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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable Steven DeBerry, IV, Judicial Circuit Court Judge
Case No. 2025CP2500032

Appellate Case No. 2025-001727

James Williams ....Respondent,

v.

BITCO General Insurance Corporation and
Seckinger Forest Products, Inc..Appellants.

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Circuit Court erred in finding that BITCO did not make a meaningful offer of UIM Coverage to Seckinger.

STATEMENT OF THE CASE

The Respondent, James Williams, initiated this action against BITCO General Insurance Corporation ("BITCO") and Seckinger Forest Products, Inc. ("Seckinger") (collectively "Appellants") by filing a summons and complaint in the Court of Common Pleas for Hampton County on January 29, 2025 (Summons and Complaint). On February 5, 2025, Respondent filed an amended summons and complaint (Am. Complaint). Therein, he alleged that BITCO did not make a meaningful offer of UIM coverage to Seckinger because the form signed by Seckinger rejecting additional UIM coverage contained typographical inconsistencies as to the labeling of the coverage being accepted or rejected. Plaintiff argued that these typographical errors result in the offer failing to comply with S.C. Code Ann. § 38– 77–350, justifying reformation of the policy to provide UIM coverage limits of one million dollars.

BITCO answered the amended complaint on March 5, 2025. (BITCO's Answer to Am. Complaint). Seckinger answered the amended complaint on March 6, 2025. (Seckinger's Answer to Am. Complaint). On April 22, 2025, BITCO moved for summary judgment, asserting a meaningful offer of UIM coverage was made such that reformation of the policy would be improper. (BITCO Mtn. for Summary Judgment). Respondent moved for summary judgment on May 5, 2025, seeking reformation of the policy to include UIM limits of $1,000,000. (Williams Mtn. for Summary Judgment). Finally, Seckinger moved for summary judgment on May 21, 2025, on the same grounds as BITCO. (Seckinger Mtn. for Summary Judgment).

The pending motions were heard by Judge Steven DeBerry, IV on June 9, 2025. After hearing the arguments of the parties and reviewing the record, Judge DeBerry issued an order on July 2, 2025, granting Respondent's motion for summary judgment and denying Appellants' motions for summary judgment. (Order Granting Respondent's Mtn. Summary Judgment and Denying Appellants' Mtn. Summary Judgment).

Thereafter, on July 2, 2025, Appellants filed a joint Motion to Alter or Amend (Mtn. Alter or Amend), which was denied by Judge DeBerry on August 2, 2025 (Order Denying Mtn. Alter or Amend). Appellants then filed a Notice of Appeal on August 28, 2025, thereby timely commencing this appeal.

STATEMENT OF THE FACTS

On July 23, 2024, Respondent was injured in an automobile accident during the course and scope of his employment with Seckinger, a forest products company in Hampton County. At the time of the accident, Respondent was operating a vehicle owned by Seckinger and insured by its carrier, BITCO. (BITCO Answer, p. 2). Respondent sought UIM coverage under the BITCO policy. BITCO tendered to Respondent the UIM limits of $75,000.00 purchased by Seckinger and specified on the declarations page of the policy, and BITCO denied that any additional coverage amount is available. (BITCO Answer, pp. 2-3). Respondent then filed this declaratory judgment action against Seckinger and BITCO, seeking a declaration that BITCO did not make a meaningful offer of UIM coverage to Seckinger and requesting that the insurance policy issued by BITCO to Seckinger be reformed to include $1,000,000 in underinsured motorist coverage.[1]

[1] Plaintiff filed a workers' compensation claim against a policy maintained by Seckinger, and also recovered the liability limits carried by the at-fault driver involved in the collision.

Seckinger has been owned and operated by Jeanne Seckinger and her husband since 1991. Jeanne Seckinger is a Certified Public Accountant ("CPA") and has over twenty years of experience in administration of law firms. (J. Seckinger Aff, ¶¶ 2-3, attached as exhibit to BITCO Mtn. for Summary Judgment). She has served as CFO for a local law firm since 1999. (*Id.,* ¶ 2). Ms. Seckinger has been responsible for the purchase of all types of insurance for Seckinger for over twenty years and considers herself to be an intelligent and sophisticated purchaser of insurance. (*Id.*, ¶¶ 4-5) She constantly weighs and balances issues of the amounts and types of insurance coverage to purchase not only for Seckinger, but herself and for the law firm where she works. (*Id.*, ¶ 5) She is very familiar with the nature and purpose of uninsured and underinsured motorist coverage and the legal requirements regarding these coverages. (*Id*.).

Beginning in October of 2016, BITCO began providing insurance to Seckinger through the Palmetto State Insurance Agency and Donald Watts, including a series of Business Automobile Policies. For each of the next four policy periods from October 1, 2016, through October 1, 2020, BITCO offered and Seckinger elected to receive underinsured motorist coverage with one million dollar limits, the same as the liability limits under the policy. Seckinger Aff. ¶ 7; D. Watts Affidavit, ¶ 4, attached as exhibit to BITCO Mtn. for Summary Judgment; *see also* 2016-2020 Declaration Pages, attached as Exhibit A to BITCO Answer to Am. Compl. However, beginning with the policy period from October 1, 2020, to October 1, 2021, and for each year thereafter, Seckinger elected to reduce its UIM coverage limits to $75,000.00, and responded to the offers of coverage from BITCO by designating UIM coverage to limits of $75,000.00, rather than one million dollars previously elected and provided. Seckinger Aff., ¶ 8; Watts Aff., ¶ 5; *see also* 2020-2024 Declaration Pages, attached as Exhibit B to BITCO Answer to Am. Compl.

In her affidavit, Ms. Seckinger explained the rationale behind Seckinger's decision to reduce its UIM coverage limits, reasoning that while Seckinger values its employees, it made a business decision to not purchase coverage that it felt was unnecessary. Seckinger Aff. ¶ 15. Ms. Seckinger also explained her desire to adequately protect Seckinger's employees, including family members, given the dangerous nature of their work, and reiterated her belief that Seckinger's employees were adequately protected due to workers' compensation insurance, disability, and $75,000.00 of UM and UIM coverage limits. Seckinger Aff., ¶ 6. Thus, Seckinger believed and continues to believe that the $75,000.00 UIM limits, combined with the other coverages also in effect, were sufficient for the needs of her business. *Id*.

Mr. Watts reaffirmed Ms. Seckinger's recollection, attesting that he was aware the Seckingers were concerned about their premium costs. Watts Aff., ¶ 5. Mr. Watts recalled that he discussed with the Seckingers the option to reduce their UM and UIM coverages to the minimum limits offered by BITCO, which was $75,000.00. *Id.* According to Watts, the Seckingers believed that such coverage, in conjunction with workers' compensation coverage, was sufficient for Seckinger's business needs. *Id.*

Policy CAP 3734984, effective October 1, 2023, to October 1, 2024, was the policy in effect on the date that the Williams motor vehicle collision occurred. *See* Policy, attached as Exhibit C to BITCO Answer to Am. Compl. In the application process for the Policy, Seckinger again requested, and BITCO again agreed to provide, underinsured motorist limits of $75,000.00. Seckinger Aff., ¶ 10; Watts Aff., ¶ 6. The Policy was partially generated through Form AF-2114 (10/18), adapted by BITCO to contain the terms approved by the South Carolina Department of Insurance for use in offering mandatory and optional automobile insurance coverages. Pages 1 and 2 of Form AF-2114 are entitled "State of South Carolina Department of Insurance SCDOI Form

Number 2006 [Revised January 1, 2007] – Offer of Additional Uninsured Motorist Coverage And Optional Underinsured Motorist Coverage." Form AF-2114, attached Exhibit A to Seckinger Aff. This form, as written and prescribed by the South Carolina Department of Insurance, explains in detail the nature and effect of the purchase of mandatory liability insurance and optional uninsured and underinsured coverages. *Id.* The explanatory text of this page form is in all significant respects as prescribed by the State of South Carolina Department of Insurance, and includes the following:

> Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.
>
> Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least $75,000 of combined single limits. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a $550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.
>
> An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than your damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.
>
> Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile

> insurance policy automatically provides uninsured motorist coverage of $75,000. There is a $200 deductible for uninsured property damages claims.
>
> You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.
>
> Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.
>
> Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.
>
> If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

Id., p. 2.

Page three of Form AF-2114 for the Policy is entitled "Offer of Additional Uninsured Motorist Coverage." This page describes the additional premium which would be charged for various levels of uninsured motorist coverage based on numbers of vehicles and policy limit options. *Id.*, p. 3. This page contains a signature block, consistent with the page header, asking "Do you wish to purchase additional uninsured motorist coverage?" A responsive "X" was placed in the answer for "No," and the form was electronically signed on behalf of Seckinger by Jeanne

Seckinger. *Id.*, p. 3. Consistent with the answer of "No," the subsequent line inquiring as to the amount of additional uninsured motorist coverage requested was left blank. *Id.* As intended, Seckinger purchased no additional UM coverage, and the Policy provided no UM coverage beyond the $75,000.00 uninsured motorist limits stated as being automatically provided.

Page four of Form AF-2114 is entitled "Offer of Optional Underinsured Motorist Coverage." This page describes the additional premium which would be charged for various levels of UIM coverage based on various numbers of vehicles and policy limit options. [2] *Id.*, p. 4. Like the previous page, this page also contains a signature block, but a typographical error that is inconsistent with the page header repeats the same question asked on the previous page of "Do you wish to purchase additional uninsured motorist coverage?" An "X" was placed in the answer for "No," and the form was electronically signed on behalf of Seckinger by Jeanne Seckinger. *Id.* Consistent with the answer of "No," the subsequent line inquiring as to the amount of optional UIM coverage requested was left blank. Based on this form and as intended by Seckinger, the Policy was issued to Seckinger with $75,000.00 in UIM coverage. *See* Declarations Page, Exhibit B to Seckinger Aff.

Page five of Form AF-2114 is entitled "Applicant's Acknowledgement," and provides that the applicant acknowledges reading (or having read to them) the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. *Id.*, p. 5. The acknowledgement further provides that the applicant understands the coverages as they have been explained, and that the type and amount of coverage marked on the preceding pages have been selected by the applicant and is what the applicant wishes to purchase. This page contains a

[2] Ms. Seckinger attested that she was fully aware of specific premiums that would be charged for additional coverage and that she had the option to purchase UIM coverage in various amounts, with correlating premiums, up to the limits of liability coverage. Seckinger Aff., ¶ 9.

signature block, dated 11/28/23, which was also signed by Ms. Seckinger. *Id.*, p. 5. Seckinger Aff., ¶ 13.

According to Ms. Seckinger, she has understood the nature of UIM coverage for years and was keenly aware that additional UIM coverage up to the limits of liability coverage was available. Seckinger Aff., ¶ 11. Ms. Seckinger further attested that she did not even notice the scrivener's error on the signature portion of page 4 of Form AF-2114, she was not confused by any scrivener's error, and that she believed at the time that she was rejecting the purchase of additional UIM coverage, which was exactly what she intended to do. *Id.* ¶¶ 11, 14. Finally, and notably, even after this dispute arose, Seckinger maintained and reaffirmed its decision to procure only $75,000.00 in UIM coverage, which is exactly what it intended to do, and did do, for the 2023 – 2024 policy period. *Id.*, ¶ 15.

Both Ms. Seckinger and Watts maintain that Ms. Seckinger was not confused at any point in the procurement process, that she was advised and understood that Seckinger had the option to purchase UIM coverage up to the limits of liability coverage, and that Seckinger knowingly and intentionally rejected any additional UIM coverage above $75,000.00 *See* Seckinger Aff., Watts Aff.

STANDARD OF REVIEW

Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) (citing *Turner v. Milliman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)). Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of

law. *Knight v. Austin*, 396 S.C. 518, 521–22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRCP; *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (eliminating the "mere scintilla" standard and holding the proper standard is the "genuine issue of material fact" standard set forth in the text of Rule 56(c), SCRCP). When the parties file cross-motions for summary judgment, the issue becomes a question of law for the Court to decide de novo. *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). Additionally, the interpretation of a statute is a question of law for the Court to review de novo. *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 300, 814 S.E.2d 513, 516 (2018).

ARGUMENT

The Circuit Court's Order finding no meaningful offer of UIM was made to Seckinger and finding the Policy should be reformed to include $1,000,000 in UIM limits is erroneous on multiple levels. Not only does the Circuit Court fundamentally misunderstand the South Carolina law regarding underinsured motorist coverage, the Circuit Court also misapplies the *Wannamaker* factors for determining whether a meaningful offer of UIM coverage was made while simultaneously ignoring the leading South Carolina cases on the issue. Finally, the Circuit Court's erroneous Order leads to an absurd result, reforming the Policy to include the UIM coverage in the amount of $1,000,000, despite the uncontroverted evidence that the insured categorically rejected these very limits and despite the public policy of our UIM jurisprudence, which is to protect the insured. Based on the foregoing, in conjunction with the evidence in the record, there is no genuine issue of material fact and BITCO is entitled to a reversal of the Circuit Court's Order and a finding

that it made a meaningful offer to Seckinger regarding UIM coverage, such that reformation of the Policy is unwarranted.[3]

I. The Circuit Court's Order Misconstrues the Legal Effect of South Carolina Common and Statutory Law Governing Underinsured Automobile Insurance and Insurer's Obligations Regarding the Same.

The purpose of requiring automobile insurers to make a meaningful offer of additional UM or UIM coverage "is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs." *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 262–63, 626 S.E.2d 6, 12 (2005) (quoting *Progressive Cas. Ins. Co. v. Leachman*, 362 S.C. 344, 352, 608 S.E.2d 569, 573 (2005)). Therefore, the Court must apply "all law with respect to a meaningful offer of additional . . . UIM coverage . . . so as to effectuate this stated purpose." *Grinnell Corp. v. Wood*, 389 S.C. 350, 356, 698 S.E.2d 796, 799 (2010). Indeed, "[t]he Court's primary function in interpreting a statute is to ascertain the intent of the legislature." *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 318 S.C. 516, 518, 458 S.E.2d 550, 551 (1995).

Where a statute is plain and unambiguous, legislative intent must be determined from the language of the statute itself. *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997) (citing *State v. Blackmon,* 304 S.C. 270, 403 S.E.2d 660 (1991)). The Court should consider, however, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Id.* (citing *S.C. Coastal Council v. S.C. State Ethics Comm'n,* 306 S.C. 41, 410 S.E.2d 245 (1991)). "The real purpose and intent of the lawmakers will prevail over the literal import of particular words." *Floyd*, 367 S.C. at

[3] Appellant also notes that Respondent's argument that an offer of zero must be communicated to constitute a meaningful offer, which was erroneously adopted by the Circuit Court, was not even raised until the hearing. As discussed below, *infra*, this only further demonstrates the error of the Circuit Court and the absurdity of the result.

260, 626 S.E.2d at 10 (citing *Browning v. Hartvigsen,* 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)).

The Circuit Court erroneously held that BITCO did not make a meaningful offer of UIM because "the offer must clearly communicate that the insured has the option to reject UIM coverage in its entirety." (Order, p. 6). In so doing, the Circuit Court misconstrued the legal effect of South Carolina law governing underinsured automobile insurance requirements. The governing statute and case law require only that the insured be offered the right to purchase coverage up to the limits of the liability coverage. But the Circuit Court erroneously inverts the statute's requirement by focusing not on the requirement that a carrier must offer the insured the option to purchase UIM coverage up to the limits of liability, but on the improper premise that the insured must be notified of its option to reject all UIM coverage, including zero. Thus, the Court's suggestion that statutory and case law require that the minimum UIM limit offered to a particular insured be zero is error and mandates reversal.

Section 38-77-160 of the South Carolina Code reads, in relevant part, as follows:

> **SECTION 38-77-160. Additional uninsured motorist coverage; underinsured motorist coverage.**
>
> Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. *Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.* If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

S.C. Code Ann. § 38-77-160 (emphasis added).

By its terms, the statute requires that an insurer *offer*, "at the option of the insured," UIM coverage *up to the liability limits of the policy*. The language is plain and unambiguous and means what it says: a carrier is required by law to offer the insured the opportunity to purchase UIM coverage up to the amount of the liability limits. BITCO's requirement that the insured have at least $75,000.00 in UIM limits, or the insured's acceptance of this requirement, is irrelevant to the question before the Court. Because while UIM coverage is not mandatory, South Carolina law does not prevent, nor can it prevent, an insurer such as BITCO from selling policies that include greater protection than provided under the law. Respondent's argument and the Circuit Court's Order holding that an insurer acts improperly by offering the insured the opportunity to purchase UIM up to the liability limits while also requiring an insured to purchase some amount of UIM coverage has no support in the statutory scheme or common law.

The Circuit Court's Order misapprehends the statutory scheme and the purpose behind it, which is to offer more, not less protection, to South Carolina insureds. It is not the option to reject, but the option *purchase*, which is key. That BITCO required a minimum amount of UIM for this particular insured is irrelevant to the inquiry of whether UIM coverage up to the limits of the insured liability coverage was meaningfully offered. Neither Respondent nor the Circuit Court references any statutory, common law, or public policy requirement that every insurer offer the insured "the option to reject UIM coverage in its entirety" as stated in the Order.[4] Not only would such a requirement be contrary to the fundamental purpose involved in the mandatory insurance

[4] The Circuit Court continuously misstates the evidence in the record. The BITCO offer form advised Seckinger that UIM coverage was optional. Seckinger, however, knew that the BITCO policy included $75,000.00 in UIM limits and Seckinger was fine with those limits. Seckinger Aff.; Watts Aff.

statutory scheme, which is to provide more protection, not less, a precedent that penalizes an insurer for writing a policy that provides *higher* protection than the law requires creates an absurd result in direct contravention to the point of the statutory scheme.

As discussed *infra*, the Circuit Court's fundamental misinterpretation of section 38-77-160 clouds its entire analysis, which is based upon an incorrect premise. This is error.

II. The Circuit Court Erred in Finding BITCO Failed to Make a Meaningful Offer with Respect to UIM Coverage.

In conjunction with misconstruing the statutory scheme, the Circuit Court then compounds its error by finding no meaningful offer was made.

As noted above, *supra*, section 38–77–160 requires an insurer to offer UM and UIM coverage to the insured. In *State Farm Mutual Automobile Insurance Co. v. Wannamaker,* 291 S.C. 518, 521, 354 S.E.2d 555, 556 (1987), the Supreme Court adopted a four-part standard by which to determine whether an insurer has complied with its duty to offer UM and UIM coverages. The four criteria outlined by *Wannamaker* are:

> (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 insurer must be told that optional coverages are available for an additional premium.

291 S.C. at 521, 354 S.E.2d at 556.

Wannamaker and its progeny require that an insurer's offer of UM and UIM coverage must be "meaningful." *Floyd*, 367 S.C. at 262–63, 626 S.E.2d at 12. "The purpose of requiring automobile insurers to make a meaningful offer of additional UM or UIM coverage 'is for insureds

to know their options and to make an informed decision as to which amount of coverage will best suit their needs.'" *Id.* (citing *Progressive Cas. Ins. Co. v. Leachman,* 362 S.C. 344, 352, 608 S.E.2d 569, 573 (2005)). All law with respect to a meaningful offer of additional UM and UIM coverage must be applied so as to effectuate this stated and "[c]ritical[]" purpose. *Grinnell*, 389 S.C. at 356, 698 S.E.2d at 799.

An insurer enjoys a presumption that a meaningful offer of UIM coverage has been made when a form offering UIM coverage complies with the requirements set forth in section 38–77–350(A) and is signed by the named insured. S.C. Code Ann. § 38–77–350(A)–(B); *see also Ray v. Austin*, 388 S.C. 605, 611, 698 S.E.2d 208, 212 (2010). But, regardless of the use of any form or the sufficiency of a form, an insurer may still prove the sufficiency of its offer by showing that it complied with *Wannamaker*. *See Wannamaker*, 291 S.C. at 521, 354 S.E.2d at 556 ("Wannamaker had a personal meeting with his State Farm agent when he paid the premium and State Farm did not ask Wannamaker about, explain, communicate or in any way offer him underinsured motorist coverage. *If the agent had discussed it and made a verbal offer to Wannamaker to purchase, this clearly would have met the statutory burden of providing the insured the option of rejecting or accepting the coverage*.") (emphasis added)); *see also Croft v. Old Republic Ins. Co.,* 365 S.C. 402, 420, 618 S.E.2d 909, 918 (2005) (holding whether a meaningful offer was made depends on the facts and circumstances of a particular case).[5]

[5] BITCO asserts that analysis of the *Wannamaker* factors is wholly unnecessary in light of the insured's position in this matter. As reasoned by Justice Pleicones in his concurrence in *Ray v. Austin*, "where the insured itself does not dispute it had all the information necessary to make an informed, intelligent choice, there is no need to discuss whether the form was acceptable under § 38–77–350 or whether *Wannamaker* has been satisfied." 388 S.C. at 615, 698 S.E.2d at 214 (J. Pleicones, concurring); *see also Grinnell*, 389 S.C. at 359, 698 S.E.2d at 801 (same) (J. Pleicones, concurring).

A. The Circuit Court Erred in Finding that Form AF-2114 Did Not Comply with Section 38-77-250.

The Circuit Court erred in finding the form offering UIM coverage to Seckinger failed to comply with the statutory requirements of section 38–77–350(A) and that it was not entitled to a conclusive presumption that a meaningful offer was made.[6] Section 38–77–350(A) provides:

> The director or his designee shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies. This form must be used by insurers for all new applicants. The form, at a minimum, must provide for each optional coverage required to be offered:
>
> (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 to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;
> (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;
> (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

A proper review of BITCO's Form AF-2114, in conjunction with the criteria set forth in section 38-77-350(A), demonstrates that BITCO's form did comply with the statute, such that it was entitled to the presumption of a meaningful offer. Again, the Circuit Court's finding that the "form does not ever ask or address whether the insured wished to purchase UIM coverage or to reject UIM coverage in its entirety," misapprehends the UIM statutory scheme and requirements,

[6] BITCO also maintains that the entirety of this action is unnecessary, as the record demonstrates that Seckinger began procuring UIM limits in the amount of $75,000 in 2020 and that limit remains unchanged today through each policy renewal. Section 38-77-350(C) states that "[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." Because the Policy at issue was a renewal of an existing policy with existing limits, BITCO was not even required to make a new "offer," let alone a "meaningful" one, to Seckinger. Nevertheless, BITCO went above and beyond, continuing to properly advise, explain and offer UIM in compliance with the statutory scheme and *Wannamaker*.

and more egregiously, injects terms into section 38-77-350(A) that do not exist. Despite its cursory analysis, one presumes the Circuit Court is referencing subsection (3), which requires "a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires." Yet, nowhere in subsection (3) does it state "in its entirety." This false premise upon which all of its findings rest poisons the entirety, as any reasonable analysis of Form AF-2114 demonstrates clear compliance with each enumerated subsection.[7] Thus, it was error for the Circuit Court to find BITCO was not entitled to a conclusive presumption that it made a meaningful offer to Seckinger.

B. The Circuit Court Erred in Failing to Find BITCO's Offer was Meaningful and in Compliance with *Wannamaker*.

However, even assuming the Form failed to strictly comply with section 38–77–350 requirements,[8] BITCO's offer still complied with *Wannamaker* and the Circuit Court's finding to the contrary is clear error. The Circuit Court did not perform an explicit analysis of each factor and seemingly hyper-focused on the third factor. Nevertheless, the record is abundantly clear that BITCO satisfied all four prongs of *Wannamaker*, with or without Form AF-2114.[9]

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[7] BITCO acknowledges that page 4 of Form AF-2114 concerning UIM contained a typographical error at the signature line, but such clerical error does not affect its compliance with section 38-77-350.

[8] Again, BITCO maintains its Form complied with section 38–77–350.

[9] Appellants emphasize that *Wannamaker* and its progeny do not require a form to satisfy the obligation of a meaningful offer. *See, e.g.*, *Wannamaker*, 291 S.C. at 521, 354 S.E.2d at 556 ("Wannamaker had a personal meeting with his State Farm agent when he paid the premium and State Farm did not ask Wannamaker about, explain, communicate or in any way offer him underinsured motorist coverage. *If the agent had discussed it and made a verbal offer to Wannamaker to purchase, this clearly would have met the statutory burden of providing the insured the option of rejecting or accepting the coverage*.") (emphasis added); <u>Ray</u>, 388 S.C. at 614, 698 S.E.2d at 213 (referencing deposition testimony of insured indicating that agent informed him of the availability of UIM coverage, and deferring to insured's conscious business decision to reject it).

i. BITCO's Offer Satisfied the First Prong of *Wannamaker*, as its Notification Process was Commercially Reasonable.

Regarding the first requirement, there has been no suggestion, nor could there be, that BITCO"s notification process was not "commercially reasonable." Indeed, discussing coverage orally with an insurance agent in conjunction with BITCO's written coverage option explanations was commercially reasonable. The record indicates that the notification process in this case was not limited to a single form containing a defective signature line. Instead, it includes specific and multi-year communications, written and oral, as described in the affidavits of Ms. Seckinger and Mr. Watts. *See Ray*, 388 S.C. at 613–14, 698 S.E.2d at 213 (recognizing and detailing ten-year course of dealings between insured and carrier and agent as satisfactory of prongs (1), (3), and (4) of *Wannamaker*).

ii. BITCO's Offer Satisfied the Second Prong of *Wannamaker*, as it Specified the Limits of Optional Coverage and did Not Merely Offer Additional Coverage in General Terms.

As to the second factor, the only evidence in the record confirms that BITCO specified, and Seckinger understood, the various limits of the optional coverage. Not only did the form include detailed explanations of coverage and exemplar amounts up to the limits of coverage, the oral process between agent and insured included explanation and understanding of Seckinger's right to buy, and BITCO's offer of, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. Thus, the second factor is not at issue here, as it was clear BITCO specified the limits of optional coverage up to the liability limits.

iii. BITCO's Offer Satisfied the Fourth Prong of *Wannamaker*, as it Communicated the Incremental Limits and Correlating Additional Premiums in Specific Terms.

As to the fourth factor, the requirement that the incremental limits and additional premiums for UIM be communicated in specific terms, there is no doubt that the table of options and

premiums on the BITCO form satisfies this requirement. Specifically, courts have found that an offer satisfies this prong of *Wannamaker* when it lists a specific premium amount that corresponds to each optional level of coverage or when the premiums are otherwise "readily ascertainable." *See Bagnal v. Foremost Ins. Grp.*, No. 2:09-CV-1474-DCN, 2010 WL 755202, at *7 (D.S.C. Mar. 2, 2010) ("By listing the [corresponding] premiums next to each of the UIM coverage limits, defendant also satisfied the fourth *Wannamaker* requirement by offering the optional coverages for additional premiums.") *aff'd*, 461 Fed.Appx. 311 (4th Cir. 2012); *Phillips v. Progressive Cas. Ins. Co.*, No. 2:07-CV-03125-CWH, 2008 WL 2705221, at *1 (D.S.C. July 3, 2008) (finding insurer satisfied *Wannamaker* where offer "contained a list of alternative coverage limits, including "$15,000/$30,000/$10,000," with a stated premium of $108.00"); *Dewart v. State Farm Mut. Auto. Ins. Co.*, 296 S.C. 150, 154, 370 S.E.2d 915, 917 (Ct. App. 1988) (finding *Wannamaker* requirements satisfied where offer stated that the insured could purchase optional coverage limits of $15,000/$30,000/$5000 or $25,000/$50,000/$25,000 by paying additional premiums of $93.00 and $97.00, respectively).

Here, the Form clearly describes the optional coverage and additional premiums in specific terms. Furthermore, the Order's reference to the BITCO form (and its mistaken commentary on Ms. Seckinger's intelligence in analyzing the premium had the insured selected $1,000,000.00 in UIM coverage) in footnote 3 is tacit acknowledgement that BITCO satisfied the fourth *Wannamaker* requirement[10] (Order, p. 9, fn. 3).

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[10] Not only is footnote 3 inaccurate, it reflects the Court's improper commentary on the propriety of the business decision made by Seckinger, an issue wholly irrelevant to the question of whether BITCO made a meaningful offer of UIM coverage. It also reflects an improper infusion of facts not in the record and the Circuit Court's continued focus on irrelevant considerations. Indeed, there is no case or statutory law that permits the Circuit Court to weaponize the reasonableness of an insured's business decisions in order to reform a policy. Whether the Circuit Court agrees or disagrees with the decision is irrelevant.

iv. BITCO's Offer Satisfied the Third Prong of *Wannamaker*, as Seckinger was Intelligibly Advised of the Nature of the Optional Coverage.

For nearly three and a half pages, the Circuit Court tediously tortures the third *Wannamaker* factor, which requires that the insurer must intelligibly advise the insured of the nature of the optional coverage, in order to conclude that no meaningful offer was made, despite uncontroverted and detailed evidence to the contrary.

Notably, our courts have consistently held that the requirement of a meaningful offer of additional UM and UIM coverage is "intended to protect an insured." *E.g., Grinnell,* 389 S.C. at 357, 698 S.E.2d at 800; *Ray*, 388 S.C. at 614, 698 S.E.2d at 213. A meaningful offer of additional UM and UIM makes as certain as possible that an insured has actual knowledge of his options with respect to such coverages and is therefore able to make an informed decision with respect to his desired coverage. *Floyd,* 367 S.C. at 262–63, 626 S.E.2d at 12 (citing *Progressive Cas. Ins. Co.,* 362 S.C. at 352, 608 S.E.2d at 573 ("The purpose of requiring automobile insurers to make a meaningful offer of additional UM or UIM coverage 'is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs.'")).

"[E]vidence of the insured's knowledge or level of sophistication is relevant and admissible when analyzing, under *Wannamaker,* whether an insurer intelligibly advised the insured of the nature of the optional UM or UIM coverage." *Croft*, 365 S.C. at 420, 618 S.E.2d at 918 (2005). This determination "is a subjective inquiry to the extent the insured may offer evidence of his understanding, or lack thereof, of the nature of UM or UIM coverage. It also is an objective inquiry because the factfinder should consider the insured[']s knowledge and level of sophistication in determining whether the insurer intelligibly explained such coverage to the insured." *Id.*

The uncontroverted affidavits of Ms. Seckinger and Mr. Watts demonstrate that Seckinger was aware of its option to purchase additional UIM coverage in various amounts, *up to the liability*

limits of $1,000,000.00, as it had done from October 2016 to October 2020, yet it deliberately chose not to do so based on certain business considerations. This in and of itself should have been the end of the analysis with respect to factor three. *See Ray,* 388 S.C. at 613–14, 698 S.E.2d at 213 (recognizing ten-year course of dealings between insured and carrier and agent as satisfactory of prongs (1), (3), and (4) of *Wannamaker*).

However, the Circuit Court painstakingly attempts to discredit Ms. Seckinger and diminish her intelligence, despite her having owned and operated Seckinger for over thirty (30) years, despite her years of experience in procuring insurance for herself and her businesses, and despite her years of experience as a CPA and administrator of a law firm. Indeed, the Circuit Court essentially finds that Ms. Seckinger did not mean what she said in her affidavit and more brazenly, even if she did, then she could not possibly have been a sophisticated or intelligent purchaser. *See* Order, pp. 9-12. This is all despite the fact that her affidavit, the only evidence in the record of her sophistication, provides thoughtful and discerning reasoning as to the economic and personal considerations Seckinger examined in procuring the amount of UM and UIM coverage that it did. This is also despite Seckinger's unequivocal outlining of her proper understanding of the UM and UIM coverage BITCO was offering and her decision related to the same.

Not only did Respondent fail to introduce any evidence to contradict Ms. Seckinger's assertions regarding her level of sophistication, experience and knowledge, and her understanding of the nature of the coverage, the record is completely devoid of *any* evidence to contradict Seckinger's deliberate business decisions to change their insurance practices and to purchase UIM in an amount less than the liability limits. *See* Rule 56(c), SCRCP (summary judgment is proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.); *Kitchen Planners,*

LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (eliminating the "mere scintilla" standard and holding the proper standard is the "genuine issue of material fact").

In finding no meaningful offer was made, the Circuit Court performs legal gymnastics, going to great lengths to attempt to distinguish this case from the controlling cases of *Grinnell* and *Ray* on the issue. Notably, the Circuit Court avoids *Ray* altogether, despite it involving the exact question before the Court and being issued the same day as *Grinnell*. Furthermore, the Circuit Court's discussion of *Grinnell* is limited, focused solely on diminishing Ms. Seckinger's uncontroverted attestation that she was a sophisticated purchaser and understood her options with respect to the UIM coverage BITCO was offering. In so doing, the Circuit Court again relies on the mistaken premise that Seckinger must have been advised of its "option [to] reject[] ALL UIM coverage" for a meaningful offer to have transpired.[11] Order, p. 11. The Order's conflation of option to purchase all and option to reject all poisons its entire analysis and clouds its egregious diminishment of Ms. Seckinger's professional career and testimony regarding her insurance knowledge, experience and process.

Respondent's red herring, adopted by the Circuit Court, that it is the option to reject all UIM, not to purchase UIM coverage, that is required with respect to a meaningful offer lacks any common or statutory law foundation. Rather, South Carolina jurisprudence on this issue is well-established and *Grinnell* and *Ray* are the seminal cases on this issue. *Grinnell* is nearly factually identical to the case at hand. In finding that a meaningful offer was made pursuant to *Wannamaker*, the Supreme Court stated:

> American Home concedes that its form did not comply with the requirements of section 38–77–350(A) and it is thus not entitled to the presumption that it made a meaningful offer of additional UM and UIM to Grinnell. If the only evidence

[11] Again, the only evidence in the record indicates that BITCO required Seckinger, and Seckinger desired to maintain, $75,000.00 in UIM limits. *See* Watts Aff., ¶ 5.

> presented in this record were the statutorily deficient and incorrectly executed offer form, the court of appeals opinion would have to be affirmed. However, the record presented in this case is replete with uncontroverted evidence that the insured knew its options with respect to additional UM and UIM coverage in South Carolina and made an informed decision as to the amount of coverage that best suited its needs. Because Goetz testified that he knew his options with respect to additional UM and UIM coverage in South Carolina and knowingly declined the offer, the court of appeals decision creates an absurd result.
>
> The record in this matter contains evidence that a meaningful offer was made under *Wannamaker*. First, the record contains ample evidence that Goetz knew his options with respect to additional UM and UIM coverage, thus, based on the sophistication of the parties, American Home made a commercially reasonable offer to Tyco. Second, the offer form listed five different split limits for optional coverage and also included an additional line where Goetz could have elected to insert an amount other than those listed. Third, American Home discussed the nature of optional coverage with Goetz at each renewal period and Goetz specifically expressed his understanding of optional coverage. Fourth, the offer form indicated coverage was available at an additional premium. Therefore, given the facts of this case with respect to the parties' level of sophistication, we find that American Home made a meaningful offer of additional UM and UIM coverage to Grinnell.

Grinnell, 389 S.C. at 358–59, 698 S.E.2d at 800.[12] Like *Grinnell*, the record here is "replete with uncontroverted evidence that the insured knew its options with respect to additional UM and UIM coverage in South Carolina and made an informed decision as to the amount of coverage that best suited its needs."

In *Ray*, inexplicably ignored by the Circuit Court altogether, states:

> We find Lumbermens met three of the four *Wannamaker* factors. Initially, Lumbermens notified Cintas of the availability of UIM coverage in a commercially reasonable manner. Consistent with their ten-year course of dealings, Purtell, on behalf of Lumbermens, met with Ryan, Cintas's insurance purchasing agent, to discuss the insurance options available to Cintas. At the meeting, Purtell explained to Ryan that Cintas had the option to purchase UIM coverage. Additionally, Purtell presented Ryan with the form offering UIM coverage. The form itself intelligibly advised Cintas of the nature of UIM coverage. The form explained that UIM coverage is triggered when liability coverage is insufficient to cover the damages

[12] Notably, unlike the Circuit Court's Order here, the Court in *Grinnell* did not question, diminish, or insult the insured's agent. *See Id*. ("Because Goetz testified that he knew his options with respect to additional UM and UIM coverage in South Carolina and knowingly declined the offer, the court of appeals decision creates an absurd result.").

> of the insured. Finally, the form stated that UIM coverage was available for an additional premium.
>
> . . .
>
> On the other hand, if we were to find Lumbermens failed to make a meaningful offer of UIM coverage because it failed to offer coverage in more specific terms, we would reach the absurd result of reforming the insurance policy to give Cintas coverage it understood, did not want, and clearly rejected. Moreover, in reaching this absurd result, we would turn the policy objective behind the meaningful offer requirement in *Wannamaker* on its head.
>
> We refuse to apply the *Wannamaker* factors in a manner that contravenes the very purpose behind the meaningful offer requirement. The clear purpose of the meaningful offer requirement is to protect insureds—to give them the opportunity "to know their options and to make an informed decision as to which amount of coverage will best suit their needs." *Floyd,* 367 S.C. at 262–63, 626 S.E.2d at 12 (internal quotation omitted). In this case, there can be no doubt that Lumbermens informed Cintas of its option to purchase UIM coverage. Lumbermens explained to Cintas the nature of UIM coverage through oral discussions and in writing. During Ryan's deposition, he confirmed that Purtell informed him of the availability of UIM coverage. Ryan stated, "[w]e [he and Purtell] would talk about whether we wanted to buy any additional coverage. Of course, our stance was no. We knew that additional coverage had additional cost associated with it." The facts of this case reveal that Cintas made a business decision to refuse UIM coverage. Cintas made this decision with full awareness of the nature of the coverage it was rejecting. Accordingly, we find Lumbermens made a meaningful offer of UIM coverage to Cintas.

388 S.C. at 614, 698 S.E.2d at 213. Like *Ray*, Seckinger "made a business decision" to refuse to purchase additional UIM coverage above the $75,000.00 "with full awareness of the nature of the coverage it was rejecting."

Despite the Circuit Court's tortured attempt to distinguish the case *sub judice* from *Grinnell*, *Grinnell* and *Ray* carry the day and are directly on point. Yet the Circuit Court's Order largely ignores their similarities and import, and instead, torturedly applies the *Wannamaker* factors "in a manner that contravenes the very purpose behind the meaningful offer requirement." Regardless of the Circuit Court's injection of its own opinions regarding Ms. Seckinger's intelligence or business decisions, the only conclusion possible based on the evidence in the record

is that Seckinger understood the coverage, did not want higher limits and clearly rejected them. There is no evidence contradicting Seckinger's understanding.

Further, there is no evidence contradicting Ms. Seckinger's and Mr. Watts' testimony about their experience procuring insurance for Seckinger, including that Seckinger's insurance was handled by an experienced officer of the corporation who purchased automobile insurance through an experienced insurance broker intimately familiar with the insured's business. Seckinger was well aware of the fact that it had the option to purchase additional UM and UIM coverage at varying levels up to the level of liability limits, as evidenced by its *prior* purchase of $1,000,000.00 in UIM coverage followed by a deliberate decision to lower those limits to $75,000.00. Furthermore, Ms. Seckinger attested that the error on the signature line of the UIM form (referring to "uninsured" motorist coverage instead of UIM coverage) did not adversely affect or confuse her understanding of what she was purchasing for Seckinger, and that she knew she had the option to purchase additional UIM coverage above the $75,000.00 minimum afforded in the Policy, but chose not to do so.

Quite simply, the record is replete with uncontroverted evidence that Seckinger, a sophisticated purchaser, understood the nature of the coverage and knowingly rejected UIM limits above $75,000.00 after making a business decision that such limits were sufficient for its needs. *See Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 631-32, 658 S.E.2d 106, 110 (Ct. App. 2008) (finding that insured was intelligibly advised of the nature of the coverage and noting the insured was a high school teacher, former principal, and coach of thirty-five years with a Master's degree and over thirty hours towards a Ph.D.).

Assuming some doubt remains, which it does not, *Progressive Casualty Insurance Company v. Leachman*, 362 S.C. 344, 608 S.E.2d 569 (2005) shuts the door and likewise mandates

that this Court find a meaningful offer was made. In *Leachman*, the Supreme Court cautioned that courts should not simply put on blinders when an insured seeks to reform a policy to include UIM coverage, but must also consider the equities. There, the insured—like Seckinger—actually purchased some amount of UIM coverage, but in a lower amount than its liability limits.[13] 362 S.C. at 346, 608 S.E.2d at 570-71. Nonetheless, after a loss, the insured sought to reform the policy to include higher limits of UIM coverage than he selected on the offer form.

The Supreme Court began its analysis by considering the insured's selection of lower limits of UIM coverage despite higher listed limits on the form. Distinguishing prior offer cases where the courts reformed rejections of optional coverage to provide UIM coverage, the Supreme Court noted that "the insured in this case *purchased UIM coverage*." *Id*. at 350, 608 S.E.2d at 572 (emphasis added). It reasoned that the insured's selection of UIM coverage limit below his liability limits in the face of other various limit options was evidence that the offer gave him the opportunity to make an intelligent and informed decision. *Id*. at 350-51, 608 S.E.2d at 572.

Here, just as in *Leachman,* Seckinger purchased some UIM and rejected the option to purchase any additional UIM coverage. Even more persuasive than *Leachman*, Seckinger had purchased the full amount of UIM coverage available in prior years, but thoughtfully decided to reduce its UIM coverage to $75,000.00 (in the face of other limit options up to the amount of its liability limits) due to business considerations.

Here, the policy goal behind the meaningful offer requirement was fully satisfied, Seckinger was fully aware of its option to purchase UIM coverage up to the limits of liability, and reformation was not justified. The Circuit Court's holding to the contrary lacks any evidentiary

[13] The insured purchased $300,000 combined single limits of liability coverage but selected the lower limits of $100,000/$300,000/$50,000 for UIM coverage. *Id*. The insured—like Seckinger—completed and signed the offer form. *Id*. at 347-348.

support and runs afoul to long-standing precedent regarding meaningful offers. Reversal is warranted.

III. Reformation of the Policy to Include Coverage up to the Limits of Liability Leads to an Absurd Result.

The Circuit Court's erroneous decision based upon a false and conflated premise fails to even acknowledge, let alone examine, the public policy and equities underlying the entire insurance scheme. In *Leachman*, the Supreme Court stated:

> There are also policy reasons for finding that Progressive made a meaningful offer. The goal, as set forth in *Wannamaker*, is to provide an insured with adequate information to make an intelligent decision on whether to accept or reject UIM coverage. In addition, a meaningful offer allows an applicant to purchase UIM insurance in any amount up to the limits of liability at an additional premium. To conclude that Progressive did not make a meaningful offer in this case would lead to an absurd result. . . . Progressive would be required to pay an amount that Leachman specifically rejected. To compel coverage would overstep the purpose behind mandating a meaningful offer.

Id. at 351, 608 S.E.2d at 572-73 (internal citations omitted); *see also Ray*, 388 S.C. at 614, 698 S.E.2d at 213 (noting that if it ignored the insured's testimony regarding its knowing rejection of UIM coverage, "we would reach the absurd result of reforming the insurance policy to give [the insured] coverage it understood, did not want, and clearly rejected" and "we would turn the policy objective behind the meaningful offer requirement in *Wannamaker* on its head"); *Grinnell*, 389 S.C. at 358, 698 S.E.2d at 800 ("Because [the insured's agent] testified that he knew his options with respect to additional UM and UIM coverage in South Carolina and knowingly declined the offer, the court of appeals decision creates an absurd result.").

The same equity and policy concerns are even more prevalent in this case. The background of Seckinger's decision-making reveals just how inequitable and absurd the Circuit Court's weaponization of the *Wannamaker* factors and reformation of the policy is. The totality of this transaction paints a clear picture that Seckinger did not want, and expressly rejected, optional UIM

coverage in any amount over $75,000.00. In fact, it is undisputed that in previous years, Seckinger had purchased more UIM coverage and made a conscious and thoughtful business decision to reduce the UIM coverage to $75,000.00, which it believed was sufficient to protect its employees in conjunction with workers' compensation coverage and UM coverage of $75,000.00.

The Circuit Court's decision creates an absurd result. The Circuit Court found that there was no meaningful offer because the insured was not given the option to reject UIM in its entirety – despite there being nothing in the record to indicate that is what Seckinger would have done if it had that option. Yet, instead of reforming the policy to eliminate all UIM coverage, the Order reforms the policy to "reach the absurd result of reforming the insurance policy to give [Seckinger] coverage it understood, did not want, and clearly rejected." *Ray,* 388 S.C. at 614, 698 S.E.2d at 213. This result flies in the face of the South Carolina Supreme Court's rationale in *Grinnell*, *Ray,* and *Leachman*, *supra*, and does not advance the stated purpose of the meaningful offer requirement. Such reformation of the policy to provide UIM up to the limits of coverage despite Seckinger's knowing rejection of the same is erroneous and this Court should reverse.[14]

CONCLUSION

As demonstrated above, the Circuit Court erred in denying Appellants' Motions for Summary Judgment and Granting Respondent's Motion for Summary Judgment. Based on the statutory scheme, the public policy behind the same, and well-established South Carolina precedent, in conjunction with the uncontroverted and unequivocal evidence in the record, no genuine issue of material fact exists and BITCO was entitled to a declaratory judgment that its

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[14] In the alternative, BITCO suggests that if reformation is warranted, which it is categorically not, the Policy should be reformed to include no UIM coverage, as the Circuit Court repeatedly emphasizes that the fatal error in BITCO's offer was its failure to notify Seckinger that it had the option to reject ALL UIM coverage.

UIM offer to Seckinger was meaningful and that reformation was not warranted. Any other conclusion leads to an absurd result. Therefore, Appellants' respectfully request this Court reverse the Circuit Court's Order denying their Motions for Summary Judgment and granting Respondent's Motion for Summary Judgment.

Respectfully Submitted,

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