UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3009

September Term, 2010

ON REMAND

DEBORAH HIOB, et al.

v.

PROGRESSIVE AMERICAN INSURANCE COMPANY, et al.

Krauser, C.J.,
Kehoe,
Berger,

JJ.

Opinion by Krauser, C.J.

Filed: July 8, 2015

While Deborah Hiob was driving her automobile, a truck, traveling on the same road but in the opposite direction, crossed the center line of the road and struck her vehicle head-on. Her car, at that time, contained three passengers: her mother-in-law, Virginia Hiob; Margaret Nelson; and Laura Dusome. Two of the car's occupants, Virginia Hiob and Laura Dusome, ultimately died of their resultant injuries, while the other two, Deborah Hiob and Margaret Nelson, suffered serious bodily injuries but survived the crash.

Because the damages sustained by the four occupants of the Hiob vehicle exceeded the amounts available under all other applicable motor vehicle liability insurance policies,[1] a dispute arose between appellee, Progressive American Insurance Company ("Progressive"), Deborah Hiob's insurance carrier, and the occupants of her vehicle (or, as for two of those occupants, their estates) over the amount of coverage provided by the uninsured/underinsured motorist ("UIM") provision of that policy.[2]

This dispute led Deborah Hiob and her husband, Douglas Hiob, individually and as personal representative of the estate of Virginia Hiob, together with Margaret Nelson and the personal representative of the estate of Laura Dusome (whom we shall collectively refer to

[1]Under Maryland Code (1997, 2006 Repl. Vol.), Insurance Article, § 19-509(g), the amount of uninsured motorist coverage available, under a given motor vehicle insurance policy, is "the amount of coverage [stated in that policy] less the amount paid to the insured, that exhausts any applicable liability insurance policies, bonds, and securities, on behalf of any person that may be held liable[.]"

[2]It is not disputed that the damages sustained by the occupants of the Hiob vehicle did, in fact, exceed the amounts available under all applicable insurance policies.

as "appellants"), to bring a declaratory judgment action in the Circuit Court for Baltimore County against Progressive (and initially Erie Insurance Exchange), which ultimately sought a declaration as to the amounts owed to each of the appellants under the UIM provision of the Progressive policy.[3] The case was removed, on Progressive's initiative, to the United States District Court for the District of Maryland. But it was later remanded back to the Baltimore County circuit court upon the federal district court's determination that it lacked jurisdiction to consider the matter. Upon remand, the Baltimore County circuit court granted summary judgment in favor of Progressive. A settlement was then reached with Erie Insurance, whereupon appellants dismissed their claims against that insurance carrier and noted this appeal from the court's grant of summary judgment in favor of Progressive.

Progressive then sought dismissal of that appeal, on the grounds that appellants had filed their notice of appeal more than thirty days after the dismissal of Erie Insurance from the case, and therefore, their notice failed to comply with Maryland Rule 8-202(a), which requires that a notice of appeal be filed within thirty days "after entry of the judgment." We agreed with Progressive and, in a reported opinion, dismissed the appeal. *Hiob v. Progressive Am. Ins. Co.*, 212 Md. App. 734 (2013). The Court of Appeals thereafter

[3]Virginia Hiob owned, at the time of the accident, a motor vehicle insurance policy issued by Erie Insurance. Her estate sought payment under the UIM provision in that policy.

granted appellants' petition for a writ of certiorari to address that issue. *Hiob v. Progressive Am. Ins. Co.*, 435 Md. 501 (2013).

While this case was before the Court of Appeals, *Connors v. Gov't Employees Ins. Co.*, 216 Md. App. 418 (2014), presented this Court with essentially the same question presented here: whether, following an automobile accident involving multiple injured claimants, a "split-limit" UIM provision, in which the per accident clause is "subject to" the per person limit, requires that each claimant receive payments up to the per person limit, subject to a total payment by the UIM insurer that may not exceed the per accident limit.[4]

After this Court, in *Connors*, agreed with the insurance company's interpretation of the policy, which was essentially what Progressive claims here, namely, that the UIM insurer is obligated to pay only the per accident limit, offset by the amounts paid by other insurers (a result which may, and in this case does, lead to a total payment to each individual claimant that is less than the per person limit), the Court of Appeals granted Connors's ensuing petition for writ of certiorari. *Connors v. Gov't Employees Ins. Co.*, 439 Md. 327 (2014). And, while that case was pending before it, the Court of Appeals reversed and remanded the instant case for us to review essentially the same question as that presented in *Connors*.

[4]Indeed, appellant's brief in *Connors* observed that "this same question is presented in the matter of *Hiob, et al. v. Progressive American Ins. Co., et al.*, September Term, 2010, No. 3009[.]" *Connors v. Government Employees Ins. Co.*, 216 Md. App. 418 (2014), Brief of Appellant, at 2 n.1.

Hiob v. Progressive Am. Ins. Co., 440 Md. 466 (2014). We subsequently issued a stay in the proceedings pending a decision by the Court of Appeals in *Connors*.

The Court of Appeals has now issued a decision in *Connors* affirming the judgment of this Court. *Connors v. Gov't Employees Ins. Co.*, 442 Md. 466, 113 A.3d 595 (2015). We therefore lift our stay and, in light of *Connors*, shall affirm the judgment of the Circuit Court for Baltimore County.

Background

On August 17, 2006, Deborah Hiob was driving her 2005 Toyota Corolla westbound on Liberty Road (Maryland Route 26) in Baltimore County. She had three passengers in her car: her mother-in-law, Virginia Hiob, as well as Margaret Nelson and Laura Dusome. At that time, a truck driven by Raymond Bert Strigle was traveling on the same road but in the opposite direction when it veered across the center line of the road and collided with Hiob's vehicle. All four occupants of Hiob's vehicle sustained serious injuries, and, within two months of the accident, Virginia Hiob and Laura Dusome died from their injuries.

On the date of the accident, motor vehicle insurance policies owned by Strigle, Nelson, Virginia Hiob, and Deborah and Douglas Hiob, that were issued by State Auto Insurance Company ("State Auto"), Nationwide Mutual Insurance Company ("Nationwide"), Erie Insurance, and Progressive, respectively, were in effect:

Strigle's motor vehicle insurance policy, which, as noted, was with State Auto, provided "split limits" of liability coverage of $100,000 per person/$300,000 per accident. After the accident, State Auto settled with the occupants of the Hiob vehicle, paying the full $300,000 per accident policy limit to them (which was, as agreed, divided among them), in exchange for waivers by the occupants and their insurers of their rights of subrogation against Strigle. Consequently, neither State Auto nor Strigle was named as a party to this case.

Nor was Nationwide, Margaret Nelson's insurer, because Nationwide subsequently waived its rights of subrogation and paid $50,000 to Ms. Nelson under the terms of the UIM provision of her policy. And Erie Insurance, Virginia Hiob's insurer, though initially a party to this case, is no longer, as it ultimately settled with Virginia Hiob's estate.

The foregoing resolutions of occupant claims left only Progressive, the insurance carrier for Deborah Hiob and Douglas Hiob, as party to the matter. The Progressive policy provided "split limits" of UIM coverage of $250,000 per person/$500,000 per accident. Each of the injured occupants of the Hiob vehicle—Deborah Hiob and Margaret Nelson—as well as the estates of the two occupants who had died as a result of the accident—Virginia Hiob and Laura Dusome—filed claims against Progressive under the UIM provision of that policy, as their damages exceeded the amounts available under other applicable liability insurance policies.

In response to those claims, Progressive asserted that the policy at issue only required it to pay an aggregate of $150,000; that is, the difference between the $500,000 per accident limit and the $350,000 already paid to appellants by State Auto and Nationwide. Appellants, on the other hand, claimed that the "per person" limit, not the "per accident" limit, should control and that, therefore, Progressive was required, by its policy, to pay to each of the injured parties up to the respective $250,000 per person limits, so long as the total amount paid to all parties did not exceed the per accident limit of $500,000. Therefore, according to appellants, Progressive's refusal to pay more than $150,000 in total violated the terms of the Hiobs' policy.

In any event, because appellants and Progressive agreed that Progressive was liable for at least $150,000, Progressive paid that amount to appellants, dividing it among them as agreed. Then, seeking a resolution of their claim to the remainder of the funds purportedly owed under the UIM provision, appellants filed a declaratory judgment action in the Baltimore County circuit court. Cross motions for summary judgment were ultimately filed.

The circuit court thereafter granted Progressive's motion for summary judgment and denied the motion of appellants requesting the same relief. In its written order, the court declared that "Progressive's aggregate policy limit for the uninsured/underinsured motorist claims" was "$150,000.00, representing its $500,000.00 per accident limit, less the total

amount of other insurance coverage available and paid to [appellants], $350,000.00"; and that, because Progressive had already paid, as agreed by the parties, a total of $150,000 to appellants, Progressive had "paid its policy limit to" appellants, and there was "no additional uninsured/underinsured motorist coverage available to [appellants] under the Progressive policy."

Later, after Erie Insurance settled its claim with the estate of Virginia Hiob, appellants voluntarily dismissed their claims against Erie Insurance "with prejudice." They then noted this appeal, raising a single question: "Do the underinsured motorist provisions of Progressive's insurance contract provide each Plaintiff a limit of underinsured coverage of $250,000, subject to an aggregate payment to all Plaintiffs by Progressive not to exceed $500,000?"

Discussion

A circuit court may grant summary judgment if there is "no genuine dispute as to any material fact," and "the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). Because there are no material facts in dispute in the instant case and the parties disagree only as to the circuit court's interpretation of terms of the insurance policy at issue, the question before us is one of law, *Agency Ins. Co. v. State Farm Mut. Auto Ins. Co.*, 193 Md. App. 666, 672 (2010), and, as such, mandates a de novo review by this Court. *Connors*, *supra*, 442 Md. at __, 113 A.3d at 599.

"Maryland law requires every motor vehicle insurance policy issued in Maryland to contain minimum uninsured motorist coverage." *Id.* "[U]ninsured motorist coverage" is invoked where "an insured is involved in an accident with a motorist who does not carry any liability insurance coverage whatsoever," while "underinsured motorist coverage" is invoked where "an insured is involved in an accident with a motorist who carries liability insurance, but whose insurance coverage is less than the insured's underinsured motorist coverage." *Id.* at __ n.4, 113 A.3d at 599 n.4. It is the latter situation that is before us, as the tortfeasor, Strigle, carried an insurance policy (the State Auto policy alluded to earlier) providing for liability coverage of up to $300,000 per accident, coverage that was obviously less than the $500,000 per accident limit of the UIM provision in the Progressive policy, and as the damages sustained by appellants exceeded the policy limits of all "applicable liability insurance policies, bonds, and securities." Md. Code (1997, 2006 Repl. Vol.), Insurance Article, § 19-509(g).

To provide some necessary context for this dispute, we shall briefly set forth the minimum statutory requirements under the Insurance Article of the Maryland Code. That is because, as we shall explain, Progressive contends that the UIM coverage at issue in this case was intended to comply with this minimum statutory requirement but no more. According to Section 19-509(g) of the Insurance Article:

> The limit of liability for an insurer that provides uninsured motorist coverage under this section is the amount of that

> coverage less the amount paid to the insured, that exhausts any applicable liability insurance policies, bonds, and securities, on behalf of any person that may be held liable for the bodily injuries or death of the insured.

This statutory provision has been termed "gap" coverage, and the Court of Appeals has stated that Maryland is a "gap theory" state—that is, the Maryland UIM statutory scheme "is designed to 'provide an injured insured with resources equal to those which would have been available had the tortfeasor carried liability coverage equal to the amount of uninsured motorist coverage which the injured insured purchased from his own insurance company.'" *Connors*, 442 Md. at __, 113 A.3d at 600 (quoting *Waters v. U.S. Fidelity & Guaranty Co.*, 328 Md. 700, 714 (1992)).

We turn next to the relevant terms of the Progressive policy:

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT

> Subject to the Limits of Liability, if you pay the premium for Uninsured/Underinsured Motorist Coverage, we will pay for damages, other than punitive or exemplary damages, which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury or property damage:
>
> 1. sustained by an insured person;
>
> 2. caused by an accident; and
>
> 3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

We will pay under this Part III only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

* * *

ADDITIONAL DEFINITIONS

When used in this Part III:

* * *

4. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:

* * *

d. to which a bodily injury liability bond, policy, or security applies at the time of the accident, but **the sum of all applicable limits of liability** under all valid and collectible bonds, policies and securities:

i. is less than the coverage limit under this Part III shown on the Declarations Page; or

ii. has been reduced by payments to persons injured in the accident, other than an insured person, to an amount less than the coverage limit under this Part III shown on the Declarations Page.

* * *

LIMITS OF LIABILITY

The limit of liability shown on the Declarations Page for the coverages under this Part III is the most we will pay regardless of the number of:

1. **claims made**;

2. covered vehicles;

3. trailers shown on the Declarations Page;

4. **insured persons**;

5. lawsuits brought;

6. vehicles involved in an accident; or

7. premiums paid.

The limits of liability apply separately to each covered vehicle as shown on the Declarations Page, and coverage for more than one covered vehicle may not be stacked or combined together.

If your Declarations Page shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to a bodily injury to one person;

2. **subject to** the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to bodily injury sustained by two or more persons in any one accident;

The "each person" limit of liability includes the total of all claims made for bodily injury to an insured person and all claims of others derived from such bodily injury, including, but not limited to, emotional injury or mental anguish resulting from the bodily injury of another or from witnessing the bodily injury to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

* * *

OTHER INSURANCE

> If there is other applicable uninsured or underinsured motorist coverage, we will pay only our share of the damages. Our share is the proportion that our Limit of Liability bears to the total of all available coverage limits. However, any insurance we provide shall be excess over any other uninsured or underinsured motorist coverage . . .
>
> We will not pay for any damages which would duplicate any payment made for damages under other insurance. The total amount that an insured person may recover under all applicable policies shall not exceed the highest limit for uninsured or underinsured motorist coverage provided under any one policy. If this policy applies as excess coverage over any other uninsured or underinsured motorist coverage, our Limit of Liability under this Part III shall be reduced by the limit of such other coverage.

(Emphasis added.)

The Declarations Page of the Hiobs' policy shows a "split limit" of $250,000 per person/$500,000 per accident for UIM coverage.

Although appellants concede that Maryland is a "gap theory" state, they claim that the specific policy provision at issue provides for greater coverage than the statutory minimum requirement and that nothing prevents an insurer from providing such additional coverage. Specifically, appellants direct our attention to the paragraph of the UIM provision of the Progressive policy, entitled "LIMITS OF LIABILITY," and, within that paragraph, point to the text immediately following the language, "If your Declarations Page shows a split limit," namely, paragraphs (1) and (2), which state:

> 1. the amount shown for "each person" [$250,000] is the most we will pay for all damages due to a bodily injury to one person [hereafter "paragraph (1)"];
>
> 2. **subject to** the "each person" limit, the amount shown for "each accident" [$500,000] is the most we will pay for all damages due to bodily injury sustained by two or more persons in any one accident [hereafter "paragraph (2)"][.]

(Emphasis added.)

Contrary to what the circuit court held, appellants suggest that, because the per accident "amount" in paragraph (2) is "subject to" the per person limit, it follows that, in calculating the amount Progressive is obligated to pay under the UIM provision of this policy, we should begin with paragraph (1) and apply the per person maximum amount [$250,000] separately to each of the four occupants of the Hiob vehicle; then deduct from that maximum amount for each occupant, any sums received by each under other motor vehicle insurance policies to arrive at the adjusted amount due to each occupant; and finally, we should invoke paragraph (2) and apply the $500,000 per accident limit to the sum of all of those amounts to calculate the total amount Progressive is obligated to pay. The foregoing calculation, as advanced by appellants and applied to the facts of the case before us, is set forth in the table below:

Column 1	Column 2	Column 3	Column 4	Column 5
Insured person	Per person limit under Progressive UIM provision	Amounts already paid by State Auto and Nationwide	Amounts already paid by Progressive	Amounts purportedly still available from Progressive policy (Column 2 amounts minus amounts in Columns 3 and 4)
Deborah Hiob	$250,000	$50,000	$49,000	$151,000
Margaret Nelson	$250,000	$100,000	$49,000	$101,000
Estate of Virginia Hiob	$250,000	$100,000	$3,000	$147,000
Estate of Laura Dusome	$250,000	$100,000	$49,000	$101,000
		Sum of all amounts paid by other insurers equals $350,000	Sum of all amounts already paid by Progressive equals $150,000	Sum of all amounts purportedly still available equals $500,000

The amounts in Column 3 are not in dispute and, as noted in the above chart, have already been paid by State Auto (Strigle's insurer) and Nationwide (Nelson's insurer)[5];

[5]For reasons that do not appear in the record before us, there is no mention of any amount paid by Erie Insurance (Virginia Hiob's insurer). Progressive, however, does not (continued...)

likewise, the amounts in Column 4 are not in dispute and have already been paid by Progressive, as both sides to this dispute agree that Progressive owed at least $150,000. The amounts in Column 5, which are the sums appellants claim are available to be paid by Progressive under Hiob's policy, are calculated by taking the per person limit of $250,000 (as reflected in Column 2) and subtracting any amounts already paid under the Progressive policy (Column 4) as well as all other policies (Column 3), on a per person basis. It is only at the final stage of the calculation, appellants claim, that paragraph (2) should be invoked and the per accident limit of $500,000 applied. Because the sum of all amounts in Column 5 exceeds $350,000 (that is, the $500,000 per accident limit adjusted by the total amount Progressive has already paid), appellants contend that Progressive still owes them $350,000, to be divided among the four insured persons in some manner agreeable to those parties, subject only to the condition that no individual insured person receive, in total, more than the $250,000 per person limit. This result, appellants insist, is dictated by the "clear and unambiguous language" of the Progressive UIM provision in the Hiob policy.

In the event that we find the foregoing argument unpersuasive, appellants argue, in the alternative, that the policy language is ambiguous, as it is "susceptible to more than one meaning" by "a reasonably prudent person." *Connors*, *supra*, 442 Md. at __, 113 A.3d a 604

[5](...continued)
contend that it should be credited for any amount which may have been paid by Erie Insurance.

(citation and quotation omitted). And, therefore, under the well-settled rule that an ambiguity in policy language is construed "liberally in favor of the insured and against the insurer *as drafter of the instrument*," *id.* at __, 113 A.3d at 605 (citation and quotation omitted), their interpretation should prevail. In other words, appellants claim that, when this ambiguous contractual language is interpreted in their favor, as it must be, it requires that Progressive pay each of them as much as $250,000, subject to a maximum per occurrence limit of $500,000.

Progressive, of course, takes a different view, one which, as will become readily apparent, we share. The correct method of calculation, according to Progressive, must begin with paragraph (2) and the per accident limit of $500,000. That amount, it maintains, should then be offset by all amounts paid by other insurers in this case, which total $350,000 (the sum of all amounts in Column 3 above), leaving Progressive obligated to pay a total of only $150,000 to all claimants. (Under Progressive's interpretation, the "subject to the 'each person' limit" phrase, at the beginning of paragraph (2), is automatically satisfied under the circumstances of this case and has no additional effect.) And, because Progressive has already paid $150,000 in total, it therefore owes nothing more. This conclusion is consistent with Insurance Article, § 19-509(g), reasons Progressive, because, had the tortfeasor, Strigle, maintained the same amount of insurance as the Hiobs, then appellants would have been entitled to receive a total of $500,000, the per accident limit of the Progressive policy (which

would, under this hypothesis, be the same as the per accident limit of Strigle's liability insurance).

As noted earlier, the Court of Appeals interpreted a similar policy provision in *Connors*. In that case, as here, the claimants, Robert Connors and Linda Connors, were involved in an automobile accident with another motorist, Adam Pond, who was at fault and underinsured. While the Connorses had UIM coverage, under their own insurance policy with Government Employees Insurance Company ("GEICO"), which provided coverage in the amounts of $300,000 per person/$300,000 per accident, Pond had liability coverage, under an insurance policy with Allstate Insurance Company ("Allstate"), providing coverage in the amounts of $100,000 per person/$300,000 per accident. *Connors*, *supra*, 442 Md. at __, 113 A.3d at 597-98. After a payment from Allstate of the policy limits of Pond's policy, $100,000 for Robert Connors and $100,000 for Linda Connors, the Connorses turned to their own insurer, GEICO, seeking payment under the UIM provision of their own policy. *Id.* at __, 113 A.3d at 598. Although the Connorses claimed that they were owed $300,000 by GEICO, GEICO took the position that it was obligated to pay a total of only $100,000. *Id.*

The UIM provision in the GEICO policy provided:

SECTION IV—UNINSURED MOTORISTS COVERAGE

* * *

LOSSES WE WILL PAY

We will pay damages for bodily injury and property damage caused by an accident which the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle arising out of the ownership, maintenance or use of that vehicle.

* * *

LIMITS OF LIABILITY

Regardless of the number of insureds, autos or trailers to which this policy applies:

1. The limit of liability for Uninsured Motorists coverage stated in the Declarations as applicable to "each person" is the limit of our liability for all damages, including those for care or loss of service, due to bodily injury sustained by one person as the result of one accident. [hereafter "subsection (1)"]

2. The limit of liability for Uninsured Motorists coverage stated in the Declarations as applicable to "each accident" is, **subject to** the above provision respecting each person, the total limit of our liability for all such damages including damages for care and loss of services, due to bodily injury sustained by two or more persons as the result of one accident. [hereafter "subsection (2)"]

* * *

4. . . .

The amount payable under this coverage will be reduced by all amounts:

(a) Paid by or for all persons or organizations liable for the injury;

> (b) Paid under the Bodily Injury and Property Damage coverages of this policy;
>
> (c) Recovered under any workers' or workmen's compensation law, disability benefits law or any similar law, exclusive of non-occupational disability benefits; or
>
> (d) Paid under a property insurance policy. [hereafter "subsection (4)"]
>
> * * *
>
> **DEFINITIONS**
>
> "Uninsured motor vehicle":
>
> * * *
>
> The limit of our liability is the amount of Uninsured Motorists coverage as stated in the Declarations less the amount paid to the insured that exhausts any applicable liability insurance policies, bonds, and securities on behalf of any person who may be held liable for the bodily injury or death of the insured.

Connors, *supra*, 442 Md. at __, 113 A.3d at 600-01 (emphasis added).

The Connorses presented essentially the same argument that appellants present here. The Connorses contended that the clause in subsection (2), in the section "LIMITS OF LIABILITY" of their GEICO policy, beginning with the words "subject to" ("subject to the above provision respecting each person"), rendered the per accident limit "subservient to" the $300,000 per person limit referred to in subsection (1). *Id.* at __, 113 A.3d at 602. Therefore, the amount owed under their UIM coverage, they maintained, should be

calculated by starting with each insured's per person limit of $300,000; subtracting the amounts Allstate paid, $100,000 per person, yielding an amount potentially owed to each insured of $200,000; and finally, adjusting the two per person amounts potentially owed, $200,000 each, by the per accident limit, $300,000. In sum, according to the Connorses, they were due the full $300,000 per accident limit under their GEICO UIM coverage. *Id.*

GEICO presented essentially the same argument that Progressive proffers here. According to GEICO, the amount due to the Connorses should be calculated by starting with the $300,000 per accident limit of UIM coverage in the Connorses' policy; subtracting the total amount paid by Allstate, $200,000 ($100,000 each to Robert Connors and Linda Connors); yielding $100,000 that it owed the Connorses. *Id.* at __, 113 A.3d at 602-03.

The Court of Appeals agreed with GEICO, concluding that the UIM provision at issue was not ambiguous. *Id.* at __, __, 113 A.3d at 605, 607. It reasoned that the words "this coverage," in subsection (4), in the section "LIMITS OF LIABILITY" ("[t]he amount payable under this coverage will be reduced by all amounts . . . [p]aid by or for all persons or organizations liable for the injury"), should be interpreted as referring to "the uninsured motorist coverage generally." *Id.* at __, 113 A.3d at 607. Therefore, according to the Court, the correct method of determining the amount due is, as GEICO had urged, to apply "the calculations and caps of subsection[s] (1) and (2) and arrive at a penultimate number," only thereafter accounting for "payments made by other entities such as Allstate." *Id.* "This

understanding of subsection (4) is confirmed," declared our highest Court, "by the policy's definition of 'uninsured motor vehicle,'" which provides that the amount payable by GEICO must be offset by "the amount paid to the insured that exhausts any applicable liability insurance policies, bonds, and securities on behalf of any person who may be held liable for the bodily injury or death of the insured." *Id.* at __, __, 113 A.3d at 601, 607.[6]

We see no material difference in the factual scenarios presented by *Connors* and the instant case. The UIM provision at issue here, like its counterpart in *Connors*, is unambiguous. The operative clause is part of the "INSURING AGREEMENT":

> We will pay under this Part III [that is, the UIM coverage] only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

As in *Connors*, the clause at issue here plainly states that Progressive will pay under "Part III," that is, the UIM provision "generally," *Connors*, 442 Md. at __, 113 A.3d at 607, "only after the limits of liability under all applicable liability bonds and policies have been exhausted." Accordingly, the correct method of determining the amount due is, as Progressive suggests, to apply the calculations and caps of paragraphs (1) and (2) and arrive

[6]In a footnote, the Court of Appeals further noted that the quoted paragraph in the policy definition of "uninsured motor vehicle" "echoes" Section 19-509(g) of the Insurance Article, which statutorily mandates that all automobile insurance policies issued in Maryland provide "gap" coverage. *Connors v. Gov't Employees Ins. Co.*, 442 Md. __, __ n.10, 113 A.3d 595, 601 n.10 (2015).

at what *Connors* called a "penultimate number," and only then account for "payments made by other entities" such as State Auto and Nationwide. *Id.* (Appellants would, in effect, perform these calculations in the reverse order, beginning with paragraph (1), accounting for payments made by other insurers on a per person basis, and only thereafter applying paragraph (2) and the per accident policy limit to the sum of the "penultimate numbers" as to each insured person, effectively re-casting the UIM provision at issue as excess,[7] rather than gap, coverage.)

Finally, contrary to appellants' assertion that the per person limit "mean[s] what it says," thereby implying that our construction of paragraph (2) does not give effect to the restrictive phrase, "subject to the 'each person' limit," we observe that our construction does indeed give effect to that phrase—namely, and regardless of the net per accident amount Progressive would otherwise owe under the UIM provision at issue, the restrictive phrase makes it clear that no single person may receive more than the per person limit. Consequently, our interpretation is consistent with settled principles of Maryland contract law, which require that, "if reasonably possible, effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the

[7]In contrast with "gap theory" UIM insurance, under which a tortfeasor is underinsured "when the injured party's **uninsured motorist coverage** exceeds the tortfeasor's liability coverage," under an "excess theory," a tortfeasor is underinsured "when the injured party's **damages** exceed the tortfeasor's liability coverage." *Waters*, *supra*, 328 Md. at 712 n. 5 (emphasis added).

language of the writing unless no other course can be sensibly and reasonably followed." *Cochran v. Norkunas*, 398 Md. 1, 17 (2007) (citation and quotation omitted).

Because, under the correct interpretation of the UIM provision at issue in this case, Progressive was obligated to pay a total of $150,000 and has already done so, we conclude that it has discharged its contractual obligation.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.