

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

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S.C. Supreme Court

South Carolina Farm Bureau Mutual Insurance Company Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins Respondents.

APPENDIX

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

Other Counsel of Record:

John S. Nichols, Esquire
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
Attorneys for Respondents

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Attorneys for Respondents

INDEX

Record on Appeal.....	1
Brief of Appellant.....	167
Reply Brief of Appellant	200
Brief of Respondent.....	221
Unpublished Opinion No. 2011-UP-136 of the Court of Appeals	260
Appellant’s Petition for Rehearing and/or Rehearing <i>En Banc</i>	266
Return to Petition for Rehearing and/or Rehearing <i>En Banc</i>	279
Reply in Support of Petition for Rehearing and/or Rehearing <i>En Banc</i>	295
Order Denying Petition for Rehearing.....	300

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SC Court of Appeals

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Case No. 2006-CP-46-02553

South Carolina Farm Bureau Mutual Insurance Company, ...Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ...Respondents.

RECORD ON APPEAL

J. R. Murphy, Esquire
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4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
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APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

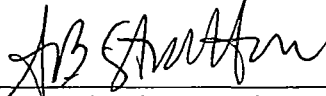
v.

South Carolina Farm Bureau Mutual Insurance Company Appellant.

PROOF OF SERVICE

I do hereby certify that I have this 16th day of December, 2009, served a copy of the
Record on Appeal in connection with the above-referenced case by mailing a copy of
the same by United States Mail, postage prepaid, to the following address:

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202



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

INDEX

Order of The Honorable John C. Hayes, III, filed September 15, 2008	2
Complaint filed by South Carolina Farm Bureau Mutual Insurance Company Against Ronnie D. Jenkins and Sandra B. Jenkins on September 29, 2006	10
Defendants' Answer, Counterclaim, and Third Party Claim Dated November 1, 2006	13
Plaintiff's Reply to Counterclaim and Third Party Claim of Defendants Filed November 29, 2006	23
Transcript of Trial heard by The Honorable John C. Hayes, III On September 3, 2008	28
Three (3) Automobile Policy Change Request Forms dated May 30, 2003	122
Three (3) Offers of Optional Additional Uninsured Motorist Coverage And Optional Underinsured Motorist Coverage dated May 30, 2003	125
Excess letter mailed by South Carolina Farm Bureau Mutual Insurance Company to Ronnie Jenkins dated April 9, 2003	133
Automobile Renewal Notice for Policy AU 0231001-6 dated April 24, 2006	134
<u>Woodson v. Nationwide Mutual Insurance Company,</u> Unpublished Opinion No. 2002-UP-398 (Ct. App. 2002)	142
<u>Foremost Insurance Company v. Demma,</u> Case No. 2006-CP-23-8108 (Cir. Ct. May 15, 2007)	148
<u>Phillips v. Progressive Casualty Insurance Company,</u> Case No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008)	157
Certificate of Counsel	164

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiff,)
)
vs.)
)
Ronnie D. Jenkins and Sandra B. Jenkins,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2006-CP-46-2553

ORDER

FILED-RECEIVED
2008 SEP 15 AM 10:17
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This declaratory judgment was tried before the undersigned without a jury on September 3, 2008. Appearances are of record.

This action arises out of a motor vehicle accident that occurred on July 15, 2006. Defendant Sandra Jenkins was struck by a trailer that was being towed by an unidentified vehicle whose driver left the scene. The Jenkins' submitted a claim to Plaintiff for uninsured motorist (UM) coverage for the bodily injuries sustained by Mrs. Jenkins.

The Jenkins had an automobile policy in effect with Farm Bureau on July 15, 2006, policy number AU 0231001, which covered two vehicles, carried liability limits of \$250,000 per person, \$500,000 per accident, and \$100,000 for property damage (250/500/100). However, the policy only provided uninsured and underinsured motorist coverage in the amounts of \$25,000.00 per person, \$50,000.00 per occurrence and \$25,000.00 property damages (25/50/25).

Prior to May 30, 2003, the Jenkins had three policies with Farm Bureau and carried liability limits of 25/50/25. At that time, the Jenkins carried the same limits of liability, UM and underinsured motorist (UIM) coverage all of which were above the mandatory minimum at the time. (Policy number AU 0166438, which carried the same liability limits, covered a 1987

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Toyota Van Wagon. Policy AU 0366990 also had the same liability limits and covered a 2002 Chrysler PT Cruiser). On or about May 13, 2002, the Jenkins were involved in an automobile accident in Florida in which the Jenkins were not at fault. However, action was filed against Mr. Jenkins in Florida. On April 9, 2003, Farm Bureau sent Mr. Jenkins an Excess Letter advising him that his liability limits may not be sufficient to cover the potential liability and recommend that he retain counsel to represent himself personally.

Approximately six weeks later, on May 30, 2003, the Jenkins went to their Farm Bureau agent to increase their insurance coverage. Mr. Jenkins admits that the reason he increased his liability coverage is because of the accident in Florida. Mr. Jenkins met with Joseph Lee (agent), the agent on duty, and changed all three existing policies with a written "Change Request Form." The liability limits on all three policies were increased to 250/500/100. However, the limits for UM and UIM remained the same.

At the same time, the Jenkins opted to increase their deductibles for comprehensive coverage on two of the policies and to increase the deductible for collision coverage on policy AU 0366990. They also deleted collision coverage entirely on policy AU 0166438.

From May 30, 2003 until the time of the accident two of the policies lapsed but the remaining policy AU 0231001, which remained in effect, provided UM and UIM limits of 25/50/25.

The agent testified he showed the offer form to prospective insureds and tells them that the form explains UM and UIM coverage. He testified that he also offers to read and explain the form to prospective insureds. He testified that he then quotes premium rates for levels of coverage requested by the applicant. In the situation such as this, when an insured is seeking to increase his liability limits without also increasing the UM and UIM coverage, the agent's

JCHZ

standard procedure would be to offer the UM and UIM coverage at the higher limit of liability coverage and quote the rates for the additional coverage. In doing so, he testified he explains the benefits of UM and UIM coverage. The agent testified that he explains to applicants that liability coverage only protects other parties but UM and UIM coverage protects the insureds. The agent testified that he explained UM and UIM coverage to the Jenkins on the day they increased their liability coverage.¹

South Carolina law requires auto insurance carriers to offer UM coverage in amounts up to the liability limits in addition to the mandatory minimum coverage. S.C. Code Ann. § 38-77-160 (2002). Construing this statute, courts in this state have held that insurers must make a meaningful offer of UM coverage. State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). To satisfy the meaningful offer requirement, an insurance carrier must show that: (1) the insurer's notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of additional UM coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the additional UM coverage; and (4) the insurer tells the insured that additional UM coverage is available for an additional premium. Id. at 521, 354 S.E.2d at 556.

Subsequent to the Wannamaker decision, S.C. Code Ann. § 38-77-350 was enacted. Section 38-77-350(A) requires the UIM or UM rejection offer form to include the following:

- (1) a brief and concise explanation of the coverage,
- (2) a list of available limits and the range of premiums for the limits,
- (3) a space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires,
- (4) a space for the insured to sign the form which acknowledges that he has been offered the optional coverages,
- (5) the mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable

¹ While the agent's testimony was usually as to his standard procedure, in response to unobjected questions, he testified he followed these procedures with the Jenkins.

J. M. F.

to answer.

Mr. Jenkins testified the agent did not explain to him anything regarding UIM or UM insurance coverage. He testified he had never heard of uninsured and underinsured coverage until it was explained to him by his current counsel after his wife's accident referenced above. Mrs. Jenkins did not testify.

The Farm Bureau offer forms contained a space for the Jenkins to sign the form and to acknowledge that they had been offered UM and UIM coverage. Each acknowledgement signed by the Jenkins provided:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

It is conceded that the Jenkins signed these acknowledgements.

In the instant case, the statutory form offers no statutory presumption that the requirements of § 38-77-350 has been met. The Jenkins did not themselves mark any choices regarding UIM or UM insurance. The agent testified he filled in all the information of the forms and offered it to the Jenkins who signed it. See Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 626 S.E.2d 6 (S.Ct. 2006)

Therefore, the Court must look at the totality of the transaction between the Jenkins and Plaintiff to determine whether or not the requirements of State Farm Mutual Automobile Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (S.Ct. 1987) have been met.

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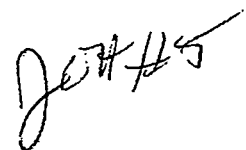
In this analysis the Court must rest its findings on the evidence of record. As with any case, the burden of proof lies with the Plaintiff. Additionally, in these "meaningful offer" cases the insurer bears the burden of establishing that it made a meaningful offer. Butler v. Unisun Insurance Co., 323 S.C. 402, 475 S.E.2d 758 (S.Ct. 1996).

Further, in its analysis, the Court must judge the credibility of the witnesses who have testified. Here, both witnesses appeared to the Court to be credible. This is true even though their testimony is dramatically opposed on two ultimate issues: (1) whether the agent intelligently advise the Jenkins' as to UM and UIM coverage and (2) if so, whether he told them the UM and UIM coverage was available for an additional premium.

As to the Wannamaker requirements, if the agent did follow his usual procedure, as he testified he did with the Jenkins, this would constitute a commercially reasonable notification process. Also, the agent's usual procedure for specifying the limits, explaining the nature of UM and UIM and the advice as to available additional coverage for additional premium work meet the Wannamaker test.

Hence, the Court is left solely with the task of determining which of the witnesses' versions of the transaction have the ring of ultimate truth, even though the Court finds both to be credible witnesses.

Before proceeding in the analysis, the Court must address three cases Plaintiff claims carries the day for it regardless of Mr. Jenkins testimony. First, Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008) is inappropriate. In Atkins, the insured chose to deal with the insurer through the mail. Here, the Jenkins went to the agent for advice. Unlike Atkins the Jenkins' were not content with having a form sent to them for their own review. Also, Atkins signed "every blank" on the form, had purchased the exact same UIM coverage before (as

A handwritten signature in black ink, appearing to read "JCH/HS", is located in the bottom right corner of the page.

had the Jenkins) and, as noted by the Court, was a man of some sophistication, including having earned a master's degree. The Jenkins' sophistication level has not been addressed in this case.

Next, Plaintiff argues that Clinton v. West American Insurance Co., 364 S.C. 113, 611 S.E.2d (Ct. App. 2005) stands for the proposition that use of the approved form (and the form here is that approved by the Insurance Commission) signed by the insured entitles it to judgment as a matter of law. The Court does not read Clinton to so hold and, additionally, Clinton predates Floyd which specifically finds no offer based on the form if not marked by the insured.²

Finally, Plaintiff cites Floyd for the proposition that one is presumed to have knowledge and understanding of a document he signs. This is, of course, black letter law. However, Floyd states that as to the issue here, extant the court stated that even though the insured signed the form (or at least it was not claimed in Floyd she did not), "This fact is not dispositive in this case because of the plain and unambiguous language of Section 38-77-350 ..." 367 S.C. at 263.

Where a party has the burden of proof juries are charged that the party must tip the scales in its favor and if the scales remain even after weighing all of the evidence, the party has failed to carry its burden of proof.

Here, Mr. Jenkins testified that he asked for the maximum coverage. What this term would mean to an insurance agent is unclear. In this case, it is particularly unclear as Mr. Jenkins testified he asked for maximum coverage, but actually increased his deductible on his comprehensive and collision coverages. While this is not inconsistent with his asking for maximum coverage, i.e. maximum coverage for liability and personal injury, it does cloud what term "maximum coverage" was meant by Mr. Jenkins and what that phrase communicates to the insurance agent.

² Plaintiff also cites an unpublished opinion, Woodson v. Nationwide Mutual Ins. Co. No. 2002-UP-398, Court of Appeals. Woodson, of course, has no procedural value and also predates Floyd.

I find that Farm Bureau has failed to carry its burden of proof and therefore failed to prove by a preponderance of the evidence that it made a meaningful offer of UM and UIM coverage to the Jenkins and therefore the subject policy of insurance is to be reformed to provide UM and UIM coverages to the Jenkins with limits of \$250,000/\$500,000/\$100,000 amounts equal to the policy's liability coverages.

The Court must note that it seems ludicrous that an insured is not bound by the acknowledgment he or she signs as set forth on the form and here signed by both insureds. Unfortunately, our courts have carved out a rule to the effect that a detailed acknowledgment that reflects detailed information, crucial to a fair contractual relation between the insured and the insurer, is valueless. Of course, the Court realizes the disparate positions of the parties here, but in spite of this, the law in this instance diminishes the value of one's signature and places absolutely no responsibility on one to watch out for their own interest and be held to their written statements (the acknowledgment here is a statement).

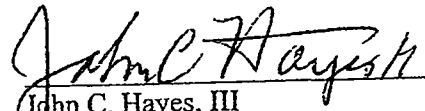
Our legislature has recognized the above inequity and in 2006 amended § 38-77-350. In its current reading, § 36-77-350(b) would clothe Plaintiff with a conclusive presumption under the circumstances here. This appears to be a response to the harsh rule established in Floyd.

Therefore, it is ordered

- 1) Plaintiff is to reform its Policy No. AU 0231001 to provide to Defendants underinsured and uninsured motorist coverage equal to the liability coverage set forth in said policy, to wit: \$250,000.00 per person, \$500,000.00 per occurrence and \$100,000.00 property damage.

gc #47

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge
H#8

September 9, 2008
York, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

South Carolina Farm Bureau Mutual Insurance
Company,

Plaintiff,

vs.

Ronnie D. Jenkins and Sandra B. Jenkins,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2006-CP-32-^W 2553

COMPLAINT
(Declaratory Judgment)
(Non-Jury)

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

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The Plaintiff above named, South Carolina Farm Bureau Mutual Insurance Company (Farm Bureau), seeks declaratory relief to determine the rights of the parties. Farm Bureau, complaining of the Defendants above-captioned, would respectfully allege and show unto this Court as follows:

JURISDICTION

1. That the Plaintiff is an insurance company organized and existing under the laws of the state of South Carolina, with a principal place of business in the state of South Carolina.
2. Upon information and belief, the Defendants are a citizens and residents of York County, South Carolina.
3. This matter is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, et seq.
4. A justiciable controversy exists between the parties.

FACTUAL ALLEGATIONS

5. Farm Bureau issued a policy of automobile insurance, policy number AU 0231001, to Defendants, which was in full force and effect on July 15, 2006. Farm Bureau

craves reference to its policy for all of the terms, conditions, and provisions relating to the matter in dispute between the parties. The policy carried liability limits of 250/500/100, but UM limits of 25/50/25.

6. Pursuant to the automobile insurance policy, Farm Bureau made a proper and valid offer of uninsured motorists ("UM") coverage to Defendants, the named insureds, including but not limited to a form entitled "Offer of Optional Additional Uninsured and Underinsured Automobile Insurance Coverages."

7. Farm Bureau's offer of UM coverage form was signed by Defendants indicating that they wished to purchase UM coverage in the amounts of 25/50/25.

8. Upon information and belief, on or about July 15, 2006, Defendant Sandra B. Jenkins was injured in a hit-and-run automobile collision.

9. Upon information and belief, Defendant sustained injuries as a result of the accident in excess of \$50,000.

10. Farm Bureau has tendered payment of \$50,000 in UM benefits, which is undisputed under the terms of the policy.

11. Defendants have made or will make claims for UM coverage in the amount of \$500,000 under the Farm Bureau automobile policy referenced above.

FOR A FIRST DECLARATION

12. Farm Bureau would show that it made a proper and valid offer of UM coverage to Defendants in accordance with South Carolina law.

13. Farm Bureau would further show that Defendants purchased UM coverage, but in amounts less than the limits of liability.

14. Therefore, Farm Bureau would show that Defendants are only entitled to the UM benefits provided under the policy in the amounts they purchased. Farm Bureau would further



show that the policy should not be reformed to include UM benefits in amounts up to the policy liability limits.

WHEREFORE, Farm Bureau prays that the Court inquire into these matters and make the following declarations:

A) That Farm Bureau made a proper and valid offer of UM coverage to Defendants for policy number AU 0231001;

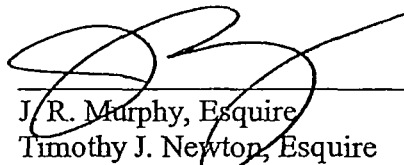
B) That Defendants purchased UM coverage based on Farm Bureau's proper and valid offer of UM coverage;

C) Thus, the automobile insurance policy issued by Farm Bureau to Defendants should not be reformed to provide UM coverage up to the liability limits for Ms. Jenkins' injuries arising from the automobile accident on July 15, 2006;

D) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.


J. R. Murphy, Esquire
Timothy J. Newton, Esquire

Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for the Plaintiff,
South Carolina Farm Bureau Mutual Insurance
Company

13
Columbia, South Carolina
September 28, 2006

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF YORK) CIVIL ACTION NO.: 2006-CP-46-2553

South Carolina Farm Bureau Mutual)
Insurance Company)
PLAINTIFF,)

vs.)

Ronnie D. Jenkins and Sandra B. Jenkins,)
DEFENDANTS)

vs.)

Crystal Martin,)
THIRD PARTY DEFENDANT.)

ANSWER
AND
COUNTERCLAIM
AND
THIRD PARTY CLAIM

The Defendants by and through their undersigned counsel Answer and Counterclaim as follows:

ANSWER

1. Defendants (Hereinafter "Jenkins") admit the allegations of paragraphs 1 and 2.
2. Defendants are without sufficient information to admit or deny the allegations of paragraph 3 and therefore deny it.
3. Defendants deny paragraph 4 and believes there is no controversy.
4. Defendants admit paragraph 5 to the extent there was a valid policy in effect but deny that it was properly executed pursuant to the common law of this State and the case of Floyd v. Nationwide.
5. Defendants deny the allegations of paragraphs 6 and 7.
6. Defendants admit the allegations of paragraphs 8 and 9 and furthermore claim that her damage well exceeds several million dollars.

7. Defendants deny the allegations in paragraph 10 and assert that Farm Bureau tendered its limits only after an accusation of bad faith and fraud was made by the Defendants' attorney.

8. Defendants admit the allegations in paragraph 11 in that they did make a claim under the UM policy for \$500,000 at one time but now have withdrawn that offer of settlement as the Plaintiff rejected and/or refused said offer.

9. Defendants deny the allegations of paragraphs 12, 13, and 14 and counterclaim as is more fully set forth herein below.

COUNTERCLAIM

FACTUAL ALLEGATIONS

10. That on or about June 30, 2003 the Defendants purchased an automobile insurance policy in amounts of \$250,000/\$500,000 liability for two vehicles (i.e. \$250,000 liability on each vehicle):

11. While the Defendants signed their name at the bottom of the page they did not fill in the amounts UM or UIM coverage. It was clearly the insurance agent or someone in the agent's office who filled in these amounts.

12. On or about June 15, 2006 the Defendant Sandra Jenkins was catastrophically injured in a serious hit and run automobile collision.

13. She was in the hospital ICU for more than five (5) weeks and has incurred more than \$300,000 in medical bills, is unable to work or even walk as a result of the collision.

14. Some time after the collision the Defendants made a claim with the Plaintiff (Hereinafter SCFB).

15. The Plaintiff's adjuster was intimately aware of the significant injuries and financial losses the Defendants had suffered. In fact, he personally visited them at their home where he saw and spoke with the Defendant in her wheelchair.

16. Upon information and belief, during this time the adjuster attempted to get the Defendants to sign a release and check for the entire claim for a mere \$8,095.00.

17. This is evidenced by the fact that both the release and the check state for "any and all claims".

18. That the Defendants have incurred over \$300,000 in medical bills from the collision on June 15, 2006 and is unable to work as a result.

19. That as a result of the very large medical bills incurred by the Defendants and being unable to pay them as a result of the Plaintiff's failure to pay this claim the Defendants are in great danger of losing their house and most other possessions and savings they have accumulated over the years.

THIRD PARTY CLAIM

20. The Plaintiff realleges each and every allegation contained in Paragraphs 1 through 19 as if set forth herein verbatim.

21. That the third party Defendant Crystal Martin (hereinafter Martin) is a citizen and resident of York County.

22. That she held herself out to the public as an agent for the Plaintiff South Carolina Farm, Bureau Mutual Insurance Company where she offered for sale different type of insurance products.

23. That the Defendants Jenkins purchased automobile insurance from this 3rd Party Defendant.

24. That the policy actually sold was not what the Defendant Jenkins requested and/or in the alternative not what they should have been sold.

25. That the Defendant Jenkins have been damaged directly by the acts and/or omissions of the Plaintiff and 3rd Party Defendant as is more fully set forth herein below.

FOR A FIRST CAUSE OF ACTION

BAD FAITH REFUSAL TO PAY INSURANCE BENEFITS

26. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 25 as if set forth herein verbatim.

27. Plaintiff and Defendant are parties to a mutually binding contract of insurance.

28. Plaintiff SCFB, as insurer, has refused to pay benefits the Defendant Jenkins is due under the contract, resulting from Plaintiff's bad faith and/or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; said actions have caused damage to Defendant Jenkins.

29. Plaintiff's conduct in this regard was willful or in reckless disregard of Defendant's rights under the contract.

30. As a result of said actions by Plaintiff, Defendant Jenkins is entitled to actual, special, and punitive damages, together with prejudgment interest, attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION

BREACH OF CONTRACT

31. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 30 as if set forth herein verbatim.

32. Plaintiff SCFB has breached the contract of insurance by failing to properly pay benefits due thereunder, resulting in foreseeable damage to Defendant Jenkins.

33. As a result of said breach, Defendant is entitled to actual and special damages, together with prejudgment interest, attorney's fees and costs.

FOR A THIRD CAUSE OF ACTION

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

34. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 33 as if set forth herein verbatim.

35. Plaintiff SCFB breached the contract of insurance with fraudulent intent relating to that breach.

36. Plaintiff SCFB committed a fraudulent act accompanying that breach by never intending to pay any substantial claim which the Defendants paid for with their hard earned money. These acts were characterized by dishonesty in fact, unfair dealing, and the unlawful retention of Defendant's money by design.

37. As a result of Plaintiff's breach of contract accompanied by a fraudulent act, Defendant is entitled to actual, special, and punitive damages, together with prejudgment interest, attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

CONVERSION

38. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 37 as if set forth herein verbatim.

39. Plaintiff SCFB has converted the insurance policy proceeds, which rightfully constitute property of Defendant Jenkins, for its own use and has wrongfully prevented Defendant from using or otherwise enjoying said proceeds, all in willful and reckless disregard of Defendant's rights.

40. As a result, Defendant Jenkins is entitled to actual, special, and punitive damages, together with prejudgment interest, attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION

UNFAIR TRADE PRACTICES ACT

41. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 40 as if set forth herein verbatim.

42. The acts of Plaintiff SCFB constituted unfair and deceptive acts in the conduct of a trade or commerce and are therefore unlawful.

43. Plaintiff's acts deceived and had the capacity, effect or tendency to deceive Defendant Jenkins.

44. Plaintiff's acts affect the public interest and have the capacity for repetition.

45. Defendant Jenkins has suffered an ascertainable loss of money and property as a result of the use and employment by Plaintiff of the unfair and deceptive methods, acts and practices described above.

46. Plaintiff's unfair and deceptive acts were willful and knowing violations of S.C. Code Ann. Section 39-5-20.

47. Defendant Jenkins is therefore entitled to actual damages, treble damages, reasonable attorney's fees, prejudgment interest, and costs.

FOR A SIXTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

48. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 47 as if set forth herein verbatim.

49. Defendant, either directly, or through its representative and/or agent, falsely represented that the Defendant Jenkins would be provided with the appropriate levels of coverage.

50. Plaintiff had a pecuniary interest in making the misrepresentation, in that it would make a larger profit from selling the insurance policy and lessen its exposure by not providing a proportional amount of UM coverage, and the misrepresentation was made in the course of Plaintiff's business.

51. Plaintiff owed a duty of care to see that it presented truthful, appropriate and necessary information to Defendant Jenkins and that it would perform the obligations imposed on it by way of the contract and to properly adjust and settle the claim in question.

52. Plaintiff breached that duty by failing to exercise due care in properly selling and adjusting this claim.

53. Defendant justifiably relied upon the misrepresentations of the Plaintiff.

54. Defendant Jenkins has suffered a pecuniary loss as the proximate result of reliance upon the misrepresentations.

55. Plaintiff's actions were willful, wanton, reckless and in absolute disregard for Defendant Jenkins' rights.

56. As a result of Plaintiff's actions, Defendant is entitled to an appropriate award of actual, special, and punitive damages, together with prejudgment interest, attorney's fees and costs.

FOR A SEVENTH CAUSE OF ACTION

**ATTORNEY'S FEES
(S.C. Code Ann. Section 38-59-40)**

57. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 49 as if set forth herein verbatim.

58. Plaintiff's unreasonable action in denying and/or properly adjusting and/or settling Defendant's claim for insurance benefits without reasonable cause or in bad faith entitles Defendant Jenkins to reasonable attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION

**UNFAIR ACTS IN BUSINESS OF INSURANCE
(S.C. Code Ann. Section 38-57-10 et seq.)**

59. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 51 as if set forth herein verbatim.

60. Defendant's acts constitute unfair or deceptive acts or practices in the business of insurance; further, Plaintiff took in premiums on a policy that it knew or should have know was improperly written, has attempted to hold the Defendant to one standard in the contract but hold itself to a different standard with a result leaving the Defendant Jenkins with substantial losses.

61. Defendant Jenkins is therefore entitled to actual and special damages, prejudgment interest, and costs of this action.

FOR A NINTH CAUSE OF ACTION

NEGLIGENCE AS TO THIRD Party DEFENDANT MARTIN

62. The Defendant Jenkins realleges each and every allegation contained in Paragraphs 1 through 54 as if set forth herein verbatim.

63. The 3rd Party Defendant Crystal Martin had a duty as an insurance agent to the Defendant Jenkins to properly advise them as to appropriate coverage as to all aspects of all potential coverages of automobile insurance.

64. That she also had a duty to not mislead, write in herself, allow anyone else in her office to write in, modify, change or otherwise mark in any way the contract for insurance that the Defendant Jenkins had signed and purchased.

65. That the 3rd Party Defendant Martin was negligent, grossly negligent, reckless, and in willful and wanton disregard for the duty she owed to the Defendant Jenkins as outlined above and is therefore liable to them for damages.

66. As a result of Plaintiff's actions, Defendant is entitled to an appropriate award of actual, special, and punitive damages, together with prejudgment interest, attorney's fees and costs.

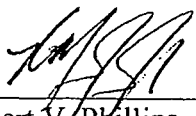
67. That the Plaintiff SCFB and 3rd Party Defendant Crystal Martin be held liable for the Defendant Jenkins' damage, both individually and jointly and severally.

68. Finally, Defendant Jenkins requests a jury trial as to all claims in this action.

WHEREFORE, Defendant Jenkins requests that the Court declare the policy to be reformed to the amounts of two policies with each having \$250,000 coverage of uninsured (UM) coverage and grant judgment in favor of Defendant Jenkins on their

claims for actual, special, treble and punitive damages, with prejudgment interest, attorney's fees, and the costs of this action, along with any other such relief the Court deems just and proper.

McGOWAN HOOD FELDER & JOHNSON


Robert V. Phillips, Attorney at Law
SC Bar #: 68458
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800 - Telephone
(803) 328-5656 - Facsimile
rphillips@mcgowanhood.com

Rock Hill, South Carolina
November 1, 2006

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE COURT OF COMMON PLEAS
COUNTY OF YORK 2006 NOV 29 PM 12: 24 CIVIL ACTION NO: 2006-CP-46-2553

South Carolina Farm Bureau Mutual Insurance
Company,
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Plaintiff,

vs.

Ronnie D. Jenkins and Sandra B. Jenkins,

Defendants.

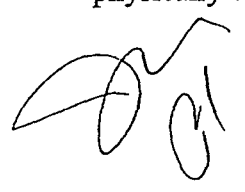
**PLAINTIFF'S REPLY TO
COUNTERCLAIM AND THIRD PARTY
CLAIM OF DEFENDANTS**

**TO: ROBERT V. PHILLIPS, ESQUIRE, ATTORNEY FOR DEFENDANTS AND TO
DEFENDANTS ABOVE-NAMED:**

The Plaintiff, replying to the Counterclaim and Third Party claim of Defendants, Ronnie D. Jenkins and Sandra B. Jenkins, would show unto the Court:

FOR A FIRST DEFENSE

1. The Plaintiff reiterates the allegations of their Complaint as if fully set forth verbatim herein and denies any allegations in the Counterclaim and Third Party claim inconsistent therewith.
2. The Plaintiff denies each and every allegation of the Counterclaim and Third Party claim not hereinafter specifically admitted.
3. As to paragraph ten (10), Plaintiff would crave reference to its policy for all terms, provisions and provisions therein; however, Plaintiff admits that the liability coverage selected by the Defendants was \$250,000.00 per person/\$500,000.00 per occurrence.
4. As to paragraph eleven (11), Plaintiff would show that the Defendants did sign the UM/UIM rejection form and all related documents but admits that the Defendants did not physically write in the amount of coverages selected; Plaintiff would further show that such



amounts were requested by the Defendants and the agent was authorized by the Defendants to fill in the amounts on the form; otherwise, paragraph eleven (11) is denied.

5. Paragraphs twelve (12) and thirteen (13) are admitted upon information and belief.

6. As to paragraph fourteen (14), Plaintiff admits that the Defendant Sandra Jenkins submitted a claim for UIM coverage under policy; otherwise, paragraph fourteen (14) is denied.

7. As to paragraphs fifteen (15), sixteen (16) and seventeen (17), Plaintiff would show that its adjuster met with the Defendants in person and intended to resolve the outstanding property damage claim by presenting Defendants with a check for \$8,095.00; Plaintiff would show that at no time did it intend to obtain a release of any claim for bodily injuries from the Defendants; otherwise, paragraphs fifteen (15), sixteen (16) and seventeen (17) are denied.

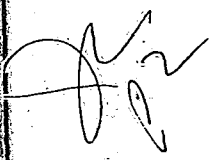
8. Paragraph eighteen (18) is admitted upon information and belief.

9. As to paragraph nineteen (19), the Plaintiff is without sufficient knowledge and information as to the nature and extent of the Defendants' financial situation and therefore, paragraph nineteen (19) is denied.

10. As to paragraphs twenty (20) through twenty-five (25), Plaintiff would show that such allegations do not apply to it but only to the Third Party Defendant; however, to the extent it could be inferred from paragraphs twenty (20) through twenty-five (25) of the Answer and Counterclaim that Plaintiff is liable to the Defendants for any sum whatsoever, those paragraphs are denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

11. In response to paragraph twenty-six (26) Plaintiff reiterates its response in paragraphs one (1) through twenty-five (25) above as if fully set forth verbatim herein.



12. As to paragraph twenty-seven (27), Plaintiff admits the Plaintiff and Defendants are parties to a contract of insurance and would crave reference to the policy for all the terms, conditions and provisions therein; otherwise, paragraph twenty-seven (27) is denied.

13. Paragraphs twenty-eight (28), twenty-nine (29) and thirty (30) are denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

14. In response to paragraph thirty-one (31), the Plaintiff reiterates its response to paragraph one (1) through thirty (30) above as if fully set forth verbatim herein.

15. Paragraphs thirty-two (32) and thirty-three (33) are denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

16. In response to paragraph thirty-four (34), the Plaintiff reiterates its response to paragraph one (1) through thirty-three (33) above as if fully set forth verbatim herein.

17. Paragraphs thirty-five (35), thirty-six (36) and thirty-seven (37) are denied.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

18. In response to paragraph thirty-eight (38), the Plaintiff reiterates its response to paragraph one (1) through thirty-seven (37) above as if fully set forth verbatim herein.

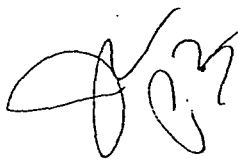
19. Paragraphs thirty-nine (39) and forty (40) are denied.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

20. In response to paragraph forty-one (41), the Plaintiff reiterates its response to paragraph one (1) through forty (40) above as if fully set forth verbatim herein.

21. Paragraphs forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46) and forty-seven (47) are denied.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION



22. In response to paragraph forty-eight (48), the Plaintiff reiterates its response to paragraph one (1) through forty-seven (47) above as if fully set forth verbatim herein.

23. Paragraphs forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56) are denied.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

24. In response to paragraph fifty-seven (57), the Plaintiff reiterates its response to paragraph one (1) through fifty-six (56) above as if fully set forth verbatim herein.

25. Paragraph fifty-eight (58) is denied.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION

26. In response to paragraph fifty-nine (59), the Plaintiff reiterates its response to paragraph one (1) through fifty-eight (58) above as if fully set forth verbatim herein.

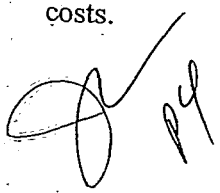
27. Paragraphs sixty (60) and sixty-one (61) are denied.

FOR A FIRST DEFENSE TO THE NINETH CAUSE OF ACTION

28. In response to paragraph sixty-two (62) through sixty-eight (68), the Plaintiff would show that such allegations apply only to the Third Party Defendant and not to Plaintiff; however, Plaintiff reiterates its response to paragraphs one (1) through fifty-four (54) as if fully set forth verbatim herein and denies the remaining allegations of paragraph sixty-two (62) through sixty-eight (68).

FOR A SECOND DEFENSE

29. The Plaintiff would show, upon information and belief, that the Defendants' Counterclaim and Third Party claim fails to state facts sufficient to constitute a cause of action and, therefore, the Defendants' Counterclaim and Third Party claim should be dismissed with costs.

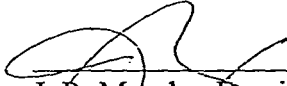
A handwritten signature in black ink, appearing to be 'J. P. [unclear]', is written over the word 'costs.' and extends into the margin.

WHEREFORE, having fully replied, the Plaintiff prays for a declaratory judgment as set forth in its Complaint, that the Counterclaims and Third Party action be dismissed with costs and for such other and further relief as the Court may deem just and proper.

The Plaintiff demands a jury trial on the Counterclaims for money damages.

MURPHY & GRANTLAND, P.A.

PS



J. R. Murphy, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for the Plaintiff,
South Carolina Farm Bureau Mutual Insurance
Company

Columbia, South Carolina
November 27, 2006

In the Court of Common Pleas
York County, South Carolina

COPY

South Carolina Farm Bureau Mutual Insurance Company

versus

Ronnie and Sandra Jenkins, Defendants

Case Number: 2006-CP-46-2553

Heard on Wednesday, September 3, 2008.

Before the Honorable John C. Hayes, III

Appearances:

J. R. Murphy

Post Office Box 6648

Columbia, SC 29260

Representing Farm Bureau

Robert V. Phillips

1539 Health Care Drive

Rock Hill, SC 29732

Representing the Jenkins'

Reported by: Janet M. Rich

Circuit Court Reporter

1992 Downey Street

Rock Hill, SC 29732

I N D E X

Opening Statements:

Mr. Murphy 3

Mr. Phillips 6

Joseph Lee

Direct examination 11

Cross examination 29

Redirect Examination 45

Recross Examination 47

Directed Verdict Motion 49

Ronnie Jenkins

Direct examination 55

Cross examination 62

Redirect Examination 76

Closing arguments:

Mr. Murphy

Mr. Phillips

E X H I B I T S

P 1-8 documents 10

1 The Court: This is Farm Bureau versus Jenkins.

2 Mr. Phillips: That's correct, Your Honor.

3 The Court: And it says here it's a declaratory
4 judgment.

5 Mr. Murphy: Yes, Your Honor, and I don't know
6 how you want to proceed. J. R. Murphy representing
7 Farm Bureau. We have marked a few exhibits in
8 advance and can submit those. We have some brief
9 testimony as plaintiff. I don't know if you want us
10 to give you an opening about the case.

11 The Court: Yeah, I'd like to know a little bit
12 about it before I hear the testimony.

13 Mr. Murphy: May it please the court, Your
14 Honor. On behalf of Farm Bureau this JD was
15 initiated to determine whether a meaningful offer of
16 uninsured and underinsured but primarily uninsured
17 motorist coverage was made to Ronnie Jenkins, who is
18 the named insured under the policy, for injuries
19 that his wife suffered in a very serious accident
20 that occurred in 2006. She was struck by a hit and
21 run driver whose trailer came loose, she suffered
22 very significant injuries, and she made a UM claim
23 with Farm Bureau.

24 The policy in effect at the time had stated
25 liability limits of \$250,000 per person, \$500,000

1 per accident for bodily injury, but the Jenkins had
2 selected \$25,000 per person and \$50,000 per accident
3 uninsured and underinsured motorist coverage on
4 their policy.

5 And we believe that the evidence will show that
6 back in 2003 the Jenkins had been sued in Florida
7 for an accident in which they were kind of the
8 middle car, kind of the peanut butter and jelly of a
9 sandwich, nonetheless they were sued; as a result of
10 getting an excess letter, they went in to increase
11 their liability limits and we have some documents
12 showing where they had three policies in effect at
13 the time and they increased their liability limits
14 on each policy and at that time they chose not to
15 increase their uninsured motorist coverage limits
16 and they were presented with written forms and the
17 testimony will show an oral explanation about their
18 right to increase those limits and that they chose
19 not to do so.

20 So we're here, Your Honor, to have a
21 declaration that they were given a meaningful offer
22 of coverage and that their rejection is valid and
23 that's basically where it is. We have, as to
24 support the offer, the written form itself and I
25 know there is some contention about the degree of

1 that and also the testimony of Joe Lee who is the
2 agent.

3 Your Honor, one issue as an aside that may be
4 addressed so I'll address it here is at the summary
5 judgment stage Judge Alford heard those motions and
6 denied cross motions for summary judgment. It may
7 be argued that some of his findings are controlling
8 or binding upon this court and I would submit that
9 those findings are not binding. Your Honor is well
10 familiar with the case law that the denial of a
11 motion for summary judgment does not establish law
12 in the case and that any motion or any issue raised
13 at that stage can be raised again at trial, can be
14 raised in a subsequent motion for summary judgment,
15 so to the extent that there is an argument that
16 anything in his order denying summary judgment has
17 any effect on the proceedings here today I just
18 would say that we disagree with that. We did file a
19 motion to reconsider, but, Your Honor, I'm
20 withdrawing that motion because I believe it's
21 improper. I don't believe a motion for summary
22 judgment has to be reconsidered because it is not
23 binding; whereas a motion that is binding or final
24 may be properly the object of a motion to
25 reconsider. So that is one issue I know

1 Mr. Phillips has raised and may raise so I just
2 address it now, it has to do to what the degree the
3 court can consider the written rejection form that
4 the Jenkins' both signed.

5 Mr. Phillips: May it please the court. Thank
6 you, Your Honor. Robert Phillips for the defendant
7 and I'm going to apologize in advance. Normally I
8 represent plaintiffs and procedurally we're more
9 plaintiff, we're asking for insurance money, and so
10 technically since they beat us to the punch and
11 filed first, we are actually the defendants and so
12 I'm going to apologize if I get confused because I
13 normally refer to my clients as the plaintiffs.
14 However, technically in this matter they are the
15 defendants because Mr. Murphy was the plaintiff or
16 South Carolina Farm Bureau was the plaintiff in this
17 DJ action.

18 We agree with most of the facts that Mr. Murphy
19 presented to the court. However, one small
20 technicality, as he stated that my clients wanted to
21 increase their liability limits; Your Honor, you are
22 going to hear testimony from my clients they had no
23 idea what the difference between liability, UM, UIM.
24 They were in an accident, they were scared about
25 getting something against them, they came in and

1 said, and you are going to hear this from them, that
2 we wanted the maximum coverage, full coverage, the
3 maximum amount. Those were the only terms they
4 knew. They did not know any distinction between
5 liability, UM, or UIM.

6 Your Honor, this case is not going to be real
7 big on dispute of facts. I think most of the facts
8 are going to be pretty much agreed upon or
9 stipulated to. This hearing is going to be
10 predicated upon this court's interpretation of those
11 facts and apply it to the law. The kind of seminole
12 cases or the seminole law of this case is the
13 Wannamaker case. If Your Honor is not familiar with
14 that case, Wannamaker says that when an insurance
15 company makes an offer of additional coverage, which
16 would be UM or UIM says it's, the legislature says
17 it's very important and we got four steps that you
18 got to have to make a meaningful offer, and they
19 said that when that form, and it's a quote from the
20 statute, when that form is properly filled out the
21 insurance company has an irrefutable presumption
22 that a meaningful offer was made.

23 The other case that you are going to hear a lot
24 about is the Floyd cases, darla Floyd versus
25 Nationwide case, and that case was filed in Federal

1 Court in Greenville District. It was the
2 plaintiff's position in that case that said we
3 think, when the legislature said you need to fill
4 out this form, and this form is in the statute, it's
5 actually, the actual form was done by the
6 legislature, and they said when you use this form
7 and it's filled out, then you get the irrefutable
8 presumption. What Judge Ross Anderson did was is he
9 sent a certified question to the Supreme Court and
10 said, Supreme Court, tell me what to do. It's the
11 plaintiff's position in this case that I'm holding
12 is that "filled out" means to not only sign at the
13 bottom but also to tick, personally tick, or write
14 out the numbers in the different selections of UIM
15 UIM PD, UM, UIM PD, all in those different sections,
16 and they said, when it's not filled out, it's not
17 filled out properly, and they acknowledged that not
18 only do they lose the irrefutable presumption but
19 the Supreme Court also said improperly filled out
20 form has the same effect as no offer. So it's going
21 to be our position that, yes, they can still show
22 evidence that an offer, a meaningful offer pursuant
23 Wannamaker was made, but it's going to be our
24 position that they can't rely on this form, it
25 wasn't filled out properly; Floyd, our Supreme Court

1 said, when it's not filled out properly it has the
2 effect of no offer at all; so therefore it's our
3 position that this form you are going to see, it's a
4 a nullity. It doesn't have any effect. It's going
5 to be up to the agent who sold it to present, and
6 remember they have got the burden of proof, I don't
7 think that's disputed, that's not disputed, they got
8 the burden of proof to show that a meaningful offer
9 was made.

10 Your Honor, we're also going to be relying on
11 this case and like I said the Floyd case and it's
12 our position that this case is factually verbatim,
13 all four corners, exactly like the Floyd case. In
14 the Floyd case Judge Ross Anderson gave directed
15 verdict based on the same argument that I've just
16 done, it was then appealed to the Fourth Circuit
17 Court of Appeals up in Virginia, that was denied
18 without even having oral arguments, a petition for
19 rehearing was done, and again that was denied
20 without oral arguments. We think this is settled
21 law, the facts in this case are exactly like the
22 facts in Floyd. It was a form. It was not properly
23 filled out. The agent didn't present any evidence
24 that he made a meaningful offer and they relied
25 solely on the improperly filled out rejection offer

1 of UM, UIM coverage, and Judge Ross Anderson gave
2 directed verdict to the plaintiffs.

3 The Court: All right. Mr. Murphy, you want to
4 call your first witness.

5 Mr. Murphy: Yes, Your Honor. We call Joe Lee.
6 And I would, just for the record, admit Plaintiff's
7 1 through 8 which we've already agreed to I think
8 for.

9 The Court: Have them marked.

10 Mr. Murphy: They have been marked and numbered
11 and just need to put them into evidence.

12 Mr. Phillips: Yes, Your Honor.

13 Mr. Murphy: So it saves the court reporter a
14 little bit of work here.

15 The Court: If you will hand them up to me.

16 Mr. Murphy: I will hand them up because I may
17 need to let the witness.

18 The Court: Okay.

19 (Plaintiff's exhibits 1 through 8 in evidence.)

20 Joseph Lee, being first duly sworn
21 was examined and testified as follows:

22 Direct Examination by Mr. Murphy:

23 Q. Mr. Lee, I'm going to stand over here, normally
24 the witnesses speak to the jury, you kind of have to
25 speak to the judge.

1 A. Okay.

2 Q. And so when I ask you to direct it to the
3 court, if you are able to do that I'll stand here so
4 maybe we're all on the same side and you don't have your
5 back to him. State your full name just for the record,
6 sir?

7 A. Joseph Allen Lee.

8 Q. And Mr. Lee, just tell us your background and
9 your employment with Farm Bureau?

10 A. I've been an agent with Farm Bureau for six
11 years. I spent many years in the retail business. I
12 moved to South Carolina in 1998 to start a business, I
13 subsequently sold that business, and came to Farm Bureau
14 seeking employment as an agent.

15 Q. And did you go through any sort of training and
16 licensing to be an insurance agent?

17 A. Yes. I passed the State required testing and
18 then Farm Bureau also has training schools for agents and
19 the proper way to make offers, fill out forms, that type
20 of thing.

21 Q. In connection with your work at the Farm Bureau
22 Office, that's the one here just outside of town here in
23 York?

24 A. Yes, sir.

25 Q. And you've had occasion, at least at one

1 occasion, to deal with Mr. Ronnie Jenkins and his wife
2 Sandra?

3 A. Yes.

4 Q. Could you just tell me what your file reflects
5 about your first involvement with the Jenkins' and their
6 automobile insurance policies?

7 A. Basically what I've reviewed in the file is
8 that they came in to add a vehicle and to raise their
9 liability limits on a selected policy.

10 Q. And which policy was that? Does the file
11 reflect which particular policy that was?

12 A. Yes, it does.

13 Q. Which one was that?

14 A. That would be policy number 231001.

15 Q. And I believe, if the court can share exhibits
16 with us, that that is reflected by the policy change
17 marked as exhibit three?

18 Mr. Murphy: I should have had an extra copy
19 for the court while I was.

20 The Court: Okay. That's three.

21 Q. Okay. Is that the policy? And then exhibits
22 one and two I believe are two other change requests that
23 were accomplished on the same day?

24 A. That's correct.

25 Q. And tell me what you notice from reviewing

1 those three documents themselves?

2 A. The other two forms, one is policy number
3 366990, we raised the liability limits to a 250-500-100
4 and we raised the comp and collision deductibles to 500
5 from 100 to 200 respectively on those. Typically when we
6 do this it's, someone is trying to reduce their premium
7 by making an increase in their policy.

8 Q. And is that reflected on the documents marked
9 as exhibit one, is that correct, policies 366990? I'm
10 sorry.

11 The Court: I'm sorry. I was looking at the
12 numbers. It would be nice for me to have copies
13 but.

14 Mr. Murphy: I will be happy to hand up mine.

15 The Court: No, that's all right. That's fine.

16 Mr. Murphy: I'm sorry, Your Honor. I gave one
17 to Mr. Phillips and I forget to have the third set.

18 A. Well, also on policy 166438, I guess that's
19 going to be exhibit number two.

20 Q. So we'll refer to those by exhibits one, two,
21 and three and all three of them are policy change forms,
22 is that correct?

23 A. Yes, sir, that's correct.

24 Q. Now from reviewing those documents, what can
25 you tell about what was done on this transaction before

1 you were involved if anything?

2 A. Basically on exhibit three a change was made on
3 these on our computer system prior to the Jenkins
4 arriving in the office which would show a preprinted
5 offer of coverage form that has not had the uninsured and
6 underinsured limits selected at that point, so that
7 change was made on our computer system. And then on ---

8 Q. So exhibit three the changes already exist in
9 the typewritten form?

10 A. Yes.

11 Q. Okay. And how does that differ from exhibits
12 one and two?

13 A. Changes one and two were manually made after
14 the Jenkins arrived at the office.

15 Q. So explain to me how that would have been
16 arrived at; how one was done in advance and the other two
17 were done manually in their presence?

18 A. Basically the best of my recollection on this
19 case, Crystal Martin was the Jenkins' agent, I feel like
20 a phone call had to have been made to trigger the changes
21 to be made on our computer system on exhibit number
22 three.

23 Q. Would all of the typed written information on
24 those forms have been present before the form was printed
25 out and made, turned into a physical document?

1 A. The typewritten information, yes.

2 Q. And then the handwritten information, check
3 marks, circles, things like that, who would have added
4 that?

5 A. I would have added the checks marks and the
6 handwritten information.

7 Q. Was there ever an occasion in your practice as
8 an agent where you would handwrite those check marks
9 before you would present this or after you got it back
10 from the insured?

11 A. We always do it in the presence of the insured.
12 The reason is we're documenting the changes that are
13 being made and the offers or the limits of liability,
14 uninsured and underinsured motorists, that they select.

15 Q. And so the change that was the same for all
16 three of the policies that the Jenkins had was to
17 increase their liability limits?

18 A. That's correct.

19 Q. And what effect would that have on their
20 premium for the policy?

21 A. It will raise the premium on the policy.

22 Q. Did they make any change or request any change
23 for uninsured motorist coverage?

24 A. No, they did not.

25 Q. Did they make any change for underinsured

1 motorist coverage?

2 A. No, they did not.

3 Q. Did they make any change with their
4 comprehensive and collision coverages?

5 A. On exhibits two and three they raised their
6 comprehensive deductible on exhibit two and on exhibit
7 three they raised their comprehensive and collision
8 deductibles.

9 Q. Is that -- okay. And what effect would raising
10 an insured's deductible have on the premium?

11 A. That will lower the premium.

12 Q. So they made one change that increased their
13 premium and then they made other changes that decreased
14 their premium?

15 A. That's correct.

16 Q. Now in going through this with them, did you
17 also -- is the handwritten out comments about what the
18 changes were, is that your handwriting?

19 A. Yes, it is.

20 Q. And was that written on there before it was
21 presented to Mr. Jenkins for his signature?

22 A. Yes, it was.

23 Q. And as with respect to each change request
24 form, exhibits one, two, and three, did Mr. Jenkins sign
25 off on each one of those change requests?

1 A. Yes, he did.

2 Q. Would he have done so in your presence?

3 A. Yes, he would have.

4 Q. Or would he have done so after the form was
5 completely filled out as it now appears in the form
6 admitted into evidence?

7 A. He would have done it after the form is filled
8 out in my presence.

9 Q. Now in connection with him making this changes,
10 did you have any discussions with him about the coverage
11 that he now had or could have or anything else about the
12 policy?

13 A. Yes. Any time someone raises their liability
14 limits and their uninsured and underinsured limits are
15 not equal, we make an offer to them to raise those
16 limits. Part of my procedure is to go on our computer
17 system and rate the changes to see what the premium
18 increase would be. At that time I offer that to the
19 client as additional coverage to them.

20 Q. Did you indicate what amounts of coverage were
21 uninsured motorist coverage or UM, what amounts would be
22 available to the Jenkins?

23 A. Basically told them that the limits were
24 available to them at 250-500-100 as was the liability.

25 Q. Did you indicate to them what the cost or the

1 premium would be for those increased limits of UM
2 coverage?

3 A. Yes, I would, and that's why I do it on the
4 computer system because that gives me an accurate cost.

5 Q. Did you discuss with them what uninsured
6 motorist and underinsured motorist coverages are?

7 A. Yes, I did.

8 Q. Tell me what you would have told them about
9 what those coverages are?

10 A. Basically as I do with all clients, uninsured
11 motorist is your protection against someone that has no
12 insurance on their vehicle. If they hit you, you are
13 involved, you have coverage up to the stated limit on the
14 policy.

15 Q. When the Jenkins came in, would these documents
16 indicate to you whether they had considered raising their
17 liability limits on all their policies or just one?

18 A. It would indicate to me that they chose to
19 raise their limits on exhibit number three only and after
20 they arrived at the office, I pulled up their policies on
21 the computer system and noticed that they had two other
22 policies which are exhibits one and two, at that time I
23 discussed those policies with them, and made the same
24 offers to them on exhibits one and two at the same
25 time..

1 Q. Now do you benefit at all from someone not
2 increasing their coverage limits?

3 A. Absolutely not.

4 Q. Do you ever try to discourage someone from
5 raising their uninsured or underinsured coverage
6 limits?

7 A. Absolutely not.

8 Q. Now when they made these choices, did you also
9 present them with the written forms, this select reject
10 forms that Farm Bureau uses to make the offers of these
11 additional optional coverage?

12 A. They were presented at the same time.

13 Q. And what I'm going to ask is if you will look
14 at the exhibits numbers, I believe they are exhibits
15 four, five, and six, and I'll let you hand all of this
16 exhibits one through six to the judge because I believe
17 you have copies of them in your file.

18 A. I don't know what we got here. My filed copies
19 are stapled together. One, two, and three, four, five,
20 and six.

21 Q. I'm going to let you give the court the actual
22 exhibits and I'll let you keep your copies and make sure
23 I'll read from mine and make sure they conform. If that
24 works all right.

25 A. I'll swap with you.

1 Q. That's what I get for not being able to count.
2 Exhibit four has on it at page 2 policy number 0366990 so
3 I'll let you find that one first.

4 A. Okay.

5 Q. Do you have that one in front of you?

6 A. Yes, I do.

7 Q. And which vehicle was that for? It should be
8 written at the top of the page?

9 A. It is a 2002 Chrysler.

10 Q. All right. Now this form, was this form given
11 to the Jenkins by you?

12 A. Yes, it was.

13 Q. Are the handwritten marks, other than their
14 signatures, were those made by you?

15 A. Yes, they were.

16 Q. Were they on the form before you gave it to the
17 Jenkins or did you fill it in after they signed it?

18 A. They were on the form before the Jenkins signed
19 the form.

20 Q. Have you ever filled in a form after an insured
21 signed it and left office?

22 A. No, I have not.

23 Q. Is it your practice to always fill in the form
24 before the insured signs it?

25 A. That is correct.

1 Q. And this was done on May 30, 2003?

2 A. Yes, sir.

3 Q. And that was the practice of Farm Bureau at
4 that time?

5 A. That's correct.

6 Q. And that was the practice of Joe Lee at that
7 time?

8 A. Yes, sir.

9 Q. Does this form contain an explanation of what
10 uninsured motorist coverage is?

11 A. Yes, sir, it's not stapled in this copy, but in
12 the hard copy.

13 Q. Would it be on that back sheet, is that the
14 copy there?

15 A. It's on the back sheet there.

16 Q. And were the Jenkins given an opportunity to
17 read over this form before they signed it?

18 A. They were given the form to sign. I don't know
19 whether they read it or not, is their choice.

20 Q. Did they ask you any questions about it or if
21 you don't recall, if they had asked you questions, would
22 you have answered them?

23 A. I would have answered their questions.

24 Q. Did you orally explain to them, as they were
25 signing this form, what uninsured and underinsured

1 motorist coverage was?

2 A. Yes, once again it's for the client's
3 protection against an uninsured or underinsured
4 motorist.

5 Q. Does the form contain the limits of coverage
6 that the Jenkins could have purchased?

7 A. Yes, those are available to them.

8 Q. And they made a selection of 25, 50, and 25?

9 A. Yes, sir, that's correct.

10 Q. And you wrote in those numbers and checked the
11 yes box on page two?

12 A. Yes, sir.

13 Q. And then they did the same thing for
14 underinsured coverage?

15 A. Yes.

16 Q. Which is not an issue in this case?

17 A. And quite frankly the form doesn't state the
18 250-500-100, it stops at 250-500 and 50, but those
19 additional limits are available and that was explained at
20 the time.

21 Q. All right. And then you had both Mr. and
22 Mrs. Jenkins sign the form?

23 A. That's correct.

24 Q. And that's exhibit four?

25 A. Yes, sir.

1 Q. Okay. Now exhibit five is a similar form and
2 it's also for the policy 0166438.

3 A. I got it.

4 Q. And you have a single sheet of paper on two
5 sides, is that correct?

6 A. Yes, sir.

7 Q. That made the exhibit two-sided. Was that
8 document gone over the same way that we just talked about
9 exhibit four?

10 A. All documents were handled at the same time in
11 the same way.

12 Q. Okay. And this applies to the policy and a
13 1987 Toyota van?

14 A. That's correct.

15 Q. And again you had Mr. and Mrs. Jenkins sign
16 this form in your presence?

17 A. That's correct.

18 Q. Then the last document is exhibit six and that
19 is the form that pertains to the policy that was still in
20 effect at the time of Mrs. Jenkins' accident, is that
21 correct?

22 A. Yes, sir.

23 Q. Now what is different about that form being
24 four pages than the other two, what can you tell of the
25 form itself?

1 A. This form was computer generated because a
2 change was initiated on our computer system which caused
3 this form to be preprinted.

4 Q. And you can tell that by the policy number
5 being printed on the third page instead of handwritten?

6 A. Yes, sir.

7 Q. And is that consistent with the policy change
8 forms where the policy change form on this particular
9 policy, policy number AU-0231001 was preprinted and the
10 other two change forms were done by you manually in the
11 office?

12 A. Yes, sir, that's correct.

13 Q. And this form was presented to the Jenkins?

14 A. Yes, it was.

15 Q. Were they given the opportunity to read it?

16 A. Yes, they were.

17 Q. Did you fill in the amounts of UM and UIM
18 coverage they had selected?

19 A. Yes, I did.

20 Q. And did they sign off on it?

21 A. Yes, sir, they did.

22 Q. And then there is a fourth page, a schedule of
23 the two vehicles under this policy, and you had them
24 initial that page?

25 A. That's correct.

1 Q. Is that consistent with how you would handle
2 any customer?

3 A. That is consistent, yes, sir.

4 Q. Do you go through uninsured motorist coverage
5 differently on a policy change or as to a new policy?

6 A. No, I do not.

7 Q. Is the procedure the same?

8 A. Yes, it is.

9 Q. Are the options for the insured the same?

10 A. Yes, they are. Their options are available up
11 to their standard liability limits.

12 Q. Have you ever deviated from this procedure with
13 doing a change request?

14 A. No.

15 Q. Have you ever had other customers who increased
16 their liability limits and did not carry UM or UIM in the
17 same limits?

18 A. Yes, I have.

19 Q. Do you have customers who reject UIM coverage
20 completely?

21 A. Yes, I do.

22 Q. Do you have customers who reject optional UM
23 coverage realizing that a certain amount is mandatory?

24 A. Yes.

25 Q. Do you try to talk them out of it?

1 A. Yes.

2 Q. And ultimately whose choice is it?

3 A. It is up to the client.

4 Q. In your procedure are you satisfied that you
5 give your customers adequate information about the nature
6 of the coverage, the available limits of coverage, and
7 the price of the coverage so they can make their mind
8 up?

9 A. Yes, I am.

10 Q. And are you satisfied it was done in this
11 case?

12 A. Yes, I am.

13 Q. Do the documents suggest to you that that
14 information was passed back and forth?

15 A. Yes, it does.

16 Q. And was it passed forth in writing and
17 orally?

18 A. Basically I printed out a or I turned my
19 computer screen around, one way or the other, to show
20 them the additional premiums that would be incurred by
21 changing the policies.

22 Q. And you recall approximately what that would
23 have been per policy period or for vehicle if they had
24 gotten the same limits of UM as liability?

25 A. Per vehicle the best of my recollection would

1 be approximately between 90 and \$100 per vehicle.

2 Q. For each policy period?

3 A. Yes.

4 Q. Now after this day when they signed all of
5 these exhibits, Mr. Jenkins signing one through six,
6 Mrs. Jenkins signing four, five, and six, were there any
7 other documents that Farm Bureau generated that would
8 have indicated to the Jenkins what limits of coverage
9 that they had?

10 A. Yes, there are.

11 Q. Tell me what other documents would have been
12 generated that would have indicated to them what
13 documents that they, what coverage for uninsured motorist
14 they would have had?

15 A. They were receiving amendment to the
16 declarations sent by South Carolina Farm Bureau from our
17 state office in Columbia.

18 Q. Would they have received anything else such as
19 correspondence or notes or anything like that?

20 A. They would receive renewal billings and those
21 type of things as well in the future.

22 Q. Is there anything in your file indicating
23 whether the Jenkins ever came back to the office to make
24 any other change to the policy from May of 2003 until the
25 time of Mrs. Jenkins' accident?

1 A. There is one change basically that was made on
2 policy 366990, forgive me, I don't know which exhibit
3 number that is now.

4 Q. Okay.

5 A. But they moved a, moved the Chrysler PT Cruiser
6 two policy number 31, 231001 which I believe is exhibit
7 number three and they canceled the vehicle or canceled
8 that existing policy number.

9 Q. Okay. So that might explain why at the time of
10 the accident they were down to just one policy with two
11 vehicles?

12 A. That's correct.

13 Q. And at the time that change was made, was a
14 change request form signed like exhibits one, two, and
15 three?

16 A. Yes, 'Mr. Jenkins' signature is on there.

17 Q. And did it show what the uninsured motorist
18 coverage limits were at that time?

19 A. Yes, it does.

20 Q. And how much is shown on that change request
21 form when they moved the PT Cruiser to a different
22 policy?

23 A. 25-50-25.

24 Q. Is there any note in the file where Mr. or
25 Mrs. Jenkins ever complained about not getting the

1 coverage they had specifically requested on these
2 policies back in 2003?

3 A. No, there is not.

4 Q. Did anyone ever contact you to say that you
5 made a mistake?

6 A. No, they have not.

7 Q. Is there any document with any inconsistent
8 selection of the amount of coverage that was shown on
9 exhibits one through six?

10 A. No.

11 Q. Or that is shown on exhibit 8 which is the
12 declarations page which was in effect at the time of the
13 accident?

14 The Court: You've got to answer.

15 A. No, sir.

16 Q. That's all the questions I have, Mr. Lee.

17 Cross examination by Mr. Phillips:

18 Q. Mr. Lee.

19 A. Yes, sir.

20 Q. Has your memory gotten better today than it was
21 a few months ago?

22 A. I don't understand your question.

23 Q. Okay. Well, I asked you in your deposition
24 about a year ago, I said, any testimony that you are
25 going to give or the Jenkins give, I said, with regard to

1 any specifics were said, do you remember what your
2 response was?

3 A. Not particularly.

4 Q. Okay. Well, why don't we look at what your
5 response was when I asked if you could recall any
6 specifics about what you said or what the Jenkins. May I
7 approach, Your Honor.

8 The Court: Yes, you may.

9 A. I don't think I can testify about any specifics
10 of what the Jenkins may have said.

11 Mr. Phillips: I've got something to help the
12 court to follow along.

13 The Court: All right.

14 Q. When I asked you that question at page 23 and
15 24 of your deposition you said, "I can make assumptions
16 but no exact specifics," isn't that what you said.

17 Mr. Murphy: Your Honor, for impeachment you
18 needs to read the question and answer I think.

19 The Court: That's correct. You need to cite
20 him to a page and cite him to the question and
21 answer.

22 Q. Let's turn to page 23, the bottom of page 23.
23 Find it?

24 A. Yes, I did.

25 Q. Okay. I asked you, I said, "So any questions,

1 so any questions or any testimony that you would give,
2 you would not be able to give specifics about what
3 Mr. and Mrs. Jenkins either said or did not say on the
4 time that they" -- before I could even finish you said,
5 "I can make assumptions but no exact specifics," isn't
6 that what you said?

7 A. It says, "I can make assumptions but no exact
8 specifics as to what they did or did not say".

9 Q. Okay. So you don't know whether they asked any
10 questions or not, do you?

11 Mr. Murphy: Your Honor, if we're impeaching I
12 think, I don't recall any testimony that he
13 attributed any specific statement to the Jenkins, so
14 I don't know what the impeachment is, Your Honor.

15 Mr. Phillips: Your Honor, he made numerous
16 allegations about what they said about the policy.
17 They didn't ask him this or they did ask him that.

18 The Court: Well, go ahead. It's cross
19 examination.

20 Mr. Murphy: Okay. That's fine.

21 A. I don't believe I referred to anything in
22 specific they said or didn't say.

23 Q. But today you don't know specifically what they
24 said or didn't say that day, do you?

25 A. I don't know what they said or didn't say, no,

1 sir, but I know what they signed and what they didn't
2 sign.

3 Q. That's not my question. My question is you --

4 A. I answered that question.

5 Q. You don't know what they said or didn't say, do
6 you?

7 A. I answered that question.

8 Q. What was your answer?

9 A. No, I do not.

10 Q. I'm sorry. I didn't hear you. You interrupted
11 me.

12 A. No, I do not.

13 Q. Okay. If you let me finish the questions then
14 I'll let you finish your answers.

15 A. Okay.

16 Q. Is that okay?

17 A. Sure. Yes, sir.

18 Q. Mr. Lee, you agree that UM and UIM coverage is
19 extremely important?

20 A. Absolutely.

21 Q. Do you not? In fact, it protects people, in
22 this case, of a tragic event like what happened to
23 Mrs. Jenkins, does it not?

24 A. Absolutely.

25 Q. Now tell me exactly how you explain is what

1 UM/UIM coverage was to them?

2 A. Basically what I tell my clients with any
3 client that basically walks through my doors is that
4 uninsured motorist is your protection against a motorist
5 that strikes you that has no insurance coverage. And
6 then underinsured motorist protection is protection
7 against motorist that strikes you that has minimum limits
8 of liability from your State or another State up to your
9 stated amounts.

10 Q. Okay. Now do you explain that to them orally
11 or do you just or do you just hand them that document
12 right there?

13 A. I explain that to them orally.

14 Q. You do?

15 A. Yes, sir.

16 Q. Okay. And this is it, that real small fine
17 print there on this big page, that's what explains it to
18 them, right?

19 A. Yes, it is.

20 Q. Okay. You go through it and you say Mr. and
21 Mrs. Jenkins or Mr. and Mrs. Client, take a few minutes,
22 read over that, and ask me any questions, is that what
23 you say to your clients?

24 A. No, I do not.

25 Q. You don't do that. Okay. You just kind of

1 hand them the document and tell them to sign at the
2 bottom, isn't that what you tell them to do?

3 A. No, I do not.

4 Q. Okay.

5 A. I explain the coverages before I ask them to
6 sign the document.

7 Q. Okay. Well, let me ask you this, how much
8 effort or trouble would it be for you to say to the
9 insured and you testified earlier that UM and UIM
10 coverage was extremely important, did you not?

11 A. Yes, I did.

12 Q. How much effort would it take for you to tell
13 them, take this document, sit down here, let me go get
14 you a cup of coffee, read over it, and if you have any
15 questions I'll explain it to you? How much effort would
16 that take?

17 A. It would not take a lot of effort.

18 Q. But you don't do that, do you?

19 A. No, I don't.

20 Q. Okay. And you know you are supposed to offer
21 them and explain it to them, right?

22 A. Yes, I do.

23 Q. And your only proof is the selections that are
24 made on this page here. Is this the page that we look to
25 to see what they selected?

1 A. Yes, it is.

2 Q. Is that page right there?

3 A. That's correct.

4 Q. Okay. And it was done at least three times,
5 maybe two times, there was some confusion how many times
6 it was done, right?

7 A. It was done three times on those exhibits.

8 Q. And each time there is no question that's
9 your -- those are your numbers there, correct?

10 A. That is correct.

11 Q. It's your numbers there as well?

12 A. That is correct.

13 Q. And those are your check marks, correct?

14 A. That is correct.

15 Q. Okay. And even on this page up here in the
16 front, those are all either your computer printouts or
17 your handwritten numbers, is that correct?

18 A. That is correct.

19 Q. And this page, for someone coming off the
20 street, not a trained agent or an attorney, but pull them
21 off the street, someone off the street who has never been
22 explained UM or UIM coverage, they are not going to have
23 any idea what this means, are they?

24 A. And that is my job to explain it to them.

25 Q. Okay. Now so you know it's your job to explain

1 it to them?

2 A. Yes, I do.

3 Q. And it's important that you explain it to them,
4 correct?

5 A. Yes, it is.

6 Q. Because UM and UIM is extremely important,
7 correct?

8 A. Yes, it is.

9 Q. Now why didn't you, and strike that. It's also
10 really important that you give them what they want,
11 right?

12 A. That is correct.

13 Q. Okay. Now if it's so important, we know it's
14 important, we know it's important to explain it to them,
15 and we know it's important that you give them the
16 coverage that they want based on a "made a knowing
17 decision", correct?

18 A. That's correct.

19 Q. Why don't you just let, why didn't you let Mr.
20 and Mrs. Jenkins write those numbers and check the box?

21 A. It is our practice after the Floyd case to do
22 that now. Prior to that, you mentioned the Floyd case in
23 your opening argument and I'm just referring to that.

24 Q. My question --

25 A. Prior to that it was customary in our office to

1 fill these forms out for the insured.

2 Q. That's because it was faster and easier, wasn't
3 it?

4 A. That was just customary, that was the way I was
5 trained when I came to work.

6 Q. But there has to be a reason behind doing
7 something, it was because it was faster and quicker to do
8 it, wasn't it?

9 A. I guess. Yes, it is.

10 Q. Okay. So it's faster and quicker. Now, I also
11 asked you, I said, or you testified just now, you said
12 it's customary for you to fill it in at the time, is that
13 correct?

14 A. That's correct.

15 Q. Why is it customary?

16 A. Because that's the way I was trained to do
17 it.

18 Q. Okay. That's not what you said in your
19 deposition, is it? Do you remember what you said in your
20 deposition when I asked you why it was customary for you
21 to fill it in?

22 A. No, I don't.

23 Q. Okay. Let's turn to page 46 line 16.

24 A. I say because I am the agent.

25 Q. Okay. No. Let's read all your answer. It

1 says, "Because I am the agent. And then I said, "Well",
2 and then you interrupted me and what was your answer
3 after you interrupted me?

4 A. What line are you referring to?

5 Q. Line 20.

6 A. It says, "Then I have the document, the
7 knowledge of what goes in the blank, and that type of
8 thing."

9 Q. Because you have the knowledge and you have the
10 document that's why you fill it in, isn't that right?

11 A. And it's because I was trained that way.

12 Q. I didn't ask you if you were trained that way.
13 I asked the reason why --

14 A. That's why I have the knowledge, sir.

15 Q. Okay. But didn't just you agree that they are
16 the ones that are supposed to have knowledge, aren't
17 they?

18 A. I shared that knowledge with them when I
19 presented the offer of coverage to them.

20 Q. But isn't it much more efficient when you let
21 them tell you what they want as opposed to you putting it
22 in there?

23 A. (No response.)

24 Q. Are you going to tell this court that it's more
25 accurate for them to say something or ask questions and

1 something and you write it down than for them to write it
2 down in their own handwriting.

3 A. I write down the answers that they gave me,
4 sir.

5 Q. That's not my question. Which do you think is
6 a more accurate way of giving them what they ask for?

7 A. It would be more accurate for me to record what
8 they say or for them to record it there in my presence at
9 the time, either way.

10 Q. Your Honor, please --

11 A. I'm not understanding your question.

12 Q. My question is: Which, you said it was
13 important to give them exactly what they asked for?

14 A. That's correct.

15 Q. And isn't it more accurate for them to fill in
16 those numbers and check the little boxes that they want
17 rather than someone else?

18 A. If they were not in my presence it would be
19 more accurate.

20 Q. My question is a yes or no question and then I
21 will give you time to explain your answer. Isn't it more
22 accurate for a person to write down what he wants exactly
23 than someone else, simple question, yes or no?

24 A. Sure, yes.

25 Q. So it is more accurate for them to do it?

1 A. Yes.

2 Q. But you didn't do it that way; you wrote it
3 down?

4 A. No, that's correct.

5 Q. You just handed it to them and took it back,
6 didn't you?

7 A. No, I did not.

8 Q. Now you said that when someone rejects UM or
9 UIM coverage, you told Mr. Murphy, that you tell them
10 about it, oh, you really need to get that, is that what
11 you said earlier?

12 A. I don't believe that I stated that way, no,
13 sir.

14 Q. Okay. Well, suppose someone comes in and buys
15 a big policy like the Jenkins' did, I mean, this is the
16 maximum liability policy they can buy, isn't it?

17 A. Yes, it is.

18 Q. Okay. And I think you testified in your
19 deposition that they came in and asked for the maximum
20 amount of full coverage; do you remember saying that in
21 your deposition?

22 A. I do not remember specifics saying maximum
23 amount of full coverage, no, sir.

24 Q. And I asked you what full coverage meant and
25 you said that would be the same amount of UM/UIM coverage

1 as what they purchased in liability?

2 A. That would be correct.

3 Q. And so if it was determined that we had someway
4 of knowing that if Mr. Jenkins came in and said, "I want
5 the maximum amount," and you gave him 250 liability but
6 only 25 UM, you wouldn't have given him what he asked
7 for, would you?

8 A. No, I wouldn't have.

9 Q. Okay. So if he asked for maximum coverage, you
10 didn't give it to him on this policy, did you?

11 A. If he had asked for maximum coverage, no, sir.

12 Q. Okay. Well, it's your testimony that he wants
13 maximum liability, the most anybody can get at State
14 Farm, \$250,000, and then he buys the least amount allowed
15 by law for \$25,000, isn't that what happened?

16 A. Well, first we're at Farm Bureau and I don't
17 know what you are referring to as being testifying that
18 he asked for the maximum amount of full coverage.

19 Q. He'll testify later as to what he testified to.
20 Let's look at this policy here, okay. 250, that's the
21 maximum amount of UM/UIM he can buy, isn't it, with State
22 Farm?

23 A. 250 by Farm Bureau.. I don't know what State
24 Farm.

25 Q. Farm Bureau.

1 A. Yes, sir.

2 Q. He can't buy any more liability, can he,
3 without going into umbrella policies?

4 A. No, he cannot.

5 Q. Okay. So you admit this man comes in and buys
6 the mack daddy of liability policies, right?

7 A. I admit that's what he signed here that's he's
8 bought.

9 Q. Sorry about my colloquialism but he buys the
10 biggest one he can get, right?

11 A. He can buy a 250-500-100, yes.

12 Q. Okay. But then he goes in, and according to
13 your testimony, he says but you know what, what I'm going
14 to protect my family for, I only want to protect my
15 family for one-tenth of what I'm protecting everyone
16 else?

17 A. That is the presumption that you are giving
18 here, yes.

19 Q. That's what happened, isn't it?

20 A. Well, that's exactly what happened, yes.

21 Q. Okay. That doesn't make much sense, does it,
22 for someone to go in and buy the most expensive liability
23 policy and then the buy the least amount allowed by
24 law?

25 A. It happens all the time in this industry.

1 Q. Okay. Now I asked you in your deposition, and
2 if you don't I've got it right here and can turn to it,
3 and I said to raise their uninsured coverage from 25,000
4 and 250,000, a ten fold increase, what would that have
5 cost them a six month policy period?

6 A. Just to raise their uninsured coverage would
7 have cost about \$20 per week vehicle.

8 Q. Okay. \$20 and when they are in an accident
9 they can stack those two policies, right?

10 A. That's correct.

11 Q. So for \$20 a vehicle every six months to give
12 themselves half a million dollars coverage, when they are
13 protecting the world for a quarter of a million dollars
14 and for a few dollars more, they are paying 12-\$1300 all
15 ready, aren't they?

16 A. I don't believe they were paying that much.
17 I'd have to add them up. They might have been.

18 Q. Why don't you add them up. I'll refer you.
19 Let's go to page 39, page 19 of your deposition, line 20
20 and 29, 19. And I asked you, "Almost \$1200 a year?" And
21 you said, "Right."

22 A. What page is that on?

23 Q. Page 39.

24 A. That's what the answer is, yes.

25 Q. Okay. So it's your testimony here today the

1 Jenkins come in, spend \$1200 a year to protect the world
2 for a quarter of a million dollars, and \$20 a vehicle
3 every six months they can protect them half a million
4 dollars and you think you would advised them properly of
5 what UM and UIM coverage was?

6 A. Yes, I do.

7 Q. All right. Did you think that was a dumb
8 decision in your opinion?

9 A. Yes, it was.

10 Q. Did you note it in your file: I advised these
11 clients that they are making a really dumb decision?

12 A. No, I do not.

13 Q. Okay. You weren't worried about maybe getting
14 sued for improper claims advising or policy advising?

15 A. No, sir, and I would not make a derogatory
16 comment about my clients in a fact to start with.

17 Q. Well, I didn't say you have to call them stupid
18 or anything. Wouldn't you have said, you know what,
19 these people are making a really bad decision?

20 A. I would not comment in that way.

21 Q. You know what CYA is, don't you, cover your
22 ass; you heard that statement?

23 A. I heard that statement, yes.

24 Q. Did you put any CYA statements in your file, a
25 notations?

1 A. I notated exactly what the Jenkins' requested
2 when they came in.

3 Q. That's not my question. We know what you noted
4 that you say they ---

5 Mr. Murphy: Your Honor, I believe that was his
6 question and he answered it and he keeps telling him
7 what his answer should be and he's not letting him
8 say what his answer is.

9 The Court: Yeah, I know this is cross
10 examination but we don't need to, we don't have a
11 jury, so argumentative questions don't really help.
12 I want to learn the factual matters.

13 Mr. Phillips: That's all the questions I have.

14 Mr. Murphy: Just briefly.

15 Redirect examination by Mr. Murphy:

16 Q. Mr. Lee, how did you document what the Jenkins'
17 asked for on May 30, 2003?

18 A. We'll look at exhibits one, two, and three I
19 believe is what has been referred to. The changes that
20 were made on the dec pages that were in our files and
21 notated, and I think they are specifically referring to
22 231001 which I believe is exhibit three. I notated in
23 the comment section change liability limits 250-500-100
24 added vehicle number two. And then I'm not sure what
25 exhibit number the offer of coverage is, but I selected

1 the amounts that they told me that they wanted for
2 uninsured and underinsured and I filled the form out and
3 they subsequently signed the form and initialed that this
4 was a multicar policy.

5 Q. If they had asked for anything different than
6 what's on this form, would you have made them sign it the
7 way it is?

8 A. If they had asked for something different it
9 would have been signed differently, yes.

10 Q. Are you confident based on these documents that
11 that's exactly what was discussed and not exactly what
12 was discussed but those are the only changes that were
13 requested?

14 A. Yes, I am.

15 Q. Do you have any reason not to have increased
16 the uninsured motorist coverage?

17 A. I have no reason whatsoever except for them
18 telling me they don't want to raise it.

19 Q. Did you have any reason on this day not to
20 spend enough time to explain those coverages to them and
21 the opportunity they had to increase those limits as
22 well?

23 A. No, there is no reason.

24 Q. And would your normal practice be to do just in
25 fact that?

1 A. Yes, it would.

2 Q. Thank you. That's all I have.

3 Mr. Phillips: Brief redirect, Your Honor.

4 The Court: Okay.

5 Recross examination by Mr. Phillips:

6 Q. Mr. Lee, if a person doesn't know what UM or
7 UIM is they can't really ask for it, can they?

8 A. If they don't know what it is, they don't know
9 what to ask for and it's my job to explain it to them
10 better.

11 Q. My question is though, and again please answer
12 my question, it's yes or no and then you can explain it,
13 if someone doesn't know what UM or UIM coverage is, they
14 can't ask for it, can they?

15 A. No, they cannot.

16 Q. Okay. Thank you. Now you said it was not a
17 wise decision to buy the biggest liability policy but the
18 absolute single allowed by law smallest UM/UIM policy,
19 correct?

20 A. That's correct.

21 Q. Now let's look at these documents that Mr.
22 Murphy just talked about, talk about the comment
23 sections, right there, wouldn't that have been a good
24 place to put a comment, "suggested client raise
25 UM/UIM"?

1 A. It would have been a great place.

2 Q. There's nothing there, is there?

3 A. No, sir.

4 Q. Let's look at number two, the same question,
5 that would have been a good place to put it, wouldn't
6 it?

7 A. Sure.

8 Q. What about right there? The same thing,
9 wouldn't it?

10 A. Sure would.

11 Q. And there is no comments by you there?

12 A. No, there is not.

13 Mr. Phillips: No more questions, Your Honor.

14 The Court: You can step down. Call your next
15 witness.

16 Mr. Murphy: Your Honor, that's all the
17 witnesses we have.

18 The Court: All right. Mr. Phillips, call
19 your witness.

20 Mr. Phillips: One moment, Your Honor. At
21 this time we would move for a directed verdict. We
22 don't believe that the plaintiff has met their
23 burden of proof. We believe the case law clearly,
24 according to Floyd, I'm going to hand up the Floyd
25 case. If, Your Honor, I can get you to turn to the

1 first paragraph under the law and analysis, it's
2 probably a couple of pages down.

3 The Court: I got it.

4 Mr. Phillips: The very first thing it says,
5 and this is the Floyd case I was talking to you
6 earlier, "Plaintiffs argue that in order for the UM
7 and UIM offer form," when we say UM/UIM it's the
8 same here, Your Honor, I don't think there is any
9 argument about that, "form to be properly
10 completed", and that's key, "properly completed and
11 executed by the named insured pursuant to Section
12 38-77-350 the name insured not only must sign the
13 offer form but must personally fill in the blanks to
14 indicate the desired coverage and limits," okay.
15 Now we know they wanted that case, that was the
16 question they asked the court, okay. And you heard
17 testimony from Mr. Lee himself, he checked the box,
18 he wrote in the amount, all they did was sign at the
19 bottom of the page.

20 Now if you turn over or follow down I guess,
21 probably on the same page, Your Honor, under, looks
22 like section 261, about halfway down it says, "A
23 non-compliant offer has the legal effect of no offer
24 at all." Does His Honor see that?

25 The Court: I do.

1 Mr. Phillips: Section. Your Honor, it says
2 right there the issue is: Is the form properly
3 completed. Now they go on and talk about this.
4 Let's start with page 7, I think it's page 7 and I'm
5 going to come back to that, under section 19, Your
6 Honor. Where it starts off, "Accordingly we answer
7 no to the question."

8 The Court: I've got it.

9 Mr. Phillips: Okay. "Accordingly we answer no
10 to the question certified by the district court. We
11 conclude the legislature intended by the plain and
12 unambiguous terms of the Statute for the insured
13 herself to personally mark, select, and sign the UIM
14 offer form pursuant to section 38-77-350. The offer
15 form is not properly," that's the key word,
16 "properly completed and executed by the named
17 insured just triggering the conclusive statutory
18 presumption a meaningful offer was made pursuant to
19 this section unless the insured personally marked",
20 right there they are saying unless that insured
21 personally marks that check mark and fills in the
22 numbers then it's not properly completed. And then
23 I take you back to where I guess it's section 13, "A
24 non-compliant offer has the effect of no offer at
25 all.".

1 Well, if the form is not properly completed
2 then it's non-compliant or improperly completed, and
3 if it's improperly completed it has, pursuant to
4 this case where they cite Hanover versus Horace
5 Mann, then it has the effect of no offer. So what
6 we have to do, Your Honor, is we have to take this
7 form and throw it in the trash because it says it
8 has the effect, it's improperly completed, which we
9 know it is by Mr. Lee's own testimony, it has the
10 effect of no offer. Can't turn around and say,
11 well, I didn't fill it out and it's not properly
12 completed but we're going to use it anyway. Not
13 only is the statutory presumption, Your Honor, but
14 you can't use it and if you look at Wannamaker,
15 Wannamaker lays out four ways, four elements that
16 have to be met. I'm trying to find that case there.

17 Your Honor, I hand up the Wannamaker case and I
18 just pulled out the four elements that are not in
19 dispute, all four of these elements have to be met
20 before the insurance company can meet their burden
21 to make a meaningful offer and it's not that they
22 can show one of them, they have to meet all four of
23 them.

24 Now say Mr. Phillips, why didn't you get
25 summary judgment if we know the form wasn't filled

1 out. Well, they can come in and still testify that
2 you know what there is other cases that Mr. Murphy
3 cites to in his brief where, you know what, we sent
4 him some additional literature at home that
5 explained it. We talked to him over the telephone
6 and explained it to him. All specific ways. It can
7 be done orally and in writing, we're not arguing
8 about that, but what we are saying is that the form
9 that gives you the statutory presumption, if it's
10 properly, only if it's properly filled out, can't
11 use it anymore. It has the effect of no offer at
12 all. So they have got to rely on what oral
13 representations were made.

14 Now they have the burden and the four elements
15 set out in Wannamaker are very tough and you heard
16 Mr. Lee up here today, he can't remember any
17 specifics, only that, well, that must be what I must
18 have done, and we don't think that that oral
19 representation or that oral assertion that, well, I
20 must have done it when the legislature, when the
21 Supreme Court says, this is extremely important.
22 Our legislature thinks that it's so important that
23 they communicate this meaningful offer we're going
24 to lay out what it is and put it in the statute.
25 It's laid out in Wannamaker, it's laid out in the

1 statute, these four elements that they have to meet.
2 That's how important it is. It's not standard
3 contract interpretation which is what Mr. Murphy
4 wants to argue.

5 He's going to say that and it says it on
6 section 18 and this is what he argues in his brief
7 of the, of this case. He's going to say, well, they
8 signed it, they are imputed with knowledge of
9 reading it. And, Your Honor, if this was a normal
10 contract interpretation we wouldn't be here, but
11 look what it says, "We acknowledge that a competent
12 person," and they are already setting it up,
13 "Usually is presumed to have knowledge and
14 understanding of a document he signs absent evidence
15 of forgery or duress" or something like that. Then
16 the very next sentence it says; "However this fact
17 is not dispositive of this case because of the plain
18 and unambiguous language of Section 38-77-350
19 emphasized above in the quoted portions of the
20 statute.".

21 What they are saying is, Your Honor, just
22 because you signed that document in a normal
23 contractual setting, Mr. Murphy would have his cake,
24 but in this case you don't, you don't get to use the
25 form because it's not properly filled out. So he's

1 got to rely on the oral testimony of Mr. Lee. It
2 got very exacting standards laid out in Wannamaker,
3 all four of those tests, not one of them, all four,
4 and he says I can't remember any specifics. I
5 filled it out because that's normally what we do.

6 The Court: I'm going to stop you at this
7 point. I've got to look at the case in the light
8 most favorable to the plaintiff at this point so I'm
9 going to deny your motion for directed verdict and
10 let you put up any evidence.

11 Mr. Phillips: Thank you, Your Honor. Your
12 Honor, at this time we call Ronnie Jenkins to the
13 stand.

14 Ronnie Jenkins, being first duly
15 sworn, testified as follows:

16 Direct examination by Mr. Phillips:

17 Q. Mr. Jenkins, state your name for the record
18 please?

19 A. Ronnie Dean Jenkins.

20 Q. Okay. Is your wife here today?

21 A. Yes, she is.

22 Q. Can you point her out and tell me her name
23 please?

24 A. Sandra and she's right there in the blue and
25 white dress.

1 Q. Okay. Do you remember June 15, 2006?

2 A. Yes, I do.

3 Q. What happened?

4 A. My wife was involved in an accident where a
5 truck pulling a trailer came loose, the trailer came
6 loose, and come across four lanes of traffic and hit the
7 car.

8 Q. Okay. Did you go out to the scene after she,
9 while the car and the trailer were still there?

10 A. Yes, I did.

11 Q. Okay. Do these photos accurately represent
12 your wife's car?

13 Mr. Murphy: Your Honor, with all due
14 respect.

15 A. Yes, sir.

16 Mr. Murphy: Excuse me, I'm going to object.
17 With all due respect to the Jenkins, we're here about the
18 offer of coverage, not about the extent of her injuries
19 and the liability. I mean, we stipulated that whatever
20 the coverage is determined is payable. I mean she's
21 significantly injured.

22 The Court: What's the relevancy of this?

23 Mr. Phillip: He talked about it in his opening
24 that she was severely injured, we're just confirming it.

25 The Court: If he's talked about it then I take

1 it has granted.

2 Mr. Phillips: Thank you. We'll move on.

3 Q. Mr. Jenkins, there has been a lot of testimony
4 about you were given these forms to purchase some
5 insurance from Farm Bureau -- may I approach, Your Honor.
6 Hold these right there?

7 A. All right.

8 Q. Now tell me, if you can to the best of your
9 recollection, what you remember about when you went in to
10 purchase insurance and it was Mr. Lee who sold it to you,
11 is that correct?

12 A. Well, I think. I don't remember him
13 particularly.

14 Q. Okay.

15 A. But as far as I know that was him.

16 Q. Well, you went to go see Crystal Martin, right?

17 A. Right.

18 Q. And they gave you Mr. Lee to?

19 A. Right, was the agent that I seen.

20 Q. Okay. Now you heard him testify that he
21 normally explains what UM and UIM coverage is, is that
22 correct?

23 A. Right.

24 Q. Okay. Tell this court when the first time you
25 learned what UM and UIM coverage was?

1 A. When you explained it to me, probably back in
2 October or September, after my wife's accident in 2006.

3 Q. Okay. So that would have been about three
4 months, three years, three years plus, after these
5 documents were dated, is that correct?

6 A. Right.

7 Q. Had anyone ever explained to you what
8 underinsurance was?

9 A. No.

10 Q. What about uninsurance?

11 A. No.

12 Q. Had you ever heard the terms UM or UIM?

13 A. I heard of them, but I didn't know what it
14 was.

15 Q. Okay. When you went in to tell Mr. Lee we want
16 some new coverage, you had been in an accident in
17 Florida, correct?

18 A. Right.

19 Q. Okay. Do you remember what words you used to
20 describe what type of insurance you wanted?

21 A. We told him we wanted the maximum coverage
22 because we had been in a wreck and make sure that we had
23 everything, the whole works.

24 Q. Okay. Did he take any time to explain to you
25 that, yeah, I'm selling you \$250,000 liability but you

1 are only get 25,000 UM and you should change that to be
2 the same?

3 A. No, he did not.

4 Q. Okay. Did he say anything about, you know, for
5 only \$20 more every six months you can have half a
6 million dollars protection for you and your wife?

7 A. No, he did not.

8 Q. Okay. Did he say anything about, you now,
9 Mr. Jenkins, this \$250,000 only protects when people sue
10 you, not when someone injures you and you need to make a
11 claim?

12 A. No, he did not.

13 Q. Okay. Let me ask you a question.

14 A. Okay.

15 Q. If you had been told for another \$20 every six
16 months per vehicle would you have purchased half a
17 million dollars coverage for you and your wife?

18 A. Well, sure I would.

19 Mr. Murphy: Objection.

20 The Court: I overrule the objection.

21 Q. Go ahead and answer.

22 A. Yes, I would have definitely.

23 Q. Okay. Now your signature is on the bottom of
24 the page, is that correct?

25 A. Yes. Uh-huh.

1 Q. Okay. Tell me how your signature came to be
2 about the bottom of that page?

3 A. Well, as I remember they just give me papers
4 and told me to sign.

5 Q. Okay. Did he just hand them to you and told
6 you to sign the bottom?

7 A. Yeah. Well, we were sitting in an office, I
8 think he was sitting across from us, and he was doing
9 paperwork when we come in, and my wife and I sit across
10 from him and he just was doing the paperwork and we kind
11 of talked a little bit, we told him we wanted to increase
12 and he handed us a paper and told us to go ahead and sign
13 it and handed it back to me and then he reached over and
14 took it back.

15 Q. He reached over and took it back from you?

16 A. Yeah, after we signed it.

17 Q. Okay. Did he flip through any of the pages and
18 point out anything that was going on in this contract?

19 A. No.

20 Q. All right. Did he give you any time to say, I
21 want you to sit back and I want you to make sure that you
22 read over this so you know what you are getting?

23 A. No.

24 Q. Okay. Now we saw earlier on these, if you look
25 up here, you see some of these were on two pages and one

1 on one page, you see these numbers?

2 A. Right.

3 Q. Those check marks up there?

4 A. Yes, sure.

5 Q. Do you remember anything being written on it
6 when you -- do you remember seeing any handwritten marks
7 on any of these pages, that page or that page there
8 before you and your wife signed down at the bottom?

9 A. No.

10 Mr. Murphy: Can counsel refer to the exhibit
11 numbers just to make sure.

12 The Court: I was just getting ready to suggest
13 that.

14 Q. Let me reask that question. Let's look at,
15 Mr. Jenkins, I'm going to show you what's been marked as
16 Plaintiff's exhibit four. Okay. Let's go to the back
17 page. I think you testified all these pages were very
18 similar, just whether they are on one page or two page,
19 do you see those handwritten numbers up there and the
20 check mark?

21 A. Yeah.

22 Q. And these here?

23 A. Right.

24 Q. And you see your signature and your wife's
25 signature down at the bottom?

1 A. Right.

2 The Court: What exhibit is that?

3 Q. This is Plaintiff's exhibit four. Do you
4 remember any of these handwritten -- strike that. Do you
5 remember any handwritten marks, numbers, or check marks
6 on this page when you were asked to sign it?

7 A. No.

8 Q. Mr. Lee talked about him turning the computer
9 screen around and showing you, do you remember him ever
10 turning around a computer screen?

11 A. No. I don't even remember a computer.

12 Q. Mr. Jenkins, I'm going to show you what's been
13 marked as Plaintiff's exhibit 8. Before you came to see
14 me did you know what any of those numbers meant?

15 A. Which numbers are you talking about?

16 Q. Well, the whole page, it talks about ---

17 A. No.

18 Q. ---uninsured liability?

19 A. No.

20 Q. Okay. What about on this page here? This says
21 coverage, do you know what any of those numbers meant?

22 A. No.

23 Q. Other than me when you were in the office in
24 September or October of 2006, has anyone, anyone in your
25 entire life ever explained to you what UM/UIM is?

1 A. No.

2 Q. That's all questions I have. Please answer any
3 questions Mr. Murphy has for you.

4 A. All right.

5 Cross examination by Mr. Murphy:

6 Q. Mr. Jenkins, do you know how to calculate
7 variable rate mortgage interest?

8 A. A what?

9 Q. A variable rate mortgage interest?

10 A. No.

11 Q. You know if you sign a mortgage and you don't
12 make your payments they will come take your house, right?

13 A. Sure.

14 Q. Okay. So you know the implications and the
15 significance of your signature on legal documents, don't
16 you?

17 A. Sure.

18 Q. And you know if you sign something and you
19 didn't really know what you were signing, that might be
20 too bad later on, don't you know that?

21 A. Sure.

22 Q. Okay. So you didn't enter in or signing any
23 documents with Farm Bureau lightly or without thinking
24 through what you were doing, did you?

25 A. Well, the man, we asked him for the maximum

1 coverage and what he did was beyond my control.

2 Q. Now Mr. Jenkins, you knew enough about
3 uninsured and underinsured motorist coverage to have
4 bought it prior to 2003, didn't you?

5 A. No, I thought I had to have it.

6 Q. And you had it on your policy, didn't you?

7 A. Whatever was on there is what was on there.

8 Q. And then what happened was you got involved in
9 an accident down in Florida where you were the Oreo part
10 of the cookie, the vanilla cream, you were in the middle
11 of three cars?

12 A. Right.

13 Q. You got rear ended and pushed into the car in
14 front of you?

15 A. Right.

16 Q. And the guy in Florida got him a Florida lawyer
17 and sued you?

18 A. Yeah, I think the Farm Bureau paid him \$1500
19 more than I would have given him.

20 Q. Yeah. And you got a letter which we marked as
21 exhibit seven from Farm Bureau telling you that your
22 insurance may not be enough to protect you?

23 A. No, I don't remember such a letter. I may
24 have, but I don't remember it.

25 Q. Okay. And you don't remember people having

1 computers on their desks in 2003 either I guess?

2 A. I don't remember a computer on his desk.

3 Q. Okay. But you were concerned because you got
4 sued. You got a letter telling you you might not have
5 enough insurance and that Farm Bureau, that's what
6 exhibit seven says, I'll be glad to have the court hand
7 it to you and let you read them.

8 A. Well, if you say that's what it is, that's what
9 it is.

10 Q. I'll let you read it and tell me if that's what
11 it says.

12 The Court: Here.

13 A. All right. Okay.

14 Q. All right. Do you acknowledge that letter
15 indicated to you that because you'd been sued in Florida
16 Farm Bureau was going to hire you a lawyer but that their
17 insurance coverage under your policy might not be enough
18 if that person got a judgment against you?

19 A. Right.

20 Q. And that accident is the reason you went into
21 the Farm Bureau agent, right up the road here in York, to
22 change your policy?

23 A. Right.

24 Q. Because you wanted to be protected in case
25 something like this ever happened again?

1 A. Sure.

2 Q. Okay. And that was as a result of an accident
3 of which you weren't hurt and your wife wasn't hurt?

4 A. Well, she was hurt but she didn't go the
5 hospital.

6 Q. And nobody made a claim?

7 A. No.

8 Q. And the only coverage that was in dispute that
9 you might not have had enough of was liability
10 coverage?

11 A. (No response.)

12 Q. That's what that letter said?

13 A. That's what the letter says.

14 Q. Okay. And that accident which was a claim
15 against you claiming you were at fault, that's the reason
16 you went into the Farm Bureau office?

17 A. Not because of the letter because I knew we
18 didn't have enough coverage apparently.

19 Q. Right. Now back at that time was about the
20 time that your arthritis got bad enough that you then
21 became unemployed, is that correct?

22 A. Right.

23 Q. So when ---

24 Mr. Phillips: Your Honor, I'm going to object.

25 I don't know what the relevance of this is.

1 The Court: Well, you brought up the fact, you
2 interjected for \$20 more you could have got this,
3 that, and the other so I think you interjected some
4 economic issues into the case.

5 Q. I'll tie it in if I need to. You were aware
6 that when you went in and increased the liability limits
7 on the three separate policies that you had at the time
8 that that increased the amount of money you were going to
9 have to pay for insurance?

10 A. Sure.

11 Q. And so at the same time, when meeting with
12 Mr. Lee, you decided to increase your deductibles or to
13 expose yourself more on your property damage for your
14 cars to keep the premium about the same?

15 A. Can you repeat that?

16 Q. Yes. And I might, if Your Honor has exhibits
17 one, two, and three, I think particularly exhibits two
18 and three, if I'm not mistaken. You understand comp and
19 collision coverage for damage to your own car, correct?

20 A. I'm sorry. I didn't hear you.

21 Q. You understand what comprehensive and collision
22 coverage are; they protect your car if it gets damaged
23 from hitting a deer or getting involved in an accident,
24 something like that?

25 A. I know what, I knew what collision was.

1 Q. Okay. And you have a deductible which means
2 you have to pay the first of so many however many
3 dollars?

4 A. Right.

5 Q. And when you went in to increase your liability
6 limits you also increased those deductibles which meant
7 that if you had collision damage you were going to have
8 to pay \$500 instead of \$200 according to exhibit one?

9 A. Right.

10 Q. And by increasing those deductibles on exhibit
11 one that helped reduce your premium back to closer to
12 where it had been before you raised your liability
13 limits?

14 Mr. Phillips: Your Honor, I am going to
15 object. I don't know that there has been any
16 testimony that he knew what his payments were before
17 this incident.

18 Mr. Murphy: Well, he might know.

19 The Court: Well, there again you are the one
20 who brought up that it would have made an economic
21 decision theory of well, obviously my client would
22 have paid \$20 to get this coverage. I think they
23 got a right to explore this.

24 Q. We know why you raised your liability limits
25 because of the accident in Florida, and I'm asking you

1 did you increase your deductibles to keep the premium
2 down, to offset the increase from the liability
3 coverage?

4 A. Apparently that's what it was. I mean I know
5 it's cheaper. I know it's cheaper if you.

6 Q. And on your '87 Toyota you dropped collision
7 all together?

8 A. Yeah, because it's a piece of junk.

9 Q. Right. And you were just wasting money on
10 that, right?

11 A. Yeah. If I had collision on it, I did know
12 what collision was.

13 Q. Okay. Now those three forms, exhibits one,
14 two, and three, they were filled out completely before
15 you signed them, weren't they?

16 A. I'm looking for the date on here because I
17 don't. The date 5-30.

18 Q. '03?

19 A. '03 is that the transaction?

20 Q. Yes, sir, that's the date of exhibits one, two,
21 and three?

22 A. Okay.

23 Q. And there is handwritten notations on those
24 documents and then there is your signature; that is your
25 signature, correct?

1 A. Yeah. Yes, sir.

2 Q. And what I'm asking you is were the handwritten
3 notations present on exhibits one, two, and three before
4 you signed it?

5 A. On this, I don't remember these papers so I
6 can't answer that for sure.

7 Q. Okay. So you don't remember that either?

8 A. I don't remember this. I remember this one
9 here.

10 Q. All right. You remember that one document so
11 well and what you're claiming is it was blank and Joe Lee
12 filled it in contrary to your instructions after you
13 left?

14 A. Well, I don't know about after I left, but he
15 didn't sign them in my presence. I mean he didn't fill
16 them in.

17 Q. Okay. Well, did he fill them in wrong?

18 A. Apparently.

19 Q. Why do you say apparently?

20 A. Because when we went to collect on the
21 insurance they said we didn't have it.

22 Q. Okay. And that was over three years later?

23 A. Right.

24 Q. Okay. The amount of uninsured coverage you had
25 is clearly shown on exhibits one, two, and three that you

1 signed on May 30, 2003, doesn't it show it there?

2 A. Sure.

3 Q. Okay. After you made the changes, you got a
4 letter from Farm Bureau on each policy and it showed that
5 you had liability coverage of 250.

6 A. Right.

7 Q. But uninsured motorist coverage of only 25?

8 A. We figured we had 250 on it that that covered
9 everything.

10 Q. Well, why would you figure that if you had a
11 letter --

12 A. ---Because that's why we went into his offices
13 for.

14 Q. Let me finish my question, sir, and then I'll
15 let you answer. You got three separate letters that
16 showed you didn't have that amount of coverage.

17 A. I don't usually pay the bills. My wife would
18 have got them.

19 Q. So now it's her fault that the coverage isn't
20 there?

21 A. No, it's the agent's fault.

22 Q. Okay. And then you got a declaration page at
23 least every six months on this policy showing you, just
24 like exhibit 8, showing you that you only had \$25,000 of
25 coverage for uninsured motorist, isn't that true?

1 A. Well, if you say it is I guess it is. That's
2 what the paper says.

3 Q. Well, turn to exhibit 8. Do you have exhibit 8
4 there?

5 The Court: I got it here. Here it is.

6 Q. All right. You don't dispute that those
7 renewal notices are sent out every time the policy renews
8 and the policies are six months in duration, so
9 approximately every six months from 2003 until sometime
10 in 2006 you were getting a notice just like this? Do I
11 need to put Mr. Felner up to testify that that's what
12 they do or can you knowledge that?

13 A. If they -- I remember seeing something like
14 this, but my wife pays the bills so I don't look at this
15 kind of stuff.

16 Q. Okay. Well, look down there under the box that
17 says policy limits, do you see that about a third of the
18 way down?

19 Mr. Phillips: Your Honor, if it will help the
20 court, we'll stipulate that that is sent to him
21 every six months, if that will help move it along.

22 Q. Thank you.

23 A. Where you see that?

24 Q. There's a box about the middle of the page and
25 it says policy limits and it has some columns inside of

- 1 it. Do you see that, sir?
- 2 A. Policy discount.
- 3 Q. Okay. Right below that, do you see that, that
- 4 box?
- 5 A. Schedule of vehicles, medical payments.
- 6 Q. See this box that says policy limits?
- 7 A. Okay.
- 8 Q. Okay. Do you see the first word in the left
- 9 column says liability?
- 10 A. Right.
- 11 Q. And then if you go over one column it says
- 12 bodily injury per person?
- 13 A. Right.
- 14 Q. What's that number?
- 15 A. Per person.
- 16 Q. Under per person, what's that first number on
- 17 the line for liability?
- 18 A. 500.
- 19 Q. Okay. I think the first one in the first
- 20 column where it says per person?
- 21 A. Oh, okay, it's 250.
- 22 Q. 250,000?
- 23 A. Right.
- 24 Q. You know what that number is and how to write
- 25 that number out?

1 A. Yeah.

2 Q. Okay. And then right underneath liability is
3 the word what or the phrase?

4 A. 25.

5 Q. Well, uninsured motorist, do you see that?

6 A. Okay, yeah.

7 Q. Okay. So if you saw uninsured motorist you
8 knew that was a separate type of coverage, correct?

9 A. I didn't know what it was. I thought it was
10 something we had to have.

11 Q. Well, did you look over to see how much of it
12 you had?

13 A. No.

14 Q. Okay. What is that number? How much did you
15 have?

16 A. Looks like 25.

17 Q. Okay. 25,000?

18 A. Yes, sir.

19 Q. Okay. And you can, you know the difference
20 between how you write out 250,00 and how you write out
21 25,000?

22 A. Right.

23 Q. You know the difference between liability and
24 uninsured, don't you?

25 A. I do now.

1 Q. Okay. And you did then?

2 A. No, I didn't.

3 Q. You didn't know that some people drive around
4 and might run into you and not have any coverage --

5 A. I didn't know that there was any such set
6 limits on anything. I didn't even think you had to have
7 it. That's what I knew about insurance and nobody
8 explained it to me.

9 Q. Well, there is no doubt that what you had, you
10 had \$25,000 worth, and you had that for years?

11 A. But that's what we went into his office for was
12 to get it increased.

13 Q. Well, when you kept getting these notices
14 telling you that it wasn't increased, did you call
15 Mr. Lee?

16 A. I've already told you, I don't read these. My
17 wife has always paid the bills. I don't write checks. I
18 usually don't see anything.

19 Q. When you, when you got these notices did anyone
20 in your house write Farm Bureau and say you made a
21 mistake?

22 A. No.

23 Q. Did you call Mr. Lee?

24 A. No.

25 Q. Or Crystal Martin and say you made a mistake?

1 A. No, because I didn't know it.

2 Q. You didn't know it?

3 A. No, I didn't know it.

4 Q. But you know how to write out the number
5 25,000, don't you?

6 A. Yeah, I think I've answered that.

7 Q. Okay. You signed six documents asking for
8 \$25,000 worth of coverage. You got at least six
9 declarations or renewal notices telling you had \$25,000,
10 and now, after the fact, you are claiming you signed a
11 blank form and the agent screwed up, isn't that what you
12 are claiming now after everything has been done?

13 A. It's what is the truth.

14 Q. And it's a complete falsehood, isn't it?

15 A. No, it's not.

16 Mr. Phillips: Objection, Your honor.

17 Q. You got exactly what you requested?

18 A. No, I did not.

19 The Court: I'm the one to decide whether it's
20 true or not.

21 Q. You signed the documents at the time and you
22 never did anything to change them in the more than three
23 years after you signed them, did you?

24 A. I didn't know because when we went to the agent
25 we told him we wanted the maximum coverage and he said it

1 was 250, we said that's what we want, the maximum.

2 Q. So Mr. Lee just ripped you off is what you are
3 saying?

4 A. Yes.

5 Q. Okay. Good. Nothing further, Your Honor.

6 The Court: Redirect.

7 Redirect examination by Mr. Phillips:

8 Q. Mr. Jenkins, you testified earlier you had no
9 idea what UM or UIM was until you came into my office in
10 September or October of 2006, correct?

11 A. Right.

12 Q. So if you didn't know what UM or UIM was, if
13 you got a 150 notices every six months saying you had 25
14 UM, how are you going to know whether it's right or wrong
15 if you don't know what it is?

16 A. I think that was what I explained, tried to
17 explain to him. We went in for the maximum coverage and
18 that's what we ended up with and we had the wreck.

19 Q. He asked you about this collision down in
20 Florida and you wanted to get more protection to protect
21 so you didn't get sued. Are you just as worried about
22 protecting members of the public as you are your own
23 family?

24 A. I worry more about her than I do somebody else.
25 I mean not that I want anybody to get hurt but.

1 Q. No more questions, Your Honor.

2 The Court: Mr. Murphy.

3 Mr. Murphy: No, Your Honor.

4 The Court: You can step down. Have a seat
5 back at counsel table.

6 A. Do you need all these papers back?

7 The Court: I do, yes, sir, thank you.

8 A. Okay. Thank you, sir.

9 The Court: Call your next witness.

10 Mr. Phillips: That would be the defendant's
11 case, Your Honor.

12 The Court: Anything in reply?

13 Mr. Murphy: No, Your Honor.

14 The Court: Well, I'm going to take this under
15 advisement. I've got, y'all want to hand up briefs
16 but I think there are briefs in here from the
17 summary judgment.

18 Mr. Murphy: Can I mention just one thing
19 briefly since counsel didn't get a chance to make a
20 little bit of an argument I won't belabor. I
21 appreciate counsel's ingenuity on this issue but
22 with all due respect his argument has been
23 completely shot down by the South Carolina Court of
24 Appeals when they came out with a case Clifford
25 Atkins versus Horace Mann and they very clearly

1 articulated that the Floyd case which, by the way, I
2 argued in the Supreme Court, I tried it in the
3 District Court, I'm very familiar with every detail
4 of that case, that the certified question the Floyd
5 case only applied to a determination of whether
6 conclusive presumption was available. And in the
7 Atkins case there was a form that was mailed to the
8 insureds and the court found a meaningful offer was
9 made based on the form alone with no personal
10 interaction with the agent and they clearly said
11 that the Floyd case was inapplicable.

12 If you read the Floyd case, the Floyd case
13 tells and explains when the conclusive presumption
14 is available. It's a drastic remedy so they
15 interpreted the statute very, very strictly and in
16 that regard they held that an insured had to fill
17 out and sign the form in order to get the
18 presumption. There is nothing in the Floyd case
19 that prohibits an insurance company from relying on
20 a written form to make its burden of proof and
21 establish a prima facie showing under Wannamaker.
22 The Atkins case clearly says that after the fact. I
23 can go through the whole litany of cases that were
24 existed before Floyd. It's never really been in
25 doubt. I never had it even argued before. I never

1 had any court refuse to rely on the form alone.

2 And I would point out that Clinton versus West
3 America case is very insightful because in that case
4 and the reason we went into the change request is
5 because in that case Mrs. Clinton argued that she
6 thinks she signed a blank form and they said that's
7 clearly meritless because the application that you
8 also sign is completely consistent with what. So
9 Mr. Jenkins' testimony that the form was blank and
10 it's not what I asked for is completely, completely
11 without credibility in light of the not one, not
12 two, but three policy changes and in light of at
13 least six declarations, renewal notices, and the
14 letters that Joe Lee testified to that clearly
15 indicated what those limits were.

16 The law does not require an insurance company
17 to make a prospective insured understand. They only
18 require that you give them the information and there
19 is nothing in the record that would show that
20 Mr. Jenkins is unaware or ignorant and had no
21 comprehension. He can say that self-servingly but
22 there is no evidence in the record that would make
23 finding of anything other than the explanations
24 given orally and the written information contained
25 in the form fully satisfied the requirement.

1 The only, there has been no argument that there
2 is a defect in the form, just that the court
3 shouldn't consider it; well, I understand their
4 argument because if the court does consider the
5 form, this case is over. The form completely
6 satisfies 38-77-350 (A). It's been held as a matter
7 of law that the SC-DI form does so and then Joe
8 Lee's testimony, even if you didn't have the form,
9 is sufficient, but you don't even have to get to his
10 testimony, he just corroborates what was done. The
11 only argument was that the form was blank when he
12 signed it and therefore it's not valid but that is
13 completely unbelievable testimony in light of the
14 multiple other instances where those limits were
15 displayed and never acted upon. It's just not
16 believable at all.

17 The Court: Do you have a copy of the three
18 cases you mentioned?

19 Mr. Murphy: I do. I do have the Atkins case
20 for you, Your Honor, and I have Clinton case too.

21 The Court: Mr. Phillips.

22 Mr. Phillips: Your Honor, Mr. Murphy has done
23 a great job like magicians do misdirection. This
24 case is not about, even though we got into it, this
25 case is not about whether they got what they wanted.

1 It's not about whether they got a good deal or a bad
2 deal, whether they confirmed they had \$25,000 in
3 coverage or not. This case is about one issue and
4 that issue is the burden that the plaintiffs have to
5 prove and that issue, Your Honor, is one thing and
6 one thing only, did they make a meaningful offer of
7 additional UM/UIM coverage. Wannamaker says it
8 right here: "The insurer's notification process
9 must be commercially reasonable whether oral or in
10 writing; two, the insurer must specify the limits of
11 optional coverage and not merely offer additional
12 coverage in general terms. The insurer must
13 intelligibly advise," intelligibly advise, "the
14 insured of the nature of the optional coverage."
15 Intelligibly advise, that means explain it, not a
16 bill saying you owe us \$88 this month. That does
17 not intelligibly advise anybody of anything except
18 they got a bill. Certainly cannot be construed that
19 it intelligibly advised them of what UM/UIM coverage
20 and they have to meet all four of these. It says
21 the insured must be told that the optional coverages
22 are available for an additional premium. None of
23 these bills that were six months out do any of that
24 stuff. The approved form by the legislature does do
25 that and when it is properly filled out you can do

1 it.

2 Now Mr. Murphy says, well, if it's not properly
3 filled out we can still use it. Well, Your Honor,
4 this case, and the Floyd, I'm going to hand up a
5 couple of cases. Your Honor, this is the order from
6 the Floyd case. Page two it says, in regards of
7 whether they made a meaningful offer or not, it
8 says, and this is on page three section E, on
9 September 29, 2000, Darla signed the second UIM
10 rejection form that had been completed by a
11 Nationwide employee. That's exactly what happened
12 here. It was common practice for Nationwide to have
13 its employees complete the UIM rejection forms for
14 customers such as Darla to sign. Again that's
15 exactly what happened here.

16 (H) I find as a fact that Nationwide did not
17 make a meaningful offer of UIM coverage to Darla
18 when it had agency personnel complete the UIM
19 rejection forms for Darla to sign.

20 Next paragraph, as proof it made a meaningful
21 offer, Nationwide relied solely on the UIM, the two,
22 the two UIM rejection forms that were completed by
23 Nationwide employee and signed by Darla. Again
24 that's exactly what happened here.

25 Then the next paragraph: Therefore based on

1 the paragraphs A through I above and the applicable
2 law below I find as a fact that Nationwide never
3 made a meaningful offer of UIM coverage to Darla
4 with regard to Nationwide policy. That's District
5 Court Judge G. Ross Anderson saying you can't get
6 through the back door what we're not letting you get
7 through the front door when it's not properly filled
8 out. You can have testimony from the agent, but in
9 this case they didn't bring the agent and that's why
10 they brought the agent here today.

11 The Court: Well, I was just getting ready to
12 point out that the sentence you left out said
13 Nationwide also --

14 Mr. Phillips: Yes, and I didn't intentionally
15 leave that out.

16 The Court: Do you mind if I finish before you
17 start?

18 Mr. Phillips: I'm sorry?

19 The Court: Do you mind if I finish before you
20 start?

21 Mr. Phillips: I apologize. I'm sorry.

22 The Court: It says Nationwide offered no
23 evidence of any oral offer of UIM coverage or any
24 testimony of the employee or employees who dealt
25 directly with Darla and they have presented that.

1 Now that doesn't mean I believe one as opposed to
2 other but I think obviously Judge Anderson thought
3 it was significant.

4 Mr. Phillips: I understand. The reason I'm
5 bringing this case up is with regard to the form
6 itself and that's, I didn't intentionally mean to
7 leave that out and that's why I said that's why they
8 brought the agent here because they knew based on
9 the Floyd case which went to the Fourth Circuit
10 Court of Appeals, and I'm going to hand this case
11 up, and you can see Mr. Murphy's brief in this case,
12 I can hold them up to the light and you can almost
13 see through them because they are exactly the same.
14 That's his motion saying Judge Ross Anderson had it
15 wrong. The Fourth Circuit said, nope, he got it
16 right, didn't even take oral arguments, and then he
17 filed a petition for rehearing and said, no, we
18 don't find your argument has any merit. And we
19 agree that the only testimony that should be looked
20 at with regard to whether Mr. and Mrs. Jenkins were
21 given a meaningful offer is the testimony of
22 Mr. Lee. And we don't think that, he can't remember
23 any specifics, that's what I normally do; well,
24 they, that was stipulated in the Floyd case, that's
25 what they normally do. That didn't get it there.

1 We would be changing, this had went to the Supreme
2 Court, the Fourth Circuit Court of Appeals twice
3 shot down.

4 Now I looked over Mr. Murphy's brief today and
5 he did find a new case that if you kind of glance
6 over it it does look kind of close, but I got from
7 the Court of Appeals the actual case and a copy of
8 the actual rejection form.

9 Now remember in this case, Your Honor, the
10 important thing is it was not properly filled out,
11 the court found in the Floyd case not properly
12 filled out, and if you'll turn, Your Honor, to
13 almost to the end of the page in this case, the very
14 last page, Your Honor, down at the bottom, and it
15 said, and this case is clearly distinguishable,
16 there's two parts: They said first Mr. Atkins said,
17 well, you sent all this stuff to me in the mail and
18 they were saying Atkins was saying, we're saying
19 it's not a meaningful offer because you got to do it
20 in-person too and they said nope. And then Atkins
21 also said, well, we also contend this: Horace Mann
22 failed to intelligibly advise him of the nature of
23 uninsured motorist coverage; again we disagree.
24 Well, why? Atkins properly signed the form in five
25 required locations including the lines accepting

1 coverage of the elements of 25-50.

2 Now remember looking at the statute in the
3 Floyd case, went to the Supreme Court and they said
4 it's so important and the Floyd case said when
5 someone, the rationale behind Floyd and they say
6 this in the case, the reason we want them to check
7 that box personally is that when they check that box
8 we feel that they are more likely to inquire, well,
9 what am I checking up here, and when they do inquire
10 then they will know UIMs. Your Honor, let me show
11 you what the Atkins --

12 The Court: Let me, before you get to that.

13 Mr. Phillips: Okay.

14 The Court: Again you left out a sentence and
15 that sentence in this one before the one you mention
16 says, Atkins purchased exactly the same UIM coverage
17 for his Lexus that he had previously purchased on
18 all of his other vehicles insured by Horace Mann.
19 In addition he signed the form advising---

20 Mr. Phillips: I understand and I'm going to
21 show you the form, Your Honor. You can see it's a
22 little fuzzy, but you can clearly make it out is,
23 right here --

24 The Court: Is this in evidence?

25 Mr. Phillips: This is an attachment to the

1 case that he handed up, the Atkins case.

2 The Court: It's attached to the actual case.

3 Mr. Phillips: Yes, Your Honor. I got it
4 directly from the Court of Appeals.

5 Mr. Murphy: We agree for it to be an appendix
6 to the case. I don't think it's technically an
7 exhibit but we'll be glad for you to look at the
8 form.

9 The Court: All right. Go ahead.

10 Mr. Phillips: Your Honor, if you'll look, now
11 he states in the case here, it says, I don't recall
12 if I checked the box or wrote the signature there,
13 but you see on the first selection of UM property
14 of, of liability, the check, signature, and the
15 date. Then the next section the check, signature,
16 and the date. Again right where all the numbers are
17 the selections, check, signature, and date. And
18 again the fourth place, check, signature, and the
19 date. Then at the bottom he signs it. The Floyd
20 case did not use it. Horace Mann did a very good
21 job. I commend their attorneys in coming up with
22 this and that way there is no question who checked
23 that box because they are making you sign right next
24 to every checked box, so to say that this overturns
25 Floyd or is controlling in this case, Your Honor,

1 you see ours, it's on two page, it's one signature
2 at the bottom of the page. There is no place for
3 him to sign up there.

4 The Court: Well, actually it's two signatures.

5 Mr. Phillips: I'm sorry, well, he and his wife
6 both signed it.

7 The Court: She has not testified so I don't
8 know what.

9 Mr. Phillips: I think that's stipulated. But
10 my point is is that the Atkins case is different, is
11 that those signatures in each location of how much
12 you wanted, how much do you want for UIM, signature.
13 How much do you want for UM, signature. How how
14 much do you want for all these different, signature
15 which is effectively a check mark in that box, and
16 that's what the Floyd case said is that in order for
17 it to be properly filled out it has to be check in
18 the box. Atkins versus Mann, they signed exactly,
19 that's a great case for Horace Mann because they had
20 him sign it wherever it was checked. That's not the
21 case here, Your Honor. And Mr. Murphy says, well,
22 we can still use the form even though it's not
23 filled out properly. Well, if you think about the
24 logic of that, it doesn't work. Floyd would never
25 exist. Why would Floyd say you don't, you got to do

1 it some other way because Floyd would have never
2 heard the case. It doesn't matter. As long as you
3 signed it, boom, that's it. Mr. Murphy is trying to
4 say that the document itself is self-supporting even
5 when it's properly filled out. Floyd said we would
6 have never heard the case. The Supreme Court would
7 have never heard it. They said it doesn't matter,
8 we're going to take Mr. Murphy's argument, it was
9 signed, case over, but they didn't say that. It has
10 to be properly filled out in order for it to serve
11 as a meaningful offer and it was not properly filled
12 out.

13 Now there was two other cases that Mr. Murphy
14 cites and I want to hand those up so you have full
15 copies of them. Did you get the Horace Mann case?

16 The Court: I've got it.

17 Mr. Phillips: Here we here.

18 The Court: I've got it.

19 Mr. Phillips: This is another case he cites to
20 in his brief. This is one. This is Jackson versus
21 State Farm. And the form was not properly filled
22 but it was found a meaningful offer was made. Why?
23 Because the agent testified I gave him additional
24 hand outs which explained it. So remember the
25 Wannamaker says it can be oral or in writing and the

1 Jackson versus State Farm they didn't get the, they
2 didn't get to use the form but the court said, well,
3 you gave him these other documents that sat there
4 and explained what UM/UIM was.

5 I got one other case, Your Honor, and I'll be
6 done. This is another case that he cites. This is
7 the case of Woodson versus Nationwide. This is
8 another case he cites. And this is a case it was
9 found a meaningful offer was made but again it's
10 distinguishable as well.

11 This is what it says on the, and it's on page,
12 let's see, fourth page, bottom of the top paragraph.
13 The Woodson's aver that because Nationwide never
14 gave them an independent oral explanation of UIM
15 coverage or afforded them an opportunity to review
16 or explain to them the language that failed to make
17 a meaningful offer. They were saying you got to
18 give us the document and you got to give us an oral
19 explanation and again the court, and we would agree
20 with that, but that's not the case here. Our, the
21 testimony from the defense was that they didn't
22 explain anything to us. They handed us a piece of
23 paper and told us to sign it. Clearly the evidence
24 would tend to go with that because he checked it, he
25 signed it, he wrote in the amounts, he checked it,

1 he could have very easily have let them sign it. He
2 testified it would be no problem at all to let them
3 fill it out. Client testified, handed him the
4 paper, signed it, and then took it back. This
5 monthly premium that they got every six months, that
6 doesn't meet any of the elements required in
7 Wannamaker. We would stipulate that they got 300 of
8 those. It's kind of like garbage in garbage out.
9 If they don't ever know what UM/UIM coverage was
10 when they went to initially buy it, you can send
11 them ad nauseam documents saying you got 25,000 UIM,
12 client who admit to reading it, but if he wasn't
13 explained it he's not going to know to call the
14 agent back to change it because he doesn't know what
15 it is.

16 The issue, I'm about wrapping up here, the
17 issue in this case is simple, one thing, did Farm
18 Bureau make a meaningful offer. It's our position
19 they did not and they can't use the form because it
20 was not properly filled out and Mr. Lee's testimony
21 is all, well, that's what I normally did.

22 Mr. Jenkins told, testified, came in, I want the
23 maximum coverage. Mr. Lee said maximum coverage
24 would include that, but that's not what he did. He
25 told them to sign the document, gave it to back to

1 them. He did not, by any stretch of the
2 imagination, meet the exacting requirements laid out
3 in Wannamaker.

4 Mr. Murphy: Can I justify being the plaintiff
5 for two minutes or one minute?

6 The Court: Yeah.

7 Mr. Murphy: I would just say that Ross
8 Anderson, I acknowledge, that he did find that a
9 meaningful offer was not made but he gave absolutely
10 no indication why and fortunately this court is not
11 subject to Ross Anderson but this court is subject
12 to the South Carolina Court of Appeals. That's why
13 the Atkins case and the Clinton case are very
14 important. Woodson is identical to this case, Your
15 Honor. That was a case I also tried and got it
16 reversed on appeal but it is unpublished and so
17 certainly there.

18 Your Honor, I acknowledge that the declarations
19 and the information given apart from the offer form
20 and the oral explanation do not constitute the
21 offer. I put those into evidence solely for
22 credibility. For someone, if they really are going
23 to claim a mistake was made and they got ripped off,
24 they would have known it a lot longer ago and that
25 just goes to credibility, but I do not argue that

1 the declaration page is satisfied the offer
2 requirement. I do submit that the written form as
3 held by countless cases, whether the agent testified
4 or not, satisfied the Wannamaker analysis because it
5 fully complied with 350 (A) and with Wannamaker and
6 Joe Lee's credible testimony would carry the day all
7 by itself. When you put the two of them together
8 Farm Bureau is entitled to judgment.

9 The Court: Well, I'm going to take it under
10 advisement. Thank you.

11 (The end of the proceedings.)
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1 I, Janet Rich, official court reporter for the
2 Sixteenth Circuit of the State of South Carolina, do
3 hereby certify that the forgoing is a true,
4 accurate, and complete transcript of record of all
5 the proceedings had and evidence introduced in the
6 trial of the captioned case, relative to appeal, in
7 the court of common pleas for York County, South
8 Carolina, on the day 3 of September 2008.

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

11
12
13 *Janet M. Rich*

14 Janet M. Rich
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SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY
AUTOMOBILE CHANGE REQUEST FORM

- ☐ Reinstate Entire Policy With a Lapse
☐ Reinstate Entire Policy With Continuous Coverage
☐ Reinstate Only Vehicles Listed In Comments With A Lapse
☐ Reinstate Only Vehicles Listed In Comments With A Continuous Coverage
☒ Policy Change

DATE _____ TIME _____

State Office Use:

Cash _____ Cash Memo _____

County Office (Please Indicate):

Payment Plan: Yes _____ No _____

Amount for this policy _____

5/30/03 10:45

AGENT 0646 DEC: 24.002 05/30/2003

PREMIUM FOR THIS

TRANSACTION: 180.62

Named Insured and Address

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

Policy PERSONAL
 Membership AU 0231001
 County 245802816 (Explain change below).
 Effective 046 YORK
 Effective 06/07/2003 TO 12/07/2003
 Policy Discounts
 ACCOUNT DISCOUNT
 RENEWAL DISCOUNT
 Endorsements:

Excluded Drivers
NONE

Location Change

Mailing Address Only

Change Effective Date: 06/07/2003

Unit	Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Rate
2	1985	TOYT	STANDARD BED	PK	JT4RN50R4F0056648	T	0	A-A

Class: 1D 2 Territory: 01 Garaged County: 46 Gal Cap: 000

Engine Size: 1440 Cost New: 0.00 Customization: 0.00

BIPD LIMITS			UM LIMITS		UI LIMITS		PIP LIMIT	MED PAY LIMIT	COMP DED	COLL DED		
250/	500/	100	25/	50/	25	25/	50/	25	NONE	1000	NONE	NONE

Premium	108.22	8.23	17.25	NONE	7.30	NONE	NONE
Recompment	NONE	NONE	NONE	NONE	NONE	NONE	NONE
TOTAL	108.22	8.23	17.25	NONE	7.30	NONE	NONE

Unit Total: 141.00 Policy Total: 306.05 Policy Endorsement Premium: 0.00

Lienholders/Additional Interests
NONE

Drivers assigned to this unit
(A) SANDRA B JENKINS

Vehicle Endorsements: PICKUP, PANEL TRUCK OR VAN; 25% SAFE DRIVER DISCOUNT

COMMENTS: Changed Liability Limits 250/500/100 Added Vehicle #2

I understand these changes and I
certify the foregoing is correct.

Insured's Signature

Date

5/30/03

I have personally verified and
recommend these changes.

Agent's Signature

Date

5/30/03

SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY

AUTOMOBILE CHANGE REQUEST FORM

DATE TIME

- ☐ Reinstate Entire Policy With a Lapse
☐ Reinstate Entire Policy With Continuous Coverage
☐ Reinstate Only Vehicles Listed In Comments With A Lapse
☐ Reinstate Only Vehicles Listed In Comments With A Continuous Coverage
☒ Policy Change

State Office Use:

Cash Cash Memo

County Office (please indicate)

Payment Plan: Yes No

Amount for this policy

AGENT 0646

DEC: 19.001 05/30/2003

PREMIUM FOR THIS TRANSACTION: 50

(Explain change below)

Named Insured and Address

SANDRA N JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

Policy PERSONAL
 Membership AU 0166438
 County 245802816
 Effective 046 YORK
 03/09/2003 TO 09/09/2003
 Policy Discounts
 ACCOUNT DISCOUNT
 RENEWAL DISCOUNT

Endorsements:

Excluded Drivers
NONE

Location Change

Mailing Address Only

Change Effective Date: 03/18/2003

Unit	Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Ra
1	1987	TOYT	VAN WAGON LE	SV	JT3YR26W0H5D38900	W	0	A-A

Class: 4C 2 Territory: 01 Garaged County: 46 Gal Cap: 000

Engine Size: 1220 Cost New: 0.00 Customization: 0.00

BIPD LIMITS	UM LIMITS	UI LIMITS	PIP LIMIT	MED PAY LIMIT	COMP DED
25/ 50/ 25	25/ 50/ 25	25/ 50/ 25	NONE	1000	250
250/500/100					500

Premium	113.71	13.34	13.49	NONE	7.39	28.61
Recompment	NONE	NONE	NONE	NONE	NONE	NONE
TOTAL	113.71	13.34	13.49	NONE	7.39	28.61

Unit Total: 247.55 Policy Total: 247.55 Policy Endorsement Premium:

Lienholders/Additional Interests
NONE

Drivers assigned to this unit
(P) DEANA DIANE JENKINS

Vehicle Endorsements: PICKUP, PANEL TRUCK OR VAN; 25% SAFE DRIVER DISCOUNT

COMMENTS: Liability Limits 250/500/100 Change Comp deductible to 500
delete collision

I understand these changes and I
certify the foregoing is correct.

Insured's Signature

Date

I have personally verified and
recommended these changes.

Agent's Signature

Da

SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY

AUTOMOBILE CHANGE REQUEST FORM

- ☐ Reinstate Entire Policy With a Lapse
☐ Reinstate Entire Policy With Continuous Coverage
☐ Reinstate Only Vehicles Listed In Comments With A Lapse
☐ Reinstate Only Vehicles Listed In Comments With A Continuous Coverage
☒ Policy Change

DATE TIME

State Office Use:

Cash _____ Cash Memo _____

County Office (please indicate)

Payment Plan: Yes _____ No _____

Amount for this policy _____

AGENT 0646 DEC: 45.000 05/30/2003

Named Insured and Address

RONNIE JENKINS
 5757 COOK RD
 CLOVER, SC 29710-8573

Policy COMMERCIAL
 Membership AU 0366990
 County 245802816
 Effective 046 YORK
 Policy Discounts 07/01/2003 TO 01/01/2004
 NONE Endorsements:
 NONE TERRORISM DISCLOSURE NOT:

PREMIUM FOR THIS TRANSACTION: 434.7

(Explain change below)

Excluded Drivers
 NONE

Location Change

Mailing Address Only

Change Effective Date: 07/01/2003

Unit	Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Rate
1	2002	CHRY	PT CRUISER C	SV	3C4FY48B02T28B026	12	0	1-1

Class: 6CA1 Territory: 08 Garaged County: 46 Gal Cap: 001

Engine Size: 1400 Cost New: 14,600.00 Customization: 0.00

BIPD LIMITS		UM LIMITS		UI LIMITS		PIP MED LIMIT LIMIT		COMP DED		COLL DED	
25/	50/	25/	50/	25/	50/	25	NONE	NONE	100	200	200
250/500/100								500		500	

Premium	173.28	14.16	13.04	NONE	NONE	115.56	111
Recompment	NONE	NONE	NONE	NONE	NONE	NONE	NONE
TOTAL	173.28	14.16	13.04	NONE	NONE	115.56	111

Unit Total: 434.73 Policy Total: 434.73 Policy Endorsement Premium: 0.00

Lienholders/Additional Interests
 (L) BANK OF AMERICA

Drivers assigned to this unit
 NONE

Vehicle Endorsements: NONE

COMMENTS: Change Liability to 250/500/100 Change Comp & Collision to 500 deductible

I understand these changes and I
 certify the foregoing is correct.

Ronnie Jenkins 5/30/03
 Insured's Signature Date

I have personally verified and
 recommend these changes.

Agent's Signature 5/30/03
 Date

Ronnie D Jenkins

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

I. EXPLANATION OF COVERAGES

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. That refusal may be based upon a number of reasons. Automobile liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage is coverage which pays people upon whom your motor vehicle inflicts bodily injury. Property damage coverage is a coverage which pays people for damages which your automobile causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$15,000 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide to you at least \$10,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15-30-10. These limits are commonly-known as minimum limits. If you purchase automobile liability insurance, then, in order to drive your automobile upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of this State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 must also agree to underwrite higher than those minimum limits of automobile liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for the increased limits of protection.

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your automobile liability insurance coverage, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them referred to within your automobile insurance policy as additional UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional automobile insurance premium for each of these additional coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically must provide uninsured motorist coverage of \$15,000/\$30,000/\$10,000. All uninsured motorist coverages provide for 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 that coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for the damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of underinsured motorist coverage, together with the additional premium, which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill-in the amounts of increased premium.

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an automobile accident, then this Form then may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your automobile insurance policy may be canceled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then 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 by your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your automobile 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, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180 * (800) 788-3487
E-Mail Address: CnsMail@doi.state.sc.us

VEHICLE DESCRIPTION: SEE ATTACHED SCHEDULE OF COVERED ITEMS

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE	AMOUNT OF INCREASED PREMIUM FOR TERRITORY 001		
	6-Month Private Pass. Single Car Multi-Car		6-Month Commercial
\$ 15,000 / \$ 30,000 / \$10,000	\$ 7.14	\$ 8.92	\$ 9.17
\$ 15,000 / \$ 30,000 / \$15,000	\$ 7.34	\$ 9.18	\$ 9.72
\$ 25,000 / \$ 50,000 / \$25,000	\$ 8.16	\$ 10.19	\$ 14.16
\$ 50,000 / \$100,000 / \$25,000	\$ 9.69	\$ 12.10	\$ 17.49
\$ 50,000 / \$100,000 / \$50,000	\$ 10.20	\$ 12.75	\$ 19.14
\$100,000 / \$300,000 / \$50,000	\$ 13.55	\$ 16.95	\$ 22.46
\$250,000 / \$500,000 / \$50,000	\$ 18.75	\$ 23.44	\$ 29.12
_____ / _____ / _____	\$ _____	\$ _____	\$ _____

Do you wish to purchase "Additional Uninsured Motorist Coverage"? (X) Yes () No
If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits. I select 25 / 50 / 25

III. OFFER OF ADDITIONAL UNDERINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE

AMOUNT OF INCREASED PREMIUM FOR TERRITORY 001

	6-Month Private Pass. Single Car Multi-Car		6-Month Commercial
\$ 15,000 / \$ 30,000 / \$10,000	\$ 14.38	\$ 17.97	\$ 6.65
\$ 15,000 / \$ 30,000 / \$15,000	\$ 14.44	\$ 18.05	\$ 7.19
\$ 25,000 / \$ 50,000 / \$25,000	\$ 17.09	\$ 21.36	\$ 13.04
\$ 50,000 / \$100,000 / \$25,000	\$ 25.43	\$ 31.78	\$ 18.34
\$ 50,000 / \$100,000 / \$50,000	\$ 25.61	\$ 32.02	\$ 19.99
\$100,000 / \$300,000 / \$50,000	\$ 38.11	\$ 47.65	\$ 28.31
\$250,000 / \$500,000 / \$50,000	\$ 62.28	\$ 77.87	\$ 41.62
	\$	\$	\$

Do you wish to purchase "Underinsured Motorist Coverage"? (☒ Yes) () No
 If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits. I select 25 / 50 / 25

IV. APPLICANT'S ACKNOWLEDGEMENT:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Your Signature

Y. R. D. Jenkins

Your Signature

Lanetta D. Jenkins

Policy Number: AU 0231001

Today's Date

5/30/03

V. NOTIFICATION OF OPTIONAL PHYSICAL DAMAGE DEDUCTIBLES

If you select any of the optional physical damage coverages of Comprehensive or Collision, we offer several higher deductibles which can decrease your premiums. Ask your agent to provide you with information about these deductibles and their premiums.

Applicant's Initials

Y. R. D. Jenkins

Applicant's Initials

L. D. Jenkins

Today's Date

5/30/03

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

1. PURPOSE AND SCOPE

The laws of South Carolina and other states now allow any insurance company to offer to you an automobile liability insurance coverage. This coverage will be for the number of persons, including the driver, who are injured by other motor vehicle drivers and their passengers, whom you may be liable for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage. One is for property damage. **Bodily injury coverage** is a coverage which pays people injured from your motor vehicle traffic bodily injury. **Property damage coverage** is a coverage which pays people for damages which your automobile causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$15,000 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide to you at least \$10,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15-30-10. These limits are commonly known as **minimum limits**. If you purchase automobile liability insurance, then, in order to drive your automobile upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of this State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 must also agree to underwrite higher than those minimum limits of automobile liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your automobile liability insurance coverage, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them referred to within your automobile insurance policy as additional UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional automobile insurance premium for each of these additional coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law your automobile insurance policy automatically must provide uninsured motorist coverage of \$15,000/\$30,000/\$10,000. All uninsured motorist coverages provide for 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 liability coverage which you will carry under your automobile insurance policy. Some of the more commonly sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your automobile insurance policy. Some of the more commonly sold limits of underinsured motorist coverage, together with the additional premium which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an automobile accident, then this Form then may be used by your insurance company as **evidence against you** if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your automobile insurance policy may be canceled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then 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 by your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your automobile 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, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, SC 29223
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180 • (800) 768-3467
E-mail Address: ConsMail@doi.state.sc.us

VEHICLE DESCRIPTION: 1987 Toyota Van 5038900

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE

AMOUNT OF INCREASED PREMIUM FOR TERRITORY 1
6-Month Private Pass. 6-Month Commercial
Single Car Multi-Car

\$ 15,000 / \$ 30,000 / \$10,000	\$ 7.14	\$ 8.92	\$ 9.17
\$ 15,000 / \$ 30,000 / \$15,000	\$ 7.34	\$ 9.18	\$ 9.72
\$ 25,000 / \$ 50,000 / \$25,000	\$ 8.16	\$10.19	\$14.16
\$ 50,000 / \$100,000 / \$25,000	\$ 9.69	\$12.10	\$17.49
\$ 50,000 / \$100,000 / \$50,000	\$10.20	\$12.75	\$19.14
\$100,000 / \$300,000 / \$50,000	\$13.55	\$16.95	\$22.46
\$250,000 / \$500,000 / \$50,000	\$18.75	\$23.44	\$29.12

Do you wish to purchase "Additional Uninsured Motorist Coverage"? ☒ Yes ☐ No 11 2003
If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits.
I select 25 / 50 / 25

III. OFFER OF UNDERINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE

AMOUNT OF INCREASED PREMIUM FOR TERRITORY 1
6-Month Private Pass. 6-Month Commercial
Single Car Multi-Car

\$ 15,000 / \$ 30,000 / \$10,000	\$14.38	\$17.97	\$ 6.65
\$ 15,000 / \$ 30,000 / \$15,000	\$14.44	\$18.05	\$ 7.19
\$ 25,000 / \$ 50,000 / \$25,000	\$17.09	\$21.36	\$13.04
\$ 50,000 / \$100,000 / \$25,000	\$25.43	\$31.78	\$18.34
\$ 50,000 / \$100,000 / \$50,000	\$25.61	\$32.02	\$19.99
\$100,000 / \$300,000 / \$50,000	\$38.11	\$47.65	\$28.31
\$250,000 / \$500,000 / \$50,000	\$62.28	\$77.87	\$41.62

Do you wish to purchase "Underinsured Motorist Coverage"? ☒ Yes ☐ No
If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits.
I select 25 / 50 / 25

IV. APPLICANT'S ACKNOWLEDGEMENT:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Your Signature Ronnie D. Jenkins

Your Signature Sandra D. Jenkins

Policy Number: 0166430

Today's Date 5/30/03

V. NOTIFICATION OF OPTIONAL PHYSICAL DAMAGE DEDUCTIBLES

If you select any of the optional physical damage coverages of Comprehensive or Collision, we offer several higher deductibles which can decrease your premiums. Ask your agent to provide you with information about these deductibles and their premiums.

COVER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

EXPLANATION OF COVERAGES

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. This refusal may be based upon a number of reasons. *Automobile liability insurance coverage* pays other motor vehicle owners and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: *bodily injury and property damage*. *Bodily injury coverage* is a coverage which pays people upon whom your car or vehicle inflicts bodily injury. *Property damage coverage* is a coverage which pays people for damages which your automobile causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$15,000 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide to you at least \$10,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15-30-10. These limits are commonly-known as *minimum limits*. If you purchase automobile liability insurance, then, in order to drive your automobile upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of this State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 must also agree to underwrite higher than those minimum limits of automobile liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your automobile liability insurance coverage, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them referred to within your automobile insurance policy as additional UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional automobile insurance premium for each of these additional coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law your automobile insurance policy automatically must provide uninsured motorist coverage of \$15,000/\$30,000/\$10,000. All uninsured motorist coverages provide for 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 liability coverage which you will carry under your automobile insurance policy. Some of the more commonly sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your automobile insurance policy. Some of the more commonly sold limits of underinsured motorist coverage, together with the additional premium which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an automobile accident, then this Form then may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your automobile insurance policy may be cancelled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then 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 by your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your automobile 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 further questions, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, SC 29223
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180 • (800) 768-3467
E-mail Address: CnsmMail@doj.state.sc.us

VEHICLE DESCRIPTION: 2002 Chry 288026

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE

AMOUNT OF INCREASED PREMIUM FORTERRITORY 1

	6-Month Private Pass. Single Car	6-Month Commercial Multi-Car	
\$ 15,000 / \$ 30,000 / \$10,000	\$ 7.14	\$ 8.92	\$ 9.17
\$ 15,000 / \$ 30,000 / \$15,000	\$ 7.34	\$ 9.18	\$ 9.72
\$ 25,000 / \$ 50,000 / \$25,000	\$ 8.16	\$10.19	\$14.16
\$ 50,000 / \$100,000 / \$25,000	\$ 9.69	\$12.10	\$17.49
\$ 50,000 / \$100,000 / \$50,000	\$10.20	\$12.75	\$19.14
\$100,000 / \$300,000 / \$50,000	\$13.55	\$16.95	\$22.46
\$250,000 / \$500,000 / \$50,000	\$18.75	\$23.44	\$29.12

Do you wish to purchase "Additional Uninsured Motorist Coverage"? ☒ Yes ☐ No

If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits.

I select 25 / 50 / 25

III. OFFER OF UNDERINSURED MOTORIST COVERAGE:

LIMITS OF COVERAGE

AMOUNT OF INCREASED PREMIUM FORTERRITORY 1

	6-Month Private Pass. Single Car	6-Month Commercial Multi-Car	
\$ 15,000 / \$ 30,000 / \$10,000	\$14.38	\$17.97	\$ 6.65
\$ 15,000 / \$ 30,000 / \$15,000	\$14.44	\$18.05	\$ 7.19
\$ 25,000 / \$ 50,000 / \$25,000	\$17.09	\$21.36	\$13.04
\$ 50,000 / \$100,000 / \$25,000	\$25.43	\$31.78	\$18.34
\$ 50,000 / \$100,000 / \$50,000	\$25.61	\$32.02	\$19.99
\$100,000 / \$300,000 / \$50,000	\$38.11	\$47.65	\$28.31
\$250,000 / \$500,000 / \$50,000	\$62.28	\$77.87	\$41.62

Do you wish to purchase "Underinsured Motorist Coverage"? ☒ Yes ☐ No

If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits.

I select 25 / 50 / 25

IV. APPLICANT'S ACKNOWLEDGEMENT:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Your Signature

Bonnie D. Jenkins

Your Signature

Sandra D. Jenkins

Policy Number: 0366990

Today's Date

5/30/03

V. NOTIFICATION OF OPTIONAL PHYSICAL DAMAGE DEDUCTIBLES

If you select any of the optional physical damage coverages of Comprehensive or Collision, we offer several higher deductibles which can decrease your premiums. Ask your agent to provide you with information about these deductibles and their premiums.



SOUTH CAROLINA FARM BUREAU INSURANCE COMPANIES

South Carolina Farm Bureau Mutual Insurance Company / South
PO BOX 2124 • WEST COLUMBIA
PHONE (803) 936-4379 • FAX (803) 936

John H. Felder
District Claims Manager

April 9, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Ronnie Jenkins
5757 Cook Road
Clover SC 29710

RE: Insured: Ronnie Jenkins

Claim No.: 811766

Policy No.: 366990

Lawsuit: Nicole Checchi and Herbert Checchi vs Ronnie D. Jenkins, et al

Case No.: 0359490

Date of Accident: 05/13/02



Sent To:

PS Form 3800, June 2000

Cer

Return Re
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Restricted Del
(Endorseme

Total Postag

Dear Jenkins:

In the above captioned lawsuit, the plaintiff prays for damages against you in an amount to be fixed by the jury. Because the dollar amount of the prayer is unspecified, it is also unlimited. This means the jury could return a verdict in excess of your policy limits, which are \$25,000 for one person, and \$50,000 for each accident. This Company has retained the services of Scott DiSalvo of Fort Lauderdale, Florida, whom we believe to be capable and qualified to represent you in the defense of this lawsuit.

As the trial of this matter may result in judgment in an amount in excess of our policy limit, the Company will not pay any sum greater than the limits indicated above. This letter is to advise you of your right and privilege to retain an attorney of your own choice to represent you personally in the defense of this suit. This is not a demand that you do this, but is intended to remind you of this right. If you do retain additional counsel, it will be at your own expense. In the event you do retain personal counsel, please advise us of this fact and the name of the firm so we may cooperate with them in this lawsuit.

If you have any questions concerning this, please do not hesitate to confer with a Company representative or the attorney retained by us to represent you.

Very truly yours,

John H. Felder
District Claims Manager

JF:jh627.1

"HELPING YOU IS WHAT WE DO BEST"

www.scfbina.com



SOUTH CAROLINA FARM BUREAU INSURANCE COMPANIES

South Carolina Farm Bureau Mutual Insurance Company/Southern Farm Bureau Casualty Insurance Company
South Carolina Farm Bureau Insurance Agency/Southern Farm Bureau Life Insurance Company
Palmetto Casualty Insurance Company
PO Box 2124 ■ West Columbia, SC 29171-2124 ■ www.scfbins.com

APRIL 24, 2006

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

*HELPING YOU IS WHAT
WE DO BEST*

|||||

POLICY : AU 0231001-6
POLICY FORM : PRIV (05/04)

Farm Bureau appreciates your business. If you have any questions concerning your coverage or premium, please contact your local agent:

CHRIS STEPHENSON, (803) 684-4235

A Joint Privacy Notice is printed on the reverse side of this cover letter. Important insurance coverage information is enclosed. Please read and keep for your records. Items enclosed are:

Your billing statement
Your auto insurance cards
Your renewal notice

Farm Bureau Insurance Claims Hotline; to report a claim, please call 1-800-799-7500 or 936-4677 in the Columbia area.

Joint Privacy Notice

This Notice is intended to fulfill our obligation to meet mandated disclosure requirements. It is for your information only, and we hope that you find it to be informative and helpful. It does not require any response from you. You may wish to file this Notice with your other important insurance papers.

When you see the words *we, us, or our* within this Notice, you should understand that these words include South Carolina Farm Bureau Mutual Insurance Company, Southern Farm Bureau Casualty Insurance Company, and Palmetto Casualty Insurance Company.

Our Commitment to Safeguarding Your Privacy. This Notice is being provided to you to inform you of our practices and procedures regarding the sharing of *nonpublic personal information*. Nonpublic personal information is information that identifies you, your family, or your household that we may obtain directly from you, that we may obtain as a result of our business dealings with you, or that we may obtain from any other source.

Except as stated within this Notice, we do not engage in the practice of disclosing your nonpublic personal information to nonaffiliated third parties other than as necessary to provide quality insurance and financial services to our customers. For instance, we do not engage in "list-selling," and we do not market your personal information to publishing houses, retailers, or coupon companies.

While you are a policyholder, we will provide you with a copy of our current Notice at least annually as part of a regular mailing, such as within a billing or a renewal notice or with a policy, and at any time that you request it in writing. Further, because Federal and State laws, regulations, and business practices can change at any time, we may revise this Notice accordingly. You can always review a copy of our most current Notice at www.scfbins.com. The effective date of this Notice is printed below, and this Notice replaces all prior notices. Once you cease to be a policyholder, we will continue to protect your private information as described within this Notice. However, we will stop sending you annual privacy notices. The examples detailed within this Notice are only meant to help you understand our practices and procedures, and they should not be taken as a complete and exclusive inventory of specific information that we collect, utilize, maintain, or share.

Information We May Collect and Use. During the course of reviewing your application for insurance coverage and deciding whether or not to underwrite the insurance policy for which you have applied, and, if we issue a policy to you, then during the course of providing services to you as required by the policy, we collect and evaluate information from the following sources:

- Information that we receive from you on applications or other forms;
- Information that we obtain to verify representations made by you;
- Information about your transactions with us, our affiliates, or others;
- Information that we receive from consumer reporting agencies; and,
- Information that we receive from local, state, or Federal governmental agencies.

It is important for us to collect and use this information to properly identify you; to provide, administer, and perform services on your behalf; and to comply with certain State and Federal requirements. We could not provide optimum service to you without collecting and using this information.

Information We May Disclose. We regard all of your personal information as confidential. Therefore, we do not disclose any nonpublic personal information about our customers or former customers to anyone except as required or permitted by law. In the course of conducting our business dealings, we may disclose certain information that we have about you to other parties. These disclosures are only made in accordance with applicable laws and may include disclosures to reinsurers, administrators, service providers, consultants, law enforcement officials, and regulatory or governmental authorities. Further, certain disclosures of information will be made to your Farm Bureau insurance agent and any Farm Bureau personnel authorized to have access to your personal information for the purpose of administering your business and providing services to you.

We may also disclose all of the information that we collect, as described above, to companies that perform services on our behalf or to other financial institutions with which we have joint marketing agreements. Service providers, for example, may assist us in processing your transactions, mailing policyholder correspondence, or destroying out-dated documents. Joint marketers are business entities, including other financial institutions, such as the Farm Bureau Bank, FSB, with which we jointly offer financial products or services. These service providers and joint marketers allow us to more efficiently and more effectively provide insurance services to you or to better meet your financial service needs. The categories of information that we may disclose to service providers or joint marketers include:

- Information that we receive from you on applications or other forms, such as your name, address, social security number, or Farm Bureau membership number;
- Information about your transactions with us, our affiliates, or others, such as your policy coverage, premium, loss history, and payment history; and,
- Information that we receive from consumer reporting agencies, such as your creditworthiness and credit history.

These entities with which we share this information are required by contract to maintain the confidentiality of that information and to only use that information to perform the tasks for which we provided it. We do not authorize these entities to use or disclose your personal information for any purpose other than for the express purpose of performing work on our behalf, as detailed within our agreements with them or as required or permitted by law.

How We Maintain the Confidentiality and Security of Your Information. We carefully restrict access to nonpublic personal information to our employees, our independent contractor insurance producers, our service providers, our joint marketers, and our affiliates and subsidiaries. The right of our employees, our independent contractor insurance producers, our service providers, our joint marketers, and our affiliates and subsidiaries to further disclose and use the information is limited by our employee handbook, agents' manuals, applicable law, and nondisclosure agreements where appropriate. We maintain physical, electronic, and procedural safeguards that comply with Federal and State law to guard your nonpublic personal information. In situations where State of South Carolina privacy law is more protective of your nonpublic personal information, we will protect your information in accordance with State of South Carolina law.

Conclusion. If you have any questions or comments concerning this Notice or our privacy standards and procedures, then please write to us at Compliance Department, Post Office Box 2124, West Columbia, South Carolina 29171-2124. Our functional regulator is the State of South Carolina Department of Insurance. If we cannot resolve your concerns or answer your questions, then feel free to contact our regulator.

(Revised upon October 1, 2003)



SOUTH CAROLINA FARM BUREAU INSURANCE COMPANIES

South Carolina Farm Bureau Mutual Insurance Company/Southern Farm Bureau Casualty Insurance Company
South Carolina Farm Bureau Insurance Agency/Southern Farm Bureau Life Insurance Company
Palmetto Casualty Insurance Company
PO Box 2124 ■ West Columbia, SC 29171-2124 ■ www.scfbins.com

Account Number	To Your Previous Balance	We Have Added CHARGES of	And Deducted CREDITS and/or REFUNDS of	And Deducted a PAYMENT of	and Added SERVICE FEE of	creating an ACCOUNT BALANCE of	MINIMUM PAYMENT
0231001 01	0.00	420.76	0.00	0.00	3.00	420.76	213.38

DUE DATE: 06/07/2006
DATE PRINTED: 04/24/2006

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER SC 29710-8573

IF YOU HAVE A QUESTION
REGARDING YOUR BILL,
PLEASE CALL 1-800-799-7500.



Policy Number	Trans Date	Description of transaction	Policy Activity	Policy Balance	Policy Minimum
AU0231001	03/22/2006	PRIV POLICY - MULTIPLE ITEMS			
	04/18/2006	RENEWAL EFFECTIVE: 06/07/2006	420.76		
	04/21/2006	POLICY BALANCE		420.76	210.38
	04/21/2006	AMOUNT DUE			
	03/22/2006	SERVICE FEE			
	04/21/2006	CURRENT CHARGE	3.00		
	04/21/2006	SERVICE FEE BALANCE		3.00	3.00
	04/21/2006	AMOUNT DUE			

SAFETY BELTS SAVE LIVES.
PLEASE BUCKLE UP - IT'S THE LAW.

VISIT US ON THE WEB AT WWW.SCFBINS.COM

F038A
C11/040

☐ CHECK HERE FOR ADDRESS CHANGE
AND SEE REVERSE SIDE

DETACH AND RETURN WITH YOUR REMITTANCE 011 AU 0231001 3 0

Make check payable to:
FARM BUREAU INSURANCE

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER SC 29710-8573

ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	FULL PAYMENT	AMOUNT PAID
0231001 01	06/07/2006	213.38	420.76	

Card No. _____

Exp. Date ____/____/____

Circle One:



Amount \$ _____

Signature _____

Cardholder Name (Print) _____

If full payment is made, no service fee applies. Full payment amount does not include service fee. Our acceptance of your credit card payment is conditioned upon the authorization of the transaction by your credit card company. If the transaction is not authorized, your premium is considered unpaid.

0110231001300213380042076000000000

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INSERT IN ENCLOSED ENVELOPE SO THAT ADDRESS ON THE REVERSE SIDE SHOWS THROUGH WINDOW.

SAMPLE

1

Account Number	To Your Credit	We Have Added	and Deducted	and Deducted	and Added	and Added	and Added	and Added
	of	of	of	of	of	of	of	of
1000000000	100.00	20.00	10.00	50.00	0.00	60.00	60.00	60.00

JOHN Q. CUSTOMER
123 MAIN STREET
ANYWHERE U.S.A.

DUE DATE: 01/31/96
DATE PRINTED: 01/15/96

Policy Number	Trans. Date	Description of Transaction	Policy Amount	Policy Balance	Policy Minimum
P000000000	01/01/96 01/05/96 01/10/96 01/15/96 01/15/96	POLICY DESCRIPTION PAYMENT RECEIVED POLICY CHANGE EFFECTIVE: 01/01/96 POLICY CHANGE EFFECTIVE: 01/15/96 POLICY BALANCE AMOUNT DUE	50.00- 10.00- 20.00	60.00	60.00
FARM BUREAU - HELPING YOU IS WHAT WE DO BEST					

Make check payable to:
FARM BUREAU
INSURANCE

Account Number	Payment Due Date	MINIMUM PAYMENT	FULL PAYMENT	AMOUNT ENCLOSED
1000000000	01/31/96	60.00	60.00	

IMPORTANT ITEMS ON YOUR ACCOUNT BILLING STATEMENT ARE INDICATED AS FOLLOWS:

- 1). THIS INFORMATION SHOWS THE ACTIVITY ON YOUR ACCOUNT SINCE YOUR LAST STATEMENT.
- 2). POLICY NUMBER - POLICY INCLUDED ON THIS ACCOUNT.
- 3). DESCRIPTION OF TRANSACTION - DETAILED INFORMATION EXPLAINING ACTIVITY EFFECTING YOUR ACCOUNT SINCE YOUR LAST STATEMENT.
- 4). PAYMENT DUE DATE - THE DATE PAYMENT IS TO BE RECEIVED BY THE COMPANY.
- 5). MINIMUM PAYMENT - THE AMOUNT DUE FOR ALL ITEMS LISTED ON THE STATEMENT.

PLEASE INDICATE MAILING ADDRESS CORRECTIONS OR CHANGES BELOW

PLEASE CHECK BOX TO LET US KNOW
THE TYPE OF ADDRESS CHANGE REQUESTED:

- ☐ I HAVE NOT MOVED - ADDRESS CHANGE OR CORRECTION ONLY.
☐ I HAVE MOVED - NEW ADDRESS.

ADDRESS:

STREET OR BOX NUMBER

CITY

STATE

ZIP CODE

TELEPHONE NUMBER

FARM BUREAU INSURANCE

PO BOX 2064

WEST COLUMBIA, SC 29171-2064

SOUTH CAROLINA FARM BUREAU INSURANCE COMPANIES

South Carolina Farm Bureau Mutual Insurance Company/Southern Farm Bureau Casualty Insurance Company
South Carolina Farm Bureau Insurance Agency/Southern Farm Bureau Life Insurance Company
Palmetto Casualty Insurance Company
PO Box 2124 ■ West Columbia, SC 29171-2124 ■ www.scfbins.com

04/24/2006

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

Dear Policyholder:

Below are two (2) Insurance ID cards for your vehicle insured by S.C. Farm Bureau Insurance. Please IMMEDIATELY detach one and place in the vehicle described on the card so that you will be in compliance with S. C. law. When requested by a law enforcement officer, this ID card must be presented. New cards will be mailed each time your policy renews. ALWAYS KEEP YOUR OLD CARD IN YOUR VEHICLE UNTIL THE EFFECTIVE DATE OF YOUR NEW CARD.

SPECIAL NOTICE TO PICK-UP TRUCK, PANEL TRUCK OR VAN OWNERS

If we are insuring a pick-up truck, panel truck or van for you, we want to remind you about special coverage for customized equipment. This includes items installed by the dealer, others, or possibly yourself that may increase the vehicle value. These items are NOT insured by comprehensive or collision coverage, unless listed (endorsed) on the policy and an additional premium paid for this additional coverage. Custom equipment or furnishings include custom painting or decals, awnings, facilities for cooking and sleeping and other items shown in the policy booklet, beginning on page 32. Please contact your Farm Bureau Insurance agent if you have questions about this coverage.

RESIDENT ADJUSTER
P.O. Box 2124
West Columbia, SC 29171-2124
TELEPHONE (800) 799-7500 or (877) 723-2762

HELPING YOU IS WHAT WE DO BEST.

SC Farm Bureau Insurance ID Card

Coverage meets SC financial responsibility requirements.

To report a claim, call (800) 799-7500

Policy: AU 0231001 MUTUAL
Effective: 06/07/2006 TO 12/07/2006
1987 TOYT XTRACAB LONG BED DELUXE
VIN: JT4RN70D9H0044935

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573
Agent: CHRIS STEPHENSON
(803) 684-4235

SC Farm Bureau Insurance ID Card

Coverage meets SC financial responsibility requirements.

To report a claim, call (800) 799-7500

Policy: AU 0231001 MUTUAL
Effective: 06/07/2006 TO 12/07/2006
1987 TOYT XTRACAB LONG BED DELUXE
VIN: JT4RN70D9H0044935

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573
Agent: CHRIS STEPHENSON
(803) 684-4235

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F110A (06/05)

SOUTH CAROLINA FARM BUREAU INSURANCE COMPANIES

South Carolina Farm Bureau Mutual Insurance Company/Southern Farm Bureau Casualty Insurance Company
South Carolina Farm Bureau Insurance Agency/Southern Farm Bureau Life Insurance Company
Palmetto Casualty Insurance Company
PO Box 2124 ■ West Columbia, SC 29171-2124 ■ www.scfbins.com

04/24/2006

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

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Below are two (2) Insurance ID cards for your vehicle insured by S.C. Farm Bureau Insurance. Please IMMEDIATELY detach one and place in the vehicle described on the card so that you will be in compliance with S. C. law. When requested by a law enforcement officer, this ID card must be presented. New cards will be mailed each time your policy renews. ALWAYS KEEP YOUR OLD CARD IN YOUR VEHICLE UNTIL THE EFFECTIVE DATE OF YOUR NEW CARD.

SPECIAL NOTICE TO PICK-UP TRUCK, PANEL TRUCK OR VAN OWNERS

If we are insuring a pick-up truck, panel truck or van for you, we want to remind you about special coverage for customized equipment. This includes items installed by the dealer, others, or possibly yourself that may increase the vehicle value. These items are NOT insured by comprehensive or collision coverage, unless listed (endorsed) on the policy and an additional premium paid for this additional coverage. Custom equipment or furnishings include custom painting or decals, awnings, facilities for cooking and sleeping and other items shown in the policy booklet, beginning on page 32. Please contact your Farm Bureau Insurance agent if you have questions about this coverage.

RESIDENT ADJUSTER
P.O. Box 2124
West Columbia, SC 29171-2124
TELEPHONE (800) 799-7500 or (877) 723-2762

HELPING YOU IS WHAT WE DO BEST.

SC Farm Bureau Insurance ID Card
Coverage meets SC financial responsibility requirements.
To report a claim, call (800) 799-7500

Policy: AU 0231001 MUTUAL
Effective: 06/07/2006 TO 12/07/2006
2002 CHRY PT CRUISER CLASSIC
VIN: 3C4FY48B02T288026

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573
Agent: CHRIS STEPHENSON
(803) 684-4235

SC Farm Bureau Insurance ID Card
Coverage meets SC financial responsibility requirements.
To report a claim, call (800) 799-7500

Policy: AU 0231001 MUTUAL
Effective: 06/07/2006 TO 12/07/2006
2002 CHRY PT CRUISER CLASSIC
VIN: 3C4FY48B02T288026

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573
Agent: CHRIS STEPHENSON
(803) 684-4235

AUTOMOBILE RENEWAL NOTICE

SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY
PO BOX 2124, WEST COLUMBIA, SC 29171-2124

If the renewal premium is paid on or before the expiration date of the current term and accepted by the company, coverage is extended from ~~06/07/2006 to 12/07/2006~~. Should the policy terminate for any reason, the lienholder will be given 10 days written notice.

Named Insured and Address

RONNIE DEAN JENKINS
5757 COOK RD
CLOVER, SC 29710-8573

Policy: AU 0231001
County: YORK
Phone: (803) 684-4235
Agent: CHRIS STEPHENSON
AGENT CODE: 0046

Policy Form: PERSONAL 05/2004

Policy Endorsements

NONE

Premium

NONE

Excluded Drivers

NONE

Policy Discounts: 15% ACCOUNT DISCOUNT, 5% RENEWAL DISCOUNT

POLICY LIMITS

	Bodily Injury Per Person	Bodily Injury Per Accident	Property Damage Per Accident
Liability	250,000	500,000	100,000
Uninsured Motorists	25,000	50,000	25,000
Underinsured Motorists	25,000	50,000	25,000
Statutory Liability-Permissive Driver	15,000	30,000	10,000

MEDICAL PAYMENTS - * \$1,000 EACH PER COVERED PERSON

Schedule of Vehicles:

Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Rate
1987	TOYOTA	XTRACAB LONG	PC	JT4RN70D9H0044935	V	0	A-A

Change Effective: 06/07/2006

Class: 1D 2

Lienholder: NONE

Territory: 01-046

Drivers Listed on the Vehicle:

RONNIE DEAN JENKINS

Vehicle Discounts/Endorsements: PICKUP, PANEL TRUCK OR VAN; 25% SAFE DRIVER DISCOUNT

Coverages	Premium	Limit/Deductible
Bodily Injury	\$73.75	SEE POLICY LIMITS
Property Damage	\$46.21	SEE POLICY LIMITS
Uninsured Motorists	\$7.85	SEE POLICY LIMITS
Underinsured Motorists	\$17.87	SEE POLICY LIMITS
MEDICAL PAYMENTS	\$7.39	SEE POLICY LIMITS
Comprehensive	NONE	NOT APPLICABLE
Collision	NONE	NOT APPLICABLE
TOTAL PREMIUM	\$153.07	
PREMIUM FOR THIS TRANSACTION	\$153.07	

Schedule of Vehicles (continued):

Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Rate
2002	CHRYSLER	PT CRUISER C	SV	3C4FY48B02T288026	12	0	A-A

Change Effective: 06/07/2006
 Class: ID 2 Territory: 01-046
 Lienholder: NONE

Drivers Listed on the Vehicle:
SANDRA B JENKINS

Vehicle Discounts/Endorsements: 25% SAFE DRIVER DISCOUNT

<u>Coverages</u>	<u>Premium</u>	<u>Limit/Deductible</u>
Bodily Injury	\$73.75	SEE POLICY LIMITS
Property Damage	\$46.21	SEE POLICY LIMITS
Uninsured Motorists	\$7.85	SEE POLICY LIMITS
Underinsured Motorists	\$17.87	SEE POLICY LIMITS
MEDICAL PAYMENTS	\$7.39	SEE POLICY LIMITS
Comprehensive	\$45.70	500 DEDUCTIBLE
Collision	\$68.92	500 DEDUCTIBLE
TOTAL PREMIUM	\$267.69	
PREMIUM FOR THIS TRANSACTION	\$267.69	

Year	Make	Model	Body Type	Vehicle ID Number	Symbol	Points	Rate
Change Effective: _____ Class: _____ Territory: _____ Lienholder: _____							

Drivers Listed on the Vehicle:

Vehicle Discounts/Endorsements:

<u>Coverages</u>	<u>Premium</u>	<u>Limit/Deductible</u>
Bodily Injury		
Property Damage		
Uninsured Motorists		
Underinsured Motorists		
Comprehensive		
Collision		
TOTAL PREMIUM		
PREMIUM FOR THIS TRANSACTION		

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kimberly S. Woodson and Christopher Woodson,
Respondents,

v.

Nationwide Mutual Insurance Company,
Appellant.

Appeal From Anderson County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2002-UP-398
Submitted March 5, 2002 - Filed June 4, 2002

REVERSED

J. R. Murphy, of Murphy & Grantland, of Columbia, for
appellant.

Donald Chuck Allen and William E. Phillips, of Allen
Law Firm, of Anderson, for respondents.

PER CURIAM: In this declaratory judgment action, Nationwide Mutual Insurance Company appeals the trial court's ruling reforming two insurance policies issued to Kimberly and Christopher Woodson for lack of a meaningful offer of underinsured motorists coverage. We reverse.

FACTS/PROCEDURAL HISTORY

Kimberly and Christopher Woodson bought separate policies of automobile insurance from Nationwide Mutual Insurance Company. Although the Woodsons also purchased additional uninsured motorist coverage, they specifically rejected underinsured motorist (UIM) coverage on an additional coverage offer form.¹

On December 15, 1997, Kimberly was injured in an automobile accident and suffered damages in excess of the at-fault driver's liability limits; she then sought UIM coverage under her own policy and Nationwide refused. Thereafter, the Woodsons filed this declaratory judgment action seeking reformation of their Nationwide policies to include UIM coverage.

Sitting without a jury, the trial court found Nationwide failed to make meaningful offers of UIM coverage to the Woodsons pursuant to State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). In particular, the court determined Nationwide's offers were not meaningful because Nationwide never provided the Woodsons with an oral explanation of UIM coverage or an opportunity to read the offer forms. As a result, the trial court reformed both policies to include UIM coverage. This appeal followed.

LAW/ANALYSIS

Standard of Review

An action to reform an insurance contract sounds in equity. Elias v. Fireman's Ins. Co. of Newark, N.J., 309 S.C. 129, 420 S.E.2d 504 (1992). In an appeal from an action in equity tried by the judge alone, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Townes Assocs. Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

S.C. Code Ann. § 38-77-160 (2002) provides that automobile insurance carriers "shall . . . offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage." See Rabb v. Catawba Ins. Co., 339 S.C. 228, 528 S.E.2d 693 (Ct. App. 2000). In Wannamaker, our supreme court adopted a four-part test for determining whether an insurer has

¹ On March 30, 1998, Kimberly renewed her policy with the same uninsured limits and again specifically rejected additional UIM coverage.

complied with its duty to offer optional coverages: "(1) the insurer's notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium." Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556.

Subsequent to the Wannamaker decision, the Legislature enacted S.C. Code Ann. § 38-77-350 (2002). This section requires insurers to use a form when offering optional insurance coverages that "at a minimum" provides:

- (1) a brief and concise explanation of the coverage,
- (2) a list of available limits and the range of premiums for the limits,
- (3) a space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires,
- (4) a space for the insured to sign the form which acknowledges that he has been offered the optional coverages, [and]
- (5) the mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable to answer.

§ 38-77-350(A). Significantly, the Legislature declared that if the form "is properly completed and executed by the named insured it is conclusively presumed that there was an informed, knowing selection of coverage," and furthermore that "[c]ompliance with [§ 38-77-350] satisfies the insurer and agent's duty to explain and offer optional coverages." § 38-77-350(B), (D).

"The insurer bears the burden of establishing that it made a meaningful offer of UIM coverage." Tucker v. Allstate Ins. Co., 337 S.C. 128, 131, 522 S.E.2d 819, 821 (Ct. App. 1999). If an insurer fails to make a meaningful offer of UIM, the policy will be reformed by operation of law to include such coverage up to the limits of liability insurance carried by the insured. Butler v. Unisun Ins. Co., 323 S.C. 402, 475 S.E.2d 758 (1996); Tucker, 337 S.C. at 131, 522 S.E.2d at 821.

At trial, Kimberly testified that although she understands UIM coverage now, she did not understand the meaning of UIM coverage when she signed

Nationwide's offer form in February 1997. She further stated the Nationwide insurance agent neither explained UIM coverage to her nor afforded her an opportunity to read the form. Likewise, Christopher testified he did not understand UIM coverage when he signed an identical Nationwide form. He claimed he was told the form offered additional insurance he was not required to have, and furthermore, that he never actually read the "stacks of papers" presented for his signature. Christopher explained that he now understands UIM coverage and, had he read the form originally, he would "probably [have understood] parts of it . . . [but] would [have] underst[ood] it better if it was explained to [him]." Thus, the Woodsons aver that because Nationwide never gave them an independent oral explanation of UIM coverage or afforded them an opportunity to review the explanatory language, it failed to make a meaningful offer of UIM.

On the other hand, Nationwide argues its form, standing alone, satisfies the Wannamaker meaningful offer test and the factors set forth in § 38-77-350(A). We agree.

On its face, the form clearly complies with both the statutory and common law mandates. The form's first two pages provide an "explanation of coverages" that spell out what automobile liability insurance covers and defines, in plain terms, UM and UIM coverages.² The form specifically states that UIM and

² UIM coverage is described as follows:

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, including passengers within your motor vehicle, for amounts that you, or your passengers, may be legally 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 that is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to compensate you for your damage.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. You have, however, a right to buy underinsured motorist coverage in limits up to the limits of liability coverage you will carry under your automobile insurance policy. Some of the more commonly sold limits of underinsured motorist coverage, together with the additional premiums you will be charged, are shown upon this Form. If there are other limits in

optional UM may be purchased for an additional premium. It further recommends that the insured "read this form carefully" and directs any questions to the South Carolina Department of Insurance at the appropriate address and phone number. Page two concludes with this sentence: "Your insurance agent must also answer any questions which you may have."

The third page of the form gives a choice of stated limits of UM coverage and allows the insured to write in any level of coverage desired up to the policy limits. Page four presents similar choices for UIM coverage. The Woodsons admit they rejected UIM coverage by checking "no" after the line on page four stating: "Do you wish to purchase underinsured motorist coverage?" They further acknowledge their respective signatures by the lines which read: "If your answer is 'no,' you may then sign here." Finally, the Woodsons agree they signed part four of the form following this paragraph:

I hereby acknowledge that I have read, or have had read to me, the above explanation and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

In our view, there is no question Nationwide's offer form complied with both Wannamaker and § 38-77-350. Accordingly, the presumption that the Woodsons made "an informed, knowing selection of coverage" is conclusive, and Nationwide had no duty to explain its optional coverages further. § 38-77-350(B); see § 38-77-350(D); Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556; Rabb, 339 S.C. at 234, 528 S.E.2d at 695. Because Nationwide made a meaningful offer as required by law, the trial court erred in reforming the Woodsons' policies to provide UIM coverage.

which you are interested, but which are not shown upon this Form, then fill-in those limits. If your insurance company is allowed to market those limits within this State, our insurance agent will fill-in the amount of increased premiums.

REVERSED.

CURETON, STILWELL, and SHULER, JJ., concur.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Foremost Insurance Company,

Plaintiff,

vs.

Louis Demma,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2006-CP-23-8108

2007 MAY 15 A 9 30
ORDER
FILED IN CLERK OF COURT
GREENVILLE CO. S.C.
BY: WICKENS

This matter is before the Court on the cross-motions for summary judgment filed by Plaintiff Foremost Insurance Company ("Foremost") and Defendant Louis Demma ("Demma"). Foremost contends that it made a meaningful offer of underinsured motorist coverage ("UIM") to Demma. Demma argues that Foremost failed to make a meaningful offer of UIM coverage to him, so that the policy issued to Demma should be reformed to provide UIM coverage.

A hearing was held on these motions on April 9, 2007, in the Greenville County Courthouse. For the reasons stated below, the Court grants the motion for summary judgment filed by Foremost and denies the motion filed by Demma. The Court also declares that Foremost made a meaningful offer of UIM coverage to Demma, which he rejected. Therefore, no UIM coverage under the Foremost policy is provided to Demma.

I. Facts

Demma visited an insurance office in Mauldin, South Carolina, to purchase a motorcycle policy. Amee Barton, an agent licensed to sell motorcycle policies for Foremost, processed Demma's application while Demma was in the office. Demma claims he told the agent that he wanted "full coverage" because he was buying the motorcycle that same day and the finance company required that he obtain "full

coverage" before he could finance the motorcycle. Demma was able to finance the motorcycle on that same day after he purchased the Foremost policy.

The agent presented a four-page application to Demma. The first page contains the typical information relating to Demma, including his date of birth, address, driver's license number, and social security number. In his deposition, Demma confirmed that all this information is correct.

Page two of the application shows the correct financing company Demma used to finance his motorcycle and all the different types of coverage provided under the policy. It shows that Demma was being provided the statutory minimum requirements of bodily injury, property damage, and uninsured (UM) motorist coverage. It does not show that any UIM coverage was being selected. Demma admits that he signed the bottom of page two. His signature appears directly under the verification that the coverage "selections indicated in this application accurately reflect the limits, coverages and deductibles I desire."

The agent also presented to Demma the final two pages of the application entitled "Offer of Optional Uninsured and Underinsured Insurance Coverages." These pages contain the same explanations of UM and UIM coverages that are set forth in the South Carolina Department of Insurance Form 2006. Page four contains all the required information regarding additional coverage, including the available limits of coverage and corresponding premises. Two computer-generated check marks show that Demma rejected UIM coverage. Demma admits he signed the bottom of page four under the "Applicant's Acknowledgement" verifying that he read or had read to him the explanations and offers of UM and UIM coverages. Despite signing this

acknowledgement, Demma stated in his deposition that he did not read any of the forms before he signed them and did not ask the agent to read them or explain them. Instead, Demma claims the agent put the forms in front of him and merely showed him where to sign them without giving him an oral explanation of UIM coverage.¹

Demma was injured in an accident with another vehicle while driving his motorcycle. Demma has recovered the limits of the other driver's liability coverage, and now seeks to recover UIM coverage under the Foremost policy.

II. Law



"Under Rule 56 (c) , SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleading. . . . Rather the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id.

S.C. Code § 38-77-350 (A) creates a conclusive presumption that the carrier made a meaningful offer of UIM coverage to an applicant so long as the insurance forms provided to the insured by the carrier meet all the conditions of the statute. The statute in effect when Demma executed his insurance application provides that the form must

¹ There is a material issue of fact as to whether the agent orally explained UIM coverage to Demma. The Foremost agent, contrary to Demma, claims that she orally explained UIM coverage to Demma before he signed the form. For purposes of deciding Foremost's motion, the Court views the evidence in the light most favorable to Demma, and therefore accepts as true Demma's testimony that the Foremost agent did not orally explain UIM coverage to Demma.

provide a "space for the insured to mark whether the insured chooses to accept or reject the coverage." Id. at § 350 (A) (3).

In this case, Demma did not personally mark the "✓" showing that he was rejecting UIM coverage. Instead, this mark was inserted by the agent.

In Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2006), the South Carolina Supreme Court held that the insured, rather than the agent, must actually place the "✓" on the application for the form to be conclusively presumed to constitute a meaningful offer of UIM coverage. The Supreme Court recognized in Floyd, however, that an insurance carrier not entitled to the statutory conclusive presumption can still show that it made a meaningful offer under the four-element State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987), test.



Foremost concedes that it is not entitled to the statutory conclusive presumption that it made a meaningful offer of UIM coverage to Demma because the Foremost agent, rather than Demma, placed the "✓" in the boxes signifying that Demma rejected UIM coverage. Therefore, Foremost does not rely on the statutory conclusive presumption in its motion for summary judgment.

The Court finds, however, that Foremost has met its burden of establishing that it made of meaningful offer of UIM coverage to Demma under the four-element Wannamaker test. Under Wannamaker, the carrier is deemed to have made a meaningful offer of UIM coverage if (1) the insurer's notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of UIM coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the UIM coverage; and (4) the insurer tells

the insured that UIM coverage is available for an additional premium. Id. at 521, 354 S.E.2d at 556.

As a matter of law, the facts show that Foremost's offer of UIM coverage to Demma meets all four Wannamaker elements. The written forms Foremost presented to Demma comply in all respects with Form 2006 promulgated by the South Carolina Department of Insurance. The forms clearly and concisely explain the nature of UIM coverage and specify that Demma can elect to purchase UIM in a variety of limits and shows the additional premiums that Foremost charges for these various limits of UIM coverage.



Moreover, the forms presented by Foremost to Demma "intelligently advised" him of the nature of UIM coverage as a matter of law. South Carolina Code § 38-77-350 (A) provides that the South Carolina Department of Insurance shall promulgate a form that "automobile insurers shall use in offering" UM and UIM coverages to applicants. The form that the Department of Insurance promulgated has become known as "Form 2006." The offer of UIM coverage that Foremost presented to Demma contained the same explanation of UIM coverage found in Form 2006.

The South Carolina Court of Appeals has held in numerous cases that Form 2006 meets the statutory requirements of § 38-77-350 (A). Clinton v. West American Ins. Co., 364 S.C. 113, 122, 611 S.E.2d 521, 526 (Ct. App. 2005) ("The South Carolina Court of Appeals has specifically held that the form used by West American, Form 2006, meets the requirements of § 38-77-350"); Burch v. South Carolina Farm Bureau Mut. Ins. Co., 351 S.C.342, 349, 569 S.E.2d 400, 404 (Ct. App. 2002) ("We agree that the [Form 2006] used by Farm Bureau in this case falls within the requirements of South Carolina's

statutory and case law, such that Farm Bureau made a meaningful and effective offer of UIM coverage to Burch”); Woodson v. Nationwide Mut. Ins. Co., 2002-UP-398 at *4-5 (Ct. App. 2002) (unpublished opinion) (“Nationwide argues its [Form 2006], standing alone, satisfies the Wannamaker meaningful offer test and the factors set forth in § 38-77-350 (A). We agree. . . . In our view, there is no question Nationwide’s offer form complied with both Wannamaker and § 38-77-350”); see also Bower v. National Gen. Ins. Co., 351 S.C. 112, 120-21, 569 S.E.2d 313, 317 (2002) (“Indeed, we note that the South Carolina Department of Insurance (DOI) has issued a sample offer form which clearly communicates [optional levels of coverage] We strongly encourage insurers to include such language on their offer forms”).



The first requirement of § 350 (A) is that the form must include a “brief and concise explanation of the coverage,” and § 350 (D) provides that “[c]ompliance with this section satisfies the insurer and agent’s duty to explain and offer optional coverages.” No South Carolina appellate court has ever ruled or suggested that the explanation of coverage found in Form 2006 fails to “intelligently advise” the applicant of the nature of UIM coverage under the Wannamaker test.

Demma nevertheless argues that he was not “intelligently advised” of the nature of UIM coverage because the agent did not orally explain that coverage to him. He contends that the written explanation the agent provided to him in the application was not sufficient because he did not read it.

Under South Carolina law, “a competent person is usually presumed to have knowledge and understanding of a document he signs, absent evidence his signature was obtained by misrepresentation, fraud, forgery, or duress.” Floyd, 367 S.C. at 263, 626

S.E.2d at 12. This rule is applicable to dealings between insurance carriers and insureds. See, e.g., Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977) (“[W]e have consistently followed the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have ascertained by reading the instrument, and that one entering into a written contract should read it and avail himself of every reasonable opportunity to understand its content and meaning”); Horton v. Atlantic Life Ins. Co., 187 S.C. 155, 197 S.E.2d 512, 514 (1938) (ruling that “in the absence of any showing of mistake or fraud” the terms of the table in policy controlled); McLeod v. Home Ins. Co., 672 F. Supp. 903, 906 (D.S.C. 1987) (“One cannot complain about the contents of a written instrument if the truth could be ascertained by reading it, except where the party is ignorant and unwary”).



Moreover, a document signer cannot avoid the binding effect of the documents he signs by arguing that he did not read the information contained in the forms or that the other party did not explain the terms to him. In Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), the South Carolina Court of Appeals held: “A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it” and that “the law does not impose a duty on the [contracting party] to explain to an individual what he could learn from simply reading the document.” Id. at 663-64, 582 S.E.2d at 440 (emphasis added).

Demma is bound by his signatures on the Foremost forms. Even though he testified that he did not read the documents before he signed them, he is presumed to have read and understood the documents as a matter of law unless he shows that he was

not competent or that his signature was obtained through "misrepresentation, fraud, forgery, or duress." Demma has failed to produce any evidence that he was somehow under duress or that the agent made any misrepresentations to get him to sign the documents. Moreover, Demma was nearly fifty years old when he applied for the Foremost policy and had experience obtaining other policies from other insurance companies for other vehicles prior to applying for the motorcycle insurance with Foremost. Although Demma did not graduate from high school, he completed a commercial vehicle driving course, obtained his commercial driving license, and drove commercial vehicles for several years. His other job experiences as an assistant manager at an auto parts store and as a plant maintenance engineer show that he was competent to understand the straightforward explanation of UIM coverage provided in the Form 2006 Foremost presented to him.



Thus, by operation of law, Demma is deemed to have read and understood the Foremost documents and is bound by them. He cannot defeat this common law presumption by claiming that he did not read the documents that he signed.

This case is practically identical to the facts of Woodson v. Nationwide Mut. Ins. Co., supra. Nationwide presented a similar four-page application to the Woodsons. They signed the acknowledgement verifying that they had read the explanation of UIM coverage. The Woodsons claimed after their accident, however, that they did not read the form when they signed it and that Nationwide failed to make a meaningful offer because its agent did not orally explain the coverage. The Court of Appeals held that the written form -- which is a similar form presented to Demma in this case -- satisfied the

requirements of Wannamaker and that Nationwide was not obligated to also give the Woodsons an oral explanation of UIM coverage.

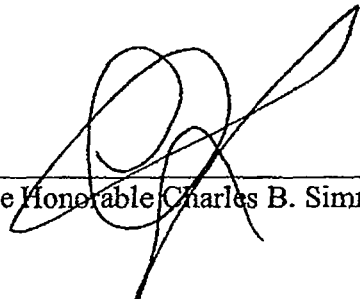
III. Conclusion

Foremost made a meaningful offer of UIM coverage to Demma. The Foremost application presented to Demma intelligibly advised Demma of the nature of UIM coverage and offered him the available limits of UIM coverage at designated rates. The Foremost forms contain the explanation of UIM coverage that is contained in the South Carolina Department of Insurance Form 2006. Demma signed the application verifying that he read the explanation. Under South Carolina law, Demma is presumed to have read the explanation and is bound by his signature to the terms of the documents he signed.

WHEREFORE, IT IS ORDERED AND ADJUDGED that the motion for summary judgment filed by Foremost Insurance Company is GRANTED, and that the motion for summary judgment filed by Louis Demma is DENIED. IT IS FURTHER DECREED that no UIM coverage is provided to Demma under the terms of his Foremost policy.

April ____, 2007

5/2/07


The Honorable Charles B. Simmons, Jr.

\$30,000.00 total per accident limits for bodily injury, and \$10,000.00 per accident for property damage. The default coverage limits that appear when an agent pulls up Progressive's on-line application form are higher than the minimum limits and have to be adjusted downward by the agent if the applicant wants lower limits.

The application included a page entitled "III. Offer of underinsured motorist coverage," which contained a list of alternative coverage limits, including "\$15,000/\$30,000/\$10,000," with a stated premium of \$108.00. The offer of UIM coverage contained the following question and response:

Do you wish to purchase underinsured motorist coverage?
Yes _____ No X

Immediately below the passage quoted above, the following line appears:

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

The plaintiff's signature appears immediately below the aforementioned line. Below the plaintiff's signature, the application states "If your answer is 'yes,' then specify the limits which you desire. These limits cannot exceed your motor vehicle insurance liability limits." Under that statement, there is a typed entry that states "REJECTED."

Lucarelli printed out the entire application template for the applicant's signature once he had entered her information. The computer program would not permit Lucarelli to print anything less than the whole application form. The completed printout included a section entitled "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage." The following provisions were under the subheading "I. Explanation of Coverages," beginning with the fourth paragraph on page 6:

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 that liability insurance is not sufficient 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 underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your motor vehicle liability policy. Some of the more commonly-sold limits of underinsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an [sic] motor vehicle accident, then this Form may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

...

In the future, if you wish to increase or decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then you must then [sic] contact either your insurance agent or your insurance company.

The form refers the applicant to the South Carolina Department of Insurance for any further questions not answered by the agent or the insurer and lists the mailing address, phone number, and e-mail address of the Department's Office of Consumer Services. The plaintiff also signed a page entitled "Applicant's Acknowledgment, which states as follows:

By my signature, I acknowledge that I have read—or have had read to me—the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the spaces provided. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and underinsured motorist coverage, and that payment of the benefits under either of these coverages is subject both to the terms and conditions of my motor vehicle coverage and to the State of South Carolina's laws.

The plaintiff does not deny signing or receiving these forms. She denies having read the forms, or if she did read them, having understood their meaning before signing them. The plaintiff also asserts that she did not notice the coverages and limits listed on the application paperwork or on the declarations pages she later received from Progressive when she received the policy in the mail the first time and again when it was renewed a year later.

II. Procedural History

On July 30, 2007, the plaintiff brought this action against Progressive. On September 14, 2007, the defendant removed this action from the Court of Common Pleas, Dorchester County, South Carolina to the United States District Court for the District of South Carolina, Charleston Division. On April 29, 2008, the defendant moved for summary judgment. On May 15, 2008, the plaintiff responded in opposition to the motion for summary judgment. On May 23, 2008, the defendant replied to the plaintiff's response to the motion for summary judgment.

III. Standard for Deciding a Motion for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Summary judgment is

proper only where the moving party is entitled to judgment as a matter of law, where it is clear what the truth is, and where no genuine issue remains for trial. Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464 (1962).

IV. Meaningful Offer of Underinsured Motorist Coverage

Under South Carolina law, motorists are not required to purchase UIM coverage, but automobile insurance carriers must offer “at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage.” S.C. Code § 38-77-160. Such an offer must be meaningful under the standards set forth in S.C. Code § 38-77-350 or the South Carolina Supreme Court’s decision in State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 521 (1987). In order for an insurer to make a meaningful offer of UIM coverage, “(1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium.” Id.

Moreover, S.C. Code § 38-77-350 requires the South Carolina Department of Insurance to create a form for insurers to use in offering optional coverages, including UIM coverage. The statute states that “[t]he form, at a minimum, must provide for each optional coverage required to be offered:

- (1) a brief and concise explanation of coverage;
- (2) a list of available limits and the range of premiums for the limits;
- (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;

(4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;

(5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

In 2005, the statute provided that it was conclusively presumed that a meaningful offer had been made if the form was completed by the insured. In 2006, the statute was amended to extend the presumption in cases where the form "has been completed by an insurance producer or a representative of the insurer." S.C. Code § 38-77-350(B). "The sufficiency of the offer is a question of law for the court." Antley v. Nobel Ins. Co., 350 S.C. 621, 567 S.E.2d 872, 878 (S.C. Ct. App. 2002). If the insurer fails to make a meaningful offer of UIM, the court will reform the policy to include UIM up to the limits of liability coverage. Butler v. Unisun Ins. Co., 323 S.C. 402, 475 S.E.2d 758, 760 (1996).

In this case, the insurance agent, Lucarelli, entered the plaintiff's information onto the downloaded form before printing it out for the plaintiff to sign. Therefore, Progressive is not seeking the statutory presumption that a meaningful offer was made. Progressive's UIM offer form is substantially similar to the South Carolina Department of Insurance's Form 2006. The South Carolina Court of Appeals has held that the Form 2006 satisfies the statutory and common elements of a meaningful offer of UIM coverage. Clinton v. West Amer. Ins. Co., 364 S.C. 113, 611 S.E.2d 521 (S.C. Ct. App. 2005). Progressive's offer form satisfies both the requirements of the Wannamaker test and S.C. Code § 38-77-350 because: (1) the offer form contains a brief and concise explanation of the coverage under the subheading "I. Explanation of Coverages," beginning with the fourth paragraph on page 6; (2) page 9 has the "Offer of uninsured motorist

coverage” and lists the available UIM coverage limits and the range of premiums for the limits; (3) page 9 of the form provides a space for the insured to mark her acceptance or rejection of UIM coverage and a space to state the coverage limits desired; (4) page 10 provides signature space for the insured to acknowledge that she was offered optional UIM and additional UM coverages; and (5) page 7 states the required contact information for the Department of Insurance, with instructions for the insured to contact the agency with any remaining questions. The plaintiff was provided with adequate information to allow her to accept or reject the coverage. The plaintiff’s assertion that she did not read or review the coverages upon receipt of the forms or at the time the coverage was renewed does not require the Court to reform the policy. Therefore, the application in question amounted to a meaningful offer of UIM coverage.

V. Conclusion

The defendant’s motion for summary judgment is granted.

AND IT IS SO ORDERED.



**C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE**

July 3, 2008
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

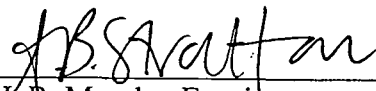
Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

v.

South Carolina Farm Bureau Mutual Insurance Company Appellant.

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

December 16, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 18 2009
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

South Carolina Farm Bureau Mutual Insurance Company, ...Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ...Respondents.

FINAL BRIEF OF APPELLANT

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

TABLE OF CONTENTS

Table of Authorities.....	ii
Issues on Appeal.....	iv
Statement of the Case	1
Statement of the Facts.....	1
Argument.....	5
I) FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND <u>WANNAMAKER</u>	5
A) FARM BUREAU'S OFFER FORM SATISFIES THE REQUIREMENTS OF § 38-77-350(A).	11
B) FARM BUREAU'S OFFER FORM SATISFIES THE REQUIREMENTS OF <u>WANNAMAKER</u>	16
II) EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND <u>WANNAMAKER</u> , THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN.	19
III) THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.	22
Conclusion	26

TABLE OF AUTHORITIES

Cases

<u>Atkins v. Horace Mann Ins. Co.,</u> 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008).....	6-8, 18
<u>Bower v. Nat'l Gen. Ins. Co.,</u> 351 S.C. 112, 569 S.E.2d 313 (2002)	16
<u>Burch v. South Carolina Farm Bureau Mut. Ins. Co.,</u> 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002).....	15, 16, 19
<u>Butler v. Unisun Ins. Co.,</u> 323 S.C. 402, 475 S.E.2d 758 (1996)	16
<u>Campbell v. Carr,</u> 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004).....	5
<u>Clinton v. West American Ins. Co.,</u> 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005).....	15
<u>Crewe v. Blackmon,</u> 289 S.C. 229, 233, 345 S.E.2d 754, 756 (Ct. App. 1986).....	5
<u>Dewart v. State Farm Mut. Auto. Ins. Co.,</u> 296 S.C. 150, 370 S.E.2d 915 (Ct. App. 1988).....	5
<u>Evans v. State Farm Mut. Auto. Ins. Co.,</u> 269 S.C. 584, 239 S.E.2d 76 (1977)	22
<u>Felts v. Richland County,</u> 303 S.C. 354, 400 S.E.2d 781 (1991)	5
<u>Floyd v. Nationwide Mut. Ins. Co.,</u> 367 S.C. 253, 626 S.E.2d 6 (2006)	5-7, 9, 11, 19, 22, 23
<u>Foremost Ins. Co. v. Demma,</u> No. 2206-CP-23-8108 (Circ. Ct. May 15, 2007)	9
<u>Horton v. Atlantic Life Ins. Co.,</u> 187 S.C. 155, 197 S.E.2d 512 (1938)	22
<u>Jackson v. State Farm Mut. Auto. Ins. Co.,</u> 301 S.C. 440, 392 S.E.2d 472 (Ct. App. 1990).....	5

<u>Koontz v. Thomas</u> , 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999)	24
<u>Mathis v. State Farm Mut. Auto. Ins. Co.</u> , 315 S.C. 71, 431 S.E.2d 619 (Ct. App. 1993)	5
<u>McLeod v. Home Ins. Co.</u> , 672 F.Supp. 903 (D.S.C. 1987)	22
<u>Phillips v. Progressive Cas. Ins. Co.</u> , No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008)	9
<u>Progressive Cas. Ins. Co. v. Leachman</u> , 362 S.C. 344, 608 S.E.2d 569 (2005)	8, 10, 18
<u>Regions Bank v. Schmauch</u> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	23
<u>State Farm Mut. Auto. Ins. Co. v. Wannamaker</u> , 291 S.C. 518, 354 S.E.2d 555 (1987)	5-9, 11, 16-19, 21, 22
<u>Woodson v. Nationwide Mut. Ins. Co.</u> , No. 2002-UP-398 (Ct. App. 2002)	8

Statutes

S.C. Code Ann. § 38-77-350	5-16, 19, 23

ISSUES ON APPEAL

- I) WHETHER FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.
- II) WHETHER THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.
- III) WHETHER THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.

STATEMENT OF THE CASE

This appeal arises out of a dispute between South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau") and Ronnie D. Jenkins and Sandra B. Jenkins regarding the amount of uninsured motorist (UM) coverage applicable to an automobile accident that occurred on July 15, 2006. Farm Bureau brought a declaratory action seeking a declaration that it made a proper and valid offer of UM coverage to the Jenkins and that the Jenkins purchased UM coverage in amounts less than the limits of liability coverage contained in his policy. Therefore, the Jenkins' policy should not be reformed to provide UM coverage up to the liability limits.

The trial court determined Farm Bureau failed to prove it made a meaningful offer of UM and underinsured motorist (UIM) coverages to the Jenkins and therefore ordered the policy to be reformed to provide UM coverage in an amount equal to the policy's liability coverage (250/500/100). Specifically, the trial court looked outside of Farm Bureau's UM/UIM offer form itself to determine whether the Jenkins received a meaningful offer. After evaluating the "totality of the transaction," the trial court gave credence to Mr. Jenkins' testimony that he had no understanding of UM/UIM coverage, despite the fact he signed three separate acknowledgements and three separate policy change forms to the contrary. (R.pp.5, 122-132.)

STATEMENT OF THE FACTS

Sandra Jenkins sustained injuries as a result of a motor vehicle accident on July 15, 2006, when she was struck by a trailer which was being towed by an unidentified vehicle whose driver left the scene. The Jenkins submitted a claim to Farm Bureau for UM coverage.

The Jenkins had an automobile policy in effect with Farm Bureau on the date of the accident. The policy, number AU 0231001, covered two vehicles and carried liability limits of \$250,000 per person, \$500,000 per accident, and \$100,000 for property damage (250/500/100). However, the policy only provided UM and UIM coverage in the amounts of \$25,000.00 per person, \$50,000.00 per occurrence, and \$25,000.00 for property damage (25/50/25).

Prior to May 30, 2003, the Jenkins had three policies with Farm Bureau and carried liability limits of 25/50/25. For these three policies, the Jenkins chose to carry the same limits of liability, UM and UIM, all of which were above the mandatory minimum at the time. However, they made specific changes to their policies following their involvement in an automobile accident in Florida in which they were not at fault. As a result of the accident, an action was filed against Mr. Jenkins. On April 9, 2003, Farm Bureau sent Mr. Jenkins an Excess Letter advising him that his liability limits may not be sufficient to cover the potential liability and recommending that he retain counsel to represent himself personally. (R.p.133.)

Approximately six weeks after receiving the Excess Letter, the Jenkins called their Farm Bureau agent to increase their liability coverage. (R.p.41.) Mr. Jenkins admits that the reason he increased his liability coverage is because of the accident in Florida. (R.pp.91-92.) On May 30, 2003, Mr. Jenkins met the agent on duty, Joseph Lee, to confirm the changes he requested over the phone by signing three written change request forms. (R.pp.122-24.) The Jenkins increased the liability limits on all three policies to 250/500/100. However, they chose to keep the UM and UIM limits the same. At the same time, they specifically chose to increase their deductibles for comprehensive

coverage on two of the policies and to increase the deductible for collision coverage on another policy. They also deleted collision coverage on one policy. The increase in deductibles coupled with the choice to reject additional UM and UIM coverage kept the Jenkins' premium about the same while increasing the liability limits. The Jenkins confirmed their selections both on the three change request forms and on the three UM/UIM offer forms presented to and signed by them. (R.pp.122-32.)

Based on their requests, the Jenkins' existing policies were modified to reflect their written instructions. From May 30, 2003, the date of the changes, until the time of the accident over three years later, two of the policies lapsed, leaving one policy with UM and UIM limits of 25/50/25 in effect at the time of the accident.

In addition to being presented with and signing the written forms, the Jenkins also received a thorough explanation of UM and UIM coverage from Farm Bureau agent Joseph Lee. (R.pp.39, 45, 49, 60.) Lee followed the same procedure with the Jenkins that he follows with every client including explaining UM and UIM coverage during the quote stage and when the documents are being signed. (R.pp. 44, 45, 49, 52, 60.) Each time he meets with prospective insureds, he shows them the offer form and tells them that the form explains UM and UIM coverage. (R.pp.44, 46, 51, 52.) He then quotes premium rates for levels of coverage requested by the applicant. (R.pp.44, 45.) In the Jenkins' case, when an insured is seeking to increase his liability limits without also increasing the UM and UIM coverage, Lee offers the UM and UIM coverage at the higher limit of liability coverage and quotes the rates for the additional coverage. (R.p.44.) In doing so, Lee explains the benefits of UM and UIM coverage, specifically describing how liability coverage only protects other parties, but UM and UIM coverage

protects the insureds. (R.pp.45, 60.) In summary, Lee would encourage the applicant to purchase the additional, optional coverage or give specific premium information and other information about the coverages. (R.pp. 46, 53.) Because Lee always follows this standard process, he was able to testify with confidence that he explained UM and UIM coverage to the Jenkins on the day they increased their liability coverage. (R.pp. 52, 73.)

Mr. Jenkins testified that he did not particularly remember meeting agent Joseph Lee when he went to raise his liability limits. (R.p.83.) He admitted he changed his policy in an effort to be better protected in response to the Excess Letter he received after his accident in Florida. (R.pp.91-92.) At the time, he was unemployed and knew that increasing his collision and comprehensive deductibles would offset the higher premium brought about by increasing the liability limits on his three policies. (R.pp.92, 93, 95.) Mr. Jenkins admitted that the amount of UM coverage he chose is clearly shown on the documents he signed. (R.pp.96, 97.) He admitted signing at least six documents asking for \$25,000 in UM coverage and receiving at least six declarations or renewal notices subsequent to May 30, 2003, indicating his chosen UM limits. (R.pp.97, 98, 101, 102; 122-32, 134-41) However, Mr. Jenkins testified he never noticed the documents because his wife pays the bills. (R.pp.97, 98, 101.) He also asserted that he asked agent Joseph Lee for "maximum coverage" and Lee made a mistake in not giving him full UM coverage despite the fact Mr. Jenkins signed six documents indicating his choice to purchase only \$25,000 of UM coverage. (R. pp.84, 102.)

STANDARD OF REVIEW

The standard of review in a declaratory judgment action is determined by the underlying issue or issues. Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781

(1991). Actions involving reformation of instruments are equitable in nature. Crewe v. Blackmon, 289 S.C. 229, 233, 345 S.E.2d 754, 756 (Ct. App. 1986); see also Mathis v. State Farm Mut. Auto. Ins. Co., 315 S.C. 71, 431 S.E.2d 619 (Ct. App. 1993); Jackson v. State Farm Mut. Auto. Ins. Co., 301 S.C. 440, 392 S.E.2d 472 (Ct. App. 1990); Dewart v. State Farm Mut. Auto. Ins. Co., 296 S.C. 150, 370 S.E.2d 915 (Ct. App. 1988) (holding actions involving reformation of insurance contracts are equitable). In an action in equity, tried by the judge alone, an appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence and may reverse a factual finding by the trial judge when the appellant satisfies the court that the finding is against the preponderance of the evidence. Campbell v. Carr, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004).

ARGUMENTS

D) FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.

The trial court erred in relying on Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 626 S.E.2d 6 (2006), when Farm Bureau's offer form itself fully satisfies the requirements of S.C. Code Ann. § 38-77-350(A) and State Farm Mutual Automobile Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). The Floyd holding is "limited to the issue of whether [the insurer] was entitled to the conclusive presumption of a meaningful offer of UIM coverage pursuant to S.C. Code Ann. § 38-77-350(B)." Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008). The Floyd Court made this clear by stating: "Our decision does not resolve the question of whether Insurer made a meaningful offer to [insured] in this case. We simply conclude

that Insurer ... is denied the benefit of the conclusive statutory presumption a meaningful offer was made.” Floyd, 367 S.C. at 264, 626 S.E.2d at 12.

Farm Bureau has never asserted that it is entitled to the conclusive presumption of a meaningful offer because the agent inserted the mark showing the Jenkins were accepting additional UM coverage. See Floyd, 367 S.C. at 263, 626 S.E.2d at 12 (“The offer form is not ‘properly completed and executed by the named insured’ – thus triggering the conclusive statutory presumption a meaningful offer was made pursuant to Section 38-77-350(B) – unless the insured herself personally marks, selects, and signs the form.”). The trial court was correct in determining Farm Bureau is not entitled to a conclusive presumption. However, the trial court erred in ending its analysis there. As the Floyd Court noted, in cases where the insurer is denied the benefit of the conclusive statutory presumption, the insurer can still demonstrate it made a meaningful offer pursuant to § 38-77-350(A) and Wannamaker. Id. at 264, 626 S.E.2d at 12.

In Atkins, this Court held that even though an insurer was not entitled to a conclusive presumption under § 38-77-350(B), the insurer was able to sustain its burden of proving it made a meaningful offer under Wannamaker by reliance on *the contents of the written offer form standing alone*. Atkins, 376 S.C. 625, 658 S.E.2d 106. The insured in Atkins relied heavily on Floyd to claim the insurer did not intelligibly advise him of the nature of UIM coverage as required by Wannamaker. Id. at 631, 658 S.E.2d at 110. Like Mr. Jenkins, the insured in Atkins testified he did not recall putting a check mark for the levels of UIM coverage that were selected. This Court rejected the insured’s argument and found that Floyd was inapplicable because “the holding in Floyd was

limited to the issue of whether [the insurer] was entitled to the conclusive presumption” pursuant to § 38-77-350(B). Id.

Atkins, like the instant case, was not about the conclusive presumption provision. With the conclusive presumption provision not at issue, the Court’s sole determination was whether the insurer made a meaningful offer. Looking at the offer form alone, this Court determined the “form clearly explains the nature of UIM coverage.” Id. at 631, 658 S.E.2d at 109. Further, the “form adequately specified the limits of optional coverage, and the form also adequately explained that optional coverages were available for an additional premium.” Id. at 632, 658 S.E.2d at 110 n.2. Based on the form alone, this Court found a meaningful offer was given.

However, the Trial Court here found Atkins “inappropriate” based on perceived factual distinctions that have no bearing on the issue. (R.p.6.) Although the Jenkins did appear in person to sign the forms, the record does not support the trial court’s finding that the Jenkins did so in order to “obtain advice.” To the contrary, the policy changes had already been decided upon by the Jenkins over the telephone and they went to the office merely to execute the change request forms and corresponding selection/reject forms. (R.p.41.) Moreover, the Jenkins signed every required space on six separate documents, which is much more convincing than Aktins’ signatures on a single form. Lastly, the trial court indicated there was no evidence, as there had been in Atkins, regarding the Jenkins’ level of sophistication. This is completely contrary to the executed documents, which show that Mr. Jenkins understood the import of an excess letter, very quickly contacted Farm Bureau to increase his liability limits while simultaneously increasing deductibles for optional property coverages that kept his premium roughly the

same. This demonstrates an understanding and sophistication that is no less impressive than the level attributed to the insured in Aktins. See also Leachman 362, S.C. at 350, 608 S.E.2d at 572 (finding a meaningful offer was given in light of the fact the insured knew enough to purchase some coverage.) Therefore, it was error to side-step the Atkins holding and find in favor of the Jenkins.

Similarly, in Woodson v. Nationwide Mutual Insurance Co., this Court addressed the exact same type of form as the one the Jenkins signed and decided that the form “standing alone” and “[o]n its face” “clearly complies with both the statutory and common law mandates” for a meaningful offer. Woodson v. Nationwide Mut. Ins. Co., No. 2002-UP-398 (Ct. App. 2002)¹ (R.p.142-147.). Like Mr. Jenkins, the insured in Woodson testified she did not understand the meaning of the optional coverage when she signed the form. She also testified that the insurance agent neither explained UIM coverage to her nor afforded her an opportunity to read the form. Rejecting the insured’s argument that failure to orally explain UIM coverage or give her an opportunity to read the form meant the insurer failed to make a meaningful offer, this Court agreed with the insurer that the “form, standing alone, satisfies the Wannamaker meaningful offer test and the factors set forth in § 38-77-350(A).” The Court highlighted language from the form which explained UIM coverage, provided contact information for the Department of Insurance for any further questions, allowed the insured to mark whether to accept UIM coverage, and acknowledged that the insured had received an explanation of the coverage

¹ Appellant acknowledges that unpublished opinions have no precedential value pursuant to Rule 220(a), SCACR. However, given the widespread confusion in this area of law regarding the application of § 38-77-350 and Wannamaker and how those two tests relate to one another, Appellant asks this Court to carefully consider the reasoning and holding of Woodson as it is a clear, well-reasoned opinion issued by this Court.

and had chosen whether or not to accept it. The Jenkins were given the opportunity to read over and sign precisely this same language on their form.

Further, in Foremost Insurance Co. v. Demma and in Phillips v. Progressive Casualty Insurance Co., the trial court and the District Court, respectively, held that an offer form exactly like Farm Bureau's form fully satisfied the statutory and common law requirements for a meaningful offer despite the fact that the statutory presumption did not apply. Foremost Ins. Co. v. Demma, No. 2206-CP-23-8108 (S.C. Com. Pl. May 15, 2007); Phillips v. Progressive Cas. Ins. Co., No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008) (R.pp.148-163.). Both of these decisions rely on the form alone and both were decided after Floyd.

The trial court's obvious confusion over the impact of the Floyd decision is demonstrated by the following paragraph in the Order appealed from.

The court must note that it seems ludicrous that an insured is not bound by the acknowledgment he or she signs as set forth on the form and here signed by both insured. Unfortunately, our courts have carved out a rule to the effect that a detailed acknowledgment that reflects detailed information, crucial to a fair contractual relation between the insured and the insurer, is valueless. Of course, the court realizes the disparate positions of the parties here, but in spite of this, the law in this instance diminishes the value of one's signature and places absolutely no responsibility on one to watch out for their own interest and be held to their written statements (the acknowledgment here is a statement).

(R.p.8.)

This view would "throw the baby out with the bath water" and undercut the very reason that a meaningful offer requirement exists in the first place. The bedrock of this requirement is to give "the insured the opportunity to make an intelligent and informed decision." Progressive Casualty Ins. Co. v. Leachman, 362 S.C. 344, 350-51, 608 S.E.2d 569, 572 (2005). The Court twice pointed out in Leachman that the goal is for insureds

to be provided with adequate information to make an intelligent and informed decision on whether to accept or reject UM or UIM coverage, and to determine which amounts of coverage will best suit their needs. Id. at 351, 352, 608 S.E.2d at 572, 573. The Supreme Court even went a step further, holding that to force an insurer to pay an amount listed on the form, which was specifically rejected by the insured by the selection of different coverage, would violate public policy. Id.

Farm Bureau's offer form accomplishes the goal of providing sufficient information for the Jenkins to make an informed decision about UM coverage. The offer form provided the Jenkins with all of the information Farm Bureau was legally obligated to provide in order to allow the Jenkins to make an informed decision.

The error of the trial court, in refusing to consider the written form as proof that Farm Bureau made a meaningful offer of optional UM and UIM coverage, is not only apparent in light of the case law, but it is also apparent in light of the plain language of the statute. The trial court determined that because the Jenkins did not personally mark the form, the form failed to meet the requirements of § 38-77-350(A). The fact that the Jenkins did not personally mark the form simply means that Farm Bureau is not entitled to a conclusive presumption under § 38-77-350(B). It has no bearing whatsoever on whether the form itself meets the requirements of § 38-77-350(A).

The analysis for each subsection of § 38-77-350 is different. Under subsection (B), the conclusive presumption provision only applies once the form has been "properly completed and executed by the named insured." Thus, whether the insurer benefits from the conclusive presumption hinges on the proper completion and execution of the offer

form by the insured². In contrast, whether the insurer meets the requirements of subsection (A) hinges on the blank form itself. The introduction to subsection (A) states:

The director or his designee shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies. This form must be used by insurers for all new applicants. The form, at a minimum, must provide for each optional coverage required to be offered... [list of requirements].

The plain language of the statute indicates that the requirements of subsection (A) apply to the blank form produced by insurers, approved by the Department of Insurance, and provided to all new applicants. In other words, whether the form complies with § 38-77-350(A) is determined before the insured completes the form.

Considering the case law and plain language of the statute, the trial court erred in applying Floyd and its decision should be reversed because Farm Bureau's offer form fully satisfies the requirements of § 38-77-350(A) and Wannamaker.

A) FARM BUREAU'S OFFER FORM SATISFIES THE REQUIREMENTS OF § 38-77-350(A).

Section 38-77-350(A) requires the form used by automobile insurers in offering optional coverages provide:

- (1) a brief and concise explanation of the coverage;
- (2) a list of available limits and the range of premiums for the limits;
- (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;
- (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages; and
- (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

² S.C. Code Ann. § 38-77-350(B) was amended in 2006 and now reads: "If this form is signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and 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 careful review of the offer forms signed by the Jenkins, including the offer form for the policy that remained in effect at the time of Mrs. Jenkins's accident, show that Farm Bureau satisfied the requirements of § 38-77-350(A). (R.pp.125-32.)

**1) FARM BUREAU'S OFFER FORM INCLUDED A BRIEF,
CONCISE EXPLANATION OF COVERAGE.**

The first requirement under § 38-77-350(A) is that the offer include "a brief, concise explanation of coverage." This requirement is satisfied by the explanation contained on the first page of the offer form which states:

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically must provide uninsured motorist coverage of \$15,000/\$30,000/\$10,000. All uninsured motorist coverages provide for a \$200 deductible for property damage claims....

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to full compensate you for your damages.

(R.pp.125, 129, 131.)

**2) FARM BUREAU'S OFFER FORM INCLUDED A LIST OF
AVAILABLE LIMITS AND THE RANGE OF PREMIUMS FOR
THE LIMITS.**

The second requirement under § 38-77-350(A) is that the offer form include "a list of available limits and the range of premiums for the limits." This requirement is satisfied on the second page of the offer form which states:

OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

LIMITS OF COVERAGE AMOUNT OF INCREASED PREMIUM FOR
TERRITORY

Commercial	6-Month Private Pass.		6-Month
	Single Car	Multi-Car	
\$15,000/\$30,000/\$10,000	\$ 7.14	\$ 8.92	\$ 9.17
\$15,000/\$30,000/\$15,000	\$ 7.34	\$ 9.18	\$ 9.72
\$25,000/\$50,000/\$25,000	\$ 8.16	\$ 10.19	\$ 14.16
\$50,000/\$100,000/\$25,000	\$ 9.69	\$ 12.10	\$ 17.49
\$50,000/\$100,000/\$50,000	\$ 10.20	\$ 12.75	\$ 19.14
\$100,000/\$300,000/\$50,000	\$ 13.55	\$ 16.95	\$ 22.46
\$250,000/\$500,000/\$50,000	\$ 18.75	\$ 23.44	\$29.12
_____/_____/_____	\$ _____	\$ _____	\$ _____

OFFER OF ADDITIONAL UNDERINSURED MOTORIST COVERAGE

LIMITS OF COVERAGE AMOUNT OF INCREASED PREMIUM FOR
TERRITORY

Commercial	6-Month Private Pass.		6-Month
	Single Car	Multi-Car	
\$15,000/\$30,000/\$10,000	\$ 14.38	\$ 17.97	\$ 6.65
\$15,000/\$30,000/\$15,000	\$ 14.44	\$ 18.05	\$ 7.19
\$25,000/\$50,000/\$25,000	\$ 17.09	\$ 21.36	\$ 13.04
\$50,000/\$100,000/\$25,000	\$ 25.43	\$ 31.78	\$ 18.34
\$50,000/\$100,000/\$50,000	\$ 25.61	\$ 32.02	\$ 19.99
\$100,000/\$300,000/\$50,000	\$ 38.11	\$ 47.65	\$ 28.31
\$250,000/\$500,000/\$50,000	\$ 62.28	\$ 77.87	\$ 41.62
_____/_____/_____	\$ _____	\$ _____	\$ _____

(R:pp.126-27, 130, 132.)

**3) FARM BUREAU'S OFFER FORM INCLUDED A SPACE FOR
THE INSURED TO MARK WHETHER HE CHOOSES TO
ACCEPT OR REJECT THE COVERAGE AND A SPACE TO
SELECT THE LIMITS OF COVERAGE DESIRED.**

The third requirement under § 38-77-350(A) is that the offer form include "space
for the insured to mark whether the insured chooses to accept or reject the coverage, and

a space to select the limits of coverage desired." This requirement is satisfied on the second page of the offer form which reads:

Do you wish to purchase "Additional Uninsured Motorist Coverage"? () Yes () No
If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits. I select ____ / ____ / ____

....
Do you wish to purchase "Underinsured Motorist Coverage"? () Yes () No
If your answer is "no," you have rejected this coverage and must sign here:

If your answer is "yes," then you must specify the limits you desire. These limits cannot exceed your automobile liability limits. I select ____ / ____ / ____

(R.pp.126-27, 130, 132.)

4) FARM BUREAU'S OFFER FORM INCLUDED A SPACE FOR THE INSURED TO SIGN AND ACKNOWLEDGE THE OPTIONAL COVERAGE HAS BEEN OFFERED.

The fourth requirement under § 38-77-350(A) is that the offer form include "a space for the insured to sign the form, acknowledging that the optional coverage has been offered." This requirement is satisfied by the following paragraph contained on the third page of the offer form:

APPLICANT'S ACKNOWLEDGEMENT:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Your Signature _____
Your Signature _____

Today's Date _____

(R.pp.127, 130, 132.)

**5) FARM BUREAU'S OFFER FORM INCLUDED THE
CONTACT INFORMATION FOR THE DEPARTMENT OF
INSURANCE.**

The fifth and final requirement under § 38-77-350(A) is that the offer form include "the mailing address and telephone number of the Department, so that the insured may contact it with any questions that the insurance agent is unable to answer." This requirement is satisfied on the second page of the offer form which states:

If you have any further questions, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180 (800) 788-3487
E-Mail Address: CnsmMail@doi.state.sc.us

(R.pp.126, 129, 131.)

Farm Bureau's offer form clearly satisfies the five requirements of § 38-77-350(A). Moreover, South Carolina courts have held that the form used by Farm Bureau, Form SAUOC (a revision of Form 2006), meets the requirements of § 38-77-350(A). In Clinton v. West American Insurance Co., this Court stated: "The South Carolina Court of Appeals has specifically held that the form used by [the insurer], Form 2006, meets the requirements of § 38-77-350." Clinton, 364 S.C. 113, 122, 611 S.E.2d 521, 526 (Ct. App. 2005). In Burch v. South Carolina Farm Bureau Mutual Insurance Co., this Court evaluated the same form as the ones the Jenkins signed and stated: "We agree that the [Form 2006] used by Farm Bureau in this case falls within the requirements of South

Carolina's statutory and case law, such that Farm Bureau made a meaningful and effective offer of UIM coverage to [the insured]." Burch, 351 S.C. 342, 349, 569 S.E.2d 400, 404 (Ct. App. 2002); see also Bower v. National Gen. Ins. Co., 351 S.C. 112, 120-21, 569 S.E.2d 313, 317 (2002) ("Indeed, we note that the South Carolina Department of Insurance (DOI) has issued a sample offer form which clearly communicates [optional levels of coverage] We strongly encourage insurers to include such language on their offer forms."); Butler v. Unisun Ins. Co., 323 S.C. 402, 475 S.E.2d 758 (S.C.1996) (holding the same rejection form as Farm Bureau's complies with § 38-77-350).

The fact that the Jenkins did not personally mark their choices regarding UIM/UM coverage does not make the form deficient under § 38-77-350(A). It only means that Farm Bureau is not entitled to a conclusive presumption under § 38-77-350(B). Thus, the trial court erred and its decision should be reversed because Farm Bureau's offer form fully satisfies the requirements of § 38-77-350(A) and the Jenkins offered no evidence to rebut their capacity to sign the form and complete the policy change requests.

B) FARM BUREAU'S OFFER FORM SATISFIES THE REQUIREMENTS OF WANNAMAKER.

The offer form not only meets the requirements of § 38-77-350(A), but it also meets the requirements of Wannamaker. Under the Wannamaker test, an offer is meaningful when: (1) the insurer's notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of optional coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the optional coverage; and (4) the insured is told that optional

coverages are available for an additional premium. Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556.

After misunderstanding the limited holding of Floyd, the trial court erred in its analysis of the Wannamaker test. Instead of evaluating the form alone, as in Atkins, the trial court looked at "the totality of the transaction" to determine whether Farm Bureau's offer met the requirements of Wannamaker. (R.p.5.) The trial court erred in looking outside of the offer form itself and in considering extrinsic evidence when the offer form standing alone fully satisfies the requirements of Wannamaker.

A careful review of the offer form itself shows that Farm Bureau met the four requirements of the Wannamaker Test. (R.pp.125-32.)

**1) FARM BUREAU'S NOTIFICATION PROCESS WAS
COMMERCIALY REASONABLE.**

The first requirement under Wannamaker is that "the insurer's notification process must be commercially reasonable, whether oral or in writing." Wannamaker, 291 S.C. at 521, 354 S.C. at 556. Farm Bureau's offer was given in written form on the UM/UIM offer form provided to the Jenkins. Therefore, Farm Bureau's form is commercially reasonable under Wannamaker.

**2) FARM BUREAU'S OFFER FORM SPECIFIED THE LIMITS
OF OPTIONAL COVERAGE.**

The second requirement under Wannamaker is that "the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms." Wannamaker, 291 S.C. at 521, 354 S.C. at 556. As listed in the previous section, Farm Bureau's offer form clearly specifies the limits for both optional UM and UIM coverage. Thus, the offer form satisfies the second requirement under Wannamaker.

3) FARM BUREAU'S OFFER FORM INTELLIGENTLY ADVISED THE INSURED OF THE NATURE OF THE OPTIONAL COVERAGE.

The third requirement under Wannamaker is that "the insurer must intelligibly advise the insured of the nature of the optional coverage." Id. The Atkins Court held that an offer form clearly explains the nature of UIM coverage when "various options of UIM coverage limits are set out, every appropriate selection is made, each signature block is signed, and the form adequately explains where the insured is to seek out additional information if he or she has questions." Atkins, 376 S.C. at 631, 658 S.E.2d at 109-110. Farm Bureau's offer form intelligibly advises the insured of the nature of the optional coverage because it sets out various options of UIM coverage limits and explains where the insured is to seek out additional information if he has questions. Further, the three offer forms completed by the Jenkins indicate that every appropriate selection was made by the Jenkins and marked by the agent, and each signature block was signed by the Jenkins. On each form, the Jenkins indicated they wished to purchase "Additional Uninsured Motorist Coverage" and "Additional Underinsured Motorist Coverage" and selected limits of 25/50/25 for both as specified by the agent. (R.pp.126-27, 130, 132.) Also, both Mr. and Mrs. Jenkins signed and dated the three acknowledgments. Therefore, Farm Bureau's offer form satisfied the third requirement under Wannamaker. See also Progressive Casualty Ins. Co. v. Leachman, 362 S.C. 344, 608 S.E.2d 569 (2005) (holding a form allowing the insured to choose different amounts of coverage up to the amount of liability coverage "gave the insured the opportunity to make an intelligent and informed decision on whether to purchase UIM coverage"); (Burch v. South Carolina Farm Bureau Mut. Ins. Co., 351 S.C. 342, 569 S.E.2d 400 (Ct. App.

2002) (holding that the form met the case law requirements when the form advised the insured he could purchase UIM coverage in limits up to limits of his liability coverage).

4) FARM BUREAU'S OFFER FORM TOLD THE INSURED THAT OPTIONAL COVERAGES ARE AVAILABLE FOR AN ADDITIONAL PREMIUM.

The fourth requirement under Wannamaker is that "the insured must be told that optional coverages are available for an additional premium." Wannamaker, 291 S.C. at 521, 354 S.C. at 556. As the list in the previous section shows, Farm Bureau's offer form clearly specifies the additional premium for each option of coverage. For example, the UM limits chosen by the Jenkins, \$25,000/\$50,000/\$25,000, cost an additional \$8.16. (R.pp.126, 130, 132.) Each additional premium is clearly set out on the offer form in compliance with the fourth requirement under Wannamaker.

The five requirements of § 38-77-350(A) and the four requirements of Wannamaker are clearly satisfied by Farm Bureau's offer form. The trial court erred in applying Floyd and in misunderstanding the analysis pertaining to the conclusive presumption provision. Because Farm Bureau's offer form satisfies the statutory and case law requirements, the decision of the trial court should be reversed.

II) EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER, THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN.

Farm Bureau's offer form fully satisfies the requirements of § 38-77-350(A) and Wannamaker. If, however, this Court finds the form to be deficient in any respect, which has not been alleged by the Jenkins, then the testimony of insurance agent Joseph Lee shows that the Jenkins were given a meaningful offer.

Joseph Lee testified he has been a licensed insurance agent for six years. (R.p.38.) Lee met with the Jenkins when they came into his office to add a vehicle and raise their liability limits on three automobile insurance policies. (R.p.39.) According to Lee, the Jenkins raised their liability limits while simultaneously raising their comprehensive and collision deductibles in an effort to reduce their premium. (R.p.40.)

Lee testified that any time a client raises his liability limits and his UM and UIM coverage is not equal to the liability limits, he offers the client additional UM and UIM coverage up to the liability limits. (R.p.44.) When he offers the additional UM and UIM coverage, he shows clients what the different premiums would be according to the different rates available. (R.pp.44-45.) He discussed with the Jenkins what UM and UIM coverages are, explaining to the Jenkins the same thing he tells any client who walks through his doors: "[U]ninsured motorist is your protection against a motorist that strikes you that has no insurance coverage. And then underinsured motorist protection is protection against motorist that strikes you that has minimum limits of liability from your State or another State up to your stated amounts." (R.pp.45, 60.)

In addition to orally explaining UM and UIM coverage, Lee presents clients with the offer form which contains a written explanation of the optional coverages. (R.pp.46-49.) Just as he does with all clients, he gave the Jenkins the opportunity to read over the form before they signed it. (R.p.51.) The Jenkins, like some of Lee's other clients, rejected additional UM coverage realizing only a certain amount of UM coverage was mandatory. (R.p.52.) Lee tries to talk his clients out of rejecting additional coverage, but, according to Lee, the ultimate choice is the client's. (R.p.53.)

When Lee presented the Jenkins with an offer of UM and UIM coverage, he gave them adequate information about the nature of the coverage, the available limits of coverage, and the price of coverage. (R.p.53.) Lee follows the same procedure with every client. (R.pp.44, 52, 53, 73.) Although Lee does not remember the exact meeting with the Jenkins, the marks Lee made on the offer form indicate exactly the choices the Jenkins requested – that they did not want additional UM coverage. (R.p.73.)

Lee's testimony shows that the Wannamaker requirements for a meaningful offer were met. Specifically, the offer was made in a commercially reasonable manner because Lee met with the Jenkins and not only orally presented the offer but also provided them with the written offer form. Lee also specified the limits of optional coverage up to their liability limits. (R.p.44.) He told them that the optional coverages were available for an additional premium, testifying, "Part of my procedure is to go on our computer system and rate the changes to see what the premium increase would be." (R.p.44.) Finally, as noted above, he intelligibly advised the Jenkins of the nature of the optional coverages. (R.pp.45, 60.)

Therefore, even if Farm Bureau's offer form is somehow deficient, which has not been alleged by the Jenkins nor determined by the trial court, then agent Joseph Lee's testimony certainly alleviates any deficiency and shows that the Jenkins were given a meaningful offer in compliance with Wannamaker.

III) THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.

The Jenkins signed three change request forms and three UM/UIM offer forms indicating their choice to reject additional UM coverage. (R.pp.122-32.) Their signatures bound them to the agreement and they cannot now claim that they should be

relieved of the clear choice they made to reject additional UM coverage. Under South Carolina law, "a competent person is usually presumed to have knowledge and understanding of a document he signs, absent evidence his signature was obtained by misrepresentation, fraud, forgery, or duress." Floyd, 367 S.C. at 263, 626 S.E.2d at 12. There is no exception to this rule for dealings between insurance carriers and insureds. See, e.g., Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977) ("[W]e have consistently followed the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have ascertained by reading the instrument, and that one entering into a written contract should read it and avail himself of every reasonable opportunity to understand its content and meaning"); Horton v. Atlantic Life Ins. Co., 187 S.C. 155, 197 S.E.2d 512, 514 (1938) (ruling that "in the absence of any showing of mistake or fraud" the terms of the table in policy controlled); McLeod v. Home Ins. Co., 672 F. Supp. 903, 906 (D.S.C. 1987) ("One cannot complain about the contents of a written instrument if the truth could be ascertained by reading it, except where the party is ignorant and unwary").

As noted above, Floyd only applies to cases in which a conclusive presumption is sought. Since Farm Bureau has never asserted that it was entitled to a conclusive presumption under §38-77-350(B), any reliance on Floyd to determine whether a meaningful offer was made in the first instance was erroneous.

Moreover, a document signer cannot avoid the binding effect of the documents he signs by arguing that he did not read the information contained in the forms or that the other party did not explain the terms to him. In Regions Bank v. Schmauch, 354 S.C.

648, 582 S.E.2d 432 (Ct. App. 2003), this Court held: "A person who signs a contract or other written document *cannot avoid the effect of the document by claiming he did not read it*" and that "the law does not impose a duty on the [contracting party] to explain to an individual what he could learn from simply reading the document." Id. at 663-64, 582 S.E.2d at 440 (emphasis added). Mr. Jenkins is presumed to have read and understood the change request forms as a matter of law unless he shows that he was not competent or that his signature was obtained through "misrepresentation, fraud, forgery, or duress." Jenkins has failed to produce any such evidence that he was somehow under duress or that the agent made any misrepresentations to get him to sign the change request forms.

Mr. Jenkins' testimony that he did not understand UM coverage, that he did not read the form, or that the form was not filled out is no defense when his own written statements show he received the forms containing all of the required information and that he authorized only \$25,000 in UM coverage. (R.pp.84, 86, 87.) Mr. Jenkins' testimony that he asked for maximum coverage and that the agent did not explain anything to him regarding UM/UIM coverage is completely contradicted by the written evidence. (R.pp.122-32.) The three change request forms contained printed limits of UM and UIM identical to the handwritten amounts of those coverages set out on the three rejection forms. All six documents were signed by the Jenkins, clearly indicating the amount of coverage selected. (R.pp.122-32.) Pursuant to the parol evidence rule, the trial court should not have considered evidence outside of the written documents. See Koontz v. Thomas, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999) (The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous

with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument.).

The trial court's error was compounded by accepting Mr. Jenkins inconsistent testimony to find that a meaningful offer was not made by Farm Bureau. At trial Mr. Jenkins initially testified that the forms he signed were blank when he signed them. (R.p.88.) However, he contradicted himself by testifying that although he signed the forms, he could not remember them so he could not say for sure whether they were blank. (R.p.96.) Next, Mr. Jenkins said he remembered one of the three forms and that it was blank when he signed it. (R.p.96.) He then alleged that agent Joseph Lee incorrectly filled in the forms. (R.p.96.)

The trial court's finding that such testimony had "the ring of ultimate truth" is completely against the preponderance of the evidence and should be reversed. (R.p.6.) There was no basis for the trial court's acceptance of Mr. Jenkins' testimony as credible. He not only contradicted himself but was completely contradicted by all of the documentary evidence submitted by the parties. There was simply no way that Mr. Jenkins and agent Joseph Lee could both be telling the truth. Although the trial court accepted Joseph Lee's *uncontradicted* testimony as true, it ruled against Farm Bureau and relied on outright contradictory testimony given by Mr. Jenkins' to find in favor of the Jenkins. Such findings are entirely against the preponderance of evidence, if in fact there is any evidence at all to support them. Therefore, the order based on such testimony, granting judgment in favor of the Jenkins, should be reversed.

The evidence plainly shows that the Jenkins were motivated by the receipt of an excess letter from Farm Bureau after they were sued in Florida for an accident despite the

fact that after Mr. Jenkins was sued in Florida for an accident for which he was not at fault. The suit demanded more than the limit of liability coverage on the policy, so Mr. Jenkins was sent an "excess letter" by Farm Bureau. (R.p.133.) Subsequently, the Jenkins contacted Farm Bureau to increase their liability limits out of an obvious motive to protect themselves from possible claims and lawsuits. At the same time, the Jenkins increased their deductibles for collision and comprehensive coverage. This action allowed the Jenkins to increase their liability coverage while keeping their premium roughly the same. (R.p.95.) The Jenkins signed three change request forms to this effect. (R.pp.122-24.) They also signed three UM/UIM offer forms rejecting higher limits of coverage. (R.pp.125-32.) The Jenkins cannot now claim that they did not know what their UM and UIM limits were when six, separate, signed statements, as well as declaration pages mailed to them every six months, show otherwise.

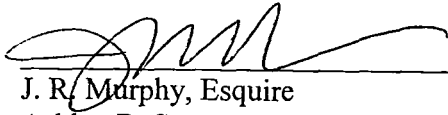
The trial court should not have considered Mr. Jenkins' testimony, which was completely contradicted by the written evidence. By operation of law, Jenkins is deemed to have read and understood the Farm Bureau documents, is bound by them, and cannot argue mistake as a matter of law. He cannot defeat this common law presumption by claiming that he did not read the documents he signed or that the documents did not specify the amount of UM coverage he requested. To accept Mr. Jenkins' contention would completely disregard the sanctity of written contracts. No insurance company could ever enforce the terms of any contract, application or rejection form if this court allows the Jenkins to avoid the consequences of their knowing and deliberate choice by simply stating later "I don't recall the form being filled in."

CONCLUSION

Based on the above, Farm Bureau respectfully this Court reverse the decision of the trial court and find that Farm Bureau made a meaningful offer of additional UM coverage and therefore, the Jenkins' selection of \$25,000/per person of UM coverage is valid and binding.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

A handwritten signature in dark ink, appearing to be 'J. R. Murphy', is written over a horizontal line.

J. R. Murphy, Esquire
Ashley B. Stratton, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Appellant
South Carolina Farm Bureau Mut. Ins. Co.

Columbia, South Carolina
December 17, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

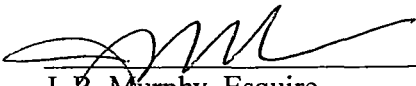
Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

v.

South Carolina Farm Bureau Mutual Insurance Company Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b).



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

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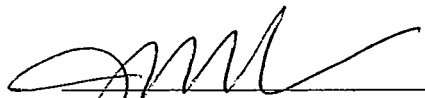
v.

South Carolina Farm Bureau Mutual Insurance Company Appellant.

PROOF OF SERVICE

I do hereby certify that I have this 18th day of December, 2009, served a copy of **Final Brief of Appellant** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202


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

THE STATE OF SOUTH CAROLINA
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South Carolina Farm Bureau Mutual Insurance Company, ...Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ...Respondents.

FINAL REPLY BRIEF OF APPELLANT

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

THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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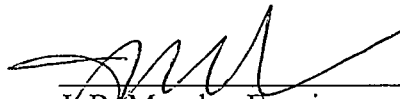
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I do hereby certify that I have this 18th day of December, 2009, served a copy of **Final Reply Brief of Appellant** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202



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

TABLE OF CONTENTS

Table of Authorities.....	ii
Argument.....	1
I) FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND <u>WANNAMAKER</u>	1
A) FARM BUREAU'S ARGUMENTS ARE PRESERVED FOR REVIEW	1
B) FARM BUREAU GAVE A MEANINGFUL OFFER TO THE JENKINS.	3
II) EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND <u>WANNAMAKER</u> , THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN.	9
III) THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.	11
Conclusion	14

TABLE OF AUTHORITIES

Cases

<u>Atkins v. Horace Mann Ins. Co.</u> , 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008).....	2-7
<u>Burch v. South Carolina Farm Bureau Mut. Ins. Co.</u> , 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002).....	13
<u>Clinton v. West American Ins. Co.</u> , 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005).....	2, 13
<u>Dewart v. State Farm Mut. Auto. Ins. Co.</u> , 296 S.C. 150, 370 S.E.2d 915 (Ct. App. 1988).....	7
<u>Elam v. South Carolina Dep't of Transp.</u> , 361 S.C. 9, 602 S.E.2d 772 (2004)	3
<u>Floyd v. Nationwide Mut. Ins. Co.</u> , 367 S.C. 253, 626 S.E.2d 6 (2006)	1-5, 11, 12
<u>Foremost Ins. Co. v. Demma</u> , No. 2206-CP-23-8108, 2007 WL 3052339 (Circ. Ct. May 15, 2007).....	5
<u>Gartside v. Gartside</u> , 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009)	2
<u>Grinnell Corp. v. Wood</u> , 378 S.C. 458, 663 S.E.2d 61 (Ct. App. 2008)	4-6
<u>Howell v. United States Fidelity and Guar. Ins. Co.</u> , 370 S.C. 505, 636 S.E.2d 626 (2006)	5
<u>McLeod v. Home Ins. Co.</u> , 672 F. Supp. 903(D.S.C. 1987)	9
<u>Phillips v. Progressive Cas. Ins. Co.</u> , No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008).....	5
<u>Progressive Cas. Ins. Co. v. Leachman</u> , 362 S.C. 344, 608 S.E.2d 569 (2005)	8
<u>Pryor v. Nw. Apartments, Ltd.</u> , 321 S.C. 524, 469 S.E.2d 630 (Ct.App.1996)	2

<u>Rabb v. Catawba Ins. Co.,</u> 339 S.C. 228, 528 S.E.2d 693(Ct. App. 2000)	13
<u>Ray v. South Carolina Nat'l Bank,</u> 281 S.C. 170, 314 S.E.2d 359 (Ct. App. 1984)	12
<u>Spence v. Wingate,</u> 381 S.C. 487, 674 S.E.2d 169 (2009)	2
<u>Smith v. Squires Timber Co.,</u> 311 S.C. 321, 428 S.E.2d 878 (1993)	2
<u>State Farm Mut. Auto. Ins. Co. v. Wannamaker,</u> 291 S.C. 518, 354 S.E.2d 555 (1987)	1, 4-9, 12-14
<u>Staubes v. City of Folly Beach,</u> 339 S.C. 406, 529 S.E.2d 543 (2000)	1
<u>Tucker v. Allstate Ins. Co.,</u> 337 S.C. 128, 522 S.E.2d 819 (Ct. App. 1999)	13
<u>Woodson v. Nationwide Mut. Ins. Co.,</u> No. 2002-UP-398 (Ct. App. 2002)	2, 5, 6

Statutes

S.C. Code Ann. § 38-77-350.....	1, 4-6, 8, 11, 13

ISSUES ON APPEAL

- I) WHETHER FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.
- II) WHETHER THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.
- III) WHETHER THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.

In reply to the Brief of Respondents Ronnie D. and Sandra B. Jenkins, Appellant South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau") submits the following.

ARGUMENTS

I) FARM BUREAU'S OFFER FORM FULLY SATISFIED THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER.

Respondents' continued reliance on Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 626 S.E.2d 6 (2005), is misplaced because the Floyd holding addresses only the conclusive presumption granted by S.C. Code Ann. § 38-77-350(B) and fails to address the ultimate issue in this case: whether a meaningful offer was given. Farm Bureau met its requirement of giving a meaningful offer as evidenced by its offer form which fully satisfies the requirements of § 38-77-350(A) and State Farm Mutual Automobile Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987).

(A) FARM BUREAU'S ARGUMENTS ARE PRESERVED FOR REVIEW.

As an initial matter, Farm Bureau maintains that its arguments are preserved review. Respondents argue that by failing to file a Motion to Alter or Amend pursuant to Rule 59, SCRCP, Farm Bureau failed to preserve a number of issues for review. Respondents' argument on this point shows a complete misunderstanding of Rule 59, SCRCP. In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000).

Farm Bureau's argument that the trial court erred in ending its analysis of the § 38-77-350(A) requirements at the conclusive presumption provision and in failing to look

to the form alone to determine whether a meaningful offer was given was both raised to and ruled upon by the trial judge. This issue is the crux of Appellant's argument and was raised to the trial court. (R.pp.105-07 ("[T]he Floyd case only applied to a determination of whether [the] conclusive presumption was available. And in the Atkins case ... the court found a meaningful offer was made based on the form alone.").)

The trial court also ruled on this issue when it looked at the "totality of the transaction" and refused to consider the form alone. (R.p.5.) Further, the trial court addressed each case relied upon by Appellant in support of this argument. (R.pp.6, 7 (rejecting Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008), Clinton v. West Am. Ins. Co., 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005), and Woodson v. Nationwide Mut. Ins. Co., No. 2002-UP-398 (Ct. App. 2002)¹)). By ending its analysis at the conclusive presumption provision and failing to look to the form alone, the trial court implicitly rejected Farm Bureau's argument. See Spence v. Wingate, 381 S.C. 487, 674 S.E.2d 169 (2009) (holding issue of whether duty existed based attorney-client relationship preserved for review when, although trial court did not restate argument, it explicitly addressed it when it found no duty); Gartside v. Gartside, 383 S.C. 35, 44, 677 S.E.2d 621, 626 (Ct. App. 2009) (citing Pryor v. Nw. Apartments, Ltd., 321 S.C. 524, 528, 469 S.E.2d 630, 633 n. 2 (Ct.App.1996) (finding an issue preserved when the circuit court implicitly ruled on and rejected the respondent's argument)); Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (1993) (finding question of whether

¹ Respondents argue that this Court should not consider Woodson because Farm Bureau failed to challenge the trial court's rejection of Woodson in a Rule 59 Motion. This argument is nothing short of ridiculous considering the fact that Woodson was raised to and ruled upon by the trial court when the trial court specifically declined to follow it. See R.p.7, n. 2. The purpose of a Rule 59 Motion is not to challenge the trial court's disagreement with one's argument, but to preserve arguments that were never addressed by the trial court. The trial court addressed Woodson and, therefore, it is properly before this Court.

the claimant was a statutory employee was preserved for review when Workers' Compensation Commission ruled claimant was an independent contractor and, therefore, implicitly held he was not a statutory employee).

Respondents' preservation argument ignores the substance of the trial court's order and misinterprets the purpose of Rule 59 motions which is to preserve issues that were not ruled upon by the trial court, and not to contest erroneous rulings. Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) ("[P]arty must file [a Rule 59(e), SCRCP] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.") Farm Bureau's issues are preserved for review and Respondents' argument to the contrary is meritless.

B) FARM BUREAU GAVE A MEANINGFUL OFFER TO THE JENKINS.

Despite the fact that the holding of Floyd is limited to the conclusive presumption issue as noted by both the Floyd Court and the Atkins Court, Respondents continue to rely on Floyd to assert that no meaningful offer was given. See Floyd, 367 S.C. at 264, 626 S.E.2d at 12 ("Our decision does not resolve the question of whether the Insured made a meaningful offer to [insured] in this case. We simply conclude that Insurer ... is denied the benefit of the conclusive statutory presumption a meaningful offer was made."); Atkins, 376 S.C. at 631, 658 S.E.2d at 100 ("[T]he holding in Floyd was limited to the issue of whether [the insurer] was entitled to the conclusive presumption."). Respondents' argument represents a misunderstanding of the limited holding of Floyd and fails to address the ultimate issue of whether a meaningful offer was given, not whether a conclusive presumption is granted.

Respondents offer an incomplete analysis of Floyd and, in turn, advocate an incomplete analysis of the meaningful offer requirement. Under South Carolina's statutory and common law framework, the meaningful offer analysis is multifaceted. If an insurer uses an offer form which satisfies the five requirements of § 38-77-350(A) and if the offer form is "properly executed", then a meaningful offer is conclusively presumed and the analysis ends. If, on the other hand, the form complies with § 38-77-350(A) but is not "properly executed", then the analysis continues to an evaluation of the four Wannamaker requirements. See Atkins, 376 S.C. 625, 658 S.E.2d 106 (evaluating whether offer form meets Wannamaker requirements after determining conclusive presumption provision was not an issue); Grinnell Corp. v. Wood, 378 S.C. 458, 663 S.E.2d 61 (Ct. App. 2008) ("An insurer's failure to comply with section 38-77-350 does not necessarily presage the lack of a meaningful offer. The insurer still has an opportunity to prove an offer is meaningful under the requirements of Wannamaker." (citation omitted)). Both the trial court and Respondent completely miss the mark by cutting the analysis short and hinging the entire meaningful offer requirement on the proper execution of the form. No South Carolina case has held what Respondent urges this Court to affirm - that the mere failure of the insured to personally mark the form precludes a finding that the form constitutes a meaningful offer. As set forth in the very case Respondent relies upon, an insurer can still meet its burden of proving a meaningful offer was given even when the form is not properly executed.

Having established that Farm Bureau is not entitled to a conclusive presumption of a meaningful offer, the issue is whether Farm Bureau met its burden of proving it made a meaningful offer under the four-part Wannamaker test. Farm Bureau contends,

and South Carolina case law shows that the Wannamaker requirements can be met by the offer form standing alone. See Atkins, 376 S.C. 625, 658 S.E.2d 106; Woodson, No. 2002-UP-398 (Ct. App. 2002); Foremost Ins. Co. v. Demma, No. 2206-CP-23-8108, 2007 WL 3052339 (S.C. Com. Pl. May 15, 2007); Phillips v. Progressive Cas. Ins. Co., No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008)². Farm Bureau urges the Court to consider these cases because the Floyd decision, which was effectively reversed six months after its issuance by a revision to § 38-77-350(B)³, caused confusion surrounding the meaningful offer requirements. An excellent example of this confusion is the trial judge in the instant case who failed to apply the proper analysis and even admitted the absurdity of his own ruling. See R.p.8 (“The Court must note that it seems ludicrous that an insured is not bound by the acknowledgement he or she signs as set forth on the form and here signed by both insureds.”). Since the December 2005 decision in Floyd, there have been only three reported cases addressing the meaningful offer requirement. Atkins is one of those cases. The two other cases are not applicable because of their dissimilar facts⁴. Cases such as Woodson, Demma, and Phillips, although unreported, should be

² Respondents argue that this Court should not consider the Demma and Phillips decisions because they were not submitted to the trial court for consideration. If this Court cannot consider any additional authority that was not presented to the trial court, as Respondents contend, then the only cases Respondents should be permitted to present are Floyd and Wannamaker because those were the only cases Respondent presented to the trial court. This, of course, is an absurd line of reasoning which should be wholly rejected by this Court.

³ “The South Carolina General Assembly effectively reversed the Floyd decision with the enactment of 2006 S.C. Rat. No. 377, §1 amending §38-77-350. Effective June 14, 2006, an insurer or representative of the insurer may complete the form for the named insured. If the form is signed by the named insured after it has been completed by the producer or representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and 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. SEE 2006 S.C. Rat. No. 377, §1.” South Carolina Insurance Bulletins and Related Materials, July 7, 2006.

⁴ Grinnell Corp. v. Wood, 378 S.C. 458, 663 S.E.2d 61 (Ct. App. 2008), is not applicable because it analyzes a form which fails to comply with specific requirements of § 38-77-350(A). Howell v. United States Fidelity and Guar. Ins. Co. 370 S.C. 505, 636 S.E.2d 626 (2006) is not applicable because it

considered because they present similar factual scenarios and offer clear and well-reasoned analysis.

Farm Bureau's offer form was presented in a commercially reasonable manner; specified the limits of optional coverage and not merely offered additional coverage in general terms; intelligibly advised the insured of the nature of the optional coverage; and told the insured that optional coverages were available for an additional premium.

Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556. Respondents allege that the form was not properly executed under § 38-77-350(B), but cannot point to any single requirement under § 38-77-350(A) or Wannamaker that the form does not meet. The form itself provided all of the information required and, therefore, met the meaningful offer requirement.

Farm Bureau's offer form fully satisfies the requirements of § 38-77-350(A) and Wannamaker and, therefore, Farm Bureau met its burden of proving it gave a meaningful offer. To find otherwise is to impose a requirement on insurers that was never intended by this State. Insurers are not charged with assuring that insureds understand optional coverages. The meaningful offer requirement has always involved an objective inquiry into the information given by the insurer and not a subjective inquiry into whether the insured understood the information. For instance, in Grinnell, this Court found that the insurer failed to meet the meaningful offer requirement even though the insured "was fully aware of [his] options and the nature of UM and UIM coverage when he executed the form." Grinnell, 378 S.C. at 464, 663 S.E.2d at 64. The understanding of the insured in Grinnell could not cure the defects in the offer form. Because the meaningful offer

addresses the applicability of the meaningful offer requirement to policies providing liability coverage only for hired and non-owned vehicles.

inquiry involves an analysis of the information given by the insurer, the understanding of the insured is of no consequence.

In light of the Grinnell decision, the meaningfulness of Farm Bureau's offer should be judged on the content of the offer and not on the understanding of the Jenkins. If Farm Bureau had assured that the Jenkins understood UM and UIM coverages but provided deficient information, then there would be no meaningful offer. Conversely, the failure of the Jenkins to understand UM and UIM coverage does not undo the adequacy of Farm Bureau's offer. The fact that meaningful offers can be made by mailing a statutory compliant form is proof that all that is required is the presentation of the required information. See Atkins, 376 S.C. at 631, 658 S.E.2d at 109 ("The use of the mail is a reasonable method of communicating with the insured about an important business transaction."); Dewart v. State Farm Mutual Auto. Ins. Co., 296 S.C. 150, 370 S.E.2d 915 (Ct. App. 1988) (finding use of the mails is a commercially reasonable way of communicating a meaningful offer).

The fact that the meaningful offer requirement is satisfied through an objective inquiry into the information given to the insured is in keeping with the policy reasons behind the meaningful offer requirement. According to the South Carolina Supreme Court, "[t]he goal, as set forth in Wannamaker, is to provide an insured with adequate information to make an intelligent decision on whether to accept or reject UIM coverage." Progressive Casualty Ins. Co. v. Leachman, 362 S.C. 344, 351, 608 S.E.2d 569, 572 (2005). Farm Bureau met this goal and satisfied the meaningful offer requirement because it provided all of the information that was required in direct response to the Jenkins' request to change their three policies. The fact that Farm Bureau

met the goal of providing insureds with adequate information to make an intelligent decision is all the more important considering Farm Bureau was not even required to provide a written offer to the Jenkins. The Jenkins were merely changing existing policies and Farm Bureau could have simply relied on the phone conversation in which the Jenkins requested specific changes to their policies. However, as a service to the Jenkins, Farm Bureau had them confirm the policy changes in writing and execute new offer forms that comply with § 38-77-350(A) and Wannamaker.

In finding that Farm Bureau did not give a meaningful offer, the trial court not only penalized Farm Bureau for taking this extra step, but also advocated reliance on a phone conversation alone. The effect of the trial court's ruling is a disservice to consumers because it means that Farm Bureau would have been better off if it had completed the requested changes based on the phone call alone without any written confirmation. However, instead of ending up with a "he said, she said" dispute to determine coverage, Farm Bureau protected the Jenkins by having them confirm their selections in writing. Surely Farm Bureau should not be penalized for considering the needs of the consumer and protecting them with written confirmations rather than relying on undocumented conversations as the Jenkins do in support of their dubious position.

Farm Bureau met the goal of providing the Jenkins with adequate information to make an informed decision when it gave the Jenkins a meaningful offer. Therefore, the trial court should be reversed.

II) EVEN IF THE FORM DOES NOT SATISFY THE REQUIREMENTS OF S.C. CODE ANN. § 38-77-350(A) AND WANNAMAKER, THE TESTIMONY OF AGENT JOSEPH LEE SHOWS A MEANINGFUL OFFER WAS GIVEN.

The decision of the trial court should be reversed because there was no evidence

to support the trial court's finding that both Mr. Jenkins and Agent Joseph Lee were credible. Despite the fact that Lee's testimony was credible and undisputed by any evidence outside of Jenkins' testimony, the trial court discredited Lee's testimony. Instead of relying on Lee's uncontradicted testimony, the trial court based its ruling on Jenkins' testimony which had absolutely no evidentiary support. In fact, all of the evidence in the record directly contradicts Jenkins' testimony and the trial court's ruling based on Jenkins' testimony is legally insufficient.

First, the three change request forms and three UM/UIM offer forms signed by Jenkins completely contradict Jenkins' testimony at trial. Second, Jenkins' own financial interest in this litigation alone cast doubt on the veracity of his testimony at trial. There is no evidence that Jenkins was ignorant and unwary and no reason to hold Farm Bureau accountable for Jenkins' failure to read six documents before he signed them. See McLeod v. Home Ins. Co., 672 F. Supp. 903, 906 (D.S.C. 1987) ("One cannot complain about the contents of a written instrument if the truth could be ascertained by reading it, except where the party is ignorant and unwary."). Considering the sufficiency of the written offer form alone, there is no need to consider the sophistication of Mr. Jenkins⁵. If, however, this Court looks at the "totality of the transaction," it is clear that Jenkins was sophisticated enough to know exactly what he was doing when he changed his insurance coverage following his 2002 accident in Florida.

⁵ Respondents contend, yet again, that the issue of Mr. Jenkins' sophistication level has not been preserved for review. However, the trial court clearly addressed Jenkins' motivation for changing his policies after his 2002 accident in Florida. (R.p.3.) The trial court also addressed Jenkins' testimony that he had never heard of UM and UIM coverage until it was explained to him by his current counsel. (R.p.5.) These facts have direct bearing on whether Jenkins knew what he was doing when he rejected UM/UIM coverage and what his sophistication level was. Therefore, the issue is preserved for review.

The evidence in the record shows that Jenkins knew enough about UM and UIM coverage to have purchased it on prior policies. The record also shows that Jenkins was savvy enough to understand the Excess Letter sent by Farm Bureau after Jenkins was sued for an accident in which he was not at fault. (R.pp.91, 92.) He was also savvy enough to increase his liability limits in response to the Excess Letter. In an obvious attempt to increase his liability limits while maintaining the same premium, Jenkins' chose to increase deductibles and reject optional coverages. His specific and deliberate choice to reject additional UM and UIM coverage was part of this overall scheme. As evidenced by the three change request forms and the three offer forms, he memorialized this choice no less than six times. (R.pp.133-32.) Yet now that he actually needs this coverage, his story has changed and he has painted himself as innocent and unaware when the evidence shows that he clearly knew what he was doing when he changed his policies.

Lee, on the other hand, had no financial interest in Jenkins' insurance policies or this litigation. If anything, Lee, as the insurance agent selling the coverage, lost profits from Jenkins' rejection of additional coverage. Because Lee essentially stood to gain from Jenkins' election of additional coverage, there is absolutely no reason why Lee would not corroborate Jenkins' testimony unless Jenkins' was lying.

The trial court's decision to reject Lee's testimony in favor of Jenkins' testimony is wholly unsupported by the record. There is absolutely no basis for finding that Jenkins' testimony had "the ring of ultimate truth" when his testimony was completely contradicted by the written evidence and entirely suspect considering his financial motives. This is a clear case of an insured wanting the benefit of coverage he never paid

for and specifically rejected. Even if the three offer forms signed by the Jenkins are somehow deficient, the three change request forms confirm the Jenkins' rejection of additional coverage and clearly contradict Mr. Jenkins' subsequent oral testimony. Because the trial court's Order based on Jenkins' testimony is legally insufficient, it should be reversed.

III) THE JENKINS ARE BOUND BY THE DOCUMENTS THEY SIGNED.

Farm Bureau met every statutory and common law requirement for a meaningful offer and the Jenkins' should be bound by the six documents they signed reflecting their deliberate choice to rejection additional UM/UIM coverage. In Floyd, the case relied upon by Respondents, the South Carolina Supreme Court stated: "In imposing these requirements, the Legislature apparently recognized that an insured person who is required to personally complete an offer form inevitably will find it necessary to seek further explanation from the insurance agent when he or she is unable to complete the form due to a lack of knowledge or understanding of the concepts of UM and UIM coverages." Floyd, 367 S.C. at 263, 626 S.E.2d 12. The Floyd Court, however, clearly misinterpreted the intention of the legislature in light of the fact that in the very next legislative session following the Floyd decision, the legislature removed from the statute the requirement that an insured personally mark the form. The 2006 amendment to § 38-77-350(B) effectively reversed Floyd, making the entire rationale of the Floyd decision obsolete.

Even if Floyd controlled, Farm Bureau asserts that there is no reason why the objective heralded by the Floyd Court was not met by providing all of the information required by law and having the Jenkins sign six forms memorializing their choices. The

Jenkins were given not one, not two, not three, but **SIX** chances “to seek further explanation from the insurance agent.” Id. Their failure to do so should not penalize Farm Bureau and force it to provide coverage that was never requested, never selected, never paid for and never intended.

In addition to imposing an unreasonable burden on Farm Bureau, Respondents also challenge Farm Bureau’s argument regarding the parol evidence rule. By citing the parol evidence rule, Farm Bureau does not seek to exclude evidence, but to challenge the legal sufficiency of the trial court’s Order. The ruling of the trial court is based entirely on legally insufficient evidence. The trial court found that if the agent followed his usual procedure, as he testified he did with the Jenkins, then the Wannamaker requirements would be met and Farm Bureau would satisfy the meaningful offer test. However, the trial court chose to discount the agent’s uncontradicted testimony in favor of the testimony of Mr. Jenkins which is completely contradicted by the evidence in the record. As mandated by the parol evidence rule, the trial court should not consider oral testimony about a written agreement which contradicts the written agreement. Where terms of a written instrument are unambiguous, clear and explicit, extrinsic evidence is inadmissible to contradict, vary or explain its terms, in the absence of fraud in the instrument’s procurement. Ray v. South Carolina Nat’l Bank, 281 S.C. 170, 314 S.E.2d 359 (Ct. App. 1984). A ruling based on such testimony is legally insufficient and should be reversed.

Respondents also argue that preventing any evidence outside the language contained in the offer form would have the same effect as ruling that the contents of the offer form control the meaningful offer inquiry without regard to the Wannamaker analysis. This argument magnifies Respondents’ confusion of the meaningful offer

requirement and reveals an ignorance of case law which holds that the contents of the offer form do control the meaningful offer inquiry. For instance, in Burch v. South Carolina Farm Bureau Mutual Ins. Co., 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002), this Court analyzed the same offer form as the form in the instant case and found that Farm Bureau made a meaningful offer because its offer form met the requirements of § 38-77-350(A). See also Clinton v. West American Ins. Co., 364 S.C. 113, 122, 611 S.E.2d 521, 526 (2005) ("West American made a valid and meaningful offer of UIM coverage to [insured] by virtue of its Offer dated September 24, 19992 ... the form used by West American, Form 2006, meets the requirements of § 38-77-350."); Rabb v. Catawba Ins. Co., 339 S.C. 228, 234, 528 S.E.2d 693, 695-96 (Ct. App. 2000) ("Clearly, the form provides the insured with the opportunity to select coverage in any amount As such, Catawba undoubtedly made a meaningful, effective offer of UIM coverage."); Tucker v. Allstate Ins. Co., 337 S.C. 128,132-33, 522 S.E.2d 819, 822 n.2 (Ct. App. 1999) ("[O]ffer sufficiently conveys the necessary information to the insured [and, therefore,] Allstate made a meaningful offer of UIM coverage.").

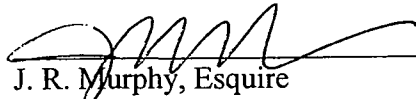
Farm Bureau's offer form met all of the requirements of § 38-77-350(A) and Wannamaker. The Jenkins had a full opportunity to read the information and seek further explanation from the agent. Having met the statutory and common law requirements, Farm Bureau is not responsible for the Jenkins' failure to read the forms and should not be required to provide coverage that was specifically rejected. The Jenkins should be bound by their signatures on the six separate documents they executed during the transaction making specific changes to their three auto policies.

CONCLUSION

For the reasons stated above and in the Brief of the Appellant, Farm Bureau respectfully requests this Court to reverse the decision of the trial court and find that Farm Bureau made a meaningful offer of additional UM coverage and therefore, the Jenkins' selection of \$25,000/per person of UM coverage is valid and binding.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J. R. Murphy, Esquire
Ashley B. Stratton, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Appellant
South Carolina Farm Bureau Mut. Ins. Co.

Columbia, South Carolina
December 17, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

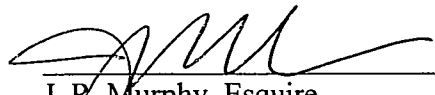
Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

v.

South Carolina Farm Bureau Mutual Insurance Company Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b).



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

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FINAL BRIEF OF RESPONDENT

John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(800) 779-8995 facsimile

Robert V. Phillips, Esquire
McGowan, Hood & Felder, LLC
1639 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 328-5656

Attorneys for Respondents

TABLE OF CONTENTS

Table of Authorities	ii
Counter-Statement of the Issues on Appeal	1
Counter-Statement of the Case	2
Scope of Appellate Review	4
Facts	5
Arguments	10
I. The trial court correctly held that, pursuant to <i>Floyd v. Nationwide Mut. Ins. Co.</i> , 367 S.C. 253, 626 S.E.2d 6 (2005), Farm Bureau's Offer Form did not satisfy the requirements of S.C. Code Ann. § 38-77-350(A) and <i>State Farm Mut. Auto. Ins. Co. v. Wannamaker</i> , 291 S.C. 518, 354 S.E.2d 555 (1987) because the Insureds themselves did not mark any choices regarding UM and UIM insurance and the Agent himself filled in all of the information on the forms	10
II. The trial court did not err in finding that Farm Bureau failed to prove the totality of the transaction between the Insureds and Farm Bureau amounted to a meaningful offer of UM and UIM coverage to Insureds as required by S.C. Code Ann. § 38-77-350(A) and <i>Wannamaker</i>	27
III. The trial court correctly ruled that pursuant to <i>Floyd v. Nationwide</i> , 367 S.C. 253, 626 S.E.2d 6 (2005) the fact that Insureds signed the acknowledgment on the Offer Form was not dispositive of the case because of the plain language of S.C. Code Ann. § 38-77-350(A)	29
Conclusion	33

TABLE OF AUTHORITIES

CASES

<i>Ackerman v. Travelers Indemnity Co.</i> , 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995)	15
<i>Anders v. South Carolina Farm Bureau Mut. Ins. Co.</i> , 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992)	18
<i>Atkins v. Horace Mann Ins. Co.</i> , 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008)	4, 5, 9, 15, 16, 17, 18
<i>Bower v. National General Ins. Co.</i> , 351 S.C. 112, 569 S.E.2d 313 (2002)	15
<i>Brown v. Singletary</i> , 226 S.C. 482, 85 S.E.2d 738 (1955)	14
<i>Burch v. South Carolina Farm Bureau Mut. Ins. Co.</i> , 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002)	25, 26
<i>Butler v. Unisun Ins. Co.</i> , 323 S.C. 402, 475 S.E.2d 758 (1996)	15, 24, 25
<i>Camden Inv. Co. v. Gibson</i> , 204 S.C. 513, 30 S.E.2d 305 (1944)	29
<i>Clinton v. West American Ins. Co.</i> , 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005)	9, 23, 24, 25
<i>Council v. Catoe</i> , 359 S.C. 120, 597 S.E.2d 782 (2004)	19
<i>Doe v. Doe</i> , 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996)	17
<i>Elam v. South Carolina Dept. of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004)	14, 23
<i>Evans v. State Farm Mut. Auto. Ins. Co.</i> , 269 S.C. 584, 587, 239 S.E.2d 76 (1977) ...	30
<i>Federal Land Bank of Columbia v. Summer</i> , 168 S.C. 510, 167 S.E. 830 (1933)	29
<i>Floyd v. Nationwide Mut. Ins. Co.</i> , 367 S.C. 253, 626 S.E.2d 6 (2005)	1, 8, 9, 10, 13, 19-24, 26, 29-32
<i>Garris v. Cincinnati Insurance Co.</i> , 280 S.C. 149, 311 S.E.2d 723 (1984)	10
<i>Hanover Insurance Company v. Horace Mann Ins. Co.</i> , 301 S.C. 55,	

389 S.E.2d 657 (1990)	15
<i>Hardy v. Aiken</i> , 369 S.C. 160, 164, 631 S.E.2d 539 (2006)	4
<i>Harmon v. Bank of Danville</i> , 287 S.C. 449, 339 S.E.2d 150 (Ct. App. 1985)	4
<i>Higgins v. Medical University of SC</i> , 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997)	20
<i>Hoffman v. Powell</i> , 298 S.C. 338, 380 S.E.2d 821 (1989)	14
<i>Horton v. Atlantic Life Ins. Co.</i> , 187 S.C. 155, 197 S.E. 512 (1938)	29, 30
<i>In re King's Will</i> , 132 S.C. 63, 128 S.E. 850 (1925)	29
<i>I'On, LLC v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	14, 23
<i>Jackson v. State Farm Mut. Auto. Ins. Co.</i> , 301 S.C. 440, 392 S.E.2d 472 (Ct. App. 1990)	4
<i>Koon v. Fares</i> , 379 S.C. 150, 666 S.E.2d 230 (2008)	14, 23
<i>Koontz v. Thomas</i> , 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999)	31
<i>Lanham v. Blue Cross and Blue Shield of SC, Inc.</i> , 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000)	19
<i>Mathis v. State Farm Mut. Auto. Ins. Co.</i> , 315 S.C. 71, 431 S.E.2d 619 (Ct. App. 1993)	4, 15
<i>Moody v. Dairyland Ins. Co.</i> , 354 S.C. 28, 579 S.E.2d 527 (Ct. App. 2003)	24
<i>Moye v. Wilson Motors, Inc.</i> , 254 S.C. 471, 176 S.E.2d 147 (1970)	29
<i>Nationwide Mut. Ins. Co. v. Prioleau</i> , 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004) ..	4
<i>Osborne v. Allstate Ins. Co.</i> , 319 S.C. 479, 462 S.E.2d 291 (Ct. App. 1995)	24, 25
<i>Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton</i> , 311 S.C. 56, 427 S.E.2d 673 (1993)	14
<i>Plante v. State</i> , 315 S.C. 562, 446 S.E.2d 437 (1994)	19, 20

<i>Progressive Casualty Ins. Co. v. Leachman</i> , 362 S.C. 344, 608 S.E.2d 569 (2005)	13, 15, 18, 19, 21, 22, 24
<i>RE: Amendments to the SCACR</i> , Order (S.C. Sup. Ct. filed April 29, 2009) (Shearouse Adv. Sh. No. 19 at 36)	19
<i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	29
<i>Roche v. South Carolina Alcoholic Beverage Control Comm'n</i> , 263 S.C. 451, 211 S.E.2d 243 (1975)	14
<i>Skinner v. Elrod</i> , 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992)	28, 32
<i>Smith v. South Carolina Ins. Co.</i> , 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002)	13
<i>South Carolina Dept. of Transp. v. M & T Enterprises of Mt.</i> , 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008)	28, 32
<i>State v. Warren</i> , 207 S.C. 126, 35 S.E.2d 38 (1945)	14
<i>State Farm Mut. Auto. Ins. Co. v. Calcutt</i> , 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000)	5
<i>State Farm Mut. Auto. Ins. Co. v. Wannamaker</i> , 291 S.C. 518, 354 S.E.2d 555 (1987)	1, 8, 9, 10, 11, 13, 18, 22, 23, 24, 27, 30, 32
<i>Sumner v. Janicare, Inc.</i> , 294 S.C. 483, 366 S.E.2d 20 (Ct. App. 1988)	4
<i>Wilkes v. Freeman</i> , 334 S.C. 206, 512 S.E.2d 530 (Ct. App. 1999)	15
<i>Woodson v. Nationwide Mut. Ins. Co.</i> , 2002-UP-398 (S.C. Ct. App. filed June 4, 2002)	19, 20, 21

STATUTES

S.C. Code Ann. § 38-59-40 (Supp. 2006)	2
S.C. Code Ann. § 38-77-160 (Supp. 2008)	10
S.C. Code Ann. § 38-77-350 (Supp. 2008)	1, 8, 10, 11, 13, 15, 21-27, 29, 30, 32

RULES

Rule 208(b)(1)(B), SCACR	31
Rule 220(a), SCACR	20
Rule 268, SCACR	19, 20
Rule 52(b), SCRCF	14, 17, 20, 21, 23
Rule 59(a), SCRCF	14, 17, 20, 21, 23
Rule 59(e), SCRCF	14, 17, 18, 20, 21, 23

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court err in holding that, pursuant to *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005), Farm Bureau's Offer Form did not satisfy the requirements of S.C. Code Ann. § 38-77-350(A) and *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987) because the Insureds themselves did not mark any choices regarding UM and UIM insurance and the Agent himself filled in all of the information on the forms?
- II. Did the trial court err in finding that Farm Bureau failed to prove the totality of the transaction between the Insureds and Farm Bureau amounted to a meaningful offer of UM and UIM coverage to Insureds as required by S.C. Code Ann. § 38-77-350(A) and *Wannamaker*?
- III. Did the trial court err in ruling that pursuant to *Floyd v. Nationwide*, 367 S.C. 253, 626 S.E.2d 6 (2005) the fact that Insureds signed the acknowledgment on the Offer Form was not dispositive of the case because of the plain language of S.C. Code Ann. § 38-77-350(A)?

COUNTER-STATEMENT OF THE CASE

On September 29, 2006, South Carolina Farm Bureau Mutual Insurance Company (Farm Bureau) brought an action against Ronnie D. Jenkins and Sandra B. Jenkins (the Insureds), seeking a judgment declaring that Farm Bureau made an effective offer of additional uninsured motorists insurance (UM) coverage to the Insureds. Farm Bureau asserted the Insureds were limited to the level of coverage they actually purchased (25,000/50,000/25,000), which was much less than the liability coverage they purchased (\$250,000/\$500,000/\$100,000).

The Insureds answered, asserting the offer of additional UM coverage was not effective under South Carolina law. The Insureds also counterclaimed for breach of the insurance contract, bad faith refusal to pay insurance benefits, breach of contract accompanied by a fraudulent act, conversion, violation of the South Carolina Unfair Trade Practices Act, negligent misrepresentation, violation of the Unfair Acts in the Business of Insurance Act, and for an award of attorneys fees under S.C. Code Ann. § 38-59-40 (Supp. 2006). Additionally, the Insureds brought a third-party claim individually against the insurance agent for negligence in obtaining the coverage on the Insureds' vehicles. Farm Bureau timely replied to the counterclaims.

Following discovery, Farm Bureau moved for summary judgment on October 9, 2007. On January 16, 2008, the Insureds also moved for summary judgment. On March 13, 2008, the court entered an order denying both motions.

On March 28, 2009, the circuit court entered an order bifurcating the issues of reformation of the Insureds' policy from the counterclaims for bad faith and breach of

contract. The court ordered the reformation issues tried by the court, with the remaining matters set for jury trial two weeks later.

On September 3, 2008, the circuit court held a bench trial on the reformation issues. Following the trial the court entered an order on September 9, 2008, finding Farm Bureau failed to establish that it made a meaningful offer of additional UM and underinsured (UIM) coverages to the Insureds. The court accordingly ordered the insurance policy reformed to provide both UM and UIM coverages up to the liability limits of \$250,000/\$500,000/\$100,000.

Farm Bureau timely appealed this order on October 8, 2008.

SCOPE OF APPELLATE REVIEW

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Hardy v. Aiken*, 369 S.C. 160, 164, 631 S.E.2d 539, 541 (2006); *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008).

Although Farm Bureau argues that the underlying action “involving reformation of instruments” is equitable¹, the underlying issue actually involves determination of coverage under an insurance policy, and therefore, is an action at law. *Atkins v. Horace Mann Ins. Co.*; *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004). In an action at law, tried without a jury, the trial judge's factual findings will

¹ Farm Bureau cites to *Mathis v. State Farm Mut. Auto. Ins. Co.*, 315 S.C. 71, 431 S.E.2d 619 (Ct. App. 1993) and *Jackson v. State Farm Mut. Auto. Ins. Co.*, 301 S.C. 440, 392 S.E.2d 472 (Ct. App. 1990) for its assertion that this is an action in equity. The more recent cases of *Atkins v. Horace Mann*, 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008) and *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004) demonstrate this action to declare whether these policies contain UIM coverage is an action at law. In the cases Farm Bureau cited, the Court of Appeals stated in its introductory paragraph that the case before it was “an action in equity for reformation of automobile insurance contracts.” However, the scope of appellate review was unimportant to the result in either case. The issue in *Atkins v. Horace Mann Ins. Co.*, was also whether the insurer in that case, Horace Mann, made a commercially reasonable offer of UIM coverage such that the underlying policy should be reformed. This Court ruled the matter was an action at law.

In any event, even if this case involves a matter in equity, on appeal the Court generally gives deference to the trial judge's findings of fact, since the trial judge saw and heard the witnesses and was in a better position to judge demeanor than the appellate court. See, e.g., *Sumner v. Janicare, Inc.*, 294 S.C. 483, 366 S.E.2d 20 (Ct. App. 1988) (although the appellate court has jurisdiction in equity matters to find facts based on its own view of the evidence, the appellate court will give due deference to the findings of the trial judge who saw and heard the witnesses and was in a better position to evaluate their testimony); *Harmon v. Bank of Danville*, 287 S.C. 449, 339 S.E.2d 150 (Ct. App. 1985) (even in an action in equity, the veracity and credibility of a witness can best be judged by the trial judge who heard the witness testify, and who was able to observe his demeanor; the trial judge is given broad discretion in this area).

not be disturbed on appeal unless a review of the record reveals there is no evidence which reasonably supports the judge's findings. *Atkins v. Horace Mann Ins. Co.*; *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 237, 530 S.E.2d 896, 899 (Ct. App.2000).

Accordingly, the trial court's findings are as follows, with citations to the evidence that supports each finding.

FACTS

On July 15, 2006, Mrs. Jenkins was struck by a trailer that was being towed by an unidentified vehicle whose driver left the scene. (R.p. 82). The Insureds submitted a claim to Farm Bureau for payment under their UM coverage for Mrs. Jenkins' injuries.

As of July 15, 2006, the Insureds had a Farm Bureau automobile insurance policy (AU 0231001) which covered two vehicles, and carried liability insurance limits of \$250,000 per person, \$500,000 per accident and \$100,000 for property damage (250/500/100). However, the policy only provided UM and UIM coverages with limits of \$25,000 per person, \$50,000 per accident and \$25,000 for property damage (25/50/25). At issue in this matter is whether the trial court properly held Farm Bureau did not make a meaningful and effective offer of additional UM and UIM coverage, and whether the court properly reformed their policy to include UM and UIM coverage up to the liability limits on their Farm Bureau policy.

Prior to May 30, 2003, the Insureds had three automobile insurance policies with Farm Bureau which carried equal limits for liability, UM and UIM coverages of \$25,000

per person, \$50,000 per accident and \$25,000 for property damage (25/50/25). All of these limits were above the mandatory minimum limits in place at the time (15/30/10).

On May 13, 2002, the Insureds were involved in an automobile accident in Florida which was not their fault. However, Mr. Jenkins was sued in Florida. On April 9, 2003, Farm Bureau wrote to Mr. Jenkins an "Excess Letter" advising him that his liability limits may not be sufficient to cover the potential liability and recommending Mr. Jenkins retain counsel to represent him personally. (R.pp. 90-92).

On May 30, 2003, the Insureds went to their Farm Bureau agent (Joseph Lee) seeking to increase their insurance coverage. Mr. Jenkins stated that the reason he increased his liability coverage was because of the Florida accident. Mr. Jenkins met with Joseph Lee, the agent on duty (the Agent), and changed all three existing policies with a written "Change Request Form." The change increased the liability limits on all three policies to \$250,000/500,000/100,000. However, the limits for UM and UIM remained at \$25,000/50,000/25,000. The Insureds also chose to increase their deductibles for comprehensive coverage on two of the policies and to increase the deductible for collision coverage on one of those policies. They also deleted coverage completely for the third policy. From May 30, 2003 until July 15, 2006 two of the policies lapsed but the remaining policy, AU 0231001, remained in effect and provided UM and UIM coverage of \$25,000/50,000/25,000. This was the level of coverage in place on July 15, 2006.

The Agent stated he had been an agent with Farm Bureau for six (6) years. (R.p. 38, lines 10-11). The Agent's file reflected the Insureds had added a vehicle and raised their liability limits on policy 231001. (R.p. 39, lines 4-14).

The Agent usually shows the Offer Form to prospective insureds and tells them that the form explains UM and UIM coverages. He testified he also offers to read and explain the Form to prospective insureds. He stated he then quotes premiums for levels of coverage requested by the applicant. (R.p. 41, line 13 - p. 42, line 14). He stated, however, that his only proof of the Insureds' election are the selections they made on the Offer Form. (R.p. 60, line 2 - R.p. 62, line 3).

The Agent testified that where an insured seeks to increase his liability limits without also increasing the UM and UIM coverages, the Agent's standard procedure would be to offer the UM and UIM coverage at the higher limit of liability coverage and to quote the rates for the additional coverages. He explains the benefits of UM and UIM, and explains that liability coverage only protects other parties but UM and UIM coverage protects the insured. The Agent stated he explained UM and UIM coverage to the Insureds on the day they increased their liability coverage. (R.p. 47, line 16 - p. 49, line 4).

Mr. Lee agreed that if someone requested the "maximum amount" but only received \$250,000 liability with \$25,000 in UIM, he would not have given the person what he or she asked for. (R.p. 68, lines 3-8).

Farm Bureau's Offer Form contained a space for the Insureds to sign the Form and to acknowledge that they had been offered UM and UIM coverages. Each acknowledgment provided:

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the space provided. I further understand that the above explanations of these coverages are intended only to be brief

descriptions of uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

The Insureds concede that they signed these acknowledgments.

Mr. Jenkins testified that the Agent did not explain anything to him regarding UIM or additional UM coverage. (R.p. 83, 84-85, 86). Mr. Jenkins added that he never heard of uninsured or underinsured motorist coverage until his trial counsel explained it to him after the July 15, 2006 incident in which Mrs. Jenkins was injured. (R.p. 83-84, 88-89, 103). He previously bought UIM because he thought it was required. (R.p. 90).

The trial judge held the Offer Form provided no statutory presumption that Farm Bureau had met the requirements of S.C. Code Ann. § 38-77-350. The Insureds did not themselves mark choices regarding UIM or additional UM coverage. The Agent stated he filled in all of the information on the Forms and offered it to the Insureds, who signed it. (R.p. 5). Hence, the court found the form was not effective pursuant to *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2006).

The court held that it therefore had to look at the totality of the circumstances to determine whether Farm Bureau met the requirements of an effective offer pursuant to *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987). (R.p. 4). The court stated it had to "rest its findings on the evidence of record." (R.p. 6). Furthermore, Farm Bureau had the burden of establishing it made a meaningful offer. (R.p. 6).

The trial court then noted that as part of its analysis, it had to judge the credibility

of witnesses. In that regard, the court stated:

* * * Here, both witnesses appeared to the Court to be credible. This is true even though their testimony is dramatically opposed on two ultimate issues: (1) whether the agent intelligently advise[d] the [Insureds] as to UM and UIM coverage and (2) if so, whether he told them the UM and UIM coverage was available for an additional premium.

As to the *Wannamaker* requirements, if the agent did follow his usual procedure, as he testified he did with the [Insureds], this would constitute a commercially reasonable notification process. Also, the agent's usual procedure for specifying the limits, explaining the nature of UM and UIM and the advice as to available additional coverage for additional premium [would] meet the *Wannamaker* test.

Hence, the Court is left solely with the task of determining which of the witnesses' versions of the transaction have the ring ultimate truth, even though the Court finds both to be credible witnesses.

(R.p. 6).

The court then ruled that three cases upon which Farm Bureau claimed it prevailed regardless of Insureds' testimony did not support Farm Bureau's position that it should prevail. The court distinguished *Atkins v. Horace Mann Inc. Co.*, 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008) and *Clinton v. West American Ins. Co.*, 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005), and found under *Floyd*, the fact that the Insureds were presumed to have knowledge of the contents of the Offer Form was not dispositive of whether Farm Bureau made an effective offer of UIM coverage. (R.pp. 6-7).

The court then held that Farm Bureau, as the plaintiff, failed to carry its burden of proof that it had made a meaningful offer of UM and UIM coverage to the insureds, and ordered the policies reformed to provide UM and UIM coverage up to the Insureds' liability limits of \$250,000/500,000/100,000. (R.pp.7-8).

ARGUMENTS

I. The Trial Court Correctly Held That, Pursuant to *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005), Farm Bureau's Offer Form Did Not Satisfy the Requirements of S.C. Code Ann. § 38-77-350(A) and *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987) Because the Insureds Themselves Did Not Mark Any Choices Regarding UM and UIM Insurance and the Agent Himself Filled in All of the Information on the Forms

Farm Bureau contends the trial court erred in ruling Farm Bureau's Offer Form did not meet the requirements of S.C. Code Ann. § 38-77-350(A) (Supp. 2008) and *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987) instead of simply ruling that Farm Bureau could not rely upon the Offer Form itself to obtain the statutory conclusive presumption. In essence, Farm Bureau is arguing that, although it did not follow the statutory requirements as set forth in *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005), Farm Bureau may still use the very Offer Form which does not comply with the statute to establish compliance with the statute as construed by *Wannamaker* and its progeny. This Court should reject Farm Bureau's argument.

The seminal case on meaningful offers of UIM coverage in South Carolina is *Garris v. Cincinnati Insurance Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984), in which the Supreme Court held the predecessor code section to S.C. Code Ann. § 38-77-160 (Supp. 2008) required that an insurer must offer UIM coverage in any amount up to the insured's liability coverage. Subsequently, in *Wannamaker*, the Court held the statute mandates the insured be provided with adequate information, and in such a manner, as to allow the insured to make an intelligent decision of whether to accept or reject the coverage. The Court adopted the following four-prong test by which to determine whether an insurer

made a meaningful offer of UIM coverage:

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

In *Wannamaker*, the insurer asserted its nine-page booklet effectively offered UIM coverage to the insured, which was declined. The Supreme Court held the nine-page booklet did not constitute an effective offer of UIM in a manner which would fulfill the mandatory provision of the South Carolina statute. The Court added that the insurance agent met with the insured when the insured paid the premium but did not ask the insured about, explain, communicate or in any way offer the insured UIM coverage. The Court stated that if the agent had discussed it and made a verbal offer to the insurer to purchase UIM, this clearly would have met the statutory burden of providing the insured with the option of rejecting or accepting the coverage.

In 1989, the General Assembly enacted S.C. Code Ann. § 38-77-350, which provided at the relevant times in this case:

Form to be used when optional coverages are offered.

- (A) The director or his designee shall approve a form which automobile

insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies. This form must be used by insurers for all new applicants. The form, at a minimum, must provide for each optional coverage required to be offered:

- (1) a brief and concise explanation of the coverage,
- (2) a list of available limits and the range of premiums for the limits,
- (3) a space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires,
- (4) a space for the insured to sign the form which acknowledges that he has been offered the optional coverages,
- (5) the mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable to answer.

(B) If this form is properly completed and executed by the named insured it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor any insurance agent has any liability to the named insured or any other insured under the policy for the insured's failure to purchase any optional coverage or higher limits.

(C) 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.

(D) Compliance with this section satisfies the insurer and agent's duty to explain and offer optional coverages and higher limits and no person, including, but not limited to, an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.

(E) If the insured fails or refuses to return an executed offer form within thirty days to the insurer, the insurer shall add on uninsured motorist and underinsured motorist coverages with the same policy limits as the insured's liability limits.

This statute was apparently enacted in response to *Wannamaker. Floyd; Smith v. South Carolina Insurance Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002).

In *Floyd*, the Supreme Court held that an offer form in which the forms were filled in by an insurance agent or his employee in the presence of the named insured, and the form was then signed by the named insured, was not properly completed and executed pursuant to § 38-77-350(B), such that the form may be conclusively presumed to constitute a meaningful offer of UIM coverage to the named insured. The Court noted that “an insurer may not benefit from the protections of the statute when the form does not comply with the statute.” *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. at 262, 626 S.E.2d at 11. The Court also stated the “purpose of requiring automobile insurers to make a meaningful offer of additional UM or UIM coverage ‘is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs.’ [*Progressive Casualty Ins. Co. v. Leachman*, 362 S.C. 344, 352, 608 S.E.2d 569, 573 (2005)].” *Id.* The Court added that “a form does not necessarily constitute a meaningful offer simply because it was approved by the Department of Insurance. *Id.*

In its brief to this Court, Farm Bureau agrees with the trial court that it was not entitled to a conclusive presumption pursuant to *Floyd* because the Offer Form was not properly completed. (App. Br. p. 6). Farm Bureau complains, however, that “the trial court erred in ending its analysis there.” (App. Br. p. 6). Farm Bureau contends that the trial court should have “looked at the offer form alone” and concluded it met its obligation under *Wannamaker*. (App. Br. pp. 6-7, 10). This Court should affirm the trial court’s decision.

To begin with, assuming Farm Bureau is correct that the trial court “stopped its analysis there,” Farm Bureau did not move pursuant to Rules 52(b), SCRCF or 59(a) and (e), SCRCF, for the trial court to rule on this point. As the Supreme Court of South Carolina stated in *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000):

If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. *E.g., Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993); *Hoffman v. Powell*, 298 S.C. 338, 380 S.E.2d 821 (1989); *see also* Rules 52(b) and 59(e), SCRCF. Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. *See Roche v. South Carolina Alcoholic Beverage Control Comm’n*, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant’s contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. *See Brown v. Singletary*, 226 S.C. 482, 85 S.E.2d 738 (1955) (party may not neglect or ignore vices in the trial, then expect to assert those vices on appeal in case of disappointment at trial); *State v. Warren*, 207 S.C. 126, 134, 35 S.E.2d 38, 41 (1945) (same).

(Bold added). See also *Koon v. Fares*, 379 S.C. 150, 666 S.E.2d 230 (2008) (citing *I’On, LLC*, Supreme Court noted an issue not raised to and ruled upon by the lower court is not preserved for appellate review); *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (a party must file a Rule 59(e) motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review). Accordingly, Farm Bureau’s argument that the trial court should not have “stopped its analysis there”

and Farm Bureau's assertion that it may rely solely upon the contents of the Offer Form itself to establish an effective offer is not preserved for this Court's review.

Second, Farm Bureau's argument is essentially an attempt to bring in the back door what the Supreme Court has told insurers may not come in the front door. Farm Bureau concedes the trial court correctly ruled that the Offer Form itself was not executed in accordance with § 38-77-350, yet it then produces this same invalid Offer Form as proof *per se* of that very offer.

As the appellate courts of this State have repeatedly stated, a noncomplying offer has the legal effect of no offer at all. *Hanover Insurance Company v. Horace Mann Ins. Co.*, 301 S.C. 55, 57, 389 S.E.2d 657, 659 (1990) ("even assuming the offer was made and refused, a noncomplying offer has the legal effect of no offer at all"). See also *Progressive Casualty Ins. Co. v. Leachman*, 362 S.C. 344, 608 S.E.2d 569 (2005) (a noncomplying offer has the legal effect of no offer at all); *Bower v. National General Ins. Co.*, 351 S.C. 112, 569 S.E.2d 313 (2002); *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 475 S.E.2d 758 (1996) (same); *Antley v. Nobel Ins. Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002) (same); *Wilkes v. Freeman*, 334 S.C. 206, 512 S.E.2d 530 (Ct. App. 1999) (same); *Ackerman v. Travelers Indemnity Co.*, 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995) (same); *Mathis v. State Farm Mut. Auto. Ins. Co.*, 315 S.C. 71, 431 S.E.2d 619 (Ct. App. 1993) (same). Farm Bureau's Offer Form did not comply with the existing mandates of § 38-77-350, and is therefore "no offer at all." As the trial court ruled, if Farm Bureau is to prevail, it must do so apart from the defective Offer Form.

Farm Bureau relies upon *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 658

S.E.2d 106 (Ct. App. 2008) in asserting that it may sustain its burden of proving a meaningful offer by reliance solely upon the contents of the written Offer Form. (App. Br. pp. 6-7). The trial court distinguished *Atkins* on the ground that in *Atkins*, the insured chose to deal with the insurer through the mails while in the case *sub judice*, the insured “went to the agent for advice.” (R.p. 6). Furthermore, the insured in *Atkins* “signed ‘every blank’ on the form, had purchased the exact same UIM coverage before (as had the [Insureds in this case]) and, as noted by the Court, was a man of some sophistication, including having earned a master’s degree. The [Insureds’] sophistication level has not been addressed in this case.” (R.pp. 6-7). There is no question that in the case *sub judice*, the Insureds dealt directly with the agent, requesting the “maximum coverage” although the trial court stated this request was unclear. (R.p. 7). Furthermore, the agent admitted he filled in all of the information on the forms and simply offered it for the Insureds to sign. (R.p. 5).

Lastly, the Court in *Atkins* did not “look at the offer form alone,” as suggested by Farm Bureau, in determining whether the offer in that case was meaningful. The Court also considered: (1) *Atkins* had an ongoing relationship with his agent and it was “apparently acceptable to him to read the automobile coverage selection/rejection form, sign every blank, and return it to the agent via the mail”; (2) *Atkins* purchased the exact same UIM coverage for the new car that he had previously purchased on his other vehicles insured by Horace Mann; and (3) *Atkins* was a high school teacher, former principal, and coach of thirty-five years with a Master’s degree and over thirty hours towards a Ph.D. *Atkins v. Horace Mann Ins. Co.*, 376 S.C. at 631, 658 S.E.2d at 109-110.

It was against these *additional* facts, which have nothing to do with the offer form itself, that the Court of Appeals affirmed, under its limited scope of appellate review (any evidence in an action at law), the trial court's ruling that Horace Mann Insurance Company made a meaningful offer of UIM coverage to Mr. Atkins.

Farm Bureau takes issue with the trial court's statement that the Insureds "went to the agent for advice." (App. Br. p. 7; R.p. 6). Instead, Farm Bureau claims the advice had already been conveyed by telephone and the only reason the Insureds came to the office was "merely to execute the change request forms and corresponding selection/[rejection] forms." (App. Br. p. 7). What Farm Bureau's agent actually stated, however, is:

Basically the best of my recollection on this case, Crystal Martin was the [Insureds'] agent, I feel like a phone call had to have been made to trigger the changes to be made on our computer system on exhibit number three.

(R.p. 41, lines 18-22). This is a far cry from affirmatively stating the agent advised the Insureds over the phone as to the nature of UIM coverage, available limits, and additional premiums. Furthermore, the trial court's order does not state the Insureds went to the office itself for advice, but may be construed to state that the Insureds contacted the agent, i.e., "went to the agent," for advice because "the [Insureds] were not content with having the form sent to them for their own review." (R.p. 6).

Farm Bureau also takes issue with the trial court's finding that the Insureds' "sophistication level has not been addressed in this case." (App. Br. p. 8; R.pp. 6-7). First, Farm Bureau did not challenge this finding by a motion pursuant to Rules 52 and 59, SCRPC. Compare *Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996) (the proper procedure for correcting factual errors in an order is to file a Motion to Alter or Amend

pursuant to Rule 59(e), SCRCP). Farm Bureau should have made this argument to the trial court and obtained a ruling, and its failure to do so renders this argument unavailable on appeal.

Second, the evidence in *Atkins* demonstrated the insured's background and past dealings with the insurer. It is true that a court reviewing an offer of optional coverage should take into account the individual sophistication of an applicant when assessing whether an applicant has received a meaningful offer under *Wannamaker*. See *Anders v. South Carolina Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992) (in determining whether sufficient advice was given to the applicant, the sophistication of the applicant may be considered; one who is ignorant and unwary might require more explanation than a sophisticated applicant). However, as the plaintiff in this case, the trial court ruled that Farm Bureau had the burden of proof as well as persuasion, and concluded Farm Bureau did not carry its burden on either front, even as to proof that the Insureds possessed the requisite sophistication to excuse Farm Bureau's failure to completely advise them about available UIM coverage.

Farm Bureau also cites to *Progressive Casualty Ins. Co. v. Leachman*, 362 S.C. 344, 608 S.E.2d 569 (2005) purportedly for the rule that the Supreme Court found "a meaningful offer was given in light of the fact that the insured knew enough to purchase some coverage." (App. Br. p. 8). The narrow holding of *Leachman*, however, was that "when an insurer offers all amounts of coverage authorized by the Department of Insurance, insurers have provided insureds with the opportunity to make an intelligent decision as to whether to accept or reject UIM coverage." *Progressive Casualty Ins. Co.*

v. Leachman, 362 S.C. at 352, 608 S.E.2d at 573. Furthermore, *Leachman* predates the Court's decision in *Floyd*.

Farm Bureau next cites to this Court's unpublished opinion in *Woodson v. Nationwide Mut. Ins. Co.*, 2002-UP-398 (S.C. Ct. App. filed June 4, 2002) in support of its position. (App. Br. pp. 8-9). Farm Bureau acknowledges the case has no precedential value by Rule, but contends there is "widespread confusion" in this area and asks this Court to carefully consider the decision. (App. Br. p. 8, footnote 1). This Court should disregard Farm Bureau's argument based upon *Woodson*.

Rule 220(a), SCACR, provides in part that "memorandum opinions shall not be published in the official reports and shall be of no precedential value." (Emphasis added). Further, and more importantly, Rule 268, SCACR², provides in part:

(d)(2) Memorandum opinions...have no precedential value and should not be cited except in proceedings in which they are directly involved.

(Emphasis added). See *Council v. Catoe*, 359 S.C. 120, 597 S.E.2d 782 (2004) (an unpublished opinion has no precedential value); *Lanham v. Blue Cross and Blue Shield of SC, Inc.*, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000) (noting Rule 220(a) applies to "unpublished opinions" as well as memorandum decisions, and that unpublished opinions have no precedential value). See also *Plante v. State*, 315 S.C. 562, 446 S.E.2d 437 (1994) (pursuant to prior Rule 239(d)(2), SCACR, which is the predecessor to Rule 268(d)(2), a party may not properly rely upon an unpublished order). This Court should

² This Rule, previously found at Rule 239, SCACR, was renumbered pursuant to Supreme Court order. RE: Amendments to the SCACR, Order (S.C. Sup. Ct. filed April 29, 2009) (Shearouse Adv. Sh. No. 19 at 36).

declare that the *Woodson* unpublished opinion is of no precedential value and does not bind anyone except for the parties who were directly involved in that matter. The Court should reject Farm Bureau's cite to *Woodson* in violation of Rules 220(a) and 268(d)(2).

Furthermore, the trial court discounted *Woodson*, noting that the decision had "no procedural (sic) value and also predates *Floyd*." (R.p. 7, footnote 2). Farm Bureau has not challenged the trial court's rejection of *Woodson* on either basis either by motion pursuant to Rules 52 and 59, SCRCP, or in its brief to this Court. This Court should decline Farm Bureau's invitation to join in Farm Bureau's inappropriate reliance upon an unpublished opinion.

Farm Bureau also cites to a 2007 decision from the Court of Common Pleas in an unrelated matter and a 2008 decision from the United States District Court in another unrelated matter. Once again, this Court should disregard Farm Bureau's citation to these unpublished orders in unrelated cases since such citation violates Rules 220(a) and 268(d)(2), SCACR. Compare *Higgins v. Medical University of SC*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (this Court was critical of a trial court for relying upon circuit court orders in unrelated matters that were handed up at a hearing, noting that "reliance on an unpublished order is improper" and citing to *Plante* and Rule 239, SCACR).³

Furthermore, while Farm Bureau notes that it submitted the *Woodson* opinion to

³ Farm Bureau included all three of these decisions in its Designation of Matter to be Included in the Record on Appeal. Insureds object to Farm Bureau's inclusion of these decisions, and request that this Court not consider those matters. Furthermore, although the trial court's order mentions the *Woodson* case, Order of Sept. 9, 2008, p. 6, note 2, the trial court does not mention either of the other two decisions, and there is no evidence the court considered either of these unpublished orders.

the trial court as an exhibit (App. Br. p. 8), the record does not indicate that these other two unpublished trial level orders were submitted to the trial court, and the trial court certainly did not address them in its order. It is improper for Farm Bureau to place these unpublished orders before this Court and advocate that the Court use these decisions to reverse the decision below.

Farm Bureau also quotes the following passage from the order as proof of the “trial court’s obvious confusion over the impact of the *Floyd* decision”:

The Court must note that it seem ludicrous that an insured is not bound by the acknowledgment he or she signs as set forth on the form and here signed by both insureds. Unfortunately, our courts have carved out a rule to the effect that a detailed acknowledgment that reflects detailed information, crucial to a fair contractual relation between the insured and the insurer, is valueless. Of course, the Court realizes the disparate positions of the parties here, but in spite of this, the law in this instance diminishes the value of one’s signature and places absolutely no responsibility on one to watch out for their (sic) own interest and be held to their (sic) written statements (the acknowledgment here is a statement).

(R.p. 8). Insureds disagree this shows confusion; rather, this statement demonstrates that the trial court’s view that the law mandates the result he reached, although he may not agree with it. Notably, Farm Bureau did not bring a motion pursuant to Rules 52 and 59, SCRCp, asking the trial court to reconsider its decision in light of Farm Bureau’s construction of the *Leachman* decision.

Also, conspicuously missing from Farm Bureau’s discussion is the next paragraph in the order in which the court stated:

Our legislature has recognized the above inequity and in 2006 amended § 38-77-350. In its current reading, § 38-77-350 would clothe [Farm Bureau] with a conclusive presumption under the circumstances here. This appears to be a response to the harsh rule established in *Floyd*.

(R.p. 8). Hence, the trial court stated, in dictum, that the legislature responded to *Floyd* by amending § 38-77-350 such that the facts involved in this case would lead to a different result under the 2006 amendment of the statute. This discussion simply does not demonstrate any confusion over *Wannamaker*, *Floyd* and § 38-77-350.

The trial court's ruling also does not "throw the baby out with the bath water," as suggested by Farm Bureau. (App. Br. p. 10). The goal of the effective offer jurisprudence is "to provide an insured with adequate information to make an intelligent decision on whether to accept or reject UIM coverage." *Progressive Casualty Ins. Co. v. Leachman*, 362 S.C. at 351, 608 S.E.2d at 572 (citing to *Wannamaker*). The trial court noted that Mr. Jenkins asked for "the maximum coverage." (R.p. 7). The trial court also noted:

Mr. Jenkins testified the agent did not explain to him anything regarding UIM or UM insurance coverage. He testified he had never heard of uninsured and underinsured coverage until it was explained to him by his current counsel after his wife's accident referenced above.

(R.p. 5). The court found Mr. Jenkins to be credible and noted the court's task was to determine which of the versions of the transaction had the ring of "ultimate truth." (R.p. 6). The court reviewed the testimony and evidence and held Farm Bureau failed to "tip the scales in its favor" and thereby failed to carry its burden of proof that it made a meaningful offer of UM and UIM coverage to the Insureds. (R.pp. 7, 8). This finding has support in the record and, under this Court's scope of review, must be affirmed.

Farm Bureau next contends that its Offer Form, in and of itself, satisfies the mandates of § 38-77-350 (App. Br. pp. 11-16) as well as the elements set forth in *Wannamaker*. (App. Br. pp. 16-19). Once again, the trial court did not separately analyze

whether the Offer Form, standing alone, satisfied either the mandates of § 38-77-350 or the requirements set forth in *Wannamaker*. Farm Bureau did not move for such a ruling pursuant to Rules 52 and 59, SCRCP, such that these arguments are not properly before this Court. See *Koon v. Fares*, 379 S.C. 150, 666 S.E.2d 230 (2008)(an issue not raised to and ruled upon by the lower court is not preserved for appellate review); *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004)(a party must file a Rule 59(e) motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review); *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000)(if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review).

Furthermore, the trial court noted Farm Bureau cited to *Clinton v. West American Ins. Co.*, 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005) for the proposition that use of the approved form signed by the insured entitles it to judgment as a matter of law. The court stated it did not “read *Clinton* to so hold and, additionally, *Clinton* predates *Floyd* which specifically finds no offer based on the form if not marked by the insured.” (R.p. 7). The trial court was correct. The narrow issue in *Clinton* was whether an offer was effective where the offer form did not reference the insured’s policy, and where the insured filled in “25/50” in a blank space on the form but was not quoted a premium for that amount of coverage. There was no argument that the form was invalid because it was filled out by the insurer and not the insured, as was later held in *Floyd*. Furthermore, there was no contention, or ruling, that the form standing by itself sufficed as a meaningful offer in the

face of an argument to the contrary. Instead, the Court ruled that, pursuant to *Leachman* (holding § 38-77-350 does not require insurers to provide a blank line and while a blank line may be helpful, it is not necessary), the offer was not defective where the insured simply filled that blank line in but was not quoted a premium. As for the failure to reference the policy number, the Court of Appeals adopted the trial court's ruling as follows:

Clinton's argument that the Offer was invalid because it did not reference her policy number is meritless. First, neither the *Wannamaker* test nor the statutory law applicable to UIM coverage requires the offer form to contain the policy number. Second, the Offer was signed and dated the same date that Clinton made her application for personal automobile insurance coverage. Because a binder was issued that day, the insurer had likely not even issued a policy number on September 24, 1992. Finally, as made clear by the affidavit of Tom Dahl, a Personal Lines Underwriting Manager for the Ohio Casualty Group, West American issued only one policy of insurance to Joy Clinton, that being policy number DPW 05109293. Moreover, Joy Clinton, in her affidavit, does not allege that she ever held more than one policy with West American or the Ohio Casualty Group. Accordingly, because no other policy of insurance has ever been issued to Joy Clinton and because the date of the Offer and the policy application are identical, it is clear that the Offer signed by Joy Clinton was made in connection with her policy which covered the Neon.

West American made a valid and meaningful offer of UIM coverage to Joy Clinton by virtue of its Offer dated September 24, 1992. The Offer was commercially reasonable, being made on a form approved by the South Carolina Department of Insurance in compliance with § 38-77-350 of the South Carolina Code of Laws. The South Carolina Court of Appeals has specifically held that the form used by West American, Form 2006, meets the requirements of § 38-77-350. *Osborne v. Allstate Ins. Co.*, 319 S.C. 479, 462 S.E.2d 291 (Ct. App.1995) superceded by statute as stated in *Moody v. Dairyland Ins. Co.*, 354 S.C. 28, 579 S.E.2d 527 (Ct. App.2003); *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 475 S.E.2d 758 (S.C.1996).

Clinton v. West American Ins. Co., 364 S.C. at 121-122, 611 S.E.2d at 526. Hence, the

Clinton Court did not have before it the precise issue argued by Farm Bureau in this case, that is: Where an Offer Form does not comply with the mandates of § 38-77-350, then may an insurer use that same Offer Form to establish a meaningful offer as a matter of law?

Farm Bureau also cites to *Burch v. South Carolina Farm Bureau Mut. Ins. Co.*, 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002), in support of its contention. (App. Br. pp. 15-16). Again, like *Clinton*, the *Burch* decision is inapposite to this case.

In *Burch*, following the enactment of § 38-77-350, the insurer made a new offer of UIM coverage to Burch on a form approved by the Department of Insurance. The insurer sent a cover letter to the insured instructing him to contact his agent if there were any questions about the form or policy coverages, limits, or rates, and directed the insured to read the instructions before filling out the form. The sole issue was whether the offer in *Burch* was defective because Farm Bureau “failed to offer UIM coverage in amounts less than the minimum liability limits, which were [Burch's] liability limits at the time the form was signed.” *Burch v. South Carolina Farm Bureau Mut. Ins. Co.*, 351 S.C. at 344-345, 569 S.E.2d at 402. The Court of Appeals held that while the placement of the blank line between the itemized coverages was “less than ideal,” the explanation of coverage on the form contained the precise language approved in *Butler* and *Osborne*, informing the insured that if he is interested in other limits which do not appear with the common examples on the form, he may fill in those amounts and his agent will provide the attendant premium amounts if those limits are marketable within this State. Therefore, the Court found the insurer made a meaningful offer of UIM coverage to the insured.

Importantly, the precise issue involved in this case was not discussed or ruled upon in *Burch*, to wit: Where an Offer Form does not comply with the mandates of § 38-77-350, then may an insurer use that same offer form to establish a meaningful offer as a matter of law? Furthermore, *Burch* predated the decision in *Floyd*.

This Court should reject Farm Bureau's contention that it can rely solely on the content of its Offer Form which the trial court held was not executed in compliance with § 38-77-350. The Court should affirm the trial court's decision that Farm Bureau failed to carry its burden of proving it made a meaningful offer of UIM to the Insureds.

II. The Trial Court Did Not Err in Finding That Farm Bureau Failed to Prove the Totality of the Transaction Between the Insureds and Farm Bureau Amounted to a Meaningful Offer of UM and UIM Coverage to Insureds as Required by S.C. Code Ann. § 38-77-350(A) and *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987)

Farm Bureau argues that even if its Offer Form does not satisfy S.C. Code Ann. § 38-77-350 (A) (Supp. 2008) and *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987), then the testimony of its agent, Mr. Lee, establishes a meaningful offer of coverage. (App. Br. pp. 19-22). This Court should reject the argument and affirm the trial court.

The trial court first noted that the agent, Mr. Lee, testified generally as to what he usually does where an applicant wishes to increase liability coverage but not increase UIM coverage. (R.pp. 9-4). The court then noted that Mr. Jenkins testified Mr. Lee, the agent, did not explain to him anything regarding UIM or UM insurance coverage. (R.p. 5). The trial court next stated that Farm Bureau, as the party with the burden of proof, had to “tip the scales in its favor” and, failing such, Farm Bureau would not carry its burden of proof. (R.p. 7). The court added that it was “left solely with the task of determining which of the witnesses’ versions of the transaction have the ring of ultimate truth, even though the Court finds both to be credible witnesses.” (R.p. 6). The court then stated:

Here, Mr. Jenkins testified that he asked for the maximum coverage. What this term would mean to an insurance agent is unclear. In this case, it is particularly unclear as Mr. Jenkins testified he asked for maximum coverage, but actually increased his deductible on his comprehensive and collision coverages. While this is not inconsistent with his asking for maximum coverage, i.e., maximum coverage for liability and personal injury, it does cloud what [the] term “maximum coverage” was meant by Mr. Jenkins and what that phrase communicates to the insurance agent.

(R.p. 7). Based upon these recitations, the court concluded Farm Bureau failed to carry its burden of proof and therefore failed to prove by a preponderance of the evidence that it made a meaningful offer of UM and UIM coverage to the Insureds. (R.p. 8).

As the trier of the facts in this case, it was within the trial court's prerogative to accept or reject Mr. Jenkins' testimony, even in the face of the testimony offered by Mr. Lee. See South Carolina Dept. of Transp. v. M & T Enterprises of Mt., 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008) (a trial judge, as trier of fact, was free to accept or reject any or all of a witness's testimony); *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992) (the trier of facts is the best judge of the credibility of the witnesses). In this case, while the trial court found the witnesses credible, the court resolved the dispute in the testimony in favor of the Insureds.

Although Farm Bureau asks this Court to find, as a matter of law, that Mr. Jenkins' testimony is not acceptable in light of Mr. Lee's testimony, weighing the testimony of these two witnesses against each other is not this Court's task. Instead, this Court should give deference to the findings by the trial court, who saw and heard the witnesses and was in a better position to judge demeanor and credibility.

Accordingly, this Court should affirm the trial court's ruling that Farm Bureau failed to meet its burden of establishing it made a meaningful offer of UIM coverage to the Insureds.

III. The Trial Court Correctly Ruled That Pursuant to *Floyd v. Nationwide*, 367 S.C. 253, 626 S.E.2d 6 (2005) the Fact That Insureds Signed the Acknowledgment on the Offer Form Was Not Dispositive of the Case Because of the Plain Language of S.C. Code Ann. § 38-77-350(A)

Farm Bureau finally argues that the Insureds' signatures on the acknowledgment forms bound them even if the Offer Forms were not validly completed. The trial court rejected this argument based upon language in *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005). (R.p. 7). This Court should affirm that ruling.

In *Floyd*, the Supreme Court stated:

We acknowledge that a competent person usually is presumed to have knowledge and understanding of a document he signs, absent evidence his signature was obtained by misrepresentation, fraud, forgery, or duress. See *Moye v. Wilson Motors, Inc.*, 254 S.C. 471, 479-80, 176 S.E.2d 147, 151-52 (1970) (automobile insurance contract); *Camden Inv. Co. v. Gibson*, 204 S.C. 513, 519, 30 S.E.2d 305, 307 (1944) (lease agreement); *Horton v. Atlantic Life Ins. Co.*, 187 S.C. 155, 197 S.E. 512 (1938) (life insurance contract); *Federal Land Bank of Columbia v. Summer*, 168 S.C. 510, 167 S.E. 830 (1933) (real property deed); *In re King's Will*, 132 S.C. 63, 128 S.E. 850 (1925) (testator's will). Plaintiffs in the present case have not asserted [Insured's] signature was improperly obtained. However, this fact is not dispositive in this case because of the plain and unambiguous language of Section 38-77-350, emphasized above in the quoted portions of the statute.

Floyd v. Nationwide Mut. Ins. Co., 367 S.C. at 263, 626 S.E.2d at 12. Pursuant to this language, Farm Bureau cannot rely upon the content of the defectively executed form to argue that the Insureds are presumed to know, and understand, the content of that form.

Farm Bureau contends South Carolina jurisprudence binds the Insureds to the documents they signed, even if they did not read them. (App. Br. pp. 22-23). See *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) (a person who signs a contract or other written document cannot avoid the effect of the document by

claiming he did not read it; the law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document; this rule is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused, however, our court very strictly construes this exception; in determining whether a party can be classified as ignorant and unwary, an individual's education, business experience and intelligence are all considered); *Evans v. State Farm Mut. Auto. Ins. Co.*, 269 S.C. 584, 587, 239 S.E.2d 76 (1977) (one who is capable of reading and understanding but fails to read a contract before signing is bound by the terms thereof); *Horton v. Atlantic Life Ins. Co.* (the insured had possession of the policy from July, 1920, to May, 1934, and must be charged, therefore, with full knowledge of the specific amount of the extended insurance available to him as set forth in the contract itself). This Court, however, should reject Farm Bureau's argument.

If the rules cited by Farm Bureau override the *Wannamaker/Floyd* analysis construing § 38-77-350, then the meaningful offer jurisprudence essentially loses all efficacy. An insurer can now simply include the language required by the statutes, as set forth in *Wannamaker*, and the insured's failure to read that document relieves the insurer of *any* obligation to explain the coverage. If this Court agrees with Farm Bureau, and holds the trial court should have found the Insureds bound to the point of exclusion by the language in the Offer Form, then this Court will change the entire landscape of this area of insurance law. This Court should resist Farm Bureau's invitation to dramatically rewrite meaningful offer jurisprudence, and should, consistent with the Supreme Court's

language in *Floyd*, affirm the trial court's rejection of this argument.⁴

Farm Bureau also contends that under the parol evidence rule, the trial court improperly considered evidence outside of the written documents. (App. Br. p. 24). See *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999)(the parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument). Farm Bureau contends this "error was compounded by accepting Mr. Jenkins['] inconsistent testimony to find that a meaningful offer was not made by Farm Bureau." (App. Br. p. 24). Farm Bureau takes issue with the trial court's evaluation of Mr. Jenkins' testimony as credible, and admits "[t]here was simply no way that Mr. Jenkins and agent Joseph Lee could both be telling the truth." (App. Br. p. 24). Farm Bureau argues further that, as a matter of law, Insureds are bound by the documents and are precluded from contradicting the written evidence or from arguing mistake. (App. Br. pp. 25-26). This Court should reject these assertions.

To begin with, Farm Bureau does not point to any objection based upon the parol evidence rule, and the trial court clearly did not include any such ruling in its order, nor

⁴ In its "Issues on Appeal," Farm Bureau states this issue as "Whether the Jenkins are Bound by the Documents They Signed." (App. Br. p. iv). This statement does not sufficiently identify the issue Farm Bureau has argued, to wit: Whether the rule that a party is bound by the contents of documents the party signs precludes that party from contending that an insurer failed to make an effective offer of optional insurance coverage where the document contains an acknowledgment that the party read, or had read to him or her, the explanations of additional UM and UIM coverage and the party has indicated whether he or she wishes to purchase each coverage. See Rule 208(b)(1)(B), SCACR (the statement of an issue "shall be concise and direct as to each issue"; "broad general statements may be disregarded by the appellate court").

did it rule on the issues Farm Bureau argues on appeal. These issues are therefore not preserved for this Court's review.

Second, applying these preclusive rules of evidence to prevent any evidence outside the language contained in the Offer Form would have the same effect as ruling that the contents of the Offer Form controls the meaningful offer inquiry without regard to the *Wannamaker* analysis. This has never been the law of this State, and this Court should not adopt such a rule, particularly where the preservation of this issue is in question.

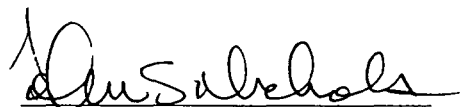
Finally, as noted above, it was within the trial court's prerogative to accept or reject Mr. Jenkins' testimony, even in the face of the contents of the Offer Forms. See *South Carolina Dept. of Transp. v. M & T Enterprises of Mt.*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008) (a trial judge, as trier of fact, was free to accept or reject any or all of a witness's testimony); *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992) (the trier of facts is the best judge of the credibility of the witnesses). In this case, while the trial court found the witnesses credible, the court resolved the dispute in the testimony in favor of the Insureds.

Accordingly, this Court should reject Farm Bureau's arguments that the contents of the written Offer Form control over the other evidence bearing on the issue of a meaningful offer, particularly where the trial court found, and Farm Bureau concedes, that it did not execute the form in accordance with § 38-77-350, *Floyd* and *Wannamaker*.

CONCLUSION

For the reasons stated this Court should reject Farm Bureau's argument that the trial court erred in failing to find Farm Bureau made a meaningful offer of UIM coverage to the Insureds, and should affirm the trial court's order.

Respectfully submitted,



John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(800) 779-8995 facsimile

Robert V. Phillips, Esquire
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 328-5656

Attorneys for Respondents

December 29, 2009

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

South Carolina Farm Bureau
Mutual Insurance Company, Appellant,

v.

Ronnie D. Jenkins and Sandra
B. Jenkins, Respondents.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2011-UP-136
Submitted January 11, 2011 – Filed April 5, 2011

AFFIRMED

John Robert Murphy, of Columbia, for Appellant.

John S. Nichols, of Columbia; and Robert Verner
Phillips, of Rock Hill; for Respondents.

FEW, C.J.: Sandra and Ronnie Jenkins had three auto insurance policies with Farm Bureau that each carried liability limits of \$25,000.00 per person, \$50,000.00 per accident, and \$25,000.00 for property damage. For each policy, the Jenkins also chose to carry equivalent UM and UIM coverage.

On May 30, 2003, the Jenkins went to the Farm Bureau office to increase their policy limits and met with Agent Joe Lee. Lee testified that another agent, Crystal Martin, made initial changes to the Jenkins's coverage in Farm Bureau's computer system and these changes were reflected on pre-printed forms before Agent Lee met with the Jenkins.

Lee filled in additional information on the forms and presented them to Ronnie Jenkins for signature. Ronnie Jenkins concedes he signed the documents. At the conclusion of the meeting, the Jenkins modified their policies to provide \$250,000.00 per person, \$500,000.00 per accident, and \$100,000.00 for property damage in liability coverage. Ronnie Jenkins testified that neither Lee nor any other Farm Bureau agent provided him with an explanation of UM and UIM coverage.

After a car accident on July 15, 2006, Sandra Jenkins filed a claim with Farm Bureau for UM coverage for bodily injuries she sustained. At the time of the accident, the Jenkins learned that their policy provided UM and UIM coverage only in the amounts of \$25,000.00 per person, \$50,000.00 per accident, and \$25,000.00 for property damage.

Farm Bureau filed a declaratory judgment action seeking a ruling that it made a meaningful offer of additional UM coverage to the Jenkins. After a hearing, the trial court found that Farm Bureau did not make a meaningful offer of UM and UIM coverage and ordered that the policy be reformed to provide Jenkins with UM and UIM coverage equal to their liability coverage.

LAW/ANALYSIS

Farm Bureau contends the trial court erred in ruling that it failed to meet its burden of proving it made a meaningful offer of UM and UIM

coverage to Ronnie and Sandra Jenkins. See Progressive Cas. Ins. Co. v. Leachman, 362 S.C. 344, 348, 608 S.E.2d 569, 571 (2005) (holding that insurer bears the burden of establishing that it made a meaningful offer).

The issues here involve making a "determination of coverage under an insurance policy, and therefore, [this] is an action at law." Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 630, 658 S.E.2d 106, 109 (Ct. App. 2008); accord Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004). In an action at law, tried without a jury, the trial court's factual findings will not be disturbed on appeal unless a review of the record reveals that there is no evidence to reasonably support the trial court's findings. Atkins, 376 S.C. at 630, 658 S.E.2d at 109.

To meet the burden of proving a meaningful offer was made, an insurer must demonstrate compliance either with section 38-77-350 of the South Carolina Code or with the Wannamaker requirements.¹ Farm Bureau concedes the trial court correctly ruled that it is not entitled to the conclusive presumption of statutory compliance under section 38-77-350(B). Instead, Farm Bureau contends that the trial court erred in ruling that it failed to make a meaningful offer under Wannamaker.² We disagree.

In Wannamaker, the supreme court held that insurers must make a "meaningful offer" of UM coverage. 291 S.C. at 522, 354 S.E.2d at 557. To satisfy this requirement:

¹ S.C. Code Ann. § 38-77-350 (2002); State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 521, 354 S.E.2d 555, 556 (1987).

² Farm Bureau posits that despite not being entitled to a conclusive presumption under subsection 38-77-350(B), it can demonstrate that a meaningful offer was made under 38-77-350(A) by analyzing the elements of the blank form. While the elements included and structure of the form are certainly a component of the meaningful offer analysis, the form must be considered in the context of how it is executed.

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

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

After the trial court ruled that Farm Bureau was not entitled to a conclusive statutory presumption, the judge properly turned to the factual question of whether Farm Bureau made a meaningful offer under the Wannamaker criteria.³ See Grinnell Corp. v. Wood, 389 S.C. 350, 357, 357 S.E.2d 796, 799-800 (2010) (holding that even when an insurer is not entitled to the statutory presumption, the insurer may prove a meaningful offer by demonstrating compliance with Wannamaker). The trial court reviewed the evidence and concluded that the testimony relating to whether Farm Bureau intelligibly advised the Jenkins of the nature of the UM and UIM coverage and whether Farm Bureau told the Jenkins that optional coverages are available for an additional premium was "dramatically opposed." The trial court determined that Farm Bureau "failed to carry its burden of proof and therefore failed to prove by a preponderance of the evidence that it made a meaningful offer of UM and UIM coverage to the Jenkins."

Evidence in the record supports the trial court's finding that no meaningful offer was made. Agent Lee testified that an insured who requests "maximum coverage" would not have received what he asked for if he only had \$25,000 in UIM coverage. He also testified about the normal procedure he follows in explaining coverage options and forms to insureds, but conceded that his only proof is the selections made on the form. Mr. Jenkins

³ Farm Bureau also contends that the trial court erred "in ending its analysis" at the point it determined Farm Bureau is not entitled to a conclusive presumption under the statute. We do not read the order to conclude its analysis prematurely.

testified that Agent Lee "did not explain to him anything regarding UIM or UM coverage. He testified that he had never heard of uninsured or underinsured coverage until it was explained to him by his current counsel" The trial judge's decision turns on this factual finding. Because there is evidence in the record to support the finding, we must affirm.

Farm Bureau relies on Atkins v. Horace Mann Insurance Co. in support of its position, but we find the case distinguishable. 376 S.C. 625, 630, 658 S.E.2d 106, 109 (Ct. App. 2008). First, Atkins addressed an appeal from a ruling that a meaningful offer was made, while here the trial court ruled that the facts supported an opposite ruling. 376 S.C. at 629, 658 S.E.2d at 108-09. The court concluded that the written offer present in Atkins is commercially reasonable under Wannamaker, 376 S.C. at 631, 658 S.E.2d at 109, while the issues present here concern different prongs of Wannamaker. Second, Farm Bureau emphasizes that the court affirmed solely on the form in Atkins. However, the entire transaction in Atkins occurred through use of the mail, whereas here, the Jenkins initially made a phone call to Farm Bureau to discuss changing their policies and then decided to go to Farm Bureau's office to discuss their options and sign the forms.

Farm Bureau also argues that Agent Lee's testimony demonstrates that a meaningful offer was given. As discussed above, after hearing and weighing Agent Lee's testimony, the trial court concluded that, in combination with the other evidence in the record, Farm Bureau did not satisfy its burden to prove it made a meaningful offer. See Leachman, 362 S.C. at 348, 608 S.E.2d at 571. This was within the trial court's discretion. See S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 668, n.12, 667 S.E.2d 7, 20, n.12 (Ct. App. 2008) (noting that the trier of fact is "free to accept or reject any or all of a witness's testimony").

Farm Bureau argues that the Jenkins should be bound by the documents they signed. The trial court properly ruled that the fact that the Jenkins signed the forms is not dispositive of the case. Although it seems contrary to basic contract principles, the law requiring meaningful offers of UM and

UIM coverage has developed to protect insureds.⁴ Without a meaningful offer, there can be no operative acceptance. As the trial court explained:

[O]ur courts have carved out a rule to the effect that a detailed acknowledgment that reflects detailed information, crucial to a fair contractual relation between the insured and the insurer, is valueless. . . . [T]he law in this instance diminishes the value of one's signature and places absolutely no responsibility on one to watch out for their own interest and be held to their written statements

AFFIRMED.

SHORT and WILLIAMS, JJ., concur.

⁴ The scenario this case presents would not have the same result now. Under the amended 38-77-350(A), the insurer is now permitted to fill out the forms on behalf of the insured as long as the insured signs the form.

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

RECEIVED
APR 18 2011
SC Court of Appeals

Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

v.

South Carolina Farm Bureau Mutual Insurance Company .. Appellant.

**APPELLANT'S PETITION FOR REHEARING
AND/OR REHEARING EN BANC**

Pursuant to Rules 219 and 221, SCACR, Appellant South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau") hereby petitions this Court for rehearing and/or rehearing en banc.

This appeal presented a very direct, concise question of law that is in dire need of being answered by the appellate courts of this state. The issue is whether the written offer form mandated by S.C. Code Ann. § 38-77-350(A) satisfies the requirement that an insurer make a meaningful offer of uninsured ("UM") and underinsured motorist ("UIM") coverage. However, the Court affirmed the trial court Order in favor of respondents in Unpublished Opinion No. 2011-UP-136. Specifically, this Court affirmed

a lower court ruling that Farm Bureau did not make a meaningful offer of uninsured UM and UIM coverage and therefore, the policy issued by Farm Bureau to Respondents would be reformed to provide the Jenkins with UM and UIM coverage up to the limits of their liability coverage. However, this Court failed to address whether the use of a written form, whose content fully satisfies S.C. Code § 38-77-350(A), establishes a prima facie showing that a meaningful offer was made under State Farm Mutual Automobile Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987).

There has been a great deal of confusion and misunderstanding regarding the Wannamaker requirements since the Supreme Court's decision in Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 626 S.E.2d 6 (2006). However, this Court recognized that Floyd only involved the issue of whether an insurer was entitled to a preclusive presumption under S.C. Code § 38-77-350 (B), and did not rule on whether a written form could satisfy the Wannamaker requirements. In Atkins v. Horace Mann Insurance Co., the Court found the Wannamaker requirements were met by the contents of the written form alone. 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008).

A decision on this issue is necessary especially in light of the conflicting decisions in lower courts. In contrast to the Order appealed from in this matter, several trial courts have ruled that a written form that complies with the requirements of S.C. Code § 38-77-350 (A), standing alone, satisfies the Wannamaker requirements. See Foremost Ins. Co. v. Demma, No. 2206-CP-23-8108 (S.C. Com. Pl. May 15, 2007); Phillips v. Progressive Cas. Ins. Co., No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008). In fact, this Court's own Chief Judge issued an Order in 2009 holding: "In this case, [insurer's] form fully complies with § 38-77-350(A) and Wannamaker and therefore,

entitles [insurer] to a declaration that it made a meaningful offer of UIM coverage to [insured].” Pace v. Nationwide Mut. Ins. Co., Case No. 2007- CP-2308631 (October 27, 2009) (attached). In addition, the unpublished opinion in this case is completely at odds with the unpublished decision of the Court in Woodson v. Nationwide, 2002-UP-398 (Ct. App. 2002) (“On its face, the form clearly complies with both the statutory and common law mandates.”).

Further magnifying the need for clarification on this issue is the Supreme Court’s unpublished per curiam opinion in Nolan v. Progressive Northern Insurance Co., Op. No. 2010-MO-016 (S.C. Sup. Ct. Order dated July 19, 2010) (unpublished order). In Nolan, the Supreme Court had an opportunity to address the meaningful offer issue after it certified the case from this Court pursuant to Rule 204(b), SCACR. According to Rule 204(b), “Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” However, despite the significant issues in Nolan, one of which mirrored the issues in this case, the Supreme Court failed to provide a published opinion with any guidance.

This confusion has been mentioned by numerous circuit court judges to the undersigned counsel and clearly is an issue that should be resolved at the appellate level with a published decision. The South Carolina Supreme Court has come close to resolving the issue in its recent opinion in Wiegand v. United States Automobile Association, 391 S.C. 159, 705 S.E.2d 432 (2011). In Wiegand, the Supreme Court relied on the offer form alone to find the offer complied with the requirements of S.C. Code Ann. § 38-77-350(A). Even though there was a dispute as to whether the insured actually marked the rejection boxes for UIM coverage, the Court found dispositive the

fact that form listed all of the statutorily required information. Further, in the absence of any testimony as to the context of the offer, the Court found that the insured was bound to his signature which appeared numerous times on the form including on the bottom of the form, under the check marks, and in the acknowledgement.

In this case, the Court focused on the “context” of the offer rather than on the “content” of the offer form which is the sole basis to determine whether a written offer satisfies Wannamaker. Considering the rampant confusion on this issue and the recent decision in Wiegand, which showed that the analysis of whether a form satisfies S.C. Code § 38-77-350(A) is separate from the analysis of whether an insurer is entitled to a preclusive presumption, this Court should reconsider its unpublished opinion, schedule this case for oral argument and issue a published opinion confirming that an insurance company can satisfy the Wannamaker requirements by relying on the contents of its written form standing alone.

Based on the above, Farm Bureau respectfully petitions this Court for a rehearing or in the alternative for a rehearing on banc.

Respectfully submitted,



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

April 18, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP2308631

Martha Pace vs. Nationwide Mutual Insurance Company

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 27th day of Oct, 2009, and a copy mailed first class this 27th day of Oct, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Anthony Butaitis Mark C. Tanenbaum,
PA P.O. Box 20757 Charleston, SC 294130757

ATTORNEY(S) FOR THE PLAINTIFF(S)

✓ John Robert Murphy Murphy & Grantland, PA
P.O. Box 6648 Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer, Clerk Of Court - Clerk of Co

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2007-CP-23-8631

Martha Pace,

Plaintiff,

v.

Nationwide Mutual Insurance Company,

Defendant.

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKES
2009 OCT 27
A 9: 31

This matter came before the court for trial on May 28, 2009, at the Greenville County Courthouse. Appearing on behalf of the Plaintiff was Stephen A. Buta, Esquire. Appearing on behalf of the Defendant was J.R. Murphy, Esquire. After hearing the trial of the case, considering the evidence and applicable law and hearing the able arguments of counsel, the court finds in favor of Defendant Nationwide and declares that Nationwide made a meaningful offer of underinsured motorist (UIM) coverage to Robert Larry Pace. Therefore, the policy issued by Nationwide to Robert Larry Pace, policy number 61 39 K 324936, is not reformed to include UIM coverage for the February 24, 2007 accident involving Plaintiff Martha Pace.

FINDINGS OF FACT

The evidence submitted consisted of the testimony of Robert Larry Pace, Martha Pace and Robert Horton, the agent who sold the policy to Mr. Pace. Nationwide submitted four exhibits including the application for insurance dated March 21, 1997, the Selection/Rejection form dated March 21, 1997, the declarations page for the policy at the time of the accident (February 24, 2007), and Mr. Pace's declarations page from his North Carolina automobile policy that expired on March 27, 1997.

Mr. Pace acknowledged going to the Horton agency to obtain a South Carolina policy upon his move from North Carolina and his marriage to Martha Pace. He acknowledged his

signature on the application and both signatures on the Selection/Rejection form. Mr. Pace denied that he actually marked the rejection of underinsured ("UIM") coverage on that form. In addition, he denied filling in the personal information contained on the form other than his signature.

Horton testified that after explaining the various coverages that Mr. Pace had in existence on his North Carolina policy and providing a quote for the same coverages on the new South Carolina policy, Mr. Pace elected to lower his liability limits and to drop his optional coverages. A comparison of the two declarations pages submitted into evidence confirms that the liability and UM limits were reduced and the collision and UIM coverages were deleted from the new policy. Horton further testified that he persuaded Mr. Pace to keep comprehensive coverage on his new South Carolina policy, which Pace did.

Mr. Pace admitted that he did not request UIM coverage on the new policy and therefore, the policy was issued without it. He further admitted that he signed the rejection of coverage on page 3 of the form and the acknowledgement on page 4 which states that he read, or had read to him, the explanations of coverage in the Selection/Rejection form. However, Mr. Pace contended at trial that he did not read the form. Mr. Pace is a high school graduate who readily admitted that he was capable of reading and understanding the information and descriptions of coverage contained in the Selection/Rejection form. Lastly, Mr. Pace also acknowledged rejecting UIM coverage on three additional occasions at the Horton Agency, once in 1997, once in 1998 and once in 2004. However, Mr. Pace did select UIM coverage on the policy taken out on the motorcycle involved in the accident on the very day of the accident. He claimed the insurance agent at the motorcycle dealership explained it better to him. Mr. Pace admitted that

he did not call Horton after purchasing UIM on the motorcycle to make any changes to the Nationwide policy at issue in this case.

ANALYSIS

South Carolina Code § 38-77-160 requires insurers to offer prospective insureds UIM coverage “up to” the limits of liability coverage in the policy. This requirement was later defined by the Supreme Court in State Farm v. Wannamaker to be “meaningful”. The court set forth four elements to determine whether the required offer was meaningful: (1) the insurer’s notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of optional coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the optional coverage; and (4) the insured is told that optional coverages are available for an additional premium. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987).

In response to Wannamaker, the South Carolina legislature enacted Code § 38-77-350 which governs the use of written forms in extending offers of optional UM and UIM coverage to prospective insureds. The statute mandates that insurers use a written form with all new applicants. Section 38-77-350(A) contains the following five requirements for a written form: (1) a brief and concise explanation of the coverage; (2) a list of available limits and the range of premiums for the limits; (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires; (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages; and (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer. Subsection B of § 38-77-350 provides a conclusive presumption if certain conditions

are met. The Supreme Court interpreted that section in Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 626 S.E.2d 6 (2005) to require that the insured himself actually mark the selection of coverage and sign the form in order to entitle an insurer to the conclusive presumption. However, failure to comply with § 38-77-350(B) does not prevent an insurer from establishing that it made a meaningful offer of under the requirements of Wannamaker and §38-77-350(A). See Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008) (holding that even when an insurer is not entitled to a conclusive presumption under § 38-77-350(B), the insurer is able to sustain its burden of proving it made a meaningful offer under Wannamaker by reliance on the contents of the written offer form standing alone).

This court first considers whether Nationwide has established its entitlement to a conclusive presumption under § 38-77-350(B) and the requirements of Floyd. In reviewing the evidence, there is a dispute as to who made the mark rejecting UIM coverage on the form. However, based on a review of the form itself and the testimony, I find that Nationwide has not carried its burden of proof to establish that the form was “completed and executed by the insured” so as to satisfy the requirements of § 38-77-350(B). Therefore, Nationwide is not entitled to a conclusive presumption that a meaningful offer was made.

The next issue is whether a meaningful offer was made based on the contents and execution of the written form standing alone. Although Plaintiff argues that the court should not consider the form based on the failure to comply with § 38-77-350(B), counsel for Plaintiff offers no authority in support of his position. Moreover, such a position would be contrary to the language in Floyd, the holding of the Court of Appeals in Atkins, and the statutory requirement that an insurer must use a written form when offering optional coverage to all new applicants.



Therefore, Nationwide is entitled to establish that it complied with Wannamaker by virtue of the written form standing alone.

The court would note that the phrase “a non-complying offer has the same effect as no offer at all” did not arise out of a case involving the conclusive presumption from § 38-77-350(B). That phrase arose from much earlier decisions and found that a “non-complying offer” was the same as a “non-meaningful offer” under the dictates of § 38-77-160 and Wannamaker. Therefore, Nationwide’s failure to establish that it fully complied with § 38-77-350(B) does not negate the use of the written form, standing alone, to establish that Nationwide complied with the requirements of Wannamaker. Moreover, this court believes that § 38-77-350(A) provides slightly different and more detailed requirements when an insurer is using a written form to satisfy the Wannamaker meaningful offer requirement. In this case, Nationwide’s form fully complies with § 38-77-350(A) and Wannamaker and therefore, entitles Nationwide to a declaration that it made a meaningful offer of UIM coverage to Robert Larry Pace.

Nationwide’s form satisfies the requirements of § 38-77-350(A) because it contained a brief and concise explanation of coverage, listed the available limits and the range of premiums for those limits, contained a space for the insured to mark whether he chose to accept or reject the coverage, a space for the insured to select the limit of coverage he desired, if any, and a space for the insured to sign the form which acknowledged that he had been offered the optional coverages. The form also had the mailing address and telephone number of the South Carolina Department of Insurance.

The form also satisfies the four requirements of the Wannamaker test. The offer was commercially reasonable. See Clinton v. West American Insurance Co., 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005) (holding an offer is commercially reasonable when it is made on a

form approved by the South Carolina Department of Insurance in compliance with S.C. Code Ann. § 38-77-350(A)). The form specifies the limits of optional coverages and specifies that the optional coverages are available for an additional premium. The form also advises the insured of the nature of the optional coverages.

The perspective that the court must use in determining whether a meaningful offer was made is set forth in Wannamaker and its progeny and is stated concisely in Progressive Casualty Insurance Co. v Leachman, 362 S.C. 344, 608 S.E.2d 569 (2005). The court underscored its decision upholding the validity of the written form, standing alone, by stating “the goal [of Wannamaker requirement] is to provide adequate information so that the insured can make an intelligent decision”. Leachman, 362 S.C. at 351, 608 S.E.2d at 572. The Court of Appeals recently reaffirmed this perspective in Grinnel Corp. v. Wood, 378 S.C. 458, 663 S.E.2d 61 (2008), by focusing on the information that was provided to the insured rather than the level of understanding that the insured exhibited. In holding that an insured’s sophistication cannot overcome a lack of adequate information, the court clearly placed the focus of the meaningful offer inquiry on whether the information provided by the insurer was adequate, not on whether the insured had a full and complete understanding. So long as the insured is not ignorant or unwary, the information contained in Nationwide’s written form is sufficient to carry its burden. See McLeod v. Home Ins. Co., 672 F.Supp. 903 (D.S.C. 1987). In fact, numerous decisions have held that written forms virtually identical or substantially similar to the Nationwide form provide all of the information required by law and therefore, give an insured “adequate information” with which to make a decision. See Clinton v. W. America Ins. Co., 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005) (citing Osborne v. Allstate Ins. Co., 319 S.C. 479, 462 S.E.2d 291 (Ct. App. 1995) *superseded by statute as stated in* Moody v. Dairyland Ins. Co., 354 S.C.

28, 579 S.E.2d 527 (Ct. App. 2003)); Butler v. Unisun Ins. Co., 323 S.C. 402, 475 S.E.2d 758 (S.C.1996); Burch v. South Carolina Farm Bureau Mut. Ins. Co., 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002), Woodson v. Nationwide Mut. Ins. Co., No. 2002-UP-398 (Ct. App. 2002).

The Plaintiff has not established that Robert Larry Pace was ignorant or unwary or was otherwise incompetent to read and understand the document. To the contrary, Mr. Pace admitted he was competent to read and understand the document. Likewise, the evidence does not suggest any fraud, misrepresentation or duress so as to relieve Mr. Pace from the contents of the document he signed. Therefore, there being no basis to find that Nationwide failed to present all of the required information under Wannamaker or that the written form failed to comply with Code §38-77-350(A), I find that Nationwide made a meaningful offer of UIM coverage to Robert Larry Pace.

Having found that the written form, standing alone, satisfies the requirement that Nationwide make a meaningful offer of UIM coverage to its insured, I do not reach the issue of whether the oral communications between agent Robert Horton and the insured, Robert Larry Pace, also satisfied the meaningful offer requirement under Wannamaker. Therefore, based on the above, it is

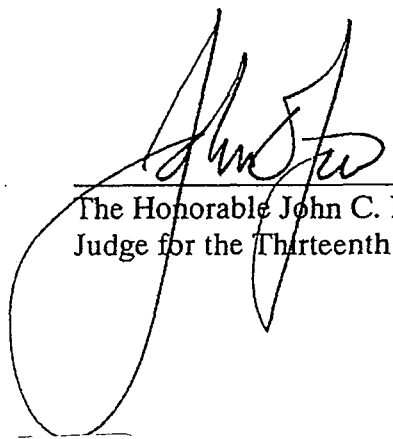
ORDERED, ADJUDGED and DECREED that judgment be and hereby is granted in favor of Nationwide as set forth above.

IT IS SO ORDERED.

Greenville, South Carolina

Date: _____

10/22/9


The Honorable John C. Few
Judge for the Thirteenth Judicial Circuit

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

RECEIVED
APR 18 2011
SCC Court of Appeals

Ronnie D. Jenkins and Sandra B. Jenkins Respondents,

v.

South Carolina Farm Bureau Mutual Insurance Company .. Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing and/or Rehearing En Banc on Ronnie D. Jenkins and Sandra B. Jenkins, by depositing a copy of it in the United States Mail, postage prepaid, on April 18, 2011, addressed to their attorneys of record, Robert V. Phillips, Esquire, 1539 Health Care Drive, Rock Hill, SC 29732 and John S. Nichols, Esquire, 1614 Taylor Street, Columbia, SC 29202.



J.R. Murphy, Esquire

Ashley B. Stratton, Esquire

Murphy & Grantland, P.A.

P.O. Box 6648

Columbia, SC 29260

(803) 782-4100

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No.: 2006-CP-46-02553

South Carolina Farm Bureau Mutual
Insurance Company, ... Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ... Respondents.

**RETURN TO PETITION FOR REHEARING
AND/OR REHEARING *EN BANC***

Pursuant to Rules 219, 221, and 240(e), SCACR, Respondents Ronnie D. Jenkins and Sandra B. Jenkins provide this Return to the Petition for Rehearing and/or Rehearing *En Banc* filed by Appellant South Carolina Farm Bureau Mutual Insurance Company (Farm Bureau) regarding this Court's decision in *SC Farm Bureau Mut. Ins. Co. v. Jenkins*, 2011-UP-136 (S.C. Ct. App. filed April 5, 2011). The Court should deny the Petition and remit the matter to the circuit court.

A. The Court Should Deny Rehearing

The Court should deny Farm Bureau's Petition for Rehearing. The Court's opinion is consistent with published and binding precedent from this Court and the

Supreme Court, and correctly affirms the trial court's order.

Rule 221(a), SCACR, provides, in pertinent part, "A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." In its Petition for Rehearing, Farm Bureau contends only that this Court failed to address its argument that the written form, by itself, can satisfy the requirements of S.C. Code Ann. § 38-77-350(A) (Supp. 2010) as well as *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987) and its progeny. The Court should reject Farm Bureau's argument.

This Court's opinion properly and thoroughly addressed the arguments Farm Bureau made below and on appeal. In discussing Farm Bureau's argument under *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 658 S.E.2d 106 (Ct. App. 2008), the Court stated, that "Farm Bureau emphasizes that the [trial] court affirmed solely on the form in *Atkins*." *SC Farm Bureau Mut. Ins. Co. v. Jenkins*, slip op. p. 3. The Court also noted:

Farm Bureau posits that despite not being entitled to a conclusive presumption under subsection 38-77-350(B), it can demonstrate that a meaningful offer was made under 38-77-350(A) by analyzing the elements of the blank form. While the elements included and structure of the form are certainly a component of the meaningful offer analysis, the form must be considered in the context of how it is executed.

Id., p. 4, note 2. Thus, contrary to Farm Bureau's assertion in its Petition, this Court did not overlook Farm Bureau's argument that the written form, by itself, satisfied the requirement of a meaningful offer under § 38-77-350(A) and *Wannamaker*.

As to the merits of Farm Bureau's Petition, Farm Bureau announces "[t]here has been a great deal of confusion and misunderstanding regarding the *Wannamaker*

requirements since the Supreme Court's decision in *Floyd v. Nationwide Mutual Insurance Co.*, 367 S.C. 253, 626 S.E.2d 6 (2006)." (Petition, p. 2). Respondents disagree as do our appellate courts. The only "confusion and misunderstanding" in this area is that which is manufactured by Farm Bureau in a repeated attempt to avoid the holding of *Floyd* and its progeny. This manufactured "confusion" becomes apparent through a review of Farm Bureau's argument, its repeated improper citation to unpublished appellate or circuit court authority, its apocryphal tale of conversations between its counsel and unidentified trial judges, and its reference to the Supreme Court's holding of *Wiegand v. United States Automobile Association*, 391 S.C. 159, 705 S.E.2d 432 (2011). This Court should reject the premise of Farm Bureau's contention as there is no real confusion at all among the binding, published jurisprudence of this State.

The upshot of Farm Bureau's argument is this: Even though the trial court found (and Farm Bureau agreed) that Farm Bureau may not have the statutory presumption of an effective offer because of its improper use of the offer form, the form itself may still be used to establish an offer that complies with the statute and *Wannamaker*. That is, a form whose faulty execution will not permit the presumption will still stand as irrefutable proof of a meaningful offer. (See Petition, pp. 1-2) (Farm Bureau claims such a form "satisfies the requirement" or "fully satisfies S.C. Code [Ann.] § 38-77-350(A)"). It is Farm Bureau's position that the form, solely and in and of itself, establishes "a prima facie showing that a meaningful offer was made" under *Wannamaker*, and somehow this

“prima facie” showing is conclusive proof of an effective offer that binds the courts.¹ This sounds remarkably like a conclusive presumption based upon the language of the improperly executed offer form. In essence, then, Farm Bureau invites the Court to open the back door because the front door is barred by the law of this State. This Court should decline that invitation.

Farm Bureau begins by once again misstating the holding of *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 658 S.E.2d 106 (Ct. App 2008) in its Petition. (Petition, p. 2). Farm Bureau contends the Court in *Atkins* “found the *Wannamaker* requirements were met by the contents of the written form alone.” (Petition, p. 2). As Respondents pointed out in their Brief, the *Atkins* Court did not rely solely on the contents of the written form alone in finding the insurer in that case made an effective offer of coverage under *Wannamaker*. (Respondent’s Brief, pp. 16-17). Unlike Farm Bureau in this case, the insurer in *Atkins* offered proof beyond the form alone regarding the sophistication of the insured, the past course of dealing between the insured and the agent selling the coverage, and the coverage the insured had purchased in the past on other vehicles insured by the insurer, Horace Mann. It is disingenuous to characterize the holding of *Atkins* as ruling that the offer form alone constituted an effective offer in that case.

In support of its contention that there is confusion about this issue, Farm Bureau asserts “This confusion has been mentioned by numerous circuit court judges to the

¹ Of course, “prima facie” simply means that evidence of a fact has been produced which may ultimately be rebutted, as was done in this case. *Mack v. Branch No. 12, Post Exchange, Fort Jackson*, 207 S.C. 258, 35 S.E.2d 838 (1945) (“prima facie” is a Latin phrase and literally means “at first view; on the first appearance”; prima facie evidence may produce a result for the time being, but that result may be repelled).

undersigned counsel....” (Petition, p. 3). This comment is improper on multiple levels. First, it is an assertion by Farm Bureau’s counsel that is untested. Farm Bureau’s counsel acts as a witness in the matter without any context about what “numerous circuit court judges” may or may not have told him about their confusion regarding this fairly straightforward concept. These conversations are also not offered as any authority in the Petition. The Court should ignore counsel’s attempt to inject hearsay into the Petition.

Second, Farm Bureau’s comment about what judges may or may not have told its counsel attempts to insert information that is not properly before this Court. See Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”); Rule 210(h), SCACR (“the appellate court will not consider any fact which does not appear in the Record on Appeal.”); *Richland County v. Carolina Chloride, Inc.*, 382 S.C. 634, 677 S.E.2d 892 (Ct. App. 2009) (this Court is confined to the record in deciding issues on appeal); *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993) (matters raised by appellant that are completely outside the record may not form the basis for a reversal). This Court should disregard Farm Bureau’s assertion about what circuit judges may or may not have said in casual conversations with Farm Bureau’s lawyer.

Farm Bureau also contends this issue “should be resolved at the appellate level with a published opinion.” (Petition, p. 3). Farm Bureau then points to the recent Supreme Court case of *Weigand v. United States Automobile Association*, 391 S.C. 159, 705 S.E.2d 432 (2011), claiming the Supreme Court “has come close to resolving the issue....” (Petition, p. 3). A closer examination of *Weigand* reveals, however, that the case

is meaningfully distinguishable, and there is no confusion in this jurisprudence.

In *Weigand*, the Supreme Court held that USAA met its burden under § 38-77-350 for making a meaningful offer of UIM coverage. That is, unlike Farm Bureau in this case, USAA in *Weigand* actually followed the statute and enjoyed the presumption of a meaningful offer. Farm Bureau admits it violated the statute and cannot enjoy the benefit of the presumption. *Weigand* offers Farm Bureau no comfort in this case.

What is glaring about Farm Bureau's petition is its omission of any reference or discussion of *Grinnell Corp. v. Wood*, 389 S.C. 350, 698 S.E.2d 796 (2010). In *Grinnell*, this Court affirmed a trial court's order finding of no effective offer and ordering reformation of a policy. *Grinnell Corp. v. Wood*, 378 S.C. 458, 663 S.E.2d 61 (Ct. App. 2008). The Supreme Court reversed. The Supreme Court noted that the insured was sophisticated and expressed a desire to decline optional UM and UIM coverages. However, the insured admittedly failed to properly execute the denial form and the form did not comply with § 38-77-350(A). The Supreme Court discussed the statute and *Wannamaker*, and found that under the particular facts of the case – specifically, the insured's express desire to decline these coverages – the insurer made a meaningful offer of additional UM and UIM coverage to the insured. The Court added:

American Home concedes that its form did not comply with the requirements of section 38-77-350(A) and it is thus not entitled to the presumption that it made a meaningful offer of additional UM and UIM to Grinnell. *If the only evidence presented in this record were the statutorily deficient and incorrectly executed offer form, the court of appeals opinion would have to be affirmed.* However, the record presented in this case is replete with uncontroverted evidence that the insured knew its options with respect to additional UM and UIM coverage in South Carolina and made an informed decision as to the amount of coverage that best suited

its needs.

389 S.C. at 358, 698 S.E.2d at 800 (emphasis added). What Farm Bureau wants this Court to do is rule contrary to the emphasized language from *Grinnell*; that is, hold that where the only evidence presented is an incorrectly executed offer form that fails to provide the presumption of a meaningful offer, then Farm Bureau may still prevail only on the language contained in the form itself. *Grinnell*, however, stands directly contrary to Farm Bureau's position, and the ink is barely dry on that decision.

Farm Bureau's argument also runs counter to the settled rule that a noncomplying offer of optional insurance coverage has the legal effect of no offer at all. *See, e.g., Hanover Ins. Co. v. Horace Mann Ins. Co.*, 301 S.C. 55, 57, 389 S.E.2d 657 (1990) and other cases cited at page 15 of Respondent's Brief. It is undisputed that the form in the case *sub judice* was filled in by the agent; Farm Bureau admits as much in its Brief. (App. Br. p. 6, first full paragraph). As the Supreme Court stated in *Floyd v. Nationwide*:

We conclude an offer form in which the blanks were filled in by an insurance agent or his employee in the presence of the named insured, and the form was then signed by the named insured, was not properly completed and executed pursuant to Section 38-77-350(B).

Floyd, 367 S.C. at 264, 626 S.E.2d at 12. Hence, under *Hanover*, the form (a noncomplying offer) has the legal effect of no offer at all – standing alone it is essentially a nullity. The trial court ruled consistent with those cases and correctly held that if Farm Bureau is to prevail in this case, it must do so apart from the defective offer form. The emphasized language from *Grinnell* makes that clear. Accordingly, this Court should adhere to published precedent and deny Farm Bureau's request for rehearing.

B. This Court should Admonish Counsel for Violating Appellate Court Rules

Farm Bureau's Petition violates the rules of this Court by citing to unpublished trial court orders and appellate opinions. Farm Bureau even went to the unprecedented length of attaching an order to its petition that was signed by Chief Judge Few in October 2009. Farm Bureau is attempting to improperly influence this Court. (Petition, pp. 2-3) (Farm Bureau notes "this Court's own Chief Judge issued an Order in 2009" ruling a form alone satisfies the law). This Court should reject this tactic and admonish counsel to stop this practice.

Regarding the order attached to the petition in *Pace v. Nationwide Mut. Ins. Co.*, 2007-CP-23-8631 (Oct. 27, 2009), Respondents first contend that it is improper to submit such a document as an exhibit to a Petition for Rehearing, and would ask the Court to disregard it in its entirety. See Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); Rule 210(h), SCACR ("the appellate court will not consider any fact which does not appear in the Record on Appeal."); *Richland County v. Carolina Chloride, Inc.*, 382 S.C. 634, 677 S.E.2d 892 (Ct. App. 2009) (this Court is confined to the record in deciding issues on appeal); *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993) (matters raised by appellant that are completely outside the record may not form the basis for a reversal). This Court should advise counsel that it did not consider this order, entered a full year after the notice of appeal in this case, in ruling on this Petition.

Second, the order in *Pace* is meaningfully distinguishable from this case. Like the Court did *Atkins*, Judge Few noted Mr. Pace's sophistication, the history of dealings

between Mr. Pace and the agent, Horton, and the fact that Mr. Pace placed UIM coverage on one of his vehicles (a motorcycle) but not the vehicles in question (he was attempting to stack).

Third, although the order Judge Few entered in the *Pace* case states “Nationwide is entitled to establish that [it] complied with *Wannamaker* by virtue of the written form standing alone,” (Order, p. 5), Judge Few relied on a misreading of *Progressive Casualty Ins. Co. v. Leachman*, 362 S.C. 344, 608 S.E.2d 569 (2005) and *Atkins*. Importantly, Judge Few also relied upon this Court’s decision in *Grinnell*, which was reversed by the Supreme Court in 2010. The order also cites to this Court’s unpublished opinion in *Woodson v. Nationwide Mut. Ins. Co.*, 2002-UP-398 (S.C. Ct. App. filed June 4, 2002), which is not proper under the South Carolina Appellate Court Rules.

Finally, the order in *Pace* has not been reviewed by the appellate courts. Insofar as the order in *Pace* holds that an insurer may rely solely on a defective offer form to convey a meaningful offer of UIM coverage, *Pace* is wrongly decided (and contrary to Chief Judge Few’s opinion in this case). If the *Pace* order is on appeal, it should be reversed under the Supreme Court’s version of *Grinnell*.

Farm Bureau also cites to the two trial court orders it improperly included in the Record on Appeal², as well as the Supreme Court’s unpublished opinion in *Nolan. v. Progressive Northern Ins. Co.*, 2010-MO-016 (S.C. Sup. Ct. filed July 19, 2010) and this

² As Respondents pointed out in their brief (p. 20-21), the record does not indicate that Farm Bureau submitted these two unpublished trial court orders to the trial court below. Furthermore, even if the orders had been submitted, the trial court did not address them in the order.

Court's unpublished opinion in *Woodson v. Nationwide*, 2002-UP-398 (S.C. Ct. App. filed June 4, 2002). This Court should disregard Farm Bureau's citation to these unpublished orders in unrelated cases since such citation violates Rules 220(a) and 268(d)(2), SCACR. *Compare, Council v. Catoe*, 359 S.C. 120, 597 S.E.2d 782 (2004) (citing Rule 220(a), SCACR, the Supreme Court noted that an unpublished opinion "has no precedential value"); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001) (unpublished orders and opinions are not binding on the Court of Appeals); *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000) (under Rule 220(a), SCACR, unpublished opinions have no precedential value); *Plante v. State*, 315 S.C. 562, 446 S.E.2d 437 (1994) (noting the appellant in that case may not properly rely on an unpublished order pursuant to former Rule 239(d)(2), SCACR, now found in Rule 263(d)(2), SCACR); *Higgins v. Medical University of SC*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (this Court was critical of a trial court for relying upon circuit court orders in unrelated matters that were handed up at a hearing, noting that "reliance on an unpublished order is improper" and citing to *Plante* and Rule 239, SCACR).

Counsel for Farm Bureau repeatedly cites to unpublished and memorandum opinions in unrelated cases, and does so before state and federal trial and appellate courts. The Court should admonish counsel to stop this improper practice immediately, and adhere to the plain language contained in the appellate court rules.

As to the merits of each of these cases, *Woodson* predates *Floyd* so it is of no use to the discussion in this case. *Nolan* specifically declined to address the issue Farm

Bureau claims years to be decided. The circuit court orders in *Foremost v. Demma* and *Phillips v. Progressive* are also not helpful to Farm Bureau for the following reasons:

1. *Foremost v. Demma* - There is no indication in the record this order was presented to the trial court in this case, so its consideration by this Court is improper. Furthermore, the facts are meaningfully different - Mr. Demma dealt directly with the agent in her office when he obtained the coverage on his motorcycle. The judge in *Demma*, the Honorable Charles Simmons, also relied on the unpublished opinion in *Woodson* (a case improperly cited by counsel for *Foremost*, who is also counsel in this case) (R. p. 153, 155-156) as well as several Court of Appeals cases whose facts predated *Floyd*. (R. p. 152). Importantly, the *Demma* order was not tested on appeal. Finally, that order predates the Supreme Court's decision in *Grinnell* (rejecting the notion that the form alone could establish an effective offer). The order in *Demma* is of questionable efficacy.
2. *Phillips v. Progressive* - Again, there is no indication in the record that this order was presented to the trial court below so this Court should not consider it on appeal. It is also an order of the United States District Court attempting to predict South Carolina law rather than certifying the matter for clarification pursuant to Rule 244, SCACR, and is therefore of no binding force. On the facts, the insured went to her agent's office to fill out the application for insurance, including the rejection form, and the evidence established the agent thoroughly explained the form and optional coverages to the insured. Furthermore, the plaintiff in *Phillips* was the insured, who had the burden of proof; in this case, Farm Bureau brought

the action and had that burden. The District Court also relied solely on *Clinton v. West. American Ins. Co.*, 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005) in finding the offer form in that case satisfied the statute – the circuit court in the case *sub judice* readily distinguished *Clinton* (R. pp. 7-8) and, as Respondents pointed out in their Brief, the narrow issue in *Clinton* was entirely different. (Respondent’s Brief, pp. 23-25). The District Court’s shorthand citation to *Clinton* is thus legally flawed. Next, there is no indication the holding in *Phillips* was tested by appeal to the Fourth Circuit Court of Appeals. Finally, *Phillips* predates the Supreme Court’s decision in *Grinnell* (rejecting the notion that the form alone could establish an effective offer).

Farm Bureau surmises that the Supreme Court certified the *Nolan* case pursuant to Rule 204, SCACR, because it involved a “significant issue.” This assertion is nothing more than speculation. While certification is “normally appropriate where the case involves an issue of significant public interest or a legal principal of major importance,” these considerations are not prerequisites to Rule 204 certification. The Supreme Court’s summary disposition of the appeal in *Nolan* bears this point out.

Farm Bureau’s counsel’s practice of disobeying the rules of this Court demonstrate the perils of using these non-binding opinions in support of unrelated cases. The circuit or district court orders have not been tested by appeal, are meaningfully different, and may be legally flawed. The unpublished appellate decisions either predated *Floyd* (this Court’s decision in *Woodson*) or limited themselves to the narrow arguments preserved for the particular case (the Supreme Court’s decision in *Nolan*).

Appellate courts promulgate unpublished or memorandum opinions solely for the parties involved in the particular cases for a variety of reasons, and the opinions themselves do not reveal the Court's intent in doing so. By declaring these decisions have no precedential value and should not be cited, the appellate courts have the ability to decide a discrete matter without concern that the decision will have broad impact of a published opinion. The adage "bad facts make bad law" enjoys less life in the realm of the unpublished or memorandum opinion.

Farm Bureau's improper citation of these various unpublished orders and opinions in violation of Rules 220(a) and 268(d)(2), SCACR, has required the additional effort by Respondents to explain why each is either meaningfully distinguishable from this case, potentially flawed legally, and untested by appeal. This is precisely why the Appellate Court Rules prohibit citation of these matters, and why this Court should rebuke Farm Bureau's effort to do so, again, in this case.

C. Farm Bureau's Suggestion of Rehearing *En Banc*

In its Petition, Farm Bureau suggests this Court rehear this matter *en banc*. Rule 219, SCACR, governs rehearing *en banc* by this Court and currently provides:

(a) When Hearing or Rehearing En Banc Will Be Ordered. It shall require the affirmative vote of six (6) members of the Court of Appeals to hear or rehear an appeal or other proceeding *en banc*. A hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) Suggestion of a Party for Hearing or Rehearing En Banc. If a party desires to suggest that a matter be heard initially *en banc*, the suggestion shall be made in writing, and must be served and filed not later than twenty (20) days prior to the hearing date. If a suggestion for rehearing *en banc* is to be made, it shall be included in the petition for rehearing. No response shall be filed by other parties unless the Court shall so order. The Clerk of the Court of Appeals shall transmit the suggestion to all judges of the Court. A vote will not be taken to determine if the matter shall be heard or reheard *en banc* unless a member of the Court calls for a vote on the suggestion. If no vote is taken on the suggestion, the parties shall be advised that the suggestion has been rejected.

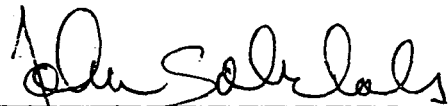
(Emphasis added). The Supreme Court amended this Rule on Thursday, April 28, 2011, to add the last two sentences to (b).

In accord with Rule 219(b), Mr. Jenkins does not respond herein to the merits of Farm Bureau's suggestion for rehearing *en banc*. However, Mr. Jenkins stands ready to respond upon order of this Court.

CONCLUSION

For the reasons stated, this Court should reject Farm Bureau's petition for rehearing. The Court should also admonish counsel for Farm Bureau to stop citing to unpublished circuit court orders and appellate opinions that have absolutely no precedential value except in matters in which they are directly involved.

Respectfully submitted, *



John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(800) 779-8995 facsimile

Robert V. Phillips, Esquire
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
(803) 328-5656

Attorneys for Respondents

April 28, 2011

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No.: 2006-CP-46-02553

South Carolina Farm Bureau Mutual
Insurance Company, ... Appellant,

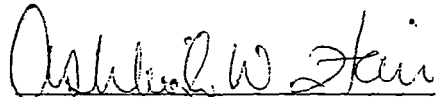
v.

Ronnie D. Jenkins and Sandra B. Jenkins, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Appellant with a copy of the *Return to Petition for Rehearing and/or Rehearing En Banc* by depositing a copy in the United States Mail, postage prepaid to the following address:

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206


Ashleigh W. Hair
Paralegal

April 28, 2011
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

RECEIVED
MAY 05 2011
SOUTH CAROLINA COURT OF APPEALS

South Carolina Farm Bureau Mutual Insurance Company, ...Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ...Respondents.

**REPLY IN SUPPORT OF PETITION FOR REHEARING
AND/OR REHEARING EN BANC**

Appellant South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau") hereby replies to the Respondent's Return to Farm Bureau's Petition for Rehearing and/or Rehearing En Banc.

A large portion of Respondent's Return is devoted to the statements contained in Farm Bureau's Petition regarding comments from Trial Judges or the inclusion of unreported decisions. In fact, Respondent requests the Court admonish the undersigned counsel for this. This Reply is to address Respondents contentions.

Farm Bureau acknowledges that unpublished opinions have no precedential value but does not submit the cases as controlling precedent. Farm Bureau references those decisions to demonstrate the inconsistency and/or confusion on the issues presented in this appeal and the

need for a published opinion on the very narrow issue presented – *i.e.*, whether a written form, standing alone, satisfies the requirements of State Farm v. Wannamaker, 291 S.C. 518, 354 S.E. 2d 555 (1987). Moreover, any “hearsay” comments alluded to in the Petition for Rehearing have a basis in the language employed by the Trial Judge in this case along with the unpublished decisions referred to that clearly demonstrate confusion or at least inconsistency in deciding the role that a written offer form plays in situations where an insurer is not entitled to conclusive presumption solely because an agent filled in the insureds selection or rejection of optional coverage. The Supreme Court recently came close to addressing the issue urged by Farm Bureau when it evaluated the content of the written form in Wiegand v. USAA, 391 S.C. 159, 705 S.E. 2d 432 (2011). Respondents cannot seriously dispute that the analysis of whether a form satisfies S.C. Code Ann. § 38-77-350(A) is separate and distinct from the analysis of whether the insurer is entitled to a conclusive presumption under § 38-77-350(B). The Supreme Court, had it not found a conclusive presumption for USAA, would have then analyzed whether the form satisfied the Wannamaker requirements since there was no evidence of any offer being made outside the contents of the form. Id. at 163.

Moreover, Respondent’s reliance on the holding in Grinnell Corp. v. Wood, 389 S.C. 350, 698 S.E. 2d 796 (2010), is misplaced. Unlike the form in Wiegand and the three (3) signed forms by Respondents below, the form in Grinnell was patently defective on its face and, therefore, incapable of satisfying the requirements of Wannamaker without evidence outside the form. As such, Grinnell has no relevance to the issue in this appeal.

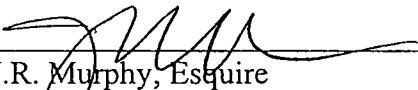
The same could be said for Respondents repeated references to the Floyd v. Nationwide decision in which the undersigned counsel was directly involved as attorney for Nationwide. Floyd involved a certified question that was limited to whether Nationwide was entitled to a

conclusive presumption under the § 38-77-350(B) when the agent, and not the insured placed with check mark on the form. The case has no application beyond that issue as was stated in Floyd and duly noted by this Court in Atkins v. Horace Mann, 376 S.C. 625, 658 S.E. 2d 106 (Ct. App. 2008). Contrary to the assertions made by Respondents, there was no evidence from outside the form presented in Atkins. Therefore, the opinion finding that Horace Mann satisfied the Wannamaker requirements was based on the content of the written form alone. This issue, however, is still being argued, so the reference to unpublished decisions, was done merely in an attempt to demonstrate the lack of controlling authority and resulting confusion. This disparity of rulings underscores the inconsistent application of the Wannamaker requirements to a form that otherwise satisfies § 38-77-350(A) but does not comply with the execution requirements of § 38-77-350(B). As noted by this Court, the three (3) separate offer forms presented to and signed by both Respondents would have entitled Farm Bureau to a conclusive presumption that it made a meaningful offer of optional UM coverage to Respondents under the current version of § 38-77-350(B). It is inconceivable how a form so potent under the current version of the applicable statute could have failed to establish a prima facie showing that Farm Bureau satisfied the Wannamaker requirements.

Therefore, Farm Bureau requests that this Court rehear this case and issue an opinion that fully analyzes the content of the written form, standing alone, under the requirements of Wannamaker and/or the five (5) requirements of § 38-77-350(A). If that analysis demonstrates that the form, standing alone, satisfies the common law or statutory requirements, then this Court should reverse the trial court and enter judgment in favor of Farm Bureau.

[Signature on following page]

Respectfully submitted,



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

May 4, 2011

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2006-CP-46-02553

South Carolina Farm Bureau Mutual Insurance Company, ...Appellant,

v.

Ronnie D. Jenkins and Sandra B. Jenkins, ...Respondents.

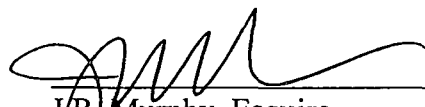
PROOF OF SERVICE

RECEIVED

MAY 05 2011

SC Court of Appeals

I certify that I have served the Appellant's Reply in Support of Petition for Rehearing and/or Rehearing En Banc on Ronnie D. Jenkins and Sandra B. Jenkins, by depositing a copy of it in the United States Mail, postage prepaid, on May 4, 2011, addressed to their attorneys of record, Robert V. Phillips, Esquire, 1539 Health Care Drive, Rock Hill, SC 29732 and John S. Nichols, Esquire, 1614 Taylor Street, Columbia, SC 29202.



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

The South Carolina Court of Appeals

South Carolina Farm Bureau Mutual
Insurance Company,

Appellant,

v.

Ronnie D. Jenkins and Sandra B.
Jenkins,

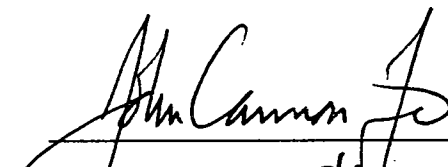
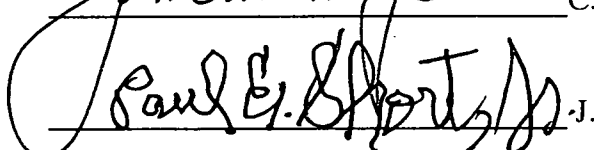
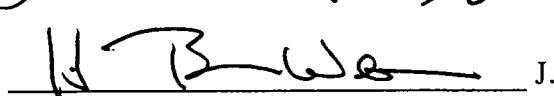
Respondents.

The Honorable John C. Hayes, III
York County
Trial Court Case No. 2006-CP-46-02553

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc: John Robert Murphy, Esquire
John S. Nichols, Esquire
Robert Verner Phillips, Esquire

FILED
June 9, 2011