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INSURANCE LAW

I. RENEWAL OF AUTOMOBILE INSURANCE POLICY CONSTITUTES NEW CONTRACT REQUIRING NEW OFFER OF UNDERINSURED MOTORIST COVERAGE

In *Webb v. South Carolina Insurance Co.*¹ the South Carolina Supreme Court held that renewal of an automobile insurance policy is a new contract unless: (1) the expiring policy specifically provides that the same terms shall remain in effect; and (2) the policy terms do not change upon renewal.² If a policy renewal does constitute a new contract, the insurer must make another valid offer of underinsured motorist (UIM) coverage to the insured.³ The *Webb* holding modifies the South Carolina Court of Appeals' decision in *Knight v. State Farm Mutual Automobile Insurance Co.*⁴ and overrules *Simpson v. State Farm Mutual Automobile Insurance Co.*⁵

In April 1988, the respondent, Frederick L. Webb III, was injured in an automobile accident. At the time of the accident, Webb was a resident of the household of his stepfather, Richard Pase. Pase held an automobile insurance policy that he had purchased from Nationwide on May 30, 1986. This policy contained a provision for renewal after the initial six-month period. At the time of Pase's original application, Nationwide offered UIM coverage, which Pase rejected. Pase renewed the policy three times, but Nationwide never offered Pase UIM coverage upon renewal. After Webb's accident, Nationwide refused to recognize Webb's entitlement to UIM coverage under Pase's policy. Webb brought

1. 305 S.C. 211, 407 S.E.2d 635 (1991).

2. *Id.* at 213, 407 S.E.2d at 636.

3. *Id.* Under section 38-77-160 of the South Carolina Code, an automobile insurer must offer optional underinsured motorist coverage to the insured. S.C. CODE ANN. § 38-77-170 (Law. Co-op. 1989 & Supp. 1991).

4. 297 S.C. 20, 374 S.E.2d 520 (Ct. App. 1988), *cert. denied*, 298 S.C. 203, 379 S.E.2d 133 (1989), *and modified by Webb*, 305 S.C. 211, 407 S.E.2d 635. In *Knight* the court of appeals held that renewal of an automobile insurance policy is a new contract unless the expiring policy expressly provides for a renewal term. *Id.* at 23, 374 S.E.2d at 522.

5. 304 S.C. 137, 403 S.E.2d 167 (Ct. App. 1991), *overruled by Webb*, 305 S.C. 211, 407 S.E.2d 635. The *Simpson* court found that, even if a renewal policy contains certain terms different from those in the expired policy, the renewal does not constitute a new contract as long as the original policy provided for renewal. *Id.* at 139-40, 403 S.E.2d at 168.

this declaratory judgment action to establish his entitlement to UIM coverage under his stepfather's policy.⁶

The trial court granted summary judgment for Webb, ruling that, under *Knight*, Nationwide was required to offer UIM coverage at each renewal.⁷ Nationwide argued on appeal that the renewal provisions in the expiring contract provided for a continuing policy under the *Knight* exception.⁸ The supreme court affirmed the trial court's ruling, but modified the *Knight* holding.⁹ The *Webb* court found that Nationwide's renewal was a new contract requiring a valid offer of UIM coverage.¹⁰

Pase's original policy provided that renewal was subject to Nationwide's policy rates and rating plans at the time of renewal.¹¹ The court stated that the policy "specifically contemplates upon renewal a renegotiation of an essential term of the contract, the premium rate."¹² Therefore, because the terms of the policy could change upon renewal, the court reasoned that this renewal was a new contract.¹³

The rationale underlying the *Webb* court's holding indicates the importance of the intent of the contracting parties for purposes of determining the legal effect of subsequent renewals of an insurance policy. Although the *Webb* opinion does not expressly mention the parties' intent, both factors that the court considered in deciding whether the renewal was a new or a continuing contract actually concern

6. *Webb*, 305 S.C. at 212, 407 S.E.2d at 635.

7. *Id.* at 212, 407 S.E.2d at 636.

8. *Id.* at 213, 407 S.E.2d at 636.

9. *See id.* The *Webb* court restricted *Knight*'s exception for renewal provisions. *Id.* For a discussion of the *Knight* holding, see *supra* note 4.

10. *Webb*, 305 S.C. at 214, 407 S.E.2d at 636.

11. *Id.* Nationwide's general policy conditions stated:

"Your policy is written for a six-month policy period. We will renew it for successive policy periods, subject to the following conditions:

a) Renewal will be in accordance with policy forms, rules, rates and rating plans in use by us at the time.

b) All premiums or premium installment payments must be paid when due, whether payable directly to us or through any premium finance plan.

c) Neither you, nor anyone who lives in your household, nor anyone who customarily operates a motor vehicle covered by your policy has his driver's license suspended or revoked during the policy period."

Id. at 213-14, 407 S.E.2d at 636 (quoting policy).

12. *Id.* at 214, 407 S.E.2d at 636. A change in the policy premium alone is sufficient to reclassify a renewal policy as a new contract. *Id.*

13. *Id.* Because this rationale conflicts with the court of appeals' holding in *Simpson*, the supreme court overruled that decision. *Id.* at 213, 407 S.E.2d at 635.

For a discussion of the holding in *Simpson*, see *supra* note 5.
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intent.¹⁴ For example, if the parties intend a policy renewal to be considered a continuing contract, the original contract will contain a renewal term and the renewal policy will contain a manifestation of that intent through terms identical to those in the original policy. This intent-based approach is consistent with that of other jurisdictions.¹⁵

The *Webb* holding leaves little room for a renewal of an automobile insurance policy to be considered a continuing policy. Accordingly, to protect itself against a claim for UIM coverage, an insurer should offer this coverage at each renewal under section 38-77-160 of the South Carolina Code¹⁶ and in accordance with the holding in *State Farm Mutual Automobile Insurance Co. v. Wannamaker*.¹⁷

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II. COURT OF APPEALS REVIEWS DEFINITION OF UNDERINSURED MOTOR VEHICLE

In *Purvis v. State Farm Mutual Automobile Insurance Co.*¹⁸ the South Carolina Court of Appeals reviewed the definition of the term "underinsured motor vehicle." The court held that the vehicle in which the appellants' deceased daughter was a passenger was not an underinsured motor vehicle under the statutory definition applicable at the time

14. See *supra* text accompanying note 2.

15. See, e.g., *Massachusetts Bonding & Ins. Co. v. Board of County Comm'rs*, 68 P.2d 555, 556 (Colo. 1937) (stating that renewal of a fidelity policy is a new contract unless the original policy shows parties' contrary intent); *Reserve Life Ins. Co. v. LaFollette*, 323 N.W.2d 173, 177 (Wis. 1982) (finding that a renewal of a health policy is a new contract unless parties express different intent in original contract). See generally 18 GEORGE J. COUCH, *CYCLOPEDIA OF INSURANCE LAW* § 68.40 (2d ed. 1983) (describing intent of parties ascertained from insurance policy as dispositive in determining whether renewal is a new or continuing contract); 44 C.J.S. *Insurance* § 283 (1945) (discussing intent exception to general rule regarding renewals of insurance contracts).

16. S.C. CODE ANN. § 38-77-160 (Law. Co-op. 1989 & Supp. 1991).

17. 291 S.C. 518, 354 S.E.2d 555 (1987). "[T]he statute mandates the insured to be provided with adequate information, and in such a manner, as to allow the insured to make an intelligent decision of whether to accept or reject the coverage." *Id.* at 521, 354 S.E.2d at 556; see also *Jackson v. State Farm Mut. Auto. Ins. Co.*, 303 S.C. 321, 400 S.E.2d 492 (1991) (discussing elements of an effective offer of UIM coverage).

18. 304 S.C. 283, 403 S.E.2d 662 (Ct. App.) (per curiam), *cert. denied*, 304 S.C. 283, 284, 403 S.E.2d 662, 662 (1991).

of the accident.¹⁹ The *Purvis* court chronicled South Carolina's voyage from being an "excess" coverage state to being a "reduction" coverage state and then back to being an "excess" coverage state.²⁰

The appellants' daughter was killed on May 16, 1988 when the vehicle in which she was riding collided with a tree. The driver's insurer paid the driver's policy limit of \$25,000 to the appellants. The appellants then filed a claim for benefits under their underinsured motorist policy with the respondent ("State Farm").²¹ State Farm denied coverage and asserted that the vehicle in which the appellants' daughter was a

19. *Id.* at 284, 403 S.E.2d at 663. The relevant statutory definition of underinsured motor vehicle is discussed *infra* note 33. In *State Farm Mutual Automobile Insurance Co. v. Horry*, 304 S.C. 165, 403 S.E.2d 318 (1991), the South Carolina Supreme Court expressly approved and adopted the *Purvis* opinion. *Id.* at 167, 403 S.E.2d at 319 (1991).

Additionally, the court in *Purvis* rejected, as without merit, the appellants' secondary challenge that the insurer's offer of underinsurance coverage was misleading and did not provide an adequate explanation of the changes in underinsurance coverage. *Purvis*, 304 S.C. at 289, 403 S.E.2d at 666.

20. *Purvis*, 304 S.C. at 286-88, 403 S.E.2d at 664-65. Under "excess" coverage, the insured receives underinsured motorist benefits from her own policy if the at-fault driver's liability coverage is less than the insured's actual damages. The insured receives the difference between her actual damages and the at-fault driver's liability policy limits, but not to exceed the insured's underinsured motorist policy limits. *Id.* at 285, 403 S.E.2d at 664.

In contrast, under "reduction" coverage, any benefits from the insured's underinsured motorist policy are reduced by the amount the insured recovers from the at-fault driver. Therefore, the insured receives benefits only if the policy limits of the insured's underinsured motorist coverage exceed the at-fault driver's liability policy limits. No benefits are available if the insured's underinsured motorist coverage is equal to or less than the at-fault driver's liability limits. *Id.*

The purpose of the "excess" coverage approach is to allow an insured to recover as much of her actual damages as possible. Whereas, the "reduction" coverage approach allows the insured to recover damages only up to the amount that she sets as an acceptable liability minimum. *See generally*, 8C JOHN A. APPLEMAN & JEAN APPLEMAN, INSURANCE LAW AND PRACTICE § 5071.45 (1981).

Several jurisdictions follow the excess coverage approach. *See, e.g.*, KY. REV. STAT. ANN. § 304.39-320(2) (Michie/Bobbs-Merrill Supp. 1990); MINN. STAT. ANN. § 65B.49(4a) (West Supp. 1992); WASH. REV. CODE ANN. § 48.22.030 (West Supp. 1992). However, other states use the reduction coverage approach. *See, e.g.*, ILL. ANN. STAT. ch. 73, para. 755a-2(4) (Smith-Hurd Supp. 1992); IND. CODE ANN. § 27-7-5-5(c) (Burns Supp. 1992); NEB. REV. STAT. § 60-578 (1988); N.J. STAT. ANN. § 17:28-1.1(e) (West Supp. 1992); OHIO REV. CODE ANN. § 3937.18(A)(2) (Anderson 1989); TEX. INS. CODE ANN. § 5.06-1(2)(b) (West Supp. 1992).

21. The limit on the appellants' underinsured motorist policy was \$25,000 per person. Record at 2.

passenger was not an underinsured motor vehicle within the appellants' policy.²²

The trial court denied underinsured motorist benefits to the appellants. On appeal, the appellants argued that the prior judicial interpretations of the term "underinsured motor vehicle"²³ should control instead of the statutory definition that was in effect on the date of the accident.²⁴

The South Carolina Underinsured Motorist Act,²⁵ enacted in 1978, provides that automobile insurance carriers shall offer optional underinsured motorist coverage to the insured for damages sustained in excess of the liability coverage of an at-fault motorist.²⁶ However, the General Assembly did not define "underinsured motor vehicle" in the Act; therefore, it was uncertain whether South Carolina was an "excess" coverage state or a "reduction" coverage state.²⁷

The South Carolina Supreme Court eliminated this uncertainty in *Gambrell v. Travelers Insurance Cos.*²⁸ and *Garris v. Cincinnati Insurance Co.*²⁹ In *Gambrell* the supreme court held that the underinsured motorist statute was intended to provide coverage when the injured party's actual damages exceeded the liability limits of the at-fault party.³⁰ Additionally, the *Gambrell* court stated that there was no statutory requirement that the insured's underinsured motorist limits exceed the liability limits of the at-fault party.³¹ In *Garris* the supreme

22. *Purvis*, 304 S.C. at 284, 403 S.E.2d at 663.

23. *E.g.*, *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984) (declaring that underinsured motorist coverage in South Carolina is excess coverage) (citing *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983)). See *infra* text accompanying notes 28-32 for a discussion of *Garris* and *Gambrell*.

24. *Purvis*, 304 S.C. at 284, 403 S.E.2d at 663. The definition of underinsured motor vehicle that was in effect at the time of the accident in *Purvis* is found in Act of June 4, 1987, § 21, 1987 S.C. Acts 166 (originally codified at S.C. CODE ANN. § 56-9-810 (Law. Co-op. 1976)) (current version at S.C. CODE ANN. § 38-77-30(14) (Law. Co-op. Supp. 1991)).

25. S.C. CODE ANN. § 38-77-160 (Law. Co-op. 1989 & Supp. 1991) (originally codified at S.C. CODE ANN. § 56-9-831 (Law. Co-op. 1976)).

26. *Id.*

27. *Purvis*, 304 S.C. at 285, 403 S.E.2d at 664. The definitions of excess coverage and reduction coverage are discussed *supra* note 20.

28. 280 S.C. 69, 310 S.E.2d 814 (1983).

29. 280 S.C. 149, 311 S.E.2d 723 (1984).

30. *Gambrell*, 280 S.C. at 71, 310 S.E.2d at 816, *quoted in Purvis*, 304 S.C. at 286, 403 S.E.2d at 664.

31. *Id.*

court confirmed its decision in *Gambrell*, squarely establishing South Carolina as an “excess” coverage state.³²

However, on June 4, 1987, the General Assembly created the state’s first statutory definition of “underinsured motor vehicle.”³³ This definition effectively abrogated the *Gambrell* court’s definition and made South Carolina a “reduction” coverage state.³⁴

The appellants argued that the holdings in *Gambrell* and *Garris* governed the definition of “underinsured motor vehicle.”³⁵ However, the court rejected this argument because the appellants renewed their underinsured motorist policy on November 14, 1987, after the effective date of the 1987 statutory definition.³⁶ The court noted that the 1987 statutory language clearly expressed the General Assembly’s intent to transform South Carolina from an “excess” coverage to a “reduction” coverage state and that accepting the appellants’ contention would nullify the purpose of the new statute.³⁷ Therefore, the court construed the

32. *Garris*, 280 S.C. at 153, 311 S.E.2d at 725-26, *quoted in Purvis*, 304 S.C. at 286, 403 S.E.2d at 664-65.

33. Act of June 4, 1987, § 21, 1987 S.C. Acts 166 (originally codified at S.C. CODE ANN. § 56-9-810 (Law. Co-op. 1976)) (current version at S.C. CODE ANN. § 38-77-30(14) (Law. Co-op. Supp. 1991)). The Act provided that:

“Underinsured motor vehicle” means a motor vehicle . . . [with] liability insurance . . . [in an] amount [that] . . . (a) is less than the limit for underinsured motorist coverage under the insured’s policy; or (b) has been reduced by payments to persons, other than the insured, injured in the accident to an amount less than the limit for underinsured motorist coverage under the insured’s policy.

Id.

34. *Purvis*, 304 S.C. at 287, 403 S.E.2d at 665. Finally, on August 1, 1989, the General Assembly amended the definition of underinsured motor vehicle to re-establish South Carolina as an “excess” coverage state. *Id.* The amended statute provides that an “[u]nderinsured motor vehicle” means a motor vehicle . . . [with] liability insurance . . . [in an] amount [that] is less than the amount of the insureds’ damages.” S.C. CODE ANN. § 38-77-30(14) (Law. Co-op. Supp. 1991). This is the current definition in South Carolina. *Purvis*, 304 S.C. at 288, 403 S.E.2d at 665.

35. *Purvis*, 304 S.C. at 284, 403 S.E.2d at 663.

36. *Id.* at 288, 403 S.E.2d at 665. The effective date of the Act was June 4, 1987. *Id.* at 287, 403 S.E.2d at 665.

37. *Id.* The court stated that it must presume that “the legislature intended to accomplish something with each statute and not to engage in futile action.” *Id.* at 288, 403 S.E.2d at 666 (quoting *Charleston Television, Inc. v. South Carolina Budget & Control Bd.*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev’d on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

In *State Farm Mutual Automobile Insurance Co. v. Horry*, 304 S.C. 165, 403 S.E.2d 318 (1991), the supreme court noted that the enactment of section 38-73-1105 of the South Carolina Code supports the *Purvis* decision. *Horry*, 304 S.C. at 168-69, <https://scholarcommons.sc.edu/sclr/vol44/iss1/13>

language of the statute according to its literal meaning and affirmed the trial court.³⁸ According to the literal meaning of the old section 56-9-810, the vehicle in which the appellants' daughter died was not an "underinsured motor vehicle" because the appellants' underinsured motorist coverage was not greater than the at-fault party's liability coverage.³⁹

Although the court's decision in *Purvis* imposed a harsh result on the appellants, the court's reasoning is sound in light of the statute's clear language. The court properly determined that "reduction" coverage applied to underinsured motor vehicles at the time of the decedent's death. Nevertheless, South Carolina now has returned to the "excess" coverage approach to underinsured motorist insurance that existed under *Gambrell* and *Garris*.⁴⁰

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403 S.E.2d at 319-20. Section 38-73-1105 requires an insurer to reduce its underinsured motorist coverage rates before it can use the statutory definition of underinsured motor vehicle. S.C. CODE ANN. § 38-73-1105 (Law. Co-op. 1989). The enactment of § 38-73-1105 in connection with the 1987 statutory definition of "underinsured motor vehicle" indicates the legislature's intent to change the then-existing judicial definition. See *Horry*, 304 S.C. at 168-69, 403 S.E.2d at 319-20.

38. *Purvis* 304 S.C. at 288-89, 403 S.E.2d at 665-66 (citing *Citizens & S. Sys., Inc. v. South Carolina Tax Comm'n*, 280 S.C. 138, 311 S.E.2d 717 (1984)); see also *Wright v. Colleton County Sch. Dist.*, 301 S.C. 282, 287, 391 S.E.2d 564, 567 (1990) (stating that courts must apply terms of statute according to their literal meaning).

39. *Purvis*, 304 S.C. at 284, 403 S.E.2d at 663.

40. See S.C. CODE ANN. § 38-77-30(14) (Law. Co-op. Supp. 1991). This section is discussed *supra* note 34.