

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-11

BONNIE STOCKTON AND MADISON STOCKTON

versus

FIRST CHICAGO INSURANCE COMPANY, ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 848-572, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

May 04, 2026

JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Stephen J. Windhorst

WRIT DENIED

JGG
SMC
SJW

TRUE COPY



MORGAN NAQUIN
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GRAVOIS, J.

Relator/defendant, First Chicago Insurance Company (“FCIC”), seeks this Court’s supervisory review of the trial court’s December 10, 2025 ruling that denied FCIC’s motion for partial summary judgment on the issue of uninsured/underinsured motorist coverage on a vehicle it insured. For the following reasons, we deny this writ application.

FACTS AND PROCEDURAL BACKGROUND

This matter arises out of an automobile accident that occurred on November 20, 2022. Respondents/plaintiffs, Bonnie Stockton and Madison Stockton, were guest passengers in a 2023 GMC Yukon XL SUV being driven by Clarence Simmons, Jr., when the vehicle collided with another vehicle. The Stocktons filed a petition for damages naming numerous defendants, including Mr. Simmons and his insurer, FCIC, and alleging that the FCIC policy included liability and uninsured/underinsured motorist (“UM”) coverage.

Thereafter, FCIC filed a motion for partial summary judgment, arguing that at the time of the accident, there was no UM coverage issued to Mr. Simmons or covering the 2023 GMC Yukon XL SUV. FCIC asserted that Mr. Simmons obtained an insurance policy through NOLA P&C Insurance Agency effective from December 29, 2020 until December 29, 2021, and at the time Mr. Simmons procured the policy, he executed an Uninsured Motorist Bodily Injury Coverage Form rejecting UM coverage via an electronic signature. The policy was renewed on December 29, 2021. On September 21, 2022, the policy was amended to add the 2023 GMC Yukon XL SUV involved in the subject accident. In its motion for partial summary judgment, FCIC argued that the UM rejection form in question complies with La. R.S. 22:1295 and remained valid through the time of the accident, thus creating a rebuttable presumption in favor of no UM coverage. Further, although Mr. Simmons testified in his deposition that he did not recognize his signature on the UM rejection form, FCIC produced the affidavit of Patricia Zibilich, a former manager of NOLA P&C Insurance Agency, which provides verification of his signature rejecting the coverage electronically.

In opposition, the Stocktons asserted that genuine issues of material fact remain regarding the issue of UM coverage. The Stocktons alleged that FCIC's own documents and communications create ambiguity as to the existence and amount of UM coverage. The Stocktons argued that FCIC's adjuster issued a written response to their UM demand on January 13, 2023, attaching a declarations page/printout that reflected \$250,000 in UM coverage and then handled the claim as a "covered UM claim." Additionally, FCIC made a settlement offer under the policy's UM provisions to settle Madison Stockton's claim, and it allegedly recently settled Mr. Simmons' UM claim.

Following a hearing on December 10, 2025, the trial court orally denied FCIC's motion for partial summary judgment.¹

In this writ application, FCIC argues that the Stocktons cannot rely on the pre-litigation settlement offer, which included a declarations page indicating \$250,000 in UM coverage. Further, it asserts that the UM rejection form was validly executed and remained valid through the policy's renewal. Finally, it argues that Ms. Zibilich's affidavit detailing the 2020 procurement process rebuts Mr. Simmons' deposition testimony that he did not sign the UM rejection form.

ANALYSIS

Appellate courts review the granting of a summary judgment *de novo*, using the same criteria governing the trial court's consideration of whether summary judgment is appropriate. *Varrechio v. Lemoine Co., L.L.C.*, 23-603 (La. App. 5 Cir. 1/31/24), 381 So.3d 210, 214; *Kliebert v. Breaud*, 13-655 (La. App. 5 Cir. 1/31/14), 134 So.3d 23, 27. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). A genuine issue of material fact is one as to which

¹ On December 10, 2025, the trial court also considered FCIC's motion for partial summary judgment regarding the Stocktons' bad faith claim. The denial of that motion is currently under review by this Court in a separate writ application.

reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *D'Angelo v. Par. of Jefferson*, 25-192 (La. App. 5 Cir. 6/4/25), 414 So.3d 1227, 1230, *writ denied*, 25-1096 (La. 11/12/25), 420 So.3d 713.

The burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.*

In Louisiana, the presence of uninsured motorist coverage in an insurance policy is determined by contractual provisions and by applicable statutes. *Jackson v. Liberty Pers. Ins. Co.*, 20-13 (La. App. 5 Cir. 7/2/20), 299 So.3d 1256, 1263, *writ denied*, 20-967 (La. 11/4/20), 303 So.3d 641. Pursuant to La. R.S. 22:1295, all automobile liability insurance issued in Louisiana covering motor vehicles registered in Louisiana must provide uninsured motorist coverage equal to the liability provided for bodily injury, unless the insured validly rejects the coverage or selects lower limits. *Magnon v. Collins*, 98-2822 (La. 7/7/99), 739 So.2d 191, 195. Even if not expressly provided, uninsured motorist coverage will be read into the policy unless there has been a knowing and valid rejection or selection of lower limits. *Duncan v. U.S.A.A. Ins. Co.*, 06-363 (La. 11/29/06), 950 So.2d 544, 547.

The plaintiff bears the burden of proof in establishing insurance coverage. However, the insurer bears the burden of proving that a policy holder rejected UM coverage or selected lower limits of coverage. A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a

lower limit, or selected economic-only coverage. *Jackson, supra; Addison v. Affirmative Ins. Co.*, 17-378 (La. App. 4 Cir. 11/15/17), 231 So.3d 753, 755–56, *writ denied*, 17-2061 (La. 2/2/18), 235 So.3d 1109. In *Duncan*, the Supreme Court identified six tasks that are required to complete the UM rejection form prescribed by the Commissioner of Insurance. These tasks include: 1) the insured initialing the rejection or selection of the coverage chosen; 2) if lower limits are chosen, the filling in of the amount chosen; 3) printing the name of the insured; 4) signing by the insured; 5) filling in the policy number; and 6) filling in the date. *Duncan*, 950 So.2d at 551.

In support of its motion for partial summary judgment, FCIC provided the UM rejection form. FCIC also provided excerpts from Mr. Simmons' deposition. In his deposition, Mr. Simmons stated he obtained the insurance policy "by phone." He believed some of the documents were on a computer and he could fax them back to the agent. When asked if the signature on the bottom of the first page of the insurance policy was his, he responded: "I'm not a hundred percent. That don't look like my signature. It very well could be, but it don't look like. ... I'm not sure." As to the UM rejection form, he stated that he did not recognize the initials or the signature on the form. He subsequently stated that the initials next to line "number 4" rejecting UM coverage were "definitely not [his] signature." He stated it was his desire to have UM coverage when he first obtained the policy. He admitted that he did not have any documentation from FCIC that shows he had UM coverage in 2020. As to the policy renewal in 2021, Mr. Simmons confirmed that the address on the renewal was where he resided at the time.² He said he did not learn that he supposedly did not have UM coverage until after the accident. In 2023, he got a new truck and stated he "made sure" it had UM coverage. He stated the initials on the UM coverage form signed in 2023 are his "writing," but do not match the initials on the 2020 UM rejection form.

² Mr. Simmons also stated in his deposition that after receiving the policy renewal in 2021 that showed no UM coverage, he called either the agency, or the insurance company, and asked them, "Do I have uninsured motorists [sic]?" After they "assured" him that he did, he didn't "worry about it" anymore.

Nevertheless, FCIC contends that Mr. Simmons' testimony does not create a genuine issue of material fact because Ms. Zibilich's affidavit verifies his electronic signature and details the 2020 procurement process. In Ms. Zibilich's affidavit, she states that she was previously a manager of NOLA P&C Insurance Agency. On December 29, 2020, Ms. Zibilich received Mr. Simmons' commercial insurance application via DocuSign and this included the UM rejection form. She located correspondence between the agency and Mr. Simmons and attached the documents to the affidavit. This included: 1) a June 29, 2020 email from Mr. Simmons to NOLA P&C, where he attached his registration and insurance and provided his social security number and driver's license number; 2) a July 16, 2020 email to Mr. Simmons asking that he fill-out a medical form needed to "complete quote"; and 3) a December 15, 2020 email from Mr. Simmons to NOLA P&C including his "loss history." Finally, attached to the affidavit was a December 29, 2020 email from "DocuSign" to Ms. Zibilich, which states "[y]our document has been completed."

The Uniform Electronic Signature Law, La. R.S. 9:2602, *et seq.*, applies to automobile insurance policies and required UM forms. *Jackson*, 299 So.3d at 1268, citing *Bonck v. White*, 12-1522 (La. App. 4 Cir. 4/24/13), 115 So.3d 651, 655. While an electronic signature may be considered valid, the production of a UM rejection form, alone, is insufficient to establish that an insurer has borne its burden of proof on a motion for summary judgment, when there is a sworn statement by an insured denying that he or she executed the form. This statement, at a minimum, raises a credibility issue that makes summary judgment inappropriate. *Weddborn v. Doe*, 15-1088 (La. App. 4 Cir. 5/4/16), 194 So.3d 80, 88.

Here, on its face, the UM rejection form meets the six *Duncan* criteria. However, in his deposition, Mr. Simmons disputes the signature on the 2020 UM rejection form. He stated that the initials on the UM rejection form are "definitely not" his and the initials on the form do not match those on a form executed in 2023. FCIC provides that the policy, which includes the UM rejection form, was electronically signed by Mr. Simmons via DocuSign. In Ms. Zibilich's

affidavit, she attests that she received Mr. Simmons' commercial application via DocuSign. Though Ms. Zibilich provides a December 29, 2020 email from DocuSign, the email is not specifically linked to Mr. Simmons. Further, FCIC has failed to provide any testimony or documents regarding the process or procedures of signing a document via DocuSign. Thus, we conclude that genuine issues of material fact remain regarding the validity of the electronic signature/initials on the UM rejection form, which Ms. Zibilich's affidavit and the attachments thereto do not overcome.

CONCLUSION AND DECREE

For the foregoing reasons, upon *de novo* review, we find no error in the trial court's judgment which denied FCIC's motion for partial summary judgment on the UM coverage issue. Accordingly, this writ application is denied.

WRIT DENIED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 4, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-11

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)

AMANDA H. AUCOIN (RELATOR)

P. M. DONOVAN (RESPONDENT)

KYLE D. ANDERSON (RESPONDENT)

R. TODD MUSGRAVE (RELATOR)

MAGEN W. DETILLIEU (RELATOR)

MICHAEL E. HILL (RESPONDENT)

CONNOR ROBERTS (RESPONDENT)

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