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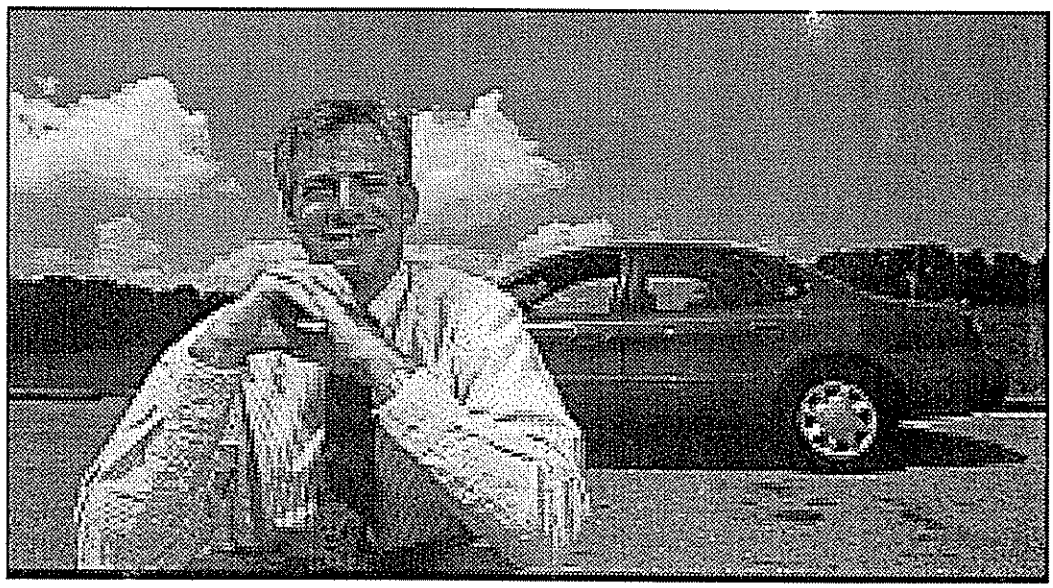
Auto Policy Must Pay $100,000 — Despite $15,000 Policy Limit

By Sylvia Hsieh



Pat Crow

Art Krawitz got an extra $85,000 in auto coverage for a client using a theory that experts say could be raised in most states. The defense lawyer says it puts insurers 'between a rock and a hard place.'

Even though an "uninsured motorist" policy has a limit of $15,000, the policyholder can collect up to $100,000 where the insurance company didn't state clearly enough that higher policy limits were available, says the Delaware Supreme Court in reversing a summary judgment for the insurance company.

The winning argument in this case was based on a statute which is similar to that found in most states.

Lawyers should think about using this argument whenever a client isn't adequately covered, says Professor Alan Widiss of the University of Iowa College of Law, the author of a treatise on uninsured motorist coverage.

The statute says that policyholders must be told that they can buy additional coverage above the mandatory limits. The court held that:

◆ Where the policyholder made telephone calls to the company to request changes in her policy, this triggered a new duty to state all over again that she could buy additional uninsured coverage — even though the changes had nothing to do with uninsured motorist coverage.

◆ Although the company did say that additional coverage was available in an information packet which it sent every six months, this wasn't good enough where the statement was made on page 41 of the 50-page packet and the company didn't go out of its way to call the policyholder's attention to it.

As a result, the policy limits will be increased to the bodily injury limits of $100,000.

About two-thirds of the states have a similar requirement — either by statute or regulation — that policyholders be told that they can buy additional coverage, says Jeffrey Stempel, a dean at the Florida State College of Law in Tallahassee, Fla.

The argument could be extended to other types of insurance coverage where the insured can opt for higher limits, such as personal injury protection or medical coverage, says Gregory Jones of Fort Worth, Texas, a former chair of ATLA's motor vehicle litigation committee.

A similar argument was accepted by the Illinois Court of Appeals in *Jensen* v. *USAA Property and Casualty*

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Insurance Co., 614 N.E.2d 1361 (1993).

Offer Was 'Buried'

The policy in the Delaware case had bodily injury limits of $100,000 per person/ $300,000 per accident, and uninsured motorist coverage of $15,000 per person/ $30,000 per accident.

The policyholder was injured in 1992 in a motorcycle accident with an unidentified driver. (He was covered under his mother's policy as a household member because he had recently moved back home.)

He claimed that the company hadn't told his mother about her right to buy additional coverage (1) in 1990 when he moved out of her house and she called to delete him from her policy, and (2) in 1991 when she called to change the vehicles insured.

The court said that these two calls involved "material changes" to the policy — and therefore triggered all over again the company's duty under the state statute, which says: "Every insurer shall offer to the insured the option to purchase additional coverage."

The court then held that the company hadn't fulfilled its duty by merely mailing the information packet with the renewal policy every six months.

The package was "ambiguous" because the key language was "buried" on page 41 of the 50-page packet and was "oblique," the court said.

It held that merely stating that additional coverage is "available" doesn't amount to an *offer* under the statute.

Therefore, the company failed to show that it had made a "meaningful offer" of additional coverage.

The insurance company, the United Services Automobile Association, is a direct carrier that communicates with its policyholders solely by mail and telephone. However, experts say the court's reasoning would apply equally where an agent communicates with the policyholder.

Read the Policy

Plaintiffs' attorneys in states with similar notice requirements should consider making this argument, lawyers advise.

Attorneys shouldn't simply "assume" that the company made a proper offer of additional coverage, says the plaintiff's attorney in the case, Art Krawitz of Wilmington, Del.

"Read the policy," he advises. "If it's not clear to you, then it probably isn't clear to the consumer."

Lawyers should also find out whether the insurance company can document that it made an oral or written offer of additional coverage. Frequently this will be a winning argument because the company won't be able to prove that an offer was made, Krawitz says.

What Companies Should Do

Insurance companies should explicitly offer additional uninsured motorist coverage during any in-person, telephone or written communications, says Jones.

This includes any time a consumer contacts the company or an agent to take out a policy, ask about the scope of coverage or change the terms of the policy, he adds.

"If there is no human being, such as a live agent, to explain the option of additional coverage to the customer, then the language in the mail must be very clear," says Stempel.

"Just because the language is there doesn't mean the offer was communicated effectively," says Krawitz.

Diane Willette, the defense attorney in the case, says it puts insurance companies "between a rock and a hard place" because they have to be careful to offer the higher limits but they can't make the offer in so many different places that the consumer is confused.

Stempel suggests that insurance companies rewrite their policies by:

- Putting the offer of additional coverage on a separate page at the front of the policy;
- Requiring insureds to check "Yes" or "No" and sign their initials stating if they want additional coverage; and
- Stating in large, bold type that the packet contains important options.

Willette says that insurance companies are moving toward creating separate mailings for higher optional limits.

The manner of presentation is as important as the substance, warns Krawitz. "The insurance company can't satisfy the mandatory requirement by sending 50 pages of materials and asking the consumer to figure it out," he says.

Delaware Supreme Court. Mason v. United Services Automobile Association, No. 231, 1996. July 30, 1997. Lawyers Weekly USA No. 9911402 (15 pages). To order a copy of the opinion, call 800-933-5594.
