[Cite as *Ruiz v. GEICO,* 2009-Ohio-2759.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Philip and Vicky Ruiz,	:	
Plaintiffs-Appellants,	:	
		No. 08AP-955
v.	:	(C.P.C. No. 07CVC02-1702)
GEICO aka Government Employees Insurance Company et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 11, 2009

Law Offices of David A. Bressman, and *David A. Bressman*, for appellants.

Daniel P. Whitehead, for appellee GEICO.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellants, Philip and Vicky Ruiz ("appellants"), filed this appeal seeking reversal of a judgment by the Franklin County Court of Common Pleas reducing the jury verdict against appellee, Government Employees Insurance Company ("appellee" or

"GEICO"), from $25,104.35 to $18,854.35. For the reasons that follow, we affirm the trial court's judgment.

{¶2} This case arose from an automobile accident that occurred on June 29, 2005, for which Ashraf Husein ("the tortfeasor") was at fault. The tortfeasor was insured under an insurance policy with coverage limits of $25,000. Those policy limits were divided equally among four claimants, resulting in Philip Ruiz receiving $6,250. Appellants were covered by an insurance policy issued by appellee that included underinsured motorist coverage ("UIM") with limits of $50,000. Appellants filed this action against appellee seeking to recover under the UIM coverage.

{¶3} The case proceeded to a jury trial, after which the jury awarded $22,604.35 to Philip Ruiz and $2,500 to Vicky Ruiz for loss of consortium, for a total award of $25,104.35. The parties were unable to agree on the judgment entry to be signed by the court, with appellee arguing that the jury's award had to be reduced by the $6,250 that had been received from the tortfeasor. The parties briefed the trial court on the issue, after which the court issued an entry granting the reduction requested by appellee.

{¶4} Appellants then filed this appeal, asserting a single assignment of error:

> THE TRIAL COURT COMMITTED ERROR WHEN IT IGNORED THE PLAIN LANGUAGE OF §3937.18(C) AND SETOFF $6,250 [THE AMOUNT RECEIVED BY APPELLANTS FROM THE TORTFEASOR] FROM THE UIM *JURY VERDICT* OF $25,104.35 RATHER THAN SETTING OFF SUCH MONIES FROM APPELLANTS' UNDERINSURED *POLICY LIMITS* WITH GEICO.

{¶5} Appellants argue that this case is governed by language set forth in R.C. 3937.18(C) that provides that "[t]he policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury

liability bonds and insurance policies covering persons liable to the insured." Appellants argue that under the plain meaning of this cited language, the only offset that can occur is against the UIM policy limits, not the jury award, and that since the jury award was less than the UIM policy limits of $50,000 minus the amount received from the tortfeasor's insurance company, no offset should have been granted.

{¶6} Appellee argues that the issue of offset in this case is governed by the language of the policy covering appellants. The section of the policy setting forth UIM coverage, which was attached as Exhibit F to appellee's post-trial brief regarding offset, provides, in relevant part, that "[t]he amount payable under this Coverage will be reduced by all amounts: (a) paid by or for all persons or organizations liable for the injury."

{¶7} Appellants argue that the cited policy language simply tracks the portion of R.C. 3937.18(C) upon which they rely, supporting their position that the only offset available is against the policy limits. We disagree. The policy language speaks in terms of payments that have actually been made by or on behalf of the tortfeasor, not amounts that are available for payment. The cited statutory language was only implicated to the extent that, prior to the jury's determination regarding damages, appellee was obligated to pay no more than $43,750 – representing the $50,000 policy limits (the amount available for payment) minus the amount paid on behalf of the tortfeasor by his insurance company. However, since the jury's award did not exceed $43,750, that section of the statute had no applicability.

{¶8} Because an insurance policy is a contract, we are required to enforce the contract as written when its terms are clear and unambiguous. *Cincinnati Indemn. Co. v. Martin*, 85 Ohio St.3d 604, 1999-Ohio-322. Under the clear and unambiguous language

of the policy, the amount payable under the UIM coverage should have been reduced by the amount paid by the tortfeasor's insurance company, and the trial court did not err in granting the offset.

{¶9} We also note that the policy provision regarding offset of amounts paid by the tortfeasor's insurance company is consistent with another provision of R.C. 3937.18(C). Specifically, in addition to the statutory language upon which appellants base their argument, R.C. 3937.18(C) also provides that "[u]nderinsured motorist coverage in this state is not and shall not be excess coverage to other applicable liability coverages, and shall only provide the insured an amount of protection not greater than that which would be available under the insured's uninsured motorist coverage if the person or persons liable to the insured were uninsured at the time of the accident." In this case, had the tortfeasor been uninsured, instead of underinsured, appellants could only have collected from appellee the $25,104.35 awarded by the jury. Had the trial court not granted the offset for the $6,250 received from the tortfeasor's insurance policy, appellants would have received an amount greater than that which they could have recovered if the tortfeasor had been uninsured.

{¶10} Consequently, we overrule appellants' assignment of error. Having overruled the assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and BROWN, JJ., concur.

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