

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2014 CP-04-00411

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ORDER

2016 APR 19 AM 10:14  
COMMON PLEAS AND  
GENERAL SESSIONS

FILED-CLERK'S OFFICE  
ANDERSON SC

Randall Dixon,

Plaintiff,

v.

Nationwide Property & Casualty Insurance  
Company,

Defendant.

This matter came before the Court for non-jury trial on June 18, 2015. Donald L. "Chuck" Allen, Esquire, appeared for the Plaintiff. Appearing for the Defendant was J.R. Murphy, Esquire. Upon careful consideration of the facts and the law, the Court finds for the Defendant.

**BACKGROUND**

This is an action for a declaratory judgment for reformation of an auto insurance policy due to the alleged failure of the defendant insurer to make a meaningful offer of underinsured motorist (UIM) coverage. The only other cause of action in the Complaint, alleging bad faith, has been dismissed by consent of the parties.

The Plaintiff, Randall Dixon, alleges in his Complaint that prior to September 7, 2013, he purchased insurance for a 2003 Suzuki motorcycle from the Defendant, Nationwide Property & Casualty Insurance Company (hereinafter "Nationwide"). The policy had minimum limits of \$25,000 per person and \$50,000 per accident for bodily injury liability coverage and uninsured motorist (UM) coverage. The policy Nationwide issued to Dixon did not carry UIM coverage.

On September 7, 2013, Dixon was in a motor vehicle accident while operating his 2003 Suzuki motorcycle as a result of which he suffered bodily injuries. The liability carrier for the at-fault driver, Allstate Insurance Company, tendered its liability limits of \$100,000. Dixon alleges that he sustained damages which exceeded the amount of the liability coverage and brought this action seeking reformation of the Nationwide policy to include UIM coverage with limits equal to the liability coverage.

### **FINDINGS OF FACT**

The Dixons have two auto policies with Nationwide. Before Dixon obtained the policy on the involved motorcycle, he already had a separate insurance policy that covered the Dixons' two personal automobiles. That policy, also with Nationwide, had limits of \$50,000 per person and \$100,000 per accident for bodily injury liability coverage, UM and UIM coverage—limits that are higher than the minimum limits (Exhibit "1").

On February 11, 2013, Dixon applied for the Nationwide policy at issue covering his 2003 Suzuki motorcycle through the Bagwell Agency in Williamston, South Carolina. The agent presented Randall Dixon with a quote (Exhibit "2"). Dixon then signed an application and a form entitled "Offer of Optional Additional Uninsured and Underinsured Registered Motor Vehicle Insurance Coverage" (hereinafter "UIM Offer Form" Exhibit "6"). All three documents Dixon signed—the quote, the application, and the UIM Offer Form—reflected Dixon's desire to reject UIM coverage. The premium for UIM coverage for the motorcycle was significantly higher than the premium for UIM coverage for Dixon's automobiles. The motorcycle policy, unlike the other policy Nationwide issued to Dixon covering his automobiles, did not contain UIM coverage.

A few months later, the policy covering the 2003 Suzuki motorcycle lapsed because of an administrative error. After he received notice of the lapse, Randall Dixon called the Bagwell Agency and spoke with one of its agents, Amber Methany. The error was corrected and Nationwide reinstated the policy. However, due to the lapse, Dixon was requested to sign a new UIM Offer Form. Randall Dixon advised Methany that he was on the road as a truck driver, and asked if his wife could sign the form. Methany advised Randall Dixon that his wife could sign the form.

On June 10, 2013, Randall Dixon's wife, Jessica Dixon, came to the Bagwell agency and signed the UIM Offer Form indicating UIM coverage was being rejected. At trial, Randall Dixon admitted that Jessica Dixon signed his name on the second UIM Offer Form (Exhibit "7"). Dixon also admitted that he authorized Jessica to sign for him, and that all her actions for him were within the scope of her authority. Pursuant to this rejection, the policy as reinstated did not carry UIM coverage. The named insureds on the policy are Randall and Jessica Dixon.

Randall Dixon's motorcycle accident occurred on September 7, 2013. Nationwide denied Dixon's claim for UIM coverage. This declaratory judgment action followed.

### **CONCLUSIONS OF LAW**

Plaintiff made two arguments at trial. First, Plaintiff argued that Nationwide failed to make a meaningful offer because it did not offer UIM coverage in amounts less than the mandatory minimum limits for liability and UM coverages. Second, Plaintiff argued Nationwide failed to make a meaningful offer to both named insureds on the policy.

Plaintiff's first argument that Nationwide failed to make a meaningful offer because it did not offer UIM coverage in limits less than the mandatory minimum fails as a matter of law. Under South Carolina law, auto insurers are not required to offer UIM coverage in amounts less

than the mandatory minimum. Moody v. Dairyland Ins. Co., 354 S.C. 28, 579 S.E.2d 527 (Ct. App. 2003); S.C. Code Ann. § 38-73-470 (2015).

Plaintiff's second argument that Nationwide's offer was inadequate because Randall and Jessica Dixon did not both sign the form also fails. Under the rules of agency, one spouse may act for another based on either express or implied authority. Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004). Randall Dixon admitted at trial that Jessica had express authority to sign for him, and that she acted within the scope of her authority when she signed the UIM Offer Form. Therefore, Jessica Dixon had express agency authority to sign for Randall.

The fact that Jessica Dixon did not separately sign the form for both Randall and herself does not render Nationwide's offer defective. Under South Carolina law, one spouse may sign as agent for the other. McLeod v. Home Ins. Co., 672 F. Supp. 903, 906 (D.S.C. 1987). It would be inconsistent for one spouse to argue, on the one hand, that she is entitled to coverage under a policy procured by the other spouse, while at the same time argue, on the other hand, that the other spouse acted without authority as to one aspect of the policy, *i.e.*, the UIM Offer Form. Prioleau, 359 S.C. at 243, 597 S.E.2d at 168.

Jessica does not deny that Randall had authority to act for her in obtaining insurance for Randall's motorcycle—a vehicle Randall owned and Jessica was not licensed to operate. In fact, if she presented such an argument, she would be repudiating the entire insurance contract. Prioleau, 359 S.C. at 243, 597 S.E.2d at 168. If Randall had authority to act for Jessica in applying for the policy, then he also had authority to sign for her in rejecting UIM coverage under that policy.



Moreover, Jessica does not have a viable argument that she did not receive a meaningful offer of UIM coverage. It was Jessica herself, acting as agent for Randall, who signed the UIM Offer Form upon reinstatement of the policy. In so doing, she received a copy of the UIM Offer Form and had the opportunity to review it before she signed it. It would be illogical for Jessica to argue that Randall lacked authority to sign for her when she herself acted as his agent in signing the form.

Based on the foregoing, I find that the Plaintiff properly rejected UIM coverage on the policy covering the motorcycle. Furthermore, I find and Plaintiff concedes that the UIM coverage on the Nationwide policy covering the Dixons' two personal automobiles is unavailable to Randall Dixon under Burgess v. Nationwide Mut. Ins. Co., 373 S.C. 37, 644 S.E.2d 40 (2007). Therefore, I find for the Defendant in this matter. Plaintiff's request for a declaratory judgment reforming Nationwide's policy to include UIM coverage with limits equal to the liability and UM coverages is **DENIED**. It is hereby

**ORDERED, ADJUGED and DECREED** that judgment be entered for the Defendant.

**IT IS SO ORDERED.**

The Honorable J. Cordell Maddox, Jr.  
Presiding Judge of the Tenth Circuit Court

Anderson, South Carolina

Date: April 18, 2016

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**CERTIFICATE OF SERVICE**

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, do hereby certify that on April 22, 2016, I have served a copy of the foregoing Order in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Donald L. Allen, Esquire  
Joshua C.B. Allen, Esquire  
The Allen & Allen Law Firm  
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MAY 06 2016  
SC Court of Appeals

  
Sandra R. Branson  
Legal Assistant to J.R. Murphy, Esquire

Columbia, SC