EFiled: Jul 29 2016 01:14PM EDT
Filing ID 59348233
Case Number 267,2016

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

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| MARIA L. DICKERSON and CHARLES L. DICKERSON,<br><br>Plaintiffs-Below/Appellants,<br><br>v.<br><br>NATIONWIDE MUTUAL INSURANCE COMPANY, a foreign corporation,<br><br>Defendant-Below/Appellee. | ) | No. 267, 2016<br><br>Court Below: Superior Court of the State of Delaware<br>C.A. No. S15C-04-022 MJB |

# ANSWERING BRIEF OF DEFENDANT-BELOW, APPELLEE

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DATED: July 29, 2016

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## NATURE OF THE PROCEEDINGS

This case arises from a motor vehicle accident involving the Plaintiff-Below/Appellant Maria L. Dickerson which occurred on June 23, 2013. She and her husband, Charles L. Dickerson, settled their personal injury suit against the tortfeasors for the full $100,000 bodily injury liability policy limit which was available. The plaintiffs then submitted an underinsured motorists ("UIM") claim to their own auto insurance carrier, Defendant-Below/Appellee Nationwide Mutual Insurance Company ("Nationwide"). The UIM limit of the policy issued by Nationwide to the plaintiffs was $100,000, the same limit as the underlying tortfeasors' bodily injury liability policy.

Nationwide denied the plaintiffs' UIM claim on the basis that the amendment to 18 Del. C. § 3902(b)(2) which was signed into law on July 3, 2013, and became effective on January 3, 2014, was not applicable to the plaintiffs' UIM claim which arose on June 23, 2013. Plaintiffs subsequently filed a declaratory judgment action against Nationwide in the Superior Court on April 20, 2015, seeking a declaration that the amended UIM statute governed their claim and that they were therefore entitled to recover UIM benefits from Nationwide.

Nationwide filed a motion to dismiss the declaratory judgment action for failure to state a claim pursuant to Superior Court Civil Rule 12(b)(6). Because

plaintiffs' response in opposition to Nationwide's motion incorporated matters outside the pleadings and because Nationwide had no objection, Nationwide's motion to dismiss was transformed into a motion for summary judgment pursuant to Superior Court Civil Rule 56. The plaintiffs filed a cross-motion for summary judgment, averring that there were no issues of material fact and that the case should be decided on the cross-motions for summary judgment. The only issue before the Superior Court was the legal question of whether, with respect to plaintiffs' UIM claim, the amended version of § 3902(b)(2) was applicable rather than the previous version which was in effect at the time of the accident.

In an opinion dated April 25, 2016, the Honorable M. Jane Brady of the Superior Court granted Nationwide's motion for summary judgment and denied the plaintiffs' competing motion. This appeal by the plaintiffs, now Appellants, ensued. Appellants' Opening Brief was filed and served on July 7, 2016, and Nationwide now submits this Answering Brief to the Court.

## SUMMARY OF ARGUMENT

**I.** Admitted in part. Denied in part. It is denied only that the prior version of 18 Del. C. § 3902(b)(2) ceased to be effective upon the signing of the amended version into law. The amended version took effect six months later, and the prior version remained in effect during the interim. The remainder of this paragraph is admitted.

**II.** Admitted.

**III.** Admitted in part. Denied in part. It is admitted that Appellants have accurately quoted the text of 79 Del. Laws 2013, Ch. 91 § 2, previously Section 2 of Senate Bill No. 61 of the 147th General Assembly. The remainder of this paragraph, consisting almost entirely of legal conclusions, is denied. 79 Del. Laws 2013, Ch. 91 § 2, previously Section 2 of Senate Bill No. 61 of the 147th General Assembly, states: "The provisions of this law shall apply to motor vehicle insurance policies issued and/or renewed six (6) months after enactment." As Appellants note in their Opening Brief, the Synopsis to Senate Bill No. 61 explains that, "The provisions of the law **will not affect existing insurance policies**, and will apply only to renewing or new policies **that become effective** (6) months after the law is enacted." (Emphasis added). Because Appellants' UIM policy in effect at the time of the accident is an "existing policy" pursuant to the plain language of

the amended UIM statute, the prior version of the UIM statute applies to Appellants' UIM claim. The policy in effect at the time of the accident did not "become effective" six months after the amended law was enacted. Had the underlying accident occurred sometime in January 2014 after the policy renewed, the amended statute would apply and Appellants would be entitled to recover UIM benefits. However, the accident occurred before the amended law was even signed, and more than six months before the law became effective.

**IV.** Admitted in part. Denied in part. It is denied that principles of judicial review of legislation support Appellants' argument and that the relief Appellants request represents application of "the plain language of the statute as expressed in the legislation itself and as intended by the legislature." The relief Appellants request necessitates a nonsensical interpretation of the statute and improper, retroactive application of a statute that was intended to be applied only prospectively. The remainder of this paragraph is admitted.

**V.** Admitted in part. Denied in part. It is admitted only that the Affidavits of No Insurance and the Release of All Claims were dated as Appellants describe. The remainder of this paragraph is denied. Appellants' argument regarding the "date of birth" of a UIM claim is unavailing because it confuses the concept of what a claimant must ***prove*** in order to successfully recover UIM benefits with the concept of what ***triggers*** UIM coverage. The claimant is required to ***prove***

exhaustion of liability limits and damages in excess of those limits in order to successfully recover UIM benefits. However, coverage is ***triggered*** by the occurrence itself. The occurrence must take place during the policy period. That is, the policy that was in place on the date of the accident – June 23, 2013.

**VI.** Denied. The Appellants, despite significant attempts to obfuscate the issue, are asking the Court to retroactively apply a statute that was intended to be applied only prospectively. Regardless of whether the statute at issue is a remedial measure, the statutory language and common sense make clear that the statute was not meant to be applied in the retroactive manner that the Appellants desire.

**VII.** Denied. Courts disfavor retroactive application of statutory provisions unless it is unmistakable on the face of the statute that the legislature intended such an application. The court will not infer an intention to make a legislative act retroactive. Any doubt about whether the statute was intended to operate retroactively should be resolved against such operation. It is the burden on the party urging retroactive application to show "unmistakable retrospective legislative intent." Contrary to Appellants' assertion, there is no retrospective intent apparent with respect to the statute at issue, much less "unmistakable" retrospective intent.

**VIII.** Admitted in part. Denied in part. It is admitted only that an insured may, in some circumstances, seek reformation of an insurance contract when an

insurer has failed to adhere to applicable law. That is not the situation here, and Appellants do not even argue that it is. Automobile insurance policies are occurrence-based. The occurrence at issue in this case took place on June 23, 2013, before the amended statute was even signed into law and at a time when Appellants' then-existing insurance policy, governed by the prior version of the statute, was in effect. The Trial Court was correct to recognize these realities and rule against the Appellants.

**IX.** Denied. Coverage should comport with the reasonable expectations of the parties to the insurance contract **at the time the contract is entered into**. Appellants are essentially arguing that, at the time they entered into the insurance contract (months before the accident), they expected their then-unknown, future UIM claim, arising from an accident that had not happened, to be governed by a statute that was not signed into law until after the accident. This is not a "reasonable expectation." Ruling in favor of Nationwide would most assuredly not work a forfeiture on the Appellants. In the very next paragraph, Appellants acknowledge that the six-month "grace period" was built into the amended law "to allow insurance companies to make whatever actuarial determinations that might be necessary that could affect premiums." Appellants did not pay premiums for any coverage of which they are being denied the benefit. During the applicable policy period, Appellants were paying premiums that were based on existing law

and the associated risks for the insurer. The Appellants would not have paid a premium adjusted for the amended law until January 2014, more than six months after the accident from which the UIM claim arises.

**X.** Admitted to the extent that the factual statements in this paragraph are correct. To the extent Appellants imply that these factual statements support their request for relief in the instant appeal, it is denied. It is noteworthy that the Appellants acknowledge in this paragraph that the amended law was intended to apply prospectively to new and/or renewed policies which became effective six months after it was enacted. This admission contradicts the remainder of Appellants' Opening Brief.

**XI.** Admitted in part. Denied in part. It is admitted only that statutory provisions control when an insurance policy conflicts with statutory law governing insurance. The remainder, largely consisting of legal conclusions, is denied. The Trial Court's ruling was not in error. The insurance policy in effect at the time of the accident did not conflict with applicable law, nor did the renewal policy conflict with applicable law after the January 5, 2014, renewal date.

**XII.** Denied. Appellants' UIM claim came into existence more than six months prior to the effective date of the amended law, and Appellants' attempt to distinguish the instant matter from the Moffitt-Ali and Sload cases is therefore

unavailing. Nationwide further disagrees with the insinuation that the prior law was being exploited to limit coverage and to prevent claimants from receiving fair compensation. The law was being followed as written, and the legislature determined that it needed to be rewritten.

**XIII.** Denied. The express language of the amended law, the stated intent of the amended law identified in the Synopsis, well-established legal and equitable principles, and common sense all weigh heavily against granting the relief requested by Appellants. Rather, this Honorable Court should hold that the amended § 3902(b)(2) does not apply to Appellants' UIM claim and that they are therefore barred from recovering UIM benefits from Nationwide arising from the underlying accident.

## STATEMENT OF FACTS

In the interest of brevity, Nationwide does not in this Answering Brief recite the factual background as already set forth in Appellants' Opening Brief. The facts which Nationwide believes are relevant to the instant appeal are as follows.

Nationwide's insured, Maria L. Dickerson, was involved in a motor vehicle accident on June 23, 2013, near Dover. The accident was apparently caused by the driver of another vehicle and caused Mrs. Dickerson to suffer injuries. A-7-8. The tortfeasors' automobile insurance company, also Nationwide, paid the full bodily injury liability policy limits of $100,000 to Appellants. A-23-30.

On July 3, 2013, roughly a week and a half after the accident, the Honorable Jack Markell, Governor of the State of Delaware, signed into law an amendment to 18 Del. C. § 3902(b)(2) known as 79 Del. Laws 2013, Ch. 91 § 1. The amendment changed the definition of an "underinsured" motor vehicle in Delaware such that an injured claimant may now access her own UIM coverage even when her UIM policy limit is not greater than the bodily injury liability limit of the tortfeasor's policy, assuming of course that the claimant's damages exceed the limit of the tortfeasor's policy. A-14-16.

79 Del. Laws 2013, Ch. 91 § 2 states: "The provisions of this law shall apply to motor vehicle insurance policies issued and/or renewed six (6) months after

enactment." The Synopsis of the amended law similarly stated: "The provisions of **the law will not affect existing insurance policies**, and will apply only to renewing or new policies that **become effective** six (6) months after the law is enacted." (Emphasis added). These provisions reflect the General Assembly's intent that insurers be given a buffer period of six months within which to reassess risks and adjust premiums before the amended law took effect. This buffer period also ensured that policyholders would be able to "shop around" and increase or decrease certain coverages based on the new premiums.

The amended UIM statute became effective on January 3, 2014. Plaintiffs' insurance policy with Nationwide (policy number 5207A 574035) renewed on January 5, 2014. On October 21, 2014, plaintiffs' counsel sent a demand letter to Nationwide which demanded the full $100,000 UIM policy limit. A-48-60. Nationwide responded promptly on November 18, 2014, advising that the UIM claim was denied because the version of the UIM statute in effect at the time of the accident governed the claim rather than the amended version which took effect more than six months after the accident. A-61. As described in the Nature of the Proceedings above, the plaintiffs filed a declaratory judgment action in the Superior Court. The Trial Court granted judgment in favor of Nationwide on cross-motions for summary judgment. Plaintiffs subsequently filed the instant appeal.

# ARGUMENT

## QUESTION PRESENTED

Should the amendment to 18 Del. C. § 3902(b)(2), the underinsured motorist statute found at 79 Del. Laws 2013, Ch. 91, formerly Senate Bill No. 61 of the 147th General Assembly, eliminating the requirement that a claimant must have UIM coverage limits in excess of the tortfeasor's bodily injury liability limits in order to access her own UIM coverage, be interpreted to apply retroactively to accidents which took place before the amendment was signed into law or became effective?

## A. SCOPE OF REVIEW

This Court reviews *de novo* the Superior Court's decision on cross-motions for summary judgment. Reserves Management Corp. v. R.T. Properties, LLC, 80 A.3d 952, 955 (Del. 2013).

## B. MERITS

### i. Introduction and Background

Across the nation, state legislatures have generally selected one of the two main UIM coverage schemes to govern in their respective jurisdictions – commonly referred to as the "offset" and "excess" statutory schemes. In an

"offset" UIM coverage jurisdiction, the amount a claimant can recover from her own UIM insurance carrier is reduced by amounts paid by the tortfeasor's bodily injury liability insurer. For example, in an "offset" jurisdiction, a claimant with UIM limits of $100,000 and whose bodily injuries have a value of $200,000 and who receives the tortfeasor's limits of $25,000 toward those injuries, may recover $75,000 in UIM benefits once the tortfeasor's insurer pays its $25,000 bodily injury coverage limit. Under this scheme, the amounts received from the tortfeasor are "offset" against the contracted-for UIM limits. The maximum amount the claimant can receive under this scheme is the contracted-for UIM limits ($100,000 in our example). Thus, if the UIM limits were the same or less than the tortfeasor's bodily injury limits, no UIM benefits are available in an "offset" jurisdiction.

In an "excess" UIM coverage jurisdiction, the same claimant could recover all $100,000 of her UIM coverage, *ceteris paribus*, yielding a total recovery of $125,000, because her recovery of UIM is in addition to, rather than reduced by, the amount of the tortfeasor's policy limit. In an "excess" jurisdiction, the UIM benefits would be available so long as the value of the injuries exceeded the bodily injury limits of the tortfeasor, even if those UIM limits were the same or less than the bodily injury limits of the tortfeasor.

The previous iteration of Delaware's underinsured motorist statute, 18 Del. C. § 3902(b)(2) (1995), permitted a claimant to access his or her full UIM coverage when the "limits of bodily injury liability coverage under all bonds and insurance policies applicable at the time of the accident total less than the limits provided by uninsured motorist coverage." Thus, Delaware had an unusual hybrid of the offset and excess UIM schemes. In order to determine whether or not UIM coverage was triggered, a comparison of the tortfeasor's bodily injury limits and the claimant's UIM limits was undertaken. If the UIM limits were the same or less than the tortfeasor's limits, no UIM coverage was triggered (following the "offset" analytical framework). However, once UIM coverage was triggered, the full UIM benefits were available to the claimant (following the "excess" analytical framework).

As an example, a Delaware claimant under the prior statute whose bodily injuries had a value of $200,000 and maintained $25,000 in UIM coverage could recover no UIM benefits if the tortfeasor's bodily injury liability limits were also $25,000, because the UIM coverage would not have been triggered. However, that same claimant, if he maintained $100,000 in UIM benefits, could recover the full $100,000 in UIM benefits in the event that the tortfeasor had, for example, a $25,000 bodily injury liability policy limit because under Delaware's scheme, once

the UIM coverage was triggered, the full benefits were available on an "excess" basis.

### ii. Motivation for the 2013 amendment to Delaware's UIM statute

The General Assembly perceived the inconsistencies in the then-existing UIM statute and therefore sought to amend the statute in such a way that injured claimants in Delaware would be able to access their own UIM coverage regardless of the policy limits of the tortfeasor. Precedent set by this Court had previously established that where an accident victim and the tortfeasor had the same insurance policy limits, the tortfeasor was not considered to be "underinsured," thus barring any UIM recovery by the claimant. *See, e.g.*, Nationwide Mut. Ins. Co. v. Williams, 695 A.2d 1124 (Del. 1997).

To correct the inequities perceived by the General Assembly, 18 Del. C. § 3902(b)(2) was amended to define an underinsured motor vehicle as one where "the limits of bodily injury liability coverage under all bonds and insurance policies applicable at the time of the accident are less than the damages sustained by the insured." Thus, an injured policyholder in Delaware may now access her own UIM coverage regardless of whether her UIM limit is greater or less than the tortfeasor's bodily injury liability limit.

### iii. The amended version of Delaware's UIM statute does not apply to Appellants' 2013 insurance policy which was in effect at the time of the subject accident

In making the above-described change to the UIM statute, the Delaware legislature recognized that it was substantially augmenting the number of injured parties who would now qualify for UIM benefits, as compared with the number who would qualify prior to the effective date of the amendment. Thus, the Legislature included clear, specific language in the amended statute providing that it would only apply ***prospectively***. In so doing, the Legislature accounted for the reasonable expectations of the parties to the insurance contract. The insurer would be in a position to adjust premiums to take into account the increased risk for policies issued or renewed six months after the amendment, and policyholders could decide on the amount of coverage they wanted in view of any premium increases for the expanded coverage. Conversely, with respect to policies issued prior to the effective date of the amendment, the parties would remain in the position they were in when the coverage was priced and the policies purchased.

79 Del. Laws 2013, Ch. 91 § 2, previously Section 2 of Senate Bill No. 61 of the 147th General Assembly, states: "The provisions of this law shall apply to motor vehicle insurance policies issued and/or renewed six (6) months after enactment." As Appellants note in their Opening Brief, the Synopsis to Senate Bill

No. 61 explains that, "The provisions of **the law will not affect existing insurance policies**, and will apply only to renewing or new policies **that become effective** (6) months after the law is enacted." (Emphasis added).

Appellants correctly note that the policy at issue in this case did indeed renew on January 5, 2014, and Nationwide does not argue here that the UIM amendment is inapplicable to the renewed policy that went into effect on January 5, 2014. However, Appellants averred in their Complaint below and in their Opening Brief before this Honorable Court that the accident in question occurred on June 23, 2013, prior to the statutory amendment of 18 Del. C. § 3902 (which was signed into law on July 3, 2013) and **more than six months before** the amended statute was applied to new and/or renewed policies on January 3, 2014. The policy under which Appellants attempt to recover UIM benefits falls within the category of "existing policies" which are not affected by the amendment. While the policy was subsequently renewed, the claim is not being made under the renewed policy, but rather is being made under the policy which existed at the time of the accident and thus is subject to the pre-amendment provisions of the UIM statute. The policy under which Appellants have made their UIM claim did not "become effective" six months after the new law was enacted (it was already in effect at the time of the accident), and the amendment is therefore inapplicable.

a. Automobile insurance policies are occurrence-based

Under an "occurrence" policy, "the insured is indemnified for acts or occurrences which take place within the policy period . . . ." Appalachian Ins. Co. v. Liberty Mut. Ins. Co., 676 F.2d 56, 59 (3d Cir. 1982). "The insurer's duty to indemnify the insured is triggered by a determination that fortuitous bodily injury or property damage occurred during the policy period." Playtex, Inc. v. Columbia Casualty, 1993 Del. Super. LEXIS 286[1] (*footnotes omitted, reversed and remanded on other grounds by* Northwestern Nat'l Ins. Co. v. Esmark, Inc., 672 A.2d 41 (Del. 1996).

The policy at issue in this case states, in the very first page under the heading "Insuring Agreement": "The selected coverages in this policy apply only to occurrences while the policy is in force." B-1-44. Appellants' argument regarding the "date of birth" of a UIM claim confuses the concept of what a claimant must ***prove*** in order to successfully recover UIM benefits with the concept of what ***triggers*** UIM coverage. The claimant is required to ***prove*** exhaustion of liability limits and damages in excess of those limits in order to successfully recover UIM benefits. However, coverage is ***triggered*** by the

[1] A copy of this unreported opinion is attached hereto as Exhibit "A."

occurrence itself.[2] The occurrence must take place during the policy period. That is, the policy that was in place on the date of the accident – June 23, 2013. The policy that was in place in June of 2013 was issued under the prior UM/UIM statutory scheme and is not subject to retrospective application of the new statute which went into effect in 2014. Coverage under the policy which was in effect after renewal in January 2014 is not triggered by this accident because the accident did not "occur" during the 2014 policy period.

Indeed, the absurdity of Appellants' position can be perceived at once if we follow the suggested chain of logic. An injured party who has low or no UIM limits on her auto policy is involved in an accident with a tortfeasor who has low liability limits. She then simply buys a new policy with extremely high UIM limits and then submits the claim under this new policy once she has exhausted the tortfeasor's limits. She has now successfully purchased insurance after the fact to

[2] Indeed, since the amendment of § 3902, it has become common for plaintiffs to include both the tortfeasor and the UIM carrier as defendants in a single suit for the bodily injuries. This is done where the plaintiff believes that the value of the injuries is likely to exceed the tortfeasor's limits. The UIM claim exists, at least potentially, at that time, even though the tortfeasor's limits have not yet been tendered. In these scenarios, the UIM claim is made under the policy in place at the time of the accident, not under some future policy that might be in place at some point in the future when the tortfeasor's limits are ultimately tendered. Appellants' theory in this appeal is directly contrary to this fundamental occurrence-based analysis of when coverage is triggered. Notably, Appellants do not cite a single case for the proposition that a UIM claim is "born" on an arbitrary date some time following the accident. They instead rely upon a tortured interpretation of a statute, 18 Del. C. § 3902(b)(3), which describes when an insurance company must ***pay*** a UIM claim, not when a UIM claim comes into existence.

cover the risk that has already occurred. Of course, this is precisely why all auto policies are "occurrence" policies.

As the Superior Court noted in Playtex, "It is a general rule that one cannot obtain insurance for those losses which are not fortuitous, in other words, for those losses of which the insured knows, plans, intends, or is aware." *See also*, Intermetal Mexicana v. Insurance Co. of North America, 866 F.2d 71 (3d Cir. 1989) ("The fortuity doctrine arises from the basic concept that insurance covers risks, rather than losses that were planned, intended, or anticipated by the insured."); Bartholomew v. Appalachian Ins. Co., 655 F.2d 27, 29 (1st Cir. 1981) ("The concept of insurance is that the parties, in effect, wager against the occurrence or non-occurrence of a specified event; the carrier insures against a risk, not a certainty."). It has been held to be contrary to public policy for an insurance company to knowingly assume the burden of a loss that occurred prior to making the contract. Burch v. Commonwealth County Mutual Ins. Co., 450 S.W.2d 838, 840 (Tex. 1970). Plaintiff is requesting that this Court allow a policy purchased more than six months after the occurrence to provide coverage for that occurrence. This is contrary to the policy language, contrary to basic insurance law, contrary to common sense, and violative of the general prohibition against retrospective application of statutes.

b. The amendment to Delaware's UIM statute should not be applied retroactively to policies that were in effect in 2013

Courts disfavor retroactive application of statutory provisions unless it is unmistakable on the face of the statute that the legislature intended such an application. Price v. All American Eng'g Co., 320 A.2d 336 (Del. Super. 1974). The court will not infer an intention to make a legislative act retroactive. Chrysler Corp. v. State, 457 A.2d 345, 351 (Del. 1983). Any doubt about whether the statute was intended to operate retroactively should be resolved against such operation. Whaley v. Allstate Ins. Co., 595 F.Supp. 1023, 1027 (D. Del. 1984). It is the burden on the party urging retroactive application to show "unmistakable retrospective legislative intent." Id.

In this instance, despite their protestations to the contrary, Appellants seek to have the amended UIM statute retroactively applied to a policy that was priced, purchased, and issued under the prior statutory scheme for UIM benefits. Appellants acknowledge on page 17 of their Opening Brief that the effective date of the statutory amendment at issue is January 3, 2014. Appellants then ask the Court to ignore the plain and unambiguous language regarding prospective application in the statute. Such a retroactive application of the amendment is not only contrary to the clear terms of the statute but would lead to an absurd/illogical economic result. Indeed, Delaware courts, when confronted with a statutory

amendment to our worker's compensation law, considered such "illogical results" when it determined that the amendment then under review was not intended to be applied retroactively. Bundy v. Corrado Brothers, 1998 Del. Super. LEXIS 184.[3] In Bundy, the Court concluded that the statute should only be applied prospectively, even though the statute was silent on prospective/retroactive application. Here, the Legislature has made it clear that the UIM statute should have only prospective application.

The courts of other jurisdictions have similarly considered the illogical economic results that would arise from retroactive application of a statutory amendment in confirming the legislature's intent that the statute be applied prospectively. *See, e.g.*, Union Mutual Life Insurance Company v. Kinder, 108 Cal. App. 3d 517 (1980); James v. New Jersey Manufacturers Insurance Company, 83 A.3d 70 (N.J. 2014). Here, the plain, unambiguous language of the statute requires prospective application of the amendment.

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In conclusion, the parties ask that this Honorable Court decide the legal question of whether the amendment to 18 Del. C. § 3902(b)(2) which was signed into law on July 3, 2013, and became effective on January 3, 2014, applies to

[3] A copy of this unreported decision is attached hereto as Exhibit "B."

Appellants' UIM claim which arises from a June 23, 2013, motor vehicle accident. For all of the foregoing reasons, Nationwide Mutual Insurance Company, by and through its undersigned counsel, respectfully suggests that this Honorable Court should hold that the amended 18 Del. C. § 3902(b)(2) is inapplicable to the Appellant's claim for UIM coverage arising from the June 23, 2013, accident at issue in this case, and that Appellants are therefore barred from recovering UIM benefits because the tortfeasors were not "underinsured" as that term was defined in the version of § 3902(b)(2) which was in effect during the relevant policy period.

Respectfully submitted,

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Dated: July 29, 2016