

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

DOCKETED  
DEC - 8 2016  
R. POSTELL  
COMMERCE PROGRAM

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<b>JOHN BIELEC</b>	:	September Term, 2014
<i>Plaintiff</i>	:	Case No. 01440
<b>v.</b>	:	Commerce Program
<b>AMERICAN INTERNATIONAL GROUP, INC. et al.</b>	:	
<i>Defendants</i>	:	Control Nos. 16011792, 16011935, 16011936.

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**ORDER**

**AND NOW**, this 5<sup>th</sup> day of December, 2016, upon consideration of the cross-motions for summary judgment filed by plaintiff John Bielec, by defendants Verizon Pennsylvania LLC and Verizon Communications, Inc., and by defendant National Union Fire Insurance Company of Pittsburgh, PA, and upon consideration of their respective memoranda of law in support and opposition, the reply brief in further support of the motion for summary judgment of defendant National Union Fire Insurance Company of Pittsburgh, PA, the sur-reply of plaintiff John Bielec, and supplemental briefing as requested in support and opposition, it is hereby **ORDERED AND DECREED** as follows:

- I. The motion for summary judgment of plaintiff John Bielec is **GRANTED**;
- II. The motion for summary judgment of defendants Verizon Pennsylvania, LLC and Verizon Communications, Inc. is **DENIED**, and Verizon's rejection of UIM benefits as it relates to plaintiff Bielec is declared **VOID**;

Bielec Vs American Inte-ORDER



- III. The motion for summary judgment of defendant National Union Fire Insurance Company of Pittsburgh, PA is **DENIED**;
- IV. The counterclaim asserted by National Union Fire Insurance Company of Pittsburgh, PA in its Answer with New Matter is **DISMISSED**;
- V. By declaratory judgment, National Union Fire Insurance Company of Pittsburgh, PA (“National”) shall provide UIM benefits to plaintiff Bielec up to the statutory limit that National was obligated to offer on Verizon’s insurance policy. National shall make payment only upon its own adjustment, upon settlement, or as required following calculation based on plaintiff’s submission of a Judgment awarding damages for injuries sustained on November 21, 2013 during an auto accident that occurred while Bielec was working for Verizon and driving a Verizon owned motor vehicle insured through National.

**BY THE COURT**



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**RAMY I. DJERASSI, J.**

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<i>Defendants</i>	:	Control Nos. 16011792,
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**MEMORANDUM OPINION**

Cross—motions for summary judgment require us to decide whether a rejection of under-insured motorist (“UIM”) coverage is valid, where statutory text-based requirements were not followed under 75 Pa. C.S.A. § 1731 *et seq.* of the Motor Vehicle Financial Responsibility Law (“MVFRL”). The case also involves policy considerations where plaintiff John Bielec is an employee of defendant Verizon Communications, Inc., which attempted to decline UIM benefits for its fleet of vehicles without notifying plaintiff. Without this notice, Bielec did not arrange for UIM coverage while driving Verizon vehicles during work hours.

Plaintiff had an accident on the job while driving a Verizon truck and was struck by an automobile at a traffic light. Bielec is now precluded from asserting a UIM claim on Verizon’s policy with defendant National Union Fire Insurance Company.

Textual and policy analysis concludes that Verizon’s rejection of UIM coverage is void. Summary judgment is granted in favor of plaintiff John Bielec.

## Background

John J. Bielec, (“Plaintiff”), is an individual residing in Pennsylvania. Defendant Verizon Communications, Inc. (“Verizon”) is an entity with a principal place of business in Philadelphia, Pennsylvania. Verizon Pennsylvania LLC, is an affiliate of Verizon Communications, Inc.<sup>1</sup> Whenever necessary, Verizon Communications, Inc. and Verizon Pennsylvania, LLC shall be hereinafter identified under the name “Verizon.” At all times relevant to this action, Plaintiff was an employee of Verizon. Defendant National Union Fire Insurance Company of Pittsburgh, Pennsylvania (“National”), is a Pennsylvania company providing, *inter alia*, commercial automobile insurance policies.

Verizon is required to insure its fleet of commercial vehicles under a commercial insurance policy. However, before Verizon may obtain such a policy, its insurer must provide Verizon with, *inter alia*, an offer of coverage for underinsured motorists (“UIM”), pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law (“MVFRL”). Specifically, the MVFRL states in pertinent part that “[n]o motor vehicle liability insurance policy shall be delivered ... in this Commonwealth ... unless ... underinsured motorist coverage[ ... is] ... offered therein.<sup>2</sup> Upon receiving an offer for UIM coverage, Verizon is required to either accept or decline the offer. If Verizon declines the offer, it is required to execute a document titled Rejection of Underinsured

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<sup>1</sup> Admission of Verizon Communications, Inc. in its answer with new matter to Plaintiff’s complaint, ¶ 4.

<sup>2</sup> 75 Pa. C.S.A. § 1731(a) (2016). The Pennsylvania Motor Vehicle Financial Responsibility Law also states in pertinent part as follows:

**Underinsured motorist coverage.**—Underinsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles. The named insured shall be informed that he may reject underinsured motorist coverage by signing the [ ] written rejection form. 75 Pa. Stat. and Cons. Stat. Ann. § 1731(c) (2016).

Motorist Protection (the “UIM Rejection Form”). The language of the UIM Rejection Form has been precisely set by the Pennsylvania Legislature. That language states in pertinent part as follows:

**REJECTION OF UNDERINSURED MOTORIST PROTECTION**

By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured 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 enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.

.....  
**Signature of First Named Insured**

.....  
**Date.**<sup>3</sup>

In addition to the precisely crafted language of the UIM Rejection Form found in §1731(c), the Pennsylvania Legislature enacted § 1731(c.1), a sub-section which instructs any insurer to follow certain formalities, lest the entire UIM Rejection Form be declared void. § 1731(c.1) specifically states:

**(c.1) Form of waiver.**—Insurers shall print the rejection forms required by subsections (b) and (c) on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. **Any rejection form that does not specifically comply with this section is void.... I knowingly and voluntarily reject this coverage.**<sup>4</sup>

Whenever Verizon negotiates and obtains new terms under its existing commercial

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<sup>3</sup> 75 Pa. Stat. and Cons. Stat. Ann. § 1731(c) (2016) (emphasis supplied).

<sup>4</sup> *Id.*, §1731(c)(1) (emphasis supplied).

automobile policy, it executes a new UIM Rejection Form.<sup>5</sup>

In 2010, Verizon sought to obtain or renew with National an insurance policy providing commercial insurance coverage for its vehicles. National submitted to Verizon a UIM Rejection Form which tracked *verbatim* the rejection language prescribed by the Pennsylvania Legislature, except for the addition of a tick-box next to the rejection statement –an addition not addressed in the MVFRL. On June 10, 2010, upon receipt of the UIM Rejection Form, a person acting under the authority of Verizon ticked the box adjacent to the rejection language therein, and signed and dated the form in the spaces immediately adjacent.<sup>6</sup>

In June 2013, Verizon required a new UIM Rejection Form from National because Verizon had renegotiated and obtained new terms under the existing policy.<sup>7</sup> National submitted to Verizon a UIM Rejection Form which tracked *verbatim* the rejection language as prescribed by the Pennsylvania Legislature. Upon receipt of the new UIM Rejection Form, a different person acting under the authority of Verizon again ticked the box adjacent to the rejection language, and executed and dated the UIM Rejection Form. This time, however, the authorized person signed and dated the document not in the spaces immediately below the rejection language; instead, she placed a signature and date at the very bottom of the document. As a result, three distinct paragraphs lay interposed between the UIM rejection language contemplated in

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<sup>5</sup> Deposition of Danielle Roth, Director of Risk Management of Verizon, pp. 29:14–25, 30: 1–15, Exhibit E to the response of Plaintiff in opposition to the motion for summary judgment of defendant National, control No. 16011935.

<sup>6</sup> PENNSYLVANIA NOTICE OF UNDERINSURED MOTORIST COVERAGE—REJECTION OF UNDERINSURED MOTORIST COVERAGE dated 6/25/10, Exhibit I to the answer of Plaintiff in opposition to the motion for summary judgment of National, control No. 16011935. Under § 1731 of the MVFRL, there is no provision for a box to be ticked by the Insured.

<sup>7</sup> Deposition of Danielle Roth, Director of Risk Management of Verizon, p. 30: 1–15, Exhibit E to the response of Plaintiff in opposition to the motion for summary judgment of defendant National, control No. 16011935.

§ 1731(c) of the MVFR, and Verizon's signature and date. The first interposed paragraph, titled "Selection of Coverage," contained language accepting of UIM coverage. Verizon's agent neither ticked this paragraph, nor affixed her signature in the immediate adjacent space provided. The second interposed paragraph, titled "Underinsured Coverage Limits," contained language rejecting stacked limits of underinsured coverage. Again, Verizon's agent neither ticked this paragraph, nor affixed her signature in the immediate adjacent space provided.

The third untitled paragraph stated as follows:

I understand the protection afforded by the Underinsured Motorist Coverage and the selection(s) I have made on this Notice regarding Underinsured Motorist Coverage. I further understand and agree that my selection(s) will apply to this policy and all future policy and all future transfers, substitutions, amendments, alterations, modifications, reinstatements or replacements of this policy, and all future renewals of this policy, unless I make a written request to change my selection(s), and such request is received and approved by the Company [National].<sup>8</sup>

On November 21, 2013, Plaintiff was in the course of his employment for Verizon and was driving a vehicle owned by his employer. At a traffic light, Plaintiff's vehicle was struck by an automobile which was insured only for the minimum bodily damage limits allowed under the law. Plaintiff asserts that he sustained serious injuries and damages in excess of these minimum limits; therefore, Plaintiff made an under-insured motorist claim to National on the policy held by Verizon. National denied the claim on grounds that Verizon in 2013 had validly rejected UIM Coverage.

On September 9, 2014, Plaintiff commenced the instant declaratory judgment

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<sup>8</sup> PENNSYLVANIA NOTICE OF UNDERINSURED MOTORIST COVERAGE—REJECTION OF UNDERINSURED MOTORIST COVERAGE dated 6/30/10, Exhibit H to the answer of Plaintiff in opposition to the motion for summary judgment of National, control No. 16011936.

action against, *inter alia*, Verizon and National. On November 5, 2014, Verizon filed its answer with new matter to Plaintiff's complaint. On November 11, 2014, National filed a timely answer to the complaint with new matter and a counterclaim for a declaratory judgment. This counterclaim seeks a declaration stating that Verizon properly completed and signed the UIM Rejection Form, and therefore Verizon properly rejected underinsured motorist coverage.<sup>9</sup> On January 15, 2016, Verizon, National and Plaintiff filed their respective motions for summary judgment. The motions are now ripe for decision.

### **Discussion**

Summary judgment may be granted only in the clearest of cases where the record shows that there are no genuine issues of material fact and also demonstrates that the moving party is entitled to judgment as a matter of law.<sup>10</sup>

Under the [Pennsylvania Rules of Civil Procedure], a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions, and affidavits.... In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.... Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt.<sup>11</sup>

#### **I. The UIM Rejection Form executed by Verizon on 6/30/13 is void.**

##### **ANALYSIS OF NATIONAL'S MOTION FOR SUMMARY JUDGMENT.**

In its motion for summary judgment, National asserts that Pennsylvania courts

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<sup>9</sup> National's answer to the complaint of Plaintiff, with new matter and counterclaim, at ¶¶ 13–15 of the counterclaim chapter.

<sup>10</sup> Trowbridge v. Scranton Artificial Limb Co., 560 Pa. 640, 644; 747 A.2d 862, 864 (Pa. 2000).

<sup>11</sup> Scalice v. Pennsylvania Employees Benefit Trust Fund, 584 Pa. 161, 171-72, 883 A.2d 429, 435 (Pa. 2005).

uphold UIM rejection forms such as the form executed in this case by Verizon.

According to National, the valid UIM Rejection Form signed by Verizon requires this court to find that Plaintiff is not entitled to underinsured motorist coverage. In support, National relies on Winslow—Quattlebaum v. Maryland Ins. Group, a case decided by the Pennsylvania Supreme Court in 2000.<sup>12</sup> Reliance on Winslow is misplaced because the facts and the pertinent issue of that case differ significantly from those here. Therefore, National's argument is rejected.

In Winslow, a motorist (hereinafter "the Motorist") purchased an automobile insurance policy but rejected UIM coverage. To reject UIM coverage, the Motorist executed a rejection form which was printed on a page containing also a "REJECTION OF STACKED UNDERINSURED COVERAGE LIMITS."<sup>13</sup> Subsequently, the Motorist was injured in an automobile accident caused by a negligent motorist; as a result, she suffered damages in excess of the coverage limits available under the insurance policy owned by the negligent driver. The Motorist then tendered a UIM claim to the insurance company (the "Insurer"), and the Insurer denied the claim on grounds that the Motorist had signed a valid UIM rejection statement. She filed a declaratory judgment action against the Insurer but the trial court found she was not entitled to UIM benefits because she had validly signed a UIM rejection form. The Motorist appealed to the Pennsylvania Superior Court. Reversing the trial court's decision, the Court analyzed the language contained in § 1731(c.1) of the MVFRL. That section states in pertinent part:

**(c.1) Form of waiver.**—Insurers shall print the rejection forms required by subsections (b) and (c) on separate sheets in prominent type and location. The forms must be signed by the first named insured and dated to be valid.... Any rejection

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<sup>12</sup> Winslow—Quattlebaum v. Maryland Ins. Group, 561 Pa. 629; 752 A.2d 878 (Pa. 2000).

<sup>13</sup> Id. at 561 Pa. 633; 752 A.2d at 880.

form that does not specifically comply with this section is void....<sup>14</sup>

Based on this language, the Superior Court concluded that the UIM rejection form executed by Plaintiff was void because it was not printed on a separate sheet, but was printed instead on the same sheet which also contained a paragraph entitled the REJECTION OF STACKED UNDERINSURED COVERAGE LIMITS.<sup>15</sup>

On further appeal, however, the Pennsylvania Supreme Court reversed, analyzing § 1731(c.1) differently. The Supreme Court held that—

[t]here is nothing in the language of section 1731(c.1) to suggest that the required rejection statement for ... UIM coverage must stand alone on a page without any other writing. Rather, the plain language of this section merely requires that the rejection statement for ... [uninsured coverage] appear on a page separate from the rejection statement for subsection (c) (UIM) coverage.... [W]e find that there is prohibition to having rejection of UIM benefits and UIM stacking benefits appear on the same form.<sup>16</sup>

Finally, the Supreme Court concluded by stating that—

To be valid ... UIM rejection forms must comply with the requirements of section 1730(c.1) as follows:  
the UIM rejection must appear on a sheet separate from the [underinsured motorist] rejection;  
the first named insured must sign the rejection;  
and the rejection must be dated.<sup>17</sup>

Turning to the case at hand, while it appears that the intervening paragraphs in Verizon's waiver form fall afoul of § 1731(c.1), we do not find Winslow-Quattlebaum to control here because the checked tick box in Verizon's form is immediately next to the appropriate UIM rejection language, and no intervening paragraphs on other subjects

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<sup>14</sup> 75 Pa. Stat. and Cons. Stat. Ann. § 1731.

<sup>15</sup> Winslow—Quattlebaum v. Maryland Ins. Group, 561 Pa. at 634; 752 A.2d at 880.

<sup>16</sup> Id. 561 Pa. at 634—635; 752 A.2d at 880—881.

<sup>17</sup> Id.

separate Verizon's checked tick-box from the rejection line that Verizon should have signed to carry out a valid UIM waiver.<sup>18</sup>

#### ANALYSIS OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

In his motion for summary judgment, Plaintiff asserts that Verizon's rejection of UIM benefits is void because Verizon failed to sign and date in the designated spaces immediately below the UIM rejections statement.<sup>19</sup> Plaintiff also asserts that the act of ticking a box adjacent to the rejection statement, as Verizon did in this case, is not a substitute for a missing signature since § 1731 does not address the existence or use of such a box.<sup>20</sup> Plaintiff concludes that Verizon's rejection of UIM benefits is void, and cites Lucas v. Progressive Casualty Ins. Co., which is instructive, but does not involve a form that has tick boxes and intervening rejection/approval paragraphs with blank signature spaces immediately below.<sup>21</sup>

In Lucas, plaintiff ("the Lucas's") applied for a motor vehicle insurance policy with defendant Progressive Casualty Insurance ("Progressive"). In their application, the Lucas's indicated "no [zero] Underinsured Motorist ... protection."<sup>22</sup> This choice was on a sheet which also contained their rejection of Un-Insured (UM) motorist benefits.

After an automobile accident, the Lucas's sued Progressive for UIM benefits, notwithstanding their apparent UIM waiver. Summary judgment was granted against the Lucas's based on Progressive's compliance with Section 1791 of the MVFRL, which provides in pertinent part:

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<sup>18</sup> Also, in Winslow, the Supreme Court aptly noted that "Winslow—Quattlebaum **specifically signed in the two designated blanks** on the form thereby rejecting *both* UIM coverage and UIM stacking coverage. Thus, there can be no mistake that she signed off on both." Id. at footnote 8. (emphasis added).

<sup>19</sup> Motion for summary judgment of Plaintiff, ¶ 27, control No. 16011936.

<sup>20</sup> Id. ¶ 29.

<sup>21</sup> Lucas v. Progressive Casualty Ins. Co., 451 Pa. Super. 492; 680 A.2d 873 (Pa. Super. 1996).

<sup>22</sup> Id. at 875.

It shall be presumed that the insured has been advised of the benefits and limits available under this chapter provided the following notice in bold print of at least ten-point type is given to the applicant at the time of application for original coverage, and no other notice or rejection shall be required....<sup>23</sup>

Applying this language, the Lucas trial court concluded that, having received notice under § 1791 of the MVFRL, the Lucas's were presumed to have waived underinsured motorist coverage.<sup>24</sup>

On appeal, the Lucas's argued that the trial court erred because its decision was based only on § 1791 without also applying § 1731(c.1). As seen, § 1731(c.1) requires UIM and UM rejection statements to be printed on separate sheets.<sup>25</sup>

The Superior Court agreed, holding the trial court should have determined whether the rejection of UIM benefits had also complied with the requirements of § 1731(c.1). The Superior Court voided the Lucas's UIM rejection, because the form which Progressive presented to the Lucas's had UIM and UM rejection paragraphs printed on the same sheet in violation of § 1731 of the MVFRL. <sup>26</sup>

While the rejection paragraphs in Plaintiff John Bielec's case are indeed found on the same page, *Lucas* does not address the factual wrinkle in his case involving the tick boxes and their proximal relationship to adjacent, but blank, signature lines.

In its sur-reply, plaintiff cites Jones v. Unitrin Auto and Home Insurance Company, a case which focuses on proximal relationship between rejection language in MVFRL-compliant insurance forms and authorized signature lines. <sup>27</sup> Jones examines

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<sup>23</sup> 75 Pa. Sts. and Cons. Stat. Ann. § 1791 (West).

<sup>24</sup> Lucas v. Progressive Cas. Ins. Co., 680 A.2d 873 (Pa. Super. 1996).

<sup>25</sup> Id. 680 A.2d at 875.

<sup>26</sup> Id., 451 Pa. Super. at 499; 680 A.2d at 877.

<sup>27</sup> Jones v. Unitrin Auto and Home Ins. Co., 2102 Pa. Super. 24; 40 A.3d 125 (Pa. Super. 2012).

the proximal relationship between required [rejection] language and signature and date lines.

In Jones, an insurance company (“Insurer”), offered UIM coverage to its insured and provided an UIM rejection form. This form tracked word-by-word the rejection language found in § 1731 of the MVFRL; however, the Insurer inserted a final sentence not contained in the statute. The additional language declared that the insured was also rejecting UIM stacked-limits benefits. The bolded language below shows the text of the added language:

REJECTION OF UNDERINSURED MOTORIST PROTECTION

By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured 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 enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage. **By rejecting this coverage, I am also signing the waiver on P. 13 rejecting stacked limits of underinsured motorist coverage.** (Emphasis added)

Signature of first named insured /s/Ms. Lee Jones  
Date 10/08/08.<sup>28</sup>

After signing this statement, the insured was involved in an automobile accident caused by a negligent driver and suffered damages in excess of the tortfeasor’s liability limits. The insured tendered a UIM claim, but the Insurer denied on grounds that the insured had signed a valid UIM rejection form.

In court, summary judgment was granted in favor of the Insurer. The insured appealed.

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<sup>28</sup> Id. 40 A.3d at 128.

Reversing, the Superior Court declared as follows:

[t]he trial court focuses on the fact that all the prescribed language in section 1731(c) was contained in [the Insurer's] UIM rejection form. However, section 1731(c) also prescribes the **proximal relationship** between the required language and the required signature and date lines following the language. Instantly, [the Insurer's] UIM rejection form **interposes** a sentence not directly related to rejection of UIM coverage, **between** the required language and the signature line. Accordingly, it does not “specifically comply” with section 1731(c) as required by section 1731(c.1). (Emphasis added)

[The Insurer] and the trial court justify the additional sentence by characterizing it as “clarifying” language.... **However ... the legislature, due to the importance of the rights at stake, directed that insurers specifically comply with section 1731.** This directive obviated the need for reviewing courts to engage in a substantial compliance analysis otherwise applicable to other sections of the MVFRL.... If we accept [the Insurer's] position, reviewing court's [*sic*] would now ... be obligated to address the question of whether added language was indeed “clarifying” or, on the other hand, created an ambiguity. This would thwart the legislative intent and the plain import of its requirement of specific compliance with section 1731.<sup>29</sup> (Emphasis added).

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**In conclusion, we hold that additions to the prescribed language, and deviations from the proximal relationship of the components, of the UIM Rejection form required by 75 Pa. C.S.A. § 1731 fail to specifically comply with the statute and is consequently void.**<sup>30</sup> (Emphasis added).

In Bielec's case here, Verizon's authorized agent signed and dated the UIM Rejection Form at the bottom of the document. The form allows at least three

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<sup>29</sup> *Id.* 40 A.3d at 129–130 (some emphasis added).

<sup>30</sup> *Id.* 40 A.3.d at 131 (emphasis added).

paragraphs to intervene between the specific UIM rejection statement and the authorized agent's signature and date. One of these interposed paragraphs contains a statement asserting that Verizon rejected "stacked limits of underinsured motorist coverage." This intervening language voids the validity of Verizon's attempted UIM rejection. If this were not so, courts at all levels would be condemned to address ambiguity derived from virtually any form that deviates in any way from MVFRL designated language and graphics. Courts would be obligated to do this on a case-by-case basis, a burden the *Jones* court proscribes.<sup>31</sup>

Accordingly, based on textual interpretation of the MVFRL and case law, summary judgment is granted in favor of Plaintiff John Bielec and Verizon's rejection of UIM benefits offered by National is declared void.

#### PUBLIC POLICY

Even if Verizon's UIM rejection were deemed valid on statutory text analysis, we believe an employer who fails to notify its employee driver that UIM coverage has been rejected is acting against public policy.

After reviewing the parties' respective motions for summary judgment, we requested supplemental briefing on matters of public policy. In his supplemental brief, employee Bielec argues that Verizon's waiver of UIM coverage without his notification is against the policies that underpin the MVFRL. Verizon and National disagree, writing in their supplemental briefs that no public policy is applicable. They argue nothing

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<sup>31</sup> We also note that at least on one prior occasion, Verizon properly complied with the requirements of § 1731(c) by signing and dating a UIM Rejection Form in the spaces which the statute specifically designates immediately below the operative language. UIM Rejection Form, Exhibit 1 to the motion for summary judgment of national, control No. 16011935.

prohibits a corporation from waiving UIM benefits for an employee injured on the job without notice or consent of that employee.

Pennsylvania courts hold that contract terms that work against clearly expressed public policy are void.<sup>32</sup> Public policy is discerned “by reference to the laws and legal precedents and not from general considerations of supposed public interest.”<sup>33</sup> In furtherance of a “dominant public policy”, court may declare a contract contrary to public policy.<sup>34</sup> Therefore, a waiver of UIM coverage in an insurance policy contract is void as a matter of public policy if it contravenes dominant public policy.<sup>35</sup>

Two dominant public policies underpin Pennsylvania’s laws related to UIM coverage.<sup>36</sup> First is the notion that Pennsylvania’s current automobile insurance laws were passed by the General Assembly to contain the spiraling costs of automobile insurance.<sup>37</sup> Second is the notion that these same laws also facilitate the greatest possible auto insurance coverage to injured claimants.<sup>38</sup> The legislative and case law history of the MVFRL reflects long and conscious interplay between these two dominant public purposes.

Prior to 1984, mandatory motor vehicle insurance had been required for nearly a decade under Pennsylvania’s former No-Fault Motor Vehicle Act.<sup>39</sup> This law was

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<sup>32</sup> Heller v. Pennsylvania League of Cities & Municipalities, 32 A.3d 1213, 1220 (Pa. 2011).

<sup>33</sup> Id.

<sup>34</sup> Id., at 1219.

<sup>35</sup> Id., at 1220 (citing Burstein v. Prudential Property and Casualty Insurance Co., 809 A.2d 204, 207 (2002)).

<sup>36</sup> See discussion in Burstein v. Prudential Prop. & Cas. Ins. Co., 809 A.2d 204, 220 (Pa. 2002) (Saylor, J., dissenting) (“In the UM/UIM arena, competing policy concerns have been clearly identified—while frequently acknowledging the remedial purposes of the legislatively prescribed offer of UM/UIM insurance, the Court has repeatedly emphasized the legislative concern for the increasing cost of insurance as a central policy to be advanced by the MVFRL.”) (citing Paylor v. Hartford Ins. Co., 640 A.2d 1235–36 (Pa. 1994)).

<sup>37</sup> Lewis v. Erie Ins. Exch., 793 A.2d 143, 150 (Pa. 2002).

<sup>38</sup> See Nationwide Ins. Co. v. Schneider, 599 Pa. 131, 146, 960 A.2d 442, 451 (2008).

<sup>39</sup> Lewis, at 149 (citing P.L. 489, No. 176 (codified at 40 P.S. §§ 1009.101–1009.701) (repealed) (the “No-Fault Act”)).

“promulgated with the express purpose of establishing a statewide system of basic loss benefits for accident victims at reasonable cost.”<sup>40</sup> A guiding principle of the No-Fault Act was “maximum feasible restoration” to accident victims.<sup>41</sup> Additionally, under Pennsylvania’s UM Act, insurers were required to provide UM coverage for any automobile insurance policy issued in Pennsylvania and covering an automobile registered or principally garaged in the Commonwealth.<sup>42</sup> As has been documented extensively, these requirements caused the price of automobile insurance policies in Pennsylvania to rise significantly.<sup>43</sup>

Pennsylvania replaced the No-Fault Act with the MVFRL in 1984, and further amended the law in 1990.<sup>44</sup> Under the present framework, UM and UIM coverage are optional.<sup>45</sup> This moderated Pennsylvania’s maximum feasible restoration policy in the UIM context to one of protecting people from the risk of injury caused by a negligent driver who lacks adequate insurance. <sup>46</sup> UM and UIM coverage is no longer required but insurance providers remain mandated to offer UM/UIM coverage under the MVFRL.<sup>47</sup> Additionally, insurance providers must comply with strict statutory requirements reviewed earlier in this Opinion to ensure that, if an insured chooses to waive UM/UIM coverage, the insured has done so knowingly.<sup>48</sup>

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<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id. at 150.

<sup>43</sup> Williams v. GEICO Gov’t Employees Ins. Co., 32 A.3d 1195, 1210 (Pa. 2011) (Baer, J., concurring); Burstein v. Prudential Property and Cas. Ins. Co., 809 A.2d 204, 207-08 (Pa. 2002); Lewis v. Erie Ins. Exch., 793 A.2d 143, 149 (Pa. 2002).

<sup>44</sup> Lewis, at 149.

<sup>45</sup> Pa. C.S. § 1731.

<sup>46</sup> Heller v. Pennsylvania League of Cities & Municipalities, 32 A.3d 1213, 1221 (2011).

<sup>47</sup> 75 Pa. C.S. § 1731 (“No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered. . .”).

<sup>48</sup> 75 Pa. C.S. § 1731, § 1791.

In balancing these two objectives under the MVFRL, Justice Baer, concurring in Williams v. GEICO Government Employees Insurance Company, a case announced at virtually the same time as Heller, noted that conditions have changed in the auto insurance market since 1990. He observed that while insurance premium cost containment was critical then, the auto insurance industry is profitable today and insurance costs have stabilized.<sup>49</sup>

In this context, both dominant MVFRL policy objectives are achieved through enforcement of technical statutory requirements, but courts may also advance these purposes when specific legislative direction is absent.<sup>50 51</sup>

Notice is key to meeting both policy objectives. When deciding if a waiver of UIM coverage is valid, courts must be satisfied that the insured “knowingly and voluntarily” signed the appropriate UIM form with signatures in the proper place.<sup>52</sup> This assures courts that an insured knows what’s happening when he signs a waiver, knowledge that promotes a fair and free insurance market with balance between cost and access.

This “knowingly and voluntarily” standard involves a two part test. First, the insured must be aware that the actual UIM coverage is available.<sup>53</sup> Second, courts must be satisfied that a waiver is free from ambiguity, such as those caused by technical defects present on some forms that do not properly comply with the language and layout set by the statute.<sup>54</sup>

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<sup>49</sup> Williams v. GEICO Gov’t Employees Ins. Co., 32 A.3d 1195, 1210 (Pa. 2011)(Baer, J. concurring)

<sup>50</sup> Freeth v. Zurich Am. Ins. Co., 152 F. Supp. 3d 420, 430 (E.D. Pa. 2015), *aff’d*, 645 F. App’x 169 (3d Cir. 2016).

<sup>51</sup> See Nationwide Ins. Co. v. Schneider, 960 A.2d. 442, 451 (Pa. 2008) (absent legislative direction the court may balance the cost-containment and remedial objectives to advance the purpose of the MVFRL).

<sup>52</sup> Nationwide Mutual Insurance Co. v. Heintz, 804 A.2d 1209, 1217 (Pa. Super. 2002)

<sup>53</sup> *Id.*

<sup>54</sup> Nat’l Union Fire Ins. Co. v. Irex Corp., 713 A.2d 1145, 1150 (Pa. Super. 1998) (“When an insurer fails to comply, in any degree, with the statutorily required rejection/waiver rules found in section 1731, our court has found such attempted UM waiver invalid.”)

In Bielec's case, Verizon tried to waive UIM coverage on its commercial automobile fleet policy without notifying him. Bielec was not given the chance to choose for himself how to respond to the economic question whether he should buy UIM insurance to cover him while at work driving Verizon's truck. He may have wanted to pay for the coverage himself or ask his union to purchase it for him. He may have chosen to decline it.

Verizon's lack of notice undermines MVFRL policy protect people from risk of injury caused by a negligent driver who lacks adequate insurance.<sup>55</sup> Without notice that UIM coverage is being declined, there cannot be a knowing and voluntary waiver. Even if defendants are correct that one federal court in 1999 thought Pennsylvania law will enable corporations to waive UM/UIM coverage on behalf of a third party, the MVFRL's purpose is still to protect Pennsylvania's drivers at reasonable cost.<sup>56</sup>

The MVFRL is clear about UIM waiver in the context of an individual person and its language speaks of household and relatives.<sup>57</sup> The law is silent, however, when it comes to corporate duty to promote the purposes of the MVFRL by letting its employees know UIM coverage is being declined.

The MVFRL defines "insured" only as an individual identified by name and in the context of private passenger motor vehicle insurance.<sup>58</sup> The phrase "named insured," however, has been held to include a corporate rental car company waiving

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<sup>55</sup> Heller v. Pennsylvania League of Cities & Municipalities, 32 A.3d 1213, 1221 (2011).

<sup>56</sup> Travelers Indem Co of Illinois v. DiBartolo, 171 F.3d 168, 172 (3d Cir.1999) (predicting that under Pennsylvania law, "a corporation...{may] waive UM coverage when the corporation is the named insured").

<sup>57</sup> 75 Pa. C.S. § 1731(b.1) (c) ("By signing this waiver I am rejecting underinsured motorist coverage under this policy, *for myself and all relatives residing in my household*. Underinsured 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 enough insurance to pay for all losses and damages").(Emphasis added).

<sup>58</sup> 75 Pa. C.S. § 1702.

UM/UIM coverage on a fleet policy.<sup>59</sup> In Blakney v. Gay, the “named insured” was a rental car company whose authorized agent had signed a proper form under 75 Pa. C.S. § 1731 to reject UM/UIM coverage. The renter also had notice that UIM insurance was not included in his rental insurance and he then affirmed that he was given an offer to purchase UIM insurance on his own but declined. <sup>60</sup> Blakney held the renter, having rejected the chance to pay for his own UM/UIM coverage, was not entitled to UM/UIM coverage on the rental car company’s policy.

Bielec’s situation is different. Verizon has not alleged that he was given notice, and Verizon has not provided discovery establishing that he was. Defendants now argue that Bielec could have asked Verizon whether he was covered and then purchased his own UIM benefit from his own insurance carrier. Verizon also argues Bielec’s union should have negotiated for UIM through by collective bargaining, and suggests mere notice needs to be won through negotiation.<sup>61</sup> Verizon also argues Bielec is covered by Pennsylvania’s workers compensations laws and does not qualify for UIM coverage, but workers’ comp protection does not include non-economic damages caused by third parties.<sup>62</sup>

In sum, Verizon’s waiver of UIM coverage for its commercial fleet vehicle without notice to its employee driver is void.

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<sup>59</sup> Blakney v. Gay, 657 A.2d 1302, 1304 (Pa. Super. 1995).

<sup>60</sup> Id. But see Peters v. National Interstate Ins. Co., 108 A.3d 38, (Pa. Super. 2014) (holding that an Ohio registered vehicle was not covered by the MVFRL and noting, in *dicta*, that a third party beneficiary was not entitled to UIM coverage).

<sup>61</sup> In the context of whether Bielec could get UIM insurance for a work vehicle under his own personal auto insurance, it is noted that many individual motor vehicle policies include an exclusion that would bar a UM/UIM claim for a non-owned regularly used vehicle.

<sup>62</sup> Pennsylvania’s workers’ compensation law provides a partial benefit covering medical expenses and two-thirds of the worker’s weekly wage. 77 Pa. C.S. § 1 *et seq.* See also Selected Risks Ins. Co. v. Thompson, 552 A.2d 1382, 1388 (Pa. 1989) (“[W]orkmen’s compensation only covers a fraction of what tort damages would cover, (e.g. workmen’s compensation does not provide 100% of wage loss coverage, nor pain and suffering, nor other consequential damages)”).

## II.

### **Plaintiff's rights as a third-party beneficiary rise to the bodily injury liability limits to which Verizon is entitled.**

In its motion for summary judgment, National asserts that Plaintiff Bielec has no expectation of UIM coverage because he is neither a first named insured, nor a named insured under the commercial automobile insurance policy in question.<sup>63</sup> We do not agree.<sup>64</sup> In Pennsylvania—

[a]n injured person who makes a claim for uninsured motorist benefits under a policy to which he is not a signatory is in the category of a third party beneficiary. Historically ... third party beneficiaries are bound by the same limitations in the contract as the signatories of that contract. The third party beneficiary cannot recover **except under the terms and conditions of the contract from which he makes a claim...**

**The rights of an alleged third party beneficiary may arise [sic] no higher than the rights of the parties to the contract** and ... they are vulnerable to the same limitations which may be asserted between the promisor and the promisee.<sup>65</sup>

(Emphasis added)

In addition, the MVFRL states in pertinent part that—

[a]ny rejection form that does not specifically comply with [Pa. C.S.A. § 1731] is void. **If the insurer fails to produce a valid rejection form, uninsured ... coverage ... shall be equal to the bodily injury liability limits.**<sup>66</sup>

(Emphasis added)

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<sup>63</sup> National's motion for summary judgment, IV—C, p. 6, control No. 16011935.

<sup>64</sup> Under the MVFRL, an "insured" includes (1) persons named on the policy, and (2) minors and spouses residing in the same household as the named insured. 75 Pa. C.S. § 1702. This specific language contemplates individual consumers of automobile insurance and their households, and is not perfectly tailored for application to other relationships, such as that between an employer and employee. Status as a third party beneficiary ameliorates some of the inequities caused, as is the case here, when an individual operating the insured vehicle is an employee of the named insured and is limited in his or her ability to consent to the waiver of UM/UIM coverage.

<sup>65</sup> *Gen. Acc. Ins. Co. of Am. v. Parker*, 445 Pa. Super. 300, 304-05; 665 A.2d 502, 504 (Pa. Super. 1995).

<sup>66</sup> 75 Pa. Stat. and Cons. Stat. Ann. § 1731 (2016) (emphasis supplied).

National cites Peters v. National Interstate Insurance Co., to support its position that a third-party beneficiary who did not elect UIM coverage and paid no premium for it “had no reasonable expectation in, or legally cognizable claim, of UIM coverage.”<sup>67</sup> Initially, we note the above quoted language in Peters is *dicta* and is subject to reevaluation in the context of the situation in this case. More importantly, the facts in Peters are not on point.<sup>68</sup>

In Peters, the Court specifically held the MVFRL was inapplicable because the vehicle involved was not registered or garaged in Pennsylvania. Peters also does not address the issue of notice, saying nothing about whether the employer there had given notice to its Ohio employee, an Ohio resident, that it had declined UIM insurance. The question in Bielec’s case appears to be first impression and does not turn on issues such as non-payment of premiums mentioned in *dicta* in Peters.

At the same time, Peters does not negate Bielec’s standing to assert a claim for UIM benefits in the event Verizon’s own waiver is void for the reasons analyzed in the first section of this Opinion.<sup>69</sup> Bielec is a third party beneficiary to Verizon’s insurance policy and his claim is linked to the fate of Verizon’s attempted rejection.<sup>70</sup>

Because public policy requires notice, Verizon’s rejection of UIM coverage

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<sup>67</sup> Peters v. National Interstate Insurance Co., 108 A.3d 38, 46 (2014)

<sup>68</sup> Id. at 45, n.10 (“Because this issue (the non-applicability of Pennsylvania’s MVFRL) [to an Ohio vehicle] is dispositive, we need not reach the additional issues raised. However, to avoid any confusion . . . we will address Appellants’ other issues on the merits as well”).

<sup>69</sup> Peters at 47. (“At best, they were third party beneficiaries”); See Egan v. USI Mid-Atlantic, Inc. 92 A.3d 1, 20 (Pa. Super. 2014).

<sup>70</sup> Defendants’ position that Bielec lacks standing also fails because he can rebut the presumption that he “has been advised of the benefits and limits available under this chapter” pursuant to 75 Pa. C.S. § 1791. Though he is not the “insured”, he is after all the actual driver impacted under a statutory section that includes: “Insurance companies operating in the Commonwealth of Pennsylvania are required by law to make available for purchase the following benefits *for you, your spouse or other relatives or minors in your custody or in the custody of your relatives, residing in your household...*” (emphasis added).

without notifying Bielec voids the rejection itself. To satisfy the dual purposes of the MVFRL, an employee driver must have a knowing and voluntary opportunity to obtain UIM coverage, even at his own expense, to protect himself and his family.

CONCLUSION

For these reasons, plaintiff John Bielec's motion for summary judgment of is granted; the motions for summary judgment of defendants National and Verizon are denied, and National's counterclaim against plaintiff is dismissed. A declaratory judgment is entered in favor of plaintiff and against defendants.

**DATE: DECEMBER 5, 2016**

**BY THE COURT**

A handwritten signature in black ink, appearing to read 'Ramy I. Djerasi, J.', written over a horizontal line.

**RAMY I. DJERASSI, J.**