2016 IL App (3d) 140558-U

Order filed August 10, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

WAYNE BILLINGSLEY,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Peoria County, Illinois,
	)	
v.	)	Appeal No. 3-14-0558
	)	Circuit No. 12-MR-32
	)	
MILLERS CLASSIFIED INSURANCE COMPANY,	)	Honorable
	)	Scott Shipplett,
	)	Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Insurer's unilateral elimination of underinsured motorist coverage from insured's automobile insurance policy constituted a material change in the policy, thereby requiring insurer either to provide uninsured and underinsured motorist coverage at the policy's bodily liability coverage limit or to obtain from insured a new, written rejection of such coverage; and (2) because insurer failed to satisfy this requirement, the trial court correctly reformed insured's policy to provide for underinsured coverage up to the policy's bodily liability coverage limit.

¶ 2 Plaintiff Wayne Billingsley (Billingsley) was insured under an automobile insurance policy issued by defendant Millers Classified Insurance Co. (Millers) when he was struck by an underinsured motorist while walking across a street in Galesburg, Illinois. Billingsley filed a declaratory judgment action in the circuit court of Knox County to determine the policy's limits on underinsured motorist (UIM) coverage. Billingsley argued that Millers violated section 143a-2 of the Illinois Insurance Code (Code) (215 ILCS 5/143a-2) (West 2010)) by eliminating underinsured motorists coverage from his policy without providing him the opportunity to request or reject UIM coverage equal to the limits of his coverage for bodily injury. Accordingly, Billingsley asked the court to reform the policy by setting the UIM coverage limit at $300,000, the policy's bodily injury coverage limit. The parties filed cross motions for summary judgment. The trial court granted Billingsley's motion, denied Millers' motion, and reformed the policy to provide for UIM coverage up to $300,000.

¶ 3 This appeal followed.

¶ 4 FACTS

¶ 5 On or about March 30, 1984, Billingsley signed an application for automobile insurance with Millers. At the time, Billingsley selected the following coverage limits: $300,000 combined single limit (CSL) for bodily injury coverage; $5,000 for medical payments coverage; $30,000 CSL for uninsured motorist (UM) coverage; and $30,000 CSL for UIM coverage. At the time Billingsley submitted his insurance application in 1984, $15,000/$30,000 was the statutory minimum coverage for UM/UIM coverage in Illinois.

¶ 6 Billingsley's policy was automatically renewed every six months from the date of his application in 1984. Contemporaneously with each renewal, Millers sent Billingsley a declarations page outlining his current coverage limits. The April 1988 declarations page shows

an increase in the UM and UIM coverage limits to $40,000 for each as a CSL. This increase was implemented by Millers due to a change in the statutory minimum for UM and UIM coverage in Illinois. Beginning with the April 1999 renewal, the declarations pages provided by Millers for each renewal period no longer listed any UIM coverage.

¶ 7 In late 1986 or early 1987, Millers sent Billingsley a "Customer Informational Bulletin" stating that Billingsley could purchase $100,000 of UM/UIM coverage for $17 per six month period and recommending that he carry UM and UIM limits "equal to [his] bodily liability limits." Beginning in the summer of 1999, the information that Millers sent to its insureds upon each renewal included an explanation that the insured had the right to increase his UM/UIM coverage limits up to his bodily injury coverage limits under the policy.

¶ 8 On July 8, 2011, Billingsley was injured when he was struck by a car while walking across North Kellogg Street in Galesburg. The driver of the at-fault vehicle had $100,000 liability insurance limits, but Billingsley's damages exceeded that amount. When Billingsley filed a claim for UIM coverage with Millers, Millers informed him that there was no UIM coverage due to the coverage limits of both insurance companies.

¶ 9 On March 13, 2012, Billingsley filed a declaratory judgment action. In his complaint, Billingsley alleged that Miller had violated section 143a-2 of the Code by eliminating UIM coverage from his policy without providing him the opportunity to request or reject UIM motorist coverage equal to the limits of his coverage for bodily injury. Accordingly, Billingsley asked the court to declare that, on the date of the accident, Billingsley's coverage under the policy "included underinsured motorist coverage and uninsured motorist coverage in the amount of $300,000, equal to [the policy's] bodily injury limits."

¶ 10 During his discovery deposition, Billingsley testified that, after he set the initial coverage limits in his 1984 application, he did not recall ever contacting Millers between 1984 and 2011 to inquire about or request an increase in any of his coverage limits. Throughout that 27-year period, Billingsley always maintained the minimum CSL offered by Millers for UM and UIM coverage. Billingsley testified that, at the time of his injury in July 2011, he believed he had UM coverage in the amount of $40,000 for a CSL. He stated that he "did not consider" the amount of UIM coverage he had at that time. However, at another point in his deposition, Billingsley testified that, at the time of the 2011 accident, he believed that he had "$30,000 worth of [UIM]" coverage, and that was the "last amount to [his] knowledge."

¶ 11 The parties filed cross-motions for summary judgment. After reviewing the parties' briefs and hearing oral arguments, the trial court issued an opinion letter to the parties' attorneys on June 5, 2014, announcing its decision in Billingsley's favor. In its opinion letter, the trial court acknowledged that the UM and UIM coverage limits included in the original policy were "proper at the time they were written" even though they were substantially lower than the policy's bodily injury coverage limit. Although section 143a of the Code now requires that "UM/UIM [coverage limits] at less than [bodily injury coverage limits] must be specifically rejected by the insured," the trial court noted that section 143a-2(2) "has a 'grandfather' provision that states that policies issued before 1991 [like the policy at issue here] may continue in full force and effect at any lesser amount of UM/UIM coverage that was previously agreed to by the parties." However, relying upon *Lee v. John Deere Insurance Co.*, 208 Ill. 2d 38 (2003), and *Nicholson v. State Farm Automobile Insurance*, 409 Ill. App. 3d 282 (2010), the trial court ruled that "where there is a material change to a policy, the 'grandfather' provisions offer no safe

harbor," and UM/UIM coverage must be provided at the policy's limits for bodily injury unless "specifically waived in writing" by the insured.

¶ 12 Applying these principles to the facts before it, the trial court found that Millers' increase of the minimum UM and UIM coverage limits from $30,000 to $40,000 to comport with a legislative directive in 1988 "was not a material change" that would trigger the written waiver requirement under section 143a-2. However, the court found that Millers' "cancellation" of Billingsley's minimum UIM policy in 1998 or 1999, which was done "unilaterally and without notice to Mr. Billingsley," "was a material change in the policy" which "require[d] a new, explicit rejection of UM/UIM [coverage] at anything other than the [bodily injury coverage] limits." Millers never obtained such an explicit waiver from Billingsley. Accordingly, the court reformed the policy to include UM and UIM coverage in the amount of $300,000 (the policy's bodily injury coverage limit).

¶ 13 The trial court noted that a UIM coverage limit of $300,000 "would not ever have been the parties' agreement or understanding, and would be a windfall in coverage to Mr. Billingsley." Nevertheless, the trial court set the UIM level at $300,000 because it believed that "[t]his would comport with the legislative directive that tends to set the UIM at the [bodily injury] level unless specifically waived in writing."

¶ 14 On June 20, 2014, the trial court issued a written order granting Billingsley's motion for summary judgment "for the reasons set forth" in the court's June 5, 2014 opinion letter. This appeal followed.

¶ 15 ANALYSIS

¶ 16 Summary judgment is appropriate where the pleadings, depositions, admissions and affidavits, viewed in the light most favorable to the nonmovant, show that no genuine issue of

material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005(c) (West 2008); *Alshwaiyat v. American Service Insurance Co.*, 2013 IL App (1st) 123222, ¶ 19. Where the parties file cross-motions for summary judgment, as here, they concede there are no genuine issues of material fact and invite the court to decide the questions presented as a matter of law. *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 19; *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 19. "The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court which are appropriate subjects for disposition by way of summary judgment." (Internal quotation marks omitted.) *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 19. Similarly, questions of statutory construction and the satisfaction of statutory requirements are also questions of law properly decided on a motion for summary judgment. *Id.*; *Pajic v. Old Republic Insurance Co.*, 394 Ill. App. 3d 1040, 1043 (2009). We review *de novo* both the circuit court's statutory interpretations and its entry of summary judgment. *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 19; *Illinois Insurance Guaranty Fund v. Virginia Surety Co.*, 2012 IL App (1st) 113758, ¶ 15.

¶ 17 This case involves Illinois' statutory requirements governing UM and UIM coverage limits in automobile liability insurance policies. The requirements relevant to this case are contained in section 143a-2 of the Code, which has been amended substantially several times over the past few decades. A brief survey of the relevant amendments to this statute will be helpful in understanding the issues presented in this case.

¶ 18 At the time the insurance policy at issue in this case was first issued in 1984, the precursor to what is now section 143a-2 provided that no automobile liability insurance policy could be "renewed or delivered or issued for delivery" in Illinois unless UM coverage was "offered" "in an amount up to the insured's bodily injury liability limits." Il. Rev. Stat 1983, ch.

73, ¶ 755a-2(1) (West 1984). The insured was free to reject UM coverage in that amount, provided that the UM coverage in his policy was "not less than the limits as set forth in section 7-203 of the Illinois Vehicle Code" (Il. Rev. Stat. 1983, ch. 73, ¶ 755a-2(2) (West 1984)), which were $15,000 per injured or deceased person and $30,000 per occurrence (Ill. Rev. Stat. 1983, ch. 95 1/2, ¶ 7-203). The statute provided that:

> "[i]n those cases where the insured has elected to purchase limits of [UM] coverage which are less than bodily injury liability limits or rejects limits in excess of that required by law, the insurer need not offer in any renewal, reinstatement, reissuance, substitute, amended, replacement or supplementary policy, coverage in excess of that elected by the insured in connection with a policy previously issued to such insured by the same insurer unless the insured subsequently makes a written request for such coverage." Il. Rev. Stat. 1983, ch. 73, ¶ 755a-2(2) (West 1984).

¶ 19 The statute in effect at the time Billingsley's original policy was issued also required insurers to offer UIM coverage "in an amount equal to the total amount of [UM] coverage provided in the policy" where the policy's UM coverage exceeded the statutory limits set forth in Section 7-203 of the Illinois Vehicle Code. Il. Rev. Stat 1983. ch. 73, par. 755a-2(4) (West 1984).

¶ 20 In 1990, approximately four years after the policy at issue in this case was first issued, the legislature amended the statute by requiring insurers to "include[]" UM coverage equal to the policy's bodily liability limits unless such coverage is "specifically rejected by the insured." 215 ILCS 5/143a-2(1) (West 1990). The amended statute provided that the insurer "must provide applicants with a brief description of the coverage and advise them of their right to reject the

coverage in excess of the limits set forth in Section 7–203 of The Illinois Vehicle Code." *Id.* These statutory amendments applied only to policies "applied for after June 30, 1991." *Id.* However, the amended statute's requirements applied both to initial applications and to renewals occurring after that date. *Id.* (stating that no automobile liability insurance policy "shall be *renewed* or delivered or issued for delivery in this State" unless UM coverage equivalent to the liability coverage is included, "unless specifically rejected by the insured") (emphasis added).

¶ 21 Under the amended statute, an applicant could still reject additional UM coverage in excess of the limits set forth in Section 7–203 of the Illinois Vehicle Code. 215 ILCS 5/143a-2(2) (West 1990).[1] However, like the pre-1990 version of the statute, the amended statute provided that, "in those cases, including policies first issued before July 1, 1991, where the insured has elected to purchase limits of UM coverage which are less than bodily injury liability limits or to reject limits in excess of those required by law, the insurer need not provide in any renewal, reinstatement, reissuance, substitute, amended, replacement or supplementary policy, coverage in excess of that elected by the insured in connection with a policy previously issued to such insured by the same insurer unless the insured subsequently makes a written request for such coverage." *Id.* Further, the amended statute stated that "[t]he original application indicating the applicant's selection of [UM] coverage limits shall constitute sufficient evidence of the applicant's selection of [UM] coverage limits and shall be binding on all persons insured under the policy." *Id.*

[1] The amended statute stated that, after June 30, 1991, "every application for motor vehicle coverage must contain a space for indicating the rejection of additional [UM] coverage," and that "[n]o rejection of that coverage may be effective unless the applicant signs or initials the indication of rejection." *Id.*

¶ 22 Like the pre-1990 version, the amended statute also required policies to include UIM coverage equal to the amount of UM coverage if (and only if) the insured elected an UM coverage in an amount that exceeded the limits set forth in Section 7-203 of the Illinois Vehicle Code. 215 ILCS 5/143a-2(4) (West 1990). At the time of the 1990 amendments, the limits set forth in section 7-203 of the Illinois Vehicle Code were:

> "not less than $20,000 because of bodily injury to or death of any one person in any one motor vehicle accident and, subject to said limit for one person, to a limit of not less than $40,000 because of bodily injury to or death of 2 or more persons in any one motor vehicle accident, and, if the motor vehicle accident has resulted in injury to or destruction of property, to a limit of not less than $15,000 because of injury to or destruction of property of others in any one motor vehicle accident." 625 ILCS 5/7-203 (West 1990).

¶ 23 The 1990 version of the statute was in effect when Millers deleted any reference to UIM coverage from Billingsley's policy in 1999. At that time, the statutory minimums for UM coverage specified in section 7-203 of the Illinois Vehicle Code were the same that they were in 1990, *i.e.*, $20,000 for bodily injury or death to one person, $40,000 for bodily injury or death to two or more persons (capped at $20,000 for each person), and $15,000 for damage to property.

¶ 24 As our appellate court has previously recognized, the language of the 1990 amendments to section 143a-2 is “ambiguous” because “[s]ubsection (2) exempts renewals and similar subsequent policies from the rule requiring UM coverage equal to the policy’s bodily liability limit, but subsection (1) plainly states that the rule applies to policies that are being renewed.”

Nicholson, 409 Ill. App. 3d at 289.[2] In an attempt to harmonize these seemingly contradictory provisions, our appellate court construed the exemption announced in subsection 2 as applying only when two conditions are met, namely: (1) when "the insured has previously rejected equal [UM] coverage"; and (2) when "there are no substantial changes in the terms of the new policy being issued." *Id.* at 290. "[A] change in the level of coverage, with its attendant change in the premium cost, is a material change that results in a new policy rather than a mere continuation of the old policy." *Id.* at 292; see generally *Bronstein v. INI Life Insurance Co. of North America*, 207 Ill. App. 3d 910, 913 (1990) (holding that a new effective date, new premium, and new benefit level were changes sufficiently material to result in a new policy rather than a continuation of a previous policy). When such material changes occur, the insurer must treat the changed policy as a new policy, and must include UM coverage equal to liability coverage unless it obtains from the insured a signed or initialed election specifically declining such coverage. *Nicholson*, 409 Ill. App. 3d at 292-93. The insurer must do this even if the insured had previously rejected such coverage in the prior policy. *Id.*

¶ 25 In this case, the trial court held that Millers' "cancellation" of Billingsley's UIM coverage during an annual policy renewal in 1999, which was done "unilaterally and without notice to Mr. Billingsley," "was a material change in the policy" which required Millers to obtain from Billingsley a "new, explicit rejection of UM/UIM [coverage]" at the policy's bodily injury liability limits. Because Millers never obtained such an explicit rejection from Billingsley when

[2] This ambiguity was arguably resolved, at least in part, by a 2004 amendment to the statute. See *Alshwaiyat*, 2013 IL App (1st) 123222, ¶¶ 28, 52, 53. However, in this case, we must interpret and apply the statute as it existed in 1999, when Millers deleted any reference to UIM coverage from the policy's declarations page.

it "canceled" Billingsley's UIM coverage (or at any time thereafter), the court reformed the policy to include UM and UIM coverage in the amount of $300,000 (the policy's bodily injury coverage limit).

¶ 26 We find no error in the trial court' decision. When Millers unilaterally canceled Billingsley's UIM coverage, it materially changed the terms of the policy. Specifically, it eliminated coverage that had existed under the prior version of the policy. Under the 1990 amendments to section 143a-2, a change in the level of coverage is a "material" change that requires a written rejection of UM/UIM coverage at the policy's bodily injury liability limits by the insured, even if the insured had rejected such coverage prior to the change, and even if the change occurs during a "renewal" of the prior policy. See *Nicholson*, 409 Ill. App. 3d at 292-93.[3]

¶ 27 Millers argues that, because Billingsley's original policy was initially "applied for" and issued before July 1, 1991, it fell under the "grandfather" provision contained in section 143a-2(2). Thus, Millers maintains, it was not required to obtain a new rejection of UM/UIM coverage at the bodily liability limit during subsequent renewals of Billingsley's policy; rather, Millers was free to issue such renewals with the same UM and UIM limits previously chosen by Billingsley unless Billingsley requested an increase in writing. We disagree. As the court noted

[3] Although *Nicholson* specifically addressed UM coverage, *Nicholson*'s construction of section 143a's requirements applies to UIM coverage as well because, as noted, the Code requires Illinois automobile insurance policies to include UIM coverage equal to the UM coverage included in the policy where the UM coverage exceeds the statutory minimum. 215 ILCS 5/143a-2(4) (West 1990). Thus, when discussing the statutory requirements or *Nicholson*'s holding throughout this Order, we will refer to "UM/UIM coverage."

in *Nicholson*, the 1999 version of section 143a-2 (which applies here) was "ambiguous" because subsection (2) exempted "renewals" and similar subsequent policies from the rule requiring UM/UIM coverage equal to the policy's bodily liability limit, but subsection (1) "plainly state[d]" that the rule requiring such coverage "applies to policies that are being renewed." *Nicholson*, 409 Ill. App. 3d at 289. *Nicholson* harmonized these apparently contradictory provisions by holding that the exemption announced in subsection 2 applies only when the insured has previously rejected equal UM/UIM coverage and "*there are no substantial changes in the terms of the new policy being issued*." (Emphasis added.) *Id.* at 290. Accordingly, *Nicholson* held that, when the insurer made a material change to the insured's coverage in a 1999 amendment, the insurer was required to either provide UM coverage equal to the policy's liability limit or obtain a new rejection of such coverage from the insured, despite the fact that the insured's initial policy was applied for an issued in 1988. *Nicholson*, 409 Ill. App. 3d at 283-84, 292-93. Similarly, because Millers' elimination of UIM coverage in the 1999 renewal policy was a "material" change, we hold that the "grandfather" exemption in subsection 2 does not aid Millers in this case.

¶ 28 Alternatively, Millers argues that its purported "cancellation" of Billingsley's UIM coverage in 1999 was not a "material change" in the policy. Millers maintains that it did not "cancel" Billingsley's UIM coverage in the 1999 renewal policy; rather, it merely deleted mention of such coverage from the policy's declarations page. Millers claims that it did this because it had determined that the UIM coverage that Billingsley had previously elected was "worthless" and "illusory." Millers asserts that Billingsley had elected UM/UIM coverage at the statutory minimum level. Relying on our supreme court's decision in *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 249 (1985), Millers argues that UIM coverage is "worthless" and

"illusory" where the insured purchases only the minimum amount of UIM coverage because an at-fault driver who is insured would have coverage at no less than the statutory minimum amount. In that circumstance, it would be impossible to have an accident where an insured Illinois driver did not have at least sufficient insurance to avoid an underinsurance situation. Millers claims that, because it determined that the statutory-minimum UIM coverage selected by Billingsley was worthless, it did not charge Billingsley a premium for UIM coverage. Moreover, Millers argues that, because Billingsley elected the statutory minimum level of UM coverage, it was not required either to offer or to include *any* UIM coverage in the policy. See 215 ILCS 5/143a2 (West 1990); see also *DeGrand v. Motors Insurance Corp.*, 146 Ill. 2d 521 (1992) (holding that insurer on policy issued in 1986 was not required to offer UIM coverage to insureds who purchased minimum amount of UM coverage). Millers argues that "[i]t can hardly be a 'material change' to omit mention of coverage that was not required, cost the insured nothing, and added no measurable benefit to the insured."

¶ 29 We do not find these arguments persuasive. First, Millers' contention that the UIM coverage previously included in Billingsley's policy was "worthless" and "illusory" depends entirely on the premise that such coverage was at the statutory minimum level. That is not the case. At the time Millers deleted Billingsley's UIM coverage in 1999, the statutory minimum for UM/UIM coverage was $20,000 for bodily injury or death to one person, $40,000 for bodily injury or death to two or more persons (capped at $20,000 for each person), and $15,000 for damage to property caused in one accident. 625 ILCS 5/7-203 (West 1998). Billingsley's policy, by contrast, included a $40,000 "combined single limit" for UIM coverage. A "combined single limit" states a single dollar limit that applies to any combination of bodily injury and property damage liability claims. Unlike Billingsley's policy, the statutory provision lists three separate

monetary limits that apply to each accident: a per person limit, a per occurrence limit for all injured persons, and per occurrence limit for all property damage resulting from the accident. 625 ILCS 5/7-203 (West 1998). This difference between Billingsley's policy and the statute is significant because it would allow Billingsley to recover substantially more than the statutory limit for UIM coverage under certain circumstances. For example, if Billingsley were injured by an uninsured or underinsured driver, he could collect up to $40,000 for his injuries under the policy, provided that he was the only person injured under the policy and that he did not assert any claims for property damage caused by the accident. Under the statutory limit for bodily injury to one person, he could have recovered only half that amount ($20,000) for his own personal injuries. Accordingly, the UIM coverage included in Billingsley's policy before 1999 was neither "worthless" nor "illusory."

¶ 30 *Glazewski* does not suggest otherwise. In *Glazewski*, the plaintiff insureds alleged that their automobile insurers had defrauded them by selling them "worthless" UIM coverage in an amount equal to the minimum liability coverage limit in Illinois. *Glazewski*, 108 Ill. 2d at 249. The insureds argued that, "[b]ecause the minimum limits for underinsured-motorist coverage would not exceed the minimum insurance carried by an Illinois resident," they could never collect on the UIM coverage included in their policies following an accident in Illinois with an Illinois resident. *Id.* Our supreme court held that the trial court erred by granting the insurers' motion to dismiss the plaintiffs' complaint. *Id.* at 250. However, because the court was ruling on a motion to dismiss, it was required to assume the truth of the plaintiffs' allegation that the UIM coverage at issue was "worthless." See *id. ("[a]ssuming for purposes of a motion to dismiss that plaintiffs' allegations that the [UIM] coverage has no value are true,* we find that the insurance company defendants have made a false representation as to the value of the

coverage by issuing it without disclosing that it had no value.") (emphasis added.) The supreme court did *not* determine that UIM coverage at the statutory minimum is, in fact, worthless. In any event, even if the supreme court had made that determination, it would not support Millers' argument in this case because, as noted, the UIM coverage previously included in Billingsley's policy exceeded the statutory minimum.

¶ 31 Millers argues that both the trial court and the Illinois Department of Insurance (IDI) have found that the UIM coverage that Millers provided to Billingsley ($40,000 as a CSL) was the statutory minimum coverage. We acknowledge that the trial court appears to have assumed that $40,000 CSL was equivalent to the statutory minimum. For the reasons set forth above, we disagree. We hold that the trial court's finding on this issue was against the manifest weight of the evidence.

¶ 32 We reject Millers' assertion that the IDI has determined that Billingsley's UIM coverage was at the statutory minimum. Millers' sole support for this assertion is a letter that the IDI sent Millers in June 2001 in response to a submission Millers had previously made to the IDI. In that letter, the IDI informed Millers that the IDI has "never allowed a premium charge for [UIM] coverage at the minimum [statutory] limit" and that Millers should not charge such premiums because it "should not have had any claims for [UIM] coverage at the $40,000 limit as such coverage does not exist." However, it is not clear precisely what type of claims for "coverage at the $40,000 limit" the IDI's letter was addressing. The IDI could have been addressing claims for personal injuries to more than one person, which would have been capped at $40,000 under the statute, rather than claims for a single person's injuries, which would have been capped at $20,000 under the statute and at $40,000 under Billingsley's policy. Thus, the June 2001 letter does not explicitly address the question presented here, *i.e.*, whether a $40,000 combined single

limit on UIM coverage is equivalent to the statutory limit.[4] In any event, even if the IDI had answered that question in the affirmative, the IDI's determination would not be binding on this court.

¶ 33 Millers also argues that nothing changed when it deleted all reference to Billingsley's UIM coverage in 1999 because Millers had a "corporate policy" to pay for UIM claims in the "rare situations" when such coverage had value, *i.e.*, when an insured files a claim against a driver who is insured in another State with lower minimum liability limits. This argument fails for two reasons. First, an alleged "corporate policy" to pay certain UIM claims is not the same as an enforceable contractual right to UIM coverage. Thus, Millers cannot reasonably claim that nothing was lost or materially changed when it eliminated UIM coverage from Billingsley's policy. In addition, contrary to Millers' argument, the UIM coverage previously included in

[4] Millers' appendix does not include a copy of its initial June 2001 submission to the IDI, which might have clarified the meaning of the IDI's response letter. During oral argument, Millers' counsel stated that he did not believe that Millers' June 2001 submission to the IDI was included in the record on appeal. Millers' appellate brief does not include a table of contents to the record with page references, as required by Illinois Supreme Court Rule 342(a) (Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005)). Thus, if Millers' June 2001 submission to the IDI were included in the record, we would have no practicable way to locate it. We advise Millers' counsel that our supreme court's rules are not advisory suggestions, but mandatory rules that must be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. Although we have the discretion to dismiss Millers' appeal for its violation of Rule 342(a) (*id.*), we have elected to address the merits of the appeal because the violation has not precluded meaningful review of the trial court's decision in this case.

Billingsley's policy could have substantial value even for claims against Illinois resident tortfeasors. (As noted above, Billingsley could collect up to twice as much under the policy for bodily injury to himself as a CSL as he could under the statutory minimum.) Millers does not claim that it had a corporate policy to pay any such claims. Thus, Billingsley suffered a real and potentially substantial loss in coverage when Millers eliminated UIM coverage from the policy in 1999.

¶ 34 Millers contends that *Nicholson* is distinguishable because the insurer in *Nicholson* materially changed the insureds' policy at the insureds' request by increasing the policy's bodily liability and UM coverage limits in exchange for an increased premium. In the case at bar, there were no such increases in bodily liability coverage or in any other coverages. Nor did Millers increase Billingsley's premium. In fact, Millers never even charged a premium for the UIM coverage it had previously included in Billingsley's policy. Millers argues that, because Billingsley's bodily liability coverage did not change, *Nicholson* is inapposite, and Millers was not required to obtain from Billingsley a new, written rejection of UM/UIM coverage at the policy's bodily injury liability limits.

¶ 35 We disagree. As noted above, Millers materially changed Billingsley's policy in 1999 by eliminating UIM coverage that had been included in the previous policy. *Nicholson* suggests that material changes in coverage levels trigger the statutory requirement that Millers either provide UM/UIM coverage in the amount of bodily liability coverage or obtain a new, written rejection of such coverage. *Nicholson*, 409 Ill. App. 3d at 292. The fact that Millers did not charge for the UIM coverage it had previously provided Billingsley (based on the erroneous assumption that such coverage was equivalent to the statutory minimum and was therefore "worthless") is of no consequence. Like the insurer in *Nicholson*, Millers changed Billingsley's

insurance coverage in a material respect. Although *Nicholson* involved a material change in a different type of coverage (bodily liability coverage instead of UIM coverage), the basic principle articulated in *Nicholson* is equally applicable here.

¶ 36 We note that *Alshwaiyat*, 2013 IL App (1st) 123222, does not contradict our holding. In *Alshwaiyat*, an insurer raised the insured's bodily liability limits by way of an endorsement which was part of the insured's original policy. *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 8. The insurer later renewed the amended policy without making additional changes. *Id.* ¶¶ 9, 39-40, 50. The question presented was whether section 143a-2 required the insurer to provide UIM coverage in an amount matching the policy's liability limits or to obtain a new rejection of such coverage from the insured when renewing the original policy. Our appellate court answered that question in the negative. *Alshwaiyat*, 2013 IL App (1st) 123222, ¶¶ 35-55. However, *Alshwaiyat* is distinguishable. As an initial matter, in *Alshwaiyat*, our appellate court construed and applied section 143a-2 as it existed in 2008, whereas in the instant case, as in *Nicholson*, we construe and apply the statute as it existed prior to the 2004 amendments. As the *Nicholson* court noted, prior to the 2004 amendments, the statute was ambiguous because subsection (2) exempted "renewals" from the rule requiring UM coverage equal to the policy's bodily injury limit, but subsection (1) "plainly state[d] that the rule appl[ied] to policies that are being renewed." *Nicholson*, 409 Ill. App. 3d at 289. *Nicholson* reasonably resolved that ambiguity by holding that the exemption announced in subsection 2 applies only when the insured has previously rejected equal UM coverage and when "there are no substantial changes in the terms of the new policy being issued." *Id.* at 290. In this case, Millers' elimination of Billingsley's preexisting UIM coverage in the 1999 renewal constituted a "substantial change" in the policy, precluding the application of the exemption announced in subsection 2. Moreover, in *Alshwaiyat*, "there

were no substantial changes in the terms of the new policy being issued" after the renewal because the renewal policy "merely incorporated the increased liability limits that had already been added to the original policy by the endorsement." (Internal quotation marks omitted.) *Alshwaiyat*, 2013 IL App (1st) 123222, ¶ 50.

¶ 37 Finally, Millers argues that reforming Billingsley's policy to provide UIM coverage in the amount of his policy's bodily injury limit would contravene Billingsley's expressed intent to purchase only the statutory minimum amount of UM/UIM coverage. In late 1986 or early 1987, Millers sent Billingsley a "Customer Informational Bulletin" stating that Billingsley could purchase $100,000 of UM/UIM coverage for $17 per six month period and recommending that he carry UM and UIM limits "equal to [his] bodily liability limits." Moreover, beginning in the summer of 1999, the information that Millers sent to its insureds every six months upon each policy renewal included an explanation that the insured had a right to increase his UM/UIM limits up to the bodily injury limits in his policy. Nevertheless, throughout the 27 years prior to his 2011 accident, Billingsley always maintained the minimum CSL offered by Millers for UM and UIM coverage, and he did not recall ever contacting Millers to inquire about or request an increase in any of his coverage limits. Moreover, Billingsley testified that, at the time of the accident in 2011, he thought that he had "$30,000 worth" of UIM coverage.

¶ 38 We acknowledge that this evidence can be read as suggesting that Billingsley did not intend to purchase more than $30,000 of UIM coverage when he renewed his policy in 1999, or at any other time. However, that does not relieve Millers of its statutory obligation either to provide UIM coverage at the policy's bodily injury limit or to obtain a new written rejection of such coverage whenever it makes a material change to an insured's policy. 215 ILCS 5/143a-2(1), (2) (West 1990); *Nicholson*, 409 Ill. App. 3d at 292-93. Millers failed to discharge this

statutory obligation when it materially changed Billingsley's policy by unilaterally deleting all UIM coverage during the 1999 renewal. Accordingly, the trial court was correct to reform Billingsley's policy to provide UIM coverage at his bodily liability limit (see *Nicholson*, 409 Ill. App. 2d at 292), regardless of Billingsley's alleged prior intent.

¶ 39 In sum, Billingsley's policy contained UIM coverage that exceeded the statutory minimum before Millers unilaterally eliminated such coverage in 1999. Millers' elimination of that UIM coverage constituted a material change in Billingsley's policy, which required Millers to obtain from Billingsley a new, written rejection of UM/UIM coverage at the policy's bodily injury liability limits. See 215 ILCS 5/143a-2(1), (2) (West 1990); *Nicholson*, 409 Ill. App. 3d at 292-93. Because Millers failed to satisfy this requirement, the trial court correctly granted Billingsley's motion for summary judgment, denied Millers' motion for summary judgment, and reformed Billingsley's policy to provide for UIM coverage up to $300,000.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 42 Affirmed.