

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

JAN 05 2015

J. Derham Cole, Circuit Court Judge

S.C. Supreme Court

Case No. 2011-CP-42-02965
Appellate Case No. 2013-000923
Op. No. 2014-UP-270 (S.C. Ct. App. filed June 30, 2014)

Progressive Northern Insurance Company Petitioner,

v.

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

Of Whom

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

APPENDIX

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**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**

Progressive Northern Insurance Company, Appellant,

v.

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

Of whom Stanley K. Medlock and Corey K. Medlock,
are Respondents.

Appellate Case No. 2013-000923

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2014-UP-270
Heard May 14, 2014 – Filed June 30, 2014

AFFIRMED

John Robert Murphy and Wesley Brian Sawyer, both of
Murphy & Grantland, PA, of Columbia, for Appellant.

Brian Ashley Martin, of Brian A. Martin, LLC, of Greer,
for Respondents.

PER CURIAM: In this declaratory judgment action involving the availability of underinsured motorist (UIM) coverage, Progressive Northern Insurance Company (Progressive) argues the trial court erred in granting Stanley K. Medlock and Corey K. Medlock's motion for summary judgment. Specifically, Progressive contends the trial court erred by (1) failing to hold that Stanley's signed rejection of optional UIM coverage bound all other insureds on the policy and (2) failing to treat the addition of a second vehicle and a second named insured as a "change" to the policy pursuant to section 38-77-350(C) of the South Carolina Code (2002). We affirm pursuant to Rule 220(b), SCACR.

1. As to whether the trial court erred in holding that Progressive was required to offer Corey UIM coverage when Progressive altered his status to a named insured on the insurance policy, we affirm. *See McDonald v. S.C. Farm Bureau Ins. Co.*, 336 S.C. 120, 124, 518 S.E.2d 624, 626 (Ct. App. 1999) ("This court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. A statute must receive a practical and reasonable interpretation consonant with the 'design' of the legislature." (citation omitted)); *id.* ("Sections 38-77-160 [of the South Carolina Code (2002)] and 38-77-350 [of the South Carolina Code (2002 & Supp. 2013)] cover the same subject matter, i.e., the offer of optional insurance coverages for automobiles, and, therefore, must be construed together and as explanatory of each other.") (quotation marks omitted); § 38-77-160 ("[Automobile insurance carriers] shall . . . offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute."); *McDonald*, 336 S.C. at 123, 518 S.E.2d at 625 ("If the insurer fails to make a meaningful offer of UIM coverage to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured."); § 38-77-350(A)-(C) (2002 & Supp. 2013) ("(A) 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. . . . (B) 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. (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."); *McDonald*, 336 S.C. at 124, 518 S.E.2d at 626 (finding that "[c]learly, the legislature intended for insurers to afford *all named insured* the opportunity to accept or reject UIM coverage. In using the term 'new applicant,' the legislature simply distinguished between those who had never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage") (emphasis added); *see also Gov't Emps. Ins. Co. v. Draine*, 389 S.C. 586, 594, 698 S.E.2d 866, 870 (Ct. App. 2010) (confirming *McDonald's* holding that the term "new applicant" means one who has never had the opportunity to reject UIM coverage).

2. As to whether the trial court erred in failing to recognize Progressive was not required to offer Corey UIM coverage pursuant to section 38-77-350(C) because Corey's altered status was merely a change in the insurance policy, we affirm. *See McDonald*, 336 S.C. at 125, 518 S.E.2d at 626 ("If [section] 38-77-350(C) were interpreted to relieve [carrier] of the general requirement of offering [the insured] underinsured motorist coverage up to the liability limits of the policy, it would amount to an absolute repeal of § 38-77-160, which mandates that an automobile insurer offer underinsured motorist coverage up to the limits of the insured's liability coverage. Where [s]ection 38-77-350(C) states the insured is not required to make a new offer, it clearly envisions the circumstances where the insurer has already made an old offer." (alterations by court) (quoting *Ackerman v. Travelers Indem. Co.*, 318 S.C. 137, 142, 456 S.E.2d 408, 410 (Ct. App. 1995))).

AFFIRMED.

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

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SC Court of Appeals

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In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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

72849

Progressive Northern Insurance Company Appellant,

v.

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

Of Whom

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

**PETITION FOR REHEARING AND/OR REHEARING *EN BANC* WITH
SUPPORTING MEMORANDUM**

Appellant Progressive Northern Insurance Company, hereinafter, "Progressive", through its undersigned attorneys, hereby respectfully petitions the Court for rehearing or for a rehearing *en banc* pursuant to Rules 221(a) and 219(a), SCACR, based on points overlooked or misapprehended by this Court. The basis for the petition is as follows:

In its Unpublished Opinion No. 2014-UP-270, this Court affirmed the trial court's order granting summary judgment in favor of Respondents Stanley and Corey Medlock

determining that Progressive was required to make a new offer of optional coverage when Respondents added a second vehicle to, and changed Corey Medlock from a listed driver to a second named insured in, an existing policy of insurance. The parties do not dispute that Progressive made a meaningful offer of optional underinsured motorist coverage to Stanley Medlock when he initially purchased the policy and that Stanley signed a valid rejection of optional coverage. The parties also agree that Stanley was a named insured under the policy at the time that he signed the written rejection of coverage, and that Stanley remained a named insured at the time his son's status in the policy was changed to a second named insured and at the time of the accident.

This Court relied upon the Court of Appeals' previous holding in McDonald v. S.C. Farm Bureau Ins. Co., 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 1999), wherein the court stated that insurers must "afford all named insured the opportunity to accept or reject UIM coverage." Id. at 124, 518 S.E.2d at 626. Respectfully, this language in McDonald was not necessary to that court's holding and is *dicta*. Moreover, it is inconsistent with the plain language of South Carolina Code § 38-77-350, which only requires an "applicant" to accept or reject UIM coverage and states that an applicant's signed rejection of optional coverage is binding upon all other insureds to the policy. See S.C. Code § 38-77-350(B).

This Court's unpublished decision does not address the fact that the General Assembly used two different terms in § 38-77-350. The General Assembly treats the terms "applicant" and "named insured" differently in § 38-77-350. Requiring "all named insureds" to reject optional coverage ignores the General Assembly's use of the two distinct terms, "applicants" and "named insured," in § 38-77-350. The Court must

presume that the General Assembly intended different meanings for these two distinct terms. See Abbott v. Abbott, 560 U.S. 1, 130 S. Ct. 1983 (2010) (dissent) (citing Rusello v. United States, 464 U.S. 16, 22-23, 104 S. Ct. 296, 300 (1983)) (“In interpreting statutory text, [courts] ordinarily presume that the use of different words is purposeful and evinces an intention to convey a different meaning.”); Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) (“[T]he legislature intends to accomplish something by its choice of words, and would not do a futile thing.”). Under this Court’s holding in the instant unpublished opinion, however, the General Assembly’s use of two distinct terms is futile and rendered meaningless because the Court treats the two phrases as one and the same.

This Court’s holding also fails to address the meaning of the word “change” in South Carolina Code § 38-77-350(C). The South Carolina Supreme Court has never addressed what constitutes a “change” to an existing policy. However, the General Assembly used broad language in § 38-77-350(C), stating that “[a]n automobile insurer is not required to make a new offer of coverage on any automobile policy which renews, extends, changes, supersedes, or replaces an existing policy.” S.C. Code § 38-77-350(C). Rather than purchase his own separate policy after he purchased a motorcycle, under which separate policy he would not have enjoyed a multi-vehicle premium discount, Corey’s status under the existing Progressive policy was merely changed from that of listed household driver to that of second named insured along with his father, Stanley. Before and after this status change for Corey, Stanley remained a named insured on the policy.

In addressing whether Corey's change in status to a second named insured constitutes a "change" requiring a new offer, this Court cites its previous holding from Ackerman v. Travelers Indem. Co., 318 S.C. 137, 142, 457 S.E.2d 408, 410 (Ct. App. 1995) that, "[w]here [s]ection 38-77-350(C) states the insured is not required to make a new offer, it clearly envisions the circumstances where the insurer has already made an old offer." However, the unpublished opinion does not explain why the prior undisputed valid offer and rejection by Stanley – who remained a named insured on the policy – did not likewise constitute an old offer.

This Court's application of McDonald to these facts creates manifest uncertainty for insurers as to when a new offer of optional coverage is required and runs contrary to the safe harbor provisions set forth in § 38-77-350. In Smith v. South Carolina Ins. Co., 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002), the court held that the addition of a second vehicle to an existing policy did not create a new policy of insurance, but merely changed the policy. The disparate holdings create a substantial gap in appellate decisions as to what constitutes a "change" under the statute. Holding that an optional coverage rejection from Stanley Medlock that bound Corey Medlock as a household insured before he was later changed to a second named insured will no longer bind him after the mere status change, even though Stanley remained a named insured on the policy, creates an inequitable and confusing result and defeats the General Assembly's intent in § 38-77-350(B) through (D).

Because of the significant impact of this decision, as well as and most especially the confusion and uncertainty the decision will inject into the marketplace for Progressive

and other insurers in South Carolina, and for the above-stated reasons and authorities,
Appellant Progressive petitions this Court for rehearing or rehearing *en banc*.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to be 'JRM', written over a horizontal line.

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July 14, 2014

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Progressive Northern Insurance Company Appellant,

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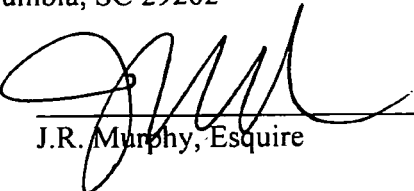
Stanley K. Medlock and Corey K. Medlock..... Respondents.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing and/or Rehearing *en banc* with Supporting Memorandum on Stanley K. Medlock, Corey K. Medlock and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on July 14, 2014, addressed to their attorneys of record:

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July 14, 2014

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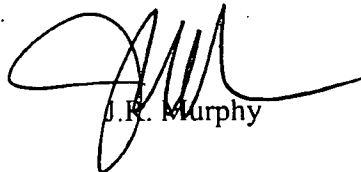
Re: Progressive Northern Insurance Company vs. Stanley K. Medlock, Corey K. Medlock
and The Standard Fire Ins. Co.
Civil Action No.: 2011-CP-42-02965
Appellate Case No.: 2013-000923
Claim No.: 10-5041541
Date of Loss: 10/09/10
Our File No.: 1115-2016

Dear Ms. Kitchings:

Enclosed please find herewith for filing with the Court the original and ten (10) copies of a Petition for Rehearing and/or Rehearing *en banc* with Supporting Memorandum in the above-referenced matter. I would appreciate your filing the original and returning the clocked copies to me by individual delivering same. Also enclosed please find my firm's check in the amount of \$25.00 for filing same. By copy of this letter I am serving same on opposing counsel.

With warm personal regards, I am

Sincerely yours,



J. R. Murphy

JRM/sb
Enclosures

cc: Brian A. Martin, Esquire
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JUL 14 2014

SC Court of Appeals

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The South Carolina Court of Appeals

Progressive Northern Insurance Company, Appellant,

v.

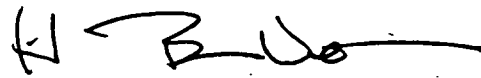
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Of whom Stanley K. Medlock and Corey K. Medlock,
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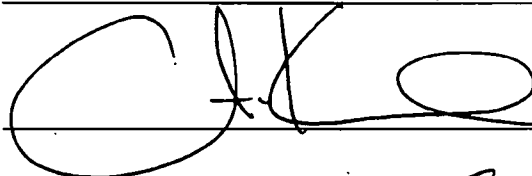
Appellate Case No. 2013-000923

ORDER

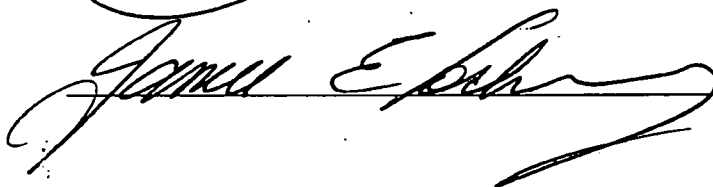
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

FILED

12-4-14

John Robert Murphy, Esquire
Brian Ashley Martin, Esquire
Wesley Brian Sawyer, Esquire
The Honorable J. Derham Cole

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. **The Trial Court erred by failing to hold that the signed rejection of optional underinsured motorist coverage by Stanley Medlock binds all other insureds, including his son Corey Medlock.**
- II. **The Trial Court erred by failing to treat the addition of a second vehicle and a second named insured as a “change” to the policy pursuant to South Carolina Code Ann. § 38-77-350(C).**

STATEMENT OF THE CASE

This case turns upon whether the addition of a second vehicle and a second named insured to an existing policy of insurance constitutes a change to the existing policy or the creation of an entirely new policy. Progressive Northern Insurance Company (“Progressive”) filed this declaratory judgment action in the Spartanburg County Court of Common Pleas on July 11, 2011 seeking a declaration that Respondent Corey Medlock was bound by his father’s signed rejection of optional underinsured motorist coverage. Corey Medlock and his father Stanley Medlock filed an Answer, Counterclaim, and Crossclaim on August 23, 2011 seeking to reform the Progressive policy to include the rejected underinsured motorist coverage. Progressive filed a Reply to the Medlocks’ counterclaim on October 4, 2011.

Progressive and the Medlocks filed cross motions for summary judgment on October 5, 2011 and June 11, 2012, respectively. Each party filed a supporting memorandum, and the Honorable J. Derham Cole heard arguments at a hearing on June 20, 2012. On March 26, 2013, Judge Cole signed an Order refusing to apply South Carolina Code § 38-77-350(C) and finding that the addition of Corey Medlock as a second named insured and the addition of his vehicle as an additional automobile to an existing policy of automobile insurance required Progressive to make a second offer of

optional coverage. The Order was filed on March 26, 2013 and Progressive received written notice of entry of the Order on April 3, 2013. Progressive timely filed the Notice of Appeal on April 23, 2013.

STATEMENT OF FACTS

The facts of the case are undisputed and were set forth in a Stipulation of Facts which the parties submitted to the Trial Court. On October 15, 2009, Progressive issued a policy of insurance to Stanley Medlock covering a 2001 Polaris Sportsman 500. The policy number was 85613910-0. (R. p. 67). Corey Medlock is Stanley's son. Corey lived with his father continuously from the time the policy was issued to the date the accident occurred. The application lists Corey Medlock as a "Driver and household resident" and describes his relationship to Stanley Medlock as "child." Although Stanley Medlock owned the Polaris Sportsman, the application reveals that the Polaris Sportsman was Corey Medlock's "principal vehicle " (R. p. 128).

As part of the application, Stanley Medlock signed a form titled: "Offer of additional uninsured motorist coverage and optional underinsured motorist coverage" ("Offer Form") (R. pp. 133-137). Stanley Medlock rejected optional underinsured motorist coverage and signed the Offer Form in the space indicating his rejection of optional coverage. He also signed the "Applicant's acknowledgment" on the following page. (R. pp. 136-137). The Medlocks concede that the Offer Form and Stanley Medlock's signatures satisfied the requirements of South Carolina Code § 38-77-350(A) and entitled Progressive to a conclusive presumption of an informed, knowing rejection of optional coverage for the October 15, 2009 application. (R. p. 67)

On June 9, 2010, only eight months after Stanley Medlock signed a written rejection of optional coverage, the existing policy was changed at the request of the named insured. A 2001 Suzuki motorcycle was added as a second vehicle on the original policy and Corey Medlock went from being shown as a listed driver and household resident to being shown as a second named insured on the declarations page. (R. p. 68). Corey Medlock owned the Suzuki motorcycle; however, no new policy was created. (R. p. 68). Because Progressive already had an offer form on file signed by a named insured to the policy rejecting optional coverage, Progressive did not make a second offer of optional coverage. (R. p. 68).

On February 10, 2011, Corey Medlock was involved in an accident while driving his Suzuki motorcycle. The liability carrier for the driver of the other involved vehicle tendered its limits of liability coverage in exchange for a Covenant Not to Execute. (R. p. 68). Corey Medlock then filed a civil action in the South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County, captioned Corey K. Medlock v. Jon C. Owens, Civil Action No. 2011-CP-42-649. This declaratory judgment action followed.

ARGUMENT

The General Assembly created a safe harbor statute in South Carolina Code § 38-77-350 protecting insurers like Progressive from reformation actions when the insurer obtains a signed rejection of optional coverage on a form designed to convey a meaningful explanation and offer of optional coverage. In order to give effect to its purpose of protecting insurers from reformation actions, the General Assembly created a conclusive presumption when the form is properly completed by a named insured

applicant. Moreover, once a named insured applicant rejects coverage, his rejection remains binding upon all other insureds for any subsequent change, renewal or replacement policy.

The Medlocks concede that Progressive made a meaningful offer of underinsured motorist coverage to Stanley Medlock when he initially applied for the policy. Stanley Medlock signed the offer form rejecting optional underinsured motorist coverage. Because Stanley Medlock remained a named insured on the policy continuously from the time he applied for coverage to the date of the accident, his signed rejection of optional coverage continued to bind all other insureds on the policy – whether named insureds or not. Moreover, adding a second named insured and a second vehicle did not create a new policy of insurance, but merely reflected a change to the existing policy as contemplated by the General Assembly in South Carolina Code § 38-77-350(C).

I. The Trial Court erred by failing to hold that the signed rejection of optional underinsured motorist coverage by Stanley Medlock binds all other insureds, including his son Corey Medlock.

When read together, South Carolina Code Sections 38-77-160 and 38-77-350 require an insurer to make an offer of optional coverage to the named insured who applies for the insurance policy. Once the applicant signs a rejection of optional coverage, that rejection is binding upon all other insureds on the policy whether or not they are named insureds.

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” Howell v. United States Fidelity and Guar. Ins. Co., 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006) (citation omitted). Therefore, Courts must consider the language of the statute as a whole and cannot focus on a single section. Id.

(citation omitted). “Statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single harmonious result ” Id. (citation omitted).

Sections 38-77-160 and 38-77-350 address the same subject matter and complement one another. Therefore, they must be construed to give effect to the language in both statutes and the General Assembly’s intent. While § 38-77-160 provides a requirement that insurers offer optional coverage to “the insured” in vague terms, § 38-77-350 provides specific guidance to insurers as to how those offers must be made and provides a safe harbor protection for insurers guaranteeing that – once an offer has been made – insurers can rely upon a named insured’s rejection of optional coverage.

Section 38-77-160 provides in pertinent part:

Automobile insurance carriers shall offer, at the option of *the insured*, uninsured motorist coverage up to the limits of *the insured’s* liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of *the insured*, underinsured motorist coverage up to the limits of the insured liability coverage If, however, *an insured or named insured* is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that *the insured or named insured* is protected only to the extent of the coverage he has on the vehicle involved in the accident. . . .

S.C. Code Ann. § 38-77-160 (emphasis added). Section 38-77-350 expounds on § 38-77-160, providing:

(A) The director or his designee shall approve a form that automobile insurers shall use in offering optional coverages required to be offered 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:

* * *

- (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 coverage
 - (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.
- (B) If this form is signed by *the named insured* . . . 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.
- (C) An automobile insurer is not required to make a new offer of optional 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 . . . is liable in an action for damages on account of the selection or rejection made by *the named insured*.

S.C. Code Ann. § 38-77-350 (emphasis added).

Section 38-77-350 clarifies the intent of § 38-77-160 in a number of ways. First, § 38-77-350(A) provides the various requirements that insurers must include in a written offer form to satisfy the meaningful offer requirement of § 38-77-160. For example, an insurer must provide "a brief and concise explanation of the coverage; a list of available limits and the range of premiums, [and] a space to mark whether the insured chooses to

accept or reject the coverage” S.C. Code Ann. § 38-77-350(A). Furthermore, an insurer must use a form approved by the Department of Insurance. S.C. Code Ann. § 38-77-350(A).

Second, and more important to this appeal, § 38-77-350(A) clarifies *which* insured must receive the offer of optional coverage. Although § 38-77-160 requires that carriers offer optional coverage to “the insured,” it does not clarify which “insured” must receive the offer. In fact, § 38-77-160 only uses the phrase “named insured” when paired in the phrase “an insured or named insured” and never specifically provides that the offer must be made to “the named insured.” However, it would be absurd to read § 38-77-160 as requiring insurers to make offers to all insureds under the policy. See Enos v Doe, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App. 2008) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”). It is obvious that the statute cannot intend for all “insureds” to receive an offer because the omnibus definition of “insured” includes permissive users. See S.C. Code Ann. § 38-77-30(7) (“‘Insured’ means the named insured . . . and any person who uses with consent . . . of the named insured the motor vehicle to which the policy applies”). Therefore, § 38-77-160 fails to provide clear guidance on who must receive the offer of optional coverage.

Section 38-77-350(A) answers the question regarding to whom insurers must make the § 38-77-160 offer by requiring that the offer be received by “new applicants” and that the applicant must be a named insured. See S.C. Code Ann. § 38-77-350(A) (“This form must be used by insurers for all new *applicants*.”) By using the term “applicants” rather than “all named insureds,” the General Assembly clarified the offer

requirement in § 38-77-160 by mandating that the offer be made to the individual named insured who undertakes the application process and submits the application. See Allstate Ins. Co. v. Estate of Hancock, 345 S.C. 81, 87, 545 S.E.2d 845, 848 (Ct. App. 2001) (“Moreover, requiring the form be executed by the named insured who is the applicant is consistent with the language in section 38-77-350(A) requiring the form be used ‘for all new applicants.’”).

Section 38-77-350(A) requires that the insurer use an approved offer form to offer coverage to “all new applicants” rather than “all named insureds.” S.C. Code Ann. § 38-77-350(A). The term “applicant” separates the individual named insured who signs the insurance application from other insureds (household residents or listed drivers) or named insureds who may ultimately be listed on the policy. The statute goes on to provide that the form must include a space for “the insured” to mark his or her selections of coverage and for “the insured” to sign the form acknowledging that “the insured has been offered the optional coverages.” S.C. Code Ann. § 38-77-350(A). Furthermore, “If this form is signed by the named insured,” the signature binds “another insured under the policy.” S.C. Code Ann. § 38-77-350(B). By using the phrase “named insured” in the same section that it uses the term “applicants,” the General Assembly intended that the two terms bear different meanings. Moreover, because a named insured is included in the class of “applicants,” “applicant” must be a more narrow term than “named insured.” By reading “applicants” to mean those named insureds that actually deal with the insurer or agent to procure the policy, both the terms “named insured” and “applicants” have distinct meanings under § 38-77-350.

The Illinois Court of Appeals interpreted the term “applicant” in this way in Messerly v. State Farm Mutual Automobile Insurance Company, 277 Ill. App. 3d 1065, 662 N.E.2d 148 (Ill. Ct. App. 1996) (which this Court cited in Nationwide Mutual Insurance Company v. Prileau, 359 S.C. 238, 243, 597 S.E.2d 165, 168 (Ct. App. 2004)). In Messerly, the claimant was a named insured on the policy, but her husband handled the insurance transaction 277 Ill. App. 3d at 1066, 662 N.E.2d at 148-49. Because only her husband received an offer and rejected optional coverage, the claimant sought to reform the policy arguing that the insurer had a duty to make an offer to “all named insureds.” Id.

The Illinois Court of Appeals rejected this contention, holding instead that the named insured that applies for the insurance policy can receive the offer and reject coverage and that his rejection of coverage binds all other insureds on the policy regardless of whether they are named insureds. Id. at 1070-71, 662 N.E.2d at 151-52. The Court of Appeals reasoned, “[b]oth the case law and common sense show us the way the majority of families obtain insurance: one person representing the family meets with an insurance agent, applies for coverage, signs the necessary documents, and lists those to be covered under the policy.” Id. Therefore, because the common practice is for one insured to apply for the policy on behalf of all insureds, that same insured’s rejection of coverage binds all insureds under the policy.

Moreover, the Court of Appeals addressed the impracticality of a rule requiring that each named insured receive an offer and sign a written rejection:

Requiring every potential “insured,” or “additional insured,” or “household member” who may be covered under a policy to visit or speak with an insurance agent in order to be given an offer of additional UM/UDIM

coverage would be impractical. The legislature amended section 143a-2 of the Code to state only the *applicant* must be given a description of and may waive the offer of additional UM/UDIM coverage and the *applicant's* waiver is to be binding on all insureds under the policy.

* * *

Requiring offers of UM/UDIM coverage to be made to all insureds under automobile policies would be contrary to reasonable business practices from which both insurers and customers benefit. . . . An offer of UM coverage was made as required by the statute and, as the applicant and a named insured, [the Husband] rejected the offer, thereby binding all insureds under the policy.

Id.

The Messerly decision appropriately recognizes the practical realities of how family insurance policies are procured and interprets the legislative intent of the word “applicant” accordingly. In the same way, the use of the word “applicants” in § 38-77-350 reflects the General Assembly’s intent to provide a practical method for insurers to extend an offer of optional coverage to the individual named insured with whom they actually enter into the insurance contract and that the rejection by that applicant binds all other insureds.

If the General Assembly wanted to require every named insured to receive a meaningful offer and reject such an offer in writing, it could have easily made that intent clear by stating that insurers must offer optional coverage to “all named insureds” and obtain signed rejections from “all named insureds.” However, the statutes do not reflect this intent. Section 38-77-160 requires that insurers “shall offer, at the option of *the* insured” optional coverage. The phrase “the insured” is used consistently throughout § 38-77-160. S.C. Code Ann. § 38-77-160. Likewise, § 38-77-350(A), after clarifying that offers must be made to “applicants,” provides that the applicant must be a named

insured by stating that if the form is signed by “the named insured” applicant, it binds all other insureds.

If South Carolina law is going to require every family member listed as a named insured on the policy to go to the insurance agency, get a meaningful explanation of optional coverage, and sign an offer form, then such an onerous burden on both the insureds and insurers should be explicitly spelled out in the statute. However, the statutes do not create such an unwieldy rule. Rather, the General Assembly adopted the reasonable solution of requiring that the individual insured that applies for the policy and deals directly with the insurance agent on behalf of all other insureds can receive the offer, sign a waiver, and bind all other insureds, both named insureds and otherwise.

II. The Trial Court erred by failing to treat the addition of a second vehicle and a second named insured as a “change” to the policy pursuant to South Carolina Code Ann. § 38-77-350(C).

The Trial Court confused the substitution of a new and different named insured that took place in McDonald v. South Carolina Farm Bureau Insurance Company, 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 2000), with the addition of a second named insured to an existing policy of insurance. Although the former constitutes a new policy of insurance because one entire side of the contracting equation has changed, the latter constitutes a mere change to the existing policy of insurance which continues in force between the original insurer and the original named insured. The Trial Court incorrectly applied the dissimilar facts in McDonald to this case.

A. Because Stanley Medlock remained a named insured on the policy after the changes took effect, the addition of Corey Medlock as a second named insured is only a change to the existing policy and not a new policy.

In this case, when Progressive issued the policy to Stanley Medlock, Corey Medlock was a listed class I insured. The Medlocks concede that Progressive made a meaningful offer of optional coverage to Stanley Medlock and he validly signed a rejection of optional underinsured motorist coverage. (R. p. 67). That rejection remained binding when Corey's status was changed from a listed driver to an additional named insured. This comports with the general insurance principle that, when parties mutually agree to change certain terms of the insurance agreement, the remaining terms go unchanged:

In general, in the absence of an agreement to the contrary, a presumption follows, on a mutual agreement to modify a policy in some particular, that the agreement contemplates that the other terms and conditions shall continue and apply to the modified policy and that it shall differ only as to the matters upon which the parties have agreed. *As a consequence, a modification which adds a new insured generally renders that insured subject to the existing terms and conditions of the policy.*

2 Couch on Ins. § 25:5 (emphasis added).

South Carolina's appellate courts have not addressed whether the addition of a second named insured to an existing policy requires a new offer. However, appellate courts in other jurisdictions have. For example, the Ohio Court of Appeals contrasted the issue addressed in McDonald from the issue in the case *sub judice* by reaching different results in Johnson v. Great American Ins. Co., 44 Ohio App. 3d 71, 541 N.E.2d 100 (Ct. App. 1988) and McKnight v. Grange Mutual Cas. Co., 110 Ohio App. 3d 282, 673 N.E.2d 1012 (Ct. App. 1996). In the Johnson case, the original and sole named insured

on the policy reduced optional coverage below the maximum amount available under Ohio law. Id. at 72, 541 N.E.2d at 101. Several years later, he requested that his new wife be added as an additional named insured. Id. Both before and after this modification, he remained a named insured on the policy. Id. Ohio's statute required that "the named insured" had the right to reject optional coverage and that no new offer is needed for any supplemental or renewal policy. Id. at 74, 541 N.E.2d at 103 (citing 138 Ohio Laws, Part I, 1458). The Court of Appeals held "at the time that the name of a new insured is added to an existing policy, the new insured is bound by the policy's existing terms absent a specific request otherwise." Id. Therefore, the husband's pre-marriage rejection of optional coverage applied equally to his new wife when she was added to the policy.

In contrast, the Ohio Court of Appeals in McKnight dealt with similar facts to those in McDonald where one named insured was completely substituted for a new and different named insured. A husband and wife swapped vehicles and insurance policies completely. 110 Ohio App. 3d at 285, 673 N.E.2d at 1014. The husband, who was originally the only named insured on the policy insuring the accident vehicle, signed a written rejection of optional coverage. Id. When the two swapped policies, the insurer used the same policy number and did not provide a new offer to the wife. Id. After the swap, the wife became the sole named insured on the policy that previously only belonged to her husband. Id. The two were never joint named insureds. Id.

The Ohio Court of Appeals held that only the wife, as the sole named insured on the policy after the swap, had authority to reject optional coverage. Therefore, the insurer should have provided a new offer and should have obtained a new written rejection from

the wife. Its failure to do so required reformation of the policy. Id. at 287, 673 N.E.2d at 1015-16. The McKnight Court compared its facts with those in Johnson and held:

The facts in *Johnson* are not similar or identical to those in the matter *sub judice*. The *Johnson* case involved a situation where one named insured was added to an existing policy in which the other named insured had already expressly rejected UM coverage. Herein, [the Wife] and [Husband] never held a joint policy of insurance as co-named insureds.

McKnight, 110 Ohio App. 3d at 287, 673 N.E.2d at 1016.

The facts of this case match those in Johnson and should be distinguished from the facts in McDonald. In McDonald – like in McKnight – one named insured was completely substituted in place of the original named insured and, therefore, a new policy was created because one side of the contracting equation completely changed. However, in the present case, – as in Johnson – Stanley Medlock remained a named insured both before and after the modification of the policy and Corey Medlock was simply added as an additional named insured on the policy. Importantly, while Ohio’s statute states that the rejection remains binding in “supplemental” or “renewal” policies, § 38-77-350(C) is much broader and makes a written rejection binding upon any policy that “renews, extends, *changes*, supersedes, or replaces an existing policy.” S.C. Code Ann. § 38-77-350(C). The General Assembly used broad language reflecting its intent in § 38-77-350 of balancing the requirement that insurers make a meaningful offer with the importance of providing a safe harbor to protect insurers from the harsh consequence of reforming a policy for optional coverage that was never purchased and, as in this case, was specifically rejected.

The Supreme Court of Rhode Island addressed a similar situation in Ferreira v. Integon National Insurance Co., 809 A.2d 1098 (R.I. 2002). In that case, the original named insured applied for coverage and signed a written rejection of optional uninsured coverage in 1995. He later married and added his wife as an additional named insured to the existing policy in 1996. Ferreira, 809 A.2d at 1099. The insurer never obtained a written rejection from the wife, who then suffered injuries in an accident with an uninsured motorist. Id.

Rhode Island's insurance statutes – like South Carolina's – provided that “*the named insured* shall have the option of selecting a limit in writing less than the bodily injury coverage,” but only after signing a form approved by the director of business regulation. Id. at 1100-01 (citing R.I. Gen. Laws § 27-7-2.1(a) (emphasis added)). The statute also provides that an insurer must notify insureds of optional coverage “in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy” but does not need to obtain a new written rejection.¹ Id. (quoting R.I. Gen. Laws § 27-7-2.1(d)). The Supreme Court held: “In the case before us, the addition of plaintiff to the policy *changed* the policy's terms, *but did not represent the new issue or delivery of a policy.*” Id. at 1101 (emphasis added).

In reaching its conclusion, the Supreme Court of Rhode Island rejected the idea that a new offer and written rejection were required when a second named insured is added to the policy because such a burdensome requirement must be created by proper

¹ The Trial Court below held that because South Carolina does not have a comparable statute requiring that the insurer notify an insured upon any amended, altered, or modified policy, that Ferreira was not applicable. However, the important issue in the Ferreira case was that if the addition of a new named insured was the creation of a *new* policy rather than an amendment, alteration, or modification to the existing policy, then the insurer could not rely upon the notice and was required to obtain a new rejection. Therefore, the issue in Ferreira is exactly the same as the issue in this case – does the addition of a second named insured constitute the creation of a new policy or merely a change to an existing policy?

legislation rather than through judicial action. Id. (“Any change in these clear statutory provisions that would impose this arguably onerous burden on insurers should be made by duly enacted legislation.”)

Although not addressing the addition of a second named insured, other jurisdictions appear to recognize the distinction between when an insured is added to an existing policy and when an insured is substituted. Compare Nila v. Hartford Ins. Co. of the Midwest, 312 Ill. App. 3d 811, 728 N.E.2d 81 (Ct. App. 2000) (substituting wife for deceased husband as sole named insured required new offer of optional coverage) with Isaacson v. Country Mut. Ins. Co., 328 Ill. App. 2d 982, 767 N.E.2d 862 (Ct. App. 2002) (addition of daughter as an insured driver did not require new offer); Allstate Ins. Co. v. Kaneshiro, 93 Hawai’i 210, 998 P.2d 490 (2000) (substituting ex-wife for ex-husband as sole named insured required a new offer) with Lee v. Government Employees Ins. Co., 911 F. Supp. 2d 947 (D. Haw. 2012) (adding vehicle and newly-licensed driver to policy did not require new offer).

Both before and after the addition of Corey Medlock and the second vehicle to the insurance policy, Stanley Medlock was a named insured. Stanley Medlock was the party who contracted for the policy when it inceptioned, and party to the policy today. If Corey had been substituted in place of his father, then a new policy of insurance would have been made. However, that is not what happened. Corey Medlock was simply added to the existing policy with all other terms of the policy and Stanley Medlock’s role as a named insured remaining the same. Therefore, the Trial Court erred by failing to recognize this important distinction and by applying this Court’s holding in McDonald to the facts of this case.

B. McDonald does not stand for the rule that the addition of a second named insured will create a new policy of insurance.

This Court held in McDonald that if one entire side of the contracting equation leaves the agreement and is substituted for a new contracting party, then a new policy of insurance is created. However, it does not follow that the addition of a second named insured to an existing policy creates the same result.

In McDonald, a new named insured was completely substituted for the original named insured. The insured, Wells, sold her car to her son, McDonald – who was not a resident relative and was not an insured on the policy. Wells requested that the policy be transferred to her son. McDonald, 336 S.C. at 122, 518 S.E.2d at 625. Although the policy number remained the same, her son went from being a stranger to the insurance policy to being the sole named insured under the policy. Id. The son did not have to fill out a new application, but he was required to pay a membership fee. Id. After the transaction, the mother was no longer a named insured on the policy.

Farm Bureau relied upon § 38-77-350(C) and argued that the substitution of one named insured for an entirely different named insured was only a “change” to the existing policy of insurance and did not create a new policy. Id. at 123, 518 S.E.2d at 626. This Court rejected that argument and held that: “***Removing Wells* from the policy *and substituting McDonald* as the named insured was not a mere policy change. It was the creation of a new insurance policy with a new named insured.” Id. at 125, 518 S.E.2d at 626 (emphasis added).**

In an earlier case, Ackerman v. Travelers Indemnity Company, 318 S.C. 137, 142, 456 S.E.2d 408, 410 (Ct. App. 1995), this Court addressed the other side of the equation where the insurer changed. In that case, the insured purchased a garage liability policy

from Travelers to replace two policies issued by Canal Insurance Company and American Mutual Insurance Company. Travelers relied upon South Carolina Code § 38-77-350(C) to argue that it was not required to make a new offer because its policy merely “replaced” the prior policies issued by different insurers. Id. This Court held that Travelers – as a new insurer to the contract – could not rely on the offer from the previous insurer – who was no longer a party to the insurance contract. Id. In doing so, this Court held that: “the only reasonable way to interpret the language in § 38-77-350(C) is to recognize that the insurer may rely on the effective past offers it has given to its insureds when these insureds continue coverage with the same insurer.” Id. at 143, 456 S.E.2d at 411.

Together, McDonald and Ackerman consistently reflect the principle that § 38-77-350(C) will not protect an insurer from the requirement of making a new offer of optional coverage when either the original insurer or the original named insured who received the written offer is no longer a party to the contract. However, neither McDonald nor Ackerman should be interpreted to abrogate the General Assembly’s intent of providing a safe harbor under § 38-77-350 when an insurer has made an offer to one named insured applicant and that applicant remains a named insured under the policy. Both before and after Corey Medlock and the second vehicle were added to the policy, Progressive was the insurer and Stanley Medlock was a named insured. This fact distinguishes this case from Ackerman and McDonald and places it squarely within the protections of § 38-77-350(C).

C. The Trial Court relied upon overly broad language from McDonald that conflicts with the plain language of South Carolina Code § 38-77-160 and § 38-77-350.

The Trial Court relied upon this Court's reasoning in McDonald which has been restated in Smith v. South Carolina Insurance Company, 350 S.C. 82, 546 S.E.2d 358 (Ct. App. 2002), and Government Employees Insurance Company v. Draine, 389 S.C. 586, 698 S.E.2d 866 (Ct. App. 2010). In McDonald, this Court held that "the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage." 336 S.C. at 124, 518 S.E.2d at 626. Therefore, this Court construed the term "new applicant" as meaning "those who . . . never had an opportunity to reject UIM coverage." Id. at 125, 518 S.E.2d at 626.

This Court in Smith contrasted the facts of McDonald with those where a second vehicle is added to an existing policy of insurance and held that the addition of a second vehicle is a "change" to an existing policy rather than the creation of a new policy.² Smith, 350 S.C. at 89, 564 S.E.2d at 362. In doing so, this Court repeated the language used in McDonald regarding old and new offers. Id. at 88, 564 S.E.2d at 361.

As discussed above, § 38-77-160 does not state which insured must receive an offer and does not state that the offer must be made to "named insureds." However, common sense dictates that § 38-77-160 does not require a meaningful offer to *all* insureds because it would be impossible for insurers to make offers to permissive users, who are defined as "insureds" under the statute. See S.C. Code § 38-77-30(7). Section 38-77-350 governs which insured must receive the meaningful offer by providing that the

² In Smith, this Court also concluded that "[a]ny limitation in the scope of this statute's [§ 38-77-350(C)] application is a matter best left for the consideration of our legislature." Id.

applicant, i.e. the named insured that actually deals with the insurance carrier or agent, must receive the offer and sign a written rejection.

The word “applicants” must be construed in a way that gives effect to every part of § 38-77-350, including part (C). South Carolina’s “legislature intends to accomplish something by its choice of words, and would not do a futile thing.” Gordon v Phillips Utilities, Inc., 362 S.C. 403, 405, 608 S.E.2d 425, 427 (2005) (citation omitted) “The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (citations omitted). “Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done so by any reasonable construction.” Hinton v. South Carolina Dep’t of Probation, Parole and Pardon Services, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004) (citations omitted).

“Applicant” cannot mean all those named insureds who never had an opportunity to reject UIM coverage. If that were the case, there would be no reason for § 38-77-350(C) because § 38-77-350(A) only requires an offer to be made to “new applicants.” Once a named insured receives an offer, he or she is no longer one who never had “the opportunity to accept or reject UIM coverage.” Therefore, no new offer would be required after any change, substitution, renewal, replacement or superseding policy because the insured was no longer an “applicant” as this Court interpreted that term in McDonald. Rather, “applicant” must mean the individual named insured who handles dealings with the insurer or insurance agent and completes the insurance application.

This gives effect to all parts of § 38-77-350 and reasonably specifies which individual must receive the offer required by § 38-77-160

Applying this reasoning, Progressive was not required to make a new offer to Corey Medlock because a named insured on the policy had already received a meaningful offer. This interpretation further comports with the reasoning in Ackerman, which this Court later relied upon in McDonald, that “where § 38-77-350(C) states that the insurer is not required to make a ‘new’ offer, it clearly envisions the circumstance where the insurer already made an ‘old’ offer.” Ackerman, 318 S.C. at 142, 456 S.E.2d at 410. In this case, there is an “old” offer. Specifically, Progressive made an offer to Stanley Medlock, the “applicant,” when he applied for the policy. Moreover, the offer to Stanley Medlock is binding upon all other insureds on the policy and remains binding until he is no longer a named insured on the policy. S.C. Code § 38-77-350(C). Therefore, giving the word “applicant” a meaning that gives effect to all parts of § 38-77-350 and comports with the General Assembly’s requirement of a meaningful offer pursuant to § 38-77-160, Progressive made a meaningful offer to Stanley Medlock that binds Corey Medlock. Moreover, the addition of a second vehicle to the policy and changing Corey Medlock from a listed insured to a named insured was a “change” to the existing policy that did not require a new offer of optional coverage.

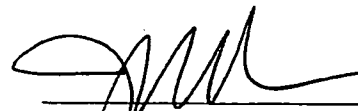
CONCLUSION

It is undisputed that Progressive made a meaningful offer of optional coverage to Stanley Medlock when he first purchased the insurance policy and that Stanley Medlock rejected optional coverage pursuant to § 38-77-350(A) and (B). As the applicant for the policy, Stanley Medlock’s rejection of optional coverage binds all other insureds on the

policy regardless of whether they are classified as named insureds, insured drivers, or household residents. South Carolina Code § 38-77-350(C) provides a safe harbor allowing insurers like Progressive to rely upon a written rejection by the applicant when the policy is subsequently changed, so long as the change does not create a new policy of insurance. The addition of a second vehicle and a second named insured to an existing policy of insurance is only a "change" to the existing policy under § 38-77-350(C). Therefore, Progressive was not required to make a new offer of optional coverage and Stanley Medlock's signed rejection of optional coverage bound all other insureds on the policy.

Respectfully submitted,

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October 28, 2013

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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

RECEIVED

OCT 28 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

v.

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

Of Whom

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

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Final Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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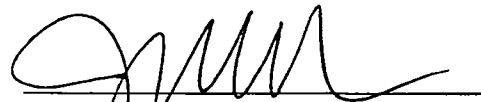
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I certify that I have served the Final Brief of Appellant on Stanley K. Medlock, Corey K. Medlock and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on October 28, 2013, addressed to their attorneys of record:

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in refusing to find that the rejection of UIM coverage by one named insured applicant was binding under South Carolina Code Ann. § 38-77-350(B) against a new named insured added eight months into a twelve month policy period?
- II. Did the Circuit Court err in finding that South Carolina Code Ann. § 38-77-350(C) does not apply to changes regarding named insured?

STATEMENT OF CASE

This declaratory judgment action involves the availability of underinsured motorist coverage for a named insured on a policy of insurance when such person was made a named insured eight months after the policy was originally issued and has never been offered the opportunity to accept or reject UIM coverage. Progressive Northern Insurance Company ("Progressive") filed the action in Spartanburg County Court of Common Pleas on July 11, 2011 seeking a declaration that UIM coverage was not available under their policy. Corey Medlock and Stanley Medlock (collectively referred to as "Medlocks" or "Medlock Defendants") filed an Answer, Counter-claims and Cross-claims on August 23, 2011 asserting no offer of UIM coverage was ever made to Corey Medlock, therefore, Progressive's policy must be reformed to provide him UIM coverage. Progressive filed a Reply to the counterclaim on October 4, 2011.

Cross motions for summary judgment were filed by Progressive on October 5, 2011 and by the Medlocks on June 11, 2012. Affidavits with supporting Exhibits were filed by the Medlocks on June 18, 2012 and each party filed a supporting memorandum of law. A hearing was held before the Honorable J. Derham Cole on June 20, 2012.

On March 26, 2013, Judge Cole granted the Medlocks' motion for summary judgment agreeing that South Carolina Code Ann. § 38-77-350(C) does not apply to changes regarding named insured and finding that when Progressive chose to make Corey Medlock a named insured on a policy of insurance, Progressive was required under South Carolina Code Ann. § 38-77-160 to offer him UIM coverage. The order was filed on March 26, 2013 and Progressive filed its Notice of Appeal on April 23, 2013.

STATEMENT OF FACTS

The facts of this case are not in dispute and arise out of a vehicle collision on October 9, 2010 in which Corey Medlock was injured while driving a motorcycle insured by Progressive. (R. p. 53, ¶ 4, p. 54, ¶ 6 & 10). The liability carrier for the at-fault vehicle tendered its limits of liability coverage in exchange for a Covenant Not to Execute and Corey Medlock filed an action in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned Corey K. Medlock v. Jon C. Owens, Civil Action Number 2011-CP-42-649 to pursue available UIM coverage. (R. p. 54, ¶ 10). Progressive entered a Notice of Appearance in that action and then filed this declaratory judgment action on July 11, 2011 (R. p. 68, ¶ 13).

On October 15, 2009, Stanley Medlock applied for a policy of insurance with Progressive to insure a 2001 Polaris Sportsman 500 4-wheeler all terrain vehicle (ATV) which he alone owned. (R. p. 55, ¶ 1). Stanley Medlock was the only applicant, the only named insured and the only person to sign the application for this policy. (R. p. 55, ¶ 2, p. 128, p. 132, pp. 136-137). Corey Medlock was listed on the application by Stanley Medlock to be an authorized driver of the ATV. (R. p. 128). When making this application for coverage on the ATV, Stanley Medlock declined to purchase optional underinsured motorist coverage. (R. p. 136).

Progressive issued policy number 8513910-0 on October 15, 2009 covering the ATV from October 15, 2009 through October 15, 2010. (R. p. 103). The liability limits of the policy were \$25,000/\$50,000 and the underinsured coverage was shown as "Rejected". (R. p. 104). Stanley Medlock was shown as the only named insured on the policy and the primary responsible driver. (R. pp. 103-104). Corey Medlock was shown

as a driver and household resident. (R. p. 104) The annual premium for this policy was \$175.00 and was always paid by Stanley Medlock. (R. p. 104).

At all times relevant to this policy, Corey Medlock was a resident relative of Stanley Medlock. (R. p. 53, ¶ 2). The terms of the policy issued define Corey Medlock as a "Relative" as opposed to the named insured or his spouse. (R. p. 108, 1st column lines 1-4).

Eight months into the twelve month policy, three-fourths (3/4) of the way through the policy period, Corey Medlock purchased a Suzuki motorcycle and asked if it could be added to the existing ATV policy. (R. p. 53, ¶ 4). Progressive agreed and on June 9, 2010 added the Suzuki as a covered vehicle on the policy. (R. p. 138). But Progressive simultaneously made another change to the policy that was not requested; Corey Medlock was changed from being just an authorized driver on the policy to being a named insured. (R. p. 138). The reason given for the unrequested change was that it was the issuing agency's policy to designate all vehicle owners as named insured. (R. p. 68, ¶ 14). The annual premium increased by \$118.00 for the Suzuki coverage and the pro-rated premium due when it was added was \$37.00 (R. p. 139) Corey Medlock paid this additional premium and has always paid the premium for the coverage on the Suzuki under the policy. (R. p. 54, ¶ 8, p. 56, ¶ 8).

No new offer of UIM coverage was made to Stanley Medlock at the time these changes were made to the policy. (R. p. 56, ¶ 7). Corey Medlock never filled out or signed an application to be a named insured with Progressive. (R. p. 54, ¶ 5) Prior to June 9, 2010, Corey Medlock had never been a named insured on any policy of insurance, either with Progressive or any other carrier. (R. p. 54, ¶ 7). Corey Medlock

was not given the opportunity to accept or reject UIM coverage by Progressive when it made him a named insured and he has never had the opportunity to make that informed decision. (R p 54, ¶ 5).

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011) (citation omitted). "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." Id. at 46-47, 717 S.E.2d at 592 (citation omitted). However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard. Id. at 47, 717 S.E.2d at 592.

ARGUMENT

South Carolina Code Ann. § 38-77-160 requires that every automobile insurance carrier is required to offer underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist. South Carolina Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 614, 730 S.E.2d 862, (S.C. 2012). “The central purpose of the UIM statute is to provide coverage when the injured party's damages exceed the liability limits of the at-fault motorist. The UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the legislature.” Id. at 614 (Citing Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005)). Following this standard and the intention of the legislature as already determined by the South Carolina Courts, the Circuit Court correctly applied our existing law to this case in granting summary judgment to the Medlocks.

The arguments, inferences and policy considerations raised by Progressive have all previously been thoroughly evaluated by the South Carolina Courts in the case of McDonald v. South Carolina Farm Bureau Insurance Company, 336 S.C. 120, 518 S.E.2d 624 (S.C.App 1999) *cert denied* (2000), wherein this Court has already answered the Appellant’s question of when does a carrier not have to make an offer of UIM to a named insured? This Court held that “clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage” and any other interpretation of the statutes “would defeat the legislature’s intent that all named insured be offered UIM coverage.” Id. at 124, 518 S.E.2d at 626 (Emphasis Added).

Progressive makes the same arguments in this appeal that Farm Bureau made in McDonald, with the only difference being that where McDonald was made a named insured and another named insured was removed, Stanley Medlock remained a named insured when Progressive switched Corey Medlock from a driver to a named insured. Arguing against the required liberal construction in favor of coverage, Progressive mistakenly believes it should be entitled to more protection than the insured under South Carolina Code Ann § 38-77-350 because of the offer made to the applicant Stanley Medlock eight months before Progressive unilaterally decided to make Corey Medlock a named insured. Although authority from a few different jurisdictions are offered in support of this claim, such a ruling would be contrary to the existing law in South Carolina and misconstrue the clear intention of the legislature to protect the insured.

I. The Circuit Court did not err in refusing to find that the rejection of UIM coverage by one named insured was binding under South Carolina Code Ann. § 38-77-350(B) against a new named insured added eight months into a twelve month policy period.

Progressive contends that the under South Carolina Code § 38-77-350(B), the rejection of UIM coverage signed by Stanley Medlock was effective against Corey Medlock because Stanley Medlock made such rejection and remained on the policy as a named insured. (Appellant's Brief, p. 4, lines 7-10). "To require a new offer of coverage when there was a valid one signed by the first named insured just eight months earlier is a burden that Progressive should not have to meet in light of the statutory framework that these cases are handled under." (R p. 82, lines 1-5). Finally, Progressive believes arguing "that by adding an additional named insured during the pendency of an existing policy, that triggers the requirement for a new offer, that seems rather ludicrous, futile,

onerous on insurance companies in derogation of the protections that were afforded them in section 350(b), (c) and (d).” (R. p. 81, lines 6-11).

This Court in McDonald most certainly weighed the burden on the carrier against the rights of a named insured before determining that the legislature intended all named insured are entitled to the offer of UIM coverage Id. at 124, 518 S.E.2d at 626 (Emphasis added). The requirement to make an offer to a new named insured added as in this case would be no more ludicrous, futile or onerous when adding one named insured and removing one named insured as in McDonald. The similarities between these cases are staggering.

In McDonald, the carrier Farm Bureau, argued that it was not required to make an offer of UIM coverage to McDonald because he was not a new applicant under S.C. Code Ann. §38-77-350(A), but was merely substituted for the existing named insured. Id. Progressive argues here that Corey Medlock was not a new applicant to be a named insured under §38-77-350(A) because (1) he was already an insured “Relative” under the policy (R. p. 76, lines 9-25), and (2) the original applicant remained a named insured on the policy. (Appellant’s Brief, p. 4, lines 7-10). Neither McDonald nor Corey Medlock were required to complete an application. In making this argument, both Farm Bureau in McDonald and Progressive are both arguing that §38-77-350(A) and §38-77-160 cannot be read together to require a carrier to offer UIM coverage to all insured. Id. at 123, 518 S.E.2d at 625, (Appellant’s Brief, pp. 5-8). Farm Bureau had previously obtained a rejection of UIM coverage from McDonald’s mother, therefore, it argued § 38-77-350 protected it from having to make a new offer and was binding on McDonald. Id. at 122, 518 S.E.2d at 625. Progressive contends it obtained a rejection from Stanley Medlock,

and is therefore protected under § 38-77-350. (Appellant's Brief, p. 4, lines 4-12).

"McDonald had never been a named insured with Farm Bureau prior to the insurance on the Mercury." Id. at 124, 518 S.E.2d at 626 Prior to June 9, 2010, Corey Medlock had never been the named insured on any policy of insurance with Progressive. (R. p. 54, ¶ 7). McDonald "had never been given the opportunity to accept or reject UIM coverage." Id. Corey Medlock has never been given the opportunity to accept or reject UIM coverage, either when the policy was initially taken out or when he was made a named insured on the policy. (R. p. 67, ¶ 6, and R. p. 54, ¶ 7). "McDonald did not fill out an application..." Id. at 122, 518 S.E.2d at 625. Corey Medlock did not fill out an application. (R. p. 54, ¶ 5).

Although agreeing with this Court's reasoning in McDonald that "Sections 38-77-160 and 38-77-350 cover the same subject matter....and, therefore, must be construed together and as explanatory of each other," Progressive attempts a new spin by arguing that § 38-77-160 is "vague" and that § 38-77-350 is necessary to determine when an offer must be made. Id. at 124, 518 S.E.2d at 626, (Appellant's Brief p. 5, lines 6-10). This Court in McDonald made the same analysis Progressive is asking this Court to make in this matter and determined there was "no inconsistency" in the terms of these sections. Id. This Court even went further in clarifying its analysis in stating:

Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage. In using the term "new applicant," the legislature simply distinguished between those who had never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage."

Id. at 124, 518 S.E.2d at 626 (Emphasis Added).

Farm Bureau argued in McDonald that it was not required to make a new offer because McDonald was not a “new applicant” under § 38-77-350(A) since he had not filled out an application. Id. at 123-124, 518 S.E.2d at 625-626 Progressive makes the exact same argument here. After asserting § 38-77-160 is “vague” as to exactly who an offer must be made to (Appellant’s Brief, p 5, lines 6-10), Progressive states that “Section 38-77-350(A) answers the question regarding to whom insurers must make the § 38-77-160 offer by requiring that the offer be received by “new applicants.” (Appellant’s Brief, p. 7, lines 19-20). And therefore, since Corey Medlock did not fill out an application to be a named insured, he was not entitled to an offer of UIM coverage. Regardless of how Progressive attempts to spin it, they are attempting the exact same argument decided in McDonald where this Court held:

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

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

In attempting to distinguish its argument from McDonald, Progressive asserts that § 38-77-350(A) provides that “the applicant must be a named insured,” (Appellant’s Brief, p. 7). With this alleged requirement and citing Allstate Ins. Co. v Estate of Hancock, 345 S.C. 81, 87, 545 S.E.2d 845, 848 (Ct. App. 2001), Progressive contends the legislature thereby intended such “offer be made to the individual named insured who undertakes the application process and submits the application.” (Appellant’s Brief, p. 7, line 22-p. 8, line 2). Section 38-77-350(A) contains no such requirement that the applicant be the named insured. S C Code Ann § 38-77-350(A). Additionally, Allstate

did not hold that the applicant must be a named insured, but rather in order for carrier to get the protection of a valid rejection under § 38-77-350, the offer form had to be signed by the named insured. Id.

However, despite this Court having addressed these same arguments in McDonald, Progressive's spin on the argument relies entirely on the assertion that "the named insured" as used in § 38-77-350(B) was only intended to only be used in the singular form "The term 'applicant' separates the individual named insured who signs the insurance application from other insureds (household residents or listed drivers) or named insureds who may ultimately be listed on the policy." (See Appellant's Brief, p. 8, lines 9-11). However, "the insured" as a noun is actually both the singular and plural forms of the word. ("the insured." Cambridge Dictionaries Online. 2013. <http://dictionary.cambridge.org/us/dictionary/business-english/the-insured> (17 August 2013)).

This Court "cannot construe a statute without regard to its plain and ordinary meaning, and this Court may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." Cain v. Nationwide Property and Cas. Ins. Co., 378 S.C. 25, 29, 661 S.E.2d 349, 352 (S.C. 2008)(citing New York Times Co. v. Spartanburg County Sch. Dist. No. 7, 374 S.C. 307, 310, 649 S.E.2d 28, 29-30 (2007)). "Further, when a plain reading of the statute "lends itself to two equally logical interpretations, this Court must apply the rules of statutory interpretation to resolve the ambiguity and to discover the intent of the General Assembly." Id. (citing Kennedy v. South Carolina Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001)).

In order for this Court to accept the argument of Progressive that the legislature intended “the named insured” to be singular as used in § 38-77-350(B), you would necessarily have to ignore the plain and ordinary meaning of “insured” as a plural noun to limit the scope of “which” named insured must receive the offer and sign the rejection, which holding would be in direct contradiction of Cain and New York Times Co. referenced above. At the very the worst, the statute is capable of “two equally logical interpretations” as referenced in Cain and Kennedy above, in both the singular or plural tense, which do not conflict with each other. “Clear and unambiguous statutes require no statutory construction and should be applied by the court according to their literal meaning” South Carolina Coastal Conservation League v South Carolina Dept. of Health and Environmental Control, 669 S.E.2d 899, 380 S.C. 349 (S.C.App. 2008)(Citing Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)).

But if that wasn’t enough, the legislature provided further direction on its intent regarding the singular or plural use of “Insured” in the statute’s definitions when it provided.

“Insured” means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either...and any person who uses with the consent... and a guest in the motor vehicle...of any of the above.”

South Carolina Code Ann. § 38-77-30(7) (Emphasis added). If the legislature had intended the term to only be used in its singular form, it would have used the word “or” in the definition rather than “and”.

While I agree with Progressive that the legislature did not intend that § 38-77-160 should be read to require insurers make offers “to all insureds under the policy,” (Appellant’s Brief, p. 7, lines 9-10), the legislature clearly specified under § 38-77-

350(B) what insured needs to sign the rejection to be effective for the protection sought by Progressive. By specifying “the named” to describe which “insured” must receive the offer and sign the rejection, the legislature clearly intended such requirement to apply to “all named insured” as already found by this Court in McDonald.

The only support Progressive offers in support of its position is a Court of Appeals decision from Illinois, Messerly v. State Farm Mutual Automobile Insurance Company, 277 Ill. App. 3d 1065, 662 N.E.2d 148 (Ill. Ct. App. 1996) where that Court stated that the Illinois legislature did not intend “every named insured to receive a meaningful offer ” (Appellant’s Brief, p. 9, line 20-p. 10, line14). Although their reliance on Messerly is misplaced, Progressive does correctly point out that this Court has already addressed the same situation as under South Carolina law in Nationwide Mutual Insurance Company v. Prioleau, 359 S.C. 238, 243, 597 S.E.2d 165, 168 (Ct. App. 2004)). It is therefore not necessary to look to the foreign authority of Illinois.

Both Messerly and Nationwide dealt with the same fact situation where one spouse applied for a policy for both spouses to be named insured. The applying spouse rejected UIM coverage and the non-applying spouse sought reformation to provide coverage. Messerly at 1066, 662 N.E.2d at 148-149, Nationwide at S.E 2d 166-167. But in Messerly, the Court was interpreting a former version of Illinois Code § 143a-2(1) that the trial court had held required an offer be made to all named insured. Id. at 1065, 662 N.E.2d at 148. The Court confirmed that at the time the policy was taken out, the statute was not clear on “who” the offer must be made to. Id. at 1067, 662 N.E.2d at 149. However, almost immediately after the policy was issued, the Illinois legislature amended § 143a-2(1) to clarify that “the applicant” rather than “insured” was the one

who may reject UIM coverage. Id. at 1069, 662 N.E.2d at 150-151 (citing 215 Ill. Comp. Stat. § 5/143a-2(1), (2)(West 1994)). Based on this specific revision by the legislature, the Court concluded the prior statute must have been intended to reflect the same, that only the applying named insured needed to sign the rejection.

But this Court in Nationwide v. Prioleau faced the exact same argument being made by Progressive in this case. In that case, the policy issued “listed both ‘Julius and Paula Prioleau’” as the named insured. Id. at S.E.2d 167. And the issues presented to this Court were stated as:

Nationwide argued the rejection of UIM coverage form signed by Julius Prioleau was a valid rejection under South Carolina law, and it was not required to also obtain the signature of Paula rejecting UIM coverage, as Julius was the named insured and the only applicant for the policy. Alternately, Nationwide claimed that the form was sufficient because Julius was acting as the agent for his wife when he obtained the insurance policy.

Id. at S.E.2d 167. But this Court did not address the first issue, which under Progressive’s theory would have been the easiest conclusion to draw, and skipped directly to addressing the agency question between a husband and wife. Id. at S.E.2d 167. If this Court had felt there was an ambiguity in the use of the term “the named insured” as suggested by Progressive, it would have certainly addressed such ambiguity at that time.

If this Court desires to examine authority from the jurisdiction of Illinois, then the case of Nila v. Hartford Ins. Co., 312 Ill.App.3d 811, 728 N.E.2d 81 (Ill.App. 2 Dist. 2000) is a more recent and far more similar case to the one at hand interpreting Illinois law on the subject. In Nila, the husband took out the insurance policy as the only named insured in 1987. Id. at 813, 728 N.E.2d at 83. The wife was listed as an additional driver, and like the terms of Progressive’s policy, defined the terms “you” and “your” to

include the named insured and their spouse. Id. at 813, 728 N.E.2d at 84. They continued to renew this policy every year through the husband's death in 1994. Id. at 814, 728 N.E.2d at 84. When the husband passed away, the carrier issued an endorsement changing the wife from a listed driver to the named insured on the policy. Id. Following his death, the wife bought a new car to replace the one insured previously and added it to the policy. Id. at 820, 728 N.E.2d at 88. The Court stated that the wife then purchased a one-year policy on the renewal date, but did not fill out an application and the new policy on the new vehicle was given the same number as the prior policy of the husband. Id. at 814, 728 N.E.2d at 84. The wife then died in an accident in 1996 in the new vehicle and the Court had to determine if she had been entitled to a new offer of UIM or was bound by the husband's. Id. The Court based its decision that a new offer was required on the fact that this was the first time she had ever been the named insured on a policy and as such now carried the responsibility for the decisions on the type and amount of coverage. Id. at 820, 728 N.E.2d at 88-89. The Court further held that she had "never had the opportunity to make an informed and intelligent decision regarding uninsured motorist coverage. Id. at 820, 728 N.E.2d at 89.

The rationale was confirmed and further explained by the Illinois Court very recently in Nicholson v. State Farm Mut. Auto. Ins. Co., 409 Ill.App.3d 282, 949 N.E.2d 666, Ill.Dec. 874 (Ill App.2 Dist. 2010). The Nicholson Court reviewing Nila stated.

We then held that this statutory purpose would be frustrated if an insured who had never elected any level of UM coverage were issued a policy without having been offered equal UM coverage on the ground that it was simply a continuation of the old policy under subsection (2).

Id. at 291, 949 N.E.2d at 673-674. The Court went on to confirm the same reasoning had been used prior to Messerly in stating:

Similarly, in Burnett v. Safeco Insurance Co. of Illinois, 227 Ill.App.3d 176, 174 169 Ill.Dec. 113, 590 N.E.2d 1032 (1992), another district of the appellate court held that an insurer's issuance of a policy to a daughter in her own name was a new policy requiring an offer of equal UM coverage, rather than a continuation of her parents' policy, under which she had been a listed driver.

Nicholson at 292, 949 N.E.2d at 674.

So, although we have clear binding authority in South Carolina, should this Court deem it necessary to consult Illinois authority in affirming the Circuit Court's decision in this matter, Burnett, Nila, and Nicholson all confirm the same standard as used by South Carolina in McDonald would apply in that jurisdiction as well. As a result, the grant of summary judgment by the South Carolina Circuit Court would also be affirmed in Illinois.

Progressive's argument for a such a limited reading of § 38-77-160 and § 38-77-350 has already been addressed and the intention of the South Carolina legislature has been determined that all named insured are entitled to make a choice regarding UIM coverage. Any other interpretation would be contrary to all existing binding authority in South Carolina. Based on these circumstances, the grant of summary judgment by the Circuit Court must be affirmed by this Court.

II. The Circuit Court did not err in finding that South Carolina Code Ann. § 38-77-350(C) does not apply to changes regarding named insured?

Progressive next contends that the addition of a new vehicle and the addition of a new named insured constitute changes to an existing policy such that they are not required to issue a new offer under South Carolina Code § 38-77-350(C) and that

McDonald does not apply because unlike McDonald where “one entire side of the contracting equation has changed,” only adding a new named insured doesn’t substantially change the existing policy in force. (Appellant’s Brief, p. 11, lines 14-20). Not only is this proposition directly contradictory to the terms of the policy and the rationale in McDonald, it is completely contrary to existing law in South Carolina.

Progressive contends McDonald is distinguishable from the present circumstances in that Corey Medlock was already insured under the policy as a relative and “he’s not entitled to any more coverage now that he’s a named insured than he was when he wasn’t a named insured.” (R. p. 80, lines 9-14). In advancing this position, Progressive stated “the legal relationship between Progressive and Corey Medlock **did not change.**” (R. p. 63, line 7). Progressive is arguing to treat the unilateral change in the designation in the policy from “driver” to “named insured” as nothing more than a clerical change.

A. Changing Corey Medlock from a listed driver to a named insured changed his legal status under the terms of the policy thereby creating a new contract as between Corey Medlock and Progressive.

The policy issued to Stanley Medlock is very clear as to the difference between the named insured and an insured relative under the policy. The term “Relative” is specifically defined in the policy as “a person residing in the same household as you, and related to you by blood marriage or adoption.. ” (R. p. 108, 1st column lines 1-2). The term “you” is defined in the policy as (a) “a person shown as the named insured on the declarations page” and (b) “the spouse of the named insured if residing in the same household at the time of the loss.” (R. p. 108, 1st column lines 24-27). If Progressive’s position that Corey Medlock’s legal status was no different, why does the policy define them differently? A review of the provisions of the policy reveal the answer, many

provisions covering rights, responsibilities and obligations only apply to either the named insured or insured relatives, but not both.

For Example, under **Part I – Liability to Others**, and the section titled **Exclusions**, in paragraph 13, Progressive excludes coverage for “**bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by a **relative**, other than a **covered motorcycle** for which this coverage has been purchased.” However “this exclusion does not apply to **your** maintenance or use of such motorcycle.” (R. p. 109, 1st column lines 39-43). Plaintiff is clearly providing coverage to the named insured and not providing the same coverage to an insured relative under the policy.

Under **Part II – Motorcycle Medical Payments Coverage**, the “Insuring Agreement” states “If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received....” (R. p. 110, 2nd column line 5-6). Under this provision, if the named insured” did not pay the premium, the insured relative would not be entitled to the coverage. Again, under the **Exclusions** section, the policy does not apply to injuries “sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered motorcycle** for which this coverage has been purchased.” However, “this exclusion does not apply to **you**.” (R. p. 111, 1st column lines 19-22).

Although there are many similar examples in the policy, I’ll conclude with the most appropriate **Part III – Uninsured/Underinsured Motorist Coverage** provision where the “Insuring Agreement” for the UIM coverage states, “If **you** pay the premium

for this coverage, we will pay for damages that an **insured person** is legally entitled to recover from the owner or operator.” (R. p. 112, 1st column lines 5-6). Therefore, under these terms of the Underinsured Motorist Coverage of the policy, if the named insured, i.e. Stanley Medlock, does not pay the premium, an insured relative, i.e. Corey Medlock is not entitled to the coverage.

Now again, under Progressive’s argument, this situation is somehow different from McDonald because the original contract between Stanley Medlock and Progressive did not change. But that is simply not true under the terms of this policy. Before Corey Medlock was made a named insured, only Stanley Medlock had the legal right to make the premium payment for the UIM and force the coverage to remain in effect, by the terms of the policy. After Corey Medlock was made a named insured, he now also had that right irrespective of the wishes or intentions of Stanley Medlock.

Beyond the premiums, the policy terms restrict other significant rights and obligations to only the named insured, such as the duty to report changes (R. p. 119, 2nd column lines 15-23), reliance on the information contained in the application (R. p. 120, 1st column lines 1-10), the ability to cancel the policy (R. p. 120, 1st column lines 38-2nd column line 24), and the entitlement to a refund of any premium refund, p. 120, 2nd column lines 26-31).

Clearly, the intention of Progressive under the policy terms was to treat a named insured different from an insured relative. Allowing Progressive to claim that a named insured and an insured relative are treated as the same solely for the purposes of avoiding the requirements of §38-77-160 and §38-77-350 would be unjust and in conflict with the intention of the parties pursuant to the terms of the policy. Such a reading would also go

against the long held standard in South Carolina that “ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer.” State Farm Mut. Auto Ins. Co. v. James, 522 S.E.2d 345, 337 S.C. 86 (S.C.App. 1999)(citing Diamond State Ins. Co. v. Homestead Indus., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995))(Emphasis added).

When such substantial changes are made to a contract that the terms of the contract take on new meaning, there is no other conclusion to draw but that a new contract has been created. That was the basis for this Court’s decision in McDonald as this Court further clarified its holding on §38-77-350(C) in Smith v. South Carolina Ins. Co., 350 S.C. 82, 564 S.E.2d 358 (S.C.App. 2002) stating “When McDonald became the named insured on the policy, it altered the legal relationship of the parties. As we observed:

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

Id. at 88, 564 S.E.2d at 361. (Emphasis added).

As already indicated in the discussion above, Progressive contends its offer to Stanley Medlock was sufficient to constitute the “old” offer referenced by this Court. What Progressive is asking this Court to decide is that even though Progressive decided on its own to make Corey Medlock a named insured and give him all the rights and privileges associated with that definition within the contract, that Progressive is not required to treat him like every other new insured and provide him sufficient information to make an informed decision about the coverage he desires. I cannot believe our

legislature would have intended to give carriers such unfettered discretion to ignore the mandate of § 38-77-160.

As with its prior argument, Progressive provides no South Carolina authority for this proposition but relies on Ohio, Rhode Island, Illinois and Hawaii case law to support its position. (Appellant's Brief p. 12, line 24-p. 16, line 14). At the Circuit Court, Progressive relied heavily on Wilkerson v. Louisiana Indemnity/Patterson Ins., 682 So.2d 1296 (La. Ct. App. 1996), to establish that Louisiana law was that the addition of a named insured did not constitute a new policy thereby requiring a new rejection form. (R. p. 76-82 and R. p. 62, line 9-p. 64 line 5). Such abandonment is clearly as a direct result of the decision in a companion case of Dempsey v. Automotive Cas. Ins., 2108 La App. 1 Cir. 6/28/96, 680 So.2d 675 (La.App. 1 cir. 1996) where the Louisiana Court completely agreed with the Medlocks' position finding under Louisiana law,

...when there are changes in the insurance policy which involve the addition of insureds or vehicles, the jurisprudence indicates that the policy is not a substitute policy, but is a new policy, which requires the execution of new UM selection/rejections forms.

Id. at So.2d 680.

Progressive's attempts to convince this Court to rely on other jurisdictions instead of South Carolina are equally flawed. The authority from Illinois has already been addressed above through Burnett, Nila, and Nicholson and will not be re-argued here. The Hawaii case of Lee v. Government Employees Ins. Co., 911 F. Supp. 2d 947 (D. Haw. 2012) used to argue Hawaii does not require a new offer when adding a vehicle and newly-licensed driver is not only inapplicable because the added driver was not added as a named insured, but as appropriately pointed out by Progressive, it conflicts with the established law in Hawaii under Allstate Ins. Co. v. Kaneshiro, 93 Hawaii 210, 998 P.2d

490 (2000) and is currently pending appeal to the Ninth Circuit Court of Appeals, Case Number 13-15524, Filed March 22, 2013.

Progressive's reliance on Rhode Island law through Ferreira v. Integon National Insurance Co., 809 A.2d 1098 (R.I. 2002) is equally misplaced. As the Circuit Court correctly found, Rhode Island has a completely different statutory scheme regarding notice of the opportunity to purchase UIM coverage and it was this basis upon which the Court in Ferreira based its decision, as properly found by the Circuit Court below:

In *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002), the Court's decision hinged on Rhode Island General Law § 27-7-2.1(d), which provides in pertinent part:

"After the selection of limits by the named insured * the insurer or any affiliated insurer shall be required to *notify* the policyholder, in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy, as to the availability of that coverage or optional limits." (Emphasis added) *Ferreira* at 1101.**

The carrier had carried out this duty when Ferreira had been added to the policy and failed to take action at that time. *Id.* at 1101. The failure to seek coverage when notice was provided was the reason the Court held the original rejection valid as to the additional named insured. South Carolina has no such mandatory notice requirement when a policy is changed; in fact S.C. Code §38-77-350(c) specifically relieves a carrier of the obligations to make a new offer when a policy "renews, extends, changes, supersedes, or replaces an existing policy." S.C. Code Ann. §38-77-350(c)(Supp. 1998).

(R. pp. 9-10).

Finally, Progressive presents that Ohio law supports its position through Johnson v. Great American Ins. Co., 44 Ohio App 3d 71, 541 N.E.2d 100 (Ct. App. 1988) and contrasts it with McKnight v. Grange Mutual Cas. Co., 110 Ohio App. 3d 282, 673 N.E.2d 1012 (Ct. App. 1996) being more similar to McDonald. Once again, the Ohio statutory provisions are very different from South Carolina. At the time of the Johnson decision, that Court specifically noted that the statute required UIM to be offered "to each

applicant for new automobile or motor vehicle liability insurance **and** to each named insured policyholder at the time of the first policy renewal.” Id. at 73, 541 N.E.2d at 102. Also of particular note is that in Ohio, “Insurance companies shall not be required to obtain or retain written rejections of such coverage.” Id. Such a significant deviation from South Carolina law should not be considered to disregard the clear existing holding of McDonald.

Although Progressive attempts to offer this authority only for the purpose of demonstrating that a new policy should not be construed to be created just at the addition of a new named insured, an examination of every case offered and argued show they only deal with the addition of a **spouse** to the policy. As has been argued above, Corey Medlock is not about the addition of a spouse, but the addition of a new named insured who was not a spouse. Under the policy terms in Progressive’s policy as well as the rationale used in every case offered by Progressive, a spouse of a named insured is treated exactly the same with all the same benefits and obligations as the named insured. Because of their being treated the same under the policy, the argument that the policy is not changed by making a spouse a named insured may very well carry more weight, **but that is not the facts of the current case.**

Corey Medlock was not defined the same under the policy before and after he was made a named insured. His legal rights changed substantially, his legal obligations changed substantially, and Stanley Medlock’s legal rights changed substantially as well. There is simply no other logical decision under these facts but to conclude that when Progressive made Corey Medlock a named insured, they created a new insurance policy as it related to Corey Medlock.

B. Changing Corey Medlock from a listed driver to a named insured changed his legal status under South Carolina law thereby creating a new contract as between Corey Medlock and Progressive.

Changing Corey Medlock from an insured relative to a named insured not only changed his legal status under the terms of the policy, but changed his legal status in the eyes of the law as well. Progressive may argue that as used in Chapter 77 of the South Carolina Code, named insured and an insured relative are synonymous as both are included in the definition of “insured”, but the legislature clearly intended that they be treated differently under the law based on the different rights and obligations provided each.

Progressive would certainly agree that § 38-77-350(B) requires that the offer be rejected by “the named insured”. Therefore, Progressive would also necessarily have to agree that a signed rejection form by any other insured that is not the named insured would not be valid under this statute. Giving this specific authority to only “the named insured” clearly implies the General Assembly did not intend the signature of any other insured under the policy, including a resident relative to carry the same protection to the insurer.

Progressive cannot have it both ways under this statute. If Progressive contends that the legislature intended the named insured and relatives residing in the household to be treated the same under the statute, then the statute would necessarily require that the offer be made to all insured and that the insurance company would only be entitled to the protection under §38-77-350 (B) if they obtained the signatures of all insured on the offer form. But Progressive has clearly stated that “it would be absurd to read § 38-77-160 as requiring insurers to make offers to all insureds under the policy.” (Appellant’s Brief, p.

7, lines 9-10 & p 19, lines 18-21). Since Progressive insists that the language of §38-77-350(B) provides it the presumption of a valid offer because one was signed only by the named insured, then Progressive would necessarily have to agree that the legislature intended a named insured be treated differently under this statute than a resident relative.

Consider the ramifications if Progressive's interpretation of the statute is adopted. It would open the floodgate for carriers to completely escape the requirements of §38-77-160 and §38-77-350. Most children that become of age to get their drivers license are not of legal age to execute contracts and still live at home with their parents. When they begin to drive, the parents add them to their existing policies as insured relatives or drivers. The child grows older, but while still living at home, he buys his own car which is added to mom and dad's policy and the child is changed to a named insured, just like Corey Medlock. Subsequently, the child moves out and the mailing address for him on the policy is changed and his notices are mailed to a separate address than his parents. Under Progressive's position, all of those changes would fall under §38-77-350(C) and the carrier would never be required to make that child an offer of UIM coverage because they would never be a new applicant under South Carolina law. As such, the child would always be bound by the election of UIM coverage that their parent made, without ever having the opportunity to make their own informed choice, even though they were not even legally able to make that decision on their own when the parents made it because of their age.

The legislature would not have intended §38-77-350(C) to be used to avoid the mandatory requirement to offer all named insured the opportunity to purchase UIM

coverage. This Court in McDonald believed the same to be true citing its holding in Ackerman v. Travelers Indem. Company, 318 S.C. 137, 456 S.E.2d 408 (Ct.App.1995):

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

Id. at 142, 456 S.E.2d at 411.

Beyond that statute, other clear indications of the intent to treat a named insured differently from other insured exist in other statutes such as under S.C. Code Ann. §38-77-120(a), wherein the legislature provided the named insured with a significant legal right that was not provided to an insured relative, the right to notice of cancellation.

“No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew.”

South Carolina Code Ann. §38-77-120(a). There is no legal requirement to notify an insured relative that the policy has been cancelled or will not be renewed. Insured relatives do not have that right and would have no legal recourse against the insurer if they were operating a vehicle believing the policy was still in place because they had not been notified it had been cancelled. Taking this process even further, under S.C. Code Ann. §38-77-123, the legislature specifically eliminated any liability on insurers from having to send notice of cancellation or refusal to renew to **“anyone other than the named insured, any person designated by the named insured and any other person to whom such notice is required to be given by the terms of the policy.”** South Carolina Code Ann. §38-77-123(C).

Clearly, if the legislature fully intended a named insured and insured relative to be treated the same, they would have provided both with this most basic right to be notified when the policy was cancelled. Otherwise, under Progressive's theory that they should be treated the same, insurers would become liable to insured relatives for damages they suffer as a result of the insurer not sending them the Notice of Cancellation. Once again, Progressive cannot have it both ways; either that the legislature intended named insured and insured relatives be treated the same and carriers would incur liability for not sending notices to all insured, or the legislature intended for them to be treated differently as indicated by the statute.

Outside the provisions of the Automobile Insurance statutes, the difference between being a named insured and an insured relative makes a huge difference under other South Carolina statutes. As the legal owner of the Suzuki, South Carolina law requires that Corey Medlock maintain liability insurance on that vehicle. South Carolina Code Ann. §56-10-10. When the vehicle was registered, he had to certify that he had liability insurance on that vehicle and his failure to maintain liability insurance on that vehicle, by law, will cause him to lose his privilege to drive in the state and be guilty of a misdemeanor subject to criminal penalties. South Carolina Code Ann. §56-10-30 and §56-10-225(C). As explained above, an insured relative under this policy has no legal right to keep the policy in place as he is not given the right to pay the premiums in order to assure he can keep the coverage in place. Certainly carriers could accept the premium from him, but there is no legal requirement for them to do so. Only the named insured has the legal standing to require the policy remain in force. These legal requirements coupled with the fact that under S.C. Code Ann. §38-77-120 and §38-77-123, an insured

relative is not entitled to notice of cancellation and has no recourse for not getting such notice makes it a near legal impossibility for an insured relative to assure that he is in full compliance with the law at all times as the owner of the vehicle. To the contrary, a named insured does have the legal right under the policy to pay the premium to keep coverage in place and the law specifically requires the insurer to notify him of the policy being cancelled or non-renewed so that he is on notice to take measures to stay in compliance with the law.

There is no question that when Progressive made Corey Medlock a named insured on June 9, 2010, that the legal relationship between Corey Medlock and Progressive changed significantly. Such a substantial change is what the existing authority has relied on, as in McDonald, to determine that this is not a mere change, but the creation of a new policy. Once he was a named insured, Corey Medlock was in the exact same position as McDonald. They both now had significant legal rights under a policy of insurance issued by the insurance carrier under the laws of the State of South Carolina, but had not filled out an application or been given the opportunity to accept or reject UIM coverage as required by the statutes. As such the holding in McDonald applies and Progressive was required to offer Corey Medlock UIM coverage.

III. The Circuit Court correctly applied South Carolina law in this case.

Although every attempt has been made to address all of Progressive's arguments and attempts to point to errors made by the Circuit Court below, the Record of the proceedings below can also stand on its own in demonstrating that the decision of the Circuit Court was appropriate, correct and should be affirmed. As a result, should this Court finds some degree of persuasion to Progressive's arguments, those arguments are

wholly insufficient to overcome the rightful and just logic, reasoning and application of the law by the Circuit Court below.

Therefore, in addition to the arguments presented herein directly against the alleged issues on appeal, Respondent would also contend that there are other reasons for this Court to affirm the decision of the Circuit Court and if such reason be found by this Court, then pursuant to Rule 220(c) of the South Carolina Appellate Court Rules, such reason shall also dictate that the decision of the Circuit Court must be affirmed.

CONCLUSION

When Progressive made Corey Medlock a named insured on a policy of insurance, it did far more than change his label on the policy; it changed the legal status and created a new policy between Progressive and Corey Medlock. As a result, Corey Medlock was entitled to an offer of UIM coverage under South Carolina Code Ann. § 38-77-160 and § 38-77-350. Progressive's failure to comply with these statutes and make such offer requires reformation of the policy to include such UIM coverage.

For the reasons stated above, as well as any other ground existing in the record on Appeal, the decision of the Circuit Court granting summary judgment to the Medlocks and denying summary judgment to Progressive must be Affirmed.

Respectfully submitted,

BRIAN A. MARTIN, LLC

A handwritten signature in black ink, appearing to read "B-A Martin", written over a horizontal line.

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Greenville, South Carolina
October 15, 2013

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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

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OCT 22 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

v.

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

Of Whom

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

CERTIFICATE

I, Brian A. Martin, Esquire, attorney for Respondent, certify that the Respondent's Final Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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October 15, 2013

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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SUMMARY

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

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

ARGUMENT

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

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

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

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

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

meaningful offer and the “automobile insurer is not required to make a new offer of coverage on any automobile insurance policy which renews, extends, changes, supersedes, or replaces an existing policy.” S.C. Code Ann. § 38-77-350(B) and (C). Moreover, “[c]ompliance with this section satisfies the insurer and agent’s duty” to provide a meaningful offer. S.C. Code Ann. § 38-77-350(D).

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

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

make a new offer if that policy is subsequently changed. The statute says that Progressive did not have to make a new offer and Progressive relied upon that statute.

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

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

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

There is no colorable argument that the terms “the insured” or “the named insured” as used in § 38-77-350 are plural. Therefore, when § 38-77-350(B) states that “neither the insurance company nor an insurance agent is liable to the named insured or

another insured under the policy for *the insured's* failure to purchase optional coverage or higher limits," it presumes *only one* offer and *one* rejection by the *one* named insured who applies for coverage. That rejection is binding upon all other insureds whether they are named insureds or otherwise.

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

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

By using the terms "applicant" and "named insured" in § 38-77-350, the General Assembly intended different meanings for the two phrases. "In interpreting statutory

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

text, [courts] ordinarily presume that the use of different words is purposeful and evinces an intention to convey a different meaning.” Abbott v. Abbott, 560 U.S. 1, 130 S. Ct. 1983 (2010) (dissent) (citing Rusello v. United States, 464 U.S. 16, 22-23, 104 S. Ct. 296, 300 (1983)). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Centex Intern., Inc. v. South Carolina Dep’t of Revenue, ___ S.E.2d ___, 2013 WL 3816542 (S.C. July 24, 2013). Furthermore, when considering a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to *limit or expand* the statute’s operation.” Id. (quoting Sloan v. Hardee, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)) (emphasis added). In other words, if the statutory language is clear, there is no reason to resort to statutory construction.

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

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

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

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

The General Assembly's uses of the terms "applicant" and "named insured" in § 38-77-350 are distinct and not interchangeable. The two terms have distinct meanings and, under their plain meaning, Stanley Medlock – as the person who interacted with Progressive to obtain the insurance policy – was the applicant. As the applicant for insurance and a named insured, § 38-77-350 identifies him as the individual to whom an offer of insurance must be made and Respondents admit that Stanley Medlock received a meaningful offer in compliance with both §§ 38-77-160 and 38-77-350 and that he signed a written form satisfying the safe harbor provisions of § 38-77-350 (B), (C), and (D). Because the statute only requires this one offer under the facts of this case, Corey Medlock is conclusively bound by his father's written rejection of optional coverage.

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

Respondents' citation to a number of out-of-jurisdiction cases reveals their failure to understand the distinction between the facts of this case and those in McDonald. For example, Respondents cite the cases of Nila v. Hartford Ins. Co., 312 Ill. App. 3d 811, 728 N.E.2d 81 (Ct. App. 2000) and Burnett v. Safeco Ins. Co. of Illinois, 227 Ill. App. 3d 176, 590 N.E.2d 1032 (Ct. App. 1992) as supporting their position that the addition of a second named insured to an existing policy is the creation of a new policy. However, neither of those cases dealt with the addition of a second named insured to an existing policy. The Court of Appeals in Nila – like this Court in McDonald – dealt with the *transfer* of a policy from a deceased husband to his wife as the new and sole named insured. "Following [husband's] death, an endorsement to the policy . . . deleted [husband] An endorsement . . . *replaced* [husband] with [wife] as the named insured

on the policy.” Nila, 312 Ill. App. 3d at 814, 728 N E 2d at 84. Because there was no longer a named insured on the policy that had rejected optional coverage, a new offer was required.

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

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

On the other hand, the discussion in Messerly v. State Farm Mut. Auto. Ins. Co., 227 Ill. App. 3d 1065, 662 N.E.2d 148, (Ct. App. 1996), answers the exact question before this court. The issue before that court was “whether section 143a-2 of the Code required an offer of additional UM coverage to be made to every named insured under a policy, or whether a legally sufficient offer made to one named insured satisfied the offer

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

requirement.” Id. at 1067, 662 N.E.2d at 149. Construing the same operative word “applicant,” the Court of Appeals held that the insurer satisfies the offer requirement by making one offer to the named insured that actually applies for the policy. Because the word “applicant” is unambiguous, this Court should do the same.

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

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

Respondents spend an unwarranted amount of time arguing against a position that Progressive does not take on appeal. Namely, Respondents create a straw man argument that “Progressive is arguing to treat the unilateral change in the designation in the policy from ‘driver’ to ‘named insured’ as nothing more than a clerical change.” (Initial Brief of Resp’t, p. 17). Although this argument is factually true and Progressive presented it to the lower court, it is not Progressive’s primary contention. Corey Medlock was a class I insured as a resident relative and listed driver of the policy when it was originally issued. In fact, the original application stated that the only vehicle listed on that policy was Corey Medlock’s primary vehicle. (R. p. 128). Therefore, changing his designation to a named insured did not substantially affect his rights with regards to optional coverage.

However, § 38-77-350(C) does not delineate between small changes and large changes. So long as the old policy remains and no new one has taken its place, a new offer is not required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

Respectfully submitted,

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Northern Insurance Company

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October 28, 2013

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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

RECEIVED

OCT 28 2013

Court of Appeals

Progressive Northern Insurance Company..... Appellant,

v.

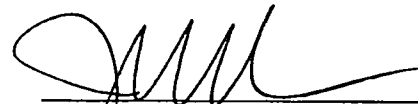
Stanley K. Medlock, Corey K. Medlock and The Standard
Fire Insurance Company, ... Defendants,

Of Whom

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

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Final Reply Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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October 28, 2013

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SC Court of Appeals

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Of Whom

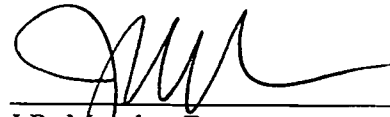
Stanley K. Medlock and Corey K. Medlock..... Respondents.

PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Stanley K. Medlock, Corey K. Medlock and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on October 28, 2013, addressed to their attorneys of record:

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2010-2

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

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OCT 08 2013
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Progressive Northern Insurance)
Company,)
Plaintiff,)

Vs.)

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

ORDER

Civil Action Number: 2011-CP-42-2965

CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 28 PM 2:43
M. HOPE D. ASHLEY

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

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

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



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

FINDINGS OF FACTS

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

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

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

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

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



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

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

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

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

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



11. Corey Medlock is the biological son of Stanley Medlock and at all times relevant to this policy, Corey Medlock was residing in the same household as his father. (Affidavit of Corey K. Medlock & Stipulations of Fact #3)

12. Under the terms of the policy issued by Plaintiff to Stanley Medlock, Corey Medlock is defined as a "Relative" rather than a named insured. (Affidavit of Stanley K. Medlock, Exhibit A p. 7 & Stipulation of Facts, Exhibit A p.7)

13. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to add a 2001 Suzuki SV650/S motorcycle owned solely by Corey Medlock as an additional vehicle under the policy. (Affidavit of Stanley K. Medlock, Exhibit C p. 1, Stipulation of Facts, Exhibit C p. 1 & Stipulations of Fact #8)

14. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to reflect that Corey Medlock was changed from being a "Relative" under the policy as a second named insured. (Affidavit of Stanley K. Medlock, Exhibit C p. 1, Stipulation of Facts, Exhibit C p. 1 & Stipulation of Facts #8)

15. As a result of these changes, the premium increase due was \$37.00. (Affidavit of Stanley K. Medlock, Exhibit C p. 1 & Stipulation of Facts, Exhibit C p. 1)

16. Corey Medlock paid the premium increase and has always paid the premium for the coverage on the Suzuki under the policy, although Stanley Medlock has paid the premium for the Polaris. (Affidavit of Corey K. Medlock)

17. No additional offer of UIM coverage was made to either Stanley Medlock or Corey Medlock at the time these changes were made to the policy. (Affidavit of Corey K. Medlock, Affidavit of Stanley K. Medlock & Stipulation of Facts #6 and #10)



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

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

STANDARD OF REVIEW

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

LEGAL ANALYSIS

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

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limits of liability coverage in that policy.

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

After the selection of limits by the named insured . . . the insurer or any affiliated insurer shall be required to *notify* the policyholder, in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy, as to the availability of that coverage or optional limits.

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

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

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

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

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

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

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

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

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

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

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

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

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

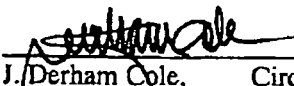
Applying this reasoning, the *McDonald* Court found that making McDonald a named insured was not just a minor change to the policy. "It was the creation of a new insurance policy with a new

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

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

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


J. Derham Cole, Circuit Court Judge

March 26, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2011-CP-42- 2965

Progressive Northern Insurance Co.)

Plaintiff,)

v.)

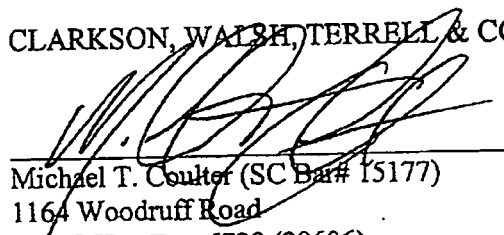
Stanley K. Medlock, Corey K.
Medlock, and The Standard Fire
Insurance Company.)

Defendants.)

SUMMONS
(Non-Jury)

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

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


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

Greenville, South Carolina
July 6, 2011

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2011-CP-42- 2965

Progressive Northern Insurance Co.)

Plaintiff,)

v.)

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

Defendants.)

COMPLAINT
(Declaratory Judgment)
(Non-Jury)

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

PARTIES AND JURISDICTION

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

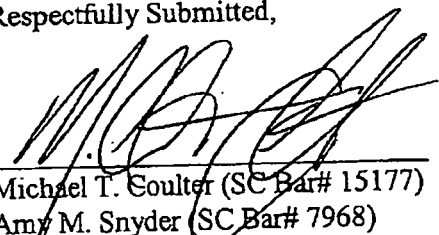
17. As a result of their knowing and express waiver of underinsured coverage the plaintiff, Progressive, would assert that there is no coverage available for the claims arising from the October 9, 2010 automobile accident.

FOR A FIRST REQUEST FOR DECLARATORY RELIEF

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

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

Respectfully Submitted,

By: 

Michael T. Coulter (SC Bar# 15177)
Amy M. Snyder (SC Bar# 7968)
Clarkson, Walsh, Terrell & Coulter, P.A.
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Attorneys for Progressive Northern Insurance Company

July 7, 2011
Greenville, South Carolina

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

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

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

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

FOR A FIRST DEFENSE

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

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

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FOR A SECOND DEFENSE AND BY WAY OF A COUNTERCLAIM

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

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

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

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

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

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

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

EXCLUSIONS

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

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

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

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

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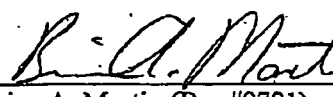
that the underinsured motorist coverage of said policy shall be available to the Defendant Corey K. Medlock upon receipt of the limits of underinsured coverage from the reformed policy with the Plaintiff.

WHEREFORE, Defendant prays the Court as follows:

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

Submitted this 23rd day of August, 2011.

MARTIN & DAVIS, LLC


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

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

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

Progressive Northern Insurance
Company,
Plaintiff,

vs.

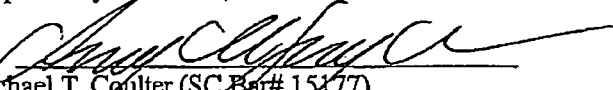
Stanley K. Medlock,
Corey K. Medlock, and The
Standard Fire Insurance Company,
Defendant.

MOTION FOR SUMMARY JUDGMENT

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

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

Respectfully submitted,

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

Greenville, South Carolina
September 27, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

2011-CP-42-2965

Progressive Northern Insurance
Company,)

Plaintiff,)

vs.)

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

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

(NON-JURY)

Defendants.)

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

FOR A FIRST DEFENSE

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

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

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

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

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

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

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

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

By: 

Michael T. Coulter (SC Bar# 15177)

Amy M. Snyder (SC Bar# 7968)

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

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Attorneys for Progressive Northern Insurance Company

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M. HOPE BLACKLEY

Greenville, South Carolina
September 27, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

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

Defendants.

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

TO: PLAINTIFF AND DEFENDANT THE STANDARD FIRE INSURANCE
COMPANY,

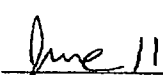
YOU WILL PLEASE TAKE NOTICE that Defendants Stanley K. Medlock and Corey K. Medlock, by and through their attorney in accordance with Rules 56 and 57 of the *South Carolina Rules of Civil Procedure*, do hereby move for Summary Judgment on their Cross-claim and Counter-claim set forth in their Answer,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

BY:


Brian A. Martin (SC Bar # 9791)

Martin & Davis, LLC
212 Trade Street
Greer, SC 29651
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Attorney for Defendant Stanley K. Medlock
and Corey K. Medlock

 2012
Greenville, South Carolina

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M. HOPE ELAHOE

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

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

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

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

Defendants.

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

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

I. INTRODUCTION

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

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

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

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

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

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

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

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II. SUMMARY OF FACTS

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

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

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

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

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

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

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

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

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

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

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

III. STANDARD OF REVIEW

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

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IV. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conflict with terms of Existing Policy

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

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

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

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

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

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

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

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

Conflict with South Carolina Law

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

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

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

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

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

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

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

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

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

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

These legal requirements coupled with the fact that under S.C. Code §38-77-20 and §38-77-123, an insured "Relative" is not entitled to notice of cancellation and has no recourse for not getting such notice makes it a near legal impossibility for an insured "Relative" to assure that he is in full compliance with the law at all times as the owner of the vehicle. To the contrary, a "Named Insured" does have the legal right under the policy to pay the premium to keep coverage in place and the law specifically requires the insurer to notify him of the policy being cancelled or non-renewed so that he is on notice to take measures to stay in compliance with the law.

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

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

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

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

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

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

S.C. Code §38-77-350(C) states, "An automobile insurer is not required to make a new offer of coverage on any automobile insurance policy which renews, extends, changes, supersedes, or replaces an existing policy." S.C. Code §38-77-350(C) Citing the Court's decision in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct.App.1995), the *McDonald* Court held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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V. CONCLUSION

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

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

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

RESPECTFULLY SUBMITTED,
Martin & Davis, LLC



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

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June 18th, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

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

AFFIDAVIT OF DEFENDANT
COREY K. MEDLOCK

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

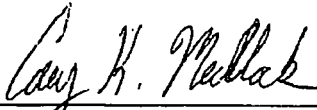
I am a Defendant in the above action. I have read the Answer, Cross-claims and Counter-claims filed on my behalf in this action and do hereby confirm the facts admitted or alleged in that Answer, Cross-claims and Counter-claims to be accurate to the best of my knowledge. In addition to the facts stated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

Facts Relevant to the Case

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

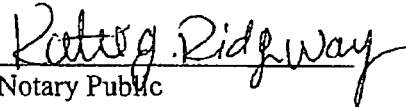
5. At the time we requested the addition of the Suzuki to the policy, I did not fill out an application and was not requested to do so. I also was not offered the option to purchase any additional underinsured motorist coverage or to increase the existing limits of coverage.
6. The new Declarations Pages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

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 Corey K. Medlock

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


 Notary Public

State of South Carolina
 County of Greenville
 My commission expires:



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

Progressive Northern Insurance
Company,

Plaintiff,

Vs.

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

Defendants.

AFFIDAVIT OF DEFENDANT
STANLEY K. MEDLOCK

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

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

Facts Relevant to the Case

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

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

Stanley K. Medlock
Stanley K. Medlock

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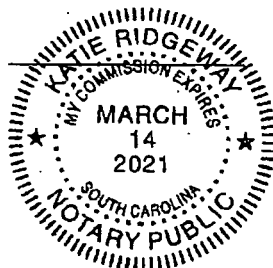
SWORN AND SUBSCRIBED to me this 15th day of June, 2012.

Katie Ridgeway
Notary Public

State of South Carolina

County of Greenville

My commission expires:



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2011-CP-42-02965

Progressive Northern Insurance Company,

Plaintiff,

v.

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

Defendant.

**MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

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

SUMMARY

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

FACTS

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

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

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

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

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

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

ARGUMENT

South Carolina Code section 38-77-160 requires that automobile insurance carriers offer optional UM and UIM coverage up to the limits of the insured's liability coverage. In order to protect insurance companies from claims that no such offer was made, the General Assembly created a safe harbor statute in South Carolina Code section 38-77-350. Specifically, section 38-77-350(A) provides that the director of the Department of Insurance "or his designee shall approve a form that automobile insurers shall use in offering optional coverages This form must be used by insurers for all *new applicants*. . . ." If the insurer uses a form that satisfies subsection (A) and the applicant signs the form indicating his rejection of optional coverage, subsection (B) protects the insurer with a statutory conclusive presumption of an "informed, knowing selection of coverage." S.C. Code § 38-77-350(B). If the rejection form is properly executed, "neither the insurance company nor an insurance agent is liable to the named insured *or another insured*" for the insured's failure to purchase optional coverage. S.C. Code § 38-77-350(B). Finally, after an initial offer has been made, "An automobile insurer is *not required* to make a new offer of coverage on any automobile insurance policy which renews, extends, *changes*, supersedes, or replaces *an existing policy*." S.C. Code § 38-77-350(C).

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

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

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

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

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

under the policy prior to the substitution. Corey Medlock, was already a resident relative, a Class I insured, and a named driver on the policy.¹ He was merely added as an additional named insured. Third, with the removal of the mother in *McDonald*, there was no longer a valid rejection signed by *any* insured under the Farm Bureau policy. Here, Stanley Medlock, who rejected the initial offer of coverage, remains the first named insured on the policy. Even after the changes to the policy, there remains a valid offer and rejection form, executed by a named insured, and binding on all other insureds to the policy, as provided by section 38-77-350(B). See S.C. Code § 38-77-350(B) ("If this form is signed by the named insured, after it has been completed . . . neither the insurance company nor an insurance agent is liable to the named insured *or another insured* under the policy for the insured's failure to purchase optional coverage or higher limits.")

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

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

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

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

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

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

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

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

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

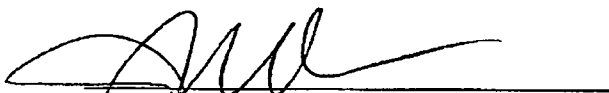
Finally, § 38-77-350(B) also supports this conclusion. Subsection B provides that, if the form is properly completed and executed by the named insured – i.e. the "new applicant" referred to in subsection (A) – then "neither the insurance company nor an insurance agent is liable to the named insured *or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

CONCLUSION

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

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

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to read 'J.R. Murphy', is written over a horizontal line.

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Attorneys for the Plaintiff

Columbia, South Carolina
June 19, 2012

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CIVIL ACTION NO: 2011-CP-42-02965

Progressive Northern Insurance Company,

Plaintiff,

v.

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

Defendant.

STIPULATION OF FACTS

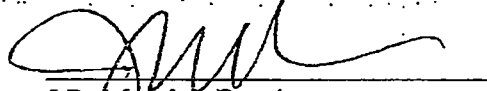
Progressive Northern Insurance Company and Stanley K. Medlock submit and agree to the following stipulated facts

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

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

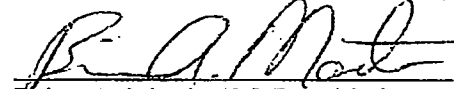
(SIGNATURES ON FOLLOWING PAGE)

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IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965

RECEIVED

APR 24 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

v.

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

Of Whom

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

NOTICE OF APPEAL

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

April 23, 2013



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

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B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

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Linda D. Moffitt
Circuit Court Reporter

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

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

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

8 THE COURT: Okay.

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

12 THE COURT: She doesn't want it.

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

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

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

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

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

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

4 THE COURT: That's fine.

5 All right. Who wants to be first?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: Mr. Martin.

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

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

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

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

25 But aside from that difference these two cases are

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

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

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

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

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

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

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

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

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

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

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

1 that coverage.

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

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

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

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

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

25 Progressive would make a distinction that because he

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exactly the same.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 decision on the listed daughter is cited by Progressive.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 THE COURT: All right. Mr. Murphy.

10 MR. MURPHY: Just briefly, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

23 END OF REQUESTED TRANSCRIPT OF RECORD
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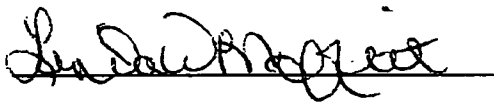
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CERTIFICATE

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

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

May 16, 2013



Linda D. Moffitt
Circuit Court Reporter

KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

000021

PROGRESSIVE

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

Policy number: 85613910-0

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

Welcome to Progressive

Your coverage began on October 15, 2009

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

Enclosed you will find

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

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

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

Log in to progressiveagent.com for convenient online service

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

Temporary user ID: 85613910 (your policy number)

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

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

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

Call 800-274-4499 to report a claim

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

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

PROGRESSIVE

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864-242-3478

KEITH YOUNG & ASSOC

Contact your agent for personalized service.

progressiveagent.com

Online Service

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

800-274-4499

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

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

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

Underwriting Company

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

Drivers and household residents

STANLEY K MEDLOCK
COREY K MEDLOCK

Additional Information

Named Insured

Policy number: 85613910-0
STANLEY K MEDLOCK

Page 2 of 2

Outline of coverage

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

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

Premium discounts

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

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

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

Important Cancellation Information

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

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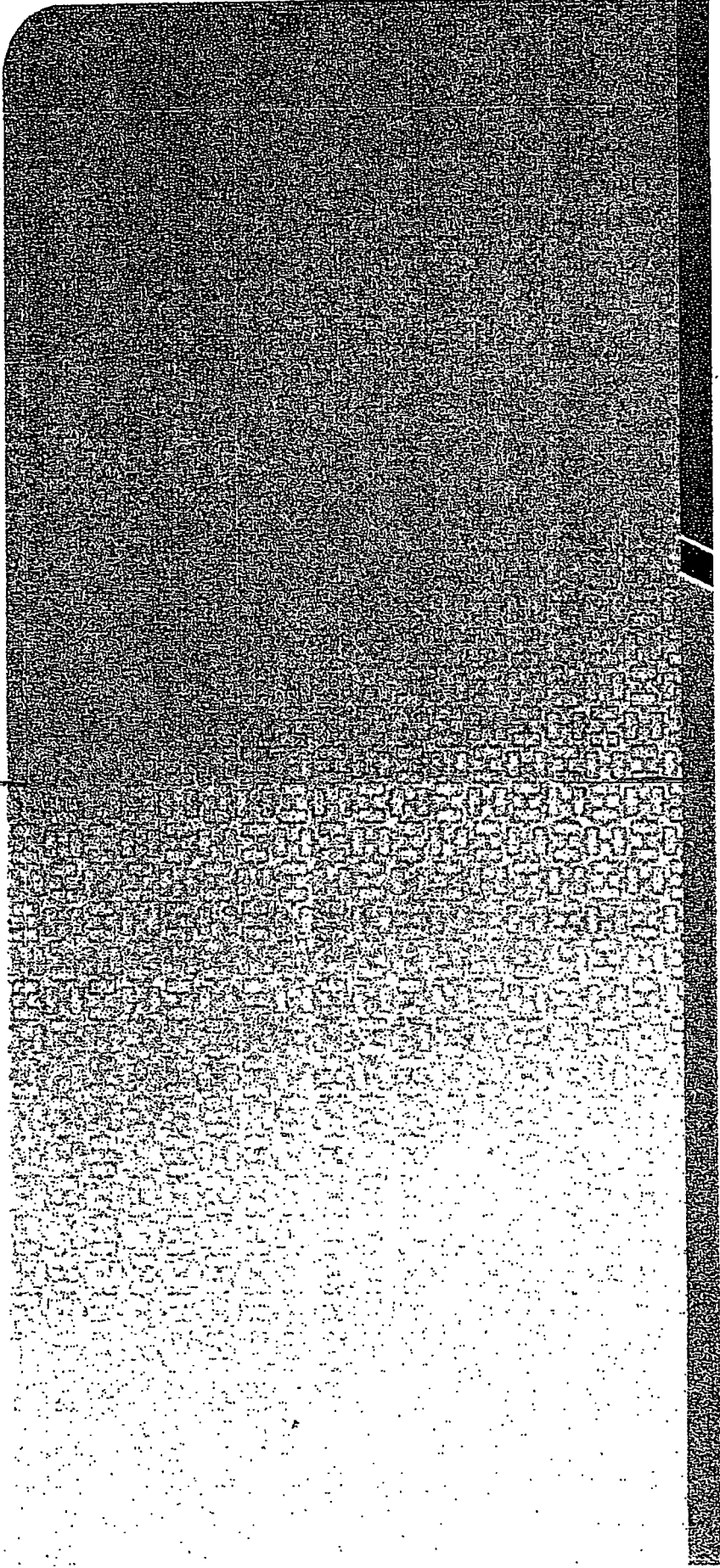
5878 SC 0108*



Medlock

PROGRESSIVE

SOUTH CAROLINA
MOTORCYCLE POLICY



Form 5878 SC 0108

PROGRESSIVE

5878 SC 0108*



IMPORTANT NOTICE

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

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

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SOUTH CAROLINA MOTORCYCLE POLICY

INSURING AGREEMENT

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

GENERAL DEFINITIONS

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

1. **"Additional motorcycle"** means a motorcycle you become the owner of during the policy period that does not permanently replace a motorcycle shown on the **declarations page** if:

- we insure all other motorcycles you own;
- the **additional motorcycle** is not covered by any other insurance policy;
- you notify us within 30 days of becoming the owner of the **additional motorcycle**; and
- you pay any additional premium due.

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

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

3. **"Covered motorcycle"** means:

- any motorcycle shown on the **declarations page** for the coverages applicable to that motorcycle;
- any **additional motorcycle**; and
- any replacement motorcycle.

4. **"Declarations page"** means the document showing your coverages, limits of liability, covered motorcycles, premium, and other policy-related information. The **declarations page** may also be referred to as the Motorcycle Insurance Coverage Summary.

5. **"Motorcycle"** means any motorcycle, motorbike, motor scooter, or motorized trike that is designed for operation principally upon public roads and has at least two wheels, but not more than three wheels.

6. **"Motorcycle business"** means the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.

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

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

9. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.

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

PART I - LIABILITY TO OTHERS

INSURING AGREEMENT

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

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

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

ADDITIONAL DEFINITION

When used in this Part I:

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

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

ADDITIONAL PAYMENTS

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

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

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

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

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any motorcycle while being used:
 - a. to carry or escort persons or property for compensation or a fee; or
 - b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.

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

This exclusion #1 does not apply to ride-share arrangements or to use of a **motorcycle** for charitable events;

2. any liability assumed under any contract or agreement by you or a relative;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any motorcycle while being maintained or used by a person while employed or engaged in any motorcycle business. For damages arising out of the ownership, main-

- tenance, or use of a covered motorcycle, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion #4 does not apply to you, a relative, or an agent or employee of you or a relative, when using a covered motorcycle;
5. **bodily injury or property damage** resulting from, or sustained during practice or preparation for:
 - a. any pre-arranged or organized:
 - (i) racing;
 - (ii) stunting;
 - (iii) speed, or demolition contest or activity; or
 - b. any riding activity conducted on a permanent or temporary racetrack, race course, or during any closed course event.
 This exclusion does not apply to use of a motorcycle for escorting participants in charitable racing events;
6. **bodily injury or property damage** due to a nuclear reaction or radiation;
7. **bodily injury or property damage** for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury or property damage** caused by an intentional act of that insured person, or at the direction of that insured person, even if the actual injury or damage is different than that which was intended or expected. For damages arising out of the ownership, maintenance, or use of a covered motorcycle, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;
10. **property damage** to any property owned by, rented to, being transported by, or in the charge of that insured person. This exclusion does not apply to a rented residence or a rented garage;
11. **bodily injury to you or a relative.** For damages arising out of the ownership, maintenance, or use of a covered motorcycle, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;
12. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by you or furnished or available for your regular use, other than a covered motorcycle for which this coverage has been purchased;
13. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any motorcycle owned by a relative or furnished or available for the regular use of a relative, other than a covered motorcycle for which this coverage has been purchased. This exclusion does not apply to your maintenance or use of such motorcycle;
14. **bodily injury or property damage** arising out of your or a relative's use of a motorcycle, other than a covered motorcycle, without the permission of the owner of the motorcycle or the person in lawful possession of the motorcycle;

15. **bodily injury or property damage** arising out of the use of a covered motorcycle while leased or rented to others or otherwise given in exchange for any compensation. This exclusion does not apply to the operation of a covered motorcycle by you or a relative; or
16. **bodily injury or property damage** caused by, or reasonably expected to result from, a criminal act or omission of that insured person. This exclusion applies regardless of whether that insured person is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

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

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

If your declarations page shows a split limit:

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

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

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

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

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

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

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

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

FINANCIAL RESPONSIBILITY LAWS

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

OTHER INSURANCE

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

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

OUT-OF-STATE COVERAGE

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

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

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

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

PART II - MOTORCYCLE MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

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

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

We, or someone on our behalf, will determine:

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

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "insured person" means:

- a. you or a relative:

- (i) while occupying a motorcycle; or

- (ii) when struck by a motor vehicle or a trailer while not occupying a self-propelled motorized vehicle; and

- b. any other person while occupying a covered motorcycle with the permission of you or a relative;

2. "Medical services" means medical, surgical, dental, x-ray, ambulance, hospital, professional nursing, and funeral services, and includes the cost of eyeglasses, hearing aids, pharmaceuticals, and orthopedic and prosthetic devices.

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

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

1. sustained by any person while occupying a covered motorcycle while it is being used:

- a. to carry or escort persons or property for compensation or a fee; or

- b. for retail or wholesale delivery, including, but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food.

This exclusion does not apply to ride-share arrangements or to use of a motorcycle for charitable events;

2. arising out of an accident involving a vehicle while being maintained or used by a person while employed or engaged in any motorcycle business. This exclusion does not apply to you, a relative, or an agent or employee of you or a relative, when using a covered motorcycle;

3. resulting from, or sustained during practice or preparation for:

- a. any pre-arranged or organized:
 - (i) racing;

(ii) stunting;

- (iii) speed, or demolition contest or activity; or
b. any riding activity conducted on a permanent or temporary racetrack, race course, or during any closed course event.

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

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

LIMITS OF LIABILITY

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

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

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

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

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

UNREASONABLE OR UNNECESSARY MEDICAL EXPENSES

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

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

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

OTHER INSURANCE

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

PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT - UNINSURED MOTORIST COVERAGE

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

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

INSURING AGREEMENT - UNDERINSURED MOTORIST COVERAGE

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

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

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

NOTICE REQUIREMENT

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

ADDITIONAL DEFINITIONS

When used in this Part III:

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

- c. any person occupying, but not operating, a **covered motorcycle**; and
- d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.

2. "Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which liability insurance or a bond applies at the time of the accident with limits of liability that equal or exceed the minimum amounts required by the South Carolina motor vehicle financial responsibility law, but which are less than the amount of the damages sustained by the **Insured person** in the accident.

An "underinsured motor vehicle" does not include any vehicle or equipment:

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

3. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type: a. to which no liability bond, cash deposit, security, or liability policy in at least the amounts of coverage required by South Carolina law applies at the time of the accident;

- b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:

- (i) denies coverage;
- (ii) is or becomes insolvent;
- (iii) is in delinquency proceedings, suspension, or receivership; or
- (iv) is financially unable to fully satisfy a judgment rendered in favor of an **Insured person**;

- c. to which a liability bond or policy applies at the time of the accident, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which the **covered motorcycle** is principally garaged; or

- d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which causes an accident resulting in **bodily injury** to an **Insured person**, or **property damage** to the property of an **Insured person**, provided:

- (i) the **Insured person**, or someone on his or her behalf, reports the accident to the police or other civil authority within 24 hours or as soon as practicable after the accident; and
- (ii) if there has been no physical contact between the vehicle operated by the unidentified operator and the **Insured person**, or a vehicle occupied by the **Insured person**, there must be independent corroborative evidence by a witness to the accident who executes a signed affidavit attesting to the truth of the accident to prove that the **bodily injury** or **property damage** was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. The testimony of the owner or operator of the **covered motorcycle** shall not constitute independent corroborative evidence. No recovery will be provided under this Part III if the **Insured person** was negligent in failing to determine the identity of the other motor vehicle and its driver at the time of the accident.

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

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

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

Coverage under this Part III will not apply:

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

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

4. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

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

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

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

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

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

3. to a covered motorcycle for which insurance:
 - a. is afforded under a nuclear energy liability insurance contract; or
 - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;

4. to a trailer; or
5. to any motor vehicle owned by you or a relative if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle.

LIMITS OF LIABILITY

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

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

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

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

If your declarations page shows a split limit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER INSURANCE

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

ARBITRATION FOR BODILY INJURY CLAIMS

If we and an insured person cannot agree on:

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

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

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

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

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

1. the legal liability of the operator or owner of an uninsured motor vehicle or underinsured motor vehicle; and
 2. the amount of the damages sustained by the insured person.
- The arbitrators will have no authority to award an amount in excess of the limit of liability.

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

ARBITRATION FOR PROPERTY DAMAGE CLAIMS

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

PART IV - DAMAGE TO A MOTORCYCLE

INSURING AGREEMENT - COLLISION COVERAGE

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

INSURING AGREEMENT - COMPREHENSIVE COVERAGE

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

A loss not caused by collision includes:

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

INSURING AGREEMENT - TRANSPORT TRAILER PHYSICAL DAMAGE COVERAGE

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

INSURING AGREEMENT - ACCESSORY COVERAGE

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

INSURING AGREEMENT - TOTAL LOSS REPLACEMENT COVERAGE

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

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

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

ADDITIONAL DEFINITIONS

When used in this Part IV:

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

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

Coverage under this Part IV will not apply for loss:

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

3. to any vehicle resulting from, or sustained during practice or preparation for:

- a. any pre-arranged or organized:
 - (i) racing;
 - (ii) stunting;
 - (iii) speed; or demolition contest or activity; or
- b. any riding activity conducted on a permanent or temporary racetrack, race-course, or during any closed course event.

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

4. to any vehicle for which insurance:

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

5. to any vehicle caused by an intentional act committed by or at the direction of you, a relative, or the owner of a non-owned motorcycle, even if the actual damage is different than that which was intended or expected;

6. to a covered motorcycle while it is leased or rented to others or otherwise given in exchange for compensation. This exclusion does not apply to the operation of a covered motorcycle by you or a relative;

7. due to destruction or confiscation by governmental or civil authorities of any vehicle because you or any relative engaged in illegal activities;

8. to any vehicle that is due and confined to:

- a. wear and tear;
- b. freezing; or
- c. mechanical, electrical or electronic breakdown or failure.

This exclusion does not apply if the damage results from the theft of a vehicle; to any vehicle that is due to collision and confined to tire inner tubes or tires, or a combination thereof;

10. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:

- a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
- b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
- c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
- d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;

11. to accessories in excess of the applicable Limits of Liability;

12. to any vehicle for diminution of value;

13. to any vehicle caused directly or indirectly by:

- a. war (declared or undeclared) or civil war;
- b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
- c. insurrection; rebellion, revolution, usurped power; or any action taken by a governmental authority to hinder or defend against any of these acts;

14. to any vehicle caused directly or indirectly by:

- a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic, or poisonous biological material; or
- b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose;

15. to safety riding apparel, except for collision damage that occurs while it is being worn by you or a passenger; or

16. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of you, a relative, or the owner of a non-owned motorcycle. This exclusion applies regardless of whether you, the relative, or the owner of the non-owned motorcycle is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

1. The limit of liability for loss to a covered motorcycle or non-owned motorcycle is the lowest of:

- a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
- b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
- c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
- d. the Agreed Value shown on the declarations page for that covered motorcycle.

2. The limit of liability for loss to your owned transport trailer is the lowest of:

- a. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
- b. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
- c. any applicable Limits of Liability shown on the declarations page.

3. The limit of liability for loss to accessories is the lowest of:

- a. the amount necessary to replace such accessory;
- b. the amount necessary to repair such accessory; or
- c. the limit of \$3,000 or any applicable Limits of Liability shown on the declarations page.

4. If your declarations page shows Agreed Value for Comprehensive Coverage and Collision Coverage for a covered motorcycle, then the following provision shall apply:

- a. The limit of liability for loss to a covered motorcycle with Agreed Value is the lower of:
 - (i) the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible shown on the declarations page; or
 - (ii) the agreed value shown on the declarations page.

5. Payments for loss to a covered motorcycle or non-owned motorcycle are subject to the following provisions:

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

PAYMENT OF LOSS

We may, at our option:

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

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

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

NO BENEFIT TO BAILEE

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

LOSS PAYEE AGREEMENT

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

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

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

OTHER SOURCES OF RECOVERY

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

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

APPRAISAL

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

PART V - ROADSIDE ASSISTANCE COVERAGE

INSURING AGREEMENT - ROADSIDE ASSISTANCE COVERAGE

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

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

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

INSURING AGREEMENT - TRIP INTERRUPTION COVERAGE

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

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

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

1. up to \$100 per day for lodging;
 2. up to \$50 per day for meals; and
 3. up to \$50 per day for alternate transportation.
- Coverage is limited to \$500 per disablement.

ADDITIONAL DEFINITIONS

When used in this Part V:

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

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

Coverage under this Part V will not apply to:

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

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

UNAUTHORIZED SERVICE PROVIDER

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

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

OTHER INSURANCE

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

PART VI - DUTIES IN CASE OF AN ACCIDENT OR LOSS

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

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

A person seeking coverage must:

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

PART VII - GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

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

CHANGES

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

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

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

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

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

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

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

DUTY TO REPORT CHANGES

You must promptly notify us when:

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

SETTLEMENT OF CLAIMS

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

TERMS OF POLICY CONFORMED TO STATUTES

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

TRANSFER OF INTEREST

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

FRAUD OR MISREPRESENTATION

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

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

at the time of application. This means that we will not be liable for any claims or damages that would otherwise be covered unless we have certified this policy as proof of financial responsibility. If we have certified this policy as proof of financial responsibility, nothing in this provision shall affect coverage under Part 1 - Liability To Others, up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina, for an accident that occurs before we notify the named insured that the policy is void. If we void this policy, you must reimburse us if we make a payment.

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

PAYMENT OF PREMIUM AND FEES

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

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

CANCELLATION

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

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

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

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

2. you produce proof that you have sold or otherwise disposed of a covered motor cycle, or surrendered its tags and registration;
3. you have secured another policy that satisfies the financial responsibility laws of the State of South Carolina; or
4. you fail to pay when due:

- a. the premium for the policy;
- b. an installment of the premium; or
- c. an installment payment under a premium service contract.

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

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

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

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

CANCELLATION REFUND

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

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

NONRENEWAL

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

AUTOMATIC TERMINATION

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

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

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

LEGAL ACTION AGAINST US

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

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

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

OUR RIGHTS TO RECOVER PAYMENT

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

However, we may not assert rights of recovery:

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

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

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

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

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

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

These provisions will be applied in accordance with state law.

JOINT AND INDIVIDUAL INTERESTS

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

BANKRUPTCY

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

South Carolina Off-Road Vehicle Coverage Endorsement

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

1. General Definitions

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

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

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

General Definitions

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

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

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

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

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

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

d. "Covered off-road vehicle" means:

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

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

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

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

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

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

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

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

2. **Part III - Uninsured/Underinsured Motorist Coverage**

Additional Definitions

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

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

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

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

3. **Part IV - Damage To A Motorcycle**

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

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

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

Important information about your Accessory Coverage

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

What makes your Accessory Coverage unique

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

Coverage considerations

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

Form Z360 (01/07)

PROGRESSIVE

Policy number: 85613910-0

October 15, 2009

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

Insurance ID Cards

Keep these cards in your vehicle

If you need service or have a question

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

Access your policy at progressiveagent.com

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

If you are in an accident

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

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

864-242-3478

Insurance Identification Card

South Carolina

Progressive Northern Insurance Co

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

Policy Number: 85613910-0

Named Insured
STANLEY K MEDLOCKYour Agent
KEITH YOUNG & ASSOC
864-242-3478
To report a claim: 800-274-4499

Vehicle

Year Make
2001 POLARIS

Model

SPORTSMAN 500/RSE/DU

Vehicle Identification No.

4XACH50A71A355200

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

PROGRESSIVE

Insurance Identification Card

South Carolina

Progressive Northern Insurance Co

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

Policy Number: 85613910-0

Named Insured
STANLEY K MEDLOCKYour Agent
KEITH YOUNG & ASSOC
864-242-3478
To report a claim: 800-274-4499

Vehicle

Year Make
2001 POLARIS

Model

SPORTSMAN 500/RSE/DU

Vehicle Identification No.

4XACH50A71A355200

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

10/15/2009 10:33

864-242-4898

KEITH YOUNG & ASSOC

PAGE 04

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

PROGRESSIVE

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

Policy number: 85613910-0

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

Payment Receipt for motorcycle insurance initial payment

Amount paid: \$175.00

Method of payment

Credit Card \$175.00

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

STANLEY K MEDLOCK
379 MAPLE RD
INMAN, SC 29349

PROGRESSIVE

Underwritten by:
Progressive Northern Insurance Co
October 15, 2009

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

*Stanley
Lindley*

Dear STANLEY K MEDLOCK,

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

Enclosed you will find:

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

Within 2 weeks you will receive:

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

Receipt of payment in full for the policy

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

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

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

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

Application for Insurance

Please review, sign where
indicated and return

PROGRESSIVE

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

Policy and premium information for policy number 85613910-0

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

Agent: LINDA Y DUDLEY
KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607
48740
864-242-3478

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

Financial responsibility vendor: EXPERIAN
888-397-3742

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

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

Total policy premium: \$175.00

Initial payment required: \$175.00

Initial payment received: \$175.00

Payment plan: 1 payment

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

Drivers and household residents

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

Name	Date of birth	Sex	Marital status	Relationship
STANLEY MEDLOCK	Jan 13, 1954	Male	Married	Insured
COREY MEDLOCK	Feb 22, 1988	Male	Single	Child

License status: Valid

License status: Valid

Principal vehicle: 2001 POLARIS SPORTSMAN 500/RSE/DU


Continued

PROGRESSIVE**Policy number: 85613910-0**

Policyholder: STANLEY K MEDLOCK

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

Page 1 of 1

This information will complete your purchase of insurance

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

Sign and return

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

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

Policy number: 85613910-0

STANLEY K MEDLOCK

Page 2 of 10

Outline of coverage

2001 POLARIS SPORTSMAN 500/BSE/DU CC: 499

VIN: 4XACH50A71A355200

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

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

Premium discounts

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

Driving history

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

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

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

Notice regarding accessory coverage

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

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



Policy number: 85613910-0

STANLEY K MEDLOCK

Page 3 of 10

Application agreement**Verification of content**

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

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

Notice of information practices

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

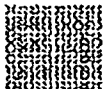
I affirm that

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

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

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

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



continued

Policy number 05612910-0
STANLEY K MEDLOCK
Page 4 of 10

Other charges

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

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

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

Signature of named insured

Date

→ (X) Stanley Keith Medlock 10/15/09

Form 0000 01/01/00



Policy number: B5613910-0

STANLEY K MEDLOCK

Page 5 of 10

Offer of additional uninsured motorist coverage and optional underinsured motorist coverage**I. Explanation of coverages**

Motor vehicle liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of motor vehicle liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your motor vehicle liability insurance for a number of reasons. If an insurance company decides to write your motor vehicle liability insurance coverage, however, it must provide at least \$25,000 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly-known as minimum limits. In order to drive your motor vehicle upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of motor vehicle liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your motor vehicle liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in a motor vehicle accident by an at-fault driver who either has no motor vehicle insurance or whose motor vehicle insurance liability limits are less than your damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your motor vehicle insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your motor vehicle insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for property damage claims.

You also have the right to buy additional uninsured motorist coverage. In various limits, up to the limits of the liability coverage which you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your motor vehicle insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your motor vehicle insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in a motor vehicle accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.


Continued

Policy number: 85613910-0

STANLEY K MEDLOCK

Page 6 of 10

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

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

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

Office of Consumer Services

South Carolina Department of Insurance

1201 Main Street, Suite 1000, Columbia, SC 29201

Post Office Box 100105 Columbia, South Carolina 29202-3105

(803) 737-6160

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


Continued

Policy number: 85613910-0

STANLEY K MEDLOCK

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II. Offer of additional uninsured motorist coverage

Limits of Coverage

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

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

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

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

\$300,000 combined single limit each accident

\$500,000 combined single limit each accident

Amounts of Increased Premium

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

n/a

n/a

n/a

n/a

n/a

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

Do you wish to purchase additional uninsured motorist coverage?

Yes _____ No ☒

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

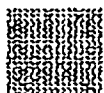
Your Signature

X

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

I select _____ / _____ / _____ split limits; or

I select _____ combined single limit



Continued

Policy number: 056129100
 STANLEY K. MEDLOCK
 Page 8 of 10

III. Offer of underinsured motorist coverage

Limits of Coverage	Amounts of Increased Premium
\$25,000/\$10,000/\$25,000	\$16.00
\$50,000/\$100,000/\$25,000	n/a
\$100,000/\$300,000/\$50,000	n/a
\$250,000/\$500,000/\$100,000	n/a
\$300,000 combined single limit each accident	n/a
\$500,000 combined single limit each accident	n/a

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

Do you wish to purchase underinsured motorist coverage? Yes _____ No (X)

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

Your Signature

→ (X) Stanley Keith Medlock 10/15/09

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

I select _____ / _____ / _____ split limits; or

I select _____ combined single limit

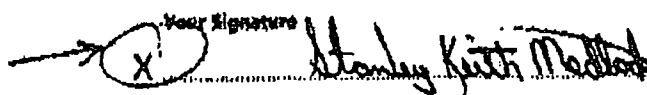
Policy number: 856110100
STANLEY K MEDLOCK
Page 9 of 10

IV. Applicant's acknowledgment

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

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

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

Your Signature  Today's Date 10/15/09

Form 2000 (C) 1/00



Carb 6.0

KEITH YOUNG & ASSOC
11 KAREN DR
GREENVILLE, SC 29607

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

PROGRESSIVE

Policy number: 85613910-0

Underwritten by:

Progressive Northern Insurance Co

June 10, 2010

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

Page 1 of 2

864-242-3478

KEITH YOUNG & ASSOC

Contact your agent for personalized service.

progressiveagent.com

Online Service

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

800-274-4499

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Declarations Page
Your policy information has changed

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

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle, unless the policy contract or endorsements indicate otherwise. The policy contract is form 5979 SC (01/08). The contract is modified by form Z56S SC (01/08).

Policy changes effective June 9, 2010

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

Underwriting Company

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

Drivers and household residents

STANLEY K MEDLOCK
COREY K MEDLOCK

Additional Information

Named Insured
Named Insured

Outline of coverage

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

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

2001 Suzuki SV650/S Engine displacement: 645 cc's
 VIN J51VP52AS12103094

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

Premium discounts

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

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

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

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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

RECEIVED

OCT 08 2013

SC Court of Appeals

Progressive Northern Insurance Company..... Appellant,

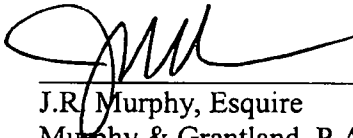
v.

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

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

CERTIFICATE OF COUNSEL

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



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Murphy & Grantland, P.A.
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Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

October 4, 2013

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965

Progressive Northern Insurance Company..... Appellant,

v.

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

Of Whom

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

PROOF OF SERVICE

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

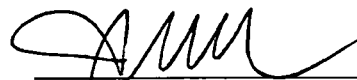
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OCT 08 2013

SC Court of Appeals



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