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TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-000204-MR

DARRYL ISAACS; AND  
THERESA ISAACS

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HON. AUDRA J. ECKERLE, JUDGE  
ACTION NO. 16-CI-000250

SENTINEL INSURANCE COMPANY,  
LIMITED D/B/A THE HARTFORD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Darryl Isaacs and Theresa Isaacs bring this appeal from a  
January 24, 2017, Order of the Jefferson Circuit Court granting a motion for

summary judgment filed by Sentinel Insurance Company, Limited d/b/a The Hartford, (Sentinel Insurance).<sup>1</sup> We affirm.

Our recitation of the facts will only include those necessary for resolution of this appeal. On January 19, 2015, Darryl Isaacs was riding a bicycle on River Road in Jefferson County, Kentucky. Isaacs was struck on his bicycle by a motor vehicle operated by Michael Baumann. As a result of the accident, Isaacs alleges to have suffered numerous physical injuries.

On January 15, 2016, and June 7, 2016, Isaacs and his wife, Theresa (collectively referred to as appellants) filed complaints against, *inter alios*, Baumann and Sentinel Insurance. Appellants asserted that Baumann negligently caused the accident on January 19, 2015, and that Baumann's motor vehicle insurance liability limits were insufficient to compensate Isaacs for his damages. Appellants alleged to be entitled to underinsured motorist (UIM) coverage under a motor vehicle policy of insurance issued by Sentinel insurance to Isaacs & Isaacs, P.S.C.:

7. In accordance with KRS 304.39-320, Defendant[ ], Sentinel Insurance Company Limited d/b/a The Hartford, . . . have elected not to substitute their payment for the policy limits offered to Plaintiffs under Michael Baumann's automobile insurance policy and have authorized Plaintiff to accept said limits in settlement of their claims against Michael Baumann and releasing him

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<sup>1</sup> We note that Sentinel Insurance Company, Limited d/b/a The Hartford, was misspelled in the Notice of Appeal, so we have corrected the misspelling in our Opinion.

from further liability herein. Plaintiffs are therefore seeking to recover underinsurance motorist coverage benefits pursuant to their policies of insurance issued by Defendant[ ], Sentinel Insurance Company Limited d/b/a The Hartford, pursuant to KRS 304.39-320 for their uncompensated damages.

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10. At all times herein mentioned Plaintiffs were insured under an additional policy of insurance issued by Defendant, Sentinel Insurance Company, Limited, d/b/a The Hartford, which policy provides underinsured coverage to Plaintiffs in the amount of \$3,000,000.00 for their uncompensated damages herein. Plaintiffs have made a demand for payment of said benefits from Defendant, Sentinel Insurance Company, Limited, d/b/a The Hartford; however, Defendant, Sentinel Insurance Company, Limited, d/b/a The Hartford, has wrongfully denied coverage to Plaintiffs under its policy of insurance and has refused to pay them underinsured motorist coverage benefits to which they are entitled under the terms, conditions and provisions of their policy of insurance and Kentucky statutory and case law. Plaintiffs are therefore seeking underinsured motorist coverage benefits under said policy of insurance for their uncompensated damages in the amount of \$3,000,000.00.

June 7, 2016, Amended Complaint at 3-5. Appellants also claimed that Sentinel Insurance acted in bad faith when it denied UIM coverage for this accident.

Thereafter, on June 30, 2016, appellants filed a motion for declaratory judgment; therein, appellants sought a declaration that Sentinel Insurance was legally obligated to provide UIM coverage to Isaacs. In particular, appellants acknowledged that the named insured on the motor vehicle insurance policy was

Isaacs & Isaacs, P.S.C. and not Isaacs individually. However, appellants maintained that Isaacs & Isaacs, P.S.C. was essentially Isaacs as he was the “sole owner” of the P.S.C.<sup>2</sup> Thus, appellants argued that as the sole owner of the P.S.C. Isaacs was entitled to UIM coverage as a named insured in said policy.

Sentinel Insurance subsequently filed a motion for summary judgment arguing that Isaacs was not entitled to UIM coverage under the plain terms of the insurance policy. Sentinel Insurance pointed out that it issued a commercial motor vehicle insurance policy to Isaacs & Isaacs, P.S.C.; thereunder, the named insured was listed as Isaacs and Isaacs, P.S.C. Pursuant to the insurance policy, Sentinel Insurance maintained that Isaacs was not a named insured and was not entitled to UIM coverage while riding his bicycle.

By order entered January 24, 2017, the circuit court granted Sentinel Insurance’s motion for summary judgment and dismissed appellants’ claims against Sentinel Insurance.<sup>3</sup> This appeal follows.

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807

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<sup>2</sup> Darryl Isaacs is a licensed attorney in Kentucky who performs legal services through Isaacs and Isaacs, P.S.C. Appellants assert that the P.S.C. is “wholly owned” by Isaacs by virtue of his being the sole shareholder of the P.S.C.

<sup>3</sup> The January 24, 2017, order included complete Kentucky Rules of Civil Procedure 54.02 language.

S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* Additionally, the interpretation of an insurance contract looks to a question of law, whereupon our review is *de novo*. *Kemper Nat'l Ins. Cos. v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869 (Ky. 2002). Our review proceeds accordingly.

Appellants argue that the circuit court erroneously interpreted the terms of the motor vehicle insurance policy issued by Sentinel Insurance as not providing UIM coverage to Isaacs on his injury claim. Appellants submit that “Darryl Isaacs and Isaacs & Isaacs PSC are synonymous for purpose of interpreting his policy of automobile insurance with Sentinel.” Appellant’s brief at 5. Thus, appellants maintain that Isaacs is a named insured entitled to UIM coverage. If such interpretation is rejected, appellants then argue that the doctrines of illusory coverage and reasonable expectations mandate UIM coverage be extended to Isaacs for his injury claim. For the reasons hereinafter stated, we disagree with both arguments.

The motor vehicle insurance policy issued by Sentinel Insurance reads, in relevant part, as follows:

**COMMON POLICY DECLARATIONS**

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Named Insured and Mailing Address: ISAACS & ISAACS, PSC  
(No., Street, Town, State, Zip Code)

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## KENTUCKY UNDERINSURED MOTORIST COVERAGE

### A. Coverage

1. We will pay all sums the “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “underinsured motor vehicle”. The damages must result from “bodily injury” sustained by the “insured” caused by an “accident”. The owner’s or driver’s liability for these damages must result from the ownership, maintenance, or use of the “underinsured motor vehicle”.
  
2. Any judgment for damages arising out of a “suit” brought without our written consent is not binding on us.

### B. Who Is An Insured

If the Named Insured is designated in the Declaration as:

1. An individual, then the following are “insureds”:
  - a. The Named Insured and any “family members”.
  - b. Anyone else “occupying” a covered “auto” or a temporary substitute for a covered “auto”. The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
  - c. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.

2. A partnership, limited liability company, corporation or any other form of organization, then the following are “insureds”:
  - a. Anyone “occupying” a covered “auto” or temporary substitute for a covered “auto”. The covered “auto” must be out of service because of its breakdown, repair, servicing, “loss” or destruction.
  - b. Anyone for damages he or she is entitled to recover because of “bodily injury” sustained by another “insured”.

Under the above terms of the insurance policy, it is unambiguous that Isaacs & Isaacs, P.S.C. is the named insured as set forth on the declarations page.

Additionally, the policy is also unambiguous that if the named insured is a corporation or other “form of organization,” insureds under the UIM coverage are limited to those persons occupying a covered auto.<sup>4</sup> So, an individual is entitled to UIM coverage if occupying a covered motor vehicle at the time of the accident. In short, the terms of UIM coverage set forth in the insurance policy are clear and unambiguous.

In this case, Isaacs was riding a bicycle at the time of the accident and was not occupying a covered auto. Under the clear and unambiguous terms of the insurance policy, Isaacs was not an insured entitled to recover UIM benefits.

Additionally, we reject appellants’ argument that Isaacs & Isaacs, P.S.C. and

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<sup>4</sup> Three separate automobiles utilized by Isaacs & Isaacs, P.S.C. were specifically covered under the policy, and any employee using the automobiles (or a temporary substitute for said automobile) or anyone occupying the covered automobiles were subject to UIM coverage under the policy.

Isaacs are “synonymous” under the insurance policy. The insurance policy clearly does not equate the two being one in the same. Essentially, the appellants argue that the P.S.C. is nothing more than a “legal fiction” for tax purposes only, yet they cite no Kentucky legal precedent to support this argument.

In Kentucky, a professional service corporation (P.S.C.) is a corporate entity as set out in Kentucky Revised Statutes (KRS) 274.015. The corporation must provide professional services to the public of the type which requires as a condition precedent thereto, the obtaining of a license or other required legal authorization to perform the service. KRS 274.005(2). Thus, licensed attorneys like Isaacs, are “qualified” persons under the statute who may form a P.S.C. to conduct their legal practice. KRS 274.005(4); KRS 274.017. More importantly, a P.S.C. formed under KRS Chapter 274 has the “same powers, authority, duties and liabilities as a corporation formed under KRS Chapter 271B.” KRS 274.015(2); *Cardiovascular Specialists, P.S.C. v. Xenopoulos*, 328 S.W.3d 215 (Ky. App. 2010).

Thus, a professional service corporation is a distinct legal entity under Kentucky law. The formation of a P.S.C. under Kentucky law does not involve tax issues. Rather, those issues look to an election under various federal tax laws by management as to whether the newly formed corporation will elect to be a C-Corporation or S-Corporation for tax purposes. Isaacs’ argument that he is one and



the same as his P.S.C. for insurance purposes because of a tax election is totally without legal merit under Kentucky law, as the record reflects he is a shareholder of the corporation. *See* KRS 274.017. Similarly, Isaacs' argument that he is the named insured of the corporation's automobile insurance policy by virtue of his stock ownership in the P.S.C. is also without merit.

Likewise, we view as groundless appellants' contention that the doctrines of illusory coverage and reasonable expectations compel UIM coverage in this case. Our Supreme Court recently addressed UIM coverage under an insurance policy and reaffirmed that "parties are at liberty to negotiate and customize policies to fit their own needs and desired levels of coverage." *Philadelphia Indemnity Ins. Co., Inc. v. Tryon*, 502 S.W.3d 585, 592 (Ky. 2016). Here, the motor vehicle policy issued by Sentinel plainly listed the named insured as Isaacs & Isaacs, P.S.C. This is a legal entity or business organization where the UIM policy endorsement clearly identifies "insureds" in Paragraph (B)(2)(a) as persons occupying a covered automobile or temporary substitute for the covered automobile at the time of the accident. There is no language in this policy that contemplates that UIM coverage would be extended to a shareholder of the P.S.C. who is injured while riding a bicycle. *See Ky. Farm Bureau Mut. Ins. Co. v. McKinney*, 831 S.W.2d 164 (Ky. 1992). As there is no ambiguity relating to UIM coverage in this instance, the doctrine of reasonable expectations is simply

inapplicable. *See True v. Raines*, 99 S.W.3d 439 (Ky. 2003). And, there is no issue of illusory coverage as UIM coverage is only triggered pursuant to the policy provisions when an individual is occupying a covered auto or temporary substitute for a covered auto at the time of the accident. As stated by the Supreme Court and equally applicable to our case, “[w]e see no reason to force insurers to bear the burden of an underwriting risk against the rest of the world while allowing the other contracting party to reap the benefits . . . .” *Tryon*, 502 S.W.3d at 592.

We view appellants’ remaining contentions of error as moot or without merit.

In sum, we hold that the circuit court properly rendered summary judgment concluding that appellants were not entitled to UIM coverage under the P.S.C.’s insurance policy.

For the foregoing reasons, the Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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ORAL ARGUMENT FOR  
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