ATTORNEYS FOR APPELLANT

John C. Trimble
Michael R. Giordano
Lewis Wagner, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Eric A. Frey
Frey Law Firm
Terre Haute, Indiana

John P. Nichols
Anderson & Nichols
Terre Haute, Indiana

ATTORNEY FOR *AMICUS CURIAE* INDIANA TRIAL LAWYERS ASSOCIATION

Scott A. Faultless
Craig, Kelley & Faultless LLC
Indianapolis, Indiana

IN THE

COURT OF APPEALS OF INDIANA

Erie Insurance Exchange,
Appellant-Defendant,

v.

Olivia Craighead,
Appellee-Plaintiff.

July 12, 2022

Court of Appeals Case No. 21A-CT-2871

Appeal from the Vigo Superior Court

The Hon. Lakshmi Reddy, Judge

Trial Court Cause No. 84D02-2005-CT-2454

Bradford, Chief Judge

Case Summary

[1] In 2018, Morgan Miller crashed his car, severely injuring his passenger, Olivia Craighead. At the time, Craighead was covered by an auto policy issued by Erie Insurance Exchange, which provided her with $100,000.00 in uninsured/underinsured motorist ("UIM") coverage and $5000.00 in medical payments coverage ("MPC"). Miller's insurer, United Farm Family Mutual Insurance Company, tendered its liability limit of $50,000.00 and a $5000.00 MPC payment, while Erie made a $5000.00 MPC payment pursuant to Craighead's own coverage. While the parties agree that Erie's UIM obligation to Craighead was properly reduced to $50,000.00 by United Farm's liability payment of $50,000.00, Erie contended that the MPC payments from it and United Farm further reduced its UIM obligation to $40,000.00.

[2] In June of 2020, Craighead sued Erie for breach of contract and for bad-faith denial of her claim for $10,000.00 in UIM coverage. Erie moved for summary judgment, arguing that a provision in its policy allowed it to reduce its UIM obligation by the amount of the MPC payments ("the Setoff Clause") and that there existed no genuine issue of material fact regarding bad faith. The trial court granted partial summary judgment in favor of Craighead on the breach-of-contract claim, concluding that the Setoff Clause was unenforceable as written. The trial court also concluded that there existed a genuine issue of material fact on the bad-faith claim. Erie contends that the trial court erred in granting partial summary judgment in favor of Craighead and in denying its motion for

partial summary judgment on the bad-faith claim. Because we conclude that the trial court properly entered partial summary judgment in favor of Craighead and determined that the bad-faith claim was not appropriate for summary judgment, we affirm.

Facts and Procedural History

[3] In May of 2018, Craighead was covered by an automobile insurance policy ("the Policy") with Erie that provided UIM coverage with a limit of $100,000.00 per person and MPC with a limit of $5000.00. The Policy provided that Erie had no duty to provide UIM coverage until all available forms of liability insurance had "been exhausted by payment of their limits." Appellant's App. Vol. II p. 52. The Policy also contained the Setoff Clause, which provided, in part, as follows:

> **Reductions**
>
> The limits of protection available under this Uninsured/Underinsured Motorists Coverage will be reduced by:
>
> 1. the amounts paid by or for any person who or organization which may be liable for bodily injury or property damage to "anyone we protect."
>
> [….]
>
> 4. the amount of any payments to the "insured" and/or injured party made pursuant to any auto medical payments provision in this or any other policy applicable to the loss.

App. Vol. II p. 52.

[4] On May 22, 2018, Craighead was riding in a car with Morgan Miller, who drove into a guardrail, seriously injuring Craighead. The parties do not dispute

that Miller's negligence caused the crash. Miller was covered by an automobile insurance policy with United Farm that provided liability coverage with a limit of $50,000.00 per person and MPC with a limit of $5000.00. On June 25, 2019, United Farm offered its liability limit of $50,000.00 in exchange for Craighead agreeing to release further claims against Miller and his parents. By this time, both Erie and United Farm had also paid their $5000.00 limits of MPC to Craighead. Erie authorized Craighead to accept United Farm's offer of its liability coverage limits. On August 1, 2019, Craighead indicated to Erie her belief that Erie would be acting in bad faith if it did not offer its full remaining UIM limit of $50,000.00. The Erie representative responded that the available limit of UIM coverage was $40,000.00 because its UIM obligation had been reduced by the $10,000.00 in MPC payments made by Erie and United Farm. Around this time, Erie indicated to Craighead that it would pay her the undisputed amount of $40,000.00 in UIM coverage only if she signed a release as to the disputed $10,000.00.

[5] On June 15, 2020, Craighead filed an amended complaint against Erie for breach of contract and bad faith. Craighead alleged that the Setoff Clause was unenforceable and that Erie had acted in bad faith by requiring Craighead to sign a release before issuing payment for $40,000.00 in UIM coverage. On June 22, 2020, Erie issued a check for $40,000.00 despite the conflict over whether the Setoff Clause applied.

[6] On March 17, 2021, Erie moved for summary judgment on the bases that enforcing the Setoff Clause did not violate Indiana law and Craighead's bad-

faith claim failed because Erie did not act maliciously in applying the unambiguous terms of the Setoff Clause. Craighead responded to Erie's motion for summary judgment and moved for partial summary judgment, arguing that a genuine issue of material fact existed as to her bad-faith claim and moved for partial summary judgment on the basis that the Setoff Clause violated Indiana Code section 27-7-5-2 ("Section 27-7-5-2").

[7] On November 23, 2021, the trial court denied Erie's motion for summary judgment and granted Craighead's motion for partial summary judgment on the contract claim with an order that provides, in part, as follows:

> As to liability, Erie Insurance should proceed in paying to Plaintiff the remaining $10,000.00 within thirty (30) days of this Order. This $10,000.00 represents the [MPC] payments that Erie Insurance believed it was entitled to apply as a set off which this Court has determined is not permissible.
>
> IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT Defendant, Erie Insurance Exchange's, Motion for Summary Judgment on the issue of set off is hereby DENIED.
>
> IT IS FURTHER ORDERED AJDUDGED AND DECREED THAT Plaintiff, Olivia Craighead's, Motion for Summary Judgment on the issue of set off is hereby GRANTED.
>
> IT IS FURTHER ORDERED ADJUDGED AND DECREED THAT Defendant, Erie Insurance Exchange's, Motion for Summary Judgment on the issue of breach of duty to deal in good faith is hereby DENIED.

Appellant's App. Vol. II pp. 20–21.

Discussion and Decision

[8] Erie appeals from the trial court's denial of its summary judgment motion and entry of partial summary judgment in favor of Craighead.

> A party is entitled to summary judgment upon demonstrating the absence of any genuine issue of fact as to a determinative issue unless the non-moving party comes forward with contrary evidence showing an issue of fact for trial. An appellate court reviewing a trial court summary judgment ruling likewise construes all facts and reasonable inferences in favor of the non-moving party and determines whether the moving party has shown from the designated evidentiary matter that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law.

Dugan v. Mittal Steel USA Inc., 929 N.E.2d 184, 185–86 (Ind. 2010) (citations omitted).

[9] When, as here, the material facts are undisputed and the case involves statutory or insurance contract interpretation, the case is suited for summary judgment, and our standard of review is *de novo*. *See Meridian Mut. Ins. Co. v. Majestic Block & Supply, Inc.*, 1 N.E.3d 173, 178 (Ind. Ct. App. 2013) (noting that contract interpretation is a question of law), and *Ramirez v. Wilson*, 901 N.E.2d 1, 2 (Ind. Ct. App. 2009) (noting that statutory interpretation is a question of law), *trans. denied*. Although it is true that the appellant must prove that the trial court's grant or denial of summary judgment was erroneous, that "burden is largely symbolic and nominal" as we "will not hesitate to reverse a trial court's ruling if it has misconstrued or misapplied the law[.]" *Beta Steel v. Rust*, 830 N.E.2d 62, 68 (Ind. Ct. App. 2005). Consequently, while the trial court's findings of fact and conclusions of law might provide insight into its decision, "they are not

binding on this court." *Ackles v. Hartford Underwriters Ins. Corp.*, 699 N.E.2d 740, 742 (Ind. Ct. App. 1998), *trans. denied*.

I. Whether the Setoff Clause is Enforceable

[10] Disposition of this issue requires us to examine various provisions of Indiana Code chapter 27-7-5, which is entitled "Uninsured Motorist Coverage and Underinsured Motorist Coverage[.]"

> Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of the statute as a whole. We avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results. As we interpret the statute, we are mindful of both what it does say and what it does not say. To the extent there is an ambiguity, we determine and give effect to the intent of the legislature as best it can be ascertained. We do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.

ESPN, Inc. v. Univ. of Notre Dame Police Dep't, 62 N.E.3d 1192, 1195–96 (Ind. 2016) (citations, quotations marks, and brackets omitted).

A. Whether UIM Coverage Above the Statutory Minimum May Be Set Off by MPC Payments

[11] Section 27-7-5-2(a) provides, in part, as follows:

> The uninsured and underinsured motorist coverages must be provided by insurers […] in limits at least equal to the limits of liability specified in the bodily injury liability provisions of an insured's policy, unless such coverages have been rejected in writing by the insured. However, underinsured motorist coverage must be made available in limits of not less than fifty thousand dollars ($50,000). [….] Insurers may not sell or provide

> underinsured motorist coverage in an amount less than fifty thousand dollars ($50,000).

[12] As we recently observed,

> [S]ection 27-7-5-2 is a mandatory coverage, full-recovery, remedial statute. *United Nat. Ins. Co. v. DePrizio*, 705 N.E.2d 455, 460 (Ind. 1999). Underinsured motorist coverage is designed to provide individuals with indemnification in the event negligent motorists are not adequately insured for damages that result from motor vehicle accidents, and it has generally been integrated into a given state's uninsured motorist legislation by modifying the definition of an "uninsured motorist." *Id*. at 459. Together with uninsured motorist coverage, the coverages serve to promote the recovery of damages for innocent victims of auto accidents with uninsured or underinsured motorists. *Id*. Given the remedial nature of these objectives, uninsured/underinsured motorist legislation is to be liberally construed. *Id*. Like all statutes relating to insurance or insurance policies, uninsured/underinsured motorist statutes are to be read in a light most favorable to the insured. *Id*.
>
> The statute is directed at insurers operating within Indiana and its provisions are to be "considered a part of every automobile liability policy the same as if written therein." *Id*. (citing *Ind. Ins. Co. v. Noble*, 148 Ind. App. 297, 265 N.E.2d 419, 425 (1970)). Moreover, "[e]ven where a given policy fails to provide such uninsured motorist coverage, the insured is entitled to its benefits unless expressly waived in the manner provided by law." *Id*. Accordingly, insurers can only avoid the coverage by obtaining a written rejection from their insured. *Liberty Mut. Fire Ins. Co. v. Beatty*, 870 N.E.2d 546, 549 (Ind. Ct. App. 2007).

Lee v. Liberty Mut. Fire Ins. Co., 121 N.E.3d 639, 644–45 (Ind. Ct. App. 2019), *trans. denied*.

[13] Also of interest in this section of the opinion is Indiana Code section 27-7-5-5(c) (entitled "Limitations on coverage"; hereafter, "Section 27-7-5-5"), which provides, in part, as follows:

> (c) The maximum amount payable for bodily injury under uninsured or underinsured motorist coverage is[…]:
>
> (1) the difference between:
>
> (A) the amount paid in damages to the insured by or for any person or organization who may be liable for the insured's bodily injury; and
>
> (B) the per person limit of uninsured or underinsured motorist coverage provided in the insured's policy[.]

Ind. Code § 27-7-5-5(c)[1].

[14] The parties agree that the Erie's $100,000.00 UIM obligation was properly reduced by the $50,000.00 liability payment from United Farm and that Craighead never executed a written rejection of UIM coverage. The only dispute is whether applying the Setoff Clause to further reduce the obligation by the $10,000.00 in MPC payments violates the provisions of Indiana's UIM statutes. Erie argues that only the first $50,000.00 of UIM cannot be set off, pointing to the language in Section 27-7-5-2(a) requiring that an insurer offer at least $50,000.00 in UIM coverage. Craighead and *amicus curiae* the Indiana Trial Lawyers Association counter that, while Section 27-7-5-2 requires that at least $50,000.00 be offered, it is the whole of the amount that is actually

[1] Section 27-7-5-5(c)(2) provides another calculation for "maximum amount payable" that is not relevant in this case. In cases where subsection -5(c)(2)'s calculation is relevant, the maximum amount payable is the lesser of the amount from subsection -5(c)(1) and the amount from subsection -5(c)(2).

purchased that cannot be set off, which, in this case, was $100,000.00. In other words, the statutory minimum of $50,000.00 is the floor but not the ceiling, which is the amount of UIM purchased by the insured.

[15] We are persuaded by Craighead's argument on this point. Section 27-7-5-5(c) clearly provides that the starting point for calculating "[t]he maximum amount payable for bodily injury under uninsured or underinsured motorist coverage is […] the *per person limit of uninsured or underinsured motorist coverage provided in the insured's policy*[,]" *not* the statutory minimum of UIM coverage.[2] (Emphasis added). Moreover, "[a]s we interpret [a] statute, we are mindful of both what it does say and what it does not say[,]" *ESPN*, 62 N.E.3d at 1196, and, as it happens, Section 27-7-5-2(a) says nothing about reductions to UIM obligations. The $50,000.00 amount mentioned in Section 27-7-5-2(a) is simply the minimum UIM coverage that must be offered and nothing more.

[16] Erie cites *Justice v. American Family Mutual Insurance Co.*, 4 N.E.3d 1171 (Ind. 2014), and *Anderson v. Indiana Insurance Co.*, 8 N.E.3d 258, 260 (Ind. Ct. App. 2014), as standing for the proposition that only the first $50,000.00 of UIM coverage cannot be set off. *Justice*, however, makes no such explicit declaration, and a close reading of the Court's analysis does not support such an interpretation. The most reasonable reading of *Justice* is that the Court determined that Justice was entitled to $50,000.00 in UIM coverage because that was the amount he purchased, not because it was the minimum required by

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[2] Section 27-7-5-5(c) is more fully discussed in the next subsection of this opinion.

Section 27-7-5-2(a). *Justice*, 4 N.E.3d at 1177–80. Significantly, the Court stated the following as informing its decision: "If [the tortfeasor] had carried the required amount of liability insurance, Justice would have received $50,000, and the purpose of our uninsured/underinsured motorist statute is to put him in that position." *Id*. at 1179. Keeping in mind that the goal is to guarantee that insureds are put in the position they would be in if the tortfeasor had purchased sufficient liability coverage, allowing coverage over the statutory minimum of $50,000.00 to be offset by non-liability payments would clearly be inconsistent with that goal. It is also worth noting that *Justice* does not address Section 27-7-5-5(c), which, as mentioned, starts with the amount of UIM coverage purchased, not the statutory minimum. To the extent that *Justice* can be interpreted as allowing setoffs against UIM coverage over $50,000.00 by non-liability payments, we reject that interpretation as inconsistent with the spirit of the UIM statutes and the plain language of Sections 27-7-5-2(a) and -5(c).

[17] We acknowledge that, in *Anderson*, another panel of this court concluded that the insured, despite having $100,000.00 in UIM coverage, was entitled to only $50,000.00 in UIM coverage that could not be set off by a worker's compensation payment. 8 N.E.3d at 268. *Anderson*, however, also fails to mention Section 27-7-5-5(c). Whatever else they may stand for, *Justice* and *Anderson* do not account for Section 27-7-5-5(c), whose provisions are highly relevant to this analysis and therefore do not help Erie. Whatever the reasons for Section 27-7-5-5(c)'s absence from the discussions in *Justice* and *Anderson*

(presumably because the parties did not put it before the court), the statute is squarely before us in *this* case.

B. Whether MPC Payments Qualify as Amounts Paid in Damages Pursuant to Section 27-7-5-5(c)(1)(A)

[18] Having determined that Section 27-7-5-2(a) does not help Erie's case, we turn to the already-mentioned Section 27-7-5-5(c). The parties agree that the $50,000.00 in liability coverage Craighead received from United Farm reduced Erie's UIM obligation from $100,000.00 to $50,000.00. In other words, it is undisputed that the liability payment qualifies as an "amount paid in damages to the insured by or for any person or organization who may be liable for the insured's bodily injury[.]" This leaves us with the MPC payments. While the Setoff Clause specifically provides for the setoff of "auto medical payments provision in this or any other policy applicable to the loss[,]" Appellant's App. Vol. II p. 52, we nonetheless conclude that neither United Farm's nor Erie's MPC payments to Craighead can be set off.

[19] The parties do not dispute that the MPC payments to Craighead were triggered by virtue of her being a passenger in Miller's vehicle when she was injured, *not* because he was negligent in operating it. This is the key point, because Section 27-7-5-5(c)(1)(A) requires that a payment, even from a party that may be liable for the insured's bodily injury, must be made "in damages" for it to reduce a UIM obligation. As Craighead notes,

> [MPC] "is a no fault type coverage where the obligation to pay and/or reimburse expenses is not dependent upon fault." *Medical Payments Coverage: A Policy Inside a Policy, 28 No. 14 Ins. Litig. Rep.*

> *501 (2006)*. Medical payments "[c]overage is also available for non-family members while occupying the insured vehicle." *Id*.

Appellee's Br. p. 22.[3] In other words, with MPC coverage being no-fault coverage, the MPC payments to Craighead were not triggered because of Miller's wrongful act, and, as the Indiana Supreme Court has declared, "the term 'damages' means the sum recoverable *as amends for the wrong*." *City of N. Vernon v. Voegler*, 103 Ind. 314, 319, 2 N.E. 821, 824 (1885) (emphasis added). Additionally, while Black's Law Dictionary broadly defines "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury[,]" *Damages*, BLACK'S LAW DICTIONARY (11th ed. 2019), it elaborates on that definition, making it clear that the term "damages" specifically refers to compensation for a wrong:

> "A sum of money adjudged to be paid by one person to another as compensation for a loss sustained by the latter in consequence of an injury committed by the former or the violation of some right." Martin L. Newell, *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* 491 (1892).
>
> "Damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong." Frank Gahan, *The Law of Damages* 1 (1936).

Id.[4]

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[3] The provisions of United Farm's policy with Miller do not appear in the record, but neither party contends that United Farm's MPC of Miller deviates from "standard" MPC.

[4] *See also Smith v. United States*, 356 P.3d 1249, 1256 (Utah 2015) ("As *Black's Law Dictionary* stated in 1891 and repeated in 1910, '[d]amages [are] amends exacted from a wrong-doer for a tort[.]'"); *Goodyear v. Discala*,

[20] An MPC payment, even by the liable party, does not qualify as an "amount paid in damages" pursuant to Section 27-7-5-5(c)(1)(A) because it is not made as amends for a wrong. Consequently, to the extent that the Setoff Clause allows Erie's UIM obligations to be reduced by "any auto medical payments provision in this or any other policy applicable to the loss[,]" Appellant's App. Vol. II p. 52, it violates the provisions of Section 27-7-5-5(c) and cannot be enforced as written. *See Justice*, 4 N.E.3d at 1177 ("So long as the policy language comports with our state statutes, it will control, but if it is inconsistent with those statutes, it is unenforceable.") (citations omitted).

[21] This interpretation of Section 27-7-5-5(c) adheres to the well-settled principles that the UIM statutes must be read in a light most favorable to the insured and that statutes be construed so as to avoid rendering any language meaningless or superfluous. *See, e.g.*, *United Nat. Ins. Co.*, 705 N.E.2d at 460 ("[L]ike all statutes relating to insurance or insurance policies, uninsured/underinsured motorist statutes are to be read in a light most favorable to the insured.") *and ESPN*, 62 N.E.3d at 1199 ("Moreover, when engaging in statutory interpretation, we 'avoid an interpretation that renders any part of the statute meaningless or superfluous.'"). The underlying purpose of UIM coverage is to fully indemnify victims of negligence in cases where the tortfeasor's liability coverage is

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849 A.2d 791, 800 (Conn. 2004) ("[T]he term 'damages' means the sum recoverable as amends for the wrong."); *Oklahoma City v. Hopcus*, 50 P.2d 216, 218 (Okla. 1935) ("[T]he term 'damages' means the sum recoverable as amends for the wrong.").

inadequate, and allowing the setoff of MPC payments (which are unrelated to liability) would not serve that purpose. Moreover, allowing the setoff of MPC payments would render the General Assembly's inclusion of the "damages" qualifier in Section 27-7-5-5(c) superfluous. The phrase's inclusion, however, indicates a legislative intent to treat payments compensating the injured for a wrong differently than non-liability payments.

[22] Both parties cite to several cases interpreting the provisions of Section 27-7-5-5. None of them, however, discuss the distinction between amounts paid "in damages" and no-fault payments. As such, those cases are of little use to us here. We would be remiss if we failed to acknowledge that the parties in this case also do not discuss this dispositive distinction. However, "when construing [a] statute[,] this Court cannot ignore its plain meaning." *Ind. Ass'n of Priv. Detectives, Inc. v. Turczynski*, 402 N.E.2d 1003, 1005 (Ind. Ct. App. 1980); *see also Payne v. State*, 396 N.E.2d 439, 441 (Ind. Ct. App. 1979). ("This court must construe and apply a statute according to its plain meaning."). In the end, we would be, perhaps, even more remiss if we failed to acknowledge the inclusion of the "damages" requirement present in Section 27-7-5-5(c)(1)(A). We conclude that the trial court properly entered summary judgment in favor of Craighead on the contract claim.

II. The Bad-Faith Claim

[23] Erie contends that the trial court erred in declining to enter summary judgment in its favor on Craighead's allegation that it denied her $10,000.00 in UIM coverage in bad faith. Erie claims that it reasonably relied on the Setoff Clause

and did not exercise an unfair advantage over Craighead when it declined to offered to release $40,000.00 in UIM coverage in exchange for a release of any claim on the remaining $10,000.00.

> An insurer has a duty to deal with its insured in good faith, and there is a cause of action for the tortious breach of that duty. The insurer's obligation of good faith and fair dealing includes an obligation to refrain from causing an unfounded delay in making payment; making an unfounded refusal to pay policy proceeds; exercising an unfair advantage to pressure an insured into settlement of his claim; and deceiving the insured. Therefore, an insured who believes an insurance claim has been wrongly denied may have two distinct legal theories available, one for breach of the insurance contract and one in tort for the breach of the duty of good faith and fair dealing. These two theories have separate, although often overlapping, elements, defenses, and recoveries.
>
> A good faith dispute about the amount of a valid claim or whether the insured has a valid claim at all will not supply the grounds for recovery in tort for the breach of the obligation to exercise good faith. This is so even if it is ultimately determined that the insured breached its contract. That insurance companies may, in good faith, dispute claims, has long been the rule in Indiana. Additionally, the lack of diligent investigation alone is not sufficient to support an award. On the other hand, for example, an insurer which denies liability knowing that there is no rational, principled basis for doing so has breached its duty. Thus, poor judgment and negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be present. A finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will. As such, a bad faith determination inherently includes an element of culpability. Finally, fact issues may preclude summary judgment in favor of an insurer on an insured's bad faith claim.

Hoosier Ins. Co. v. Audiology Found. of Am., 745 N.E.2d 300, 310 (Ind. Ct. App. 2001) (citations omitted), *trans. denied*.

[24] Erie and Craighead make many arguments to support their respective arguments on this issue, and they all have one thing in common: they highlight parts of the record that factually support their positions. Where the parties differ is that Erie contends the designated evidence supports the entry of summary judgment in its favor on Craighead's bad-faith claim, while Craighead contends that the designated evidence generates at least one genuine issue of material fact. We agree with Craighead on this point.

[25] While we have already determined that Erie wrongfully denied Craighead $10,000.00 in UIM to which she was entitled, Erie designated evidence that included the Policy (with its Setoff Clause) and documentation that the UIM endorsement had been submitted to, and approved by, the Indiana Department of Insurance. Moreover, in its memorandum in support of its summary judgment motion, Erie cited cases in which the court had upheld the reduction of UIM obligations by MPC payments. *See, e.g.*, *Standard Mut. Ins. Co. v. Pleasants*, 627 N.E.2d 1327, 1329 (Ind. Ct. App. 1994), *trans. denied*; *Wineinger v. Ellis*, 855 N.E.2d 614, 622 (Ind. Ct. App. 2006), *trans. denied*. Although we, as explained in the previous section, ultimately find these and similar cases of little use, we think the above to be a sufficient basis on which a finder of fact could determine that Erie denied Craighead's claim to $10,000.00 of UIM coverage in good faith.

[26] Craighead, however, designated evidence in its response to Erie's motion for summary judgment that, for around a year, Erie refused to pay the undisputed portion of UIM without Craighead's release of any claim on the disputed portion. Indeed, the record contains designated evidence that Erie paid Craighead the undisputed $40,000.00 only after Craighead brought suit with a request for punitive damages. Craighead describes Erie's actions as "consciously forcing Craighead to give up her legal right to the $10,000 she believed was owed under the policy or forcing her to file suit and not receive the undisputed portion of her UIM claim" and characterizes the condition on payment as "unconscionable[.]" Appellee's Br. p. 29. At the very least, we conclude that this designated evidence raises a genuine issue of material fact regarding whether Erie acted in good faith by conditioning the payment of undisputed funds on Craighead releasing all claims on the disputed funds. Because we conclude that a genuine issue of material fact exists as to whether Erie acted in good faith at all times and in all respects, we affirm the trial court's denial of Erie's motion for partial summary judgment on this point.

[27] We affirm the judgment of the trial court.

Najam, J., and Bailey, J., concur.