

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM COHICK and SHARON COHICK,	:	NO. 05-01,094
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ONE BEACON INSURANCE GROUP,	:	Cross-Motions for
Defendants	:	Judgment on the Pleadings

**OPINION AND ORDER**

Before the Court are cross-motions for judgment on the pleadings through which the Court is requested to enter judgment on Plaintiffs' Declaratory Judgment action, filed in response to a dispute which arose between the parties over the amount of uninsured motorist benefits available to Plaintiffs under their automobile insurance policy. Argument on the motions was heard November 10, 2005.

The issue raised by Plaintiff's Complaint is simple: are Plaintiffs entitled to uninsured motorist coverage limits of \$100,000 or \$15,000, in connection with a vehicle accident on February 20, 2004, in which Plaintiff Sharon Cohick was hit by another driver who left the scene of the accident and could not be identified? The answer turns on whether the application for insurance signed and submitted by Mrs. Cohick on August 31, 2001, which undeniably sets forth a request for uninsured motorist coverage in the lower amount, is determined sufficient to constitute a "written request for lower limits".<sup>1</sup>

Plaintiff Sharon Cohick applied for the policy at issue on August 31, 2001, and at that time requested bodily injury liability limits of \$100,000/\$300,000 and uninsured and underinsured motorist coverage of \$15,000/\$30,000. The policy was issued in accordance with Plaintiff's request and the various coverages were set forth on the declarations page. Plaintiffs paid premiums based on the coverages selected. The policy was renewed several times in the time period between the date of the initial application and the date of the accident, without changes. Plaintiffs now contend they are entitled to uninsured motorist coverage at the higher limits, equal to the liability limits, because Defendant cannot produce a separate written request

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<sup>1</sup> Counsel agree the facts are not in dispute.

for reduced coverages, arguing that the application itself is insufficient to comply with Section 1734 of the Motor Vehicle Financial Responsibility Law.<sup>2</sup> The Court does not agree.

Section 1734 provides:

**Request for lower limits of coverage**

A named insured may request in writing the issuance of coverages under section 1731 (relating to availability, scope and amount of coverage) in amounts equal to or less than the limits of liability for bodily injury.

75 Pa.C.S. Section 1734. In Lewis v. Erie Insurance Exchange, 753 A.2d 839 (Pa. Super. 2000), *affirmed*, 793 A.2d 143 (Pa. 2002), the Superior Court held a request for lower uninsured/underinsured motorist coverages contained in a written insurance application and not on a separate form was a valid election of reduced benefits as Section 1734 requires only a writing but does not mandate the use of any particular language or form. Clearly, the instant matter is controlled by Lewis.

Plaintiffs nevertheless argue the matter is instead controlled by Motorist Insurance Companies v. Emig, 664 A.2d 559 (Pa. Super. 1995), in which the Court found insufficient a policy change form signed at the end by the insured. It should be noted, however, that in Emig, the policy in effect at the time of the changes (addition of a vehicle and a spouse and rejection of stacking) provided for uninsured/underinsured motorist coverages of \$50,000/\$100,000 but the agent had written in “reduce” and “15/30”; the insured had left the section entitled “UM/UIM REJECTION OR REDUCTION” completely blank and had not signed it, signing only at the end of the entire change form. The Court found the insured had not requested in writing that her UM/UIM coverages be reduced, based on the fact she herself had not filled in the relevant section of the change form, nor had she authorized her agent to do so, and not on the basis that the form was signed only at the end. Indeed, the Court in Lewis distinguishes Emig from the situation before it, indicating “the problem there was the absence of a writing. Thus, the explicit language of § 1734 was not met. ... Here, the writing requirement is not disputed.” Lewis at 851 (citation omitted).

Accordingly, Plaintiffs’ application for insurance which contained a request for lower uninsured/underinsured motorist coverages constitutes a valid “request for lower limits” under

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<sup>2</sup> 75 Pa.C.S. Sections 1701 *et seq.*

Section 1734, and the limits on Plaintiffs' uninsured motorist liability coverage at the time of the accident was \$15,000.

**ORDER**

AND NOW, this 30<sup>th</sup> day of November 2005, for the foregoing reasons, Plaintiff's motion for judgment on the pleadings is hereby denied and Defendants' motion for judgment on the pleadings is hereby granted. Judgment is hereby entered in favor of Defendant and against Plaintiffs on the complaint for declaratory judgment.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson