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LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

John Young,

*

Plaintiff,

*

* Case No.: CI00-5177

-vs-

*

Michigan Mutual Insurance Co.,
et al.,

* OPINION AND JUDGMENT ENTRY

*

Defendants.

*

This cause is before the Court upon defendants Michigan Mutual Insurance Company and Daimler Chrysler Corporation's motions for summary judgment and plaintiff John Young's cross motion for summary judgment. Upon careful consideration of the memoranda of counsel, the evidence and applicable law, the Court grants Plaintiff's motion, denies Chrysler's motion, and denies Michigan Mutual Insurance Company's motion in part and grants it in part.

I. FACTS

This case involves a claim for uninsured/underinsured motorist (hereinafter, "UM/UIM") coverage under a commercial automobile policy, No. CPP-0165275 ("MMI Policy") issued by defendant Michigan

Mutual Insurance Co. ("MMI"). The coverage is sought for injuries plaintiff John Young ("Plaintiff") sustained in a January 25, 1998 motor vehicle accident in Lucas County, Ohio. Plaintiff was a passenger in a vehicle operated by Jason Hartbarger ("Mr. Hartbarger") when another vehicle operated by Donald Mossing ("Mr. Mossing") failed to yield the right of way and struck Mr. Hartbarger's vehicle.

At the time of the accident, Mr. Mossing was insured by Progressive Insurance Company ("Progressive") which provided automobile liability coverage with limits of \$25,000. Mr. Hartbarger carried insurance which provided UM/UIM coverage with limits of \$25,000 per person/\$50,000 per accident. Plaintiff was employed by Daimler Chrysler Corporation ("Chrysler"). MMI issued the MMI policy to Chrysler.

On December 6, 2000, Plaintiff filed a complaint with this Court seeking declaratory judgment that the MMI policy provides UM/UIM coverage for plaintiff either expressly or by operation of law. On February 5, 2001, MMI filed an answer, counterclaim and cross-claim against Chrysler. On April 23, 2001, MMI filed an amended cross-claim seeking judgment that the \$25,000 UM/UIM coverage provided under the MMI Policy is the sole and exclusive responsibility of Chrysler.

On October 26, 2001, MMI filed the instant motion for summary judgment on Plaintiff's complaint and on MMI's counterclaim and

cross-claim. On November 13, 2001, Chrysler filed its own motion for summary judgment and adopting the arguments made by MMI relative to summary judgment on Plaintiff's complaint. Plaintiff filed a cross motion for summary judgment for up to the \$5,000,000 limit on the MMI policy.

II. SUMMARY JUDGMENT STANDARD

The general rules governing motions for summary judgment filed pursuant to Civ.R. 56 are well established. In Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64, 66, the Supreme Court of Ohio stated the requirements that must be met before a motion for summary judgment can be granted:

"The appositeness of rendering a summary judgment hinges upon the tripartite demonstration: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment."

A party who claims to be entitled to summary judgment on the grounds that a nonmovant cannot prove its case bears the initial burden of: (1) specifically identifying the basis of its motion, and (2) identifying those portions of the record that demonstrate

the absence of a genuine issue of material fact regarding an essential element of the nonmovant's case. Hannah v. Dayton Power & Light Co., (1998), 82 Ohio St.3d 482, 484; see, also, Dresher v. Burt (1996), 75 Ohio St.3d 280, 293. The movant satisfies this burden by calling attention to some competent summary judgment evidence of the type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmovant has no evidence to support his or her claims. Dresher at 293. Once the movant has satisfied this initial burden, the burden shifts to the nonmovant to set forth specific facts, in the manner prescribed by Civ.R. 56(E), indicating that a genuine issue of material fact exists for trial. Id. Accord Vahila v. Hall (1997), 77 Ohio St.3d 421, 429-430; Misteff v. Wheeler (1988), 38 Ohio St.3d 112, 114-115.

III. DISCUSSION

Initially, the Court notes that in their December 10, 2001 memorandum in opposition, MMI and Chrysler concede that there are questions of fact relative to the notice and subrogation issues in the case sub judice, and they therefore, withdraw the arguments they made on these issues in their motion.¹ Nevertheless, Defendants assert they are entitled to summary judgment because MMI "fronts" motor vehicle liability protection for Chrysler, and thus Chrysler is a "self-insured in the practical sense," and is not subject to the insurance laws of Ohio, and therefore, not subject

¹ See December 10, 2001 Memorandum in Opposition and Reply, P. 10-11.

to the UM/UIM requirements of R.C. 3937.18, including the requirements of offer, rejection, and all Ohio case law construing R.C. 3937.18. Though not subject to the requirements of R.C. 3937.18, Chrysler chose to provide the functional equivalent of UM/UIM coverage under the policy only to a \$25,000 limit. However, Plaintiff is not entitled to such UM/UIM coverage because: (1) the tortfeasor, Mr. Mossing, was not underinsured, and; (2) Plaintiff is not an insured pursuant to Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660. Finally, regarding its cross-claim against Chrysler, MMI contends that pursuant to Endorsements CA-A and CA-E, the Indemnity and Reimbursement Agreement ("IRA") and the Addendum to the IRA ("the Addendum"), if Plaintiff is entitled to the \$25,000 UM/UIM limits provided under the MMI policy, Chrysler is solely responsible for the payment.

In support of his own motion and in opposition to MMI and Chrysler's motions, Plaintiff argues that the MMI policy does not meet the statutory and common law requirements of Ohio so as to constitute the self-insurance exemption from R.C. 3937.18. As such, the MMI policy is subject to the mandatory offering requirements of R.C. 3937.18 and UM/UIM coverage in the amount of \$5,000,000 is afforded by operation of law. Plaintiff also contends that the tortfeasor, Mr. Mossing was underinsured. Plaintiff further asserts that under Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660, as an employee of

Chrysler, he is an insured for purposes of UM/UIM coverage under the MMI policy. Finally, Plaintiff alleges that the MMI policy failed to meet the UM/UIM offer and rejection requirements of Linko v. Indemnity Insurance Company of North America (200), 90 Ohio St.3d 445 and Gyori v. Johnson Coca-Cola Bottling Group (1996), 76 Ohio St.3d 565

A. Chrysler as a Self-Insured

In its motion, MMI describes its role in the liability protection program for Chrysler as "fronting" motor vehicle liability protection for Chrysler. MMI argues that since Chrysler reimburses MMI for 100% of any losses paid under the MMI policy, Chrysler is self-insured or "self-insured in the practical sense." Ohio courts are split as to whether a fronting policy constitutes self-insurance, permitting the policyholder to avoid the requirements of R.C. 3937.18. Eby v. Zurich American Ins. Co. (Nov. 30, 2001), Cuyahoga C.P. No. 408279, unreported.

Many of the cases that have addressed the issue of fronting policies as self-insurance have cited Grange Mut. Cas. Co. v. Refiners Transport and Terminal Corp. (1986), 21 Ohio St.3d 47, which contains the "self-insured in the practical sense" language. Plaintiff urges the Court to confine the application of the Refiners Transport to its actual narrow holding. In Refiners Transport, the claimant's employer met the state financial responsibility requirements for its truck fleet by utilizing a

hybrid program consisting of a financial responsibility bond for the first \$100,000 loss coupled with two excess liability insurance policies. The court only considered the employer's status relative to the financial responsibility bond and not the excess insurance policies since the two companies that issued the excess insurance were not part of the action and the appellant claimed no proceeds from them in the suit. Id. at 49. The court found that relative to the bond, the employer was not a self-insurer in the legal sense contemplated by R.C. 4509.45(D) and 4509.72 regarding entities that file a certificate of self-insurance. Id. However, again in terms of the bond only, the court seemed to term the employer a self-insurer "in the practical sense" in that the employer was ultimately responsible under the term of its bond either to a claimant or the bonding company in the event the bond company paid any judgment claim. Id. The court decided that the employer's status was actually that of a bond principal and not a self-insurer. Id. Finally, the court pronounced that the uninsured motorist provisions of R.C. 3937.18 do not apply to either self-insurers or financial responsibility bond principals, such as the employer. Id. at 51.

In McCullum v. Continental Ins. Co. (Apr. 9, 1993), Lucas App. No. L-92-141, unreported, there was a fronting agreement between the employer and the insurance company and two policies, a comprehensive liability policy and an excess liability policy. The

comprehensive policy had a total limit of liability of \$750,000 in excess of the employer's \$250,000 self-retained limit. Based on these facts, the court concluded that similar to the bond in Refiners Transport, there was no shift of risk of loss from the employer to the insurance company and one could conclude that the employer was self-insured "in a practical sense." Id. at 5. However, based upon a footnote in Refiners Transport, supra², the court still found the policies were subject to the requirements of R.C. 3937.18 because they provided fleet liability insurance coverage in excess of the \$250,000 self-retained limit. Id. at 6.

In, Dewalt v. State Farm Ins. Cos. (Sept. 11, 1997), Lake C.P. No. 96 CV 001173, unreported, the employer-railroad company had a fronting agreement with a "matching deductible" policy in which there was five million dollars in liability coverage with an accompanying five million dollar deductible. Id. at 1. The court found that because the employer agreed to assume the risk of loss up to the policy limits, it was a self-insured in the practical sense. Id. at 2. The court noted that the policy did not shift the risk of loss to the insurance company. Id. The court concluded that as a self-insured in the practical sense, the employer was

² In footnote 3 in Refiners Transport, the court stated: "Additionally, we note that Refiners did produce a signed rejection of the uninsured motorist coverage * * *, which does reference the bond agreement by name and policy number as well as the two excess insurance policies. While we do not find that such a self-serving rejection is necessary for either bond principals or self-insurers, **it is needed for fleet liability insurance policies** (such as the excess insurance policies in this case) which seek to exclude coverage otherwise required by R.C. 3937.18." (Emphasis added)

not required to comply with R.C. 3937.18. Id. The decision in Lafferty v. Reliance Ins. Co. (S.D.Ohio 2000), 109 F.Supp.2d 837, regarding the self-insured issue mirrors the opinion in Dewalt, supra, as the employer-railroad company, insurance company and matching deductible policy were the same as in Dewalt. Lafferty at 842.

In Fonseca v. Fetter (June 15, 2001), Lucas C.P. No. CI99-4712, unreported, which was cited by MMI, Judge Bowman found that the employer was exempt from R.C. 3937.18 since it was self-insured in the practical sense because the deductible of each of the three policies at issue was equal to the limits of liability for each policy. Id. at 17. Hence the court concluded, the risk of loss never left the employer. Similarly, in German v. Therm-O-Disc, Inc. (June 15, 2001), Richland C.P. No. 00-174-H, unreported, the court found that since the employer was ultimately responsible for paying any claim that fell within the two million dollar deductible, the employer was a self-insured with respect to the plaintiff's claim and therefore was exempt from the statutory requirements of R.C. 3937.18.

In at least two more recent cases, the courts have looked beyond the comparison of the policy limits to the deductible for evidence of a lack of risk shifting which would imply a self-insured situation. In Caylor v. Pacific Employees Ins. Co. (Aug. 3, 2001), Miami C.P. No. 99-400, unreported, and in Hodnichak v.

Gray (undated), Summit C.P. No. CV999-09-3844, unreported, the courts found that the fact that the insurance company was responsible for paying claims in the event that the employer became insolvent or filed for bankruptcy was some evidence that the employer had shifted some risk to the insurance company. See Caylor at 5 and Hodnichak at 5. In both Caylor³ and Hodnichak⁴, the courts concluded that the employer/organization was subject to the requirements of R.C. 3937.18.

In the case sub judice, the Business Auto Coverage Form Declaration states a liability limit of \$5,000,000. (Defendant exh. A, Bates No.011) Pursuant to the Endorsement CA-A, Deductible Endorsement for the Business Auto Coverage Form has a automobile liability deductible of \$4,950,000 each accident. (Id. at Bates No.022) Thus, at first blush it appears that \$50,000 of risk under the business auto coverage shifted to MMI. However, MMI points to Endorsement CA-E, an Indemnity and Reimbursement Agreement ("IRA"), and a letter clarifying the IRA ("the Addendum"). The IRA provides in pertinent part:

³ In Caylor, the claimant was a volunteer for the Boy Scouts of America ("BSA") which was insured through three policies, including a commercial general liability policy for which BSA claimed self-insured status. However, the court focused on whether the parties framed a motor vehicle liability policy and pursuant to the definition of an insured in the policy, the court found it was a motor vehicle liability policy for which UM/UIM coverage should have been offered.

⁴ In Hodnichak, the court opined that even if the employer could be considered self-insured in the practical sense, there are no statutory guidelines for a "practical" self-insured for purposes of not offering UM/UIM coverage.

"WHEREAS, Chrysler agrees to reimburse MMI for any loss MMI pays or expenses MMI incurs pursuant to any statute, rule, regulation, judicial determination, or similar action. * * *

Chrysler agrees to the following: * * *

D. To defend, indemnify and hold harmless MMI for all costs and expenses, claims, fees, interest, demands and judgments, and all other liabilities against MMI arising out of the issuance of the Policy * * *." (Defendant exh. C)

The Addendum provides in pertinent part:

"The purpose of this letter is to clarify the Indemnity and Reimbursement Agreement signed by Chrysler Corporation and Michigan Mutual Insurance Company representatives for Michigan Mutual Policy Number CPP 0165275 for the policy period April 1, 1995 to April 1, 2001 acknowledges Chrysler Corporation's responsibility for the payment of all losses under the terms of the policy irrespective of the policy's Automobile and General Liability deductible endorsements." (Defendant exh. D)

In opposition, Plaintiff cites the language from the Coverage in the Ohio UM/UIM Endorsement as follows:

"We will pay all sums the 'insured' is legally entitled to recover as compensatory damages from the owner or driver of an 'uninsured motor vehicle' because of 'bodily injury' sustained by the 'insured' caused by an 'accident.'" (Defendant exh. A, Bates No.245)

Despite this language, the Court finds that, similar to the "matching deductible" policies in Dewalt, Lafferty and Fonseca, supra, in the case sub judice based upon the terms of the IRA and

the Addendum, at first blush it appears Chrysler retained the risk of loss in the event a claim was made under the MMI policy which includes the UM/UIM Endorsement. However, similar to Caylor and Hodnichak, supra, the Business Auto Coverage Form contains a bankruptcy clause that provides that MMI is not relieved of its obligations in the event of Chrysler's bankruptcy or insolvency. (Defendant exh. A, Bates No.018) Thus, similar to Caylor and Hodnichak, it appears that MMI bears some risk pursuant to the bankruptcy clause. Based upon the foregoing, when viewing the evidence in a light most favorable to the nonmovant, reasonable minds can only conclude that Chrysler was not self-insured or self-insured in the practical sense under the MMI policy. Therefore, Chrysler is subject to the statutory UM/UIM requirements of R.C. 3937.18.

Plaintiff as an Insured

On the Common Policy Declarations of the MMI policy, the "Named Insured" is listed as "Chrysler Corporation." (Defendant exh. A, Bates No.001) Section II - Liability Coverage of the Business Auto Coverage Form defines "WHO IS AN INSURED" as follows:

"a. You for any covered 'auto'. * * *"
(Id. at Bates No.014)

The Business Auto Coverage Form also states:

"Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations." (Id. at Bates No.013)

Further, the Ohio UM/UIM Endorsement defines "WHO IS AN INSURED" as follows:

- "1. You.
2. If you are an individual, any 'family member'.
3. Anyone else 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto'. The covered 'auto' must be out of service because of its breakdown, repair, servicing, loss or destruction.
4. Anyone for damages he or she is entitled to recover because of 'bodily injury' sustained by another 'insured'." (Id. at Bates No.245)

Defendants concede that these provisions are similar to the ones the Supreme Court of Ohio found ambiguous and nonsensical in Scott-Pontzer, supra, in which the court ruled that an employee of the corporate named insured was an insured himself for UM/UIM coverage imposed by operation of law. However, Defendants assert that in the case sub judice, Plaintiff is not an insured by operation of law under the authority of Scott-Pontzer, supra, when viewing the MMI policy as a whole. Specifically, Defendants point to the Drive Other Car ("DOC") Endorsement's inclusion of individuals as insureds. The DOC Endorsement states that it modifies the insurance provided under the Business Auto Coverage Form. (Defendant exh. A, Bates No.092) The DOC Endorsement states

"The following is added to WHO IS AN INSURED:

Any individual named in the Schedule * * *"
(Defendant exh. A, Bates No.093)

In turn, the Schedule lists the following under "Name of Individual":

"Employee, spouse or any relative while a resident of one same household as per listing on file the the[sic] insured." (Defendant exh. A, Bates No.092

Thus, Defendants argue, "you" in the definition of an insured in the Business Auto Coverage Form, refers to individuals, and is not rendered meaningless as in Scott-Pontzer. In support of this interpretation, Defendants cite Estate of David L. Houser v. Motorists Mutual Insurance Co. (May 24, 2001), Auglaize C.P. No. 2000-CV-183, unreported. In Houser, a small corporation and its individual owner were the named insureds in a policy that included a UM/UIM endorsement. The court found that the Scott-Pontzer analysis based upon the nonsensical result of a corporation as the sole covered insured for personal injuries was not applicable. Id. at 2.

In opposition, and in support of Scott-Pontzer's application to the case sub judice, Plaintiff cites Rimel v. Chubb (October 31, 2000), Stark C.P. No. 1999CV02413, unreported and Miller v. The Hartford (June 14, 2001), Lake C.P. No. 00CV001234, unreported. In Rimel, the commercial automobile liability policy at issue listed the plaintiff's employer, a corporation along with two other corporations and two individuals as named insured on the

declaration page. The court found that the language in the policy was identical to the policy in Scott-Pontzer and that the inclusion of the two named individuals did not create a distinction from the reasoning in Scott-Pontzer. Rimel at 3. Therefore, the plaintiff-employee was an insured under the commercial automobile liability policy and the \$1,000,000 UM/UIM coverage under the policy was available to the plaintiff. Id.

In Miller, supra, the UM/UIM endorsement defined "Who Is An Insured" with the exact same language that the Ohio UM/UIM Endorsement uses in the case sub judice. Miller at 13. Similar to MMI's argument in the case sub judice, the insurer argued that the policy did not contain the same ambiguity that was found in the policy in Scott-Pontzer because in addition to the various corporate insureds, the policy in Miller named one individual as an insured. Id. at 3. The court did not agree. The court found that in order to achieve the legislative mandate of the statute, an insurer cannot offer UM/UIM coverage in a motor vehicle policy of insurance to less than all of the named insureds and still be in compliance with R.C. 3937.18. Therefore, the court concluded similar to Scott-Pontzer, that for UM/UIM coverage for a corporation to have meaning, the corporate employees, officers, directors, and shareholders must be covered and read into the definition of the ambiguous "You." Id. at 16.

The Court agrees with the reasoning of Rimel and Miller,

supra. Pursuant to Miller, MMI cannot offer UM/UIM coverage in a motor vehicle policy of insurance to less than all of the named insureds and still be in compliance with R.C. 3937.18. Further, for UM/UIM coverage for Chrysler, a named insured, to have meaning, the corporate employees, officers, directors, and shareholders must be covered and read into the definition of the ambiguous "You." Despite the DOC Endorsement which adds language that includes individuals as insureds, the ambiguous "You" is still part of the definition of "WHO IS AN INSURED" and Scott-Pontzer applies.

Based upon the foregoing, reasonable minds could only conclude that "You" in the definition of "WHO IS AN INSURED" is ambiguous in reference to the corporate-named insured, Chrysler. Therefore, pursuant to Scott-Pontzer, Plaintiff is an insured under the MMI policy.

Offer and Rejection Requirements of Gyori

In support of his contention that UM/UIM coverage arises by operation of law in the amount of \$5,000,000⁵, rather than the \$25,000 limit expressly provided in the UM/UIM Endorsement Plaintiff cites Gyori v. Johnston Coca-Cola Bottling Group (1996), 76 Ohio St.3d 565. The Court notes that on this issue, the version of R.C. 3937.18 in effect at the beginning date of the MMI policy period, April 1, 1995, applies to this case. Brodbeck v. Continental Casualty Company (Feb. 8, 2002), Lucas App. No. L-01-

⁵ Coverage equivalent to the MMI policy liability limit.

1269, unreported, fn3, citing Ross v. Farmers Ins. Group of Cos. (1998), 82 Ohio St.3d 281. In addition, case law interpreting that version of the statute will also apply. Id. In Brodbeck, the policy at issue had a policy period that began on July 15, 1995, similar⁶ to the April 1, 1995 policy period start date for the MMI policy in the case sub judice. Thus, the holding in Brodbeck and the cases cited therein, including Gyori, supra, have applicability to the case sub judice.

In Gyori, supra, the Supreme Court of Ohio noted that according to R.C.3937.18 and Ohio case law, an express, knowing rejection of UM/UIM coverage by the customer is the only way to avoid the requirement that UM/UIM coverage be provided. Gyori, 76 Ohio St.3d at 568. The court held that in order for a rejection of UM/UIM coverage to be effective, it must be signed by the insured and received by the insurer prior to the commencement of the policy year. Such rejection timing requirement also applies to a reduction in UM/UIM coverage. See North v. Grange Mutual Casualty Co. (Dec. 14, 1999), Franklin App. No. 99AP-128, unreported.

In Brodbeck, supra, the plaintiff was employed by The Andersons, Inc. The plaintiff claimed that he was an insured under a commercial umbrella policy issued to The Andersons and that he was entitled to UM/UIM benefits under the policy by operation of

⁶ The Court states the policy start date in Brodbeck and the case sub judice are "similar" because the next amendment to R.C. 3937.18 was in H.B. 261 effective September 3, 1997.

law for injuries he sustained in a June 20, 1997 accident. A rejection form had been executed by a representative from The Andersons nearly three months after the policy period began. The Court found that the term "policy period" as defined in the declarations page of the policy, which provided for a three-year policy period starting July 15, 1995, controlled rather than the annual review endorsement. Id. at 18. The court cited Gyori and Schumacher v. Kreiner (2000), 88 Ohio St.3d 358, in stating that "when UM coverage is not part of a policy, such coverage is created by operation of law unless the insured expressly rejects it in writing before the time that the coverage begins." Brodbeck at 15 citing Schumacher at 359-360. The court concluded that the rejection form signed by The Andersons representative on October 2, 1995, was untimely as to the entire three-year policy period which began July 15, 1995. Therefore, UM/UIM coverage arose by operation of law. Brodbeck at 18.

In the case sub judice, pursuant to the Common Policy Declarations page the policy period is from April 1, 1995 to April 1, 2001. (Defendant exh. A, Bates No. 001) The Ohio UM/UIM Endorsement states:

"This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below." Id. at Bates No.245.

No date is indicated on this endorsement. However, Endorsement

CA-K, that lists the UM/UIM limits by state, including a \$25,000 limit for Ohio, states an effective date of April 1, 1995 but was executed by a representative of Chrysler on February 20, 1996. (Id. at Bates No.035-036.)

The Court finds that pursuant to Brodbeck, supra, the six-year policy period, commencing April 1, 1995, as stated in the MMI policy's Common Policy Declarations controls. Further, the reduction in UM/UIM coverage evidenced by the February 20, 1996 signature on Endorsement CA-K by the Chrysler representative was untimely as to the entire six-year policy period and UM/UIM coverage arose by operation of law. Therefore, the \$5,000,000 liability coverage equivalent, rather than the \$25,000 reduced UM/UIM limit applies. Further, with this \$5,000,000 limit imposed by law, the tortfeasor Mr. Mossing, whose insurance carrier only provided \$25,000 in coverage, was an underinsured motorist.

Based upon the foregoing, when viewing the evidence in a light most favorable to the nonmovant, reasonable minds can only conclude that Chrysler's attempt to reduce UM/UIM coverage under the MMI policy was not timely and therefore, was ineffective. Therefore the \$5,000,000 liability equivalent for UM/UIM coverage is imposed by law.

MMI's Cross-Claim Against Chrysler

In light of the Indemnity and Reimbursement Agreement ("IRA"), and the Addendum as discussed by the Court earlier in this

Opinion,⁷ reasonable minds could only conclude that Chrysler is solely responsible for the payment of Plaintiff's UM/UIM claim. The only noted exception would be in the event of Chrysler's bankruptcy, pursuant to the bankruptcy clause. (Defendant exh. A, Bates No.018) Therefore, MMI's motion for summary judgment on its cross-claim against Chrysler must be granted.

JUDGMENT ENTRY

It is therefore, ORDERED, ADJUDGED and DECREED that plaintiff John Young's motion for summary judgment is granted.

It is further, ORDERED, ADJUDGED and DECREED that defendant Chrysler Corporation's motion for summary judgment is denied.

It is further ORDERED, ADJUDGED and DECREED that defendant Michigan Mutual Insurance Company's motion for summary judgment on its cross-claim against Chrysler Corporation is granted.

It is further ORDERED, ADJUDGED and DECREED that defendant Michigan Mutual Insurance Company's motion for summary judgment on plaintiff John Young's complaint is denied.

March 5, 2002


Ruth Ann Franks, Judge

cc: Dennis Keil
John D. Willey
Henry Hentemann

⁷ See discussion of Chrysler as Self Insured.