NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1752

JOHN DALE RILEY, JR. AND PEARL ELAINE RILEY

VERSUS

WAVA H. BUDDEN, ALLSTATE INSURANCE COMPANY, AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Judgment rendered: FEB 14 2007

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On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number 493,658; Division D21
The Honorable Janice Clark, Judge Presiding

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BEFORE: PETTIGREW, DOWNING, GAIDRY, McDONALD, AND HUGHES, JJ.

Downing, J. dissents and assigns reasons.

HUGHES, J.

The issue on appeal in this case is whether the trial court erred in applying Louisiana law rather than Wisconsin law to an uninsured/underinsured motorist (UM/UIM) policy issued in Wisconsin to a claimant who was involved in an automobile accident in Louisiana. For the reasons that follow, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

On March 29, 2001, while driving in Louisiana, John Dale Riley was rear-ended by a vehicle driven by Wava H. Budden and insured by Allstate Insurance Company (Allstate). Mr. Riley contends he suffered back injuries as a result of the accident.

Allstate tendered its $100,000.00 liability limits. Thereafter, Mr. Riley filed a UIM claim with his automobile insurer, State Farm Mutual Automobile Insurance Company (State Farm). The policy, which was issued in Wisconsin, provided UIM limits of $100,000.00/$300,000.00, but contained a clause that reduced the UIM limits by the amount of liability coverage tendered.[1] State Farm attempted to enforce the reduction clause contained in the policy to decrease its policy limits by Allstate's tender. Mr. Riley brought the instant suit against State Farm asserting that the policy should be construed under Louisiana law because he is a Louisiana resident and the accident occurred in Louisiana. Because Louisiana UM/UIM law generally does not admit application of reduction clauses, Mr. Riley argues the reduction clause should not apply.

Following a non-jury trial on the merits, the trial court ruled that Mr. Riley established Louisiana residency and further declared that "Louisiana

[1] The policy authorized reduction of the limits of the UIM coverage by "the amount paid to the ***insured*** by or on behalf of any ***person*** or organization that may be legally responsible for the ***bodily injury***... ."

interests are substantially compelling." Therefore the trial court applied Louisiana law to the Wisconsin UIM policy provisions, and held the reduction provision of the policy unenforceable. State Farm appealed the judgment, asserting that the trial court erred in its choice of law analysis, in finding Louisiana has a more substantial interest in the application of its laws, and in applying Louisiana law to the Wisconsin policy.

DISCUSSION

The appropriate starting point in a multistate case is to first determine that there is a difference between Louisiana's law and the law of the foreign state, and then to conduct a choice-of-law analysis. **Champagne v. Ward**, 2003-3211, p. 22 (La. 1/19/05), 893 So.2d 773, 786. In this case, applicable Wisconsin Statute 632.32 provides, in pertinent part, that "[a] policy may provide that the limits under the policy for uninsured or underinsured motorist coverage for bodily injury or death resulting from any one accident shall be reduced by ... [a]mounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made." Under Louisiana law, reduction clauses are not enforceable when doing so would preclude full recovery by a UM/UIM insured, to which the insured would otherwise be entitled under Louisiana's UM/UIM law (LSA-R.S. 22:680). See **Francis v. Travelers Insurance Company**, 581 So.2d 1036, 1043 (La. App. 1 Cir.), writs denied, 588 So.2d 1114, 1121 (La. 1991). See also **Zuviceh v. Nationwide Insurance Company**, 2000-0773, p. 7 (La. App. 1 Cir. 5/11/01), 786 So.2d 340, 345-46.

In **Champagne v. Ward**, the supreme court held Louisiana law does not automatically apply to UM/UIM claims under a policy issued in another state, even though a Louisiana resident is involved in the accident. Rather,

pursuant to the Louisiana Civil Code, a choice-of-law analysis is necessary. The pertinent Civil Code articles read as follows:

> **Art. 14. Multistate cases**
>
> Unless otherwise expressly provided by the law of this state, cases having contacts with other states are governed by the law selected in accordance with the provisions of Book IV of this Code.

> **Art. 3515. Determination of the applicable law; general and residual rule**
>
> Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.
>
> That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

> **Art. 3537. General rule**
>
> Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.
>
> That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.

In summary, Article 3515 instructs the court to examine the relationship of each state to the parties and the dispute. Further, Article

3537 invites analysis of the nature, type, and purpose of the contract. **Dunlap v. Hartford Insurance Company of the Midwest**, 2004-0725, p. 4 (La. App. 1 Cir. 3/24/05), 907 So.2d 122, 124.

Application of these principles was discussed by this court at length in **Zuviceh v. Nationwide Insurance Company**, 2000-0773 at pp. 7-11, 786 So.2d at 345-48:

> The issue to be resolved is which state's policies would be most seriously impaired if its laws were not applied. LSA-C.C. arts. 3515, 3537. ...
>
> The goal of Louisiana's UM legislation is to promote full recovery for innocent accident victims. **Martin v. Champion Ins. Co.**, 95-0030, p. 3 (La. 6/30/95), 656 So.2d 991, 994. Factors supporting Louisiana's strong interest in promoting full recovery for innocent automobile accident victims are: (1) there are economic interests involved which include costs of medical care (which are more likely to be paid if there is sufficient insurance); (2) there is significant involvement of the facilities of the Department of Public Safety and the judicial system; and (3) the issuing states of the UM policy often have credit and reduction provisions in their UM policies, thereby reducing limits and serving to prevent full recovery by the innocent accident victims.
>
> In further support of a strong public policy for applying Louisiana law under the UM statute, McKenzie and Johnson in *Louisiana Civil Law Treatise* on *Insurance Law and Practice* § 119 at 293, make the following expression:
>
> > Any credit reducing the UM limits by the amount of liability insurance of the adverse driver is clearly contrary to the underinsured motorist protection required by statute. The insured is entitled to recover, subject to the limits of his policy, the difference between his damages and liability insurance of the negligent motorist.
>
> [The other state], however, also has an interest in the UM coverage issue. It has a very real interest in regulation of its insurance industry and in the contractual obligations that are inherent parts thereof. The integrity of the contract is a substantial and real interest. The fact that Congress has allowed fifty states to have their own uniform system of regulations governing insurance strongly suggests this is a legitimate public purpose. **Austin [v. Western World Insurance Company**, 99-2541 (La. App. 4 Cir. 5/17/00), 765 So.2d 390, 394, writ denied, 2000-1795 (La. 9/22/00), 768 So.2d 1288].

In this case, Nationwide and plaintiff entered into a contract that contains reduction clauses that provide, in sum, that plaintiff's recovery will be reduced by amounts paid by Allstate or by Nationwide pursuant to its bodily injury coverage. This agreement was the contemplation of the contracting parties, and the premium of $101.00 per year for UM coverage was based on Nationwide's potential exposure under the policy, including the reduction clauses.

Francis v. Travelers Ins. Co., 581 So.2d 1036, (La. App. 1st Cir. 1991), writs denied, 588 So.2d 1114, 1121 (La. 1991), involved an accident that occurred prior to the 1987 amendment to the UM statute and the effective date of LSA-C.C. art. 14 and Book IV of the Civil Code. In **Francis**, this court performed an "interest analysis" to determine whether Louisiana or Ohio law applied to a UM policy. In that case, the plaintiffs were Louisiana residents who had been injured in Louisiana while they were guest passengers in a car owned and driven by Ohio residents. The owner of the car had a UM policy that was issued and delivered in Ohio. The UM policy contained a limitation of liability provision, and this court noted that a different result would be reached depending on which state's law applied. **Francis**, 581 So.2d at 1041. The policy also contained provisions relative to "out of state" coverage and stated that if accidents occurred in other states, the policy would be interpreted to provide at least the minimum amounts and types of coverage required by the laws of such other states. After conducting an "interest analysis," this court concluded Louisiana's interest outweighed that of Ohio and held that Louisiana law applied. **Francis**, 581 So.2d at 1042.

The method for determining the applicable law is now set forth in the Civil Code. ...

* * *

Zuviceh prepared an affidavit that purports to convey her many significant contacts with the state of Louisiana. At the hearing on this matter, the parties stipulated to the following facts contained therein:

1) The accident occurred in Slidell, Louisiana;
2) The other vehicle involved in the accident was owned and operated by Louisiana residents;
3) Zuviceh's emergency medical care was administered in Louisiana;
4) Zuviceh's treating physician, Dr. Larry Thirstrup, is located in Louisiana;
5) Zuviceh underwent extensive physical therapy at the Wellness Clinic, located in Louisiana;
6) Zuviceh's diagnostic testing was performed in Louisiana;

7) Zuviceh's two sisters, brother and stepmother reside in Louisiana, all of whom she visits frequently;
8) Zuviceh has children and grandchildren residing in Louisiana whom she visits frequently;
9) Zuviceh would travel to Louisiana to baby-sit her grandchild three times per week;
10) Zuviceh owns immovable property in Louisiana;
11) Zuviceh attends church in Louisiana on a weekly basis; and
12) Zuviceh frequently visits her stepchildren who live in Louisiana.

These factors speak for themselves, but the essence is that a Mississippi resident and domiciliary was involved in an accident in this state with a Louisiana resident. Medical attention and treatment were received in Louisiana, and Zuviceh has family, property and church membership in Louisiana, which causes her to frequently visit the state of Louisiana.

The parties' contacts with the state of Mississippi include the following: 1) Zuviceh's choice of residence is within Mississippi; 2) Mississippi is the place of negotiation and formation of the insurance contract; 3) the vehicle Zuviceh was driving at the time of the accident was registered and garaged in Mississippi; 4) Nationwide issues policies in Mississippi; and 5) the insurance policy is a Mississippi contract that contains no provision regarding out-of-state accidents that would suggest that the parties had contemplated the application of another state's laws.

* * *

In conducting our analysis, we are guided by our previous decision of **Francis**. However, we are mindful that **Francis** was decided before the enactment of LSA-C.C. arts. 3515 and 3537. Moreover, we find the fact that the policy at issue in **Francis** contained a provision regarding consideration of other states' laws to be crucial to the finding that Louisiana's law applied. As previously noted, Nationwide's policy contains no such provision.

While Zuviceh clearly has contacts with Louisiana that cause her to frequently visit this state, we find that under the facts of this case, Mississippi's policies will be most seriously impaired if its law is not applied to the insurance policy. The application of Louisiana law to the policy would result in the abrogation of a Mississippi contract. Moreover, we find that Zuviceh's premium for UM coverage was based on the application of Mississippi law to the contract. Thus, we find no error in the trial court's determination that Mississippi's law applies to the Nationwide policy.

In the instant case, Mr. Riley has been a Louisiana residence since 1978. He attended grammar and middle school in Louisiana, but quit his formal education to work with his father. From 1992 to 2000, he spent several months a year working in Illinois and Wisconsin. In September 1998, while living in Wisconsin with his sister, Mr. Riley obtained a Wisconsin driver's license and bought a truck and registered it there. Using his sister's address, he insured the vehicle with State Farm.

Mr. Riley testified that he informed the State Farm representative, Mr. Dellamuth, that he "was from Baton Rouge" and "traveled back and forth." In response to his attorney's question, "Did you also tell [Mr. Dellamuth] you traveled and three, four months out of the year you would come up to Wisconsin to work[,]" Mr. Riley responded, "Yes, Sir."

Mr. Dellamuth testified, via deposition, that Mr. Riley never informed him that he resided anywhere but Wisconsin. Connie Baker, a State Farm automobile underwriting team manager, testified also via deposition, that she was familiar with Mr. Riley's State Farm policy. Ms. Baker further testified regarding premium notices sent to Mr. Riley and payments he made by money order for his premiums (copies of pertinent premium notices and money order payments were annexed to her deposition). Ms. Baker testified that the State Farm premium notices stated, "IF YOU HAVE ... MOVED, PLEASE CONTACT YOUR AGENT." To Ms. Baker's knowledge no notification was received by State Farm that Mr. Riley moved from Wisconsin back to Louisiana. Further, the money orders mailed by Mr. Riley contained a handwritten Wisconsin address. These money orders were dated from 2001 through 2004. Vera Beckham, a State Farm underwriting section manager, testified in her deposition that she supervises all underwriting in Louisiana, and that the State Farm UM/UIM rates charged in

Louisiana for the pertinent time period were significantly higher than those charged in Wisconsin.

Since approximately 2000, Mr. Riley stated that he has lived exclusively in Louisiana and has not worked in Wisconsin, but he nevertheless maintained his driver's license and vehicle registration in Wisconsin. Mr. Riley further stated that he obtained a Louisiana "identification card" to cash checks in Louisiana. Mr. Riley admitted that he had checked on Louisiana insurance rates and found that insurance was less expensive in Wisconsin. Mr. Riley also stated that he continued to receive his State Farm premium notices at his sister's Wisconsin post office box even though he no longer worked in Wisconsin, and that she forwarded them to him for payment. Mr. Riley admitted that he never sent a change of address notice to State Farm. Mr. Riley further admitted that even though he has not worked or lived in Wisconsin for five years, he still has not registered his car in Louisiana, obtained a Louisiana inspection sticker, or obtained a Louisiana driver's license.

Mr. Riley's automobile insurance policy was introduced into evidence and contained the following provision:

> **Premium**
>
> ...The premium for this policy is based on information State Farm has received from ***you*** or other sources. If the information is incorrect or incomplete, or changes during the policy period, ***you*** must inform State Farm of any changes regarding the following:
>
> * * *
>
> ...the location where ***your car*** is principally garaged.
>
> ***You*** agree that if this information or any other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease or increase the premium during the policy period based upon the corrected, completed or changed information. ...

> ...**Concealment of Fraud**
>
> There is no coverage under this policy if ***you*** or any other ***person*** insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

The goal of Louisiana's UM legislation is to promote full recovery for innocent accident victims. On the other hand, Wisconsin has a very real interest in the regulation of its insurance industry and in the integrity of contractual obligations confected in furtherance thereof. This is a legitimate public purpose. See **Dreisel v. Metropolitan Property and Casusalty Insurance Company**, 2001-2705, pp. 6-7 (La. App. 1 Cir. 12/20/02), 836 So.2d 347, 350-51, writ denied, 2003-0199 (La. 3/28/03), 840 So.2d 575. In the instant case, State Farm and Mr. Riley entered into a contract that contained a reduction clause, which provided for the reduction of his UM coverage by the amount collected under the automobile liability insurance covering the owner and/or operator of the underinsured automobile. This agreement was a factor within the consideration of the contracting parties and the premiums were assessed accordingly, based on State Farm's potential exposure under the policy with the reduction clause. See **Dreisel v. Metropolitan Property and Casualty Insurance Company**, 2001-2705 at p. 7, 836 So.2d at 351.

Under the particular facts of this case, we find Wisconsin has a more substantial interest in the uniform application of its laws governing insurance contracts than Louisiana. The application of Louisiana law to this insurance policy would result in the abrogation of a Wisconsin contract.

Moreover, it is apparent that Mr. Riley has intentionally availed himself of the privileges and advantages of purchasing automobile insurance in Wisconsin, and has gone to some trouble to keep Wisconsin insurance

coverage (i.e., failing to notify State Farm that he no longer resides in Wisconsin; allowing State Farm to misdirect his mail to his sister's address and then having her forward same to Louisiana; misrepresenting his actual address on payments to State Farm; and failing to obtain a Louisiana license, registration, or inspection sticker).[2] These activities, obviously motivated by Mr. Riley's desire to obtain the lower insurance premiums available to Wisconsin residents, do not militate in favor of the application of Louisiana law, which would provide Mr. Riley more insurance coverage than he either bargained for or paid for.

We therefore conclude that Wisconsin's policies will be most seriously impaired if its law is not applied to the insurance policy in this case. Consequently, we find the trial court erred in its determination that Mr. Riley satisfied his burden of proof that Louisiana law applied to the State Farm policy. See **Dreisel v. Metropolitan Property and Casusalty Insurance Company**, 2001-2705 at p. 8, 836 So.2d at 351-52. Accordingly, we reverse the judgment of the trial court interpreting the State Farm policy under Louisiana law, and remand to the trial court for a reevaluation of the amount of damages collectable under the State Farm policy after applying all pertinent provisions of the insurance policy as allowable under the laws of Wisconsin.

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[2] We note that Louisiana's motor vehicle and traffic regulation laws require that every person, before operating a motor vehicle on any public street, road, or highway of this state, obtain a driver's license from the Louisiana Department of Public Safety. LSA-R.S. 32:52 and 32:402. Although Title 32 enumerates exceptions to this requirement, only a "nonresident" is entitled to drive under the license of a foreign state, and then only for a period of ninety days. LSA-R.S. 32:404. Further, all vehicles operated on the highways of Louisiana are required to be registered in this state pursuant to LSA-R.S. 32:51 and 47:501, unless the vehicle is owned by a "resident of another state" and falls within the exception provided by LSA-R.S. 47:511. And, every vehicle required to be registered in this state is also required by LSA-R.S. 32:1301 and 1304 to be inspected by a state-approved inspector and bear an inspection sticker. Civil and criminal penalties have been promulgated for violations of Title 32 and Title 47 laws. See LSA-R.S. 32:57, 32:427, 32:1310, and 47:516.

CONCLUSION

For the reasons stated herein, we reverse the judgment of the trial court, and remand the matter for further proceeding in accordance with the foregoing. Each party is to bear his own cost of this appeal.

REVERSED AND REMANDED.

JOHN DALE RILEY, JR. AND PEARL ELAINE RILEY

VERSUS

WAVA H. BUDDEN, ET AL

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 1752

DOWNING, J., dissents, and assigns reasons.

I respectfully dissent. The majority completely disregards the manifest error rule in making its new findings of fact. Under the manifest error rule it cannot do this. I may have decided differently had I been the trial court judge; however, a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of manifest error. ***Stobart v. State, Dept. of Trans. & Dev.***, 617 So.2d 880, 882 (La. 1993). The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. ***Id.***

Here, the trial court found that even though Mr. Riley bought and insured his truck in Wisconsin while living and working in that area, his agent was aware that he also spent much of his time living and working in Louisiana. The trial court commented that it was "quite impressed with the veracity and candor with which petitioner testified." The trial court went on to say that it "is firmly of the opinion that he intended to maintain his domicile and principle place of residence in East Baton Rouge Parish." It is well settled that the factfinder's reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. ***Rosell v. ESCO***, 549 So.2d 840, 844 (La. 1989). The trial court also noted that all his education took place in Louisiana, he had registered for selective service in Louisiana, and resided in the same trailer park where his parents had lived for thirty years. It also

found that he was in Louisiana at least eight to nine months out of every year.

Looking at the record in its entirety and looking at the totality of the circumstances, the trial court's determination was supported by the record, was not manifestly erroneous, and should not be set aside.