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Apr 10 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Anderson County
Anderson County Court of Common Pleas
Hon. J. Cordell Maddox, Jr., Presiding

Civil Action No. 2020-CP-04-02533
Appellate Case No. 2023-000549

Donegal Insurance.....Appellant,

Versus

Charles H. Wade.....Respondent

PETITION FOR REHEARING

Scarlet B. Moore, #72534
Attorney for Respondent, Charles H. Wade
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(864) 214-5805
(864) 752-0930 (FAX)

April 10, 2025.

NOW INTO COURT, comes the Respondent Charles H. Wade, who respectfully submits the following Petition for Rehearing, pursuant to Rule 221 of the S.C. Rules of Appellate Practice, for the following reasons, to wit:

The Court of Appeals in its Unpublished Opinion No. 2025-UP-100 of March 26, 2025, respectfully overlooked and/or misapprehended the issues and arguments submitted by the Respondents in brief as discussed *infra*. The Respondent respectfully requests that this Honorable Appellate Court grant the Respondent's Petition and affirm the order of Honorable J. Cordell Maddox, Jr. Specifically, this Court held that the trial court erred when it found Wade's automobile insurance policy should be reformed to retroactively apply UIM coverage finding that Donegal issued a policy with UIM coverage to Wade, which Wade later decreased and ultimately eliminated. This holding is not supported by the specific facts presented by this case. The Appellant (Donegal) relies on this Court's opinion in *United States Automobile Association v. Litchfield*, 356 S.C. 582 (Ct. App. 2003), asserting in brief that the facts of this case are identical to the facts in *Litchfield*. However, the facts of this case are distinguishable on one very crucial point: Ms. Litchfield did not challenge on appeal the fact that she voluntarily elected to drop underinsured motorist coverage, while Mr. Wade in this case *did* specifically challenge at trial and continues to challenge on appeal the voluntariness of the alleged waiver of UIM coverage, as discussed in brief. Further, contrary to the assertions of Donegal in brief, this Court specifically states in *Litchfield* that, "*We do not view this as an 'offer of UIM coverage' case..... Moreover we agree with the trial court that 'it 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.'"* (Emphasis added) This Court was clearly

concerned about ruling in favor of Litchfield given that she did not challenge her intent to waive UIM coverage on appeal. Further, Litchfield is a narrowly-tailored opinion that does not address the issue of whether Ms. Litchfield received a “meaningful offer” to reject UIM, which issue this court clearly overlooked by not addressing in its unpublished opinion. In the case at bar, however, Mr. Wade did not contact his insurer for the specific purpose of dropping UIM coverage and did not waive this issue at trial, nor on appeal. Therefore, Litchfield is not applicable to this case, is distinguishable on key points affecting this appeal, and Judge Maddox did not err in ruling in favor of Mr. Wade at trial.

As stated, Mr. Wade did not contact Donegal for the specific purpose of dropping UIM coverage. The testimony at trial established that Mr. Wade’s wife, Shonda, had “a lot” of phone conversations with Michelle Rogers, who was employed by Countybank Insurance -- the prior issuer of the Wades’ car insurance policies prior to the assignment of the policies to Donegal. Of note is that Michelle Rogers was not produced as a witness at trial. Shonda Wade testified that in July, 2017, she contacted Michelle Rogers for the purpose of receiving information regarding the renewal of their insurance coverage and “what was going on with the UMI and the underinsured and uninsured motorist” coverage so that Ms. Rogers could explain the policies to her. (R. p. 152, lines 14-23.) Shonda Wade testified that her conversation with Ms. Rogers caused her to understand “nothing,” and she was as confused as before she called Ms. Rogers. (R. p. 152, lines 24-25; p. 153, lines 1-8.) Subsequently, Shonda Wade testified that she gave the emails she received from Ms. Rogers to Mr. Wade so that he could speak to Ms. Rogers to receive clarification on what the different policies entailed. (R. p. 153, lines 15-20.) Shonda

Wade testified that she never understood the difference between UIM and UM, despite Ms. Rogers' explanation to her. (R. p. 153, lines 21-25.) Shonda Wade testified that she and her husband Charles Wade had always carried UIM coverage, and had she known what UIM coverage was she would have continued to carry it on her insurance policy. (R. p. 155, lines 16-25.) Shonda Wade testified that at the time of trial she and Mr. Wade had UIM coverage on their policies, and that she believed what Ms. Rogers told her about the coverage was a mistake. (R. p. 155, lines 23-25.) Shonda Wade specifically testified that she never called Countybanc to directly cancel UIM coverage. (R. p. 156, lines 10-12.) Charles Wade also testified at trial. Mr. Wade testified that he and his Wife contacted Countybanc because their policy was coming up for renewal and they wanted to bundle the house and car – that's what started the conversation. (R. p. 160, lines 22-25; p. 161, lines 1-7; p. 167, lines 21-25.) Mr. Wade also testified that he did not contact Ms. Rogers nor Countybanc to cancel UIM coverage. (R. p. 161, lines 8-10.) Mr. Wade testified that after Shonda Wade spoke to Ms. Rogers that Mrs. Wade was confused in thinking they were paying for the same coverage for underinsured and uninsured motorist coverage. (R. p. 161, lines 20-25.)

Pursuant to cross examination, counsel for Donegal questioned Shonda Wade about why the emails introduced as Defendant's Exhibit 1 do not indicate whether she understood the distinction between uninsured or underinsured motorist coverage. (R. p. 156, lines 18-25; p. 157, lines 1-8; pp. 70-74.) Appellant's trial counsel seemingly chastises Shonda Wade for not saying, "I'm not going to buy this because I don't know what it is." (R. p. 157, lines 12-13.) Appellant's trial counsel also questions Mr. Wade about not sending an email stating that he did not understand the distinction of uninsured

coverage or underinsured coverage. (R. p. 166, lines 17-25.) As the statutes and case law squarely put the burden upon the insurance company to make a meaningful offer of UIM coverage, it is concerning that counsel is seemingly shifting the burden to the insured to understand insurance coverages without the insurance company presenting a meaningful offer under the statutes and case law. Further, this Court should have reached the issue of whether or not a meaningful offer was made to the Respondent and overlooked this crucial issue in reaching a decision in this case. Certainly Judge Maddox received sufficient evidence in this case to distinguish the *Litchfield* case and rightly so. Judge Maddox did not err and his order should be affirmed by this Court.

CONCLUSION

The Respondent, Charles Wade, respectfully prays that this Honorable Appellate Court will grant his Petition for Rehearing and affirm the Order of Honorable Judge J. Cordell Maddox, Jr., Circuit Court Judge presiding, dismiss this appeal with prejudice, and for any further relief as deemed appropriate by this Court.

Respectfully Submitted,

s/Scarlet B. Moore

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CERTIFICATE OF SERVICE

I certify that on this date, April 10, 2025, I have served the Respondent’s Petition for Rehearing, and Certificate of Service on opposing counsel to their respective **E-MAIL** addresses, pursuant to the Order of the Supreme Court Appellate Case No. 2020-000447(g)(3).

Karl Stephen Brehmer - ksb@brownandbrehmer.com
James Donald Floyd - jfloyd@gibbslawsc.com
Thomas E. Hite, III - t3@hiteandstone.com

Respectfully Submitted,

s/Scarlet B. Moore

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Greenville, South Carolina
April 10, 2025

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Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: Donegal Insurance, Appellant, v. Charles H. Wade, Respondent
Appellate Case No. 2023-000549

Dear Madam Clerk,

Enclosed please find the Respondent's Petition for Rehearing and a Certificate of Service. I will forward the filing costs of \$50.00 by U.S. Mail.

Please let me know if you have questions regarding the enclosed. With kind regards, I remain

Very Truly Yours,

s/Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Respondent

SBM/s

Cc: Thomas E. Hite, III, Esq.
Karl Stephen Brehmer, Esq.
James Donald Floyd, Esq.