THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough-northern judicial district
Case No. 2025-0330
Citation: Royce v. State Farm Fire & Cas. Co., 2026 N.H. 28

SUSAN D. ROYCE

v.

STATE FARM FIRE AND CASUALTY COMPANY

Argued: April 9, 2026
Opinion Issued: July 24, 2026

Bussiere & Bussiere, P.A., of Manchester (Emile R. Bussiere, Jr. on the brief and orally), for the plaintiff.

Primmer Piper Eggleston & Cramer, PC, of Manchester (Doreen F. Connor on the brief and orally), for the defendant.

DONOVAN, J.

[¶1] The plaintiff, Susan D. Royce, appeals a decision of the Superior Court (Will, J.) granting summary judgment to the defendant, State Farm Fire and Casualty Company (State Farm). This action concerns the extent of a waiver of uninsured or underinsured motorist (UIM) coverage in an umbrella policy. The plaintiff argues that under RSA 264:15, I (2004) (amended 2007, 2015), an insured's initial rejection of UIM coverage when purchasing the umbrella policy did not waive UIM coverage with respect to the policy's subsequent renewals and an increase in its liability coverage. We agree with the plaintiff as to the insured's requested $4 million increase in coverage. Consequently, we reverse and remand.

I. Facts

[¶2] The following facts are taken from the summary judgment record. In October 2000, the plaintiff's sister, Katherine Royce, applied for a $1 million personal liability umbrella policy with State Farm. The application form included a section entitled "REJECTION OF UNINSURED/UNDERINSURED MOTOR VEHICLE COVERAGE." In that section, Katherine checked the box next to the statement, "I reject Uninsured/Underinsured Motor Vehicle Coverage on all vehicles." Below this box, and above a line on which Katherine signed, read another statement: "I understand that this acknowledgement of rejection will be applicable to the policy applied for, all future renewals of the policy, and on all replacement policies until I make a written request to add this coverage."[1]

[¶3] Katherine submitted the application form. Shortly thereafter, State Farm approved her application and issued her a one-year umbrella insurance policy. In October 2001, State Farm renewed this policy. A month later, in November 2001, Katherine requested an increase in her umbrella liability limit to $5 million, which State Farm approved. Katherine did not sign a rejection of UIM coverage in connection with this increase to her policy limits. State Farm then renewed the umbrella policy continuously each year for more than two decades, with Katherine occasionally modifying the covered cars and drivers.

[¶4] In 2021, the plaintiff suffered significant injuries while riding as a passenger in Katherine's insured vehicle. The plaintiff settled her claims against the underinsured driver. She then sought UIM coverage under Katherine's umbrella policy. State Farm denied UIM coverage under that policy, citing the checked box on Katherine's October 2000 application rejecting UIM coverage.

[¶5] The plaintiff sued seeking a declaratory judgment that Katherine's umbrella policy "requires" UIM coverage for the plaintiff in the amount of $5 million. Following a hearing on the parties' cross-motions for summary judgment, the trial court granted State Farm's motion and denied the plaintiff's motion. This appeal followed.

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[1] Another statement within the same section of the form, above the box, read: "In keeping with the laws of my state, I have been offered the opportunity to purchase Uninsured/Underinsured Motor Vehicle Coverage, and I reject the opportunity to purchase this option as part of this application."

II. Analysis

[¶6] On appeal, the plaintiff contests the trial court's conclusion that under RSA 264:15, I, Katherine's October 2000 rejection of UIM coverage remained effective at the time of the accident. "To obtain summary judgment, the moving party must 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.'" O'Malley-Joyce v. Travelers Home & Marine Ins. Co., 175 N.H. 245, 250 (2022) (quoting RSA 491:8-a, III (2010)). "In reviewing the trial court's rulings on cross-motions for summary judgment, we consider the evidence in the light most favorable to each party in its capacity as the nonmoving party." Boyle v. City of Portsmouth, 172 N.H. 781, 785 (2020). "[I]f no genuine issue of material fact exists, and if the moving party is entitled to judgment as a matter of law, we will affirm the grant of summary judgment." Id. "We review the trial court's application of the law to the facts de novo." Id.

[¶7] "In a declaratory judgment action to determine the coverage of . . . [a liability] insurance policy, the burden of proof is always on the insurer, regardless of which party brings the petition." CC 145 Main v. Union Mut. Fire Ins. Co., 176 N.H. 97, 99 (2023) (citing RSA 491:22-a (2010)). To decide this action, we must construe RSA 264:15, I. "Statutory interpretation [presents] a question of law, which we review de novo." Appeal of Town of Salem, 168 N.H. 572, 577 (2016). "We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Boucher v. Town of Moultonborough, 176 N.H. 271, 274 (2023). "We give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "We also construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. "However, we do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme." Id.

[¶8] RSA 264:15, I, sets forth New Hampshire's UIM mandate, invoking a "purpose . . . to place insured persons in the same position that they would have been if the offending uninsured motorist had possessed comparable liability insurance." Rizzo v. Allstate Ins. Co., 170 N.H. 708, 715 (2018) (quotation omitted). The trial court determined, and the parties agree, that the 1991 enactment of RSA 264:15, I — which was in force both when Katherine secured her umbrella policy and when she later increased the liability limit — governs this case. In pertinent part, the version of RSA 264:15, I, passed in 1991, provides:

> When an insured elects to purchase liability insurance in an amount greater than the minimum coverage required by RSA 259:61, his uninsured motorist coverage shall automatically be equal to the liability coverage elected. For the purposes of this

paragraph umbrella or excess policies that provide excess limits to policies described in RSA 259:61, shall also provide uninsured motorist coverage equal to the limits of liability purchased, unless the named insured rejects such coverage.

[¶9] The first sentence in the quoted excerpt above, "commonly referred to as the elective coverage provision," seeks "to allow policy holders to protect themselves against injury from an uninsured motorist to the extent they protect themselves against liability." Swain v. Employers Mut. Cas. Co., 150 N.H. 574, 577 (2004). The second sentence above expressly extends the requirement to provide equivalent UIM coverage to umbrella policies, absent an insured's rejection of UIM protection. O'Donnell v. Allstate Indem. Co., 173 N.H. 295, 303 (2020). There is no dispute that the State Farm umbrella policy provides excess limits to a policy "described in RSA 259:61." RSA 264:15, I.

A. $4 Million Umbrella Limit Increase

[¶10] We begin by considering the plaintiff's claims pertaining to Katherine's $4 million increase in her umbrella liability limit. The plaintiff contends that: (1) this increase constituted a "purchase" of additional insurance; and (2) because Katherine did not reject UIM coverage when "elect[ing] to purchase" this insurance, the increase triggered the statutory mandate that State Farm provide equivalent UIM protection. RSA 264:15, I. As a threshold matter, State Farm counters that the first sentence above, the elective coverage provision, does not apply to umbrella policies. State Farm submits that it is thus irrelevant whether Katherine "elect[ed] to purchase" insurance when she increased her umbrella policy's limit, given that — as described in the second sentence above — she had already rejected UIM coverage when she bought the policy.

[¶11] State Farm's argument fails for several reasons. First, it erroneously relies on our holding in United Services Automobile Association v. Wilkinson that "umbrella-type policies" fall outside the elective coverage provision's scope. U.S. Automobile Assoc. v. Wilkinson, 132 N.H. 439, 448-49 (1989) (construing an earlier version of RSA 264:15, I, before the legislature's 1991 amendment). This reliance on Wilkinson is misplaced, given that the legislature added the second sentence quoted above to the statute after our opinion in that case. In Wilkinson, "we invited the legislature, if it desired uninsured motorist coverage to equal liability coverage from any source, including umbrella-type policies, to amend the statute accordingly." Santos v. Metro. Prop. & Cas. Ins. Co., 171 N.H. 682, 691 (2019) (brackets, quotation, and ellipsis omitted). Two years later, the legislature modified RSA 264:15, I, to include umbrella policies. See id.; O'Donnell, 173 N.H. at 303.

[¶12] Moreover, by using the phrase "[f]or the purposes of this paragraph" to begin the sentence discussing umbrella policies in RSA 264:15, I, the legislature unequivocally "incorporated the final sentence into the pre-existing text of the statute," as the plaintiff points out. See RSA 264:15, I; Boucher, 176 N.H. at 274 (noting that "[w]e give effect to every word of a statute"). The word "also" further signals that the legislature intended the UIM mandate for umbrella policies to replicate the general UIM mandate — with the sole distinction that, unlike with general motor vehicle insurance policies, insureds with umbrella policies may reject equivalent UIM coverage. See RSA 264:15, I. Finally, in line with our duty to "construe all parts of a statute together," Boucher, 176 N.H. at 274, the plaintiff correctly observes that the second sentence above "lacks [a] triggering event for the inclusion of UIM coverage." This omission indicates that the triggering event for UIM protection to attach to an umbrella policy is the same as that in the preceding sentence: an insured's "elect[ion] to purchase" insurance. RSA 264:15, I.

[¶13] Accordingly, we next assess whether Katherine "elect[ed] to purchase liability insurance," id., when she increased her umbrella limit by $4 million. RSA chapter 264 does not define the words "elect," "purchase," or "insurance."[2] "When a term is not defined in the statute, we look to its common usage, using the dictionary for guidance." Appeal of Port City Air Leasing, Inc., 177 N.H. 149, 153 (2024), 2024 N.H. 71, ¶10; RSA 21:2 (2020). "[E]lect" means "[t]o pick out, choose" or "[t]o make deliberate choice of (a course of action, an opinion, etc.) in preference to an alternative." Oxford English Dictionary, https://www.oed.com/dictionary/elect_v?tab=meaning_and_use#5816690 (last visited July 22, 2026). "[P]urchase" means "[t]o obtain; to gain possession of." Oxford English Dictionary, https://www.oed.com/dictionary/purchase_v?tab=meaning_and_use#27522953 (last visited July 22, 2026). Finally, "insurance" is "a contract by which the one party (usually a company or corporation) undertakes, in consideration of a payment (called a premium) proportioned to the nature of the risk contemplated, to secure the other against pecuniary loss." Oxford English Dictionary, https://www.oed.com/dictionary/insurance_n?tab=meaning_and_use#401861 (last visited July 22, 2026).

[¶14] When she contacted State Farm to request an increase in her umbrella limit, Katherine made a deliberate choice to obtain an additional $4 million in protection from pecuniary loss. Notably, this increase to the $5 million limit resulted in a recalculated premium "proportioned to the nature of the risk contemplated." Id. We therefore conclude that when she modified her policy to quintuple her umbrella coverage, Katherine "elect[ed] to purchase" insurance. RSA 264:15, I. Our construction of RSA 264:15, I, accords with the statute's "plain and ordinary meaning." Boucher, 176 N.H. at 274. It also

[2] Although RSA 259:61 (2004) — to which RSA 264:15, I, refers — sets forth the minimum required coverage for a "[m]otor vehicle liability policy," it also does not define "insurance."

fulfills our obligation to construe the UIM mandate liberally to effectuate its goal of compensating victims who, due to a liable driver's inadequate insurance, would otherwise receive scant relief. Rivera v. Liberty Mut. Fire Ins. Co., 163 N.H. 603, 608 (2012); see also 9 Steven Plitt et al., Couch on Insurance 3d § 122:39 (rev. ed. 2015) (explaining that "statutory provisions permitting rejection are to be strictly construed against waiver," due to "the strong public policy behind uninsured motorist coverage").

[¶15] In arguing for a contrary result, State Farm asks us to adopt the trial court's analysis of RSA 264:15, I, which "construe[d] the plain language of 'elects to purchase' as choosing to obtain a policy of insurance." (Emphasis added.) The trial court determined that as Katherine never obtained a new umbrella policy from State Farm, the statute required no further rejection of UIM coverage after October 2000. As the plaintiff observes, the trial court's interpretation of RSA 264:15, I, erroneously "add[s] language that the legislature did not see fit to include." Boucher, 176 N.H. at 274. The elective coverage provision lacks any reference to a policy. See RSA 264:15, I. Instead, it solely discusses purchases of insurance. See id. An insured may make such a purchase by executing paperwork for a new policy or alternatively, as here, by "obtain[ing]" additional insurance under a preexisting policy. See Oxford English Dictionary, https://www.oed.com/dictionary/purchase_v?tab=meaning_and_use#27522953 (last visited July 22, 2026) (defining "purchase").

[¶16] State Farm also relies, as did the trial court, on our holding in O'Donnell that an insured's decrease to his or her umbrella limit did not require a fresh waiver of UIM protection. O'Donnell, 173 N.H. at 304. There, we explained that "a change in policy limits does not preclude a finding that [a] new policy is a renewal policy, particularly when . . . there is no lapse in coverage." Id. at 301 (quotation omitted). O'Donnell is not controlling because it applied a post-1991 amended version of RSA 264:15, I, which the parties agree is inapplicable here. See id. at 298 (noting that RSA 264:15, I (Supp. 2019) provides explicitly that rejections of UIM coverage "shall remain effective upon policy amendment or renewal"). Because the 1991 version of RSA 264:15, I, contains no mention of policy amendments or renewals, the inquiry as to whether Katherine's rejection of UIM coverage remained in force does not turn on the fact that she merely amended her existing policy.

[¶17] Finally, we note that "[t]he parties to an insurance contract may not by agreement limit the required coverage in contravention of RSA chapter 264." Santos, 171 N.H. at 693. The policy application's language requiring Katherine to revoke her UIM waiver in writing thus cannot override the statutory mandate that, after Katherine "elect[ed] to purchase" an additional $4 million in umbrella insurance, State Farm had to supply her with automatic UIM coverage, absent her waiver. RSA 264:15, I. The statute mandates that this

UIM protection must "be equal to the liability coverage elected." Id. Here, as explained below, Katherine waived the automatic UIM coverage with respect to the initial $1 million coverage she elected in October 2000. However, she did not waive such coverage with respect to the $4 million in additional umbrella coverage that she purchased in November 2001.

B. Original $1 Million Umbrella Limit

[¶18] Emphasizing that Katherine never executed a new UIM waiver after October 2000, the plaintiff also asserts that Katherine "elect[ed] to purchase" insurance when she renewed her $1 million umbrella coverage in October 2001 and at her annual renewals thereafter. Id. The plaintiff concedes that pursuant to the explanation in State Farm's application form that a UIM waiver extended to "future renewals" and "replacement policies," Katherine waived UIM coverage with respect to renewals of the $1 million umbrella limit. The plaintiff contends, however, that notwithstanding this waiver, the 1991 version of RSA 264:15, I, compels State Farm to provide $1 million in UIM coverage for the original $1 million in umbrella insurance that Katherine purchased.

[¶19] On this point, we find the legislature's use of the word "elects" noteworthy. Unlike her purchase of an added $4 million in protection, Katherine's yearly renewals of her original $1 million in umbrella insurance did not represent a "deliberate choice" to obtain coverage or require her to take a meaningful "course of action." Oxford English Dictionary, https://www.oed.com/dictionary/elect_v?tab=meaning_and_use#5816690 (last visited July 22, 2026). Rather, Katherine's October 2001 renewal merely sustained the $1 million in umbrella coverage she had purchased the previous year, as did her subsequent renewals of this original $1 million in coverage. As the trial court put it, these renewals were "administrative in nature," and "[n]othing in the statute suggests that routine acts such as premium payments or policy renewals that do not launch a new contractual relationship . . . represent a new election to purchase insurance." We therefore conclude that Katherine's UIM waiver remained effective as to the original $1 million coverage that she purchased.

III. Conclusion

[¶20] In sum, we conclude that under the 1991 version of RSA 264:15, I, Katherine's requested $4 million increase in her umbrella protection was a purchase of liability insurance that triggered the statutory UIM mandate, absent her waiver. Because Katherine did not reject UIM protection when making this purchase, she had $4 million in UIM coverage at the time of the plaintiff's accident. We also conclude, however, that Katherine's rejection of equivalent UIM coverage remained in force with regard to the original $1 million in coverage that she purchased in October 2000. We therefore reverse and remand for the entry of a declaratory judgment consistent with this opinion.

Reversed and remanded.

MACDONALD, C.J., and COUNTWAY and GOULD, JJ., concurred.