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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2008 - 2009

2070625

Willie M. Rose and Robert W. Rose Sr.

v.

Safeway Insurance Company of Alabama, Inc.

Appeal from Montgomery Circuit Court
(CV-05-2456)

PITTMAN, Judge.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala. R. App. P.; Kendall v. United States Auto. Ass'n, [Ms. 1061472, May 15, 2009] _____

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So. 3d ___, ___ (Ala. 2009); and State Farm Mut. Auto. Ins. Co. v. Causey, 509 F. Supp. 2d 1026, 1029-30 (M.D. Ala. 2007).

This appeal was transferred to this court by the Alabama Supreme Court pursuant to Ala. Code 1975, § 12-2-7(6).

Bryan, Thomas, and Moore, JJ., concur.

Thompson, P.J., concurs specially.

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THOMPSON, Presiding Judge, concurring specially.

The relevant facts in this case are identical to those in Kendall v. United States Automobile Ass'n, [Ms. 1061472, May 15, 2009] ___ So. 3d ___ (Ala. 2009), in which our supreme court held that, when a driver is injured in an accident in which a government entity is at fault, a driver's underinsured-motorist insurance carrier is not obligated to pay any amount of damages over the statutory maximum for which a government entity is legally liable, § 11-93-2, Ala. Code 1975, even though the evidence is undisputed that the damages incurred by the driver exceeded that statutory maximum. Because the relevant facts are identical, I agree that Kendall is dispositive of this case. However, I also agree with Chief Justice Cobb's special concurrence in Kendall. It is the job of the Alabama Legislature, not of the appellate courts, to revisit the uninsured/underinsured motorists statute, § 32-7-23, Ala. Code 1975, to clarify whether it intended outcomes such as the one in the present case.