

Automobile Law Committee



REJECTING THE REJECTION

Pennsylvania state and federal courts strictly construe UIM rejection forms

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In a manner that is presumably similar to the requirements of the automobile law in other jurisdictions, Pennsylvania's Motor Vehicle Responsibility Law [MVFRL] imposes a number of across-the-board requirements which automobile insurance carriers must follow during an insured's application and purchase of an automobile insurance policy. Among the many requirements are mandated forms, containing specified language, which insurance companies must present and have executed by the applicant during the purchasing of the policy.

For example, Pennsylvania law mandates that a UIM carrier is required to provide UM and UIM coverage in an amount at least equal to the liability limits selected by its insured unless a valid rejection form, written in accordance with the specific form language set forth in 75 Pa.C.S. § 1731(c), was executed by the insured. Under the separate 75 Pa.C.S. § 1731(c.1), the Pennsylvania Legislature also provided that "[a]ny rejection form that does not specifically comply with this section is void."

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Litigation over the propriety of these forms typically arises later after the injured party insured has been in a motor vehicle accident and wishes to challenge whether he or she properly rejected or reduced the UM or UIM coverages under their own policy.

A number of recent state and federal court decisions in Pennsylvania have confirmed that the courts of this Commonwealth will engage in a strict constructionist approach when reviewing challenges to these UM/UIM rejection forms. From these decisions, it is readily

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apparent that the even the slightest deviation from the statutorily mandated language will result in the forms and, therefore, the elections of reduced UM or UIM coverages, null and void as a matter of law.

Extra language renders form void

In its recent decision in the case of *Jones v. Unitrin Auto and Home Insurance Company*, 40 A.3d 125, 2012 WL 361696, No. 397 W.D.A. 2011 (Pa. Super. Feb. 6, 2012), the Pennsylvania Superior Court had an opportunity to address the propriety of an underinsured motorists (UIM) benefits rejection form in a declaratory judgment action filed by an injured party insured.

The novel question presented in this case of first impression was whether the inclusion of additional, or extra language, by the UIM carrier at the end of its underinsured motorist insurance rejection form which was over and above the statutorily mandated language failed to specifically comply with the MVFRL and was therefore void.

The *Jones v. Unitrin* Court noted that precedent required it to construe Pennsylvania auto insurance law "liberally" to give effect to the goals of that law, one of which was to "afford the injured claimant the greatest possible coverage." The Court also recognized that in cases involving close questions, the courts were required to "interpret the intent of the legislature and the language of the insurance policies to favor coverage for the insured."

Turning to the facts before it, the Court in *Jones v. Unitrin* noted that the UIM rejection form utilized by the carrier contained the exact same language required by the statute. However, as noted, the form also had an additional sentence appended to the end of the form which was not found in the mandated form. That sentence read, "By rejecting this coverage, I am also signing the waiver on P. 13 rejecting stacked limits of underinsured motorist coverage."

Prior to the Superior Court's decision last month in this case of *Jones v. Unitrin*, there were no appellate decisions in Pennsylvania addressing the effect of additional words on the validity of these types of automobile insurance rejection forms.

The Pennsylvania Superior Court in *Jones v. Unitrin* did draw guidance from another Pennsylvania appellate

decision on a similar issue involving the effect of missing words from the required form. In its prior decision in the case of *American Intern. Ins. Co. v. Vaxmonsky*, 916 A.2d 1106 (Pa. Super. 2006), the Pennsylvania Superior Court had ruled that a UIM rejection form that was missing one word mandated by the statute was void for failing to specifically comply with the statutory mandates.

The Superior Court in *Jones v. Unitrin* likewise held that, in deviating from the statutorily mandated language in the form, in this case by adding extra language, the UIM carrier failed to specifically comply with the statutory requirements with regards to the underinsured motorist insurance rejection form and, as such, the form was void.

With this ruling, the Court rejected the trial court's reliance upon the Pennsylvania Supreme Court decision of *Winslow-Quattlebaum v. Maryland Ins. Group*, 752 A.2d 878 (Pa. 2000), in which that Court wrote in *dicta* that "[t]here is nothing in the language of section 1731 (c.1) to suggest that the required rejection statement for UM or UIM coverage must stand alone on a page without any other writing."

The majority in *Jones v. Unitrin* distinguished the *Winslow-Quattlebaum* decision as focusing on the different issue of what different kinds of coverage rejections could be on the same page as opposed to the exact content of the wording of those rejection forms. The *Jones v. Unitrin* Court also noted that the form in the *Winslow-Quattlebaum* case, unlike the form in the case before it, did comply with the requirement that the form language be immediately followed by the mandated signature line.

In this regard, the *Jones v. Unitrin* Court faulted the form before it for also violating the "proximal relationship" between the mandated language and the required signature line following the form. In other words, the form in § 1731(c) did not have anything between the end of the language in the form and the signature line. Any deviation from that set-up also failed to specifically comply with the statute in the eyes of the Pennsylvania Superior Court.

Accordingly, the Pennsylvania Superior Court in this *Jones v. Unitrin* case strictly applied Pennsylvania automobile insurance law and found that, by adding an extra sentence to the form between the required language and the signature line, the Unitrin UIM rejection form did not, as required by § 1731 (c.1), "specifically comply" with the form found in § 1731(c).

Similar results in Pennsylvania federal courts

Another recent case in which a UIM rejection form containing extra language—in this case only one extra word—was found to be invalid is the Federal Middle District Court decision of *Grassetti v. Property & Casualty Insurance Company of Hartford et al.*, 2011 WL 1522326 (M.D. Pa, 2011).

In this decision, which was handed down before the *Jones v. Unitrin* decision, the court also relied upon the *Vaxmonsky* decision to hold that the carrier's form deviated from the statutorily required language, albeit with respect to the addition of only one word. Whereas the statutorily mandated form language made reference to "Uninsured Coverage," the carrier's form at issue in this matter added a word and referred to "Uninsured Motorists Coverage."

The Court in *Grassetti* emphasized that 75 Pa.C.S. Section 1731(c)(1) provided that "[a]ny rejection form that does not specifically comply with this section is void." In so ruling, the Court also found *Vaxmonsky* persuasive on the issue of interpreting the specific compliance requirements of Section 1731(c)(1).

In a more recent Pennsylvania Eastern District Federal Court decision that was handed down after the Pennsylvania Superior Court's decision in *Jones*

v. Unitrin, Federal Senior Judge Edmund V. Ludwig relied upon *Jones v. Unitrin* in ruling against Travelers Indemnity Co. of America with regards to the propriety of a UIM rejection form in the case of *Robinson v. Travelers Indemnity Co. of America*, 2012 WL 677007 (E.D. Pa. Feb. 29, 2012).

Judge Ludwig ruled that, based upon the *Jones v. Unitrin* decision, the addition of a single word in an underinsured motorist coverage rejection form violated the specific mandates of the MVFRL and, as such, rendered the rejection void. In *Robinson*, Travelers had changed the waiver by adding the word "motorists" into the phrase "underinsured coverage" in the mandated language.

Take a closer look

The recent state and federal court decisions on the propriety of UM/UIM rejection forms should serve to compel both sides of the issue to break out the magnifying glasses to review the form language for strict compliance with the statutorily mandated language. The decisions issued to date confirm that, with respect to at least UM/UIM rejection forms, a deviation of the addition or omission of even only a single word could serve to render the form void and thereby result in greater coverage for the injured party insured. ▽ ▽



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