the transfer of the waiver language to § 1731 reflected a legislative intent that no remedy existed for failure to comply with § 1734. Id.

There have been several recent decisions by the Supreme Court of Pennsylvania which suggest an unwillingness to entertain statutory interpretations that depart from the letter of the statute, even in cases where the plaintiff is left without redress for an injury. See Leymeister v. State Farm Mut. Auto. Ins. Co., 100 F. Supp.2d 269, 272 n. 3 (M.D.Pa. 2000). In Salazar, the Pennsylvania Supreme Court found that with regard to § 1791.1 of the MVFRL, there was no remedy provided by the MVFRL and that the legislature has not provided in the MVFRL any enforcement mechanism regarding that requirement. Salazar, 702 A.2d at 1044.

Similarly, in Donnelly, the Pennsylvania Supreme Court explicitly applied Salazar 's holding to another section of the MVFRL and found that the legislature had not provided a remedy under the statute. Donnelly v. Bauer, et al., 720 A.2d 447, 454 (Pa. 1998). Like it did in Salazar, the Court noted that the 1990 amendments to the MVFRL were designed by the legislature to "stem the rising cost of insurance in the Commonwealth." Id. The Court held that where the MVFRL provides no explicit remedy, the courts cannot imply the remedy

of full tort coverage. Id.

Additionally, more recently, a court has found that with regard to § 1734, where there is no explicit remedy, they will not create one by judicial interpretation. Lewis v. Erie Ins. Exchange, 753 A.2d 839 (Pa.Super.Ct. 2000). The Superior Court determined that the absence of a remedy in § 1734, prevents reformation, consistent with the Pennsylvania Supreme Court's rulings in Salazar and Donnelly. Id.; see also Nationwide Mutual Ins. Co. v. Murphy, 1998 WL 964212 (E.D.Pa) (finding that even though no § 1791 Important Notice had been provided, according to Pennsylvania law and precedent, the insured was not entitled to any reformation as the MVFRL did not provide for such).

Finally, the Court of Appeals in Buffetta,[10] addressed the Pennsylvania Supreme Court holdings in Salazar and Donnelly and addressed the question of the availability of a remedy under the MVFRL when it stated that:

> We also view the Pennsylvania Supreme Court's reasoning in its recent opinions of Salazar and Donnelly regarding the issue of "reformation" to support the way in which we approach the statute before us. [§ 1734] Even where defendant insurance companies have violated the policy notice requirements of the Pennsylvania MVFRL, the Pennsylvania Supreme Court has declined to provide a remedy for the insured by, for example, construing the policy against the insurer. Instead, the court has adhered strictly to the statutory language, and where no remedy is provided, it has refused to create one . . . As a federal court sitting in diversity, we should be especially reluctant to create new

[10]The Court of Appeals opinion in Buffetta had not yet been issued when the non-jury trial was held in this case.

> rights that neither the state legislature nor the state courts have seen fit to recognize.

Buffetta, 230 F.3d at 641-42.

In light of the fact that the Third Circuit has taken this view of the Pennsylvania Supreme Court holdings, and in light of the fact that we find that there was a valid § 1734 election, we find that reformation is not available.

The plaintiff was content with the lower premium and this choice until the instant situation arose. Now, the plaintiff is seeking to obtain a larger recovery. If this Court were to fashion a remedy not expressly provided for in the MVFRL, this Court would contravene the cost containment policy behind the MVFRL because allowing the plaintiff the full coverage he seeks would result in giving the plaintiff something for which no individual has paid, which in turn, would result in insurance companies passing on this extra costs to all other insureds.[11] Therefore, we conclude that when there is no explicit statutory remedy, we cannot create one by judicial interpretation.

Conclusion

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[11]The instant case is distinguishable from this court's previous holding in Cebula, where we found the reformation was necessary. Cebula, et al. v. Royal & SunAlliance Ins. Co., 3:00cv266, April 23, 2001. In that case, the insureds did not submit any request that their UM/UIM limits be lower than their bodily injury liability limits. Since we found that there clearly was no §1734 request, we determined that reformation was available. The Third Circuit Court of Appeals stated in Buffetta, that they believed that reformation was allowed in certain limited instances. Buffetta, 230 F.3d at 639. The Buffetta court found that "in the instances in which the insured has been successful [in obtaining reformation], it has been based upon the absence of a valid written request for reduced coverages signed by a named insured." Id. In Cebula, there was no such request for reduced coverages, while in the instant case, as we have noted above, Plaintiff Clifford signed, dated and mailed a form to Prudential requesting lower UIM coverage of $15,000/$30,000. Therefore, we find that Cebula is inapplicable to the instant case.

We find that there was a valid § 1791 notice, and also find that the plaintiff signed and dated and mailed to Prudential a form that provided for a valid § 1734 election of reduced UM/UIM coverage. Having considered the evidence and arguments of able counsel together with the relevant case law, we find that the defendant is entitled to judgment. Therefore, we will not reform the insurance policy as requested by the plaintiff, and will hold that the Prudential policy provides UIM coverage in the amount of $15,000 per person, and $30,000 per accident and that the coverage should be $15,000.00, for each of the five vehicles insured, bringing the total amount to $75,000.00. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH P. CLIFFORD; and JOSEPH :

P. CLIFFORD, Administrator to the Estate of Christopher J. Clifford, Deceased, Plaintiffs

v.

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE CO., a subsidiary of the PRUDENTIAL INSURANCE CO. OF AMERICA, Defendant

No. 3:99cv1788

(Judge Munley)

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VERDICT

AND NOW, to wit, this 28th day of August 2001, pursuant to the attached memorandum, we find in favor of the defendant and against the plaintiff.

It is hereby **ORDERED** that:

1. At the time of the accident, on May 15, 1999, the Clifford's insurance policy, No. 282A454692, provided underinsured motorist coverage in the amount of $15,000 per vehicle, with a total stacked coverage of $75,000.00 of UIM coverage, for the five vehicles.
2. Judgment on the claim is entered in favor of the defendant and against the plaintiff.
3. The Clerk of Court is hereby directed to mark this action closed.

BY THE COURT:

_____
JUDGE JAMES M. MUNLEY
United States District Court

FILED: 8/28/01

OPTION 1
REQUEST FOR LOWER LIMITS OF COVERAGE FOR UNINSURED MOTORISTS INSURANCE

By signing this request, I am asking for lower limits of coverage for Uninsured Motorists Insurance under this policy. The limits of coverage on the policy are to be:

$ 15,000 Each Person $ 30,000 Each Accident

Signature of First Named Insured

CLIFFORD JOSEPH P
Print Name

11/20/94
Date:

28 2A454692
Policy Number

OPTION 2
REQUEST FOR LOWER LIMITS OF COVERAGE FOR UNDERINSURED MOTORISTS INSURANCE

By signing this request, I am asking for lower limits of coverage for Underinsured Motorists Insurance under this policy. The limits of coverage on the policy are to be:

$ 15,000 Each Person $ 30,000 Each Accident

Signature of First Named Insured

CLIFFORD JOSEPH P
Print Name

11/20/94
Date:

28 2A454692
Policy Number

RETAIN

PCD 3027 PA Ed. 8/93

OPTION 3
REJECTION OF UNINSURED MOTORISTS PROTECTION

A. By signing this waiver I am rejecting Uninsured Motorists Coverage under this policy for myself and all relatives residing in my household. Uninsured Motorists Coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have any insurance to pay for losses and damages. I knowingly and voluntarily reject this coverage.

Signature of First Named Insured

Print Name

Date

Policy Number

OPTION 4
REJECTION OF STACKED UNINSURED COVERAGE LIMITS

B. By signing this waiver I am rejecting stacked limits of Uninsured Motorists Coverage under the policy for myself and members of my household under which the limits of coverage available would be the sum of limits for each motor vehicle insured under the policy. Instead the limits of coverage that I am purchasing shall be reduced to the limits stated in the policy. I knowingly and voluntarily reject the stacked limits of coverage. I understand that my premiums will be reduced if I reject this coverage.

Signature of First Named Insured

Print Name

Date

Policy Number