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

REPLY BRIEF OF THE PLAINTIFF/APPELLANT

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TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

Cases

Statutes

II. ARGUMENT

A. Disputed Facts Cited by Appellee Are Improper and Must Be Disregarded

Hudson improperly relies on disputed facts in its brief, specifically on pages 6 and 7, in violation of the standard of review applicable to appeals from summary judgment. The cited portions of the record are drawn entirely from Hudson's own Statement of Material Facts and ignore Dudley's denials and qualifications. Hudson's assertions were disputed with appropriate citations to conflicting portions of the record:

- On page 6, Hudson states: "Mr. Nagy called Mr. Kanyambo after receiving Mr. Schmoll's email the same day, July 31, 2018, to tell him about the renewal quote and that Mr. Kanyambo would again need to complete additional documents to bind coverage." Appellee cites Hudson's SMF ¶ 19, App. 105[1]; however, this statement was denied at Dudley's Opposing SMF ¶ 19, App. 123-124.

[1] The parties have employed differing citation conventions in referring to the Appendix. Appellee uses the abbreviation "R.A." followed by a page number to cite the Appendix. For purposes of clarity and precision, Appellant will continue to identify the specific document and paragraph being cited, followed by the corresponding appendix page number.

- On pages 6–7, Hudson asserts: "Instead of agreeing to the renewal, Mr. Kanyambo asked Mr. Nagy if he could shop out the policy." It cites Hudson's SMF ¶ 20, App. 105; however, that statement was denied at Dudley's Opposing SMF ¶ 20, App. 124.
- Hudson further states: "Mr. Nagy stated he could not and recommended to Mr. Kanyambo that he contact other insurance agencies to explore this option." Hudson cites Hudson's SMF ¶ 21, App. 105; this was denied at Dudley's Opposing SMF ¶ 21, App. 125.
- Hudson continues: "Mr. Kanyambo told Mr. Nagy that he would do so." Cited at Hudson's SMF ¶ 22, App. 105; denied at Dudley's Opposing SMF ¶ 22, App. 125-126.
- Finally, Hudson claims: "At no time thereafter did Mr. Kanyambo and Ms. Mahirwe instruct Champoux to take steps to renew the general liability policy with Hudson." Cited at Hudson's SMF ¶ 23, App. 105; significantly qualified at Dudley's Opposing SMF ¶ 23, App. 126-127.

Because the standard of review on appeal from a summary judgment ruling requires that factual disputes be resolved in favor of the non-moving party, Hudson's reliance on its version of contested facts is improper and should be disregarded. *See Adeyanju v. Foot & Ankle Assocs. of Me., P.A.*, 2024 ME 64, ¶17, 322 A.3d 1201 (The Law Court reviews "de novo a court's entry of a summary judgment, 'viewing the facts and any inferences that may be drawn from them in the light most favorable to the nonprevailing party.").

B. 24-A M.R.S. §2908(4) Does Not Authorize a New Application Process

Hudson argues that even though it required a new application and conditioned any continuation of coverage on that application's approval, its actions still constituted an "offer to renew". *Appellee's Brief* at 13-14. It relies on the final sentence of 24-A M.R.S. §2908(4) — "This section does not apply… to a premium increase based on the altered nature or extent of the risk insured against"—to suggest that it may demand a new application as part of the renewal process. That interpretation is incorrect for two reasons.

First, Hudson claims to be a surplus lines insurer. *Appellee's Brief* at 9–10. Section 2908(4) has no application to surplus lines insurers. The statute appears in Chapter 39 of the Maine Insurance Code, which governs casualty insurance. Surplus lines insurance is governed by Chapter 19. Unlike Chapter 39, Chapter 19 contains no analogous provision to § 2908(4). If Hudson is a surplus lines insurer, the statute does not apply.

Second, by no means does the final sentence of § 2908(4) authorize an insurer to require a new insurance application each year. The sentence exempts premium increases based on changed risk from the section's protections; it does not authorize an insurer to require a new application or withhold coverage at its discretion. There are many scenarios in which an insurer might increase premiums because of an altered risk—e.g., claims experience, location-based risks, climate change and other environmental risks, government regulation—without demanding a new application. Hudson's reading would insert into the statute language the Legislature did not see fit to include. See *Kimball v. Land Use Regulation Comm'n*, 2000 ME 20, ¶23 n.14, quoting *Lopez- Soto v. Hawayek*, 175 F.3d, 170, 173 (1st Cir. 1999) ("Courts have an obligation to refrain from embellishing statutes by inserting language that Congress opted to omit.")

Altered risk may justify an increased premium, but it does not convert the statutory framework into one that allows the insurer to demand a new application and potentially decline coverage. If the Legislature intended to authorize such conduct, it would have done so explicitly.

C. Hudson's Failure to Comply With Statutory Obligations Does Not Create an Unwarranted Windfall

Hudson contends that enforcing coverage for its failure to comply with statutory requirements results in an "undeserved windfall" to the insureds. *Appellee's Brief* at 19. This assertion is legally unsound and contrary to the established purpose of Maine's insurance statutes.

When an insurer fails to provide statutorily mandated notice of cancellation or nonrenewal, coverage remains in effect by operation of law—not as a gratuitous benefit to the insured, but as the legal consequence of the insurer's failure to comply.

In *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, 246 A.3d 586, the Law Court held that a surplus lines insurer must give written notice at least fourteen days before the effective nonrenewal date under 24-A M.R.S. § 2009-A(1). When the insurer failed to do so, the Law Court vacated summary judgment in favor of the insurer. There, the fire loss occurred one day after the stated expiration of the policy term. .As in this case, the insurer in the *Corinth Pellets* notified the insurance agency through which the insured had obtained the policy that it would not renew coverage, and the agency in turn orally informed the insured. *See id.* ¶ 6. This oral communication was not sufficient to meet the statutory requirement of written notice to the insured.

In *Skilken & Co. v. Berkley Aviation LLC*, No. 2:15-CV-161-JAW, 2017 WL 1025728 (D. Me. Mar. 15, 2017), the court held that coverage would be enforced under Maine's reach and apply statute even though the injury occurred 17 days after the stated expiration date of the policy because the insurer failed to provide proper notice of nonrenewal.

Continued coverage is not a gratuitous windfall. Rather, it is the legal consequence of Hudson's failure to observe statutory notice requirements and the terms of its own insurance policy. The Court is simply enforcing the statutory protections the Legislature enacted.

III. CONCLUSION.

For the foregoing reasons, and those set forth in Catherine Dudley's principal brief, the Court should grant the appeal, vacate the judgment below, and remand the matter with instructions to enter partial summary judgment in Dudley's favor on both the reach-and-apply and assigned contract claims, with damages to be determined at a future hearing.

Dated: August____, 2025

Respectfully submitted,

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IV. CERTIFICATE OF SERVICE.

I, Anthony K. Ferguson, Esq., hereby certify that one (1) paper copy of the Reply Brief for Plaintiff/Appellant was served on the following at the address set forth below by pre-paid first-class mail on August ____, 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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