IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2007-CP-23-6453

Douglas Earl Stiltner and Christine Rene Stiltner ..... Appellants,

v.

USAA Casualty Insurance Company.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On October 1, 2007, Appellants Doug and Rene Stiltner brought this action against Respondent USAA seeking reformation of Doug's insurance policy to include underinsured motorist ("UIM") coverage following a March 25, 2007 automobile accident in which the Stiltners suffered injuries. After completing discovery, the parties submitted cross motions for summary judgment on several issues. The Stiltners argued that USAA had never made a meaningful offer of UIM coverage as required by South Carolina law. They also claimed that even if USAA had made such an offer, Rene did not have authority to reject UIM coverage on Doug's behalf. USAA countered that it had made a meaningful offer which Rene had authority to reject. USAA also argued that Doug had ratified Rene's actions and that Rene was estopped from challenging her own decision to reject the coverage. Following a hearing on the cross motions for summary judgment on January 30, 2009, the trial court entered an order granting USAA's motion for summary judgment and denying the Stiltners' motion for summary judgment.

The Stiltners appealed, challenging only the trial court's determination that Rene had implied authority to make certain decisions as to Doug's insurance policy and that she acted within the scope of that authority when she rejected UIM coverage.[1] This Court affirmed the trial court's ruling that Rene had implied authority to act on Doug's behalf regarding his automobile insurance coverage provided her actions did not change his existing coverage and she consulted with Doug before she acted. Stiltner v. USAA Cas. Ins. Co., 395 S.C. 183, 190, 717 S.E.2d 74, 77-78 (Ct. App. 2011). However, this Court held that material issues of fact remained as to whether Rene acted within the

[1] The Stiltners did not challenge the trial court's ruling that USAA had provided a meaningful offer of UIM coverage.

scope of her authority when she signed the form rejecting UIM coverage, whether Doug ratified Rene's actions, and whether Rene was estopped from contesting her own rejection of UIM coverage. Stiltner, 395 S.C. at 190-93, 717 S.E.2d at 78-79. This Court accordingly remanded the case for trial.

The parties tried this case before the circuit court on May 8, 2012. The evidence at trial consisted of Doug and Rene Stiltner's in-court testimony and a selected portion of Rene's deposition testimony. In a written order dated May 17, 2012, the trial court entered declaratory judgment in favor of USAA, finding that Rene had acted within the scope of her implied authority when she signed the form declining UIM coverage and that Doug had ratified her actions by leaving his policy unchanged despite receiving declaration pages from USAA that he did not carry UIM coverage. The court did not reach the issue of whether Rene was estopped from challenging her rejection of UIM coverage.

On June 1, 2012, the Stiltners filed a motion for reconsideration, which the circuit court summarily rejected on June 10, 2012. The Stiltners filed their notice of appeal on July 16, 2012.

STATEMENT OF THE FACTS

On March 25, 2007, Doug and Rene Stiltner were both seriously injured when another driver failed to yield the right of way and drove into the path of their motorcycle. The at-fault driver's liability insurance policy had limits of $25,000 per person and $50,000 per occurrence, which was insufficient to cover the Stiltners' medical expenses. For at least six years prior to the accident, the Stiltners had not maintained UIM coverage on their USAA automobile insurance policy.

Doug had continuously maintained automobile insurance (policy number 00955 52 18C 7102 8) with USAA since approximately 1990. (Trial Tr. p.8). Doug added Rene as an operator under his policy after they married in 1998. (Trial Tr. p.10). According to a USAA declaration page for the period of October 14, 1998 to April 14, 1999 that the Stiltners introduced at trial, the Stiltners at one time (at least for that one six-month period) had UIM coverage with limits of $25,000 per person, $50,000 per occurrence, and $25,000 for property damage. (Trial Tr. p.20; Plaintiff's Exhibit 3). However, all the other declaration pages introduced into evidence, covering April 14, 2001 through April 14, 2007, showed that the Stiltners did not maintain UIM coverage during those coverage periods (which included the period in which the accident occurred). (Trial Tr. p.34-36, Defendant's Exhibits 3-13).[2] After listing the specific coverages and amounts of coverage available, each of these declaration pages including the following language:

> THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:
>
> VEH 14[3] – MEDICAL PAYMENTS, UNDERINSURED MOTORISTS, RENTAL REIMBURSEMENT, TOWING AND LABOR, PERSONAL INJURY PROTECTION

On October 17, 2000, Rene signed an uninsured/underinsured coverage offer form and faxed it to USAA from her workplace. (Trial Tr. pp.12,14; Plaintiff's Ex. 1,1a). The portion of the form offering UIM coverage listed available limits and premiums for UIM bodily injury and property damage. The offer form asked the applicant to check "Yes" or

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[2] Doug Stiltner testified that shortly before trial he found the declaration page for the period covering April 14, 1999 through October 14, 1999 in the back of his filing cabinet at home. (Trial Tr. p.24). USAA's declaration pages only went back to 2001 because the company's policy is to keep such records for seven years. (Trial Tr. p.21). Thus, no declaration pages were produced at trial for the period of October 14, 1999 through April 14, 2001.

[3] Vehicle 14 is listed on the declarations page as "01 MTRCYCLE FATBOY" and first appeared on the July 1, 2001 to October 14, 2011 page.

"No" to the question: "Do you wish to purchase Underinsured Motorists Coverage?" The form instructed the applicant to place a check beside the desired limits if the answer is "Yes." The form Rene signed and faxed to USAA was inconsistent in that it indicated the Stiltners wished to reject UIM coverage ("No" was checked), while at the same time showing a selection of the lowest limit of UIM coverage for bodily injury and property damage (an "x" was placed in the boxes for $15,000/30,000 UIM bodily injury and $10,000 UIM property damage).

Two days later, on October 19, 2000, Rene signed a corrected uninsured/underinsured coverage offer form and again faxed it to USAA from her workplace. (Trial Tr. pp.12,14; Plaintiff's Ex. 2,2a). In this corrected form, the Stiltners still selected "No" for UIM coverage, and the boxes for $15,000/30,000 UIM bodily injury and $10,000 UIM property damage had been whited out. Doug and Rene both testified at trial that the signature on both the initial and corrected forms rejecting UIM coverage belonged to Rene. (Trial Tr. pp.14,54).

Although Doug generally handled the couple's insurance matters, Rene was authorized to handle such matters provided she communicated with Doug and made no unilateral changes in their coverage. (Trial Tr. p.44). Doug testified at trial that he had "no evidence" that Rene violated either of those two conditions. (Trial Tr. p.44). Specifically, Doug testified that Rene never would have put her name on Doug's insurance document and faxed it to USAA without talking to him about it first. (Trial Tr. p.45). Doug acknowledged that the three-day period in which Rene faxed the initial and corrected offer forms provided "ample" time for he and Rene to discuss USAA's offer of UIM coverage. (Trial Tr. p.45). Doug also conceded that he could not say that the form

Rene signed and faxed to USAA actually changed his coverage because he did not know whether UIM coverage had already been dropped from his policy as a result of a phone call he made. (Trial Tr. p.45). Likewise, Doug affirmed that if Rene was conforming the UIM offer form to changes he had made, that would have been within the scope of the permission he had given her. (Trial Tr. p.46).

Doug also testified about the declaration pages for April 2001 through April 2007. He acknowledged that he received those declaration pages and that his practice was to review them closely enough to make sure that the coverages were correct. (Trial Tr. pp.39-40). Doug further admitted that he never called USAA to report a mistake on the declaration pages. (Trial Tr. p.40). Specifically, Doug admitted that the declaration pages clearly and expressly indicated that UIM coverage was not included in the Stiltners' policy. (Trial Tr. p.41).

Rene also testified at trial. Due to the brain injury she sustained in the motorcycle accident, she had no memory of faxing the UIM offer forms or conducting any transactions with USAA. (Trial Tr. pp.53-54). She did acknowledge, however, that the signature on the UIM offer forms was hers. (Trial Tr. p.54). Additionally, Rene admitted that her authority to conduct insurance transactions would have included transactions that did not change the coverage and which she had discussed with Doug. (Trial Tr. pp.57-58). Rene testified that it would not have been her intention to change anything about the policy when she submitted the UIM offer forms to USAA. (Trial Tr. p.59).

An excerpt of Rene's deposition transcript was read into the record at trial. In that deposition testimony, Rene stated she would not have made any unilateral changes in

their coverage and would have told Doug about signing and returning the forms.

Specifically, she testified at her deposition as follows.

> Q. If for some reason you would have handled [Doug's policy], would you have just kept things the way they were the way he had it before?
>
> A. Yeah.
>
> Q. As long as you would have done that, do you think he would have been okay with that?
>
> A. Yeah.
>
> ...
>
> Q. Would you have signed a document for the automobile policy without your husband's permission?
>
> A. No.
>
> Q. Would you have signed it without his approval?
>
> A. No.
>
> Q. Would you have signed it contrary to his instructions?
>
> A. Say that again?
>
> Q. Would you have signed it and accomplished something contrary to what he told you?
>
> A. No.
>
> Q. Would you have signed it without discussing it with him?
>
> A. No, because usually it comes to him.
>
> Q. Okay, but if you signed it, would you have done so without him knowing about it?
>
> A. No.
>
> Q. Would you have kept it a secret from him?

A. No.

Q. Would you have shown it to him before you signed it?

A. Yeah.

Q. To your knowledge, were you attempting to change anything on the policy when you signed those documents?

A. No.

Q. To your knowledge, did you change anything about the policy?

A. No – no, I don't think so.

(Trial Tr. pp.65-67).

The trial court entered declaratory judgment in USAA's favor based on two findings. First, the trial court found that Rene acted within the scope of her implied authority when she signed the form declining UIM coverage. (Order pp.4-6). Second, the trial court found that Doug had ratified Rene's actions by leaving his policy unchanged despite receiving numerous declarations pages from USAA that expressly advise him that he did not carry UIM coverage. (Order pp.6-9).

STANDARD OF REVIEW

Whether a suit for declaratory judgment is legal or equitable is determined by the nature of the underlying issue. Nationwide v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004). When the underlying issue involves determination of coverage under an insurance policy, the action is at law. Id. "In an action at law, tried without a jury, the trial judge's factual findings will not be disturbed on appeal unless a review of the record reveals there is no evidence which reasonably supports the judge's findings." Id.

ARGUMENTS

I) UNDER THIS COURT'S PREVIOUS RULING, RENE HAD IMPLIED AUTHORITY TO ACT ON DOUG'S BEHALF REGARDING HIS AUTOMOBILE INSURANCE SO LONG AS SHE DID NOT CHANGE HIS COVERAGE AND SHE DISCUSSED THE MATTER WITH HIM FIRST.

Following the Stiltners' appeal from the trial court's grant of summary judgment to USAA, this Court upheld the trial court's ruling that Rene had implied authority to make insurance decisions that did not change Doug's policy so long as she discussed them with him first. Stiltner, 395 S.C. at 190, 717 S.E.2d at 77-78. That holding is now the law of the case. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 174-75, 525 S.E.2d 869, 871 (2000) (trial court was bound by the appellate court's previous decision in that case holding that elements of fraud and been proven and remanding for factual development as to damages). In fact, this Court remanded this case to the trial court so it could determine whether Rene's decision to reject UIM coverage was within the scope of her implied authority.

Implied agency arises from the words and conduct of the parties and the circumstances of the particular case. City of Greenville v. Washington Am. League Baseball Club, 205 S.C. 495, 32 S.E.2d 777, 781 (1945). An implied agency between a husband and wife is governed by the same rules which apply to other agencies. Prioleau, 359 S.C. 238, 242, 597 S.E.2d 165, 168 (citing Bankers Trust of South Carolina v. Bruce, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984)). Although no presumption that one spouse is acting as agent for the other arises from the mere fact of the marital relationship, it is possible for a spouse to reject UIM coverage if he or she does so as an

agent authorized to act on the applicant's behalf. Allstate Ins. Co. v. Hancock, 345 S.C. 81, 87, 545 S.E.2d 845, 848 n.4 (Ct. App. 2001).

In Prioleau, this Court held that rejection of UIM coverage by one spouse is valid where evidence shows an implied agency relationship between the spouses. Although the wife in that case testified that her husband did not have authority from her to act as her agent, the Court held that "the relationship of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied by the words and conduct of the parties and the circumstances of the particular case." Prioleau, 359 S.C. at 243, 597 S.E.2d at 168. The Court went on:

> The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency.

Id. (citing Crystal Ice Co. of Columbia v. First Colonial Corp., 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979)).

Despite this Court's holding that Rene had implied authority, the Stiltners contend that Rene's authority "to not change the policy" is nonsensical. (Appellants' Br. p.6). Although limited in scope, Rene's authority regarding Doug's insurance policy was clear: She could reject offers that would change the policy if she discussed them with Doug first. There is nothing "nonsensical" about this authority. As this Court previously held, Rene had implied authority to decline USAA's offer.

The Stiltners also contend that the trial evidence showed she had no implied authority but could only act if Doug expressly instructed her to do so. According to the trial court, Rene "had the authority to act on her husband's behalf so long as she

discussed her actions with her husband and did not make any unilateral changes." (Order p.4). The Stiltners insist that because Rene was required to discuss insurance matters before taking action, she could have only "express" agency. (Appellants' Br. p.7). Discussion, however, does not equal explicit instruction. As this Court observed in Prioleau, implied authority frequently is "implied by the words and conduct of the parties[,]" even if the principal denies that the agency relationship exists. 359 S.C. at 243, 597 S.E.2d at 168. Doug's and Rene's testimony that she would not act on the policy unless she discussed it with him implies that she had authority to sign the UIM offer forms on his behalf, even if he never explicitly told her to sign the forms.[4] (Trial Tr. pp.45,59,65-67).

II) THERE WAS EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING THAT RENE ACTED WITHIN THE SCOPE OF HER AUTHORITY WHEN SHE REJECTED UIM COVERAGE ON DOUG'S POLICY.

The scope of Rene's authority to handle insurance matters was defined by two limitations. First, Rene could not do anything to change Doug's coverage. Second, Rene had to discuss any insurance matters with Doug. The trial court correctly found that Rene did not act outside the scope of these limitations and, therefore, her completion of the offer form constitutes a valid rejection of UIM coverage on Doug's behalf.

A. <u>There was evidence to support the trial court's finding that the rejection of UIM coverage did not change Doug's policy.</u>

[4] The trial court's recognition (consistent with this Court's prior ruling) that Rene had authority to act as Doug's agent in rejecting UIM coverage is all the more appropriate considering the nature of USAA's business. Being comprised primarily of military families, USAA is in the business of trusting spouses to handle insurance matters while the named insured is deployed. Because insurance paperwork cannot timely follow men and women in uniform moving about the world, USAA relies on the agency authority of named insureds' spouses in handling insurance matters and assuring that USAA fulfills its purpose of insuring military families. Accordingly, USAA regularly accepts insurance forms completed by the named insured's spouse.

As to the first condition, the trial court found that Rene's rejection of UIM coverage did not change Doug's policy. (Order pp.4-5). This factual finding must stand unless there was "no evidence" which reasonably supports it. Prioleau, 359 S.C. at 241, 597 S.E.2d at 167.

There was evidence presented at trial to support the court's finding that Rene did not change the policy. Doug testified that Rene was authorized to make automobile insurance decisions that did not change his coverage. (Trial Tr. p.44). Moreover, Doug admitted that he could not say that the form Rene signed and faxed to USAA changed his coverage because he did not know whether UIM coverage had already been dropped from his policy as a result of a phone call he made or any other action he may have taken. (Trial Tr. p.45). Likewise, Doug testified that if Rene was conforming the UIM offer form to changes he had made, that would have been within the scope of the permission he had given her. (Trial Tr. p.46). Rene similarly testified that she had authority to conduct insurance transactions that did not change Doug's coverage. (Trial Tr. pp.57-58). She further testified that it would not have been her intention to change anything about the policy when she submitted the UIM offer forms to USAA. (Trial Tr. p.59). In Rene's deposition testimony, which was read into the record without objection, she emphasized that she would not have rejected UIM coverage if that decision would have changed the policy. (Trial Tr. pp.65-67). In light of Doug's and Rene's testimony that Rene would not have changed the policy – coupled with the undisputed fact that Rene signed the forms rejecting UIM coverage – the trial court held that Rene's rejection of UIM coverage did not change the policy.

As conceded by the Stiltners, the claim that Rene could have been the one who dropped the UIM coverage based on one declaration page showing UIM coverage from October 1998 to April 1999 is pure speculation. (Appellants' Br. p.11). The court's finding must stand unless there is "no evidence" that reasonably supports it. The Stiltners' own testimony that Rene would not have acted to change the policy is sufficient evidence. As the trial court stated, "Plaintiffs have previously admitted that Mrs. Stiltner's actions did not change the existing coverage on the policy at the time she rejected UIM coverage." (Order p.4).

B. There was evidence to support the trial court's finding that Rene discussed the UIM offer with Doug before she rejected it.

The trial court also found that Rene discussed the rejection form with Doug. (Order pp.5-6). This finding was supported by the evidence at trial.

Doug testified that Rene would not have put her name on Doug's insurance document and faxed it to USAA without talking to him about it first. (Trial Tr. p.45). And he acknowledged that the three-day period in which Rene faxed the initial and corrected offer forms provided "ample" time for he and Rene to discuss USAA's offer of UIM coverage. (Trial Tr. p.45). At her deposition, Rene unequivocally averred that she would not have signed the form without discussing it with Doug, would have shown Doug the form, and would not have completed the form without his knowledge. (Trial Tr. pp.65-67). Her testimony is particularly significant in light of the fact that her rejection of UIM coverage was drawn out over several days and involved the completion of multiple forms. Accordingly, the trial court observed that "the testimony of both Plaintiffs was clear that any and all matters concerning insurance would have been discussed and agreed upon by both husband and wife." (Order p.5).

The Stiltners argue that despite their testimony that Rene would have discussed insurance matters with Doug before taking any action, Rene could not remember discussing the UIM forms and Doug outright denied that they had such a discussion. (Appellants' Br. p.13). But Rene's failure to remember the discussion does not mean that it did not happen. And the court was not required to credit Doug's testimony that Rene did not discuss the UIM forms with him. In fact, to credit Doug's testimony on this point, one would have to believe that Rene simply ignored the limits of her authority and went to the trouble of faxing the forms to USAA on two occasions from her workplace so she could drop UIM coverage – despite both Doug's and Rene's testimony that she never would have done this without talking to him first.

Additionally, the trial court found that for over six years Doug received declaration pages expressly indicating he did not have UIM coverage without contacting USAA to ask questions or reinstate coverage. The court considered this fact as further proof that Rene had discussed the matter with Doug and that she was authorized to reject UIM coverage. (Order p.6). See Wiegand v. USAA, 391 S.C. 159, 166, 705 S.E.2d 432, 436 (2011) (fact that Plaintiff received annual reports indicating no UIM coverage and never sought to correct the policy was evidence that Plaintiff had filled out form rejecting UIM).

The Stiltners contend that although it is within "the realm of possibility" that Doug knew UIM coverage had been dropped from his policy, it is also "possible" that he "inadvertently overlooked the removal of UIM from his policy." (Appellants' Br. p.12). Under the applicable standard of review, the Stiltners must do much more than point out possible alternatives to the trial court's findings of fact. The Stiltners must show that

there was no evidence reasonably supporting the trial court's inference that Doug was aware his policy did not include UIM coverage. They have failed to make this showing on appeal. Doug testified at trial that he received those declaration pages and that his practice was to review them closely enough to make sure the coverages were correct. (Trial Tr. pp.39-40). Doug further admitted that he never called USAA to report a mistake on the declaration pages. (Trial Tr. p.40). The trial court reasonably inferred that Doug would have contacted USAA if his coverage (including his UIM coverage) was incorrect and the fact that he did not contact USAA was evidence Rene had been authorized to reject USAA's offer of UIM coverage.

III) THERE WAS EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING THAT DOUG RATIFIED RENE'S ACTIONS WHEN HE FAILED TO TAKE ANY CORRECTIVE ACTION AFTER RECEIVING OVER SIX YEARS' WORTH OF POLICY DECLARATIONS AND RENEWAL NOTICES.

The trial court also found that, regardless of whether Rene was acting as Doug's agent when she rejected UIM coverage, Doug ratified her rejection when he failed to take corrective action after receiving six years' worth of notices which expressly excluded UIM from coverages provided under the policy. (Order pp.6-9). This finding was supported by the evidence at trial.

Lack of authority of an agent can be supplied by express or implied ratification. Dubuque Fire & Marine Ins. Co. v. Miller, 219 S.C. 17, 26-27, 64 S.E.2d 8, 12 (1951). Ratification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent. Lincoln v. Aetna Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989) (citing Barber v. Carolina

Auto Sales, 236 S.C. 594, 115 S.E.2d 291 (1960)). Ratification exists upon the concurrence of three elements: (1) acceptance by the principal of the benefits of the agent's acts; (2) full knowledge of the facts; and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements. Id. (citing 2A C.J.S. Agency Section 71 (1972)).

Analyzing the three elements of ratification it is clear that: (1) Doug accepted the benefits of Rene's rejection of UIM coverage by paying a lower premium on his policy and accepting payment for coverages that were provided under the policy,[5] as well as benefitting from protection against accidents and conformity to South Carolina law requiring insurance; (2) Doug had full knowledge of the fact that his policy did not provide UIM coverage as indicated by his testimony that he reviewed renewal notices every six months which expressly listed UIM coverage as being among those not provided under the policy; and (3) Doug accepted the benefits of coverage under his policy without taking any action to correct or question Rene's rejection of UIM coverage.

Although not controlling, there is a Third Circuit case which has comparable facts. In State Farm Insurance Company v. Taylor, the insureds claimed that State Farm unilaterally changed the "named insured" on the declarations page from the insured individual's name to the name of the insured's company without authorization. 293 F.Supp.2d 530 (E.D. Pa. 2003), aff'd, 116 F. App'x 350 (3d Cir. 2004). The court granted summary judgment to State Farm based on the fact that the insured ratified and thereby assented to any changes on the policy. Specifically, the court held:

> There is no dispute that Defendants received copies of the policies and the new declaration pages years before the accident. By paying the premiums and

[5] Doug testified that USAA provided collision coverage for damage to his vehicle in two separate accidents. (Trial Tr. p.43).

> renewing the policies three times prior to the accident, Defendants accepted and ratified the terms of the policies, including the "named insured" appearing in the declarations. Defendants accepted the benefits of coverage when they paid the policy premiums. Had they reviewed the insurance documents prior to Mrs. Taylor's accident, they would have reached the inescapable conclusion outlined above: if Mrs. Taylor became involved in an accident in her personal vehicle with an underinsured driver, she would not be eligible for UIM benefits under the Corporation's policies. Despite having sufficient information available to them, Defendants did nothing in the twenty-one months between the policies' inception dates and the date of the accident to address any perceived questions or errors concerning the "named insured" or the scope of coverage.

Id. at 535 (citations omitted); see also, e.g., Benner v. Nationwide Mut. Ins. Co., 93 F.3d 1228, 1237 (4th Cir. 1996) ("If the insured accepts the policy or retains it for an unreasonable length of time, the insurer may presume that he ratified any changes and agreed to all of the terms.") (applying Maryland law).

Similarly, Doug received declarations pages detailing his coverage every six months for the six years preceding the accident. Additionally, he received notices of adjustments to the policy when he changed cars or added his teenage stepdaughter to the policy. (Trial Tr. pp.28-29). By paying the premiums and renewing the policy, he accepted and ratified the terms of the policy, including the exclusion of UIM coverage. He accepted the benefits of coverage when he paid the policy premiums and accepted collision coverage payments on two occasions. Had he reviewed the insurance documents prior to the accident he would have reached the inescapable conclusion that if he became involved in an accident with an underinsured driver, he and his wife would not be entitled to UIM coverage. Despite having sufficient information available to him, he did nothing in the six years and five months between the date of the signed rejection form and the date of the accident to address any perceived questions or errors concerning the scope of coverage.

These facts run counter to the Stiltners' argument that "all USAA has to support ratification is Doug's silence." (Appellants' Br. p.15). Doug did not simply remain silent while Rene acted on his behalf. As noted above, among other affirmative acts he made regarding the policy, Doug reviewed the declarations noting the lack of UIM coverage, paid the lower premiums applicable to a policy without that coverage and accepted benefits from other claims under the policy.

Therefore, even if Rene was not acting as Doug's agent when she rejected UIM coverage, Doug ratified her rejection and judgment in favor of USAA should be affirmed.

IV) EVEN IF RENE STILTNER WAS NOT ACTING WITHIN HER AUTHORITY AS DOUG'S AGENT WHEN SHE REJECTED UIM COVERAGE, SHE IS ESTOPPED FROM DENYING THE EXISTENCE OF THE AGENCY RELATIONSHIP.

As a final matter, Rene Stiltner should be estopped from denying her rejection of UIM coverage. Although the trial court did not reach the estoppel issue, this Court may affirm on any basis appearing in the record. Rule 220(c), SCACR; Cisson Const., Inc. v. Reynolds & Assoc., Inc., 311 S.C. 499, 504, 429 S.E.2d 847, 850 (Ct. App. 1993).

Under South Carolina law, the elements of estoppel include: (1) ignorance of the truth on the party invoking it, (2) representations or conduct by the other party which misled the first, (3) actual reliance by the invoking party on the other's representations or conduct, and (4) a resulting prejudicial change in the invoking party's position. Canal Ins. Co. v. Caldwell, 338 S.C. 1, 8, 524 S.E.2d 416, 419 n.3 (Ct. App. 1999).

The equitable remedy of estoppel was applied in a similar factual setting when the Georgia Court of Appeals held that a spouse who signed her named insured husband's name to a UIM rejection form, asserting her authority to do so, could not recover based

on the form not bearing a valid signature. Miller v. State Farm Mut. Auto. Ins. Co., 271 S.E.2d 14, 16 (Ga. Ct. App. 1980). Specially, the Georgia Court held:

> The insurance company clearly should not be penalized for failing to provide uninsured motorist coverage under these circumstances, and it would contravene any notion of justice to allow [the signing spouse] to disavow her admitted agency in an attempt to impose liability. Accordingly, we hold that [she] is estopped from claiming that she signed her husband's name without proper authority.

Id. at 16.

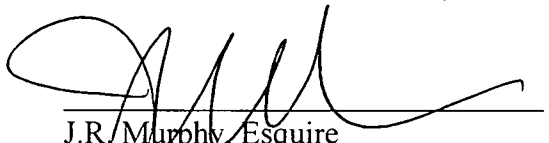
Similarly, Rene Stiltner should be estopped from claiming she signed the UIM rejection without proper authority. First, even if Rene did not have authority to sign the form, USAA did not know (and had no reason to know) of her lack of authority. Second, the Stiltners' conduct led USAA to believe that Rene did in fact have authority to sign the form. Rene's signature on the form impliedly warranted that she had authority to sign it. Likewise, Doug led USAA to believe he approved the rejection of UIM coverage based on his failure to correct the form throughout the course of more than six years in which he paid lower premiums and received declarations showing he lacked UIM coverage. Third, USAA relied to its detriment on the Stiltners' conduct based on the lower rates it charged them over the course of that time period. Fourth, USAA was prejudiced when the Stiltners claimed that Rene's signature was unauthorized only after they sought to collect UIM benefits following their motorcycle accident. Thus, the facts presented at trial satisfy all the elements of estoppel, and this Court can affirm the trial court's judgment on this alternative ground.

CONCLUSION

For the reasons stated above, the evidence below support the trial court's factual findings, and the trial court's order granting declaratory judgment in favor of USAA should be affirmed.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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Columbia, South Carolina
April 23, 2013

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2007-CP-23-6453

Douglas Earl Stiltner and Christine Rene Stiltner .....Appellants,

v.

USAA Casualty Insurance Company .....Respondent.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Order dated May 17, 2012;
2. Order dated June 10, 2012;
3. Record on Appeal from prior appeal of same case;
4. Trial Transcript and exhibits; and
5. Defendant's Trial Brief dated May 8, 2012.

I certify that this designation contains no matter that is irrelevant to this appeal.

April 23, 2012

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PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter on Douglas Earl Stiltner and Christine Rene Stiltner by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2013, addressed to their attorney of record, Blake A. Hewitt, Esquire, P.O. Box 7965, Columbia, South Carolina 29202 and Bryan D. Ramey, Esquire, P.O. Box 51600, Piedmont, South Carolina 29673.

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