

**85-LW-0119 (10th)**

Aurora Rosa JORGE, Executrix of the Estate of Miguel Jorge, Plaintiff-Appellant,

v.

The BUCKEYE UNION INSURANCE COMPANY and Columbus Motor Car Company, Defendants-Appellees.

No. 85AP-524.

10th District Court of Appeals of Ohio, Franklin County.

Decided on December 26, 1985.

OPINION

Wolske & Blue, Walter J. Wolske, Jr., and Warner M. Thomas, Jr., for appellant.

Lane, Alton & Horst, Collis Gundy Lane, Jack R. Alton, and Robert E. Hanson, for appellee, Buckeye Union Insurance Company.

Porter, Wright, Morris & Arthur, and Craig D. Barclay, for appellee Columbus Motor Car.

Appeal from the Franklin County Court of Common Pleas.

McCORMAC, Judge.

Aurora Rosa Jorge, Executrix of the Estate of Miguel Jorge, plaintiff-appellant, appeals from the judgment of the Franklin County Court of Common Pleas finding in favor of defendants-appellees, The Buckeye Union Insurance Company and Columbus Motor Car Company. The facts were stipulated as follows: In 1973, Dr. Werler Samlowski and Dr. Miguel Jorge were medical doctors incorporated as a professional corporation. This corporation subsequently leased two cadillacs from Columbus Motor Car for the use of its employees, Samlowski and Jorge. Because insurance was required under the lease agreement, the doctors inquired whether Columbus Motor Car could obtain insurance for them. Columbus Motor Car was covered under a master policy issued by Buckeye Union, which provided insurance on its leased automobiles. Prior to execution of this master policy, Columbus Motor Car, as the named insured on the policy, rejected uninsured motorist coverage equal to the bodily injury liability limits of the policy and requested uninsured motorist coverage with limits of \$12,500 per person/\$25,000 maximum per accident. In the lease entered between the professional corporation and Columbus Motor Car, the lessee requested Columbus Motor Car to procure insurance in the following specified amounts: bodily injury and property damage in the amount of \$250,000, and \$500,000 for bodily injury, and \$100,000 for property damage, physical damage insurance with a \$100 deductible amount. The lease was silent with regard to uninsured motorist coverage. In response thereto, the professional corporation was added as an additional insured to Columbus Motor Car's master policy. Shortly after the leases were signed, Certificates of Insurance, which confirmed and delineated the coverage as provided under Columbus Motor Car's master policy of insurance, were sent to the professional corporation upon enrollment and each renewal. This certificate of insurance indicated that the uninsured/underinsured motorist coverage was provided in the amount of \$12,500 for each person or a maximum of \$25,000 for each accident. The policy defined uninsured motorist coverage to include underinsured motorist coverage.

On August 9, 1980, Dr. Jorge was killed when he was struck by an automobile. The driver of the vehicle which struck Dr. Jorge was insured for bodily injury liability in the amount of \$12,500. Jorge's claims against this driver and his insurance company were settled for \$12,500. Jorge's spouse, as executrix, seeks recovery under the uninsured/underinsured provision from Buckeye Union. The trial court declared the policy limit to be \$12,500, instead of the \$25,000 maximum, because the master policy required its liability be reduced by any sums paid by the responsible party and rendered judgment accordingly.

Appellant asserts the following issues, which we will treat as the assignments of error although not labeled as such:

"1. May an insurance company accomplish indirectly through an unlicensed middle-man what it cannot accomplish directly, i.e., avoid the mandate of O.R.C. ] 3937.18 that all automobile insurance policies

afford uninsured/underinsured motorist coverage in an amount equal to the liability coverage purchased, and;

"2. Must a lessor of automobiles, when acting as an unlicensed insurance agent, advise its customers both of the availability of uninsured/underinsured motorist coverage in an amount equal to the amount of liability coverage purchased, and of its rejection of uninsured/underinsured motorist coverage in that amount."

Appellant first argues that, because the policy issued by Buckeye Union Insurance defined an uninsured motorist to include an underinsured motorist, the insurance company was required by R.C. 3937.18 to also provide underinsured motorist coverage in the amount of liability insurance (\$300,000/\$500,000) unless specifically rejected.

While, including an underinsured motorist in the definition of an uninsured motorist did expand the uninsured coverage to require payment up to the policy limits in the present situation, such policy definition does not change the interpretation of the statutory definition of uninsured motorists to statutorily mandate that underinsured coverage be in force in the amount of liability insurance unless rejected. R.C. 3937.18, in effect at the time of the last renewal on the policy, only required uninsured motorist coverage to be offered. An uninsured motorist was statutorily defined as one with less liability coverage than \$12,500 per person and \$25,000 maximum per accident as stated in R.C. 4509.20. The court interpreting this statute in Shelby Mutl. Ins. Co. v. Smith (1976), 45 Ohio St.2d 66, specifically held in its syllabus:

"The term 'uninsured motor vehicle,' as used in R.C. 3937.18, does not include those motor vehicles for which the applicable liability insurance coverage carried by the tortfeasor owner or operator meets or exceeds the limits set by R.C. 4509.20."

The court found that "[w]hile this might be a commendable result of appropriate legislation, the plain language of R.C. 3937.18 does not support appellant's position." Therefore, expansion of the definition of uninsured motorist in the insurance policy does not operate to enlarge the statutory definition of uninsured motorist and thereby impose the statutory duties in R.C. 3937.18.®1

Columbus Motor Car as the "named insured" had rejected the uninsured motorist coverage as required by statute. Appellant argues that Jorge, the anticipated driver who leased the automobile through his corporation, should have been the person whose written consent was required to effect a waiver of such coverage. However, the plain language of the statute requires the rejection to be completed by the named insured. Columbus Motor Car was the named insured on its master policy under which Jorge was covered. When the language of the statute is clear and unambiguous, a court should not vary the terms of the statute in the guise of interpretation. Board of Edn. v. Fulton County Budget Comm. (1975), 41 Ohio St.2d 147.

Appellant's first assignment of error is overruled.

Appellant, in its second assignment of error, alternatively argues that Columbus Motor Car is liable because it was acting as an agent for the lessee and that, as an agent, it failed to disclose that it had rejected uninsured motorist coverage in the amount equal to its liability coverage. However, there was no agency relationship present in the instant case. Although Columbus Motor Car agreed to procure insurance for the professional corporation, it did so as an incidental benefit to the lessee. It never agreed to undertake to find the best insurance coverage for the professional corporation. Columbus Motor Car only agreed to obtain insurance under its master policy in the stated liability amounts in order to obtain an advantageous premium for the professional corporation. This situation does not rise to the level of an agency relationship where duties beyond those expressed in the lease are required. Furthermore, Columbus Motor Car was not paid for its services in obtaining insurance coverage as would be true in a typical insurance agency relationship.

Even if the elements of a traditional agency relationship were present, the Certificates of Insurance, which were sent to appellant each year the policy was renewed, operated as a disclosure that uninsured motorist coverage equal to the liability amounts had been rejected, with a substitution of coverage in the amount of \$25,000. However, Columbus Motor Car was not acting as an agent for Dr. Jorge and did not fail to disclose the rejection of uninsured motorist coverage in the amount of the liability policy.

Appellant's second assignment of error is overruled.

The assignments of error are overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

REILLY, P.J., and MOYER, J., concur.

Footnote 1 .In 1982, the statute was later amended to include underinsured motorist in the definition of uninsured motorist. See R.C. 3937.18 as amended, by H.B. 489, effective June 23, 1982.