

Judgment rendered February 27, 2002.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 35,743-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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ROBERT EARL HOBSON and
DELORES NELSON HOBSON, ET AL

Plaintiffs-Appellees

Versus

WANDA FAYE KING, ET AL

Defendants-Appellants

* * * * *

Appealed from the
Sixth Judicial District Court for the
Parish of East Carroll, Louisiana
Trial Court No. 19229

Honorable Michael E. Lancaster, Judge

* * * * *

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Appellant, Safeway Ins.

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Appellees, Robert Hobson,
Delores Hobson, Ricky
Hobson, Robert Hobson, Jr.
and Mary Douglas

SMITH and DAVIS, L.L.P.
By: Amos H. Davis

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Appellees, Eugene Styron,
Lonnie Styron, U-Haul
International and Republic
Western Ins.

* * * * *

Before BROWN, CARAWAY and PEATROSS, JJ.

BROWN, J.,

This appeal concerns the validity of a rejection of uninsured motorist coverage on a form promulgated pursuant to the provisions of La.R.S. 22:1406(D)(1)(a)(ii). Following cross motions for summary judgment, the trial court granted plaintiffs' motion and held the form in question to be invalid because it had been altered. For the reasons that follow, we reverse.

Facts

On March 12, 2000, Delores Nelson Hobson and her children, Ricky Earl Hobson, Mary Douglas, and Robert Earl Hobson, Jr., were involved in an automobile accident with an uninsured motorist. Their claim for benefits under their own policy with Safeway Insurance Company was denied by Safeway on grounds that Delores Nelson had rejected UMBI (Uninsured Motorist Bodily Injury) coverage. The alleged rejection was executed on a form promulgated by the Louisiana Commissioner of Insurance pursuant to the provisions of La.R.S. 22:1406(D)(1)(a)(ii). The Safeway form included the following language:

By law, your policy will include UMBI Coverage at the same limits as your Bodily Injury Liability Coverage unless you request otherwise. If you wish to reject UMBI Coverage, select lower limits of UMBI Coverage, or select Economic-Only UMBI Coverage, you must complete this form and return it to your insurance agent or insurance company. ***(Economic-Only UMBI Coverage may not be available from your insurance company. In this case, your company will have marked options 3 and 4 below as "Not Available.")*** (Emphasis added).

The form then provided five options concerning UMBI coverage: The first option was UMBI coverage for both economic and non-economic losses with the same limits as bodily injury liability coverage. This option defined "economic losses" as those that could be measured in specific monetary terms, including, but not limited to, medical costs, funeral expenses, lost

wages, and out-of-pocket expenses, and “non-economic losses” as losses other than economic losses, including, but not limited to pain, suffering, inconvenience, and mental anguish. The second option provided on the form was UMBI coverage for both economic and non-economic losses, with limits lower than bodily injury liability coverage limits. Options three and four allowed selection of economic-only UMBI coverage, either with the same limits as bodily injury liability coverage or with lower limits than bodily injury liability coverage. However, options three and four were marked as “Not Available.” Finally, the fifth option provided by the form was a complete rejection of UMBI coverage. Delores Nelson initialed option number five and signed the UMBI coverage form on March 10, 2000.

After cross-motions for summary judgment were filed concerning the validity of the waiver, and after arguments were heard on the motions, the trial court concluded that the form, promulgated by the Commissioner of Insurance, had been “altered”; therefore, the motion for summary judgment filed on behalf of plaintiffs was granted, while the motion for summary judgment filed on behalf of defendants was denied. This appeal followed.

Discussion

Louisiana law requires UM coverage in every automobile liability insurance policy for an amount not less than the limits of bodily injury liability provided by the policy. This minimum amount is automatically included in the policy unless the insured rejects the coverage or selects lower limits. La.R.S. 22:1406D(1)(a)(i); *Cangelosi v. Allstate Ins. Co.*, 96-0159, (La. App. 1st Cir. 09/27/96), 680 So.2d 1358, *writ denied*, 96-2586 (La. 12/13/96), 692 So.2d 375. In 1997, the Legislature enacted Act No. 1476,

which amended the statute governing UM coverage to allow an additional selection by an insured for economic only (“EO”) UM coverage. The pertinent part of La.R.S. 22:1406D(1)(a)(i) provides:

Insurers *may* also make available, at a reduced premium, the coverage provided under this Subsection with an exclusion for all noneconomic loss. This coverage shall be known as "economic-only" uninsured motorist coverage. Noneconomic loss means any loss other than economic loss and includes but is not limited to pain, suffering, inconvenience, mental anguish, and other noneconomic damages otherwise recoverable under the laws of this state. (Emphasis added).

Subsection (D)(1)(a)(ii) of the statute further provides that “rejection, selection of lower limits, or selection of economic-only coverage shall be made only on a form prescribed by the commissioner of insurance,” and the “prescribed form shall be provided by the insurer and signed by the named insured or his legal representative.”

The form in question was promulgated by the Louisiana Commissioner of Insurance on April 28, 1998, in La. Bulletin LIRC 98-01, attached to this opinion as Appendix “A”. The form used by Safeway is identical to the form promulgated by the Commissioner of Insurance in all respects, including the provision providing that a company not offering EO UMBI coverage will have marked options three and four as “Not Available.”

In the instant case, there is no question that the rejection was executed on a form provided by the Commissioner of Insurance and that the form specifically states that EO UMBI coverage might not be available from the insurer, in which case the company would have marked options three and four as “Not Available.” Accordingly, the trial court incorrectly concluded that the form was “altered” by the insurance company.

Plaintiffs contend that even if Safeway chooses not to sell EO UMBI coverage, the purchaser still has a right “to see a form **with all** of the options granted by the statute.” Thus, if the purchaser chooses a type of UMBI coverage not sold by Safeway, the company may inform him of that fact and he can seek insurance elsewhere. Plaintiffs also argue that the Commissioner of Insurance could not authorize Safeway to “deprive an insured of one of his choices” because the statute instructs the Commissioner to create a form that includes EO UMBI coverage. We disagree with both of plaintiffs’ arguments.

First, the statute specifically indicates that EO UMBI coverage is a type of coverage that an insurer *may* offer. The language of the La.R.S. 22:1406 that “[i]nsurers may also make available,” at a reduced premium uninsured motorist coverage with an exclusion for all non-economic loss is permissive language, in contrast to other provisions in the statute in which the word “shall” indicates that a provision is mandatory rather than permissive.

Nowhere does the statute require that the form prescribed by the Commissioner of Insurance afford an insured the option of selecting EO coverage. Instead, the provisions simply requires that, when an insured makes a selection concerning uninsured motorist coverage, other than coverage in an amount equal to bodily injury liability coverage, that selection, whether a rejection, a selection of lower limits, or selection of EO coverage, must be made on the prescribed form. Stated differently, the requirement of the selection of EO coverage, *if available*, on the prescribed form, does not equal a requirement that the insurer offer EO coverage. Furthermore, while the statute does not specifically state that automobile insurance purchasers must

be made aware of EO UMBI coverage, even if the statute could be so read, the form promulgated by the Commissioner of Insurance and utilized by Safeway clearly explains EO UMBI coverage and full UMBI coverage, and plainly states that EO UMBI coverage may not be available from the purchaser's insurance company. Thus, the form indicates all possible options concerning UMBI coverage, while also explaining the nature of EO UMBI coverage.

We conclude that the form is valid and that the trial court erred in granting summary judgment for plaintiffs.

Conclusion

For the reasons set forth above, we reverse the trial court's judgment and render judgment in favor of Safeway, holding that Ms. Nelson's waiver of UMBI coverage was valid. Costs are assessed to plaintiffs-appellees.

REVERSED AND RENDERED.

APPENDIX "A"

STATE OF LOUISIANA

This form was promulgated pursuant to LRS 22 § 1406.D.(1)(a)(ii). This form may not be altered or modified.

UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE FORM

UNINSURED/UNDERINSURED MOTORISTS BODILY INJURY COVERAGE, referred to as "UMBI" in this form, is insurance which pays persons insured by your policy who are injured in an accident caused by an owner or operator of an uninsured or underinsured motor vehicle.

By law, your policy will include UMBI Coverage at the same limits as your Bodily Injury Liability Coverage unless you request otherwise. If you wish to reject UMBI Coverage, select lower limits of UMBI Coverage, or select Economic- Only UMBI Coverage, you must complete this form and return it to your insurance agent or insurance company. (Economic-Only UMBI Coverage may not be available from your insurance company. In this case, your company will have marked options 3 and 4 below as "Not Available.")

UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE

You may select one of the following UMBI Coverage options (initial only one option):

1. _____ I select UMBI Coverage which will compensate me for my
Initials economic and non-economic losses with the same limits as my Bodily Injury Liability Coverage.

Economic losses are those which can be measured in specific monetary terms including, but not limited to, medical costs, funeral expenses, lost wages, and out of pocket expenses.

Non-economic losses are losses other than economic losses and include, but are not limited to, pain, suffering, inconvenience, and mental anguish.

2. _____ I select UMBI Coverage which will compensate me for my
Initials economic and non-economic losses with limits lower than my Bodily Injury Liability Coverage limits:

\$_____ each person

3. _____ I select Economic-Only UMBI Coverage which will compensate
Initials me only for my economic losses with the same limits as my Bodily Injury Liability Coverage.

