STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CYNTHIA C. RUZAK,

Plaintiff,

v

File No. 06-25177-NI
HON. PHILIP E. RODGERS, JR.

USAA INSURANCE AGENCY, INC.,
a foreign corporation,

Defendant.
_____/

Mark R. Dancer (P47614)
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Nathan P. Miller (P69620)
Attorneys for Plaintiff

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Attorney for Defendant

DECISION AND ORDER ON
CROSS-MOTIONS FOR SUMMARY DISPOSITION
REGARDING APPLICABILITY OF THE "RENEWAL RULE"

This auto negligence, breach of contract and declaratory judgment action arises out of a single vehicle accident that occurred on October 21, 2004 in Leelanau County. The Plaintiff was a passenger in an automobile being driven by her husband, Jay Ruzak, when he lost control of the vehicle, left the roadway, sideswiped a utility pole and struck a tree. As a result of the accident, the Plaintiff was seriously injured and sought damages from Mr. Ruzak for his negligence and against the Ruzak's automobile liability insurance company, USAA Insurance Agency, Inc. ("USAA") for breach of contract for failure to pay benefits under the bodily injury liability coverage provisions of their policy. USAA filed a declaratory judgment action seeking the Court's determination of the applicable limits of the bodily injury liability coverage.

USAA filed a motion for summary disposition, pursuant to MCR 2.116(C)(10), claiming that there was no genuine issue of material fact that the maximum amount of liability insurance coverage under the policy for family members in circumstances such as those presented here was $20,000. USAA relied upon Exclusion C which excluded coverage for any member of the insured's household "to the extent that the limits of liability for this coverage exceed $20,000 for each person or $40,000 for each accident." The Plaintiff responded to USAA's motion by filing a counter-motion for summary disposition, pursuant to MCR 2.116(C)(10), claiming that there is no genuine issue of material fact that the maximum amount of liability insurance coverage under the policy is $300,000 per person because the policy was ambiguous and Exclusion C was against public policy or unconscionable.

On October 19, 2006, this Court issued a decision and order denying USAA's motion for summary disposition and granting summary disposition for the Plaintiff. The Court found that the policy was unambiguous, but that Exclusion C was unconscionable and against public policy and granted summary disposition for the Plaintiff. USAA appealed.

On June 24, 2008, the Court of Appeals issued its opinion. It agreed that the insurance policy was unambiguous, but found that Exclusion C was not unconscionable and did not violate public policy. Therefore, the Court of Appeals reversed the decision of this Court. However, because the Plaintiff claimed on appeal that USAA never notified her or her husband when their policy was renewed and the contested exclusion was added, the Court of Appeals remanded the case to this Court for further proceedings to determine whether the "renewal rule" applies.

On August 6, 2008, the Court issued an Amended Pre-Hearing Order, giving each party 21 days from the date of the Order to file a motion for summary disposition on the applicability of the renewal rule to the facts of this case and giving each party 28 days from the date of the Order to respond to the other party's motion. These time limits have now expired.

The Court has reviewed the parties' motions and responses, as well as applicable case law. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3) and, for the reasons stated herein, grants summary disposition in favor of the Plaintiff Cynthia Ruzak.

It is well established that an insured is obligated to read his or her insurance policy and raise any questions about the coverage within a reasonable time after the policy is issued. *VanDyke v League Gen Ins Co*, 184 Mich App 271, 275; 457 NW2d 141 (1990); *House v*

Billman, 340 Mich 621; 66 NW2d 213 (1954); *Russell v State Farm Mutual Automobile Ins Co*, 47 Mich App 677; 209 NW2d 815 (1973). Consistent with this obligation, if the insured has not read the policy, he or she is nevertheless charged with knowledge of the terms and conditions of the insurance policy. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999); *Auto Owners Ins Co v Zimmerman*, 162 Mich App 459, 461; 412 NW2d 925 (1987). Under the rule of "reasonable expectation," which requires a court to ascertain and enforce the meaning of a policy provision as reasonably expected by an insured, the court must presume that the insured actually read the language of the insurance contract in issue. *Powers v DAIIE*, 427 Mich 602, 631-633; 398 NW2d 411 (1986). If the language in the insurance policy has been read, the insured cannot reasonably expect coverage for damages and injuries when such coverage is disavowed in unambiguous terms in the insurance policy. See *Transamerica Ins Corp of America v Buckley*, 169 Mich App 540; 426 NW2d 696 (1988).

There is an exception to this rule, commonly referred to as the "renewal rule," when the insurer renews the policy but fails to notify the insured of a reduction in coverage. *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981); *Industro Motive Corp v Morris Agency, Inc,* 76 Mich App 390, 395-396; 256 NW2d 607 (1977). When the insurer fails to provide notice, the insurer is bound to the greater coverage in the earlier policy, and the insurer is estopped from denying coverage on the basis of the discrepancy between the current policy and the prior one that was not brought to the insured's attention. *Parmet Homes, supra* at 145; 314 NW2d 453; *Industro Motive Corp, supra* at 395-396; 256 NW2d 607. In other words, when the insured relies on the carrier to renew an existing policy, the insured can assume that the coverage is the same under the renewal unless the carrier gives the insured actual notice of a change.

USAA contends that the renewal rule is not applicable in this case because this case does not involve a contract renewal. Instead, this case involves the issuance of an entirely new policy occasioned by the Rusaks' move from Indiana to Michigan. In addition, the Indiana policy that the Ruzaks had before moving to Michigan totally excluded a household member from coverage, whereas the new Michigan policy only limited the insurance available to a household member to the statutory minimum which is actually an increase in coverage.

The Plaintiff, on the other hand, argues that her husband has been insured by USAA since 1966 and she and her husband have been insured by USAA since 1987. Their insurance

policy with USAA did not always exclude household members from coverage. Therefore, when the exclusion was added to their policy, they should have been notified and USAA never notified them of policy changes affecting the insurance available to a household member.

While the renewal rule requires actual notice when an insurance policy is renewed and there is a reduction in coverage, the general principles underlying the renewal rule may apply in other circumstances. In *Parmet Homes, Inc v Republic Ins Co,* 111 Mich App 140; 314 NW2d 453 (1982), for example, the plaintiff was engaged in the business of constructing homes and was insured against fire loss under a builder's risk insurance policy issued by an insurance company. When the policy was about to expire, Parmet's insurance agent reviewed the policy and determined that another company could better meet Parmet's needs. The evidence in the case indicated that the plaintiff was not consulted about the change, but was mailed a copy of the new policy and invoices for payment of premiums containing the new insurer's letterhead. There was one critical difference between the policies: the original policy required notice of construction starts every 90 days while the second policy required notice of construction starts every 30 days.

During the summer of 1976, Parmet suffered five fire losses, only one of which was paid by its new insurer and was not at issue. The insurer denied coverage of the other four fires because the 30-day reporting requirement had not been fulfilled.

Parmet asserted at trial that it was unaware of the fact that its insurer had changed and that, under its original policy, the report of new construction on the four lots was timely. Parmet claimed negligence on the part of its agent in not notifying it of the policy differences. Plaintiff submitted evidence that it only received correspondence concerning "renewal" of its policy, which indicated to it that the original policy was being continued. While the new policy was not a "renewal" of the earlier policy, the plaintiff presented evidence that it was led to believe such was the case. The trial court gave the jury the following instruction:

> Generally, I instruct you that the law in Michigan places a duty upon an insured to read his insurance policy. It is for you to decide what a reasonably careful person would, or would not do under the circumstances which you find existed in this case. If you find that Parmet Homes acted reasonably in believing the policy to be a renewal of the [original] policy, then Parmet Homes does not have the duty to read the policy. If you find that a reasonably careful person would have read his policy under the circumstances which you find

existed in this case, you may consider this with respect to the plaintiff's conduct in considering contributory negligence.

There is a specific rule of law which applies to the renewal of insurance policies. That rule is that an insurance company is bound by the greater coverage in an earlier policy where the renewal policy is issued without calling the insured's attention to a reduction in coverage.

On appeal, the defendants argued that the trial court erred by giving this instruction because the new policy was not a "renewal." The Court of Appeals found that these instructions were in conformance with the law, citing *Industro Motive, supra,* because the plaintiff presented evidence that it was led to believe that the new policy was a renewal.

The insurer also objected to the following instructions which were given in conjunction with the "renewal rule" instructions:

Ordinarily parties are bound by the written terms of an insurance policy. However, the terms of a policy can be waived by the conduct or statements of an insurance agent. Such a waiver can occur when the agent knows an insured is seeking a certain kind of coverage, but the agent obtains a different kind of coverage without adequately informing the insured about the difference.

If you find that [the agent] was negligent in not advising Parmet Homes, Incorporated of the change in the reporting clause between the [old] policy and the [new] policy; and if you find that Parmet Homes, Incorporated, would have reported the building lost through fire to [its new insurer] within the thirty-day reporting period, had it been advised of such a requirement; and you find further, that [the new insurer] would have issued insurance coverage on the homes lost through fire had they been reported; then the actions of [the agent], as agent for [the new insurer], prevent [the new insurer] by way of estoppel from denying insurance coverage to those homes which you find would have been timely reported under the thirty-day provision. In other words, if you find these facts to exist, the law removes the effect of that clause from the contract.

The new insurer argued on appeal that it was error to give these instructions because "the doctrine of waiver and estoppel cannot be used to bring into existence coverage where it does not otherwise exist." The Court of Appeals disagreed:

Our Courts have recognized that, in certain situations, estoppel or waiver may operate to hold a defendant liable for coverage which may differ from the express terms of the contract. See *Industro Motive, supra*, and *Gristock v The Royal Ins Co*, 87 Mich 428, 430; 49 NW 634 (1891). The jury could have found

> that plaintiff justifiably relied upon [its agent] to renew its insurance in view of the three-year relationship they held and [the agent's] failure to personally inform plaintiff otherwise. There was also evidence to support the fact that plaintiff relied upon [its agent's] earlier representations that the 30-day notice requirement stated on the forms supplied by [it] could be ignored. On this record, we find the elements of estoppel have been satisfied. *Industro Motive, supra.* [The insurer], as principal of [the agent], is vicariously liable for [the agent's] negligence.

Therefore, in certain circumstances, estoppel may operate to hold an insurer liable for coverage that differs from the express terms of the contract. *Id* at 148. Equitable estoppel arises only "when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts." *Lichon v American Universal Ins Co*, 435 Mich 408, 415; 459 NW2d 288 (1990).

In the instant case, there is evidence that Jay Ruzak has been insured by USAA since 1966. He and his wife, Plaintiff Cynthia Ruzak, were married in 1987 and they were both insured by USAA until they canceled their coverage in 2006. Over the years that they were insured by USAA, they lived in several different states and with each move from one state to another, they were issued a new policy by USAA. Jay and Cynthia Ruzak both testified by affidavit that they "never received any information from USAA describing how [their] coverage was affected in family member situations." USAA admits that the family member coverage changed from time to time depending on which state's law applied. In fact, USAA admits that, when the Ruzaks lived in Indiana, they had no household member coverage and acquired minimal statutory coverage by moving to Michigan. As the Plaintiff points out, however, she had full coverage when they lived in Wisconsin because Wisconsin law prohibits the exclusion from coverage of "[p]ersons related by blood, marriage or adoption to the insured." See Exhibit 4 to Plaintiff's Response to Defendant USAA's Motion for Summary Disposition.

Over the 40 years that the Ruzaks paid premiums, they relied upon USAA to provide them with automobile liability insurance coverage as they moved from one state to another. Their "confidence in USAA was derived from the fact that its products and services are only available to members of the military community." According to the Ruzaks' affidavits, USAA

never advised them of the impact that their moves from one state to the next had on their insurance coverage. They testified by affidavits that USAA never sent them a complete copy of their actual policy. They only ever received the Automobile Policy Packet which contained a premium invoice, declarations page and other miscellaneous information.[1] When they moved to Wisconsin, the Ruzaks were not told that they had family coverage and, when they moved to Indiana, they were not told that they no longer had family coverage. Likewise, when they moved to Michigan, they were not told that, even with Michigan No-Fault underinsurance coverage, USAA coverage did not insure a family member in excess of the Michigan statutory minimum.

Exclusion C in the instant policy creates a huge insurance coverage gap. It not only limits a household member's coverage to the Michigan statutory minimum, but it also eliminates underinsured motorist coverage for family members. And yet, USAA admits, through the affidavit of Don Griffin, that "[b]ecause the coverage afforded to the member under the Michigan policy, with respect to liability protection for intra-family claims, was greater than the coverage afforded under the Indiana policy, this was not a difference that would have been addressed with the member at the time the Indiana policy was cancelled and the Michigan policy was issued."

This is one of those exceptional situations in which waiver and estoppel operate to hold the insurer liable for coverage which may differ from the express terms of the contract. See *Industro Motive, supra*, and *Gristock v The Royal Ins Co*, 87 Mich 428, 430; 49 NW 634 (1891). USAA intentionally or through culpable negligence induced the Ruzaks to believe that they had $300,000 per person and $500,000 per accident bodily injury liability insurance coverage. The Ruzaks rightfully relied on such belief and will be prejudiced if USAA is permitted to deny the existence of such coverage.

In conclusion, the principles of waiver and estoppel which underlie the renewal rule apply in this case to estop USAA from denying that the Plaintiff Cynthia Ruzak had $300,000 in bodily injury liability insurance coverage, as well as underinsured coverage, in force and

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[1] The declarations page for their Michigan policy indicated they both had $300,000/$500,000 bodily injury liability coverage. Providing the Ruzaks with the declarations page without further explanation, intentionally or negligently would have induced them to believe that the Plaintiff was insured under the policy for the limits shown on the declarations page.

effect when she was injured in the subject automobile accident. Therefore, summary disposition should be and hereby is granted in Plaintiff Cynthia Ruzak's favor.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 9/11/08