Rel: May 29, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1181076

David R. Turner

v.

State Farm Mutual Insurance Company

Appeal from Baldwin Circuit Court
(CV-17-901256)

BRYAN, Justice.

David R. Turner appeals from a summary judgment entered by the Baldwin Circuit Court ("the circuit court") in favor of State Farm Mutual Insurance Company ("State Farm"). We affirm.

Background

In August 2017, Turner was on duty as a paramedic and was riding in the passenger seat of an ambulance while responding to an emergency call. While traversing an intersection, the ambulance collided with a vehicle being driven by Michael Norris. Turner suffered multiple injuries, including a broken leg. In November 2017, Turner sued Norris, asserting claims of negligence and "recklessness." Norris answered the complaint, denying that he had been negligent or reckless.

In January 2018, Norris filed in the circuit court a suggestion of bankruptcy, asserting that he had named Turner as a creditor in the bankruptcy proceeding. The circuit court thereafter entered an order dismissing Turner's action, without prejudice. Turner later moved the circuit court to reinstate the action, asserting that he had obtained relief from the relevant bankruptcy court to proceed with his action against Norris. The circuit court granted Turner's motion. Once the action was reinstated, Turner filed an amended complaint, naming his insurance carrier, State Farm, as an additional defendant and including a claim for "underinsured-motorist coverage" against State Farm. State Farm answered

the amended complaint.

In September 2018, Norris and Norris's insurance carrier offered to settle Turner's claims against Norris for $25,000, the liability limits of Norris's insurance policy. Turner's attorney sent a letter notifying State Farm of the settlement offer and stating: "We would like State Farm to investigate the claim and determine if State Farm will waive subrogation and allow us to accept the $25,000 offered by [Norris's insurance carrier] or if State Farm intends to tender $25,000 and force us to pursue our claims against ... Norris."

In November 2018, State Farm's attorney sent a letter to Turner's attorney, stating:

> "Please find enclosed herewith a check from State Farm ..., in the amount of $25,000 ... which represents the 'buy out' of ... Norris'[s] policy limits offer. Please hold the proceeds in trust pending satisfaction of any liens and subrogation claims. All subrogation rights of the [underinsured-motorist] carriers against ... Norris are reserved pursuant to Lambert v. State Farm, 576 So. 2d 160 (Ala. 1991), and its progeny."

State Farm enclosed with its letter a check for $25,000.

In January 2019, State Farm filed a motion to "opt out" of the action pursuant to the procedure described by this Court in Lowe v. Nationwide Insurance Co., 521 So. 2d 1309,

1310 (Ala. 1988), in which this Court stated, in relevant part:

> "A plaintiff is allowed either to join as a party defendant his own liability insurer in a suit against the underinsured motorist or merely to give it notice of the filing of the action against the motorist and of the possibility of a claim under the underinsured motorist coverage at the conclusion of the trial. If the insurer is named as a party, it would have the right, within a reasonable time after service of process, to elect either to participate in the trial (in which case its identity and the reason for its being involved are proper information for the jury), or not to participate in the trial (in which case no mention of it or its potential involvement is permitted by the trial court). Under either election, the insurer would be bound by the factfinder's decisions on the issues of liability and damages."

The circuit court granted State Farm's motion to opt out of the action.

Turner's attorney sent a letter in response to State Farm's November 2018 letter, in which Turner's attorney requested an explanation regarding State Farm's decision to decline consent to the settlement offered by Norris and Norris's insurance carrier, explaining his opinions that Norris's liability was clear, that Turner's damages clearly exceeded $25,000, and that no recovery could be had against Norris personally in light of Norris's bankruptcy proceedings.

State Farm's attorney responded in a letter stating his belief that Turner's attorney had "mischaracterized liability in this matter" and insisting that State Farm had properly exercised its rights under Lowe and Lambert v. State Farm Mutual Automobile Insurance Co., 576 So. 2d 160 (Ala. 1991).

In February 2019, Turner's attorney sent a letter to State Farm stating his belief that, in light of information learned in discovery regarding Norris's alleged liability and Norris's bankruptcy proceedings, Turner should accept the settlement offered by Norris and Norris's insurance carrier, release Norris and Norris's insurance carrier from further liability, return the $25,000 previously advanced by State Farm, and pursue a direct action against State Farm. Turner's attorney also asserted that he believed State Farm had not conducted a good-faith investigation regarding the merits of Turner's claims against Norris and that, "[a]t the very least, State Farm should disclose the findings of its investigation."

State Farm's attorney responded in a letter, stating that State Farm's investigation of Turner's claim was substantially conducted by him and was, therefore, privileged. He also stated his belief that "liability [wa]s clearly disputed based

on the answer filed by Norris" and that he was aware of no authority supporting the proposition that, by declining to accept Norris's settlement offer, Turner would be violating the relevant bankruptcy court's order granting Turner relief from an automatic bankruptcy stay to proceed in his action against Norris.

Turner thereafter entered into a settlement agreement with Norris and Norris's insurance carrier, whereby Turner released them from all liability related to this action and agreed to a dismissal of Turner's claims against Norris, with prejudice, in exchange for $25,000. Turner's attorney sent a letter informing State Farm of the settlement agreement, returning the $25,000 previously advanced by State Farm, and expressing Turner's intent to pursue a direct action against State Farm. The circuit court entered an order dismissing Norris from the action.

After amending its answer with the circuit court's permission, State Farm moved for a summary judgment in July 2019 regarding Turner's claim for underinsured-motorist ("UIM") benefits, arguing that Turner had forfeited his right to UIM coverage by entering into the settlement agreement with

Norris and Norris's insurance carrier without State Farm's consent. Turner filed a response in opposition to State Farm's summary-judgment motion. On August 23, 2019, the circuit court entered an order stating, in relevant part: "[T]he Court finds that there is no genuine issue as to any material fact and State Farm is entitled to a judgment as a matter of law."[1] Turner appealed.

Standard of Review

> "'An order granting or denying a summary judgment is reviewed de novo, applying the same standard as the trial court applied. American Gen. Life & Accident Ins. Co. v. Underwood, 886 So. 2d 807, 811 (Ala. 2004). ... Where, as here, the facts of a case are essentially undisputed, this Court must determine whether the trial court misapplied the law to the undisputed facts, applying a de novo standard of review. Carter v. City of Haleyville, 669 So. 2d 812, 815 (Ala. 1995).'"

McKinney v. Nationwide Mut. Fire Ins. Co., 33 So. 3d 1203, 1206 (Ala. 2009)(quoting Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1034-35 (Ala. 2005)).

Analysis

In relevant part, § 32-7-23, Ala. Code 1975, defines an

[1]The circuit court certified the August 23, 2019, order as a final judgment pursuant to Rule 54(b), Ala. R. Civ. P., because the order did not dispose of a claim for workers' compensation benefits that Turner has asserted against his employer.

"uninsured motor vehicle" to include

> "motor vehicles with respect to which ... [t]he sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an injured person after an accident is less than the damages which the injured person is legally entitled to recover."

§ 32-7-23(b)(4).

As noted above, Turner settled his claims against Norris for $25,000, the liability limits of Norris's policy with his insurance carrier. On appeal, Turner does not clearly state what he believes his total damages to be, but he contends that they "exceed" $25,000. Turner's brief, at 16.[2] Similarly, the parties' briefs do not clearly state the limits of the UIM coverage provided by Turner's policy with State Farm. The record indicates, however, that the bodily injury limits of Turner's UIM coverage under his policy, which appears to have included another named insured, were $50,000 per person and $100,000 per accident.[3]

---

[2]Turner's position is also that the amount of a lien asserted by his workers' compensation carrier exceeds $25,000, the amount of Turner's settlement with Norris. Turner's brief, at 23. The record indicates that, in July 2018, the amount of the lien asserted by the workers' compensation carrier was $29,109.18.

[3]Turner does not contend that his damages exceed the limits of the UIM coverage under his policy with State Farm.

On appeal, Turner does not challenge the validity of the pertinent provision in his insurance policy with State Farm that required Turner to obtain State Farm's consent before entering into a settlement agreement with Norris and Norris's insurance carrier, i.e., the "consent-to-settle" provision. Instead, Turner argues that the circuit court erred by entering a summary judgment for State Farm regarding his claim for UIM benefits because, he says, State Farm's purported reasons for refusing to consent to Turner's settlement of his claims with Norris and Norris's insurance carrier were not legitimate. Turner also alternatively argues that he should have been permitted to accept Norris's offer without forfeiting UIM benefits because State Farm did not provide additional explanation for its decision to withhold consent to the settlement agreement. Turner asserts that his arguments raise questions of first impression for this Court. Turner's brief, at ii.

We begin by considering the pertinent language of Turner's policy with State Farm. "'An insurer may contract with its insured upon conditions expressed in its policy, limited only by statute and public policy. The insured, by

acceptance of a policy, is deemed to have approved it with all conditions and limitations expressed therein which are reasonable and not contrary to public policy.'" Gulf American Fire & Cas. Co. v. Gowan, 283 Ala. 480, 486, 218 So. 2d 688, 693 (1969)(quoting MFA Mut. Ins. Co. v. Bradshaw, 245 Ark. 95, 99-100, 431 S.W.2d 252, 254 (1968)).

In Hardy v. Progressive Insurance Co., 531 So. 2d 885, 887 (Ala. 1988), this Court explained:

> "Underinsured motorist coverage applies where the negligent or wanton tort-feasor has some liability insurance but does not have enough to fully compensate the victims of his negligence or wantonness. Underinsured motorist coverage provides compensation to the extent of the insured's injury, subject to the insured's policy limits. It is an umbrella coverage that does not require the insurer to pay to its insured the amount of the tort-feasor's bodily injury liability limits, as those limits pertain to the insured. Therefore, the insurer has no right to subrogation insofar as the tort-feasor's limits of liability are concerned. Its right of subrogation would be for sums paid by the insurer in excess of the tort-feasor's limits of liability."

As noted above, Turner's policy with State Farm included a consent-to-settle provision. In particular, the policy provided, in pertinent part: "There is no coverage ... for an insured who, without our written consent, settles with any person or organization who may be liable for the bodily injury

and thereby impairs our right to recover our payments."

> "[T]he purpose of consent-to-settle clauses in the uninsured/underinsured motorist insurance context is to protect the underinsured motorist insurance carrier's subrogation rights against the tort-feasor, as well as to protect the carrier against the possibility of collusion between its insured and the tortfeasor's liability insurer at the carrier's expense."

Lambert, 576 So. 2d at 167.

Thus, to retain his entitlement to UIM benefits under the terms of his policy, Turner agreed to obtain State Farm's consent before entering into a settlement agreement with Norris and Norris's insurance carrier and releasing them from liability for Turner's injuries. See Gowan, 283 Ala. at 486, 218 So. 2d at 693. As explained above, Turner ultimately entered into a settlement agreement with Norris and Norris's insurance carrier and granted them a release. It is undisputed that State Farm did not consent to the settlement agreement and that, by nonetheless entering into the settlement agreement, Turner violated the consent-to-settle provision of his policy with State Farm. Moreover, by releasing Norris and Norris's insurance carrier from liability for Turner's injuries, any subrogation interest State Farm may have otherwise had against either of those parties was

extinguished.

"'A repudiation is a manifestation by one party to the other that the first cannot or will not perform at least some of his obligations under the contract.' E. Allan Farnsworth, Contracts, § 8.21, at 633-34 (1982)." Congress Life Ins. Co. v. Barstow, 799 So. 2d 931, 938 (Ala. 2001). "The general rule with respect to repudiation is that when one party repudiates a contract, the nonrepudiating party is discharged from its duty to perform." Beauchamp v. Coastal Boat Storage, LLC, 4 So. 3d 443, 451 (Ala. 2008). Thus, under general contract principles, by refusing to abide by the terms of the consent-to-settle provision in his policy with State Farm, Turner repudiated their agreement, and State Farm's obligation to pay Turner UIM benefits was discharged.

However, as a matter of public policy, this Court has held that an injured party's settlement with a tortfeasor without the consent of the injured party's UIM insurance carrier does not necessarily preclude the injured party from recovering UIM benefits. See Lambert, 576 So. 2d at 166 ("[W]e have not held that consent-to-settle and subrogation clauses are void, but we have placed many restrictions on

their enforceability."). Among other "general rules" pertaining to notice and other considerations not contested by the parties in this case, this Court's decision in Lambert provided the following guidelines for UIM insurance carriers that do not wish to consent to a settlement agreement between their insureds and tortfeasors:

> "If the uninsured motorist insurance carrier refuses to consent to a settlement by its insured with the tort-feasor, or if the carrier denies the claim of its insured without a good faith investigation into its merits, or if the carrier does not conduct its investigation in a reasonable time, the carrier would, by any of those actions, waive any right to subrogation against the tort-feasor or the tortfeasor's insurer.
>
> "... If the underinsured motorist insurance carrier wants to protect its subrogation rights, it must, within a reasonable time, and, in any event before the tort-feasor is released by the carrier's insured, advance to its insured an amount equal to the tort-feasor's settlement offer.
>
> "....
>
> "This Court stated in Lowe v. Nationwide Ins. Co., 521 So. 2d 1309 (Ala. 1988), that there are three primary concerns in an insurance claim involving underinsured motorist insurance coverage:
>
> > "'1) that of protecting the right of the [underinsured motorist insurance carrier] to know of, and participate in, the suit; 2) that of protecting the right of the insured to litigate all aspects of his claim in a single suit ... and 3) that of

> protecting the liability phase of the trial from the introduction of extraneous and corrupting influences, namely, evidence of insurance ....'"

576 So. 2d at 167-68 (emphasis added).

The Lambert Court applied the guidelines it had articulated as follows:

> "We hold that the trial court erred, and we reverse its judgment. We have studied the record and we find that State Farm's refusal to consent to the proposed settlement offer, based on these facts, was unreasonable. If, in fact, as the record suggests, State Farm was convinced that its insureds' damages did not exceed $25,000, then its rights under the policy would be protected, because it ostensibly could prove to a factfinder that there was no liability under the underinsured motorist insurance policy. Applying the guidelines we have adopted, we believe that when State Farm evaluated the [insureds]' claim for damages, it should have paid them $25,000, the amount offered by [the tortfeasor's insurance carrier], if it wanted to retain its right of subrogation against [the tortfeasor] and [the tortfeasor's insurance carrier]. Although State Farm did ultimately offer to pay the [insureds] $25,000, we find that, under the facts of this case, the offer was 'belated,' especially in view of the position State Farm was taking -- that if the [insureds] settled, State Farm would refuse to pay any benefits under its underinsured motorist policy. In short, the record suggests that State Farm took the legal position that it had a right to insist on refusing to give its consent to the settlement.
>
> "Based on the foregoing, we conclude that State Farm, by its refusal to consent to the settlement or to timely advance the amount of the settlement

> offer, effectively waived its right to be subrogated, and that the [insureds]' acceptance of the settlement, under the facts of this case, does not affect their rights under State Farm's underinsured motorist insurance policy."

576 So. 2d at 168-69 (emphasis added.)

Unlike in Lambert, in this case, upon learning of the $25,000 policy-limits settlement offer that Turner received from Norris and Norris's insurance carrier, State Farm declined to consent to the settlement agreement and instead sent Turner a check for $25,000 before the settlement agreement was consummated, citing the Lambert guidelines as its basis for doing so. With the circuit court's approval, State Farm also opted out of the action, pursuant to the procedure provided by Lowe. Turner, however, sent the check back to State Farm and entered into the settlement agreement with Norris and Norris's insurance carrier anyway, in violation of the consent-to-settle provision in Turner's policy with State Farm.

In Ex parte Allstate Property & Casualty Insurance Co., 237 So. 3d 199, 205 (Ala. 2017), this Court discussed whether trial courts could properly enforce settlement agreements between tortfeasors and injured parties when the injured

parties' respective UIM insurance carriers, Allstate Property and Casualty Insurance Company ("Allstate") and GEICO Indemnity Company ("GEICO"), did not consent to the settlement agreements and chose instead to avail themselves of the procedures provided by this Court in Lowe and Lambert. When Allstate and GEICO petitioned this Court for a writ of mandamus seeking vacatur of the trial courts' orders enforcing the respective settlement agreements, this Court held that the petitioners had a clear legal right to the relief they sought. Ex parte Allstate, 237 So. 3d at 208.

Specifically, we reasoned:

> "It is undisputed that, at all times pertinent hereto, the insurers complied, to the very 'letter of the law,' with the Court's dictates in Lowe and Lambert, as set out above. Specifically, Allstate and GEICO, after receiving notice of a settlement offer but declining to consent, which right was secured by the respective contracts between the insurers and their insureds, properly advanced an amount equal to the tortfeasor's respective settlement offer. Further, Allstate ultimately exercised the available option of opting out of further participation in the litigation in order to prevent mention of 'its potential involvement.' Despite that compliance, the actions of the trial courts in attempting to order that the settlements be effected and the tortfeasors dismissed have essentially nullified the insurers' legal right both to withhold consent to settlement and to opt out of further proceedings. In essence, despite the insurers' payment of the funds necessary to enjoin

> the insureds' consummation of the tortfeasors' offered settlements, the insurers were, nonetheless, ultimately forced to accept the exact settlement to which they had previously declined to consent. Further, as a result of the trial courts' attempted dismissal of the tortfeasors, the insurers -- each of which would be the sole remaining defendant in each case -- are being denied the right to opt out of further proceedings and to avoid mention of their involvement in the case."

Ex parte Allstate, 237 So. 3d at 207 (footnotes omitted). We concluded:

> "Because the insurers, in following the express directives of this Court, have been deprived of their contractual rights as well as the benefit of the procedures set forth in Lowe and Lambert, we conclude that they have demonstrated a clear legal right to the requested relief. We, therefore, in case no. 1150511 and case no. 1151266, direct the applicable circuit court to vacate its respective order purporting both to 'enforce' the pro tanto settlement agreements against the insurer's consent and to dismiss the tortfeasors."

Ex parte Allstate, 237 So. 3d at 208.

This Court's decision in Ex parte Allstate indicates that, by complying with the guidelines set out by this Court in Lowe and Lambert, State Farm, as a matter of public policy, was justified in standing on its contractual right to withhold its consent to the settlement agreement between Turner and Norris and Norris's insurance carrier. On appeal, however, Turner argues that State Farm's refusal to consent to his

settlement agreement with Norris was not reasonable or legitimate, an argument not raised by the respondents in Ex parte Allstate. See Ex parte Allstate, 237 So. 3d at 207 n.2 ("There appears to be no suggestion that, in any of the three cases, the consent of the respective insurer was unreasonably withheld ....").

Specifically, Turner argues: (1) that State Farm was precluded from asserting any subrogation interest against Norris by virtue of Norris's bankruptcy proceedings[4] and (2) that "disputing liability or damages is not a legitimate reason to refuse consent." Turner's brief, at 22. Thus, Turner argues, State Farm had no legitimate reason for refusing to consent to Turner's settlement agreement with Norris. In essence, Turner appears to argue that, under the circumstances of this case, State Farm should have consented to his settlement agreement with Norris and Norris's insurance carrier and that, by refusing to do so, State Farm did not act

[4]Turner's argument regarding Norris's bankruptcy proceedings is based on the automatic-stay provisions imposed by federal bankruptcy law. Turner does not assert that Norris obtained a discharge injunction in bankruptcy and that State Farm could, therefore, have never recovered against Norris. See Turner's reply brief, at 12 ("Whether [State Farm] could ever pursue subrogation is speculative.").

in good faith and wrongfully deprived Turner of UIM benefits. Turner's reply brief, at 3-5.

In LeFevre v. Westberry, 590 So. 2d 154 (Ala. 1991), an insured sued his UIM insurance carrier alleging bad-faith failure to pay his claim for UIM benefits. 590 So. 2d at 156. This Court explained:

> "Uninsured motorist coverage in Alabama is a hybrid in that it blends the features of both first-party and third-party coverage. The first-party aspect is evident in that the insured makes a claim under his own contract. At the same time, however, third-party liability principles also are operating in that the coverage requires the insured to be 'legally entitled' to collect -- that is, the insured must be able to establish fault on the part of the uninsured motorist and must be able to prove the extent of the damages to which he or she would be entitled. The question arises: when is a carrier of uninsured motorist coverage under a duty to pay its insured's damages?
>
> "There is no universally definitive answer to this question or to the question when an action alleging bad faith may be maintained for the improper handling of an uninsured or underinsured motorist claim; the answer is, of course, dependent upon the facts of each case. Clearly, there is a covenant of good faith and fair dealing between the insurer and the insured, as with direct insurance, but the insurer and the insured occupy adverse positions until the uninsured motorist's liability is fixed; therefore, there can be no action based on the tort of bad faith based on conduct arising prior to that time, only for subsequent bad faith conduct."

590 So. 2d at 159.

Although Turner does not rely on LeFevre on appeal, we note that the LeFevre Court provided the following standards that were intended to "allow the [UIM] insurer to aggressively defend the claim and attempt to defeat the claim, or at least to minimize the size of the award, while concomitantly fulfilling the duties imposed on it by law and the obligations imposed on it by its contract with the insured." 590 So. 2d at 160-61. Specifically, the LeFevre Court held:

> "1. When a claim is filed by its insured, the uninsured motorist carrier has an obligation to diligently investigate the facts, fairly evaluate the claim, and act promptly and reasonably.
>
> "2. The uninsured motorist carrier should conclude its investigation within a reasonable time and should notify its insured of the action it proposes with regard to the claim for uninsured motorist benefits.
>
> "3. Mere delay does not constitute vexatious or unreasonable delay in the investigation of a claim if there is a bona fide dispute on the issue of liability.
>
> "4. Likewise, mere delay in payment does not rise to the level of bad faith if there is a bona fide dispute on the issue of damages.
>
> "5. If the uninsured motorist carrier refuses to settle with its insured, its refusal to settle must be reasonable."

LeFevre, 590 So. 2d at 161 (footnotes omitted). The foregoing standards were set out to better define the duties owed by a UIM insurance carrier to its insured regarding the payment of UIM benefits for the purposes of establishing the UIM insurance carrier's tort liability for acting in bad faith. See LeFevre, 590 So. 2d at 160-61 (expounding upon principles set out in Quick v. State Farm Mutual Automobile Insurance Co., 429 So. 2d 1033, 1034 (Ala. 1983), which had discussed "whether the tort of bad faith should be extended to the uninsured motorist claim in th[at] case").

In this case, however, the question presented is not whether State Farm is liable in tort for damages to Turner for acting in bad faith by refusing to pay Turner's claim for UIM benefits. Turner did not assert such a tort claim against State Farm in the circuit court and, as noted above, does not cite or discuss LeFevre on appeal. See Smiths Water Auth. v. City of Phenix City, 436 So. 2d 827, 830-31 (Ala. 1983)("It is well-established that this Court will not consider a theory or issue where it was not pleaded or raised in the trial court."). Instead, the question presented in this appeal is whether State Farm could be compelled to pay Turner's claim

for UIM benefits as a matter of contract law and public policy.

As explained above, under general contract principles, Turner repudiated his policy with State Farm by violating the consent-to-settle provision, and State Farm's obligation to pay Turner UIM benefits was discharged. Moreover, pursuant to the public-policy guidelines imposed by this Court in Lambert, State Farm advanced Turner $25,000, the amount of the settlement offered by Norris and Norris's insurance carrier, before the settlement agreement was consummated. In Ex parte Allstate, 237 So. 3d at 207, this Court explained that a UIM insurance carrier's payment of a Lambert advance "enjoin[s] the insureds' consummation of the tortfeasors' offered settlements." Turner, however, settled with Norris and Norris's insurance carrier notwithstanding State Farm's refusal to consent to the settlement agreement and State Farm's payment of a Lambert advance.

In essence, Turner is arguing that he should have been permitted to unilaterally decide that State Farm's decision to avail itself of the Lambert procedure was unreasonable, to release Norris from all further liability, and still to retain

his entitlement to UIM benefits in contravention of the consent-to-settle provision in his policy with State Farm. Turner presents no compelling reason for such a rule.

In his reply brief, Turner cites this Court's decision in United Services Automobile Ass'n v. Allen, 519 So. 2d 506 (Ala. 1988), a decision the LeFevre Court cited for the proposition that "a refusal of a carrier of underinsured motorist coverage to consent to settle must be reasonable." LeFevre, 590 So. 2d at 161 n.4; see also Lambert, 576 So. 2d at 164 (noting that, in Allen, "[t]his Court did hold, of course, that the refusal of an underinsured motorist insurance carrier to consent to settle must be reasonable"). We reaffirm that principle here.

Turner ignores, however, that he did not avail himself of the procedure employed by the insured in Allen. In pertinent part, the insured in Allen sought injunctive relief compelling his UIM insurance carrier to consent to the tortfeasor's proposed settlement before entering into the settlement agreement and releasing the tortfeasor from liability. On appeal from the trial court's order "restraining" the UIM insurance carrier "from withholding its permission and consent

for" the insured to receive the tortfeasor's settlement offer, 519 So. 2d at 507, this Court stated: "[T]here is nothing in the record before us to show that [the UIM insurance carrier] has a reasonable basis for withholding such consent .... Enough is enough. We refuse to hold that the trial court abused its legal or judicial discretion in granting the injunction, and we affirm." 519 So. 2d at 508.

Allen was decided before Lambert. However, in light of this Court's explanation that a Lambert advance "enjoin[s] the insured['s] consummation of the tortfeasor['s] offered settlements," Ex parte Allstate, 237 So. 3d at 207, the decision of the insured in Allen to seek judicial intervention regarding his UIM insurance carrier's refusal to consent to a settlement agreement with a tortfeasor -- in lieu of repudiating his policy altogether by accepting the settlement offer -- appears all the more prudent under the current state of the law, which actually requires UIM insurance carriers to pay their insureds the amount of the settlement offered as a prerequisite for withholding consent to the settlement. See, e.g., Ex parte Allstate, 237 So. 3d at 201-03 (reviewing interlocutory orders entered by circuit courts regarding

whether settlement agreements between insureds and tortfeasors should be effectuated).

As noted above, one of the primary concerns in an action seeking UIM benefits is "protecting the right of the insured to litigate all aspects of his claim in a single suit." Lowe, 521 So. 2d at 1309. The communications between Turner's attorney and State Farm's attorney regarding this case indicate that Turner's attorney understood that, pursuant to Lambert, State Farm had the option of paying Turner the amount of the settlement offered by Norris and Norris's insurance carrier and declining to consent to the settlement agreement. Turner could have sought the circuit court's intervention regarding the reasonableness of State Farm's refusal to consent to his settlement agreement before accepting the settlement offer. If Turner had obtained a determination from the circuit court concerning that question and whether State Farm should have been compelled to consent to the settlement agreement, those issues might have been before us. However, Turner did not request such a decision from the circuit court. Therefore, we need not decide whether the circuit court could have properly compelled State Farm to consent to the

settlement agreement based on Turner's assertion that State Farm's decision was unreasonable, and we express no opinion concerning that issue at this time.

As explained above, in this appeal, we are faced with an unambiguous consent-to-settle provision, State Farm's payment of a Lambert advance, Turner's unilateral decision to release Norris and Norris's insurance carrier from all liability pertaining to this action, and the circuit court's judgment enforcing the exclusionary aspects of the consent-to-settle provision. Turner has failed to demonstrate that, under principles of contract law or the public-policy principles articulated by the this Court in Lambert and its progeny, the circuit court's judgment should be reversed based on the undisputed facts presented. See McKinney, 33 So. 3d at 1206.

Conclusion

The circuit court's summary judgment in favor of State Farm is affirmed. Because we hold that State Farm was discharged from its obligation to pay Turner UIM benefits based on State Farm's payment of a Lambert advance and Turner's repudiation of his policy with State Farm, we pretermit consideration of Turner's alternative argument

regarding State Farm's failure to disclose the substance of its investigation of Turner's claim for UIM benefits, and we express no opinion concerning that issue. We also express no opinion regarding any potential liability State Farm may or may not have to Turner in tort because, as explained above, Turner has not asserted such a claim in this action.

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Wise, Sellers, Stewart, and Mitchell, JJ., concur.

Mendheim, J., concurs in part and concurs in the result.

MENDHEIM, Justice (concurring in part and concurring in the result).

I entirely agree with the main opinion's conclusion that David R. Turner repudiated his insurance policy with State Farm Mutual Insurance Company ("State Farm") by violating the consent-to-settle provision in that policy and that therefore State Farm's obligation to pay Turner uninsured- or underinsured-motorist ("UIM") benefits was discharged. Accordingly, the trial court's judgment is due to be affirmed. I write separately to note my misgivings about the main opinion's discussion of United Services Automobile Ass'n v. Allen, 519 So. 2d 506 (Ala. 1988), a discussion that is clearly dictum, given that the opinion states that "we express no opinion concerning th[e] issue" raised by Allen, but that could lead to uncertainty in this area of the law. ___ So. 3d at ___.

In Allen, a plaintiff-insured filed an action for injunctive relief against his UIM insurer, United Services Automobile Association ("USAA"), seeking an order requiring USAA to consent to a settlement between the insured and the tortfeasor. The trial court entered the injunction, and this Court affirmed the trial court's judgment because "[t]here is

nothing in the record before us to show that USAA had a reasonable basis for withholding such consent." Allen, 519 So. 2d at 508.

The main opinion correctly notes that Allen was decided before Lambert v. State Farm Mutual Automobile Insurance Co., 576 So. 2d 160 (Ala. 1991), the case that sought to provide a "bright-line" procedure for UIM insurance carriers, their insureds, and tortfeasors in the context of settlement negotiations between the insured and the tortfeasor. Lambert, 576 So. 2d at 165. However, the main opinion then goes on to observe:

> "[T]he decision of the insured in Allen to seek judicial intervention regarding his UIM insurance carrier's refusal to consent to a settlement agreement with a tortfeasor -- in lieu of repudiating his policy altogether by accepting the settlement offer -- appears all the more prudent under the current state of the law, which actually requires UIM insurance carriers to pay their insureds the amount of the settlement offered as a prerequisite for withholding consent to the settlement."

___ So. 3d at ___ (emphasis added). The main opinion later adds that "Turner could have sought the circuit court's intervention regarding the reasonableness of State Farm's

refusal to consent to his settlement agreement before accepting the settlement offer." ___ So. 3d at ___.

The above-quoted portions of the main opinion appear to suggest that the injunction remedy approved in Allen may be available to a plaintiff-insured who believes that his or her UIM insurer has unreasonably refused to consent to a settlement between the insured and the tortfeasor even when -- under the Lambert procedure -- the UIM insurer has advanced to the insured the amount of the offered settlement, thereby preserving its subrogation interests. Such speculation seems unnecessary given that, as the main opinion observes, Turner did not seek such relief from the circuit court. We also have no clear idea as to the ramifications of allowing such an injunctive remedy given that we do not have the benefit of any commentary about Allen from State Farm because Turner cited Allen for the first time in his reply brief.

I express no opinion on the continued viability of the remedy approved in Allen, but I would consider the issue if it is presented in a proper case. This is not such a case because Turner failed to pursue an injunction from the trial court. My concern is the main opinion's suggestion in this

case that an Allen injunction "appears all the more prudent under the current state of the law." ___ So. 3d at ___. Accordingly, I cannot fully concur with the main opinion.