

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2008 CA 0444**

**GERALD DICKERSON**

**VERSUS**

**PROGRESSIVE CASUALTY INSURANCE COMPANY,  
PROGRESSIVE SECURITY INSURANCE COMPANY, ROYLEY A.  
FOLSE, JR., RONALD L. JOHNSON AND JESSIE DUPUY**

*Judgment Rendered:* SEP 23 2008

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**Appealed from the  
18th Judicial District Court  
In and for the Parish of Iberville, Louisiana  
Case No. 64537**

**The Honorable James J. Best, Judge Presiding**

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Marksville, Louisiana**

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Gerald Dickerson**

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*KUHN, J DISSENTS & ASSIGNS REASONS*

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**BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.**

*Guidry, J. concurs in the result.*

**GAIDRY, J.**

**MEMORANDUM OPINION**

This is an appeal of a partial summary judgment of the 18th Judicial District Court for the Parish of Iberville, brought by the defendant-appellant, Progressive Security Insurance Company (Progressive). We affirm.

**PERTINENT FACTS AND RULING OF THE LOWER COURT**

This action arises from a motor vehicle accident of November 13, 2006. The plaintiff, Gerald Dickerson, was a passenger in a van owned by Ramos Corporation and driven by Ronald Johnson. The van was one of the insured vehicles described in a commercial automobile liability insurance policy issued by Progressive to Raymond Johnson, Inc. as named insured.<sup>1</sup> The policy included an uninsured/underinsured motorists (UM) coverage rejection form, dated November 7, 2003 and bearing the signature “Raymond Johnson” on a blank designated “Signature of Named Insured or Legal Representative.” Above that blank was another blank for the printed name of the “Named Insured or Legal Representative.” The latter blank was not filled in, nor was another blank for the policy number in the lower right-hand corner. However, the policy number clearly appeared at the top of both pages of the preprinted form.

Plaintiff instituted this action for personal injury damages on November 29, 2006. He alleged that Progressive provided UM coverage in its policy at issue. Progressive answered the petition, affirmatively denying the existence of such coverage. On August 14, 2007, Progressive moved for summary judgment in its favor, contending that the UM rejection form was properly completed and signed by the named insured’s legal representative. Plaintiff filed a cross-motion for partial summary judgment, contending that

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<sup>1</sup> Ramos Corporation, the owner of the van, was listed by endorsement as an additional insured.

the form was improperly completed and that UM coverage was therefore provided.

The motions were heard on December 5, 2007. On December 12, 2007, the trial court signed a judgment granting plaintiff's motion for partial summary judgment and certifying it as a final judgment for purposes of appeal pursuant to La. C.C.P. art. 1915(B)(1). Progressive appeals.

### **ISSUES PRESENTED**

Progressive contends that the trial court erred in granting partial summary judgment in favor of plaintiff on the issue of the validity of the UM rejection, and in denying its motion for summary judgment on that issue. Specifically, Progressive argues that the insured's failure to write the policy number on the blank provided does not serve to invalidate the UM rejection, as the policy number clearly appears at the top of both pages of the form. Progressive also argues that the signature of "Raymond Johnson" was clearly that of the legal representative of Raymond Johnson, Inc., and that it was unnecessary to print the name in the blank provided to identify the capacity in which the signature was made.

### **APPEALABILITY AND JURISDICTION**

The partial summary judgment at issue determines only the issue of the existence of UM coverage under Progressive's policy, but not its liability. Thus, it is a partial summary judgment authorized by La. C.C.P. art. 966(E). Although the trial court certified the judgment as final for purposes of appeal, its reasons for doing so were not stated. Accordingly, we must conduct a *de novo* determination of whether certification was proper. *R.J. Messinger, Inc. v. Rosenblum*, 04-1664, pp. 13-14 (La. 3/2/05), 894 So.2d 1113, 1122. Based upon our consideration of the relevant factors for such determination, particularly the relative importance of the coverage

issue in determining the posture of the parties, we conclude that there is no just reason for delay and that the trial court's certification was appropriate. *See, e.g., Machen v. Bivens*, 04-0396, p. 3 (La App. 1st Cir. 2/11/05), 906 So.2d 468, 470-71.

### REASONS

The same policy and UM rejection form at issue here have already been the subject of an appeal in another Louisiana appellate court. In *Johnson v. Folse*, 07-1031 (La. App. 5th Cir. 5/27/08), \_\_\_ So.2d \_\_\_, an action arising from the same accident, the court held that Progressive's UM rejection form was invalid, because the policy number blank was not filled in, the blank for the printed name of the insured or legal representative was not filled in, and the signature was ambiguous as to the individual or representative capacity of "Raymond Johnson." We agree with the rationale of that opinion, for the following reasons.

The law is clear that the subjective intent of the parties does not control the legal validity of a UM rejection form. The form must comply with the statutory requirements, which in turn incorporate by reference the requirements of the form prescribed by the commissioner of insurance. *See* La. R.S. 22:680(1)(a)(ii) and *Duncan v. U.S.A.A. Ins. Co.*, 06-363, pp. 12-13 (La. 11/29/06), 950 So.2d 544, 552. Any form completed and signed in a less precise manner is insufficient to effect a valid rejection of UM coverage. *See Gray v. American Nat. Prop. & Cas. Ins. Co.*, 07-1670, p. 15 (La. 2/26/08), 977 So.2d 839, 849.

In the *Duncan* case, the supreme court held that "compliance with the form prescribed by the commissioner of insurance is necessary for the UM waiver to be valid." *Duncan*, 06-363 at p. 14, 950 So.2d at 553. The court

noted that the prescribed form requires six tasks to be performed in order for an insured to reject or select UM coverage:

The insured initials the selection or rejection chosen to indicate that the decision was made by the insured. If lower limits are selected, then the lower limits are entered on the form to denote the exact limits. The insured or the legal representative signs the form evidencing the intent to waive UM coverage and includes his or her printed name to identify the signature. Moreover, the insured dates the form to determine the effective date of the UM waiver. Likewise, the form includes the policy number to demonstrate which policy it refers to.

*Duncan*, 06-363 at p. 13, 950 So.2d at 552.

The form at issue is incomplete and imprecise, in that it does not include the printed name of the insured or the insured's legal representative, and thereby fails to identify the capacity in which "Raymond Johnson" signed the form.<sup>2</sup> *Johnson*, 07-1031 at p. 7, \_\_\_ So.2d at \_\_\_. See also *Cohn v. State Farm Mut. Auto. Ins. Co.*, 03-2820, pp. 4-5 (La. App. 1st Cir. 2/11/05), 895 So.2d 600, 602, writ denied, 05-1000 (La. 6/17/05), 904 So.2d 705. This formal omission alone is fatal to the form's validity, on the facts before us.

Progressive also contends that *Duncan* is clearly distinguishable from this case, in that the UM rejection form in *Duncan* contained no policy number anywhere on the form, while the policy number pre-printed on the form at issue was sufficient "to demonstrate which policy it refers to." See *Duncan*, 06-363 at p. 13, 950 So.2d at 552. While we agree with that described purpose for inclusion of the policy number, we cannot agree that the purpose may be fulfilled without compliance with the required task of "filling in the policy number" in the blank provided on the prescribed form.

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<sup>2</sup> Admittedly, while it might logically be assumed that Raymond Johnson is a corporate representative of Raymond Johnson, Inc., the similarity in the individual and corporate names creates ambiguity as to whether the signature was intended to be made in a representative capacity. If a differently-named individual had signed, the representative nature of the signature would have been more obvious.

*See Duncan*, 06-363 at p. 12, 950 So.2d at 551. (Emphasis supplied.) The supreme court in *Duncan* squarely held that “[b]y failing to include the policy number *in the blank provided on the form*, the insurer failed to effectuate a valid rejection of UM coverage.” 06-363 at p. 15, 950 So.2d at 553. (Emphasis supplied.) We are bound to follow that unambiguous holding, given the facts of this case.<sup>3</sup>

### **DECREE**

The judgment of the trial court is affirmed. All costs of this appeal are assessed to the defendant-appellant, Progressive Security Insurance Company. This memorandum opinion is issued in accordance with Rule 2-16.1(B) of the Uniform Rules of the Louisiana Courts of Appeal.

**AFFIRMED.**

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<sup>3</sup> *Cf. Carter v. State Farm Mut. Auto. Ins. Co.*, 07-1294 (La. 10/5/07), 964 So.2d 375.

GERALD DICKERSON

STATE OF LOUISIANA


VERSUS

COURT OF APPEAL

PROGRESSIVE CASUALTY INSURANCE  
COMPANY, PROGRESSIVE SECURITY  
INSURANCE COMPANY, ROYLEY A. FOLSE,  
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FIRST CIRCUIT

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 Kuhn, J., dissenting.

I would reverse the trial court's judgment and grant the motion for summary judgment filed by Progressive Security Insurance Company (Progressive). In support of its motion, Progressive submitted a UM rejection form that complied with all of the requirements of La. R.S. 22:680(1)(a)(ii), as interpreted by the supreme court in *Duncan v. U.S.A.A. Ins. Co.*, 06-363 (La. 11/29/06), 950 So.2d 544. A "properly completed and signed form," is presumed to constitute a knowing waiver of UM coverage. *Duncan*, 06-363 at p. 13, 950 So.2d at 552. The *Duncan* court listed the six tasks contained in the form prescribed by the commissioner of insurance that were pertinent for a valid rejection of UM coverage. These six tasks are met in the present case, i.e., 1) Mr. Johnson initialed the rejection of Uninsured/Underinsured Motorist Bodily Injury coverage; 2) no selection of lower limits was required due to the insured's selection of no UMBI coverage; 3) the form contained the typed name of Raymond Johnson, Inc's legal representative, Raymond Johnson; 3) Mr. Johnson's signature was affixed to the form; 5) although the policy number was not written on the blank provided for the policy number, it appeared on the form, less than two inches above the blank; and 6) the form was dated. The majority finds the form deficient because it does not identify the capacity in which "Raymond Johnson" signed the form. However, La. R.S. 22:680 does not require that the form establish the representative capacity of the signatory. Further, the form should not be invalidated based on hypertechnical "defects" regarding the placement of information on the form.

Because the UM rejection is valid, the burden shifted to plaintiff, Mr. Dickerson, to rebut the presumption that UM coverage was knowingly rejected. He failed to do so. Accordingly, based on the record, there are no genuine issues of material fact, and Progressive is entitled to judgment as a matter of law.