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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-111

Filed 7 May 2025

Wake County, No. 22CVS014984-910

ERIE INSURANCE EXCHANGE, Plaintiff,

v.

JAMES STRICKLAND, Defendant.

Appeal by defendant from order entered 28 November 2023 by Judge Vince M. Rozier, Jr., in Superior Court, Wake County. Heard in the Court of Appeals 13 August 2024.

*Sue, Anderson & Bordman, LLP, by Stephanie W. Anderson and Andrew T. Smith, for plaintiff-appellee.*

*Bailey & Dixon, LLP, by David S. Coats and J.T. Crook, and Blanchard, Miller, Lewis, & Isley P.A., by Philip R. Miller, III, for defendant-appellant.*

PER CURIAM.

Defendant appeals from an order granting Erie Insurance Exchange's motion for judgment on the pleadings. The trial court found that Defendant was not entitled to underinsured motorist coverage under the policy issued by Erie Insurance Exchange to Defendant. For the reasons discussed herein, we affirm the trial court's

order.

### **I. Factual and Procedural Background**

On 15 February 2022, a vehicle collided head-on with Defendant's vehicle. As a result of the accident, Defendant suffered serious personal injuries and was admitted to the intensive care unit. He continued to experience lasting medical issues related to his injuries, including an ongoing neck injury. The medical bills from the accident totaled approximately \$75,000.00. There is no dispute that the driver of the other vehicle caused the accident and that Defendant was not at fault.

At the time of the accident, Defendant had automobile insurance coverage with Erie Insurance Exchange ("Erie"). His policy (the "Policy") with Erie included underinsured motorist ("UIM") coverage capped at \$1,000,000.00 per person and \$1,000,000.00 per accident.

Defendant initially filed a personal injury claim with the insurance carrier of the at-fault driver, Government Employees Insurance Company ("GEICO"). On 12 July 2022, GEICO informed Defendant that the liability limits for his claim arising from the accident was \$30,000.00 and confirmed that it would provide the full coverage amount. The following day, Defendant spoke with one of Erie's insurance adjusters and subsequently sent a letter summarizing the details of their conversation. The letter stated that GEICO was to tender the \$30,000.00 limits of its liability policy and that Defendant would send GEICO's formal tender letter to Erie once received. Further, Defendant wished to proceed with a UIM claim pursuant to

Defendant's Policy with Erie, as the costs associated with his injuries exceeded GEICO's limits of liability coverage.

On 18 July 2022, GEICO sent a formal tender letter to Defendant, notifying him that it had "tendered the available policy limits of \$30,000.00." The letter further stated, "[t]his offer is contingent upon a waiver of subrogation from any other insurance that may contribute to [Defendant's] bodily injury claim and a full release" and "this provides thirty days for the Underinsured Motorist carrier(s) to advance payment of our policy limits in order to protect their subrogation rights, or to forgo subrogation and allow us to pay out limits." On 26 July 2022, Defendant signed a Covenant Not to Enforce Judgment (the "Covenant"), releasing GEICO from any further obligation arising from the accident.

On 18 August 2022, Defendant informed Erie that he had accepted GEICO's tender of the \$30,000.00 liability limits pursuant to the at-fault driver's liability policy. Defendant sent to Erie both GEICO's formal tender letter and the signed Covenant.

On 16 November 2022, Defendant sent Erie a demand for arbitration regarding his UIM claim under the Policy. Defendant stated that because no payment had been made within the thirty-day period for the \$30,000.00 tendered by GEICO, Erie had waived any opportunity to make a payment in order to protect its subrogation rights. Therefore, as the thirty-day period had expired, Defendant's claim was ripe for arbitration.

In response, on 5 December 2022 Erie filed a complaint for a declaratory judgment and a motion to stay Defendant's demand for arbitration. As to the declaratory judgment action, Erie sought a judicial determination as to whether it owed Defendant UIM coverage under the Policy. Erie specifically argued that Defendant failed to provide sufficient written notice of GEICO's tender of liability coverage before Defendant executed the Covenant, thereby waiving Erie's subrogation rights against the at-fault driver.

On 17 February 2023, Defendant filed an answer and counterclaim, seeking a declaratory judgment that he was entitled to proceed with his UIM claim against Erie and an order compelling arbitration of the matter. Thereafter, Erie filed a motion for judgment on the pleadings, and Defendant filed a motion for summary judgment.

On 28 November 2023, after a hearing on the motions, the trial court entered an order granting Erie's motion for judgment on the pleadings, finding:

as a result of . . . [D]efendant's failure to provide thirty days' notice to [Erie] of the liability carrier's tender of coverage pursuant to G.S. § 20-279.21, thereby precluding [Erie's] right to subrogation, the [c]ourt finds that there is no [UIM] Coverage under the policy issued by [Erie] to . . . [D]efendant for the February 15, 2022 motor vehicle accident.

The trial court, however, did not address Defendant's motion for summary judgment in its order. Defendant timely appealed.

## **II. Analysis**

Defendant argues the trial court erred by granting Erie's motion for judgment

on the pleadings. Defendant further argues, because Erie’s motion was erroneously granted, the trial court erred by not granting his motion for summary judgment. However, this case ultimately concerns whether Defendant is entitled to UIM coverage under the Policy, or whether he is barred from coverage because he executed the Covenant with GEICO before the expiration of the thirty-day period. To address this issue, two questions must be addressed: (1) whether Erie was provided with sufficient written notice before the settlement between Defendant and GEICO; and (2) if the notice was adequate, whether the Covenant—entered into by Defendant and GEICO within Erie’s thirty-day notice period—prohibited Erie from advancing payment to Defendant and waived its subrogation rights against the at-fault driver; therefore, barring Defendant from recovering on the Policy.

At the trial court, a motion for judgment on the pleadings “should not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.” *Barefoot v. Rule*, 265 N.C. App. 401, 404, 828 S.E.2d 685, 687 (2019). “The trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party. All well pleaded factual allegations in the nonmoving party’s pleadings are taken as true and all contravening assertions in the movant’s pleadings are taken as false.” *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974) (citations omitted).

“A trial court’s ruling on a motion for judgment on the pleadings is subject to

*de novo* review on appeal.” *Rule*, 265 N.C. App. at 403, 828 S.E.2d at 687. “Under a *de novo* standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *Bauman v. Pasquotank Cnty. ABC Bd.*, 270 N.C. App. 640, 642, 842 S.E.2d 166, 168 (2020) (citation omitted).

UIM coverage is governed by The North Carolina Motor Vehicle Safety and Financial Responsibility Act, pursuant to North Carolina General Statute Section 20-279.21(b)(4). *N.C. Farm Bureau Mut. Ins. Co., Inc. v. Dana*, 379 N.C. 502, 507, 866 S.E.2d 710, 715 (2021). The Financial Responsibility Act was enacted to “compensate the innocent victims of financially irresponsible motorists.” *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 573, 573 S.E.2d 118, 120 (2002) (citation omitted). Its provisions are construed “to provide the innocent victim with the fullest possible protection.” *Id.* at 574, 573 S.E.2d at 120 (citation omitted). To effectuate the purpose of the Act, its provisions “are written into every policy of automobile insurance as a matter of law.” *Tutterow v. Hall*, 283 N.C. App. 314, 317, 872 S.E.2d 171, 174 (2022) (citations and quotation marks omitted).

Under the Act, the purpose of UIM coverage is to “provide[ ] a secondary source of recovery for an insured when the tortfeasor has insurance, but the tortfeasor’s liability limits are insufficient to compensate the injured party.” *N.C. Farm Bureau Mut. Ins. Co., Inc. v. Hebert*, 385 N.C. 705, 712, 898 S.E.2d 718, 724 (2024) (citation omitted). It “acts as a safeguard” for the insured party “when the tortfeasor’s liability coverage is exhausted.” *Id.* at 712, 898 S.E.2d at 725 (citations, quotation marks, and

brackets omitted). Stated differently, it is “intended to place a policy holder in the *same position* that the policy holder would have been in if the tortfeasor had had liability coverage equal to the amount of” the UIM coverage. *Nationwide Mut. Ins. Co. v. Haight*, 152 N.C. App. 137, 142, 566 S.E.2d 835, 838 (2002) (emphasis in original) (citation omitted).

Thus, when the insured party sustains damages which exceed the tortfeasor’s liability coverage, the limit of an UIM claim is calculated by determining “the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of [UIM] coverage applicable to the motor vehicle involved in the accident.” N.C. Gen. Stat. § 20-279.21(b)(4) (2023). From there, the insured party, pursuant to its own policy, may elect to be compensated for those injuries in an amount consistent with the UIM limit.

However, it is well-established that an UIM insurer is entitled to subrogate, *i.e.*, step into the place of the insured and assume the rights that the insured may have against the tortfeasor who caused the loss. *See Wichnoski v. Piedmont Fire Prot. Sys., LLC*, 251 N.C. App. 385, 394, 796 S.E.2d 29, 36-37 (2016) (describing subrogation as “an equitable remedy in which one steps into the place of another and takes over *the right to claim monetary damages* to the extent that the other could have” (emphasis in original) (citation omitted)); *see also New S. Ins. Co. v. Velez*, 21 N.C. App. 700, 701, 205 S.E.2d 559, 560 (1974) (“[A]n insurer who pays damages to the insured is subrogated to whatever rights the insured may have against the tort-

feasor.” (citation omitted)).

North Carolina General Statute Section 20-279.21(b)(4) sets forth the requirements for an UIM insurer to preserve its subrogation rights:

No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice.

N.C. Gen. Stat. § 20-279.21(b)(4). Therefore, when the primary liability insurance carrier offers its policy limits in settlement to the insured, two requirements must be met in order for an UIM insurer to preserve its subrogation rights. First, the UIM insurer must be provided with written notice before a settlement between the insured and the primary liability insurance carrier. *See id.* Second, the UIM insurer must “advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice.” *Id.* If the UIM insurer does not advance a payment to the insured within the thirty-day period, the UIM insurer thereby waives its subrogation rights. In other words, the UIM insurer is then barred from exercising any rights the insured may have had against the tortfeasor.

#### **A. Written Notice**

Under North Carolina General Statute Section 20-279.21(b)(4), we must first



address whether Erie was provided with written notice before the settlement occurred between Defendant and GEICO. Erie contends the 13 July 2022 letter from Defendant to Erie merely gives “notice of a tender” and does not give “notice of an intent to accept said tender and settle with the liability carrier.” However, this Court has expressly dismissed arguments akin to Erie’s in both *Daughtry* and *Ennis*.

In *Daughtry*, the primary liability insurance carrier sent a letter to the insured, offering to pay the policy limit in settlement but allowing the insured to choose between two different structured settlement options. The insured sent a copy of the letter to the UIM insurer, alongside another letter which stated, “It appears [the primary liability carrier] has accepted full responsibility for this accident and have [sic] offered to tender their liability limits in the amount of \$100,000 to conclude this matter.” *Daughtry v. Castleberry*, 123 N.C. App. 671, 672, 474 S.E.2d 137, 138 (1996). On appeal, the UIM insurer argued that the notice it was provided did not trigger the thirty-day period, as it was a “preliminary negotiation or offer” and “not an actual settlement” between the insured and primary liability insurance carrier. *Id.* at 674, 474 S.E.2d at 139-40.

In analyzing North Carolina General Statute Section 20-279.21(b)(4), this Court held that an UIM insurer must be “notified when a settlement *offer* is made, and when the primary liability insurance carrier has *offered* the limits of its policy in settlement.” *Id.* at 675, 474 S.E.2d at 140 (emphasis in original). The statute does not “require that the settlement be completed or that the UIM carrier must have

notice of its insured's acceptance of the offer." *Id.* Accordingly, this Court overruled the UIM insurer's arguments and held it was properly notified of the settlement.

This Court recently reaffirmed the holding of *Daughtry* in *Ennis*. There, the UIM insurer argued that the thirty-day deadline was not triggered, as the insured "had expressly rejected the tender of policy limits and stated [an] intent to continue to reject settlement offers for the liability insurer's policy limits." *Ennis v. Haswell*, 292 N.C. App. 112, 118, 897 S.E.2d 15, 19 (2024). Citing *Daughtry*, the Court in *Ennis* held, "the only requirement to trigger the 30-day deadline is an *offer*, and the insured's response—whether known or unknown to the UIM insurer—is immaterial." *Id.* at 118, 897 S.E.2d at 19-20 (emphasis in original).

In the present case, Defendant sent Erie a letter on 13 July 2022, which stated:

This will follow up our conversation from this afternoon and confirm that liability carrier in the above case contacted me today to tender its \$30,000.00 limits. As a result, we would like to proceed with a UIM claim pursuant to [Defendant's] policy with Erie, I have not yet received a formal tender letter from the liability carrier. Once I receive it I will forward it to you. In the meantime, please forward this letter to whomever necessary within Erie to start a UIM claim.

Like *Daughtry*, the 13 July 2022 letter notified Erie that GEICO contacted Defendant about a settlement *offer* and that GEICO *offered* to tender the \$30,000.00 limits of its policy in settlement. This is further supported by the language, "[a]s a result, we would like to proceed with a UIM claim" and "please forward this letter to whomever necessary within Erie *to start a UIM claim.*" (Emphasis added.) Put together, the

letter notified Erie that an offer was made, that GEICO offered the limits of its policy, and *as a result of that offer*, Defendant requested that Erie do what was necessary to *start* a UIM claim.

As discussed *supra*, North Carolina General Statute Section 20-279.21(b)(4) requires “written notice *before* a settlement between its insured and the underinsured motorist” and a payment equal to the “*tentative* settlement.” N.C. Gen. Stat. § 20-279.21(b)(4). Likewise, “the only requirement to trigger the 30-day deadline is an *offer*, and the insured’s response . . . is immaterial.” *Ennis*, 292 N.C. App. at 118, 897 S.E.2d at 19-20 (emphasis in original). Thus, consistent with this Court’s interpretation of the controlling statute, the 13 July 2022 letter provided Erie with adequate written notice prior to a settlement. Accordingly, the 13 July 2022 notice triggered Erie’s thirty-day deadline.

## **B. UIM Coverage**

We next determine whether Defendant is entitled to UIM coverage under the Policy. At the trial court, and now on appeal, Defendant’s and Erie’s arguments regarding the resolution of this issue are markedly different. Nevertheless, it is undisputed that Erie did not pay Defendant the tentative settlement amount within thirty days following the 13 July 2022 notice.

Erie’s argument is as follows. The thirty-day period during which Erie was allowed to make a payment to Defendant began on 13 July 2022 and expired on 12 August 2022. During that period, and within thirteen days of Erie’s receipt of the 13

July 2022 notice, Defendant signed the Covenant. The Covenant waived Erie's subrogation rights and prohibited Erie from advancing a payment to Defendant. Consequently, since the Covenant was executed before 12 August 2022 and its rights were terminated, Erie did not receive the statutorily required thirty-day notice. Therefore, as Defendant failed to comply with this thirty-day notice requirement, he is precluded from recovering on UIM coverage under the Policy.

On the other hand, Defendant argues that the date the Covenant was signed is irrelevant to the outcome. The dispositive issue, according to Defendant, is whether Erie made a payment to Defendant by 12 August 2022. Since Erie did not do so, it waived its subrogation rights. Moreover, Defendant asserts that Erie's argument is wholly unsupported, as no caselaw establishes that a covenant not to enforce judgment precludes an insured from UIM coverage.

In 1997, the North Carolina General Assembly amended North Carolina General Statute Section 20-279.21(b)(4) to address how a covenant not to enforce judgment affects an insured party's right to assert a UIM claim:

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist

coverage from pursuing any right of subrogation.

N.C. Gen. Stat. § 20-279.21(b)(4). The plain language of the statute reveals that an insured party, in exchange for receiving the policy limit from the primary liability insurance carrier, may enter into a covenant not to enforce judgment against the tortfeasor. The contractual covenant precludes the enforcement of any judgment that exceeds the policy limits against the tortfeasor. Notably, the execution of this covenant does not prevent an insured party from seeking UIM benefits, unless expressly stated otherwise, and does not bar an UIM insurer from exercising its subrogation rights.

The 1997 amendment aligns with the public policy objectives underlying the statute, specifically its purpose of protecting and compensating the insured party for damages caused by financially irresponsible motorists. *Pennington*, 356 N.C. at 573-74, 573 S.E.2d at 120. Therefore, allowing the insured party, at their discretion, to contractually waive their right to enforce a judgment against the tortfeasor is consistent with these policy goals.

Although this language seems to address the issue at hand, it does not account for the situation where the insured party signs a covenant not to enforce judgment with the primary liability carrier *before* the thirty-day notice period expires.

Moreover, North Carolina courts have not yet addressed this specific issue.<sup>1</sup> Thus, to resolve this issue, we must examine the effects of a covenant not to enforce, the precise statutory language, and the language contained in the Covenant itself.

A covenant not to enforce judgment allows “the injured party to take the necessary steps . . . to limit a release to the tortfeasor’s personal liability.” *N.C. Farm Bureau Mut. Ins. Co. v. Edwards*, 154 N.C. App. 616, 623, 572 S.E.2d 805, 809 (2002) (citations omitted). Specifically, as discussed *supra*, it allows the insured party to contractually waive the enforcement of a judgment that exceeds policy limits against the tortfeasor. This allows “settlement of the primary claim” so the insured party may collect from the primary liability insurance carrier, and thereafter, seek UIM benefits from its own insurer. *Gurganious v. Integon Gen. Ins. Corp.*, 108 N.C. App. 163, 168, 423 S.E.2d 317, 320 (1992). Meaning, the consummation of a covenant not to enforce judgment in exchange for the primary liability insurer’s tender of funds *settles* the claim between the insured and the tortfeasor.

The unambiguous language of North Carolina General Statute Section 20-279.21(b)(4), however, provides that an UIM insurer shall not exercise any right of subrogation or any right to “*approve settlement*” if it fails to advance a payment “in an amount equal to the *tentative settlement*” within thirty-days following the written

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<sup>1</sup> Although this Court and our Supreme Court have addressed similar issues, this case is distinguishable because Erie received written notice of GEICO’s offer to settle for its policy limits, but Defendant signed the Covenant during Erie’s thirty-day notice period.

notice. *Id.* An interpretation of “to approve settlement” and “tentative settlement,” by its plain meaning, implies that an UIM insurer has thirty days to act *before* the finalization of a settlement between the insured and the primary liability insurance carrier.<sup>2</sup> Stated differently, an UIM insurer cannot “approve” of a settlement that has already been completed and is no longer “tentative.”

This interpretation is consistent with the general rule that, once the UIM insurer fails to advance payment within the allotted period, “an insured’s failure to obtain the [UIM] insurer’s consent before entering into a settlement agreement does not, as a matter of law, bar the insured’s recovery against the insurer for underinsured motorist coverage.” *McCrary ex rel. McCrary v. Byrd*, 148 N.C. App. 630, 637, 559 S.E.2d 821, 826 (2002); *see also Wilmoth v. State Farm Mut. Auto. Ins. Co.*, 127 N.C. App. 260, 265, 488 S.E.2d 628, 632 (1997) (explaining that an insured party may initiate an action for UIM coverage when the UIM insurer “has received notice of the settlement in compliance with G.S. § 20-279.21(b)(4) and has waived its rights to approve the settlement”).

Likewise, it logically follows that an insured party’s failure to comply with the notice requirement under North Carolina General Statute Section 20-279.21(b)(4)

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<sup>2</sup> The Merriam-Webster Dictionary defines “approve” as “to give formal or official sanction” and “tentative” as “not fully worked out or developed.” *See Approve*, The Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/approve> (last visited 31 March 2025); *see also Tentative*, The Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/tentative> (last visited 31 March 2025).

may result in the waiver of UIM benefits. As our Supreme Court in *Bowden* held, “[a]n underinsured motorist carrier may only be said to have waived its rights if, after receiving written notice of a proposed settlement, it fails to advance an amount equal to the proposed settlement within thirty days of the notice.” *Williams v. Bowden*, 128 N.C. App. 318, 320, 494 S.E.2d 798, 800 (1998); *see also* Simpson, *North Carolina Uninsured and Underinsured Motorist Insurance* § 3:22 (“[T]here is no UIM coverage for an insured who settles his bodily injury claim without the UIM insurer’s consent.”).

Ultimately, the language of the statute, when considered in light of our caselaw, is instructive. The insured party must provide written notice to the UIM insurer when the primarily liability insurance carrier makes an offer of its policy liability limits. The notice triggers the thirty-day period, where the UIM insurer may advance a payment in response to the offer or allow the period to expire, thus waiving its rights to subrogation and right to approve the settlement. If the UIM insurer advances a payment, the insured party *does not settle* with the tortfeasor, as the payment preserves the UIM insurer’s rights to subrogation and settlement. *See Edwards*, 154 N.C. App. at 619, 572 S.E.2d at 807 (“[A] UIM carrier’s liability to the insured is derivative of the tortfeasor’s liability.”). By contrast, if the UIM insurer does not advance a payment within thirty days, the insured party *may settle* with the tortfeasor, as the UIM insurer waived its rights accordingly. Nevertheless, during the thirty-day period the UIM insurer has the discretion to exercise either option.



With this in mind, we must now determine whether Defendant waived his UIM claim when he entered into the Covenant with GEICO thirteen days after Erie received notice of GEICO's offer to tender its policy limits.

A North Carolina federal court addressed an analogous issue in *Essentia Ins. Co. v. Stephens*, 530 F. Supp. 3d 582 (E.D.N.C. 2021). Although *Stephens* is not binding on this Court, we find its analysis and interpretation of North Carolina General Statute Section 20-279.21(b)(4) persuasive. See *Libertarian Party of N.C. v. State*, 200 N.C. App. 323, 331, 688 S.E.2d 700, 706 (2009) (“[I]n construing and applying our laws . . . neither this Court nor our Supreme Court is bound by the decisions of federal courts . . . although in our discretion we may conclude that the reasoning of such decisions is persuasive.” (citations and quotation marks omitted)).

In that case, the defendant both signed a covenant not to enforce judgment and received the funds from the primary liability carrier before notifying the UIM insurer a few days later of the offer to tender. The court in *Stephens* explained that the covenant not to enforce judgment, by its terms, settled the defendant's claim against the primary liability insurer in exchange for the tender of the policy limits, funds of which were disbursed to the defendant. As such, the defendant had not only received an offer from the primary liability insurance carrier but “had actually reached a settlement with its insured within the meaning of the statute.” *Id.* at 593. It further reasoned:

[The d]efendant had executed a covenant not to enforce,

which fixed by mutual agreement that [the] defendant would release [the primary liability insurance carrier] from any obligation arising from the accident and that [the] defendant would not attempt to collect any sum from [the primary liability insurance carrier's] insured as a result of said accident, resolving any controversy between the two parties. [The d]efendant did not notify [the UIM carrier] of the offer of settlement . . . prior to entering this settlement, violating section 20-279.21(b)(4)'s "plain and clear" written notice requirement.

*Id.* at 593-94. Thus, under North Carolina General Statute Section 20-279.21(b)(4), the UIM insurer "retained the ability to exercise its right to approve settlement with the [tortfeasor] when [the] defendant entered into the settlement." *Id.* at 594.

Accordingly, the defendant's UIM claim was "forfeited because [the UIM insurer] did not waive its right to approve the settlement, yet defendant entered a settlement without [the UIM insurer's] consent." *Id.* In sum, the court in *Stephens* held that the defendant's failure to provide statutorily required notice *and* his settlement of his claim against the tortfeasor, without the UIM insurer's consent, barred his UIM claim.

In the present case, Erie received the required written notice on 13 July 2022. On 18 July 2022, GEICO informed Defendant that it had tendered the available policy limits of \$30,000.00; however, the funds were "contingent upon a waiver of subrogation from any other insurance [carrier]" and "a full release." While Erie had until 12 August 2022 to advance a \$30,000.00 payment to Defendant, Defendant signed the Covenant on 26 July 2022.

The Covenant included the following terms. First, it “release[ed], acquit[ted] and forever discharge[d] the payor, [GEICO,] . . . from *any obligation* arising among these parties because of an accident which occurred on or about the 15<sup>th</sup> day of February, 2022.” Second, Defendant agreed that he would “*not attempt to collect any sum from [the tortfeasor]*, and any other person, firms or corporations that may qualify as an insured” under the respective GEICO policy, nor would Defendant enforce “any judgment against [the tortfeasor] rendered as a result of” the accident. Third, while the Covenant preserved Defendant’s rights to pursue UIM coverage, Defendant agreed that any judgment would be marked as “Satisfied” after the exhaustion of his UIM coverage. Lastly, alongside Defendant’s signature is a statement which states, “this is a release in full.”

Thus, by signing the Covenant, Defendant released GEICO from any obligation arising from the accident and further agreed that he would not attempt to collect any sum from the tortfeasor, thereby “resolving any controversy between the two parties.” *Stephens*, 530 F. Supp. 3d at 593-94; *see also Spivey*, 116 N.C. App. at 127, 446 S.E.2d at 838 (“As long as [the insured] intended to release the tortfeasor, the UIM carrier is released as well.”). This settlement, entered into on 26 July 2022, occurred during the thirty-day period in which Erie had the ability to approve the “*tentative settlement*.” Notwithstanding that Erie did not waive its right to approve the settlement, Defendant settled the matter without Erie’s consent.

Accordingly, as in *Stephens*, Defendant’s settlement of his claim against the

tortfeasor, without Erie's waiver of rights and within the thirty-day notice period, barred his UIM claim. *See Stephens*, 530 F. Supp. 3d at 593-94. He settled within thirteen days of Erie's notice, when Erie retained the right to approve the settlement. Defendant's violation of North Carolina General Statute Section 20-279.21(b)(4) therefore barred him from UIM coverage under the Policy.

We are cognizant of the public policy underlying the Financial Responsibility Act and recognize that it is "a remedial statute to be liberally construed so that the beneficial purpose intended by its enactment may be accomplished." *Hebert*, 385 N.C. at 711-12, 898 S.E.2d at 724 (citation omitted). However, we also recognize that the purpose of the notice requirement is to "protect the [UIM] insurer's right of subrogation." *Silvers v. Horace Mann Ins. Co.*, 324 N.C. 289, 298, 378 S.E.2d 21, 27 (1989) (citation omitted). Likewise, "to protect the UIM carrier against collusion between the tortfeasor and the insured and noncooperation on the part of the tortfeasor after his or her release by the insured." *Id.* at 299, 378 S.E.2d at 27.

Furthermore, the role of this Court "is not to speculate about the consequences of the language the legislature chose; we interpret that language according to its plain meaning and if the result is unintended, the legislature will clarify the statute." *Ennis*, 292 N.C. App. at 119, 897 S.E.2d at 20 (citation omitted). An interpretation of North Carolina General Statute Section 20-279.21(b)(4) according to its plain meaning afforded Erie with the right to approve the settlement at its discretion. As Defendant signed the Covenant prior to the thirty-day deadline, he settled any

controversy between him and the tortfeasor, stripping Erie of its exercisable right to approve of the tentative settlement. Thus, although the result of this matter may be unintended by our legislature, Defendant's violation of the statute barred his UIM claim.

### **III. Conclusion**

Due to Defendant's settlement with the tortfeasor's insurer prior to Erie's right to approve the settlement expired, Defendant is not entitled to UIM coverage from Erie. Accordingly, we affirm the trial court's order.

AFFIRMED.

Panel consisting of Chief Judge DILLON and Judges STROUD and GORE.

Report per Rule 30(e).