

[Cite as *Motorists Mut. Ins Co. v. Hohman*, 2004-Ohio-3899.]

**COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
SHELBY COUNTY**

**MOTORISTS MUTUAL  
INSURANCE COMPANY**

**CASE NUMBER 17-04-03**

**PLAINTIFF-APPELLEE**

**O P I N I O N**

**v.**

**RICHARD HOHMAN, INDIVIDUALLY  
AND AS ADMINISTRATOR OF THE  
ESTATE OF VIVIAN HOHMAN, DECEASED**

**DEFENDANT-APPELLANT**

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**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas  
Court.**

**JUDGMENT: Judgment reversed and cause remanded.**

**DATE OF JUDGMENT ENTRY: July 26, 2004.**

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**ATTORNEYS:**

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Case No. 17-04-03

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**Bryant, J.**

{¶1} Defendant-appellant Richard Hohman (“Hohman”), in his individual capacity and as the administrator of the Estate of Vivian Hohman (“Vivian”), brings this appeal from the judgment of the Court of Common Pleas of Shelby County granting summary judgment to plaintiff-appellee Motorists Mutual Ins. Co. (“Motorists”).

{¶2} On January 18, 2001, Homan signed an application for umbrella automobile insurance coverage with Motorists. The effective dates of the policy were from February 1, 2001, until February 1, 2002. The policy had a liability limit of \$1,000,000. On June 16, 2001, Vivian was struck by a vehicle while crossing a road in Puerto Rico and died. Hohman attempted to seek recovery under the uninsured motorists clause of the umbrella policy and Motorists denied the claim.

{¶3} On June 9, 2003, Motorists filed a complaint for declaratory relief in Montgomery County, Ohio. Hohman requested and received a change of venue to

Shelby County. On September 17, 2003, Hohman filed a motion for summary judgment. Motorists filed a motion for summary judgment on October 29, 2003. The trial court denied Hohman's motion and granted Motorists' motion on January 7, 2004. Hohman brings this appeal from that judgment and raises the following assignment of error.

**The trial court erred in finding that oral and documentary extrinsic evidence is admissible to prove an insurer made a valid offer and obtained a valid rejection of Uninsured/Underinsured insurance coverage.**

{¶4} The sole issue raised by Hohman in this appeal is whether Motorists can rely upon extrinsic evidence to show that the insurer made a valid offer and obtained a valid rejection of UM/UIM coverage under R.C. 3937.18. The statutory law in effect on the date of the new policy period is the law to be applied to claims arising during that period. In this case, the policy went into effect on February 1, 2001. Thus, the 2000 version of the statute is the applicable version.

**A named insured or applicant may reject or accept both coverages as offered under division (A) of this section, or may alternatively select both such coverages in accordance with a schedule of limits approved by the superintendent. The schedule of limits approved by the superintendent may permit a named insured or applicant to select uninsured and underinsured motorists coverages with limits on such coverages that are less than the limit of liability coverage provided by the automobile liability or motor vehicle liability policy of insurance under which the coverages are provided, but the limits shall be no less than the limits set forth in [R.C. 4509.20] for bodily injury or death. A named insured's or applicant's rejection of both coverages as offered under division (A) of this section, or a**

**named insured's or applicant's selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be in writing and shall be signed by the named insured or applicant. A named insured's or applicant's written, signed rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's written, signed selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section, and shall be binding on all other named insureds, or applicants.**

R.C. 3937.18. The Ohio Supreme Court has addressed what the writing must include in order for a valid rejection of UM/UIM insurance to occur under R.C. 3937.18 as in force during the relevant period. The Supreme Court held that an offer for UM/UIM must contain the following three elements: 1) a description of the coverage; 2) the premium costs for UM/UIM coverage; and 3) and express statement of the coverage limits. *Linko v. Indemnity Ins. Co. of N. Amer.* (2000), 90 Ohio St.3d 445, 449, 739 N.E.2d 338. The failure to include all of these elements prevents the applicant from making an express, knowing rejection of coverage. *Id.* The Supreme Court further held that “the four corners of the insurance agreement control in determining whether the waiver was knowingly and expressly made by each of the named insureds.” *Id.* at 450. “Extrinsic evidence is not admissible to prove that a waiver was knowingly and expressly made by each of the named insureds.” *Id.* This court has followed the guidance of the Supreme Court and required that an offer for UM/UIM coverage be in

writing and contain all of the required elements set forth in *Linko. Coldwell v. Allstate Ins. Co.*, 3<sup>rd</sup> Dist. No. 3-03-04, 2003-Ohio-5139. These requirements apply to all policies written after the 1997 statutory amendments and prior to the effective date of Senate Bill 97. *Kemper v. Michigan Millers Mut. Ins. Co.*, 98 Ohio St.3d 162, 2002-Ohio-7101.

{¶5} In this case, the written application indicates that Hohman declined UM/UIM coverage. However, the application does not provide a description of the coverage, the potential limits of the coverage, or the cost of the coverage. No rejection form was specifically provided. Thus, Hohman was not able to make a knowing and express rejection of UM/UIM coverage by reviewing the four corners of the agreement.

{¶6} Motorists claims that a written document did exist at one time but was destroyed once the coverage was rejected. In support of this claim, Motorists provides the affidavit of one of its employees. Motorists claims that the Supreme Court in *Kemper* specifically allowed the use of extrinsic evidence to prove an effective offer.<sup>1</sup> However, a reading of *Kemper* shows that it merely answered questions certified to it by the United States District Court for the Northern District of Ohio, Western Division. Specifically, the *Kemper* opinion states the following.

**“(1) Are the requirements of *Linko* \* \* \* relative to an offer of UM/UIIM coverage, applicable to a policy of insurance written after enactment of [1997] HB 261 and before [2001] SB 97?”**

**“(2) If the *Linko* requirements are applicable, does, under [1997] HB 261, a signed rejection act as an effective declination of UM/UIIM coverage, where there is no other evidence, oral or documentary, of an offer of coverage?”**

**We answer certified question No. 1 in the affirmative and certified question No. 2 in the negative.**

Id. The opinion does not state that extrinsic evidence may be reviewed, just that a signed rejection alone is insufficient to satisfy the *Linko* requirements.

{¶7} Here, the sole evidence that any written offer satisfying the *Linko* requirements existed is the affidavit of the employee of Motorists. This court has held that the rejection must be found within the four corners of the insurance agreement. *Coldwell*, supra. Any extrinsic evidence would, by definition, not be within the four corners of the agreement. Thus, it may not be used to determine if the requirements of *Linko* have been met. The assignment of error is sustained.

{¶8} The judgment of the Court of Common Pleas of Shelby County is reversed and the cause is remanded for further proceedings.

***Judgment reversed and  
cause remanded.***

**SHAW, P.J., and CUPP, J., concur.**

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<sup>1</sup> Motorists also claim that this court permitted the use of extrinsic evidence in *Strayer v. Lincoln General Ins. Co.*, 3<sup>rd</sup> Dist. No. 1-02-100, 2003-Ohio-3429. However, no question concerning extrinsic evidence was raised in *Strayer*. The sentence referenced is a quote of the *Kemper* opinion only.