Rel: September 18, 2020

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1180852

Mid-Century Insurance Company

v.

Rodney Watts, as personal representative of the Estate of Leiah Watts, deceased, et al.

Appeal from Talladega Circuit Court
(CV-17-900251)

BOLIN, Justice.

This Court granted Mid-Century Insurance Company ("Mid-Century") permission to appeal from the denial of its motion for a partial summary judgment in an action seeking

underinsured-motorist benefits filed by Rodney Watts, as the personal representative of the estate of his wife Leiah Watts, deceased, and others (hereinafter collectively referred to as "the Watts plaintiffs"). See Rule 5, Ala. R. App. P.

Facts and Procedural History

On July 16, 2016, Leiah Watts, Caiden Watts, Jackson Watts, Faye Howard, Mary Adair, Evelyn Watts, Tammy McBurnett, Renee Stone, and Victoria Stone were traveling in a 2014 Ford Expedition sport-utility vehicle ("the Watts vehicle") when the Watts vehicle was struck by a vehicle being driven by Wiley "Pete" Whitworth. The collision killed Leiah Watts, Faye Howard, Mary Adair, and Evelyn Watts. Tammy McBurnett, Renee Stone, Caiden Watts, Jackson Watts, and Victoria Stone suffered serious injuries in the collision.

The Watts vehicle was insured by a policy of insurance issued by Farmers Insurance Exchange to Rodney Watts ("Rodney") and underwritten by Mid-Century.[1] The insurance policy provided underinsured/uninsured-motorist ("UIM")

[1]Following the accident, Whitworth's insurer tendered the liability policy limits of $300,000 available under a policy of insurance issued to Whitworth. Farmers and Mid-Century authorized Rodney's acceptance of those moneys and waived their subrogation interests.

coverage of $50,000 per person and $100,000 per accident. The insurance policy listed five vehicles that were covered under the policy. The insurance policy also contained a "stacking" provision in the policy endorsements "Part II-Uninsured Motorist" section, allowing the stacking of benefits.

A dispute arose between Mid-Century and Rodney as to the amount of UIM benefits payable to the Watts plaintiffs under the policy. Mid-Century contended that, because the policy allowed for the stacking of up to three UIM coverages, the maximum amount of UIM benefits available under the policy for the accident in this case is $300,000, based on $100,000 per accident. However, the Watts plaintiffs contended that each of the nine occupants of the Watts vehicle involved in the accident (or his/her personal representative) was entitled to $150,000 in UIM benefits ($50,000 per person limit of the occupied vehicle plus the per person limit of $50,000 for two additional coverages under the stacking provision of the policy). Thus, the total sought by Rodney in UIM benefits was $1,350,000 (9 x $150,000).

On August 3, 2017, the Watts plaintiffs sued Mid-Century, Farmers Insurance Exchange, and Farmers Group, Inc.[2] (hereinafter collectively referred to as "the defendants"), in the Talladega Circuit Court ("the trial court"), asserting claims alleging fraud, breach of contract, wrongful denial of UIM benefits, and bad faith. On August 28, 2017, the defendants filed, pursuant to 28 U.S.C. § 1446, a notice of removal of the action to the United States District Court for the Northern District of Alabama, Eastern Division ("the federal district court"). On that same date, the defendants moved the federal district court to dismiss the Watts plaintiffs' fraud claims, breach-of-contract claim, and bad-faith claim. On October 19, 2017, the federal district court entered an order requiring, among other things, that the Watts plaintiffs file an "Amended Complaint setting out with the specificity required by the Federal Rules of Civil Procedure (including Rule 9 as to any fraud claims) all claims against all defendants."

On November 30, 2017, the Watts plaintiffs filed their first amended complaint, reasserting their claims against the

[2]Farmers Group is an entity that administers insurance policies issued by Farmers Insurance Exchange.

defendants with more specificity. On December 14, 2017, the defendants moved the federal district court to dismiss the fraud claims, the bad-faith claim, and the breach-of-contract claim asserted against them in the Watts plaintiffs' first amended complaint.

On April 27, 2018, the federal district court entered an order granting in part and denying in part the defendants' motion to dismiss. The court granted the motion to dismiss the fraud claims as to Farmers Group only and denied the motion to dismiss the fraud claims as to Farmers Insurance Exchange and Mid-Century. Additionally, the court dismissed without prejudice -- based on ripeness grounds -- the breach-of-contract and bad-faith claims against all the defendants.

On May 25, 2018, the Watts plaintiffs filed a second amended complaint against Farmers Insurance Exchange and Mid-Century, reasserting their fraud claims and to more specifically state a breach-of-contract claim for UIM benefits ("the UIM claim"). On June 14, 2018, the Watts plaintiffs moved to dismiss their UIM claim against Farmers Insurance Exchange. On June 29, 2018, the federal district court entered an order granting the Watts plaintiffs' unopposed motion to

dismiss, without prejudice, the UIM claim against Farmers Insurance Exchange.

On July 27, 2018, the Watts plaintiffs moved the federal district court to remand the case to the trial court. On September 6, 2018, the federal district court entered an order remanding the case to the trial court.

On February 18, 2019, Mid-Century moved the trial court for a partial summary judgment on the UIM claim, arguing that the UIM coverage available to the Watts plaintiffs under the uninsured-motorist statute, § 32-7-23, Ala. Code 1975, and the UIM provisions of the policy issued to Rodney was $300,000. Mid-Century also moved the trial court for an order allowing it to pay UIM benefits of $300,000 into the trial court for distribution to the Watts plaintiffs. On March 12, 2019, Farmers Insurance Exchange and Mid-Century moved the trial court pursuant to Rule 21, Ala. R. Civ. P., to sever the Watts plaintiffs' fraud claims from the UIM claim.

On March 22, 2019, the Watts plaintiffs filed their motion in opposition to Mid-Century's motion for a partial summary judgment on the UIM claim, arguing that Mid-Century's limit of liability under the uninsured-motorist statute and

the UIM provisions of the policy was $150,000 per injured person, for a total of $1,350,000.

On March 26, 2019, the trial court entered an order granting Mid-Century's motion to pay its asserted UIM policy limit of $300,000 into the trial court. On April 29, 2019, the trial court entered an order granting the motion to sever the fraud claims from the UIM claim. On June 21, 2019, the trial court entered an order denying Mid-Century's motion for a partial summary judgment as to the Watts plaintiffs' UIM claim.

On July 10, 2019, Mid-Century moved the trial court pursuant to Rule 5, Ala. R. App. P., for permission to appeal the interlocutory order denying its motion for a partial summary judgment as to the UIM claim, and on July 19, 2019, the trial court entered an order granting Mid-Century permission to appeal. On July 26, 2019, Mid-Century petitioned this Court for permission to appeal. On October 2, 2019, this Court granted Mid-Century permission to appeal pursuant to Rule 5, Ala. R. App. P.

Standard of Review

> "'Where, as here, the facts of a case are essentially undisputed, this Court must determine

> whether the trial court misapplied the law to the undisputed facts, applying a de novo standard of review. Carter v. City of Haleyville, 669 So. 2d 812, 815 (Ala. 1995). Here, in reviewing the denial of a summary judgment when the facts are undisputed, we review de novo the trial court's interpretation of statutory language and our previous caselaw on a controlling question of law.'"

Wood v. Wayman, 47 So. 3d 1212, 1215 (Ala. 2010)(quoting Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1035 (Ala. 2005)).

This Court has stated the following with regard to permissive appeals:

> "In the petition for a permissive appeal, the party seeking to appeal must include a certification by the trial court that the interlocutory order involves a controlling question of law, and the trial court must include in the certification a statement of the controlling question of law. Rule 5(a), Ala. R. App. P. In conducting our de novo review of the question presented on a permissive appeal, 'this Court will not expand its review ... beyond the question of law stated by the trial court. Any such expansion would usurp the responsibility entrusted to the trial court by Rule 5(a).' BE&K, Inc. v. Baker, 875 So. 2d 1185, 1189 (Ala. 2003). ..."

Alabama Powersport Auction, LLC v. Wiese, 143 So. 3d 713, 716 (Ala. 2013). The trial court certified the controlling question of law as follows:

> "What are the total amount of limits available to the [Watts] Plaintiffs under the governing automobile insurance policy as dictated by, and in accordance

> with, the Alabama uninsured motorist statute (Section 32-7-23[, Ala. Code 1975])?"

Discussion

I. Permissive Appeal

The Watts plaintiffs initially argue that this Court improvidently granted the Rule 5 motion for a permissive appeal. Rule 5 provides, in part:

> "(a) Petition for Permission to Appeal. A party may request permission to appeal from an interlocutory order in civil actions under limited circumstances. Appeals of interlocutory orders are limited to those civil cases that are within the original appellate jurisdiction of the Supreme Court. A petition to appeal from an interlocutory order must contain a certification by the trial judge that, in the judge's opinion, the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an immediate appeal from the order would materially advance the ultimate termination of the litigation, and that the appeal would avoid protracted and expensive litigation. The trial judge must include in the certification a statement of the controlling question of law.
>
> "....
>
> "(b) Content of Petition; Answer.
>
> "(1) Petition. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court, supported by reference to the appendix accompanying the petition; a statement of the question itself, as stated by the trial court in its certification; and a statement of the reasons

> why a substantial basis exists for a difference of opinion on the question, why an immediate appeal would materially advance the termination of the litigation, and why the appeal would avoid protracted and expensive litigation."

It is "our time-honored rule that a final judgment is an essential precondition for appealing to this Court." John Crane-Houdaille, Inc. v. Lucas, 534 So. 2d 1070, 1073 (Ala. 1988). However, in exercising its rule-making authority, this Court has provided in Rule 5 that "[a] party may request permission to appeal from an interlocutory order in civil actions under limited circumstances." Rule 5 "allows for an appeal of an interlocutory order involving a controlling issue of law as to which there is substantial ground for difference of opinion when an immediate appeal would materially advance termination of the litigation and would avoid protracted and expensive litigation." Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060, 1062 (Ala. 2014).

A. Controlling Question of Law.

The Watts plaintiffs argue that no controlling question of law is presented in this permissive appeal, because, they say, this Court is being asked only to apply well established

principles of uninsured-motorist law to the facts of this case.

> "Rule 5 does not apply in situations that involve the application of law to facts or factual issues that are so one-sided that it can be said that 'as a matter of law' those issues can be decided only one way. 'Rule 5 is not a vehicle by which to obtain review of "significant and unresolved factual issues."' Gowens v. Tys. S., 948 So. 2d 513, 530 (Ala. 2006) (quoting Spain v. Brown & Williamson Tobacco Corp., 872 So. 2d 101, 104 (Ala. 2003)(emphasis added in Gowens). See also McFarlin v. Conseco Servs., LLC, 381 F.3d 1251, 1259 (11th Cir. 2004) (stating that permissive appeals are 'intended, and should be reserved, for situations in which the court of appeals can rule on a pure, controlling question of law without having to delve beyond the surface of the record in order to determine the facts' (emphasis added) ...."

Once Upon a Time, LLC v. Chappelle Props., LLC, 209 So. 3d 1094, 1106-07 (Ala. 2016)(Murdock, J., dissenting).

Section 32-7-23, the uninsured-motorist statute, provides, in pertinent part:

> "(a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of Section 32-7-6, under provisions approved by the Commissioner of Insurance for the protection of

> persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom ....
>
> "....
>
> "(c) The recovery by an injured person under the uninsured provisions of any one contract of automobile insurance shall be limited to the primary coverage plus such additional coverage as may be provided for additional vehicles, but not to exceed two additional coverages within such contract."

Section 32-7-6(c), Ala. Code 1975, provides, in pertinent part:

> "[E]very policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death to one person in any one accident and subject to the limit for one person, to a limit of not less than fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident ...."

Thus, § 32-7-6(c) requires that uninsured-motorist coverages provide coverages on both a per person basis and a per accident basis. See also Weaver v. Champion Ins. Co., 567 So. 2d 380 (Ala. 1990); Safeco Ins. Co. v. Jones, 243 So. 2d 730 (Ala. Civ. App. 1970).

In accordance with § 32-7-6(c), the insurance policy at issue here provides UIM coverage of $50,000 per person and

$100,000 per accident. Five vehicles were listed in and covered by the policy. The insurance policy also contained the following "stacking" provision:

> "2. When there is more than one insured car on the policy:
>
> "a. And the insured was occupying your insured car at the time of the accident:
>
> "(1) The limit of liability for Uninsured Motorist coverage stated in the Declarations for each person for the occupied insured car, plus the sum of the highest limits of liability for Uninsured Motorist coverage stated in the Declarations for each person applicable to any other insured car on the policy, up to a maximum of two additional limits, is our maximum limit of liability for all damages....
>
> "(2) Subject to the limit for each person, the limit of liability for Uninsured Motorists coverage stated in the Declarations for each accident for the occupied insured car, plus the sum of the

> highest limits of liability for Uninsured Motorists coverage stated in the Declarations for each accident applicable to any other insured car on the policy, up to a maximum of two additional limits, is our maximum limit of liability for all damages for bodily injury resulting from any one accident...."

Mid-Century argues that the phrase in § 32-7-6(c), "two or more persons in any one accident," as incorporated by § 32-7-23(a), makes clear that when two or more injured persons seek UIM benefits under the same policy arising out of the same accident, those injured persons are eligible to receive only the per accident limit under the policy. Mid-Century continues that the phrase "subject to the limit for one person" in § 32-7-6(c) makes it clear that when only one person seeks UIM benefits under a policy, that injured person is eligible to receive only the per person limit under the policy. Mid-Century concludes that, because the accident here involved "two or more injured persons," the per accident benefit of $100,000 is applicable. Mid-Century further argues

that the "stacking" provision in § 2a.(2) of the insurance policy allows the Watts plaintiffs to stack the per accident benefit of $100,000 for up to two additional coverages. Thus, Mid-Century concludes that the Watts plaintiffs are entitled to $300,000 in UIM benefits pursuant to the uninsured-motorist statute and Rodney's insurance policy.

The Watts plaintiffs' initially argue that the per accident limit in the insurance policy is an exclusion not authorized by the uninsured-motorist statute. The Watts plaintiffs contend that "in the absence of an exclusion in the Act, none is authorized to be read into it. In other words, the legislature could have authorized exclusions in the uninsured motorist statute but not having done so, no such exclusions are permitted." Gatson v. Integrity Ins. Co., 451 So. 2d 361, 362-63 (Ala. Civ. App 1984).

The Watts plaintiffs further argue that the phrase "subject to the limit for each person" contained in § 2a.(2) of the insurance policy is ambiguous and that, like all ambiguities in provisions of an insurance policy, it should be construed strictly against the insurance company. See Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687 (Ala.

2001). The Watts plaintiffs contend that § 2a.(2) of the insurance policy should be construed so that the per accident limit of liability is subordinate or inferior to the per person limit of liability because the per accident limit of liability is "subject to the limit for each person." The Watts plaintiffs contend that this understanding is consistent with the commonly understood meaning of "subject to" and best reflects the reasonable expectations of Rodney, as the contracting party, that UIM coverage would be available on all five vehicles for which the coverage was purchased. Thus, the Watts plaintiffs conclude that each of the persons in the Watts vehicle is entitled to "stack" the per person limit of liability of $50,000 up to two additional coverages for an individual UIM benefit of $150,000 per person and total UIM benefits for the accident of $1,350,000 under the policy.

In the alternative, the Watts plaintiffs argue that at a minimum they are entitled to at least $500,000 in UIM benefits. The Watts plaintiffs state that the accident resulted in the death of four persons and injury to five others. They also state that there are five vehicles covered under the UIM policy for a total of five available coverages.

The Watts plaintiffs contend that § 32-7-23(c) permits each injured person to recover from the primary coverage plus two additional coverages but places no limitations on which additional coverages the injured persons may rely upon to draw the UIM benefits. For example, the Watts plaintiffs contend that all nine persons could draw UIM benefits from the primary coverage under the policy and that four of the nine could draw UIM benefits from the second and third available coverages. The Watts plaintiffs further argue that the remaining five injured persons could then draw UIM benefits from the fourth and fifth available coverages. Applying the $100,000 per accident limit, the Watts plaintiffs conclude that the total UIM benefit limit using all five available coverages is at least $500,000. The Watts plaintiffs state that Mid-Century's contrary position deprives them of two coverages sold and issued by Mid-Century and violates the illusory-promises doctrine.

As noted earlier, the trial court has certified the following question of law:

> "What are the total amount of limits available to the [Watts] Plaintiffs under the governing automobile insurance policy as dictated by, and in accordance

> with, the Alabama uninsured motorist statute (Section 32-7-23)?"

The underlying facts of this case are not disputed, and this Court is not called upon to review any unresolved factual questions or to apply any well settled principles of law to a particular set of facts. The certified question presented by the trial court requires this Court to undertake a legal analysis of the relevant portions of the uninsured-motorist statute and the policy of insurance issued in this case. Although the question as certified by the trial court is rather broad, it adequately encompasses the purely legal issue presented to this Court under the uninsured-motorist statute and the UIM provisions of the policy as set forth and argued by the parties. Accordingly, we conclude that the trial court has properly certified the controlling question of law in this case.[3]

B. Substantial Ground for Difference of Opinion.

The Watts plaintiffs next argue that the underlying legal principles of law that this Court must invoke in answering the

[3]Because we have determined that the trial court has certified a proper controlling question of law presented in this case, we pretermit discussion of the Watts plaintiffs' argument that this Court should reframe that question.

question of the available limits of UIM coverage involves basic rules of statutory construction and the application of the uninsured-motorist statute, both of which, they say, are well established and lacking of any substantial ground for a difference of opinion.

> "[T]he limitation in Rule 5 to issues 'as to which there is substantial ground for difference of opinion' is a limitation to questions of law that either have never been decided or are the subject of a split of authority or a conflict in our precedents. Otherwise, this Court is merely performing the trial court's function of researching and deciding legal issues, a task for which the trial court is well equipped and to which it equally is assigned. See, e.g., Couch v. Telescope Inc., 611 F.3d 629, 633 (9th Cir. 2010) (noting that '[c]ourts traditionally will find that a substantial ground for difference of opinion exists where "... novel and difficult questions of first impression are presented"' (quoting 3 Federal Procedure § 3:212 (Lawyers ed. 2010)))."

Once Upon a Time, 209 So. 3d at 1107 (Murdock, J., dissenting).

The Watts plaintiffs' argument misapprehends the query presented here. It is true that principles of law related to statutory and contract construction are well settled and lack any ground for a difference of opinion. Likewise, the application of the uninsured-motorist statute is largely well settled and lacks any ground for a difference of opinion.

However, the actual legal question presented here pertaining to the amount of coverage available under the insurance policy, as dictated by the applicable provisions of the uninsured-motorist statute, appears to be a question of first impression. Therefore, we conclude that there is a "'substantial ground for a difference of opinion.'" Once Upon a Time, 209 So. 3d at 1107 (Murdock, J., dissenting).

C. Materially Advance the Ultimate Termination of the Litigation and Avoid Protracted and Expensive Litigation.

The Watts plaintiffs state that two actions are pending in the trial court against Mid-Century -- the fraud claims and the UIM claim that were originally filed together but that were later severed by the trial court. The Watts plaintiffs argue that, whatever the outcome of this appeal, the fraud claims remain to be litigated. Thus, they contend, it is likely that there will be multiple, piecemeal appeals in this matter and that, therefore, this permissive appeal will not "materially advance the ultimate termination of the litigation" between them and Mid-Century. We disagree.

The trial court entered an order severing the fraud claims from the UIM claim pursuant to Rule 21, Ala. R. App. P. The trial court ordered that the fraud claims and the UIM claim

proceed as independent actions. The trial court also directed the circuit court clerk to designate the fraud claims with their own civil-action case number. Thus, this permissive appeal consists only of the Watts plaintiffs' UIM claim seeking to recover UIM benefits, and a determination of that claim by this Court on permissive appeal would effectively end the litigation of the UIM claim. Accordingly, we conclude that this permissive appeal will materially advance the ultimate termination of this litigation and will help to avoid protracted litigation and the expense associated with such litigation; thus, the permissive appeal was properly granted.

II. UIM Claim

As mentioned above, pursuant to § 32-7-6(c), the insurance policy here provides UIM coverage on both a per person basis and a per accident basis. The coverage limit on the per person basis is $50,000; the coverage limit on the per accident basis is $100,000. The parties dispute which coverage limit is available to the Watts plaintiffs in accordance with the terms of the uninsured-motorist statute and the insurance policy.

Section 32-7-6(c), incorporated by § 32-7-23(a), provides, in pertinent part:

> "The policy ... shall not be effective under this section unless ... every policy ... is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death to one person in any one accident and subject to the limit for one person, to a limit of not less than fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident ...."

"When a court construes a statute, '[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.'" Ex parte Berryhill, 801 So. 2d 7, 10 (Ala. 2001) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).

Reading the phrases "subject to the limit for one person" and "bodily injury to or death of two or more persons in any one accident" in § 32-7-6(c) so as to give those words their "natural, plain, ordinary, and commonly understood meaning," we conclude that, in those cases where two or more persons are injured or killed in a single accident, the per accident limit

of liability contained in the policy is the proper coverage limit to be applied. The policy here contains a per accident limit of coverage as required by § 32-7-6(c). Because the accident made the basis of this UIM claim involved "two or more persons," the per accident coverage limit of $100,000 found in the policy is applicable. Section 32-7-23(c) of the uninsured-motorist statute and § 2a.(2) of the insurance policy allow the Watts plaintiffs to "stack" the primary coverage of $100,000 for up to two additional coverages, or a total amount of $300,000 in UIM benefits.

The Watts plaintiffs do not necessarily dispute the above interpretation of the uninsured-motorist statute and the policy provision. Rather, they challenge the interpretation and application of the uninsured-motorist statute and insurance policy in other ways. Initially, they argue that a per accident limit is an exclusion not authorized by the uninsured-motorist statute and that, "in the absence of an exclusion in the Act, none is authorized to be read into it." Gatson, 451 So. 2d at 362-63. This argument, however, is without merit. Initially, we note § 32-7-6(c) requires that UIM coverage contained in automobile-insurance policies be

provided on both a per person and per accident basis. Weaver, supra; Jones, supra. Further, the required per accident limit of coverage for UIM benefits appears on the declaration page of the insurance policy. The "Uninsured Motorist Coverage," which governs how and on what basis the UIM benefits are paid, appears in Part II of the policy provisions. Part II of the UIM provisions contains the following exclusions:

> "This coverage shall not apply to the benefit of any insurer or self-insurer under any workers' compensation law, or directly to the benefit of the United States, or any state or any political subdivision.
>
> "This coverage does not apply to bodily injury sustained by a person:
>
> "1. While occupying any vehicle owned by you or a family member for which insurance is not afforded under this policy or through being struck by that vehicle.
>
> "2. If that person or the legal representative of that person makes a settlement without written consent.
>
> "3. While occupying your insured car when used to carry persons or property for a charge. This exclusion does not apply to shared-expense carpools.
>
> "4. During active participation in any organized or agreed-upon racing or speed contest or demonstration or in

> practice or preparation for any such contest."

The per accident limit is set forth in the declarations page of the policy -- not in the UIM exclusions found in Part II of the insurance policy. Thus, it is clear from § 32-7-6(c) and the policy provisions that the per accident limit is not an exclusion under the policy.

The Watts plaintiffs next argue that the phrase "subject to the limit for each person" contained in § 2a.(2) of the insurance policy is ambiguous and should be construed against the insurance company, Mid-Century. See Twin City Fire Ins. Co., supra. The Watts plaintiffs argue that the ambiguity in the language triggers the "reasonable-expectations rule," under which an insured is entitled to the protection that he or she may reasonably expect from the insurance policy containing the ambiguity. See Lambert v. Liberty Mut. Ins. Co., 331 So. 2d 260 (Ala. 1976). The Watts plaintiffs contend that the "subject to the limit for each person" phrase in § 2a.(2) of the insurance policy should be construed so as to make the per accident limit of liability subordinate or inferior to the per person limit of liability, because, they say, that interpretation is consistent with the commonly

understood meaning of "subject to" and best reflects the reasonable expectations of Rodney, as the contracting party, that UIM coverage would be available on all five vehicles for which it was purchased and not limited to the primary coverage plus two additional coverage.

When determining how to construe the provisions of an insurance policy, this Court is guided by the following principles:

> "'When analyzing an insurance policy, a court gives words used in the policy their common, everyday meaning and interprets them as a reasonable person in the insured's position would have understood them. Western World Ins. Co. v. City of Tuscumbia, 612 So. 2d 1159 (Ala. 1992); St. Paul Fire & Marine Ins. Co. v. Edge Mem'l Hosp., 584 So. 2d 1316 (Ala. 1991). If, under this standard, they are reasonably certain in their meaning, they are not ambiguous as a matter of law and the rule of construction in favor of the insured does not apply. Bituminous Cas. Corp. v. Harris, 372 So. 2d 342 (Ala. Civ. App. 1979). Only in cases of genuine ambiguity or inconsistency is it proper to resort to rules of construction. Canal Ins. Co. v. Old Republic Ins. Co., 718 So. 2d 8 (Ala. 1998). A policy is not made ambiguous by the fact that the parties interpret the policy differently or disagree as to the meaning of a written provision in a contract. Watkins v. United States Fid. & Guar. Co., 656 So. 2d 337 (Ala. 1994). A court must not rewrite a policy so as to

> include or exclude coverage that was not intended. Upton v. Mississippi Valley Title Ins. Co., 469 So. 2d 548 (Ala. 1985).'
>
> "B.D.B. v. State Farm Mut. Auto. Ins. Co., 814 So. 2d 877, 879-80 (Ala. Civ. App. 2001). However, if a provision in an insurance policy is found to be genuinely ambiguous, 'policies of insurance should be construed liberally in respect to persons insured and strictly with respect to the insurer.' Crossett v. St. Louis Fire & Marine Ins. Co., 289 Ala. 598, 603, 269 So. 2d 869, 873 (1972)."

State Farm Mut. Auto. Ins. Co. v. Brown, 26 So. 3d 1167, 1169-70 (Ala. 2009).

We first note that the Watts plaintiffs do not challenge the "subject to" language in § 32-7-6(c), the actual statutory provision setting forth the circumstances in which either the per person or per accident limit is applicable. Rather, the "subject to" language challenged by the Watts plaintiffs is found in the "stacking" provision § 2a.(2) of Part II of the UIM section of the policy. Further, the Watts plaintiffs' argument that the "subject to" language creates an ambiguity is conclusory only, with no real explanation as to how the phrase creates an ambiguity and with no citation to any authority supporting the contention that the phrase is ambiguous. In fact, the same "subject to" language contained in the UIM provision here has been held to be unambiguous in

the context of the availability of the per person limit or per accident limit in such coverage. See Livingston v. Farmers Ins. Co., 79 Wash. App. 72, 900 P.2d 575 (1995). Accordingly, we conclude that the Watts plaintiffs have failed to demonstrate an ambiguity in the UIM provisions of the insurance policy. Therefore, the reasonable-expectations doctrine, a "rule of construction that applies to interpret ambiguous insurance policies," has no application here. Nationwide Mut. Ins. Co. v. J-Mar Mach. & Pump, Inc., 73 So. 3d 1248, 1253 (Ala. 2011).

The Watts plaintiffs next alternatively argue that, if this Court does not find an ambiguity in the policy language that requires the application of the per person limit and a finding that they are entitled to a total UIM benefit of $1,350,000, then they are entitled to a total UIM benefit of at least $500,000. As set forth in detail above, the Watts plaintiffs argue that § 32-7-23(c) permits each injured person to recover from the primary coverage plus two additional coverages, but places no limitation as to which policy an injured person may choose the additional coverages from which to draw his or her benefit. The Watts plaintiffs next argue

that all nine of the persons injured or the representatives of those killed in the accident would recover UIM benefits from the primary coverage and that four of the nine could recover from the second and third available coverages. They continue that the remaining five injured persons, in addition to recovering from the primary coverage, could then recover from the fourth and fifth available coverages. The Watts plaintiffs further state that because the uninsured-motorist statute provides for a total of three coverages being available for recovery of uninsured-motorist benefits (the primary and two additional) for "an injured person," and there are a total of five coverages available, the total limit of coverage available is at least $500,000 if the per accident limit of coverage is applied. The Watts plaintiffs contend that if Mid-Century's interpretation of the uninsured-motorist statute and the policy is adopted, two coverages sold and issued by Mid-Century would never be available to any claimant and that such a result would violate the illusory-promises doctrine.

Section 32-7-23(c) provides: "The recovery by an injured person under the uninsured provisions of any one contract of automobile insurance shall be limited to the primary coverage

plus such additional coverage as may be provided for additional vehicles, but not to exceed two additional coverages within such contract." Nothing can be read in § 32-7-23(c) as limiting the number of vehicles an insurer can insure under a policy of insurance. Section 32-7-23(c) expressly contemplates multiple coverages for multiple vehicles through the phrase "additional coverage as may be provided for additional vehicles." Although § 32-7-23(c) does not limit the number of vehicles an insurer may insure, the phrase limiting recovery by an injured person "to the primary coverage plus such additional coverage as may be provided for additional vehicles, but to not exceed two additional coverages within such contract," expressly limits the stacking of uninsured-motorist coverage by an insured to a total of three coverages under a single policy. Hall, supra. This statutory language must be given its plain and ordinary meaning, and this Court must construe the language to mean exactly what it says. Ex parte Berryhill, supra. The insurance policy before us covered five vehicles; however, § 32-7-23(c) expressly limits the stacking of uninsured-motorist benefits to a total of three coverages for a single policy.

The Watts plaintiffs' contention that Mid-Century's interpretation of the uninsured-motorist statute and the UIM provisions of the policy would result in two coverages under the policy he was sold that would never be available to any claimant is without basis and, therefore, without merit.

"'When limitations or exclusions completely contradict the insuring provisions, insurance coverage becomes illusory.' Alabama law does not '"countenance such illusory 'coverage.'"'" Shrader v. Employers Mut. Cas. Co., 907 So. 2d 1026, 1033 (Ala. 2005) (citations omitted). All five vehicles here carried UIM coverage of $50,000 per person and $100,000 per accident. Pursuant to the terms of the uninsured-motorist statute and the insurance policy, the Watts plaintiffs were, however, able to stack only three of those five coverages, but that does not necessarily mean that the Watts plaintiffs were deprived of coverages on two of the vehicles. Nothing in the record, or in allegations made by counsel, indicates that Mid-Century had denied UIM coverage on any of the vehicles. Rather, the Watts plaintiffs were, simply put, prohibited by the uninsured-motorist statute and the insurance policy only from stacking more than three coverages. Such exclusion or

limitation does not completely contradict the stacking provision of the policy so as to make coverage "illusory"; rather, to so interpret the stacking provision would make the provision itself illusory. Accord Hall, supra.

Based on the foregoing, we conclude that the Watts plaintiffs are unable to stack more than three coverages under the uninsured-motorist statute and insurance policy, and the fact that they cannot do so does not render the coverage under the policy illusory.

Conclusion

We reverse the trial court's order denying Mid-Century's motion for a partial summary judgment as to the UIM claim and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Shaw, Wise, Bryan, Sellers, Mendheim, and Mitchell, JJ., concur.

Parker, C.J., and Stewart, J., dissent.