IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

GREGORY SCOTT AMSHOFF	:	APPEAL NO. C-060719 TRIAL NO. A-0404371
and	:	
VICKIE AMSHOFF,	:	*JUDGMENT ENTRY.*
Plaintiffs-Appellants,	:	
vs.	:	
ADAM W. BURKE,	:	
JAMES STEINBUCK,	:	
PROGRESSIVE INSURANCE,	:	
NEXL SPORTS PRODUCTS,	:	
BLEACHER COMFORT LLC,	:	
J.P. CYCLES, INC.,	:	
Defendants,	:	
and	:	
THE CINCINNATI INSURANCE COMPANY,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

[1] See S.Ct.R.Rep.Op. 3(A), App.R.11.1(E), and Loc.R. 12.

The appellant, Gregory Amshoff, was injured in a motor vehicle accident on June 22, 2002. The accident was the fault of Adam Burke. Amshoff and his wife, Vickie (collectively, "the Amshoffs"), settled with Burke for his maximum liability coverage. The Amshoffs then settled with Gregory's own insurance company for the maximum underinsured-motorist coverage.

In June 2000, the Amshoffs had purchased a homeowners insurance policy from The Cincinnati Insurance Company ("Cincinnati Insurance"). They decided to add $1,000,000 of umbrella coverage and did so in September 2000. The Amshoffs filed a suit against Cincinnati Insurance for underinsured-motorist coverage for the June 22 accident under the umbrella policy. Cincinnati Insurance filed an answer and a counterclaim for a declaratory judgment, asking the court to declare that there was no underinsured-motorist coverage under the umbrella policy.

After a hearing, a magistrate held that the Amshoffs were not entitled to underinsured-motorist coverage under the policy. The trial court overruled the Amshoffs' objections to the magistrate's decision and adopted the decision. The Amshoffs now assert in their sole assignment of error that the trial court erred in adopting the magistrate's decision. We disagree and affirm.

The Amshoffs argue that where an insurer fails to make a valid offer of underinsured-motorist coverage when it sells an insurance policy, the coverage is imposed by law, and that neither Cincinnati Insurance nor its agents made such an offer for the umbrella policy. They maintain that no written offer existed, and that the information Cincinnati Insurance claimed its agent gave them orally did not satisfy the *Linko*[2] test. The Amshoffs further maintain that there was no valid

[2] *Linko v. Indemn. Ins. Co. of North America*, 90 Ohio St.3d 445, 2000-Ohio-92, 739 N.E.2d 338.

rejection of uninsured-motorist coverage, and that under R.C. 3937.18 underinsured-coverage arose as a matter of law.

It is clear that this court must apply the law that was in effect at the time the policy was issued. The statute that governs in this case is R.C. 3937.18. That statute provides that a signed rejection of uninsured/underinsured-motorist ("UM/UIM") coverage is effective on the date signed, and that a signed rejection creates a presumption that an offer of such coverage was made. In this case, there was a rejection, signed by the Amshoffs, of UM/UIM coverage with regard to the umbrella policy. To be effective, this rejection must have been made in response to an offer that included a brief description of the premiums and coverage available. The contents of the offer could have been proved by extrinsic evidence.[3]

During the hearing before the magistrate, evidence was presented that Vickie Amshoff had called Cincinnati Insurance's agent to inquire about purchasing an umbrella policy. The agent explained to Vickie that UM/UIM coverage was available for an umbrella policy, and he quoted a price and the amount of coverage that would be received for that price. The agent had notes of the conversation confirming his account. The Amshoffs then talked it over for a few days. They then called the agent and told him to proceed with the umbrella policy, but said that they would decline the UM/UIM coverage to avoid the extra cost. The agent then sent the Amshoffs a written rejection form, which they signed and mailed back to the agent.

We conclude that the written rejection form was valid under R.C. 3937.18. The magistrate was in the best position to judge the credibility of the witnesses, and he decided that the evidence demonstrated that the rejection was given in response

[3] *Hollon v. Clary*, 104 Ohio St.3d 526, 2004-Ohio-6772, 820 N.E.2d 881, syllabus.

to an offer that included a description of the coverage and the premiums. The trial court did not err when it adopted the decision of the magistrate. We, therefore, overrule the sole assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and **DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 27, 2007
per order of the Court _____.
Presiding Judge