

No. 30037 – Sheryl Lynn Jewell v. Lisa Ford and Nationwide Mutual Insurance Company

**FILED**

**July 11, 2002**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Starcher, J., concurring:

**RELEASED**

**July 12, 2002**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

I concur with the majority’s opinion, but I write separately to detail the factual background supporting the majority opinion’s result.

Plaintiff Sheryl Lynn Jewell was seriously injured on February 16, 2000, when defendant Lisa Ford, who was driving drunk, lost control of her vehicle and slammed headlong into the plaintiff’s vehicle. The plaintiff has been unable to walk on her own, run, or work since the collision.

The plaintiff applied for automobile insurance from defendant Nationwide Insurance Company (“Nationwide”) in August 1996. The policy she purchased had uninsured motorist coverage in the amounts of \$25,000.00 per person for bodily injury, \$50,000.00 per occurrence, and \$25,000.00 in property damage (“25/50/25”).

At the time she purchased the coverage from Nationwide, the plaintiff was given a form regarding uninsured motorist coverage which was prescribed by the Insurance Commissioner. *See W.Va. Code*, 33-6-31d(a) [1993] (“Optional limits of uninsured motor vehicle coverage . . . shall be made available to the named insured at the time of initial application . . . on a form prepared and made available by the insurance commissioner.”). The

form was published by the Insurance Commissioner in Information Letter No. 88 in July 1993, and was the form required to be used so that an insurance company could make a commercially reasonable offer of coverage, and the policyholder can make a knowing and intelligent choice of coverage, as a matter of law. *See Bias v. Nationwide*, 179 W.Va. 125, 365 S.E.2d 789 (1987).

The Insurance Commissioner's form had blanks which required the insurance company to list the various amounts of uninsured motorist coverage being offered to the plaintiff, and the premiums for each type of coverage. Important to the instant case, the form had blanks which required the insurance company to list the plaintiff's current insurance coverage and the premiums she was currently paying.<sup>1</sup> The form states that the "company must complete the blank spaces below to create an effective offer in order for the consumer to exercise a knowing and intelligent selection."

When the plaintiff applied for insurance in August 1996, on the form under the heading "Your Present Coverage Is," Nationwide failed to complete the blanks indicating the plaintiff's current level of uninsured motorist coverage and the premiums she was paying. This failure to provide the plaintiff with information was critical to the plaintiff choosing only "25/50/25" in coverage.

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<sup>1</sup>In Informational Letter No. 121, issued in July 2000, the Insurance Commissioner abolished the requirement for insurance companies to list the "present coverage" of the prospective insurance applicant or policyholder.

Prior to August 1996, the plaintiff had been insured by another insurance company and had purchased uninsured motorist coverage from the other company. She paid \$31.20 every 6 months for “20/40/10” coverage, information which was not given to her by Nationwide as required by the Insurance Commissioner. When the plaintiff applied for coverage in August 1996 with Nationwide, according to the briefs of the parties, she could have paid \$29.70 to buy 100/300/10 uninsured motorist coverage from Nationwide. In other words, had the plaintiff been provided with information regarding her existing level of uninsured motorist coverage, she could have knowingly considered that she could buy \$80,000 more coverage than she had prior to August 1996 for \$1.50 less.

Nationwide clearly failed to complete the form established by the Insurance Commissioner, and as a result the plaintiff did not make a knowing and intelligent waiver of her right to purchase additional coverage. I therefore concur with the majority opinion.