

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. AND-25-76

**CATHERINE DUDLEY,
Plaintiff/Appellant**

v.

**HUDSON SPECIALTY INSURANCE COMPANY
Defendant/Appellee**

ON APPEAL FROM THE ANDROSCOGGIN SUPERIOR COURT

BRIEF OF THE PLAINTIFF/APPELLANT

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TABLE OF CONTENTS

I.	TABLE OF AUTHORITIES	3
II.	STATEMENT OF PROCEDURAL HISTORY AND FACTS.....	6
III.	ISSUES PRESENTED FOR REVIEW.....	10
IV.	STANDARD OF REVIEW.....	11
V.	SUMMARY OF ARGUMENT	13
VI.	ARGUMENT.....	14
	A. An Offer to Reapply Is Not an Offer to Renew.....	14
	B. An Offer to an Insurance Producer is Not an Offer to the Insured.....	17
	C. Kanyambo and Mahirwe did not Receive Notice of the Contents of the NEEE Email.....	20
	D. Hudson was Required to Send Written Notice of Nonrenewal to Kanyambo and Mahirwe.....	24
	E. Dudley is Entitled to Partial Summary Judgment.....	33
VII.	CONCLUSION.....	34
VIII.	CERTIFICATE OF SERVICE.....	36

I. TABLE OF AUTHORITIES.

Cases

Adams v. Universal Underwriters Ins. Co., No. 1:10-cv-00146-JAW, 2011 WL 1900043 (D. Me. May 18, 2011).....	28
Barbara Corp. v. Bob Maneely Ins. Agency, 197 N.J. Super. 339, 484 A.2d 1292 (1984).....	27
Butterfield v. Norfolk & Dedham Mut. Fire Ins. Co., 2004 ME 124, ¶4, 860 A.2d 861.....	24
Cambridge Mut. Fire Ins. Co. v. Perry, 1997 ME 94, 692 A.2d 1388.....	34
Corinth Pellets, LLC v. Arch Specialty Ins. Co., 2021 ME 10, 246 A.3d 586.....	14, 16, 22, 24, 25, 27, 33
Cormier v. Genesis Healthcare, LLC, 2015 ME 161, 129 A.3d 944.....	12
F.R. Carroll, Inc. v. TD Bank, N.A., 2010 ME 115, ¶ 8, 8 A.3d 646, 648-9.....	12
Ghiz v. Richard S. Bradford, Inc., 573 A.2d 379 (Me. 1990).....	18, 19, 20
Harvester Chem. Corp. v. Aetna Cas. & Sur. Co., 277 N.J. Super. 421, 649 A.2d 1296 (Super. Ct. App. Div. 1994).....	18, 26
Jenness v. Nickerson, 637 A.2d 1152 (Me. 1994).....	12
Lyle v. Mangar, 2011 ME 129, 36 A.3d 867.....	12

Maine Bonding & Cas. Co. v. Knowlton, 598 A.2d 749 (Me. 1991).....	26, 28
Nationwide Mut. Ins. Co. v. Davis, 7 N.C. App. 152, 171 S.E.2d 601 (1970).....	27
Patrons Oxford Ins. Co. v. Harris, 2006 ME 72, 905 A.2d 819.....	33, 34
Remmes v. The Mark Travel Corp., 2015 ME 63, 116 A.3d 466.....	12
Rocque v. Co-operative Fire Ins. Ass’n of Vt., 140 Vt. 321, 438 A.2d 383 (1981).....	19, 20
Sausen v. Am. Family Mut. Ins. Co., 121 Wis. 653, 360 N.W.2d 565 (1984).....	27
Shore v. Coronet Ins. Co., 7 Ill. App. 3d 782, 288 N.E.2d 887 (1972).....	27
Skilken & Co. v. Berkley Aviation LLC, No. 2:15-CV-161-JAW, 2017 WL 1025728 (D. Me. Mar. 15, 2017).....	28, 31, 32, 33
State v. Vainio, 466 A.2d 471, 474 (ME 1983).....	25
Struck v. Hackett, 668 A.2d 411 (Me. 1995).....	11
Sunset Enters. v. Webster & Goddard, Inc., 556 A.2d 213 (Me. 1989).....	18
Texas Specialty Underwriters, Inc. v. Tanner, 997 S.W.2d 645 (Tex. App. 1999).....	28
United Heritage Prop. & Cas. Co. v. Zech,	

170 Idaho 764, 526 P.3d 1035 (2022).....	29, 30
Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc., 2021 ME 65, 264 A.3d 1248.....	19

Statutes and Rules

24-A M.R.S. § 2009.....	15
24-A M.R.S. § 2009-A(1).....	23, 25
24-A M.R.S. § 2904.....	33
24-A M.R.S. § 2908(1)(D).....	24
24-A M.R.S. § 2908(1)(E).....	16
24-A M.R.S. § 2908(5)(B).....	23, 25
24-A M.R.S. § 3007(1)(D).....	24
24-A M.R.S. § 3007(1)(E).....	16
24-A M.R.S. § 3007(5)(B).....	23, 25
M.R. Civ. P. 56(c).....	12

Secondary Sources

2 Field, McKusick & Wroth, <i>Maine Civil Practice</i> § 56.4 (2d ed. 1970).....	12
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II. STATEMENT OF PROCEDURAL HISTORY AND FACTS.

Catherine Dudley (“Dudley”) filed a reach-and-apply action against Hudson Specialty Insurance Company (“Hudson”) pursuant to 24-A M.R.S.A. § 2904 seeking payment under a liability policy issued to Michel Kanyambo (Kanyambo”) and Speciose Mahirwe (“Mahirwe”) for a judgment entered against them. (Second Amended Complaint, Count I, App. 38-43). The judgment arose from personal injuries Dudley sustained in a fall on September 23, 2018 at an apartment building in Lewiston, Maine owned by Kanyambo and Mahirwe. In addition to the reach-and-apply claim, Dudley asserted a breach of contract claim against Hudson that had been assigned to her by Kanyambo and Mahirwe seeking to recover the attorney’s fees and expenses incurred by them in defending the underlying personal injury action. (Second Amended Complaint, Count II, App. 43-4).

Kanyambo and Mahirwe purchased the apartment building on September 14, 2017 and contacted Champoux Insurance Group (“Champoux”)¹, an insurance producer, (PSMF ¶ 2, App. 57), to

¹ At the time, it was incorporated as Champoux Insurance Agency, Inc., and later changed its name to Champoux Insurance Group, Inc. (PSMF ¶ 1, App. 57). For clarity, Plaintiff refers to the entity throughout as “Champoux” regardless of its corporate name at the relevant time.

obtain insurance coverage. (PSMF ¶ 3, App. 58). Champoux engaged New England Excess Exchange, Ltd. (“NEEE”), which secured a general liability policy from Hudson and a commercial property policy from Underwriters at Lloyd’s, London. (PSMF ¶¶ 7-8, App. 58). NEEE is the agent of Hudson. (PSMF ¶ 42, App. 67; Plaintiff’s Reply SMF ¶ 17, App. 87). Both policies were effective from September 14, 2017 through September 14, 2018. (PSMF ¶¶ 8–9, App. 58-9).

Hudson declined to defend Dudley’s personal injury lawsuit, asserting that its policy had expired nine days before the incident. (PSMF ¶ 32, App. 64). The case subsequently proceeded to mediation and was settled. (PSMF ¶ 36, App. 65). The court thereafter entered judgment against Kanyambo and Mahirwe in the amount of \$470,000.00, plus interest and costs. (PSMF ¶ 39, App. 66).

The coverage dispute turns on whether Hudson’s policy remained in effect on the date of the incident due to Hudson’s failure to provide written notice of nonrenewal as required by both Maine law and the terms of the policy. The following facts concern Hudson’s communications and conduct with respect to the nonrenewal process, including the issuance of a conditional quote and the absence of notice to Kanyambo and Mahirwe.

On July 31, 2018, NEEE sent to Champoux by email a policy quote dated July 26, 2018. (PSMF ¶¶ 16-18, App. 60-1; Plaintiff's Response to Hudson SMF ¶ 12, App. 117-8; NEEE email, App. 190-198). That same day, a representative from Champoux spoke with Kanyambo and informed him that they had received a renewal quote for the Hudson liability policy, but that Lloyd's would not be renewing the property policy. (Plaintiff's Reply SMF ¶ 12, App. 85; Plaintiff's Response to Hudson SMF ¶ 20, App. 124; Plaintiff's Statement of Additional Facts ¶¶ 12-13, App. 134). The quote was valid for 30 days and was contingent upon the completion of a new insurance application, including ACORD forms 125 and 126 (App. 199-207) and a TRIA Policyholder Disclosure form. (PSMF ¶¶ 17-22, App. 61-2; NEEE Quotation, App. 194). ACORD form 126 contains a notice that states in relevant part: "CREDIT SCORING INFORMATION MAY BE USED TO HELP DETERMINE EITHER YOUR ELIGIBILITY FOR INSURANCE OR THE PREMIUM YOU WILL BE CHARGED." (App. 203) (Emphasis in original).

There were no communications with Mahirwe. (PSMF ¶6, App. 58). The contingencies and reapplication requirements were not communicated to Kanyambo. (PSMF ¶¶ 23-26, 41, App. 62-3, 66-7;

Plaintiff's Response to Hudson SMF ¶¶ 19-22, App. 123-5; Plaintiff's Statement of Additional Facts ¶¶ 11-15, App. 134-5). The NEEE email and new insurance application were never sent to Kanyabo and Mahirwe. (PSMF ¶¶ 23-26, 41, App. 62-3, 66-7; Plaintiff's Response to Hudson SMF ¶¶ 19-22, App. 123-5; Plaintiff's Statement of Additional Facts ¶¶ 19, 21, App. 135-6). The quote expired on August 25, 2018, before the scheduled expiration of the policy. (PSMF ¶¶ 17-19; NEEE Quotation, App. 194).

Neither Hudson nor NEEE sent a written notice of nonrenewal to Kanyambo and Mahirwe prior to the Hudson policy's expiration. (PSMF ¶¶ 14-15, App. 60). NEEE sent the notice of nonrenewal for the Lloyd's commercial property policy directly to Kanyambo and Mahirwe. ((PSMF ¶ 13, App. 60). Champoux states it mailed a nonrenewal notice for the Hudson policy on September 14, 2018, but Kanyambo and Mahirwe did not receive it. (PSMF ¶ 40, App. 66; Plaintiff's Response to Hudson SMF ¶ 25, App. 130). Kanyambo and Mahirwe expected to receive a renewal notice and invoice for the Hudson policy, as they had with other insurance policies, but received neither. (PSMF ¶ 41, App. 66-7, Plaintiff's Response to

Hudson SMF ¶ 23, App. 126-7; Plaintiff's Statement of Additional Facts ¶ 117, App. 135).

On September 5, 2024, Dudley and Hudson filed cross motions for summary judgment. (App. 48-56, 89-101). On February 6, 2025, the Superior Court issued an order denying Dudley's motion and granting Hudson's motion.² (Order on Cross Motions for Summary Judgment, App. 11-17). Final judgment was entered that same day. (Docket Record, App. 3). On February 20, 2025, Dudley timely filed this appeal. (Docket Record, App. 9).

III. STATEMENT OF ISSUES PRESENTED FOR REVIEW.

- A.** Whether a conditional renewal offer requiring a new application and underwriting submitted to an insurance producer is an "offer to renew" under the Maine Insurance Code?

² In addition to the breach of contract claim against Hudson, Kanyambo and Mahirwe assigned to Dudley any claims they had against Champoux Insurance Group. Count III of Dudley's complaint asserted the assigned claim against Champoux. (Second Amended Complaint, Count III, App. 44-7). On February 5, 2025, the Superior Court granted Champoux's motion for summary judgment. (*Order on The Champoux Insurance Group's Motion for Summary Judgment*, App. 208-213). Dudley subsequently settled her claim against Champoux and did not appeal the order granting summary judgment.

- B.** Whether a conditional renewal offer requiring a new application and underwriting submitted to an insurance producer who lacks ongoing agency authority and who never informs the insured of the terms of the conditional renewal offer is an "offer to renew" under the Maine Insurance Code?
- C.** Whether verbal notice from an insurance producer of the receipt of a renewal quote without notice of the renewal terms and conditions is an "offer to renew" under the Maine Insurance Code?
- D.** Whether in the absence of timely written notice of nonrenewal as mandated by the Maine Insurance Code and the insurance policy, the policy remains in effect beyond its stated term?
- E.** Whether Catherine Dudley is entitled to partial summary judgment on her reach and apply action?

IV. STANDARD OF REVIEW.

This Court reviews *de novo* a trial court's decision on summary judgment. *Struck v. Hackett*, 668 A.2d 411, 416 (Me. 1995).

Summary judgment is appropriate only where there is no genuine dispute as to any material fact and the moving party is

entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Remmes v. The Mark Travel Corp.*, 2015 ME 63, ¶ 8, 116 A.3d 466. In evaluating a motion for summary judgment, the Court considers the facts in the light most favorable to the non-moving party. *Cormier v. Genesis Healthcare, LLC*, 2015 ME 161, ¶ 7, 129 A.3d 944; *Jenness v. Nickerson*, 637 A.2d 1152, 1154 (Me. 1984) (“[T]he party seeking the summary judgment has the burden of demonstrating clearly that there is no genuine issue of fact. Any doubt on this score will be resolved against him and the opposing party will be given the benefit of any inferences which might reasonably be drawn from the evidence.”) (quoting 2 Field, McKusick & Wroth, *Maine Civil Practice* § 56.4 at 39 (2d ed. 1970))). When there are cross motions for summary judgment, each motion is analyzed separately with inferences drawn in favor of the opposing party. *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8 A.3d 646, 648-9.

Statutory interpretation and the application of insurance policy terms are questions of law for the Court. See *Lyle v. Mangar*, 2011 ME 129, ¶ 11, 36 A.3d 867, 870.

V. SUMMARY OF ARGUMENT.

This case centers on whether Hudson Specialty Insurance Company effectively nonrenewed its liability policy with Michel Kanyambo and Speciose Mahirwe before the policy's expiration on September 14, 2018. Under Maine law, nonrenewal requires written notice to the insured prior to expiration. Hudson did not provide such notice. Instead, its agent, New England Excess Exchange (NEEE), sent to Champoux Insurance Group an email containing a quote conditioned on a new application and additional underwriting. This quote was not communicated to the insureds and expired before the policy's end date.

Maine statutes mandate strict compliance with nonrenewal notice requirements, which serve to protect insureds from unexpected lapses in coverage. The absence of a clear, timely, and direct nonrenewal notice means the policy remained in effect on September 23, 2018, when Catherine Dudley was injured on the insureds' property. Accordingly, Dudley is entitled to recover under the policy through her reach-and-apply action.

VI. ARGUMENT.

A. An Offer to Reapply Is Not an Offer to Renew

The Superior Court treated Hudson as a surplus lines insurer³. (Order on Cross Motions for Summary Judgment at 1–2, App. 11–12). That characterization is not supported in the record. The court did not cite specific evidence in the record although the Order appears to reference both Dudley S.M.F. ¶ 8 and Hudson S.M.F. ¶ 6. Dudley S.M.F. ¶ 8 does not mention surplus lines. Hudson S.M.F. ¶ 6 refers to Hudson as a surplus lines insurer but offers no citation to the record. In her opposing statement, Dudley qualified her response by noting that there was no evidence in the record establishing Hudson’s status as a surplus lines insurer and objecting on the ground that Hudson failed to provide a supporting record citation. (Plaintiff’s Response to Hudson SMF ¶ 6, Appendix 112).

Maine law requires that a policy issued by a surplus lines insurer shall bear the stamp of the producer with surplus lines authority and the warning:

³ There is no statutory definition for “surplus lines insurer”, but it generally is understood to mean “an insurer that is not licensed to transact business within the state where the risk is located.” *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 5 n. 1, 246 A.3d 586.

This insurance contract is issued pursuant to Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance.

24-A M.R.S. § 2009. The Hudson policy does not bear this mandatory surplus lines language. (Hudson policy, App. 145-189).

The Superior Court seemed to believe that surplus lines insurers occupy a special status with respect to policy renewals. The Court emphasized that, unlike the typical experience of insureds—and contrary to the expectations of Kanyambo and Mahirwe (PSMF ¶ 41, App. 66-7)—it is common practice for surplus lines insurers to require a new application with each renewal. The court cited deposition testimony from the President of Champoux—even though that testimony was not included in either party’s statement of material facts. (Order on Motions for Summary Judgment, App. 15 n.6).

The Court’s erroneous assumption that Hudson is a surplus lines insurer may ultimately be inconsequential because the definition of “renewal” and “to renew” is the same for all types of insurers. Pursuant to the Maine Insurance Code:

"Renewal" or "to renew" means the issuance of, or

the offer to issue by an insurer, a policy succeeding a policy previously issued and delivered by the same insurer or an affiliate of the insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.

24-A M.R.S. § 2908(l)(E) (casualty lines); 24-A M.R.S. § 3007(l)(E) (property lines); *Corinth*, 2021 ME 10, ¶ 22, 246 A.3d 586 (using the definition of "nonrenewal" from sections 2908 and 3007 in a surplus lines case).

NEEE's email to Champoux did not offer "to renew" the existing policy. Instead, NEEE's email required Kanyambo and Mahirwe to complete a new set of application forms (ACORD 125, 126, and TRIA disclosure forms). (See PSMF ¶¶ 17, 18, 20, 21, 22, App. 61-2). The quote was contingent on the submission of those forms and acceptance of the risk disclosed. The quote was valid for only 30 days, expiring on August 25, 2018. (PSMF ¶¶ 17-19, App. 61).

NEEE demanded an entirely new application for insurance. The request for a new insurance application was not an offer to renew the existing policy, but instead was initiation of the process for evaluating whether to enter into a new contractual agreement. The two processes—renewal and new application—are legally and practically

distinct. In a renewal, the insurer commits to extending the existing policy terms without requiring a complete reassessment of the insured's risk.

In contrast, requesting a new set of application forms introduces uncertainty because there is no assurance that the insurer will provide coverage. A new application requested by NEEE required detailed information such as loss history, criminal history, fire and safety code violations, bankruptcy history, judgment and lien history, and other business information for a fresh risk analysis. (ACORD Form 125, App. 200–203). One particular form, ACORD Form 125, underscored that Hudson might not offer new coverage. That form included a notice stating, in relevant part:

CREDIT SCORING INFORMATION MAY BE USED TO
HELP DETERMINE EITHER YOUR ELIGIBILITY FOR
INSURANCE OR THE PREMIUM YOU WILL BE
CHARGED.

(App. 203) (emphasis in original). A request for a new set of application forms constitutes a negotiation for a new contract, not the renewal of the existing one.

B. An Offer to an Insurance Producer is Not an Offer to the Insured

The communication from NEEE to Champoux concerning the renewal quotation and reapplication process did not constitute notice from Hudson to its insureds, Kanyambo and Mahirwe. See, *Harvester Chem. Corp. v. Aetna Cas. & Sur. Co.*, 277 N.J. Super. 421, 432 n. 8, 649 A.2d 1296, 1302 n. 8 (Super. Ct. App. Div. 1994) (notice to insurance agent or broker is not notice to insured). There is no record evidence that Champoux was the agent of Kanyambo and Mahirwe at the time of the communication. The Law Court has made clear that in most circumstances, an insurance producer's obligations to the insured do not extend beyond the initial procurement of the policy. In *Ghiz v. Richard S. Bradford, Inc.*, 573 A.2d 379 (Me. 1990), the Court explained that "[o]bligations between a seller and a buyer of commodities or services may arise out of contractual or agency undertakings and out of tort duties prohibiting fraud or misrepresentation," but that "there is no independent duty of reasonable care" on the part of an insurance producer once the policy has been procured. *Id.* at 380.

This principle is reinforced in *Sunset Enterprises v. Webster & Goddard, Inc.*, 556 A.2d 213, 215 (Me. 1989), where the Court held that "[a]n agent has no duty to notify the insured when it receives

notice from the insurer that coverage is cancelled." The Law Court has similarly recognized that "once a policy has been procured, an insurance broker owes no further duty to the insured with respect to that policy unless the parties have otherwise agreed." *Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 4 n.1, 264 A.3d 1248, 1250. There is no evidence that Champoux had any continuing authority to act on behalf of Kanyambo and Mahirwe. There is no evidence that Champoux was authorized to receive formal notice of nonrenewal or conditional renewal terms. Notably, NEEE sent the notice of nonrenewal for the Lloyd's commercial property policy directly to Kanyambo and Mahirwe—not to Champoux. ((PSMF ¶ 13, App. 60; Hudson's Resp. to Dudley's First Req. for Admis. ¶ 8, filed with Dudley's Mot. for Partial Summ. J.). NEEE's notice to Champoux is not notice to Kanyambo and Mahirwe.

In *Ghiz*, this Court explicitly adopted the reasoning of the Vermont Supreme Court in *Rocque v. Co-operative Fire Insurance Association of Vermont*, 140 Vt. 321, 438 A.2d 383 (1981):

Absent special facts not present here, it is generally well settled that once a policy has been procured as requested, the relationship terminates and no further duty is owed the insured by the insurance agent with respect to such insurance. Specifically,

where an insurance company is required to give direct notice of cancellation to the insured, as is the case here, the insurance agent is not liable for a failure to notify, since he is justified in assuming that the insured would be made aware of the cancellation from other sources.

Ghiz, 573 A.2d at 381 (quoting *Rocque*, 438 A.2d at 386).

This passage highlights that when the law or insurance policy requires direct notice to the insured, notice to a previous producer of insurance is not legally sufficient.

The rationale in *Ghiz* and *Rocque* applies not only to nonrenewal notices, but also to conditional renewal offers. NEEE's July 31, 2018 email to Champoux—which contained a time-limited quote contingent on a new insurance application—cannot be deemed notice to Kanyambo and Mahirwe.

C. Kanyambo and Mahirwe did not Receive Notice of the Contents of the NEEE Email

The Superior Court's statement that "Kanyambo received timely notice of the renewal offer" (Order on Cross Motions for Summary Judgment, App. 15) is inaccurate. Although Champoux called Kanyambo after receiving NEEE's email, the discussion was limited.

Champoux informed Kanyambo of three matters: (1) it had a general liability insurance quote from Hudson, (Plaintiff's Reply SMF ¶ 12, App. 85; Plaintiff's Statement of Additional Facts ¶ 12, App. 134); (2) it did not have a property insurance quote, (Plaintiff's Response to Hudson SMF ¶ 20, App. 124; Plaintiff's Statement of Additional Facts ¶ 13, App. 134); and (3) Kanyambo needed to make repairs to obtain property insurance, (Plaintiff's Response to Hudson SMF ¶ 20, App. 124; Plaintiff's Statement of Additional Facts ¶ 13, App. 134). Kanyambo informed Champoux that he would make the necessary repairs. (Plaintiff's Response to Hudson SMF ¶ 20, App. 124; Plaintiff's Statement of Additional Facts ¶ 14, App. 134)

Kanyambo alone was informed by Champoux that Champoux had received a renewal quote. (Plaintiff's Response to Hudson SMF ¶ 19, App. 123). Nothing whatsoever was communicated to Mahirwe. (PSMF ¶ 6, App. 58). The terms of the offer or its conditions were never relayed orally or in writing to Kanyambo. (PSMF ¶¶ 23–26, 41, App. 62-3, 66-7; Plaintiff's Response to Hudson SMF ¶¶ 19-22, App. 123-6). The reapplication requirement was never communicated to Kanyambo or Mahirwe. (PSMF ¶ 41, App. 66-7; Plaintiff's Reply SMF ¶ 12, App. 85). The NEEE quotation and renewal application

documents were never submitted to Kanyambo or Mahirwe for completion. (PSMF ¶¶ 23–26, 41, App. 62-3, 66-7; Plaintiff’s Response to Hudson SMF ¶¶ 19-22, App. 123-5, Plaintiff’s Statement of Additional Facts ¶¶ 7-10, App. 133-4). Kanyambo and Mahirwe were never told the amount of the premium. (Plaintiff’s Response to Hudson SMF ¶¶ 19-22, App. 123-6). The quote expiration date was never conveyed to Kanyambo and Mahirwe. (PSMF ¶¶ 23-6, 41 App. 62-3, 66-7; Plaintiff’s Response to Hudson SMF ¶¶ 19-22, App. 123-6). Kanyambo and Mahirwe expected to receive a renewal notice and invoice, as they had with other insurance policies, but received neither. (PSMF ¶ 41, App. 66-7, Plaintiff’s Response to Hudson SMF ¶ 23, App. 126-7; Plaintiff’s Statement of Additional Facts ¶ 117, App. 135).

Even if the quote from NEEE to Champoux was a renewal offer, failure to communicate its contents and conditions renders it ineffective. See *Corinth Pellets*, 2021 ME 10, ¶22, 246 A.3d 586, 593 (notice must be received to be effective). To hold otherwise would effectively nullify the consumer protection purpose behind Maine’s statutory notice requirements and would be contrary to both settled law and the intent of Maine’s insurance statutes.

Even if this were a renewal offer (which it was not), it expired on August 25, 2018. Once it expired, there was no offer in place, and Hudson was unwilling to bind coverage. A lapsed or withdrawn offer cannot substitute for the statutory requirement of written notice of nonrenewal.

The structure and logic of the Maine Insurance Code support the conclusion that an offer to renew must be made in writing and communicated directly to the insured. Maine law consistently requires that critical notices—such as cancellation, nonrenewal, conditional renewal, and premium increases—be in writing and delivered to the insured within specified timeframes. *See, e.g.*, 24-A M.R.S. §§ 2009-A(1), 2908(5)(B), 3007(5)(B). These written notice requirements reflect a clear legislative intent to ensure transparency, avoid confusion, and protect consumers. It would be inconsistent to allow something as consequential as an “offer to renew”—the absence of which may result in a lapse of coverage—to be delivered informally or verbally.

Here, the only “notice” was a verbal statement by the insurance producer to Kanyambo that a renewal quote had been received. No details were provided—no policy terms, premium amount,

application requirements, or deadlines were conveyed. The risk of misunderstanding or error in such informal communications is substantial. A written offer, by contrast, can be reviewed, clarified, and confirmed. It provides a concrete record of what was offered, when, and under what conditions. That is precisely why Maine’s statutory framework consistently requires written notice: to promote accountability and avoid the very kind of uncertainty that occurred here.

D. Hudson was Required to Send Written Notice of Nonrenewal to Kanyambo and Mahirwe

The Maine Insurance Code defines “nonrenewal” uniformly across all insurance lines. “[N]onrenewal’ means termination of a policy at its expiration date.” *See, Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 22, 246 A.3d 586, 593 (surplus lines); 24-A M.R.S. § 2908(1)(D) (casualty insurance); 24-A M.R.S. § 3007(1)(D) (property insurance). The Hudson policy adopts these statutory provisions as part of the insurance contract. (PSMF ¶¶ 10-11, App. 59; Hudson policy, App. 188).

“[W]ords in a statute must be given their plain, common, and ordinary meaning...” *Butterfield v. Norfolk & Dedham Mut. Fire Ins.*

Co., 2004 ME 124, ¶4, 860 A.2d 861 (quoting *State v. Vainio*, 466 A.2d 471, 474 (ME 1983)). This definition is clear and unambiguous. It is undisputed that Hudson did not provide written notice of nonrenewal to Kanyambo and Mahirwe prior to the policy's expiration date. Its failure to do so is dispositive.

“Nonrenewal” requires written notice to the Kanyambo and Mahirwe. 24-A M.R.S. § 2009-A(1) (surplus lines); 24-A M.R.S.A. § 2908(5)(B) (casualty insurance); 24-A M.R.S. § 3007(5)(B) (property insurance). Under 24-A M.R.S. § 2009-A(1) (surplus lines insurance), nonrenewal is not effective unless the insured receives written notice at least 14 days before the effective date of cancellation.⁴ For both casualty and property insurance, the statutes require written notice at least 30 days in advance. See 24-A M.R.S. § 2908(5)(B) (casualty insurance); 24-A M.R.S. § 3007(5)(B) (property insurance).

Hudson's policy mirrors the statutory scheme:

⁴ The statute provides:

Notice. Cancellation and nonrenewal by an insurer of surplus lines coverage subject to this chapter shall not be effective unless received by the named insured at least 14 days prior to the effective date of cancellation or, when the cancellation is for nonpayment of premium, at least 10 days prior to the effective date of cancellation. A postal service certificate of mailing to the named insured at the insured's last known address shall be conclusive proof of receipt on the 5th calendar day after mailing.

24-A M.R.S. § 2009-A(1). Although the statute does not expressly require written notice, it has been interpreted to do so. *Corinth Pellets*, 2012 ME 10, ¶ 37, 246 A.3d 586, 593.

Nonrenewal

If we decide not to renew this policy, we will mail or deliver notice of nonrenewal to the first Named Insured. Nonrenewal will not be effective prior to 30 days after receipt by the first Named Insured of the notice of nonrenewal. A post office certificate of mailing to the first Named Insured at the last known mailing address will be conclusive proof of receipt of notice on the third calendar day after mailing.

(Hudson policy, App. 188.).

The Law Court has consistently held that these statutory notice provisions are mandatory and must be strictly construed in favor of the insured. *Maine Bonding & Casualty Co. v. Knowlton*, 598 A.2d 749, 750 (Me. 1991) (statutes regarding notice of cancellation or nonrenewal are to be given a “consumer protection bent”). “Notice requirements are designed to prevent a lapse in coverage not only for insureds, but also to protect innocent third parties since lapse of coverage could translate into uncompensated injury that ought rightfully be remunerated.” *Harvester Chem. Corp. v. Aetna Cas. & Sur. Co.*, 277 N.J. Super. 421, 432 n.8, 649 A.2d 1296 (Super. Ct. App. Div. 1994). The legislative purpose behind these statutes is to prevent precisely the type of coverage gap that occurred here.

Statutes in some states explicitly provide that a notice of

nonrenewal is not required when an insurer offers to renew a policy. *See, Shore v. Coronet, Insurance Co.*, 7 Ill. App. 3d 782, 784, 288 N.E.2d 887, 888 (1972). Maine has no such exception in our statute. In jurisdictions without such statutory exceptions, insurers are generally required to send a notice of nonrenewal if the insured failed to pay the renewal premium by the expiration date. *Barbara Corp. v. Bob Maneely Insurance Agency*, 197 N.J. Super. 339, 345, 484 A.2d 1292, 1295 (1984); *Nationwide Mutual Insurance Co. v. Davis*, 7 N.C. App. 152, 17-160, 171 S.E.2d 601, 604-5 (1970) (if insured does not pay the renewal premium, the insurer has the option of treating the unpaid premium as an account receivable or refusing to renew the policy and sending the required notice). *See also, Sausen v. American Family Mutual Insurance Co.*, 121 Wis. 653, 656-7, 360 N.W.2d 565, 566-7 (1984 (insurance policy does not lapse if insurer fails to give insured either notice of premium due or notice of nonrenewal). These cases align with the plain reading of Maine's nonrenewal notice statutes.

The statutory language is clear: without written notice, the policy remains in effect beyond its stated expiration date. *See Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶22, 246 A.3d

586, 593; *Skilken & Co. v. Berkley Aviation LLC*, No. 2:15-CV-161-JAW, 2017 WL 1025728 (D. Me. Mar. 15, 2017). The absence of written notice is not a mere procedural misstep; it is a condition precedent to nonrenewal. See *Skilken*, 2017 WL 1025728, at *16; *Adams v. Universal Underwriters Ins. Co.*, No. 1:10-cv-00146-JAW, 2011 WL 1900043, at *18 (D. Me. May 18, 2011). The trial court failed to enforce the policy's plain terms, which, like the statutes, must be construed in favor of the insured. See *Maine Bonding*, 598 A.2d at 750.

In excusing Hudson's failure to provide timely written notice of nonrenewal to its insureds, the Superior Court relied on caselaw from Idaho and Texas to the effect that notice of nonrenewal is not required if an insurer offered to renew and the insured declined the offer. There is no such exception under the Maine insurance code, and there is no such exception in the Hudson policy language. Moreover, the two cases cited by the Superior Court are distinguishable.

Texas Specialty Underwriters, Inc. v. Tanner, 997 S.W.2d 645 (Civ. App. 1999) is a lower appellate court case interpreting a very different nonrenewal statute under a very different set of facts. The Texas statute gave the option of renewing to the insured, unless the

insurer had given timely written notice of nonrenewal. An insured who did not receive written notice of nonrenewal, could opt to renew or opt not to renew. The policy itself did not automatically renew. Sixty days before expiration of his policy, Tanner received an unambiguous offer to renew at the same coverage limits contingent only upon signing an instruction form opting for renewal and making payment of the renewal premium. Tanner did not sign the form to renew and did not make payment of the renewal premium. After expiration of the policy, he suffered a loss and tried to then pay the renewal premium to reinstate the policy. The Court ruled against Tanner based on his receipt of the renewal offer and his failure to accept it. The Texas statute was not in the form of a consumer protection statute like our Maine statute which makes renewal automatic absent timely written notice of nonrenewal. Action by the Texas insured was always required, either opting to renew or not when no notice of nonrenewal was received or accepting or not if an offer to renew was received. In addition, the offer to renew in Tanner was simple and unambiguous and was not an offer to complete a new set of application forms.

The issue in *United Heritage Prop & Cas. Co. v. Zech*, 170 Idaho

764, 526 P.3d 1035 (Idaho 2022) was interpretation of a policy provision concerning renewal in the absence of any applicable statute or rule. The Court took pains to elaborate the three ways in which a policy may terminate: during its effective term by the insurer's cancellation, where an insurer elects not to renew in the absence of statute, rule, or policy provisions imposing duties for renewal or conditions for nonrenewal, or where the policy expires by its own terms. In *Zech* the policy expired by its own terms because it explicitly stated coverage would terminate at the end of the policy period unless a renewal offer was accepted by timely payment of the renewal premium. Reliance on *Zech* to excuse Hudson's failure to comply with the Maine statute and its failure to comply with its own, very different policy language is misplaced. *Zech* does not stand for the proposition that there is an exception to Maine's statute and an exception to Hudson's policy terms. *Zech* presented no statutory equivalent to Maine's nonrenewal statute and presented different policy language. The offer to renew in *Zech* was clear and unambiguous and included a premium bill with a due date for payment.

Kanyambo received a mere phone call concerning Champoux's receipt of a quote for possible renewal of the Hudson insurance

policy. In *Skilken*, 2017 WL 1025728, the court held that an insurer must provide written notice of nonrenewal to avoid automatic policy renewal under Maine law despite calls, visits, emails, and letters informing the insured of the need to complete a renewal application.

In *Skilken*, Berkley Aviation, LLC (Berkley) insured Oxford Aviation, Inc. (Oxford). Oxford repaired a jet owned by Skilken & Co. (Skilken). Shortly after the repair, control of the jet was lost in flight resulting in a “hard landing” that damaged the jet and injured a passenger. Skilken and the passenger placed Berkley on notice of the claims against Oxford. Berkley denied the claims, asserting that Oxford failed to renew the insurance policy and that it had lapsed 16 days prior to the hard landing. Skilken and the passenger sued Oxford. Oxford defaulted, and default judgments were entered against it. Berkley did not receive notice of the lawsuit until after the entry of the default judgments.

Skilken and the passenger successfully filed suit to reach and apply the Berkley policy to satisfy the default judgments. Berkley unsuccessfully argued that it substantially complied with Maine law and the policy did not renew because of Oxford’s actions. Oxford’s behavior included:

- Ignoring a letter from the insurer concerning the upcoming renewal; *Id.* at *4, *15.
- Doing nothing after receiving a call from the insurer's agent that the policy would not renew unless Oxford completed a new insurance application; *Id.*
- Refusing to see the insurer's agent on three occasions when the agent went to Oxford's office to complete the new insurance application; *Id.* and
- Doing nothing after the insurer's agent emailed the new insurance application to Oxford and explained that the insurance policy would not renew without completion of the application. *Id.*

Judge Woodcock held that Maine law required the insurer to provide 30 days written notice of nonrenewal. The letter regarding the need to complete a new insurance application, the attempts to help Oxford complete the application, and the phone call informing Oxford that the policy would not renew unless the new application was completed did not satisfy the Maine Insurance Code's written notice requirements. *Id.* at *16 ("telephone conversations do not substitute for the 'written notice' required by the statute"). The court held the

policy remained in effect. *Id.*

Likewise, *Corinth Pellets* reaffirmed that nonrenewal requires written notice and that termination at expiration without such notice is ineffective. The trial court erred in crediting Hudson's informal procedures over these binding authorities, undermining the predictability of Maine insurance law and exposing insureds to avoidable coverage lapses.

E. Dudley is Entitled to Partial Summary Judgment

The only defenses to the reach and apply cause of action are those contained in section 2904⁵. *Patrons Oxford Ins. Co. v. Harris*, 2006 ME 72, ¶21, 905 A.2d 819, 828. Fraud and collusion are the

⁵ Possible defenses are:

1. Motor vehicle operated illegally or by one under age. When the insured automobile, motor vehicle or truck is being operated by any person contrary to law as to age or by any person under the age of 16 years where no statute restricts the age; or
2. Motor vehicle used in race contest. When such automobile, motor vehicle or truck is being used in any race or speed contest; or
3. Motor vehicle used for towing a trailer. When such automobile, motor vehicle or truck is being used for towing or propelling a trailer unless such privilege is indorsed on the policy or such trailer is also insured by the insurer; or
4. Liability assumed. In the case of any liability assumed by the insured for others; or
5. Liability under workers' compensation. In the case of any liability under any workers' compensation agreement, plan or law; or
6. Fraud or collusion. When there is fraud or collusion between the judgment creditor and the insured.

24-A M.R.S. § 2904.

only defenses theoretically applicable here. Hudson pled neither as a defense. Had they been pled, they would fail as a matter of law.

Once Hudson declined to defend the lawsuit, the parties were free to agree to a stipulated judgment, *See, Cambridge Mut. Fire Ins. Co. v. Perry*, 1997 ME 94, ¶ 12, 692 A.2d 1388, 1392, and to a covenant not to execute, *Patrons Oxford Ins. Co. v. Harris*, 2006 ME 72, ¶ 19 n.7, 905 A.2d 819. There is no genuine issue of material fact concerning the failure of Hudson to provide written notice of nonrenewal to Kanyambo and Mahirwe at least 30 days prior to Plaintiff's September 23, 2018 fall. There is no genuine issue of material fact as to Hudson's liability on the reach and apply action. Plaintiff is entitled to summary judgment on the issue of Hudson's general liability insurance policy being in full force and effect on September 23, 2018.

VII. CONCLUSION.

The undisputed facts and controlling law establish that Hudson's policy remained in effect on September 23, 2018 due to Hudson's failure to provide written notice of nonrenewal. For the foregoing reasons, the order granting summary judgment to Hudson

should be reversed and the case remanded for entry of partial summary judgment in favor of Catherine Dudley on liability on both the reach and apply and assigned contract causes of action and for damages to be decided at a future hearing.

Dated: May xx, 2025

Respectfully submitted,

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VIII. CERTIFICATE OF SERVICE.

I, Anthony K. Ferguson, Esq., hereby certify that two (2) paper copies of the Brief for Plaintiff/Appellant and one (1) paper copy of the Appendix were served on the following at the addresses set forth below by pre-paid first-class mail on May xx, 2025:

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An electronic copy of the Brief of Plaintiff/Appellant and of the Appendix has also been forward electronically to counsel at the aforesaid email address.

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