

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 30 2012

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2007-CP-04-2704

Greg and Stacy Cohen,.....Appellants,

vs.

Progressive Northern Insurance Company
and Auto-Owners Insurance Company,.....Respondents.

RECORD ON APPEAL

Daniel L. Draisen (SC Bar #13536)
Krause, Moorhead and Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
Attorney for Appellants

J.R. Murphy, Esq.
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for Respondent Progressive Northern
Insurance

J. Victor McDade, Esq.
Doyle, Tate & McDade, P.A.
P.O. Box 2125
Anderson, South Carolina 29622
(864) 224-7111
Attorney for Respondent Auto-Owners Insurance

INDEX

Order of July 8, 2010.....	1
Order in <u>South Carolina Farm Bureau vs. Jenkins</u> , 2006-CP-46-2553.....	15
Order in <u>Helms vs. Progressive Casualty Insurance Company</u> , 2008-CP-46-0689.....	23
Testimony	
Meredith B. Thomason.....	31
(Transcript of Proceedings pp. 4, 5, 6, 7, 8, 9, 10, 13, 14, 17, 18, 19, 20, 24, 25, 26, 27, 29, 30, 31, 32, 33, 35, 37, 40, 41, 43, 45, 46, 47, 50 and 56)	
Greg Cohen.....	65
(Transcript of Proceedings, pp. 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 74, 78, 79, and 83)	
Transcript of Record, Motion to Reconsider, May 27, 2011.....	82
Joint Exhibits	
1.....	108
2.....	123
3.....	134
4.....	137
Certificate of Appellants.....	140

Order of July 8, 2010

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Greg Cohen and Stacy Cohen,

Plaintiffs,

v.

Progressive Northern Insurance Company and
Auto-Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2007-CP-04-2704

A TRUE COPY

JUL - 8 2010

Martha R. Newton
CLERK OF COURTS

ORDER

This is a declaratory action to determine whether the insurance policy covering Plaintiff Greg Cohen's motorcycle should be reformed to included underinsured ("UIM") coverage on grounds that Cohen did not receive a meaningful offer of such coverage at the time of his application. Defendant Progressive Northern Insurance Company ("Progressive") maintains it made a meaningful offer of UIM coverage based on the contents of the written offer form standing alone and the totality of the transaction with the producing agent.

A trial was held on September, 10, 2009, in the Anderson County Courthouse. For the reasons stated below, the Court declares that Progressive made a meaningful offer of UIM coverage to Cohen, which he rejected. Therefore, no UIM coverage under the Progressive policy is provided to Plaintiffs.

FACTS

Greg Cohen applied for the subject Progressive policy in January, 2005. Cohen called his independent insurance agent, The Citizens Insurance Agency in Anderson, South Carolina, on January 25, 2005, and visited the agent's office to sign the form the following day. The individual agent who handled Cohen's application, Meredith Thomason, while not specifically recalling the subject transaction with Cohen, testified from her records that she obtained a printed form from Progressive's agency internet website after entering Cohen's personal

information and desired coverages by computer. The printed form included, in relevant part, a concise explanation of UIM benefits, a one-page form entitled “offer of underinsured motorist coverage” listing several available UIM coverage limit combinations— including one corresponding to Cohen’s liability coverage limits, which were listed below them — with applicable premiums listed for each option and a blank space provided for writing in the limits desired, and a form acknowledging that the signer had read and understood the form.

The form contained an ‘X’ mark in the “No” space following the question: “Do you wish to purchase underinsured motorist coverage?” This mark was generated by the computer’s quoting software at the agent’s request based on input from Cohen. Below the mark was a request for Cohen’s signature memorializing the rejection of UIM coverage. When the agent gave the form to Cohen for his signature, she added no indicia of selection or rejection of UIM coverage afterwards. Cohen signed the form in the “Your Signature” blank, thereby expressly indicating that he was rejecting UIM coverage on the motorcycle. Just below Cohen’s signature, the pre-printed word “REJECTED” appeared in response to the following: “If your answer is ‘yes’, then specify the limits which you desire. These limits cannot exceed your motor vehicle insurance liability limits.” Cohen also signed an acknowledgment form, indicating that he read and understood the “explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage” and that he “indicated whether [he wished] to purchase each coverage in the spaces provided.”

Although Plaintiffs contend that the agent failed to give an oral explanation of coverage when she gave Cohen the offer form, she testified that she would not have printed the forms without having entered the selections, and that she would not have entered the selections without having been instructed to do so by Cohen. She further testified that she briefly explains UIM

coverage to each applicant while they have the printed form in hand and before they sign to confirm their choice. Cohen does not deny that he signed the form containing the choices indicated, including the explicit rejection of UIM coverage, but claims he did not read or understand the forms before doing so and simply signed at the spaces indicated. The policy Progressive issued to the Cohens, No. 42541297-0, and which was thereafter twice renewed as Nos. 42541297-1, -2, did not include UIM coverage.

Greg Cohen also had UIM coverage on a 2001 Ford Expedition through Auto-Owners Insurance Company. The parties stipulated at trial that UIM coverage under the Auto-Owners policy would only apply if it were determined that Progressive had UIM coverage that would apply in this case.

LAW

I) Progressive made a meaningful offer of UIM coverage to Cohen in compliance with S.C. Code Ann. § 38-77-350(A) and Wannamaker.

A) Elements of a Meaningful UIM Offer

Under South Carolina law, motorists are not required to purchase UIM coverage, but automobile insurance carriers must offer “at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage.” S.C. Code Ann. § 38-77-160. The South Carolina Supreme Court has held that an insurance carrier fulfills its obligation of making a meaningful offer of UIM coverage if (1) the insurer’s notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of the optional coverage; (3) the insurer intelligibly advises the insured of the nature of the optional coverage; and (4) the insured is informed that UIM coverage is available for an additional premium. State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555, 556 (S.C. 1987).

In response to Wannamaker, the South Carolina General Assembly enacted S.C. Code Ann. § 38-77-350, directing the South Carolina Department of Insurance to create a form that “automobile insurers use in offering” optional coverages, including UIM coverage. The statute requires that the form include the following five elements: (1) a brief and concise explanation of the optional coverages; (2) a list of available limits and the range of premiums for the limits; (3) a space to mark whether the insured chooses to accept or reject the coverage; (4) a space for the insured to sign the form acknowledging that the insured has been offered the optional coverages; and (5) information on how to contact the Department of Insurance if the insured desires additional information regarding the coverages. § 38-77-350 (A) (1)-(5). Compliance with the statute “satisfies the insurer and agent’s duty to explain and offer optional coverages and higher limits, and no person, including, but not limited to, and insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.” § 38-77-350 (D).

If the form satisfies the statutory requirements and was “properly completed and executed by the named insured,” then a conclusive presumption arises that a meaningful offer was made. § 38-77-350(A) and (B) (2002)¹. If the form was not “properly completed and executed by the named insured,” then the insurer may still prove it made a meaningful offer if the offer form meets the requirements of § 38-77-350(A) and Wannamaker. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 263, 626 S.E.2d 6, 12 (2005); Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 631-32, 658 S.E.2d 106, 110 (Ct. App. 2008). In Floyd, the Court of Appeals held that the conclusive

¹ S.C. Code Ann. § 38-77-350(B) was amended in 2006 and now reads: “If this form is signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured’s failure to purchase optional coverage or higher limits.” This amendment, which took effect after Cohen applied for the Progressive policy, effectively reversed the decision in Floyd.

presumption is lost if the insured does not personally mark the form, but qualified its holding by stating:

Our decision today does not resolve the question of whether Insurer made a meaningful offer to [the applicant] in this case. We simply conclude that Insurer, by allowing an agent or his employee to partially complete the offer form in a manner inconsistent with the plain terms of Section 38-77-350, is denied the benefit of the conclusive statutory presumption a meaningful offer was made.

Id. The requirement that the insured must fill out the form entirely without the agent's involvement goes only to the question of whether the statutory presumption applied, not to the overall sufficiency of the offer. It is only where the overall substance of the offer fails to conform with statutory and common law requirements that it is ineffective.

To find, as Plaintiffs urge the Court to do, that Cohen's failure to personally mark the form makes the form deficient under § 38-77-350(A) is to ignore the plain and unambiguous language of the statute explaining that a form meets the requirements of § 38-77-350(A) when it provides the information listed in subsections one through five. According to the statute, an insurer can satisfy the requirements of § 38-77-350(A) without any regard to whether the form was "properly completed and executed by the named insured" pursuant to § 38-77-350(B). Proper completion and execution certainly entitles the insurer to a conclusive presumption of a meaningful offer but it does not displace the five requirements of § 38-77-350(A) as being the criteria for a statutorily compliant offer form. Therefore, despite the fact that the conclusive presumption in section 38-77-350(B) does not apply since Cohen did not personally mark the form rejecting coverage and instead conveyed his rejection to the agent who input the rejection in the computer, the offer form, standing alone, constituted a meaningful offer of coverage.

The Court's finding that the offer form, standing alone, constituted a meaningful offer is supported by the Court of Appeals' decision in Atkins v. Horace Mann Insurance Co., 376 S.C.

625, 658 S.E.2d 106 (Ct. App. 2008). In Atkins, the Court of Appeals held that even when an insurer is not entitled to a conclusive presumption under § 38-77-350(B), the insurer is able to sustain its burden of proving it made a meaningful offer under Wannamaker by reliance on the contents of the written offer form standing alone. Atkins, 376 S.C. 625, 658 S.E.2d 106. The form in Atkins, like the form provided to Cohen, complied with each requirement of § 38-77-350(A) and Wannamaker; and the insurer in Atkins, like Progressive, made a meaningful offer of UIM coverage despite the fact the form was not personally marked by the insured, thereby precluding the insurer's entitlement to the conclusive presumption of § 38-77-350(B). Moreover, Cohen signed the offer form three times and not only discussed the offer with the agent over the phone, but also came into the agent's office to formally execute his choices. This is much more convincing than the insured's single signature on a form received in the mail in Atkins.

B) Progressive's offer form fully satisfied § 38-77-350(A).

Progressive complied with the five requirements of section 38-77-350(A). South Carolina courts have previously held that the identical form signed by Cohen, Form Number 2006 promulgated by the South Carolina Department of Insurance, satisfies the requirements of S.C. Code Ann. § 38-77-350(A) and the Wannamaker test. Clinton v. W. America Ins. Co., 364 S.C. 113, 611 S.E.2d 521 (Ct. App. 2005) (citing Osborne v. Allstate Ins. Co., 319 S.C. 479, 462 S.E.2d 291 (Ct. App. 1995) *superceded by statute as stated in* Moody v. Dairyland Ins. Co., 354 S.C. 28, 579 S.E.2d 527 (Ct. App. 2003) ("The South Carolina Court of Appeals has specifically held that the form used by West American, Form 2006, meets the requirements of § 38-77-350.")); Burch v. South Carolina Farm Bureau Mut. Ins. Co., 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002)(finding a form that was almost identical word-for-word with the Progressive form

“falls within the requirements of South Carolina’s statutory and case law, such that [insurer] made a meaningful and effective offer of UIM coverage to [insured].”).

This case is strikingly similar to the facts of Woodson v. Nationwide Mutual Insurance Co., No. 2002-UP-398 (Ct. App. 2002). In Woodson, the Court of Appeals addressed the exact same type of form as the one Cohen signed and decided that the form standing alone “clearly complies with both the statutory and common law mandates” for a meaningful offer. Woodson, No. 2002-UP-398. The Woodson Court highlighted language from the form which explained UIM coverage, provided contact information for the Department of Insurance for any further questions, allowed the insured to mark whether to accept UIM coverage, and acknowledged that the insured had received an explanation of the coverage and had chosen whether or not to accept it. Cohen was given the opportunity to read over and sign precisely this same language on his form. The Court of Appeals held that the Nationwide form satisfied both the requirements of § 38-77-350 and the common law elements of Wannamaker and that Nationwide was not obligated to also give the Woodsons an oral explanation of UIM coverage. Thus, the Woodsons’ claim that they did not read the offer form and that the agent did not orally explain the coverage had no bearing on the fact that the form, standing alone, constituted a meaningful offer.

Similarly, in Foremost Insurance Co. v. Demma, Judge Charles Simmons held that an offer form exactly like Progressive’s fully satisfied the statutory and common law requirements for a meaningful offer because it intelligibly advised the insured of the nature of UIM coverage and offered him the available limits of UIM coverage at designated rates. Foremost Ins. Co. v. Demma, No. 2206-CP-23-8108 (Circ. Ct. May 15, 2007). Also, in Phillips v. Progressive Casualty Insurance Co., Judge Weston Houck of the District Court found that the same form satisfies both the requirements of the Wannamaker test and § 38-77-350(A) despite the fact that

the statutory presumption did not apply. Phillips v. Progressive Cas. Ins. Co., No. 2:07-cv-03125-CWH (D.C.S.C. July 3, 2008). Both of these decisions rely on the form alone and both were decided after Floyd.

The written explanation in the form satisfies the explanation requirement in part (1) of § 38-77-350(A). The form listed available limits and the range of premiums for those limits which satisfied part (2). The offer form contained a space for Cohen to mark whether he chose to accept or reject UIM coverage and a space for him to select the limits of coverage he desired. This satisfied part (3). The offer form also contained a space for Cohen to sign the form and to acknowledge that he had been offered UIM coverage, satisfying part (4). Part (5) requires insurers to provide contact information for the South Carolina Department of Insurance. The offer form contained this information at the end of the explanation of coverages. Thus, the offer form fully satisfied the five requirements of § 38-77-350(A).

C) Progressive's offer form fully complies with the Wannamaker requirements.

Not only did the offer form satisfy § 38-77-350(A), but it also satisfied the four-element Wannamaker test. Wannamaker specifies that a commercially reasonable offer of UIM coverage can be made by the carrier in either written or oral form. Id. The requirement that the notification process be commercially reasonable is satisfied in this case because Cohen received an oral offer from the agent and received a copy of the offer form from the agent when he came into the agency on January 26, 2005.

The list of different levels of UIM coverage and associated premiums on the form satisfied the second Wannamaker prong. The final two Wannamaker requirements are satisfied by the language on the offer form's explanation pages. The explanation pages advised Cohen of the nature of UIM coverage and told him the coverage was available for an additional premium.

Cohen received the explanation pages and was given the opportunity to read them and take them home.

The form itself fully satisfied the goal of the meaningful offer requirement because it provided Cohen with adequate information to make an intelligent decision on whether to accept or reject UIM coverage. See Progressive Cas. Ins. Co. v Leachman, 362 S.C. 344, 351, 608 S.E.2d 569, 572 (2005) (citing Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556) (“The goal, as set forth in Wannamaker, is to provide an insured with adequate information to make an intelligent decision on whether to accept or reject UIM coverage.”). Progressive offered every coverage option that it was authorized to offer and gave Cohen adequate information to make an intelligent decision. Because Progressive’s UM/UIM offer form, standing alone, complied with the elements of the Wannamaker test and met the requirements of § 38-77-160 and § 38-77-350(A), Progressive’s offer of UIM coverage constituted a meaningful offer under South Carolina law. Cohen’s rejection of this offer was therefore valid.

II) Even if the form does not satisfy the requirements of S.C. Code Ann. § 38-77-350(a) and Wannamaker, the Plaintiff’s transaction with agent Meredith Thomason demonstrates a meaningful offer was given.

Progressive’s offer form fully satisfies the requirements of § 38-77-350(A) and Wannamaker. Even if the form did not satisfy these requirements, the totality of the transaction with insurance agent Meredith Thomason shows that Cohen was given a meaningful offer.

Meredith Thomason testified she has been a licensed insurance agent since 2006. Thomason met with Cohen to complete his insurance application after receiving pertinent information from Cohen over the phone. Although Thomason could not specifically recall her transaction with Cohen, she testified as to her general procedure which included explaining UIM coverage after receiving the insured’s information but before issuing a quote. Thomason

explains UIM coverage and quotes the premium for UIM limits up the selected liability limits. She explains that although UIM coverage is not required in South Carolina, it is a good idea to have it. Once the insured indicates his selection or rejection of UIM coverage, Thomason enters the choice in the computer and generates a quote. The insured then comes into the office to meet with Thomason and sign the application. At this point, Thomason explains UIM coverage and corresponding premiums a second time. In addition to orally explaining UIM coverage, Thomason presents clients with the offer form which contains a written explanation of the optional coverages. Just as Thomason does with all clients, she gave Cohen the opportunity to read over the form without rushing him before he signed it.

Thomason's testimony shows that the Wannamaker requirements for a meaningful offer were met. Specifically, the offer was made in a commercially reasonable manner because Thomason met with Cohen and not only orally presented the offer but also provided him with the written offer form. Thomason also specified the limits of optional coverage up to Cohen's liability limits. She told him that the optional coverages were available for an additional premium and intelligibly advised him of the nature of the optional coverages.

Therefore, even if Progressive's offer form does not meet the meaningful offer requirements, then the totality of the transaction with agent Meredith Thomason shows that Cohen was given a meaningful offer.

III) Progressive's offer was meaningful despite Cohen's claim that he failed to read the form.

Like the unsuccessful claimant in Atkins, Cohen argues that Progressive's offer was not meaningful because he signed the forms without reviewing or understanding them and without having them sufficiently explained by the agent. Atkins, 376 S.C. at 630, 658 S.E.2d at 109-110 (rejecting argument that insurer "failed to intelligibly advise" applicant of UIM coverage where

form was mailed but not orally discussed; insured was capable of reading form, which explained choices sufficiently). Plaintiffs say Cohen signed the papers in a rush without reading them. That is no defense. Under South Carolina law, “a competent person is usually presumed to have knowledge and understanding of a document he signs, absent evidence his signature was obtained by misrepresentation, fraud, forgery, or duress.” Floyd, 367 S.C. at 263, 626 S.E.2d at 12. There is no exception to this rule for dealings between insurance carriers and insureds. See, e.g., Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977) (“[W]e have consistently followed the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have ascertained by reading the instrument, and that one entering into a written contract should read it and avail himself of every reasonable opportunity to understand its content and meaning”); Horton v. Atlantic Life Ins. Co., 187 S.C. 155, 197 S.E.2d 512, 514 (1938) (ruling that “in the absence of any showing of mistake or fraud” the terms of the table in policy controlled); McLeod v. Home Ins. Co., 672 F. Supp. 903, 906 (D.S.C. 1987) (“One cannot complain about the contents of a written instrument if the truth could be ascertained by reading it, except where the party is ignorant and unwary”).

A document signer cannot avoid the binding effect of the documents he signs by arguing that he did not read the information contained in the forms or that the other party did not explain the terms to him. In Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), the Court of Appeals held: “A person who signs a contract or other written document *cannot avoid the effect of the document by claiming he did not read it*” and that “the law does not impose a duty on the [contracting party] to explain to an individual what he could learn from simply reading the document.” Id. at 663-64, 582 S.E.2d at 440 (emphasis added). Cohen is

presumed to have read and understood the change request forms as a matter of law unless he shows that he was not competent or that his signature was obtained through “misrepresentation, fraud, forgery, or duress.” Cohen failed to produce any such evidence that he was somehow under duress or that the agent made any misrepresentations to get him to sign the change request forms.

A finding that the Plaintiffs are not bound by Cohen’s signature on the rejection form, as they contend, would undercut the very reasons that a meaningful offer requirement exists in the first place. The bedrock of the meaningful offer requirement is to give “the insured the opportunity to make an intelligent and informed decision.” Progressive Casualty Ins. Co. v. Leachman, 362 S.C. 344, 350-51, 608 S.E.2d 569, 572 (2005). It is ludicrous to assume an offer form which provides all of the information required by statutory and common law and is signed by the insured does not constitute a meaningful offer. As the Supreme Court noted in Leachman, to force an insurer to pay an amount listed on the form, which was specifically rejected by the insured would violate public policy. Id. at 352, 608 S.E.2d at 573. Thus, Cohen’s testimony that he did not understand UIM coverage, that he did not read the form, or that the form was not filled out is no defense when the signed offer form provided Cohen with all of the information Progressive was legally obligated to provide in order for Cohen to make an informed decision.

IV) Cohen is not entitled to coverage under the Auto-Owners policy.

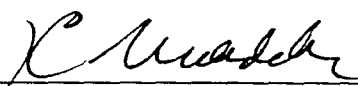
The parties stipulated at trial that the legal position of Auto-Owners was the same as Progressive. The parties further stipulated that Auto-Owners would not have UIM coverage unless it was determined that UIM coverage was available under the Progressive policy. For the reasons stated above, Progressive provided no UIM coverage under its policy to the Plaintiffs. Thus, Auto-Owners would not have UIM coverage that would apply in this case.

CONCLUSION

Progressive made a meaningful offer of UIM coverage to Cohen. The Progressive application presented to Cohen intelligibly advised Cohen of the nature of UIM coverage and offered him the available limits of UIM coverage at the designated rates. The Progressive forms contain the explanation of UIM coverage that is contained in the South Carolina Department of Insurance Form 2006. Cohen signed the application verifying that he read the explanation. Under South Carolina law, Cohen is presumed to have read the explanation and is bound by his signature to the terms of the documents he signed.

WHEREFORE, IT IS ORDERED AND ADJUDGED that Plaintiffs are not entitled to UIM coverage under the Progressive policy covering Greg Cohen's motorcycle or under the Auto-Owners policy covering Greg Cohen's 2001 Ford Expedition. IT IS FURTHER DECREED that Progressive made a meaningful offer of UIM coverage to Cohen based on the contents of the written offer form standing alone.

Date: 2/7/10


The Honorable J. Cordell Maddox, Jr.

A TRUE COPY

JUL - 8 2010

Martha D. Newton
CLERK OF COURTS

FILED-CLERK'S OFFICE
ANDREWS SC
2010 JUL - 8 A 10:01
COMMON PLEAS AND
GENERAL SESSIONS

Order in South Carolina Farm Bureau vs. Jenkins, 2006-CP-46-2553

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FILED-RECEIVED
2008 MAR 13 PM 4:31
JUDGMENT IN A CIVIL CASE
CASE NO: 2006CP4602553
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

South Carolina Farm Bureau Mutural Insurance Company vs. Ronnie D Jenkins

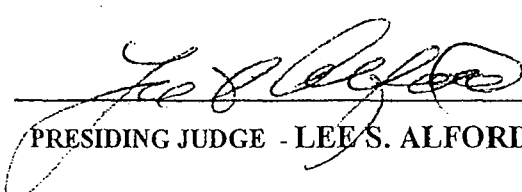
CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS DENIED.
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.
Dated at York, South Carolina, this 13th day of January, 2008.

Court Reporter:


PRESIDING JUDGE - LEE S. ALFORD

This judgment was entered on the 13th day of January, 2008, and a copy mailed first class this 13th day of January, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

John Robert Murphy Murphy & Grantland, PA
P.O. Box 6648 Columbia, SC 29260

Robert Verner Phillips McGowan Hood Felder
& Johnson 1539 Health Care Drive Rock Hill,
SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

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

South Carolina Farm Bureau Mutual
Insurance Company
PLAINTIFF,

vs.

Ronnie D. Jenkins and Sandra B. Jenkins,
DEFENDANTS

vs.

Crystal Martin,
THIRD PARTY DEFENDANT.

ORDER

FILED-RECEIVED
2008 MAR 13 PM 4:31
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court after Plaintiff filed a Motion for Summary Judgment on two issues 1) as to whether or not it had made a meaningful offer of additional UM coverage pursuant to the Wannamaker requirements and 2) that the Plaintiff had not acted in bad faith in the handling or adjusting of the underlying property and personal injury claims made by the Defendants. The Defendants have also filed a Motion for Summary Judgment that no meaningful offer of additional UM coverage was made by the Plaintiff.

BACKGROUND

This action arises out of a motor vehicle collision in which Sandra Jenkins was seriously injured. The accident occurred on July 15, 2006 when Ms. Jenkins was struck by a trailer which was being towed by an unidentified vehicle whose driver left the scene. Subsequently, the Jenkins submitted a claim for uninsured motorist coverage for the property damage to their vehicle and for the bodily injuries sustained by Mrs. Jenkins.

Claims were made pursuant to this policy and Mr. Jenkins accepted a verbal offer for the cash value of the vehicle. Subsequently a check for \$8,095.00 was given to Mr. Jenkins, however, the check itself had the words "In full payment for any and all claims" in the line above the insured's name. Also, a release was drafted by the Plaintiff that included language of the same nature and at the bottom. Both below and above the signature line were printed the words "Attention! This is a complete release." While Farm Bureau agreed to tender the undisputed amounts of uninsured motorist coverage to the Jenkins, who maintained two separate policies with one vehicle each no payment was ever actually made until after the Defendants hired an attorney. The uninsured motorist coverage on the vehicle under each policy was \$25,000.00 per person, resulting in combined uninsured motorist coverage for bodily injury of \$50,000.00.

The Jenkins, through their counsel, questioned the amount of coverage based on whether the rejection forms signed by Mr. and Mrs. Jenkins were valid under South Carolina law. Farm Bureau initiated this declaratory action to determine whether the company satisfied the meaningful offer requirement under South Carolina law. The Jenkins counterclaimed and asserted claims for bad faith arising out of the handling of the claims.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
Meaningful Offer Made

In this case, Jenkins both signed the UM/UIM Offer/ Rejection form. However, they did not personally mark the "✓" in the box indicating purchase of additional UM coverage. Instead, this mark was inserted by the agent. Furthermore, Mr. Jenkins did not write in the amount of total UM coverage he was purchasing, \$25,000.00 per person. Again, the agent wrote in the amount of UM coverage purchased.

#2
JAC

In Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2006), the South Carolina Supreme Court held that the insured, rather than the agent, must actually place the "✓" on the application for the form and select the amount of UM coverage to be conclusively presumed to constitute a meaningful offer of additional UM coverage. The Supreme Court recognized in Floyd, however, that an insurance carrier not entitled to the statutory conclusive presumption can still show that it made a meaningful offer under the four-element test found in State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). Floyd, at 264, 626 S.E.2d at 12.

One of the issues that must be determined is if the form is "properly completed" as is required by Section 38-77-350(B). The Court in Floyd answered this question as follows, "We conclude an offer form in which the blanks were filled in by an insurance agent or his employee in the presence of the named insured, and the form was then signed by the named insured, was not properly completed and executed pursuant to Section 38-77-350(B)." (Emphasis added) Since Plaintiff admits it was the agent who "checked the box" and wrote in the amounts, clearly this form was not properly completed.

Plaintiff argues that the holding in Floyd only takes away his conclusive presumption that a meaningful offer was made, which it does, but that the form itself can then be used to show a meaningful offer was made despite the fact it was not properly completed. This argument has no merit. The Court in Floyd also held that "a non-complying offer has the legal effect of no offer at all" citing Hanover Ins. Co. v. Horace Mann Ins. Co., 301 S.C. 55, 57, 389 S.E.2d 657, 659 (1990). Since the offer form was not properly filled out it has the legal effect of no offer at all. If there is no offer at all, a

#3
HCH

non-existing offer could hardly meet the burdens imposed under Wannamaker¹. Therefore, with respect to the Offer of Additional UM/UIM Coverage page, no offer was made, much less a meaningful one which the Plaintiff has the burden to prove. Otherwise, the Defendant/Insured may reform the policy of UM/UIM as matter of law.

Therefore, summary judgment on the issue that the Plaintiff made a meaningful offer by the fact that form itself provided all the necessary information to constitute a meaningful offer is hereby denied.

South Carolina Farm Bureau Has Not Acted in Bad Faith

Next the Plaintiff argues that there was no bad faith in the handling of this claim. As evidence the Plaintiff claims that Mr. Jenkins admitted that the figure on the check² was for the damage to the vehicle only and had nothing to do with his wife's bodily injury claim. He also admits that he agreed to this figure as a fair value for the total loss of the vehicle.

While there seems to be no disagreement regarding the amounts, the question of fact that remains is what would have been the result if Mr. Jenkins had in fact signed the check. Mr. Jenkins testified in his deposition that he "never had any problems with Farm Bureau, but what was he (the adjuster) trying to pull here." On paper there are certainly discrepancies between what Plaintiff claims was its good intentions and the appearance of bad faith from a reasonable person's point of view. While the amounts on the checks were correct, the fact remains that no new check or release was ever tendered to Mr.

¹ Under Wannamaker, in order to have made a meaningful offer of additional coverage the carrier is required to show that (1) the insurer's notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of additional UM coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the additional UM coverage; and (4) the insurer tells the insured that additional UM coverage is available for an additional premium.

² While the check did have the agreed upon amount for the property damage, it contained the language that it was being tendered for "payment of any and all claims."

Jenkins until long after he retained an attorney. Additionally, it is Defendants' assertion that the possibility of reforming these two policies played a role in Defendants' allegation that the bad faith in handling the claim was to obtain a full release before the policies could be reformed.

Clearly it is a question of fact as to whether or not Plaintiff was acting in bad faith with respect to these two claims or if it was simply a misunderstanding. As with all Motions for Summary Judgment the facts must be taken in the light most favorable to the non-moving party. At the very least there are facts that could lead a reasonable juror to infer that the Plaintiff acted in bad faith. Thus, it is proper for a trier of fact to determine the meaning of these facts.

Therefore, Plaintiff's Motion for Summary Judgment to dismiss the Defendants' Counterclaim for Bad Faith is hereby denied.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
Meaningful Offer Not Made

Defendants have alleged that since there was no offer of additional UM coverage made to them pursuant to the Floyd case and as outlined above, the Plaintiff cannot meet its burden. While there has been no offer made by way of written document, Wannamaker provides that "the insurer's notification process must be commercially reasonable, whether oral or in writing." Therefore, while the Plaintiff did not make a written offer he is allowed to attempt to meet his burden by proving the same orally.

Defendants then asserted that the only person who was in the office at the time was the agent and the agent testified in his deposition that "I could make assumptions but no exact specifics as to what they did or did not say." Ray Deposition, pg. 24

Defendants claim that Plaintiff cannot meet its burden because he can only

#5
2011

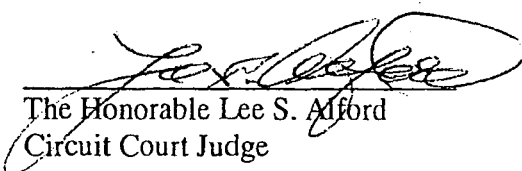
speculate and not point to any specific fact(s) to meet the Plaintiff's burden of proving a meaningful offer was made.

However, further in his deposition the agent testified that any testimony he would give would be based on "the way he handles business." The way one 'handles business' would be viewed as "habit" under SCRE 406 and thus would go to the weight of the evidence and not the admissibility. Again, the determination of whether or not the agent made a meaningful offer is a question for the trier of fact.

Therefore, taking the facts in the light most favorable to the non-moving party, Defendants' Motion for Summary Judgment is hereby denied.

WHEREFORE, based on the arguments of counsel, evidence presented at the hearing and the statutory and common law of this State, it is hereby ORDERED that the two Motions for Summary Judgment filed by the Plaintiff and the Motion for Summary Judgment filed by the Defendants are all hereby denied and shall be set for trial.

IT IS SO ORDERED!



The Honorable Lee S. Alford
Circuit Court Judge

At Chambers
York, South Carolina
This 17 day of March 2008

#6
6/3/08

Order in Helms vs. Progressive Casualty Insurance Company,
2008-CP-46-0689

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CASE NO.: 2008CP4600689

RICHARD HELMS AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF SAMUEL HELMS

Plaintiff,

vs.

PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendant.

ORDER

FILED-RECEIVED
2009 FEB 27 PM 3:22
DAVID HARRIS
CLERK OF COURT
YORK COUNTY, SC

This matter came before the Court on January 21, 2009, for a trial and to hear arguments of counsel on the issue presented. Present and representing the parties at the hearing were Plaintiff's counsel, Mark Chappell, and J. R. Murphy, Defendant's counsel. The facts essential to a decision in the case were either stipulated, or are uncontradicted, as contained in the parties' discovery in the case. Counsel for the parties presented arguments and briefs, along with submission of the relevant discovery, including documents and deposition testimony, for the Court's consideration. Thus, by agreement of the parties, this matter is decided based the record submitted to the Court, and without an evidentiary hearing.

Based on the record presented and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

STATEMENT OF CASE

This is an action for a declaratory judgment concerning whether underinsured motorist ("UIM") coverage is provided under a policy of insurance issued by Defendant to Plaintiff's decedent, Samuel Helms ("Helms") for his motorcycle. The sole issue presented is whether Defendant made meaningful offer of UIM coverage to Helms in connection with the issuance of the motorcycle policy.

FINDINGS OF FACT

This action arises out of a motor vehicle accident that occurred on March 28, 2007. Helms was driving a motorcycle insured by Progressive when the motorcycle was struck by another automobile, resulting in Helms' death. Plaintiff, as personal representative of the Estate

mm
#1

of Samuel Helms, submitted a claim for UIM coverage for Helms' injuries and death resulting from the accident. Coverage was denied.

Progressive issued a policy of motorcycle insurance to Helms covering his motorcycle, and the policy was in effect on the date of the accident. The policy carried liability limits of \$15,000 per person, \$30,000 per vehicle, and \$10,000 for property damage; however, as issued, the policy did not provide UIM coverage. Helms signed forms rejecting UIM coverage, as indicated by his signing of Progressive's "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage."

The sequence of events leading to this dispute is contained in the following discussion of facts. The Court finds that these represent the facts proven by a preponderance of the evidence, and the reasonable inferences to be drawn from therefrom.

On May 20, 2005, Mr. Helms contacted agent Chasity M. Ford ("Ford") by telephone to purchase insurance for his 1995 Yamaha motorcycle and a 1982 Chevrolet. Ford, an agent for Enterprise Insurance Agency, entered Helms' information into a computer for the issuance of the motorcycle policy, including marking on the computer document a box stating that Helms declined to purchase UIM coverage. During that telephone conversation, Ford took Helms' credit card information in order to process his premium payment. Ford processed Mr. Helms' credit card payment, and his policy of insurance was effective immediately. At that time, Helms had not actually signed any document evidencing that an offer of UIM coverage was made to him, or that he declined such coverage.

Later on the same date, May 20, 2005, Helms went to the Enterprise Insurance Agency to execute additional necessary paperwork related to purchasing the insurance. At this time, Helms met for "five, ten minutes" with Enterprise agent Brooke Brazzell ("Brazzell"). Brazzell had Helms sign, among other things, Progressive's "Offer of underinsured motorist coverage" ("UIM Offer"), a printed form related to the motorcycle policy. The form contains a place to mark "Yes" or "No" under the question "Do you wish to purchase underinsured motorist coverage?" A computer generated "X" was marked beside the answer "No." Helms did not place the "X" next to the "No" answer; rather, this was accomplished when Ford entered it into the computer while taking information from Helms by phone earlier in the day.

Ford "vaguely" remembers her May 20, 2005, phone conversation with Helms. Ford only remembers "explain[ing] to him the coverages as far as the amount." Brazzell has no specific memory of Helms, and does not know what he looked like. Brazzell believes that she

MM
B 2

Ford or Brazzell. Certainly, a form that is internally inconsistent cannot be said to have afforded a "meaningful" explanation of the coverage being purchased or refused.

Further, no such similar hand-completed form has been produced by Defendant with regard to UIM coverage on the motorcycle. There is nothing in the computer generated form refusing UIM coverage on the motorcycle to indicate that a separate and meaningful explanation of coverage was given to Helms.

While Defendant argues that Helms consciously elected to buy UIM coverage on the car, but not the motorcycle because of the significantly higher cost of such coverage on the motorcycle, Defendant's argument is based only upon inference or conjecture, and not the documents in the record. It is equally inferable, based on the obvious confusion in the paperwork, as well as the order of the events and actions pertaining to the coverage in issue, that Helms simply did not receive an explanation of what he was doing sufficient to make his alleged rejection of UIM coverage on the motorcycle "meaningful."

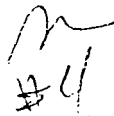
Considering the record as a whole, the Court finds that Defendant has not proven by a preponderance of the evidence that Helms received a "meaningful" offer of UIM coverage under the facts of this case.

STANDARD OF REVIEW

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Hardy v. Aiken*, 369 S.C. 160, 164, 631 S.E.2d 539, 541 (2006). In this case, the issue involves determination of coverage under an insurance policy, and therefore, is an action at law. *Auto-Owners Ins. Co. v. Hamin*, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (Ct.App. 2006) (cert. granted 2007). In an action at law, tried without a jury, the trial court is the finder of fact, just like a jury.

BURDEN OF PROOF

In a case where an offer of UIM coverage is in dispute, "[t]he insurer bears the burden of establishing that it made a meaningful offer." *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 630, 658 S.E.2d 106, 109 (2008); *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 759 (1996). "If the insurer fails to comply with its statutory duty to make a meaningful offer 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." *Id.*; *Butler, supra*, 323 S.C. at 404, 475 S.E.2d at 760.



DISCUSSION

If an insurer fails to make a meaningful offer of UIM coverage to an insured, the policy will be reformed to include UIM coverage equal to the liability limits.

Our supreme court has provided clear direction on the law and procedure applicable to this analysis. In *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2006), the Supreme Court held:

Automobile insurance carriers are required to offer, at the option of the insured, UIM coverage up to the limits of the insured's liability coverage. S.C. Code Ann. § 38-77-160 (2002). The insurer bears the burden of establishing that it made a meaningful offer of UIM and additional UM coverages. . . . A noncomplying offer has the legal effect of no offer at all. . . . If the insurer fails to comply with its statutory duty to make a meaningful offer 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." 367 S.C. at 261, 626 S.E.2d at 11. (Internal citations omitted.)

To satisfy the meaningful offer requirement, an insurer must show that:

- (1) its notification process is commercially reasonable, whether in writing or oral;
- (2) it specifies the limits of additional UIM coverage and not merely offers additional coverage in general terms;
- (3) it intelligibly advises the insured of the nature of the additional UIM coverage; and,
- (4) it tells the insured that additional UIM coverage is available for an additional premium. *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 521, 354 S.E.2d 555, 556 (1987).

A meaningful offer of UIM form must include the following:

- (1) a brief and concise explanation of the coverage;
- (2) a list of available limits and the range of premiums for the limits;
- (3) a space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires;
- (4) a space for the insured to sign the form which acknowledges that he has been offered the optional coverages;
- (5) the mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable to answer. S.C. Code Ann. § 38-77-350(A) (1976, as amended). (Emphasis added.)

If the named insured completes and executes a form meeting the requirements of § 38-77-350(A), the insurer is conclusively presumed to have made a meaningful offer of UIM. S.C.

Code Ann. § 38-77-350(B).¹ If an insurer is not entitled to the statutory presumption, then the Court must look to the totality of the transaction between the insured and the insurer.

A. Defendant's Offer of UIM Coverage Fails to Satisfy the Requirements of Section 38-77-350(A).

Defendant's offer of UIM coverage on May 20, 2005, fails to satisfy the requirements of Section 38-7-350(A), and Defendant is not entitled to any presumption that a meaningful offer was made.

[An] offer form in which the blanks [are] filled in by an insurance agent . . . in the presence of the named insured, and the form [is] then signed by the named insured, [is] not properly completed and executed pursuant to Section 38-77-350(B), such that the form may be conclusively presumed to constitute a meaningful offer of UIM coverage. *Floyd*, 367 S.C. at 264, 626 S.E.2d at 12.

In *Floyd*, an insurance agent filled in the blanks in the presence of the named insured, and the insured signed the forms. The insured also signed a detailed acknowledgement that, among other things, the UIM coverage had been explained to her and that she chose to reject the offer of UIM coverage. Nationwide relied solely on "UIM offer forms as proof that it made a meaningful offer of UIM coverage to [the plaintiff], and not on any verbal discussions or explanations of the coverage." *Floyd*, *supra*, 367 S.C. at 258, 626 S.E.2d at 9.

It is undisputed that Ford placed a computer generated "X" on the UIM coverage form for the motorcycle. This was not done "in the presence of the named insured," but rather while she was on the phone with Helms. This undisputed fact is sufficient to defeat the presumption of a meaningful offer.

Since it is undisputed that Ford entered the "X" on her computer indicating that Helms declined to purchase UIM coverage, Defendant fails to satisfy the requirements of Section 38-77-350(A), and is not entitled to a presumption that its offer of UIM was meaningful. In argument to the Court, Defendant acknowledged that it was not entitled to the statutory presumption.

B. Defendant Fails to Carry Its Burden of Proving a Meaningful Offer of UIM Coverage Was Made.

¹ S.C. Code Ann. § 38-77-350(B) was amended on June 14, 2006 to give an insurer the conclusive presumption if an appropriate form was "completed by an insurance producer or a representative of the insurer." The UIM offer at issue in this case predates this amendment, and the previous statutory language in Section 38-77-350(B) is applicable to Plaintiff's claims. See *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 402, 520 S.E.2d 142, 157 (1999); *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974); *JRS Builders Inc. v. Neunsinger*, 364 S.C. 596, 600, 614 S.E.2d 629, 631 (2005).

As discussed herein the facts in this case are very similar to those in *Floyd*. There, the insurer's employee filled in the blanks on the offer of UIM coverage, and the named insured thereafter signed the form in the agent's presence. The named insured also signed a detailed acknowledgement of having been given an explanation of coverages. Under these facts, the Supreme Court concluded that Nationwide was not entitled to the statutory presumption of a meaningful offer based on the manner in which the forms were completed.

Defendant argues that the offer form itself can be used to show that a meaningful offer of underinsured coverage was made to Helms, even though it was not in compliance with § 38-77-350(B). However, it is clear in *Floyd* that a noncomplying offer is effectively no offer at all. If the form relied upon fails to meet the statutory requirement, it is illogical to say that it can nevertheless be used to prove the very fact for which it may not be used.

While the agents who sold the policy to Helms affirm that they explained coverages to him, they do not establish by a preponderance of the evidence that they intelligibly advised Helms of the nature of UIM motorist coverage, as mandated by applicable cases.

Ford has only a passing recollection of what she explained to Helms regarding the available underinsurance limits. As her discussion was by phone, she obviously did not have the benefit of any written material or applicable form to demonstrate to Helms that he was waiving an important right. Despite this, she accepted a credit card payment, and put Helms' policy into effect. The evidence does not carry the burden of showing that Ford discussed the limits of underinsured motorist coverage available to Helms, or the nature of underinsured motorist coverage, all of which is required under *Wannamaker*.

When Helms then went to the Enterprise agency with coverage already having been bound, Brazzell spent five or ten minutes with Helms "getting stuff signed." She was under the belief that Ford had "talked to Mr. Helms about the policy." Brazzell does not "have any specific memory of going over" the UIM selection/rejection forms with Helms.

This testimony and evidence fails to meet the degree of specificity required in order to carry the burden of showing that Defendant's agents made a meaningful offer of underinsurance to Helms.

Further, Defendant also fails to carry its burden of proving that Helms was provided with a copy of the Explanation of Coverage form. Defendant has produced no record of the Explanation of Coverage form it contends was provided to Helms that is contemporaneous with

MMK
1

the transaction. Rather, it relies on a document created by the Defendant after the commencement of this litigation.

Neither Ford, nor Brazzell can state specifically whether they provided the Explanation of Coverages form to Helms. They rely entirely on their statements that it is their normal procedure to do so, and neither Ford, nor Brazzell kept a contemporaneous copy of the Explanation of Coverages Defendant contends was provided to Helms.

Based on the discussion herein, the Court finds and concludes as a matter of law that Defendant did not make a meaningful offer of UIM coverage to Helms.

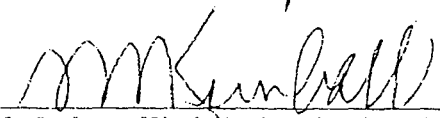
ORDER

Therefore, in accordance with applicable case law, and based on the findings and conclusions herein, it is ordered as follows:

1. Plaintiff is granted a declaratory judgment ruling that Defendant failed to make a meaningful offer of underinsured motorist coverage to the Plaintiff's decedent.
2. The subject policy is reformed to include underinsured motorist coverage equal to the liability limits of \$15,000 per person and \$30,000.00 per accident or occurrence.

AND IT IS SO ORDERED.

February 6, 2009


S. Jackson Kimball, Special Circuit Judge
York County

#8

Testimony of Meredith B. Thomason

State of South Carolina

County of Anderson

In the Court of Common Pleas

Greg S. Cohen,

Plaintiff,

-vs-

Progressive Northern Insurance,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

2007-CP-04-2704

September 10, 2009

Transcript of Record

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge

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

Daniel Draisen, Esquire
Attorney for the Plaintiff

John Robert Murphy, Esquire
Attorney for Defendant

Renee Tollison
Circuit Court Reporter

1 DIRECT EXAMINATION

2 BY MR. DRAISEN:

3 Q. Ms. Thomason, are you employed?

4 A. I am.

5 Q. Where do you work?

6 A. Citizens Insurance Agency.

7 Q. Okay. And what do you do for Citizens?

8 A. I am an agent and I'm also a customer service rep.

9 Q. And in January of 2005, where did you work?

10 A. At Citizens Insurance.

11 Q. And was your position the same?

12 A. It was.

13 Q. And in terms of your education and background, how
14 far did you go in school?

15 A. I graduated college at Anderson University in 2002.

16 Q. With a degree in?

17 A. Human resources.

18 Q. Okay. In terms of your insurance background, did
19 you have to take some classes?

20 A. I did. You have to take a licensing exam, and then
21 you have to take continuing ed. courses throughout the
22 year.

23 Q. Okay. And did you obtain an insurance license?

24 A. I did.

25 Q. What year was that?

1 A. 2003.

2 Q. And what was it in, what type?

3 A. It was in property and casualty.

4 Q. And did you subsequently receive later some other
5 certification?

6 A. I did. I received a C.I.S.R. designation, which is
7 Certified Insurance Service Representative.

8 Q. And when did you receive that?

9 A. I believe 2006.

10 Q. Okay. And did I ask you how long you've been
11 working at Citizens?

12 A. Since 2003.

13 Q. Since 2003. Do you have a recollection of writing
14 coverage for Greg Cohen in January of 2005?

15 A. Not specifically, no.

16 Q. Does that mean you have no independent mental
17 recollection of that transaction?

18 A. Yes.

19 Q. Now, do you maintain a file in your office?

20 A. I do.

21 Q. Okay. And so you would have a file with documents
22 and notes regarding writing coverage?

23 A. Yes.

24 Q. Do you know what kinds of insurance Mr. Cohen
25 personally had in 2005 through Citizens Insurance Agency?

1 A. At that time I believe he had an automobile, and
2 then we subsequently wrote the motorcycle.

3 Q. Okay. And do you know what company the automobile
4 policy was written with?

5 A. Auto Owners.

6 Q. And who did you write the motorcycle policy with?

7 A. Progressive.

8 Q. Okay. Now, do you know how Mr. Cohen made contact
9 with you about the motorcycle insurance?

10 A. Not specifically, but I assume over the telephone.
11 That's how most transactions start.

12 Q. When a transaction starts, is there a document or
13 piece of paper or something that y'all use to make notes
14 on?

15 A. Yes. We created a quote sheet.

16 Q. Okay. I'm going to show you what we've marked as
17 Joint Exhibit Number 3.

18 A. Okay.

19 Q. I'd ask you to take a look at that for me.

20 A. Okay.

21 Q. If you'll bear with me just a second and let me get
22 my copy. Is this the document that you were talking
23 about?

24 A. Yes, it is.

25 Q. Okay. And what's the purpose of this sheet?

1 A. It's just basically a guideline to let us know what
2 questions to ask.

3 Q. Okay.

4 A. So we make sure we get all of the information.

5 Q. And whose handwriting is on this paper?

6 A. It is mine.

7 Q. And what's the date at the top?

8 A. 1/25/2005.

9 Q. And the name?

10 A. Greg Cohen.

11 Q. And at the top you've circled -- there's a choice
12 between auto and motorcycle?

13 A. Correct.

14 Q. You circled one of them?

15 A. I circled motorcycle.

16 Q. Okay. And then there's some blanks?

17 A. Yes.

18 Q. And you go down to unit one, and you wrote in on
19 unit one?

20 A. 2003 Yamaha V Star.

21 Q. And the VIN number is blank?

22 A. Correct.

23 Q. And then you've got the engine size?

24 A. Yes, 1100 cc.

25 Q. And you've got usage?

1 A. Pleasure.

2 Q. And miles is blank, and then you've got principle
3 operator?

4 A. That's Greg.

5 Q. And then unit two is blank?

6 A. Correct.

7 Q. And then all drivers in household, the name is
8 blank, there's a date of birth?

9 A. Of September 15th, 1972.

10 Q. And whose date of birth would that be?

11 A. That would have been Greg's.

12 Q. And there's a drivers license number?

13 A. Yes.

14 Q. And whose would that have been?

15 A. That would have been his also.

16 Q. And then underneath that there is another section
17 that seems to be identical that's blank?

18 A. Yes.

19 Q. Okay.

20 A. That would have been if there were additional
21 drivers.

22 Q. Okay. And then the next part at the very bottom it
23 says, desired limits?

24 A. Yes.

25 Q. Okay. And it's got -- the first one says B.I. What

1 is B.I.?

2 A. Bodily injury. .

3 Q. Okay. And what's it say beside that?

4 A. It's blank.

5 Q. Okay. And the next one beside that -- below that

6 says P.D. What's P.D.?

7 A. Property damage.

8 Q. And what does it say beside that?

9 A. It's blank also.

10 Q. And the third one says U.M./U.I.M.B.I. What does

11 that mean?

12 A. Uninsured, underinsured, bodily injury. And it's

13 blank.

14 Q. And what does it say beside it?

15 A. Blank.

16 Q. Blank. And the next one says U.M./U.I.M.P.D.

17 What's it say beside that?

18 A. It's blank.

19 Q. Okay. And then next is comprehensive ---

20 A. Yes, and it's got five hundred.

21 Q. --- and you wrote in five hundred there?

22 A. Uh-huh (affirmative).

23 Q. And collision?

24 A. Five hundred.

25 Q. And then towing?

1 A. It's blank.

2 Q. And rental?

3 A. It's blank.

4 Q. Okay. And what -- so I can skip around just a
5 little bit. What's the five hundred mean that you wrote
6 in beside comprehensive and collision?

7 A. That would be the deductible amount.

8 Q. So in looking at your note sheet, your quote sheet,
9 can you tell from your notes what limits of bodily
10 injury, property damage, U.M./U.I.M.B.I. or P.D. that
11 Greg asked you to write?

12 A. No.

13 Q. Now, the second page of that document, can you tell
14 me what that is?

15 A. That is the quote sheet printed off from
16 Progressive.

17 Q. Okay. And at the top right side, it says today's
18 date?

19 A. Yes.

20 Q. What date is that?

21 A. 1/25/05.

22 Q. So is this something that was generated the same
23 day?

24 A. It was.

25 Q. Okay. Now, how do you generate this? It's not

1 term now. Sorry. That's kind of like their rental
2 coverage.

3 Q. Rental? It says included on the other side.

4 A. Uh-huh (affirmative).

5 Q. So that's ---

6 A. Yeah.

7 Q. Is that's why there's nothing beside that?

8 A. It is.

9 Q. And then roadside?

10 A. Eight.

11 Q. So that's eight dollars to purchase?

12 A. Uh-huh (affirmative).

13 Q. Okay. Now, on the U.I.M. that's on this, it says

14 U.I.M./P.D. That's underinsured motorist coverage

15 property damage?

16 A. Yes.

17 Q. Is there anything on here for U.I.M.B.I.?

18 A. No, there's not.

19 Q. And so on this quote sheet, it doesn't even -- it
20 has everything else on here, but it doesn't even show a
21 line with the word none or anything beside it; is that
22 right?

23 A. That's correct.

24 Q. So can you tell from this sheet whether or not Mr.
25 Cohen requested any kind of U.I.M.B.I. coverage?

1 A. No, not from this sheet.

2 Q. Are there any other notes besides this paperwork
3 that you have of that day or that discussion with Mr.
4 Cohen about what he requested in terms of coverage?

5 A. No.

6 Q. This is the only document?

7 A. That's it.

8 Q. Now, let me show you what's been marked as Joint
9 Exhibit Number 2. Let me put this back over here so I
10 don't lose the Court's exhibits. Okay. Do you recognize
11 exhibit 2?

12 A. I do.

13 Q. Can you tell me what it is?

14 A. It is the actual motorcycle application.

15 Q. Okay. And at the top left-hand corner, it has a
16 date on it?

17 A. It does. 1/25/05.

18 Q. Okay. Now, how do you get this document? How does
19 it come to be in existence?

20 A. After you input the information for the quote, you
21 can go a little further and actually have them input the
22 information into an application. And that's how you get
23 this.

24 Q. Okay. And this looks like -- well, you tell me.
25 This is an application for what vehicle?

1 A. Yes.

2 Q. And do you know whose signature that is?

3 A. That would be Mr. Cohen's.

4 Q. And how do you know that?

5 A. It's not my signature.

6 Q. So -- but I mean, you're assuming that's his
7 signature?

8 A. Yes.

9 Q. You have no independent -- do you have any
10 independent knowledge that's his signature?

11 A. No.

12 Q. Now, it's dated, right?

13 A. It is.

14 Q. What day is it dated?

15 A. It's dated 1/26/05.

16 Q. So it wasn't signed the same day that you printed
17 it?

18 A. Correct.

19 Q. Okay. And there's some handwritten note -- a note
20 at the top of each of these. Well, skip that. Strike
21 that. Go on to the next page, page four.

22 A. Okay.

23 Q. What's page four?

24 A. Page four is the producer's signature page. It's
25 where I sign.

1 Q. And so this says that you warrant and certify the
2 information contained herein is correct to your
3 knowledge?

4 A. Yes.

5 Q. That this application was completed and then signed
6 by the insured?

7 A. Uh-huh (affirmative).

8 Q. And that a copy, a complete copy, has been given to
9 the insured and that the owner signed will retain a
10 signed copy hereof?

11 A. Yes.

12 Q. And you signed that?

13 A. I did.

14 Q. And what day is it dated?

15 A. 1/25/05.

16 Q. Okay. So at the time you signed this on 1/25/05,
17 it's not correct that the applicant has signed this --
18 had signed the application, is it?

19 A. Correct.

20 Q. So the certification is not correct?

21 A. Correct.

22 Q. And I assume you didn't give him a completed copy,
23 Mr. Cohen that is, on January 25th, '05?

24 A. Not on the 25th. If he came in on the 26th, he would
25 have gotten one that day.

1 Q. Okay. So at the time you signed the certification,
2 what was required by the certification wasn't correct?

3 A. Correct. Unless I put the wrong date.

4 Q. Now, the next page is what? Page five.

5 A. It is the offer of the uninsured motorist coverage
6 and underinsured coverage.

7 Q. Okay. And it has, it looks like, three paragraphs
8 on the page?

9 A. It does.

10 Q. And page six is what?

11 A. Page six is a continuation of the explanation of
12 that coverage.

13 Q. Okay. And page seven is what?

14 A. It's more information on that coverage.

15 Q. Okay. Now, do you have any specific recollection of
16 reading pages five, six, and seven to Mr. Cohen?

17 A. Not specifically, no.

18 Q. Do you have any specific recollection of seeing him
19 read it when he signed the application?

20 A. No.

21 Q. So do you know here today whether or not he ever
22 read it or it was ever read to him?

23 A. No. But he was given an opportunity to read it.

24 Q. And you know that how?

25 A. That's my procedure. I give them a chance to look

1 it over and read it.

2 Q. Can you say you specifically did it with Mr. Cohen?

3 A. Not specifically, no.

4 Q. You can only testify about what you typically do?

5 A. Correct.

6 Q. But you don't have any specific recollection of what
7 you did or didn't do with Mr. Cohen at all?

8 A. Correct.

9 Q. Okay. Turn to page eight for me.

10 A. Okay.

11 Q. What's page eight?

12 A. Page eight is the uninsured motorist coverage form.

13 Q. Okay. And this is the part where the insured or you
14 and the insured do what?

15 A. I discuss what the uninsured motorist coverage is,
16 let them know that it is required by law. And if they
17 wish to not purchase any additional coverage rather than
18 the minimum limits, they would have to sign this page.

19 Q. Okay. And on this page, it looks like it starts off
20 with fifteen/thirty/one hundred with a note the minimum
21 limits of uninsured motorist coverage are automatically
22 provided?

23 A. Correct.

24 Q. And then it's got twenty-five/fifty/ten with a
25 premium of seventy-one dollars, fifty/one hundred/twenty-

1 motorist coverage that would match his liability; is that
2 correct?

3 A. Yes, it is.

4 Q. Then it says, do you wish to purchase underinsured
5 motorist coverage.

6 A. And it's marked no.

7 Q. Okay. Now, again, what kind of mark is that on it?

8 A. It's a computer generated X.

9 Q. And so how did that come to be on this paper?

10 A. It would have been that we had discussed whether he
11 wanted that or not, and I would have chosen no. And
12 that's what it is.

13 Q. Okay. And do you have a specific recollection with
14 Mr. Cohen discussing with him whether or not he wanted
15 underinsured motorist coverage?

16 A. No, I don't.

17 Q. So again, you're testifying what you typically do?

18 A. Correct.

19 Q. But this X that's on here, it's a typewritten X; is
20 that right?

21 A. It is.

22 Q. So did Mr. Cohen make this mark?

23 A. He did not.

24 Q. It was on there because you generated it on the
25 computer that way?

1 A. Correct.

2 Q. And then it says, if your answer is no, then you
3 must sign here. And there appears to be a signature?

4 A. There is.

5 Q. Okay. And do you know whose signature that is?

6 A. I assume it's Mr. Cohen's.

7 Q. You don't know that for a fact?

8 A. No.

9 Q. You don't remember seeing him sign that the day you
10 did this?

11 A. I do not, no.

12 Q. Okay. Then underneath that it says, if the answer
13 is yes, then specify the limits which you desire. These
14 limits cannot exceed your motor vehicle insurance
15 liability limits. And there is a word typed, rejected.

16 A. Yes.

17 Q. How did that get on there?

18 A. The same way the X. It's computer generated.

19 Q. So that's not written by Mr. Cohen?

20 A. No, it's not.

21 Q. Okay. All right. And then page ten. What's page
22 ten?

23 A. It's the applicant acknowledgment form just saying
24 that they have read all the documentation and they
25 understand it.

1 Q. Okay. And it appears to be signed?

2 A. Yes.

3 Q. And dated?

4 A. It's dated 1/26/05.

5 Q. So again, the day after this paperwork was printed?

6 A. Correct.

7 Q. The next day it's signed?

8 A. Correct.

9 Q. All right. Now, other than this application, is
10 there any other paperwork related to the writing of the
11 policy for the motorcycle that you have in your file?

12 A. No.

13 Q. Now, when you -- let's talk about what you typically
14 do.

15 A. Okay.

16 Q. When you typically discuss underinsured motorist
17 coverage with clients, tell me what it is you tell them.

18 A. Typically I explain what the coverage is, that
19 uninsured is required by law. And you can purchase more
20 which it covers you if someone does not have any
21 insurance. And then underinsured I explain as it covers
22 you if they do not have enough to cover your damages.
23 And it is not required by law, but it would be a good
24 idea to cover -- to have that in case their coverage is
25 not sufficient.

1 Q. Okay. And I asked you in your deposition, I
2 believe, about the amount of coverage that you tell them
3 they should buy.

4 A. Correct.

5 Q. What is it you normally tell your clients they
6 should purchase?

7 A. I typically recommend that they buy the same
8 coverage limits all the way across because if the
9 coverage is good enough for the people riding around on
10 the street, then it should be enough for them too.

11 Q. Okay. And do you generally recommend -- well,
12 strike that. Do you generally tell your customers that
13 they can purchase lesser amounts of underinsured motorist
14 coverage?

15 A. Typically, I do not. But if they ask, I will
16 explain that you can purchase less than what is offered.

17 Q. Okay. And I believe I asked you -- and of course,
18 I'm talking about back in 2005, more specifically back in
19 2005. Was it your practice to tell your customers that
20 if they wanted to purchase it, it was recommended that
21 they buy the same limits as their liability?

22 A. Correct.

23 Q. And that you did not typically tell them they could
24 purchase lower limits of underinsured motorist coverage?

25 A. Correct.

1 Q. So if you just left Mr. Cohen to rely on his own
2 reading of the policy and didn't explain it to him, how
3 would that fit into your business model, Citizens
4 Insurance Agency's business model?

5 A. Do you mean would that be good practice?

6 Q. Right.

7 A. It probably would not be good practice.

8 Q. And would it be what you typically would do, leave
9 it to your insured to siphon out what these papers say?

10 A. No. We would explain it while we were going through
11 the forms what the coverage was.

12 Q. If they had any questions?

13 A. If they had any questions.

14 Q. Now, do you specifically recall whether or not --
15 well, strike that. Do you specifically recall how long
16 Mr. Cohen was at the office on January 26th, 2005?

17 A. No.

18 Q. So it could have been five minutes or fifteen
19 minutes?

20 A. It could have been, yes.

21 Q. Do you specifically recall sitting down with him and
22 going through each of those pages that we've been through
23 just a few minutes ago?

24 A. No.

25 Q. Do you have any independent recollection of

1 specifically discussing with him what underinsured
2 motorist coverage is?

3 A. No.

4 Q. Do you have any specific recollection discussing
5 with him what uninsured motorist coverage is?

6 A. No.

7 Q. Do you have any specific recollection discussing
8 with him what limits were available for underinsured
9 motorist coverage?

10 A. No.

11 Q. Do you have any specific recollection discussing
12 what the premiums were for underinsured motorist
13 coverage?

14 A. No.

15 Q. Can you tell us today definitively whether or not
16 you actually discussed those things with Mr. Cohen on the
17 26th of January?

18 A. Not to my recollection.

19 Q. Do you know if you even met with Mr. Cohen that day
20 when he signed the papers?

21 A. I would have, yes.

22 Q. Could someone else in your office have met with him
23 just to sign the papers?

24 A. It could have been possible.

25 Q. So if he showed up and you had already generated the

1 papers the day before and you were tied up with another
2 customer, is it possible that someone else brought them
3 out and he signed them?

4 A. If I have another customer they wait until I'm
5 finished, but it could have been possible that someone
6 else took care of him.

7 Q. Okay. So you don't even -- you don't know for sure
8 that you even saw him on January 26th?

9 A. No.

10 Q. Now, I believe in your deposition you told me that
11 until I pointed him out, you didn't -- you couldn't
12 recognize him?

13 A. Correct.

14 Q. And that -- do you know what clothes he was wearing
15 that day?

16 A. No.

17 Q. Do you know if he came with somebody or by himself?

18 A. No, I don't.

19 Q. Okay. You just frankly have no -- and I appreciate
20 your honesty. You just have no recollection of that
21 transaction?

22 A. I don't, correct.

23 Q. Okay.

24 MR. DRAISEN: If you'll give me just a second
25 Your Honor, I may be done.

1 THE COURT: You're fine.

2 MR. DRAISEN: I do have just -- I almost forgot
3 something important.

4 Q. I'm going to show you -- you mentioned in your
5 testimony before that Citizens had also written other
6 coverage for Mr. Cohen.

7 A. Correct.

8 Q. And do you know what kind of vehicle that was on?

9 A. Not specifically, no.

10 Q. Was that policy in effect prior to him requesting
11 the motorcycle insurance?

12 A. It was, yes.

13 Q. Okay. Let me show you what's been marked as exhibit

14 4. Can you tell me what that is?

15 A. This is his Auto Owners automobile policy.

16 Q. What's it commonly called, that page?

17 A. A dec. page.

18 Q. And what does a declarations page do?

19 A. It shows what coverage it has on his vehicle.

20 Q. So when you look at that, can you tell me what
21 coverages he had on his -- what kind of vehicle?

22 A. It was a 2001 Ford Expedition.

23 Q. Okay. Can you tell me what under bodily injury,
24 under coverages, what limits of bodily injury coverage
25 did Mr. Cohen have on his ...

1 A. He had those one hundred and three hundred limits.

2 Q. And what limits of property damage did he have?

3 A. One hundred thousand.

4 Q. Okay. And the next one says uninsured motorist B.I.

5 A. Yes.

6 Q. What limits of coverage did he have there?

7 A. One hundred/three hundred thousand.

8 Q. Okay. And under underinsured -- uninsured motorist

9 P.D., what limits are there?

10 A. One hundred thousand.

11 Q. And the next one says underinsured motorist B.I.

12 What limits does he have there?

13 A. One hundred/three hundred thousand.

14 Q. Okay. And the next one says underinsured motorist

15 P.D.

16 A. One hundred thousand.

17 Q. So did he, on his Ford Expedition, have underinsured

18 motorist coverage?

19 A. He did.

20 Q. And that policy was in effect at the time that he

21 purchased this motorcycle?

22 A. Correct.

23 Q. Now, do you know how long he had his Expedition

24 insured through Citizens?

25 A. No, I do not.

1 we're talking about them?

2 THE COURT: I do not.

3 MR. MURPHY: Do you want to hand those up --
4 I've got -- mine have different numbers on them, so we
5 could hand write in the numbers or ---

6 MR. DRAISEN: I don't have your last one.

7 MR. MURPHY: Which is the dec. pages? Yeah, I
8 can hand those up. Here's a copy of those.

9 THE COURT: Yes, sir?

10 MR. MURPHY: Thank you.

11 CROSS EXAMINATION

12 BY MR. MURPHY:

13 Q. Ms. Thomason, I'd like to ask you a couple questions
14 first about what you can learn from the two quote sheets
15 I think were marked as Joint Exhibit 3. Do you have
16 those documents in front of you, or did you hand them
17 back?

18 A. Not in front of me.

19 MR. DRAISEN: I put them back.

20 Q. Let's see. Let me hand you exhibit 3. As I
21 understand it, the top sheet is something that the
22 Citizens agency compiled for an agent to use either in
23 person or on the phone when they're first going to
24 understand what a customer may want?

25 A. Yes.

1 A. What he had.

2 Q. Would that be a reason as to why on the handwritten
3 sheet the desired limits you didn't write anything in?

4 A. Correct.

5 Q. If he had asked you, I want the same policy I have
6 on my car, would you have needed to write all those in by
7 hand, or would you have had access to that directly on
8 the computer screen?

9 A. I could have looked it up on the computer.

10 Q. And would your habit have been to simply just pull
11 it up to quote him what he had on his other existing
12 policy?

13 A. Yes.

14 Q. Now, would you -- if he had asked to give you the
15 same thing, would you have quoted him a policy for the
16 motorcycle with the same coverages and the same limits as
17 is on the Auto Owners policy for his Expedition?

18 A. Yes.

19 Q. Now, would you have printed that out, or would you
20 have only -- according to your normal procedure, would
21 you just print the quote sheet once you had agreed as to
22 what he really wanted on the policy?

23 A. It is my practice to print it after we have agreed
24 on what they want.

25 Q. Okay. So if you will look at page two of Joint

1 U.I.M./P.D.?

2 A. Yes. It just doesn't say B.I.

3 Q. Okay. But it doesn't say B.I. for U.M. either, does
4 it?

5 A. It does not.

6 Q. But it does show B.I. limits for uninsured motorist
7 coverage on the second column?

8 A. Yes.

9 Q. So when you said that there was no information on
10 this quote sheet showing none or rejected for U.I.M.
11 bodily injury coverage, you were mistaken, weren't you?

12 A. Yes.

13 Q. If U.I.M. bodily injury coverage had been selected
14 after your discussions with a customer on a Progressive
15 quote sheet, it would show right there on the third line
16 under coverages?

17 A. Yes.

18 Q. Now, would you have printed this if you had not
19 discussed all of the coverages shown there under the 2003
20 Yamaha with a perspective insured?

21 A. No.

22 Q. Is that your normal procedure?

23 A. That's my procedure.

24 Q. Did you ever deviate from that?

25 A. No.

1 Q. And do you have any explanation as to why Mr. Cohen
2 may have decided not to get underinsured coverage on his
3 motorcycle when he did have it on his car and that being
4 the only difference between the two policies?

5 A. Typically it's the cost.

6 Q. Okay. What was the cost -- and perhaps Joint
7 Exhibit 1, I believe, the application -- what would have
8 been the cost to have gotten the identical amount of
9 underinsured bodily injury coverage on the motorcycle
10 that he had on his car?

11 A. I do not have that exhibit.

12 Q. I'm sorry. I said I would give it to you, and I
13 left it over here. That is actually Joint Exhibit Number
14 2. I don't know why I wrote number one on my copy here.
15 That premium would have been two hundred seventy-eight
16 dollars; is that correct? On page nine?

17 A. That's correct.

18 Q. Okay. So rejecting that coverage was virtually
19 almost fifty percent of the total quote which was only
20 five hundred and fifty-two?

21 A. Correct.

22 Q. The entire Auto Owners policy on the Ford for all
23 coverages combined ended up being just three hundred and
24 ten dollars with a discount, didn't it?

25 A. It did.

1 A. Yes.

2 Q. And do you do that every time at the stage of a
3 quote before you go to the application?

4 A. Yes.

5 Q. Would there be any reason to believe you did not do
6 that with Mr. Cohen?

7 A. No.

8 Q. And after and only after an insured has said, that's
9 what I want, is that when you go to the application?

10 A. Yes.

11 Q. Okay. And then you input a lot of the same
12 information into the application. And in fact, the
13 coverages on page two of the application are identical to
14 that section of the quote sheet; is that correct?

15 A. That's correct.

16 Q. Do you have to redo it, or can you just -- will it
17 automatically format once you indicate go to application
18 or whatever button you have to hit?

19 A. Once the quote is agreed upon, you can -- most of
20 the information will go into the application part of it.

21 Q. Okay.

22 A. You don't have to re-enter.

23 Q. And so on page two when we look at the coverages and
24 the premiums, when we get to line three and it says
25 U.I.M./P.D. none, is that indicating that there's no

1 in another room and come back, or do you flip the pages
2 for them at your desk?

3 A. I flip the pages for them and explain each page to
4 them as we go through it.

5 Q. Now, the fact that you signed this on the 25th, do
6 you know for sure whether you were with Mr. Cohen when
7 this was reviewed and signed by him?

8 A. No.

9 Q. Would it be your procedure to sign it after the
10 insured has gone through it, or would you sign it as you
11 got to page four?

12 A. After they have gone through it.

13 Q. Okay. Is it possible you looked at the typed date
14 on this when you signed it and didn't realize it was the
15 26th, or do you think you really signed it the day before?

16 A. It's possible I just misprinted the date.

17 Q. Okay. Your procedure would have been to sign it
18 after you had gone through the entire form?

19 A. Yes.

20 Q. And then after you had done that and everything has
21 been signed, policy number filled in, would you then
22 present a copy to an insured?

23 A. Yes.

24 Q. Do you do that every time?

25 A. Yes.

1 Q. Do you ever not do it?

2 A. No.

3 Q. Okay. Now, when you get to the page five, six, and
4 seven of this exhibit, those are the narrative
5 explanations of these optional coverages, both extra
6 amounts of uninsured or U.M. coverage and then
7 underinsured or U.I.M. coverage?

8 A. Yes.

9 Q. Do you give an insured an opportunity to read those?

10 A. I do.

11 Q. Do you read those if you're not requested to?

12 A. No.

13 Q. Do you explain when you get to those pages in
14 general through a summary or a brief description as to
15 what is contained in the typewritten parts of those
16 pages?

17 A. Yes.

18 Q. And then do you review and confirm the coverages
19 that are either -- that are being selected whether it's
20 none and hence a rejection or whether some amount and
21 possibly even the identical amount of the liability
22 coverage?

23 A. Yes.

24 Q. When you do that, is the information on the page
25 already there? Is everything that's typewritten on this

1 exhibit on pages eight and nine present before you

2 present that to an insured?

3 A. Yes, it is.

4 Q. So when Mr. Cohen would have gone and reviewed page

5 eight, it would have already indicated that he was

6 purchasing uninsured motorist coverage in the amount of

7 one hundred thousand/three hundred thousand/fifty

8 thousand?

9 A. Yes.

10 Q. You didn't add that later?

11 A. No, I did not.

12 Q. And that would have been consistent with what he had

13 told you at the quote stage and what you would have

14 reviewed on the coverages that appear on page two of the

15 application?

16 A. Yes.

17 Q. So this would actually be the third time you would

18 be reviewing that selection with an insured?

19 A. Yes.

20 Q. Does that happen every time you go through a policy

21 like this?

22 A. Yes.

23 Q. And then you would have gone over page nine with Mr.

24 Cohen per your practice?

25 A. Yes.

1 A. Yes.

2 Q. And the top of his signature may be a half inch from
3 that X?

4 A. Yes.

5 Q. And then right below, about a half inch below his
6 signature, is the word what in all caps?

7 A. Rejected.

8 Q. Okay. And is the transaction complete without a
9 signature from the named insured on that page?

10 A. No.

11 Q. And then if you'll turn to page ten of exhibit 2.
12 That's the acknowledgment?

13 A. It is.

14 Q. And why do you have an insured acknowledge that they
15 read this form?

16 A. To make sure that they understand the information
17 that's been presented to them.

18 Q. Okay. And by signing this, an insured is saying,
19 yes, I read this form or had it explained to me and the
20 selections shown on it are my own?

21 A. Yes.

22 Q. Is there any question in your mind that by doing so
23 that those were Mr. Cohen's selections?

24 A. No.

25 Q. And was that consistent with what occurred at the

1 for a hundred and two dollars?

2 A. Yes.

3 Q. Collision at a hundred and ninety-four dollars a
4 year premium with a five hundred dollar deductible and
5 roadside assistance for eight dollars?

6 A. Yes.

7 Q. So he was -- does it appear from this that he's
8 trying to buy a cheap policy?

9 A. No.

10 Q. Okay. So do you have any independent recollection
11 of having a discussion with Greg Cohen about the cost
12 specifically of the additional underinsured motorist
13 coverage?

14 A. Not specifically.

15 Q. So any of those questions Mr. Murphy asked you would
16 be complete speculation on your part; is that correct?

17 A. Yes.

18 Q. You have no recollection that y'all discussed cost
19 savings at all?

20 A. No.

21 Q. Or that cost was even an issue?

22 A. No.

23 Q. Okay.

24 MR. DRAISEN: I think that's all I have, Your
25 Honor.

Testimony of Greg Cohen

- 1 A. Lawrenceville -- Dacula, Georgia.
- 2 Q. And how long have you lived there?
- 3 A. Three years -- four years.
- 4 Q. And how long ---
- 5 A. Five years. I'm sorry.
- 6 Q. And how old are you?
- 7 A. Thirty-six.
- 8 Q. Okay. How far did you go in school?
- 9 A. High school education.
- 10 Q. Do you have any additional education or training
- 11 beyond high school?
- 12 A. Just a couple of classes.
- 13 Q. Did you receive any other certificates or degrees of
- 14 any kind?
- 15 A. No.
- 16 Q. Okay. Now, what is it that you do for a living?
- 17 A. Textile sales and purchasing.
- 18 Q. And who's that with?
- 19 A. My brother and my father.
- 20 Q. Okay. And what's the name of your business?
- 21 A. Orr Lyons Industries.
- 22 Q. Okay. And who started that business?
- 23 A. My grandfather did.
- 24 Q. Okay. And from your grandfather, who did it go to?
- 25 A. My father.

1 Q. And then to whom?

2 A. My brother.

3 Q. And then to whom?

4 A. And now myself.

5 Q. Okay. And what is your role with that business?

6 A. Sales and purchasing, and I do a lot of traveling.

7 Q. Okay. So you're kind of the guy on the ground. Is
8 that what you do?

9 A. I'm a grounder in the air.

10 Q. So you fly from place to place or you drive from
11 place to place?

12 A. Yeah.

13 Q. What do you do?

14 A. I sell textiles pretty much all over the United
15 States, Central and South America. And we also do some
16 -- I also do some purchasing.

17 Q. And when you purchase, what are you purchasing?

18 A. Textiles, fabrics.

19 Q. So the raw materials?

20 A. Yeah.

21 Q. Okay. Who does the business end of things at Orr
22 Lyons?

23 A. My brother does.

24 Q. Is that his responsibility to run the office?

25 A. Correct.

- 1 Q. What else does he do?
- 2 A. Plant manager. He runs all of the employees.
- 3 Q. Okay. That's not part of your job duties?
- 4 A. No.
- 5 Q. All right. And let's see. Back in 2005, did you
- 6 live in South Carolina?
- 7 A. Yes.
- 8 Q. And where in South Carolina did you live?
- 9 A. In Iva.
- 10 Q. And did you own a motorcycle?
- 11 A. Yes, I did.
- 12 Q. Okay. When did you purchase the motorcycle?
- 13 A. Back in 2004, I believe it was.
- 14 Q. Okay. When you purchased the motorcycle, what did
- 15 you do about insuring it?
- 16 A. When I purchased it, I just got the basic insurance
- 17 at the dealership. I went ahead and bought quick
- 18 insurance so I could go ahead and register it in South
- 19 Carolina so I could bring it home with me.
- 20 Q. So in other words, you had to -- in order to be able
- 21 to drive it off the lot or take it home or whatever, you
- 22 had to have insurance, so you took what they sold you at
- 23 the dealership?
- 24 A. Correct.
- 25 Q. Was there a point in time when you decided you

1 wanted to change that insurance?

2 A. Yes.

3 Q. Do you know approximately when that was?

4 A. Probably as soon as I got it home.

5 Q. Then at some point in time you made contact with an
6 insurance company in South Carolina about writing
7 coverage for your motorcycle?

8 A. Yes, I did.

9 Q. Who did you call?

10 A. Citizens Insurance.

11 Q. Why did you call Citizens Insurance Agency?

12 A. We have a lot of other insurance with them through a
13 lot of different policies.

14 Q. Did Citizens Insurance have other insurance written
15 for you at that time?

16 A. Yes, they did.

17 Q. And do you remember how you -- how did you make
18 contact with Citizens about writing a policy for your
19 motorcycle?

20 A. I called them up and told them I had just purchased
21 a motorcycle, if they could do the same coverage as my
22 other vehicles.

23 Q. Okay. So let's back up a second. So you called
24 Citizens Insurance Agency?

25 A. Correct.

1 Q. Now, do you recall who you spoke to?

2 A. No, I don't.

3 Q. Do you know if it was a male or female?

4 A. It was a female.

5 Q. Okay. Was it somebody that you had dealt with
6 before to your knowledge?

7 A. Yes, it was.

8 Q. So you recognized the voice?

9 A. I did recognize it. And they knew who I was, and
10 that was all I remember.

11 Q. Now, what was it that you told that person that you
12 wanted in terms of coverage?

13 A. I just purchased a motorcycle. I want the same
14 coverage that I have on my Expedition, my other vehicle.

15 Q. All right. And that's specifically what you told
16 them?

17 A. Correct.

18 Q. Now, what did they say to you to your recollection
19 in response? Anything you recall?

20 A. Nothing.

21 Q. They didn't say anything back to you?

22 A. No.

23 Q. Or you don't recall?

24 A. I don't recall.

25 Q. Okay. All right. And how long did that phone

1 conversation take approximately?

2 A. A few minutes. I think she just asked about the
3 motorcycle.

4 Q. Okay. Do you recall what would have been asked?

5 A. What year, what size motorcycle and when I purchased
6 it.

7 Q. Okay. Do you recall any specific discussions with
8 you at that time about whether you want -- you know, what
9 limits you wanted of coverages?

10 A. Specifically, no.

11 Q. Do you recall any discussions about whether or not
12 you wanted uninsured motorist coverage?

13 A. No.

14 Q. Do you recall any discussions about whether or not
15 you wanted underinsured motorist coverage?

16 A. No.

17 Q. Okay. Now, after that phone call, what did you have
18 to do or what did they ask you to do in order to get that
19 policy?

20 A. Come in the following day to sign the paperwork.

21 Q. Okay. And did you do that?

22 A. Yes, I did.

23 Q. Okay. So tell me about what -- tell me what
24 happened the next day.

25 A. I was at the office in Iva on my way back to

1 Georgia. They said the paperwork was ready. I stopped
2 in, signed the paper in a few minutes and left.

3 Q. How long do you think you were there?

4 A. Less than five minutes.

5 Q. Do you specifically recall sitting down with Ms.
6 Thomason?

7 A. I do believe -- I remember sitting down. I don't
8 remember if it was her, but I do remember sitting down
9 for a few minutes. And that was it.

10 Q. Do you specifically recall anyone going through page
11 by page explaining to you what was in the paperwork?

12 A. No, I do not.

13 Q. Did they do that? Did they specifically go through
14 the papers and explain page by page to you?

15 A. No, they did not.

16 Q. Did you have a discussion with anyone there about
17 what limits of liability you wanted?

18 A. No, I did not.

19 Q. Did you discuss with them the day you were in the
20 office to sign the policy about what limits of uninsured
21 motorist coverage you wanted?

22 A. No, I did not.

23 Q. Did you discuss with them specifically that day what
24 limits of underinsured motorist coverage you wanted?

25 A. No, I did not.

1 Q. So it's your testimony that they did not have these
2 discussions with you?

3 A. No, I did not -- they did not.

4 Q. And do you have any idea why that might have been?

5 A. I don't know. Maybe they were busy.

6 Q. Okay. Now, let me show you what's been marked as
7 exhibit 2. Can you flip through exhibit 2 which is the
8 -- just for the record, that's the application. Can you
9 tell me -- flip through that document and tell me where
10 on the document is anything that you wrote? Let's do
11 this. Look at page one. Is there anything on here in
12 your handwriting on page one?

13 A. No, there is not.

14 Q. Look at page two. Anything on page two in your
15 handwriting?

16 A. No, there is not.

17 Q. Look at page three. Is there anything on page three
18 that you wrote?

19 A. My signature.

20 Q. And what about the date?

21 A. And the date.

22 Q. Okay. So you believe you signed and dated that
23 page?

24 A. Correct.

25 Q. Look at page four. Anything in your handwriting?

- 1 A. No, there is not.
- 2 Q. Anything in page five?
- 3 A. No, there is not.
- 4 Q. Anything on page six?
- 5 A. No.
- 6 Q. Anything on page seven?
- 7 A. No.
- 8 Q. Anything on page eight?
- 9 A. No.
- 10 Q. Anything on page nine?
- 11 A. Yes.
- 12 Q. What's on page nine?
- 13 A. My signature.
- 14 Q. Okay. Did you mark anything else on page nine?
- 15 A. No, I did not.
- 16 Q. Importantly on page nine, look at the top of that
- 17 underneath the printed name. You see where it says what
- 18 this is? What's this form?
- 19 A. Offer of underinsured motorist coverage.
- 20 Q. Okay. Now, look down here below. You see where it
- 21 says, do you wish to purchase underinsured motorist
- 22 coverage?
- 23 A. Yes.
- 24 Q. And you see there's a typed X by the no?
- 25 A. Correct.

1 Q. Did you make that mark?

2 A. No, I did not.

3 Q. Okay. You sure about that?

4 A. One hundred percent.

5 Q. Okay. Go to page ten. Anything on page ten that's
6 in your handwriting?

7 A. Yes, there is.

8 Q. What's that?

9 A. My signature and the date.

10 Q. Okay. So other than the three places you signed and
11 the two places you wrote the date, is anything on here in
12 your writing?

13 A. No, there is not.

14 Q. Okay. Now, was there ever a discussion when you
15 were in the office on the 26th of January with Ms.
16 Thomason about cost being an issue?

17 A. No, there was not.

18 Q. And you're positive about that?

19 A. One hundred percent.

20 Q. Okay. Why is it that you would be positive about
21 that?

22 A. We have a lot of insurance, both business and
23 personal. We look at -- we have them look after our best
24 interest. Whatever they recommend, we go ahead and get
25 higher premiums.

1 Q. So did you specifically tell her you did not want
2 underinsured motorist coverage?

3 A. No, I did not.

4 Q. Did you specifically tell her that you were
5 concerned about the premium that it would cost you to buy
6 underinsured motorist coverage?

7 A. No, I was not.

8 Q. Did Ms. Thomason explain to you that if you did not
9 purchase underinsured motorist coverage on your
10 motorcycle and that you were hurt, you could not collect
11 the underinsured motorist coverage ---

12 A. No, she did not.

13 Q. --- on your automobile?

14 A. I didn't.

15 Q. So there was no discussion about that?

16 A. No.

17 Q. Was there any discussion with Ms. Thomason about the
18 effect of not purchasing underinsured motorist coverage
19 if you were injured?

20 A. No, there was not.

21 Q. Are you positive about that?

22 A. One hundred percent.

23 Q. Now, after you went there and signed the papers to
24 get the insurance on your motorcycle, did you have any
25 other discussions with Citizens Insurance Agency or

1 Meredith Thomason about that policy?

2 A. No, we did not.

3 Q. So in the subsequent renewals or years, whatever,
4 how did you -- how did the renewals happen?

5 A. They just kept renewing them.

6 Q. Okay. So there was no discussions with you about
7 whether you wanted to change your coverage or up your
8 coverage or lower your coverage or any concern about the
9 premium and how much it was costing you?

10 A. No.

11 Q. Okay. And was it Citizens Insurance Agency that was
12 sending you the renewals, or was it Progressive Insurance
13 Company?

14 A. I don't recall.

15 Q. Do you even recall seeing the renewals?

16 A. No.

17 Q. What would you have typically done with the renewals
18 when they came in the mail?

19 A. Put them in the office and they get filed away.

20 Q. So it's your practice that you would have gotten
21 them and stuck them in a file?

22 A. Correct.

23 Q. And why would you do that?

24 A. Usually it's just the renewal. There's no changes
25 to it, so we just file them away.

1 people sign documents, correct?

2 A. Yes.

3 Q. That's why we sign credit card receipts so when the
4 bill comes time to be paid, we don't tell Visa, hey, I
5 didn't eat at that restaurant. I didn't know it cost
6 that much. You signed the receipt. You have to pay.
7 You've obligated yourself to pay for it, haven't you?

8 A. Correct.

9 Q. Checks the same way. Leases the same way. Deeds
10 and mortgages and notes and other types of agreements the
11 same way, correct?

12 A. Correct.

13 Q. When you sign a document like that, whether you read
14 it or didn't read it, you're bound by the information
15 that's contained in that document. That's what a
16 signature is there for, isn't it?

17 A. Yes, it is.

18 Q. Okay. And you don't dispute at all that on exhibit
19 2, the application for your motorcycle policy, that you
20 signed the policy in several places. In fact, all the
21 places where it purports to be your signature is your
22 signature, correct?

23 A. Yes, it is.

24 Q. And you understand and understood before you signed
25 it that day the legal significance of signing documents

1 and plain on the documents that you reviewed and signed?

2 A. I did not review them.

3 Q. Okay. So your excuse today in this courtroom is
4 that I just didn't look over it very close, maybe I
5 shouldn't have signed it?

6 A. I depended on my insurance agent for all of my
7 insurance coverages.

8 Q. Well, why don't you turn it over to page nine where
9 your first signature appears. Now, I assume back in 2005
10 your eyesight was fine?

11 A. Correct.

12 THE COURT: Which exhibit are you on, 3?

13 MR. MURPHY: This is on Joint Exhibit 2. It's
14 a ten-page -- the first page says South Carolina
15 Motorcycle Policy. And this would be page nine.

16 Q. Do you have that in front of you, Mr. Cohen?

17 A. Yes.

18 Q. That is your signature there. You have a very thin
19 signature. I mean, it's vertical kind of, isn't it?

20 Mine is kind of flatter and fatter, kind of like me, I
21 guess. You couldn't have put the pen on that piece of
22 paper without seeing the no box being checked, could you
23 have?

24 A. It depends.

25 Q. Well, I mean, by my estimation it's less than a half

1 inch away from where your top of your signature is there
2 on the "H" in Cohen?

3 A. Correct.

4 Q. So by signing it -- and it actually goes through the
5 quoted word no, if your answer is no, then you must sign
6 here. So you knew what you were signing when you signed
7 it?

8 A. No, I did not.

9 Q. Okay. Well, let me ask you this. With your high
10 school education, you understand what it means, if your
11 answer is no, then you must sign here. Would that mean
12 to you that if you signed there your answer was no?

13 A. Correct.

14 Q. Okay. And the answer has to be to a question,
15 correct?

16 A. Yes.

17 Q. And do you see right above the statement there that
18 there's a question?

19 A. I see it now.

20 Q. Okay. You see it now. You just didn't happen to
21 see it the day you signed it. Is that your testimony?

22 A. I didn't review the paperwork.

23 Q. Okay.

24 A. She just pointed for me where to sign.

25 Q. Okay. Well, the question was do you wish to

1 A. Which of the declarations pages?

2 Q. That would be on the Joint Exhibit Number 1. Did
3 you receive -- you did receive those declarations pages
4 and renewal notices, didn't you?

5 A. I don't recall.

6 Q. Okay. Did you notice that the coverage had been
7 rejected when all the other coverages show a limit there?

8 A. I see it now.

9 Q. Okay. Did you see it when you received this in the
10 mail from Progressive?

11 A. I don't believe so.

12 Q. When it was renewed in January of 2006, did you
13 review it and notice that underinsured motorist bodily
14 injury coverage had been rejected?

15 A. No, I did not.

16 Q. When you received the second renewal in 2007, did
17 you notice that underinsured motorist bodily injury
18 coverage had been rejected?

19 A. No, I did not.

20 Q. You do acknowledge that you never paid any money for
21 underinsured motorist coverage under this policy, don't
22 you?

23 A. I'm unaware of it.

24 Q. Okay.

25 A. The bills that we get don't have it itemized.

Transcript of Record, Motion to Reconsider, May 27, 2011

State of South Carolina) In the Court of Common Pleas
County of Anderson) Tenth Judicial Circuit

Greg S. Cohen, et al.,) Transcript of Record
) 2007CP0402704
 Plaintiffs,)

 V.)

Progressive Northern)

Insurance, et al.,)

Defendants.)

May 27, 2011

Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge

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

Daniel L. Draisen, Esquire
Attorney for the Plaintiff

James Victor McDade, Esquire
John Robert Murphy, Esquire
Attorneys for the Defendants

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E XFriday, May 27, 2011

Motion to Reconsider.....	3
Certificate of Reporter.....	26

NO EXHIBITS WERE INTRODUCED

1 Friday, May 27, 2011

2 THE COURT: Cohen vs. Progressive?

3 MR. DRAISEN: Yes, sir.

4 THE COURT: All right. Yes, sir.

5 MR. DRAISEN: Please the Court, Your Honor. Judge,
6 this is a motion to reconsider your order dated July the
7 29th -- July the 9th, 2010. This order came after we had the
8 trial in September of 2008 -- 2000 -- I'm sorry, the trial
9 September 10th, 2008, the order July 9th, 2010. I'll get the
10 years right. So there was quite a gap. There was quite a gap
11 between trial and the order in the case.

12 THE COURT: Right.

13 MR. DRAISEN: If you recall, procedurally,
14 Mr. Murphy and I both filed cross motions for summary judgment
15 in this case. The Court denied our cross motions for summary
16 judgment both ways. The matter was tried. Essentially, the
17 same information and same arguments were advanced at trial as
18 had been advanced in summary judgment.

19 This is, Your Honor, a pre Floyd UIM offer case,
20 and, Your Honor, we're here to ask the Court to reconsider its
21 order because -- a couple reasons. Number one is when we got
22 the call about the Court's ruling -- I basically got a call
23 from the law clerk, I think, who said the Court asked
24 Mr. Murphy to draft an order.

25 I wrote a letter to the Court and, you know, I asked

1 can we have some basis for which the Court is making its
2 decision so that we know what's drafted is what the Court
3 intends. And the response I got, I believe was, Mr. Murphy
4 knows how to write an order and if it's not what I want I'll
5 let him know, something to that affect, essentially, and I
6 think I got that from the law clerk not from Your Honor, but,
7 you know, basically, we're going to review the order.

8 And when I got the final order and it was signed,
9 particularly at page five of the order, the Court finds that
10 despite the fact that the conclusive presumption in
11 38-77-350(b) does not apply since Cohen didn't personally mark
12 the form rejecting the coverage and instead conveyed his
13 objection to the agent who inputted the rejection in the
14 computer the offer form standing alone constitutes a
15 meaningful offer of coverage.

16 And that finding that the form itself constitutes a
17 meaningful offer of coverage continues through the Court's
18 order in its evaluation of section 38-77-350(a) with the
19 compliance of the form, which is the next section of the
20 order. Progressive's form fully complies with the Wannamaker
21 requirements and then even if it doesn't there's a part where
22 you finally discuss on page nine the transaction with the
23 agent demonstrates a meaningful offer. So I want to focus on
24 that part of it just briefly, Your Honor, and the law.

25 And what I want to do, Judge, if you'll permit me,

1 I'll try to make this as easy as I can, believe it or not.

2 THE COURT: No problem.

3 MR. DRAISEN: I'd like to hand this up. I've got a
4 few of these to hand up. But I think this will be instructive
5 and it may be easy, and I'd like to make this part of the
6 record as well, each of these pieces of paper I'm going to
7 hand up for this hearing.

8 Judge, this first document that I'm handing up is a
9 timeline of the applicable law. And I think that the hard
10 thing when you have these UIM cases is to figure out what was
11 the state of the law that's applicable to the cases before the
12 Court because there's been so many cases and so many things
13 that have changed over the course of this that it's important
14 to figure out where does this policy lie, what was the timing
15 involved in this policy.

16 So, Your Honor, what I've done here is I've shown
17 that the Wannamaker case was adopted in 1987. That case
18 creates the test for establishing what's necessary to
19 constitute a meaningful offer.

20 In response to Wannamaker the Legislature adopted
21 sections 350(a) and (b) in 1989 which essentially codified the
22 Wannamaker requirements for the form to be issued by the
23 Department of Insurance in terms of the form itself having
24 dot, dot, dot, what needs to be in there for the form to
25 constitute an offer that has the necessary elements.

1 Then you had the Hanover vs. Horace Mann case, you
2 had the Woodson appeal case with the Court of Appeals in 2002,
3 and then in January of 2005 the Cohens' policy was issued.
4 And then later in 2005, December 28th, 2005, the Floyd case
5 came out.

6 Now, there's no dispute between Mr. Murphy and the
7 Cohens -- I should say Progressive and the Cohens that the
8 Cohens did not -- Mr. Cohen did not check the box.

9 THE COURT: Right.

10 MR. DRAISEN: It's a typed-written box. The agent
11 says, I input it in the computer, etcetera. So there's no
12 dispute with that.

13 The question for the Court is well, what does that
14 do? What's the affect of the fact that he didn't check the
15 box? And so, Your Honor, you go beyond the Floyd case, and
16 the Floyd case says very clearly -- and I don't know how long
17 it's been since you've looked at Floyd but Floyd -- that is
18 the issue in the Floyd case.

19 In the Floyd case basically the Court says,
20 Accordingly, we answer no to the question certified by
21 District Court. We conclude that the Legislature intended, by
22 the plain and unambiguous term of the statute, for the insured
23 herself to personally mark, select and sign the UIM offer form
24 pursuant to 38-77-350(a).

25 The offer form is not properly completed and

1 executed by the named insured thus triggering the conclusive
2 statutory presumption of a meaningful offer was made pursuant
3 to 38-77-350(b), unless the insured herself personally marks,
4 selects and signs the form.

5 Imposing these requirements the Legislature
6 apparently recognized that an insured person who is required
7 to personally complete an offer form inevitably will find it
8 necessary to seek further explanation from the insurance agent
9 when he or she is unable to complete the form due to a lack of
10 knowledge or understanding of the concepts of UM and UIM
11 coverages.

12 Then they say, Our decision does not resolve the
13 question of whether the insurer made a meaningful offer in
14 this case. We simply conclude that the insurer, by allowing
15 an agent or employee to partially complete the offer form in a
16 manner inconsistent with the plain terms of Section 38-77-350,
17 is denied the benefit of a conclusive statutory presumption a
18 meaningful offer was made.

19 Such case presents a factual issue for resolution by
20 the fact finder, with the insurer bearing the burden of proof
21 and persuasion in demonstrating whether a meaningful offer was
22 made to the insured pursuant to the Wannamaker analysis.

23 Now, why did I go over all that with you? I went
24 over all that with you, Your Honor, because in this case I've
25 done a little summary sheet of the law applicable to Cohen vs.

1 Progressive matter. So what you have is Code Section
2 38-77-350(a) establishes the requirements for forms used by
3 the insurer.

4 If the form complies 38-77-350(b) provides a
5 complete conclusive presumption in favor of the insurer that
6 the insured made a knowing waiver of the option to purchase
7 additional coverage.

8 The form did not comply in this case because Cohen
9 didn't mark whether he chose to accept or reject the form, and
10 I've made just a little chart there for you. So if you have
11 an offer form that meets the statutory requirement, plus
12 completed correctly per Floyd it equals the presumption of a
13 meaningful offer; however, if the offer form meets the
14 statutory requirement and it's not completed correctly per
15 Floyd it's no offer, per Atkins. The form itself is no offer.

16 If the insurer is not entitled to the presumption of
17 a meaningful offer it can then prove the sufficiency of its
18 offer by showing that it complied with Wannamaker, and I
19 provide all those sections for you, and again reiterate my
20 argument with regard to that.

21 So lastly, and hopefully most helpfully, what I've
22 done, Your Honor, and this is a good one for you to look at, I
23 hope, which is this is a summary of Mr. Murphy's arguments and
24 my arguments in a simple chart, two columns.

25 Mr. Murphy has argued and the Court has accepted

1 your argument on the left, which is J. R. Murphy's argument
2 which says, essentially, that you take the Wannamaker test.
3 That's how it starts. And that sets forth the requirements
4 that need to be on the form. And then you look at Section
5 350(a) which says, Well, the form has to include, if it's
6 accepted by the Department of Insurance, the things set forth
7 in 350(a).

8 If the form complies you move on to 350(b) and you
9 see if it was properly completed by the insured. Now, this is
10 Floyd law. This is not current. They've changed the statute
11 in 2006. So this is pre 2006 statute. Then you go on to the
12 Wannamaker test, according to Mr. Murphy. If you don't
13 complete it properly you go back to Wannamaker, according to
14 Mr. Murphy, and you apply the Wannamaker.

15 But Mr. Murphy makes a circuitous argument that all
16 you do when you do that is go back and look to see that the
17 form complied with the 350(a), and if the form complied with
18 350(a) then the conclusion you must make is that form equals a
19 meaningful offer.

20 What you've done in this order, Your Honor, is
21 essentially you've stepped into the shoes of Legislature and
22 you have gotten rid of 350(b). I mean, this holding would
23 essentially say that 350(b) no longer exists.

24 The Court's order says you ignore 350(b), the
25 Legislature must no longer have given any intent as applicable

1 in this case to say the insured must mark the form. I mean,
2 that's what 350(b) says as it's applicable to this case. So
3 if you buy Mr. Murphy's argument and the order that's in the
4 Court's order right now, as it's stated in your order, then
5 you have to accept that that's the way the law would look.

6 If you look at my argument, Your Honor, which is on
7 the other side, I agree you look to Wannamaker factors, I
8 agree you go to 350(a) and I agree you go to 350(b). But
9 under 350(b) you have to look to Floyd because that's the law
10 that's applicable to this policy. It's a 2005 policy. And
11 Floyd says it must be complete by the insured. So you don't
12 have a complying form. Then you have to go make a Wannamaker
13 analysis, and it stops there. You have to make a Wannamaker
14 analysis in the absence of the form, okay, because the form
15 doesn't comply. The form cannot constitute an offer.

16 Atkins, the Atkins case says a noncomplying form
17 equals no offer at all. That's the Atkins case, 2008 case
18 says that. So that's the difference between his position and
19 my position. And I think that the Court has to understand
20 what the stated law was at the time.

21 Now, Your Honor, I'm sure it's going to be important
22 to be raised, will come up, you've probably seen the Wiegand
23 case, which is the most recent Supreme Court case, filed
24 January 31, 2011. I want to go ahead and just very quickly
25 address why that case is clearly distinguishable because I'm

1 sure the Court is aware of the case.

2 In this case Wiegand signed the form and the parties
3 disagreed over who completed the form, and let me make sure
4 you understand. Somebody checked the boxes.

5 THE COURT: Right. I get it. I get it.

6 MR. DRAISEN: You probably heard this argument
7 before.

8 THE COURT: Yeah.

9 MR. DRAISEN: Okay. So anyway, what this boils down
10 to at the end of the Wiegand case the Court says that they
11 concluded that by signing the form along with the other
12 evidence mentioned above they found that USAA met its burden.
13 Well, the other evidence mentioned above are all the
14 Wannamaker factors.

15 So essentially, Your Honor, what I'm saying is the
16 Court has to make a complete Wannamaker analysis in this case
17 and decide whether or not a meaningful offer was made in order
18 to find that there was -- that there's no reformation of the
19 policy. So what you have to do in your order is you go look
20 to the last part of this order, which is paragraph two on page
21 nine, even if the form doesn't satisfy the requirements of
22 Code Section 38-77-350 in Wannamaker, the plaintiff's
23 transaction with Ms. Thomason demonstrates that a meaningful
24 offer was given, the Court says.

25 Well, Your Honor, I've supplied the Court with,

1 attached to my motion and in the additional exhibits, the
2 additional exhibits contains the transcript or sections of the
3 transcript from trial itself.

4 And basically, Your Honor, our position is simple.
5 Ms. Thomason doesn't remember squat about this transaction.
6 She didn't know who Greg Cohen was. She couldn't identify
7 him, she didn't know what they talked about, she didn't know
8 how long he was in the office, she didn't know anything that
9 she did with him. She couldn't even tell you that she was
10 there when he signed the papers.

11 All Mr. Murphy had her do is testify about what she
12 typically does, and it's our position, Your Honor, there is
13 plenty of cases where the Court has already found that's not
14 sufficient. They have to actually be able -- because the
15 burden is on the insurer to show you that they made a
16 meaningful offer under the factors of Wannamaker.

17 So to have them put up evidence from the agent that
18 says, I don't remember anything and all I can tell you is what
19 I typically do, and that meets the burden? I mean, that's
20 what they are arguing, and that's what the order says. The
21 order says -- basically it cites all the things that she
22 typically does.

23 So the Court has found it was sufficient for the
24 insurer to meet its burden by simply having the agent testify
25 what she typically does, not what she did with Mr. Cohen.

1 Now, Mr. Cohen testified specifically that nobody
2 went over it with him, nobody asked questions, nobody told him
3 what he was signing. Nobody did any of that stuff. He was in
4 and out of there. So that, you have specific testimony about
5 what happened from him but you don't have anything like that
6 from the perspective of the insurer who has the burden. We
7 don't have the burden. They have the burden to show you that.
8 But the finding in your order says that that was sufficient.

9 So, Your Honor, we're asking the Court to reconsider
10 this for two main reasons; number one because we frankly don't
11 believe that the law is or should be that the form itself can
12 constitute a meaningful offer in a Floyd case.

13 Later on after 2006 when the Legislature came in and
14 changed the statute and said that an agent can complete the
15 form, I would agree with you. After 2006 we don't have that
16 issue. But this is a case that exists before the change in
17 the statute and Floyd makes it very clear. That's a Supreme
18 Court case that has never been overruled by any other case,
19 with relation to policies issued before then, okay, never been
20 overruled, that says the insured had to mark that box.

21 So the law applicable is the Floyd law and pre Floyd
22 law, not post Floyd, and so any of those arguments, I think
23 that's the distinction. I mean, you've got a finding here,
24 you know, a ruling on the law that the offer form itself
25 constitutes a meaningful offer, and I don't think that's the

1 law. I don't think that's correct on it and I'd ask you to
2 reconsidering that point.

3 And, Judge, when you reconsider that point -- and
4 understand, I'm not saying we win if you agree with me. We
5 don't win, necessarily. You still can go and make a
6 Wannamaker analysis and you may say the evidence is sufficient
7 under Wannamaker to -- you know, for the insurer to still
8 prevail; however, when you look at that I would ask again that
9 you actually look at the facts and testimony because the
10 insurer carries the burden at that point to prove to you in
11 the absence of the form that they made a meaningful offer, and
12 I think when you look at the evidence in that light you'll see
13 that they did not do that.

14 THE COURT: Okay. All right. Just address the
15 Floyd issue. I mean, I get the rest of it. I'm just -- this
16 fell between the cracks between Floyd and the legislative
17 correction.

18 MR. MURPHY: Well, Your Honor, I think first of all
19 I would just preface my remarks saying that nothing we've
20 heard is anything other than a rehash of what was previously
21 argued and not accepted by the Court, and so it's not the
22 proper subject of a Rule 59 motion. He's free to argue it if
23 he takes it up.

24 But having said that, Your Honor, in Floyd you have
25 to understand, and I have a little familiarity with it since I

1 lived with that case for about four years, Floyd is a
2 certified question limited to one thing and one thing only,
3 what has to happen in order for an insurance company to take
4 advantage of the conclusive presumption.

5 A conclusive presumption is a drastic remedy and so
6 very specific execution, the Supreme Court concluded, had to
7 occur to get a conclusive presumption; however, that same
8 statutory code section, 350, requires insurers to use a
9 written form on new policies, which Mr. Cohen's was. So there
10 is absolutely no way the Floyd case could ever stand for the
11 proposition that you throw the baby out with the bath water.

12 The written form may not entitle the insurance
13 company to a conclusive presumption because at that time it
14 was assumed that if they signed it that's all the insured had
15 to do, and so that the agents were either marking it by hand
16 or inputting that data on the computer, and the Supreme Court
17 read the statute a little differently than apparently what the
18 Legislature ultimately concluded they intended to mean the
19 first time. However, once the conclusive presumption is lost
20 under 350(b) then the question is, was there a meaningful
21 offer made and what evidence can be submitted to the Court to
22 show that a meaningful offer was made.

23 And in Progressive vs. Leachman, another certified
24 question that I argued to the Supreme Court, the Court said
25 that the purpose -- and the Court has to keep this in mind

1 when analyzing whether a meaningful offer was made, the
2 purpose is to give an insured adequate information so he can
3 make an informed decision. That means the content of the form
4 has to be sufficient to let someone know what the coverage is,
5 what's available and how much it's going to cost. Those are
6 basically the Wannamaker requirements.

7 Section 350(a) codifying Wannamaker is really a
8 little bit more specific. It would be unimaginable that a
9 form that would satisfy in content Section 350(a) would not
10 also satisfy Wannamaker, and that's what the Court of Appeals
11 said in the unpublished decision, the Woodson case, a case I
12 tried right here in this courthouse.

13 And so the interesting part of what we've had since
14 you issued your order is from Wiegand. Wiegand clearly shows
15 that the analysis of the content of the form under 350(a) is
16 separate and distinct from whether an insurer is entitled to a
17 conclusive presumption on 350(b).

18 THE COURT: Well, let me ask you this.

19 MR. MURPHY: Yes.

20 THE COURT: I always looked at -- and every judge
21 hates these things because they are required to go back,
22 especially in this situation, to a slice of the law as it was
23 and is not now, but I always looked at (b) as more procedural
24 than substantive.

25 MR. MURPHY: That's exactly what it is, and all you

1 do by not complying with (b), Your Honor, all you lose is a
2 conclusive or irrebuttable presumption. You do not lose the
3 ability to say, Well, here's the information we gave them. We
4 didn't give it to them orally because the Legislature mandated
5 that we had to give it to them in writing. Wannamaker says it
6 can be in writing.

7 I could go back through 20 years of cases where a
8 form and nothing else is in the record and the Court is
9 deciding whether the substance of the form was adequate. But
10 we don't have to go back 20 years. We only have to go back to
11 one case, the one case decided by the Court of Appeals after
12 Floyd, and that is Atkins.

13 In Atkins, the Court specifically found that Horace
14 Mann was not entitled to a conclusive presumption of a
15 meaningful offer under 38-77-350(b). In that case there was
16 no evidence submitted other than the written form alone, which
17 the insured, Mr. Atkins, admitted that he signed but denied
18 that he placed the checkmark in. Therefore, the Court ruled,
19 the trial court ruled that he was not entitled to a conclusive
20 presumption and that was not appealed.

21 However, the Court of Appeals found that Horace Mann
22 did carry its burden of proving a meaningful offer and
23 reversed the Circuit Court. The only way they could have
24 found they met their burden was through the written form
25 because there is no evidence whatsoever that he met with the

1 agent. In fact, it says he preferred to do things by mail.

2 So the only information that was given to Mr. Atkins
3 by Horace Mann was a written form that was not properly
4 executed under 350(b) to entitle Horace Mann to a conclusive
5 presumption. Nonetheless, the form was sufficient in its
6 content under 350(a) to establish a prima facie showing that
7 it made a meaningful offer. And at that point, like any other
8 written document, Your Honor, an insured would have to come
9 back and with something that, you know, well, I'm not bound by
10 that, or I didn't understand that, or they didn't give me
11 every page, or they told me that I'd be covered and I had full
12 coverage, or something other than simply, Well, I didn't place
13 the X in the line, because that's exactly what was done in the
14 Atkins case and the Court of Appeals has rejected that.

15 And so the law has really not changed. Floyd just
16 defines when you get a conclusive presumption. It has nothing
17 to do with whether a meaningful offer was made. And since the
18 statute requires a written form to be used, since Wannamaker
19 allows a written form to be used, and since Atkins validates a
20 written form standing alone as satisfying 350(a) and
21 Wannamaker I would submit that there's nothing new under the
22 sun and that the analysis in this case was this; did Mr. Cohen
23 receive adequate information to make an intelligent decision?

24 The content of this written form, there's never been
25 any argument at any point in this case that there's some

1 deficiency in the content of this form; and therefore, you
2 should not reconsider your order. You should let it stand.
3 And if an appellate court disagrees, so be it, but the
4 appellate cases that we see and the Wiegand case that has come
5 out since you issued your order lends support to that because
6 in Wiegand they clearly show that the procedural aspect of
7 350(b) is separate from the content aspect of 350(a).

8 Now, in Wiegand they didn't get to whether the form
9 would satisfy Wannamaker because they found enough
10 circumstantial evidence, and I know this because I represent
11 USAA also, that USAA mails the forms out and gets them back.
12 They don't touch them, and so I guess that circumstantial
13 evidence carried the day for the Supreme Court in Wiegand and
14 they gave the conclusive presumption.

15 But the key in that new case is that the analysis of
16 the content of the form is a separate analysis. You are not
17 protected if the insurance company loses the conclusive
18 presumption from the insurance company using the exact same
19 evidence to satisfy the meaningful offer requirement because
20 they gave you the requirements in writing. And unless you can
21 show that you didn't get that information, and Mr. Cohen has
22 never said he didn't sign the form, he's never said the
23 information in the form was deficient, he's trying to hide
24 behind the loss of the conclusive presumption as throwing out
25 the entire offer.

1 Well, how can you throw that out when you have an
2 offer that is mandated to be in writing by the Legislature,
3 and when you have an offer that today, if it was made today
4 would entitle Progressive to a conclusive presumption? An
5 offer that is that good would be thrown out and be null and
6 void and you'd to start with something else? I don't see how
7 that could possibly be what the law is.

8 And so Floyd is really limited to when you get a
9 conclusive presumption. When you don't you weigh the evidence
10 submitted by the insurance company versus any rebuttal, and in
11 this case there's just simply no rebuttal to that evidence and
12 that's why your judgment was proper.

13 THE COURT: Well, do you agree with Mr. Draisen's
14 chart here on how to determine --

15 MR. MURPHY: Which one?

16 THE COURT: Well, the last one.

17 MR. MURPHY: Okay. What I think you do is you're
18 required to make a meaningful offer.

19 THE COURT: Right.

20 MR. MURPHY: And you have to do it in writing
21 according to 350(a) for new business.

22 THE COURT: Right.

23 MR. MURPHY: So you have to analyze the form under
24 350(a), and this form satisfies 350(a). I've never heard any
25 argument that there's something missing. Then you go --

1 THE COURT: You all are the same down to 350(b).

2 MR. MURPHY: Right. Well, in 350(b), Your Honor, at
3 350(b) under how the statute 350(b) was written at the time
4 this offer was made I concede that Progressive would not be
5 entitled to a conclusive presumption because the form on the
6 -- the mark on the form was made as a result of the agent's
7 selection after being told by the insured, which, you know,
8 maybe I shouldn't concede that because in effect the insured
9 was marking the form, you know.

10 THE COURT: Right.

11 MR. MURPHY: But I understand that that's the same
12 situation in Floyd except the agent made a handwritten mark in
13 Floyd. Then you're still able to prove that you made a
14 meaningful offer. And my point would be a form that satisfies
15 350(a) in content would have to satisfy Wannamaker because
16 350(a) is actually more specific.

17 But if you compare the four elements of Wannamaker
18 and the five elements of 350(a), which the Court of Appeals
19 did in the unpublished Woodson decision and said that a form
20 which is virtually identical to what we're talking about
21 satisfied it, which Judge Simmons did over in Greenville,
22 which Judge Houck did, which Judge Few has done on an
23 unreported case I haven't submitted.

24 THE COURT: Woah, don't be citing Judge Few.

25 MR. MURPHY: That's right. But in any event, there

1 it would be hard to say that. We're not trying to make an
2 inrun and get rid of 350(b) but I believe the form does have
3 to undoubtedly establish a prima facie showing, and the Cohens
4 would have to rebut the evidence by saying, No, I didn't get
5 that form; no, I didn't sign that form; no, they lied to me,
6 as opposed to the saying the agent didn't tell me. Okay, the
7 agent didn't tell you, but the agent gave you the information
8 that's required in writing. And once they have admitted to
9 that they virtually have no defense, Your Honor.

10 So, you know, a prima facie showing by a valid
11 written form is pretty strong evidence. There's only going to
12 be a very few circumstances when it could even be rebutted.
13 The Legislature is trying to keep it so it can never be
14 rebutted but the Supreme Court came to a different conclusion
15 about what was required to get that conclusive presumption,
16 they've changed the statute.

17 But even without it being conclusively presumed it
18 certainly establishes a prima facie showing under Wannamaker
19 that they got adequate information to make an informed
20 decision. At that point they are going to have to somehow
21 bring into dispute, to rebut that prima facie showing, and in
22 this case they haven't done it.

23 It's very rare, I think, any insured would do it
24 because the bottom line is they probably just signed it and
25 they only have themselves to thank if they didn't read it

1 fully or whatever. It's very rare where I've ever heard
2 anyone testify that the agent misled them, lied to them, it
3 was under duress, or some sort of coercion and they didn't
4 really get access to the whole form. But in this case there's
5 nothing before you in the record to suggest that there's some
6 defense to the fact that they got this written form. And
7 whether they read it or not they had the opportunity to do so.

8 THE COURT: Well, the horror of this case was that
9 it did not show up on the under-advisement list and so it was
10 never showing up every 30 days on my personal list or the
11 Court's list, until somebody called. I guess it was
12 Mr. Draisen, and I had no idea.

13 I mean, I don't look at the list. I don't do it.
14 So I had to go back and reread everything. And to be honest
15 with you, trying to reread it, you know, I want to make sure
16 -- God, I hate to reread it again, and I'm not but I want to
17 make sure that factually I've got it straight in my head.

18 MR. DRAISEN: And, Your Honor, if I can just briefly
19 say that I think there's a little bit of a misstatement by
20 Mr. Murphy about exactly what happened with Mr. Cohen. I
21 mean, Mr. Cohen's testimony was basically that he had
22 underinsured motorist coverage on his other vehicle.

23 THE COURT: Right.

24 MR. DRAISEN: Issued through the same agency, and he
25 called and said, I want you to give me the same coverage.

1 THE COURT: I want the same stuff, is what he said.

2 MR. DRAISEN: Yeah. So he's out of town in Georgia.
3 She says, I'll get the papers for you. Just stop by and sign
4 them.

5 He says, I stopped in. I signed the papers. I
6 wasn't there five minutes. I left and assumed that I had
7 signed a form that gave me the same coverage.

8 And so that is the testimony. That's not disputed
9 by anybody. In fact, Ms. Thomason says she can't remember
10 anything about the transaction at all. So, you know, I don't
11 dispute, Your Honor, that the form itself meets 350(a).
12 That's not the issue.

13 But, you know -- but Atkins says -- the holding in
14 Atkins says that offer of UIM must be meaningful pursuant to
15 statute and Wannamaker. That's the holding in the case.

16 And so you can't ignore -- I mean, you would be
17 finding that 350(b) was repealed if you found that the form
18 itself, by the argument Mr. Murphy's advanced, was that you
19 simply can do Wannamaker if there's -- obviously if there's a
20 problem with (b), wasn't completed by the insured, then you go
21 to Wannamaker and you simply look to the form, and the form
22 complies as it did back when you looked at it for (a) purposes
23 so therefore you have a meaningful offer? That can't be it.
24 You have to look beyond the form.

25 I'm not saying you can't consider that there's a

1 form that has the stuff in it, okay, but I think you have to
2 consider under Wannamaker the circumstances under which that
3 form was signed. I think you have to consider what the
4 discussions were with the agent and the insured. I think you
5 have to consider all the factors in order to make those
6 factual findings under Wannamaker in this case because of when
7 it occurred. Beyond this I don't think that's an issue.

8 THE COURT: Okay. I'll let you know.

9 MR. DRAISEN: Thank you.

10 THE COURT: Mr. McDade, you got something to say?

11 MR. MCDADE: No, sir. I don't have anything.

12 THE COURT: All right. I'll let you know something
13 pretty quick. It won't get left off any list this time.

14 MR. DRAISEN: Thank you, Your Honor.

15 (WHEREUPON, the hearing was concluded.)

16

17

18

19

20

21

22

23

24

25

Joint Exhibit 1

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-0

Underwritten by:

Progressive Casualty Insurance Company

January 27, 2005

Policy Period: Jan 26, 2005 - Jan 26, 2006

Page 1 of 2

864-226-0354

CITIZENS INS AGCY

Contact your agent for personalized service.

driveinsurance.com

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

800-925-2886

To report a claim, or if your agent is
unavailable.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

Your coverage began on January 26, 2005 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on January 26, 2006 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 allows the stacking of limits. The policy contract is form 9608A SC (11/04). The contract is modified by form 9631SC (05/03).

Underwriting Company

Progressive Casualty Insurance Company
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

GREG COHEN

Additional information

Named insured

FILED-CLEARY'S OFFICE
ANDERSON, SC
JAN 27 11 A 9 31
CITIZENS INSURANCE CO
864-226-0354



Outline of coverage

2003 Yamaha XVS1100/A Engine displacement: 1063 cc's
VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$127
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Includes Guest Passenger Coverage			
Uninsured Motorist	\$100,000 each person/\$300,000 each accident		66
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	35
Medical Payments	\$1,000 each person		41
Comprehensive		\$500/\$0 glass	102
Collision		\$500/\$0 glass	194
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$573
South Carolina Uninsured Motorist Fund charge			1
Total 12 month policy premium			\$574

Premium discount

Policy	
42541297-0	home owner

Important information concerning Physical Damage Coverage limitations

Coverage for physical damage to your motorcycle extends only to the basic motorcycle as it comes from the factory. If you have any custom parts or equipment, not provided as original equipment by the manufacturer, they are not covered for loss. If you have custom parts or equipment and wish to purchase this coverage, contact your agent. The first \$1,000 in custom parts and equipment is provided free of charge if physical damage is purchased.

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.

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-0

Underwritten by:

Progressive Casualty Insurance Company

February 12, 2005

Policy Period: Jan 26, 2005 - Jan 26, 2006

Page 1 of 2

864-226-0354

CITIZENS INS AGCY

Contact your agent for personalized service.

driveinsurance.com

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

800-925-2886

To report a claim, or if your agent is
unavailable.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

Your policy information has changed

Your coverage began on January 26, 2005 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on January 26, 2006 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 allows the stacking of limits. The policy contract is form 9608A SC (11/04). The contract is modified by form 9631SC (05/03).

Policy changes effective January 26, 2005

Changes requested on:	Feb 10, 2005 02:36 p.m.
Requested by:	GREG COHEN
Premium change:	\$89.00
Changes:	The home owner discount has been removed from your policy. A multi-policy discount has been added to your policy.

Underwriting Company

Progressive Casualty Insurance Company
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

GREG COHEN	Additional information Named insured
------------	---

Outline of coverage

2003 Yamaha XVS1100/A Engine displacement: 1063 cc's
VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$147
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Includes Guest Passenger Coverage			
Uninsured Motorist	\$100,000 each person/\$300,000 each accident		76
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	41
Medical Payments	\$1,000 each person		48
Comprehensive		\$500/\$0 glass	118
Collision		\$500/\$0 glass	224
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$662
South Carolina Uninsured Motorist Fund charge			1
Total 12 month policy premium			\$663

Premium discount

Policy	
42541297-0	multi-policy

Important information concerning Physical Damage Coverage limitations

Coverage for physical damage to your motorcycle extends only to the basic motorcycle as it comes from the factory. If you have any custom parts or equipment, not provided as original equipment by the manufacturer, they are not covered for loss. If you have custom parts or equipment and wish to purchase this coverage, contact your agent. The first \$1,000 in custom parts and equipment is provided free of charge if physical damage is purchased.

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-1

Underwritten by:

Progressive Casualty Insurance Co.

December 19, 2005

Policy Period: Jan 26, 2006 - Jan 26, 2007

Page 1 of 2

864-226-0354

CITIZENS INS AGCY

Contact your agent for personalized service.

driveinsurance.com

Online Service

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

800-925-2886

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on January 26, 2006 at 12:01 a.m. This policy expires on January 26, 2007 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 9608A SC (11/04). The contract is modified by form 9631SC (05/03).

Underwriting Company

Progressive Casualty Insurance Co.
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

GREG COHEN

Additional information

Named insured

Outline of coverage**2003 Yamaha XVS1100/A** Engine displacement: 1063 cc's

VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$134
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Includes Guest Passenger Coverage			
Uninsured Motorist	\$100,000 each person/\$300,000 each accident		76
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	41
Medical Payments	\$1,000 each person		48
Comprehensive		\$500/\$0 glass	110
Collision	Actual Cash Value	\$500/\$0 glass	224
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$641
South Carolina Uninsured Motorist Fund charge			1
Total 12 month policy premium			\$642

Premium discount

Policy

42541297-1

multi-policy

Important information concerning Physical Damage Coverage limitations

Coverage for physical damage to your motorcycle extends only to the basic motorcycle as it comes from the factory. If you have any custom parts or equipment, not provided as original equipment by the manufacturer, they are not covered for loss. If you have custom parts or equipment and wish to purchase this coverage, contact your agent. The first \$1,000 in custom parts and equipment is provided free of charge if physical damage is purchased.

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-1

Underwritten by:
Progressive Casualty Insurance Co.
January 24, 2006
Policy Period: Jan 26, 2006 - Jan 26, 2007
Page 1 of 2

864-226-0354

CITIZENS INS AGCY
Contact your agent for personalized service.

driveinsurance.com

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

800-925-2886

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Renewal Declarations Page

Your coverage begins on January 26, 2006 at 12:01 a.m. This policy expires on January 26, 2007 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 9608A SC (11/04). The contract is modified by form 9631SC (05/03).

Underwriting Company

Progressive Casualty Insurance Co.
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

GREG COHEN

Additional information

Named insured

Outline of coverage**2003 Yamaha XV51100/A** Engine displacement: 1063 cc's

VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$134
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Includes Guest Passenger Coverage			
Uninsured Motorist	\$100,000 each person/\$300,000 each accident		76
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	41
Medical Payments	\$1,000 each person		48
Comprehensive		\$500/\$0 glass	110
Collision	Actual Cash Value	\$500/\$0 glass	224
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$641
South Carolina Uninsured Motorist Fund charge			1
Total 12 month policy premium			\$642

Premium discount

Policy	
42541297-1	multi-policy

Important information concerning Physical Damage Coverage limitations

Coverage for physical damage to your motorcycle extends only to the basic motorcycle as it comes from the factory. If you have any custom parts or equipment, not provided as original equipment by the manufacturer, they are not covered for loss. If you have custom parts or equipment and wish to purchase this coverage, contact your agent. The first \$1,000 in custom parts and equipment is provided free of charge if physical damage is purchased.

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-2

Underwritten by:

Progressive Northern Insurance Co

December 22, 2006

Policy Period: Jan 26, 2007 - Jan 26, 2008

Page 1 of 2

864-226-0354

CITIZENS INS AGCY

Contact your agent for personalized service.

driveinsurance.com

Online Service

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

800-925-2886

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Renewal Declarations Page

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on January 26, 2007 at 12:01 a.m. This policy expires on January 26, 2008 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 endorsement indicate otherwise. The policy contract is form 5072A SC (08/05).

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

GREG COHEN

Additional information

Named insured

Outline of coverage**2003 Yamaha XVS1100/A** Engine displacement: 1063 cc's

VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$131
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Uninsured Motorist Bodily Injury	\$100,000 each person/\$300,000 each accident		113
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	24
Medical Payments	\$1,000 each person		43
Comprehensive	Actual Cash Value	\$500/\$0 glass	56
Collision With Full Glass	The Lesser Of Actual Cash Value Less Deductible Or The Market Value	\$500	150
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$525
South Carolina Uninsured Motorist Fund charge			2
Total 12 month policy premium			\$527

Premium discount

Policy	
42541297-2	multi-policy

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-2

Underwritten by:
Progressive Northern Insurance Co
January 13, 2007
Policy Period: Jan 26, 2007 - Jan 26, 2008
Page 1 of 2

864-226-0354

CITIZENS INS AGCY
Contact your agent for personalized service.

driveinsurance.com

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

800-925-2886

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Renewal Declarations Page

Your coverage begins on January 26, 2007 at 12:01 a.m. This policy expires on January 26, 2008 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 5072A SC (08/05).

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

Additional information

GREG COHEN

Named insured

Outline of coverage

2003 Yamaha XV51100/A Engine displacement: 1063 cc's
VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$131
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Uninsured Motorist Bodily Injury	\$100,000 each person/\$300,000 each accident		113
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	24
Medical Payments	\$1,000 each person		43
Comprehensive	Actual Cash Value	\$500/\$0 glass	56
Collision With Full Glass	The Lesser Of Actual Cash Value Less Deductible Or The Market Value	\$500	150
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$525
South Carolina Uninsured Motorist Fund charge			2
Total 12 month policy premium			\$527

Premium discount

Policy	
42541297-2	multi-policy

CITIZENS INS AGCY
PO BOX 1627
ANDERSON, SC 29622



GREG COHEN
1 LAWTON ST
IVA, SC 29655

Policy number: 42541297-2

Underwritten by:

Progressive Northern Insurance Co

January 15, 2007

Policy Period: Jan 26, 2007 - Jan 26, 2008

Page 1 of 2

864-226-0354

CITIZENS INS AGCY

Contact your agent for personalized service.

driveinsurance.com

Online Service

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

800-925-2886

To report a claim.

Motorcycle Insurance Coverage Summary

This is your Declarations Page

Your policy information has changed

Your coverage begins on January 26, 2007 at 12:01 a.m. This policy expires on January 26, 2008 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 5072A SC (08/05).

Policy changes effective January 26, 2007

Changes requested on:	Jan 11, 2007
Requested by:	GREG COHEN
Premium change:	\$0.00

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
800-925-2886

Drivers and household residents

	Additional information
GREG COHEN	Named insured

Outline of coverage

2003 Yamaha XVS1100/A Engine displacement: 1063 cc's
 VIN JYAVP11E73A043777

	Limits	Deductible	Premium
Liability To Others			\$131
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Uninsured Motorist Bodily Injury	\$100,000 each person/\$300,000 each accident		113
Underinsured Motorist Bodily Injury	Rejected		--
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	24
Medical Payments	\$1,000 each person		43
Comprehensive	Actual Cash Value	\$500/\$0 glass	56
Collision With Full Glass	The Lesser Of Actual Cash Value Less Deductible Or The Market Value	\$500	150
Custom Parts or Equipment	\$1,000 included with Comprehensive or Collision		included
Roadside Assistance			8
Subtotal policy premium			\$525
South Carolina Uninsured Motorist Fund charge			2
Total 12 month policy premium			\$527

Premium discount

Policy	
42541297-2	multi-policy

Joint Exhibit 2

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: 42541297-0

PAGE 1

LOAD MESSAGE: THIS APPLICATION HAS NOT BEEN UPLOADED.

COMPANY INFORMATION:

Progressive Casualty Insurance Company
P.O. BOX 94656 CLEVELAND OH 44101-4656

AGENT INFORMATION:

CITIZENS INS AGCY
602 N MAIN ST
ANDERSON, SC 29621
(864) 226-0354 SM-44847TOTAL PREMIUM: 553.00
DOWN PAYMENT: 0.00
BALANCE DUE: 553.00
DOWNPAY REQ: 139.00
DOWNPAY METH: EXPRESS MONEY

POLICY #: 42541297-0

(Do Not Retain Commission)

REQUIRED NOTICE

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.

GENERAL INFORMATION

Effective date subject to change pending completion of the application information.

GREG COHEN
1 LAWTON ST
IVA, SC 29655-
HOME PHONE:
K PHONE: (864) 940-9871POLICY TERM: 12 MONTHS
PAY PLAN: 4-PAY

DRIVER AND HOUSEHOLD RESIDENTS

Complete for 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.

DR#	DRIVER'S NAME	SEX	MARITAL STATUS	RELATION	INS	DATE OF BIRTH	PRNCPL VEHICLE
1	GREG COHEN	M	SINGLE	INSURED		09/15/72	1

DR#	SOCIAL SECURITY #	LICENSE NUMBER	ST	LICENSE STATUS
1		4004275	SC	VALID

VEHICLE INFORMATION

VEH #	YEAR	MAKE	MODEL	VIN
1	2003	YAMAHA	KVS1100/A	JYAVP11E73A0437770

VEH #	GARAGING	ENGINE	NUM WHEELS
1	29655 SC	1063	2

VEHICLE USE
PLEASURE

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: VEH 12970

PAGE :

COVERAGES

	2003 YAMAH	VEH 1
BIPD/GP	100/300/50	106
UM/PD	100/300/50	101
UIM/PD	NONE	0
MED PAY	1,000	41
COMP	500 DED	102
COLL	500 DED	194
CPE		INCL
RD SIDE ROADSIDE		8

Subtotal	\$	552.00	Dr #/Sex/Marital/Age	1MS32
UM Fund		1.00		
Total Premium	\$	553.00		

* Bodily Injury Coverage includes Guest Passenger (GP) coverage.

DISCOUNTS/SURCHARGES

Policy Discount(s): Homeowner

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: 42541297-0

PAGE 3

APPLICANT'S SIGNATURE

I hereby declare that the statements contained herein are true to the best of my knowledge and belief and do hereby 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/she 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.

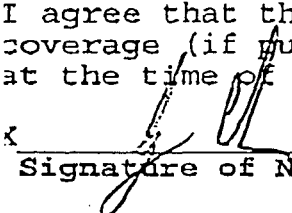
I acknowledge that, in connection with this application and premium quotation, the Company may collect information from consumer reporting agencies, such as driving record, claims, and credit history reports. This information will be used to underwrite my insurance and provide an accurate quote in one of Progressive's underwriting companies. Future reports may be used to update or renew the insurance.

I understand that a NSF 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 fee shall not deem the Company to have accepted the check unconditionally.

I agree to pay the 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 that the amount of these fees may change upon policy renewal or if I change my payment plan. I also understand that the amount of these fees may change if my premium is increased due to inaccurate or incomplete information in this application.

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.

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.


Signature of Named Insured

Date: 1-26-05

NOTE: FOR QUESTIONS REGARDING YOUR POLICY OR BILL, PLEASE CALL: 1-800-888-7764

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #:

425412970

PAGE 4

PRODUCER SIGNATURE

The undersigned hereby warrants and certifies that the information contained herein is correct to his/her knowledge; and that this application was completed and then signed by the insured; that a completed copy has been given to the insured; and that the undersigned will retain a signed copy hereof.

X Meredith Thomas
Signature of Producer

Date: 1/25/05

Time: _____

Form No. 1205 SC (06/03)

Model: 2003

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #:

425412970

PAGE 5

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

I. EXPLANATION OF COVERAGES

The State of South Carolina's motor vehicle insurance laws now allow any insurance company to refuse to underwrite your motor vehicle liability insurance coverage. That refusal may be based upon a number of reasons. Motor vehicle liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of motor vehicle liability insurance coverage: bodily injury and property damage. Bodily injury coverage is a coverage which pays people upon whom your motor vehicle inflicts bodily injury. Property damage coverage is a coverage which pays people for damages which your motor vehicle causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your motor vehicle liability insurance coverage, then it must provide to you at least \$15,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000.00 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide to you at least \$10,000.00 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15-30-10. These limits are commonly-known as minimum limits. If you purchase motor vehicle liability insurance, then, in order to drive your motor vehicle upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of this State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 must also agree to underwrite higher than those minimum limits of motor vehicle liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased motor vehicle insurance premium for those increased limits of protection.

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: 42541297-1

PAGE 6

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your motor vehicle liability insurance coverage, you must be offered, at your option, two additional motor vehicle insurance coverages which will protect you in the event you are damaged in an motor vehicle accident by an at-fault motor vehicle driver who either has no motor vehicle insurance or whose motor vehicle insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them referred to within your motor vehicle insurance policy as UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional motor vehicle insurance premium for each of these additional 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 must provide uninsured motorist coverage of \$15,000/\$30,000/\$10,000. All uninsured motorist coverages provide for a \$200 deductible for property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits, up to the limits of the liability coverage which you will carry under your motor vehicle insurance policy. Some of the more commonly-sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

Underinsured motorist coverage compensates you, or other persons insured under your motor vehicle insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages.

Your motor vehicle insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your motor vehicle insurance policy. Some of the more commonly-sold limits of underinsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill in the amounts of increased premium.

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: 47541297-0

PAGE 7

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an motor vehicle accident, then this Form may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the motor vehicle liability insurance which you purchase, must be automatically added on to your motor vehicle insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your motor vehicle insurance policy may be canceled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then you must then contact either your insurance agent or your insurance company. You will not be presented with another copy of this Form by your insurance agent or by your insurance company upon the renewal of your motor vehicle liability insurance policy. You will not be presented with another copy of this Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your 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, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
300 Arbor Lake Dr., Suite 1200
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3467
EMail Address: CnsmMail@doi.state.sc.us

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #:

425412977

PAGE 8

Offer of additional uninsured motorist coverage

Limits of Coverage

Amounts of Increased Premium
(These increased premium charges
must be filled in by your insurance
company or insurance agent prior to
your decision and signature.)

\$15,000/\$30,000/\$10,000

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

\$25,000/\$50,000/\$10,000

- premium \$71

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

- premium \$84

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

- premium \$101

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

- Not Available

\$300,000 Combined Single Limit (each accident)

- Not Available

\$500,000 Combined Single Limit (each accident)

- Not Available

_____/_____/_____

Your Policy's Liability Coverage Limits:

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

- premium \$101

Do you wish to purchase additional uninsured motorist coverage?

☒ X 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 \$100,000/\$300,000/\$50,000

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #: 425412970

PAGE 9

Offer of underinsured motorist coverage

Limits of Coverage

Amounts of Increased Premium
(These increased premium charges
must be filled in by your insurance
company or insurance agent prior to
your decision and signature.)

\$15,000/\$30,000/\$10,000	- premium \$165
\$25,000/\$50,000/\$10,000	- premium \$191
\$50,000/\$100,000/\$25,000	- premium \$224
\$100,000/\$300,000/\$50,000	- premium \$278
\$250,000/\$500,000/\$100,000	- Not Available
\$300,000 Combined Single Limit (each accident)	- Not Available
\$500,000 Combined Single Limit (each accident)	- Not Available

_____/_____/_____

Your Policy's Liability Coverage Limits:

\$100,000/\$300,000/\$50,000 - premium \$278

Do you wish to purchase underinsured motorist coverage?

Yes _____ No X

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

Your Signature

X _____

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

REJECTED

01/25/05

GREG COHEN

SOUTH CAROLINA MOTORCYCLE

POLICY #:

425412A70

PAGE 1

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 underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the spaces provided. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my motor vehicle insurance policy and to the State of South Carolina's laws.

Type or Print Your Name: GREG COHEN

Your Address: 1 LAWTON ST
IVA , SC 29655-

Your Signature

X

Today's Date

1-26-05

Form 2008 SC (02/02)

Joint Exhibit 3

AUTO/MOTORCYCLE QUOTE SHEET

Date: 1/25/05
Name: Greg Cohen Phone#: _____
Address: 1 Pawan St.
City: Iva State: 29655 County: _____
Own or Rent: _____

Prior Carrier: _____ Policy#: _____
Expiration Date: _____

Unit 1: Year: 2003 Make: Yamaha Model: V Star
VIN#: _____
Engine Size (motorcycle) 1100 CC
Usage: Pleasure Miles: _____ Principal Operator: Greg

#2: Year: _____ Make: _____ Model: _____
VIN#: _____
Engine Size (motorcycle) _____
Usage: _____ Miles: _____ Principal Operator: _____

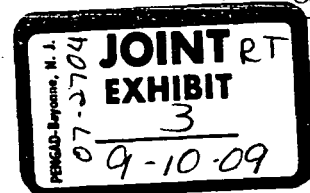
ALL DRIVERS IN HOUSEHOLD

Name: _____ Sex: _____ DOB: 9/15/72
DL# 4004275 SS# _____ Under 25 driver training? _____
Accidents/Violations? _____

Name: _____ Sex: _____ DOB: _____
DL# _____ SS# _____ Under 25 driver training? _____
Accidents/Violations? _____

Desired Limits:

BI _____
PD _____
UM/UM BI _____
UM/UM PD _____
Comprehensive 500
Collision 500
Towing _____
Rental _____



UPLOAD MESSAGE: THIS APPLICATION HAS NOT BEEN UPLOADED.

CITIZENS INS AGCY
602 N MAIN ST
ANDERSON , SC 29621-
(864) 226-0354 SM-44847

TODAY'S DATE: 01/25/05
RATE REVISION: 01/03 V01.1
EFFECTIVE DATE: 01/25/05

PROGRESSIVE QUOTE SHEET

Policy Period: 12 MONTHS
Pay Method: 4-PAY

INSURED'S INFORMATION:

GREG COHEN
1 LAWTON ST
IVA , SC 29655-
HOME PHONE _____
WORK PHONE _____
E-MAIL ADDRESS: NONE
UPLOAD STATUS: ON
FR STATUS: NO HIT

DRIVER NAME
GREG COHEN

DR# AGE SEX M/S
1 32 M S

VEHICLE INFORMATION				
VEH	#	YEAR	MAKE	MODEL
	1	2003	YAMAHA	V STAR 1100 C

ENGINE	CC	DR#
	1100	1

COVERAGES		VEH 1
2003 YAMAHA		
BIPD/GP 100/300/50		106
UM/PD 100/300/50		101
UTM/PD NONE		0
DED PAY 1,000		41
COMP 500 DED		102
COLL 500 DED		194
CPE		INCL
RD SIDE ROADSIDE		8
		552
Subtotal	\$ 552.00	Dr #/Sex/Marital/Age 1MS32
UM Fund	1.00	
Total Premium	\$ 553.00	

* Bodily Injury Coverage includes Guest Passenger (GP) coverage.

DISCOUNTS/SURCHARGES

Policy Discount(s): Homeowner

Auto-Owners

Page 1

19020 (10-80)
Issued 01-23-2007

INSURANCE COMPANY
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

AUTOMOBILE POLICY DECLARATIONS

AGENCY CITIZENS INSURANCE AGENCY INC
16-0101-00 MKT TERR 047 (864) 226-0354

Renewal Effective 02-28-2007

INSURED GREG STEVEN COHEN

POLICY NUMBER 96-616-840-01

Company Use 36-01-SC-0002

ADDRESS PO BOX 693

Company
Bill

POLICY TERM	
12:01 a.m.	12:01 a.m.
02-28-2007	08-28-2007

ANDERSON SC 29622-0693

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

DESCRIPTION OF ITEM INSURED	SYMBOL/COST	TERRITORY	CLASS/PG
-----------------------------	-------------	-----------	----------

Accidental Death Benefit Endorsement

048
Anderson County, SC

COVERAGES	LIMITS	PREMIUM
ACCIDENTAL DEATH BENEFIT	\$20,000 PER ELIGIBLE PERSON	Included
TOTAL		INCLUDED

Additional Forms For This Item: 79939 (03-05)

130

1. 2001 FORD EXPEDITION ED BAUER
VIN: 1FMTU18L71LA93991

15-E6-4 048 074
Anderson County, SC

COVERAGES	LIMITS	PREMIUM
Bodily Injury	\$ 100,000 ea pers/\$ 300,000 ea occ	\$143.84
Property Damage	\$ 100,000 ea occ	92.68
Uninsured Motorist BI	\$ 100,000 ea pers/\$ 300,000 ea occ	28.00
Uninsured Motorist PD	\$ 100,000 ea occ	12.00
Underinsured Mtrst BI	\$ 100,000 ea pers/\$ 300,000 ea occ	63.00
Underinsured Mtrst PD	\$ 100,000 ea occ	5.00
TOTAL		\$344.52

Interested Parties: None

Additional Forms For This Item: 79306 (07-05) 79310 (07-05)

PREMIUM BASIS: Automobile driven for pleasure use by a 34 year old operator.
5% ABS Discount applies to BI, PD, and Coll premiums.
30% Air Bag Discount applies to PA premium.
Total premium includes a reduction of \$57.00* as safe driver discount.

130



gjp

AUTO-OWNERS INS. CO.

19020 (10-80)
Issued 01-23-2007AGENCY CITIZENS INSURANCE AGENCY INC
16-0101-00 MKT TERR 047Company POLICY NUMBER 96-616-840-01
Bill Company Use 36-01-SC-0002

INSURED GREG STEVEN COHEN

Term 02-28-2007 to 08-28-2007

TOTAL POLICY PREMIUM	TERM
PAID IN FULL DISCOUNT	\$344.52
TOTAL POLICY PREMIUM IF PAID IN FULL	-33.75
	\$310.77

The Paid In Full Discount does not apply to fixed fees or statutory charges.

The Paid In Full Discount is based on favorable loss experience for the collective group of policyholders who choose to pay their premium in full directly to the company.

Forms That Apply To All Items: 79001 (03-99) 79633 (08-98) 79732 (07-04)
79609 (06-97) 79480 (05-03) 79968 (05-03)

Countersigned By: COMPANY ISSUED

This policy is written through the Auto-Owners Insurance Company within the Auto-Owners Group of companies. Your agent placed you with this company because:

1. This was the only company within the Auto-Owners Group operating in South Carolina at the time, or
2. Based upon your driving classification or driving history, your agent feels that the coverage, rate levels or rating structure in Auto-Owners Insurance Company may better suit your individual needs.

You may be eligible for lower rate levels within another Auto-Owners Group Company. Please see your agent to discuss your individual insurance needs.

Certificate of Counsel

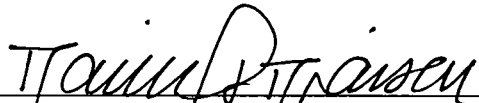
The undersigned hereby certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


DANIEL L. DRAISEN (S.C Bar # 13536)
Krause, Moorhead and Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
Attorney for the Appellants

April 18, 2012
Anderson, South Carolina

Certificate of Counsel

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


DANIEL L. DRAISEN (S.C Bar # 13536)
Krause, Moorhead and Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
ddraisen@kmdlawyers.com
Attorney for the Appellants

ORIGINAL

April 18, 2012
Anderson, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 30 2012

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2007-CP-04-2704

Greg and Stacy Cohen,.....Appellants,

vs.

Progressive Northern Insurance Company
and Auto-Owners Insurance Company,.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served the Record on Appeal on J.R. Murphy, Esq. and J. Victor McDade, Esq., attorneys for the Respondents, by depositing a copy of same in the United States Mail, postage prepaid, on April 26, 2012 addressed as follows:

J.R. Murphy, Esq.
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
Attorney for Respondent
Progressive Northern Insurance

J. Victor McDade, Esq.
Doyle, Tate & McDade, P.A.
P.O. Box 2125
Anderson, S.C. 29622
Attorney for Respondent
Auto-Owners Insurance

Dated: April 26, 2012


Daniel L. Draisen (SC Bar #13536)
Krause, Moorhead and Draisen, P.A.
207 E. Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
Attorney for Appellants