

2012

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.

RECORD ON APPEAL

J.R. Murphy, Esquire
Wesley B. Sawyer, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Appellant

Brian A. Martin, Esquire
BRIAN A. MARTIN, LLC
212 Trade Street
Greer, South Carolina 29651
(864) 879-7779
Attorneys for Respondents

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Attorneys for Respondents

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Progressive Northern Insurance)
Company,)
Plaintiff,)

Vs.)

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

ORDER

Civil Action Number: 2011-CP-42-2965

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE D-ASHLEY

DATE OF HEARING : **June 20, 2012**
JUDGE : **J. Derham Cole**
PLAINTIFF'S ATTYS : **J. R. Murphy, Wesley B. Sawyer**
MEDLOCK DEFENDANTS' ATTY : **Brian A. Martin**
DEFENDANT STANDARD FIRE ATTY : **William P. Davis**

THIS MATTER came before me for a hearing at the Spartanburg County, South Carolina Court of Common Pleas on June 20, 2012 on cross motions for summary judgment by Plaintiff and Defendants Stanley K. Medlock and Corey K. Medlock. Present at the hearing were the Plaintiff's attorneys, J.R. Murphy and Wesley B. Sawyer, the Medlock Defendants' attorney, Brian A. Martin and Defendant Standard Fire attorney, William P. Davis.

The issues before the Court relate to the availability of underinsured motorist (UIM) coverage and arise out of a contract of insurance between Plaintiff and the Medlock Defendants. Since both parties have moved for summary judgment, there is agreement of the parties that there are no issues of fact to be decided by the Court in this matter.



In addition to the pleadings, affidavits, exhibits and memoranda filed, Plaintiff and Medlock Defendants each presented their arguments for summary judgment. Defendant Standard Fire did not present any argument regarding the motions. Based upon the materials and information presented and arguments of counsel, and for good cause shown, the Court finds that summary judgment should be granted in favor of the Medlock Defendants as to the claims of the Plaintiff.

FINDINGS OF FACTS

1. Corey Medlock was injured on October 9, 2010 when the motorcycle he was driving and insured by Plaintiff under policy number 8561390-0 was struck by another vehicle. (Affidavit of Corey K. Medlock & Stipulation of Fact #1 and #12)

2. The driver of the other vehicle was insured by GEICO at the time, who tendered their full coverage of \$50,000.00 in settlement of Corey Medlock's claim in exchange for a Covenant Not to Execute. (Affidavit of Corey K. Medlock & Stipulation of Fact #12)

3. On February 10, 2011, an action was filed in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned *Corey K. Medlock v. Jon C. Owens*, Civil Action Number 2011-CP-42-649 alleging that Mr. Owens was at fault in the accident and caused unspecified damages in excess of \$50,000.00 to Corey Medlock. (Affidavit of Corey K. Medlock & Stipulation of Fact #13)

4. Plaintiff entered a Notice of Appearance as a UIM carrier on April 14, 2011, reserving any rights under any applicable policy of insurance. (Stipulation of Fact #13)

5. On October 15, 2009, Stanley Medlock applied for a policy of insurance with Plaintiff to insure a 2001 Polaris Sportsman 500 4-wheel all terrain vehicle owned by him. (Affidavit of Stanley K. Medlock, Exhibit B, Stipulations of Fact Exhibit B & Stipulation of Fact #1 and #2)

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6. The application was prepared by the Agency of Keith Young & Associates with the named insured as "Stanley K. Medlock" (Affidavit of Stanley K. Medlock, Exhibit B p2 & Stipulations of Fact, Exhibit B p. 2) and the application was only signed by Stanley Medlock. (Affidavit of Stanley K. Medlock, Exhibit B, p. 6, 9 and 10, Stipulations of Fact, Exhibit B p. 6, 9 and 10 & Stipulation of Fact #4)

7. On the first page of the application under the section titled "Drivers and household residents" and the column listed as "Relationship," Stanley Medlock is listed as "Insured" and Corey Medlock is listed as "Child." (Affidavit of Stanley K. Medlock, Exhibit B p. 2 & Stipulation of Facts, Exhibit B p. 2)

8. The application contained an offer of optional underinsured motorist coverage pursuant to S.C. Code §38-77-250 and Stanley Medlock rejected that offer and signed and dated this section of the application below it. (Affidavit of Stanley K. Medlock, Exhibit B p. 10, Stipulation of Facts, Exhibit B p. 10 & Stipulation of Facts #5)

9. Plaintiff issued policy number 8513910-0 on October 15, 2009 for a policy period of October 15, 2009 through October 15, 2010 covering the 2001 Polaris Sportsman 500 with liability limits of \$25,000/\$50,000, Uninsured Coverage of \$25,000/\$50,000, and Underinsured Coverage showing as "Rejected." (Affidavit of Stanley K. Medlock, Exhibit A, Stipulation of Facts, Exhibit A & Stipulations of Fact #1 and #7)

10. On the first page of the Declarations to the policy under the section titled "Drivers and household residents" and the column listed as "Additional Information," Stanley Medlock is shown as the named insured and Corey Medlock has no information in this column. (Affidavit of Stanley K. Medlock, Exhibit A p. 2 & Stipulation of Facts, Exhibit A p. 2)



11. Corey Medlock is the biological son of Stanley Medlock and at all times relevant to this policy, Corey Medlock was residing in the same household as his father. (Affidavit of Corey K. Medlock & Stipulations of Fact #3)
12. Under the terms of the policy issued by Plaintiff to Stanley Medlock, Corey Medlock is defined as a "Relative" rather than a named insured. (Affidavit of Stanley K. Medlock, Exhibit A p. 7 & Stipulation of Facts, Exhibit A p.7)
13. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to add a 2001 Suzuki SV650/S motorcycle owned solely by Corey Medlock as an additional vehicle under the policy. (Affidavit of Stanley K. Medlock, Exhibit C p. 1 & Stipulation of Facts, Exhibit C p. 1 & Stipulations of Fact #8)
14. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to reflect that Corey Medlock was changed from being a "Relative" under the policy as a second named insured. (Affidavit of Stanley K. Medlock, Exhibit C p. 1, Stipulation of Facts, Exhibit C p. 1 & Stipulation of Facts #8)
15. As a result of these changes, the premium increase due was \$37.00. (Affidavit of Stanley K. Medlock, Exhibit C p. 1 & Stipulation of Facts, Exhibit C p. 1)
16. Corey Medlock paid the premium increase and has always paid the premium for the coverage on the Suzuki under the policy, although Stanley Medlock has paid the premium for the Polaris. (Affidavit of Corey K. Medlock)
17. No additional offer of UIM coverage was made to either Stanley Medlock or Corey Medlock at the time these changes were made to the policy. (Affidavit of Corey K. Medlock, Affidavit of Stanley K. Medlock & Stipulation of Facts #6 and #10)



18. Prior to being changed from a "Relative" to a named insured on this policy, Corey Medlock had never been a "Named Insured" on any other policy of insurance with Plaintiff (Affidavit of Corey K. Medlock & Stipulations of Fact #11)

19. Corey Medlock has never been given the opportunity to accept or reject UIM coverage with Plaintiff. (Affidavit of Corey K. Medlock & Stipulation of Facts #6 and #10)

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998). Since both Plaintiff and Medlock Defendants have moved for summary judgment, there is agreement that there is no genuine issue of material fact and that summary judgment is appropriate in this case.

LEGAL ANALYSIS

The paramount issue before the Court in these cross motions for summary judgment is whether Corey Medlock was entitled to an offer of UIM coverage and the opportunity to reject such coverage when the Plaintiff made Corey Medlock a named insured on a policy of automobile insurance previously issued by the Plaintiff to Stanley Medlock. For the reasons stated below, I find that making Corey Medlock a named insured created a new policy with a new named insured and that he was entitled to an offer of UIM coverage and opportunity to reject UIM coverage. Therefore, summary judgment should be granted in favor of the Medlock Defendants and since no such offer was made, the policy issued by the Plaintiff should be reformed to include UIM coverage up to the

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limits of liability coverage in that policy.

An offer of UIM coverage is a mandatory requirement under S.C. Code Ann. § 38-77-160 on all Automobile insurance carriers up to the limits of liability obtained under a policy by a new insured. S.C. Code Ann. § 38-77-160. The form used for such offer and the information it must contain is mandated by S.C. Code Ann. § 38-77-350 to assure that all new applicants have been provided sufficient information to make an informed choice whether to buy such optional coverage. S.C. Code Ann. § 38-77-350. If the form is signed by the named insured, it is conclusively presumed that there was an informed selection of coverage made and the insurance company is not liable for the choice not to buy the coverage. S.C. Code Ann. § 38-77-350(B). Once an offer of coverage has been made, the carrier is not required to make a new offer when the policy is renewed, extended, changed or replaced. S.C. Code § 38-77-350(C).

The Supreme Court of South Carolina has addressed the issue of whether an offer of UIM coverage must be made in very similar circumstances in the case of *McDonald v. South Carolina Farm Bureau Insurance Company*, 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 1999). In *McDonald*, a mother purchased insurance for her car in 1993 through Farm Bureau and in completing the application, rejected UIM coverage. In 1996, the mother informed Farm Bureau that she had sold the car to her son, McDonald, and wanted the insurance put in his name. McDonald had never been a named insured on any policy with Farm Bureau and was not a member of Farm Bureau. McDonald paid a membership fee but did not complete an application or sign any document to become a named insured on the policy. *Id.* at 122, 518 S.E.2d at 625.

After McDonald paid the membership fee, Farm Bureau issued a policy with McDonald as the named insured which had the same policy number as his mother's policy and carried the same



limits of liability and did not provide UIM coverage. Farm Bureau admitted it had not offered McDonald UIM coverage but that it was simply their policy to change the name on the policy when a vehicle transferred from parent to child. *Id.* at 122, 518 S.E.2d at 625.

Farm Bureau argued, as does Plaintiff in the present case, that Farm Bureau was not required to make an offer of UIM coverage to McDonald because he was not a "new applicant" under S.C. Code Ann. § 38-77-350. *Id.* at 123, 518 S.E.2d at 625. In making its decision, the Court in *McDonald* rejected Farm Bureau's argument holding:

We see no inconsistency in the term "new applicant" in Section 38-77-350(A) and "insured" in Section 38-77-160. Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage. In using the term "new applicant," the legislature simply distinguished between those who had never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage.

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Id. at 124, 518 S.E.2d at 626 (emphasis added).

The Court further held that McDonald had never been a named insured with Farm Bureau, that he had never been given the opportunity to accept or reject UIM coverage and that regardless of how Farm Bureau processed the issuance of the policy, McDonald was a new named insured with Farm Bureau and was entitled to an offer of UIM coverage. *Id.* at 124, 518 S.E.2d at 626. The Court went on to state that "[a]ny other construction of the statute would defeat the legislature's intent that all named insured be offered UIM coverage. *Id.* at 124, 518 S.E.2d at 626.

The circumstances of the present case are nearly identical to *McDonald*. Stanley Medlock applied for a policy of insurance with Plaintiff, completed the application and rejected UIM coverage. Ten months later, Plaintiff added a vehicle owned by Corey Medlock as a covered vehicle on the policy and made Corey Medlock a named insured on that policy. Like McDonald, Corey



Medlock had never been the named insured on any policy of insurance with Plaintiff, has never been given the opportunity to accept or reject UIM coverage, and was not required to fill out an application. Similar to the membership fee McDonald was required to pay, there was a premium increase on the policy which was paid by Corey Medlock.

Plaintiff argues that Corey Medlock was only made a named insured because he was the registered owner of a vehicle added to the policy. However, it is irrelevant how Corey Medlock became a named insured on the policy of insurance issued by the Plaintiff; he was a new named insured with the Plaintiff. Based on the Court's interpretation of the statutes in *McDonald*, the legislature intended that all named insureds must be afforded the opportunity to accept or reject UIM coverage, which by the evidence submitted in this case, necessarily includes Corey Medlock.

Plaintiff argues that the present case is materially different from *McDonald* in that (1) Stanley K. Medlock was never removed from the policy but remained a named insured; (2) Corey K. Medlock, although not a named insured, was already a Class I insured under the existing policy as a resident relative whereas McDonald was not; and (3) since Stanley K. Medlock was not removed, there remains a valid offer and rejection by a named insured that is binding on all other insureds on the policy under S.C. Code Ann. § 38-77-350(B). Plaintiff's arguments and support are not compelling given the clear direction of the Court in *McDonald*, the clear terms of the policy, and the Court's interpretation of S.C. Code Ann. § 38-77-350.

The Court in *McDonald* held the legislative intent of the statutes was to afford "all" named insured the opportunity to accept or reject UIM coverage, not "a" or "any" named insured as the Plaintiff contends the phrase "or another insured under the policy" in § 38-77-350(B) should be interpreted. It naturally would make sense that a decision by the named insured on a policy of



insurance taken out by that named insured who is the primary beneficiary of that policy, has the legal obligation to pay for it, and the only right to change or cancel it, should be binding on other insureds who only stand to benefit under such policy without the burden of paying for it. But when Corey Medlock was made a named insured, he no longer only stood to benefit but became burdened with the obligations under the policy as well. The legislature recognized this in its distinguishing between a named insured and an insured relative under the law. An insured relative has no legal authority, even if he so desires, to require the insurer to provide him UM or UIM coverage under that policy as a matter of law.

Under Plaintiff's theory, a carrier that made someone a named insured on a policy they were already an insured driver under would allow the carrier to hold that insured to all the other legal requirements, obligations and rights of a named insured both under the policy and the law, except for the mandatory requirement of providing them the opportunity to make an informed and intelligent decision on whether to purchase UIM coverage. The Court in *McDonald* recognized this potential inequity but resolved it in their holding that the legislature's intent was that "all named insured be offered UIM coverage." *McDonald*, 336 S.C. at 124, 518 S.E.2d at 626.

Plaintiff offers the cases of *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002), *Wilkinson v. Louisiana Indemnity/Patterson Ins.*, 682 So.2d 1296 (La. Ct. App. 1996), writ denied, 695 So.2d 964 (La. 1997), and *Isaacson v. Country Mut. Ins. Co.*, 767 N.E.2d 862 (Ill. Ct. App. 2002), as support that in the jurisdictions of Rhode Island, Louisiana and Illinois, a rejection of coverage by the initial named insured has been held valid against subsequently added named insureds. These cases, however, are clearly distinguishable from the present case.

In *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002), the Courts decision hinged

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on Rhode Island General Law § 27-7-2.1(d), which provides in pertinent part:

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.

Ferreira, 809 A.2d at 1101 (emphasis added). The carrier had carried out this duty when Ferreira had been added to the policy and failed to take action at that time. *Id.* The failure to seek coverage when notice was provided was the reason the Court held the original rejection valid as to the additional named insured. South Carolina has no such mandatory notice requirement when a policy is changed; in fact S.C. Code Ann. § 38-77-350(c) specifically relieves a carrier of the obligation to make a new offer when a policy “renews, extends, changes, supersedes, or replaces an existing policy.” S.C. Code Ann. § 38-77-350(c).

In *Wilkinson v. Louisiana Indemnity/Patterson Ins.*, 682 So.2d 1296 (La. Ct. App. 1996), writ denied, 695 So.2d 964 (La. 1997), the Court of Appeals in Louisiana determined that the definition of “insured” in the policy included the named insured and his spouse if a resident of the same household, and that since Mrs. Wilkinson was already covered as the spouse under the policy from the time they were married, that adding her as a named insured did not alter her coverage under the policy at all and therefore, did not constitute a new policy. This is very different from the case at hand where Corey Medlock is clearly defined as a “Relative” under the policy issued by the Plaintiff with limited rights and coverage versus the named insured or spouse included in the definition of “you” under the policy. The *Wilkinson* decision was also a limited exception for spouses only from its prior decision in *Dempsey v. Automotive Cas. Ins.*, 680 So.2d 675 (La. Ct. App. 1996), which held that the addition of an insured driver to an existing automobile liability insurance policy, without any change in the bodily injury limits, increases the policy’s coverage and constitutes a new policy,

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requiring the execution of a separate selection/rejection of UM coverage. *Id.* at 681. Based on the *Dempsey* decision, Louisiana would seem to be in line with the holding of *McDonald* and actually support the Medlock Defendants position rather than the Plaintiff.

Finally, Plaintiff offers *Isaacson v. Country Mut. Ins. Co.*, 767 N.E.2d 862 (Ill. App. Ct. 2002), as support that the addition of a daughter to a policy did not require a new rejection of UM coverage. In this case, the policyholder's daughter was added to the policy as an insured but not as a named insured. The Court specifically held that the daughter "was not substituted as a named insured and was not responsible for policy decisions. In addition, a new vehicle was not added or substituted for coverage" therefore "the addition of Bartola's daughter did not reflect a coverage change but a driver information change." *Id.* at 866. A much more applicable case from this jurisdiction and cited by the Court in *Isaacson* is the case of *Nila v. Hartford Ins. Co.*, 758 N.E.2d 81 (Ill. App. Ct. 2000). In *Nila*, a policy was issued with a husband as the named insured and his wife as a covered driver. *Id.* at 83. Like the case at hand, that policy defined "you" to include the named insured and spouse if a resident of the same household. *Id.* at 84. The husband passed away and the carrier replaced the husband with the wife as the named insured on the policy. The wife did not complete an application and had never been offered the opportunity to accept or reject UM coverage. *Id.* at 84. The Court held that this was the first time the wife had been a named insured and the first time she was responsible for decisions as to the type and amount of coverage, that the purpose of the uninsured motorist statute is to make sure the insured makes an informed and intelligent decision regarding such coverage, and that she had never had the opportunity to make an informed and intelligent decision regarding UM coverage. *Id.* at 88-89. As such the Court found that making the wife the named insured was the creation of a new policy requiring a new offer of UM coverage and

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their failure to do so required reformation of the policy. *Id.* at 89. Based on this decision, the Illinois jurisdiction would also seem to be in line with our Court's holding in *McDonald*.

Plaintiff also argues that Corey Medlock was already a Class I insured under the existing policy therefore the legal relationship between Plaintiff and Corey Medlock did not change when he was made a named insured. The terms of the policy itself bear out that this is not true.

Under the policy terms, Corey Medlock was defined as a "Relative" when Stanley Medlock was the only named insured, but changed to being defined under the term "you" when he was made a named insured on the policy. With this change, Corey Medlock now had increased coverage which is excluded in paragraph 13 of the Exclusions section of Part I – Liability to Others, where coverage is excluded for bodily injury or property damage arising out of the ownership, maintenance, or use of any non-covered motorcycle owned by a relative, but this exclusion does not apply to a named insured's maintenance or use of such motorcycle. (Affidavit of Stanley K. Medlock, Exhibit A p. 8) Additionally, only the named insured has the legal obligation to pay the premium and the legal right to enforce coverage upon tender of the premium. The policy terms also restrict other significant rights and obligations to only the named insured, such as the duty to report changes (Affidavit of Stanley K. Medlock, Exhibit A p. 18 & Stipulation of Facts, Exhibit A p. 18), the ability to cancel the policy (Affidavit of Stanley K. Medlock, Exhibit A p. 19 & Stipulation of Facts, Exhibit A p. 19), and the entitlement to a refund of any premium refund. (Affidavit of Stanley K. Medlock, Exhibit A p. 19 & Stipulation of Facts, Exhibit A p. 19)

Plaintiff's final argument that adding Corey K. Medlock as a named insured simply recognized that he was the owner of the vehicle added to the policy and merely constituted a change to an existing policy under S.C. Code §38-77-350(c) also fails in light of the facts of this case and the

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decision in *McDonald*. While it is clear from the Court's decision in *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002), that the addition of a vehicle to an existing policy does not require a new offer under § 38-77-350(c) the Court in *McDonald* specifically addressed that the changing of the named insured does require a new offer and the Court in *Smith* confirmed that the decision in *McDonald* was an entirely different situation than in *Smith*. 350 S.C. at 88, 564 S.E.2d at 361.

S.C. Code Ann. § 38-77-350(C) states, "[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." Citing the Court's decision in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995), the *McDonald* Court held: "Where Section 38-77-350(C) states the insured is not required to make a "new" offer, it clearly envisions the circumstances where the insurer has already made an "old" offer." *McDonald*, 336 S.C. at 125, 518 S.E.2d at 626 (emphasis added).

The Court in *McDonald* also believed this section should not be used to avoid the requirement of § 38-77-160, citing its holding in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995):

If §38-77-350(C) were interpreted to relieve [carrier] of the general requirement of offering [the insured] underinsured motorist coverage up to the liability limits of the policy, it would amount to an absolute repeal of §38-77-160, which mandates that an automobile insurer offer underinsured motorist coverage up to the limits of the insured's liability coverage.

McDonald, 336 S.C. at 125, 518 S.E.2d at 626 (emphasis added).

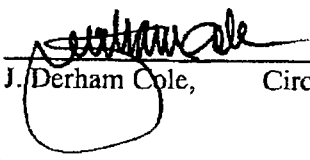
Applying this reasoning, the *McDonald* Court found that making McDonald a named insured was not just a minor change to the policy. "It was the creation of a new insurance policy with a new

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named insured.” *Id.* at 125, 518 S.E.2d at 626. The same would also necessarily be true for Corey Medlock. When Plaintiff made Corey Medlock a named insured, it created a new insurance policy requiring a new offer of UIM coverage.

It is undisputed that Corey Medlock became a named insured on a policy of automobile insurance issued by the Plaintiff and it is undisputed that Corey Medlock was never given the opportunity to accept or reject UIM coverage by the Plaintiff. Regardless of how Plaintiff made Corey Medlock a named insured, he was a new named insured with the Plaintiff. Under S.C. Code Ann. § 38-77-160 and authority of *McDonald*, it is clear that Plaintiff was required to provide all named insureds with the opportunity to accept or reject an offer of UIM coverage, including Corey Medlock. Since no such offer was made to Corey Medlock, summary judgment must be granted in favor of the Medlock Defendants and the policy of the Plaintiff ordered to be reformed to reflect UIM coverage in amounts equal to the limits of liability.

Based upon the foregoing this Court finds that **Plaintiff's motion** for summary judgment should be and is therefore **denied** and **Defendants Medlocks' motion** for summary judgment should be and is therefore **granted** and the **policy** of insurance issued by the Plaintiff in this matter with Corey Medlock as a named insured **is hereby reformed** to include underinsured motorist coverage in the same amount as the liability coverage afforded under the policy.


J. Derham Cole,

Circuit Court Judge

March 26, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2011-CP-42- 2965

Progressive Northern Insurance Co.)

Plaintiff,)

v.)

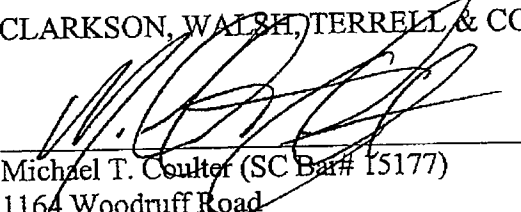
Stanley K. Medlock, Corey K.
Medlock, and The Standard Fire
Insurance Company.)

Defendants.)

**SUMMONS
(Non-Jury)**

YOU WILL PLEASE TAKE NOTICE that you are hereby required to answer the Complaint in this action (a copy of which is served upon you) which was filed in the office of the Clerk of Court on the 7TH day of July, 2011 and to serve a copy of your Answers upon the subscriber at 1164 Woodruff Road, P.O. Box 6728 (29606), Greenville, South Carolina 29607, within thirty (30) days after service thereof, exclusive of the day of such service. If you fail to answer the Complaint within said time, judgment by default will be rendered against you for the relief demanded in the Complaint.

CLARKSON, WALSH, TERRELL & COULTER, P.A.


Michael T. Coulter (SC Bar# 15177)
1164 Woodruff Road
Post Office Box 6728 (29606)
Greenville, South Carolina 29607
(864) 232-4400
(864) 235-4399 – fax
Attorneys for the Plaintiff

Greenville, South Carolina
July 6, 2011

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2011-CP-42- 2965

Progressive Northern Insurance Co.)

Plaintiff,)

v.)

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

Defendants.)

COMPLAINT
(Declaratory Judgment)
(Non-Jury)

The plaintiff Progressive Northern Insurance Co., ("Progressive"), complaining of the above-named defendants would allege and state as follows:

PARTIES AND JURISDICTION

1. The plaintiff, Progressive, is organized under the laws of a State other than South Carolina doing business as Progressive in South Carolina.

2. The defendants, Stanley K. Medlock and Corey K. Medlock, upon information and belief, are residents of Spartanburg County, South Carolina.

3. The defendant Corey K. Medlock is a plaintiff in a lawsuit brought against Jon C. Owens alleging injuries arising from an automobile accident of October 9, 2010, Civil Action Number 2011-CP-42-00649, pending in the Court of Common Pleas for Spartanburg County.

The Standard Fire Insurance Company, ("Standard"), is a company organized and existing under the laws of the State of Connecticut doing business as Standard in South Carolina. At the time of the accident, the vehicle being driven by Corey Medlock was insured by Progressive under Policy number 8561390-0 and both defendants were listed as insureds under the policy. Upon

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information and belief, Corey Medlock has also claimed underinsured motorist coverage through a policy issued on other vehicles by Standard.

4. This action is brought pursuant to S.C. Code Ann. § 15-53-10 et. seq.

5. Upon information and belief this Court has both personal and subject matter jurisdiction over this action and venue is proper in the Spartanburg County Court of Common Pleas.

FACTS

6. On or about February 10, 2011 an action was filed in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned Corey K. Medlock v. Jon C. Owens, Civil Action Number 2011-CP-42-649. This action is herein after referred to as "the lawsuit."

7. In the lawsuit Corey Medlock seeks unspecified damages arising out of an injury sustained in an automobile accident, which occurred on October 9, 2010, on Old Furnace Road in Spartanburg County, South Carolina in which he claims Mr. Owens to be responsible.

8. Upon information and belief the vehicle Mr. Owens was driving at the time of the accident was insured by GEICO, who has tendered their full coverage in the amount of \$50,000.00 in settlement of Corey Medlock's claim in exchange for a Covenant Not to Execute. Corey Medlock is claiming damages in excess of \$50,000.00 in his lawsuit against Mr. Owens.

9. On April 14, 2011 Progressive entered a Notice of Appearance as an underinsured motorist carrier pursuant to S.C. Code Ann. § 38-77-160 reserving any rights under any policy of insurance applicable to this claim.

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10. Standard also entered a Notice of Appearance on April 28, 2011 as an underinsured motorist carrier pursuant to S.C. Code Ann. § 38-77-160 reserving any rights under any policy of insurance applicable to this claim.

11. On October 15, 2009 Progressive entered into a policy of insurance with number 85613910-0 with Stanley K. Medlock insuring a 2001 Polaris Sportsman 500 VIN 4XACH50A71A355200 with liability coverage of \$25,000.00 per person/\$50,000.00 per accident. Stanley Medlock was informed as to his options to purchase underinsured motorist coverage and signed a form declining underinsured coverage. The offer form executed by Stanley Medlock stated as follows:

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must then contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or insurance company upon the renewal of your motor vehicle liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your motor vehicle liability insurance policy.

12. On June 9, 2011 Progressive policy number 85613910-0 was changed to include the addition of a 2001 Suzuki SV650/S VIN JS1VP52A512103094 and to add the owner of that vehicle, Corey K. Medlock, a resident relative of Stanley K. Medlock as a second insured under the policy. No other terms of the policy were changed.

13. In accordance with the Progressive policy and South Carolina Code Ann. Section 38-77-350(C) no additional offer of optional underinsured motorist coverage was made at the time the policy was changed.

14. Stanley K. Medlock at the time the policy was issued knowingly rejected any optional underinsured motorist coverage.

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15. Stanley K. Medlock never contacted his insurance company or its agent during the pendency of the policy to request a change of his limits of underinsured motorist coverage.

16. Corey K. Medlock never contacted his insurance company or its agent during the pendency of the policy to request a change of his limits of underinsured motorist coverage.

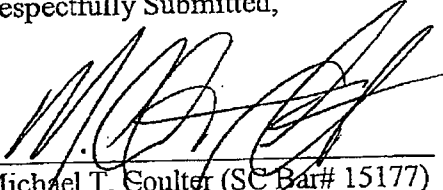
17. As a result of their knowing and express waiver of underinsured coverage the plaintiff, Progressive, would assert that there is no coverage available for the claims arising from the October 9, 2010 automobile accident.

FOR A FIRST REQUEST FOR DECLARATORY RELIEF

18. The plaintiff would request that this Court declare, pursuant to S.C. Code Ann. § 15-53-10 et. seq., that there is no underinsured motorist coverage available under Progressive policy number 85613910-0 insuring the Suzuki SV650/S VIN JS1VP52A512103094 for the policy period effective October 9, 2010 such coverage being effectively waived by the defendants, Corey K. Medlock and Stanley K. Medlock.

WHEREFORE, the plaintiff prays that this Court issue an Order declaring that there is no underinsured motorist coverage applicable to the claim of Corey K. Medlock, and for any such further relief as this Court deems just and proper.

Respectfully Submitted,

By: 

Michael T. Coulter (SC Bar# 15177)
Amy M. Snyder (SC Bar# 7968)
Clarkson, Walsh, Terrell & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)

Attorneys for Progressive Northern Insurance Company

July 7, 2011
Greenville, South Carolina

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C.A. NO.: 2011-CP-42-2965

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

Stanley K. Medlock, Corey K. Medlock,
And The Standard Fire Insurance
Company,

Defendants.

ANSWER, COUNTERCLAIMS AND
CROSS-CLAIMS ON BEHALF OF
DEFENDANTS STANLEY K. MEDLOCK
AND COREY K. MEDLOCK
(Declaratory Judgment)
(Non-Jury)

Defendants Stanley K. Medlock and Corey K. Medlock hereby answers the allegations of
Plaintiff's complaint and makes Cross-Claims against Defendant The Standard Fire Insurance
Company as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's complaint not specifically admitted herein is denied and strict proof thereof is demanded of the Plaintiff.
2. The allegations contained in paragraph number 1 are admitted upon information and belief.
3. The allegations contained in paragraph number 2 are admitted.
4. The allegations contained in paragraph number 3 are admitted.
5. The allegations contained in paragraph number 4 are admitted.
6. The allegations contained in paragraph number 5 are admitted.
7. The allegations contained in paragraph number 6 are admitted.
8. The allegations contained in paragraph number 7 are admitted.

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9. The allegations contained in paragraph number 8 are admitted.
10. The allegations contained in paragraph number 9 are admitted.
11. The allegations contained in paragraph number 10 are admitted.
12. The allegations contained in paragraph number 11 are admitted upon information and belief.
13. Regarding the allegations contained in paragraph number 12, it is admitted that on June 9, 2010 that Plaintiff issued a contract of insurance to Defendants, Stanley K. Medlock and Corey K. Medlock insuring a 2001 Suzuki SV650/S VIN JS1VP52A512103094 and that Defendant Corey K. Medlock was the owner of that vehicle. Any and all remaining allegations contained in paragraph number 12 are denied.
14. Regarding the allegations contained in paragraph number 13, it is admitted that no offer of optional underinsured motorist coverage was made to either Defendants Stanley K. Medlock or Corey K. Medlock on or about June 9, 2010.
15. The allegations contained in paragraph number 14 are denied.
16. The allegations contained in paragraph number 15 are denied.
17. The allegations contained in paragraph number 16 are denied.
18. The allegations contained in paragraph number 17 are denied.
19. To the extent paragraph number 18 contains any allegations to which a response required of the Defendants, those allegations are denied.

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FOR A SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM

20. Defendants incorporate by reference the consistent and relevant portions of the preceding paragraphs from both Plaintiff's Complaint and Defendants' Answers above as if fully set forth herein.

21. On or about June 9, 2010, Plaintiff issued a policy of insurance covering a 2001 Suzuki Motorcycle owned by Defendant Corey K. Medlock.
22. Prior to June 9, 2010, Defendant Corey K. Medlock was not the named insured of any other policy of insurance issued by the Plaintiff.
23. Defendant Corey K. Medlock became a named insured of an insurance policy issued by Plaintiff covering said 2001 Suzuki Motorcycle.
24. Defendant Corey K. Medlock was never informed as to his options to purchase underinsured motorist coverage by the Plaintiff.
25. Defendant Corey K. Medlock has never signed a form declining any offer of optional underinsured motorist coverage.
26. Defendants Stanley K. Medlock and Corey K. Medlock would request this Court declare, pursuant to S.C. Code Ann. § 15-53-10 et. Seq. and the prevailing case law of South Carolina, that no meaningful offer of underinsured motorist coverage was ever made to insured Corey K. Medlock and order the reformation of the policy of insurance covering such vehicle to include underinsured motorist coverage up to the limits of liability on said policy.

FOR A THIRD DEFENSE AND BY WAY OF A CROSS-CLAIM

27. Defendants incorporate by reference the consistent and relevant portions of the preceding paragraphs of both Plaintiff's Complaint and Defendants' Answers stated above as if fully set forth herein.
28. On September 10, 2010, Defendant Stanley K. Medlock entered into a policy of insurance with number 9434621791011 with Defendant Standard Fire Insurance Company insuring four vehicles (none of which were involved in this accident) with underinsured motorist

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coverage of \$50,000 per person/\$100,000 per accident for each vehicle. Insured Drivers under this policy were Stanley K. Medlock, Earleen S. Medlock and Corey K. Medlock.

29. Defendant Corey K. Medlock is seeking damages in the action filed in Spartanburg County Court of Common Pleas captioned Corey K. Medlock v. Jon C. Owens, Civil Action Number 2011-CP-42-649, that will exceed the limits of both the liability coverage from Mr. Owens of \$50,000 already tendered by GEICO in exchange for a Covenant Not to Execute and the policy limits available to Defendant Corey K. Medlock under a reformed policy with Plaintiff, thereby allowing Defendant Corey K. Medlock to claim coverage under the policy with Defendant Standard Fire.

30. Defendant Standard Fire has asserted that no Underinsured Coverage exists under this policy based on the following Exclusion contained in the policy of insurance:

EXCLUSIONS

A. We do not provide Underinsured Motorist Coverage for "bodily injury" or "property damage sustained by any person:

- 1. While "occupying"; or when struck by; any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.**

31. This attempted exclusion has been held to be void as it is in direct conflict with South Carolina code § 38-77-160 in the case of *Nakatsu v. Encompass Indemnity Company*, 172, 700 S.E.2d 283 (S.C.App. 2010) and this specific provision used by Defendant Standard Fire was held to be void under the *Nakatsu* ruling in *Carter v. The Standard Fire Insurance Co.*, 041811 SCCA, 2011-UP-175.

32. Defendants Corey K. Medlock and Stanley K. Medlock would request this Court declare, pursuant to the prevailing law in South Carolina that the above exclusion contained in the Policy of Insurance between Defendant Stanley K. Medlock and Defendant Standard Fire Insurance Company is void as a matter of law and declare, pursuant to S.C. Code Ann. § 15-53-10 et seq.,

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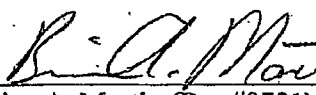
that the underinsured motorist coverage of said policy shall be available to the Defendant Corey K. Medlock upon receipt of the limits of underinsured coverage from the reformed policy with the Plaintiff.

WHEREFORE, Defendant prays the Court as follows:

1. That the Declaratory Relief sought by the Plaintiff be denied.
2. That this Court issue an Order reforming the policy of insurance between Plaintiff and Defendant Corey K. Medlock to include underinsured motorist coverage up to the limits of the liability coverage contained in such policy.
3. That this Court issue an Order declaring the Exclusion cited herein contained in the policy of insurance between Defendant Stanley K. Medlock and Defendant Standard Fire Insurance Company is void as a matter of law and that the underinsured motorist coverage of said policy shall be available to Defendant Corey K. Medlock.
4. Such other and further relief as the Court deems just and proper.

Submitted this 23rd day of August, 2011.

MARTIN & DAVIS, LLC


Brian A. Martin (Bar #9791)
Attorney for the Defendant
212 Trade St.
Greer, South Carolina, 29651
(864) 334-1986

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	2011-CP-42-2965
	)	
Progressive Northern Insurance Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR SUMMARY JUDGMENT
	)	
Stanley K. Medlock,	)	
Corey K. Medlock, and The	)	
Standard Fire Insurance Company,	)	
	)	
Defendant.	)	
	)	

The Plaintiff, Progressive Northern Insurance Company ("Progressive"), in accordance with Rules 56 and 57 of the *South Carolina Rules of Civil Procedure*, would hereby move for Summary Judgment on its claim set forth in its Complaint in this matter and request that the Court declare in accordance with that Complaint that there is not underinsured motorist coverage applicable with regard to Corey K. Medlock. This Motion is based upon the *South Carolina Rules of Civil Procedure* and the Pleadings filed herein, and any such Memorandum of authority or affidavits that may be filed hereafter.

In accordance with Rule 57 of the *South Carolina Rules of Civil Procedure*, the Plaintiff would request a speedy hearing with regard to this Motion and that it be advanced on the Non-Jury Motion calendar.

Respectfully submitted,

By: 
Michael T. Coulter (SC Bar# 15177)
Amy M. Snyder (SC Bar# 7968)
CLARKSON, WALSH, TERRELL & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
(864) 232-4400
(864) 235-4399 – fax
Attorneys for Progressive Northern Insurance Company

Greenville, South Carolina
September 21 2011

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
2011-CP-42-2965

Progressive Northern Insurance
Company,
Plaintiff,

vs.

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

**PLAINTIFF'S REPLY TO DEFENDANTS'
COUNTERCLAIM and CROSSCLAIM**

(NON-JURY)

The Plaintiff, Progressive Northern Insurance Company, ("Progressive") responding to the Counterclaim of the Defendants, Stanley K. Medlock, and Corey K. Medlock, would respectfully submit unto the Court as follows:

FOR A FIRST DEFENSE

1. Paragraphs 1 through 19 of the Answer and Counterclaim are responsive paragraphs to the initial Complaint, and therefore, no response is required. To the extent information contained in those allegations is inconsistent with the information pled in the Complaint, the Plaintiff would deny those allegations and craves reference to the allegations of the Complaint.

2. With regard to Paragraph 20, the Plaintiff craves reference to previously pled herein.

3. The Plaintiffs admit so much of the allegations contained in Paragraphs 21 through 23 as alleged that the Defendant, Corey K. Medlock, became an additional insured on the policy issued to his father, Stanley K. Medlock, with regard to a 2001 Suzuki motorcycle owned by the

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Defendant, Corey K. Medlock, the Plaintiff denies any allegations contained in Paragraphs 21 through 23 inconsistent herewith.

4. The Plaintiff admits that the Defendant Corey K. Medlock has not signed a form declining any offer of optional underinsured motorist coverage. The Plaintiff denies any allegations contained in Paragraphs 24 and 25 inconsistent herewith.

5. The Plaintiff denies the allegations contained in Paragraph 26 of the Defendants' Complaint.

6. The Plaintiff lacks sufficient information to respond to the allegations contained in Paragraph 27 through 32 of the Defendant's Cross-Claim and would deny the same to the extent that they are inconsistent with the allegations of the Plaintiff's Complaint and craves reference to the Plaintiff's Complaint in this action.

WHEREFORE, the Plaintiff, Progressive Northern Insurance Company prays for the relief requested in its Complaint and dismissal of the Counterclaim with prejudice and all such further relief as the Court deems just and proper.

By: 

Michael T. Coulter (SC Bar# 15177)

Amy M. Snyder (SC Bar# 7968)

Clarkson, Walsh, Terrell & Coulter, P.A.

P.O. Box 6728

Greenville, SC 29606

(864) 232-4400

(864) 235-4399 (fax)

Attorneys for Progressive Northern Insurance Company

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Greenville, South Carolina
September 27, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-42-2965

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

Stanley K. Medlock, Corey K. Medlock,
And The Standard Fire Insurance
Company,

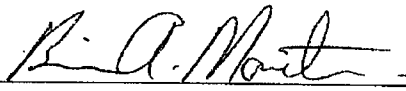
Defendants.

MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF
DEFENDANTS
STANLEY K. MEDLOCK AND
COREY K. MEDLOCK

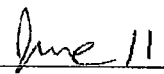
TO: PLAINTIFF AND DEFENDANT THE STANDARD FIRE INSURANCE
COMPANY,

YOU WILL PLEASE TAKE NOTICE that Defendants Stanley K. Medlock and Corey K. Medlock, by and through their attorney in accordance with Rules 56 and 57 of the *South Carolina Rules of Civil Procedure*, do hereby move for Summary Judgment on their Cross-claim and Counter-claim set forth in their Answer, Cross-Claims and Counter-Claims in this matter and request that the Court declare in accordance with the Cross-Claim and Counter-Claim, that the insurance policies of Plaintiff and Defendant The Standard Fire Insurance Company shall be reformed respectively to include underinsured motorist coverage that is applicable to Corey K. Medlock. This Motion is based upon the *South Carolina Rules of Civil Procedure*, the Pleadings filed herein, and any such Memorandum of authority or affidavits that may be filed hereafter.

BY:


Brian A. Martin (SC Bar # 9791)
Martin & Davis, LLC
212 Trade Street
Greer, SC 29651
(864) 334-1986
Attorney for Defendant Stanley K. Medlock
and Corey K. Medlock

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, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

C.A. NO.: 2011-CP-42-2965

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

Stanley K. Medlock, Corey K. Medlock,
And The Standard Fire Insurance
Company,

Defendants.

MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF SUMMARY JUDGMENT
IN FAVOR OF DEFENDANTS
STANLEY K. MEDLOCK AND
COREY K. MEDLOCK

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This matter is before the Court upon motions by both Plaintiff and Defendants Stanley K. Medlock and Corey K. Medlock for summary judgment. For the following reasons, Plaintiff's motion should be denied and Defendants' motion should be granted.

I. INTRODUCTION

This Declaratory Judgment action is brought by Plaintiff to have the Court declare that there is no underinsured motorist coverage available under Progressive policy number 8563910-0 for the policy period effective October 9, 2010 and that such coverage was effectively waived by defendants Stanley K. Medlock and Corey K. Medlock (sometimes hereinafter referred to collectively as "Medlock Defendants").

The original complaint was filed by Plaintiff on July 11, 2011. Medlock Defendants filed an answer, counter-claims and cross-claims against Defendant The Standard Fire Insurance

Company (hereinafter "Defendant Standard Fire") on August 23, 2011. Plaintiff filed its reply to the counter-claims and cross-claims on or about September 22, 2011 as well as this motion for summary judgment. Defendant Standard Fire filed its answer to Plaintiff's complaint and to the Medlock Defendants' cross-claims on or about October 27, 2011. Medlock Defendants then filed their motion for summary judgment on June 11, 2012. Based on the different legal issues involved, Medlock Defendants and Defendant Standard Fire have requested that the Motion for Summary Judgment as to Defendant Standard Fire be heard separately from these motions, therefore, only the issues between Plaintiff and Medlock Defendants is briefed in this Memorandum.

The issues before the Court in Plaintiff's and Medlock Defendants' cross-motions for summary judgment relate to the availability of underinsured motorist (UIM) coverage and arise out of a contract of insurance between Plaintiff and the Medlock Defendants. Since both parties have moved for summary judgment, it would appear that there is agreement that there are no issues of fact to be decided by the Court in this matter. Although the facts are not in dispute, the parties do have different interpretations of the insurance contract and the applicability of South Carolina law.

Plaintiff's motion for summary judgment is sought on the basis that (1) a meaningful offer of UIM coverage was made to Defendant Stanley K. Medlock which was rejected and that rejection is applicable to Defendant Corey K. Medlock as a resident "Relative" insured under the policy and remained applicable when he became a "Named Insured" on the policy and (2) that the change of Defendant Corey K. Medlock from being insured as a resident "Relative" to a "Named Insured" was a change to an existing policy such that under S.C. Code §38-77-350(C),

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Plaintiff was not required to make a new offer of UIM coverage. For the reasons stated below, the Plaintiff's motion should be denied.

The Medlock Defendants filed a cross-motion for summary judgment on June 11, 2012. The basis for this motion is that (1) although the original offer of UIM coverage to Defendant Stanley K. Medlock was applicable to Defendant Corey K. Medlock as a resident "Relative" under the policy originally issued, when his legal status changed under the policy to a "Named Insured," a new offer of UIM coverage was required to be made to him at that time under S.C. Code §38-77-160, S.C. Code §38-77-350 and *McDonald v. South Carolina Farm Bureau Ins. Co.*, 336 S.C. 120, 518 S.E.2d 624 (S.C.App. 1999) *cert. denied.*; and (2) S.C. Code §38-77-350(C) does not apply to the change of Defendant Corey K. Medlock from being insured as a resident "Relative" to a "Named Insured". Since no offer was ever made to Defendant Corey K. Medlock, the insurer failed to comply with its duty under the law, the policy must be reformed to include UIM coverage up to the limits of liability carried by the insured. *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 86, 564 S.E.2d 358, 361 (S.C.App.2002) citing *Rath v. Catawba Ins. Co.*, 339 S.C. 228, 232, 528 S.E.2d 693, 694-95 (Ct.App.2000) *cert. denied.* For these reasons, Medlock Defendants' motion should be granted.

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II. SUMMARY OF FACTS

The issues in this case arise out of an automobile accident that occurred on October 9, 2010 in which the Defendant Corey K. Medlock was injured when the motorcycle he was driving and insured by Plaintiff under policy number 8561390-0 was struck by another vehicle. (Affidavit of Corey K. Medlock) The driver of the other vehicle was insured by GEICO at the

time, who tendered their full coverage of \$50,000.00 in settlement of Corey Medlock's claim in exchange for a Covenant Not to Execute. (Affidavit of Corey K. Medlock)

On February 10, 2011, an action was filed in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned *Corey K. Medlock v. Jon C. Owens*, Civil Action Number 2011-CP-42-649 (hereinafter "the tort action") alleging that Mr. Owens was at fault in the accident and caused unspecified damages in excess of \$50,000.00 to Defendant Corey K. Medlock. (Affidavit of Corey K. Medlock) Plaintiff entered a Notice of Appearance as a UIM carrier on April 14, 2011, reserving any rights under any applicable policy of insurance. Plaintiff thereafter filed this declaratory judgment action on July 11, 2011 with all Defendants responding as indicated above.

On October 15, 2009, Defendant Stanley K. Medlock applied for a policy of insurance with Plaintiff to insure a 2001 Polaris Sportsman 500 4-wheel all terrain vehicle owned by him. (Affidavit of Stanley K. Medlock, Exhibit A) The application was prepared by the Agency of Keith Young & Associates with the "Named Insured" as "Stanley K. Medlock" (Affidavit of Stanley K. Medlock, Exhibit B p. 2) and the application was only signed by Defendant Stanley K. Medlock. (Affidavit of Stanley K. Medlock, Exhibit B p. 6, 9 and 10) On the first page of the application under the section titled "Drivers and household residents" and the column listed as "Relationship," Defendant Stanley K. Medlock is listed as "Insured" and Defendant Corey K. Medlock is listed as "Child." (Affidavit of Stanley K. Medlock, Exhibit B p. 2) The application contained an offer of optional underinsured motorist coverage pursuant to S.C. Code §38-77-250 and Defendant Stanley K. Medlock rejected that offer and signed and dated this section of the application below it. (Affidavit of Stanley K. Medlock, Exhibit B p. 10)

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Plaintiff issued policy number 8513910-0 on October 15, 2009 for a policy period of October 15, 2009 through October 15, 2010 covering the 2001 Polaris Sportsman 500 with liability limits of \$25,000/\$50,000, Uninsured Coverage of \$25,000/\$50,000, and Underinsured Coverage showing as "Rejected." (Affidavit of Stanley K. Medlock, Exhibit A) On the first page of the Declarations to the policy under the section titled "Drivers and household residents" and the column listed as "Additional Information," Defendant Stanley K. Medlock is shown as the "Named Insured" and Defendant Corey K. Medlock has no information in this column. (Affidavit of Stanley K. Medlock, Exhibit A p. 2)

Defendant Corey K. Medlock is the biological son of Defendant Stanley K. Medlock and at all times relevant to this policy, Defendant Corey K. Medlock was residing in the same household as his father. (Affidavit of Corey K. Medlock,) This fact is made relevant to the applicability of the available coverage, terms and conditions of the policy given that the "General Definitions" of the policy define the word "Relative" and "You" as follows:

10. **"Relative"** means a person residing in the same household as you, and related to **you** by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.
15. **"You"** and **"your"** mean:
 - a. a person shown as a named insured on the **declarations page**; and
 - b. the spouse of a named insured if residing in the same household at the time of the loss.

(Affidavit of Stanley K. Medlock, Exhibit A p. 7) Therefore, under the terms of the policy issued, Defendant Corey K. Medlock was not a "Named Insured" and would be defined under the policy terms as a "Relative."

On June 9, 2011, two changes were made to the existing policy number 85613910-0 between Plaintiff and Defendant Stanley K. Medlock. The first change was that a 2001 Suzuki

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SV650/S motorcycle owned solely by Defendant Corey K. Medlock was added as an additional vehicle under the policy. (Affidavit of Stanley K. Medlock, Exhibit C p. 1) The second change was that Defendant Corey K. Medlock was changed from being a "Relative" under the policy to a second "Named Insured." (Affidavit of Stanley K. Medlock, Exhibit C p. 1) The premium due from these changes was \$37.00. (Affidavit of Stanley K. Medlock, Exhibit C p. 1) Defendant Corey K. Medlock paid this premium and always paid the premium for the coverage on the Suzuki under the policy. (Affidavit of Corey K. Medlock) No additional offer of UIM coverage was made to either Defendant Stanley K. Medlock or Defendant Corey K. Medlock at the time these changes were made to the policy. (Affidavit of Corey K. Medlock and Affidavit of Stanley K. Medlock)

Prior to being changed from a "Relative" to a "Named Insured" on this policy, Defendant Corey K. Medlock had never been a "Named Insured" on any other policy of insurance with Plaintiff (Affidavit of Corey K. Medlock) and Defendant Corey K. Medlock has never been given the opportunity to accept or reject UIM coverage with Plaintiff. (Affidavit of Corey K. Medlock)

III. STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). Since both Plaintiff and Medlock Defendants have moved for summary judgment, there is agreement that there is no genuine issue of material fact and that summary judgment is appropriate in this case.

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IV. LEGAL ARGUMENT

The issues raised in this declaratory judgment action by the Plaintiff have already been decided by the South Carolina Courts in the case of *McDonald v. South Carolina Farm Bureau Insurance Company*, 336 S.C. 120, 518 S.E.2d 624 (S.C.App. 1999) *cert. denied.*, wherein the Court held regarding the UIM statutory requirements that "Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage" and any other interpretation of the statutes "would defeat the legislature's intent that all named insured be offered UIM coverage." *Id.* at p. 124 (Emphasis Added)

It is undisputed that Defendant Corey K. Medlock became a "Named Insured" on this policy (Affidavit of Stanley K. Medlock, Exhibit C p. 1) and it is undisputed that Defendant Corey K. Medlock was never given the opportunity to accept or reject UIM coverage by the Plaintiff. (Affidavit of Corey K. Medlock) Therefore, summary judgment should be granted in favor of the Medlock Defendants and the policy of the Plaintiff ordered to be reformed to reflect UIM coverage in amounts equal to the limits of liability.

An offer of UIM coverage is a mandatory requirement under S.C. Code §38-77-160 on all Automobile insurance carriers up to the limits of liability obtained under a policy by a new insured. S.C. Code §38-77-160 The form used for such offer and the information it must contain is mandated by S.C. Code §38-77-350 to assure that all new applicants have been provided sufficient information to make an informed choice whether to buy such optional coverage. S.C. Code §38-77-350 If the form is signed by the "Named Insured", it is conclusively presumed that there was an informed selection of coverage made and the insurance company is not liable for the choice not to buy the coverage. S.C. Code §38-77-350(B) Once an offer has been made to the "Named Insured", the carrier is not required to make a new offer

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to that "Named Insured" when the policy is renewed, extended, changed or replaced. S.C. Code §38-77-350(C)

Plaintiff seeks summary judgment under the theory that based on the facts of this case, the offer of UIM coverage to Defendant Stanley K. Medlock and the rejection by him at the original issuance of the policy is sufficient to meet the statutory requirements and no new offer was required when Defendant Corey K. Medlock was changed from a "Relative" under the policy to a "Named Insured." Plaintiff's theory would appear to rely on S.C. Code §38-77-350(B) wherein if the approved form of the offer is rejected and signed by the named insured, the selection is effective against both the named insured "or any other insured under the policy." Plaintiff would also necessarily seem to rely on the contention that since Defendant Corey K. Medlock was already an insured driver as a "Relative" under the original policy, changing him from a "Relative" to a "Named Insured" did not change his status under the policy. Therefore, such change would fall under S.C. Code §38-77-350(C) as a change to an existing policy such that no new offer of UIM coverage was required.

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All "Named Insured" are entitled to an offer of UIM coverage

The first part of Plaintiffs premise boils down to the position that because Defendant Corey K. Medlock was already an insured "Relative" under the policy that changing him to a "Named Insured" did not involve taking a new application, therefore he would not be a "New Applicant" for which an offer of UIM coverage is required under S.C. Code §38-77-350. Although *McDonald* involved substituting one "Named Insured" for another on the policy and the present case involves changing an existing insured "Relative" to an additional "Named Insured", the issue addressed by the Court is the same: Does the manner in which someone

becomes a "Named Insured" on a policy make a difference in whether an offer of UIM coverage is required? The Court in *McDonald* clearly answered that question "no".

In *McDonald*, the carrier, Farm Bureau, argued that it was not required to make an offer of UIM coverage to McDonald because he was not a "New Applicant" under S.C. Code §38-77-350(A) but was merely substituted for the existing "Named Insured." *Id.* at p. 124 That argument is no different than the present case where Plaintiff argues that Defendant Corey K. Medlock was not a "New Applicant" to be a "Named Insured" under §38-77-350(A) because he was already an insured "Relative" under the policy. Neither McDonald nor Defendant Corey K. Medlock was required to complete an application. In making this argument, Farm Bureau in *McDonald* and Plaintiff in the present case are both arguing that §38-77-350(A) conflicts with §38-77-160, which requires a carrier to offer UIM coverage to all "insureds". *Id.* at p. 123 Farm Bureau had previously offered UIM coverage to McDonald's mother, therefore, it argued her rejection satisfied §38-77-160 and was binding on McDonald in substituting him as the "Named Insured". *Id.* at p. 122 In this case, Plaintiff had previously offered UIM coverage to Defendant Stanley K. Medlock as the original "Named Insured", therefore, it argues this rejection of that coverage satisfied §38-77-160 and is binding on Defendant Corey Medlock in making him a "Named Insured" under the same policy.

The Court in *McDonald* firmly disagreed with this argument finding:

"We see no inconsistency in the term "new applicant" in Section 38-77-350(A) and "insured" in Section 38-77-160. Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage. In using the term "new applicant," the legislature simply distinguished between those who had never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage." *Id.* at p. 124 (Emphasis Added)

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The similarities of the cases continue as the Court went on to find **“McDonald had never been a named insured with Farm Bureau prior to the insurance on the Mercury.”** *Id.* at p. 124 Prior to June 9, 2010, Defendant Corey K. Medlock had never been the “Named Insured” on any policy of insurance with Plaintiff. (Affidavit of Corey K. Medlock) McDonald **“had never been given the opportunity to accept or reject UIM coverage.”** *Id.* at p. 124 Defendant Corey K. Medlock has never been given the opportunity to accept or reject UIM coverage, either when the policy was initially taken out by Defendant Stanley K. Medlock or when Defendant Corey K. Medlock was made a “Named Insured” on the policy. (Affidavit of Corey K. Medlock) **“McDonald did not fill out an application...”** *Id.* at p.122 Defendant Corey K. Medlock did not fill out an application. (Affidavit of Corey K. Medlock)

Considering these circumstances which are identical to the case at hand, the Court concluded that :

“Regardless of the manner in which Farm Bureau processed McDonald’s request for his own insurance policy, McDonald was a new named insured with the carrier, entitled to an offer of UIM coverage. Any other construction of the statute would defeat the legislature’s intent that all named insured be offered UIM coverage.” *Id.* at p. 124 (Emphasis added)

Therefore, regardless of how the Plaintiff made Defendant Corey K. Medlock a “Named Insured” on this policy, he was a new “Named Insured” with them and was entitled to an offer of UIM coverage under the law.

Plaintiff would argue that the *McDonald* case is distinguishable from the present circumstances in that Defendant Corey K. Medlock was already insured under the policy as a “Relative” and as such was bound by the rejection of Defendant Stanley K. Medlock pursuant to §38-77-350(B). Plaintiff would further argue that changing Defendant Corey K. Medlock to a “Named Insured” was nothing more than a clerical designation as a result of him being the legal

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owner of the Suzuki added to the policy as an additional vehicle. In support of this, Plaintiff essentially argues that the terms "Named Insured" and insured "Relative" are synonymous in this situation and that Defendant Corey K. Medlock's status did not change under the policy when he changed from an insured "Relative" to a "Named Insured" because he was entitled to the same coverage under the policy as a "Named Insured" that he was as an insured "Relative."

This position is in direct conflict with *McDonald* as the Court further clarified its holding on §38-77-350(C) in *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (S.C.App. 2002) stating **"When McDonald became the named insured on the policy, it altered the legal relationship of the parties, As we observed:**

Where Section 38-77-350(C) states the insured is not required to make a "new" offer, it clearly envisions the circumstances where the insurer has already made an "old" offer."

Id. at p. 88 (Emphasis Added) Not only is Plaintiff's position in direct conflict with the holding in *McDonald*, it is also in direct conflict with the terms of the insurance policy itself and the laws of South Carolina.

Conflict with terms of Existing Policy

The policy issued to Defendant Stanley K. Medlock is very clear as to the difference between the "Named Insured" and an insured "Relative" under the policy. As indicated in the Statement of Facts above, the term "Relative" as used in the policy is defined essentially as a resident relative living in the household of the "Named Insured" and the term "You" or "Your" is defined as the "Named Insured" or their spouse residing in the household. (Affidavit of Stanley K. Medlock, Exhibit A p. 7) The policy having different specific definitions for these two terms begs the question under Plaintiff's argument that if there is no difference between

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Defendant Corey K. Medlock being a "Named Insured" or an insured "Relative," why are the terms defined separately under the policy? A review of the provisions of the policy reveal the answer; that although the "Named Insured" and insured "Relatives" are combined in some provisions under the term "Insured person," there are many provisions covering rights, responsibilities and obligations that only apply to the "Named Insured" and some that only apply to insured "Relatives."

For Example, under Part I – Liability to Others, and the section titled Exclusions, in paragraph 13, Plaintiff excludes coverage for "**bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by a **relative**, other than a **covered motorcycle** for which this coverage has been purchased." However "this exclusion does not apply to **your** maintenance or use of such motorcycle." (Affidavit of Stanley K. Medlock, Exhibit A.p. 8) Plaintiff is clearly providing coverage to the "Named Insured" and not providing the same coverage to an insured "Relative" under the policy.

Under Part II – Motorcycle Medical Payments Coverage, the "Insuring Agreement" states "If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received...." (Affidavit of Stanley K. Medlock, Exhibit A p. 9) Clearly under this provision, if the "Named Insured" did not pay the premium, the insured "Relative" would not be entitled to the coverage. Again, under the Exclusions section, the policy does not apply to injuries "sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered motorcycle** for which this coverage has been purchased." However, "this exclusion does not apply to **you**." (Affidavit of Stanley K. Medlock, Exhibit A p. 10)

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Although there are many similar examples in the policy, I'll conclude with the most appropriate **Part III – Uninsured/Underinsured Motorist Coverage** provision where the “Insuring Agreement” for the UIM coverage states, “If you pay the premium for this coverage, we will pay for damages that an **insured person** is legally entitled to recover from the owner or operator.” (Affidavit of Stanley K. Medlock, Exhibit A p. 11) Again, under these terms of the policy, if the “Named Insured” does not pay the premium, an insured “Relative” is not entitled to the coverage.

Now Plaintiff might argue that although the provisions of the policy related to the payment of the premium only refer to the “Named Insured”, they do not prohibit an insured “Relative” from making the payment to maintain the coverage; but that is missing the point. Under the terms of the policy, the **legal right** to make the premium payment to force the coverage to remain in effect, by the terms of the policy, lies solely with the “Named Insured.”

Beyond the premiums, the policy terms restrict other significant rights and obligations to only the “Named Insured,” such as the duty to report changes (Affidavit of Stanley K. Medlock, Exhibit A p. 18), reliance on the information contained in the application (Affidavit of Stanley K. Medlock, Exhibit A p. 19), the ability to cancel the policy (Affidavit of Stanley K. Medlock, Exhibit A p. 19) and the entitlement to a refund of any premium refund (Affidavit of Stanley K. Medlock, Exhibit A p. 19). Clearly, the intention of the Plaintiff under the policy terms was to treat a “Named Insured” different from an insured “Relative.” Allowing Plaintiff to claim that the “Named Insured” and an insured “Relative” are treated as the same solely for the purposes of avoiding the requirements of §38-77-160 and §38-77-350 would be unjust and in conflict with the intention of the parties pursuant to the terms of the policy.

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There is no dispute that Defendant Corey K. Medlock was defined as a "Relative" under this policy and no dispute that the original policy issued only identified Defendant Stanley K. Medlock as the "Named Insured." (Affidavit of Stanley K. Medlock, Exhibit A p. 1) Under the specific terms of the policy, when Defendant Corey K. Medlock was changed from an insured "Relative" under the policy to a "Named Insured" on the policy, his legal status under this policy changed significantly. He went from only being entitled to the some benefits under the coverage in the policy to having the maximum protection afforded by the policy, and having far more rights such as the ability to cancel or change the policy.

Conflict with South Carolina Law

Changing Defendant Corey K. Medlock from an insured "Relative" to a "Named Insured" not only changed his legal status under the terms of the policy, but changed his legal status in the eyes of the law as well. Plaintiff may argue that as used in Chapter 77 of the South Carolina Code which covers Automobile Insurance, the "Named Insured" and an insured "Relative" are synonymous because §38-77-30 defines "Insured" under the statute to include both "the named insured and, while resident of the same household, the spouse of any named insured and relatives of either." S.C. Code §38-77-30(7) But the legislature clearly intended that they be treated differently under the law because they are provided different rights and obligations under the law.

"This Court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. A statute must receive a practical and reasonable interpretation consistent with the "design" of the legislature." *Smith* at p. 87

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A close examination of S.C. Code §38-77-350(C) shows that despite combining “Named Insured” and “Relatives” in the definition of “insured”, the legislature only provided the presumption that there was an “informed, knowing selection of coverage” if the “Named Insured” signs the form of the offer. The insurer would not receive the same protection and presumption if the form was signed by an insured “Relative.” Had the legislature intended to provide that presumption under both circumstances, they would have simply used the term “insured” that they had already defined to include both under §38-77-30(7). If that were the case, under the existing language a “Named Insured” would not be bound under this statute for any offer signed by an insured “Relative.” Giving such authority to only the “Name Insured” clearly implies the General Assembly did not intend the signature of an insured “Relative” under the policy to carry the same protection to the insurer.

The Plaintiff cannot have it both ways under this statute. If the Plaintiff contends that the legislature intended the “Named Insured” and “Relatives” residing in the household to be treated the same under the statute, then the statute would necessarily require that the offer be made to all “insureds” and that the insurance company would only be entitled to the protection under §38-77-350 (B) if they obtained the signatures of all insureds on the offer form. If that is how the statute is to be interpreted, Defendant Corey K. Medlock never signed the selection of the offer, therefore he would not be bound by the offer rejected by his father. If instead, the Plaintiff insists that the language of §38-77-350(B) provides Plaintiff the presumption of a valid offer because it was signed only by the “Named Insured,” then Plaintiff would necessarily have to agree that the legislature intended a “Named Insured” be treated differently under this statute than a resident “Relative.”

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To take it even further, if the Plaintiff's interpretation of the statute is adopted, it would open the floodgate for insurance carriers to get around the requirements of §38-77-160 and §38-77-350 entirely. Consider this scenario. Most children that become of age to get their drivers license are not of legal age to execute contracts and still live at home with their parents. When they begin to drive, the parents add them to their existing policies as insured "Relatives." The child grows older, but while still living at home, he buys his own car which is added to mom and dad's policy and the child is changed to a "Named Insured," just like Defendant Corey K. Medlock. Subsequently, the child moves out and the mailing address for him on the policy is changed and his notices are mailed to a separate address than his parents. Under Plaintiff's contention, all of those changes would fall under §38-77-350(C) and Plaintiff would never be required to make that child an offer of UIM coverage because they would never be a "New Applicant." As such, the child would always be bound by the election of UIM coverage that their parent made, without ever having the opportunity to make their own informed choice and they were not even legally able to make that decision on their own when it was made because of their age.

I cannot believe the legislature would have intended §38-77-350(C) to be used to avoid the mandatory requirement to offer all "Named Insureds" the opportunity to purchase UIM coverage. The Court in *McDonald* believed the same to be true citing its holding in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct.App.1995).

"If §38-77-350(C) were interpreted to relieve [carrier] of the general requirement of offering [the insured] underinsured motorist coverage up to the liability limits of the policy, it would amount to an absolute repeal of §38-77-160, which mandates that an automobile insurer offer underinsured motorist coverage up to the limits of the insured's liability coverage." *Id.* at p. 142.

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Beyond that statute, other clear indications of the intent to treat them different exist in other statutes such as under S.C. Code §38-77-120(a), wherein the legislature provided the “Named Insured” with a significant legal right that was not provided to an insured “Relative”, the right to notice of cancellation. “No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew.” S.C. Code §38-77-120 There is no legal requirement to notify an insured “Relative” that the policy has been cancelled or will not be renewed. Insured “Relatives” do not have that right and would have no legal recourse against the Insurer if they were operating a vehicle believing the policy was in place because they had not been notified it had been cancelled. Taking this process even further, under S.C. Code §38-77-123, the legislature specifically eliminated any liability of insurers from having to send notice of cancellation or refusal to renew to “anyone other than the named insured, any person designated by the named insured and any other person to whom such notice is required to be given by the terms of the policy.” S.C. Code §38-77-123(C)

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Clearly, if the legislature fully intended a “Named Insured” and insured “Relative” to be treated the same, they would have provided both with this most basic right to be notified when the policy was cancelled. Otherwise, under Plaintiff’s theory that they should be treated the same, Insurers would become liable to insured “Relatives” for damages they suffer as a result of the Insurer not sending them the Notice of Cancellation. Once again, Plaintiff cannot have it both ways. It must be either that the legislature intended them to be the same and Plaintiff would incur liability for not sending Notices to all insured, or the legislature did intend for them to be treated separately as indicated by the statute.

Outside the provisions of the Automobile Insurance statutes, the difference between being a "Named Insured" and an insured "Relative" makes a huge difference under other South Carolina statutes. As the legal owner of the Suzuki, South Carolina law requires that Defendant Corey K. Medlock maintain liability insurance on that vehicle. S.C. Code §56-10-10 When the vehicle was registered, he had to certify that he had liability insurance on that vehicle and his failure to maintain liability insurance on that vehicle, by law, will cause him to lose his privilege to drive in the state (S.C. Code §56-10-30) and be guilty of a misdemeanor subject to criminal penalties. S.C. Code §56-10-225(C) As explained above, an insured "Relative" under this policy has no legal right to keep the policy in place as he is not given the right to pay the premiums in order to assure he can keep the coverage in place. Certainly the Plaintiff could accept the premium from him, but there is no legal requirement for them to accept those funds under the policy. Only the "Named Insured" has the legal standing to require them to do so.

These legal requirements coupled with the fact that under S.C. Code §38-77-120 and §38-77-123, an insured "Relative" is not entitled to notice of cancellation and has no recourse for not getting such notice makes it a near legal impossibility for an insured "Relative" to assure that he is in full compliance with the law at all times as the owner of the vehicle. To the contrary, a "Named Insured" does have the legal right under the policy to pay the premium to keep coverage in place and the law specifically requires the insurer to notify him of the policy being cancelled or non-renewed so that he is on notice to take measures to stay in compliance with the law.

Although "Named Insureds" and insured "Relatives" are treated the same in some statutes related to Automobile Insurance, the legislature clearly intended them to be separate classifications and treated differently unless stated otherwise. As a result, Defendant Corey K.

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Medlock obtained a very different legal status as a "Named Insured" than he had as an insured "Relative." Therefore, despite Plaintiff's contention that Defendant Corey K. Medlock's status did not change from being an insured "Relative" to a "Named Insured," the terms of the policy itself as well as the statutes of South Carolina and the Court in *Smith* and *McDonald* confirm that his legal status did change when he became a "Named Insured."

Having demonstrated that his legal rights and obligations definitely changed when Defendant Corey K. Medlock was made a "Named Insured," I would again emphasize that following that change on June 9, 2010, Defendant Corey K. Medlock was in the exact same position as the new substituted "Named Insured" in *McDonald*. They both now had significant legal rights under a policy of insurance issued by the insurance carrier under the laws of the State of South Carolina, but had not filled out an application or been given the opportunity to accept or reject UIM coverage as required by the statutes. As such the holding in *McDonald* applies and since the Plaintiff was required to offer UIM coverage and did not, the policy must be reformed.

§38-77-350(C) does not apply to a new "Named Insured"

The second contention that Plaintiff's theory relies on is that since Defendant Corey K. Medlock was an insured "Relative" under the original policy, changing him from a "Relative" to a "Named Insured" was a change to an existing policy such that no new offer of UIM coverage was required. Once again, this is the exact same argument presented by the carrier in *McDonald* where the Court found that putting a new "Named Insured" on a policy "was not a mere policy change." *McDonald* at p. 125

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In *McDonald*, the issuing agent admitted that McDonald was not offered UIM coverage because it was their office policy to “just change the name on the existing policy when a child purchases an automobile from a parent, so the child does not have to pay a new premium.” *Id.* at p. 122. Similar to the present case, the Plaintiff would contend that Defendant Corey K. Medlock was simply changed to a “Named Insured” because he was the registered owner of the Suzuki and for no other reason.

S.C. Code §38-77-350(C) states, “An 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 §38-77-350(C) Citing the Court’s decision in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct.App.1995), the *McDonald* Court held:

“Where Section 38-77-350(C) states the insured is not required to make a new offer, it clearly envisions the circumstances where the insurer has already made an “old” offer.” *Id.* at p. 125

Applying this reasoning, the Court found that making McDonald a “Named Insured” was not just a minor change to the policy. **“It was the creation of a new insurance policy with a new named insured.” *Id.* at p. 125**

And again in comparing *McDonald* to the case at hand, the Court found:

“Before McDonald became the named insured, he had never been given the opportunity to accept or reject UIM coverage. Therefore, an offer of UIM coverage to McDonald was required under Section 38-77-160.” *Id.* at p. 125

Prior to becoming a “Named Insured” on the policy at issue, Defendant Corey K. Medlock had never been given the opportunity to accept or reject UIM coverage. (Affidavit of Corey K. Medlock) Therefore, an offer of UIM coverage to Defendant Corey K. Medlock was required under §38-77-160.

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Once again, Plaintiff would argue that the present situation is very different from *McDonald* claiming that unlike that case, an offer was made on this policy to Defendant Stanley K. Medlock as the initial "Named Insured" and that offer is effective against Defendant Corey K. Medlock under §38-77-350(B) since he was an insured "Relative" under the policy and an "insured" under the definitions in the statute. This argument is flawed in a number of respects.

First, most obvious, and not in dispute, Defendant Corey K. Medlock himself has never been made an offer of UIM coverage, therefore, he has never had the opportunity to make the decision himself to accept or reject that coverage. (Affidavit of Corey K. Medlock) Given the McDonald Court's finding that §38-77-350(C) requires that an "old" offer have been made, Plaintiff's position would be that the offer to Defendant Stanley K. Medlock was that "old" offer. Plaintiff's contention apparently lies in the claim that under §38-77-350(B) Defendant Stanley K. Medlock is essentially acting as the legal agent of Defendant Corey K. Medlock for purposes of making a decision on the offer made and that once that decision was made as his agent, it is binding on Defendant Corey K. Medlock so long as he remains any type of insured under the policy. Even if §38-77-350(B) makes Defendant Stanley K. Medlock's rejection effective on all other insureds under the policy, such unrestrained extension of authority under this statute is most certainly not what the legislature intended.

It only makes sense that a decision by a "Named Insured" on a policy of insurance taken out by that "Named Insured" who is the primary beneficiary of that policy, has the legal obligation to pay for it, and the only right to change or cancel it, should be binding on others who only stand to potentially benefit under it. But when Defendant Corey K. Medlock was changed to a "Named Insured," he no longer only stood to benefit but now qualified for all of the benefits and became burdened with the obligations under the policy as well. Clearly, the

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legislature recognized this in its distinguishment between a "Named Insured" and an insured "Relative" under the law. An insured "Relative" has no legal authority, even if he so desires, to require the insurer to provide him uninsured or underinsured motorist coverage under that policy as a matter of law. Were an insured "Relative" to pursue such a requirement, I believe the legislature would say the insured "Relative" was trying to have their cake and eat it too. I believe the legislature would say that the insured "Relative" has the option to get his own policy of insurance so that he becomes the "Named Insured" and is entitled to that offer of UIM coverage afforded under the statutes.

The fact that Defendant Corey K. Medlock became a "Named Insured" on an existing policy should not allow an insurer to hold him to all the other legal requirements, obligations and rights of a "Named Insured" both under the policy and the law, except for the requirement of providing him the mandatory offer to purchase UIM coverage. The Court in *McDonald* recognized this in their holding that the legislature's intent was that "all named insureds be offered UIM coverage." *Id.* at p. 124

Second, the argument is flawed under the terms of the policy. We have already shown above that the insurance policy at issue by its very terms makes a significant distinguishment between a "Named Insured" and an insured "Relative." (Affidavit of Stanley K. Medlock, Exhibit A) The rights and obligations of a "Named Insured" under the policy terms are significantly greater than those of an insured "Relative." What sense would it make to allow the Plaintiff to extend all of the rights of a "Named Insured" under the terms of the policy to a new "Named Insured", but be allowed to escape their legal responsibilities to that "Named Insured" by changing them to a "Named Insured" under an existing policy rather than issuing a new policy?

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Lastly, as demonstrated earlier, the statutes themselves bear out that the legislature intended them to be treated differently. Only the signature of the "Named Insured" on the offer gives the carrier the presumption under §38-77-350. If the Plaintiff wants to claim that the legislature intended them to be treated the same, then they must agree that the statutory requirements would require the offer be made to all insured and the presumption would only be allowed if all insureds have signed the form.

Based on this obvious intent, just as I believe the Court would tell an insured "Relative" to get his own policy if he wants to get UIM coverage but the "Named Insured" doesn't, I believe the legislature would tell the Plaintiff in this situation that if they want the presumption in §38-77-350(B) after they change an insured "Relative" a "Named Insured," they should make that insured "Relative" an offer of UIM coverage and get their signature on the form mandated by the statute. It is the only way to make sense of all of the statutory requirements and the stated terms of the policy.

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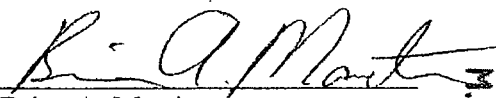
V. CONCLUSION

It is undisputed that Defendant Corey K. Medlock has never been made an offer of UIM coverage by the Plaintiff. There is no question that the Court has held in *McDonald* that it was the legislature's intent that all "Named Insureds" be offered UIM coverage. It does not matter how or why Plaintiff changed Defendant Corey K. Medlock from an insured "Relative" to a "Named Insured" under this policy, the fact remains that he became a "Named Insured." That change, although argued as insignificant by the Plaintiff, brought with it significantly more rights, responsibilities and legal obligations to both parties under both the terms of the policy and the laws of South Carolina. Just like in *McDonald*, a new policy was essentially created by

these actions. When Plaintiff made Defendant Corey K. Medlock a "Named Insured", he was for all purposes a "new applicant" under §38-77-350 of the South Carolina Code, but was made no offer of the opportunity to buy UIM coverage. Under the statutes and the holding of *McDonald*, the policy must be reformed to provide UIM coverage on the vehicles covered under the policy up to the limits of liability on those vehicles.

For the reasons stated above, the motion for summary judgment by the Plaintiff should be denied and the motion for summary judgment by the Medlock Defendants should be granted.

RESPECTFULLY SUBMITTED,
Martin & Davis, LLC



Brian A. Martin
SC Bar # 9791
212 Trade St.
Greer, South Carolina 29651
(864) 879-7779
ATTORNEY FOR
MEDLOCK DEFENDANTS

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M. HOPE BLACKLEY

June 18th, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-42-2965

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

Stanley K. Medlock, Corey K. Medlock,
And The Standard Fire Insurance
Company,

Defendants.

AFFIDAVIT OF DEFENDANT
COREY K. MEDLOCK

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PERSONALLY appeared before me, Corey K. Medlock who, being duly sworn, deposes and states:

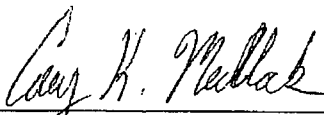
I am a Defendant in the above action. I have read the Answer, Cross-claims and Counter-claims filed on my behalf in this action and do hereby confirm the facts admitted or alleged in that Answer, Cross-claims and Counter-claims to be accurate to the best of my knowledge. In addition to the facts stated in that document, I also hereby confirm the following relevant facts:

Facts Relevant to the Case

1. I am the biological son of Stanley K. Medlock who is also named as a defendant in this action.
2. At all times related to the circumstances of this case, I lived with my father in his house.
3. In 2009, my father owned a 2001 Polaris Sportsman 500 4-wheel all terrain vehicle that was insured by the Progressive Northern Insurance Company. I operated this vehicle at times and was listed under the insurance policy with Progressive as my father's child.
4. In June of 2010, I purchase a 2001 Suzuki SV650/S motorcycle, which was titled in my name only. Since my father already had a motorcycle insurance policy with Progressive for the Polaris, we asked Keith Young and Associates to add the Suzuki to his existing policy, which they did.

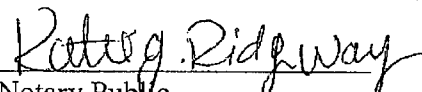
5. At the time we requested the addition of the Suzuki to the policy, I did not fill out an application and was not requested to do so. I also was not offered the option to purchase any additional underinsured motorist coverage or to increase the existing limits of coverage.
6. The new Declarations Pages effective June 9, 2010 were sent to both me and my father showing that the Suzuki had been added to the policy and that I had been changed to a second "Named Insured."
7. Prior to this change on June 9, 2010, I had never been a "Named Insured" on any policy of automobile insurance and had never been a "Named Insured" on any policy with the Plaintiff.
8. The premium due when we added the Suzuki was \$37.00. I paid this premium to my father and he forwarded it to Progressive. The total annual increase in the premium to the policy for the addition of the Suzuki was \$118.00 per year. When a premium payment was due, I paid the premium for the Suzuki to my father and he forwarded my payment along with his payment for the premium on the Polaris to Progressive.
9. On October 9, 2010, I was severely injured in an accident with another vehicle while I was driving the Suzuki motorcycle insured with Progressive under this policy. The driver of the other vehicle was insured by GEICO. GEICO tendered their full coverage of \$50,000.00 to me in settlement of their liability policy under the terms of a Covenant Not to Execute.
10. On February 10, 2011, an action was filed on my behalf in the South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned *Corey K. Medlock v. Jon C. Owens*, Civil Action Number 2011-CP-42-649 alleging that Mr. Owens was at fault in the accident and caused unspecified damages in excess of \$50,000.00 to me. Progressive then brought this declaratory judgment action.

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 M. HOPKINS-BLOCKLEY



 Corey K. Medlock

SWORN AND SUBSCRIBED to me this 15th day of June, 2012.



 Notary Public

State of South Carolina

County of Greenville

My commission expires:



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-42-2965

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

Stanley K. Medlock, Corey K. Medlock,
And The Standard Fire Insurance
Company,

Defendants.

AFFIDAVIT OF DEFENDANT
STANLEY K. MEDLOCK

PERSONALLY appeared before me, Stanley K. Medlock who, being duly sworn,
deposes and states:

I am a Defendant in the above action. I have read the Answer, Cross-claims and Counter-claims filed on my behalf in this action and do hereby confirm the facts admitted or alleged in that Answer, Cross-claims and Counter-claims to be accurate to the best of my knowledge. In addition to the facts stated in that document, I also hereby confirm the following relevant facts:

Facts Relevant to the Case

1. On October 15, 2009, I applied for a policy of insurance with Plaintiff to insure 2009 Polaris Sportsman 500 4-wheel all terrain vehicle which I owned.
2. The application was prepared by the Agency of Keith Young & Associates with me as the only "Named Insured". My son, Corey K. Medlock, was included as a relative living with me that I expected to operate this vehicle also.
3. A copy of the Application that I submitted to Keith Young & Associates is attached to this Affidavit as Exhibit B.
4. On October 15, 2009, I was issued policy number 8513910-0 by Plaintiff for a policy period of October 15, 2009 through October 15, 2010 covering the 2001 Polaris Sportsman 500 and paid the premium of \$175.00.
5. A complete copy of the Policy issued to me by the Plaintiff on October 15, 2009 is attached to this Affidavit as Exhibit A.

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6. On June 9, 2010, my son, Corey K. Medlock purchased a 2001 Suzuki SV650/S motorcycle. Since I already had a motorcycle insurance policy with Progressive for the Polaris, we asked Keith Young and Associates to add the Suzuki to the existing policy, which they did. I was not requested to fill out a new application.
7. At the time this change was made, I was not offered the option to purchase additional underinsured motorist coverage or increase the existing limits of coverage.
8. The premium due when adding the Suzuki was \$37.00. My son paid this premium me and I forwarded it to Progressive. The total annual increase in the premium to the policy for the addition of the Suzuki was \$118.00 per year. When a premium payment was due, my son paid the premium for the Suzuki and I forwarded his payment along with the premium for the Polaris to Progressive.
9. I then received new Declarations Pages effective June 9, 2010 showing that the Suzuki had been added and that my son, Corey K. Medlock had been changed to a second "Named Insured." This was the first mailing of any kind that I received from Progressive that was addressed to both me and my son.
10. A copy of the Declarations Pages effective June 9, 2010 is attached to this Affidavit as Exhibit C.
11. To my knowledge, my son has never been the "Named Insured" on any automobile insurance policy other than this policy after the change on June 9, 2010.

Stanley K. Medlock
Stanley K. Medlock

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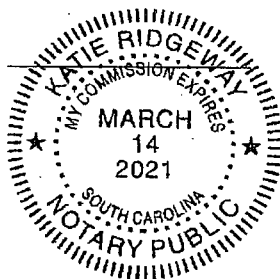
SWORN AND SUBSCRIBED to me this 15th day of June, 2012.

Katie Ridgeway
Notary Public

State of South Carolina

County of Greenville

My commission expires:



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CIVIL ACTION NO: 2011-CP-42-02965

Progressive Northern Insurance Company,

Plaintiff,

v.

Stanley K. Medlock, Corey K. Medlock and
The Standard Fire Ins. Co.,

Defendant.

**MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Plaintiff, Progressive Northern Insurance Company (hereinafter Progressive) submits this Memorandum of Law in support of its Motion for Summary Judgment.

SUMMARY

This declaratory judgment action concerns whether a new offer of optional uninsured or underinsured motorist coverage must be made when a new vehicle is added to an existing policy and a listed driver, who was already an insured under the policy, is changed to an additional "named insured." Because the addition of another vehicle and another named insured only constitutes a "change" to the existing policy of insurance, there is no duty to make another meaningful offer of optional coverage and the existing rejection remains valid.

FACTS

Progressive issued an automobile insurance policy to Stanley Medlock on October 15, 2009 covering a 2001 Polaris Sportsman 500, which he owned. (Stip. of Facts ¶ 1, attached as Ex. A). The policy was a "minimum limits" policy and did not include underinsured motorist (UIM) coverage. As part of the application for the policy, Stanley received an offer form that satisfied the requirements of South Carolina Code § 38-77-530(A). (Stip. of Facts ¶ 5). Stanley

signed the form indicating his rejection of optional UIM coverage. (Stip. of Facts ¶ 5). The original policy period was from October 15, 2009 to October 15, 2010.

Corey Medlock is Stanley's son. (Stip. of Facts ¶ 3). Initially, Corey was not a named insured on the policy. (Insurance Policy, p.2). He was, however, listed as a "Driver and household resident" on the declarations page. (Insurance Policy, p.2). Moreover, Corey was a resident relative of Stanley Medlock and the application states that Corey's principal vehicle was the 2001 Polaris. (Stip. of Facts ¶ 3; Application p.2).

Eight months later, during the initial policy period, the policy was changed at the request of the Medlocks to add a 2001 Suzuki SV 560/S. (Stip. of Facts ¶ 8). It was the practice of Keith Young and Associates, the issuing agency for the Policy, to designate all vehicle owners as "named insureds". (Stip. of Facts ¶ 14). Because Corey was the owner of the Suzuki, he was changed from a listed driver to an additional named insured. (Stip. of Facts ¶ 9).

No new policy number was issued and the policy continued in existence, now covering both the Polaris and the Suzuki. (Declarations Page). The Suzuki carried the same coverage as the Polaris. (Stip. of Facts ¶ 8). Stanley Medlock continued as a named insured on the policy. (Stip. of Fact ¶ 8). Because this was merely a change to the policy, no new offer of optional coverage was made.

On October 9, 2010, Corey Medlock was involved in a motor vehicle accident while driving the Suzuki. (Stip. of Facts ¶ 12). He now seeks to reform the Progressive policy to include UIM coverage that was already validly rejected at the time the application for the policy was made.

ARGUMENT

South Carolina Code section 38-77-160 requires that automobile insurance carriers offer optional UM and UIM coverage up to the limits of the insured's liability coverage. In order to protect insurance companies from claims that no such offer was made, the General Assembly created a safe harbor statute in South Carolina Code section 38-77-350. Specifically, section 38-77-350(A) provides that the director of the Department of Insurance "or his designee shall approve a form that automobile insurers shall use in offering optional coverages This form must be used by insurers for all *new applicants*. . . ." If the insurer uses a form that satisfies subsection (A) and the applicant signs the form indicating his rejection of optional coverage, subsection (B) protects the insurer with a statutory conclusive presumption of an "informed, knowing selection of coverage." S.C. Code § 38-77-350(B). If the rejection form is properly executed, "neither the insurance company nor an insurance agent is liable to the named insured *or another insured*" for the insured's failure to purchase optional coverage. S.C. Code § 38-77-350(B). Finally, after an initial offer has been made, "An 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 § 38-77-350(C).

The Medlocks concede that the original offer of optional coverage made to Stanley Medlock at the inception of the policy was meaningful, and use of the offer form entitles Progressive to the statutory presumption under section 38-77-350(B). (Stip. of Fact ¶ 5). Moreover, it is clear that the addition of the Suzuki motorcycle and addition of Corey Medlock as an additional named insured did not create a new policy. There was no new application for insurance. The first named insured, Stanley Medlock, remained the first named insured on the

policy and coverage for the Polaris remained the same. The policy number remained the same, and the policy period remained the same. (Declarations Page).

Importantly, Corey Medlock was already a Class I insured under the policy and the application stated that the Polaris was his primary vehicle. He was a named driver on the policy from its inception when UIM coverage was validly rejected by his father.

The Court of Appeals decision in *McDonald v. South Carolina Farm Bureau Ins. Co.*, 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 2000), does not support defendant's argument that the change of Corey Medlock from a listed driver to a named insured constituted the creation of a new policy and required a new offer. In *McDonald*, a mother initially purchased insurance for her own automobile through Farm Bureau. *Id.* at 122, 518 S.E.2d at 625. Several years later, she sold her car to her son, who was neither a resident of her household nor a Farm Bureau member. She asked Farm Bureau to "swap" the policy to him. *Id.* The son had to pay a membership fee to Farm Bureau in order for the policy transfer to take place. *Id.* The mother was removed from the policy completely, and the son substituted in her place. Farm Bureau did not make a new offer of insurance to the son. Therefore, the Court of Appeals reformed the policy, holding that Farm Bureau was required to make a new offer of coverage under section 38-77-160 because, "***Removing Wells from the policy and substituting McDonald as the named insured was not a mere policy change. It was the creation of a new insurance policy with a new named insured.***" *Id.* at 125, 518 S.E.2d at 626.

McDonald addresses a completely different set of facts than this case. First, the mother in *McDonald* was removed as the only named insured on the policy. In this case, Stanley Medlock was never removed and there was no substitution. Second, in *McDonald*, the son who was added to the policy was not a resident relative of the mother or otherwise already insured

under the policy prior to the substitution. Corey Medlock, was already a resident relative, a Class I insured, and a named driver on the policy.¹ He was merely added as an additional named insured. Third, with the removal of the mother in *McDonald*, there was no longer a valid rejection signed by *any* insured under the Farm Bureau policy. Here, Stanley Medlock, who rejected the initial offer of coverage, remains the first named insured on the policy. Even after the changes to the policy, there remains a valid offer and rejection form, executed by a named insured, and binding on all other insureds to the policy, as provided by section 38-77-350(B). See S.C. Code § 38-77-350(B) (“If this form is signed by the named insured, after it has been completed . . . 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.”)

A similar factual scenario was addressed by the Supreme Court of Rhode Island in *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002). In that case, Natalia Lopes was originally the named insured on the policy. Lopes declined UM coverage by executing a rejection notice and warning form, as required under Rhode Island law. *Id.* at 1099. She then married Leno Ferreira, who was added as a named insured to Lopes’ policy. *Id.* The insurer did not obtain a new signed rejection. Like in South Carolina, Rhode Island statutes require a written rejection of optional coverage at the time an application for insurance is made. *Id.* at 1100-1101 (citing R.I. Gen. Laws § 27-7-2.1(a)). However, after an initial rejection is signed, the Rhode Island law does not require an additional written rejection for a subsequent “renewal,

¹ South Carolina law distinguishes two classes of insureds for UM/UIM purposes. See *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984). Class I insureds include the named insured and his spouse and relative relatives. Class I insureds are protected by UM/UIM coverage “at all times.” *Id.* at 156, 311 S.E.2d at 727. Class II insureds constitute permissive users of the vehicle and are only covered while using the insured vehicle. *Id.* Because Corey was a resident relative of Stanley Medlock, he was already a Class I insured. Becoming a named insured did not affect his legal status regarding UM or UIM coverage.

reinstatement, substitute, amended, altered, modified, transfer, or replacement policy.” *Id.* at 1101 (citing R.I. Gen. Laws § 27-7-2.1(d)). The Supreme Court held that the addition of the husband as a named insured “changed the policy’s terms, but did not represent the new issue or delivery of a policy.” *Id.* Because the addition of a named insured was merely a “change” to the existing policy, the original rejection remained binding upon both named insureds. *Id.* The Supreme Court rejected the argument that a new offer should be made under these circumstances, noting that a change “that would impose this arguably onerous burden on insurers should be made by duly enacted legislation.” *Id.*

In *Wilkinson v. Louisiana Indemnity/Patterson Ins.*, 682 So.2d 1296 (La. Ct. App. 1996), writ denied, 695 So.2d 964 (La. 1997), the original named insured, James Wilkinson, executed a UM rejection form. *Id.* at 1300. Louisiana statutes provided that, after an initial valid rejection of optional coverage, that rejection remains valid for renewal, reinstatement, or substitute policies. *Id.* at 1301 (citing LSA-R.S. 22:1406(D)(1)(a)(i)). James then added his wife, Frances Wilkinson as a named insured to the existing policy. *Id.* No new UM rejection form was executed. *Id.* As the wife of the named insured, Frances was already an insured under the definitions of “insured” in both the liability and UM portions of the policy. *Id.* Therefore, the insurer had already “bound itself to provide coverage for Mr. Wilkinson’s wife, as evidenced by the definition of ‘insured’ in the policy.” The Court of Appeals held that “the formal addition of Frances Wilkinson as a named insured . . . did not constitute a new policy requiring the execution of a separate UM selection/rejection form.” *Id.* See also *Isaacson v. Country Mut. Ins. Co.*, 328 Ill. App. 3d 982, 987, 767 N.E.2d 862, 866 (Ill. Ct. App. 2002) (addition of daughter as a listed driver when she turned sixteen did not require new explanation of UM coverage and new rejection of higher limits).

Corey Medlock was already a named driver and a Class I resident relative under the existing Progressive policy before the change. The definition of “Insured person” under the UM/UIM portion of the policy includes “**you or a relative.**” (Policy p.11). “Relative” is defined as “a person residing in the same household as **you**, and related to **you** by blood” (Policy p.7). “You” means “a person shown as a named insured on the **declarations page**” (Policy p. 7). Therefore, as a resident relative of Stanley Medlock, Corey was already insured under the existing policy. The legal relationship between Progressive and Corey did not change. Like the wife in *Wilkinson*, Progressive had already bound itself to provide coverage for Corey, as evidenced by the definitions of “insured” in the policy and – more importantly – the statement on the application that the Polaris would be Corey’s principal vehicle. (Application p.2). There was no reason to re-offer optional coverage that was rejected by the named insure when coverage was first acquired for Corey’s “principal vehicle” just eight months earlier.

Moreover, South Carolina Code section 38-77-350(C) is *broad*er than the provision referred to in *Wilkinson*, since it not only applies to renewals and substitute policies, but also to any policy that “extends, changes, supersedes, or replaces an existing policy.” The addition of the Suzuki and the listing of Corey as a named insured on the policy did nothing more than “change” the existing policy. It certainly did not create a new policy. No new application was made and coverage for the Polaris, Stanley Medlock and even Corey Medlock remained the same. All that adding Corey as a named insured effectively did was recognize that he was a registered owner of the Suzuki motorcycle. (Stip. of Facts ¶ 14). Requiring a new offer for this mere change would circumvent the safe harbor language of section 38-77-350(B) and (C). This is especially so given the language in section 38-77-350(A) that provides that the offer form must be used for all “*new applicants*” rather than all “named insureds” or “new insureds.”

Moreover, the fact that the word applicant, insured and named insured, when used in § 38-77-160 and § 38-77-350 appear only in the singular form underscores the legislature's intent that one individual, listed in the policy as a named insured, has authority to sign a proper rejection form which will be binding on all other insureds under the policy, whether named insureds, listed drivers, resident relatives or permissive users.

The Defendant's contention that the phrase referenced in *dicta* in *McDonald* regarding the legislature's intent that "all named insureds" be offered UIM coverage misapprehends the context of that phrase. In light of the repetitive, intentional use of the singular form of *applicant* and *insured* in the two statutes, it is clear that the phrase from *McDonald* refers to the pool of potential policyholders who will qualify as named insureds authorized to reject UIM coverage on all policies issued in South Carolina and not to multiple individuals listed on a single policy. Any other interpretation is strained and fails to give the words used in the statute their plain and ordinary meaning. This court must read the statutory language "in a sense which harmonizes [it] with its subject matter and accords with its general purpose." *Smith v. S.C. Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002) (quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). "A statute must receive a practical and reasonable interpretation consistent with the 'design' of the Legislature." *Id.* The legislature could have easily used the term "all named insureds", but instead it chose to use the word "applicant," a clear and well-defined word. See *McCleneghan v. McCleneghan*, 20 S.C. Eq. 295, 1847 WL 2519, at *19 (S.C. App. Eq. 1847) (holding that, where the legislature uses a word with well-defined meaning, the court "cannot presume the Legislature either misapprehended or misapplied" the term, and if the Legislature had intended a different result, "it is more than probable that it would have been explicitly expressed.")

This is in accord with the Illinois Appellate Court's statement that use of the word "applicant" rather than "insured" in its offer statute "leaves no room for doubt as to whom UM coverage must be explained." *Messerly v. State Farm Mut. Auto. Ins. Co.*, 277 Ill. App. 3d 1065, 1069, 662 N.E.2d 148, 151 (App. Ct. 1996). (holding that where a husband applied for insurance for himself and his wife, who was also a named insured on the policy, his rejection of optional UM coverage would have been binding upon her as well. *Id.*) Given the fact that one named insured may sign an otherwise proper rejection form and bind all other insureds under the policy, Defendants argument that all named insureds under a single policy of insurance are required to be offered coverage is contrary to the plain terms of the statute interpreted in light of the clear legislative intent to reduce claims and offer a safe harbor protection to insurers and their agents in connection with the offer of optional coverages.

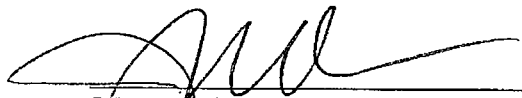
Finally, § 38-77-350(B) also supports this conclusion. Subsection B provides that, if the form is properly completed and executed by the named insured – i.e. the "new applicant" referred to in subsection (A) – then "neither the insurance company nor an insurance agent is liable to the named insured *or another insured under the policy* for the insured's failure to purchase optional coverage or higher limits." S.C. Code § 38-77-350(B). Clearly, the General Assembly intended by the use the word "new applicants" in subsection A, that that new applicant's rejection of optional coverage binds all other insureds under the policy. Corey Medlock, both before and after the change, was "another insured" under the policy and is therefore bound by his father's valid rejection of UIM coverage.

CONCLUSION

For the above-mentioned reasons, Progressive requests that this court find that there is no UIM coverage afforded under the terms of the policy. Stanley Medlock, a named insured, was

given and validly rejected a meaningful offer. Changing Corey Medlock from a named driver who qualified as an "insured" throughout the policy, to an additional "named insured" constitutes a mere "change" to the policy. There is no disputed issue of material fact and therefore Progressive is entitled to a summary judgment that there is no UIM coverage under the Progressive policy for Corey's accident.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire
Wesley B. Sawyer, Esquire
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for the Plaintiff

Columbia, South Carolina
June 19, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CIVIL ACTION NO: 2011-CP-42-02965

Progressive Northern Insurance Company,

Plaintiff,

v.

STIPULATION OF FACTS

Stanley K. Medlock, Corey K. Medlock and
The Standard Fire Ins. Co.,

Defendant.

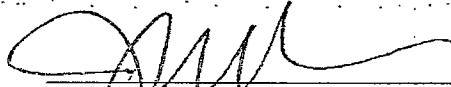
Progressive Northern Insurance Company and Stanley K. Medlock submit and agree to the following stipulated facts

1. On October 15, 2009 Progressive Northern Insurance Company, ("Progressive"), issued Policy 85613910-0, ("the Policy"), to Stanley K. Medlock covering a 2001 Polaris Sportsman 500 with VIN 4XACH50A71A355200, ("Polaris Sportsman 500"). This policy provided liability coverage in the amount of \$25,000.00 for bodily injury to each person, \$50,000.00 for bodily injury per accident, and property damage coverage in the amount of \$25,000.00 per accident subject to the terms of the policy. The Declarations and complete policy issued is attached hereto as exhibit A.
2. Stanley K. Medlock was the owner of the 2001 Polaris Sportsman 500.
3. Stanley K. Medlock is the father of Corey K. Medlock. At all times relevant, Corey Medlock lived with his father.
4. The Application for Insurance was signed by Stanley K. Medlock on October 15, 2009. The Application for Insurance is attached hereto as exhibit B.
5. The offer form beginning on page seven of exhibit B was signed by Stanley Medlock on October 15, 2009. The form satisfies the requirements of South Carolina Code § 38-77-530(A), entitling Progressive to a conclusive presumption of an informed, knowing rejection of optional coverage as to that offer.
6. No offer of optional underinsured motorist coverage was made to Corey K. Medlock in conjunction with the issuance of this policy on October 15, 2009, and none was required.

7. The initial Policy period was from October 15, 2009 to October 15, 2010.
8. On June 9, 2010 the existing Policy was changed (1) to add coverage for a 2001 Suzuki SV650/S, ("Suzuki"), with VIN JSIVP52A512103094 with the same coverage limits as the Polaris Sportsman 500, and (2) Corey K. Medlock was changed to a second Named Insured. The Declarations page for these changes is attached hereto as exhibit C.
9. Corey K. Medlock was the owner of the Suzuki.
10. No offer of additional uninsured or underinsured motorist coverage was made at the time the changes were made to the policy on June 9, 2010 to either Stanley K. Medlock or Corey K. Medlock.
11. Prior to June 9, 2010, Corey K. Medlock had never been the Named Insured on any policy of insurance with Progressive.
12. Corey K. Medlock was involved in a motor vehicle accident while driving the Suzuki on October 9, 2010 in which he sustained significant injuries. The liability carrier for the other driver involved in the accident has paid Corey K. Medlock the limits of its coverage in exchange for a Covenant Not To Execute
13. On February 10, 2011, an action was filed in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned Corey K. Medlock v. Jon C. Owens, Civil Action Number 2011-CP-42-649 alleging that Mr. Owens was at fault in the accident and caused unspecified damages in excess of \$50,000.00 to Defendant Corey K. Medlock. Plaintiff entered a Notice of Appearance as a UIM carrier on April 14, 2011, reserving any rights under its policy of insurance
14. It is the practice of Keith Young and Associates, the issuing agency for the Policy, to designate all vehicle owners as "named insureds."

(SIGNATURES ON FOLLOWING PAGE)

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire

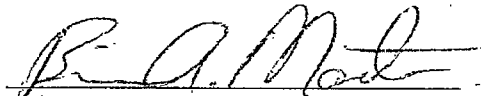
P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Progressive Northern
Insurance Company

MARTIN & DAVIS, LLC



Brian A. Martin (SC Bar # 97910)

212 Trade Street

Greer, SC 29651

(864) 334-1986

Attorney for Defendant Stanley K. Medlock
and Corey K. Medlock

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

RECEIVED

APR 24 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

v.

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

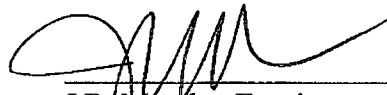
Of Whom

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

NOTICE OF APPEAL

Progressive Northern Insurance Company, appeals the Order Denying Motion for Summary Judgment of the Honorable J. Derham Cole dated March 26, 2013 and filed with the court on March 28, 2013. Appellant received written notice of entry of this order on April 3, 2013.

April 23, 2013


J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Appellant

Other Counsel of Record:

Brian A. Martin, Esquire
Martin & Davis, LLC
212 Trade Street
Greer, SC 29651
Attorneys for Respondents/Defendants
Stanley K. Medlock and Corey K. Medlock

And

William P. Davis, Esquire
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400 (29204)
P.O. Box 8057
Columbia, SC 29202
Attorney for Defendants The Standard
Fire Insurance Company

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Progressive Northern)
Insurance Company,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-42-02965
7 Stanley K. Medlock,)
Corey K. Medlock,)
8 Defendants.) June 20, 2013
Spartanburg, South Carolina

10
11
12
13 B E F O R E :

14 HONORABLE J. DERHAM COLE, JUDGE
15

16
17 A P P E A R A N C E S :

18 JOHN ROBERT MURPHY, ESQUIRE
Attorney for the Plaintiff

19 WILLIAM PEARCE DAVIS, ESQUIRE
Attorney for

20 BRIAN ASHLEY MARTIN, ESQUIRE
21 Attorney for Defendant
22

23 Linda D. Moffitt
24 Circuit Court Reporter
25

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MR. MURPHY: If I may, I was a slow getting back with
2 Mr. Martin, but we've tried to streamline it in a
3 stipulation of fact. And I'm going to hand you the
4 original for the court's file. It has some attachments to
5 it.

6 I believe we have some cross motions for summary
7 judgment on this declaratory case.

8 THE COURT: Okay.

9 MR. MURPHY: I also may give the court reporter if
10 it's okay the original of our memorandum. I believe we
11 emailed it to the court yesterday.

12 THE COURT: She doesn't want it.

13 MR. MURPHY: I'll hand it to you, Your Honor. There's
14 the original.

15 MR. MARTIN: Your Honor, if I could clarify, I
16 delivered my memorandum of law Monday morning to the
17 clerk's office to make sure you received that. I have a
18 copy that I can provide to you as well.

19 THE COURT: It was delivered to the clerk on Monday
20 morning?

21 MR. MARTIN: Yes, sir. It was filed with the clerk
22 Monday morning and a copy hand delivered to them to pass to
23 your office.

24 THE COURT: Tell Pat we need all of those things to be
25 in the file. That's why we have the file.

1 MR. MARTIN: Your Honor, if you would like, I do have
2 a copy. That's the affidavits that were filed at the same
3 time.

4 THE COURT: That's fine.

5 All right. Who wants to be first?

6 MR. MURPHY: If it please the Court, Your Honor.

7 Despite all of these voluminous documents, I believe
8 we have a very narrow and straightforward legal issue in
9 this declaratory case involving whether a new offer of
10 underinsured and uninsured motorist coverage was required
11 to be made in a case in which Corey Medlock, the son of
12 Stanley Medlock, was added as a second named insured about
13 eight months into the policy that had been issued by my
14 client, Progressive Northern, to his father. And so that
15 is the issue in this case.

16 It is relatively undisputed. That's why we did the
17 stipulation. I think the affidavits confirm this, that
18 when the policy was originally issued it was issued to
19 Stanley Medlock as the named insured.

20 Corey Medlock, his son, was listed as a driver and
21 household resident, similar to the case we just argued on
22 the original declarations.

23 At that time a proffer, offer, of optional uninsured
24 and underinsured motorist coverage was made to Mr. Stanley
25 Medlock. He completed and executed the form. And the

1 parties have agreed that that was a valid and meaningful
2 offer of those optional coverages in compliance with South
3 Carolina law.

4 The question then becomes when eight months later --
5 because I believe Corey Medlock -- a vehicle was added to
6 the policy with which Corey Medlock either titled solely in
7 his name or jointly with his father, but/and it's in the
8 facts -- I don't think that distinction.

9 But what is key, the key, is that Corey Medlock then
10 his status under the policy was changed from just a -- a
11 listed driver and household resident to a second named
12 insured.

13 And the question is whether -- whether he should have
14 been given a new offer of those optional coverages or
15 whether he was not entitled to one, whether the law did not
16 require Progressive to make one.

17 Your Honor, Progressive believes that under South
18 Carolina Code Section 38-77-350(c) as we set forth in the
19 brief that that is the safe-harbor provision that does not
20 require a new offer to be made to any policy that changes,
21 supersedes an existing policy.

22 We believe the addition of Corey Medlock as a named
23 insured by listing him now as a second named insured did
24 not trigger any duty or any requirement on Progressive to
25 make a new offer.

1 Now, there's not a lot of case law in this area, but
2 there's a couple of cases, and one of which I believe is
3 being kinda misapplied to the facts of this case. It's
4 McDonald vs. Farm Bureau.

5 That case is very different from this case. There are
6 a couple of cases from out of jurisdiction that more
7 square. They involved when a named insured got married and
8 added their spouse, one from Louisiana and one from Rhode
9 Island. And I have copies of those cases if the Court
10 would like to see them. And they indicate that under those
11 states' statutory schemes no new offer was made.

12 The McDonald case in South Carolina is a little bit
13 different animal than what this case involves. In McDonald
14 the named insured was named Wells. She was the mother of
15 McDonald. She was a Farm Bureau member. She was the named
16 insured. She was the titled owner of the vehicle that was
17 covered in the policy issued by Farm Bureau to her.

18 Her son was not a resident relative, did not live with
19 her. He was not listed on the policy. He was not even
20 covered by the policy, nor would he be an insured that
21 would be subject to the provision in South Carolina Code
22 Section 38-77-350(d) that says that a valid -- a valid
23 rejection of coverage is binding on all insurers in D and
24 D.

25 So what happened was Ms. Wells decided to sell the

1 vehicle to her son, and when they did that the agent trying
2 to save them a nickel simply deleted her from the policy
3 and substituted McDonald as the only named insured.

4 In fact, McDonald had to join Farm Bureau and pay a
5 membership fee in order for the policy to be transferred to
6 him.

7 And the Court basically said that's not a change of an
8 existing policy, that's a new policy between parties who
9 were not previously in relationship with each other, and
10 therefore McDonald should have been given an offer of
11 underinsured coverage.

12 There's a phrase in that case that indicates that all
13 named insureds should be given the opportunity to reject
14 coverage, and that is a phrase that's repeated at length by
15 Mr. Martin in this case.

16 But I would urge the Court to make sure that the
17 phrase is read in context, in the context of the adoption
18 of 38-77-350 which granted several protections for
19 insurance companies and their agents and did not grant any
20 extension of rights for insureds with a legislative intent
21 of trying to reduce these types of claims.

22 I don't believe that phrase can be read to mean that
23 multiple insureds, named insureds, on a single policy have
24 to all sign the rejection.

25 In fact, if you look at the statute it uses the

1 singular form of applicant and insured and named insured
2 throughout the safe-harbor provisions in subsections (b),
3 (c) and (d).

4 I would submit that when it's talking about -- when it
5 says all named insureds, it's talking about all of the
6 people out there in the pool of perspective insurance
7 customers who may come forward and get a policy for
8 themselves. Any time a person comes forward to get a
9 policy for themselves they have to be offered the coverage.

10 McDonald had never been given that opportunity, and
11 this was even though the policy was being transferred. It
12 was viewed, that event was viewed, as being McDonald coming
13 forward and getting his own policy, which, in effect, it
14 was.

15 This case doesn't involve Corey Medlock coming forward
16 and getting his own policy, and I would urge that if the
17 protections granted to insurance companies and their agents
18 are only valid if all named insureds sign the rejection,
19 that's a matter for the legislature to clarify and not the
20 courts.

21 And I think there's some language to that effect in
22 the Smith vs. South Carolina Insurance Company case which
23 held that adding a vehicle to the policy did not require a
24 new offer and granting the protection afforded in
25 38-77-350(c), which says that no new offer is required for

1 a policy that renews, extends, supersedes or changes an
2 existing policy. And they viewed that as a change, and
3 basically said if that's not the kind of change that was
4 envisioned, then the legislature needs to clarify that,
5 that the courts need to give deference to the protections
6 afforded insurance companies in that statute. And I would
7 submit in this case that's exactly what is trying to be
8 avoided.

9 This is a case where a policy change was made that did
10 not affect any coverages available to Corey Mayfield. He
11 was a Class One insured at the time the policy was taken
12 out by virtue of being a resident relative, and he's not
13 entitled to any more coverage now that he's a named insured
14 than he was when he wasn't a named insured, and the
15 singular use of applicant and named insured makes it clear
16 that the valid rejection of coverage by one named insured
17 would be binding upon all insureds, named, listed as
18 drivers, or even unnamed on the face of the policy but
19 living in the household.

20 We cite a case from Illinois, the Messerly case, where
21 a husband rejected coverage on a policy that both he and
22 his wife are named insureds, and they say that was valid in
23 Illinois.

24 So what we have is a valid rejection that would have
25 properly allowed Progressive to deny coverage for the first

1 eight months of this policy, a rejection that would have
2 been valid if both of the gentlemen were listed as named
3 insureds when the time the policy was taken out, because
4 the statute did not specifically require more than one
5 person to sign the rejection.

6 But the argument for a loophole that by adding an
7 additional named insured during the pendency of an existing
8 policy, that triggers the requirement for a new offer, that
9 seems rather ludicrous, futile, onerous on insurance
10 companies in derogation of the protections that were
11 afforded them in section 350(b), (c) and (d). And, quite
12 frankly, I think something that the legislature wants to
13 make it that onerous, it should be up to them.

14 In this case it's clearly distinguished from McDonald
15 because again McDonald -- the Court viewed that as a new
16 applicant, and we don't have a new applicant here.

17 We don't have the deletion of Stanley Medlock. We
18 don't have the substitution of a different insured who is
19 never part of the policy.

20 We merely have the addition of a second person as a
21 named insured much like a couple where, one, they may get
22 married, and a name, the spouse's name, is added because
23 maybe they own one car, and so they do it that way.

24 That's probably the reason that Corey was added by
25 name, because he owned one of the vehicles. I think that

1 was the proper way to do it. But to require a new offer of
2 coverage when there was a valid one signed by the first
3 named insured just eight months earlier, I think is a
4 burden that Progressive should not have to meet in light of
5 the statutory framework that these cases are handled under.

6 THE COURT: Mr. Martin.

7 MR. MARTIN: Thank you, Your Honor. May it please the
8 Court.

9 I would agree with Mr. Murphy that the facts in this
10 case I don't believe are in dispute. But I do think that
11 he and I have very different interpretations of the
12 existing law.

13 I do believe that the case of McDonald in South
14 Carolina is the applicable law in this state. I don't
15 believe that there is a need to go outside of this
16 jurisdiction to seek direction from the Court in what to do
17 in this situation because of the extreme similarities
18 between McDonald and the case at hand.

19 I will agree that the McDonald case involved the
20 substitution of a son that was a non -- that did not live
21 with Ms. Wells in place of her policy. And in this case
22 Corey Medlock was already an insured relative under the
23 policy. And I'll get to that point later. I believe that
24 distinction as a relative is very important here.

25 But aside from that difference these two cases are

1 exactly identical, and they address the same question by
2 the Court -- does it matter how someone becomes a named
3 insured.

4 And I think the Court in McDonald was very clear in
5 the language in saying no, it really doesn't matter. If
6 you're going to make someone a named insured, then you have
7 to afford them the rights under the law. And as Mr. Murphy
8 would point out, in this case they do not have a new
9 applicant. Corey Medlock was not a new applicant.

10 I would submit to you that the exact same argument is
11 what was used in McDonald. In McDonald Farm Bureau argued
12 that because it was their policy to simply change a son
13 with a parent who purchased a car that he was not a new
14 applicant.

15 The Court using the reasoning that he didn't fill out
16 an application, he had never been a named insured on
17 another policy with Farm Bureau, he had never been offered
18 the opportunity to accept or reject underinsured motorist
19 coverage, that his legal status changed as a named insured.
20 And under the law the legislature clearly intended that all
21 named insureds be afforded the opportunity to purchase
22 underinsured and uninsured coverage.

23 In this situation I would submit that Corey Medlock
24 was not an old applicant. Corey Medlock was not an
25 applicant at all on the initial policy.

1 You have the affidavit of Stanley Medlock, and in the
2 Exhibit B I believe to the stipulated facts, the
3 application was submitted by Stanley Medlock in Stanley
4 Medlock's name only as the named insured. It was signed by
5 Stanley Medlock.

6 The rejection of U.I.M. coverage and U.M. coverage was
7 signed by Stanley Medlock. There is no dispute that Corey
8 Medlock was never offered the opportunity to apply for the
9 insurance coverage.

10 The contention by Progressive is that it was the
11 agency's policy to change a person on a policy to a named
12 insured if they own a vehicle that was on the policy.

13 That is exactly the same as in McDonald where the
14 policy was to substitute the child. That's the only
15 difference.

16 In this case it is not disputed that Corey Medlock did
17 not apply for the initial policy. It is not disputed that
18 he has never filled out an application. It is not disputed
19 that he was -- has never been a named insured, not just on
20 Farm Bureau -- on Progressive's policy. He's never been a
21 named insured on any insurance policy before this. He has
22 never been offered the opportunity to accept or reject
23 coverage.

24 He meets all of the exact same criteria that the Court
25 used in McDonald to determine that McDonald was entitled to

1 that coverage.

2 So under the law in South Carolina I believe that the
3 McDonald case clearly applies and would give direction to
4 this situation being so similar in protecting the named
5 insured.

6 Now, the difference between Corey Medlock and this
7 situation being a named insured versus a relative I believe
8 is very important in the policy that is -- that was in
9 effect.

10 Under that policy there are two definitions that were
11 crucial. The word you under the policy is defined to
12 include, A, the named insured under the policy and, B, the
13 spouse of the named insured. And throughout the policy the
14 word you is used to provide all of the rights, privileges,
15 obligations supplied to the named insured and the spouse of
16 the named insured.

17 But in the definitions of that policy the term
18 relative is defined to include those related by blood,
19 marriage or adoption residing in the same household as you,
20 the named insured, or the spouse.

21 And I do not dispute that Corey Medlock was a
22 relative. He was Stanley Medlock's son. He lived in the
23 house with them. He was clearly a relative under the terms
24 of this policy.

25 Progressive would make a distinction that because he

1 was a relative, resident relative, he was a class one
2 insured, therefore his legal status didn't change at all.

3 A review of the policy clearly shows that is not the
4 case. The terms of this policy provide different coverage
5 for you than it does for relatives.

6 There are exceptions that apply to relatives that do
7 not apply to you -- the named insured of the spouse. A
8 relative has no authority under this policy to modify,
9 cancel, change, make any additions. The relative doesn't
10 even have a duty to report to the insurance company under
11 the policy.

12 The relative is only entitled to the benefits of the
13 policy. And that I believe is a very important distinction
14 in this situation.

15 It makes sense under 350(b) that the legislature would
16 say if a named insured takes out a policy, pays the
17 premium, applies, takes out a policy but provides just the
18 benefits of that to somebody else, then, yeah, it makes
19 sense that the person reaping the benefits would also be
20 subject to the limitations.

21 But when the Court in McDonald indicates that the
22 legislature's intent, these changes apply to all named
23 insureds, they recognize that the legal status changes when
24 you go from being a relative in the house or a listed
25 driver to a named insured.

1 When Corey Medlock was made a named insured it didn't
2 matter how Progressive made him a named insured. He now
3 was entitled to change the policy, cancel the policy,
4 increase the coverage.

5 He was entitled to a refund if there was an overage
6 due under the policy, and he was entitled under South
7 Carolina law. Only the named insured is entitled to notice
8 that the policy is being canceled or that they refuse to
9 renew it.

10 When he changed from a relative under the policy to a
11 named insured his legal status completely changed. He now
12 no longer had just the benefits of being a named -- of
13 being an insured under the policy. He now had all the
14 benefits that a named insured is provided, as well as the
15 rights and the obligations. Very important right. Under
16 this policy you -- if you pay the premium we will provide
17 the coverage.

18 Corey Medlock as a relative did not have the legal
19 right to pay the premium and force the coverage to remain
20 in effect. But when he was changed to a named insured he
21 gained that right. His legal status under the policy
22 significantly changed.

23 So to say that the only difference was they just
24 changed and put named in front of his -- the insured on the
25 policy for him is completely inaccurate.

1 In addition, being a relative versus being a named
2 insured is in conflict, for those to be the same is in
3 conflict, with the provisions of the statute that -- or the
4 intent of the legislature in the provisions.

5 Under 350(b) the legislature clearly distinguished a
6 difference between a named insured and some other type of
7 insured under the policy, a resident relative, when they
8 only gave the presumption of a valid rejection if the named
9 insured signed.

10 The same presumption does not apply if a resident
11 relative signs that rejection. The named insured would
12 still be entitled to this offer. The legislature knew that
13 there was a difference between those. They recognized it
14 in the statutes.

15 An example of a situation under the theory that
16 Progressive would report in this situation, under their
17 theory the only difference here, the only thing, was this
18 was a simple change or changing somebody that's on a policy
19 to a named insured because they own a vehicle. So they've
20 had the same coverage. No big deal.

21 If this line of reasoning is allowed, then if you
22 think about the situation where most children who come of
23 age to get their driver's license are not of legal age to
24 execute a contract where it is bound or enforceable, so
25 when children turn 16 or 17 years old and they get their

1 license and they get a car, their parents add them to their
2 insurance policy.

3 Under Progressive's theory adding them -- and of which
4 I don't dispute if you add them just as a listed driver
5 that is an informational change, and I don't think it's
6 entitled to a new offer.

7 But when you add them as a named insured it changes
8 their legal status. Under Progressive's theory if you have
9 this 17-year-old, they buy their first car, they go on mom
10 and dad's policy because they can't get their own policy
11 yet, that's a change under 350(c). No new offer. Because
12 the child is now -- owns a car, they make him a named
13 insured, just a change in the policy. No new offer.

14 That child gets older, heads off to college or moves
15 out on his own, can still stay on the same policy. The
16 insurance carrier simply changes the address they send the
17 premium notice to on that or the notices to. Again, change
18 on the policy and no new offer.

19 So that insured driver could go for an extended period
20 of time under their theory without them ever having to
21 comply with the law that all insureds under 160 -- under
22 38-77-160 be made an offer.

23 I don't believe that the legislature intended to
24 create that kind of a loophole, and specifically in
25 addressing it as -- with regard to named insureds.

1 The additional argument that Progressive presents is
2 that it changed from a resident relative in the house to
3 the named insured falls under 38-77-350(c) as a -- just a
4 change to the policy.

5 Again, just like the argument of not being a new
6 applicant, the Court in McDonald specifically addressed
7 this.

8 They had also specifically addressed it previously in
9 Ackerman in saying that if 38 -- I'm sorry. In Ackerman
10 vs. Travelers Indemnity. If 38-77-350(c) were interpreted
11 to relieve the carrier of the general requirement of
12 offering the insured underinsured motorist coverage up to
13 the limits of liability of the policy it would amount to an
14 absolute repeal of 38-77-160 which mandates that an
15 automobile insurer offer uninsured motorist coverage to the
16 insured.

17 So if you -- if their argument prevails in this
18 situation and 350(c) is allowed to be a change, then it
19 does amount to the repeal of 160 as it applies to people
20 that are on a policy as a driver and just get changed to a
21 named insured.

22 I don't believe that it matters with regard to whether
23 there is another insured, named insured, on the policy.
24 One of the arguments that Progressive presents is that the
25 statute implies by saying if the named insured signs a

1 rejection they would argue -- and I believe argue in their
2 brief -- that there is -- that the legislature did not use
3 the word any named insured or a named insured. But they
4 try and argue that because Stanley Medlock is still an
5 insured on the policy and he signed a valid rejection that
6 that rejection is still applicable to Corey Medlock when he
7 becomes a named insured.

8 I would submit to the Court that if the legislature
9 intended one named insured to be able to bind all named
10 insureds they would not have used the word "the" in
11 reference to the named insured signs the rejection. The
12 named insured can certainly refer to multiple named
13 insureds on the policy.

14 In addition to that the South Carolina court in the
15 case of Nationwide Mutual Insurance vs. -- I can't
16 pronounce this name -- Prioleau, Court of Appeals' decision
17 from April of 2004, subsequent to McDonald in '99 -- in
18 this case the Court of Appeals had the opportunity to
19 address this specific question.

20 In this case Mr. and -- Julius and Paula Prioleau had
21 an insurance policy that Mr. Prioleau, the husband, took
22 out. Both the husband and the wife were named insureds on
23 the policy. But the husband was the only person that
24 applied for it, and the husband was the only person that
25 signed the rejection of the offer.

1 The trial court determined that there was no valid
2 rejection. And on appeal the issues brought to the Court
3 of Appeals, first, was that Mr. -- I'm going to say the
4 husband -- was a named insured on the policy and he
5 rejected the coverage and under 350(b) that was valid as it
6 applied to his wife. That was the first issue raised on
7 appeal.

8 The second issue raised on appeal was he was her
9 husband and he was acting as her agent, therefore as it has
10 her agent he was able to bind coverage on the rejection.

11 In this case the Court specifically did not address at
12 all the first issue, which would seem to me to be the
13 easiest issue under the theory that Progressive reports,
14 that a named insured binds all the named insureds.

15 The Court did not address it at all, skipped straight
16 to the issue of whether the husband was a power of attorney
17 for the wife and determined that the spousal recognition --
18 in South Carolina that he was, and found that his rejection
19 was binding on her as a result of that.

20 So under that theory the courts in South Carolina have
21 addressed in addition to McDonald the situation that it's
22 not just one named insured but all named insureds that need
23 to be made that offer and sign the rejection.

24 Corey Medlock was not a new applicant on this policy.
25 He was exactly the same as Mr. McDonald in his case,

1 exactly the same.

2 Substituting him versus him being an additional named
3 insured is the argument that Progressive presents and in
4 making that argument cites cases from outside of our
5 jurisdiction.

6 The case from Rhode Island, Ferreira vs. Integon
7 National Insurance, while, yes, Ferreira dealt with the
8 issue of a spouse being added to the policy and found that
9 no rejection was required, the big difference in that case
10 between the law in Rhode Island and the law in South
11 Carolina is that decision was not based on the fact that
12 she was his spouse, which I do believe is a very
13 significant difference I'll talk about with the next case,
14 Wilkerson.

15 The Court in Rhode Island in Ferreira made the
16 determination, because in Rhode Island statute right under
17 where they require the rejection and provide the same
18 protection that 350(b) does, the Rhode Island statute has a
19 sub -- a neck subsection (d) that requires the states that
20 after the selection of limits by the named insured, the
21 insurer or any affiliate insurer shall be required to
22 notify the policy holder in any renewal, reinstatement,
23 substitute, amended, altered, modified, transferred or
24 replacement policy as to the availability of that coverage
25 for optional limits.

1 In Rhode Island they have -- they don't require that
2 they get a new rejection signed, but in Rhode Island it is
3 state law that they have to make the offer when the policy
4 is changed and on renewals. And in this case they made the
5 offer when the policy was changed to add the wife.

6 They didn't have to get a new rejection, but they did
7 have to provide the notice. And they also provided the
8 notice on two subsequent renewals. And it was on that
9 basis that the insured complied with that requirement of
10 the law that the Court decided that there was no valid
11 rejection offer.

12 And the next case cited, which we go to Louisiana,
13 wilkinson vs. Louisiana Indemnity, once again, the position
14 is taken that in wilkerson a spouse was added. And I'll go
15 back to the reason that's different and the reason, another
16 reason, in that case is different is because under the
17 policy's language a spouse is given all of the same rights
18 as the named insured. And that is the basis that the Court
19 in wilkerson used to determine that Ms. Wilkerson was not
20 entitled to a new offer.

21 If you read this case you also have to read a
22 companion case that went with it. The companion case is
23 entitled waller vs. Dempsey. And waller was actually
24 decided prior to wilkerson. And in wilkerson the court
25 gave the parties an additional time period to brief since

1 they had made the decision in Waller. In Waller the Court
2 in Louisiana decided that any change to a policy, whether
3 it's adding an insured or adding a vehicle, does require a
4 new offer under their statutes.

5 In Wilkerson they specifically made the distinction
6 that it did not apply to Ms. Wilkerson because she was a
7 spouse, and only because she was a spouse. She already had
8 all of the same coverage that Mr. Wilkerson had as a named
9 insured, all the same rights, the same obligations.

10 But the law now in Louisiana is if there is a vehicle
11 added to the policy, which, oh, by the way, we have a
12 vehicle added on this policy -- and if there is a change in
13 the named insured, they do require a new offer and a new
14 signed rejection. So if we need to go to Louisiana law for
15 direction for South Carolina, that direction is going to
16 end up in the exact same place as McDonald.

17 The third case cited by Progressive, Isaacson vs.
18 Country Mutual Insurance Company, this is from the State of
19 Illinois, and this case is cited that no rejection was
20 required when a daughter was added as a listed driver.
21 We're not even talking about a named insured. We're
22 talking about adding another Corey Medlock.

23 The court in Isaacson said adding a listed driver is
24 nothing more than an informational designation. And it had
25 no impact on her legal status that a change was required.

1 However, the Court in Isaacson specifically references
2 with authority the Illinois decision of Nila vs. Hartford
3 Insurance Company. And if we have to find an out-of-state
4 jurisdiction for a case that is more similar to this than
5 in McDonald, I would submit and find it hard that
6 Progressive would argue that Nila is that situation.

7 In Nila the husband took out the insurance policy as
8 the only named insured. His wife was listed as an
9 additional driver. She was not a named insured.

10 They continued to renew this policy for several years.
11 He passed away. The insurance company changed the wife
12 from being a listed driver to the named insured.

13 And when the Court had to evaluate and determine if
14 she was entitled to a new offer of rejection or was bound
15 by his, they said she's never filled out an application,
16 she's never been a named insured on another policy with
17 this company, she's never been given the opportunity to
18 accept or reject underinsured coverage.

19 She's the named insured. A new vehicle was added.
20 It's a new policy, and she was entitled to an offer and the
21 opportunity to reject that offer.

22 Again, that's exactly the Court's reasoning in
23 McDonald.

24 So if we have to go outside of our jurisdiction that's
25 the most similar case, and it's from Illinois where the

1 decision on the listed daughter is cited by Progressive.

2 In looking at those cases I cannot believe that there
3 is any difference between Corey Medlock and Mr. McDonald.
4 They both were not new applicants. They didn't fill out an
5 application.

6 Mr. McDonald did pay a membership fee to Farm Bureau.
7 I will grant that. Progressive doesn't require a
8 membership fee, but according to the affidavits of Stanley
9 Medlock and Corey Medlock, Corey paid the premium. He paid
10 the \$37 premium increase when they -- when he was changed
11 to a named insured. And he's paid the premium ever since.
12 He believed he was the named insured.

13 He had the ability now to change the policy. He had
14 the right to receive the notice to cancel or notice of no
15 intent to renew. His legal status changed. The Corey
16 McDonald clarified their reasoning in Smith vs. South
17 Carolina Insurance Company in stating that in McDonald when
18 McDonald became the named insured on the policy it altered
19 the legal relationship of the parties.

20 As we observed where section 350(c) states the insured
21 is not required to make a new offer, it clearly envisions
22 the circumstances where the insurer has already made an old
23 offer.

24 Corey Medlock has never been made an offer. The old
25 offer that they are trying to attribute to him is the offer

1 made to Stanley Medlock who was an applicant, who did have
2 an offer, who did reject it. But his rejection cannot
3 carry from an insured relative under the policy with a
4 completely different set of coverage to a named insured.
5 The legislature just could not have envisioned that.

6 Again, the argument that 350(c) is broader than
7 wilkerson and therefore is broader in South Carolina than
8 in wilkerson, it's the same argument the Court addressed in
9 McDonald.

10 The legislative intent that a named insured would be
11 able to bind all named insureds, I don't believe that to be
12 the case. I believe the statute using the word the named
13 insured signing the rejection covers all the named
14 insureds. And I believe our courts have determined it to
15 be that way.

16 Corey was not a new applicant according to Progressive
17 but another insured. If that's where the decision has to
18 go, then they have to agree that the Court in Nila in
19 Illinois is the exact same. The wife was another insured,
20 became a named insured. The court used the exact same
21 thing as McDonald.

22 Under that scenario, Your Honor, I would submit that
23 Corey Medlock becoming a named insured is entitled to a new
24 offer and the opportunity to reject.

25 Under the law he now has control of his coverages. He

1 can increase them and decrease them, but under their theory
2 he can do all of that, but he can't -- he's not entitled to
3 the legal requirement that they make him an offer of
4 uninsured coverage. I cannot believe the legislature would
5 intend it to work out that way.

6 For those reasons I believe that summary judgment
7 should be granted in favor of defendants Stanley Medlock
8 and Corey Medlock. Thank you, Your Honor.

9 THE COURT: All right. Mr. Murphy.

10 MR. MURPHY: Just briefly, Your Honor.

11 I would -- I would just argue Prioleau did not address
12 the issue of whether one named insured can bind another
13 named insured.

14 But 38-77-350(b) has been amended since that case was
15 decided in response to Floyd vs. Nationwide, and very
16 clearly says that it advised the named insured and another
17 insured, which would include other named insureds in that
18 protection given to insurance companies.

19 So whether Mr. Martin can believe it or not, the Court
20 can read that and see that that protection does, in effect,
21 exist.

22 And the -- and the fulcrum of this case in light of
23 McDonald and the case he references in Illinois versus the
24 other cases that have been decided is there is apparently a
25 difference in the way the courts are viewing the

1 substitution where the existing named insured is taken away
2 and a new person is put in their place who was not
3 previously the named insured on that policy.

4 And that is a different situation from where a person
5 joins with the existing named insured who signed a valid
6 rejection and becomes a second or extra named insured. And
7 so I think in that situation that's the difference, and
8 that's a change to an existing policy, whereas the
9 substitution of insureds has been seen and viewed as being
10 not the change to an existing policy but the creation of a
11 new policy between new parties.

12 I think the addition of an extra named insured is not
13 seen that way. That's envisioned by 350(c), and the
14 protections afforded there should be available to
15 Progressive in this case.

16 THE COURT: All right. I'll take it under advisement
17 and issue an order.

18 MR. MARTIN: Your Honor, I have copies of those cases
19 from out of state if you'd like those.

20 THE COURT: All right. I'll be happy to take them.

21 MR. MURPHY: We will do the same, Your Honor, to help
22 the law clerk.

23 END OF REQUESTED TRANSCRIPT OF RECORD
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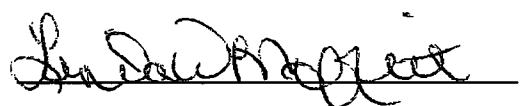
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 20th day of June 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 16, 2013


Linda D. Moffitt
Circuit Court Reporter

KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

000021

PROGRESSIVE

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

Policy number: 85613910-0

Underwritten by:
Progressive Northern Insurance Co
October 16, 2009
Policy Period: Oct 15, 2009 - Oct 15, 2010

Welcome to Progressive

Your coverage began on October 15, 2009

Thank you for purchasing your policy from KEITH YOUNG & ASSOC. The Progressive Group of Insurance Companies is the number one motorcycle insurer in the country. We are pleased to have you as a customer and look forward to serving you.

Enclosed you will find

- Your Motorcycle Insurance Coverage Summary (Declarations Page)
- Your policy
- Your Permanent ID cards

Contact KEITH YOUNG & ASSOC for personalized service at 864-242-3478

As an independent agency, KEITH YOUNG & ASSOC provides a high level of service and counsel that is personalized to your needs and lifestyle. Please contact your agency for servicing your policy or for other insurance needs. If you need service when your agency is not available call 800-876-5581, 24 hours a day, 7 days a week.

Log in to progressiveagent.com for convenient online service

For secure access to your policy, 24 hours a day, 7 days a week, log in to our easy-to-use online service site. You can use it to make payments, print temporary ID cards, update your policy and more. To get started, go to progressiveagent.com and enter the temporary user ID and password printed below.

Temporary user ID: 85613910 (your policy number)

Temporary password: TILE+ first five digits of your Social Security number
(Example: TILE12345)

Convenient e-mail service. Share your e-mail address with Progressive today!

To receive billing reminders, payment confirmations, and more, visit progressiveagent.com. Then, log on to "Manage Your Policy" and click on "E-mail Preferences". Except for your agent, we won't share your e-mail address with other companies for their marketing purposes without your consent.

Call 800-274-4499 to report a claim

We get to work on your claim quickly, providing clear communication throughout the claim and repair process and personally handling your claim from beginning to end. Our claims representatives are ready to assist you 24 hours a day, 7 days a week, every day of the year.

KEITH YOUNG & ASSOC
11 KAREN DR.
GREENVILLE, SC 29607

PROGRESSIVE

STANLEY K MEDLOCK
379 MAPLE RD
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Page 1 of 2

864-242-3478

KEITH YOUNG & ASSOC

Contact your agent for personalized service.

progressiveagent.com

Online Service

Make payments, check billing activity, update
policy information or check status of a claim.

800-274-4499

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

Your coverage began on October 15, 2009 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on October 15, 2010 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise. The policy contract is form 5979 SC (01/08). The contract is modified by form Z565 SC (01/08).

Underwriting Company

Progressive Northern Insurance Co

P.O. Box 6807

Cleveland, OH 44101

800-876-5581

Drivers and household residents

STANLEY K MEDLOCK

COREY K MEDLOCK

Additional information

Named insured

Outline of coverage

2001 Polaris Sportsman 300 Engine displacement: 499 cc's
 VIN 4XACH50A71A355200

	Limits	Deductible	Premium
Liability To Others			
Bodily Injury Liability	\$25,000 each person/\$50,000 each accident		\$37
Property Damage Liability	\$25,000 each accident		
Uninsured Motorist Bodily Injury	\$25,000 each person/\$50,000 each accident		5
Underinsured Motorist Bodily Injury	Rejected		
Uninsured Motorist Property Damage	\$25,000 each accident	\$200	1
Comprehensive		\$250	68
Collision		\$500	52
Accessory Coverage	\$3,000		Included
Roadside Assistance			10
Subtotal policy premium			\$173
South Carolina Uninsured Motorist Fund charge			2
Total 12 month policy premium			\$175

Premium discounts

Policy	
85613910-0	home owner and paid in full
Driver	
STANLEY K MEDLOCK	responsible driver and motorcycle endorsement
COREY K MEDLOCK	motorcycle endorsement

Important information about Accessories on your motorcycle/off-road vehicle

Coverage for physical damage to your motorcycle/off-road vehicle extends only to the vehicle as it comes from the factory. Accessories added on at the dealership or by an individual, and therefore not provided as original equipment by the manufacturer, are not considered part of the vehicle as delivered from the factory. If you have purchased comprehensive or collision coverage, we provide up to \$3000 of accessory coverage at no additional charge to you. Please review the value of the accessories on your vehicle. Should you wish to purchase coverage for more accessories, additional accessory coverage is available at very reasonable rates.

Important Cancellation Information

THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.



5979 SC 0108



Medlock

PROGRESSIVE

SOUTH CAROLINA

MOTORCYCLE POLICY

Form 5979 SC (01/08)

5979 SC 0108



PROGRESSIVE

IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND
2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;
3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

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SOUTH CAROLINA MOTORCYCLE POLICY

INSURING AGREEMENT

In return for **your** payment of the premium, **we** agree to insure **you** subject to all the terms, conditions, and limitations of this policy. **We** will insure **you** for the coverages and the limits of liability shown on this policy's **declarations page**. **Your** policy consists of the policy contract, **your** insurance application, the **declarations page**, and all endorsements to this policy.

GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in bold-face type and have the same meaning whether in the singular, plural, or any other form.

1. **"Additional motorcycle"** means a **motorcycle** **you** become the owner of during the policy period that does not permanently replace a **motorcycle** shown on the **declarations page** if:
 - a. **we** insure all other **motorcycles** **you** own;
 - b. the **additional motorcycle** is not covered by any other insurance policy;
 - c. **you** notify **us** within 30 days of becoming the owner of the **additional motorcycle**; and
 - d. **you** pay any additional premium due.An **additional motorcycle**, including an **off-road vehicle**, will have the broadest coverage **we** provide for any **motorcycle** shown on the **declarations page**. If **you** ask **us** to insure an **additional motorcycle** more than 30 days after **you** become the owner, any coverage **we** provide will begin at the time **you** request coverage.
2. **"Bodily Injury"** means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
3. **"Covered motorcycle"** means:
 - a. any **motorcycle** shown on the **declarations page** for the coverages applicable to that **motorcycle**;
 - b. any **additional motorcycle**; and
 - c. any **replacement motorcycle**.
4. **"Declarations page"** means the document showing **your** coverages, limits of liability, **covered motorcycles**, premium, and other policy-related information. The **declarations page** may also be referred to as the Motorcycle Insurance Coverage Summary.
5. **"Motorcycle"** means any motorcycle, motorbike, motor scooter, or motorized trike that is designed for operation principally upon public roads and has at least two wheels, but not more than three wheels.
6. **"Motorcycle business"** means the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.
7. **"Occupying"** means in, on, entering, exiting, mounting or dismounting.
8. **"Off-road vehicle"** means an ATV, dirt bike, golf cart, Segway®, or snowmobile which is designed for operation principally off public roads.
9. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.

10. **"Relative"** means a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. Your unmarried dependent children temporarily away from home will qualify as a relative if they intend to continue to reside in your household.
11. **"Replacement motorcycle"** means a motorcycle, including an off-road vehicle, that permanently replaces a motorcycle shown on the declarations page. A replacement motorcycle will have the same coverage as the motorcycle it replaces if the replacement motorcycle is not covered by any other insurance policy. However, if the motorcycle being replaced had coverage under Part IV - Damage To A Motorcycle, such coverage will apply to the replacement motorcycle only during the first 30 days after you become the owner unless you notify us within that 30-day period that you want us to extend coverage beyond the initial 30 days. If the motorcycle being replaced did not have coverage under Part IV - Damage To A Motorcycle, such coverage may be added, but the replacement motorcycle will have no coverage under Part IV until you notify us of the replacement motorcycle and ask us to add the coverage.
12. **"Trailer"** means a non-motorized trailer designed to be towed on public roads by a motorcycle.
13. **"Transport trailer"** means a non-motorized trailer designed to be towed on public roads by a land motor vehicle and principally designed for transporting a covered motorcycle.
14. **"We", "us", and "our"** mean the underwriting company providing the insurance, as shown on the declarations page.
15. **"You" and "your"** mean:
 - a. a person shown as a named insured on the declarations page; and
 - b. the spouse of a named insured if residing in the same household at the time of the loss.

PART I - LIABILITY TO OTHERS

INSURING AGREEMENT

If you pay the premium for this coverage, we will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages include prejudgment interest awarded against an **insured person**.

We will settle or defend, at our option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITION

When used in this Part I:

"Insured person" means:

- a. you or a relative with respect to an accident arising out of the ownership, maintenance, or use of a motorcycle;
- b. any person with respect to an accident arising out of that person's use of a covered motorcycle with the permission of you or a relative;

- c. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in a or b above; and
- d. any Additional Interest shown on the **declarations page** with respect only to its liability for the acts or omissions of a person described in a or b above.

ADDITIONAL PAYMENTS

In addition to our limit of liability, we will pay for an **insured person**:

1. all expenses we incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until we have paid, offered to pay, or deposited in court that portion of the judgment which does not exceed our limit of liability. This does not apply if we have not been given notice of suit or the opportunity to defend an **insured person**;
3. the premium on any appeal bond or attachment bond required in any lawsuit we defend. We have no duty to purchase a bond in an amount exceeding our limit of liability, and we have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. We have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$200 per day, incurred at our request.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including our duty to defend, will not apply to any **insured person** for:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any motorcycle while being used:
 - a. to carry or escort persons or property for compensation or a fee; or
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.
 For damages arising out of the ownership, maintenance, or use of a **covered motorcycle**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion #1 does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events;
2. any liability assumed under any contract or agreement by you or a relative;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any motorcycle while being maintained or used by a person while employed or engaged in any **motorcycle business**. For damages arising out of the ownership, main-

tenance, or use of a **covered motorcycle**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion #4 does not apply to you, a **relative**, or an agent or employee of you or a **relative**; when using a **covered motorcycle**;

5. **bodily injury or property damage** resulting from, or sustained during practice or preparation for:

a. any pre-arranged or organized:

(i) racing;

(ii) stunting;

(iii) speed, or demolition contest or activity; or

b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.

This exclusion does not apply to use of a **motorcycle** for escorting participants in charitable racing events;

6. **bodily injury or property damage** due to a nuclear reaction or radiation;

7. **bodily injury or property damage** for which insurance:

a. is afforded under a nuclear energy liability insurance contract; or

b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;

8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;

9. **bodily injury or property damage** caused by an intentional act of that **Insured person**, or at the direction of that **Insured person**, even if the actual injury or damage is different than that which was intended or expected. For damages arising out of the ownership, maintenance, or use of a **covered motorcycle**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;

10. **property damage** to any property owned by, rented to, being transported by, or in the charge of that **Insured person**. This exclusion does not apply to a rented residence or a rented garage;

11. **bodily injury to you or a relative**. For damages arising out of the ownership, maintenance, or use of a **covered motorcycle**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;

12. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by you or furnished or available for **your** regular use, other than a **covered motorcycle** for which this coverage has been purchased;

13. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered motorcycle** for which this coverage has been purchased. This exclusion does not apply to **your** maintenance or use of such motorcycle;

14. **bodily injury or property damage** arising out of **your** or a **relative's** use of a motorcycle, other than a **covered motorcycle**, without the permission of the owner of the motorcycle or the person in lawful possession of the motorcycle;

15. **bodily injury or property damage** arising out of the use of a **covered motorcycle** while leased or rented to others or otherwise given in exchange for any compensation. This exclusion does not apply to the operation of a **covered motorcycle** by you or a **relative**; or

16. **bodily injury or property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **Insured person**. This exclusion applies regardless of whether that **Insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for liability coverage is the most we will pay regardless of the number of:

1. claims made;
2. **covered motorcycles**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

If your **declarations page** shows a split limit:

1. the amount shown for "each person" is the most we will pay for all damages due to **bodily injury** to one person resulting from any one accident;
2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most we will pay for the total of all **property damage** resulting from any one accident.

The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most we will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, we will comply with any law that requires us to provide any separate limits.

The Limits of Liability under this Part I shall not be reduced by payments made under Part II - Motorcycle Medical Payments Coverage. However, no one is entitled to duplicate payments for the same elements of damages.

Any payment to a person under this Part I will be reduced by any payment to that person under Part III - Uninsured/Underinsured Motorist Coverage.

We will not pay under this Part I any expenses paid or payable under Part II - Motorcycle Medical Payments Coverage.

If multiple motorcycle policies issued by us are in effect for you, we will pay no more than the highest limit of liability for this coverage available under any one policy.

A **motorcycle** and attached trailer are considered one **motorcycle**. Therefore, the limits of liability will not be increased for an accident involving a **motorcycle** that has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. The **insured person** must reimburse us if we make a payment that we would not have made if this policy was not certified as proof of financial responsibility.

OTHER INSURANCE

If there is any other applicable liability insurance or bond, we will pay only our share of the damages. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

However, any insurance we provide for a motorcycle, other than a **covered motorcycle**, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state, territory, or possession of the United States of America or any province or territory of Canada, other than the one in which a **covered motorcycle** is principally garaged, and the state, province, territory, or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the limits shown on the **declarations page**, this policy will provide the higher limits; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a **motorcycle** in that state, province, territory, or possession, this policy will provide the greater of:
 - a. the required minimum amounts and types of coverage; or
 - b. the limits of liability under this policy.

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

Any party to a disputed property damage liability claim may submit the claim to arbitration in accordance with South Carolina law.

PART II - MOTORCYCLE MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

If you pay the premium for this coverage, we will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a motor vehicle accident because of **bodily injury**:

1. sustained by an **insured person**; and
2. caused by that motor vehicle accident.

We, or someone on our behalf, will determine:

1. whether the expenses for **medical services** are reasonable; and
2. whether the **medical services** are necessary.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "**Insured person**" means:
 - a. you or a **relative**:
 - (i) while **occupying a motorcycle**; or
 - (ii) when struck by a motor vehicle or a trailer while not **occupying** a self-propelled motorized vehicle; and
 - b. any other person while **occupying a covered motorcycle** with the permission of you or a **relative**.
2. "**Medical services**" means medical, surgical, dental, x-ray, ambulance, hospital, professional nursing, and funeral services, and includes the cost of eyeglasses, hearing aids, pharmaceuticals, and orthopedic and prosthetic devices.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II will not apply to **bodily injury**:

1. sustained by any person while **occupying a covered motorcycle** while it is being used:
 - a. to carry or escort persons or property for compensation or a fee; or
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.This exclusion does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events;
2. arising out of an accident involving a vehicle while being maintained or used by a person while employed or engaged in any **motorcycle business**. This exclusion does not apply to you, a **relative**, or an agent or employee of you or a **relative**, when using a **covered motorcycle**;
3. resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized:
 - (i) racing;

- (ii) stunting;
 - (iii) speed, or demolition contest or activity; or
 - b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.
- This exclusion does not apply to use of a **motorcycle** for escorting participants in charitable racing events;
- 4. due to a nuclear reaction or radiation;
 - 5. for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
 - 6. for which the United States Government is liable under the Federal Tort Claims Act;
 - 7. sustained by any person while **occupying** any vehicle while located for use as a residence or premises;
 - 8. if workers' compensation benefits are available for the **bodily injury**;
 - 9. sustained by any person while **occupying** or when struck by any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered motorcycle** for which this coverage has been purchased;
 - 10. sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered motorcycle** for which this coverage has been purchased. This exclusion does not apply to **you**;
 - 11. to **you** or a **relative** while **occupying** any vehicle, other than a **covered motorcycle**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
 - 12. to any person while **occupying** a **covered motorcycle** while leased or rented to others or otherwise given in exchange for any compensation. This exclusion does not apply to the operation of a **covered motorcycle** by **you** or a **relative**;
 - 13. caused directly or indirectly by:
 - a. war (declared or undeclared) or civil war;
 - b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
 - c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;
 - 14. caused directly or indirectly by:
 - a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic, or poisonous biological material; or
 - b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
 - 15. caused by, or reasonably expected to result from, a criminal act or omission of an **insured person**. This exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Motorcycle Medical Payments Coverage is the most **we** will pay for each **insured person** injured in any one accident, regardless of the number of:

- 1. claims made;
- 2. **covered motorcycles**;
- 3. **insured persons**;
- 4. lawsuits brought;
- 5. vehicles involved in the accident; or
- 6. premiums paid.

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **insured person** under this Part II will be reduced by any amount paid or payable for the same expense under Part I - Liability To Others or Part III - Uninsured/Underinsured Motorist Coverage.

If multiple motorcycle policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

UNREASONABLE OR UNNECESSARY MEDICAL EXPENSES

If an **insured person** incurs expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those expenses and contest them.

If the medical service provider sues the **insured person** because **we** refuse to pay expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** will pay any resulting defense costs, and any resulting judgment against the **insured person**, subject to the limit of liability for this coverage. **We** will choose the counsel. **We** will also pay reasonable expenses, including loss of earnings up to \$200 per day, incurred at **our** request.

The **insured person** may not sue **us** for expenses for **medical services** **we** deem to be unreasonable or unnecessary unless the **insured person** paid the entire disputed amount to the medical service provider or the medical service provider has initiated collection activity against the **insured person** for the unreasonable or unnecessary expenses.

OTHER INSURANCE

If there is other applicable vehicle medical payments insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide for an **insured person** **occupying** a motorcycle, other than a **covered motorcycle**, will be excess over any other **motorcycle** insurance providing payments for **medical services**.

PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT - UNINSURED MOTORIST COVERAGE

If you pay the premium for this coverage, we will pay for damages that an **Insured person** is legally entitled to recover from the owner or operator of:

1. an **uninsured motor vehicle** because of **bodily injury**:
 - a. sustained by an **insured person**;
 - b. caused by an accident; and
 - c. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**; or
2. an **uninsured motor vehicle** because of **property damage**:
 - a. caused by an accident; and
 - b. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

INSURING AGREEMENT - UNDERINSURED MOTORIST COVERAGE

If you pay the premium for this coverage, we will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of:

1. an **underinsured motor vehicle** because of **bodily injury**:
 - a. sustained by an **insured person**;
 - b. caused by an accident; and
 - c. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**; or
2. an **underinsured motor vehicle** because of **property damage**:
 - a. caused by an accident; and
 - b. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.

We will pay under this Part III only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

NOTICE REQUIREMENT

Any judgment or settlement for damages against an owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** that arises out of a lawsuit brought for which we have not received notice in accordance with South Carolina law is not binding on us.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "**Insured person**" means:
 - a. **you** or a **relative**;
 - b. any person while operating a **covered motorcycle** with the permission of **you** or a **relative**;

- c. any person **occupying**, but not operating, a **covered motorcycle**; and
 - d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.
2. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type to which liability insurance or a bond applies at the time of the accident with limits of liability that equal or exceed the minimum amounts required by the South Carolina motor vehicle financial responsibility law, but which are less than the amount of the damages sustained by the **insured person** in the accident.
An "**underinsured motor vehicle**" does not include any vehicle or equipment:
 - a. owned by any governmental unit or agency, except when:
 - (i) operated by a person without proper authorization; or
 - (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle accident is barred by the Tort Claims Act of South Carolina;
 - b. operated on rails or crawler treads;
 - c. while located for use as a residence or premises; or
 - d. that is an **uninsured motor vehicle**.
 3. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
 - a. to which no liability bond, cash deposit, security, or liability policy in at least the amounts of coverage required by South Carolina law applies at the time of the accident;
 - b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
 - (i) denies coverage;
 - (ii) is or becomes insolvent;
 - (iii) is in delinquency proceedings, suspension, or receivership; or
 - (iv) is financially unable to fully satisfy a judgment rendered in favor of an **insured person**;
 - c. to which a liability bond or policy applies at the time of the accident, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which the **covered motorcycle** is principally garaged; or
 - d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which causes an accident resulting in **bodily injury** to an **insured person**, or **property damage** to the property of an **insured person**, provided:
 - (i) the **insured person**, or someone on his or her behalf, reports the accident to the police or other civil authority within 24 hours or as soon as practicable after the accident; and
 - (ii) if there has been no physical contact between the vehicle operated by the unidentified operator and the **insured person**, or a vehicle occupied by the **insured person**, there must be independent corroborative evidence by a witness to the accident who executes a signed affidavit attesting to the truth of the accident to prove that the **bodily injury** or **property damage** was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. The testimony of the owner or operator of the **covered motorcycle** shall not constitute independent corroborative evidence. No recovery will be provided under this Part III if the **insured person** was negligent in failing to determine the identity of the other motor vehicle and its driver at the time of the accident.

An **"uninsured motor vehicle"** does not include any vehicle or equipment:

- a. owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer that:
 - (i) is or becomes insolvent; or
 - (ii) fails to qualify as a self-insurer under South Carolina law;
- b. owned by any governmental unit or agency, except when:
 - (i) operated by a person without proper authorization; or
 - (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle accident is barred by the Tort Claims Act of South Carolina;
- c. operated on rails or crawler treads;
- d. while located for use as a residence or premises; or
- e. that is an **underinsured motor vehicle**.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

Coverage under this Part III will not apply:

1. to **bodily injury** sustained by any person while using or **occupying**:
 - a. a **covered motorcycle** while being used:
 - (i) to carry or escort persons or property for compensation or a fee; or
 - (ii) for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.
This exclusion does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events; or
 - b. any motor vehicle owned by **you** or a **relative** if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle;
2. to **bodily injury** sustained by **you** or a **relative** while using any vehicle, other than a **covered motorcycle**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
3. to **bodily injury** resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized:
 - (i) racing;
 - (ii) stunting;
 - (iii) speed, or demolition contest or activity; or
 - b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.
This exclusion does not apply to use of a **motorcycle** for escorting participants in charitable racing events; or
4. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

Coverage under this Part III will not apply to **property damage**:

1. sustained while a **covered motorcycle** is being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines,

newspapers, food or any other products. This exclusion does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events;

2. to **bodily injury** resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized:
 - (i) racing;
 - (ii) stunting;
 - (iii) speed, or demolition contest or activity; or
 - b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.
This exclusion does not apply to use of a **motorcycle** for escorting participants in charitable racing events;
3. to a **covered motorcycle** for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
4. to a trailer; or
5. to any motor vehicle owned by **you** or a **relative** if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Uninsured Motorist Coverage and Underinsured Motorist Coverage, as the case may be, is the most we will pay regardless of the number of:

1. claims made;
2. **covered motorcycles**, but only with respect to **insured persons** other than **you** or a **relative**. However, coverage for more than one **covered motorcycle** under this policy may not be stacked or combined together for **bodily injury** sustained by **you** or a **relative** while **occupying** a motor vehicle other than a **covered motorcycle**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid, but only with respect to **insured persons** other than **you** or a **relative**.

When **you** or a **relative** sustain damages covered under this Part III while **occupying** a **covered motorcycle**, the most that may be recovered as benefits under each applicable uninsured motorist coverage or underinsured motorist coverage is the limit of liability applicable to that **covered motorcycle**.

When **you** or a **relative** are not **occupying** a vehicle and sustain **bodily injury** caused by the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, our limit of liability shall not exceed the limit of liability shown on the **declarations page** for any one **covered motorcycle**.

If your **declarations page** shows a split limit:

1. the amount shown for "each person" for "bodily injury" is the most we will pay for all damages due to **bodily injury** to one person;

2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most **we** will pay for the aggregate of all **property damage** caused by any one accident.

The "each person" limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all **bodily injury** damages resulting from any one accident. However, without changing this total limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The limits of liability for **bodily injury** under this Part III will be reduced by all sums:

1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible;
2. paid under Part I - Liability To Others; and
3. paid or payable because of **bodily injury** under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

We will not pay under this Part III any expenses paid or payable under Part II - Motorcycle Medical Payments Coverage.

The limit of liability for **property damage** to a **covered motorcycle** is the lowest of:

1. the actual cash value of the **covered motorcycle** at the time of the accident;
2. the amount necessary to replace the **covered motorcycle**;
3. the amount necessary to repair the **covered motorcycle** to its pre-loss condition; or
4. the limit of liability shown on the **declarations page** for Uninsured Motorist Property Damage Coverage or Underinsured Motorist Property Damage Coverage, whichever applies.

The applicable limit of liability for **property damage** under this Part III will be reduced by all sums paid because of **property damage** by or on behalf of any persons or organizations that may be legally responsible, including, but not limited to, all sums paid under Part I - Liability To Others.

We shall not pay for **property damage** to the extent that such damages are paid or payable under any other property damage or physical damage insurance, including all sums paid or payable under Part IV - Damage To A Motorcycle.

Payments for **property damage** under this Part III are subject to the following provisions:

1. any amount payable under this Part III for **property damage** shall be subject to the applicable deductible shown on the **declarations page**; and
2. no more than one deductible shall be applied to any one accident.

No one will be entitled to duplicate payments for the same elements of damages.

If multiple motorcycle policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all available coverage limits. However, when **you** or a **relative** are **occupying** a motor vehicle other than a **covered motorcycle** and sustain **bodily injury** covered under this Part III, **our** coverage shall be excess to the coverage applicable to the motor vehicle that **you** or the **relative** are **occupying**, and **our** total limit of liability under this policy shall not exceed **our** limit of liability for one **motorcycle**.

ARBITRATION FOR BODILY INJURY CLAIMS

If **we** and an **insured person** cannot agree on:

1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; or
 2. the amount of the damages sustained by the **insured person**;
- this will be determined by arbitration if **we** and the **insured person** mutually agree to arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred.

If **we** and the **insured person** mutually agree to arbitration, each party will select ~~an~~ arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within 30 days, then on joint application by the **insured person** and **us**, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator and any other expenses it incurs. The costs and fees of the third arbitrator will be shared equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding with respect to a determination of:

1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; and
2. the amount of the damages sustained by the **insured person**.

The arbitrators will have no authority to award an amount in excess of the limit of liability.

We and an **insured person** may agree to an alternate form of arbitration.

ARBITRATION FOR PROPERTY DAMAGE CLAIMS

An **insured person** may submit a disputed **property damage** claim to arbitration in accordance with South Carolina law.

PART IV - DAMAGE TO A MOTORCYCLE

INSURING AGREEMENT - COLLISION COVERAGE

If you pay the premium for this coverage, we will pay for sudden, direct, and accidental loss to a **covered motorcycle** or a **non-owned motorcycle** resulting from **collision**.

INSURING AGREEMENT - COMPREHENSIVE COVERAGE

If you pay the premium for this coverage, we will pay for sudden, direct, and accidental loss to a **covered motorcycle** or a **non-owned motorcycle** that is not caused by **collision**.

A loss not caused by **collision** includes:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny; or
8. windstorm, hail, water, or flood.

INSURING AGREEMENT - TRANSPORT TRAILER PHYSICAL DAMAGE COVERAGE

If you pay the premium for this coverage, we will pay for sudden, direct, and accidental loss to your owned **transport trailer**, subject to the Limits of Liability.

INSURING AGREEMENT - ACCESSORY COVERAGE

We will pay for sudden, direct, and accidental loss to **accessories** on a **covered motorcycle** for which this coverage has been purchased. This coverage applies only if you have purchased Comprehensive Coverage or both Comprehensive Coverage and Collision Coverage for that **covered motorcycle** and the loss is covered under one of those coverages.

INSURING AGREEMENT - TOTAL LOSS REPLACEMENT COVERAGE

If there is a **total loss** to a **motorcycle** shown on the **declarations page** and you have paid the premium for this coverage, then subsection 1 of the Limits of Liability provision under this Part IV will not apply to that **total loss** and the following shall apply:

The limit of liability for a **motorcycle** shown on the **declarations page** for which Total Loss Replacement Coverage has been purchased is as follows:

- a. we will pay the Manufacturer Suggested Retail Price of a current model year **motorcycle** that is the same make and model as the **motorcycle** for which this coverage is shown on the **declarations page**.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "**Accessory**" means equipment, devices, enhancements, and changes, other than those which are original manufacturer installed, which alter the appearance or performance of a **covered motorcycle**. This includes, but is not limited to:
 - a. any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or play back recorded media, that are permanently installed on a **covered motorcycle** using bolts or brackets, including slide-out brackets;
 - b. sidecars;
 - c. custom paint, custom plating, and custom exhaust;
 - d. **trailers**; and
 - e. **safety riding apparel**.
2. "**Collision**" means the upset of a vehicle or its impact with another vehicle or object.
3. "**Mechanical parts**" means operational parts on a vehicle that wear out over time or have a finite useful life or duration typically shorter than the life of the vehicle as a whole. **Mechanical parts** do not include external crash parts, wheels, paint, or windshields and other glass.
4. "**Non-owned motorcycle**" means a **motorcycle** that is not owned by or furnished or available for the regular use of you or a **relative** while in the custody of or being operated by you or a **relative** under a rental agreement with the facility or dealer which owns the **motorcycle**.
5. "**Safety riding apparel**" means safety apparel specifically designed to minimize injury from an accident, including, but not limited to, helmets, leathers, riding boots, riding gloves, and protective eyewear.
6. "**Total loss**" means:
 - a. the theft of the **motorcycle** if the **motorcycle** is not recovered within 30 days; or
 - b. any other loss to the **motorcycle**, that is payable under this Part IV, if we determine that it is not economical to repair the **motorcycle** after considering the **motorcycle's** actual cash value, salvage value, and the cost to repair the **motorcycle**.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV will not apply for loss:

1. to any **motorcycle** while being used:
 - a. to carry or escort persons or property for compensation or a fee; or
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.This exclusion does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events;
2. to a **non-owned motorcycle** or **transport trailer** while being maintained or used by a person while employed or engaged in any **motorcycle business**;

3. to any vehicle resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized:
 - (i) racing;
 - (ii) stunting;
 - (iii) speed, or demolition contest or activity; or
 - b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.

This exclusion does not apply to use of a **motorcycle** for escorting participants in charitable racing events;
4. to any vehicle for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you**, a **relative**, or the owner of a **non-owned motorcycle**, even if the actual damage is different than that which was intended or expected;
6. to a **covered motorcycle** while it is leased or rented to others or otherwise given in exchange for compensation. This exclusion does not apply to the operation of a **covered motorcycle by you or a relative**;
7. due to destruction or confiscation by governmental or civil authorities of any vehicle because **you** or any **relative** engaged in illegal activities;
8. to any vehicle that is due and confined to:
 - a. wear and tear;
 - b. freezing; or
 - c. mechanical, electrical or electronic breakdown or failure.

This exclusion does not apply if the damage results from the theft of a vehicle;
9. to any vehicle that is due to **collision** and confined to tire inner tubes or tires, or a combination thereof;
10. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:
 - a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
 - b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
 - c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
 - d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;
11. to **accessories** in excess of the applicable Limits of Liability;
12. to any vehicle for diminution of value;
13. to any vehicle caused directly or indirectly by:
 - a. war (declared or undeclared) or civil war;
 - b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
 - c. insurrection; rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;

14. to any vehicle caused directly or indirectly by:
 - a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic, or poisonous biological material; or
 - b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose;
15. to **safety riding apparel**, except for **collision** damage that occurs while it is being worn by **you** or a passenger; or
16. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, or the owner of a **non-owned motorcycle**. This exclusion applies regardless of whether **you**, the **relative**, or the owner of the **non-owned motorcycle** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered motorcycle** or **non-owned motorcycle** is the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
 - b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
 - c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
 - d. the Agreed Value shown on the **declarations page** for that **covered motorcycle**.
2. The limit of liability for loss to **your owned transport trailer** is the lowest of:
 - a. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
 - b. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
 - c. any applicable Limits of Liability shown on the **declarations page**.
3. The limit of liability for loss to **accessories** is the lowest of:
 - a. the amount necessary to replace such **accessory**;
 - b. the amount necessary to repair such **accessory**; or
 - c. the limit of \$3,000 or any applicable Limits of Liability shown on the **declarations page**.
4. If **your declarations page** shows Agreed Value for Comprehensive Coverage and Collision Coverage for a **covered motorcycle**, then the following provision shall apply:
 - a. The limit of liability for loss to a **covered motorcycle** with Agreed Value is the lower of:
 - (i) the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible shown on the **declarations page**; or
 - (ii) the agreed value shown on the **declarations page**.

5. Payments for loss to a **covered motorcycle** or **non-owned motorcycle** are subject to the following provisions:
- If coverage applies to a **non-owned motorcycle**, we will provide the broadest coverage applicable to any **covered motorcycle** shown on the **declarations page**.
 - If you have Agreed Value Coverage for a **covered motorcycle**, the agreed value is the most we will pay for all loss to that **covered motorcycle**, including its **accessories**.
 - In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by us:
 - will not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by us; and
 - will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
 - original manufacturer parts or equipment; and
 - nonoriginal manufacturer parts or equipment.
 - To determine the amount necessary to repair or replace the damaged property as referred to in the above subsections, the total cost of necessary repair or replacement may be reduced by unrepaid prior damage. Unrepaid prior damage includes broken, cracked, or missing parts; rust; dents; scrapes; gouges; and peeling paint. The reduction for unrepaid prior damage is the cost of labor, parts, and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, wheels, paint, and windshields and other glass that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss.
 - The actual cash value is determined by the market value, age and condition of the vehicle at the time the loss occurs.
6. Duplicate recovery for the same elements of damages is not permitted.
7. Any amount paid or payable to a person under this Part IV for **property damage** to a **motorcycle** shall be reduced by any amount paid for that **property damage** to the **motorcycle** under Part III - Uninsured/Underinsured Motorist Coverage.

PAYMENT OF LOSS

We may, at our option:

- pay for the loss in money; or
- repair or replace the damaged or stolen property.

At our expense, we may return any recovered stolen property to you or to the address shown on the **declarations page**, with payment for any damage resulting from the theft. We may keep all or part of the property at the agreed or appraised value.

We may settle any loss with you or the owner or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYEE AGREEMENT

Payment under this Part IV for a **total loss** to a **covered motorcycle** will be made according to your interest and the interest of any Loss Payee or lienholder shown on the **declarations page** or designated by you. Payment may be made to both jointly, or separately, at our discretion. We may make payment for a partial loss covered under this Part IV directly to the repair facility with your consent.

Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you or a **relative**, or where the loss is otherwise not covered under the terms of this policy, the Loss Payee or lienholder's interest will not be protected.

We will be entitled to the Loss Payee or lienholder's rights of recovery, to the extent of our payment to the Loss Payee or lienholder.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a **non-owned motorcycle** will be excess over any other collectible source of recovery including, but not limited to:

- any coverage provided by the owner of the **non-owned motorcycle**;
- any other applicable physical damage insurance; and
- any other source of recovery applicable to the loss.

APPRAISAL

If we cannot agree with you on the amount of a loss, then we or you may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent appraiser and shall notify the other party of that appraiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified umpire chosen by the appraisers. If the two appraisers are unable to agree upon an umpire within 15 days, we or you may request that a judge of a court of record, in the county where you reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. You will pay your appraiser's fees and expenses. We will pay our appraiser's fees and expenses. All other expenses of the appraisal, including payment of the umpire if one is selected, will be shared equally between us and you. Neither we nor you waive any rights under this policy by agreeing to an appraisal.

PART V - ROADSIDE ASSISTANCE COVERAGE

INSURING AGREEMENT - ROADSIDE ASSISTANCE COVERAGE

If **you** pay the premium for this coverage, **we** will pay for our authorized service representative to provide the following services when necessary due to a **covered emergency**:

1. towing of a **covered disabled motorcycle** to the nearest qualified repair facility; and
2. labor on a **covered disabled motorcycle** at the place of disablement.

If a **covered disabled motorcycle** is towed to any place other than the nearest qualified repair facility, **you** will be responsible for any additional charges incurred.

INSURING AGREEMENT - TRIP INTERRUPTION COVERAGE

If **you** pay the premium for this coverage, **we** will reimburse interruption expenses as described below when a **covered motorcycle** is disabled due to mechanical breakdown or a **covered comprehensive or collision loss**.

For this coverage to apply, the disablement must occur more than 100 miles from the insured's primary residence.

When a **covered motorcycle** is disabled, interruption expenses consist of the following:

1. up to \$100 per day for lodging;
2. up to \$50 per day for meals; and
3. up to \$50 per day for alternate transportation.

Coverage is limited to \$500 per disablement.

ADDITIONAL DEFINITIONS

When used in this Part V:

1. "**Covered disabled motorcycle**" means a **covered motorcycle** for which this coverage has been purchased that sustains a **covered emergency**.
2. "**Covered emergency**" means a disablement within 100 feet of a road or highway that is a result of:
 - a. mechanical or electrical breakdown;
 - b. battery failure;
 - c. insufficient supply of fuel, oil, water, or other fluid;
 - d. flat tire;
 - e. lock-out; or
 - f. entrapment in snow, mud, water or sand.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.

Coverage under this Part V will not apply to:

1. the cost of purchasing parts, fluid, lubricants, fuel or replacement keys, or the labor to make replacement keys;

2. installation of products or materials not related to the disablement;
3. labor not related to the disablement;
4. labor on a **covered disabled motorcycle** for any time period in excess of 60 minutes per disablement;
5. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;
6. towing from a service station, garage, or repair shop;
7. labor or repair work performed at a service station, garage, or repair shop;
8. vehicle storage charges;
9. a second service call or tow for a single disablement;
10. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction, weather, or earth movement;
11. tire repair;
12. repeated service calls for a **covered disabled motorcycle** in need of routine maintenance or repair; or
13. disablement that results from an intentional or willful act or action by **you**, a relative or the operator of a **covered disabled motorcycle**.

UNAUTHORIZED SERVICE PROVIDER

When service is rendered by a provider in the business of providing roadside assistance and towing services, other than one of our authorized service representatives, **we** will pay only reasonable charges, as determined by **us**, for:

1. towing of a **covered disabled motorcycle** to the nearest qualified repair facility; and
2. labor on a **covered disabled motorcycle** at the place of disablement; which is necessary due to a **covered emergency**.

OTHER INSURANCE

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

PART VI - DUTIES IN CASE OF AN ACCIDENT OR LOSS

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident and loss information including time, place, and how the accident or loss happened. **You** or the person seeking coverage must also obtain and provide **us** the names and addresses of all persons involved in the accident or loss, the names and addresses of any witnesses, and the license plate numbers of the vehicles involved.

If **you** or the person seeking coverage cannot identify the owner or operator of a vehicle involved in the accident, or if theft or vandalism has occurred, **you** or the person seeking coverage must notify the police within 24 hours or as soon as practicable.

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;
2. provide any written proof of loss **we** may reasonably require;
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you** or any other person seeking coverage and answer all reasonable questions **we** may ask as often as **we** may reasonably require;
4. promptly call to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered motorcycle**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered motorcycle**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

PART VII - GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses occurring during the policy period shown on the **declarations page** and that occur within a state, territory, or possession of the United States of America, or a province or territory of Canada, or while a **covered motorcycle** is being transported between their ports.

CHANGES

This policy contract, **your** insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, and all endorsements to this policy issued by **us** contain all the agreements between **you** and **us**. Subject to the following, the terms of this policy may not be changed or waived except by an endorsement issued by **us**.

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to notify **us** if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, **you** agree that **we** may adjust **your** premium accordingly.

Changes that may result in a premium adjustment are contained in **our** rates and rules. These include, but are not limited to, **you** or a **relative** obtaining a driver's license or operator's permit, or changes in:

1. the number or type of **covered motorcycles**;
2. operators using **covered motorcycles**;

3. an operator's marital status;
4. the place of principal garaging of any **covered motorcycle**;
5. coverage, deductibles, or limits of liability; or
6. rating territory or discount eligibility.

The coverage provided in **your** policy may be changed only by the issuance of a new policy or an endorsement by **us**. However, if during the policy period **we** broaden any coverage afforded under the current edition of **your** policy without additional premium charge, that change will automatically apply to **your** policy as of the date the coverage change is implemented in **your** state.

If **you** ask **us** to delete a motorcycle from this policy, no coverage will apply to that motorcycle as of the date and time **you** ask **us** to delete it.

DUTY TO REPORT CHANGES

You must promptly notify **us** when:

1. **your** mailing or residence address changes;
2. the principal garaging address for a **covered motorcycle** changes;
3. there is a change with respect to the residents in **your** household or the persons who regularly operate a **covered motorcycle**;
4. an operator's marital status changes; or
5. **you** or a **relative** obtain a driver's license or operator's permit.

SETTLEMENT OF CLAIMS

We may use estimating, appraisal, or injury evaluation systems to assist **us** in adjusting claims under this policy and to assist **us** in determining the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by **us** or a third party and may include computer software, databases, and specialized technology.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform with the statutes of the state listed on **your** application as **your** residence, the provision shall be deemed amended to conform with such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the laws of the state listed on **your** application as **your** residence.

TRANSFER OF INTEREST

The rights and duties under this policy may not be transferred to another person without **our** written consent. However, if a named insured shown on the **declarations page** dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on **your** insurance application. **We** may void this policy at any time, including after the occurrence of an accident or loss, if **you**:

1. made incorrect statements or representations to **us** with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct;

at the time of application. This means that **we** will not be liable for any claims or damages that would otherwise be covered unless **we** have certified this policy as proof of financial responsibility. If **we** have certified this policy as proof of financial responsibility, nothing in this provision shall affect coverage under Part I - Liability To Others, up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina, for an accident that occurs before **we** notify the named insured that the policy is void. If **we** void this policy, **you** must reimburse **us** if **we** make a payment.

We may deny coverage for an accident or loss if **you** or a person seeking coverage has knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

PAYMENT OF PREMIUM AND FEES

If **your** initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to **us** by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at **our** option, be cancelled from its inception by notice of cancellation or rescission. This means **we** will not be liable under this policy for any claims or damages that would otherwise be covered if the check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. Any action by **us** to present the remittance for payment more than once shall not affect **our** right to void this policy.

In addition to premium, fees may be charged on **your** policy. **We** may charge fees for installment payments, late payments, and other transactions. Payments made on **your** policy will be applied first to fees, then to premium due.

CANCELLATION

You may cancel this policy during the policy period by calling or writing **us** and stating the future date **you** wish the cancellation to be effective.

We may cancel this policy during the policy period by mailing a notice of cancellation to the named insured shown on the **declarations page** at the last known address appearing in **our** records, stating the specific reason for cancellation. Notice will be mailed at least 15 days before the date of cancellation.

We may cancel this policy for any of the following reasons within the first 60 days of the initial policy period:

1. a premium payment by check, draft, electronic funds transfer, or similar form of remittance is not honored upon presentment;

2. **you** produce proof that **you** have sold or otherwise disposed of a covered motorcycle, or surrendered its tags and registration;
3. **you** have secured another policy that satisfies the financial responsibility laws of the State of South Carolina; or
4. **you** fail to pay when due:
 - a. the premium for the policy;
 - b. an installment of the premium; or
 - c. an installment payment under a premium service contract.

After the policy has been in effect for more than 60 days, but before the policy has been in effect for more than 90 days, **we** may cancel this policy for any reason.

After this policy is in effect for more than 90 days, or if this is a renewal or continuation policy, **we** may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. loss of driving privileges through suspension or revocation of an operator's license issued to **you**, any driver in **your** household, or any regular operator of a covered motorcycle; or
3. any other reason permitted by law.

Proof of mailing will be sufficient proof of notice. If this policy is cancelled, coverage will not be provided as of the effective date and time shown in the notice of cancellation. For purposes of cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverages for all persons and all vehicles.

CANCELLATION REFUND

Upon cancellation, **you** may be entitled to a premium refund. However, **our** making or offering of a refund is not a condition of cancellation.

If this policy is cancelled, any refund due will be computed on a daily pro-rata basis.

NONRENEWAL

If neither **we** nor one of **our** affiliates offers to renew or continue this policy, **we** will mail notice of nonrenewal, stating the specific reason for nonrenewal, to the named insured shown on the **declarations page** at the last known address appearing in **our** records. Proof of mailing will be sufficient proof of notice. Notice will be mailed at least 15 days before the end of the policy period.

AUTOMATIC TERMINATION

If **we** or an affiliate offers to renew or continue this policy and **you** or **your** representative does not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due will mean that **you** have not accepted **our** offer.

if you obtain other insurance on a covered motorcycle, any similar insurance provided by this policy will terminate as to that covered motorcycle on the effective date of the other insurance.

If a covered motorcycle is sold or transferred to someone other than you or a relative, any insurance provided by this policy will terminate as to that covered motorcycle on the effective date of the sale or transfer.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy.

We may not be sued for payment under Part I - Liability To Others until the obligation of an insured person under Part I to pay is finally determined either by judgment after trial against that person or by written agreement of the insured person, the claimant, and us. No one will have any right to make us a party to a lawsuit to determine the liability of an insured person.

If we retain salvage, we have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

OUR RIGHTS TO RECOVER PAYMENT

We are entitled to the rights of recovery that the insured person to whom payment was made has against another, to the extent of our payment. That insured person may be required to sign documents related to the recovery and must do whatever else we require to help us exercise those recovery rights, and do nothing after an accident or loss to prejudice those rights.

However, we may not assert rights of recovery:

1. for amounts paid as Underinsured Motorist Coverage benefits; or
2. for amounts paid as Motorcycle Medical Payments Coverage benefits.

When an insured person has been paid by us and also recovers from another, the amount recovered will be held by the insured person in trust for us and reimbursed to us to the extent of our payment. If we are not reimbursed, we may pursue recovery of that amount directly against that insured person.

If an insured person recovers from another without our written consent, the insured person's right to payment under any affected coverage will no longer exist.

If we elect to exercise our rights of recovery against another, we will also attempt to recover any deductible incurred by an insured person under this policy unless we are specifically instructed by that person not to pursue the deductible. We have no obligation to pursue recovery against another for any loss not covered by this policy.

We reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. We also reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery.

If the total recovery is less than the total of our payment and the deductible, we will reduce reimbursement of the deductible based on the proportion that the actual recovery bears to the total of our payment and the deductible. A proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts will also reduce reimbursement of the deductible.

These provisions will be applied in accordance with state law.

JOINT AND INDIVIDUAL INTERESTS

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy.

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve us of any obligations under this policy.

South Carolina Off-Road Vehicle Coverage Endorsement

For purposes of this Off-Road Vehicle Coverage Endorsement, the South Carolina Motorcycle Policy is amended as follows:

1. General Definitions

The General Definition of **"covered motorcycle"** is deleted and all references throughout the policy to **"covered motorcycle"** are deleted and replaced by **"covered off-road vehicle"**.

The General Definition of **"motorcycle"** is deleted and all references throughout the policy to **"motorcycle"** are deleted and replaced by **"off-road vehicle"**.

The remainder of the General Definitions section is deleted in its entirety, as are all references throughout the policy to those definitions, and replaced with the following:

General Definitions

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form:

a. **"Additional off-road vehicle"** means an off-road vehicle you become the owner of during the policy period that does not permanently replace an off-road vehicle shown on the declarations page if:

- (i) we insure all other off-road vehicles you own;
- (ii) the additional off-road vehicle is not covered by any other insurance policy;
- (iii) you notify us within 30 days of becoming the owner of the additional off-road vehicle; and
- (iv) you pay any additional premium due.

An additional off-road vehicle, including a motorcycle, will have the broadest coverage we provide for any off-road vehicle shown on the declarations page. If you ask us to insure an additional off-road vehicle more than 30 days after you become the owner, any coverage we provide will begin at the time you request coverage.

b. **"All-terrain vehicle" or "ATV"** means any land motor vehicle that has at least three wheels and is principally designed for operation off public roads.

c. **"Bodily injury"** means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.

d. **"Covered off-road vehicle"** means:

- (i) any off-road vehicle shown on the declarations page for the coverages applicable to that off-road vehicle;
- (ii) any additional off-road vehicle; and
- (iii) any replacement off-road vehicle.

e. **"Declarations Page"** means the document showing your coverages, limits of liability, covered off-road vehicles, premium, and other policy-related information. The declarations page may also be referred to as the Off-Road Vehicle Insurance Coverage Summary.

f. **"Dirt bike"** means any land motor vehicle that has:

- (i) two wheels and is designed exclusively for operation off public roads;
- (ii) completely open-air driver's seating; and
- (iii) a motorcycle hand-grip steering device.

g. **"Golf cart"** means any land motor vehicle designed principally for use on a golf course.

h. **"Occupying"** means in, on, entering, exiting, mounting or dismounting.

i. **"Off-road vehicle"** means any ATV, dirt bike, golf cart, or Segway® which is designed for operation principally off public roads.

- j. "Off-road vehicle business" means the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.
- k. "Property damage" means physical damage to, destruction of, or loss of use of, tangible property.
- l. "Relative" means a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. Your unmarried dependent children temporarily away from home will qualify as a relative if they intend to continue to reside in your household.
- m. "Replacement off-road vehicle" means an off-road vehicle, including a motorcycle, that permanently replaces an off-road vehicle shown on the declarations page. A replacement off-road vehicle will have the same coverage as the off-road vehicle it replaces if the replacement off-road vehicle is not covered by any other insurance policy. However, if the off-road vehicle being replaced had coverage under Part IV—Damage To A Motorcycle, such coverage will apply to the replacement off-road vehicle only during the first 30 days after you become the owner unless you notify us within that 30 day period that you want us to extend coverage beyond the initial 30 days. If the off-road vehicle being replaced did not have coverage under Part IV—Damage To A Motorcycle, such coverage may be added, but the replacement off-road vehicle will have no coverage under Part IV until you notify us of the replacement off-road vehicle and ask us to add the coverage.
- n. "Segway®" means a Segway® Personal Transporter.
- o. "Trailer" means a non-motorized trailer or sled designed to be towed by a covered off-road vehicle.
- p. "Transport trailer" means a non-motorized trailer designed to be towed on public roads by a land motor vehicle and principally designed for transporting a covered off-road vehicle.
- q. "We", "us", and "our" mean the underwriting company providing the insurance, as shown on the declarations page.
- r. "You" and "your" mean:
 - (i) a person shown as a named insured on the declarations page; and
 - (ii) the spouse of a named insured if residing in the same household at the time of the loss.

2. Part III - Uninsured/Underinsured Motorist Coverage

Additional Definitions

The following item is deleted from the definition of "underinsured motor vehicle" in Part III:

An "underinsured motor vehicle" does not include any vehicle or equipment operated on rails or crawler treads.

The following item is deleted from the definition of "uninsured motor vehicle" in Part III:

An "uninsured motor vehicle" does not include any vehicle or equipment operated on rails or crawler treads.

3. Part IV - Damage To A Motorcycle

The Exclusions section in Part IV is modified to include the following:

Coverage under this Part IV will not apply for loss to a covered off-road vehicle if the damage does not affect the structure or operation of the covered off-road vehicle. Such damage includes, but is not limited to, paint chips, scratches, scrapes, and minor dents.

All other terms, limits and provisions of the policy remain unchanged.

Important information about your Accessory Coverage

Below is a general explanation of our coverage for custom parts and equipment, which we call Accessory Coverage. We encourage you to read your policy contract for more details.

What makes your Accessory Coverage unique

We are excited to tell you about your Accessory Coverage because we believe it is superior to what you may have had in the past. Many other companies depreciate the value of your custom parts over time and pay you less than your original investment. Others may pay only the difference in value between the stock part which you replaced and the custom part. But your Accessory Coverage will pay the amount to actually replace a custom part on your vehicle if it can't be repaired. We are pleased to be able to offer you this valuable coverage.

Coverage considerations

In the event of a loss, your policy will pay to replace Accessory Coverage up to the limit of liability found on your Declarations Page. Accessory Coverage includes, but is not limited to, custom paint jobs, after market exhaust pipes, seats and wheels, and chrome accents. This also includes anything added to your motorcycle/off-road vehicle by the dealer. It is important that you make this distinction when evaluating your motorcycle/off-road vehicle and choosing coverage for it, since Comprehensive and Collision only cover the vehicle as it was produced in the factory. Documentation, which includes receipts and pictures, can help facilitate the claims process. It is important for you to re-assess the value of your motorcycle's/off-road vehicle's custom parts at each renewal, or whenever you make significant investments. If you have added or removed parts on your motorcycle/off-road vehicle, you may want to adjust the limit of Accessory Coverage you have chosen.

Form Z360 (01/07)

PROGRESSIVE**Policy number: 85613910-0**

October 15, 2009

Policy period: Oct 15, 2009 - Oct 15, 2010

Insurance ID Cards

Keep these cards in
your vehicle

If you need service or have a question

Your agent is ready to help with personalized service and counsel. Refer to the front of your Insurance Identification Card for information on how to reach your agent.

Access your policy at progressiveagent.com

- Pay your bill
- View and print your policy documents
- Check the status of a claim
- Get important information about your vehicle
- For most policies find out how much it would cost to insure another vehicle, add a driver and more!

If you are in an accident

Representatives are ready to assist 24 hours a day, 7 days a week, including weekends and holidays. Call 800-274-4499 to report a claim.

Keith Young & Associates
Insurance Agency, LLC
11 Karen Drive
Greenville, SC 29607

864-242-3478

Insurance Identification Card

South Carolina

Progressive Northern Insurance Co

Policy Period: Oct 15, 2009 to Oct 15, 2010

Policy Number: 85613910-0

Named Insured
STANLEY K MEDLOCK

Your Agent
KEITH YOUNG & ASSOC
864-242-3478

To report a claim: 800-274-4499**Vehicle**

Year Make
2001 POLARIS

Model

SPORTSMAN 500/RSE/DU

Vehicle Identification No.

4XACH50A71A355200

Coverage under this policy meets South Carolina's minimum financial responsibility requirements. This card must be carried in your vehicle for production on demand.

PROGRESSIVE

Insurance Identification Card

South Carolina

Progressive Northern Insurance Co

Policy Period: Oct 15, 2009 to Oct 15, 2010

Policy Number: 85613910-0

Named Insured
STANLEY K MEDLOCK

Your Agent
KEITH YOUNG & ASSOC
864-242-3478

To report a claim: 800-274-4499**Vehicle**

Year Make
2001 POLARIS

Model

SPORTSMAN 500/RSE/DU

Vehicle Identification No.

4XACH50A71A355200

Coverage under this policy meets South Carolina's minimum financial responsibility requirements. This card must be carried in your vehicle for production on demand.

10/15/2009 10:33

864-242-4898

KEITH YOUNG & ASSOC

PAGE 04

LINDA Y DUDLEY
KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

PROGRESSIVE

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

Policy number: 85613910-0

Underwritten by:

Progressive Northern Insurance Co

October 15, 2009

Policy Period: Oct 15, 2009 - Oct 15, 2010

Payment Receipt for motorcycle insurance initial payment

Amount paid: \$175.00

Method of payment

Credit Card \$175.00

Post
LINDA Y DUDLEY
KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

PROGRESSIVE

Underwritten by:
Progressive Northern Insurance Co
October 15, 2009

*Keith,
Please sign & fax back to me
the last 3 pages.
My fax is 864-242-4898.
Sharon
Ludlow*

Dear STANLEY K MEDLOCK,

Thank you for contacting me about your motorcycle insurance needs. I appreciate your business and am certain you will be pleased with your decision to purchase your policy. You can ride with confidence, knowing that Progressive is the largest motorcycle insurer in the country, with claims offices in all 50 states. Claims service is available 24 hours a day, 7 days a week by calling 800-274-4499. You can also have full access to your policy information through a password protected site, progressiveagent.com.

Enclosed you will find:

- Your application. Please review and sign where indicated.
- Policy documents that require your signature.

Within 2 weeks you will receive:

- Your policy contract, any applicable endorsement to the contract and Insurance Coverage Summary (Declarations Page). Please take a few minutes to review these important documents and contact me if you have any questions about your coverage.
- Permanent ID cards.
- Information about Roadside Assistance service.

Receipt of payment in full for the policy

This is receipt of \$175.00 which pays the policy in full through Oct 15, 2010. Payment was made by credit card.

Convenient e-mail service. Share your e-mail address with Progressive today!

To receive billing reminders, payment confirmations, and more, visit progressiveagent.com. Then log on to "Manage Your Policy" and click on "E-mail Preferences". Except for your agent, we will not share your e-mail address with other companies for their marketing purposes without your consent.

If you have any questions, please call me at 864-242-3478.

Application for Insurance

Please review, sign where
indicated and return

PROGRESSIVE
Policy number: 85613910-0
Named insured: STANLEY K MEDLOCK
October 15, 2009
Page 1 of 10

Policy and premium information for policy number 85613910-0

Insurance company: Progressive Northern Insurance Co
PO Box 6807
Cleveland, OH 44101

Agent: LINDA Y DUDLEY
KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607
48240
864-242-3478

Named insured: STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349
e-mail address: NONE
Home: 864-814-4448
Work:

Financial responsibility vendor: EXPERIAN
888-397-3742

Policy period: Oct 15, 2009 - Oct 15, 2010

Effective date and time: Oct 15, 2009 at 09:45 a.m.

Total policy premium: \$175.00

Initial payment required: \$175.00

Initial payment received: \$175.00

Payment plan: 1 payment

THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.

Drivers and household residents

All household residents who operate the vehicles described in the application, all operators that have an ownership interest in any of these vehicles and any other regular operator of these vehicles are listed below.

Name	Date of birth	Sex	Marital status	Relationship
STANLEY MEDLOCK	Jan 13, 1954	Male	Married	Insured
License status: Valid				
COREY MEDLOCK	Feb 22, 1988	Male	Single	Child
License status: Valid				
Principal vehicle: 2001 POLARIS SPORTSMAN 500/RSE/DU				



PROGRESSIVE

Policy number: 85613910-0

Policyholder: STANLEY K MEDLOCK

Policy period: Oct 15, 2009 - Oct 15, 2010

Page 1 of 1

This information will complete your purchase of insurance

Please review the items listed below and **return the requested information to my office** as soon as possible. Your insurance premium is based on the information you provided on the application. If we do not receive the items requested, your insurance premium may change.

Sign and return

- ☐ Your application
- ☐ Offer of optional additional uninsured motorist coverage and optional underinsured motorist coverage

Return to: LINDA Y DUDLEY
KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607
Fax: 864-242-4898

Policy number: 85613910-0

STANLEY K MEDLOCK

Page 2 of 10

Outline of coverage

2001 POLARIS SPORTSMAN 500/RSE/DU CC: 499

VIN: 4XACH50A71A355200

Garaging Zip Code: 29349 State: SC Use: Off-Road

	Limits	Deductible	Premium
Liability To Others			\$37
Bodily Injury Liability	\$25,000 each person/\$50,000 each accident		
Property Damage Liability	\$25,000 each accident		
Uninsured Motorist Bodily Injury	\$25,000 each person/\$50,000 each accident		5
Uninsured Motorist Property Damage	\$25,000 each accident	\$200	1
Comprehensive		\$250	68
Collision		\$500	52
Accessory Coverage	\$3,000		Included
Roadside Assistance			10
Total premium for 2001 POLARIS			\$173
Subtotal policy premium			\$173
South Carolina Uninsured Motorist Fund charge			2
Total 12 month policy premium, with paid in full discount			\$175

Premium discounts

Policy	
85613910-0	home owner and paid in full
Driver	
STANLEY MEDLOCK	responsible driver and motorcycle endorsement
COREY MEDLOCK	motorcycle endorsement

Driving history

Please review the following information carefully because driving history is used to determine your rate. All accidents are considered at-fault and chargeable unless the accident is under an applicable payment threshold or we receive additional information from you or another source that proves the accident was not-at-fault. We obtain driving history from the following sources:

- Your application (APP)
- Motor Vehicle Reports - provided by state agencies (MVR)

Driver	Description	Date	Source
COREY MEDLOCK	speeding	Feb 10, 2009	MVR

Notice regarding accessory coverage

Subject to your limits of liability, if you have paid a premium for Comprehensive or Collision Coverage and you do not have Agreed Value on your motorcycle or off-road vehicle, you will receive coverage for any loss arising from theft or damage to any accessory attached to your motorcycle or off-road vehicle up to \$3,000. "Accessory coverage" means equipment, devices, enhancements, and changes, other than those that are original manufacturer installed, which alter the appearance or performance of a covered vehicle.

Please be aware that accessories may have been added to your motorcycle or off-road vehicle by any previous owner, including a dealership. In this event, the cost for any accessory may have been included in the purchase price of the motorcycle or off-road vehicle. If the value of any such accessory exceeds \$3,000, you may wish to purchase additional coverage. This coverage is available for an additional premium and affords protection for up to \$30,000 worth of accessories.



Policy number: 85613910-0

STANLEY K MEDLOCK

Page 3 of 10

Application agreement**Verification of content**

I affirm that the statements contained herein are true to the best of my knowledge and belief and do agree to pay any surcharges applicable under the Company rules which are necessitated by inaccurate statements. I understand that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter the Company's exposure is omitted or misrepresented.

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Notice of information practices

I understand that to calculate an accurate price for my insurance, the Company may obtain information from third parties, such as consumer reporting agencies that provide driving, claims and credit histories. The Company may use a credit-based insurance score based on the information contained in the credit history. The Company or its affiliates may obtain new or updated information to calculate my renewal premium or service my insurance. I may access information about me and correct it if inaccurate. In some cases, the law permits the Company to disclose the information it collects without authorization. However, the Company will not share personal information with nonaffiliated companies for their marketing purposes without consent. Complete details are in the Company's Privacy Policy, which will be provided with this insurance policy and upon request.

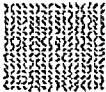
I affirm that

If I make my initial payment by electronic funds transfer, check, draft, or other remittance, the coverage afforded under this policy is conditioned on payment to the Company by the financial institution. If the transfer, check, draft, or other remittance is not honored by the financial institution, the Company shall be deemed not to have accepted the payment and this policy shall be void.

If I make my initial payment by credit card, the coverage afforded under this policy is conditioned on payment to the Company by the card issuer. I understand that if the Company is unable to collect my initial payment from the card issuer, the Company shall be deemed not to have accepted the payment and this policy shall be void. I also understand that if I authorize a credit card transaction for any payment other than the initial payment, this policy will be subject to cancellation for nonpayment of premium if the Company is unable to collect payment from the card issuer. The Company is deemed "unable to collect" in the following instances: (1) when I reach my credit limit on my credit card and the card issuer refuses the charge; (2) when the card issuer cancels or revokes my credit card; or (3) when the card issuer does not pay the Company, for any reason whatsoever, upon the Company's request.

I agree that the maximum limit of liability for Comprehensive and Collision Coverage (if purchased) is the Actual Cash Value of the factory standard vehicle at the time of the loss, if the vehicle does not have Agreed Value.

I agree that the maximum limit of liability for Comprehensive and Collision Coverage (if purchased) is the Actual Cash Value of the factory standard vehicle at the time of the loss, less the deductible, or the amount displayed on the declarations page, whichever is less; unless Total Loss Replacement or Agreed Value Coverage options are selected, in which case the maximum limits are determined as provided for in the policy contract.


Continued

Policy number: 05613910-0
STANLEY K MEDLOCK
Page 4 of 10

Other charges

I agree to pay the installment fees shown on my billing statement that become due during the policy term and each renewal policy term in accordance with the payment plan I have selected. I understand the installment payment plan fee is \$1.00 for electronic funds transfer installments and \$5.00 for paper installments. I understand that the amount of these fees may change upon policy renewal or if I change my payment plan. Any change in the amount of installment fees will be reflected on my payment schedule.

I understand that a returned payment fee of \$20.00 will be assessed to the balance due on my policy if any check offered in payment is not honored by my bank or other financial institution. Imposition of such charge shall not deem the Company to have accepted the check unconditionally.

I agree to pay a late fee of \$5.00 during the policy term and each renewal policy term when either the minimum amount due is not paid or payment is postmarked more than 2 days after the premium due date. The amount of this fee may change upon policy renewal.

Signature of named insured

Date

→ (X) Stanley Keith Medlock

10/15/09

John 4/24/09 SC 01/08/01



Policy number: B5613910-0
STANLEY K MEDLOCK
Page 5 of 10

Offer of additional uninsured motorist coverage and optional underinsured motorist coverage

I. Explanation of coverages

Motor vehicle 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 motor vehicle 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 motor vehicle liability insurance for a number of reasons. If an insurance company decides to write your motor vehicle liability insurance coverage, however, it must provide at least \$25,000 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly-known as minimum limits. In order to drive your motor vehicle 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 motor vehicle 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 motor vehicle liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in a motor vehicle accident by an at-fault driver who either has no motor vehicle insurance or whose motor vehicle 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 motor vehicle 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 motor vehicle insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits, up to the limits of the liability coverage which 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 motor vehicle 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 motor vehicle 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 a motor vehicle 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.


Continued

Policy number: 85613910-0

STANLEY K MEDLOCK

Page 6 of 10

If you do not complete this form and return it to your insurance company or insurance agent within 30 days your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your motor vehicle liability insurance, to your motor vehicle insurance policy. You will be required to pay an additional premium for each of these two coverages and your policy may be canceled for non-payment of that additional premium.

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must then contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or insurance company upon the renewal of your motor vehicle liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your motor vehicle liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services

South Carolina Department of Insurance

1201 Main Street, Suite 1000, Columbia, SC 29201

Post Office Box 100105 Columbia, South Carolina 29202-3105

(803) 737-6160

(800) 737-6205 fax E-Mail Address: consumers@doi.sc.gov


Continued

Policy number: 85613910-0
 STANLEY K MEDLOCK
 Page 7 of 10

II. Offer of additional uninsured motorist coverage

Limits of Coverage

\$25,000/\$50,000/\$25,000

\$50,000/\$100,000/\$25,000

\$100,000/\$300,000/\$50,000

\$250,000/\$500,000/\$100,000

\$300,000 combined single limit each accident

\$500,000 combined single limit each accident

Amounts of Increased Premium

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

n/a

n/a

n/a

n/a

n/a

To obtain the uninsured motorist premium amounts for adding or removing vehicles, please contact us.

Do you wish to purchase additional uninsured motorist coverage? Yes _____ No ~~X~~

If your answer is "no," then you must sign here.

Your Signature

X

If your answer is "yes," then specify the limits which you desire. These limits cannot exceed your motor vehicle insurance liability limits.

I select _____ / _____ / _____ split limits; or

I select _____ combined single limit



Continued

Policy Number: 058139140
 STANLEY K. MEDLOCK
 Page 8 of 10

III. Offer of underinsured motorist coverage

Limits of Coverage	Amounts of Increased Premium
\$25,000/\$50,000/\$25,000	\$16.00
\$50,000/\$100,000/\$25,000	n/a
\$100,000/\$300,000/\$50,000	n/a
\$250,000/\$500,000/\$100,000	n/a
\$300,000 combined single limit each accident	n/a
\$500,000 combined single limit each accident	n/a

To obtain the underinsured motorist premium amounts for adding or removing vehicles, please contact us.

Do you wish to purchase underinsured motorist coverage?

Yes ☐ No ☒

If your answer is "no," then you must sign here.

Your Signature

→ (X) Stanley Keith Medlock 10/15/09

If your answer is "yes," then specify the limits which you desire. These limits cannot exceed your motor vehicle insurance liability limits.

* I select _____ split limits or

I select _____ combined single limit

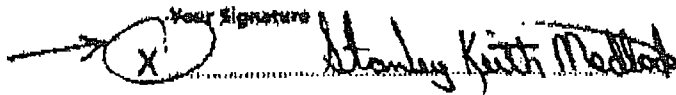
Policy number: 856118100
STANLEY K MEDLOCK
Page 9 of 10

IV. Applicant's acknowledgment

By my signature, I acknowledge that I have read or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my motor vehicle insurance policy and the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: STANLEY K MEDLOCK
Your Address: 379 MAPLE RD
INMAN, SC 29349

Your Signature  Today's Date 10/15/09

Form 2000 SC 001.000



KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

PROGRESSIVE

STANLEY K MEDLOCK
COREY K MEDLOCK
379 RED MAPLE RD
INMAN, SC 29349

Policy number: 85613910-0

Underwritten by:
Progressive Northern Insurance Co
June 10, 2010
Policy Period: Oct 15, 2009 - Oct 15, 2010
Page 1 of 2

864-242-3478

KEITH YOUNG & ASSOC
Contact your agent for personalized service.

progressiveagent.com

Online Service
Make payments, check billing activity, update
policy information or check status of a claim.

800-274-4499

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

Your policy information has changed

Your coverage began on October 15, 2009 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on October 15, 2010 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise. The policy contract is form 5979 SC (01/08). The contract is modified by form Z565 SC (01/08).

Policy changes effective June 9, 2010

Changes requested on:	Jun 9, 2010 11:12 a.m.
Requested by:	LINDA DUDLEY FROM KEITH YOUNG & ASSOC
Premium change:	\$37.00
Changes:	The 2001 Suzuki SV650/S has been added. The vehicle information for the 2001 Suzuki SV650/S has changed. COREY K MEDLOCK has changed to a second Named Insured. A multi-vehicle discount has been added to your policy.

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
800-876-5581

Drivers and household residents

STANLEY K MEDLOCK
COREY K MEDLOCK

Additional Information:

Named Insured
Named Insured

Outline of coverage

2001 Polaris Sportsman 500 Engine displacement: 499 cc's
 VIN 4XACH50A71A355200

	Limits	Deductible	Premium
Liability To Others			\$33
Bodily Injury Liability	\$25,000 each person/\$50,000 each accident		
Property Damage Liability	\$25,000 each accident		
Uninsured Motorist Bodily Injury	\$25,000 each person/\$50,000 each accident		4
Underinsured Motorist Bodily Injury	Rejected		
Uninsured Motorist Property Damage	\$25,000 each accident	\$200	1
Comprehensive		\$250	62
Collision		\$500	47
Accessory Coverage	\$3,000		included
Roadside Assistance			10
Total premium for 2001 Polaris			\$157

2001 Suzuki SV650/S Engine displacement: 645 cc's
 VIN JS1VP52A512103094

	Limits	Deductible	Premium
Liability To Others			\$24
Bodily Injury Liability	\$25,000 each person/\$50,000 each accident		
Property Damage Liability	\$25,000 each accident		
Uninsured Motorist Bodily Injury	\$25,000 each person/\$50,000 each accident		20
Underinsured Motorist Bodily Injury	Rejected		
Uninsured Motorist Property Damage	\$25,000 each accident	\$200	1
Comprehensive		\$250	9
Collision		\$500	54
Accessory Coverage	\$3,000		included
Roadside Assistance			10
Total premium for 2001 Suzuki			\$118
Subtotal policy premium			\$275
South Carolina Uninsured Motorist Fund charge			4
Total 12 month policy premium			\$279

Premium discounts

Policy	
85613910-0	multi-vehicle, home owner and paid in full
Driver	
STANLEY K MEDLOCK	motorcycle endorsement and responsible driver
COREY K MEDLOCK	motorcycle endorsement

Important information about Accessories on your motorcycle/off-road vehicle

Coverage for physical damage to your motorcycle/off-road vehicle extends only to the vehicle as it comes from the factory. Accessories added on at the dealership or by an individual, and therefore not provided as original equipment by the manufacturer, are not considered part of the vehicle as delivered from the factory. If you have purchased comprehensive or collision coverage, we provide up to \$3000 of accessory coverage at no additional charge to you. Please review the value of the accessories on your vehicle. Should you wish to purchase coverage for more accessories, additional accessory coverage is available at very reasonable rates.

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

RECEIVED

OCT 08 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

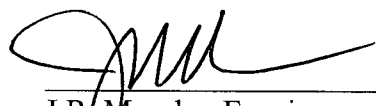
v.

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

Of Whom,
Stanley K. Medlock and Corey K. Medlock.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

October 4, 2013

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

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.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Stanley K. Medlock, Corey K. Medlock and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on October 8, 2013, addressed to their attorneys 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

RECEIVED

OCT 08 2013

SC Court of Appeals



J.R. Murphy, Esquire
Wesley B. Sawyer, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Appellant