

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 8th *day of* August, 2014.

William Watlington, Appellant,

against Record No. 131359
Circuit Court No. CL12-2468

Progressive Insurance Company, et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Norfolk.

Upon consideration of the record, briefs, and argument of
counsel, the Court finds no reversible error in the judgment of the
circuit court. Therefore, the judgment is affirmed.

I. Background

On November 7, 2008, William Watlington was operating a motor
vehicle owned by his employer, Terminix Company of North Carolina
("Terminix"), in the course of his employment when he was involved
in an automobile accident with another vehicle. Watlington filed a
motion for declaratory judgment in the Circuit Court for the City of
Norfolk, asking the court to determine the underinsured motorist
coverage available to Watlington under Terminix' automobile
insurance policy with Ace Insurance Company ("ACE").

Terminix rejected increased underinsured motorist coverage in
connection with the December 31, 2005 through December 31, 2006
policy between Terminix and ACE ("December 2005 policy") and
selected "limits in the amount of \$25,000/50,000/20,000," the lowest
limits permissible under Virginia law. Code § 46.2-472. After a
bench trial, the circuit court ruled that the policy in place at the

time of Watlington's accident was a renewal policy. The court held that, because the policy was a renewal policy, the rejection of increased underinsured motorist coverage in the former policy between ACE and Terminix remained applicable. The court therefore held that the limit of underinsured motorist personal injury coverage available to Watlington was \$25,000.

On appeal, Watlington argues that Terminix' rejection of increased underinsured motorist coverage limits in association with the December 2005 policy is not applicable to the policy in place at the time of the accident, thus requiring underinsured motorist coverage in an amount equal to the policy's liability insurance limits. In the alternative, Watlington argues that he is eligible for a \$70,000 limit of underinsured personal injury coverage under the terms of the applicable policy.

II. Discussion

A. Renewal Policies

Watlington argues that neither the policy in place from October 1, 2007 through December 31, 2007 ("October 2007 policy") nor the policy in effect at the time of the accident which provided coverage from December 31, 2007 to December 31, 2008 ("December 2007 policy") were renewal policies of the December 31, 2005 policy, which rejected increased undersinsured and uninsured motorist coverage. Watlington contends that the definition of "renewal" included in Code § 38.2-2212 requires that a renewal policy is one that begins at the conclusion of the previous policy's full term, and that the October 2007 policy was instituted before the expiration of the stated term of the December 31, 2006 through December 31, 2007 policy ("December 2006 policy").

The Court reviews the application of definitions in Code §§ 38.2-2202 to -2212, a question of law, de novo. Osman v. Osman, 285 Va. 384, 389, 737 S.E.2d 876, 878-79 (2013). In conducting its review, the Court is "bound by the plain language of the statutes at issue," Small v. Fannie Mae, 286 Va. 119, 127, 747 S.E.2d 817, 821 (2013), and must "give effect to the legislature's intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity." Osman, 285 Va. at 389, 737 S.E.2d at 879 (internal quotation marks omitted).

Code § 38.2-2212(A) provides definitions that "shall apply to this section." Code § 38.2-2212(B) expands the definitions' application to "that portion of a policy of motor vehicle insurance providing the coverage required by §§ 38.2-2204, 38.2-2205, and 38.2-2206." (Emphasis added.)

Code § 38.2-2206 governs uninsured and underinsured motorist insurance coverage. It requires that the limits of uninsured motorist coverage be equal to the policy's liability insurance limits "unless any one named insured rejects the additional uninsured motorist coverage by notifying the insurer as provided in subsection B of § 38.2-2202." (Emphasis added.) These requirements are also applicable to damage caused by underinsured motor vehicles. Code § 38.2-2206(A). Thus, the requirements of Code § 38.2-2202(B) are relevant to "that portion of a policy of motor vehicle insurance providing the coverage required by . . . 38.2-2206," and definitions provided in Code § 38.1-2212 are applicable to its terms. Code § 38.2-2212(B).

Code § 38.2-2212(A) defines "renewal," in relevant part, as:

[(1)] the issuance and delivery by an insurer of a policy[, (2)] superseding at the end of the policy period a policy previously issued and delivered by the same insurer, [(3)] providing types and limits of coverage at least equal to those contained in the policy being superseded.

Contrary to Watlington's argument, the October 2007 policy was a renewal policy under this definition.

First, the policy was issued and delivered by the insurer of Terminix' previous policy, ACE. Second, the policy went into effect on October 1, 2007, at the same time that the previous policy was terminated, as evidenced by the inclusion of the December 2006 policy number as the "expiring policy" in the October 2007 policy. Absent a gap between the former, expiring policy and the new policy, the new policy "supersed[es] at the end of the policy period a policy previously issued." Code § 38.2-2212(A).

Finally, the October 2007 policy provides types and limits of coverage that at least equal the coverage provided by the former policy. Although changes from the December 2006 policy were made to the October 2007 policy, the alterations relevant to a determination of whether the policy is new or a renewal are those made to the "types and limits of coverage." Code § 38.2-2212(A). Both policies provide the following types of coverage: personal injury protection, medical payments, uninsured motorist coverage, and underinsured motorist coverage. The coverage limits remain the same, providing a \$1,000,000 limit of liability for any single accident, \$5,000 for medical payments, and personal injury protection, uninsured motorist coverage, and underinsured motorist coverage in an amount specific

to each state. These state-specific coverages, including the coverage for Virginia, remain the same between the December 2006 policy and the October 2007 policy. As no rejection of increased limits was submitted in association with either policy, the underinsured motorist coverage minimums applicable in this Commonwealth were not altered. Furthermore, there is no language in the policies as submitted to the Court that indicates an intent to alter the previously-selected limits.

The December 2007 policy, in effect at the time of the accident, was also a renewal policy. The policy was issued by ACE, went into effect immediately following the termination of the previous policy term, and provided types and limits of coverage at least equal to that provided by the October 2007 policy.

Therefore, according to the plain language of the statute, the circuit court did not err in holding that both the October 2007 policy as well as the December 2007 policy were renewal policies.

B. Policy Limits

We will also affirm the circuit court's determination that the underinsured motorist coverage available to Watlington under Terminix' policy was limited to \$25,000.

When reviewing the language of a contract provision, "[e]ach phrase and clause of an insurance contract should be considered and construed together and seemingly conflicting provisions harmonized when that can be reasonably done so as to effectuate the intention of the parties as expressed therein." PBM Nutritionals, LLC v. Lexington Ins. Co., 283 Va. 624, 633, 724 S.E.2d 707, 713 (2012) (quoting Seals v. Erie Ins. Exch., 277 Va. 558, 562, 674 S.E.2d 860, 862 (2009)).

Terminix validly rejected increased underinsured motorist coverage as a part of its December 2005 policy with ACE. Terminix selected underinsured motorist "coverage limits in the amount of \$25,000/50,000/20,000," the lowest limits permissible under Virginia law. Code § 46.2-472. This selection applies to the December 2007 policy because the December 2007 policy is a renewal policy, renewing the October 2007 policy, which renewed the December 2006 policy, which in turn renewed the December 2005 policy. ACE did not issue a new policy between the December 2005 policy and the December 2007 policy. USAA Casualty Ins. Co. v. Alexander, 248 Va. 185, 188, 445 S.E.2d 145, 147 (1994) ("[O]nce the insured has effectively reduced the level of coverage by notifying the insurer, in accordance with Code § 38.2-2202(B), the waiver and reduction of coverage remains in effect during subsequent renewals of the policy.").

The language in the December 2007 policy does not alter the underinsured motorist coverage limits selected in the December 2005 policy. A list of "proposed" uninsured and underinsured coverage limits submitted by ACE in relation to the December 2007 policy proposes underinsured motorist coverage in the amount of "\$25,000 per person \$50,000 per accident Bodily Injury \$20,000 per accident Property Damage or \$70,000 Combined Single Unit." Watlington argues that this language represents two options for coverage, and that Terminix selected \$70,000. This argument, however, is contrary to the plain meaning of "propose." "Propose" is defined as "to form or put forward a plan or intention." Webster's Third New International Dictionary 944-45 (3rd ed. 1985). Thus, "proposed" coverage is a plan for coverage, not an assortment of different coverage options.

Reading the proposal language together as a single, united plan produces a result consistent with the plain language of the December 2007 policy. The proposal lists the specific, individual limits followed by the highest combined limit of \$70,000 that the proposed coverage would provide for any single accident, \$50,000 liability for personal injury if more than one person is injured and \$20,000 for property damage. The same language is present in the list of uninsured and underinsured motorist coverage by state in the completed December 2007 policy.

\$70,000 appears again in Endorsement 6 of the December 2007 policy, an amendment to the limit of underinsured motorist coverage provided by the policy. The individual limitations, \$25,000/50,000/20,000, are not listed. However, as aforementioned, we must construe each clause of the contract together to produce a harmonized result. Reading Endorsement 6 together with the list of insured and underinsured motorist coverages by state indicates that \$70,000 in underinsured motorist coverage references Terminix' selection of the lowest permissible limits of underinsured motorist coverage, the combination of which is a combined limit for any single accident.

Watlington's only claim was for his own personal injury. Thus, he is limited by the policy to \$25,000 underinsured motorist coverage for his injuries. The circuit court did not err by ruling that Terminix' policy with ACE provided for the minimum level of underinsured motorist coverage permitted in the Commonwealth and that the December 2007 policy entitled Watlington to \$25,000 for his injuries.

III. Conclusion

Finding no reversible error, the judgment is affirmed. The appellant shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamling

Clerk