IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965
Appellate Case No. 2013-000923

Progressive Northern Insurance Company..... Appellant,

v.

Stanley K. Medlock, Corey K. Medlock and The Standard Fire Insurance Company, ... Defendants,

Of Whom

Stanley K. Medlock and Corey K. Medlock..... Respondents.

REPLY BRIEF OF APPELLANT

J.R. Murphy, Esquire
S.C. Bar No. 7941
Wesley B. Sawyer, Esquire
S.C. Bar No. 100229
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

Other Counsel of Record:
Brian A. Martin, Esquire
Martin & Davis, LLC
212 Trade Street
Greer, SC 29651

William P. Davis, Esquire
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400 (29204)
P.O. Box 8057
Columbia, SC 29202

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

SUMMARY

Regardless of how hard Respondents work to shoehorn the facts of this case into McDonald, the two cases are different in one key aspect: Stanley Medlock, the named insured who signed the rejection of optional coverage, remains a named insured on the Progressive policy. Therefore, Progressive continues to have the written rejection of optional coverage on the form required by § 38-77-350 signed by the named insured applicant. In McDonald, after the transfer of the policy from the mother to her son, she was no longer involved with the policy. Therefore, there wasn't a named insured on the policy that had received a meaningful offer and rejected optional coverage. That is not true in the case before the Court.

In McDonald, this Court dealt with a purported policy transfer. In this case, the policy was not transferred; a second named insured was merely added to the existing policy. Section 38-77-350(C) provides that the old offer remains binding when the policy is changed. The statute must be construed to give effect to the legislature's intent to create a safe harbor for insurers and to reduce reformation actions. Therefore, because the policy was only changed, no new offer was required.

ARGUMENT

Although Respondents would have this Court blindly apply McDonald v. South Carolina Farm Bureau Ins. Co., 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 1999), that case cannot be read apart from its facts and the statutory framework provided in § 38-77-350. The operable facts of this case are distinct from those in McDonald. Namely, the transaction in McDonald was a policy ***transfer*** from one named insured to another. Because the mother in McDonald was no longer on the policy, there was no written

rejection signed by a named insured applicant as required by § 38-77-350. In this case, no transfer took place. Instead, the policy issued to Stanley Medlock remains issued to Stanley Medlock and Progressive continues to have a written rejection of optional coverage signed by a named insured to the policy. The policy was only ***changed***. South Carolina Code § 38-77-350(C) protects insurers that have already obtained a written rejection of optional coverage from one named insured applicant from the burden of obtaining additional rejections when the policy is subsequently changed. Because the policy was only changed, the safe harbor provisions in § 38-77-350 apply and the signed rejection of Stanley Medlock continues to bind all other insureds on the policy.

I. The legislative history and plain language of § 38-77-350 reveals the General Assembly's intent that the signed written rejection by one named insured applicant satisfies the insurer's obligation to make a meaningful offer.

The history of § 38-77-350 reflects the General Assembly's intent to create a safe harbor provision to reduce reformation actions when dealing with uninsured and underinsured motorist claims. In 1987, the Supreme Court issued its holding in State Farm Mutual Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987), setting out various requirements that insurers must satisfy in order to comply with § 38-77-160. See S.C. Code Ann. 38-77-160. In response, the General Assembly enacted § 38-77-350. Grinnell Corp. v. Wood, 389 S.C. 350, 356, 698 S.E.2d 796 (2010).

Section 38-77-350 had two effects. First, paragraph (A) essentially adopts the standard in Wannamaker regarding what must be included in the offer and makes the use of a written form commercially reasonable. Second, paragraphs (B), (C), and (D) each invoke safe harbor language. Once the completed form described in (A) is signed by an appropriate named insured applicant, "it is conclusively presumed" that there was a

meaningful offer and the "automobile insurer is not required to make a new 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(B) and (C). Moreover, "[c]ompliance with this section satisfies the insurer and agent's duty" to provide a meaningful offer. S.C. Code Ann. § 38-77-350(D).

On December 28, 2005, the Supreme Court interpreted the language in § 38-77-350(B) that "[i]f the form is properly completed and executed by the named insured it is conclusively presumed that there was an informed, knowing selection of coverage" to mean that ***only*** the insured could complete the form, not the agent. See Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005); S.C. Code Ann. § 38-77-350(B) (2005). Only six months later, on June 14, 2006 – after overriding a veto by the governor – the General Assembly amended § 38-77-350 to clarify that the form could be completed by either the insured or the agent as long as it is signed by the named insured applicant. See 2006 S.C. laws Act 395 (H.B. 4622). In doing so, the "General Assembly effectively reversed the Floyd decision." S.C. Dep't of Ins. Bulletin No. 2006-03.

The General Assembly's unusually prompt response to the Supreme Court's holding in Floyd emphasizes the legislature's intent in § 38-77-350. Although insurers are required to offer optional coverage, once they have done so in a meaningful way, they are protected from actions seeking to reform policies to provide insureds with coverage that they never paid for or requested. Insurers should be able to rely upon the written law. Section 38-77-350(C) states that once an offer is made, the insurer is not required to make a new offer if that policy is subsequently changed. The statute says that Progressive did not have to make a new offer and Progressive relied upon that statute.

A. A simple glance at the subject-verb agreement in § 38-77-350 reveals that "the named insured" is used in the singular, not the plural.

Respondents make the novel argument that, because some dictionaries state that "insured" can be both singular and plural, there is no reason to believe that the use of the phrase "the named insured" throughout § 38-77-350 is meant to be in the singular. However, the General Assembly uses an "s" at the end of insured to indicate the plural version of the word. In fact, in Title 38, Insurance, of the South Carolina Code Annotated, the General Assembly uses the word "insureds" or "insureds'" in fifty-four different sections and multiple times in some of those sections. Clearly, the General Assembly has adopted "insureds" as the plural form of "insured."

Moreover, a perfunctory reading of § 38-77-350 proves that "the named insured" and "the insured" are used in the singular. For example, § 38-77-350(A)(3) requires "a space to mark whether the insured ***chooses*** to accept or reject coverage and a space to state the limits of coverage the insured ***desires***." Basic subject-verb agreement proves that "the insured" is used in the singular here. Again, § 38-77-350(A)(4) requires a space for the insured to mark acknowledging that "the insured ***has been*** offered the optional coverages." If "the insured" were plural, the proper verb would be "have been offered." Furthermore, § 38-77-350(A)(5) goes back to using the word "applicant" which clearly is only used in the singular.

There is no colorable argument that the terms "the insured" or "the named insured" as used in § 38-77-350 are plural. Therefore, when § 38-77-350(B) states that "neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for ***the insured's*** failure to purchase optional coverage or higher limits," it presumes ***only one*** offer and ***one*** rejection by the ***one*** named insured

who applies for coverage. That rejection is binding upon all other insureds whether they are named insureds or otherwise.

B. The *dicta* in McDonald is much broader than the facts of that case.

Very respectfully, the Court in McDonald brushed with broad strokes when it stated that the General Assembly intended for "all named insured" to receive a meaningful offer. This broad statement was not necessary to the facts of that case and is not supported by a careful reading of the statutes. Section 38-77-160 does not say that offers must be made to a "named insured" but say "the insured." See S.C. Code Ann. § 38-77-160. As discussed in Progressive's primary brief, "insured" could include named insureds, spouses, resident relatives, or permissive users. See S.C. Code Ann. § 38-77-30(7). In McDonald, the insurer argued that § 38-77-160 conflicts with § 38-77-350. This is not Progressive's argument. As this Court held, there is no conflict between the two statutes. Progressive contends that the uncertainty of § 38-77-160 regarding which insured must receive the offer of optional coverage is clarified in § 38-77-350 by stating that the "applicant" must receive the offer. Therefore, the two statutes do not conflict, but actually build upon one another.[1]

By using the terms "applicant" and "named insured" in § 38-77-350, the General Assembly intended different meanings for the two phrases. "In interpreting statutory text, [courts] ordinarily presume that the use of different words is purposeful and evinces an intention to convey a different meaning." Abbott v. Abbott, 560 U.S. 1, 130 S. Ct.

[1] As an important side note, Respondents cite Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004), reasoning that if § 38-77-350 did not require an offer to each and every named insured, this Court would have said so rather than going into the agency analysis. However, to the extent that any guidance can be drawn from Prioleau, this Court's refusal to address the question suggests that the issue was ***not*** resolved in the earlier McDonald case. If, as Respondents suggest, McDonald stood for the proposition that all named insureds must receive a meaningful offer, then this Court could have easily said so in Prioleau with citation to McDonald and then moved on to the agency question. Instead, this Court remained silent on that issue. The silence suggests that the question remains unanswered.

1983 (2010) (dissent) (citing Rusello v. United States, 464 U.S. 16, 22-23, 104 S. Ct. 296, 300 (1983)). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Centex Intern., Inc. v. South Carolina Dep't of Revenue, __ S.E.2d __, 2013 WL 3816542 (S.C. July 24, 2013). Furthermore, when considering a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to ***limit or expand*** the statute's operation." Id. (quoting Sloan v. Hardee, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)) (emphasis added). In other words, if the statutory language is clear, there is no reason to resort to statutory construction.

However, if the Court does resort to statutory construction, it must assume that the General Assembly intended different meanings for the words "named insured" and "applicant." Abbott, 130 S. Ct. at 2003; Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) ("[T]he legislature intends to accomplish something by its choice of words, and would not do a futile thing."). Importantly, this means that when § 38-77-350 states that the offer form must be presented to "all new applicants," it cannot mean that the offer form must be presented to "all new named insureds." The statute must be read to give distinct meaning to the two distinct terms.

The reasonable reading of the two terms is clear. The offer must be made to an "applicant." Based upon the language in § 38-77-350(B), an applicant must be a named insured. In other words, applicant is a more narrow term defining a subset of named insureds.

The instructions in § 38-77-350 are clear and unambiguous and must be applied according to the statute's plain language. "Applicant" is defined as "one who applies, as

for employment, help, etc." Webster's New World Dictionary and Thesaurus (Michael Agnes, 1996). Applicants are the subset of named insureds that actually negotiate the insurance transaction with an agent or carrier. Because the applicant is the individual with whom the insurance company negotiates the transaction, it makes perfect sense that the General Assembly would require the meaningful offer be presented to this individual. In this case, Stanley Medlock was the applicant. He approached the insurance company to apply for coverage, his signatures completed the written application, and the policy was issued based upon his representations. Because Progressive's agent dealt with Stanley Medlock as the applicant, Progressive made the offer to him. As Respondents have conceded, that offer was meaningful and triggered the safe harbor provision of § 38-77-350(B).

On the other hand, "named insured" has a different meaning altogether. Black's Law Dictionary defines "named insured" as follows: "In insurance, the person specifically designated in the policy as the one protected and, commonly, it is the person with whom the contract of insurance has been made." Black's Law Dictionary, 1023 (6th ed. 1990). Importantly, although the named insured is typically the one with whom the contract is made, Black's recognizes that this is not always the case. For example, in the present case, Stanley Medlock is both the named insured and the one with whom the contract of insurance was made. However, Corey Medlock, while being specifically designated as a named insured, is not the person with whom the contract was made.

The General Assembly's uses of the terms "applicant" and "named insured" in § 38-77-350 are distinct and not interchangeable. The two terms have distinct meanings and, under their plain meaning, Stanley Medlock – as the person who interacted with

Progressive to obtain the insurance policy – was the applicant. As the applicant for insurance and a named insured, § 38-77-350 identifies him as the individual to whom an offer of insurance must be made and Respondents admit that Stanley Medlock received a meaningful offer in compliance with both §§ 38-77-160 and 38-77-350 and that he signed a written form satisfying the safe harbor provisions of § 38-77-350 (B), (C), and (D). Because the statute only requires this one offer under the facts of this case, Corey Medlock is conclusively bound by his father's written rejection of optional coverage.

C. All of the out-of-jurisdiction cases that Respondents rely upon reflect the same policy transfer that took place in McDonald rather than a policy change like what took place here.

Respondents' citation to a number of out-of-jurisdiction cases reveals their failure to understand the distinction between the facts of this case and those in McDonald. For example, Respondents cite the cases of Nila v. Hartford Ins. Co., 312 Ill. App. 3d 811, 728 N.E.2d 81 (Ct. App. 2000) and Burnett v. Safeco Ins. Co. of Illinois, 227 Ill. App. 3d 176, 590 N.E.2d 1032 (Ct. App. 1992) as supporting their position that the addition of a second named insured to an existing policy is the creation of a new policy. However, neither of those cases dealt with the addition of a second named insured to an existing policy. The Court of Appeals in Nila – like this Court in McDonald – dealt with the ***transfer*** of a policy from a deceased husband to his wife as the new and sole named insured. "Following [husband's] death, an endorsement to the policy . . . deleted [husband] . . . . An endorsement . . . ***replaced*** [husband] with [wife] as the named insured on the policy." Nila, 312 Ill. App. 3d at 814, 728 N.E.2d at 84. Because there was no longer a named insured on the policy that had rejected optional coverage, a new offer was required.

Likewise in McDonald, this Court held that "Removing [mother] from the policy and substituting [son] as the named insured was not a mere policy change." McDonald, 336 S.C. at 125, 518 S.E.2d at 626. Both in McDonald and in Nila a key operative fact was the removal of the original named insured that rejected optional coverage. Without the original named insured, there was no written rejection from a named insured on the policy.

The court in Burnett also dealt with a drastically different scenario. In that case, a daughter that was previously listed on her parents' policy applied for her own separate policy of insurance. The parents maintained their old policy and a new policy was issued to the daughter as the sole named insured. Burnett, 227 Ill. App. 3d at 172, 590 N.E.2d at 1036. She even completed a new application for insurance and her vehicle had never been insured under her parents' policy. Id. Put simply, Burnett is inapplicable. If Corey Medlock had obtained his own insurance policy, Progressive would have provided a new offer.[2]

On the other hand, the discussion in Messerly v. State Farm Mut. Auto. Ins. Co., 227 Ill. App. 3d 1065, 662 N.E.2d 148, (Ct. App. 1996), answers the exact question before this court. The issue before that court was "whether section 143a-2 of the Code required an offer of additional UM coverage to be made to every named insured under a policy, or whether a legally sufficient offer made to one named insured satisfied the offer requirement." Id. at 1067, 662 N.E.2d at 149. Construing the same operative word "applicant," the Court of Appeals held that the insurer satisfies the offer requirement by

[2] Respondents also cite Nicholson v. State Farm Mut. Auto. Ins. Co., 409 Ill. App. 3d 282, 949 N.E.2d 666 (Ct. App. 2010). However, that case dealt with an increase of coverage and therefore provides no guidance for the current matter.

making one offer to the named insured that actually applies for the policy. Because the word "applicant" is unambiguous, this Court should do the same.

II. Section 38-77-350(C) is designed specifically to preserve a meaningful offer and written rejection of coverage after a policy is changed.

In order to protect both insurers and insureds from the administrative nightmare of having to present, complete, and sign a new offer of optional coverage with every endorsement or amendment to an existing policy of insurance, the General Assembly wisely provided a safe harbor to insurers by enacting § 38-77-350(C). After a named insured applicant has signed a completed written rejection of optional coverage, "[a]n automobile insurer is not required to make a new 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).

Respondents spend an unwarranted amount of time arguing against a position that Progressive does not take on appeal. Namely, Respondents create a straw man argument that "Progressive is arguing to treat the unilateral change in the designation in the policy from 'driver' to 'named insured' as nothing more than a clerical change." (Initial Brief of Resp't, p. 17). Although this argument is factually true and Progressive presented it to the lower court, it is not Progressive's primary contention. Corey Medlock was a class I insured as a resident relative and listed driver of the policy when it was originally issued. In fact, the original application stated that the only vehicle listed on that policy was Corey Medlock's primary vehicle. (Application, 2). Therefore, changing his designation to a named insured did not substantially affect his rights with regards to optional coverage. However, § 38-77-350(C) does not delineate between small changes and large changes.

So long as the old policy remains and no new one has taken its place, a new offer is not required.

Progressive contends – and the undisputed facts show – that the transaction that occurred in this case did not create a new policy of insurance. It only changed the existing policy. The General Assembly did not limit the protections of § 38-77-350(C) to clerical changes or limited changes. In fact, the statute does not limit itself to only those changes that are insubstantial. Rather, Progressive did not have a duty to make a new offer "on ***any*** automobile insurance policy which . . . ***changes*** . . . ***an existing policy***." S.C. Code Ann. § 38-77-350(C). The General Assembly used broad language reflecting its intent to provide a safe harbor for insurers. Pursuant to that provision, the original rejection signed by Stanley Medlock relieved Progressive of any duty to provide another offer of optional coverage upon any change to the policy.

Ignoring the General Assembly's use of the term "change," Respondents claim that "[w]hen such substantial changes are made to a contract that the terms of the contract take on new meaning, there is no other conclusion to draw but that a new contract has been created." (Initial Brief of Resp't, p. 20). In fact, this Court reached the opposite conclusion in Smith v. South Carolina Ins. Co., 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002). In that case, the insured added an extra vehicle to an existing policy of insurance and the insurer did not make a new offer of optional coverage. Importantly, the addition of a second vehicle meant that numerous terms throughout the policy took on a new meaning. Moreover, the policy potentially provided more coverage, such as stackable uninsured motorist coverage because another vehicle was now covered on the policy.

Nonetheless, this Court determined that the addition of the second vehicle was a change to the existing policy and did not require a new offer.

Because insurers are only required to make one offer, the "old" offer to the named insured applicant that is still a named insured on the policy continues to bind all insureds on the policy. Stanley Medlock was never removed from the policy. Therefore, his written rejection of optional coverage remains binding and Progressive had no duty to make a second offer.

A. The holdings in the Ohio cases of Johnson and McKnight provide ample guidance for this Court.

In its primary brief, Progressive provides a thorough discussion of why the Ohio Court of Appeals' decisions in Johnson and McKnight are particularly instructive in this case. See Johnson v. Great American Ins. Co., 44 Ohio App. 3d 71, 541 N.E.2d 100 (Ct. App. 1988) and McKnight v. Grange Mutual Cas. Co., 110 Ohio App. 3d 282, 673 N.E.2d 1012 (Ct. App. 1996) (Initial Brief of Appellant, pp. 12-14). Without restating that argument, Progressive suggests that the Court should take special note of these two cases because they highlight the distinction between the issue before the Court in McDonald and the present issue before the Court. Importantly, the operative distinction between the two cases was whether the original named insured that rejected optional coverage remained a named insured after the transaction. If so, the policy was merely changed and the old offer and rejection bound all insureds. If not, the transaction created a new policy requiring a new offer. These two cases reveal the correct outcome for the present case.

B. This Court should follow the Rhode Island Supreme Court's holding in Ferreira, which addresses precisely the same question before this Court.

Respondents continue to point to cases that have facts similar to those in McDonald as being persuasive in this case. However, those cases are inapposite. For example, in an attempt to avoid another case that Progressive argued to the lower court but has not relied upon on appeal, Wilkerson v. Louisiana Indemnity/Patterson Ins., 682 So. 2d 1296 (La. Ct. App. 1996), Respondents cite Dempsey v. Automotive Cas. Ins., 680 So. 2d 675 (La. Ct. App. 1996). In Wilkerson, the Court of Appeals held that the addition of the named insured's wife as a second named insured to the policy did not constitute a new policy requiring the execution of a new rejection form. 682 So. 2d at 1300.

Respondents cite Dempsey, a case that ***predates*** Wilkerson. In Dempsey, the Court of Appeals held that the addition of a second vehicle and another insured driver created a new policy and required a new offer. Based upon this Court's holding in Smith, Dempsey clearly would not apply in South Carolina. Moreover, Louisiana's legislature effectively ***overruled*** Dempsey by ***amending*** its statute, which now provides:

> Any changes to an existing policy, regardless of whether these changes create new coverage, except changes in the limits of liability, do not create a new policy and do not require the completion of new uninsured motorist selection forms. For the purpose of this Section, ***a new policy shall mean an original contract of insurance which an insured enters into through the completion of an application on the form required by the insurer.***

LSA-R.S. 22:1295(1)(a)(ii) (emphasis added). Therefore, under Louisiana law, the transaction in this case would not have required a new offer.

Unlike the cases cited by Respondents, Ferreira v. Integon Nat. Ins. Co., 809 A.2d 1098 (2002) is directly on point. Respondents – and the lower court by adopting their proposed order – misread the applicable statute that was at issue in Ferreira. Specifically, the statute in that case provided as follows: "***After the selection of limits by the named insured*** . . . the insurer or any affiliated insurer shall be required to notify the policyholder, in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy, as to the availability of that coverage or optional limits." R.I. Gen. Laws § 27-7-2.1(d)(2002) (emphasis added). However, if the transaction resulted in the creation of ***new*** policy, instead of an amendment or alteration of an existing policy, the statute required a ***new offer*** of optional coverage. R.I. Gen. Laws § 27-2-2.1(a). Therefore, the issue addressed by the Rhode Island Supreme Court in Ferreira is exactly the same as the issue presented in this case: Whether the addition of a new named insured was the creation of a new policy or merely an alteration or amendment – i.e. a "change" – to the existing policy. The Rhode Island Supreme Court held that the addition of a second named insured was only an amendment that did not require a new offer. This Court should do the same.

Furthermore, the addition of a spouse as a second named insured is no different from the addition of a child as a second named insured. In both cases, the previously non-named insured is a class I insured entitled to stack coverage and all other benefits under the policy. Upon becoming the named insured, their rights admittedly change with respect to certain terms in the policy. However, the original policy does not cease to exist. On the other hand, if the original named insured – or the original insurer – is

removed from the policy, then the original policy ceases to exist and, by definition, there is a "new" policy. That is what happened in McDonald, but it did not happen in this case.

Respondents present a false hypothetical arguing that, if Progressive prevails in this case, a child that is added to his parents' policy will never receive an offer of optional coverage. (Initial Brief of Resp't, p. 25). This is simply not true. Insurers do not issue personal automobile policies for multiple households. When parents add their child to the existing policy of insurance, no offer is required because the parents or child have chosen to be added to an existing policy of insurance and the parents remain named insureds on that policy. However, when the child subsequently moves out on his own, the carrier will not send bills and policy declarations to two different addresses. In order for the child to receive bills and declarations, the child must do one of two things. Either, the child will have to purchase his own policy – at which time he will receive an offer of optional coverage – or the parents will have to be removed from the policy and the policy transferred to the child – at which time he will receive an offer of optional coverage. Either way, the child receives an offer at the correct time pursuant to § 38-77-350, when one whole side of the insurance equation has changed. Therefore, Respondents' hypothetical presents a non-existent problem.

III. Any expansion of the insurer's obligation to make a meaningful offer should come through the General Assembly and not the courts.

In Smith, this Court stated that "[A]ny limitation in the scope of [§ 38-77-350(C)'s] application is a matter best left for the consideration of our legislature." 350 S.C. at 89, 564 S.E.2d at 362. Progressive agrees. Respondents – like the insureds in Floyd – ask this Court to punch another hole in what the General Assembly intended to be a safe harbor provision. Section 38-77-350(C) uses broad language to protect insurers

and should be read to carry out that effect. Because Respondents concede that Stanley Medlock received a meaningful offer and signed the form pursuant to § 38-77-350(B), the real question before this Court is whether the addition of a second named insured is a "change" to an existing policy. As the Rhode Island Supreme Court and Ohio Court of Appeals have held, it is. Therefore, Progressive correctly relied upon the safe harbor provisions created by the General Assembly when it chose not to make a second offer of optional coverage.

If the legislature wanted all named insureds to receive a meaningful offer, it could have said so with two easy words. Rather than requiring that the offer be presented to "all new applicants," the General Assembly could have required an offer to "all new named insureds." It did not. Because § 38-77-350 is written in plain and unambiguous terms, there is no need for construction. However, if this court should resort to statutory construction, the history of § 38-77-350 and the distinct use of the terms "applicant" and "named insured" must be given their plain distinct meanings. In order to affirm the lower court, this Court must both ignore the legislature's intentional use of two distinct terms and ignore the legislature's purpose in enacting § 38-77-350(B), (C), and (D). Any such change to the statute must be duly enacted by the General Assembly, not this Court.

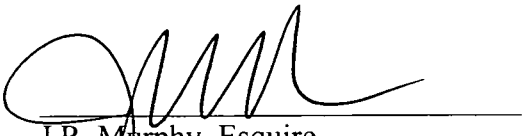
CONCLUSION

Progressive complied with the statutory offer requirements of § 38-77-160 and 38-77-350 when it made a meaningful written offer of optional coverage to Stanley Medlock. He rejected that coverage. Respondents' post-accident attempt to reform a policy to obtain coverage that they never paid for and never desired must be looked upon with scrutiny. Recognizing the policy concerns that accompany policy reformation for

optional coverage, the General Assembly enacted safe harbor provisions in § 38-77-350. Progressive not only complied with the requirements of § 38-77-350(B) in order to trigger the safe harbor protections, but relied upon § 38-77-350(C) thereafter when it did not provide any additional offers of optional coverage. Progressive was entitled to do so and the lower court erred when it reformed the policy. This Court should correct that error, carry out the legislature's intent as enacted in § 38-77-350(C), and reverse.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire
Bar No. 7941
Wesley B. Sawyer, Esquire
Bar No. 100229
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Appellant Progressive Northern Insurance Company

Columbia, South Carolina
September 9, 2013