

NO. 03-CI-07219

JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

BETTY FRANKLIN

PLAINTIFF

v.

ORDER

KELVATA S. LESTER

and

WILLIAM E. GREENWELL

and

AMERICAN NATIONAL PROPERTY & CASUALTY CO.

DEFENDANTS

This matter came before the Court by the parties' motions in regard to revealing Defendant ANPAC's presence in the action. Plaintiff is represented by counsel, Allen K. Gailor. Defendant Lester and Defendant Greenwell are represented by counsel, Marc L. Breit. Defendant ANPAC is represented by counsel, Robert C. Ewald and Timothy G. Hatfield. The Court, after careful review of the record, submitted memoranda and applicable case law, **finds as follows:**

This matter arises from an automobile accident. Defendant Lester was operating the vehicle of her grandfather, Defendant Greenwell, on December 1, 2001, when she struck the vehicle of Plaintiff. Plaintiff asserts that she experienced a closed head injury leading to a diminishment of her sense of smell

and taste, as well as cognitive difficulties. Defendant Lester's insurance company, Kentucky Farm Bureau (KFB) offered a settlement to Plaintiff of the insured's policy limit, \$25,000.00. Plaintiff is insured by Defendant ANPAC and her policy includes basic reparation benefits of \$10,000.00 and under-insured motorist (UIM) coverage in the amount of \$100,000.00. As a result of the settlement offer by KFB, Defendant ANPAC utilized the Coots procedure established in Coots v. Allstate Ins. Co., Ky., 853 S.W.2d 895 (1993), and tendered \$25,000.00 to Plaintiff in order to preserve its subrogation rights.

As all parties are well aware, the case of Earle v. Cobb, Ky., 156 S.W.3d 257 (2005), has a strong impact on the case at hand. The facts of the case at hand are parallel to those in Earle, where the plaintiff's insurance company became a defendant in the action by use of the Coots procedure to preserve its subrogation rights in regard to any amounts paid in regard to the plaintiff's UIM coverage. Also, as in the case at hand, the plaintiff brought a negligence claim against the other driver involved in an automobile accident and a contract claim against her own insurance carrier. In Earle, the Court stated, "[W]e hold that the failure to identify to the jury a named party defendant at trial that is also the plaintiff's UIM carrier to be reversible error." *Id.* at 261. It is clear from Earle that the presence of Defendant ANPAC must be revealed to the jury. However, it is equally clear that great precaution must be used in order to ensure that the jury is not prejudiced by the knowledge of an insurance company being a party to the case. It should be noted that nothing in Earle serves to alter KRE 411, which

states, "Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness." As such, there shall be no testimony as to Defendant Lester's insurance or policy limits.


Defendant ANPAC shall be treated as any other party to a case. Defendant ANPAC will be allowed full participation at trial and must produce a representative for testimony, if called. Defendant ANPAC may also choose not to participate at trial, but must still produce a representative, if requested. Plaintiff argues that there should also be full disclosure of Defendant Lester's policy limit and the UIM coverage policy limit, as Earle stands for doing away with legal fictions. However, this Court does not agree. In Earle the Court discussed doing away with the legal fiction of concealing the presence of the insurance company in the case. There is no call for disclosure of the terms of insurance including the policy limits and/or the amount of any premiums paid as same simply is not relevant. This Court finds no reason to reveal the amount of coverage provided by any insurance policy, as said information has no relevance to the question of liability or damages. Even if it could be argued that the policy limits were remotely relevant to the issues at hand, said evidence would be excluded pursuant to KRE 403 due to its probative value being substantially outweighed by the danger of undue prejudice.


Based upon the foregoing and the applicable law, **IT IS HEREBY ORDERED** as follows:

1. Defendant ANPAC may, at its discretion, participate at trial and must produce a company representative for testimony if called by opposing counsel, and

2. No party shall reveal to the jury the policy limits for either insurance policy, and

3. It may be revealed to the jury that Defendant ANPAC is the insurer of Plaintiff and may be entitled to recovery from Defendant Lester of any funds paid in regard to the accident.

ENTERED IN COURT
TONY MILLER, CLERK
AUG 22 2005
BY 
DEPUTY CLERK


KATHLEEN VOOR MONTANO, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION TEN (10)

Date: 8/18/05

cc: Allen K. Gailor, Attorney for Plaintiff
Marc L. Breit, Attorney for Defendant Lester and Defendant Greenwell
Timothy G. Hatfield and
Robert C. Ewald, Attorney for Defendant ANPAC