IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MARY JENKINS and PAUL HOWELL,	)	
Plaintiffs,	)	
v.	)	C.A. No. 09C-11-115 DCS
JUSTIN WILSON, GEICO CASUALTY COMPANY and NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,	)	Jury Trial of Twelve Demanded
Defendants,	)	
GEICO CASUALTY COMPANY,	)	
Third-Party Plaintiff,	)	
v.	)	
THE AVIS BUDGET GROUP, d/b/a BUDGET RENT-A-CAR,	)	
Third-Party Defendant.	)	

Submitted: December 14, 2011
Decided: March 30, 2012

Upon Third-Party Defendant The Avis Budget Group d/b/a Budget Rent-A-Car's Motion to Reargue Motion for Summary Judgment
Motion ***Denied***

MEMORANDUM OPINION

STREETT, J.

Appearances:

Michael K. DeSantis, Esquire, Wilmington Delaware
Attorney for Third-Party Plaintiff GEICO Casualty Company

Lynn A. Kelly, Esquire, Wilmington, Delaware
Attorney for Third-Party Defendant The Avis Budge Group d/b/a
Budget Rent-A-Car

INTRODUCTION

Third-Party Defendant The Avis Budget Group, d/b/a Budget Rent-A-Car, ("Budget"), a Delaware Corporation, hereby moves to reargue the denial of its motion for summary judgment against Third-Party Plaintiff GEICO Casualty Company, ("Geico"), in an insurance coverage dispute arising from an automobile collision involving a rental car in which Geico, the uninsured/underinsured motorist coverage carrier for the lessee of the rental car, filed an action against Budget for contribution and indemnification.

FACTUAL AND PROCEDURAL BACKGROUND

On November 17, 2007, Plaintiffs Mary Jenkins and Paul Howell, ("Plaintiffs"), allegedly sustained injuries while traveling in a rented vehicle when it was rear-ended by Defendant Justin Wilson, ("Wilson"), the alleged tortfeasor and uninsured motorist. At the time of the collision, Plaintiff Mary Jenkins was driving while Plaintiff Paul Howell, ("Howell"), was a passenger. The vehicle was owned by Budget, registered in Pennsylvania, allegedly "used in Delaware as a part of a regional fleet,"[1] and rented in Delaware by Kimyada Maddrey, ("Lessee"), who was a friend of Howell who was an employee of Budget. The identity of the Budget employee who authorized the rental agreement has not been

[1] Budget's Motion for Summary Judgment, ¶ 8 (Aug. 17, 2011).

identified (other than by an identification number on the agreement).[2] Lessee, who is not a party to this action, signed the rental agreement which references the rental document jacket and allegedly indicates rejection of UM coverage. In extremely small and nearly unreadable print, Budget's rental terms and conditions, which are in the rental document jacket that is separate from the agreement, state in pertinent part:

> You understand that unless required by applicable law, we will not provide . . . (d) supplementary no fault, noncompulsory uninsured or underinsured motorist coverage, and any other optional or rejectable coverage, and you and we reject all such coverages to the extent permitted by law. Where permitted by law, you are rejecting uninsured or underinsured motorist . . . coverages . . . for you and all other passengers in the car.[3]

Plaintiffs filed an action for damages against Wilson (the alleged tortfeasor and uninsured motorist) as well as Geico (Lessee's insurer) and Nationwide Mutual Fire Insurance Company, ("Nationwide") (Plaintiff Jenkins insurer). Geico, in turn, filed a third-party action for indemnification and contribution against Budget as the self-insured rental agent. Budget subsequently moved for summary judgment on the grounds that it is not required to provide

[2] Howell was employed by Budget and, being the only service technician who worked all day at his particular Budget location, was considered the manager on duty. The Budget vehicle was rented from Howell's place of work by his friend, Kimyada Maddrey, so that Howell could drive the vehicle. He could not rent the vehicle himself because he did not have a valid driver's license, and he did not have automobile insurance. However, Howell and Maddrey paid for the rentals. Howell testified at his deposition that Maddrey would rent a vehicle for approximately one week at a time due to her credit card limit, and she would continuously enter into new weekly rentals. Howell also said that he did not write the rental agreement for the vehicle involved in the collision: "Q. At the time that this accident happened did you have anything to do with writing the contracts? A. No." Budget's Opening Brief in Support of Motion to Reargue, Exh. C at 51.

[3] Budget's Opening Brief in Support of Motion to Reargue, Exh. E, ¶16 (Nov. 23, 2011).

uninsured/underinsured motorist, ("UM"), coverage and, thus, is not responsible for indemnification or contribution.

On October 19, 2011, the Court heard the motion for summary judgment and denied it on the grounds that material issues of fact remained including whether the Budget vehicle was principally garaged in Delaware so as to implicate Delaware's UM law.

CONTENTIONS OF THE PARTIES

In moving for summary judgment, Budget asserted that it is not obligated to provide UM coverage under Delaware law and, even if it were, Lessee rejected UM coverage, and, therefore, Budget is not obligated to provide UM coverage under the rental agreement. Budget further asserted that Geico, a non-party to the rental agreement, lacks standing to file an action against Budget. In response, Geico argued that Budget was obligated to provide UM coverage because such coverage could not have been rejected by Lessee unless Budget met its legal duty to see that she was otherwise insured. Geico also argued that Budget's assertion that Geico does not have standing is misplaced.

DISCUSSION

"A motion for reargument will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law

or facts such as would have changed the outcome of the underlying decision."[4] A motion for reargument will not be granted solely to repeat arguments already ruled upon.[5]

Under Delaware's UM Statute, Insufficient Facts Exist to Determine the Threshold Issue of Whether the Statute Applies to the Budget Vehicle

Regarding UM coverage, Delaware statute provides that:

> No policy insuring against liability arising out of the ownership, maintenance or use of any motor vehicle shall be delivered or issued for delivery in this State with respect to any such vehicle *registered or principally garaged in this State* unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of *uninsured* or hit-and-run vehicles for bodily injury, sickness, disease, including death, or personal property damage resulting from the ownership, maintenance or use of such uninsured or hit-and-run motor vehicle. *No such coverage shall be required in or supplemental to a policy when rejected in writing*, on a form furnished by the insurer or group of affiliated insurers describing the coverage being rejected, by an insured named therein . . . .[6]

The above statute is the result of Delaware's strong public policy in support of UM coverage and against limitations on such coverage.[7] The legislative purpose for the requirement that UM coverage be available to the public is to protect the innocent from "the negligence of unknown or impecunious tortfeasors."[8]

Since the statute requires that UM coverage be provided upon the issuance of an insurance policy which, for rental vehicles, occurs at the time of contract, a

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[4] *State v. Amin*, 2007 WL 3105895, *1 (Del. Super. Aug. 8, 2007).
[5] *Id.* at *1.
[6] 18 *Del. C.* § 3902(a)-(a)(1) (emphasis added).
[7] *State Farm Mut. Auto. Ins. Co. v. Washington*, 641 A.2d 449, 453 (Del. 1994).
[8] *Washington*, 641 A.2d at 451; *see State Farm Ins. Co. v. Washington*, 1993 WL 1626510 (Del. Super. June 29, 1993) *aff'd sub nom. State Farm Mut. Auto. Ins. Co. v. Washington*, 641 A.2d 449 (Del. 1994) (citing *Jeanes v. Nationwide Insurance Company*, 532 A.2d 595, 598 (Del. Ch. 1987) (holding that uninsured coverage is required regardless of whether insured is driving her own vehicle or another's)).

determination as to where a rental vehicle is principally garaged is made by ascertaining such at the time of contract and not at the time of a subsequent accident.[9] Therefore, it matters not where the vehicle was driven or garaged after the insurance policy was issued.[10] "The very nature of [a rental car agency's] business requires that rental cars registered in one state will be driven through and/or to another state."[11]

In this matter, since the statute applies to insurance policies issued for vehicles either registered in Delaware or principally garaged in Delaware, a determination must be made as to the status of the Budget vehicle. Budget has presented evidence that the Budget vehicle is registered in Pennsylvania, and that position is not being contested by Geico.[12] Budget also offers an employee's affidavit stating that Budget's vehicles are "used throughout the region."[13] Budget presents no evidence, however, as to where its vehicle was principally garaged and instead relies on the allegation that it "was used in Delaware as a part of a regional fleet."[14]

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[9] *Estate of Ralston v. Metropolitan Property and Casualty Ins. Co.*, 767 N.E. 2d 789, 793 (Ohio Ct. App. 2001).
[10] *Estate of Ralston*, 767 N.E. 2d at 793; *see Green v. Budget Rent A Car Corp.*, 857 A.2d 1031, 1035-1036 (Del. Super. 2004) (stating that "it would be unduly burdensome to require a rental car agency to either restrict use of its cars to the state in which they are registered, or to require [the agency] to re-register a car every time it is temporarily moved to another state").
[11] *Green*, 857 A.2d at 1036.
[12] Budget's Opening Brief in Support of its Motion to Reargue, Exh. B; Hearing Transcript, p. 8 (Oct. 19, 2011) (hereinafter Hrg. Tr.).
[13] Budget's Opening Brief in Support of its Motion to Reargue, Exh. D at 1.
[14] Budget's Motion for Summary Judgment at ¶ 8.

Due to the Budget vehicle being registered in Pennsylvania, Budget contends that it was not required to either provide or offer UM coverage.[15] In so doing, Budget relies on *Green v. Budget Rent A Car Corp.*[16] which holds that 21 *Del. C*. § 2118 (Delaware's PIP statute) "does not apply to rental cars that are registered out of state, and which meet that state's minimum insurance coverage, but are used on occasion in Delaware as part of a national or regional fleet."[17] The *Green* Court further found that Delaware law does not require out-of-state rental cars owned by a Delaware Corporation to be registered in Delaware in order to operate in Delaware as long as these vehicles meet the minimum coverage requirements of the state in which they are registered.[18] Budget argues that *Green* is instructive in that the same rule exempting rental cars registered outside of Delaware from the Delaware PIP statute should also apply to the Delaware UM Statute. A specific difference, however, in the language of the two statutes prevents such an application of *Green*.

The Delaware PIP statute provides that "[n]o owner of a motor vehicle *required to be registered in this State* . . . shall operate or authorize any person to operate such vehicle unless the owner has insurance . . ."[19] whereas the Delaware UM Statute provides that no policy "shall be delivered or issued for delivery in this

[15] Hrg. Tr. at 4-5.
[16] 857 A.2d 1031 at 1032.
[17] *Id*.
[18] *Id*. at 1035.
[19] *Id*. at 1033.

State with respect to any such vehicle *registered or principally garaged in this State* unless coverage is provided . . . ."[20] In *Green*, the plaintiff argued that the "principally garaged" language of the UM statute should be read into the language of the PIP statute in order to require PIP coverage for vehicles principally garaged in Delaware.[21] The *Green* Court disagreed. Here, Budget seemingly argues the opposite—that the "principally garaged" language of the UM statute should not be considered in order to exempt vehicles registered in another state from Delaware's UM coverage requirement. As in *Green*, here, too, the Court will neither infuse the language of one statute onto the other nor eliminate the "principally garaged" provision that the Legislature has included presumably for a purpose.[22] The Budget vehicle, therefore, is not exempt from the Delaware UM statute simply because it is registered in Pennsylvania.

On the other hand, Geico claims that because the Budget vehicle was rented from a Budget location in Delaware to a Delaware resident for use in Delaware, it is deemed as "principally garaged" in Delaware and is, therefore, subject to Delaware's UM Statute.[23] Geico has provided no legal authority, and the Court finds none, for its assertions that the state in which the Budget vehicle was to be used or driven and the residence of Lessee have any effect on where the rental

[20] 18 *Del. C*. § 3902(a) (emphasis added).
[21] *Green*, 857 A.2d at 1034.
[22] *Id*. at 1035; *see Humm v. Aetna Cas. & Sur. Co.*, 656 A.2d 712, 715 (Del. 1995) (stating that "[t]he courts may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature").
[23] Hrg. Tr. at 8.

vehicle was "principally garaged" at the time of contract.[24] Since the location where a rental vehicle is principally garaged is pertinent to the analysis only at the time of contract—the time the insurance policy is issued—these factors are not appropriate criteria in determining that location. Nevertheless, the fact that the Budget vehicle was rented at a Delaware Budget location could be indicative of where it was "principally garaged." Alternatively, that it was "part of a regional fleet" could demonstrate that it was kept somewhere other than the Delaware location from which it was rented. Summary judgment, therefore, was determined to be inappropriate since a factual record must be established to find whether the Budget vehicle was principally garaged in Delaware such that Budget is subject to Delaware's UM statute.

Assuming that, after factual findings are made as to where the Budget vehicle was principally garaged, it is determined that coverage is required under Delaware's UM statute, the next issue to discuss would be whether Budget properly abided by said statute upon its issuance of insurance. On the other hand, if it is determined that Delaware's UM statute does not apply, the issue becomes whether Budget "has insurance on [the] motor vehicle equal to the minimum insurance required by the state or jurisdiction where said vehicle is registered."[25]

[24] Geico's assertions are more suited to a proper choice of law analysis rather than an analysis of the applicability of Delaware's UM statute to a particular vehicle.

[25] 21 *Del. C*. § 2102(b); *Green*, 857 A.2d at 1035. Pennsylvania's self-insured statute provides for UM coverage up to certain limits. *See Green*, 857 A.2d at 1036; 75 *Pa.C.S.* § 1787. Nevertheless, the Court has not discussed the potential application of another state's law. If this becomes necessary, the Court will ask the parties for additional briefing.

Under Delaware Law, Budget's Denial of UM Coverage is Contrary to Statute If Lessee was Not Fully Informed Regarding Her Right to UM Coverage and If Budget Did not Verify the Existence of Alternative UM Coverage.

Under the first scenario—a determination that Delaware's UM statute does apply to the Budget vehicle—the Court must determine whether Budget's denial of UM coverage is valid under Delaware law.

"[Delaware's] statutory scheme mandates [the minimum amount of] uninsured motorist coverage unless rejected in writing."[26] Thus, policy provisions that reduce uninsured coverage to less than what Section 3902 requires are void.[27] The intent of the statute—compensating innocent drivers—affects how Delaware courts construe the statute.[28] Specifically, that intent is to make available the minimum amount of uninsured coverage to "any individual who does not expressly opt out" of such coverage in writing.[29] Moreover, while the intent of such statutes is to entitle the insured to recover for damages in the event of an uninsured motorist, the "statute does not require that [UM] coverage be made available when the insured has been otherwise protected."[30]

Furthermore, in subsection (a), the UM statute does not "allow the insurer and the insured to engage in traditional means of contracting; that is, by an offer and an acceptance" but, subsection (a) "change[s] the traditional means of

[26] *State Farm Mut. Auto. Ins. Co. v. Arms*, 477 A.2d 1060, 1063 (Del. 1984).
[27] *Frank v. Horizon Assur. Co.*, 553 A.2d 1199, 1201-02 (Del. 1989).
[28] *Arms*, 477 A.2d at 1064.
[29] *Humm*, 656 A.2d at 716.
[30] *Okonkwa v. Camrac, Inc.*, 2004 WL 2439724 (Conn. Super. Ct. Sept. 29, 2004).

contracting by *requiring* a certain coverage unless the insured rejects it in writing."[31] Thus, subsection (a) operates under a higher standard than subsection (b)—one of mandatory coverage unless rejected as opposed to simply an offer of coverage. In fact, the insured is "deemed to have accepted [a minimum level of uninsured coverage] unless [s]he rejects the coverage in writing."[32]

In *Hicks v. State Farm Mut. Auto. Ins. Co.,* this Court found that the intent of the Legislature is "to give an insured motorist the opportunity to protect himself or herself from the risk posed by an uninsured driver" and to place the burden on the insurer to demonstrate an affirmative rejection of such protection.[33] In order to have such an opportunity either for protection against the risk of an uninsured driver or rejection thereof, an insured would have to be informed of her right to such coverage. Thus, the insurer has a statutory duty to make certain that the insured is informed of her right to uninsured coverage as opposed to making a unilateral rejection of such coverage on her behalf.[34] "Section 3902 expresses a *legislative command that automobile liability policies issued in Delaware provide UM coverage as a matter of course* . . . with the option on the part of the insured to reject UM coverage in writing . . . ."[35]

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[31] *Humm*, 656 A.2d at 716 (emphasis added).
[32] *Humm*, 656 A.2d at 714.
[33] *Hicks v. State Farm Mut. Auto. Ins. Co.*, 1987 WL 8889, *2 (Del. Super. Mar. 30, 1987); *Hudson v. Colonial Penn Ins. Co.*, 1993 WL 331168, *4 (Del. Super. July 21, 1993).
[34] *See Hicks*, 1987 WL 8889 at *2.
[35] *O'Hanlon v. Hartford Acc. & Indem. Co.,* 639 F.2d 1019, 1026-27 (3d Cir. 1981) (emphasis added).

Furthermore, Geico argues that since UM coverage is mandated under a legislative command, an insurer has the duty to verify that the insured has alternative UM coverage in the event that the insured rejects UM coverage in writing. Geico relies on *Miller v. Fidelity Guaranty Ins. Underwriters*[36] for the assertion that a rental car company cannot simply by way of boilerplate language in a rental agreement disclaim UM coverage.

In *Miller*, the Superior Court held that pursuant to 21 *Del. C*. § 6102 and 21 *Del. C.* § 2118(a), the owner of a rental car has the duty to either provide PIP coverage or ensure that coverage is in effect by taking steps to guarantee that the renter has coverage, thereby shifting the responsibility to the renter.[37] Miller further held that a rental agency's mere inquiry as to the renter's coverage is insufficient; the agency must make sure that the insurance is in effect.[38] Furthermore, in *Zurich Am. Ins. Co. v. Alamo Rent-A-Car, Inc.*,[39] this Court held as to liability insurance that Delaware law requires that the "owner of a rented vehicle either insure the vehicle to the appropriate amount *or* see to it that the renter carries such insurance."[40]

On the other hand, Budget argues that this Court rejected the *Miller* holding in *United Service Auto. Assoc. v. Avis Rent-A-Car, Inc.*[41] There, however, the

[36] 2002 WL 32067544 (Del. Super. Oct. 31, 2002).
[37] *Miller*, 2002 WL 32067544 at *3.
[38] *Id*.
[39] 1999 WL 1611324 (Del. Super. Mar. 29, 1999).
[40] *Id*. at *3.
[41] 2005 WL 3416299 (Del. Super. Nov. 18, 2005).

Court found that there was no need to "specifically ask the renter whether he has other available insurance and obtain his confirmation" where the "rental agreement assured that the renter would be covered" either by the rental agency or by other existing insurance.[42]

In this matter, Budget is required under the statute to provide Lessee with UM coverage so that any innocent victims of uninsured motorists, such as the Plaintiffs, have protection. In following *Miller*, the only way in which Budget would be able to deny such UM coverage would be if Lessee upon being fully informed of her right to UM coverage expressly rejected such in writing after Budget's verification that Lessee was otherwise protected. Budget offers no evidence of Lessee's knowledge regarding her right to coverage or the steps it took to verify that alternative coverage existed but merely provides a signed agreement that refers to a document jacket that contains a boilerplate provision of rejection.[43] While the Budget rejection provision may or may not be sufficient to indicate rejection on Lessee's part upon being fully informed of her right to coverage, it is insufficient to demonstrate that Budget took steps to verify that Lessee was otherwise covered before she rejected UM protection.

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[42] *Avis Rent-A-Car, Inc.*, 2005 WL 3416299 at *2.

[43] Budget submitted the affidavit of Lamonte Hazel, a litigation specialist, stating that Lessee received a copy of Budget's Terms and Conditions; however, the affiant does not provide the basis for such an affirmation. *See* Budget's Opening Brief in Support of Motion to Reargue, Exh. D. Other than that, Budget supplied only a one-page document signed by Lessee making reference to the rental document jacket, providing information as to Lessee's driver's license and credit card, and providing notices as to a loss damage waiver, fuel charges, early return of vehicle, additional operators, and traffic tickets.

The high standard of subsection (a)—required coverage—is not met by Budget's presumably unilateral rejection in the provision at issue. Although the *Hicks* Court applies the duty to make sure an insured is fully informed of the right to UM protection to subsection (b), it more aptly applies to subsection (a) because the standard for subsection (a) is one of required *coverage* rather than simply a required *offer of coverage* and, as such, is a higher bar.[44] Budget has not presented evidence of the steps it took to ensure that Lessee had coverage before unilaterally rejecting same and, therefore, has not met this bar.[45]

Moreover, Budget's argument that the holding in *Miller* was rejected by this Court in *Avis Rent-A-Car* does not stand. In *Avis*, the Court found that there was no need to "specifically ask the renter whether he ha[d] other available insurance and obtain his confirmation" in a situation where the agreement assured that the renter would be covered even if he did not. The provision at issue, here, does not provide such assurance of coverage.

Thus, without remarking on the language of Budget's boilerplate provision, the Court applies the *Miller* standard to Delaware's UM statute and to the case *sub judice* and finds that, if Budget failed to take steps to verify the existence of alternative UM coverage for Lessee, Budget has violated its statutory duty. Under

[44] *Contra Johnson v. AIG Ins. Co.*, 2004 WL 1732211 (Del. Super. July 26, 2004); *see Daniels v. Seacoast Cab Co., Inc.,* 2006 WL 2337361, *3 (Del. Super. July 27, 2006).

[45] This issue is further confounded by the circumstance of Howell's orchestrating the rental. In essence, Budget, by way of its employee Howell, was renting the vehicle to Howell, by way of Lessee. As such, Howell was the de facto lessee. Thus, any unilateral rejection provision on Budget's part, by way of Howell, who knew he had no insurance, is not valid and does not in any way meet the high bar set forth in subsection (a) of Delaware's UM statute.

such circumstances, the rejection provision would be void, and Budget would be required to provide UM coverage under Delaware's UM statute. Such a rule of law complies with the Legislative intent to have UM coverage "as a matter of course" in Delaware.[46]

Summary judgment was, therefore, appropriately denied because a factual record has not been established as to whether Budget took appropriate steps to verify alternative coverage.

Under Delaware Law, Reformation Is Not the Remedy for Failure to Verify Alternative Coverage Pursuant to § 18* Del.C. *3902(a) When Suit Is Brought for Contribution and Indemnification.

"Reformation of an insurance policy is a remedy recognized by the Court for failure to comply with [18 *Del.C.* § 3902(b)] requiring that an offer be made of additional uninsured coverage."[47]

Budget contends that Geico does not have standing, here, to pursue reformation of its rental agreement with Lessee. In support, Budget cites various cases that disallow a third party from seeking reformation of an automobile insurance policy to which they were not a party. Two cases cited by Budget, however, do not concern the required coverage mandated in 18 *Del.C.* § 3902(a)

[46] *See O'Hanlon*, 639 F.2d at 1026-27. A mandate to provide UM coverage is also consistent with the law in other jurisdictions. *E.g. Danner v. Hertz Corp.,* 584 F. Supp. 293, 299 (D. Del. 1984) (stating that "New York courts have held that self-insurers must provide uninsured motorist coverage") (citing *Allstate Insurance Company v. Shaw,* 418 N.E.2d 388 (1980)); *Lonesathirath v. Avis Rent A Car Sys., Inc.*, 937 F. Supp. 367, 372 (E.D. Pa. 1995) *aff'd, Lonesathirath v. Avis Rent a Car Sys., Inc.*, 91 F.3d 124 (3d Cir. 1996) (finding that a self-insured agent is required under state statute to provide UM coverage such that any "waiver provision for uninsured motorist coverage which a self insurer inserts in a rental agreement is invalid").

[47] *Blanchfield v. State Farm Mut. Auto. Ins. Co.*, 1985 WL 189270, *2-3 (Del. Super. Sept. 13, 1985).

but concern the required contractual negotiations mandated in § 3902(b).[48] And, a third case, although finding that a plaintiff did not have standing to seek reformation in a case concerning the required coverage of Subsection (a), relied almost entirely on *Menefee v. State Farm Mut. Auto. Ins.* which again was a case involving the required negotiations of Subsection (b), not the required coverage of Subsection (a).[49] Moreover, none of the cases presented by Budget discuss a claim under the theory of contribution and indemnification.

Nevertheless, under 18 *Del.C.* § 3902, "an insurance carrier's duty to provide a minimum level of uninsurance coverage under subsection (a) is separate and distinct from its duty, under subsection (b), to offer additional uninsured/ underinsured coverage."[50] These two types of coverage are governed by entirely different statutory mechanisms.[51] In subsection (a), the minimum uninsured coverage is "automatically included in the primary liability policy" unless rejected in writing.[52] On the other hand, Subsection (b) provides for the traditional means

[48] *E.g. Menefee v. State Farm Mut. Auto. Ins.*, 1986 WL 6590 (Del. Super. May 28, 1986) (stating that "[i]n the present situation, there is no contract, but only a right to create a contract" when discussing the statutory requirement for an insurer to make an offer to an insured so that insured has the opportunity for greater coverage); *State Farm Mut. Auto. Ins. Co. v. Arms*, 477 A.2d 1060, 1064-66 (Del. 1984) (stating that "the plain language of section 3902(b) imposes a duty to offer additional uninsured motorist coverage whenever a new policy, other than a renewal, is issued" and finding that the insurance company "breached its duty to offer increased uninsured motorist coverage to [plaintiff]").
[49] *See Garnett v. One Beacon Ins. Co.*, 2002 WL 1732371 (Del. Super. July 24, 2002).
[50] *Humm*, 656 A.2d at 712.
[51] *Humm*, 656 A.2d at 715.
[52] *Id*.

of contracting and "expressly requires an offer by the insurance carrier and describes the legal effect of an acceptance of that offer by the insured."[53]

Here, in view of the Legislature's separate categorization of subsections (a) and (b), the Supreme Court's differentiation between the two in *Humm*, and the respective mechanisms by which insurance negotiations must adhere, the Court cannot enmesh the two by finding that Geico is attempting reformation of a policy between Lessee and Budget based on case law germane to subsection (b) where subsection (a) is the provision at issue. Subsection (a) is a mandate for coverage whereas subsection (b) requires traditional contracting (an offer and a potential acceptance) for additional coverage. Thus, any contract resulting from an offer made pursuant to subsection (b) could be amenable to reformation.[54] The mandated coverage under subsection (a), however, is in a different category—coverage is required for the Budget vehicle and must be provided unless Budget can affirmatively demonstrate a proper express rejection in writing as described herein. While Delaware law recognizes reformation as a remedy for "failure to comply with the statute requiring that an offer be made of additional [UM] coverage" in subsection (b),[55] the remedy of reformation is not recognized where subsection (a) is not complied with by an insurer. Regarding noncompliance with subsection (a), Budget's rejection provision would simply be void rather than

[53] *Id*.
[54] *Blanchfield*, 1985 WL 189270 at *2-3.
[55] *Id*.

eligible for reformation.[56] Furthermore, Geico is not seeking reformation of the policy between Lessee and Budget so as to receive UM coverage from Budget; rather, it has presented a claim for indemnification and contribution on the theory that Budget was statutorily required to provide UM coverage.

CONCLUSION

For the above reasons, the Court continues to find that genuine issues of material fact remain concerning whether Delaware's UM statute is applicable to the Budget vehicle and whether Budget took sufficient steps to verify alternative UM coverage before unilaterally rejecting same. Thus, the Court has not misapprehended the law or facts such that the outcome of the underlying decision would be different.

ACCORDINGLY, Budget's motion for reargument is ***DENIED***. The Court, however, gives leave for Budget to renew its underlying motion for summary judgment upon further discovery.

IT IS SO ORDERED.

/s/ Diane Clarke Streett
Streett, J.

[56] *See Frank*, 553 A.2d at 1201-02.