THE STATE OF SOUTH CAROLINA

In the South Carolina Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965
Appellate Case No. 2015-000007

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.

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QUESTIONS PRESENTED

I. Did the Court of Appeals correctly interpret South Carolina Code Ann. § 38-77-350(B) based on the holding of McDonald v. SC Farm Bureau in finding that the written rejection of UIM coverage by one named insured was not binding against a new named insured voluntarily added by the carrier on its own initiative eight months into a twelve month policy period?

II. Did the Court of Appeals correctly interpret South Carolina Code Ann. § 38-77-350(C) as inapplicable to the voluntary change made by the insurance carrier of a listed driver to a named insured because such proposed application would constitute an absolute repeal of South Carolina Code Ann. § 38-77-160 as previously found by the Court in McDonald v. SC Farm Bureau?

STATEMENT OF CASE

This appeal involves the availability of underinsured motorist coverage to a named insured on a policy of insurance when such person was made a named insured at the sole decision and action of the insurance carrier eight months after the policy was originally issued and has never been offered the opportunity to accept or reject UIM coverage. The same factual situation, questions, arguments, inferences and policy considerations raised by Progressive have all previously be evaluated by the South Carolina Courts in the case of McDonald v. South Carolina Farm Bureau, 336 S.C. 120, 518 S.E.2d 624 (S.C.App. 1999) ***cert denied*** **(2000)**. Progressive's issues are not novel, but simply an attempted spin of these facts as compared to McDonald for the sole benefit of the insurance carrier.

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, Corey's father, Stanley Medlock, applied for a policy of insurance with Progressive to insure a 2001 Polaris Sportsman 500 4-wheeler all-terrain vehicle (ATV) which Stanley Medlock 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 on the policy as "Rejected". (R. p. 104). Stanley Medlock was clearly shown as the only named insured on the policy and the primary responsible driver. (R. pp. 103-104). Corey Medlock was listed as a potential 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 policy terms clearly 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 held by Stanley Medlock. (R. p. 53, ¶ 4). Progressive said yes and on June 9, 2010 added the Suzuki as a covered vehicle on the policy. (R. p. 138). *But without request by Corey or Stanley, Progressive simultaneously and completely of its own accord 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) (See also Petition for Cert p. 2).* 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).

On October 9, 2010, Corey K. Medlock was injured when the motorcycle he owned and was driving insured by Progressive was struck by another vehicle. The liability carrier for the at-fault driver tendered its limits of liability in exchange for a

Covenant Not to Execute. (R. p. 68). 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. Plaintiff entered a Notice of Appearance as a UIM carrier on April 14, 2011, reserving any rights under any applicable policy of insurance.

Progressive filed this 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 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.

Progressive seeks review on the basis that the Court of Appeals failed to clarify and reconcile the use of the term "applicant" in § 38-77-350(A) with "named insured" in § 38-77-350(B), that the Court of Appeals failed to address the impact of a written

rejection by one named insured over other insureds, and that the Court of Appeals failed to explain what constitutes a "change" under § 38-77-350(C). Although Respondent contends the Court of Appeals addressed all of these concerns, to the extent they weren't addressed in this decision, it was because all of these concerns had already been addressed by the Court in McDonald.

ARGUMENT

The overriding, consistent, simple and well-reasoned policy behind the interpretation of South Carolina UIM statutes is, and has always been, ***to protect the Insured***. Grinnell Corp v. Wood, 389 S.C. 350, 357, 698 S.E.2d 796, 800 (S.C. 2010). As in McDonald, the decision to make Corey Medlock a named insured on a policy was ***solely*** made by Progressive with full knowledge of the requirements to offer UIM coverage under S.C. Code § 38-77-160 and the risks/benefits it faces with or without a signed rejection of such offer by that named insured. Now that the insurer faces negative consequences for its unilateral decision to make Corey Medlock a named insured on the policy, it seeks a different interpretation of the identical facts and issues in McDonald by this Court for the benefit of the insurer rather than the insured. [1]

The questions presented have been addressed by this Court in McDonald, and confirmed by the Court of Appeals in this matter. Considering the same arguments, inferences and policy considerations raised by Progressive, the McDonald 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

[1] The facts are identical as to the insured to be protected in both cases. Neither McDonald nor Corey Medlock had completed an application, had requested to be a named insured, had ever been the named insured on a policy of auto insurance, or had personally ever been given the opportunity to accept or reject UIM coverage. (R. p. 38)

defeat the legislature's intent ***that all named insured*** be offered UIM coverage." Id. at 124, 518 S.E.2d at 626 (Emphasis Added). Any other interpretation of this situation, where the **insurer** unilaterally makes the decision to give someone the rights and privileges of a named insured, but seeks to avoid the ramifications of failing to make an offer of UIM coverage clearly fails to protect the insured.

I. The Court of Appeals correctly interpreted South Carolina Code Ann. § 38-77-350(B) based on the holding of McDonald v. SC Farm Bureau in finding that the written rejection of UIM coverage by one named insured was not binding against a new named insured voluntarily added by the carrier on its own initiative 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, (Petition for Cert p. 6)[2].

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. The 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."**

[2] Compare Farm Bureau's argument in McDonald that "it did not have to offer McDonald UIM coverage because he was not a 'new applicant' in that McDonald's mother had "applied" for the policy (336 S.C. at 124, SE2d at 626) with Petitioner's argument that Corey Medlock was not an 'applicant' under the statute at all because Stanley Medlock had completed the application. (Petition p. 6, "In other words, the statute only requires an offer to the applicant – i.e., the person who actually handles the insurance transaction by applying for coverage...")

Id. at 124, 518 S.E.2d at 626 (Emphasis Added). Neither Corey Medlock nor McDonald had ever before made informed decisions about UIM coverage.

Despite Progressive's unsubstantiated claim that such an interpretation "creates confusion and that "this Court's guidance is severely needed," the holding in McDonald is perfectly clear and addresses the exact issues raised here.

> **"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) as intended by the legislature requires only that such "offer be made to the individual named insured who undertakes the application process and submits the application." (Petition for Cert p. 7). And then continues the inference therefore, that the signed rejection in § 38-77-350(B) must only be signed by the applicant named insured. Section 38-77-350(A) contains no such requirement that the applicant be the named insured. S.C. Code Ann. § 38-77-350(A). Progressive is simply trying to stretch § 38-77-350(A) and (B) to create the inference such was the intention. Given that the overriding philosophy by the Court in evaluating UIM statues is ***to protect the insured***, such an interpretation could not have been the intention of the General Assembly, especially when the sole purpose of such would be to protect the insurer for a situation that was solely the insurer's choice to create.

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 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 specifically 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 any ambiguity in the use of the term "the named insured" as suggested by Progressive, it would have certainly addressed such ambiguity at that time.

Although not referenced by Progressive, the Illinois 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 (just like Corey Medlock), 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, just like McDonald. 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 (just like Medlock and McDonald) 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 (just like Medlock and McDonald) and as such now carried the responsibility for the decisions on the type and amount of coverage (just like Medlock and McDonald). Id. at 820, 728 N.E.2d at 88-89. The Court further held like Medlock and McDonald, 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 rational 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.

Although we have clear binding authority in South Carolina through McDonald, other Illinois authority in Burnett, Nila, and Nicholson all confirm the same standard as used by South Carolina in McDonald.

Progressive's argument for 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 and would completely fail ***to protect the insured***.

II. The Court of Appeals correctly interpreted South Carolina Code Ann. § 38-77-350(C) as inapplicable to the voluntary change made by the insurance carrier of a listed driver to a named insured because such proposed application would constitute an absolute repeal of South Carolina Code Ann. § 38-77-160 as previously found by the Court in McDonald v. SC Farm Bureau.

In seeking more protection for the insurer, Progressive next argues the addition of a new named insured is "one of the more predictable 'changes' that may take place" (Petition for Cert p. 10) and "Section 38-77-350(C) plainly provides that this sort of change to an existing policy does not trigger a duty to make a new offer of coverage." (Petition for Cert p. 11). First, this question is not a novel issue as this exact question was presented to the McDonald Court. Secondly, this proposition is directly contradictory to the terms of the policy and the rationale in the McDonald holding. Finally, it is completely contrary to existing law in South Carolina.

In McDonald, it was the issuing agent's office policy to just change the name on the policy when a child purchased a vehicle from a parent so they did not have to pay a new premium. *Id.* S.C. at122, S.E.2d at 625. In the present case, it was the issuing agent's office policy to designate all vehicle owners as "named insured." (R. p. 68, ¶ 14). In

McDonald, Farm Bureau argued that the substitution of McDonald for his mother was merely a "change" under § 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:

> **"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. The Court went on to state that a change to the named insured, "was not a mere policy change. It was the creation of a new insurance policy with a new named insured." McDonald had never had the chance to accept or reject UIM coverage before, therefore he was entitled to an offer of UIM coverage. The exact same situation exists in the present case, therefore, it is not a novel issue for the Court.

Despite the matter having already been decided by the Court, pursuant to the specific terms of the policy, the addition of a new named insured is not a mere "change" as the legal relationship of the parties was changed significantly by this voluntary unilateral action of the insurer.

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). A review of the

provisions of the policy reveal that 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, the most appropriate is the **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.

Progressive argues 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 any premium refund, (R. 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).

Progressive references two (2) cases[3] for the proposition that other jurisdictions have held the addition of a second named insured spouse has not required a new offer. 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.**

[3] See Petition for Cert, p. 10, Ferreira v. Integon National Ins. Co., 809 A.2d 1098 (R.I. 2002) and Johnson v. Great American Ins. Co., 44 Ohio App. 3d 71, 541 N.E.2d 100 (Ct. App. 1998).

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. The Court of Appeals correctly determined that there is simply no other logical decision under these facts but to conclude that when Progressive voluntarily and unilaterally made Corey Medlock a named insured, they created a new insurance policy as it related to Corey Medlock, and were therefore required to make him an offer of UIM coverage.

However, 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 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.

Clear indications of the legislature's 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).

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.[4] 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

[4] This appears to be the basis for the Progressive issuing agent's office policy to make the owners of all vehicles named insureds on the policy. (Petition for Cert p. 12) However, the requirement of this statute is on the insured rather than the insurer, therefore, while helpful to the insured in meeting this statutory requirement, voluntary action by the insurer by no means can be used to excuse the insurer's required compliance with § 38-77-160 to offer UIM coverage up to the limits of liability to a new named insured.

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.

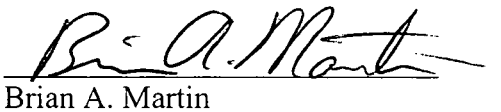
There is no question that when Progressive voluntarily and unilaterally made Corey Medlock a named insured on June 9, 2010, that the legal relationship between Corey Medlock and Progressive changed significantly. Such a substantial change is what the existing authority has relied on, as in McDonald, 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.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari by Progressive Northern Insurance Company to review the Court of Appeals decision in this case should be **denied**.

Respectfully submitted,

BRIAN A. MARTIN, LLC



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ATTORNEY FOR RESPONDENTS

Greenville, South Carolina
January 26, 2015

THE STATE OF SOUTH CAROLINA

In the South Carolina Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965
Appellate Case No. 2015-000007

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.

PROOF OF SERVICE

I certify that that I have served the Return to Petition for Writ of Certiorari on Progressive Northern Insurance Company and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on January 26, 2015, addressed to their attorneys of record. I further certify that I received the Petition for Writ of Certiorari on January 7, 2015.

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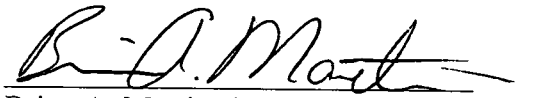

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January 26, 2015

VIA FIRST CLASS MAIL

Daniel E. Shearouse
South Carolina Supreme Court
Supreme Court Building, 1231 Gervais Street
Post Office Box 11330
Columbia, South Carolina 29211-1330

Re: *Progressive Northern Insurance Company v. Stanley K. Medlock, Corey K. Medlock and The Standard Fire Insurance Co.*
Civil Action No.: 2011-CP-42-02965
Appellate Case No.: 2013-000923
Claim No.: 10-5041541
Date of Loss: October 9, 2010

Dear Mr. Shearouse:

Enclosed, please find for filing with the Court an original and seven (7) copies of the Return to Petition for Writ of Certiorari in the above-referenced matter, as well as an original and one (1) copy of the Proof of Service for the same. Kindly file the enclosed and return one (1) clocked copy of each document to me via the prepaid return envelope provided herein. Your assistance is greatly appreciated.

If you have any questions or should require anything further, please contact me. By copy of this letter I am serving the same on opposing counsel.

Sincerely,

Brian A. Martin

Enclosures

cc: J.R. Murphy, Esquire
William P. Davis, Esquire

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