

Woman loses suit, claims policy kept secret; appeal eyed

Panel in March said woman did not prove harm or insurer's duty to tell her of policy

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The attorney of a woman who, after being injured in a car accident sued the opposing party's insurance company for allegedly hiding a \$1 million umbrella policy from her, said earlier this week he is looking to appeal the case to the state Supreme Court.

Last month, the 1st District Appellate Court rejected the class-action lawsuit brought by plaintiff Christine Demarco and her attorney, Kent D. Sinson, against Country Preferred Insurance Co.

Demarco was injured in September 2011 car accident in Lisle with Austin Sahr, a Country Preferred policyholder.

In response to an interrogatory from Sinson, Sahr said — through his Country Preferred-provided counsel — that he had an automobile policy with limits of \$250,000 per person and \$500,000 per accident with no excess coverage.

But three weeks later, Sahr then indicated he had a \$1 million personal umbrella liability policy from Country Preferred. Sahr would later state that he did not know what the term excess coverage meant and he thought his first answer were correct.

This led to Demarco filing a class-action lawsuit against Country Preferred, accusing them of perpetuating a practice that conceals the existence of excess and umbrella policies from plaintiffs and their attorneys.

But the 1st District Appellate Court on March 24 affirmed that then-Cook County judge Mary Lane Mikva properly dismissed Demarco's claims, finding that many of her allegations were insufficiently supported.

"Although Demarco stated that she 'relied upon' Country Preferred's misrepresentations, the amended complaint failed to adequately allege what she did or did not do in reliance on any misrepresentations," Justice Jesse G. Reyes wrote in the 24-page Rule 23 order.

For instance, the 1st District panel found that Demarco did not sufficiently establish in her allegations that Country Preferred had a duty to communicate accurate information to her.

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The panel rejected Demarco's contention that she can bring her complaint under the state Consumer Fraud Act. The panel found she did not satisfy the consumer nexus test, which allows plaintiffs to bring forward complaints as if they were consumers so as long as their claims meet certain conditions.

"Demarco fails to articulate how Country's conduct harmed consumers like Sahr or otherwise implicated consumer protection

concerns," Reyes wrote. "For example, she does not allege that Country misrepresented the policy limits to Sahr; or that any misrepresentation resulted in higher premiums or other negative consequences for Sahr."

The panel was also not moved by Demarco's citations of the out-of-state case law as well as the federal case Sinson is fighting on behalf of another client.

Instead, the 1st District panel agreed with U.S. District Judge Edmond E. Chang's finding in *Roppo v. Travelers Cos.*, 2013-c-05569, where Sinson represents the plaintiff, that Section 143.24b of the Illinois Insurance Code does not require an insurance company to disclose an umbrella policy.

Both Chang and the 1st District panel read the statute, which requires an insured party to disclose its "personal private passenger automobile liability insurance policy" as not applying to an umbrella policy. The panel, in particular, cited prior case law that distinguished these policies.

By contrast, Demarco did not cite "any case law in support" of her contention that the statutory definition of personal private passenger automobile liability insurance policy also includes an umbrella or excess policy.

In an interview, Sinson said insurance companies and their attorneys control the flow of infor-

mation — like what sort of policies an insured driver has — to the plaintiffs. That, he maintains, allows the companies to play games with the plaintiffs.

"[The panel's Rule 23 order] seems to send the message that a defendant in an insurance company and the lawyer can lie about the existence of an umbrella policy, and there is no consequence for that," Sinson said. "And that should be troubling to everybody."

Apart from *Roppo*, Sinson is also representing another plaintiff who — like his other clients — was in a motor vehicle accident and the defendant did not disclose the existence of an excess or umbrella policy during the interrogatory answers.

Kim v. State Farm, No. 16-3323, is currently pending in the 1st District over whether the stay the trial court put on the case while Demarco's case was pending was appropriate.

Meanwhile, *Roppo* is currently before the 7th U.S. Circuit Court of Appeals, which heard oral arguments in September.

Sinson maintained that his loss in Demarco's case will not affect his pending litigation. Sinson said the case between Demarco and Sahr is still pending.

In all three of these lawsuits, Sinson has sought class-action certification, contending that an untold number of people could be affected by insurance companies allegedly hiding these policies from them.

"If you ask plaintiff's lawyers ... everybody will tell you it happens a lot, and it was my intent by filing this to put this to an end," Sinson said.

The attorney for Country Preferred, Lisa M. Lilly, the sole member of Lisa M. Lilly LLC, expressed satisfaction with the panel's ruling.

Lilly pointed out that Demarco's amended complaint did not contain any facts detailing how Country Preferred actively tried to deceive her or engaged in a pattern of deception regarding the existence of an excess or umbrella liability policy.

"By [Sinson's] own complaint, in his facts, he doesn't allege any sort of facts or any pattern. There's a lot of allegations about other cases and other complaints," Lilly said, but nothing regarding Sahr and Country Preferred.

Justices Robert E. Gordon and Bertina E. Lampkin concurred with the order.

The case is *Christine Demarco v. CC Services Inc.*, 2017 IL App (1st) 152933-U.

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