

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
) Civil Action No. 2020-CP-04-02533
)

DONEGAL INSURANCE,
Plaintiff,

vs.

CHARLES H. WADE,
Defendant.

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FINAL ORDER

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Apr 05 2023
SC Court of Appeals

This matter came before the Court on September 20, 2022 at the Anderson County Courthouse for a non-jury trial on the Plaintiff’s Complaint for Declaratory Judgment as to the issue of Underinsured Motorist Coverage on the Defendant’s policy of insurance. Present at the hearing was Thomas E. Hite, III, appearing on behalf of the Defendant, Charles H. Wade, and Karl Brehmer, appearing on behalf of Plaintiff, Donegal Insurance.

NOW THEREFORE BASED UPON MEMORANDUMS OF LAW, WITNESS TESTIMONY, AND EVIDENCE PRESENTED TO THIS COURT, I HEREBY MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. On November 1, 2017, the Defendant was involved in a motor vehicle accident with Deanna M. McEntire in Anderson County, South Carolina. On January 23, 2019, Mr. Charles Wade (“Wade”) filed a Summons and Complaint against Ms. McEntire for damages resulting from the motor vehicle accident in Case Number 2019-CP-04-00871. Mr. Wade settled his claims with Ms. McEntire on a Covenant Not to Execute within the liability limits of Ms. McEntire’s automobile liability insurance policy. Mr. Wade deemed Ms. McEntire

underinsured and therefore served his insurance carrier through the South Carolina Department of Insurance with the Summons and Complaint in that action.

2. On December 30, 2020, Donegal Insurance (“Donegal”) commenced the instant case against Mr. Wade seeking a declaratory judgment as follows: that it was under no obligation to make an offer of Underinsured Motorist (“UIM”) coverage to Mr. Wade; that the Policy does not provide underinsured motorist coverage for the injuries complained of in his Complaint; and that Mr. Wade cannot seek a reformation of the Policy to include UIM coverage by challenging the sufficiency of the offer of UIM coverage. Wade filed an Answer and Counterclaims against Donegal for: Breach of Contract; Reformation of Contract Based on Mutual Mistake; Reformation Based on Insured’s Reasonable Expectations and Failure to Make a Meaningful Offer; Bad Faith; and Bad Faith – Attorneys’ Fees. Donegal filed a Reply to Wade’s Counterclaim denying the allegations.

3. A Motion for Summary Judgment hearing was held on April 20, 2022, in which Plaintiff’s motion was denied. An Order denying Plaintiff’s Motion of Summary Judgment was entered on June 7, 2022.

4. Prior to the trial of this matter the parties convened via teleconference to determine whether this matter could be heard by the Court in a non-jury hearing. The parties after due consideration consented to going forward by non-jury.

5. During the trial in this matter, which was held on the above-reference date, both parties presented testimony and exhibits as to their respective claims.

6. The Plaintiff called Sandra Booth of Donegal underwriting and Linda Barnes of Countybank Insurance Services. Plaintiff through these witnesses supplied the court with the insurance file and electronic communications between the parties.

7. Defendant testified that he was not informed of his options to purchase UIM and did not understand UIM coverage or the available options for the purchase of UIM. Defendant presented evidence of the UIM rejection form that was not fully completed and did not have the amounts for premiums filled in.

8. This case stems from the Plaintiff's failure to make a meaningful offer of UIM coverage to Mr. Wade. Mr. and Mrs. Wade had automobile insurance on their vehicles through Southern Mutual Insurance Company, a subsidiary of Donegal, for several years prior to August 2017. On or about August 2017, Mrs. Wade contacted Michelle Rogers of Countybanc to inquire as to what coverages they had on their vehicles and for an explanation as to what each item covered. Mr. and Mrs. Wade did not understand what they were paying for in regards to UIM and UM coverage. Mr. and Mrs. Wade did not contact Ms. Rogers with the intention of canceling or dropping UIM coverage from their policy. However, after a telephone conversation with Mrs. Wade, Michelle Rogers emailed Mr. Wade requesting that he sign and return a UIM meaningful offer / rejection form. This form was not filled out properly and did not contain the required premium options for the purchase of UIM coverages up to the policy limits for liability. Michelle Rogers did not testify in this case.

9. The Plaintiff determined that the Defendant's inquiry was a triggering act that required an offer / rejection form to be signed pursuant to S.C. Code Ann § 38-77-160 and 38-77-350 and when any offer of UIM is made it must be properly made.

10. Based on the testimony and evidence presented, the court finds that Donegal has not produced a meaningful offer of Underinsured Motorist Coverage that complies with S.C. Code Ann § 38-77-160 and 38-77-350.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That the Court finds for the Defendant based on the reasons stated above.
2. That the Defendant, Charles Wade's policy shall be reformed and UIM coverage be applied to the level of liability limits on the policy.

AND IT IS SO ORDERED.

JUDGE J. CORDELL MADDOX, JR.
COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

MARCH_____, 2023
ANDERSON, SOUTH CAROLINA



Anderson Common Pleas

Case Caption: Donegal Insurance VS Charles H Wade

Case Number: 2020CP0402533

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.