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IN THE COURT OF APPEALS OF INDIANA

Donald Kearschner,
Appellant-Plaintiff

v.

American Family Mutual Insurance Company, S.I.,
Appellee-Defendant.

July 13, 2022

Court of Appeals Case No. 21A-CT-1888

Appeal from the Owen Circuit Court

The Honorable Kelsey Hanlon, Judge

Trial Court Cause No.
60C02-1908-CT-345

Pyle, Judge.

Statement of the Case

[1] Donald Kearschner ("Kearschner") appeals the trial court's order granting summary judgment to Kearschner's insurer, American Family Mutual Insurance Company's ("AFI"), which had argued that it was not required to provide underinsured motorist ("UIM") coverage to Kearschner. Kearschner argues that the trial court erred by granting AFI's summary judgment motion. Specifically, Kearschner contends that the UIM policy provision, which provided that any worker's compensation payment would reduce Kearschner's UIM liability limit, was unenforceable because it contravened the UIM state statute. Concluding that the language of the UIM policy provision unambiguously provided that any worker's compensation payment would reduce Kearschner's UIM liability limit but that application of such provision is contrary to the UIM statute, we reverse the trial court's summary judgment order and remand for further proceedings.

[2] We reverse and remand.[1]

Issue

> Whether the trial court erred by granting AFI's summary judgment motion.

Facts

[3] The underlying facts involved in this appeal are undisputed. On August 29, 2017, Kearschner, while in the course and scope of his employment with Wal-Mart ("Employer"), was involved in an automobile collision and injured his shoulder. This collision was caused by John Hall ("Tortfeasor"), who had an automobile insurance policy limit of $50,000.

[4] At the time of the collision, Kearschner had an automobile insurance policy with AFI ("the Policy"), which included bodily injury liability limits of $100,000 per person/$300,000 per occurrence and an underinsured motorist ("UIM") endorsement with UIM limits of $100,000 per person/$300,000 per accident. The UIM coverage applied to "bodily injury only[,]" which the Policy defined as "bodily injury or sickness, disease or death of any person." (Appellee's App. Vol. 2 at 3, 6). The UIM endorsement of the Policy provided, in relevant part, as follows:

> We will pay compensatory damages for **bodily injury** which an **insured person** is legally entitled to recover from the owner or

[1] We held an oral argument in this appeal via Zoom on June 7, 2022. We thank all counsel for their able advocacy.

> operator of an **underinsured motor vehicle**. The **bodily injury** must be sustained by an **insured person** and must be caused by accident and arise out of the use of the **underinsured motor vehicle**.

(Appellee's App. Vol. 2 at 14) (emphasis in original). The UIM endorsement defined an "underinsured motor vehicle" as a "**motor vehicle** which is insured by a liability bond or policy at the time of the accident which provides **bodily injury** liability limits less than the limits of liability of this Underinsured Motorists coverage." (Appellee's App. Vol. 2 at 14) (emphasis in original).

[5] Additionally, the Policy's UIM endorsement contained the following provision relating to UIM limits of liability:

> **LIMITS OF LIABILITY**
>
> The limits of liability of this coverage as shown in the declarations apply, subject to the following:
>
> 1. The limit for each person is the maximum for all damages sustained by all person as the result of **bodily injury** to one person in any one accident.
>
> 2. Subject to the limit for each person, the limit for each accident is the maximum for **bodily injury** sustained by two or more persons in any one accident.
>
> **We** will pay no more than these maximums no matter how many vehicles are described in the declarations, **insured persons**, claims, claimants or policies or vehicles are involved in the accident.
>
> The *limits of liability* of this coverage will be *reduced by*:

1. A payment made or amount payable by or on behalf of any person or organization which may be legally liable, or under any collectible auto liability insurance, for loss caused by an accident with an **underinsured motor vehicle**.

2. A payment under the Liability coverage of this policy.

3. *A payment made or amount payable because of **bodily injury** under any workers' compensation or disability benefits law or any similar law*.

(Appellee's App. Vol. 2 at 14) (bold in original; italics added). The Policy provision at issue in this appeal is this provision relating to reducing Kearschner's UIM liability limits ("the UIM Limit Reduction Provision"), and more specifically, the italicized provision in subsection 3 specifically relating to a reduction in Kearschner's UIM liability limit for a payment under worker's compensation benefits.

[6] Furthermore, the "General Provisions" section of the Policy contained a provision relating to a potential conflict of the Policy with state statutes. Specifically, the provision ("Statute Conforming Provision") provided:

10. **Terms of Policy Conform to Statute**. Terms of this policy which are in conflict with the statutes of the state in which this policy is used are changed to conform to those statutes.

(Appellee's App. Vol. 2 at 14).

[7] Following the collision, Kearschner filed a worker's compensation claim with Employer. In August 2019, Kearschner and Employer submitted a compromise

agreement and petition for approval ("worker's comp agreement") to the Worker's Compensation Board. This worker's comp agreement indicated that Kearschner had been assigned a five percent impairment rating of the whole person. The agreement also explained that Employer had paid Kearschner a total sum of $69,260.15, which included payments for the following: $25,294.29 for the disability payment; $34,715.86 for medical expenses; and $9,250.00 to settle future medical claims. The Worker's Compensation Board approved the parties' worker's comp agreement. Kearschner later paid Employer $7,175.63 to settle Employer's worker's compensation lien. Thus, the net amount that Kearschner received from Employer was $62,084.52.

[8] Also in August 2019, Kearschner filed a complaint, and then an amended complaint, against Tortfeasor. Additionally, Kearschner named AFI as an additional defendant and sought to recover UIM benefits from AFI. Specifically, Kearschner sought judgment against AFI to recover his UIM coverage benefits "in excess of any insurance coverage of [Tortfeasor]." (App. Vol. 2 at 60).

[9] In May 2020, Kearschner and Tortfeasor entered into a stipulation of dismissal for the claims against Tortfeasor after Tortfeasor's insurer had paid Kearschner Tortfeasor's liability policy limits of $50,000. The trial court then dismissed the claims against Tortfeasor with prejudice.

[10] In April 2021, AFI filed a motion for summary judgment. AFI argued that, pursuant to the unambiguous UIM Limit Reduction Provision in the Policy, it

had "no duty to provide underinsured motorist coverage for [Kearschner's] August 29, 2017 collision given that [he] [had] recovered the statutory minimum coverage [as set out in INDIANA CODE § 27-7-5-2(a)] of $50,000[2] from the tortfeasor and a net $62,084.52 from workers' compensation[.]" (App. Vol. 2 at 11). AFI asserted that because Kearschner's "Policy provide[d] for $100,000 underinsured motorist coverage per person, there [wa]s no underinsured motorist coverage available for [Kearschner] after the setoff for what the tortfeasor [had] paid and what workers' compensation [had] paid." (App. Vol. 2 at 16). In support of its argument, AFI relied on *Justice v. Am. Fam. Mut. Ins. Co.*, 4 N.E.3d 1171 (Ind. 2014) and the mathematical formula contained in that opinion to argue that Kearschner's UIM liability limit had been reduced to zero.

[11] In Kearschner's response to AFI's summary judgment motion, he did not challenge the meaning of the UIM Limit Reduction Provision in the Policy. Instead, Kearschner pointed to the Statute Conforming Provision in the Policy and argued that the UIM Limit Reduction Provision regarding a setoff for workers' compensation payments was "void" and "unenforceable" because it was contrary to statutory law. (App. Vol. 2 at 65). Specifically, Kearschner

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[2] INDIANA CODE § 27-7-5-2(a) provides, in part, that "underinsured motorist coverage must be made available in limits of not less than fifty thousand dollars ($50,000)."

referred to INDIANA CODE § 27-7-5-2 ("the UIM Statute")[3] and asserted that this statute "provides important protections for individuals who purchase underinsured coverage." (App. Vol. 2 at 65). Kearschner asserted that the UIM Statute contained two minimum UIM coverages: (1) $50,000; or (2) an amount at least equal to the bodily injury liability coverage, which in Kearschner's policy was $100,000, unless rejected in writing. Kearschner argued that because AFI had sold him an automobile policy with bodily injury liability limits of $100,000 per person/$300,000 per occurrence, then AFI was required by the UIM statute to provide him with an equal amount of UIM coverage, which would be a UIM per person limit of $100,000. Thus, Kearschner argued the UIM Limit Reduction Provision, which would have reduced his UIM liability limit to zero, was "void and unenforceable because it contravene[d] the clear and unambiguous minimum statutory coverage mandate required by [the UIM Statute] that . . . underinsured limits be equal to bodily injury liability limits." (App. Vol. 2 at 71). Kearschner argued that, pursuant to the purpose and the plain language of the UIM Statute, AFI was not allowed to reduce Kearschner's $100,000 UIM policy limits by the worker's compensation payments that he had received.

[12] In AFI's summary judgment reply, it argued that the UIM Limit Reduction Provision relating to a reduction for a worker's compensation benefit was not

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[3] We note that INDIANA CODE § 27-7-5-2 also refers to underinsured motorist ("UM") coverage and that some cases may refer to the statute as the UM/UIM Statute. Nevertheless, for purposes of this appeal that involves only issues relating to UIM coverage, we will refer to the statute as the UIM Statute.

void and did not contravene INDIANA CODE § 27-7-5-2(a). AFI asserted that Kearschner had contracted to have a $100,000 UIM liability limit and that he had further contracted to have limitations that would reduce that coverage limit.

[13] Following a hearing on AFI's motion, the trial court issued an order granting summary judgment to AFI and entered the judgment as a final judgment in AFI's favor. Kearschner now appeals.

Decision

[14] Kearschner argues that the trial court erred by granting AFI's summary judgment motion. Our standard of review for summary judgment cases is well-settled. When we review a trial court's grant of a motion for summary judgment, our standard of review is the same as it is for the trial court. *Knighten v. E. Chi. Hous. Auth.,* 45 N.E.3d 788, 791 (Ind. 2015). Summary judgment is appropriate only where the moving party has shown that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). If the moving party makes such a showing, the burden shifts to the non-moving party to demonstrate the existence of a genuine issue of material fact that precludes the entry of summary judgment in the movant's favor. *Justice*, 4 N.E.3d at 1175. "Like the trial court we construe all evidence and resolve all doubts in favor of the non-moving party, so as not improperly to deny [the non-movant] his day in court." *Id.* (cleaned up).

[15] We first pause to recognize that an "underinsured motor vehicle" is defined as "an insured motor vehicle where the limits of coverage available for payment to the insured under all bodily injury liability policies covering persons liable to the insured are less than the limits for the insured's underinsured motorist coverage at the time of the accident[.]" I.C. § 27-7-5-4(b). Similarly, Kearschner's UIM endorsement in his policy with AFI defined an "underinsured motor vehicle" as a "**motor vehicle** which is insured by a liability bond or policy at the time of the accident which provides **bodily injury** liability limits less than the limits of liability of this Underinsured Motorists coverage." (Appellee's App. Vol. 2 at 14) (emphasis in original).

[16] Resolution of this summary judgment case on appeal involves the interpretation of a statute and an insurance contract. More specifically, this Court is called upon to interpret the UIM Statute and the UIM Limit Reduction Provision in the Policy between Kearschner and AFI. The interpretation of a statute and the interpretation of an insurance contract involve questions of law, which we review *de novo*, thereby making such interpretation appropriate for resolution on summary judgment. *Justice*, 4 N.E.3d at 1175.

[17] The Policy provision at issue in this appeal is the UIM Limit Reduction Provision, which provides, in relevant part, as follows:

> **LIMITS OF LIABILITY**
>
> * * * * *
>
> The *limits of liability* of this coverage will be *reduced by*:

1. A payment made or amount payable by or on behalf of any person or organization which may be legally liable, or under any collectible auto liability insurance, for loss caused by an accident with an **underinsured motor vehicle**.

2. A payment under the Liability coverage of this policy.

3. *A payment made or amount payable because of **bodily injury** under any workers' compensation or disability benefits law or any similar law*.

(Appellee's App. Vol. 2 at 14) (bold in original; italics added).

[18] These types of reduction or "[s]etoff provisions in uninsured motorist and underinsured motorist policies have generated frequent litigation[.]" *Anderson v. Ind. Ins. Co.*, 8 N.E.3d 258, 262 (Ind. Ct. App. 2014). "Insurance contracts are governed by the same rules of construction as other contracts." *Justice*, 4 N.E.3d at 1175 (cleaned up). "Although some special rules of construction of insurance contracts have been developed due to the disparity in bargaining power between insurers and insureds, if a contract is clear and unambiguous, the language therein must be given its plain meaning." *Wagner v. Yates*, 912 N.E.2d 805, 810 (Ind. 2009) (cleaned up).

[19] Kearschner does not challenge, and rightfully so, the interpretation or meaning of the UIM Limit Reduction Provision. *See Justice*, 4 N.E.3d at 1177 (interpreting an identical UIM policy language as unambiguously providing for a reduction of the insured's UIM liability limits by payment from the legally liable tortfeasor and by payment of the insured's worker's compensation

benefit). Instead, Kearschner argues that subsection 3 of the UIM Limit Reduction Provision, relating to a reduction in Kearschner's UIM liability limit for a payment of a worker's compensation benefit, is unenforceable because it is contrary to the UIM Statute.

[20] While "[i]nsurance companies are free to limit their liability," they must do so "in a manner consistent with public policy as reflected by case or statutory law." *Catanzarite v. Safeco Ins. Co. of Ind.*, 144 N.E.3d 778, 783 (Ind. Ct. App. 2020), *trans. denied*. *See also Masten v. AMCO Ins. Co.*, 953 N.E.2d 566, 569 (Ind. Ct. App. 2011), *trans. denied*. "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." *Justice*, 4 N.E.3d at 1177 (cleaned up). *See also State Farm Mut. Auto. Ins. Co. v. D'Angelo*, 875 N.E.2d 789, 798-99 (Ind. Ct. App. 2007) (explaining that language in an insurance policy that limits or diminishes the protection required by the UIM Statute is contrary to public policy and that our appellate courts are to declare an insurance contract void when it contravenes a statute), *trans. denied*.

[21] Thus, we turn our attention to the UIM Statute, INDIANA CODE § 27-7-5-2, which "governs the obligations of insurance carriers to provide UM/UIM coverage to Indiana drivers." *North v. Selective Ins. Co. of S.C.*, 155 N.E.3d 662, 664 (Ind. Ct. App. 2020), *trans. denied*. The relevant subsection of this UIM Statute at issue in this appeal is subsection (a), which provides as follows:

> (a) Except as provided in subsections (d), (f), and (h), the insurer shall make available, in each automobile liability or motor

vehicle liability policy of insurance which is delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person and for injury to or destruction of property to others arising from the ownership, maintenance, or use of a motor vehicle, or in a supplement to such a policy, the following types of coverage:

> (1) in limits for bodily injury or death and for injury to or destruction of property not less than those set forth in IC 9-25-4-5[4] under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death, and for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles for injury to or destruction of property resulting therefrom; or
>
> (2) in limits for bodily injury or death not less than those set forth in IC 9-25-4-5 under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy provisions who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

The uninsured and underinsured motorist coverages must be provided by insurers for either a single premium or for separate premiums, in limits at

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[4] INDIANA CODE § 9-25-4-5 provides that "the minimum amounts of financial responsibility" are $25,000 "for bodily injury to or the death of one (1) individual" and $50,000 "for bodily injury to or the death of two (2) or more individuals in any one (1) accident."

> *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).* At the insurer's option, the bodily injury liability provisions of the insured's policy may be required to be equal to the insured's underinsured motorist coverage. *Insurers may not sell or provide underinsured motorist coverage in an amount less than fifty thousand dollars ($50,000).* Insurers must make underinsured motorist coverage available to all existing policyholders on the date of the first renewal of existing policies that occurs on or after January 1, 1995, and on any policies newly issued or delivered on or after January 1, 1995. Uninsured motorist coverage or underinsured motorist coverage may be offered by an insurer in an amount exceeding the limits of liability specified in the bodily injury and property damage liability provisions of the insured's policy.

I.C. § 27-7-5-2(a) (emphases added).[5]

[22] The UIM Statute is a "mandatory, full-recovery, remedial statute." *Justice*, 4 N.E.3d at 1178 (cleaned up). Given the remedial nature of UIM coverage, "underinsured motorist legislation is to be liberally construed, and similar to all insurance statutes and policies, is to be read in a light most favorable to the insured." *Masten.*, 953 N.E.2d at 570. The UIM Statute "requires that insurers make underinsured motorist coverage available to those whom they insure[,]" and the statute is "considered part of every policy as if included therein." *Id.*

[5] We note that while other subsections of the UIM Statute have been amended since the time of Kearschner's August 2017 collision, the language of INDIANA CODE § 27-7-5-2(a) has remained the same.

[23] "[INDIANA CODE] § 27-7-5-2(a) requires insurers to offer coverage to policyholders that provides a minimum level of compensation if they are injured by someone with inadequate or no insurance." *Asklar v. Gilb*, 9 N.E.3d 165, 167 (Ind. 2014). "'[T]he underlying purpose of UIM coverage . . . is to give the insured the recovery he or she would have received if the underinsured motorist had maintained an *adequate* policy of liability insurance.'" *Lakes v. Grange Mut. Cas. Co.*, 964 N.E.2d 796, 801 (Ind. 2012) (quoting *Corr v. Am. Family Ins.*, 767 N.E.2d 535, 540 (Ind. 2002)) (emphasis added). *See also Justice*, 4 N.E.3d at 1178 (explaining that the purpose of UIM insurance coverage is "to promote the recovery of damages for innocent victims of auto accidents with . . . underinsured motorists") (cleaned up). The term "adequate" does not refer to an insured's UIM coverage. *Lakes*, 964 N.E.2d at 803. "Instead, 'adequate' is a relative term with reference to the amount of damage incurred by the innocent victim of the tortfeasor's negligence—that is, a tortfeasor's $50,000 policy is adequate if the damages incurred by the victim are equal to or less than $50,000, but inadequate if such damages exceed $50,000." *Id.* Thus, stated differently, UIM coverage is "designed to provide individuals indemnification in the event negligent motorists are not adequately insured for damages that result from motor vehicle accidents." *DePrizio,* 705 N.E.2d at 459.

[24] In the UIM Statute, the legislature has set forth that an insurer must provide an automobile insurance policy that contains UIM coverage in a set minimum amount. This Court has explained that the UIM Statute "sets out two minimum coverage amounts." *Lee v. Liberty Mut. Fire Ins. Co.*, 121 N.E.3d 639,

648 (Ind. Ct. App. 2019), *trans. denied*. Specifically, "[t]he first minimum applies where the insured has not rejected in writing the amount of coverage that must be 'in limits at least equal to the limits of liability specified in the bodily injury liability provisions[,]'" which would result in "the minimum coverage amount [being] the bodily injury amount." *Id.* (quoting I.C. § 27-7-5-2(a)). "The second minimum applies where the insured rejects in writing UIM coverage equal to the bodily injury coverage[,]" which results in "the minimum coverage amount is $50,000[.]" *Lee*, 121 N.E.3d at 648.

[25] Therefore, we turn to the main issue before this Court of whether the UIM Limit Reduction Provision that provides that Kearschner's UIM coverage limits will be reduced by any worker's compensation benefit payments contravenes the UIM Statute, INDIANA CODE § 27-7-5-2, where Kearschner has $100,000 of UIM coverage under his Policy with AFI. We find our Indiana Supreme Court's *Justice* opinion to be instructive.

[26] In *Justice*, our Indiana Supreme Court addressed an insured's challenge to a setoff provision in the insured's UIM coverage. The insured, Justice, had UIM coverage of $50,000 with AFI. The language of Justice's policy regarding coverage under the UIM endorsement and the limits of liability language were identical to the language in the Policy's UIM endorsement at issue on appeal. Justice received $25,000 from the tortfeasor's insurer and a net amount of $71,958.50 in worker's compensation benefits. Justice then sought to recover $25,000 from his UIM coverage with AFI. Specifically, he sought to recover the difference between his UIM policy limit of $50,000 and the $25,000 he had

received from the tortfeasor's insurer. AFI denied coverage, and Justice filed a complaint for breach of contract. AFI sought summary judgment, arguing that "Justice was not entitled to recover under the policy because the $71,958.50 he received in workers' compensation benefits operated as a 'setoff' against the $50,000 policy limit, thus reducing American Family's liability to zero." *Justice*, 4 N.E.3d at 1174. The trial court granted summary judgment to AFI.

[27] On appeal, Justice raised various arguments, including a challenge to whether the setoff for worker's compensation benefits would be applicable to his policy limit or to his damages. Based on the language of the setoff provision in Justice's policy, our supreme court concluded that the worker's compensation benefits were to be deducted from the policy limits. Specifically, our supreme court explained that, in application, the "'limits of liability of this coverage,' $50,000, w[ould] be reduced by the $25,000 payment Justice received from a 'legally liable' entity—[the tortfeasor's] insurer—and by the $71,958.50 Justice [had] received in workers' compensation and disability benefits." *Id.* at 1177. The *Justice* Court further explained that "[t]he equation works out as follows: $50,000.00 policy limit—$25,000.00 from [the tortfeasor's] insurer—$71,958.50 [in worker's compensation benefits] + -$46,958.50." *Id.* Thus, the Court concluded that the "policy limit was reduced to zero." *Id.* Accordingly, the *Justice* Court determined that the policy language unambiguously provided for a setoff against the UIM policy limits for the worker's compensation payment that Justice had received.

[28] The *Justice* Court, however, observed that the "inquiry cannot end there" because it was necessary to determine whether the policy provision comported with state statutes. *Id.* The Court then discussed INDIANA CODE § 27-7-5-2, the UIM Statute, including its purpose and some legislative amendment history. *See id.* at 1178. The Court explained that "th[e] amendment history unequivocally demonstrate[d] an intent by our legislature to give insureds the opportunity for full compensation for injuries inflicted by financially irresponsible motorists." *Id.* (cleaned up). Additionally, the *Justice* Court observed that "[s]ince [INDIANA CODE § 27-7-5-2] was enacted, insurers have tried to circumvent its minimum coverage requirement in various ways—but always unsuccessfully." *Id.*

[29] When deciding whether the worker's compensation setoff provision that reduced Justice's $50,000 UIM policy limit to zero was permitted under INDIANA CODE § 27-7-5-2, the *Justice* Court quoted and focused on only part of that statute. Specifically, the Court discussed the language of the UIM Statute that set forth the requirement that insurers were to provide an insured with a minimum UIM coverage amount of $50,000. The *Justice* Court observed that Justice had not received the full $50,000 statutory minimum from the tortfeasor's insurer and that he had received only $25,000. The *Justice* Court concluded that, in light of the statutory purpose of the UIM Statute and case precedent, Justice was "entitled to recover the remaining $25,000[,]" which was the difference between his UIM policy limit of $50,000 and the $25,000 he had received from the tortfeasor's insurer—from AFI and that any policy provision

to the contrary was "unlawful and unenforceable." *Id.* Accordingly, the *Justice* Court reversed the trial court's grant of summary judgment and remanded the case for further proceedings.

[30] Here, as in *Justice*, the application of the worker's compensation reduction in the UIM Limit Reduction Provision, which resulted in a reduction of Kearschner's UIM policy limit to zero, was contrary to the relevant part of the UIM Statute and, therefore, unenforceable. *See id.* The UIM Statute is unambiguous in its directive that an insurer must provide UIM coverage "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." *See* I.C. § 27-7-5-2(a).

[31] It is undisputed that AFI provided Kearschner with an automobile insurance policy containing bodily injury liability limits of $100,000 per person and corresponding UIM limits of $100,000 per person. It is also undisputed that this case does not involve a written rejection of that $100,000 UIM coverage. From Kearschner's $100,000 UIM coverage in his Policy, Kearschner sought the availability of the remaining $50,000, which is the difference between his UIM policy liability limits of $100,000 and the $50,000 payment received from Tortfeasor's bodily injury liability policy.

[32] The worker's compensation reduction in the UIM Limit Reduction Provision resulted in a reduction of Kearschner's UIM policy limit to zero and diminished the protection required by the UIM Statute. AFI's policy provision attempting

to reduce Kearschner's UIM policy limit to zero based on the payment of any worker's compensation benefits provided less coverage than the UIM statute required and is inconsistent with the view that the UIM Statute is a full-recovery, remedial statute. Thus, we conclude that this specific policy provision is unlawful and unenforceable and that, depending on his damages, Kearschner is entitled to the difference between his UIM policy limit of $100,000 and the $50,000 he had received from Tortfeasor's insurer. *See Justice*, 4 N.E.3d at 1177-79. Accordingly, we reverse the trial court's order granting summary judgment to AFI and remand for further proceedings.[6]

[33] Reversed and Remanded.

May, J., and Brown, J., concur.

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[6] We reject AFI's argument that the *Justice* opinion does not require reversal of the trial court's summary judgment order because "[b]oth the Indiana Supreme Court and this Court have been clear . . . that UIM policies providing for workers' compensation setoffs are permissible so long as the insured receives at least $50,000 from either the tortfeasor alone (which is what occurred here) or a combination of the tortfeasor and the UIM carrier." (AFI's Br. 15) (citing *Justice*, 4 N.E.3d at 1177; *Anderson*, 8 N.E.3d at 268). AFI cites to *Justice* for the proposition that the goal of the UIM Statute is to "put the insured in the same position he . . . would have been in had the tortfeasor been adequately insured" and for the assertion that the determination of an adequate amount is defined by the $50,000 minimum UIM limit as set forth in the UIM Statute. (AFI's Br. 23).

However, as explained above, "the underlying purpose of UIM coverage . . . is to give the insured the recovery he . . . would have received if the underinsured motorist had maintained an *adequate* policy of liability insurance[,]" and [t]he term "adequate" does not refer to an insured's UIM coverage. *Lakes*, 964 N.E.2d at 801, 803 (emphasis added; internal quotation marks and citation omitted). Moreover, we note that the *Justice* and *Anderson* Courts addressed only the $50,000 UIM statutory minimum discussed in the UIM Statute. Neither case addressed the UIM statutory minimum in INDIANA CODE § 27-7-5-2(a) that requires an insurer to provide UIM coverage in limits at least equal to the limits of liability specified in the bodily injury liability provisions of an insured's policy, unless rejected in writing by the insured. Here, that provision is applicable to this case on appeal.