

**Franklin County Legal Journal**  
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**Blake and Connaster-Blake v. Progressive Specialty Insurance Company**

**James A. Blake and Jodi Connaster-Blake, Plaintiffs v.**  
**Progressive Specialty Insurance Company, Defendant**  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch Civil Action No. 2012-3241

HEADNOTES

*Insurance Policies; Underinsured Motorist Coverage; Rejection of Underinsured Motorist Coverage*  
*Summary Judgment; Business Practices as Evidence*

1. Pennsylvania Courts will strictly construe the technical requirements of the Motor Vehicle Financial Responsibility Law.
2. An insurance company need only produce a facially valid Underinsured Motorist Coverage rejection form in order to comply with the Motor Vehicle Financial Responsibility Law.
3. Upon producing a facially valid Underinsured Motorist Coverage rejection form, the burden will then shift to the insured party to demonstrate that the form was not signed with their authorization or knowledge.
4. Where a business cannot recall a particular customer or transaction, but can testify as to strict adherence to business practices and policies during the time of that transaction, then the testimony can be considered evidence which creates a genuine issue of material fact.

Appearances:

Anthony Cosentino, Esq., Attorney for Plaintiffs  
Karl Stefan, Esq., Attorney for Defendant  
David Freeman, Esq., Attorney for Defendant

OPINION

Before Herman, J.

**Procedural History:**

On September 28, 2012, Plaintiffs James A. Blake and Jodi Connaster-Blake, husband and wife, filed a Complaint in this matter seeking declaratory judgment under their insurance policy with Defendant, Progressive Specialty Insurance Company (Progressive), pursuant to the Declaratory Judgment Act, 42 Pa. Con. Stat. § 7531 et seq. Defendant filed an Answer to the Complaint with New Matter on October 9, 2012. Plaintiffs replied to New Matter on November 1, 2012. Following a period of discovery including depositions, Plaintiff filed the instant Motion for Summary Judgment and brief in support on April 30, 2013. Defendant filed a response with brief in opposition on May 29, 2013. Oral argument on the motion was held on June 18, 2013. The matter is now ready for decision.

**Factual Background**

On September 15, 2010, James Blake was driving his vehicle on U.S. Route 30 in Bedford County. While stopped at a traffic light, Mr. Blake was struck from behind by a vehicle driven by Anthony Mitravich. Mr. Blake suffered bodily injuries from this collision. At the time of the accident, Mitravich was covered by an insurance policy with State Farm Automobile Insurance Company. State Farm tendered \$25,000 to Mr. Blake as a result of this accident. This amount was the full amount allowed under Mitravich's policy. Mr. Blake accepted the policy limit, but \$25,000 was insufficient to compensate him for his injuries.

Mr. Blake then sought further compensation under his policy with Defendant, Progressive. At the time of the accident, Mr. Blake was covered by a policy through Progressive. According to the Blakes, it was unbeknownst to them that this policy did not contain underinsured motorist (UIM) coverage. Mr. Blake submitted a claim to Progressive seeking compensation under the UIM provision, however, Progressive rejected the claim and stated that the policy lacked UIM coverage because it was waived by the Blakes. In support of their rejection, Progressive attached a UIM rejection form signed by Mr. Blake.

Plaintiffs contend that the UIM rejection form is invalid and was not signed by Mr. Blake. At Mr. Blake's deposition, he testified that when he was obtaining a quote and setting the terms of his insurance policy over the

phone with his insurance agent, no discussion or mention of UIM was ever made. He was not aware of what UIM was and he was not asked if he wanted or did not want UIM. According to him, the only coverage Mr. Blake asked for was “full coverage.” Mr. Blake testified that when he spoke to the receptionist at the agency over the phone, she informed him that he would be the named insured and did not state that he had to be present to sign the forms. As a result, Mr. Blake sent his wife to the agency to finalize the insurance policy documents. Prior to sending Mrs. Blake, Mr. Blake testified that no discussion of UIM took place between him and his wife. Further, he testified that he did not authorize his wife to make any changes to the policy or to sign a UIM form, he did not know there would be a UIM rejection form in the documents that his wife would be signing, and he would not have authorized his wife to sign a rejection form if he did know that there would be one in the forms to be signed.

At Mrs. Blake’s deposition, she testified that she was not authorized to make any changes to the policy and was merely sent to sign the documents which her husband negotiated over the phone. She testified that her husband never mentioned UIM coverage, the insurance agent did not discuss UIM with her, and she did not know what UIM coverage was. When she arrived at the agent’s office, she testified that the agent, Leslie Johns, did not explain any forms, suggest that Mrs. Blake consult with Mr. Blake, review the declarations page, and did not mention or explain UIM coverage. When signing documents, Mrs. Blake recalled that the insurance agent began putting form after form in front of her and informed her that it was acceptable to sign her husband’s name. Mrs. Blake did not know she would be signing her husband’s name, and merely did so because she trusted the agent’s advice. The agent reaffirmed that it was acceptable to sign Mr. Blake’s name despite Mrs. Blake’s repeated hesitation in doing so.

Leslie Johns, the insurance agent who prepared the policy documents, testified at her deposition that she has no recollection of the interaction or discussions. She does not remember the Blakes, let alone what specifics were discussed with them, or what occurred when the documents were signed. She also testified that there were no notes in her files as to how the transaction occurred. She did testify, however, as to the regular business practices of her office at the time this policy was written. She testified that she has been an agent for 14 years and that she had developed certain practices over that time that she used when dealing with clients and potential clients who sought insurance coverage from her agency. She also testified that the Blake’s policy did not appear to be a standard policy and there were several areas of coverage that were reduced or eliminated. She testified that a policy would not normally have minimum liability coverage as low as \$15,000 a person and \$30,000 per accident as the Blakes did, unless it was specifically asked for. A standard policy would normally have at least \$25,000/\$50,000 coverage. A policy would also normally include accidental death or funeral benefit coverage unless an insured asked to forego such coverage. A policy would normally always include uninsured and underinsured motorist coverage as a default unless specifically asked to not have the coverage. Based upon her standard procedures and default policies, Ms. Johns was able to testify that the only reason for the lack of types of coverage in the Blakes’ policy was that the Blakes would have elected to eliminate these types of coverage.

Ms. Johns also testified that it was her office’s practice to explain each type of coverage when giving a quote over the phone, including UIM coverage. She would be sure to explain each page of the policy when the client came in to sign documents, and not just show them pages which needed a signature. A policy would only be issued to the person who contacted the agency and that is who would have to sign the forms. Additionally, it was her office’s practice to only allow the policy holder to sign his or her own name, and has never allowed a spouse to sign for another spouse, nor would she allow a spouse to sign for another spouse.

### **Discussion**

The Court may grant a party’s motion for summary judgment when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Pa. R. Civ. P. 1035.2. A motion for summary judgment can be entered once the pleadings are closed, and will be determined by review of the pleadings, affidavits, and other discovery. *Id.* In reviewing a motion for summary judgment, we must view the record and all reasonable inferences in the light most favorable to the non-moving party and grant the motion only if the case is free and clear from doubt. Weaver v. Lancaster Newspapers, Inc., 926 A.2d 899, 902 (Pa. 2007).

The relevant portion of the Motor Vehicle Financial Responsibility Law is as follows:

(c) Underinsured motorist coverage.

Underinsured motorist coverage shall provide protection for persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages therefor from owners or operators of underinsured motor vehicles. *The named insured shall be informed that he*

*may reject underinsured motorist coverage by signing the following written rejection form:*

#### REJECTION OF UNDERINSURED MOTORIST PROTECTION

By signing this waiver I am rejecting underinsured motorist coverage under this policy, for myself and all relatives residing in my household. Underinsured coverage protects me and relatives living in my household for losses and damages suffered if injury is caused by the negligence of a driver who does not have enough insurance to pay for all losses and damages. I knowingly and voluntarily reject this coverage.

75 Pa.C.S. § 1731(c) (emphasis added).

(c.1) Form of waiver.

*The forms must be signed by the first named insured and dated to be valid. The signatures on the forms may be witnessed by an insurance agent or broker. Any rejection form that does not specifically comply with this section is void.*

75 Pa.C.S. § 1731(c.1) (emphasis added).

Pennsylvania Courts have strictly construed the technical requirements of the Motor Vehicle Financial Responsibility Law. Toth v. Donegal, 964 A.2d 413, at 417 (Pa Super 2009). For example, the Superior Court held a UIM rejection form void where the insurer omitted the word “all” from the phrase “all losses and damages” in violation of § 1731(c). Id. (citation omitted). The Superior Court has also held that although an insured admitted to waiving UIM coverage, the rejection form was invalid because it was printed on the same document as the uninsured motorist coverage rejection form in violation of § 1731(c.1). Id. (citation omitted). In order to satisfy § 1731(c) and (c.1), the Toth court held that “where a signature appears on the UIM rejection form purporting to be that of the first named insured, the insurer has complied with the statute resulting in a facially valid rejection form.” Id. Upon production of this prima facie evidence, the burden will then shift to the insured to demonstrate that his or her signature was affixed to the rejection form without authorization or knowledge. Id.

Here, both parties agree on the standard set forth in Toth v. Donegal, and Plaintiffs accept the burden it places upon them. As stated in the Factual Background, Progressive has produced a facially valid rejection form with James Blake’s signature. Now Plaintiffs contend that they have produced sufficient evidence, by way of depositions of Mr. and Mrs. Blake establishing that the signature is not that of Mr. Blake, and that it was made without his authorization. Further, they argue even if he had authorized Mrs. Blake to sign his name, he could not have knowingly waived UIM coverage because the agency never explained what UIM coverage was. Plaintiffs also contend that Defendant has no evidence to dispute their contention because the one person besides the Blakes who would have any personal knowledge, Leslie Johns, has no recollection or knowledge of the transaction.

Defendant argues that while the agent does not recall this particular transaction or the Blakes, the agent did testify as to her agency’s business practices. She testified, among other things, that in 2009 when this policy’s documents were signed, she would have always discussed UIM coverage with a client, that she would have never allowed a spouse to sign for another spouse, let alone advise one spouse that it was ok to sign for his or her spouse. Defendant contends that this evidence of business policy is sufficient evidence to defeat the motion for summary judgment.

We find that, in a light most favorable to the Defendant, evidence of the business practices of the agency does create a genuine issue of material fact. The testimony of Leslie Johns’ adamant insistence that she always adhered to the business practices of always discussing and explaining UIM coverage and never allowed spouses to sign each other’s signatures is a fact that could be decided by a jury. Additionally, based upon office procedures, Ms. Johns was able to testify that the Blakes had elected to forego certain types of coverage because a default policy would have included certain areas of coverage which included UIM. This testimony appears to be more than mere speculation, but rather, a firm assertion that this regular practice was always followed. Cf. Toll Naval Assoc. v. Lexington Ins. Co., 2005 WL 1923836 (E.D. Pa 2005) (holding that a non-moving party to a motion for summary judgment does not create a genuine issue of material fact by reliance on inferences based upon speculation or conjecture). In furtherance of our finding, we cite Pennsylvania Rule of Evidence 406 which makes evidence of an organization’s routine practice admissible to prove that the organization acted a certain way on a particular occasion. This evidence, if accepted as true, could directly contradict the testimony of the Blakes.

This creates a dispute to the facts as alleged by the Blakes that Mr. Blake did not personally sign the rejection

of UIM coverage because there is evidence that Ms. Johns would not have allowed a spouse to sign for another spouse. Even if Ms. Johns did allow a spouse to sign for another spouse, this evidence creates a dispute to the facts that Ms. Blake was not authorized to sign for Mr. Blake because there is evidence that Ms. Johns explained UIM coverage to all potential clients when creating a policy and would have discussed the coverage over the phone with him. Therefore, we find that there remain genuine issues of material facts.

### **Conclusion**

In light of the foregoing discussion, Plaintiffs' Motion for Summary Judgment will be denied.

### **ORDER OF COURT**

**AND NOW**, this 20th day of September 2013, upon consideration of Plaintiff's Motion for Summary Judgment and brief in support, Defendants' answer and brief in response, and the arguments presented at oral argument,

**THE COURT HEREBY ORDERS** that Plaintiff's Motion for Summary Judgment is DENIED pursuant to the attached Opinion.

*Pursuant to Pennsylvania Rules of Civil Procedure 236, the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.*