NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

STATE OF LOUISIANA

FIRST CIRCUIT

2008 CA 0950

SHANNON SPENCER

VERSUS

USAGENCIES CASUALTY INSURANCE COMPANY

2008 CW 0677

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USAGENCIES CASUALTY INSURANCE COMPANY

Judgment rendered: DEC 2 3 2008

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On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: C559,398; Division J; Section 25
The Honorable Curtis A. Calloway, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

Whipple, J. concurs for reasons assigned.

DOWNING, J.

USAgencies Casualty Insurance Company (USAgencies) appeals a judgment that granted Shannon Spencer's cross-motion for summary judgment recognizing Spencer's level of underinsured motorist insurance (UM) coverage as $10,000.00. USAgencies also filed a writ seeking review of the trial court's denial of its motion for summary judgment.

For the following reasons, we reverse the summary judgment recognizing Spencer's level of UM coverage as $10,000.00. Also, we grant USAgencies' motion for summary judgment, based on the merits.

PERTINENT FACTS AND PROCEDURAL HISTORY

Shannon Spencer was involved in a motor vehicle accident on December 17, 2006. At the time of the accident, USAgencies had provided a policy of automobile insurance to Spencer. Thereafter, Spencer sued her own insurance company, USAgencies, asserting a claim under her UM coverage.

USAgencies denied that UM coverage existed in Spencer's policy due to a UM coverage waiver executed by Spencer. Accordingly, USAgencies filed a motion for summary judgment, seeking dismissal of the case on its merits.

Spencer then filed a cross-motion for partial summary judgment, asking the trial court, in pertinent part, to hold that her level of UM coverage afforded by USAgencies for this accident was $10,000.00.

In its judgment, the trial court denied USAgencies' motion for summary judgment and granted Spencer's cross-motion, thereby recognizing that her level of UM coverage was the minimum amount of $10,000.00.[1]

[1] This judgment has been remanded twice to the district court. It was first remanded because it lacked sufficient decretal language. The judgment was amended and the case was returned to this court. However, this amended judgment was a partial judgment that had not been designated as final per La. C.C.P. art. 1915B, so we remanded it for that reason. The judgment has now been properly certified and returned. On review, we agree with the designation in that resolution of the issues involved does not delay the litigation and tends to simplify and clarify the ongoing proceeding. Further, failure to consider the matter here would create two adverse judgments: the one we reverse on USAgencies' writ application that dismisses Spencer's claim and the one on appeal that would find insurance coverage for Spencer if we did not reverse that judgment here.

USAgencies now appeals the judgment of the trial court, and assigns the following as error:

1. The trial court erred in granting Spencer's motion where the undisputed facts demonstrate that Spencer waived uninsured/underinsured motorist coverage on a properly completed and signed form provided by the Louisiana Commissioner of Insurance.

2. The trial court erred in granting Spencer's motion where no proof was presented as to the tortfeasors' insurance status.

Further, USAgencies has filed a writ application with this Court, seeking review of the trial court's judgment denying USAgencies' motion for summary judgments. The writ application was referred to this panel for consideration.

DISCUSSION

Reviewing courts review summary judgments *de novo*, using the same criteria that govern the trial court's determination of whether summary judgment is appropriate; *i.e.*, whether there is any genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. **Samaha v. Rau**, 07-1726, p. 3 (La. 2/26/08), 977 So.2d 880, 882-83.

Spencer's Policy Limits

Spencer's insurance policy with USAgencies carried insurance at the minimum level allowed by law. These coverage limits included bodily injury liability coverage up to $10,000 for each person and up to $20,000 for each accident.

Waiver of UM Coverage

USAgencies bases its appeal on a waiver Spencer executed in regard to her policy's UM coverage. In connection with her automobile liability policy, Spencer completed a State of Louisiana Uninsured/Underinsured Motorist Bodily Injury Coverage Form which, US Agencies asserts, was an effective and valid waiver of UM coverage.

Spencer contends, however, that the form used by US Agencies was invalid because certain choices were marked as "not available." These two choices, Options 2 and 4, each dealt with selecting components of UM coverage lower than the bodily injury liability coverage limit in the insured's policy. Spencer bases her argument on the belief that not providing certain options is unlawful. However, for reasons stated below, US Agencies was legally unable to offer Options 2 and 4.

Choosing Option 2 permits an insured to choose UM coverage with limits lower than the policy's bodily injury liability coverage. Option 4 allows an insured to select economic-only UM coverage lower than the policy's bodily injury liability coverage.

The UM coverage waiver did, however, offer every other option available on the compulsory form. "In order to be a valid rejection form, it must inform the insured of the protection provided and of the available options." **Dardar v. York**, 2000-0339, p. 4 (La.App. 1 Cir. 3/28/01), 808 So.2d 519, 521. The remaining legally available options were offered to Spencer.

Statutory Bar to UM Coverage Below Minimum

On the form which Spencer completed, USAgencies had marked "not available" next to Options 2 and 4. Spencer contends that by not allowing these particular options, USAgencies caused the form to become invalid. Spencer alleges that the form allows only Options 3 and 4 to be marked as "not available."

Spencer's basis for this argument is the language of the form which states, in pertinent part, that "Economic-Only UMBI Coverage may not be available from your insurance company. In this case, your company will have marked options 3 and 4 below as 'Not Available.'" Spencer contends this language means that only Options 3 and 4 may be marked as "Not Available." This is simply not the case.

These instructions should not be interpreted as meaning that only Options 3 and 4 can be marked as "Not Available." In some instances, an insurance company

will not offer Economic-Only UMBI coverage to its customers. This makes Options 3 and 4 not available to any customer of that particular company.

This language is clear and unambiguous. Just because an insurer is able to mark Options 3 and 4 as unavailable does not mean that they are preempted from marking "Not Available" next to other options, especially when the other options are not available by law.

In the case at bar, Options 2 and 4 were marked "Not Available" as a matter of law. La.R.S. 22:680(1)(a)(i), formerly La.R.S. 22:1406(D)(1)(a)(i), specifically states that "[i]n no event shall the policy limits of an uninsured motorist policy be less than the minimum liability limits required under R.S. 32:900, unless economic-only coverage is selected as authorized herein." The Supreme Court has specifically addressed this issue, explaining that "when an applicant elects to purchase only the minimum bodily injury limits allowable, the option of selecting UM coverage at limits lower [than] those in the policy is foreclosed by law." **Daigle v. Authement**, 96-1662, p. 4 (La. 4/8/97), 691 So.2d 1213, 1215.

Spencer had chosen to set her policy's bodily injury limits at the legally allowable minimum, thereby legally barring her from choosing a lower amount of UM coverage. As such, USAgencies marked "not available" next to these legally barred options: Options 2 and 4. This notation was in no way an increased limitation of Spencer's rights, but merely a way to inform her of which options were not available.

Therefore, in our review of the summary judgment recognizing Spencer's level of UM coverage at $10,000.00, we find merit in USAgencies' first assignment of error and will reverse the lower court's judgment rendered in Spencer's favor.

Writ Application

Reviewing the writ application by USAgencies, we also find merit in USAgencies' specifications of error. As discussed above, Spencer waived UM coverage on a properly completed and signed form as provided by the Louisiana Commissioner of Insurance. Therefore, the trial court erred in denying USAgencies' motion for summary judgment on the merits. The waiver of UM coverage was valid. Accordingly, USAgencies is entitled to judgment as prayed for, and we will reverse the judgment denying USAgencies' motion for summary judgment. We will render judgment in USAgencies' favor, dismissing Spencer's claims against US Agencies with prejudice.

DECREE

For the foregoing reasons, we reverse the summary judgment in favor of plaintiff, Sharon Spencer, recognizing her UM coverage at $10,000.00. Further, we enter judgment in favor of USAgencies, dismissing all of Spencer's claims against US Agencies with prejudice. Costs of this appeal are assessed against appellee, Sharon Spencer.

REVERSED; WRIT GRANTED; RENDERED

SHANNON SPENCER **STATE OF LOUISIANA**

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WHIPPLE, J., concurring.

Although I agree that the result reached herein is legally correct, in my view, hearing appeals of this nature promotes piecemeal litigation. See generally Daigle & Associates, APLC v. Lafayette Insurance Company, 2004-0915 (La. App. 1st Cir. 6/29/05) 916 So. 2d 1078 and Baumann v. D & J Fill, Inc., 2007-1480 (La. App. 1st Cir. 2/8/08) (unreported opinion).