



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

VIRGINIA ROBINSON,	)	
	)	No. 172, 2017
Plaintiff-Below,	)	
Appellant,	)	
	)	
v.	)	Court Below-Superior Court
	)	of the State of Delaware,
STATE OF DELAWARE	)	in and for Sussex County
	)	C.A. No. S16C-11-001 ESB
Defendant-Below,	)	
Appellee.	)	

**APPELLEE STATE OF DELAWARE'S ANSWERING BRIEF**

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

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## **NATURE AND STAGE OF THE PROCEEDINGS**

On November 1, 2016, Appellant, plaintiff-below Virginia Robinson (hereinafter “Appellant” or “Plaintiff”) filed this action alleging entitlement to uninsured motorists benefits as a result of a April 15, 2016 motor vehicle accident.<sup>2</sup> The defendant, State of Delaware (hereinafter “State”), is alleged to owe uninsured motorist benefits as a result of Plaintiff’s operation of a State owned vehicle at the time of the accident.<sup>3</sup>

On December 16, 2016, Defendant filed a motion for summary judgment pursuant to Superior Court Civil Rule 56 asserting that Delaware law permits denial of uninsured motorist benefits in this case.<sup>4</sup>

On January 6, 2017, the Superior Court held oral argument on the State’s motion for summary judgment.

After the parties submitted supplemental briefing, on April 11, 2017 the Superior Court granted the State’s motion by letter opinion and order.<sup>5</sup>

On April 20, 2017, Plaintiffs filed a Notice of Appeal.

On June 2, 2017, Appellants filed their opening brief with this Court. This is

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<sup>2</sup> See Complaint, B1.

<sup>3</sup> *Id.*

<sup>4</sup> See Defendant’s Motion for Summary Judgment, B7-B12.

<sup>5</sup> See Superior Court Order of 4/11/17 granting the State’s motion for summary judgment. B13-B18.

the State's Answering Brief on appeal.

## SUMMARY OF ARGUMENT

1. Denied. The Superior Court below properly interpreted pre-amended 19 *Del. C.* § 2304 to preclude uninsured motorist benefits to a State employee.
2. Denied. The Superior Court in *Simpson v. State*<sup>6</sup> correctly interpreted pre-amended 19 *Del. C.* § 2304 to preclude uninsured motorist benefits from the State.
3. Denied. The Superior Court below correctly held that the amended 19 *Del. C.* § 2304 is not a clarification of the pre-amended 19 *Del. C.* § 2304; rather, the amendment is a substantive change which has no retroactive application.

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<sup>6</sup> 2016 WL 425010 (Del.Super. Jan. 28, 2016).

## STATEMENT OF FACTS

This case results from an automobile accident that occurred on April 15, 2016 involving another vehicle that struck Plaintiff's vehicle and fled the scene.<sup>7</sup> Plaintiff alleges that she is entitled to uninsured motorist benefits from the State as she was operating a vehicle owned by the State.<sup>8</sup>

At the time of the accident, Plaintiff was in the course and scope of her employment with the Delaware Department of Service for Children Youth & their Families.<sup>9</sup> As such, Plaintiff was an employee of the State of Delaware and received workers' compensation benefits for this accident.<sup>10</sup>

Pursuant to *Simpson v. State*, at the time of Plaintiff's accident, no State employee involved in a motor vehicle accident was entitled to uninsured motorist benefits, as workers' compensation is the exclusive remedy.<sup>11</sup> On September 6, 2016, House Bill No. 308 amended 19 *Del. C.* § 2304 to specifically include payment of benefits for uninsured/uninsured motorist benefits and personal injury protection

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<sup>7</sup> See Complaint, B1-6.

<sup>8</sup> *Id.*

<sup>9</sup> See State of Delaware Personal Injury Protection Application executed by Plaintiff, B19.

<sup>10</sup> See PMA Group log indicating all medical payments and wage payments issued on behalf of Plaintiff, B20-B24.

<sup>11</sup> 2016 WL 425010 (Del.Super.Jan. 28, 2016) *rearg denied Simpson v. State*, C.A. No. N15C-02-138, Carpenter, J., (Del.Super. May 4, 2016), B25-B38, (denying reargument upon all four arguments advanced as arguments were raised for first time at reargument).



along with payment of workers' compensation benefits.<sup>12</sup> House Bill No. 308 states that the Act shall take effect upon its enactment into law.<sup>13</sup> The Bill was approved on September 6, 2016.<sup>14</sup>

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<sup>12</sup> *See* House Bill No. 308 which amends 19 *Del. C.* § 2304, B39.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

## **ARGUMENT**

- I. THE SUPERIOR COURT BELOW PROPERLY INTERPRETED PRE-AMENDED 19 *DEL. C.* § 2304 TO PRECLUDE UNINSURED MOTORIST BENEFITS TO A STATE EMPLOYEE.

### **First Question Presented**

Whether the Superior Court below properly precluded uninsured motorist benefits to a State employee finding that the workers' compensation statutory exclusion applied?

### **Scope of Review**

This Court reviews *de novo* a lower court's ruling granting a motion for summary judgment.<sup>15</sup> Questions of law, including the interpretation of statutes, are also reviewed *de novo*.<sup>16</sup>

### **Merits of the Argument**

The Superior Court below properly interpreted pre-amended 19 *Del. C.* § 2304<sup>17</sup> to preclude uninsured motorist benefits to a State employee. The Superior

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<sup>15</sup> *Ramirez v. Murdick*, 948 A.2d 395, 399 n. 16 (Del. 2008).

<sup>16</sup> *City of Wilmington v. Nationwide Ins. Co.*, 154 A.3d 1124, 1127 (Del. 2017).

<sup>17</sup> Pre-amended 19 *Del. C.* § 2304 states:

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

Amended Section 2304 states:

Except as expressly excluded in this chapter and except as to uninsured

Court relied upon the Honorable William C. Carpenter, Jr.'s decision in *Simpson v. State*<sup>18</sup> stating that it was correctly decided.<sup>19</sup> With regard to the Superior Court below's reliance upon *Simpson v. State*,<sup>20</sup> a thorough analysis of *Simpson* must be undertaken. The *Simpson* court properly viewed the issue to be whether 19 *Del. C.* § 2304 precludes an employee's recovery of UIM benefits from a self-insured employer *in addition* to workers' compensation paid by the employer where the payor/employer is the same entity.<sup>21</sup>

The *Simpson* court first reviewed the State's UM/UIM policy noting that it tracks the language of the statute and provides that it will "pay all sums the insured is *legally entitled* to recover as compensatory damages from the owner or driver of (a) an uninsured ... [or] underinsured motor vehicle because of bodily injury sustained by the insured...."<sup>22</sup> In determining whether the plaintiff was legally

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motorist benefits, underinsured motorist benefits, and personal injury protection benefits, every employer and employee, adult and minor, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.

<sup>18</sup> 2016 WL 425010 (Del.Super. Jan. 28, 2016).

<sup>19</sup> *Robinson v. State*, 2017 WL 1363894, at \*1 (Del. Super. April 11, 2017).

<sup>20</sup> 2016 WL 425010 (Del.Super. Jan. 28, 2016) *rearg denied Simpson v. State*, C.A. No. N15C-02-138, Carpenter, J., (Del.Super. May 4, 2016), B25-B38, (denying reargument upon all four arguments advanced as arguments were raised for first time at reargument).

<sup>21</sup> 2016 WL 425010, at \*3.

<sup>22</sup> *Id.*; *see also* relevant policy portions of the State's self-insurance program, B20-

entitled to recover UM, the *Simpson* court next looked at the UM/UIM statute, 18 *Del. C.* § 3902, in conjunction with the worker’s compensation statute, 19 *Del. C.* § 2304.<sup>23</sup> The court recognized that Delaware has allowed employees to collect both workers’ compensation and UIM benefits in cases where the employee purchased his or her own personal UIM policy.<sup>24</sup> Noting, however, that in those cases, the Delaware Supreme Court reasoned that “[r]estricting a double recovery in underinsured motorist cases would frustrate the reasonable expectations of the insured (created by the payment of insurance premiums) to recover under the policy, and thereby would defeat the General Assembly’s purpose in enact Section 3902”.<sup>25</sup> The *Simpson* court recognized that the facts before it differed in that the State is self-insured for both worker’s compensation and UM/UIM such that payment would be from the same entity rather than a separate insurance company which was paid premiums by the employer or the employee.<sup>26</sup> It is important to note that there is no evidence in the record that Plaintiff paid insurance premiums for self-insured

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B24.

<sup>23</sup> 2016 WL 425010, at \*2-3.

<sup>24</sup> *Simpson*, 2016 WL 425010, at \*3, citing *Miller v. State Farm Mut. Auto. Ins. Co.*, 993 A.2d 1049, 1053 (Del.2010) (“The State Farm insurance policy was purchased and paid for by the Millers, whereas Miller’s workers’ compensation insurance was paid for by his employer. Because State Farm contributed nothing to the fund that created the collateral source and had no interest in that fund, State Farm should not have been allowed to benefit from it.”).

<sup>25</sup> *Simpson v. State*, 2016 WL 425010, at \*3.

<sup>26</sup> *Id.*

automobile benefits provided by the State. The State's UM/UIM benefits are not bargained for by an employee and the employee does not pay a premium in exchange for certain policy limits. As such, any argument that Plaintiff had a reasonable expectation to coverage is without merit.

The *Simpson* court found that affording injured workers UM/UIM benefits when workers' compensation applies would be duplicative.<sup>27</sup> The *Simpson* court properly held that the phrase "exclusion of all rights and remedies" in 19 *Del. C.* § 2304 prohibited Plaintiff from gaining access to the State's UM/UIM policy.<sup>28</sup> The court below properly relied upon the *Simpson* analysis.

Plaintiff asserts in her opening brief that this case is a contract case that was not contemplated by the exclusivity of 19 *Del. C.* § 2304 because the pre-amended statute only applied to negligence claims.<sup>29</sup> Plaintiff cites 19 *Del. C.* § 2314 in support of her position. Such citation is misplaced as 19 *Del. C.* § 2314 prohibits certain liability defenses by employers in worker's compensations claims<sup>30</sup> and has no bearing on the issue of whether UM/UIM is payable by a self insured where workers' compensation is also payable.

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<sup>27</sup> *Simpson v. State*, 2016 WL 425010, at \*4.

<sup>28</sup> *Id.*

<sup>29</sup> See Plaintiff's Amended Opening Brief, p. 6.

<sup>30</sup> See *Willing v. Midway Slots*, 2003 WL 21085398, at \*2 (Del. Super. May 13, 2003) (holding that pursuant to 19 *Del. C.* § 2314, it is not a defense that the injury was caused by the negligence of the employee).

Plaintiff also asserts that *State v. Donahue*<sup>31</sup> is instructive on this issue because the facts note that the State's underinsured motorist carrier paid \$25,000 to Donahue while the State also paid workers' compensation benefits.<sup>32</sup> *State v. Donahue* is inapplicable to the analysis of this case. First, the issue in *Donahue* was whether the State could pursue subrogation rights for workers' compensation benefits paid to the employee against the State's UM/UIM carrier, Pennsylvania Manufacturers Association Insurance Company.<sup>33</sup> The *Donahue* court never considered the issue of payment of UM/UIM where workers' compensation was paid because the State never disputed payment, as in this case.<sup>34</sup> Moreover, as noted in *Donahue*, the State had an insurer for automobile benefits and was not self-insured at that time benefits were paid to Donahue.<sup>35</sup> Since October 1, 1985, the State has been self-insured for its vehicle liability coverage.<sup>36</sup> In this case, the entire premise to deny UM/UIM based upon payment of workers' compensation is because the self-insured State pays both benefits, distinct from the facts in *Donahue*.

Plaintiff next asserts that third party suits against the employer and intentional tort claims are not barred by the exclusivity provision of 19 *Del. C.* § 2304.

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<sup>31</sup> 472 A.2d 824, 826 (Del.Super. 1983).

<sup>32</sup> See Plaintiff's Amended Opening Brief, p. 7.

<sup>33</sup> *State v. Donahue*, 472 A.2d 824, 826 (Del.Super. 1983).

<sup>34</sup> *Id.*

<sup>35</sup> *Donahue*, 472 A.2d at 825.

<sup>36</sup> See relevant policy portions of the State's self-insurance program, B20-B24.

However, UM/UIM benefits are neither a third party suit against the employer nor an intentional tort. As such, any argument that those exceptions are instructive in this case is without merit.

Plaintiff's reference to *Cicchini v. State*<sup>37</sup> is inapposite to the issue in this case. The issue in *Cicchini* was whether PIP or workers' compensation was the primary coverage.<sup>38</sup> There was no analysis of 19 *Del. C.* § 2304 and whether the State could have denied PIP or UM/UIM benefits.

Plaintiff asserts that the court below ignored the statutory language set forth at pre-amended 19 *Del. C.* § 2304 because the court below ignores the phrase "regardless of questions of negligence".<sup>39</sup> The court below sets forth both the full original and amended versions of §2304.<sup>40</sup> While the court references the language "to the exclusion of all other rights and remedies" later in its analysis<sup>41</sup>, there is no indication that the reference ignores the rest of the statutory language. Plaintiff repeatedly argues that the language "regardless of questions or negligence" can only mean that the "exclusion of all other rights and remedies" must be limited to negligence. In fact, 19 *Del. C.* § 2314<sup>42</sup> and longstanding Delaware law has

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<sup>37</sup> 640 A.2d 650, 651 (Del.Super. 1993).

<sup>38</sup> *Id.*

<sup>39</sup> See Plaintiff's Amended Opening Brief, p. 10.

<sup>40</sup> *Robinson*, 2017 WL 1363894, at \*1.

<sup>41</sup> *Robinson*, 2017 WL 1363894, at \*2.

<sup>42</sup> Negating certain liability defense in workers' compensation cases.

interpreted the language at issue in 19 *Del. C.* § 2304 to mean that payment of workers' compensation does not require an analysis of negligence.<sup>43</sup>

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<sup>43</sup> See *Hill v. Moskin Stores, Inc.*, 165 A.2d 447, 451 (Del. 1960) (the basic philosophy of the workmen's compensation acts is to eliminate questions of negligence and fault in industrial accidents); see also *Stayton v. Clariant Corp.*, 10 A.3d 597, 599 (Del. 2010) (the purpose of Delaware's Workers' Compensation Act is to eliminate questions of negligence and fault in industrial accidents, and to substitute a reasonable scale of compensation for the common-law remedies).



II. THE SUPERIOR COURT IN *SIMPSON V. STATE*<sup>44</sup> PROPERLY INTERPRETED 19 *DEL. C.* § 2304, IN ITS ENTIRETY, TO PRECLUDE UNINSURED MOTORIST BENEFITS FROM THE STATE.

### **Second Question Presented**

Whether the Superior Court in *Simpson* properly interpreted 19 Del. C. §2304 to preclude UM/UIM benefits from a self-insured entity, the State?

### **Scope of Review**

This Court reviews *de novo* a lower court's ruling granting a motion for summary judgment.<sup>45</sup> Questions of law, including the interpretation of statutes, are also reviewed *de novo*.<sup>46</sup>

### **Merits of the Argument**

For the reasons set forth in Argument I above, the State maintains that the *Simpson* court properly precluded UM/UIM benefits to plaintiff pursuant to 19 *Del. C.* § 2304.

Plaintiff asserts that the *Simpson* court failed to consider 19 *Del. C.* § 2363 and 18 *Del. C.* § 3902.<sup>47</sup> Plaintiff's reference to 19 *Del. C.* § 2363 is misplaced. 19 *Del. C.* § 2363 sets forth an employee's right to recover from a third party.<sup>48</sup> In this

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<sup>44</sup> 2016 WL 425010 (Del.Super. Jan. 28, 2016).

<sup>45</sup> *Ramirez v. Murdick*, 948 A.2d 395, 399 n. 16 (Del. 2008).

<sup>46</sup> *City of Wilmington v. Nationwide Ins. Co.*, 154 A.3d 1124, 1127 (Del. 2017).

<sup>47</sup> See Plaintiff's Amended Opening Brief, p. 13.

<sup>48</sup> *Dickinson v. E. R. R. Builders*, 378 A.2d 650, 651 (Del. Super. 1977) citing 19 *Del. C.* § 2363.

case, the third party would be the motorist that struck Plaintiff and fled the scene. Because there is no third party in this case, an analysis of whether Plaintiff elected to file a third party claim against the tortfeasor is not required. As such, the Simpson court appropriately disregarded 19 *Del. C.* § 2363. However, the *Simpson* court properly considered the UM/UIM statute, 18 *Del. C.* § 3902, in conjunction with the worker's compensation statute, 19 *Del. C.* § 2304<sup>49</sup>, despite Plaintiff's claim that the *Simpson* court failed to consider the same.

Plaintiff cites *State v. Calhoun*<sup>50</sup> arguing that payment of duplicative benefits is supported in the absence of a legislative prohibition against the receipt of dual benefits.<sup>51</sup> However, both the *Simpson* court and the Superior Court below properly found the language of 19 *Del. C.* § 2304 to exclude UM/UIM. As such, the decision below is in line with the first holding in *Calhoun*.

Moreover, the issue in *Calhoun* was whether the State could reduce the workers' compensation benefits by the amount of pension disability benefits plaintiff was receiving.<sup>52</sup> A full review of *Calhoun* reveals that the Court found it significant that plaintiff had paid into the second source of funds, his disability pension benefits,

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<sup>49</sup> 2016 WL 425010, at \*2-3.

<sup>50</sup> 634 A.2d 335 (Del. 1993).

<sup>51</sup> See Plaintiff's Amended Opening Brief, p. 13.

<sup>52</sup> *Calhoun*, 634 A.2d at 337.

such that they were separately contracted for by the plaintiff and had vested.<sup>53</sup> The *Calhoun* Court reviewed *Adams v. Delmarva Power & Light Co.*,<sup>54</sup> noting that this Court ruled that a workers' compensation carrier could not invoke the set-off provisions of 19 *Del.C.* § 2363(e) to secure reimbursement of compensation benefits from an injured employee's recovery under the *employee's own* underinsured motorist policy.<sup>55</sup> "The Court reasoned that since the employee had paid an independent consideration for additional protection against injury, he was entitled to the [full] benefit of his insurance contract."<sup>56</sup> The employee's right to a disability pension was "based on his participation in, and contributions to, the State Employees' Pension Plan."<sup>57</sup> The Court noted that "[a]lthough the plan is legislatively established, it is contractual in nature and, when vested, confers a constitutionally protected property right" that cannot be forfeited by implication.<sup>58</sup> The Court held the vested pension right was the result of a contractual arrangement supported by employee consideration and thus an offset was not proper.<sup>59</sup> In this case, although Plaintiff's position repeatedly indicates that her right to UM/UIM is

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<sup>53</sup> *Id.* at 337-8.

<sup>54</sup> 575 A.2d 1103 (Del.1990).

<sup>55</sup> *Calhoun*, 634 A.2d at 338.

<sup>56</sup> *Id.* citing *Adams*, 575 A.2d at 1107.

<sup>57</sup> *Calhoun*, 634 A.2d at 338.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

contractual in nature, the record is void of any consideration for the UM/UIM coverage. This case is factually distinct from *Calhoun*.

Plaintiff's position is that she can elect her remedy between receiving workers' compensation and UM/UIM.<sup>60</sup> However, 43 Del. Laws Ch. 269, approved May 26, 1941, changed the Delaware Workmen's Compensation Law from a voluntary system to a compulsory system.<sup>61</sup> Provisions of the Workmen's Compensation Law which dealt with the power and consequences of election to be bound or not to be bound by the law were deleted.<sup>62</sup> As such, Plaintiff is unable to avoid workers' compensation benefits.

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<sup>60</sup> See Plaintiff's Amended Opening Brief, p. 15.

<sup>61</sup> *Dickinson v. E. R. R. Builders*, 378 A.2d 650, 654 (Del. Super. Ct. 1977) citing *Hill v. Moskin Stores, Inc.*, 165 A.2d 447 (Del. 1960) and *Miller v. Ellis*, 122 A.2d 314 (Del.Super. 1956).

<sup>62</sup> *Dickinson*, 378 A.2d at 654.

III. THE SUPERIOR COURT BELOW PROPERLY HELD THAT AMENDED 19 DEL. C. § 2304 IS NOT A CLARIFICATION AND HAS NO RETROACTIVE APPLICATION.

**Third Question Presented**

Whether the Superior Court properly held that amended 19 *Del. C.* § 2304 was a substantive change having no retroactive application?

**Scope of Review**

This Court reviews *de novo* a lower court's ruling granting a motion for summary judgment.<sup>63</sup> Questions of law, including the interpretation of statutes, are also reviewed *de novo*.<sup>64</sup>

**Merits of the Argument**

While this Court has recognized that the theory of clarification may operate to allow a statute to apply retroactively, Delaware has sparingly applied the theory.

<sup>65</sup> Delaware law is clear that a synopsis is a proper source for ascertaining legislative

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<sup>63</sup> *Ramirez v. Murdick*, 948 A.2d 395, 399 n. 16 (Del. 2008).

<sup>64</sup> *See City of Wilmington v. Nationwide Ins. Co.*, 154 A.3d 1124, 1127 (Del. 2017).

<sup>65</sup> *See Walls v. Dept. of Correction.*, 1995 WL 420801, at \*2 (Del. July 3, 1995) (TABLE) (holding that the amended statute declaring that inmates were not employees for purposes of wages applied retroactively to prevent prior claims of wages because of the uptake in employee related claims of inmates followed by the immediate legislative response); *see also See Townshend v. Liberty Mutual Insurance Company*, 1998 WL 281265, at \*3-4 (Del. Super.) (denying summary judgment on other grounds, the court comments that synopsis language would allow retroactive application of a statute).

intent.<sup>66</sup> However, the court may *only* look to the synopsis if the court finds that the statutory language is ambiguous and requires interpretation.<sup>67</sup> It is well established that “[a] statutory synopsis cannot change the meaning of an unambiguous statute.”<sup>68</sup>

In this case, there is an unambiguous effective date that does not require retroactive application. The legislative process allowed the drafters of the legislation to require that House Bill 308 apply retroactively. That specificity is not present in House Bill 308. Instead, House Bill No. 308 states that the Act shall take effect upon its enactment into law.<sup>69</sup> The Bill was approved on September 6, 2016.<sup>70</sup> The Court should not allow the synopsis to trump the unambiguous effective date of the statute.

The Superior Court below adopted a three factor test to determine if an amendment clarifies existing law: (1) whether the enacting body declared the amendment was clarifying; (2) whether a conflict or ambiguity existed prior to the amendment; and (3) whether the amendment is consistent with a reasonable

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<sup>66</sup> See *Board of Adjuster of Sussex County v. Verlaysen*, 36 A.3d 326, 332 (Del. 2012) (citing *Carper v. New Castle County Bd. of Ed.*, 432 A.2d 1202, 1205 (Del.1981).

<sup>67</sup> *Chrysler Corp. v. State*, 457 A.2d 345, 351 (Del. 1983) *citing Carper*, 432 A.2d at 1205 (emphasis added); *see also Hanson v. Delaware State Pub. Integrity Comm’n*, 2012 WL 3860732, at \*14 (Del. Super.. Aug. 30, 2012), *aff’d*, 69 A.3d 370 (Del. 2013) (mentioned in dicta that any law clarifying an amendment will not apply retroactively unless the legislature made that intent clear).

<sup>68</sup> *Chrysler Corp.*, 457 A.2d at 351, (citing *Bank of America v. GAC Properties Credit, Inc.*, 389 A.2d 1304, 1309 (Del. Ch. 1978)).

<sup>69</sup> See House Bill No. 308, B39.

<sup>70</sup> *Id.*

interpretation of the prior enactment and its legislative history.<sup>71</sup> The court below properly found that amended 19 *Del. C.* § 2304 was a substantive change to the statute finding none of the clarification factors present.<sup>72</sup>

In so holding, the court found that the first factor was not met because the legislature failed to state that duplicative benefits (workers' compensation and automobile benefits) is what was intended all along.<sup>73</sup> The court found the amendment was simply a remedy for that particular situation.<sup>74</sup> With regard to the second factor, the court found that there was no conflict in the law prior to *Simpson*.<sup>75</sup> This is supported by the lack of Delaware case law on this particular issue, as noted by Judge Carpenter.<sup>76</sup> Regarding the final factor, the court below correctly concluded that the amendment constituted a substantive change to § 2304 because it excepted out uninsured motorist benefits, underinsured motorist benefits, and personal injury protection benefits, such that now the law specifically permits payment of those

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<sup>71</sup> *Robinson*, 2017 WL 1363894, at \*1.

<sup>72</sup> *Id.*, 2017 WL 1363894, at \*2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *See Simpson*, 2016 WL 425010, at \*3; *see also Simpson v. State*, C.A. No. N15C-02-138, Carpenter, J., (Del.Super. May 4, 2016), B25-B38, at p. 8-9 (Judge Carpenter noted in his opinion denying reargument that the comment that the “parties to such litigation have believed for some time the exclusivity language of the Workers’ Compensation Act would prohibit such action” was dicta and that the lack of case precedent was the court’s ultimate finding).

three benefits along with workers' compensation.<sup>77</sup> The court properly held that the original and amended statutes simply can not be reconciled.<sup>78</sup>

The Superior Court properly concluded that the theory of clarification simply does not apply in this instance.

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<sup>77</sup> *Robinson*, 2017 WL 1363894, at \*2 (Del. Super.).

<sup>78</sup> *Id.*



**CONCLUSION**

For the foregoing reasons, the award of summary judgment finding that the UM/UIM from the State is precluded pursuant to 19 *Del. C.* § 2304 should be affirmed.

**STATE OF DELAWARE  
DEPARTMENT OF JUSTICE**

*/s/ Lynn A. Kelly*  
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