

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Ellen Akins, etc.

Court of Appeals No. L-03-1279

Appellants

Trial Court No. CI-01-4222

v.

Harco Insurance Company, et al.

DECISION AND JUDGMENT ENTRY

Appellees

Decided: September 12, 2005

* * * * *

David P. Miraldi, attorney for appellant.

Erin Stottlemeyer Gold and Michael F. Schmitz, for appellee,
Old Republic Insurance Company.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on remand from the Ohio Supreme Court for application of *Hollon v. Clary*, 104 Ohio St.3d 526, 2004-Ohio-6772. See *Akins v. Harco Ins. Co. of N. Am.*, 106 Ohio St.3d 41, 2005-Ohio-3557. Accordingly, *Akins* is reinstated on this court's docket for the sole purpose of applying *Hollon* to appellant/cross-appellee Ellen Akins' first assignment of error¹. The insurer involved in appellant's first

¹Appellant's first assignment of error reads:

"The trial court erred when it concluded that the Old Republic policy did not provide underinsurance motorist coverage for this incident."

assignment of error is Old Republic Insurance Company ("Old Republic"). See *Akins v. Harco Ins. Co.*, 158 Ohio App.3d 292, 2004-Ohio-4267.

{¶ 2} In *Akins*, the Lucas County Court of Common Pleas found, inter alia, that the appellant's son, the decedent, was not entitled to underinsured motorist ("UIM") coverage under a leasing company's motor vehicle insurance policy because that company validly rejected UIM coverage. *Id.* at 22. In reaching this decision, the trial judge considered extrinsic evidence, specifically, an affidavit, in determining whether the requirements of *Linko v. Indemnity Ins. Co. of N. Am.*, 90 Ohio St.3d 445 were met. *Id.* On appeal, this court decided that the trial court erred in considering this extrinsic evidence and held that Old Republic failed to make a valid offer of UIM coverage to the leasing company; therefore, the decedent was entitled to UIM coverage under the Old Republic insurance policy by operation of law. *Id.* at ¶29. Old Republic then appealed our decision to the Ohio Supreme Court.

{¶ 3} Subsequently, the Ohio's high court decided *Hollon*, holding:

{¶ 4} "A signed written rejection of uninsured/underinsured motorist coverage is valid under the H.B. 261 version of R.C. 3937.18 if it was made in response to an offer that included a brief description of the coverage and the coverage premiums and limits. Once a signed rejection is produced, the elements of the offer may be demonstrated by extrinsic evidence." *Id.* at the syllabus.

{¶ 5} In *Hollon*, as in the case before us², the insurer produced a written offer/rejection of UM/UIM coverage. *Hollon*, at ¶3; *Akins*, at ¶29. However, each of these written offers did not contain a premium. *Hollon*, at ¶ 3; *Akins*, at ¶29. Nevertheless, in both *Hollon* and *Akins*, the insurer provided an unrebutted affidavit averring that the insured was informed of the premium for UM/UIM coverage prior to rejecting that coverage. *Hollon*, at ¶6; *Akins*, at ¶22. Thus, because the pertinent facts in *Akins* are on all fours with the relevant facts in *Hollon*, we are constrained to conclude, on remand, that appellant's first assignment of error is not well-taken.

{¶ 6} On consideration whereof, this court finds that substantial justice was done the party complaining, and the judgment of the Lucas County Court of Common Pleas as it relates to appellant's first assignment of error is affirmed. Appellant is ordered to pay the costs of that portion of this appeal that involves Old Republic Insurance Company for which sum judgment is rendered against appellant on behalf of Lucas County and for which execution is awarded. See App.R. 24.

JUDGMENT AFFIRMED AS TO
FIRST ASSIGNMENT OF ERROR.

²It is undisputed that the issue of UIM coverage in this cause falls under the H.B. 261 version of R.C. 3937.18.
3.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

JUDGE

William J. Skow, J.

JUDGE

Dennis M. Parish, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
