

IN THE SUPREME COURT OF OHIO

Jack R. Advent, Executor of the Estate of,  
Valijean D. Advent, Deceased,

Appellant,

vs.

Allstate Insurance Company, et al.,

Appellees.

On Appeal from the Franklin  
County Court of Appeals, Tenth  
Appellate District

**06-2271**

Court of Appeals  
Case No: 06AP-103

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT JACK R. ADVENT, EXEC.

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**John M. Gonzales (0038664) (Counsel of Record)**

John M. Gonzales, LLC

140 Commerce Park Dr.

Westerville, OH 43082

614.882.3443

614.882.7117 Fax

jgonzales@gonzales-lawfirm.com

*Counsel for Appellant Jack R. Advent, Exec.*

**Monica L. Waller (0070941) (Counsel of Record)**

Lane, Alton & Horst, LLC

175 S. Third St., Suite 700

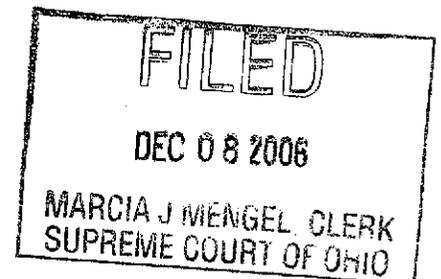
Columbus, OH 43215

614.233.4744

614.228.0146 Fax

mwaller@lah4law.com

*Counsel for Appellee Allstate Insurance Co.*



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**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST**

The viability of the guaranteed two-year policy period for all automobile insurance policies sold in this State is of public and great general interest. In *Wolfe v. Wolfe* (2000) 88 Ohio St.3d 246, this Court announced that every automobile liability insurance policy issued in Ohio must have, at a minimum, a guaranteed two-year policy period during which the policy cannot be altered except by agreement of the parties and in accordance with statutes governing cancellation and non-renewal of automobile insurance. The Court was construing former R.C. 3937.31(A), which provided that “cancellation” included refusal to renew a policy with at least the coverages, included insureds, and **policy limits** provided at the end of the next preceding policy period. In this case the Court of Appeals’ decision has completely subverted the two-year guarantee and has allowed Allstate to alter the Advent’s policy to lower their limits of uninsured/underinsured motorist (“UM/UIM”) coverage during the guarantee period. The Appellate Court’s rationale was that the amendment to R.C. 3937.31, specifically R.C. 3937.31(E) (as amended by SB No. 267), allowed insurance companies to incorporate legislative changes into their policies mid-guarantee, even if such changes are expressly prohibited by R.C. 3937.31(A).

As this Court has recognized, the purpose of the legislature enacting R.C. 3937.31 was to ensure that consumers of automobile liability insurance are able to maintain the level of coverage and policy limits that they had originally contracted for. See *Wolfe, supra*. The Appellate Court’s decision renders this case one of public and great general interest as the public has an interest in reversing an appellate decision that is contrary to Supreme Court precedent and that essentially does away with the two-year guarantee period expressly provided for by the state legislature. If the appellate decision stands, that protection is no longer available.

As it stands, the Appellate Court's ruling herein abrogates this Court's decision in *Wolfe*, ignores the express language of the very statute it portends to apply and disregards the legislative policy of providing protection to consumers. Unfortunately, in reliance upon this case, similar results have been reached in other cases, most notably *St. Clair v. Allstate* (slip copy) 2006 WL 3373069 (Ohio App. 1 Dist.). In *St. Clair*, the Appellate Court determined that the language used by the legislature in amending R.C. 3937.31 indicated an intent to supersede the *Wolfe* holding. *St. Clair* at paragraph 12.

Fortunately, there is at least one court of appeals decision that applied the plain language of R.C. 3937.31(A) to bar any alteration of a policy mid-guarantee period. In *Storer v. Sharp*,<sup>1</sup> the Eighth District Court of Appeals reached the opposite result of the Tenth District herein, finding that an insurer could not incorporate changes in the law into its policy mid-guarantee renewal. Accordingly, there is a public or great general interest in the reconciliation of the various appellate court decisions that have addressed this issue.

More importantly however, these cases cannot be considered as isolated incidents or only applying to policies written within a limited window of time. To the contrary, R.C. 3937.31 applies to every policy written today. The interpretation of R.C. 3937.31 in this case has the potential to affect many policies now and in the future. For example, without the two-year guarantee provided in R.C. 3937.31(A) a consumer that purchases UM/UIM coverage today could have that coverage unilaterally taken away at any six-month renewal, as under current law there is no requirement for an express rejection or waiver of coverage. In fact, because there is no longer an obligation to offer UM/UIM coverage, even coverage that was offered and placed can be unilaterally cancelled by the insurance company at any subsequent renewal period. Therefore, any analysis of R.C. 3937.31 that validates a unilateral reduction in policy limits

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<sup>1</sup> *Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577.

during the two-year guarantee period, or worse, eliminates the guarantee altogether, would also form the basis for the reduction of limits in current policies.

In addition, it would be naive to conclude that there will be no future changes to the statutes that mandate automobile liability coverage and provide for UM/UIM coverage. Doing away with the statutory two-year guarantee period potentially forms the basis for allowing insurance companies to incorporate mid-guarantee period changes in other coverages, elimination of named insureds and the procedures to cancel policies, all of which *Wolfe* prohibited. Clearly this court should be the determining body when such far-reaching consequences of a statutory interpretation are likely.

Finally, the public also has an interest in maintaining what little statutory protection there is left against uninsured drivers. Under the law in existence at the inception of the two-year guarantee period in this case, there was a clear public policy consideration recognized by the legislature and this Court that UM/UIM coverage “ \* \* \* is designed to protect persons injured in automobile accidents from losses which, because of the tortfeasor’s lack of liability coverage, would otherwise go uncompensated.” *Abate v. Pioneer Mut. Cas. Co.* (1970), 22 Ohio St.2d 161, 165. Mandating that every policy of automobile insurance have limits of UM/UIM coverage equal to the limits of liability coverage, unless expressly rejected, furthered that policy.

Accordingly, the proper application of R.C. 3937.31 to this case, as well as to current and future insurance policies, is of public and great general interest. This Court interpreted former R.C. 3937.31 to require a simple and workable formula governing the incorporation of changes to the law into policies of insurance. The legislature’s amendment to the statute, in light of a number of appellate decisions, necessitates the Court revisiting its prior decision, reaffirming *Wolfe* and again crafting a simple and workable formula that upholds the purposes behind R.C. 3937.31.

#### STATEMENT OF THE CASE

This case arises from the tragic death of Valijeau D. Advent who died in a car accident in Illinois on September 29, 2002 as the result of the negligence of Scott D. Rude. Mrs. Advent is survived by her husband, Jack Advent, and her children, Laura and Ryan. In 2004, Appellant, as the Executor of his wife's estate, settled all claims against Mr. Rude and State Farm, Mr. Rude's automobile liability insurer, for the payment of the \$100,000 applicable liability insurance limits while preserving the right to pursue any potential claims against the Advents' uninsured/underinsured ("UM/UIM") insurer, Defendant/Appellee Allstate Insurance Company ("Appellee Allstate"). Appellee Allstate consented to the Estate's settlement with Mr. Rude and State Farm.

On September 23, 2004, Appellant filed a wrongful death and declaratory judgment action in the Franklin County Court of Common Pleas against Appellee Allstate and Defendant Dennis O. Norton ("Defendant Norton"). Appellant's action against Appellee Allstate seeks to recover \$200,000 in UM/UIM coverage under the Advents' Allstate policy (\$300,000 UM/UIM coverage as a matter of law minus the \$100,000 paid by State Farm). Alternatively, Appellant claimed Defendant Norton was negligent and as the result of his negligence, Appellant's Allstate policy only had \$50,000 in UM/UIM coverage. Appellant claimed Defendant Norton, therefore, was liable to the estate for \$200,000.

On June 28, 2005, Appellee Allstate filed a motion for summary judgment. On August 8, 2005, Appellant filed his memorandum contra and his cross-motion for partial summary judgment with respect to Allstate. Appellee Allstate filed its reply on August 12, 2005. On November 15, 2005, the trial court issued its "Decision Granting Allstate's Motion for Summary Judgment, filed on June 28, 2005 and Decision Denying Plaintiff's Motion for Partial Summary Judgment, filed August 8, 2005." An "Entry Granting Defendant Allstate Insurance Company's Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment"

incorporating the trial court's November 15, 2005 decision was filed on January 4, 2006. On January 30, 2006, Appellant timely filed his notice of appeal.

On October 24, 2006, The Franklin County Court of Appeals, Tenth Appellate District issued an "Opinion" affirming the trial court's decision and a "Judgment Entry" journalizing the "Opinion." On November 3, 2006, Appellant timely filed "Appellant's Motion to Certify to the Ohio Supreme Court a Conflict with a Judgment of another Court of Appeals" with the appellate court, which is currently pending. Appellant now timely appeals to the Supreme Court of Ohio.

### **STATEMENT OF THE FACTS**

In 1989, Defendant Norton sold Mr. and Mrs. Advent an Allstate insurance policy that provided BI limits of \$300,000 each person, \$500,000 each occurrence. Mr. and Mrs. Advent were the named insureds on the Allstate policy, policy number 092005461. However, according to the declarations page, the policy only had UM/UIM limits of \$50,000 each person, \$100,000 each occurrence. Neither Appellee Allstate nor Defendant Norton can produce the original application, any written offer or any written reduction of UM/UIM coverage from 1989 through the September 28, 2002 automobile collision and death of Mrs. Advent the following day. Neither Appellee Allstate nor Defendant Norton can produce any notes or other documents setting forth that UM/UIM coverage was described to the Advents, that UM/UIM coverage premiums were provided to the Advents, including premiums for \$300,000/\$500,000 limits, or an express statement of the limits. Appellant and his wife did not sign any UM/UIM reduction form at the time they initially purchased the policy and did not have any discussions with Defendant Norton, anyone from his agency, or anyone from Appellee Allstate about UM/UIM coverage, including the appropriate limits of such coverage; the purpose of the coverage; a description of the coverage and the premium cost of the coverage.

From 1989 up through the time of Mrs. Advent's death on September 29, 2002, neither Mr. or Mrs. Advent ever signed a UM/UIM reduction form and they never had any discussions

with Defendant Norton, anyone from his agency, or anyone from Appellee Allstate about UM/UIM coverage, including the appropriate limits of such coverage; the purpose of the coverage; a description of the coverage and the premium cost of the coverage, despite the fact Mr. Advent had some contact with Defendant Norton's office over the years regarding routine policy changes.

The Allstate policy was initially issued on March 12, 1989 and renewed every two (2) years until the time of Mrs. Advent's death. The applicable two (2) year policy period for this cause of action, given Mrs. Advent's death on September 29, 2002, is March 12, 2001 through March 12, 2003. Appellee Allstate has admitted the total amount of compensatory damages the estate has sustained as a result of Mrs. Advent's wrongful death are in excess of \$300,000.

#### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**Proposition Of Law No. I:** R.C. §3937.18, effective September 21, 2000 (S.B. 267), is the controlling version of the UM/UIM statute for this case pursuant to *Ross*<sup>2</sup> and *Wolfe*.<sup>3</sup>

R.C. §3937.18 as amended by S.B. 267, effective September 21, 2000 is the controlling UM/UIM statute and, therefore, it is clear Appellant is entitled to summary judgment that the Allstate policy provides UM/UIM limits of \$300,000 each person, \$500,000 each occurrence as a matter of law.

Pursuant to *Ross, supra*, the statutory law in effect at the time the parties enter into a new contract for automobile insurance controls the rights and duties of the contracting parties. The question becomes when did the Advents and Allstate enter into a new contract prior to the September 29, 2002 date of loss? R.C. §3937.31 and *Wolfe, supra*, provide the answer.

In *Wolfe, supra*, the Ohio Supreme Court held, pursuant to R.C. §3937.31(A), every automobile liability insurance policy issued in this state must have, at a minimum, a guaranteed two-year policy period during which the policy cannot be altered except by agreement of the

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<sup>2</sup> *Ross v. Farmers Insurance Group of Companies* (1998), 82 Ohio St.3d 281.

<sup>3</sup> *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246.

parties and in accordance with R.C. §§3937.30 to 3937.39.<sup>4</sup> The commencement of each policy period mandated by R.C. §3937.31(A) brings into existence a new contract of automobile insurance, whether the policy is categorized as a new policy of insurance or a renewal of an existing policy and the guarantee period is not limited solely to the first two years following the initial institution of coverage. *Wolfe, supra*, at the syllabus. Consequently, a court determines the effective date of each new automobile policy by ascertaining the original issuance date of the policy and counting successive two-year policy periods from that date. *Wolfe, supra*.

In the case at bar, therefore, the applicable two-year policy period is March 12, 2001 through March 12, 2003, meaning the applicable version of R.C. §3937.18 is the version amended by S.B. 267, effective September 21, 2000.

Because the S.B. 267 version of R.C. §3937.18 is controlling for this case and Appellee Allstate did not comply with it, nor *Abate*,<sup>5</sup> *Gyori*,<sup>6</sup> *Linko*,<sup>7</sup> *Kemper*<sup>8</sup> and *Hollon*,<sup>9</sup> Appellant is entitled to UM/UIM limits of \$300,000 each person, \$500,000 each occurrence as a matter of law. There is no dispute Appellee Allstate did not comply with *Abate*, *Gyori*, *Linko*, *Kemper* or *Hollon*.

**Proposition of Law No. II: The S.B. 97 amendments to R.C. §3937.18, effective October 31, 2001, have no application or bearing on the instant cause of action.**

Even Appellee Allstate acknowledges a new contract of insurance for the Advents came into effect on March 12, 2001 and remained in effect for two (2) years through March 12, 2003, meaning the S.B. 267 version of R.C. §3937.18 applies to this case. Nonetheless, Appellee Allstate argues that R.C. §3937.18, as amended by S.B. 97 also applies to this case, because it

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<sup>4</sup> There is no dispute in this case that the Allstate policy was never altered by agreement of the parties and in accordance with R.C. §§3937.30 to 3937.39 at anytime prior to September 29, 2002.

<sup>5</sup> *Abate v. Pioneer Mutual Cas. Co.* (1970), 22 Ohio St.2d 161.

<sup>6</sup> *Gyori v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 Ohio St.3d 565.

<sup>7</sup> *Linko v. Indemnity Ins. Co. of North America* (2000), 90 Ohio St.3d 445, 2000-Ohio-92.

<sup>8</sup> *Kemper v. Michigan Millers Mut. Ins. Co.* (2002), 98 Ohio St.3d 162, 2002-Ohio-7101.

<sup>9</sup> *Hollon v. Clary* (2004), 104 Ohio St.3d 526, 2004-Ohio-6772.

was incorporated into the Advents' policy prior to Mrs. Advent's death. This argument is without merit.

In making its argument, Appellee Allstate relies on the S.B. 267 amendments to R.C. §3937.31. While Appellant concedes the S.B. 267 amendments apply to this case, Appellee Allstate misinterprets these amendments and their application to the Allstate policy and this case.

R.C. §3937.31, as amended by S.B. 267, states in pertinent part:

(A) Every automobile policy shall be issued for a period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two year. Where renewal is mandatory, "cancellation," as used in sections 3937.30 to 3937.39 of the Revised Code, includes refusal to renew a policy with at least the coverages, including insureds, and policy limits provided at the end of the next preceding policy period. No insurer may cancel any such policy except pursuant to the terms of the policy, and in accordance with sections 3937.30 to 3937.39 of the Revised Code, and for one or more of the following reasons:

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(E) Nothing in this section prohibits an insurer from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of this section.<sup>10</sup>

The notes accompanying R.C. §3937.31 provide:

Section 5. It is the intent of the General Assembly in amending section 3937.31 of the Revised Code to make it clear that an insurer may modify the terms and conditions of any automobile insurance policy to incorporate changes that are permitted or required by that section and other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of that section.

R.C. §3937.31(A) provides that a policy must be issued for a "guaranteed period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years." Therefore, *at a minimum*, a policy of insurance has a two-year guarantee period in which an insurer cannot reduce or eliminate "the coverages, including insureds, and policy limits provided at the end of the next preceding policy period." Applicable to this case, that means Allstate could not reduce the Advents UM/UIM *policy limits* of \$300,000/\$500,000 during the two-year period from March 12, 2001 to March 12, 2003.

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<sup>10</sup> Section E was a new section added to R.C. §3937.31 with the S.B. 267 amendments.

R.C. §3937.31(E) does nothing to change the analysis. It provides that if an insurance policy is issued, pursuant to §3937.31(A), in shorter than two-year policy periods that are “guaranteed renewable for successive policy periods totaling not less than two years,” an insurer may, but is not required to, incorporate into a policy “any changes that are *permitted or required by this section or other sections of the Revised Code* at the beginning of any policy period within the two-year period set forth in division (A) of this section.” (Emphasis added). Therefore, by the express language of R.C. §3937.31(E), not all statutory changes are incorporated into a policy at the beginning of a shorter policy period within the two-year guarantee period.<sup>11</sup> Within a two-year guarantee period, only those changes *permitted or required* by the revised code can be incorporated.

Appellee Allstate is trying to use R.C. §3937.31(E) to incorporate the S.B. 97 amendments to R.C. §3937.18 into the policy in an attempt to reduce the Advents’ UM/UIM policy limits. This is not only not permitted or required by the revised code, it is expressly prohibited by R.C. §3937.31(A). Therefore, because S.B. 97 purports to reduce UM/UIM policy limits, by attempting to overrule *Linko* and its progeny and eliminate coverage implied as a matter of law, the S.B. 97 version of R.C. §3937.18 can only be incorporated at the end of a two-year guarantee period. Meaning S.B. 97 has no application to this cause of action.

Changes in the revised code that do not affect “coverages, including insureds, and policy limits” could be incorporated into a policy at a renewal within the two-year guarantee period. A change in a statute of limitations, or changes in the procedures for cancellation, or procedures for adding coverages, or procedures for payment options, etc., are all examples of potential revised code changes that don’t affect “coverages, including insureds, and policy limits” (as prohibited

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<sup>11</sup> All statutory changes will be incorporated into every policy following the expiration of each two-year guarantee period and prior to the start of another two-year guarantee period.

by R.C. §3937.31(A)) and would be permitted or required by the revised code to be incorporated into a renewal prior to the expiration of the two-year period.

Assuming *arguendo* that the S.B. 97 amendments to R.C. §3937.18 were incorporated into the Advents policy at a renewal within the two-year guarantee period and prior to Mrs. Advent's death, the analysis still does not change and the Advents are entitled to UM/UIM policy limits of \$300,000/\$500,000.

At the beginning of the two-year guarantee period (March 12, 2001), pursuant to Ohio law and the undisputed facts of this case, the Advents had UM/UIM policy limits of \$300,000/\$500,000 because of Allstate's failure to comply with *Linko, et al.* The statutory language of S.B. 97 R.C. §3937.18 does nothing to change that. It simply eliminated a mandatory offer of UM/UIM. But in this case, Allstate offered UM/UIM and the Advents already had UM/UIM coverage. So S.B. 97 has no application. It is only the uncodified staff notes of S.B. 97 that express some public policy intent to do away with coverage implied as a matter of law. However, nothing in the actual statutory language indicates that. Even were this Court to entertain and consider the uncodified law of S.B. 97, to do so would mean reducing the Advents' UM/UIM policy limits of \$300,000/\$500,000 prior to the expiration of the two-year guarantee period, which is expressly prohibited by R.C. §3937.31(A). The Advents' limits of UM/UIM limits of \$300,000/\$500,000 by operation of law cannot be reduced until the end of the two-year guarantee period (March 12, 2003).

Because Appellee Allstate never had a valid offer and reduction of UM/UIM to \$50,000 each person, \$100,000 each occurrence, the Advents policy had always had a policy with UM/UIM coverage limit of \$300,000 each person, \$500,000 each occurrence, notwithstanding the indication on the declarations pages. By 1989 (the inception of the first policy), *Abate* was nineteen (19) year-old precedent that the Advents needed to expressly reject or reduce UM/UIM coverage. Because they had the \$300,000/\$500,000 UM/UIM policy limits at the start of the

two-year guarantee, those limits (per R.C. §3937.31(A)) could not be reduced by the S.B. 97 amendments until the beginning of another two-year guarantee, i.e. March 12, 2003.

Finally, even if the Court were to determine that the S.B. 97 version of R.C. §3937.18 could be incorporated into the policy prior to the expiration of the two-year guarantee period and used to reduce the Advents' UM/UIM limits, it is still inapplicable because Allstate failed to properly so do.

R.C. §3937.31(E), quoted earlier, merely provides that if an insurance policy has shorter policy periods within a two (2) year guarantee period, nothing “prohibits an from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code . . .” Therefore, by the express statutory language, an insurer is not required to incorporate all statutory changes that are permitted or required by the revised code prior to the expiration of the two-year guarantee. Consequently, there is no “automatic” incorporation. If an insurer chooses to incorporate statutory changes prior to the end of the two-year period, it must take some affirmative action to do so. The question becomes: what is the necessary affirmative action that must be taken?

The plain meaning of that language seems clear. A change has to be made to the policy itself. It is Appellant's position that incorporating a statutory change into a policy prior to the expiration of a two-year guarantee period can only be done by policy endorsement and there is no dispute that was not done in this case.

Appellee Allstate argues that a mere notice is sufficient. Is a mere notice, which is not part of the policy, sufficient? Would a telephone call to an insured be sufficient? Would a mass mailing to all Ohio Allstate insureds be sufficient? Is a specific endorsement necessary? Those are all questions the Court may be called upon to answer in future cases on this issue. Fortunately, in this case, the Allstate policy itself answers the question.

First, page 6 of the "Renewal Auto Policy Declarations" for September 12, 2002 to March 12, 2002 as a section titled "Your Policy Documents" that states:

Your auto policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Ohio Auto Insurance Policy form PDU40 - Ohio Amendatory Policy Provisions form PDU89-3

Form XC15, the notice sent to the Advents upon which Appellee Allstate relies, is not even part of their policy! If it is not part of the policy, it certainly can't be incorporated into the policy. The Allstate policy provides further guidance and instruction in this matter. The section titled "Coverage Changes" provides:

When Allstate broadens a coverage during the policy period without additional charge, you have the new feature if you have the coverage to which it applies. The new feature applies on the date the coverage change is effective in your state. Otherwise, the policy can be changed only by endorsement. Any change in your coverage will be made using the rules, rates and forms in effect, and on file if required, for our use in your state.

(Emphasis added). After S.B. 97, if it were to apply to the Advents' policy, there is certainly an argument that there would be no UM/UIM coverage as a matter of law and the Advents' UM/UIM limits would be the \$50,000/\$100,000 as stated on the declarations page. Clearly this would be a reduction of coverage - not broadening coverage without additional charge. Consequently, the only way Allstate could do this, per its own policy language, was by endorsement. It did not do so. Form XC15 is not an endorsement and it is not part of the policy. Therefore, S.B. 97 was not incorporated into the policy in effect on the date of Mrs. Advent's death, September 29, 2002

It would have been simple for Allstate to issue an endorsement, but it didn't. For example, at the same time Form XC15 was sent to the Advents, Allstate also sent another "Important Notice" - Form XC11, stating a change to the policy had been made increasing the UM/UIM statute of limitations to three years. Like Form XC15, Form XC11 was not a part of the policy. However, in addition to the notice, Allstate also included an endorsement regarding

the statute of limitations - "Policy Endorsement" Ohio Amendatory Policy Provisions for PDU89-3.

S.B. 97 represented a major change in Ohio UM/UIM law. UM/UIM coverage no longer has to be provided and written offers and rejections/reductions are no longer required. Essentially thirty years of UM/UIM law in Ohio was wiped out. If Allstate wanted to incorporate this statute into the Advents policy prior to the new two-year policy period, it needed to inform the Advents the policy was changing due to a change in Ohio law and follow the language of its own policy and issue an endorsement.

Appellee Allstate's reliance on *Arn v. Mclean*, ("*Arn*")<sup>12</sup> is misplaced. First and foremost, it is Appellant's position that *Arn* was incorrectly decided and misinterprets Ohio law and should be given no precedential value. In contrast, see *Storer v. Sharp*.<sup>13</sup> In addition, *Arn* does not address all of the issues raised by Appellant. There is no discussion in *Arn* about whether or not the policy language required, as the Advents' policy does, that any change that reduces coverage must be done by endorsement. There was not a specific endorsement in *Arn*, but we don't know if there needed to be. The court did not address the issue and it may not have been raised. Therefore, *Arn*, while appearing similar, is inapplicable. Nonetheless, *Arn*, as is the appellate decision in this case, is in conflict with *Storer*, meaning the Court should accept this case to provide clarity and uniformity across the state.

*Arn* essentially abrogates *Wolfe*, which the Ohio Supreme Court has not done. In addition, the legislature has not tried to statutorily overrule *Wolfe*. While it did add R.C. §3937.31(E), no changes were made to §3937.31(A). In addition, when making statutory changes, particularly with respect to insurance law, the legislature has continually referenced Supreme Court decisions in its uncodified law that it intends or purports to supersede. Of

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<sup>12</sup> *Arn v. McLean* (2005), 159 Ohio App.3d 662, 2005-Ohio-654.

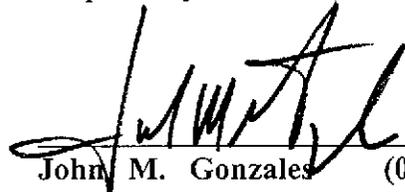
<sup>13</sup> *Supra*; appeal not accepted for review, 110 Ohio St.3d 1443, 2006-Ohio-3862.

considerable note, no such mention or intent has ever been made with respect to *Wolfe*. Because this Court has not overruled or limited *Wolfe* and *Wolfe* has not been legislatively overruled, it is applicable to this case and prevents Allstate from incorporating S.B. 97 into the Advents' policy renewal prior to the expiration of the two-year guarantee period on March 12, 2003. Thus Appellee Allstate's policy provided UM/UIM policy limits of \$300,000/\$500,000 at the time of Mrs. Advent's death.

### CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this Court accept jurisdiction of this case so the important issues presented will be reviewed on the merits.

Respectfully submitted,



John M. Gonzales (0038664)  
Counsel of Record  
John M. Gonzales, LLC  
140 Commerce Park Dr.  
Westerville, OH 43082  
614.882.3443  
614.882.7117 Fax  
jgonzales@gonzales-lawfirm.com  
*Counsel for Appellant Jack R.  
Advent, Exec.*

**CERTIFICATE OF SERVICE**

A copy was sent by ordinary U.S. mail on December 8, 2006 to:

Edwin J. Hollern  
**Edwin J. Hollern Co., L.P.A.**  
77 N. State St.  
Westerville, OH 43081  
*Counsel for Appellee Dennis O. Norton*

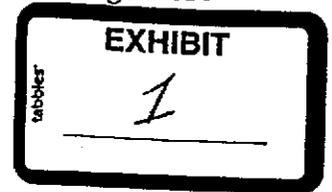
Monica L. Waller  
**Lane, Alton & Horst, LLC**  
175 S. Third St., Suite 700  
Columbus, OH 43215  
*Counsel for Appellee Allstate Insurance Co.*



John M. Gonzales (0058664)  
*Counsel for Appellant Jack R. Advent, Exec.*

**APPENDIX**

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|----|---------------------------------------------------------------------------------------------|-------|
| 1. | October 24, 2006 Tenth District Court of Appeals "Opinion"<br>for Case No: 06AP-103;        | 1 - 8 |
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Advent v. Allstate Ins. Co. Ohio App. 10 Dist., 2006.  
 CHECK OHIO SUPREME COURT RULES FOR  
 REPORTING OF OPINIONS AND WEIGHT OF  
 LEGAL AUTHORITY.

Court of Appeals of Ohio, Tenth District, Franklin  
 County.

Jack R. ADVENT, Executor of the Estate of  
 Valijeane D. Advent, Deceased, Plaintiff-Appellant,  
 v.

ALLSTATE INSURANCE COMPANY et al.,  
 Defendants-Appellees.  
 No. 06AP-103.

Decided Oct. 24, 2006.

Appeal from the Franklin County Court of Common  
 Pleas.

John M. Gonzales, LLC, and John M. Gonzales, for  
 appellant.

Lane, Alton & Horst, LLC, Rick E. Marsh, and  
 Monica L. Waller, for appellee Allstate Insurance  
 Company.

FRENCH, J.

\*1 ¶ 1 Plaintiff-appellant, Jack R. Advent, as  
 executor of the estate of Valijeane D. Advent ("  
 appellant"), appeals from the judgment of the  
 Franklin County Court of Common Pleas granting  
 summary judgment in favor of defendant-appellee,  
 Allstate Insurance Company ("Allstate"), and  
 denying appellant's motion for partial summary  
 judgment. For the following reasons, we affirm the  
 trial court's judgment.

¶ 2 This action arises out of an automobile  
 accident that occurred on September 28, 2002, as a  
 result of the negligence of Scott D. Rude. Valijeane  
 D. Advent died from injuries she sustained in the  
 accident and is survived by her husband, appellant  
 Jack Advent, and her children, Laura and Ryan. As  
 executor of his late wife's estate, appellant settled  
 the estate's claims against Mr. Rude and Mr. Rude's

insurer, State Farm Mutual Automobile Insurance  
 Company ("State Farm"), for the \$100,000 bodily  
 injury limit of Mr. Rude's insurance policy, while  
 preserving the right to pursue claims for  
 uninsured/underinsured motorist ("UM/UIM")  
 coverage from Allstate, the Advents' insurer.

¶ 3 At the time of the accident, appellant and his  
 wife were the named insureds on an Allstate  
 insurance policy, which provided liability coverage  
 up to \$300,000 per person/\$500,000 per  
 occurrence. According to its declarations page, the  
 Allstate policy provided UM/UIM coverage up to  
 \$50,000 per person/ \$100,000 per accident.

¶ 4 On September 23, 2004, appellant filed an  
 action for wrongful death and declaratory judgment  
 against Allstate and Dennis O. Norton, appellant's  
 insurance agent, in the Franklin County Court of  
 Common Pleas.<sup>FN1</sup> In his claims against Allstate,  
 appellant seeks to recover \$200,000 in UM/UIM  
 coverage under the Allstate policy. Appellant  
 contends that UM/UIM coverage arose by operation  
 of law under the Allstate policy in an amount  
 equivalent to the policy's liability limit of \$300,000  
 per person/\$500,000 per occurrence. After setting  
 off the \$100,000 paid by State Farm, appellant  
 contends that the estate is entitled to recover  
 \$200,000 under the Allstate policy. Allstate has  
 admitted that the estate sustained compensatory  
 damages in excess of \$300,000.

FN1. Appellant's claim against defendant  
 Norton was the subject of a separate  
 appeal, *Advent v. Allstate Ins. Co.*,  
 Franklin App. No. 05AP-1092,  
 2006-Ohio-2743.

¶ 5 On June 28, 2005, Allstate filed a motion for  
 summary judgment, arguing that appellant was not  
 entitled to recover UM/UIM benefits under the  
 Allstate policy because Mr. Rude's liability  
 coverage exceeded the Allstate policy's UM/UIM

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limits. Allstate also argued that, because the S.B. No. 97 version of R.C. 3937.18(A) applies, no additional UM/UIM coverage arises by operation of law under the Allstate policy. On August 8, 2005, appellant filed a memorandum contra Allstate's motion for summary judgment and a cross-motion for partial summary judgment. Allstate filed a reply memorandum in support of its motion on August 12, 2005. On November 15, 2005, the trial court issued a decision granting Allstate's motion for summary judgment and denying appellant's motion for partial summary judgment. The trial court entered judgment in accordance with its November 15, 2005 decision on January 4, 2006, and appellant filed a timely notice of appeal.

\*2 {¶ 6} Appellant raises a single assignment of error for our consideration:

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLEE ALLSTATE AND DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT.

{¶ 7} Appellate review of summary judgments is de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711.

{¶ 8} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and

(3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶ 9} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. *Id.* at 293. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-359, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶ 10} The parties' dispute over the amount of UM/UIM coverage afforded by the Allstate policy stems from their disagreement over which version of the Ohio uninsured motorist statute, R.C. 3937.18, governs the scope of the policy. "For the purpose of determining the scope of coverage of an underinsured motorist claim, the statutory law in effect at the time of entering into a contract for automobile liability insurance controls the rights and duties of the contracting parties." *Ross v. Farmers Ins. Group of Cos.* (1998), 82 Ohio St.3d 281, syllabus. However, as the Third District Court of Appeals has aptly recognized, "[t]his seemingly simple concept can become problematic because Ohio statutory law requires insurance carriers to give insureds a two-year guaranteed coverage period. R.C. 3937.31(A)." *McDaniel v. Rollins*. Allen App. No. 1-04-82, 2005-Ohio-3079, at ¶ 21.

\*3 {¶ 11} Allstate originally issued the Advents' policy on March 12, 1989, and the parties continuously renewed the policy through the time of the accident. Pursuant to R.C. 3937.31(A), "[e]very automobile insurance policy shall be issued for a period of not less than two years or guaranteed renewable for successive policy periods totaling not

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less than two years." In *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246, 250, the Ohio Supreme Court addressed the effect of R.C. 3937.31(A), holding that the commencement of each two-year guarantee period brings into existence a new contract of insurance, whether the policy is categorized as a new policy or a renewal, and that R.C. 3937.31 applies "regardless of the number of times the parties previously have contracted for motor vehicle insurance coverage." The statutory law in effect as of the issuance date of each new policy governs the policy. *Id.* "Under *Wolfe*, insurance policies could \* \* \* not be altered during the guaranteed two-year period 'except by agreement of the parties and in accordance with R.C. 3937.30 to 3937.39.'" *Arn v. McLean*, 159 Ohio App.3d 662, 2005-Ohio-654, at ¶ 15; *Wolfe* at 250. Consequently, under *Wolfe*, an insurer could incorporate statutory changes into an insurance policy only when a new two-year guarantee period began. *Wolfe* at 250-251.

{¶ 12} In *Wolfe*, the Ohio Supreme Court looked to the original issuance date of the appellants' automobile insurance policy and counted successive two-year periods from that date to determine the last guarantee period. Applying that method here, and counting successive two-year periods from the original issuance date of March 12, 1989, the last two-year guarantee period prior to the accident ran from March 12, 2001 until March 12, 2003. The statutory law in effect on March 12, 2001, included the statutory changes affected by S.B. No. 267, effective September 21, 2000. As the statutory law in effect at the beginning of the relevant guarantee period, the S.B. No. 267 versions of the insurance statutes govern the scope of the Allstate policy.

{¶ 13} Enacted subsequent to *Wolfe*, but prior to the beginning of the relevant guarantee period, S.B. No. 267 did not change the requirement of a two-year guarantee period mandated by R.C. 3937.31(A). However, as part of S.B. No. 267, the General Assembly added subsection (E) to R.C. 3937.31, which provides as follows:

(E) Nothing in this section prohibits an insurer from incorporating into a policy any changes that are permitted or required by this section or other sections of the Revised Code at the beginning of any policy period within the two-year period set

forth in division (A) of this section.

Section 5 of S.B. No. 267 read: It is the intent of the General Assembly in amending section 3937.31 of the Revised Code to make clear that an insurer may modify the terms and conditions of any automobile insurance policy to incorporate changes that are permitted or required by that section and other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of that section.

\*4 Under R.C. 3937.31(E), where a policy is "guaranteed renewable for successive policy periods totaling not less than two years[.]" as permitted by R.C. 3937.31(A), an insurer may incorporate changes permitted by the Ohio Revised Code at the beginning of any policy period. Thus, to the extent that it held that insurance policies could not be altered during the two-year guarantee period except by agreement of the parties, R.C. 3937.31(E) abrogated *Wolfe*. See *Arn; McDaniel* at ¶ 12, fn. 1.

{¶ 14} The S.B. No. 267 version of R.C. 3937.18 required automobile insurers to offer UM/UIM coverage in an amount equal to the liability limits under any automobile insurance policy written or delivered in Ohio, and, if an insurer failed to offer UM/UIM coverage, such coverage arose by operation of law in the amount of the policy's liability coverage. *Hicks-Malak v. Cincinnati Ins. Cos.*, Lucas App. No. L-04-1272, 2005-Ohio-2745, at ¶ 11, citing *Gyori v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 Ohio St.3d 565, 568. Although the Allstate policy declarations state that UM/UIM coverage is provided with limits of \$50,000 per person/\$100,000 per accident, appellant argues that Allstate failed to offer UM/UIM coverage in an amount equal to the policy's liability limits and that Allstate cannot produce a written reduction of limits for UM/UIM coverage. Consequently, appellant argues that UM/UIM coverage arises under the Allstate policy by operation of law in the amount of \$300,000 per person/\$500,000 per accident, equivalent to the policy's liability coverage.

{¶ 15} Although S.B. No. 267 was in effect at the beginning of the relevant guarantee period, the

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General Assembly, during that guarantee period, again amended R.C. 3937.18 through S.B. No. 97, effective October 31, 2001. Allstate argues that R.C. 3937.31(E), which was in effect at the beginning of the guarantee period, permitted incorporation of statutory changes at the end of any policy period within the two-year guarantee period and that Allstate incorporated the S.B. No. 97 version of R.C. 3937.18(A) into the policy prior to the accident. As amended by S.B. No. 97, R.C. 3937.18(A) provides, in part:

Any policy of insurance delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state that insures against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, may, but is not required to, include uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages.

In S.B. No. 97, the General Assembly expressed its intent to: (1) Eliminate any requirement of the mandatory offer of uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages;

(2) Eliminate the possibility of uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages being implied as a matter of law in any insurance policy;

\*5\*\*\*

(4) Eliminate any requirement of a written offer, selection, or rejection form for uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages from any transaction for an insurance policy[.]

Allstate contends that, under the S.B. No. 97 version of R.C. 3937.18(A), no additional UM/UIM coverage may be imposed by operation of law on the Advents' policy.

{¶ 16} Simply stated, the essence of the parties' dispute becomes whether the S.B. No. 97 amendments to R.C. 3937.18(A) applied to the Allstate policy at the time of the accident. Two Ohio appellate districts have considered scenarios,

like the one presently before us, involving a claim for UIM coverage arising out of an accident that occurred after the effective date of S.B. No. 97, where the insurance policy at issue had a guarantee period that began after the effective date of S.B. No. 267, but before the effective date of S.B. No. 97. The Second and Eighth District Courts of Appeals have reached differing conclusions as to whether the S.B. No. 97 changes to R.C. 3937.18 can be incorporated into an insurance policy during a guarantee period that began between the effective dates of S.B. Nos. 267 and 97. See *Arn; Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577

{¶ 17} In *Arn*, the relevant guarantee period began on February 21, 2001, at which time the S.B. No. 267 versions of R.C. 3937.18 and 3937.31, including R.C. 3937.31(E), were in effect. During the guarantee period, the *Arn* policy renewed on February 22, 2002, after the effective date of S.B. No. 97. Like here, the parties disagreed as to whether the S.B. No. 97 changes applied to the policy at the time of the accident. The Second District held that, because R.C. 3937.31(E) was in effect at the beginning of the guarantee period, the insurer "was free to modify the policy or to incorporate any changes that were then permitted or authorized by law" when the policy renewed on February 22, 2002. *Arn* at ¶ 24. Accordingly, the court held that S.B. No. 97 governed the parties' rights under the policy.

{¶ 18} In *Storer*, the relevant guarantee period began on September 18, 2001, at which time the S.B. No. 267 versions of R.C. 3937.18 and 3937.31 were in effect. Like the policy in *Arn*, the *Storer* policy renewed after the effective date of S.B. No. 97. Unlike the Second District, the Eighth District Court of Appeals rejected the argument that the insurer could incorporate the S.B. No. 97 amendments into the policy in a mid-guarantee renewal, despite R.C. 3937.31(E). The court stated: As noted by this court in *Young v. Cincinnati Ins. Co.*, [Cuyahoga] App. No. 82395, 2004-Ohio-54, a policy cannot be amended to reflect statutory changes that occur during the guaranteed two-year period; an amendment does not take effect until the expiration of that two-year period. R.C. 3937.31(A)

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; *Shay v. Shay*, [164 Ohio App.3d 518], 2005-Ohio-5874; *Stone v. Allstate Ins. Co.*, Richland App. No.2004CA0021, 2004-Ohio-3990.

\*6 *Id.* at ¶ 15. We disagree with the Eighth District's analysis in *Storer*.

{¶ 19} The cases upon which the Eighth District based its conclusion that a policy cannot be amended to reflect statutory changes during a guarantee period involved insurance policies with guarantee periods that began prior to the effective date of S.B. No. 267 and, thus, prior to the enactment of R.C. 3937.31(E). In *Young v. Cincinnati Ins. Co.*, Cuyahoga App. No. 82395, 2004-Ohio-54; *Shay v. Shay*, 164 Ohio App.3d 518, 2005-Ohio-5874; and *Stone v. Allstate Ins. Co.*, Richland App. No.2004CA0021, 2004-Ohio-3990, the guarantee periods at issue began prior to the effective date of S.B. No. 267 when, under *Wolfe*, an insurer could incorporate statutory changes into an insurance policy only when a new two-year guarantee period began. Accordingly, those courts properly concluded that the insurers could not incorporate the S.B. No. 267 amendments into the policies in the middle of a statutorily mandated guarantee period. Such cases are inapposite to this case because, here, the guarantee period of the Allstate policy began after the effective date of S.B. No. 267 and the enactment of R.C. 3937.31(E), which expressly permits an insurer to incorporate changes into policies at the beginning of a policy period within the guarantee period. Accordingly, we find the Eighth District's reliance on such cases in *Storer* misplaced. We further find the Second District's analysis in *Arn* sound.

{¶ 20} Appellant acknowledges that R.C. 3937.31(E) permits insurers to incorporate policy changes at the beginning of a policy period within a two-year guarantee period, but argues that the Allstate policy was issued for two-year policy periods rather than for shorter, successively renewable policy periods. Appellant contends that the policy period of the Allstate policy was the same as the guarantee period, ending March 12, 2003. Thus, appellant argues that Allstate could not incorporate the S.B. No. 97 changes into the policy until the beginning of the next two-year policy and

guarantee period. Allstate, on the other hand, argues that it issued the Advents' policy for six-month policy periods, guaranteed renewable for successive periods totaling two years and that, during the applicable guarantee period, the policy renewed on September 12, 2001, March 12, 2002, and September 12, 2002. Allstate contends that it incorporated the S.B. No. 97 changes into the policy as of the March 12, 2002 renewal.

{¶ 21} To determine the policy period for the Allstate policy, we turn to the policy itself. Appellant argues that Allstate issued its policy for two-year policy periods based on the policy provision entitled "Guarantee Period," which provides:

A guarantee period required by Ohio law begins on the 90th day after the original effective date of the policy, and continues for two years from that original effective date. When this guarantee period expires, a new guarantee period will commence for another two year period unless we mail notice that we don't intend to continue the policy. Each guarantee period begins after the expiration of the prior guarantee period.

\*7 Although the Allstate period clearly provides for a two-year guarantee policy, as required by R.C. 3937.31(A), the policy does not use the terms "guarantee period" and "policy period" interchangeably. Rather, the policy defines the policy period in a provision entitled "When And Where The Policy Applies," which provides: Your policy applies only during the policy period. During this time, it applies to covered losses to the insured auto, accidents, and occurrences within the United States, its territories or possessions; Canada, and between their ports. *The policy period is shown on the Policy Declarations.*

(Emphasis added.)

{¶ 22} Allstate issued Renewal Auto Policy Declarations every six months. The Renewal Auto Policy Declarations issued at the beginning of the March 12, 2001 guarantee period identify the "policy period" as March 12, 2001, to September 12, 2001, at 12:01 a.m. standard time. The record contains additional Renewal Auto Policy

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Declarations listing policy periods of September 12, 2001, to March 12, 2002, March 12, 2002, to September 12, 2002, and September 12, 2002, to March 12, 2003.

{¶ 23} Despite policy language defining the policy period as the period set forth in the declarations, each of which identifies a six-month policy period, appellant argues that a six-month policy period is in direct contradiction to the specific language of the "Guarantee Period." Alternatively, appellant argues that the Allstate policy is ambiguous regarding the length of the policy period. We disagree. The "Guarantee Period" provision in the Allstate policy simply incorporates the guarantee period required by R.C. 3937.31(A), which permits insurers to issue a policy either for a two-year policy period or for lesser policy periods guaranteed renewable for at least two years. Nothing in R.C. 3937.31(A) requires insurers to issue policies for two-year policy periods, and nothing in the Allstate policy's "Guarantee Period" provision suggests that the Allstate policy has a two-year policy period. Rather, the Allstate policy expressly provides that its policy period is shown on the policy declarations, each of which identifies a six-month policy period. Thus, upon review, we conclude that the Allstate policy was issued for successive six-month policy periods within each two-year guarantee period. Accordingly, pursuant to R.C. 3937.31(E), Allstate was permitted to incorporate the changes brought about by S.B. No. 97 into the policy at the beginning of any six-month policy period following the effective date of S.B. No. 97.

{¶ 24} Appellant next argues that, even if the Allstate policy was issued for six-month periods, Allstate took no action to incorporate the S.B. No. 97 version of R.C. 3937.18 into the policy. Appellant contends that the incorporation of a statutory change into a policy prior to the expiration of a two-year guarantee period may only be accomplished by a policy endorsement and that Allstate failed to issue a policy endorsement incorporating the S.B. No. 97 changes. Allstate, on the other hand, argues that the "Important Notice" sent to the Advents prior to the March 12, 2002 renewal was sufficient to incorporate the S.B. No. 97 changes into the policy. The notice stated:

\*8 We'd like to let you know that we've changed the process for selecting and making changes to Uninsured Motorists Insurance for Bodily Injury and Uninsured Motorists Insurance-Property Damage.

Effective immediately, you can add or remove Uninsured Motorists Insurance for Bodily Injury and Uninsured Motorists Insurance-Property Damage and increase or decrease your limits under Uninsured Motorists Insurance for Bodily Injury by simply calling your Allstate representative. There will be no forms to sign.

Please refer to the enclosed Policy Declarations to determine if your policy currently has Uninsured Motorists Insurance for Bodily Injury and Uninsured Motorists Insurance-Property Damage.

If Uninsured Motorists Insurance for Bodily Injury or Uninsured Motorists Insurance-Property Damage is not included in your policy and you would like to purchase it, or if you would like to increase or decrease the Uninsured Motorists Insurance for Bodily Injury limits shown on the Policy Declarations, please feel free to contact your agent or the Allstate Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

We also note that, under the heading "Important Payment and Coverage Information," the Renewal Policy Declarations for the policy period from March 12, 2002, to September 12, 2002, explicitly informed the Advents that their chosen UM/UIM limits were less than their liability coverage limits and instructed them to contact their agent or Allstate if they wished to increase their UM/UIM limits.

{¶ 25} Appellant argues that the Notice is insufficient to incorporate the S.B. No. 97 changes into the Allstate policy because the policy itself expressly requires that any change to the policy that restricts or reduces coverage be accomplished by policy endorsement. The Allstate policy provision entitled "Coverage Changes" provides:

When Allstate broadens a coverage during the policy period without additional charge, you have the new feature if you have the coverage to which it applies. The new feature applies on the date the coverage change is effective in your state. Otherwise, the policy can be changed only by

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endorsement. Any change in your coverage will be made using the rules, rates and forms in effect, and on file if required, for our use in your state.

Appellant contends that the incorporation of the S.B. No. 97 changes into the Allstate policy constituted a change to the policy resulting in a reduction of coverage. Appellant claims that, prior to S.B. No. 97, UM/UIM coverage would have arisen by operation of law with limits of \$300,000 per person/\$500,000 per accident, whereas, under S.B. No. 97, UM/UIM coverage is limited to \$50,000 per person/\$100,000 per accident, as set forth in the policy declarations.

{¶ 26} We reject appellant's position that S.B. No. 97 could only be incorporated into the Allstate policy by endorsement. The incorporation of the S.B. No. 97 changes to R.C. 3937.18 into the Allstate policy did not change the policy itself. From its inception, the terms of the Allstate policy provided for UM/UIM coverage with limits of \$50,000 per person/\$100,000 per accident. In his deposition, appellant admitted that, prior to the accident, he understood that the Allstate policy provided UM/UIM coverage with lower limits than the policy's liability coverage. It was only by operation of law that courts could, under the prior versions of R.C. 3937.18, impose higher UM/UIM coverage limits on the Allstate policy. The incorporation of the S.B. No. 97 version of R.C. 3937.18 simply validated the coverage that the policy had always purported to provide.

\*9 {¶ 27} The Twelfth District Court of Appeals recently rejected an argument similar to that which appellant makes here. In *Burton v. Allstate Ins. Co.*, Butler App. No. CA2004-10-247, 2005-Ohio-5291, the appellants sought UM/UIM coverage after a March 31, 2002 automobile accident. The insurance policy at issue in *Burton* was originally issued on December 6, 1997, and was renewed on December 6, 1999, and December 6, 2001. The appellants argued that the reduced UM/UIM limits stated in the policy were invalid and that UM/UIM coverage arose by operation of law in an amount equivalent to the policy's liability coverage. The insurer argued that, under the S.B. No. 97 version of R.C. 3937.18, the reduced UM/UIM limits were valid and

precluded recovery. It was undisputed that the most recent policy renewal occurred after the effective date of S.B. No. 97. Nevertheless, the appellants argued that the S.B. No. 97 changes were not incorporated into their policy because appellants were not properly notified of the changes in UM/UIM coverage when the policy renewed. The Twelfth District rejected the appellants' argument for two reasons:

\* \* \* First, "[a]n insurer has no duty to inform an insured about changes in insurance laws." *Ryan v. The Hartford Co.* (June 25, 2001), Butler App. No. CA2000-10-210. Second, there was no change in the UM/UIM coverage limits of the renewal policy. The Burtons concede that the policy originally issued to them on December 6, 1997 included UM/UIM coverage in the amounts of \$25,000 per person and \$50,000 per occurrence. These amounts are identical to those declared in the renewal policy that went into effect on December 6, 2001. Thus, notice of a change in UM/UIM coverage was not required.

*Id.* at ¶ 16.

{¶ 28} Similarly, in *Arn*, the appellants argued that the S.B. No. 97 changes were not incorporated into their policy, under which UM/UIM coverage would have otherwise been imposed by operation of law. There, the renewal certificate issued with the post-S.B. No. 97 renewal informed the insureds that UM/UIM coverage had been declined and instructed the insureds to contact their insurance agent if they wished to purchase UM/UIM coverage. The appellants argued that, because their prior rejections of UM/UIM coverage were invalid under the pre-S.B. No. 97 versions of R.C. 3937.18, this was not a sufficient change to the policy. The Second District disagreed, stating:

\* \* \* In our opinion, prior rejections or coverage imposed by operation of law were irrelevant, because State Farm had no obligation to offer UM coverage and there was no need for either a written offer or a rejection when the policy was renewed in February, 2002. On its face, the policy did not contain UM/UIM coverage and, in fact, had never contained UM/UIM coverage. The only way such coverage might have been in effect previously was through a legal fiction adopted by courts—a fiction

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that was no longer viable in February 2002. Whether one wants to consider the statement on the renewal certificate a change or simply a return of the policy to what it always was before the many amendments to the UM statutes, the fact is that the insured was clearly informed that the policy did not contain UM/UIM coverage.

\*10 *Arn* at ¶ 41.

{¶ 29} Like the policy at issue in *Burton*, the Allstate policy at issue here has always provided in its declarations for reduced UM/UIM coverage limits. Since its inception, the Allstate policy has provided UM/UIM coverage with limits of \$50,000 per person/\$100,000 per accident. The only way additional UM/UIM coverage might previously have been available to appellant "was through a legal fiction adopted by court—a fiction that was no longer viable[.]" *Id.* Additional coverage imposed by operation of law was, by definition, never explicitly included in the Allstate policy. Accordingly, there was no policy provision for Allstate to amend by endorsement. As the *Burton* court noted, an insurer has no duty to inform its insureds about changes in insurance law. Nevertheless, Allstate instructed its insureds to review the UM/UIM coverage expressly listed in their policy declarations and informed them how to make changes to such coverage if desired. Allstate also explicitly informed the Advents that their chosen UM/UIM limits were less than their liability coverage limits. Because the incorporation of the S.B. No. 97 changes to the insurance statutes occasioned no change in the terms of the Allstate policy, Allstate was not required to issue a policy endorsement to incorporate those changes into the policy.

{¶ 30} In support of its position that a policy endorsement was required to make changes to the policy, appellant cites to the fact that Allstate issued an endorsement, in addition to a notice, to enlarge the statute of limitations for UM/UIM claims from two to three years. Allstate sent its notice regarding the extension of the statute of limitations at the same time it sent notice regarding the changes to the process for selecting UM/UIM coverage. We find Allstate's issuance of an endorsement changing the

statute of limitations irrelevant. The enlargement of the statute of limitations involved a change to the express terms of the Allstate policy, which previously required that "[a]ny legal action against Allstate must have been brought within two years of the date of the accident." Unlike the change to the statute of limitations, application of amended R.C. 3937.18(A) did not involve any change to the terms of the Allstate policy. Rather, it simply validated the expressly stated limits of UM/UIM coverage set forth in the policy declarations, as negotiated by the parties and as appellant understood them to exist.

{¶ 31} For the foregoing reasons, we find that the S.B. No. 97 changes to R.C. 3937.18(A) applied to the Allstate policy at the time of the accident and that the Allstate policy provided UM/UIM coverage in the amounts of \$50,000 per person/\$100,000 per accident. Consequently, we conclude that the trial court did not err in granting Allstate's motion for summary judgment and denying appellant's motion for partial summary judgment. Therefore, we overrule appellant's assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

\*11 *Judgment affirmed.*

BRYANT and TRAVIS, JJ., concur.

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Slip Copy, 2006 WL 3008484 (Ohio App. 10 Dist.), 2006 -Ohio- 5522

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 IN THE COURT OF APPEALS OF FRANKLIN CO. OHIO  
 TENTH APPELLATE DISTRICT  
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Jack R. Advent, Executor of the Estate  
 of Vali Jean D. Advent, Deceased,

Plaintiff-Appellant,

v.

Allstate Insurance Company et al.,

Defendants-Appellees.

No. 06AP-103  
 (C.P.C. No. 04CV09-9924)  
 (REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on October 24, 2006, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

FRENCH, BRYANT, and TRAVIS, JJ.

By Judith L. French  
 Judge Judith L. French