Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **29th day of June, 2022** are as follows:

BY Griffin, J.:

2021-C-00810 *JOHNNY CARVAL HAVARD VS. RICKY JEANLOUIS, ET AL. (Parish of Lafayette)*

AFFIRMED. SEE OPINION.

Weimer, C.J., dissents and assigns reasons.
Crain, J., dissents in part and assigns reasons.
McCallum, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2021-C-00810

JOHNNY CARVAL HAVARD

VS.

RICKY JEANLOUIS, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

GRIFFIN, J.

We granted this writ to determine whether a stamped signature on an uninsured/underinsured motorist ("UM") coverage rejection form, affixed by the administrative assistant of the corporate insured's owner and president, complies with the statutory requirement that the UM form be signed by the named insured or his legal representative. Because the stamped signature was affixed on behalf of the legal representative and not by the legal representative himself, we agree with the court of appeal that the lack of prior written authorization to the administrative assistant renders the UM form invalid.

FACTS AND PROCEDURAL HISTORY

This dispute over UM coverage arises from a motor vehicle accident between Johnny Carval Havard and Ricky Jeanlouis. The tow truck driven by Mr. Jeanlouis was owned by his employer, Rick's Towing & Recovery Service, Inc. ("Rick's Towing"). Mr. Havard filed suit against several parties including State National Insurance Company ("State National") in its capacity as UM coverage provider for Rick's Towing. The UM form in the State National policy was signed with a stamped signature bearing the name of Richard C. Baker, the owner and president of Rick's Towing.

State National filed a motion for summary judgment arguing that UM coverage was waived because Rick's Towing properly completed and signed a UM

form wherein the option for rejecting coverage was initialed. In addition to the UM form, State National submitted the affidavits of Mr. Baker and Vickie d'Augereaux, Mr. Baker's administrative assistant. Both attested that Mr. Baker authorized Ms. d'Augereaux to stamp sign his signature and initial the UM form to reject coverage. Mr. Havard opposed, arguing the stamped signature did not constitute a valid signature or, alternatively, that Ms. d'Augereaux lacked written authority to affix Mr. Baker's stamped signature to the UM form on his behalf. The trial court granted State National's motion for summary judgment and dismissed Mr. Havard's claims against it with prejudice. Mr. Havard appealed.

The court of appeal reversed. Relying on *Holloway v. Shelter Mut. Ins. Co.*, 03-0896 (La.App. 3 Cir. 12/10/03), 861 So.2d 763, it found that because La. R.S. 22:1295 requires waiver of UM coverage must be in writing, written authorization is required under La. C.C. art. 2993 for another individual to waive coverage on behalf of a corporate insured's legal representative. *Havard v. Jeanlouis*, 20-0404, pp. 13-15 (La.App. 3 Cir. 5/12/21), 320 So.3d 1186, 1193-94.

State National's writ application to this Court followed, which we granted. *Havard v. Jeanlouis*, 21-0810 (La. 10/19/21), 326 So.3d 1223.

DISCUSSION

The issue before this Court is whether UM coverage was validly rejected by Rick's Towing. In Louisiana, "UM coverage is determined not only by contractual provisions, but also by applicable statutes." *Duncan v. U.S.A.A. Ins. Co.*, 06-0363, p. 4 (La 11/29/06), 950 So.2d 544, 547. Thus, whether coverage exists turns on the interpretation of the policy and UM statute. Statutory interpretation is a question of law subject to *de novo* review. *Benjamin v. Zeichner*, 12-1763, p. 5 (La. 4/5/13), 113 So.3d 197, 201.

"No automobile liability insurance [policy] … shall be delivered or issued in … [Louisiana] unless [UM] coverage is provided." La. R.S.

22:1295(1)(a)(i). However, UM coverage is not required if "any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage, in the manner provided in [La. R.S. 22:1295(1)(a)(ii)]." *Id*. "Such rejection … shall be made on a form prescribed by the commissioner of insurance" that is "provided by the insurer and signed by the named insured or his legal representative." La. R.S. 22:1295(1)(a)(ii). Accordingly, "the requirement of UM coverage is an implied amendment to any automobile liability policy … as UM coverage will be read into the policy unless validly rejected." *Duncan*, 06-0363, p. 4, 950 So.2d at 547.

A stamped signature may be used to sign a UM form. *See Rainey v. Entergy Gulf States, Inc.*, 09-0572, pp. 15-16 (La. 3/16/10), 35 So.3d 215, 225-26 (observing that, in the absence of a specific statutory requirement, a signature may be "written by hand, printed, stamped, typewritten, engraved, or [accomplished] by various other means"); 5 LA. CIV. L. TREATISE, LAW OF OBLIGATIONS § 12.28 (2d ed.). The issue before this Court therefore turns not on the method of signing a UM form, but the authority of the individual who affixes the signature.

A corporate insured cannot sign its own name on a UM form and must act through its legal representative. *Harper v. Direct General Ins. Co.*, 08-2874, p. 3 (La. 2/13/09), 2 So.3d 418, 420 (per curiam); *Kevin Associates, L.L.C. v. Crawford*, 03-0211, p. 11 (La. 1/30/04), 865 So.2d 34, 41. The legal representative does not need prior written authority to sign on behalf of the corporate insured – such authority may be verbal and subsequently established by affidavit. *See, e.g., Harper*, *supra*; *Bergeron v. Liberty Mutual Ins. Co.*, 12-0086, pp. 4-5 (La.App. 3 Cir. 6/6/12), 92 So.3d 645, 648-49; *Terrell v. Fontenot*, 11-1472, pp. 6-7 (La.App. 4 Cir. 6/27/12), 96 So.3d 658, 662-63.

The authority to represent another person may be conferred by law, contract, or procuration. *See* La. C.C. arts. 2985, 2986, and 2987. "A mandate is a contract

by which a person, the principal, confers authority on another person, a mandatary, to transact one or more affairs for the principal." La. C.C. 2989. Although a mandate is not required to be in a certain form, "when the law prescribes a certain form for an act, a mandate authorizing the act must be in that form." La. C.C. art. 2993; *see also* La. C.C. art. 2988 (procuration subject to the rules governing mandate to the extent they are compatible). Accordingly, where one individual signs a UM form on behalf of another individual and authority is not conferred by law, our Civil Code requires this authority be in writing. *Holloway*, 03-0896, p. 7, 861 So.2d at 768.

State National argues there was a valid rejection of UM coverage because Ms. d'Augereaux is the legal representative of Rick's Towing and executed the UM form on its behalf. *See, e.g.*, *Harper*, *supra*; *Bergeron v. Liberty Mutual Ins. Co.*, 12-0086, pp. 4-5 (La.App. 3 Cir. 6/6/12), 92 So.3d 645, 648-49; *Terrell v. Fontenot*, 11-1472, pp. 6-7 (La.App. 4 Cir. 6/27/12), 96 So.3d 658, 662-63. Mr. Havard counters that *Holloway* and La. C.C. art. 2993 applies in light of two facts established by the affidavits submitted in evidence: 1) Mr. Baker is the legal representative of Rick's Towing; and 2) Ms. d'Augereaux affixed Mr. Baker's stamped signature on the UM form rather than sign her own name. Mr. Havard thus asserts the cases relied upon by State National are factually distinguishable. We agree.

The affidavit testimony establishes that Mr. Baker, not Ms. d'Augereaux, is the legal representative of Rick's Towing. Specifically, Mr. Baker attested that he "make[s] the final determination as to what insurance coverage to get for Rick's Towing" and that he "made the decision to reject UMBI Coverage under the Policy issued by [State National] to Rick's Towing." Mr. Baker authorized Ms. d'Augereaux, to stamp sign his signature on the UM form. Ms. d'Augereaux attested that Mr. Baker "asked [her] to fill out" the UM form and that she "stamp-signed the [UM form] on behalf of Richard C. Baker as the representative (Owner and President of) for Rick's Towing." State National's reliance on *Harper*, *Bergeron*, and *Terrell*

is therefore inapposite as the UM forms therein were signed by the legal representatives of their respective corporate insureds. *See Harper*, 08-2874, p. 3, So.3d at 420; *Bergeron*, p. 4, 92 So.3d at 648; *Terrell*, 11-1472, p. 7, 96 So.3d at 663. Ms. d'Augereaux did not sign the UM form in her name as the legal representative of Rick's Towing. As correctly observed by the court of appeal, "[t]his case instead presents a situation where a corporate representative, Mr. Baker, directed a subordinate, Ms. d'Augereaux, to execute the waiver form in *his* capacity as corporate representative." *Havard*, 20-0404, p. 14, 320 So.3d at 1194 (emphasis in original). The extension of such authority must be in writing.

There is no language in La. R.S. 22:1295 which suspends the application of La. C.C. art. 2993 and allows the derivative representation Rick's Towing seeks to establish here. To find otherwise would be in derogation of the well-settled principle that the UM statute is liberally construed and exceptions to coverage are interpreted strictly. *Duncan*, 06-0363, p. 4 950 So.2d at 547. The clear and unambiguous language of La. C.C. art. 2993 must therefore be applied as written. *See* La. C.C. art. 9. Concerns over the practical impact within the insurance industry in scrutinizing stamped signed UM forms are unavailing. Inconvenience is not an absurdity. The insurer has the authority, opportunity, and responsibility to assure the UM form is completed properly. *Gray v. American Nat. Property & Cas. Co.*, 07-1670, pp. 14-15 (La. 2/26/08), 977 So.2d 839, 849-50. Practical considerations regarding increased due diligence requirements are matters of policy best directed to the legislature. *See Carpenter v. Metropolitan Life Ins. Co.*, 182 La. 813, 820, 162 So. 630, 632 (1935).

DECREE

For the foregoing reasons, the ruling of the court of appeal is affirmed.

AFFIRMED

SUPREME COURT OF LOUISIANA

No. 2021-C-00810

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Third Circuit, Parish of Lafayette

WEIMER, C.J., dissenting.

Once again, this court must address the validity of a UM waiver form. Louisiana R.S. 22:1295 generally mandates UM coverage equal to the liability limits in all automobile liability policies, unless the insured "rejects [the] coverage, selects lower limits, or selects economic only coverage, in the manner provided in Item (1)(a)(ii)" of the statute. That subsection provides in relevant part:

> Such rejection, selection of lower limits, or selection of economic-only coverage shall be made only on a form prescribed by the commissioner of insurance. The prescribed form shall be provided by the insurer and signed by the named insured or his legal representative. ... A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage.

Thus, by statute, a UM form is valid if (1) the insured rejects UM coverage, (2) on a form prescribed by the commissioner of insurance, and (3) the form is signed by the insured or his legal representative. Importantly, the failure to properly complete a UM waiver form does not necessarily mean the form is invalid. Rather, the consequence for failure to properly complete a UM waiver form is statutorily prescribed–the insurer does not receive the benefit of a rebuttable presumption that the insured knowingly rejected coverage. See La. R.S. 22:1295(1)(a)(ii); **Duncan v. U.S.A.A. Ins. Co.**, 06-363, p. 2 (La. 11/29/06), 950 So.2d 544, 555 (Weimer, J., dissenting). The form can still be defended at a hearing or trial.

In this case, the UM waiver form is valid on its face: the Commissioner's form was used; a selection rejecting UM coverage was made; and the signature of Richard C. Baker appears on the form. The issue centers on authority to sign the form. There is no dispute that Mr. Baker is the legal representative of Rick's Towing entitled to sign the UM waiver form. The relevant evidence presented in support of State National's Motion for Summary Judgment was not disputed. Mr. Baker has been the owner and president of Rick's Towing since 1978. As owner and president of the company, Mr. Baker determines what insurance coverage to obtain. Mr. Baker decided to reject UM coverage under the State National policy. In conjunction with that decision, Mr. Baker authorized his long time administrative assistant, Vickie d'Augereaux, to stamp sign his signature on the UM waiver form. Following her employer/supervisor's instructions, Ms. d'Augereaux stamped Mr. Baker's signature on the form. Applying La. C.C. arts. 2989 and 2993 relative to mandate, the majority effectively finds the form was not properly completed and, thus, invalid because Mr. Baker did not provide prior written authorization to Ms. d'Angereaux to stamp sign his signature. Considering the undisputed facts of this case, I find requiring a written act of mandate is hypertechnical and at odds with the language and intent of the UM statute.

Richard Baker, as the owner and president of Rick's Towing, is the legal representative authorized to make a decision regarding UM coverage. Mr. Baker made the decision to reject UM coverage on behalf of the company. He did not authorize Ms. d'Angereaux to make that decision. Rather, after deciding to reject UM coverage, Mr. Baker simply directed his administrative assistant to perform the routine task of affixing his signature on the UM waiver form using a signature stamp. The court of appeal majority, and the majority of this court, hold that this "extension of

authority" must be in writing, citing to **Holloway v. Shelter Mut. Ins. Co.**, 03-0896, p. 7 (La.App. 3 Cir. 12/10/03), 861 So.2d 763, 768. I disagree. As noted by Judge Gremillion in dissenting to the court of appeal decision:

> Unlike in *Holloway*, which involved a mother and her deceased son, the corporate representative here, Baker, is alive and able to attest to the authorization his secretary of over 20 years had to sign on his behalf. His intent to waive UM coverage is not the issue; the waiver is valid on its face as it is appropriately filled out. The only issue in this case is Baker's intent to allow d'Augereaux to sign on his behalf. "The extension of authority" referred to by the majority seems abundantly clear since Baker went to the trouble of having a rubber stamp likeness of his signature created such that d'Augereaux could sign any number of documents on his behalf.
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> . . . .
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> Authority to execute a UM waiver can be established by affidavit and there is no legal requirement regarding the nature of the proof required of authority for a representative to sign a UM form. Because the corporation's legal representative, Baker, is able to attest to his intent to authorize d'Augereaux to sign on his behalf, unlike in *Holloway*, the issue of "derivative representation" is a non-issue.

Havard v. Jeanlouis, 20-404, p. 3 (La.App. 3 Cir. 5/12/21), 320 So.3d 1186, 1196-97 (Gremillion, J., dissenting) (internal citation removed). I agree with Judge Gremillion. Under these particular facts, I would not hold that UM coverage is mandated simply because Mr. Baker verbally instructed and authorized Ms. d'Angereaux to stamp his signature, rather than provide that authorization in writing. Based on the majority opinion, Mr. Baker could have stamped his own signature on the form without consequence, but because he directed his long-time administrative assistant to perform that same exact menial task in the ordinary course of business, an invalid UM waiver form was created. I cannot subscribe to such a result.

Unfortunately, issues surrounding the Commissioner's UM form have persisted since this court's decision in **Duncan**. The majority in **Duncan** deviated from the UM statute by failing to recognize and apply the statutory consequence if a UM form is not

properly completed–the "rebuttable presumption" that the insured knowingly rejected coverage does not apply. See **Duncan**, 06-363 at 2, 950 So.2d at 555 (Weimer, J., dissenting). **Duncan** has not fulfilled its intended purpose to streamline the process in UM cases. Rather, **Duncan** has only fostered litigation to find some minor technical problem with the UM waiver form to extract insurance coverage that was not requested and not paid for. As I noted in my dissent in **Duncan**, "[i]n the majority opinion, form is being substantially elevated over substance where one is provided coverage that was apparently specifically rejected and neither bought nor paid for simply because a potentially unnecessary number is not listed on the rejection form." **Duncan**, 06-363 at 2, 950 So.2d at 555 (Weimer, J.,dissenting). The same is true here. The UM waiver form is valid on its face and there is no dispute that Rick's Towing intended to waive UM coverage and did not pay for such coverage. Even if the stamped signature means the form was not "properly completed and signed," and State National was therefore not entitled to the benefit of a rebuttable presumption that Rick's Towing knowingly rejected UM coverage, it is clear that State National successfully defended the UM rejection form on summary judgment through the undisputed affidavits of Mr. Baker and Ms. d'Augereaux. Based on the facts of this case, it seems unjust to force the insurance company to provide coverage under a UM policy for which it received no premium. No one should get something for nothing in this circumstance–especially when it was something not wanted, not paid for, and specifically rejected. Therefore, I respectfully dissent.

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CRAIN, J., agrees in part, dissents in part.

I agree that a stamped signature of a "legal representative" of an insured corporation may be used to sign a UM rejection form. I disagree that written authority is required for another employee to stamp the signature on the form.

The UM statute provides that a UM rejection must be "signed by the named insured *or his legal representative*." *See* La. R.S. 22:1295(1)(a)(ii) (emphasis added). In this case, the named insured is a corporation. A corporation acts only through its officers, employees, and other agents. *See Harper v. Direct General Insurance Co.*, 08-2874 (La. 2/13/09), 2 So. 3d 418, 420 (per curiam) ("[I]t is obvious the corporate insured cannot sign its name, but must act through its legal representative."); *Kevin Associates, L.L.C. v. Crawford*, 03-0211 (La. 1/30/04), 865 So. 2d 34, 41 ("Although a corporation is a juridical person . . ., it only acts through its officers, employees, and other agents.").

As recognized by the majority, this court has correctly never required written authority for an employee to reject UM coverage for a corporation. *See Voinche v. Capps*, 14-1498 (La. 10/24/14), 150 So. 3d 297, 298 (per curiam); *Harper*, 2 So. 3d at 420; *Banquer v. Guidroz*, 09-466 (La. 5/15/09), 8 So. 3d 559, 561 (per curiam). Proof of verbal authority to sign the rejection is sufficient to establish the employee is the corporation's "legal representative" for this purpose. *See Voinche*, 150 So. 3d at 298; *Harper*, 2 So. 3d at 420; *Banquer*, 8 So. 3d at 561.

Here, it is undisputed that UM coverage was not wanted, was not paid for, and an employee was told to stamp the signature of the company's owner and president on the rejection form. But, in order to reject UM coverage, the majority now requires more: written authority for the employee to affix the stamped signature.

The UM statute does not require written authority for this ministerial act. The majority imposes this requirement by applying the law of mandate, particularly the second sentence of Louisiana Civil Code article 2993, often referred to as the "equal dignity rule." *See* Wendell H. Holmes & Symeon C. Symeonides, *Representation, Mandate, and Agency: A Kommentar on Louisiana's New Law*, 73 Tul. L. Rev. 1087, 1122 (1999). Under Article 2993, no particular form is required for a mandate unless "the law prescribes a certain form for an act." In that event, "a mandate authorizing the act must be in that form." Applying this rule, the majority finds written authority is required "where one individual signs a UM form on behalf of another individual." This holding cannot be reconciled with *Voinche*, *Harper*, and *Banquer*.

It is inexplicable, and the majority does not attempt to explain, why the equal dignity rule does not require written authority for an employee to sign a UM rejection for the company, but requires written authority for the designee of that employee. The primary mandate from the corporation is exempt from the writing requirement, but the secondary mandate to another employee is not. If the equal dignity rule applies, all mandates to reject UM coverage for a corporation must be in writing. In that event, *Voinche*, *Harper*, and *Banquer* must be overruled.

That said, I do not believe the equal dignity rule applies to a UM rejection for a corporation and submit Section 22:1295(1)(a)(ii) controls. Our jurisprudence recognizes that a "legal representative" is any employee authorized to reject UM coverage for the company. *See Voinche*, 150 So. 3d at 298; *Harper*, 2 So. 3d at 420; *Banquer*, 8 So. 3d at 561. Here, the owner-president was authorized to reject the

coverage. He then authorized his assistant to perform the ministerial task of stamping his signature to the rejection form *on behalf of the corporation*. Both individuals acted for the corporation. These undisputed facts establish the owner-president and his assistant each acted as an authorized "legal representative" of the corporation in rejecting UM coverage.

This conclusion is further supported by the limited nature of the assistant's act: stamping the owner's signature to a form at his request. That is no different than affixing an electronic signature to the document. Because it was applied at the owner's direction, the signature is attributable to the owner. It is the owner's signature, not the employee's. Under these circumstances, stamping the document is a ministerial task performed in the normal course and scope of the assistant's employment. The relationship here is between an employer and employee, not between a principal and mandatary. *See* La. Civ. Code arts. 2746-50. "The master-servant relationship cannot be equated with the principal-agent relationship." *Blanchard v. Ogima*, 253 La. 34; 215 So. 2d 902, 906 (1968). While one can be both an employee and a mandatary in certain instances, application of Article 2993 to simple, ministerial, employment-related tasks stretches the concept of principal-mandatary and its related form requirements to unprecedented lengths.[1]

Notably, even in the principal-mandatary context, legal scholars have been critical of Article 2993's "equal dignity rule." Adopted in 1997, Article 2993 had no counterpart in the former code articles and was based on jurisprudence, most notably *Tedesco v. Gentry Development, Inc.*, 540 So. 2d 960 (La. 1989). *See* La. Acts 1997, No. 261; Holmes and Symeonides, 73 Tul. L. Rev. at 1122. In *Tedesco*,

[1] Other jurisdictions have rejected attempts to extend written form requirements to nondiscretionary tasks even in a principal-agent relationship. *See* 1 Cal. Real Est. § 1:90 (4th ed.) ("When the act of signing a contract or other document subject to the statute of frauds does not require an agent to exercise discretion, the ministerial act of affixing the signature is binding on the principal even though the agent's authority is not in writing.")

the court held a contract to purchase immovable property from a corporation was unenforceable because the corporation's president did not have written authority to sell the property. *Tedesco*, 540 So. 2d at 964. The court relied on former Civil Code articles requiring "express authority" to do certain acts, such as "sell or buy." *See* La. Civ. Code arts. 2996 and 2997 (repealed 1997) (*see now* La. Civ. Code art. 2996).

Reviewing the 1997 legislation, Professors Holmes and Symeonides criticized the court's analysis:

> The flaw in [the court's] analysis, however, is that neither of the latter two code articles [Arts. 2996 and 2997] said anything about requiring a writing; they simply required express authority which, obviously, can be oral as well as written. It is simply a leap of faith to conclude that because article 2440 requires an agreement to sell immovables to be written, former articles 2996 and 2997 required that the express authority to execute such an agreement as buyer or seller must be in writing as well. No such conclusion is inexorably compelled by logical interpretation of the then existing provisions of the Civil Code.
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> Neither the *Tedesco* court, nor the drafters of new article 2993 articulate the policy underlying the adoption of this rule. It is one thing for the legislature to determine . . . sound policy dictates the imposition of certain formality requirements [for a transaction's] enforceability. . . . It is, however, not self-evident that the same policies always justify imposing the same requirements for the contract of mandate . . . . [I]t would seem appropriate to identify some good reason for so doing, given that this can be a classic "trap for the unwary." Frankly, it is difficult in many instances to see what that reason is.

Holmes and Symeonides, 73 Tul. L. Rev. at 1123-24 (1999) (footnotes omitted).

Nevertheless, the equal dignity rule in Article 2993 is the law and requires that certain mandates be in writing. However, the requirements of a contract of mandate should not burden an employment relationship by requiring written authorization for an employee to perform a basic administrative task at another employee's request, particularly where such authorization is not required for the co-employee to perform the same act.

Affixing another's signature to a document at his request by a stamp, electronic means, or other mechanical method is increasingly common in the workplace. These are instruments of convenience. That is the reason for a stamp. In

most instances, if the person whose name is being stamped has to affix the stamp himself, he can just as easily sign himself. Imposing a form requirement on such routine requests exceeds the scope of Article 2993, needlessly complicates and burdens a simple task, and serves no identifiable purpose other than to block enforcement of this UM rejection. I would reverse the court of appeal and reinstate the trial court's summary judgment dismissing the claims against National Insurance Company.

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McCALLUM, J., dissents and assigns reasons.

There are many issues that invoke vehement debate in modern society, such as who should be the next president, the existence of aliens and UFOs, and whether Pete Rose should be in the Major League Baseball Hall of Fame. In my view, the debate in this matter is not so controversial, as the essential facts of this case are undisputed. Richard C. Baker is the owner of Rick's Towing. Vickie d'Augereaux is his administrative assistance. The UM rejection form in question complies with the requirements of La. R.S. 22:1295 (1)(a)(ii). The form bears the signature of Richard C. Baker on a line subtitled "Signature of Named Insured or Legal Representative," Mr. Baker's initials indicating the option chosen, the date of the signature, the date of the effect of the waiver, the policy number, and the insurer's logo and name. Everything on the waiver form is there as Mr. Baker wanted. Mr. Baker's signature appears on the form because he actively desired and directed that it be there. The UM form clearly, facially meets the requirements for creating a presumption of a waiver of UM coverage. Yet, even in the face of such concord and despite the fact that the statutory requirements were decidedly met, the majorities at the court of appeal and here have determined that the waiver of uninsured motorist coverage was invalid.

The majority opinion recognizes that a stamped signature, or various other means, may be used to sign a UM form. Additionally, the majority observes that

"[t]he issue before this Court therefore turns not on the method of signing …." I agree with the majority on both points, and in my view, the inquiry should cease there and the matter be resolved by finding that UM coverage was waived. However, the majority has found the UM waiver to be invalid, and, in doing so, contradicted itself and ignored the very propositions it articulated. In so ruling, and in reaching its result, the majority has determined that some forms of signature application are preferable to others and that the method of signing is the determinative factor.

This writer, often resistant to and distrustful of change, stands with Scheherazade's audience in amazement at the breathtaking pace with which things that only a few years ago seemed otherworldly, are now common place.[1] We are deeply enmeshed in the 21st century. One can now do complex mathematical computations, perform dictionary and encyclopedic research, watch television, buy and sell, pay bills, and communicate around the globe on a single handheld device no larger than a box of kitchen matches. And yes, an individual can now affix his signature electronically to documents of all sorts without chronological or spatial constraints; even this very Court does so routinely. Ironic then that a ghost of offices past, a rubber signature stamp, should prove to be so vexatious.

The crux of the majority's decision is that the law of mandate applies in this case. As such then, the means used in the application of the signature stamp (the corporate officer's assistant) should have been memorialized in another, separate written instrument. I could not disagree more, for the various reasons that follow.

Initially, I note that the parties to the contract, the insured and the insurer, agree that uninsured motorists coverage was validly waived. Only an individual whose name appears nowhere on the document, the petitioner, objects to its interpretation and application. While this situation is not unusual in UM waiver

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[1] Edgar Allan Poe, *The Thousand-and-Second Tale of Scheherazade*, *in* The Collected Tales and Poems of Edgar Allan Poe 104-18 (1992 Modern Library Ed., The Modern Library, Random House, New York, 1992).

cases, it is nonetheless extraordinary; those who created the contract do not have the last word on what it says.

Second, this is not a case about the law of mandate. Instead, much more practical, mechanical, and commonsense considerations are at play. Quite simply, this is a matter of how an individual chooses to sign his name to a UM waiver. The legislature did not mandate a method or device to be so employed, thereby accommodating all methods, including crayons, quill or ball point pens, signature stamps, and presumably, electronic signatures. Our jurisprudence, as the majority acknowledges by quoting *Rainey v. Entergy Gulf States, Inc.*, 2009-0572 (La. 3/16/10), 35 So. 3d 215, clearly reflects that there are numerous methods by which a UM form may be signed, including, as the majority expressly states, "[a] stamped signature." Here, the use of a stamp by Mr. Baker's administrative assistant, Vickie d'Augereaux, was one manner employed by Mr. Baker to affix his signature to the waiver. A signature stamp is created for just such a use. In short, Mr. Baker signed his name. Who are we to quibble about the means he employed?

Even assuming arguendo that this case is about mandate and that written authorization was required from Mr. Baker to Ms. d'Augereaux pursuant to La. C.C. art. 2993, the waiver still stands as valid. It is beyond question that defects such as the absence of written authorization of a mandatary in our public immovable property records are routinely remedied by supplying the written authorization after the fact. The affidavits of Mr. Baker and Ms. d'Augereaux have performed the same function and remedied any ostensible, perceived irregularity concerning written authorization for her to act on his behalf. That which is sufficient for the conveyance records must surely be sufficient for a UM waiver.

Finally, in his dissent to the court of appeal majority opinion, Judge Gremillion correctly outlined the error in conflating the statutory intent to waive UM coverage with Mr. Baker's intent to authorize his assistant to sign on his behalf. In

deciding whether a UM rejection form meets statutory requirements, we simply look to the form itself. "A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage." La. R.S. 22:1295(1)(a)(ii). The intent issue in this matter is a red herring. It only goes toward the intent of the signatory in authorizing the means of supplying his signature on behalf of the company, not whether his signature was on the form or why it was on the form. Such consideration of the internal business practices of authorized signatures should not have interdicted the pure form consideration of the statutory UM waiver requirements. In fact, such a consideration effectively negates the reason for a form, meant to create a singular, industry standard, by instead setting a precedent for a case-by-case need to discover what intent a party had in waiving coverage, why and how a company employee was authorized to sign on behalf of the company, and how companies conduct their internal business affairs.

In *Duncan*, this Court spoke to intent, but intent being used to cure a defect in form. "The insurer cannot rely on the insured's intent to waive UM coverage to cure a defect in the form of the waiver." *Duncan v. U.S.A.A. Ins. Co.*, 2006-363, p. 14-15 (La. 11/29/06), 950 So. 2d 544, at 553. I agree with Judge Gremillion's dissent that, in this case, a defect in form is not present. Instead, it is a purported defect in authorization of a signature upon which the majority hinges its opinion.

The legislature mandated clear requirements for a valid UM form, that when facially complied with, is presumptive of a UM waiver. The majority opinion essentially derogates from the legislature's clear mandate and creates uncertainty and complexity where simplicity is meant to pervade. I would reverse the judgment of the court of appeal and reinstate the trial court's judgment. Therefore, I must respectfully dissent.