

2008

Lopez v. United Automobile : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARIA LOPEZ, individually and on behalf of
all similarly situated persons,

Plaintiff,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY, and EL SOL INSURANCE
AGENCY, LLC, a Utah corporation,

Defendants.

CASE NO. 20080846-CA
Oral Argument Requested

BRIEF OF APPELLANT

Appeal from a Judgment of Third Judicial District Court
of Salt Lake County, State of Utah
Honorable Terry Christiansen

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JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to U.C.A. §78-2a-3(2)(j)(2001)(pour-over civil jurisdiction).

ISSUES ON APPEAL

The following issues are presented on appeal:

1. Whether the trial court erred in granting summary judgment, by finding that the UM/UIM waiver signed by Miriam Salazar complied with U.C.A. 31A-22-305, requiring a statutory disclosure of UM/UIM benefits and costs. The standard of review is *de novo*. *Gen. Sec. Indem. Co. of Arizona v. Tipton*, 158 P.3d 1121; 2007 UT 127.
2. Whether the trial court erred in granting summary judgment or judgment on the pleadings as to the common-law negligence claim of Lopez? The standard of review for summary judgment is *de novo*. *Harris v. Albrecht*, 86 P.3d 728; 2004 UT 13. Because the trial court also struck the affidavit of the insured, Miriam Salazar, it appears that the question on appeal is actually whether, construing the complaint in the light most favorable to Salazar, and indulging all reasonable inferences that might favor her, is there “any state of facts that could be proved in support of [her] claims?”. *Educators Mut. Ins. Ass’n v. Allied Prop. & Cas. Ins. Co.*, 890 P.2d 1029, 1030 (Utah 1995); *Helf v. Chevron, USA, Inc.*, 2009 UT 11.

DETERMINATIVE STATUTES AND RULES

The determinative statute is:

U.C.A. §31A-22-305.3(2)(b)(2006):

- (i) For new policies written on or after January 1, 2001, the limits of underinsured

motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

- (i) waives the higher coverage;
- (ii) reasonably explains the purpose of underinsured motorist coverage; and
- (iii) discloses the additional premiums required to purchase underinsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

STATEMENT OF THE CASE

1. Nature of the Case

This is an appeal from a summary judgment by the Third District Court, J. Terry Chrisitansen, in favor of Defendants/Appellees UAIC and El Sol Insurance Company, dismissing Plaintiff/Appellant Lopez's claims for underinsured motorist coverage for personal injuries.

2. Course of Proceedings and Disposition in the Court Below

Lopez sued UAIC and El Sol, alleging that UAIC used a UIM disclosure and waiver form that did not comply with Utah law, and for negligence in selling a policy without adequately explaining the coverages available, to compensate her for injuries she received in an automobile accident. UAIC and Lopez moved for motion for summary judgment based upon two grounds: 1) Lopez lacked "standing" to sue for either the adequacy of the statutory disclosure and waiver for UIM, or negligence in providing requested automobile insurance, and 2) that the disclosure and waiver form used complied with Utah statute. The trial court granted summary judgment as to both the first ground, and the second ground. This appeal followed.

3. **Statement of Relevant Facts on Appeal**

On February 1, 2007, Miriam Salazar (Salazar), purchased a policy of automobile insurance from El Sol Insurance Agency. (Stipulation, R. 36-38, p. UAIC 00001-00028). Salazar signed an application for insurance, which included a paragraph titled “AGREEMENT DELETING UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE”. (Id., UAIC 00030, attached as Appendix 1). One week later, on February 8, 2007, Salazar was driving the car with Lopez as her passenger, when she was rear-ended by Able Martinez. (R. 43, at ¶1-2). Martinez was insured by Progressive Insurance which tendered its limits of \$25,000.00 to Lopez for her injuries. (Id., at ¶3-4). Lopez then demanded underinsured motorist (UIM) benefits from UAIC, in the amount of \$25,000.00. (Complaint, R. 5, ¶23). UAIC refused to pay any UIM benefits, (id., R. 6, at ¶24), and Lopez brought this action for herself and all others similarly situated. (Complaint, R. 1-12).

Salazar filed an affidavit¹ that averred that she was originally from Guatemala, (R. 53, ¶2), and only completed the 6th grade there. (Id., at ¶3). She has worked as a packager at Overstock, and previously worked packing vitamins and making furniture. (Id., at ¶4). She can understand “a little bit of English, but cannot read anything in English”. (Id., at ¶6). She had never owned a car before, and had never purchased automobile insurance before, in her life. (Id., at ¶7-11). When she went to El Sol to buy automobile insurance, she “asked for ‘full coverage’”. (Id., at ¶12). The El Sol agent

¹The trial court struck the affidavits of Salazar and Lopez. Presumably, as to the contract claims based upon the statute, this was based upon some notion of the parol evidence rule, but there was no explanation why the affidavits should be stricken as to the negligence claims.

specifically told her that she “would have ‘full coverage’ for me [Salazar] and any other persons in my [Salazar’s] car.” (Id., at ¶13). She was given a paper to sign, with no other explanation of her insurance. (Id., at ¶14). She was given no price quote for either UM coverage (which she did select) or UIM coverage (which she rejected). (Id., at ¶15-16). If El Sol had explained to her what UIM coverage was, Salazar averred that she would have selected it. (Id., at ¶17). Salazar cannot read any portion of the “AGREEMENT DELETING UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE”, which UAIC relies upon. (Id., at ¶18).

Lopez averred that she was from Mexico, and completed the 8th grade there. (Id., at ¶2-3). She can only understand “a little bit of English but cannot read anything in English”. (Id., at ¶4). Like Salazar, she has never purchased automobile insurance in her life, and does not drive. (Id., at ¶5-6). Like Salazar, she has to rely upon others to explain her insurance coverage to her. (Id., at ¶8).

Pursuant to Utah R. Civ. P. 56(f), Lopez’ counsel averred that El Sol is an insurance agency located in West Jordan, Utah, which specifically targets the Spanish-speaking community in Utah. (Bertch Affidavit, R. 61-66, at ¶22).

SUMMARY OF ARGUMENT

The UAIC agreement rejecting UIM coverage did not meet the requirements of U.C.A. §31A-22-305.3(2)(b))(2006). It did not purport to explain the underinsured motorist benefits that Salazar could have purchased, nor did it disclose the premium costs. In fact, it lumped uninsured motorist and underinsured motorist benefits into a single disclosure, despite the fact that these coverages are separate and distinct. Further, it was negligence for El Sol to fail to explain these coverages in Spanish, to Salazar, its Spanish-speaking customer. Salazar averred that she would have purchased

the additional underinsured motorist coverage if she had known about it. Finally, Lopez has standing to assert that UAIC did not comply with the statute, because she is one of the statutory insureds for underinsured motorist coverage. Further, she is a foreseeable plaintiff, because the statute specifically contemplates that underinsured motorist coverage would be extended to passengers of the named insured. Judgment should not have been granted.

ARGUMENT

POINT ONE

THERE IS NO “LAWFUL WAIVER FORM” FOR UNDERINSURED MOTORIST COVERAGE

UAIC and El Sol allege that Salazar “made a valid rejection of underinsured motorist coverage.” This is not true. U.C.A. §31A-22-305.3(2)(b)(2006) requires:

(b) For new policies written on or after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form that:

- (i) is filed with the department;
- (ii) is provided by the insurer;
- (iii) waives the higher coverage;
- (iv) reasonably explains the purpose of underinsured motorist coverage; and
- (v) discloses the additional premiums required to purchase underinsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

The UAIC form fails these requirements on TWO grounds:

- 1. The UAIC form fails to “reasonably explain[] the purpose of underinsured motorist coverage.**

The UAIC form does not contain ANY meaningful explanation or definition of underinsured

motorist coverage. It merely states: “Uninsured/Underinsured Motorists Bodily Injury Coverage provides payment for certain benefits for damages caused by the owner or operator of uninsured/underinsured motor vehicles because of bodily injury, sickness, disease or death.” What is missing from the waiver:

- 1) Any definition of “Uninsured” or “Underinsured”. These terms have technical definitions in the Insurance Code, and the insurer has an obligation to explain them in layman’s terms.
- 2) Any explanation of what benefits are provided by these coverages. The waiver simply states “certain benefits”, but unless a customer is already familiar with the Insurance Code, there is no explanation of what those “certain benefits” might be.

The waiver basically provides nothing at all, by way of information to the insurance consumer. The waiver provides no “reasonable explanation of the purpose of underinsured motorist coverage” as required by U.C.A. §31A-22-305.3(2)(b)(2006). It fails to state any purpose whatever for the coverage, but merely makes a tautological reference to “Uninsured/underinsured Motorist Coverage”. The waiver is the equivalent of no waiver at all.

2. The UAIC Form Does Not Disclose the Additional Premiums to Purchase UIM Coverage.

The UAIC form contains no information about the amount of “additional premiums required to purchase underinsured motorist coverage” as required by U.C.A. §31A-22-305.3(2)(b)(2006). Without that information, no insurance consumer can make an intelligent decision about whether to purchase underinsured motorist coverage. At least two premium quotes need to be made: UIM in the amount of the bodily injury limits, or in the maximum amount that the insured could purchase. The

UAIC waiver does not contain either of these specific premium amounts.

U.C.A. §31A-22-305.3(2)(b)(iii)(2006) should be read into (2)(b)(ii) by reference. A reasonable explanation that allows a consumer to make an informed choice must include some discussion of the cost of that coverage. Simply outlining the definition and coverages is not enough without a quote on the price for that coverage. That price quote should track (2)(b)(ii) so that the informed consumer has a chance to properly evaluate whether the coverage is worth the price. If (2)(b)(ii) does not include a price discussion, as laid out in (2)(b)(iii), the consumer is left without any price standard to make a decision by. And if (2)(b)(ii) does not include the price discussion of (2)(b)(iii), then the court has sanctioned an anomalous situation, where the insurer must quote prices to someone who has already agreed to buy the coverage, but not give any price information to someone who has decided to decline the coverage. This reading of the statute places the decision first, and then the pricing information. This is an absurdity; the apparent purpose of the statute is to provide price information BEFORE the decision to purchase, not after.

The Utah Court of Appeals, in *Gen'l Sec. Indem. Co. of Arizona v. Tipton*, 2007 UT App 109, 158 P.3d 1121, adopted a common-sense reading of the statute, to require that the consumer “be presented with the maximum amount of UM coverage available, as well as lesser amounts, and then be allowed to choose.” *Id.*, at ¶19; 158 P.3d at 1126 . While *Tipton* involved uninsured motorist coverage, the statutes are in nearly every respect identical. It should be noted that the *Tipton* court relied upon the legislative history of the underinsured motorist coverage statute in interpreting the uninsured motorist statute, because of the similarities. Because Salazar was never presented with the maximum underinsured motorist coverage, as well as lesser amounts, with the premiums for each,

and allowed to choose, her rejection of underinsured motorist coverage was not valid.

POINT TWO

WHEN THERE IS NO VALID WAIVER, BY LAW THERE IS UIM COVERAGE

When there is no valid waiver², the legal effect is that there is coverage in amounts “equal to the lesser of the limits of the insured’s motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured’s motor vehicle policy . . .”. U.C.A. 31A-22-305(9)(b)(2004). This provision was authoritatively construed by the recent case of *Gen’l Sec. Indem. Co. of Arizona v. Tipton*, 2007 UT App 109 (hereafter, “*Tipton*”). While *Tipton* dealt with the effect of a missing uninsured motorist coverage waiver, the statutes are virtually identical. Compare U.C.A. 31A-22-305(3)(b)(2004) with 305(9)(b)(2004). *Tipton* quoted the legislative history of the statute, *id.* at ¶11, and emphasized that the statute requires the insurer to “affirmatively” informing the consumer about the levels of coverage and costs. Further, *Tipton* makes clear that this disclosure must be made in writing, before the insurance consumer signs the waiver, if that is what the consumer wants to do. *Id.*, at ¶12: “the [statute] was specifically adopted in order to ‘affirmatively inform[]’ insureds about the costs of various levels of UM coverage before they decide whether to purchase it and in what amounts.” *Tipton* makes clear that an insurer must do both: inform of the insurance consumer of the purpose of underinsured motorist coverage, and the various levels of coverage and the costs, before the consumer makes a decision. That disclosure must be made in writing. *Id.* It was not done here, and so Lopez is entitled to coverage.

²The statute and *Tipton* both make clear that “verbal” disclosures are not sufficient.

Tipton discussed the remedy for failure to follow the statute. The insurance consumer is entitled to the “maximum amount [Salazar/Lopez] could have purchased had [UAIC] provided her with the required statutory disclosures . . .”. *Id.*, at ¶22. There is no evidence that Salazar could not have purchased underinsured motorist coverage in the same amount as she purchased uninsured motorist coverage, or, \$25,000. So, \$25,000 can be presumed to be the “maximum amount [Salazar/Lopez] could have purchased. The bodily injury liability limits are admitted to be \$25,000 also. So either way, Lopez is entitled to \$25,000 coverage for underinsured motorist benefits..

POINT THREE

THE NEGLIGENCE CLAIM SHOULD NOT BE DISMISSED

UAIC argues that there is no legal duty on the part of either the agent, El Sol, or the insurer, UAIC, to provide a reasonable explanation to a prospective customer. This is contrary to Utah law. For example, in *Salt Lake City School Dist. v. Galbraith & Green, Inc.*, 740 P.2d 284 (Utah 1987), an insurance consultant was found liable in damages for negligently failing to advise his client about insurance coverages. Compare *Harris v. Albrecht*, 86 P.3d 728 (Utah 2004)(no liability for insurance agent where no duty to provide insurance was assumed); *Lewis v. Pike*, 663 P.2d 91 (Utah 1983)(no duty on part of agent to provide credit life insurance).

In *Harris v. Albrecht*³, the Utah Supreme Court looked at the case of *Alford v. Tudor Hall and Assocs., Inc.*, 75 N.C.App. 279, 330 S.E.2d 830, 832--33 (1985), to define when a claim for

³ The Utah Court of Appeals in *Asael Farr & Sons Co. v. Truck Ins. Exch.*, 2008 UT App 315, distinguished *Harris v. Albrecht*, because “Farr’s property and liability insurance had to be customized to Farr’s specific needs, unlike an auto or residential homeowner’s policy.” Unlike in *Farr* or *Albrecht*, Lopez is suing over a standard auto insurance policy. *Id.*, at ¶31.

negligence for failure to procure insurance would lie. In contrast to Albrecht, El Sol clearly assumed a duty to provide insurance requested by Salazar. Salazar filled out an application, satisfying the first *Alford* factor. El Sol went beyond a “bare acknowledgment against casualty of a specific kind”, the second *Alford* factor. El Sol actually issued a policy for automobile insurance, that should have at least included the statutorily required coverages, or adequately explained those that were declined. A jury could find that El Sol did “lull [Salazar] into believing that [it] would procure insurance or that a policy had been procured”, because it did in fact procure a policy. This satisfies the third *Alford* factor. The final *Alford* factor, to “have a pattern of prior dealings of the type sufficient to impose a duty to procure insurance”, is essentially covered by the fact that El Sol did, in fact, procure insurance. Salazar’s dealings with El Sol went far beyond the vague assurance that it would “come out and look at [her] business”, which was all that Harris alleged against Albrecht. Given that El Sol actually procured insurance, Salazar’s claims against El Sol really go to their failure to fulfill that assumed duty. A jury could find that a failure to clearly and completely explain UIM coverage to Salazar, in Spanish, violates a duty El Sol assumed toward its Spanish-speaking customer.

Other courts have specifically held that an insurance agent has a duty to fairly and fully explain statutorily required coverages such as uninsured motorist coverage:

We hold that in order for an insured to have an option to increase UM limits not to exceed the limits of the policy, or for the insured to completely reject UM coverage in writing, an insurance agent has a duty to explain UM coverage as outlined above. An agent is not necessarily under a duty to recommend that the insured exercise the option of obtaining UM coverage up to the limits of the policy; however, before an insured may make an intelligent decision about how much UM coverage he wants, or make a knowing waiver of UM coverage in writing (which the agent must obtain if there is to be no UM coverage under the policy), he must understand what he is entitled to. If an agent fails to uphold this duty to explain, and is thereby found to be

negligent, damages should not be awarded in an amount less than the statutory minimum for UM coverage, \$10,000.00, nor in an amount more than the limits of the particular policy in question---i.e., no more than the insured could have opted for under the terms of the policy.

Aetna Cas. & Surety Co. v. Berry, 669 So.2d 56 (Miss. 1996); *Caddy v. Smith*, 129 Or App 62 (Or 1994)(“When an insurance agent agrees to procure insurance for an insured, the agent undertakes a duty to explain the extent to which the insurance procured actually provides the coverage that was requested”); *Allstate Ins. Co. v. Parfrey*, 830 P.2d 905 (Colo. 1992)(agent liable for failure to offer statutory UIM coverage in amount exceeding minimum limits; insured had private cause of action to enforce statute against agent); *Dimeo v. Burns, Brooks & McNeil, Inc.*, 6 Conn. App. 241, 504 A.2d 557 (1986)(court instructed jury that insurance agent had duty to explain uninsured motorist coverage); *Featherston v. Allstate Ins. Co.*, 875 P.2d 937 (Id. 1994)(insurance agent has common-law duty to explain what coverage insured is purchasing; liability for failure to advise regarding underinsured motorist coverage); *Johnson v. Urie*, 405 N.W. 2d 887 (Minn. 1987)(complaint against agent stated claim for negligent failure to advise regarding underinsured motorist coverage); *Peter v. Schumacher Ent., Inc.*, 22 P.3d 481 (Alaska 2001)(tort claim against agent for failure to advise of available levels of UIM coverage, as required by statute); *Avery v. Arthur E. Armitage Agency*, 576 A.2d 907 (N.J. 1990)(insurance agents have duty to offer and explain UM/UIM coverage as required by statute); *Dann v. State Farm Mut. Auto. Ins. Co.*, 98 Md. App. 41 (1993), cert. denied, 334 Md. 19 (1994) (error in granting summary judgment where insureds disputed that they were informed of statutory right to obtain UIM coverage in an amount equal to limits of their liability policy);. cf. *Silver v. Slusher*, 770 P.2d 878 (Okla. 1989)(no common-law claim for negligence

absent a statutory duty to explain uninsured motorist coverage); *Pinney v. State Farm Mut. Ins.*, 552 S.E.2d 186 (N.C. App. 2001)(no common-law duty to explain UIM coverage to customer who did not qualify by statute for such coverage); *Nelson v. Davidson*, 456 N.W. 2d 343 (Wis. 1990)(no negligence duty to advise regarding UIM coverage where no statutory duty); *Trupiano v. Cincinnati Ins. Co.*, 654 N.E.2d 886 (In. 1996)(no common-law duty to advise customer to increase UIM limits absent “special relationship” between agent and customer, applying Michigan law); *Show v. Pemberton*, 868 P.2d 164 (Wa. App. 1994)(no common-law duty to advise customer of “hired vehicle” exclusion to UIM coverage); *Robinson v. Charles Flynn Ins. Agency*, 39 Mass. App. Ct. 902 (1995)(agent not liable in absence of allegation that he failed to fulfill statutory duty to offer UIM coverage); *Sintros v. Hamon*, 810 A.2d 563 (N.H. 2002)(no common-law duty to advise regarding UIM coverage where no “special relationship” exists); *Farmers Ins. Co. v. McCarthy*, 871 S.W.2d (Mo. App. 1994)(same); *Mullins v. Comm.*, 839 S.W.2d 245 (Ky. 1992)(same); *Blanchfield v. State Farm Mut. Auto. Ins. Co.*, 511 A.2d 1044 (Del. 1986)(same).

There is a statutory duty on the part of the insurer and agent to provide a “reasonable explanation” of the purposes of underinsured motorist coverage, and the costs associated with it. The negligence claim should not have been dismissed.

POINT FOUR

LOPEZ HAS “STANDING” TO PURSUE THESE CLAIMS

The trial court grounded most of its ruling on the fact that Lopez was not the named insured, but rather, a stranger to the contract, itself. This is contrary to many Utah cases; for instance, *Neel v. State*, 854 P.2d 581, 582 fn. 2 (Utah App. 1993). *Neel* generally holds that a passenger can sue a

self-insured owner of a state-owned vehicle for nonpayment of statutory No-Fault (PIP) benefits without complying with procedural aspects of the Utah Governmental Immunity Act. The relevance to Lopez is that the passenger, who is not in privity of contract with the vehicle owner or its insured, can still sue to enforce payment of statutorily required automobile insurance benefits. Footnote 2 clearly states the Court of Appeals' understanding that the passenger would be able to directly sue the insurer under a third-party beneficiary theory.

There are many other Utah cases involving either passengers or third-party tort claimants who sued for statutorily required coverages, and were regarded as having standing. Utah law favors joining all parties, including the plaintiff, tortfeasor, and insurer, in a single action for purposes of determining insurance obligations. For example, see *Fire Insurance Exchange v. Estate of Therkelsen, Jr.*, 2001 UT 48; 27 P.3d 555 where the insurer brought an action for declaratory relief against the injured plaintiff and the estate of the tortfeasor, to determine the scope of coverage of a homeowner's policy. The landmark case in Utah involving the statutory step-down provision was a case brought directly by the injured party against the insurer: *Cullum v. Farmers Ins. Exch.*, 857 P.2d 922 (Utah 1993). If there was a fatal problem with the injured party directly suing for declaratory relief over a step-down provision, surely the Utah Supreme Court in *Cullum* would have noted it. Accord: *Progressive Cas. Ins. Co. v. Dalglish*, 52 P.3d 1142; 2002 UT 59 (insurer sued both driver and injured passenger in action for declaratory relief regarding step-down provision in auto liability insurance policy); *Pollard v. Fire Insurance Exchange*, 26 P.3d 868 2001 UT App 120 (injured party sues insurer of car owner for declaratory relief as to scope of insurance coverage); *Wagner v. Farmers Insurance Exchange*, 786 P.2d 763 (Utah App. 1990)(wife of deceased passenger

brought action for declaratory relief against Farmers to construe step-down provision as applied to uninsured driver); *Travelers Ins. Co. v. Kearl*, 896 P.2d 644 (Utah App. 1995)(insurer sued insured for declaratory relief; all injured parties joined as intervenors); *State Farm Fire & Cas. Co. v. Geary*, 869 P.2d 952 (Utah App. 1994)(insurer sued both insured/tortfeasor and injured plaintiff for declaratory relief); *Viking Ins. Co. of Wisc. v. Coleman*, 927 P.2d 661 (Utah App. 1996)(insurer sued insured and injured parties for declaratory relief).

A contrary rule would create an anomaly, where the Legislature has required insurance coverage extending to many other persons besides the named insured. If only the named insured can bring suit to enforce those statutorily required provisions, then no one can. If the named insured sues for statutory coverage for a passenger, or other insured, the insurer will undoubtedly object that the named insured has no standing to sue for another person's injuries. And if the other insured, such as a passenger, is barred from suing for lack of standing, the statutorily required coverages become unenforceable. Surely that is not the law.⁴

CONCLUSION

UAIC used a completely inadequate disclosure and waiver form. It did not comply with the essentials of the Utah UIM statute, because it did not explain the coverages, or provide premium information, before the insured made a choice whether to accept or decline UIM coverage. El Sol owed Salazar a duty to exercise reasonable diligence in its procurement of auto insurance for her.

⁴The trial court acknowledged that “there are situations where a third party beneficiary of an insurance contract may have standing to sue the insurer, but the situation in the case at bar is not one of them.” (Memo. Dec. p. 5, fn. 2). The trial court did not explain why.

At a minimum, this included a duty to explain, in Spanish, the coverages and their costs. This duty included foreseeable plaintiffs such as Lopez, a passenger who would be covered, pursuant to statute. And Lopez has standing to assert these claims, because she is the injured party. Salazar lacks standing because she was not hurt. Otherwise, there is a breach of statute and a tort, but no one with standing to assert it. Judgment should not have been granted for UAIC and El Sol.

DATED THIS 11th day of June, 2009.

BERTCH ROBSON

Electronically signed /s/ Daniel F. Bertch
Daniel F. Bertch
Kevin K. Robson

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 2009, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by deposit in first class mail, postage prepaid to the following counsel of record:

Tim Dalton Dunn
Michael J. Collins
DUNN & DUNN, P.C.
505 East 200 South, Second Floor
Salt Lake City, UT 84102
Attorneys for Defendants/Appellees

ADDENDUM

A
MEMORANDUM DECISION
September 4, 2008

THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

MARIA LOPEZ, individually and on behalf
of all similarly situated person,

Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, a Florida corporation, EL SOL
INSURANCE AGENCY, LLC, a Utah
corporation,

Defendants.

**MEMORANDUM DECISION
AND ORDER RE:
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT,
PLAINTIFF'S FOR PARTIAL
SUMMARY JUDGMENT,
DEFENDANTS' MOTION TO STRIKE
AFFIDAVITS AND
PLAINTIFF'S MOTION TO STRIKE
AFFIDAVITS**

Case No. 070422402

Judge Terry L. Christiansen

This matter came before the Court on August 4, 2008, for hearing on Defendants United Automobile Insurance Company and El Sol Insurance Agency, LLC's (jointly referred to as "Defendants" or individually as "UAIC" and "ESIA") Motion for Summary Judgment, Maria Lopez' ("Plaintiff") Motion for Partial Summary Judgment, Defendants' Motion to Strike Affidavits of Salazar and Lopez and Plaintiff's Motion to Strike Rule 56(f) Affidavit of Bertch. Daniel F. Bertch appeared on behalf of Plaintiff, Michael J. Collins appeared on behalf of Defendants. The Court took the matter under advisement.

Having considered the parties arguments, briefs and the applicable law, the Court GRANTS both Defendants' Motions to Strike Affidavits of Salazar and Lopez and Plaintiff's Motion to Strike Rule 56(f) Affidavit of Bertch and DENIES Plaintiff's Motion for Partial Summary Judgment and GRANTS in part and DENIES in part Defendants' Motion for Summary Judgment based upon the following Memorandum Decision and Order.

BACKGROUND

On February 8, 2007, Plaintiff was a passenger in a vehicle driven by non-party Miriam Salazar ("Salazar") when non-party Abie Martinez ("Martinez") rear-ended the vehicle operated by Salazar and occupied by Plaintiff. Plaintiff alleges that she suffered severe injuries in the accident, including injuries to her head, neck, back, legs and other parts of her body.

UAIC issued a motor vehicle policy, policy number UTS 000611667, to Salazar with a policy period of February 1, 2007 through August 1, 2007, that did not include underinsured coverage, but did include uninsured coverage as reflected by Salazar's signed application.¹

¹ A week before the accident, on February 1, 2007, Salazar signed an application for insurance with Defendants that included the following language:

**AGREEMENT DELETING UNINSURED/UNDERINSURED MOTORISTS
BODILY INJURY COVERAGE**

Utah Insurance Code Section 31A-22-305 requires that every automobile policy include Uninsured/Underinsured Motorists Bodily Injury Coverage with limits equal to the Bodily Injury limit, unless you select a different limit than your Bodily Injury Coverage or reject the Uninsured/Underinsured Motorists Bodily Injury Coverage entirely. Uninsured/Underinsured Motorists Bodily Injury Coverage provides payment of certain benefits for damages caused by the owner or operator of uninsured/underinsured motor vehicles because of bodily injury, sickness, disease or death. Please indicate your desire to entirely reject Uninsured/Underinsured Motorists/Bodily Injury Coverage or whether you desire this coverage at limits other than the Bodily Injury limits of your policy.

- ☐ a. I hereby reject Uninsured Motorist Coverage.
- ☒ b. I hereby reject Underinsured Motorist Coverage.
- ☒ c. I hereby select Uninsured Motorists Coverage limits of 25000/50000 which equals my Bodily Injury liability limits.
- ☐ d. I hereby select Underinsured Motorists Coverage limits of _____ which equals my Bodily Injury liability limits.

I understand and agree to the selection of any of the above options to my liability insurance policy. Future renewals or replacements of this policy will be issued at the same Uninsured/Underinsured Motorist limits. If I decide to select another option at some future time, I must let the Company or my agent in writing.

Martinez was insured by Progressive Insurance Company ("Progressive") with liability limits of \$25,000. Progressive tendered its limits to Lopez and UAIC consented to the settlement and waived its rights of subrogation against Martinez.

Thereafter, Plaintiff made a claim to Defendants for underinsured motorist benefits. Defendants rejected Plaintiff's claim because Salazar did not have underinsured coverage.

On December 26, 2007, Plaintiff filed the present law suit against Defendants alleging three causes of action: Count I for Individual Contract Claim by Lopez, Count II for Class Breach of Contract Claim, and Count III for Individual Negligence Claim.

Defendants filed their joint answer and counterclaim for Declaratory Judgment on January 23, 2008.

Thereafter, the parties filed the cross motions for summary judgment and cross motions to strike.

CROSS MOTIONS TO STRIKE

Upon reviewing Defendants' Motion to Strike Affidavits of Salazar and Lopez and Plaintiff's Motion to Strike Rule 56(f) Affidavit of Bertch, the Court concludes that the information in those affidavits are not necessary for the Court to render a decision. The Court's decision is partially based upon Defendants duty to Plaintiff and standing to bring a claim, which are a matter of law. Further, the parol evidence rule bars extraneous evidence that attempts to contradict or vary the terms of a written document. For these reasons, the Court summarily

Signature of Applicant: x /s/ Miriam Salazar

Date: 02/01/2007

GRANTS both Defendants' Motion to Strike Affidavits of Salazar and Lopez and Plaintiff's Motion to Strike Rule 56(f) Affidavit of Bertch.

CROSS MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is only appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). In considering cross motions for summary judgment, the trial court is not bound to grant it to one side or another. *Diamond T. Utah, Inc. V. Travelers Indem. Co.*, 441 P.2d 705 (1968).

PLAINTIFF'S COUNT I - Individual Contract Claim by Lopez

Plaintiff claims that Defendants owed non-party Salazar a duty to explain underinsured motorist coverage, to set forth the option to accept or decline underinsured motorist coverage, and if desired, to select one of various limits or amounts of coverage according to respective premiums. Plaintiff claims that Defendants failure to offer underinsured motorist benefits constituted a breach of good faith and fair dealing required of them as a first party insurance provider. Plaintiff claims Defendants duty to non-party Salazar extended to her as an occupant of Salazar's car. The Court disagrees that Defendants duty to non-party Salazar extended to Plaintiff.

"The covenant of good faith and fair dealing is an implied contractual provision, and a cause of action for its breach sounds in contract." *Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 798 n.8. "Utah law clearly limits the duty of good faith to first parties to insurance contracts. Consequently, only a first party can sue for breach of that duty." *Sperry v. Sperry*, 990 P.2d 381, ¶ 7 (Utah 1999). In Utah, the term "first party" is used to refer to an insurance agreement where the insurer agrees to pay claims submitted to it by the insured for losses suffered by the insured.

In contrast, a “third party” situation is one where the insurer contracts to defend the insured against claims made by third parties against the insured and to pay any resulting liability, up to the specified dollar limit. *Liberty Mutual Insurance Company v. Shores*, 147 P.3d 456, 461-62 ¶ 25 (Utah Ct. App. 2006)(citing *Sperry v. Sperry*, 990 P.2d at ¶¶ 7-8); see also *Pixton v. State Farm Mut. Auto. Ins. Co.*, 809 P.2d 746, 748 (Utah Ct. App. 1991)(concluding there is no duty of good faith and fair dealing imposed upon an insurer running to a third-party claimant seeking to recover against the company's insured). “[A]n action for breach of the covenant of good faith and fair dealing may be brought only by a party to the insurance contract.” *Savage v. Educators Ins. Co.*, 908 P.2d 862, 865 (Utah 1995); see also Bad Faith Claims Against Insurers: The State of Utah Law Fifteen Years after *Beck v. Farmers Insurance Exchange*, 15 BYU J. Pub. L. 53 (2000).

Given the clear rule in Utah that a third party beneficiary of an insurance contract does not have standing to sue for the breach of duty of good faith and fair dealing, Plaintiff, as a third party beneficiary of the insurance contract, cannot bring a cause of action for the breach of duty of good faith and fair dealing against Defendants.² Plaintiff and Defendants share no privity of contract for the duty of good faith and fair dealing to attach; rather that privity runs between Defendants and non-party Salazar. The Court concludes that no genuine issues of material fact exist on the breach of contract claim and Defendants are entitled to summary judgment on Count I.

² The Court notes that there are situations where a third party beneficiary of an insurance contract may have standing to sue the insurer, but the situation in the case at bar is not one of them.

As an alternative basis for granting summary judgment in favor of Defendants, the Court concludes that even if Plaintiff had standing to sue Defendants for the breach of duty of good faith and fair dealing, there is no genuine issue of material fact that Defendants met the requirements of Utah law for Salazar to reject underinsured motorist coverage. Utah law requires that every automobile insurance policy shall include underinsured coverage, unless affirmatively waived under Section 31A-22-305.3(2) of the Utah Code. Utah Code § 31A-22-302(1)(c). A named insured may reject underinsured motorist coverage by an express writing on "a form provided by the insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage and when it would be applicable." Utah Code § 31A-22-305.3(2)(g). For an effective rejection of underinsured coverage in its entirety, the statute imposes a duty on the insurer to provide a form that reasonably explains the purpose of underinsured motorist coverage and when underinsured motorist coverage would be applicable for a rejection of the underinsurance coverage to be valid.³ In reviewing Defendants' form in footnote 1 signed by

³ In *General Security Indemnity Company of Arizona v. Tipton*, 158 P.3d 1121, n.5 (Utah Ct. App. 2007), *cert denied*, *Fulcrum v. Tipton*, 2007 Utah LEXIS 127 (UT 2007), the Utah Court of Appeals distinguished two subsections of the uninsured statute. This Court applies the same distinction to the underinsured statute. Specifically, subsection 2(b) of § 31A-22-305.3 states:

For new policies written on or after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgement form that:

- (i) is filed with the department;
 - (ii) is provided by the insurer;
 - (iii) waives the higher coverage;
 - (iv) reasonably explains the purpose of underinsured motorist coverage;
- and

Salazar, the Court concludes that the form clearly incorporates statutory language to reasonably explain the purpose of underinsured motorist coverage and when underinsured motorist coverage would be applicable. The fact that Salazar selected uninsured motorist coverage and rejected underinsured motorist coverage reflects a rational decision on her part to select certain coverage and reject other coverage. The breach of contract claim fails because Plaintiff cannot establish there was a breach of the duty of good faith and fair dealing. Non-party Salazar rejected underinsured motorist coverage so the policy does not contain the coverage Plaintiff seeks. Accordingly, Defendants are entitled to summary judgment even if the Plaintiff had standing to sue for the breach of duty of good faith and fair dealing because no genuine issues of material fact exist that the Defendants met the statutory requirements of Utah law.

PLAINTIFF'S COUNT II - Class Action Breach of Contract Claim

Plaintiff, on behalf of herself and a purported class, alleges a breach of contract action against Defendants. The basis of Plaintiff's purported class action claims are based on the implied contractual duty of good faith and fair dealing. As stated above, *supra* Count I, Defendants owed no implied duty of good faith and fair dealing to Plaintiff. Therefore, Plaintiff has no breach of contract cause of action for the implied covenant of good faith and fair dealing against Defendants. To represent a class of people, Plaintiff should be in a same or similar

(v) discloses the additional premiums required to purchase underinsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum undersinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

Subsection 2(b) specifically relates to the situation when an insurance consumer is choosing to waive a higher level of underinsured motorist coverage, but is not rejecting such coverage entirely. Whereas, in this case before the Court, Salazar rejected underinsured coverage in its entirety, the Court applies subsection 2(g) of § 31A-22-305.3, rather than subsection 2(b).

position as those in the class. Since there is no class of litigants like Plaintiff that would have a claim against Defendants, Plaintiff does not have an adequate interest to have standing to represent the class. Accordingly, the Court concludes that Defendants are entitled to summary judgment on Count II.

PLAINTIFF'S COUNT III - Individual Negligence Claim by Lopez

Plaintiff claims Defendants were negligent in their statutory duty to inform her and Salazar of the meaning, and the purposes of underinsured motorist coverage, together with premiums charged for that coverage, at a minimum in a form that correctly complied with these duties in English, as well as in Spanish, the language spoken by the class of consumers that Defendants specifically market.

To support a negligence claim, a plaintiff must establish a prima facie case that defendant owed plaintiff a duty, defendant breached the duty, and the breach of the duty was the proximate cause of plaintiff's injury and damages. *Rose v. Provo City*, 67 P.3d 1017, 1020 (Utah Ct. App. 2003). The issue of whether there is a duty requires an analysis of the legal relations between the parties. *Loveland v. Orem City Corp.* 746 P.2d 763, 778 (Utah 1987). Legal duties are often found to exist in the context of contractual, fiduciary, and filial relationships. *AMS Salt Industries, Inc. v. Magnesium Corporation of America*, 942 P.2d 315, 321 (Utah 1997).

The Utah Supreme Court has recognized that in some cases the acts constituting a breach of contract may also result in breaches of duty that are independent of the contract and may give rise to causes of action in tort. *Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 801 n.3. For example, a duty to refrain from intentionally causing severe emotional distress to others, breach of duty to

bargain in good faith could amount to fraudulent activity, or under various unfair practices acts, there may be statutory requirements that give rise to independent torts. *Id.*

Plaintiff claims that Defendants' statutory duty to inform Salazar on the underinsured coverage extended to her as an occupant of non-party Salazar's car. The Court disagrees that Defendants statutory duty to inform applied to Plaintiff. The statutory duty was owed to Salazar, not Plaintiff. Plaintiff was not a party to the insurance contract between Salazar and Defendants. Accordingly, she cannot claim there was a breach of the statutory duty to inform her. To extend the statutory duty to inform to a statutory third party beneficiary of an insurance contract would be difficult, if not impossible, to do. At the time of contracting for an insurance policy, the insurer and insured would have to determine who the statutory third party beneficiaries of the insurance contract are, who that would include in the context of the insured and then somehow inform those statutory third party beneficiaries of the insured's decision to reject underinsured motorist coverage. This would be extremely difficult, if not impossible, to do.

For example, an insured rejects underinsured motorist coverage. A week later, the insured offers a ride to a new co-worker the insured just met. If they were involved in an accident, the new co-worker would be a statutory third party beneficiary to the insured's policy. However, the new co-worker would not have received information that the insured rejected underinsurance coverage until he or she made a claim to the insurer and such claim was denied. At the time of contracting, neither the insured nor the insurer could have anticipated that a "stranger" would be riding in the insured's vehicle and therefore, would be a statutory third party beneficiary entitled to notice of the insured's waiver of underinsured motorist coverage. Under the Plaintiff's theory, the insurer would have had a duty to inform the new co-worker without the

ability to do so and the Plaintiff's theory would require the insurer to provide the waived coverage for underinsured motorist coverage. The Court does not agree that the insurer's statutory duty to inform extends this far. Utah law imposes a duty on the insurer to inform the insured of coverages that the insured may waive, so that an insured can make an informed decision on the insurance coverage they are contracting for. To impose the statutory duty to inform to statutory third party beneficiaries would be extending the insurer's duty too far and interfere with the insurer and insured's ability to contract for insurance coverage. If the Plaintiff's rule were adopted, the impact would be to null the insurer and insured's ability to contract because even if an insured properly waived their statutory right to underinsured motorist coverage and did not pay a premium for it, an insurer would still be required to pay underinsured motorist coverage to statutory third party beneficiaries because the insurer did not give them notice of the insured's exercised right to waive the statutory underinsured motorist coverage. The Court concludes that there is no such duty for an insurer to inform third party beneficiaries of an insured's waiver of the statutory underinsured motorist coverage.

Plaintiff also claims there was a duty for Defendants forms to be in Spanish. However, Plaintiff fails to cite a statute, case law or insurance department regulation requiring that such forms and explanation be provided in Spanish. Therefore, Plaintiff failed to show that there is a duty to do so.

In summary, Plaintiff lacks standing to pursue a negligence claim because there is no legal duty for an insurer to inform a passenger in an insured's vehicle of the insured's waiver of statutory underinsured motorist coverage and there was no legal duty to provide the forms in

Spanish. Without a legal duty to Plaintiff, there can be no prima facie showing of a negligence claim and the Court concludes that Defendants are entitled to summary judgment on Count III.

DEFENDANT'S COUNTERCLAIM FOR DECLARATORY JUDGMENT

Defendants request the Court declare the (1) the waiver of underinsured motorist coverage by Miriam Salazar complied with the relevant provisions of the Utah Code, and therefore is valid, (2) UAIC Policy Number UTS 000611667 issued to Miriam Salazar does not contain underinsured motorist coverage, (3) Plaintiff is not entitled to underinsured motorist benefits under UAIC Policy Number UTS 000611667, and (4) that each party shall bear their own costs of suit, including paying their own attorneys fees and costs.

"Generally, courts have held that the conditions which must exist before a declaratory judgment action can be maintained are: (1) a justiciable controversy; (2) the interests of the parties must be adverse; (3) the party seeking such relief must have a legally protectible interest in the controversy; and (4) the issues between the parties involved must be ripe for judicial determination." *Baird v. State*, 574 P.2d 713, 715 (Utah 1978). The declaratory judgment statute does not remove the keystone from "our judicial framework--the presence of a justiciable controversy--and reconfigure our courts into forums where the curious or the confused may acquire legal guidance." *Id.* at 716. "A Declaratory Judgment Statute cannot be so construed as to authorize the courts to deliver advisory opinions or pronounce judgments on abstract questions, but there must be the invariable justiciable controversy present in such cases." *Id.* "The courts have no jurisdiction to render a declaratory judgment in the absence of a justiciable or actual controversy" *Id.*

The Court's decision pertaining to Counts I, II and III reflect that Plaintiff claims against Defendants fail. The effect of the Court's decision is to grant summary judgment in favor of Defendants. No longer is there a justiciable controversy between the parties. Accordingly, this Court lacks jurisdiction to make further declarations on additional issues. A decision on issues, other than those addressed above, would be wholly advisory. "When it is ascertained that there is no jurisdiction in the court because of the absence of a justiciable controversy, then the court can go no further, and its immediate duty is to dismiss the action, and jurisdiction cannot be conferred by consent or any other act of the parties." *Id.* To make a declaratory judgment on additional issues would exceed this Court's jurisdiction, therefore, the Court DENIES Defendants counterclaim for declaratory judgment.

ORDER

The Court hereby ORDERS:

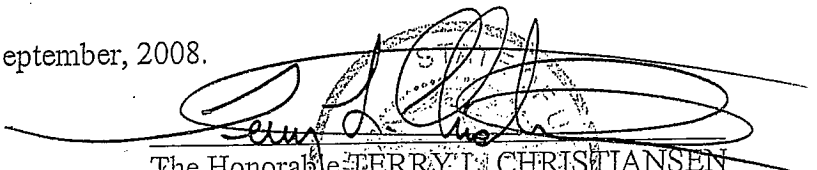
Plaintiff's Motion for Partial Summary Judgment be, and the same hereby is, DENIED,

Defendants' Motion for Summary Judgment be, and the same hereby is, GRANTED IN PART AND DENIED IN PART, specifically, the Court:

GRANTS summary judgment in favor of Defendants and against Plaintiff on Plaintiff's Counts I, II and III, and

DENIES summary judgment on Defendants Counterclaim for Declaratory Judgment because such declaration would be advisory and would exceed the Court's jurisdiction.

DATED this 4 day of September, 2008.


The Honorable TERRY L. CHRISTIANSEN
Third District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 070422402 by the method and on the date specified.

METHOD NAME

Mail	DANIEL F BERTCH Attorney PLA 1996 E 6400 S STE 100 SALT LAKE CITY, UT 84121
Mail	TIM D DUNN Attorney DEF 505 E 200 S 2ND FLR SALT LAKE CITY UT 84102

Dated this 4 day of Sept, 2008.


Deputy Court Clerk

B
AGREEMENT DELETING UNINSURED/UNDERINSURED MOTORISTS
BODILY INJURY COVERAGE

LIST ALL ACCIDENTS AND VIOLATIONS, OR ALL DRIVERS BELOW

Driver#	Driver Name	Date	Description of Accident or Violation	Location
1	MIRIAM	2005-06-01	SPEEDING OVER 01-10 MPH ABOVE LIMIT	
1	MIRIAM	2006-02-01	SPEEDING OVER 01-10 MPH ABOVE LIMIT	
1	MIRIAM	2004-09-01	DRIVING W/O VALID DL, OR WHILE SUS/REVOK	

AGREEMENT DELETING UNINSURED MOTORISTS PROPERTY DAMAGE COVERAGE

Utah Insurance Code Section 31A-22-305(4) requires that every automobile policy which does not provide insurance for collision damage shall provide coverage for property damage to the motor vehicle(s) described in the policy, to the extent that you are legally entitled to recover from the owner or operator of an uninsured motor vehicle. This coverage shall not exceed the motor vehicle's actual cash value or \$3,500, whichever is less, and is subject to a \$250 deductible. I have read the above, and agree to the deletion of Uninsured Motorists Property Damage Coverage.

I have read & understand this waiver. Signature of Applicant: X _____ Date 02/01/2007

AGREEMENT DELETING UNINSURED/UNDERINSURED MOTORISTS BODILY INJURY COVERAGE

Utah Insurance Code Section 31A-22-305 requires that every automobile policy include Uninsured/Underinsured Motorists Bodily Injury Coverage with limits equal to the Bodily Injury limit, unless you select a different limit than your Bodily Injury Coverage or reject the Uninsured/Underinsured Motorists Bodily Injury Coverage entirely. Uninsured/Underinsured Motorists Bodily Injury Coverage provides payment of certain benefits for damages caused by the owner or operator of uninsured/underinsured motor vehicles because of bodily injury, sickness, disease or death. Please indicate your desire to entirely reject Uninsured/Underinsured Motorists Bodily Injury Coverage or whether you desire this coverage at limits other than the Bodily Injury limits of your policy.

- ☐ a. I hereby reject Uninsured Motorist Coverage.
- ☒ b. I hereby reject Underinsured Motorist Coverage.
- ☒ c. I hereby select Uninsured Motorists Coverage limits of 25000/50000 which equals my Bodily Injury liability limits.
- ☐ d. I hereby select Underinsured Motorists Coverage limits of _____ which equals my Bodily Injury liability limits.

I understand and agree to the selection of any of the above options to my liability insurance policy. Future renewals or replacements of this policy will be issued at the same Uninsured/Underinsured Motorist limits. If I decide to select another option at some future time, I must let the Company or my agent in writing.

Signature of Applicant: X Miriam Salazar Date 02/01/2007

AGREEMENT WAIVING PIP LOSS OF GROSS INCOME BENEFITS

Utah Insurance Code Section 31A-22-307 requires that every automobile policy include Personal Injury Protection. Insurance Code Section 31A-22-307(4) also allows you to waive loss of gross income benefits under Personal Injury Protection Coverage, subject to the following requirement: The Named Insured must certify in writing that for the previous 31 days and for at least the next 180 days, neither the insured nor the insured's spouse will received earned income from regular employment. I have read the above, and agree to the waiving of loss of gross income benefits under Personal Injury Protection Coverage.

Date 02/01/2007

Signature of Applicant: X _____

NAMED DRIVER EXCLUSION ENDORSEMENT

WARNING - READ THIS ENDORSEMENT CAREFULLY!

This acknowledgement and rejection is applicable to all renewals issued by any affiliated insurer or us. In consideration of the premium charged for this policy, it is agreed we shall not be held liable and no liability or obligation of any kind shall attach to us for bodily injuries, losses or damages under any of the coverages of the policy while any motor vehicle is operated by an Excluded Driver.

EXCLUDED DRIVER(S) NAMES	RELATIONSHIP	BIRTHDATE	SEX
FRANCISCO ASENCIO	Spouse	04/15/1980	M

Date 02/01/2007

Signature of Applicant: X Miriam Salazar