STATE OF MICHIGAN

COURT OF APPEALS

CHARLES KNOX,

Plaintiff-Appellee,

v

No. 98520

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE,

On Remand

Defendant-Appellant.

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BEFORE: M.H. Wahls, P.J., B.B. MacKenzie and H. Hood, JJ.

PER CURIAM

We reconsidered this insurance case on remand from the Supreme Court, which determined that "the facts of this case are as recited in the first full paragraph of page 7 of the defendant's brief in support of its application for leave to appeal to this Court, rather than as recited in the contradictory portions of the third paragraph of the Court of Appeals' July 29, 1986 opinion." The first full paragraph on page 7 of defendant's brief states:

> "The Court of Appeals also emphasizes in its opinion that the accident vehicle, which did not have uninsured motorist coverage, was a replacement for a 1972 Vega, and that the policy covering the Vega included uninsured motorist coverage. In fact, the transcript of trial clearly shows that the accident vehicle replaced a 1972 Chevrolet pick-up [sic], which in turn had replaced the 1971 Ford van that was the first vehicle insured by Defendant (1/23/85 Tr, 84-85, 88). Neither the 1971 Ford Van nor the 1972 Chevrolet had uninsured motorist coverage (1/23/85 Tr, 84-89).

In its brief, defendant continues and states that "the mistaken notion that the policy on the accident vehicle replaced a policy that had uninsured motorist coverage makes it seem that Defendant concealed a change in the renewal policy from Plaintiff."

As explained in our former opinion, this case involves an appeal by defendant insurance company from a jury verdict holding defendant liable for damages suffered by plaintiff in a 1979 automobile collision involving plaintiff's 1977 Ford pickup

truck. Liability was premised on uninsured motorist coverage, even though plaintiff in fact had not paid for such coverage. We found that there was sufficient evidence presented at trial showing that a special relationship existed between plaintiff and defendant's agent so as to impose a duty on the agent to inform plaintiff of the availability of uninsured motorist coverage, and that in view of the silence of defendant's agent in informing plaintiff of his policy's coverage, reformation of the insurance contract to include uninsured motorist coverage was proper. We do not view the factual mistake in our first opinion as requiring on remand a different result than that previously reached.

Defendant first argued that the trial court erred in denying its motion for a directed verdict because there was no duty on defendant's part to inform plaintiff of the availability of uninsured motorist coverage. We reassert our former conclusion that the facts in this case are sufficiently analogous to those in Stein v Continental Casualty Co, 110 Mich App 410; 313 NW2d 299 (1981), lv den 414 Mich 853 (1982) and Palmer v Pacific Indemnity Co, 74 Mich App 259; 254 NW2d 52 (1977), lv den 401 Mich 808 (1977), to have avoided a directed verdict. This reassertion is based on the conclusion, also reached in our former opinion, that there was sufficient evidence presented at trial showing a special relationship between the parties in this action to allow the case to go to the jury. Where a special relationship exists, the insurer has a duty to advise the insured regarding a policy's coverage and is liable for breaching that duty. Absent such a special relationship, however, there is generally no duty to advise, and it is instead the responsibility of the insured to read the insurance policy and make inquiries about coverage within a reasonable time after issuance. Parmet homes v Republic Ins Co, 111 Mich App 140, 314 NW2d 453 (1981), lv den 415 Mich 851 (1982).

In this case, plaintiff was insured by defendant since 1974. In that year, plaintiff insured his 1971 Ford van with defendant. He spoke with an unnamed agent at defendant's

Ypsilanti branch, and the agent filled out an application for plaintiff based on plaintiff's responses to questions. Plaintiff testified that he requested "full coverage" and road service, and left it up to the agent to complete the paperwork. The agent, according to plaintiff, never talked to plaintiff about the various available coverages. After the agent completed filling out the application, plaintiff signed it. "I felt comfortable," plaintiff asserted, 'knowing [I had] full coverage and everything." Later in 1974, plaintiff purchased a 1972 Chevrolet pickup truck and the policy on the 1971 Ford van was transferred to that vehicle. Later still, when plaintiff received his 1977 Ford pickup truck as a Father's Day present from his son-in-law, plaintiff again transferred his policy to the new vehicle, requesting "full coverage, like I always ask for." Plaintiff explained that to him, "full coverage" meant "that you're covered for everything that [the insurer has] to offer you that you would need.... To protect you against lawsuits or losing your home or anything." Moreover, plaintiff testified that when he requested "full coverage" for his son Jimmy's pickup truck from one of defendant's insurance agents, the policy for the truck included uninsured motorist coverage. In addition, other members of plaintiff's family testified that when they requested "full coverage" for their vehicles under plaintiff's master policy from insurance agents employed by defendant, they were given uninsured motorist coverage.

Under these facts, where defendant carried all of plaintiff's and plaintiff's family's automobile insurance policies for five years; where defendant's agent wrote out plaintiff's insurance application in response to questions posed to plaintiff; where plaintiff specifically requested "full coverage" from defendant; where at other times a request for "full coverage" from defendant prompted the inclusion of uninsured motorist protection; and where defendant held itself out as an expert in the field of automobile insurance, we find that the parties shared a "special relationship" such that

defendant had a duty to inform plaintiff about the adequacy of his policy regarding uninsured motorist coverage. Thus, the trial court did not err in denying defendant's motion for a directed verdict on the basis that there was no duty on defendant's part to inform plaintiff of the availability of insured motorist coverage.

We feel that our holding is harmonious with the decisions in Stein v Continental Casualty Co, supra, and Palmer v Pacific Indemnity Co, supra. In Stein, plaintiffs began an architectural and engineering business and, between 1964 and 1969, contracted with the Mourer-Foster Insurance Agency for a "claims made" professional liability insurance policy with defendant Continental Casualty Company. Under a "claims made" policy, an insured party must maintain continuous coverage in order to have protection against liability for malpractice if the claim is not made in the same policy year in which the alleged negligence occurred. Plaintiffs allowed their policy to lapse between 1969 and 1971, but renewed their contract in 1971. However, upon renewing, they were not informed of the consequences of having cancelled their insurance in 1969 and were not informed that a "prior acts" endorsement was available when they renewed their insurance in 1971. This Court affirmed the trial court's conclusion that a special relationship existed between the parties, emphasizing the following:

> "In the instant case, the evidence established that the Mourer-Foster Insurance Agency had handled all of plaintiffs' insurance needs, including their malpractice insurance, for 10 years. The evidence also established that Mourer-Foster was an agent of defendant, Continental. From 1962 until 1969, plaintiffs bought their malpractice insurance from Continental through Mourer-Foster. When plaintiffs elected not to renew their malpractice insurance, Mourer-Foster failed to inform them of the consequences of their failure to renew. In 1971, plaintiffs decided to renew their malpractice insurance asking Mourer-Foster to obtain a policy which would cover them against all liabilities. Mourer-Foster insured plaintiffs with Continental but failed to inform plaintiffs of Continental's prior acts endorsement which would have protected them in the Bank of Lansing action." (Emphasis added.) 110 Mich App at 417-418.

Similarly, in this case, plaintiff had a long-standing relationship with defendant, which extended to many members of

his family. Moreover, in requesting "full coverage," plaintiff was asking defendant, as did the plaintiffs in Stein, "to obtain a policy which would cover [him] against all liabilities." Moreover, defendant failed to inform plaintiff of the uninsured motorist coverage which would have assured plaintiff of coverage for the damages received in the 1979 automobile collision.

In Palmer, the plaintiff had professional malpractice coverage of $10,000 with an insurer through defendant Nettleship Company -- an insurance agency specializing in professional malpractice insurance. Plaintiff had been a client of Nettleship Company for approximately 30 years. After being sued and sustaining liability for $82,000, plaintiff argued that the insurer and Nettleship were liable for the excess of the judgment over the insurance coverage of $10,000 because he never received any advice indicating that his coverage was inadequate or that he should have had more coverage. This Court found that because there was evidence of a special relationship between Nettleship Company and the plaintiff, the trial court properly denied the former's motion for a directed verdict. The Palmer Court stated:

> "In this case, there was evidence of a special relationship between Nettleship and the plaintiff Palmer. The defendant was the sponsored insurance representative of the National Osteopathic Association and held itself out as an expert in the field of medical and professional malpractice insurance. Palmer had been a client for approximately 30 years. Given this, a fact situation was created regarding the question whether a special relationship existed and it would have been improper for the trial court to grant a directed verdict in favor of Nettleship." 74 Mich App at 267.

In the instant case, defendant, Detroit Automobile Inter-Insurance Exchange, held itself out as an expert in the field of automobile insurance. Plaintiff clearly relied on defendant's expertise, as is evidenced by his trusting reliance on defendant to give him "full coverage," as requested. Plaintiff, in response to a question on cross-examination whether defendant charged him for something he did not get, stated: "No. I'm saying that I asked for full coverage and I thought that I was getting everything that I needed. I didn't even know what uninsured motorist [coverage] was." And although plaintiff's

relationship with defendant did not span the number of years spanned in the Palmer relationship, plaintiff and other of his family members nevertheless had dealt with defendant for a significant period of time; clearly, plaintiff was not an insured who shared a brief or fleeting history with defendant.

Second, as an alternative argument, defendant contended that there was no clear and convincing evidence presented at trial regarding mutual mistake of fact or unilateral mistake and fraud by defendant so as to entitle plaintiff to reformation of the contract to include uninsured motorist coverage. Thus, defendant reasoned, the trial court should have granted its motion for directed verdict. The trial court denied defendant's motion on the basis that a question of fact for the jury existed regarding whether a mistake was made, particularly in light of the fact that, "In this case there was uninsured motorist coverage on all the other household policies."

In Stein, supra, this Court recognized that a contract may be reformed where there has been a mutual mistake made by the parties or where there is a mistake by one party and fraud or inequitable conduct by the other. It also recognized that an insurance policy may be reformed where, through the fault of the insurer, a policy does not cover the person or property intended. In addressing the issue of first impression of whether a failure to inform is a basis for reformation of an insurance policy, the Stein Court found that the silence of the insurance agent "induced plaintiff's mistake and justifies a reformation of the insurance policy." 110 Mich App at 421.

In our previous decision in this case, we stated that, as in Stein, "defendant's silence is the basis for reformation of the insurance policy." On remand, our reassessment in light of the correct facts does not lead us to a conclusion at variance with our prior determination. Plaintiff's mistake in failing to obtain uninsured motorist coverage derived from the insurance agent's silence regarding the coverage afforded under plaintiff's policy. Plaintiff wanted "full coverage" and left it up to the

insurance agent to fill out the proper forms to obtain such coverage. He testified that he never specifically requested uninsured motorist protection by name because he "didn't even know it existed" and because he assumed he already had full coverage for his vehicle. Clearly, this mistaken perception on the part of plaintiff would not have existed had an insurance agent alerted plaintiff that his policy, in fact, lacked the coverage afforded under an uninsured motorist provision. Thus, on these facts, we cannot distinguish Stein.

Moreover, that the insurance declaration sheets periodically mailed out by defendant to plaintiff included, since sometime in 1977, a provision stating that no uninsured motorist protection was provided under the policy issued to plaintiff does not persuade us that defendant sufficiently broke its silence on this issue to the extent that plaintiff's mistaken belief as to his coverage ceased to be a mistake. On cross-examination, plaintiff testified as follows:

"Q I'm talking about before the accident. You kept getting these renewal notices, correct?

A Correct.

Q And you either ignored them or read them and didn't understand them?

A I didn't ignore them. I read them and sometimes just glanced at them because I couldn't understand them. I didn't understand them. And so I would pay for them, and I felt secure that --

Q In may of '77 it looks like they changed the sheet here where it mentions uninsured motorist coverage and the word "none" appears in there, doesn't it?

A On here it does, yes.

Q Did that, when you got this notice back in May of '77, at all startle you or prompt you to make any kind of phone call?

A No.

* * *

A Never noticed it. I didn't even know it existed, uninsured motorist, because I had asked for full coverage and I thought I have everything. I didn't even know anything about uninsured motorist until after this accident.

Under these circumstances, it seems clear to us that plaintiff continued to labor under his mistaken belief until, as the record

reflects, he was specifically advised by his attorney after the 1979 accident that he should acquire the protection provided by what is known as uninsured motorist coverage. In this determination, we do not vary from our earlier opinion, and we do not detect any necessity to change our assessment upon considering the issue in light of the correct facts as set forth at the beginning of this opinion.

Accordingly, based on the foregoing, we affirm the lower court in this case on remand.

/s/ Myron H. Wahls
/s/ Barbara B. MacKenzie
/s/ Harold Hood