

IN THE SUPREME COURT OF OHIO

ORIGINAL

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

Appellant,

vs.

Allstate Insurance Company, et al.,

Appellees.

Supreme Court Case No: ~~06-227~~

06-2393

On Appeal from the Franklin
County Court of Appeals, Tenth
Appellate District
Case No: 06AP-103

ON COMPUTER-ALM

NOTICE OF CERTIFIED CONFLICT

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

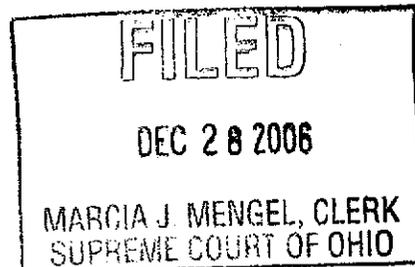
Columbus, OH 43215

614.233.4744

614.228.0146 Fax

mwaller@lah4law.com

Counsel for Appellee Allstate Insurance Co.



Notice of Certified Conflict between Decisions of the Tenth and Eighth Appellate Districts

Pursuant to *S. Ct. Prac. R. IV, §1*, Appellant Jack R. Advent, Exec., hereby gives notice to the Supreme Court of Ohio that the Tenth Appellate District has issued an order certifying a conflict with the Eighth Appellate District in the following decisions: *Advent v. Allstate Insurance Co.*, Franklin App. No. 06AP-103, 2006-Ohio-5522 and *Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577.

The Tenth Appellate District certified the following question as being in conflict between the two aforementioned decisions:

Can the S.B. No. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two-year guarantee period that commenced subsequent to the S.B. No. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. No. 97 amendments?

Copies of the Tenth District's December 21, 2006 "Decision On Motion to Certify" and the corresponding "Journal Entry" are attached hereto. Copies of the actual decisions in *Advent* and *Storer, supra*, are also attached.

On December 8, 2006, Appellant also filed a discretionary "Notice of Appeal" and "Jurisdictional Memorandum" with the Supreme Court of Ohio in this matter as well.

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 28, 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 (0038664)
Counsel for Appellant Jack R. Advent, Exec.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

12225120
12/25/06
CLEVELAND COURTS

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

Plaintiff-Appellant,

v.

Allstate Insurance Company et al.,

Defendants-Appellees.

No. 06AP-103
(C.P.C. No. 04CVC09-9924)

(REGULAR CALENDAR)

JOURNAL ENTRY

For the reasons stated in the decision of this court rendered herein on December 21, 2006, it is the order of this court that the motion to certify the judgment of this court as being in conflict with the judgment of the Court of Appeals for Cuyahoga County in *Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577, is granted and, pursuant to Section 3(B)(4), Article IV, Ohio Constitution, the record of this case is certified to the Supreme Court of Ohio for review and final determination upon the following issue in conflict:

Can the S.B. No. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two-year guarantee period that commenced subsequent to the S.B. No. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. No. 97 amendments?

ON COMPUTER 12

FRENCH, BRYANT, and TRAVIS, JJ.

By Judith L. French
Judge Judith L. French

John M. Gonzales

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN, OHIO
2006 DEC 21 PM 12:23
CLERK OF COURTS

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

Plaintiff-Appellant,

v.

Allstate Insurance Company et al.,

Defendants-Appellees.

No. 06AP-103

(C.P.C. No. 04CVC09-9924)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 21, 2006

*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.*

ON MOTION TO CERTIFY

FRENCH, J.

{¶1} Pursuant to App.R. 25, appellant, Jack R. Advent, as executor of the estate of Valijean D. Advent ("appellant"), moves this court for an order certifying to the Ohio Supreme Court a conflict between our October 24, 2006 opinion in *Advent v. Allstate Ins. Co.*, Franklin App. No. 06AP-103, 2006-Ohio-5522, and the opinion of the

Eighth Appellate District in *Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577. Appellee, Allstate Insurance Company ("Allstate"), opposes appellant's motion.

{¶2} Section 3(B)(4), Article IV, Ohio Constitution vests in the courts of appeals of this state the power to certify the record of a case to the Ohio Supreme Court for review and final determination "[w]henever the judges * * * find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state[.]" In *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596, the Ohio Supreme Court set forth the standard for courts of appeals to use when ruling on a motion to certify:

* * * [A]t least three conditions must be met before and during the certification of a case to this court * * *. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be "upon the same question." Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. * * *

Before certification to the Supreme Court, there must exist an actual conflict between appellate judicial districts on a rule of law. *Id.*, paragraph one of the syllabus. However, as this court has noted, "there is no reason for a Court of Appeals to certify its judgment as conflicting with that of another Court of Appeals where * * * the point upon which the conflict exists had no arguable effect upon the judgment of the certifying court." *Penrod v. Ohio Dept. of Adm. Servs.*, Franklin App. No. 04AP-1118, 2005-Ohio-6611, at ¶4, quoting *Pincelli v. Ohio Bridge Corp.* (1966), 5 Ohio St.2d 41, 44.

{¶3} Appellant proposes the following question for certification to the Supreme Court:

Can the S.B. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two-year *Wolfe* [*v. Wolfe* (2000), 88 Ohio St.3d 246] guarantee period that commenced subsequent to the S.B. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. 97 amendments?

{¶4} Both *Advent* and *Storer* involve claims for uninsured/underinsured motorist coverage. The relevant two-year guarantee period for the insurance policy at issue in *Advent* commenced on March 12, 2001, after the effective date of S.B. No. 267 but prior to the effective date of S.B. No. 97. Likewise, in *Storer*, the relevant two-year guarantee period for the insurance policy began on September 18, 2001, after the effective date of S.B. No. 267, but prior to the effective date of S.B. No. 97. Accordingly, at the commencement of the relevant guarantee periods, the S.B. No. 267 versions of the insurance statutes governed the scope of the policies in both *Advent* and *Storer*. As part of S.B. No. 267, the General Assembly added subsection (E) to R.C. 3937.31, which provides that "[n]othing 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 [guarantee] period[.]" In both *Advent* and *Storer*, after the effective date of S.B. No. 97, the insurance policies were renewed for new policy periods within the applicable two-year guarantee periods.

{¶5} Central to the judgment in both *Advent* and *Storer* was the question of whether an insurer may incorporate the S.B. No. 97 amendments to R.C. 3937.18 into a policy when the policy renews during a two-year guarantee period that commenced after the effective date of S.B. No. 267. Allstate agrees with appellant that this was the ultimate issue in both cases.

{¶6} In *Storer*, the Eighth Appellate District rejected the insurer's argument that, as a result of S.B. No. 267, the S.B. No. 97 changes to R.C. 3937.18 could be incorporated into a renewal policy before the beginning of a new two-year guarantee period. Despite a policy renewal after the effective date of S.B. No. 97, the court held that "a policy cannot be amended to reflect statutory changes that occur during the guaranteed two-year period[.]" *Id.* at ¶15, citing *Young v. Cincinnati Ins. Co.*, Cuyahoga App. No. 82395, 2004-Ohio-54.

{¶7} Here, in *Advent*, we rejected the Eighth Appellate District's reasoning in *Storer* and reached the opposite conclusion. We concluded that S.B. No. 267, with its amendment of R.C. 3937.31 to include subsection (E), expressly permitted Allstate to incorporate statutory changes into its policy at the beginning of a renewal policy period within the two-year guarantee period. Accordingly, contrary to the *Storer* opinion, we held that Allstate could incorporate the statutory changes brought about by S.B. No. 97 into its policy at the commencement of a new policy period within the two-year guarantee period.

{¶8} In opposing certification, Allstate contends that it is not clear from the *Storer* opinion that the judgments in *Advent* and *Storer* conflict. Allstate attempts to distinguish *Storer* based on the lack of discussion in *Storer* as to whether the insurer took steps to incorporate the S.B. No. 97 changes into the policy. Allstate claims that it is unclear from the *Storer* opinion whether the court's judgment would have been the same had it undertaken such consideration. We disagree. While Allstate is correct that this court considered the steps Allstate took to incorporate the S.B. No. 97 changes into its policy, such consideration was necessitated only by our conclusion that an insurer

was permitted to incorporate the S.B. No. 97 amendments into the policy before the commencement of a new two-year guarantee policy. To the contrary, whether or not the insurer in *Storer* acted to incorporate the S.B. No. 97 changes into its policy, the Eighth Appellate District concluded that an insurer could not incorporate such changes until the beginning of a new guarantee period. Thus, it is clear from the opinion in *Storer* that consideration of the issue identified by Allstate would not have altered the Eighth Appellate District's judgment.

{¶9} Upon review, we agree with appellant that our judgment in *Advent* conflicts with the Eighth Appellate District's judgment in *Storer* on the same question of law and that the cases are not distinguishable on their facts. Consequently, we certify the present case as being in conflict with the opinion of the Eighth Appellate District in *Storer*, on the following question:

Can the S.B. No. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two-year guarantee period that commenced subsequent to the S.B. No. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. No. 97 amendments?

{¶10} For the foregoing reasons, we grant appellant's motion to certify, and we certify the above-stated question to the Ohio Supreme Court for resolution of the conflict pursuant to Section 3(B)(4), Article IV, Ohio Constitution.

Motion to certify conflict granted.

BRYANT and TRAVIS, JJ., concur.

John M. Gonzales

FILED
IN THE COURT OF APPEALS OF OHIO COURT OF APPEALS
FRANKLIN CO. OHIO
TENTH APPELLATE DISTRICT 2006 OCT 24 PM 2:43
CLERK OF COURTS

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. 04CVC09-9924)

(REGULAR CALENDAR)

O P I N I O N

Rendered on October 24, 2006

*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.*

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiff-appellant, Jack R. Advent, as executor of the estate of Vali Jean 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. Vali Jean 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.¹ 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,

¹ Appellant's claim against defendant Norton was the subject of a separate appeal, *Advent v. Allstate Ins. Co.*, Franklin App. No. 06AP-1092, 2006-Ohio-2743.

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.

{¶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 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.

{¶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.

{¶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 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.

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 *Am; 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 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;

(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 *Am; Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577.

{¶17} In *Am*, 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 *Am* 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. *Am* 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); *Shay v. Shay*, [164 Ohio App.3d 518], 2005-Ohio-5874; *Slone v. Allstate Ins. Co.*, Richland App. No. 2004CA0021, 2004-Ohio-3990.

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 *Slone 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 *Am* 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.

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 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:

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 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.

{¶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 *Arm*, 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 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.

Am 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

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GRANTED. THE MOTION FOR SUMMARY JUDGMENT IS DEEMED FILED AS OF 06/18/04. THE COURT FURTHER GRANTS PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENIES DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. THE COURT FINDS THAT THE UMBRELLA POLICY, SIGNED SEPTEMBER 18, 2001, CALLED FOR A GUARANTEED TWO-YEAR POLICY PERIOD DURING WHICH STATE FARM WAS PRECLUDED FROM ALTERING THE AMOUNT OF THE POLICY LIMITS IN THE UMBRELLA EXCEPT BY AGREEMENT OF THE PARTIES. THE COURT FINDS THAT THE PARTIES NEVER AGREED TO ALTER THE POLICY LIMITS. THE COURT FURTHER FINDS THAT SB 97 (ENACTED OCTOBER 31, 2001) DOES NOT APPLY TO THE TWO-YEAR GUARANTEED RENEWAL POLICY THAT PLAINTIFF SIGNED SEPTEMBER 18, 2001, SIX WEEKS PRIOR TO THE BILL BEING ENACTED. BECAUSE SB 97 DOES NOT APPLY TO PLAINTIFF'S POLICY, THE REQUIREMENTS OF LINKO V. INDEMN. INS. CO. OF N AMERICA (2000) 90 OHIO ST. 3D 445, MUST BE MET IN ORDER TO EFFECTIVELY REJECT UM/UIM COVERAGE. THE COURT FINDS THAT THE POLICY ISSUED BY DEFENDANT STATE FARM AND SIGNED BY THE PLAINTIFF'S [sic] ON SEPTEMBER 18, 2001, DID NOT MEET THE LINKO REQUIREMENTS. AS SUCH, THERE WAS NO EFFECTIVE REJECTION OF UM/UIM COVERAGE. THEREFORE, UM/UIM IS PROVIDED BY OPERATION OF LAW. THE COURT HEREBY GRANTS PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENIES DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE UM/UIM COVERAGE EXISTED AS AN OPERATION OF

LAW AT THE TIME OF THE ACCIDENT ON FEBRUARY 26, 2003. THIS IS A FINAL APPEALABLE ORDER. THERE IS NO JUST CAUSE FOR DELAY. THE COURT WILL, HOWEVER, CONDUCT A SETTLEMENT CONFERENCE ON 05/13/05 AT 10:30 AM. ALL PARTIES WITH FULL SETTLEMENT AUTHORITY MUST BE PRESENT. BOOK 3329 PAGE 0754 05/16/2005 NOTICE ISSUED

{¶ 7} "This court reviews the lower court's grant of summary judgment de novo. *Piciorea v. Genesis Ins. Co.*, Cuyahoga App. No. 82097, 2003-Ohio-3955, ¶ 8. Summary judgment is appropriate when, if the evidence is construed most strongly in favor of the nonmoving party, (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, which is adverse to the nonmoving party. *Id.*, citing *Zivich v. Mentor Soccer Club, Inc.* (1998), 82 Ohio St.3d 367, 369-370, 1998-Ohio-389, 696 N.E.2d 201; see, also, *Civ.R. 56(C)*." *White v. Lawler*, Cuyahoga App. No. 85199, 2005-Ohio-3835, ¶ 5.

{¶ 8} "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, 289, 1998-Ohio-381, 695 N.E.2d 732. Further, when an insurance policy is renewed, the date of the renewal determines the law that was in effect at that time. *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246, 2000-Ohio-322, 725 N.E.2d 261, syllabus; *Dalton v. Wilson*, Franklin App. No. 01AP-1014, 2002-Ohio-4015, ¶ 20.

*2 {¶ 9} In Ohio, in order to calculate the effective date of an insurance policy, we refer to R.C. 3937.31(A), which requires each policy to be effective for successive two-year periods unless the parties agreed to modify that provision in conformity with R.C. 3937.30 to 3937.39. *Dalton*,

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¶ 19, citing *Wolfe*, at syllabus. Accordingly, the effective date of an insurance policy is determined by counting successive two-year periods forward from the original issuance date of the policy. *Dalton*, ¶ 19, citing *Wolfe* at 250.

{¶ 10} In the case at bar, the subject policy was first purchased on September 18, 1987. At that time, R.C. 3937.31(A) was in effect. The parties agree that they never altered the statute's successive two-year requirement. Accordingly, when we count successively two years forward from September 18, 1987, we conclude that the last effective date of plaintiff's renewed policy was September 18, 2001, the last policy period before plaintiff's accident on February 26, 2003. The September 18, 2001 policy would have ended on September 18, 2003, several months after the accident.

{¶ 11} Once the effective policy date is determined, R.C. 3937.18 then governs what obligation an insurance company has with regard to UM/UIM coverage. On September 18, 2001, the 2000 version of R.C. 3937.18(A) ^{FN4} was in effect. The statute required insurers to make an express offer of UM/UIM coverage within their policies. *Gyori v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 Ohio St.3d 565, 568, 1996-Ohio-358, 669 N.E.2d 824. The statute further "required insurers to offer UM/UIM coverage in 'an amount * * * equivalent to the automobile liability * * * coverage.' The insurer's failure to properly offer UM/UIM coverage resulted in UM/UIM coverage arising by operation of law." *Cooley v. THI of Ohio at Greenbriar S. LLC*, Scioto App. No. 05CA2989, 2006-Ohio-221, ¶ 16, citing *Gyori*.

FN4. In 2000, R.C. 3937.18(A) stated, in part, as follows:

No automobile liability or motor vehicle liability policy of insurance insuring 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 shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally

garaged in this state unless both [uninsured motorist coverage and underinsured motorist coverage] are offered to persons insured under the policy for loss due to bodily injury or death suffered by such insureds.

* * *

HISTORY: 131 v 965 (Eff 9-15-65); 132 v H 1 (Eff 2-21-67); 133 v H 620 (Eff 10-1-70); 136 v S 25 (Eff 11-26-75); 136 v S 545 (Eff 1-17-77); 138 v H 22 (Eff 6-25-80); 139 v H 489 (Eff 6-23-82); 141 v S 249 (Eff 10-14-86); 142 v H 1 (Eff 1-5-88); 145 v S 20 (Eff 10-20-94); 147 v H 261 (Eff 9-3-97); 148 v S 57 (Eff 11-2-99); 148 v S 267 (Eff 9-21-2000); 149 v S 97. Eff 10-31-2001.

{¶ 12} In *Linko v. Indemnity Ins. Co.* (2000), 90 Ohio St.3d 445, 450, 2000-Ohio-92, 739 N.E.2d 338, ^{FN5} the Ohio Supreme Court determined that "whether coverage was offered * * * should be apparent from the contract itself." The written offer must "inform the insured of the availability of UM/UIM coverage, set forth the premium for UM/UIM coverage, include a brief description of the coverage, and expressly state the UM/UIM coverage limits in its offer." *Id.*, at 447-448.

FN5. The decisional law in *Linko* was superseded by amendments to R.C. 3937.18, effective October 31, 2001. See, *Burton v. Allstate Ins. Co.*, Butler App. No. CA2004-10-247, 2005-Ohio-5291, ¶ 12.

{¶ 13} In the case at bar, defendant admits that plaintiff's September 18, 2001 policy does not include an express offer of UM/UIM coverage. According to defendant, however, the 2001 policy is not the relevant policy in this case. For defendant, the only relevant policy is plaintiff's renewal policy dated September 18, 2002. Defendant argues that [o]n September 21, 2000, S.B. 267 took effect, amending R.C. 3937. [31(E)] to supersede the *Wolfe v. Wolfe* decision, (2000), 88 Ohio St.3d 246. Pursuant to S.B. 267, each renewal of an insurance policy is now deemed to be a new contract of

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insurance so that new statutory changes will now take effect at the time of each new renewal of the policy, regardless of the two-year guarantee period.

*3 {¶ 14} Defendant's Brief on Appeal, at 6. Defendant further argues that, when R.C. 3937.18 was amended on October 31, 2001, it no longer permitted UM/UIM coverage to arise by operation of law. Thus as a result of S.B. 267, the amended version of R.C. 3937.18 is incorporated into plaintiffs' September 18, 2002 renewal policy and, therefore, UM coverage cannot arise by operation of law to cover plaintiff's accident in February 2003. We reject defendant's arguments.

{¶ 15} As noted by this court in *Young v. Cincinnati Ins. Co.*, 8th 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); *Shay v. Shay*, Fulton App. No. F-05-008, 2005-Ohio-5874; *Slone v. Allstate Ins. Co.*, Richland App. No.2004CA0021, 2004-Ohio-3990.

{¶ 16} So, even though plaintiffs' policy was renewed on September 18, 2001, S.B. 267, which became effective on September 21, 2000, would not change the terms of that 2001 policy, because the law did not change until October 31, 2001, when R.C. 3937.18 was amended. There were no material changes to the statute until October 2003. And, by that date, plaintiffs' policy had already renewed for another guaranteed two-year term: September 18, 2001 to September 18, 2003. The subject accident occurred during the two-year period when the law still permitted UM coverage to arise by operation of law from a policy that did not expressly offer such coverage.

{¶ 17} We know that in this case defendant admits it did not make an offer of UM/UIM coverage in plaintiff's September 2001 policy. Accordingly, the trial court did not err in granting plaintiff's motion for summary judgment and determining that UM coverage arose by operation of law under the 2001 policy. Defendant's sole assignment of error is

overruled.
Judgment accordingly.

It is ordered that appellees recover of appellants their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, J., and CHRISTINE T. MCMONAGLE, J., concur.

~~N.B. This entry is an announcement of the court's~~ decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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