STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA C. RUZAK, Plaintiff-Appellee,	UNPUBLISHED December 1, 2011
v	No. 288053 Grand Traverse
USAA INSURANCE AGENCY, INC., Defendant-Appellant,	LC No. 06-025177-NI
and JAY D. RUZAK, Defendant.	

ON REMAND

Before: MURPHY, C.J., and JANSEN and WILDER, JJ.

MURPHY, C.J. (*dissenting*).

Because I conclude that the renewal rule can apply when an insurance policy is issued pursuant to an insured's move to a new state, and because I find that the renewal rule can apply where the most recent change in the insurance policy produced an increase in coverage, but where there was nonetheless a decrease in comparison to the original policy, I respectfully dissent. I would affirm the trial court's ruling.

I. OVERVIEW

On remand from our Supreme Court, defendant USAA Insurance Agency, Inc. (USAA), appeals as of right the trial court's order denying its motion for summary disposition and granting plaintiff's cross-motion for summary disposition. Plaintiff was a passenger in a truck driven by her husband, defendant Jay Ruzak (hereafter "Mr. Ruzak"), when the truck collided with a tree, resulting in severe injuries to plaintiff. Plaintiff and Mr. Ruzak had no-fault insurance coverage under a Michigan policy issued by USAA, which had continually insured either Mr. Ruzak or the couple through multiple interstate moves since 1966. The applicable policy had general liability coverage limits of $300,000 per person and $500,000 per accident. It, however, also contained a provision limiting coverage to $20,000 per person and $40,000 per

accident when a covered person became legally responsible to pay damages for bodily injuries suffered in an accident by a family member who resided in the same household as the covered person. This family-member coverage limitation was not contained in an earlier policy issued by USAA to the Ruzaks. Plaintiff commenced an action against her husband and USAA, and on cross-motions for summary disposition, the trial court, for a variety of reasons, denied USAA's motion and granted plaintiff's motion. On appeal, this Court found that the "renewal rule"[1] might be implicated and remanded the case for a determination whether the rule was applicable under the circumstances presented. *Ruzak v USAA Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2008 (Docket No. 274993) (*Ruzak I*). On remand, the trial court again denied USAA's motion for summary disposition and granted plaintiff's competing motion, finding that the renewal rule precluded application of the family-member limitation. On appeal once again to this Court, a divided panel affirmed, but only because it was required to do so under the law of the case doctrine. *Ruzak v USAA Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 2010 (Docket No. 288053) (*Ruzak II*). Our Supreme Court initially denied USAA's application for leave to appeal. *Ruzak v USAA Ins Agency, Inc*, 488 Mich 944; 790 NW2d 391 (2010). However, on reconsideration, the Supreme Court ruled that the law of the case doctrine had not precluded consideration of the following two specific arguments: "(a) the renewal rule does not apply when a new insurance policy is issued pursuant to an insured's move to a new state; and (b) the renewal rule does not apply where the last change in the insurance policy did not produce a decrease in coverage, but an increase." *Ruzak v USAA Ins Agency, Inc*, 489 Mich 865; 795 NW2d 154 (2011). The Court remanded the case to us for consideration of these two arguments, with leave being denied in all other respects. *Id.* On remand, I would hold that the renewal rule can apply regardless of interstate changes of residency. I would further hold that the renewal rule can apply regardless of the fact that the most recent change in the insurance policy produced an increase in coverage, where there was nonetheless a decrease in coverage as compared against the original insurance policy. Given that the Supreme Court's remand order left untouched all aspects of our earlier ruling except with respect to the two identified arguments, it remains established that USAA failed as a matter of law to provide plaintiff with the requisite notice under the renewal rule.

II. FACTUAL DETAILS

Mr. Ruzak averred that USAA's "products and services are only available to members of the military community" and that from 1965 to 1969 he had been a member of the United States Air Force. In 1966, Mr. Ruzak first acquired an automobile insurance policy from USAA, and he indicated in his affidavit that he continued to be insured by USAA over the next 40 years. In a second affidavit, Mr. Ruzak asserted that he had lived in Michigan since 1997 and that, before

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[1] "Where a renewal policy is issued without calling the insured's attention to a reduction in coverage, the insurer is bound to the greater coverage in the earlier policy." *Koski v Allstate Ins Co*, 213 Mich App 166, 171; 539 NW2d 561 (1995), rev'd on other grounds 456 Mich 439 (1998).

moving to Michigan, he had lived "in Indiana, Minnesota, Wisconsin, California, and Illinois." Plaintiff and Mr. Ruzak married in 1987, and plaintiff averred in her affidavit that she became eligible for USAA insurance coverage upon marriage and continually carried such coverage through the date of the accident.[2] Plaintiff further averred that she and her husband were living in Illinois when they wed in 1987, that they moved to Wisconsin in approximately 1990, that they then lived in Minnesota and Indiana,[3] residing several years in each state, and that they lived in Michigan from 1997 forward. There is no dispute that the couple lived in Indiana immediately before moving to Michigan. Taking into consideration all of the affidavits, it appears that Mr. Ruzak may have been living in either Illinois or California in 1966 when he first obtained a USAA policy, but ultimately the record is unclear regarding Mr. Ruzak's residency in 1966.

At the time of the accident, in which Mr. Ruzak lost control of his truck, sideswiped a utility pole, and smashed into a tree with plaintiff as his passenger, the USAA policy generally provided liability coverage in the amount of $300,000 per person and $500,000 per accident. However, under the exclusion subsection, the Michigan policy also provided:

> There is no coverage for [bodily injury] for which a covered person becomes legally responsible to pay a member of that covered person's family residing in that covered person's household. This exclusion applies only to the extent that the limits of liability for this coverage exceed $20,000 for each person or $40,000 for each accident.[[4]]

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[2] The accident occurred in October 2004, and the Ruzaks subsequently canceled their USAA policy in 2006.

[3] Subsequent affidavits executed by plaintiff and Mr. Ruzak revealed that they lived in Wisconsin from 1990 to 1992. Based on arguments below, it appears that the Ruzaks lived in Minnesota from 1992 to 1994 and then resided in Indiana from 1994 to 1997.

[4] MCL 500.3009(1) provides:

> An automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and subject to that limit for 1 person, to a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and to a limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident.

The previous Indiana policy had a complete exclusion relative to family-member liability; therefore, had the accident occurred during the Ruzaks' residency in Indiana, no insurance coverage would have been available for purposes of residual liability under the express terms of the Indiana policy. However, Wisconsin did not permit such family-member exclusions or limitations,[5] and thus full liability coverage had been available during the Ruzaks' tenure in Wisconsin, which again was prior to their residency in Indiana, as well as Michigan.

In an affidavit executed by Rebecca Mainez, a USAA product analyst, she averred that she had personally reviewed USAA records with respect to the Ruzaks and found that Mr. Ruzak had carried a policy with USAA since 1966 and that the family limitation clause had been "a part of Mr. Ruzak's . . . policies with [USAA] since at least 1999."[6] In an affidavit executed by Don Griffin, a USAA policy service director, he averred that, generally speaking, "[a]t the time the Ruzaks' Michigan policy was issued, USAA's Michigan policy included a family member limitation[.]" USAA, having insured Mr. Ruzak since 1966, provided no evidence, nor did it argue, that a family-member exclusion or limitation had been included in the original 1966 policy.

Plaintiff filed an action against Mr. Ruzak and USAA, arguing that the family-member limitation could not be applied and alleging claims of breach of contract, fraud, and negligent and innocent misrepresentation. On cross-motions for summary disposition, the trial court denied USAA's motion and granted plaintiff's motion, finding that, although the limitation provision was unambiguous and complied with the no-fault act, MCL 500.3101 *et seq*., it was nonetheless repugnant, unconscionable, and reprehensible. *Ruzak I*, slip op at 1. This Court reversed the trial court's ruling that the family-member limitation was unconscionable and otherwise violated public policy as a repugnant and reprehensible provision; therefore, plaintiff was not entitled to summary disposition. *Id.*, slip op at 3. Plaintiff had not raised an argument under the renewal rule at the trial court level, but it did raise the issue on appeal and the panel chose to entertain the matter. *Id.*, slip op at 4. The Court noted that, given the lack of argument below, the record was undeveloped with respect to application of the renewal rule. *Id.* Accordingly, the panel ruled:

> We, therefore, remand for a determination regarding the application of the renewal rule to the present case. The trial court shall determine whether [USAA] added the contested provision to the insurance policy after the policy was initially

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[5] While the majority laments that there was no evidence regarding the actual Wisconsin policy and the language contained therein, I believe that it is safe to conclude that the policy was consistent with Wisconsin state law. And even if the Wisconsin policy had a family-member exclusion or limitation, it would not have been enforceable under the law.

[6] Mainez failed to provide an explanation with respect to why she could only go back to 1999 for purposes of identifying family-member clauses in the various policies, yet still aver that Mr. Ruzak had carried a USAA policy since 1966.

> purchased by [Mr. Ruzak] and, if so, whether [USAA] provided actual notice of the reduction in coverage to plaintiff and [Ruzak]. [*Id.*]

On remand, the trial court once again denied USAA's motion for summary disposition and granted plaintiff's competing motion. The court found that plaintiff had presented evidence establishing that USAA failed to notify the Ruzaks of the reduction of coverage that they once enjoyed while living in Wisconsin, inducing the Ruzaks to believe that they had the $300,000/$500,000 coverage for residual liability. *Ruzaks II*, slip op at 2. The majority in *Ruzak II* did not believe that it was appropriate, for purposes of determining the applicability of the renewal rule, to take into consideration all of the policies issued since 1966, opining that only the Michigan policies issued over the years should be examined. *Id.*[7] However, the panel found itself bound by the law of the case doctrine to consider the full policy history between USAA and the Ruzaks. *Id.* The Court, in affirming the trial court, then held:

> Our criticism of the prior panel's ruling aside, we must determine whether the trial court properly resolved the two issues presented on remand. The parties provide little evidence regarding the first question the trial court was expressly ordered to consider, whether [USAA] added the provision after the policy was initially purchased in 1966. The only record evidence presented on remand established that while residing in Wisconson, the Ruzaks enjoyed full coverage with no reduction or exclusion for family members. Thus, consistent with the trial court, we conclude there is no factual dispute that at some point after leaving Wisconsin, [USAA] added the family member exclusion that reduced plaintiff's coverage. Having concluded there was a reduction in coverage, we must determine whether [USAA] adequately notified the Ruzaks of this change.
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> Even assuming the facts are as [USAA] states and that [USAA] sent the new policy in full, case law requires more. Actual notice is required. . . . The insured's attention must be called to the reduction in coverage, and not merely to the fact that a policy has been revised, in order that the insured may remain reasonably informed of the contents of the policy. [USAA] appears to have made no effort to call attention to the change in coverage, or at least [USAA] provides no evidence conflicting with the Ruzaks' affidavits that no notice was given. This is not sufficient to give actual notice of the change in coverage. [*Id.*, slip op at 4 (citations omitted).]

As indicated above, our Supreme Court initially denied USAA's application for leave to appeal. *Ruzak*, 488 Mich 944. However, on reconsideration, the Supreme Court ruled that the law of the case doctrine had not precluded consideration of the following two specific arguments: "(a) the renewal rule does not apply when a new insurance policy is issued pursuant to an insured's move to a new state; and (b) the renewal rule does not apply where the last change in the insurance

[7] For a discussion of the reasons why the Court found analytical error, see *Ruzak II*, slip op at 3.

policy did not produce a decrease in coverage, but an increase." *Ruzak*, 489 Mich 865. Accordingly, the panel must now address those two arguments.

III. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a ruling on a motion for summary disposition. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). The issues presented on remand constitute questions of law that are also reviewed de novo on appeal. *Anzaldua v Band*, 457 Mich 530, 533; 578 NW2d 306 (1998).

B. THE RENEWAL RULE AND ITS HISTORY

In *Koski v Allstate Ins Co*, 213 Mich App 166; 539 NW2d 561 (1995), rev'd on other grounds 456 Mich 439 (1998), the plaintiff's daughter was injured in an accident involving machinery that was being operated by the plaintiff. The plaintiff carried a homeowners insurance policy issued by Allstate, and in an insurance renewal package sent before the accident there was an enclosed brochure indicating that an exclusion had been added. The exclusion precluded coverage when household members sued each other.[8] The renewal package's cover letter, which referred to several features of the new policy, did not mention any exclusions from coverage. *Id.* at 168. This Court addressed the renewal rule and explained the scope of the rule, stating:

> An insured is obligated to read the insurance policy and to raise questions concerning coverage within a reasonable time after issuance of the policy. However, an exception to this rule exists "where a policy is renewed without actual notice to the insured that the policy has been altered." Where a renewal policy is issued without calling the insured's attention to a reduction in coverage, the insurer is bound to the greater coverage in the earlier policy. The rule that attention must be called to the reduction in coverage, and not merely to the fact that a policy has been revised, is consistent with *Giles v St Paul Fire & Marine Ins Co*, 405 F Supp 719, 724 (ND Ala, 1975), in which it was held that an "insurer should be able to enforce only those changes in coverage as to which the insured has been reasonably informed." [*Id.* at 170-171 (citations omitted).]

The Court found that the notice provided by Allstate was inadequate as a matter of law. *Id.* at 170.

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[8] The plaintiff was sued by his daughter and her mother in an underlying negligence action, and a default judgment was entered against the plaintiff. Allstate refused to defend the plaintiff in that suit, denying liability under the policy and any duty to defend. The plaintiff then filed a breach of insurance contract action against Allstate, demanding indemnification. *Koski*, 213 Mich App at 168-169.

In acknowledging and applying the renewal rule, the *Koski* panel cited *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981), and *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 395-396; 256 NW2d 607 (1977). *Koski*, 213 Mich App at 170-171. In *Parmet Homes*, the plaintiff, a building contractor, sued Republic Insurance Company (Republic) and its insurance agent, seeking benefits under an insurance policy for fire losses. For several years, the plaintiff had fire insurance under a policy issued by Insurance Company of North America (INA) and sold to the plaintiff by the insurance agent. When the INA policy was close to expiring, the plaintiff's insurance agent determined that a fire policy through Republic would better suit the plaintiff's needs. The insurance policy through INA was permitted to lapse and the insurance agent procured a policy from Republic. The plaintiff, however, was not consulted about the change in policies, although it was mailed a copy of the new policy. The Republic policy required notice of construction starts every 30 days, whereas the INA policy only required such reports every 90 days. Subsequently, the plaintiff suffered five fire losses, one of which was paid by Republic, but it denied coverage relative to the other four fire losses because the 30-day reporting mandate had not been satisfied. The plaintiff asserted at trial that it was unaware that INA was no longer its insurer and that a report concerning new construction relative to the four lots at issue was indeed timely under the INA policy. At trial, the lower court instructed the jury, in part, on the renewal rule, and the two defendants objected to the instruction and challenged it on appeal. *Id.* at 143-145. This Court held:

> An insured is obligated to read the insurance policy and raise questions concerning coverage within a reasonable time after the issuance of the policy. However, there is an exception to the rule where a policy is renewed without actual notice to the insured that the policy has been altered. *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 395-396; 256 NW2d 607 (1977). Although it is clear that, in fact, the Republic policy was not a "renewal" of the earlier INA policy, plaintiff presented evidence that it was led to believe such was the case. Under these circumstances, we find the . . . instruction to be in conformance with the law. [*Parmet Homes*, 111 Mich App at 145 (citations omitted).]

This Court thus invoked the renewal rule even where the policy was a new policy and not a renewal and where the liable insurance company had not even issued the underlying policy; Republic was forced to abide by coverage provisions in the INA policy.

Industro Motive involved a fire that consumed the plaintiffs' building, and the plaintiffs had coverage under an insurance policy that had been procured by an insurance agency, which served as intermediary between the insured and the insurance company. The insurance policy provided less business-interruption coverage than a prior policy that had been issued by a different insurance company and which had been cancelled by the plaintiffs at the suggestion of the insurance agency. The plaintiffs were agreeable to a change in insurers but only if the insurance agency was able to obtain identical coverage at a lower rate; the plaintiffs made the change under the impression that such coverage was provided. The new insurer even sent a binder to the plaintiffs that duplicated the existing coverage, but the binder had an expiration date of 30 days, and the policy that was subsequently issued had decreased coverage. The plaintiffs were not expressly made aware of the reduced coverage by the new insurer or insurance agency,

both of whom were named as defendants in the suit. *Industro Motive Corp*, 76 Mich App at 391-393. The Court applied estoppel principles to prevent the defendants from denying liability with respect to the reduction in coverage. *Id.* at 395-396. Additionally, tackling the principle that an insured is obligated to read his or her insurance policy and to voice concerns or problems within a reasonable time, the Court observed:

> [W]e liken the plaintiffs' duty to read the insurance contract to that of an insured under a renewal policy; for in effect plaintiffs sought no more than to revive coverage, albeit with another insurer, identical to their former insurance.
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> As the Tenth Circuit held in *Government Employees Insurance Co v United States*, 400 F2d 172, 174-175 (CA 10, 1968):
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> "While the renewal of an insurance policy constitutes a separate contract to be governed by general contract principles, it is the general rule that an insurance company is bound by the greater coverage in an earlier policy where the renewal contract is issued without calling to the insured's attention a reduction in policy coverage." (Footnotes omitted.) Similarly, see 17 Couch, Insurance 2d, § 68:63, pp. 699-700, 91 ALR2d 546.
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> In the present case, the insurer does not claim that it directed the insured to read the policy carefully, or that it appended the change in percentage-contribution as a separate addition to the contract. On the contrary, the defending parties admit their failure to inform plaintiffs of the change in coverage. [*Industro Motive*, 76 Mich App at 396-397 (citation omitted).]

Thus, the *Industro Motive* panel effectively applied the renewal rule under circumstances in which a brand new policy with less coverage had been issued by a completely different insurer, with the new insurer being ordered to provide the full coverage existing under the earlier policy.

In *Giles*, 405 F Supp at 724-725, which was cited favorably in *Koski* as reflected above, the federal district court observed:

> Because the policy here at issue constituted a renewal of prior coverage, defendant was obligated to call its insured's attention to any reductions in the scope of policy coverage; failing this, the defendant would be bound by the greater coverage set forth in an earlier policy. Similarly, in a situation where the insured's attention is drawn to one reduction in coverage, and the insurer subsequently relies on a broader reduction as to which the insured is not adquately informed, the same result should obtain and the insured should have the benefit of the greater coverage. Stated otherwise, the court is of the opinion that providing an insured with incomplete or misleading information with respect to changes or modifications in a renewal policy has the same effect as a failure to inform the insured of any changes at all; consequently, in such a situation, the insurer should be able to enforce only those changes in coverage as to which the insured has been reasonably informed. [Citations omitted.]

Keeping in mind the principles associated with the renewal rule as outlined in the recited caselaw, and in compliance with our Supreme Court's remand order, I now proceed to address the two specific arguments cited in the order.

C. IMPACT OF INTERSTATE CHANGES IN RESIDENCY ON THE RENEWAL RULE

USAA maintains that the renewal rule does not apply when an insurer issues a new insurance policy to an insured after the insured moves to a new state, even though there is no change in insurer during the interstate move and there is no break in the ongoing insurer-insured relationship. USAA contends that the purpose of the renewal rule is to prevent insurers from changing policy terms to the detriment of an unwitting insured. But, according to USAA, when an insured moves to a new state, the insured should expect some variation in the insurance laws and thus in the extent of the coverage, such that it gives rise to an obligation to read the policy applicable to the new state venue.

On examination of *Koski*, *Parmet Homes*, *Industro Motive*, and *Giles*, I find no language suggesting, let alone dictating, that application of the renewal rule is limited to policy renewals that occur intrastate. There is no indication that the renewal rule is inapplicable to policies or renewals issued after an interstate move by the insured. The purpose of the renewal rule is to draw the attention of an unsuspecting insured to a decrease in coverage or to new exclusions and limitations in comparison to prior policies when a policy is renewed. See *Koski*, 213 Mich App at 171 ("defendant has entirely failed to recognize that it had an affirmative obligation to call its insured's attention to a reduction in coverage"). USAA and the majority are making the assumption that the average policyholder would clearly understand that the laws of a particular state could result in a reduction or alteration in insurance coverage under a policy in comparison and relationship to the coverage that existed in a state in which the policyholder previously resided. And with this knowledge and understanding, the insured is obligated to read and should be deemed to have read the new or renewal policy in order to detect coverage reductions. The majority relies on the theory that because each individual state heavily regulates the insurance industry, an insured has no reasonable basis to believe that policy terms will be identical from state to state, even when the insurer and general coverage liability limits remain unchanged with the interstate move. I am simply not prepared to accept that an insured knows or appreciates that each state heavily regulates insurers operating in the state and that there are coverage differences in policies from state to state, where the same insurer issued the policies to the same insured with the same general coverage liability limits. I would surmise that an average insured who, for example, had a Texas insurance policy with certain general policy limits and then moved to Michigan and maintained a policy with the same insurer and same limits as in Texas, would have no idea that there could be a relevant difference in coverage with respect to exclusions, restrictions, and limitations. I can, however, safely conclude that seasoned insurers like USAA recognize and appreciate that coverage reductions can occur as a result of an interstate move, such that an obligation arises to make an insured who has moved to a new state aware of any policy modifications that reduce coverage. Indeed, Don Griffin, who is a USAA policy service director as indicated above, averred that with the move from Indiana to Michigan, it was a

customary business practice to have a USAA service representative explain the differences between Indiana and Michigan policies relative to the no-fault system, minimum liability coverage limits, and coverages available.[9] If the majority were correct in its assessment that an insured has no reasonable basis to believe that policies issued by the same insurer, to the same insured, and with the same general policy limits, would be the same from state to state, there would be no need for USAA to explain differences in policies as a customary business practice. I conclude that it is reasonable for an insured to believe that there will be no reductions in coverage by way of restrictions and limitations when the insured moves to a new state but retains the same insurer and maintains the same general coverage limits.

In *Parmet Homes* and *Industro Motive*, the renewal rule was applied to insurance companies that did not even issue the previous policies but instead issued their own separate and new policies. And these new insurers were made to abide by the coverage limits and terms set by the prior insurance companies because of a notice failure regarding alterations in the new policies. Indeed, the policies were not even true renewals, which is arguably the case here, yet the renewal rule was implicated. If an insured is not obligated to read a new policy and be bound by the coverage limits under the renewal rule where a policy has been issued by a *new* insurance company under the circumstances presented in *Parmet Homes* and *Industro Motive*, it would make little sense to preclude application of the rule where the insured simply moves to a new state but retains the same insurer. The continuum of an already existing relationship between the insured and the insurer, as we have here, is certainly more consistent with the concept of policy renewal and the renewal rule than the relationships that were present in *Parmet Homes* and *Industro Motive*. With respect to the majority's "reasonable expectations" analysis, I point out that in *Parmet Homes*, the plaintiff was issued a new policy by a new insurer, absent any indication that the plaintiff was affirmatively led to believe that the coverage was identical, which would seem to support a conclusion that policy changes could be reasonably expected. However, the renewal rule was applied. And again, I do not agree with the majority's underlying premise that the average insured person would reasonably expect modifications and decreases in coverage where they have maintained the same insurer and merely crossed state lines. To a lawyer or an insurance professional this may be evident, but not to a layperson.

Given that many insurers, including USAA, operate nationwide on an interstate basis and provide ongoing insurance coverage to insured loyal customers despite movement across state lines, the onus must be placed on the insurers to keep their insured apprised of any policy changes that result in decreased coverage. The burden should not be on the premium-paying insured to review complex insurance policies and to compare them against each other for purposes of detecting modifications. Considering the intricacies of insurance law, the seasoned insurer is in the best position to be aware of the governing state insurance laws and to be aware of policy changes caused by an interstate move, such that an obligation arises to make an insured

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[9] The Ruzaks denied receiving any notification of coverage changes and policy differences. And, again, the issue of whether USAA adequately notified the Ruzaks is not encompassed by the remand order.

aware of any modifications that could be detrimental. I note that USAA provides financial products and services to members of the military community, which strengthens the need to place the responsibility on USAA to give adequate notice of detrimental coverage reductions, considering that military personnel are known to relocate regularly and often move great distances as part of their service obligations. I am not suggesting that coverage cannot be changed or reduced, nor does my analysis place an unreasonable burden on the insurer. An insurer must simply give notice to an insured of any reduction in coverage and then it is up to the insured to read the policy for details concerning the reduction.

In sum, I would hold that the renewal rule can apply when an insured moves to a new state and a policy with reduced coverage is then issued by the insurer.

D. APPLICABLE POLICIES TO CONSIDER

I next address the argument that the renewal rule does not apply because the last change in the insurance policy produced an increase in coverage and not a decrease. As indicated above, the Ruzaks held an Indiana automobile insurance policy with USAA before moving to Michigan. And, as apparently allowed by Indiana law, that policy had a full family-member *exclusion*, whereas the Michigan policy merely had a family-member *limitation*, which still permitted recovery of the statutory minimum levels of coverage. Accordingly, if only the Indiana policy is considered, there was an increase in coverage with the issuance of the Michigan policy. However, if one is permitted to consider the Wisconsin policy in relationship to the Michigan policy, there was a reduction in coverage, given that Wisconsin did not permit family-member exclusions or limitations, thereby leaving intact full liability coverage.[10] Furthermore, USAA has never asserted that its records, which were reviewed by employees Mainez and Griffin, indicated that the original 1966 policy contained a family-member exclusion or limitation. The most Mainez could assert was that the family limitation clause had been part of Mr. Ruzak's policies since at least 1999. Prefacing the 1999 date with the "at least" language in Mainez's affidavit does not support recognizing the existence of a family limitation clause 33 years earlier in 1966. Accordingly, I shall proceed on the basis that no such exclusion or limitation existed in 1966.

On examination of *Koski*, *Parmet Homes*, *Industro Motive*, and *Giles*, I find no language suggesting, let alone dictating, that a court is limited to examining the coverage at issue solely in comparison to the most immediately preceding insurance policy for purposes of invoking the renewal rule. I would hold that if the original policy issued by an insurer contained greater coverage than the current policy at issue, the renewal rule applies if the insurer failed to provide adequate notice to the insured of the coverage reduction. This holding does not place an unreasonable burden on the insurer, but merely compels the insurer to provide adequate notice of

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[10] When I speak of less or reduced coverage, my focus is on inclusion of a family-member limitation where one did not previously exist. There is undeniably "less" coverage under a policy when accidents involving family members no longer give rise to full residual liability coverage.

detrimental policy alterations. Further, it is illogical to conclude that the issuance of the Indiana policy prior to the Ruzaks obtaining coverage in Michigan cut off USAA's obligation to expressly notify the Ruzaks that they had less coverage than that which existed under the 1966 policy. The purpose of the renewal rule would not be served or honored with such a holding. Under the caselaw, we must proceed on the basis that the original 1966 USAA policy was read, whether or not it was actually read, because there existed an obligation to read that policy. A reduction in coverage under later renewal policies issued by USAA gave rise to an obligation to adequately notify the Ruzaks of the coverage reduction, at least for purposes of the Michigan policy and under Michigan law.

There is no evidence that the Ruzaks, when moving to Indiana, were expressly informed by USAA that a family-member exclusion now applied or that they were otherwise aware of the exclusion, so it makes no sense under the renewal rule to solely compare the Indiana policy against the Michigan policy. The Ruzaks were under the impression that they had full liability coverage for an accident, unrestricted by any family-member exclusion or limitation, which is consistent with the 1966 policy, thereby making it proper to compare the 1966 policy to the Michigan policy for purposes of the renewal rule. Accordingly, I would reject USAA's argument.

IV. CONCLUSION

I would hold that the renewal rule applies here regardless of the interstate changes of residency and regardless of the fact that the most recent change in the insurance policy produced an increase in coverage, where there was still a coverage decrease upon broader consideration of the original policy. Given that the Supreme Court's remand order left untouched all aspects of our earlier ruling except with respect to the two identified arguments, it remains established that USAA failed as a matter of law to provide plaintiff with the requisite notice under the renewal rule. Accordingly, I would affirm and respectfully dissent.

/s/ William B. Murphy