

From The Bench

legal news of interest

February 2002

BRINEY & FORET

Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505
337.237.4070
FAX 337.233.8719

Q Is a UM rejection form valid when it is not signed by the named insured but is signed by his or her spouse?

a. A spouse may validly sign a UM rejection form when he or she is also insured under the policy.

The Validity of Signatures on UM Rejection Forms

by Crystal D. Burkhalter

In *Tucker v. Valentin*,¹ the Louisiana Fifth Circuit Court of Appeal revisited the question of the validity of an uninsured/underinsured motorist coverage rejection. The court of appeal affirmed the trial court's ruling that the insured's wife expressed an intent not to receive UM coverage in the policy under which she was insured, and further fulfilled the statutory requirement to properly reject UM coverage under *LSA--R.S. 22:1406*.

On December 30, 1999, a motor vehicle accident occurred at the intersection of U.S. Highway 90 and Interstate 310 in St. Charles Parish, when a vehicle driven by Ibarra Valentin struck Wayne Tucker's car. The Tuckers filed suit in the 24th Judicial District Court of Jefferson Parish, naming Progressive Security Insurance Company as a defendant. The Tuckers alleged that Progressive had issued a policy to them which provided uninsured/underinsured motorist coverage.

Progressive filed a *Motion for Summary Judgment* asserting the Tuckers had rejected UM coverage when applying for their policy. Subsequently, the Tuckers also filed a *Motion for Summary Judgment* on the same issue, arguing their rejection of uninsured/underinsured motorist coverage was invalid.

In support of its *Motion for Summary Judgment*, Progressive offered deposition testimony of Cynthia Alleman, the agent who sold the policy at issue. The agent testified Mrs. Tucker had indicated she did not want UM coverage. Mrs. Tucker was provided with the insurance policy form which included an option to reject uninsured/underinsured motorist coverage. Mrs. Tucker indicated a rejection of UM coverage on this form by placing her husband's initials next to the appropriate selection and signing her husband's name to the form. The trial court held Mrs. Tucker's waiver of UM coverage was valid and granted Progressive's *Motion for Summary Judgment*.

The Tuckers appealed the trial court's decision. They argued *LSA--R.S. 22:1406(D)(1)(a)(ii)* was controlling. This portion of the UM statute provides: "The prescribed form shall be provided by the insurer and signed by the *named insured* or his legal representative."² The Tuckers argued because the named insured, Mr. Tucker, did not sign the UM rejection form and his wife was not his legal representative, the UM rejection form signed by Mrs. Tucker was invalid.

LSA--R.S. 22:1406(D)(1)(a)(i) addresses the issue of uninsured motorist coverage and states, in pertinent part:

"The coverage required under this Subsection is not applicable when *any insured* named in the policy either rejects coverage, selects lower limits, or



selects economic-only coverage, in the manner provided in item (D)(1)(a)(ii) of this Subsection.”³

Progressive argued that under the language of §D(1)(a)(ii), Mrs. Tucker, as an insured named on the policy, had the ability to validly sign the UM rejection form.

The court of appeal, citing *Bonnette v. Robles*,⁴ addressed the issue of whether a named insured’s spouse was an “insured named in the policy” entitled to select lower limits of UM benefits in spite of the fact that the policy did not designate her as a named insured. The Second Circuit, in *Bonnette*, held under *LSA--R.S. 22:1406(D)(1)(a)(i)*, Mrs. Bonnette was authorized to sign a UM waiver because she did qualify as “any insured named in the policy.”⁵

In *Dronet v. Safeway Insurance Company*,⁶ the Third Circuit addressed the issue of whether a wife’s “alleged forgery” of her husband’s signature on a UM rejection form rendered the rejection invalid. The court held even if Mrs. Dronet had signed the UM rejection form on behalf of her husband, the rejection was still valid due to the authorization by statute of UM rejection by “any insured named in the policy.”

The Fifth Circuit, relying upon the evidence presented by Progressive in its *Motion for Summary Judgment*, and the opinions in *Bonnette* and *Dronet* held Mrs. Tucker validly executed a UM rejection form.

The decision of the Fifth Circuit Court of Appeal in *Tucker* has not yet been released for publication and is subject to revision or withdrawal. Additionally, this decision may be reviewed by the Louisiana Supreme Court.

¹ 01-755 (La. App. 5 Cir. 12/26/01), 2001 WL 1650846 (not yet designated for publication).

² *LSA--R.S. 22:1406(D)(1)(a)(ii)*.

³ *LSA--R.S. 22:1406(D)(1)(a)(i)*.

⁴ 32,191 (La. App. 2 Cir. 8/18/99), 740 So.2d 261.

⁵ *Bonnette*, at page 263.

⁶ 95-1471 (La. App. 3 Cir. 11/7/97), 703 So.2d 97.



- Update -

In *Equal Employment Opportunity Commissioner v. Waffle House, Inc.*, the United States Supreme Court recently held an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as back pay, reinstatement, and damages, in *Americans Disabilities Act of 1990* enforcement action.¹

¹ 122 S.Ct. 754, 12 A. D. Cases 1001, 2 Cal. Daily Op. Serv. 369, 2002 Daily Journal D.A.R. 485 (U.S. Jan. 15, 2002)

Briney & Foret

Patrick J. Briney	Shannon J. Gremillion
Charles J. Foret	Gary J. Delahoussaye
Katherine M. Loos	Carol S. Hunter
Michael P. Corry	Richard R. Montgomery
Deanne B. McCauley	Matthew D. McConnell
Kevin S. Frederick	Crystal D. Burkhalter

Christopher L. Zaunbrecher*
* of counsel



For additional information on the contents of this newsletter or if you would like to be on our mailing list for other topics, please contact D'Lane Wimberley at 337.237.4070 or dlane@brineyforet.com.

This publication is prepared as a source of information for our clients and other interested parties and its contents should not be construed as legal advice.



BRINEY & FORET
Attorneys at Law

413 Travis Street
Post Office Drawer 51367
Lafayette, Louisiana 70505