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if the mitigation options were legally proper, the trial court's conclusion that Avco possessed a duty to mitigate its damages against the Kilcreases constituted an unreasonable prerequisite to Avco's right to sue Ramsey for his faulty title opinion.

Additionally, the supreme court explained that the three mitigation options offered by the trial court were incomplete, risky, time-consuming, and expensive. The court concluded that "(t)he law of mitigation does not impose upon the damaged party the duty to expend good money to chase the bad; nor does it impose upon the damaged party the duty to first exhaust all other remedies." Accordingly, the Alabama Supreme Court reversed the trial court's decision, finding in favor of Avco.

—*Judith Gorske*

Uninsured motorist coverage notice held satisfactory

In *Breithaupt v. USAA Property and Casualty Ins. Co.*, 867 P.2d 402 (Nev. 1994), the Supreme Court of Nevada held that USAA Property and Casualty Insurance Company (USAA) provided customers with satisfactory written notice regarding the availability of uninsured motorist coverage. In so doing, the court refused to overrule legal precedent imposing a greater duty of notice on the insurer. The court also declined to apply retroactive disclosure laws upon insurers because such measures would not improve consumer awareness of the benefits of purchasing optional uninsured/underinsured motorist coverage.

The Notice Requirement

On April 4, 1988, Barbara Breithaupt suffered severe and permanent injuries in an automobile accident. While she recovered the maximum amount from

the other driver's insurance company, this amount did not fully compensate for her injuries. Breithaupt carried uninsured/underinsured motorist (UM) coverage with USAA in the amount of \$15,000 per person and \$30,000 per accident for both of her vehicles. She also carried bodily injury coverage of \$300,000 per person and \$500,000 per accident. In order to provide Breithaupt with maximum coverage, USAA allowed her to stack the UM coverage on her two vehicles and paid her \$30,000, the full amount of her UM coverage.

Breithaupt filed suit against USAA under a Nevada statute, NRS 687B.145(2), seeking reformation of her automobile insurance contract. She alleged that USAA failed to comply with pre-1990 statutory language requiring the insurer to notify its customers that they could purchase UM coverage equal to the limits of bodily injury coverage. In dispute was USAA's insurance renewal notice that included a flyer describing both the nature of UM coverage and the minimum coverage which an uninsured motorist was required to purchase by law. The flyer contained a section entitled: "Higher limits are available." The higher limits section discussed factors that an insured should consider in determining the appropriate amount of coverage to purchase. The notice also stated:

"If you want to increase your UM coverage, give us your order on the order form on the back of this folder. Available limits are listed in the box to the right.

"IMPORTANT: The UM policy limits you select may not exceed the Bodily Injury (BI) liability limits in your policy. If you want to increase your UM to a limit higher than your present BI, please use the order form on the back to increase your BI liability limit."

To the right of this statement, USAA listed "UM Limits Available." The list included UM coverage of \$300,000 and \$500,000.

Breithaupt contended that the insurance renewal notice failed to satisfy the notification requirement under the Nevada statute because it was unclear and ambiguous. She claimed that as a result of these deficiencies, the court should reform her contract with USAA to allow the UM limits of the policy to equal the limits for bodily injury. Under a reformed contract, USAA would provide Breithaupt with UM coverage of \$300,000 per person for each of her two vehicles. Stacking this coverage would entitle Breithaupt to \$600,000 of UM coverage, allowing her to recover an additional \$570,000 for damages sustained in her accident.

The trial court granted summary judgment for USAA, holding that the contract should not be reformed because the written notice satisfied the state law requirements. Breithaupt then appealed to the Nevada Supreme Court.

Court Finds Full Disclosure of UM Coverage

The Supreme Court of Nevada rejected Breithaupt's contention that the insurance renewal notice was unclear, ambiguous, and did not satisfy statutory requirements. It agreed that USAA could have made a clearer affirmative statement to Breithaupt that UM coverage equaling her bodily injury coverage was available. However, the court found that the notice was sufficient to inform "the average layman who is untrained in the law or the field of insurance" that UM coverage equal to bodily injury coverage was available.

In addressing the issue of notification, the court examined the language of the pre-1990 version of the applicable state law. In relevant part, the statute provided that insurers "must offer uninsured motorist coverage equal to the limits of bodily injury coverage sold to the individual policyholder." The court acknowledged that "must offer" was susceptible to a variety of interpretations, each imposing a different duty of notice upon the insurer. In its discus-

sion, the court relied upon its analysis in *Quinlin v. Mid Century Ins.*, 741 P.2d 822 (1987), and the state legislature's use of "offer" in other insurance statutes. It concluded that "offer" was used to instruct insurance companies simply to make a certain type of coverage available to purchasers. Nevertheless, the court stated that in order to effectuate the legislature's intent, the insurers must notify their customers that greater UM coverage is available. The *Quinlin* court held that the following statement included in the insurer's renewal notice satisfied the statutory notification requirements: "Did you know that you may now have uninsured motorist coverage in amounts up to your bodily injury liability limits? If interested contact your agent." In examining the notification in the case at bar, the supreme court held that USAA made a much fuller disclosure of the UM coverage available to insureds, and thus met the notice requirement under the statute.

The court concluded, however, that the 1990 amendment to the applicable state law rendered *Quinlin's* notice standard inapplicable to insurance transactions that occurred after the effective date of the statute. The legislative history behind the amendment indicated that it was specifically intended to impose prospectively a greater duty of notice upon insurers.

Court refuses to impose retroactively a broader standard of disclosure

Nevertheless, the Nevada Supreme Court rejected Breithaupt's argument that *Quinlin* should be overruled and a broader duty of disclosure retroactively imposed. It concluded that the legislative history behind the applicable state law indicated the legislature's intent was to impose a greater duty of disclosure upon insurers only to insurance transactions made after the effective date of the statute.

The court examined the committee meetings and legislative history behind the 1990 amendment to NRS

687B.145(2). In doing so, it concluded that the legislature had not considered the statute as imposing a duty of notice greater than announced in *Quinlin*. The court failed to identify any legislative evidence that *Quinlin* contravened the intent of the 1979 legislature in enacting NRS 687B.145(2). Furthermore, it reasoned that even if *Quinlin* had been wrongly decided, it was not necessary to impose retroactively a greater burden upon insurers. In making this determination, the court articulated three factors limiting the law to prospective application. These included: (1) the decision must dictate a new legal principle which either overrules past precedent on which parties may have relied or is an issue of first impression, the outcome of which was not clearly foreshadowed; (2) the court must evaluate the merits in each case by examining the prior history, purpose, and effect of the rule under analysis and whether or not retroactive operation will aid its implementation; and (3) the court must consider whether retroactive application could cause substantial inequitable results. The supreme court concluded that the retroactive application of NRS 687B.145(2) would not improve pre-1990 consumer awareness of the benefits of purchasing the optional UM coverage. Accordingly, it affirmed the lower court's grant of summary judgment for the insurer, USAA.

—Benjamin Malkin

Strict liability extended to commercial leases

In *Samuel Friedland Family Enterprises v. Amoroso*, 630 So.2d 1067 (Fla. 1994), the Florida Supreme Court held that the doctrine of strict liability extends to commercial lease transactions of defective products.

The Amorosos hit rough seas

The Diplomat Hotel (Diplomat), a waterfront property in Hollywood, Florida, leased part of its land to Sunrise Water Sports, Inc. (Sunrise) which used the land to operate a sailboat rental stand. Sunrise owned the sailboats, but Atlantic Sailing Center, Inc. (Atlantic), rented them out. The Amorosos were guests at the Diplomat and rented sailboats on three separate occasions. During the third rental, the crossbar on the Amorosos' rented sailboat broke and Mrs. Amoroso was injured. As a result of her injuries, Amoroso and her husband sued the Diplomat, Sunrise, Atlantic, and the welder who had repaired the crossbar a few days before the accident. One of the Amorosos' claims asserted that the Diplomat, Sunrise, and Atlantic were strictly liable for Mrs. Amoroso's injuries.

The trial court directed verdicts in favor of all the defendants on the strict liability claim. The district court of appeals reversed the trial court, holding that strict liability extends to commercial lease transactions. The appellate court certified the question of whether the doctrine of strict liability extends to commercial lease transactions for appeal to the Florida Supreme Court.

Lessors in the leasing business held to strict liability

The Florida Supreme Court initially analyzed the purpose of strict liability. The court stated that the doctrine of strict liability causes the entities within the distributive chain who profit from the product's sale or distribution to bear the burden of product defects, even undetectable ones. As compared with an innocent injured person, those entities are in a better position to ensure the safety of products, protect against defects in those products, and spread the cost of any resulting injuries. The Florida Supreme Court had previously adopted the strict liability doctrine in *West v. Caterpillar Tractor Co*, 336 So.2d 80, 87 (Fla. 1976), and recognized that "a