THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Civil Action No. 2020-CP-04-02533

Appellate Case No. 2023-000549

Donegal Insurance,

Appellant,

v.

Charles H. Wade,

Respondent.

APPELLANT'S REPLY BRIEF TO RESPONDENT

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October 26, 2023
Columbia, South Carolina

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I. Because a meaningful offer of underinsurance coverage was made to Respondent on the Policy, SC Code Ann. § 38-77-350(c) governs whether an additional meaningful offer was required in this instance, which it was not.

In its initial brief, Respondent argues that Appellant appears to have abandoned its assertion that the Respondent was given a meaningful offer when Respondent purchased its insurance policy. (Resp't. Br., at 9). Respondent further argues that no meaningful offer of underinsurance ("UIM") coverage was ever made to the Respondent. (Resp't. Br., at 11). However, Respondent fails to acknowledge that Respondent enjoyed UIM coverage from Appellant for at least one year prior to the renewal period in question. This renewal period was predicated by a meaningful offer of UIM coverage.

In *State Farm Mut. Auto. Ins. Co. v. Wannamaker,* the Court provides that a "meaningful" offer under S.C. Code Ann. § 38-77-160 is one where:

> (1) the insurer's notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium.

State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555, 556 (1987). However, this Court has since expanded the ruling in *Wannamaker* a step further to outline a test that may be utilized to determine whether a form should be conclusively presumed as a meaningful offer. Under *McDowell v. Travelers Property & Cas. Co,* a form must include the following to be conclusively presumed as a meaningful offer:

> (1) a brief and concise explanation of the coverage, (2) a list of available limits and the range of premiums for the limits, (3) a space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires, (4) a space for the insured to sign the form which acknowledges that he has been offered the optional coverages, (5) the

> mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable to answer.

McDowell, 357 S.C. 118, 122, 590 S.E.2d 514 (S.C. App. 2003).

Here, the Respondent was provided with a meaningful offer of UIM coverage prior to this renewal period in question for the Policy, effective on August 5, 2016, through a South Carolina Offer of Additional Uninsured Motorist Coverage and Optional Underinsured Motorists Coverage form ("Initial Form"). (Pl.'s Ex. 1); (Trial Tr., at 11:14 – 12:17). Based on the standards outlined above, the Initial Form not only satisfies the requisite criteria in the *Wannamaker* test but is also conclusively presumed as a meaningful offer.

Under the *Wannamaker* test, the Initial Form (1) provided notice to Respondent in writing, (2) specified the limits of optional coverage in a detailed breakdown by bodily injury and property damage for both uninsured motorist ("UM") and UIM coverages, (3) provided a multi-page explanation of coverages to advise Respondent on the nature of each coverage, and (4) provided a dollar figure amount for the additional premium associated with each limit of optional coverage. (Pl.'s Ex. 1). Furthermore, the Initial Form provides (1) an explanation of coverages, (2) a list of available limits offered by Appellant, (3) a space for Respondent to check "yes" or "no" to purchase optional UM and UIM coverage, followed by a space to specify what limits of coverage Respondent desires, (4) a signature line for denying any such coverage and Shonda Wade's initials beside the selected levels of coverage, and (5) all contact information for the Insurer *and* the South Carolina Department of Insurance to assist with any issues encountered in completing the Initial Form. *Id.* As such, the Initial Form not only satisfies the requisite standards to qualify but also should be conclusively presumed as a meaningful offer of UIM coverage.

While the Respondent argues that the Supplement sent to Respondent by Appellant does not satisfy the meaningful offer requirements, the Appellant was not required to provide Respondent with an additional meaningful offer of UIM coverage pursuant to S.C. Code Annotated § 38-77-350(c). (*See* Resp't. Br., at 10). Under S.C. Code Annotated § 37-77-350(c), "[a]n automobile insurer is not required to make an offer of coverage on any automobile insurance policy which **renews**, extends, **changes**, supersedes, or replaces an existing policy. *S.C. Code Ann. § 38-77-350(c)* (emphasis added). Here, Appellant provided Respondent with a meaningful offer of UIM coverage in 2016, which was adopted and included in the Respondent's available coverages for the effective period. (Pl.'s Ex. 1); (Pl.'s Ex. 9). Respondent would have continued to receive UIM coverage benefits under the Policy but for Respondent's unequivocal instructions to Appellant to remove such coverage from the Policy. Respondent's instructions merely changed the available coverages of the Policy by rejecting UIM coverage, so the Appellant was not required to provide an additional meaningful offer of UIM coverage to Respondent under S.C. Code Annotated § 38-77-350(c). As such, Respondent's argument falls flat because Appellant not only provided a meaningful offer of UIM coverage to Respondent in 2016, which Respondent accepted and paid for, but also Appellant was not required to provide an additional meaningful offer.

Accordingly, the Trial Court erred in finding that Appellant was required to and did not produce a meaningful offer of underinsured motorist coverage to Respondent.

II. Because Respondent made an unequivocal and voluntary rejection of UIM coverage, Respondent is not entitled to reform the Policy to apply underinsured motorist coverage retroactively and amend actions of his own volition.

In Respondent's initial brief, Respondent argues that this case is separate and distinct from *UNITED SERVICES AUTO v. Litchfield* on the basis that Ms. Litchfield did not challenge the fact that she voluntarily elected to drop UIM coverage from her policy of insurance, but Respondent

did. (Resp't. Br., at 6). Respondent attempts to muddy the waters and mislead this Court by citing select portions of the holding in *UNITED SERVICES AUTO* to portray it as case law relating only to an individual that contacted their insurance company for the sole purpose of dropping UIM coverage, thereby supporting its distinction of the Respondent's voluntariness in dropping such coverage. *Id.* However, this Court held in *UNITED SERVICES AUTO v. Litchfield* the following:

> We do not view this an "offer of UIM coverage" case. *We are beyond the point of having to decide whether USAA made a valid offer of UIM coverage to Litchfield. This is because Litchfield did in fact enjoy such coverage and in amount up to the limits of her liability coverage; however, she later, on her own initiative, voluntarily decided to drop it. Because Litchfield once had UIM coverage from her policy, USAA was under no obligation to make another offer of UIM coverage.* Moreover, we agree with the trial court that "[i]t would make no sense ... for an insurer to be required to 'offer' a given coverage to an insured who had contacted the insurance company for the specific purpose of dropping that coverage.

UNITED SERVICES AUTO. v. Litchfield, 356 S.C. 582, 584, 590 S.E.2d 47 (S.C. App. 2003) (emphasis added). This case lands on all-fours with the facts and circumstances involved in the present action. As such, Respondent's attempt to highlight a secondary holding only serves to mislead this Court and overshadow the principal holding as it relates to this case. Appellant made a valid offer of optional UIM coverage to Respondent in 2016. (Pl.'s Ex. 1). Respondent agreed to and paid for such coverage from 2016 through 2017, and Respondent made an independent, voluntary decision to reject UIM coverage on the Policy as of August 8, 2017. (Pl.'s Ex. 9); (Def.'s Ex. 1). As such, this case, too, is beyond the point of deciding whether Appellant made a valid offer of UIM coverage; Appellant had no obligation to make another offer of UIM coverage.

Despite such factual similarities, Respondent accuses Appellant of burden shifting and insists that Respondent's rejection of UIM coverage was not voluntary. (Resp't. Br., at 8). Respondent testified that he and his wife were confused about UIM and UM coverage on the Policy and claimed not to have understood the coverages when he rejected UIM coverage. (Trial Tr., at

61:22-25; 67:2-5). Despite such allegations, Respondent's wife, Shonda Wade, could not explain why the emails between the parties regarding the deletion of UIM coverage did not indicate whether she or her husband understood the distinction between UM and UIM coverage. (Trial Tr., at 59:18-25; 60:1-8); (Def.'s Ex. 1). Respondent Charles Wade also had no explanation for why he did not mention in emails sent to Countybanc Insurance or in separate emails that he did not understand the distinction between uninsured and underinsured motorist coverage. (Trial Tr., at 69:17-25). Of the evidence introduced at the trial of this case, there is no written inquiry or notice from Respondent that there was confusion over UIM or UM coverage. As such, these questions were not shifting the burden onto Respondent; instead, they established that Respondent has no documentation to support his contentions. Furthermore, there is no evidence substantiating Respondent's claim that he acted involuntarily. His response in his email clearly states, "I want to completely reject the UIM BI/PD." (Def.'s Ex. 1). Further, the Supplement sent to Respondent to formally confirm the rejection of UIM coverage was signed by Respondent without any notation that it was signed under duress, reservation, or with something to the same or similar effect to provide any notice to Appellant that Respondent did not clearly understand the implications of his own actions (Pl.'s Ex. 6).

As such, the Circuit Court erred in finding Respondent Charles Wade's policy should be reformed and applying underinsured motorist coverage to the Policy.

CONCLUSION

For the reasons discussed herein, as well as those stated in its previous brief, Appellant respectfully requests the Court to overturn the Circuit Court's judgment in favor of Respondent reflected in the March 17, 2023, Order and find in favor of the Appellant.

RESPECTFULLY SUBMITTED,

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PROOF OF SERVICE

I certify that a true copy of Appellant's Reply Brief in this case has been served on Thomas Erskine Hite, III, Esq., and Scarlet B. Moore, Esq., counsel for Respondent, this 26th day of October 2023, by emailing a copy of such to his primary email address (t3@hiteandstone.com) and her primary email address (scarlet28@msn.com) listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022, Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

[SIGNATURE PAGE TO FOLLOW]

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