

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-001096

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SC Court of Appeals

Jamar Markel Bronner,

Appellant,

vs.

GEICO Indemnity Company,

Respondent.

RESPONDENT'S BRIEF

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The Circuit Court properly ruled that there is no genuine issue as to any material fact that Mr. Bronner rejected UIM coverage after receiving a meaningful offer in compliance with S.C. Code Ann. § 38-77-350(A) and Wannamaker. Consequently, Bronner is not entitled to reformation of his policy to include UIM coverage and is not entitled to any UIM coverage, thereby entitling GEICO to summary judgment.

TABLE OF AUTHORITIES

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- Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (S.C. App. 2008), p. 23
- Bower v. National Gen. Ins. Co., 351 S.C. 112, 120-21, 569 S.E.2d 313, 317 (2002), p. 21
- Burch v. South Carolina Farm Bureau Mutual Insurance Co., 351 S.C. 342, 569 S.E.2d 400 (S.C. App. 2002), pp. 20, 21, 24
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OTHER

South Carolina Department of Insurance Bulletin 1999-01, pp. 8, 12

South Carolina Department of Insurance Bulletin 2006-03, pp. 8, 28

SCRCF Rule 56(c), p. 16,

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT CORRECTLY RULE THAT GEICO'S OFFER OF UIM COVERAGE COMPLIED WITH THE REQUIREMENTS OF S.C. CODE OF LAWS §38-77-150 (2002), AND THE FACT THAT THE APPELLANT SIGNED AND RETURNED THE REQUIRED REJECTION FORM CONSTITUTED A CONCLUSIVE PRESUMPTION THAT A MEANINGFUL OFFER WAS MADE TO HIM?
2. AS A SECOND SUPPORTING GROUND FOR GRANTING GEICO SUMMARY JUDGMENT, DID THE CIRCUIT COURT CORRECTLY RULE THAT GEICO MADE AN EFFECTIVE OFFER OF UIM COVERAGE UNDER STATE FARM MUTUAL INSURANCE COMPANY vs. WANNAMAKER, 291 S.C. 518, 354 S.E.2d 555 (1987) AND ITS PROGENY?

STATEMENT OF THE CASE

The Appellant, Jamar Bronner, rejected underinsured motorist coverage (hereinafter “UIM coverage”) twice, first during his initial telephone application; and secondly when he executed, signed, and returned the South Carolina Option Form.

Mr. Bronner subsequently suffered injuries and damages in a motorcycle accident on June 24, 2016. The liability carrier for the opposing driver paid its policy limits to the Appellant. The Appellant then asserted a claim that his insurance policy through GEICO Indemnity Company (hereinafter “GEICO”) should be reformed to provide him with UIM coverage, even though he had knowingly rejected UIM coverage on two separate occasions.

At the time of the accident, the Appellant maintained a policy of motorcycle insurance providing liability limits of \$25,000 per person and \$50,000 per accident with GEICO. (GEICO policy Declarations Page, R. # 17-a). The policy did *not* provide underinsured motorist (“UIM”) coverage. GEICO denied the claim, as there was no UIM coverage under the policy. The Circuit Court agreed that GEICO had made an effective offer of coverage under both S.C. Code Ann. §38-77-350 and State Farm Mutual Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). The Circuit Court granted summary judgment to GEICO, finding that the Appellant had rejected UIM coverage after an effective offer had been made by the insurer. (Order Granting GEICO’s Motion for Summary Judgment, R. # 3). The Appellant has appealed this decision.

The Appellant, Jamar Bronner, rejected UIM coverage twice, first in the telephone application process; and secondly via his signature on the South Carolina Option Form that was mailed to him. In spite of his clear rejection of UIM coverage on two separate occasions by two different means, the Appellant now seeks reformation of the motorcycle insurance policy issued by GEICO to allow for UIM coverage. GEICO maintains that an effective offer of UIM was made

and was rejected by the Appellant. Therefore, there is no UIM coverage under this policy that is applicable to this claim.

TELEPHONE APPLICATION AND DISCLOSURE OF PREMIUM:

Mr. Bronner first applied to GEICO Insurance Company for insurance for his motorcycle by telephone application on April 9, 2015. Mr. Bronner applied for the policy via a telephone conversation with a GEICO employee, Steven Stewart. (Affidavit of Steven Stewart, R. # 17-c; Deposition of Steven Stewart, R. # 22). Steven Stewart held a detailed conversation with Mr. Bronner. Mr. Stewart obtained the individual information for Mr. Bronner, which included his name, date of birth, age, address, telephone number, email address, resident relatives, driving record, vehicle to be insured, and registration information. (PHIN Sales Application records, R. #17-e. Bronner Deposition, p. 40, l. 5-p. 43, ll. 11, R. # 17-b; Stewart Deposition, R. # 22). Mr. Bronner admitted that the conversation with the sales agent lasted 15-30 minutes. (Bronner deposition, p. 8-11, R. # 17-b).

Steven Stewart then explained all available coverages that Mr. Bronner could obtain for the vehicle. (Affidavit of Steven Stewart, R. # 17-c; Deposition of Steven Stewart, R. # 22). Mr. Stewart informed Mr. Bronner of the amount of the premium if Mr. Bronner decided to purchase all available coverages, including UIM coverage. Mr. Stewart then informed Mr. Bronner which coverages were mandatory under South Carolina law and which coverages were optional. Therefore, Mr. Bronner was informed of the exact amount of the premium if he elected to either accept or reject the optional coverages during this telephone conversation. (Deposition of Steven Stewart, R. # 22) This directly contradicts the Appellant's claim that the amount of the premium was not disclosed to him, and that he was only provided with a range for the premium. Mr. Bronner

elected to *reject all optional coverages* in order to have a lower premium. (Affidavit of Steven Stewart, R. # 17-c; Deposition of Steven Stewart, R. # 22).

At the conclusion of the telephone application process, Mr. Bronner paid for the initial installment of the premium by credit card. GEICO then instituted the policy as required under South Carolina law and mailed a package of materials to Mr. Bronner to confirm the insurance policy. The package included a cover letter, identification cards, billing statement, declarations page, coverage option forms, coverage description, and additional insurance documents. (Initial package from GEICO to Bronner under cover letter dated 4/10/15, R. # 17-h). The package included the South Carolina Information and Option Form required by S.C. Code Ann. §38-77-350 (2002). The package emphasized that it contained important documents. Mr. Bronner admitted that he received the package from GEICO. (Bronner deposition, p. 47, ll. 7-17, R. # 17-b).

Mr. Bronner described his education level as good. He testified that he understands what he reads. (Bronner deposition, p. 11, ll. 15-19, R. # 17-b). Mr. Bronner admitted that he read through the package and understood what he read, including the part telling him about his coverages. (Bronner deposition, p. 48, ll. 3-10, R. # 17-b). The initial package contained the South Carolina Information and Option Form, as approved by the Director of the South Carolina Department of Insurance and as required by S.C. Code Ann. §38-77-350 (2002). (SC Department of Insurance Bulletin 1999-01 and 2006-03). Mr. Bronner admitted that he saw the form providing an explanation of the insurance terms. (Bronner deposition, p. 48, l. 11-p. 49, l. 7, R. # 17-b).

Mr. Bronner had always handled the applications for insurance coverage on his vehicles. (Bronner deposition, p. 32, l. 22- p. 33, l. 3, R. # 17-b). Prior to purchasing insurance from GEICO, Mr. Bronner had his insurance with Allstate. (Bronner deposition, p. 33, ll. 7-11, R. # 17-b). Mr.

Bronner had never purchased underinsured motorist coverage. (Bronner deposition, p. 12-16, R. # 17-b).

Mr. Bronner applied for insurance on his motorcycle with GEICO via telephone application in April of 2015. (Bronner deposition, p. 33, l. 17-p. 34, l. 17, R. # 17-b). Mr. Bronner called around and went with GEICO because they were the cheapest and the best in motorcycle coverage. (Bronner deposition, p. 34, ll. 10-17, R. # 17-b). Mr. Bronner does not recall much about the conversation. He called, asked for a quote, received a quote, and set up the coverage that day. (Bronner deposition, p. 34, ll. 18-25, R. # 17-b).

Mr. Bronner does not recall any discussion about different premiums for different coverages, but he does admit that they listed all of the coverages that he could purchase and provided a premium for that. (Bronner deposition, p. 35, ll. 1-17, R. # 17- b). Although Mr. Bronner does not recall much about the conversation, he does not deny that the sales agent went through the type of coverages available and the premiums for each. (Bronner deposition, p. 36, ll. 7-10, R. # 17-b). Thus, Mr. Stewart's sworn testimony by affidavit, that he explained the premiums and disclosed the exact amount of the premium to Mr. Bronner, is not disputed. (Affidavit of Steven Stewart, R. # 17-c; Deposition of Steven Stewart, R. # 22). This testimony directly refutes the Appellant's primary contention, that he was not informed of the exact amount of the premium for the optional coverage.

Counsel for the Appellant's main assertion that the offer was ineffective is that GEICO failed to advise Mr. Bronner of the exact amount of the premium for the optional UIM coverage. This assertion is not true. Steven Stewart and Brandy Shade testified via their affidavits that Mr. Bronner was advised of the amounts of the premiums for the policy with optional coverages and without optional coverages during the initial telephone call. (Affidavit of Steven Stewart, R. #

17-c; Affidavit of Brandy Shade, R. # 17-d; Deposition of Steven Stewart, R. # 22). Therefore, Mr. Bronner was advised of the exact amount of the premium for underinsured motorist coverage during the telephone application.

The Declaration Page (R. # 17-a) clearly states that the insured rejects underinsured motorist bodily injury coverage and property damage. (Bronner deposition, p. 46, ll. 22-25; p. 50, l. 11-p. 52, l. 1, R. # 17-b). Mr. Bronner admitted that he read the declarations page. P. 52, l. 17-p. 53, l. 2, R. # 17-b). The Declarations Page lists an individual premium for each coverage provided but lists no premium for the rejected UIM coverage. (Bronner deposition, p. 44, l. 4- p. 46, l. 21, R. # 17-b). The premiums for each coverage were itemized. (Bronner Deposition p. 46, ll. 10-21, R. # 17-b). Mr. Bronner admitted that he saw the premiums listed when he received the declarations page. (Bronner deposition, p. 35, ll. 15-17, R. # 17-b).

Mr. Bronner was quoted a premium of \$1,093 for the mandatory minimum coverage on the motorcycle, and that is what he agreed to pay. (Bronner Deposition, p. 47, ll. 1-5, R. # 17-b). Mr. Bronner admitted that he has never paid any premium for UIM Coverage. (Bronner deposition, p. 63, l. 17-p. 64, l. 1, R. # 17-b). Mr. Bronner is now trying to benefit from coverage that he rejected and never paid for.

The forms provided to Mr. Bronner repeatedly state to call GEICO with any questions. Even the contact information for the Department of Insurance was provided to the Appellant. Mr. Bronner admitted that he was advised multiple times to call or contact GEICO if he had any questions. (Bronner deposition, p. 49, ll. 8-15, R. # 17-b). Mr. Bronner knew that he could call GEICO if he had questions. (Bronner deposition, p. 53, ll. 3-9, R. # 17-b).

The South Carolina Information and Option Form contained in the initial package explains Uninsured Motorist Coverage and Underinsured Motorist Coverage and warns the policy holder

that unless they execute and return the form that GEICO will be required to include the optional coverages and charge an additional premium. (Executed Option Form, R. # 17-j). The use of this form is mandatory. It is required to be used by the insurer under S.C. Code Ann. §38-77-350. Mr. Bronner admitted to receiving the Option Form. (Bronner deposition, p. 53, l. 18- p. 57, l. 9, R. # 17-b).

The Option Form states, in pertinent part, as follows:

IMPORTANT PLEASE READ CAREFULLY

IF YOU ARE A NEW POLICY HOLDER OR HAVE JUST MOVED TO SOUTH CAROLINA, AND DO NOT COMPLETE, SIGN, AND RETURN THIS FORM, your policy will be issued to include Uninsured Motorist and Underinsured Motorist limits equal to your Bodily Injury and Property Damage liability limits. This may result in a change in your premium.

...

Your motor vehicle insurance policy will include Underinsured Motorist Coverage equal to your Bodily Injury and Property Damage liability limits unless you complete, sign, and return this form indicating that you have made a change to your Underinsured Motorist Coverage. The limits of Optional Underinsured Motorist Coverage are shown on this form, together with the additional premium ranges for those limits.

...

The premium range for the available Uninsured Motorist Coverage and Underinsured Motorist Coverage limits is shown below. Please call us at 1-800-841-3000 if you would like to determine your exact premium.

The premium ranges are per vehicle and may vary based upon the type of vehicle, operator(s), discounts, fees, territory, and/or surcharges applied.

It is important that you understand that, if you reject Additional Uninsured Motorist Coverage and/or Optional Underinsured Motorist Coverage on this form and are involved in an motor vehicle accident, then this form may be used against you by us as evidence against you if we deny your claim for either of these coverages.

The form goes on to provide the Offer of Underinsured Motorist Coverage, as follows:

OFFER OF UNDERINSURED MOTORIST COVERAGE

COVERAGE LIMITS AND RATES

Offer of Optional Underinsured Motorist Coverage:

- \$25,000/\$50,000/\$25,000 \$23.00 to \$780.00
- \$50,000/\$100,000/\$25,000 \$27.00 to \$878.00
- \$100,000/\$300,000/\$50,000 \$32.00 to \$1,073.00
- I wish to reject the offer of Optional Underinsured Motorist Coverage:

In order to validate your rejection of our offer of Optional Underinsured Motorist Coverage, you must also sign and date below.

The Form further provides that:

IMPORTANT NOTICE

If you do not complete this form and return it to us within 30 days, we are required by law to add Additional Uninsured Motorist Coverage and Option Underinsured Motorist Coverage, in the same limits as your liability insurance, to your policy. You will be required to pay the additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

The insured is required to attest and acknowledge that he has read or had read to him the explanations and offers. The Form states:

INSURED'S/APPLICANTS ACKNOWLEDGMENT

By your signature, you acknowledge that you have read or have read to you, the above explanations and offers.

The form used by GEICO is virtually identical to SCDI Form 2006, which was promulgated by the South Carolina Department of Insurance for use by insurers when offering additional uninsured motorist coverage and optional UIM coverage. (See, South Carolina Department of Insurance Bulletin 1999-01). §38-77-350 makes it mandatory for insurers to use this form. The GEICO offer form included this description of UIM coverage:

Underinsured motorist coverage compensates you, or other persons insured under your motor vehicle insurance policy, for amounts which you legally

may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

The initial package states multiple times that if the insured has any questions, they may contact GEICO at geico.com or call GEICO at 1-800-841-3000, or they may contact the South Carolina Department of Insurance.

Mr. Bronner did not immediately execute and return the South Carolina Information and Option Form after receiving the initial package from GEICO. (Bronner deposition, p. 57, ll. 10-16, R. # 17-b). Therefore, on May 1, 2015, GEICO mailed a completely separate letter to Jamar Bronner enclosing only the South Carolina Information and Option Form. (GEICO letter dated 5/1/15, R. # 17-I; Bronner deposition, p. 57, l. 17-p. 59, l. 12, R. # 17-b). The fact that the Option Form was sent separately to Mr. Bronner highlights it even more than when it was sent to him as part of the original package.

This letter further emphasized the need for Mr. Bronner to read, execute, and return the Option Form to GEICO. The letter states:

It has come to our attention that we have not received some of the forms or information that we discussed with you when you obtained your policy. The required information still needed is indicated below.

We're sure you understand that your completed paperwork is an essential part of the insurance contract.

Within the next 10 days, please take a few moments to send us this information using the enclosed envelope. For your convenience, you may also return the information to us via fax at the number listed above.

Outstanding Item(s) due within 10 days of receipt of this letter unless otherwise specified:

Information and Option Form(s). If we do not receive the completed and signed enclosed form(s) within the designated time, we will adjust the coverages and limits as necessary to comply with state requirements.

The fact that this form was sent individually to Mr. Bronner further emphasizes the importance of this document, and the fact that it was brought directly to the attention of Mr. Bronner.

Mr. Bronner personally executed and signed the Option Form on May 5, 2015. (Envelope and executed Option Form, R. #17-j. Bronner deposition, p. 59, l. 13-p. 60, l. 16, R. # 17-b). Mr. Bronner acknowledged at this deposition that he *personally* checked off the boxes rejecting additional Uninsured Motorist coverage and rejecting Optional Underinsured Coverage, then signed the Option Form, and returned it to GEICO. (Bronner Deposition, p. 60, l. 17-p. 61, l. 20; p. 68, ll. 2-4; p. 71, l. 17-p. 72, l. 8, R. # 17-b). The signing of this form constitutes a **conclusive presumption** under South Carolina law that an effective offer of UIM coverage was made to the insured. S.C. Code Ann. § 38-77-350.

Mr. Bronner was informed of the UIM Offer on at least three (3) different occasions: (1) during the initial phone application; (2) by the initial package; and (3) by the follow-up letter. Mr. Bronner was informed of the specific premium for the optional coverage in the initial telephone application. Mr. Bronner was clearly advised of his options and definitely elected to reject UIM coverage on two separate occasions.

The Option Form, that was provided to Mr. Bronner on two separate occasions, advised him of the range of premiums from \$23.00 to \$780.00. In his deposition, Mr. Bronner testified that the exact amount of the premium within this range was not important to him. (Bronner deposition, p. 74, l. 22-p. 75, l. 18, R. # 17-b). Mr. Bronner stated that he would have been willing to pay the maximum amount of \$780.00 to obtain the coverage. Therefore, counsel's argument that Mr. Bronner needed to have the exact amount of the premium listed on the Option Form to make his choice does not make sense. Mr. Bronner testified that knowing the exact amount of the coverage would not have made a difference to him. If Mr. Bronner had desired the

UIM coverage, he would have purchased it, even at the top of the range listed on the policy. This argument also fails because Mr. Bronner had been provided the premium amounts for the optional coverages during the telephone application.

The Appellant contends the policy should be reformed to include UIM coverage, despite the clear rejection of such coverage on two occasions, because the offer was not meaningful as required by S.C. Code Ann. § 38-77-350. Specifically, Appellant maintains the range of premiums detailed on the offer form does not meet the requirement of § 38-77-350(A)(2) requiring that the offer form contain a list of available limits and the range of premiums for the limits. However, this contention belies Mr. Bronner's own testimony concerning the purchase of UIM coverage. Mr. Bronner testified that the amount of the premium was not important to him.

The Honorable Marvin Dukes agreed that GEICO fully complied with South Carolina law governing effective offers of UIM coverage, and that the offer had been rejected by the Appellant. The Court rule that GEICO had made an effective offer under both (1) S.C. Code Ann. § 38-77-350 (2002) and under (2) Wannamaker and its progeny. Since GEICO made an effective offer under both S.C. Code Ann. § 38-77-350 (2002) and under Wannamaker, the policy should not be reformed to include UIM. There is no UIM coverage under this policy. The Plaintiff rejected UIM coverage and never paid for UIM coverage. GEICO requests that the ruling of the circuit court be affirmed.

STANDARD OF REVIEW

"When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." Williams v. Gov't Employees Ins. Co. (GEICO), 409 S.C. 586, 593, 762 S.E.2d 705, 709 (2014) (quoting S.C. Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012)). "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC." Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co., 406 S.C. 534, 538, 753 S.E.2d 437, 439 (S.C. App. 2013) (quoting Nakatsu v. Encompass Indemnity Co., 390 S.C. 172, 177, 700 S.E.2d 283, 286 (S.C. App. 2010)). Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." SCRPC Rule 56(c).

"[W]hen a party has moved for summary judgment[,] the opposing party may not rest upon the mere allegations or denials of his pleading to defeat it." Fowler v. Hunter, 380 S.C. 121, 125, 669 S.E.2d 803, 805 (S.C. App. 2008). "Rather, the non-moving party must set forth specific facts demonstrating to the court there is a genuine issue for trial." *Id.* "Summary judgment should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (S.C. App. 2009).

ARGUMENT

S.C. Code Ann. § 38-77-160 requires an insurer to offer UIM coverage to the insured and common law requires the offer be “meaningful.” See, Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6, 12 (2005). The automobile insurer cannot be held liable for the insured’s failure to purchase UIM coverage pursuant to statutory provisions when the insured made a knowing and informed decision rejecting coverage. GEICO vs. Draine, 389 S.C. 586, 698 S.E. 2d 866 (S.C. App. 2010). GEICO satisfied the effective offer requirement under both S.C. Code Ann. §38-77-350 and State Farm Mutual Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). The offer form signed by Mr. Bronner satisfies the requirements of South Carolina statutory and common law and thereby constitutes a valid and binding rejection of UIM coverage. GEICO also complied with the common law requirements in Wannamaker.

A. CONCLUSIVE PRESUMPTION UNDER S.C. CODE ANN. §38-77-350 (2002)

The meaningful offer requirement can be satisfied in one of two ways: compliance with S.C. Code Ann. § 38-77-350(A) or compliance with the four-part test established by the South Carolina Supreme Court in State Farm Mutual Insurance Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987). Cohen v. Progressive Northern Ins. Co., 402 S.C. 66, 73, 737 S.E.2d 869 (S.C. App. 2013). If a form that satisfies the requirements of section 350(A) is signed by a named insured, then there is a *conclusive presumption* that a meaningful offer was made according to S.C. Code Ann. § 38-77-350(B). Because GEICO’s offer form satisfies the requirements of section (A) and Mr. Bronner signed the completed form, it is entitled to the conclusive presumption, and summary judgment is in order.

Section 38-77-350(A) makes it mandatory for insurers to use the form approved by the Director of Insurance. The statute reads that “This form **must** be used by insurers for all new

applicants.” Section 38-77-350(A) requires the form used by automobile insurers in offering optional coverages provide:

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

GEICO utilized the form approved by the Director of Insurance. The Offer Form satisfies subpart (1) of § 38-77-350(A) requiring “a brief, concise explanation of coverage” by the explanation contained on the first page of the offer form which, again, is virtually identical to the description of UIM coverage drafted by the SCDOI and included on Form 2006.

South Carolina Appellate Courts have repeatedly held that the explanation of coverage provided by the SCDI 2006 form is an adequate explanation of the coverage. Accordingly, Mr. Bronner should not now be allowed to complain that the explanation of the coverage was insufficient. SCDI 2006 has already been held to constitute a meaningful offer that is fully compliant with § 38-77-350(A). Clinton v. West American Ins. Co., 364 S.C. 113, 122, 611 S.E.2d 521, 526 (S.C. App. 2005). If the entire form satisfies the whole of the statute, then the explanation of coverage must necessarily satisfy subpart (1). Thus, GEICO’s explanation of coverage is sufficient to comply with subpart (1) of the statute.

The second requirement under § 38-77-350(A) is that the offer form include “a list of available limits and the range of premiums for the limits.” This requirement is satisfied on the second page of the offer form. In addition to the cost of the minimum limits UIM coverage, GEICO’s form included a list of a range of premiums for coverage limits that Mr. Bronner could

not purchase because he only had the minimum liability limits. There is no authority, however, for the proposition that including more than the required limits invalidates the offer. Thus, GEICO complied with the second statutory requirement.

The third requirement under § 38-77-350(A) is that the offer form include “a space for the insured to mark whether the insured chooses to accept or reject the coverage, and a space to select the limits of coverage desired.” This requirement is satisfied on the second page of the offer form which provides the above-detailed limits and premiums along with an option that reads: “I wish to reject the offer of Optional Underinsured Motorist Coverage: In order to validate your rejection of our offer of Optional Underinsured Motorist Coverage, you must also sign and date below.”

As noted previously, Mr. Bronner admitted that he placed a checkmark on the form in the rejection box. Mr. Bronner also admitted that he signed the form. By including a signature line on the form, which Mr. Bronner admits he signed, along with the box that he checked, GEICO provided *more* than is required by §38-77-350. GEICO provided *two* spaces for the insured to use when indicating his desire to reject UIM coverage: a box to be checked and a line to be signed. Thus, because Mr. Bronner actually placed the checkmark in the rejection box and signed the form, under South Carolina law, this constitutes a conclusive presumption that there was an informed knowing selection of coverage and neither the insurance company nor agent is liable to the insured for the insured’s failure to purchase higher coverage. *See, Floyd vs. Nationwide Mutual Insurance Company*, 367 S.C. 253, 626 S.E. 2d 6 (2005).

The fourth requirement under § 38-77-350(A) is that the offer form include “a space for the insured to sign the form, acknowledging that the optional coverage has been offered.” This requirement is satisfied by the following paragraph contained on the third page of the offer form:

INSURED'S/APPLICANT'S ACKNOWLEDGEMENT:

By your signature, you acknowledge that you have read, or have had read to you, the above explanations and offers.

In the future, if you wish to increase or to decrease the limits of Additional Uninsured Motorist Coverage or Optional Underinsured Motorist Coverage, you must contact GEICO at either the web site or telephone number below. You will not be presented with another copy of this form when you extend, change, supersede, or replace your motor vehicle liability insurance policy.

Signature

Print Name

Date

We will answer any questions pertaining to these coverages. Please visit us at geico.com or call us toll free at 1-800-841-3000....

The fifth and final requirement under § 38-77-350(A) is that the offer form include “the mailing address and telephone number of the Department of Insurance, so that the insured may contact it with any questions that the insurance agent is unable to answer.” This requirement is satisfied on the third page of the offer form which states:

For any further questions you may contact the South Carolina Department of Insurance via either email at consumers@doi.sc.gov; phone at (803) 737-6180 or 1-800-768-3467; or mail to Consumer Services Division, P.O. Box 100105, Columbia, South Carolina 29202-3105.

GEICO's offer form satisfies each of the five requirements of § 38-77-350(A).

As noted above, South Carolina courts have held that the form used by GEICO (a revision of Form 2006), meets the requirements of § 38-77-350(A). In Clinton v. West American Insurance Co., this Court stated: “The South Carolina Court of Appeals has specifically held that the form used by [the insurer], Form 2006, meets the requirements of § 38-77-350.” Clinton, 364 S.C. 113, 122, 611 S.E.2d 521, 526 (S.C. App. 2005). In Burch v. South Carolina Farm Bureau Mutual Insurance Co., this Court evaluated a similar form to the one signed by Mr. Bronner and stated: “We agree that the [Form 2006] used by Farm Bureau in this case falls within the requirements of

South Carolina's statutory and case law, such that Farm Bureau made a meaningful and effective offer of UIM coverage to [the insured]." Burch, 351 S.C. 342, 349, 569 S.E.2d 400, 404 (S.C. App. 2002); *see also*, Bower v. National Gen. Ins. Co., 351 S.C. 112, 120-21, 569 S.E.2d 313, 317 (2002) ("Indeed, we note that the South Carolina Department of Insurance (DOI) has issued a sample offer form which clearly communicates [optional levels of coverage] We strongly encourage insurers to include such language on their offer forms."); Butler v. Unisun Ins. Co., 323 S.C. 402, 475 S.E.2d 758 (1996) (holding the same rejection form as Farm Bureau's complies with § 38-77-350).

Having shown that the GEICO offer form provided to Mr. Bronner and executed by him fully complied with the requirements of S.C. Code Ann. §38-77-350(A), GEICO is entitled to the **conclusive** presumption of a meaningful offer to Mr. Bronner and a valid rejection of the UIM coverage by Mr. Bronner that was otherwise available to him for purchase. Floyd, *supra*. Section 350(B) states: "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." The form fully complied with all requirements of section 350(A), and Mr. Bronner signed the form three separate times. Thus, GEICO is entitled to the conclusive presumption of a meaningful offer and knowing rejection of the UIM coverage.

A "Conclusive Presumption" is defined as follows:

A Conclusive Presumption or absolute presumption or irrebuttable presumption of law refers to presumption **which cannot be overcome** or changed by any additional evidence or argument. *USLEGAL, INC.*

A **conclusive presumption** is a **presumption** of law that cannot be rebutted by evidence and must be taken to be the case whatever the evidence to the contrary. *Wikipedia*.

A conclusive presumption is defined as, "A presumption that cannot be overcome by any additional evidence or argument." Black's Law Dictionary.

Even internet applications are considered to be sufficient to comply with the statute.

Traynum vs. Scavens, 416 S.C. 197, 788 S.E. 2d 115 (2016).

The Respondent would re-emphasize that:

- The law states that if a form that satisfies the requirements of Section 350(A) is signed by a named insured, then there is a **conclusive presumption** that a meaningful offer was made according to S.C. Code Ann. § 38-77-350(B).
- Mr. Bronner signed and returned the completed rejection form.
- GEICO is entitled to a conclusive presumption that a meaningful offer was made.

Because of the fact that Mr. Bronner completed, signed, and returned the South Carolina Option Form rejecting coverage, GEICO is entitled to a conclusive presumption that a meaningful offer was made. Thus, GEICO is entitled to summary judgment based upon a simple application of the law as written to the facts of this case.

B. AS A SECOND SUPPORTING GROUND, GEICO'S OFFER FORM SATISFIES THE COMMON LAW REQUIREMENTS OF WANNAMAKER.

The offer form not only meets the requirements of § 38-77-350(A), but it also meets the requirements for an effective offer set forth in Wannamaker. The Supreme Court of South Carolina has held that "the statute mandates the insured to be provided with adequate information, and in such a manner, as to allow the insured to make an intelligent decision of whether to accept or reject coverage." State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 521, 354 S.E.2d 555, 556 (1987). Under the Wannamaker test, an offer is meaningful when: (1) the insurer's notification process is commercially reasonable, whether oral or in writing; (2) the insurer specifies the limits of optional coverage and not merely offers additional coverage in general terms; (3) the insurer intelligibly advises the insured of the nature of the optional coverage; and (4) the insured is told

that optional coverages are available for an additional premium. Wannamaker, 291 S.C. at 521, 354 S.E.2d at 556. Recent case law holds that the offer form fully satisfies the statutory and common law requirements for a meaningful offer *even if* the statutory presumption did not apply. Cohen v. Progressive Northern Ins. Co., 402 S.C. 66, 73, 737 S.E.2d 869 (S.C. App. 2013).

The first requirement under Wannamaker is that “the insurer’s notification process must be commercially reasonable, whether oral or in writing.” Wannamaker, 291 S.C. at 521, 354 S.C. at 556. GEICO’s offer was given (1) by telephone, in which Mr. Bronner was informed of the additional premium for optional coverages; and (2) in written form on the UM/UIM offer form provided to Appellant. Therefore, GEICO’s form is commercially reasonable under Wannamaker.

The second requirement under Wannamaker is that “the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms.” Wannamaker, 291 S.C. at 521, 354 S.C. at 556. As listed in the previous section, Mr. Bronner was informed of the premiums for optional coverage during the telephone application. GEICO’s Option Form complies with S.C. Code Ann. § 38-77-350(A), and details three optional coverages and their corresponding ranges of premiums.

The third requirement under Wannamaker is that “the insurer must intelligibly advise the insured of the nature of the optional coverage.” Id. In Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 658 S.E.2d 106 (S.C. App. 2008), the South Carolina Court of Appeals held that an offer form clearly explains the nature of UIM coverage when “various options of UIM coverage limits are set out, every appropriate selection is made, each signature block is signed, *and the form adequately explains where the insured is to seek out additional information if he or she has questions.*” Atkins, 376 S.C. at 631, 658 S.E.2d at 109-110 (emphasis added). GEICO’s offer form intelligibly advises the insured of the nature of the optional coverage because it sets out various options of UIM

coverage limits and explains where the insured is to seek out additional information if he has questions. Further, the offer form completed by Mr. Bronner indicates that every appropriate selection was made, and each signature block was signed by Mr. Bronner.

Therefore, GEICO's offer form satisfied the third requirement under *Wannamaker*. See also, Progressive Casualty Ins. Co. v. Leachman, 362 S.C. 344, 608 S.E.2d 569 (2005) (holding a form allowing the insured to choose different amounts of coverage up to the amount of liability coverage "gave the insured the opportunity to make an intelligent and informed decision on whether to purchase UIM coverage"); Burch v. South Carolina Farm Bureau Mut. Ins. Co., 351 S.C. 342, 569 S.E.2d 400 (Ct. App. 2002) (holding that the form met the case law requirements when the form advised the insured he could purchase UIM coverage in limits up to limits of his liability coverage).

The fourth requirement under *Wannamaker*, is that "the insured must be told that optional coverages are available for an additional premium." *Wannamaker*, 291 S.C. at 521; 354 S.C. at 556. As the list in the previous section shows, GEICO's offer form specifies the additional premium for the addition of UIM coverage: the \$25,000/\$500,000/\$25,000 option corresponds with a \$23.00 to \$780.00 range with an explanation the premium varies based on "the type of vehicle, operator(s), discounts, fees, territory and/or surcharges applied." The form also directs the insured to visit GEICO's website or call a provided number with inquiries about the exact amount of premium. Mr. Bronner was also informed of the premium for optional coverages during the telephone application.

GEICO also provided a method by which Mr. Bronner could have determined the premium for a specific set of coverage limits if they had not been disclosed to him in the telephone application. Namely, Mr. Bronner could have called GEICO at its customer service telephone

number for a quote. Mr. Bronner's only challenge to this rationale is that GEICO should not have "put the onus on its customer to contact it for specific premiums" because it had the necessary information to provide the specific quotes for his vehicles given the fact that his liability limits were the statutory minimums. However, Mr. Bronner fails to explain why it is unduly burdensome to expect customers to call their insurers for specific premiums if they have questions about the coverages or the premiums. It should be noted again that the actual premiums for the optional coverages were covered with Mr. Bronner by Steven Stewart in the telephone application.

Mr. Bronner personally never claimed that calling GEICO was burdensome. Rather, he concedes that he was able to contact GEICO and make an inquiry about the exact premium, but that he did not do so because he never wanted the UIM coverage in the first place.

The Appellant relies on an allegation that the range of premiums is consistent with NO premium price given and relies on Ackerman v. Traveler's Insurance Company, 318 S.C. 137, 456 S.E.2d 408 (S.C. App. 1995) and American Security Ins. Co. v. Howard, 315 S.C. 47, 431 S.E. 2d 604 (S.C.. App. 1993). Both of these cases were decided prior to the enactment of § 38-77-350. They are not directive in this instance. The plain meaning of § 38-77-350(A)(2) requires that the form provide 'a list of available limits and the range of premiums for the limits.' The instant form used by GEICO clearly complies with the requirements of 38-77-350. There is no material dispute as to the form or its contents." The range of premiums listed on the UIM offer form is acceptable.

The five requirements of § 38-77-350(A) and the four requirements of Wannamaker are clearly satisfied by GEICO's offer form. Nevertheless, to the extent that there remains any question about whether Mr. Bronner received a meaningful offer, that question is answered by the South Carolina Court of Appeals' opinion in Cohen v. Progressive Northern Ins. Co., 402 S.C. 66, 737 S.E.2d 869 (S.C. App. 2013). In that case the Court of Appeals found that an offer form,

which provides all of the information required by S.C. Code Ann. § 38-77-350(A) fulfills the meaningful offer requirement even where the form is not properly completed.

In this case, of course, Mr. Bronner has admitted that he signed the offer form mailed to him by GEICO. However, the willingness of the Court of Appeals in Cohen to find that the form satisfies even the common law requirements set forth in *Wannamaker* is an indication of the weight that the form carries. Even when the form is not precisely completed, it is given a high deference when it provides the information necessary to understand UIM coverage. In this case, the form was properly completed and fully complied with § 38-77-350(A) and Wannamaker.

C. APPELLANT'S ARGUMENTS ARE INCORRECT AND UNSUPPORTABLE:

A. Appellant asserts that the policy was issued without UIM coverage before it provided Appellant with the UM/UIM selection/rejection form or otherwise explained UIM coverage to him.

In his cross-motion for summary judgment, Mr. Bronner made two claims that are simply unsupported under the current state of the law in South Carolina. First, Appellant claims that the policy was issued before it provided the Appellant with the selection/rejection form or otherwise explained the coverage to him. First of all, the coverage was explained to him during the initial telephone application process. *See*, Affidavits of Steven Stewart and Brandy Shade, R. , # 17-C and 17-d. Secondly, S.C. Code Ann. §38-77-350(E) only requires that the form be completed within 30 days of the inception of the policy. Thus, South Carolina law provides for the policy to be issued before the selection/rejection form is signed and returned. Regardless of the 30-day time period, Mr. Bronner had clearly executed the form and returned it within the 30 day time period long before the accident in question.

B. Defendant issued the policy without UIM Coverage before it provided Appellant with the amount of the premium it would cost for him to purchase UIM Coverage.

This argument is simply not true. The Appellant was informed of the available coverages and premiums during the initial sales call. (See, Affidavits of Steven Stewart and Brandy Shade, R. , # 17-C and 17-d.) Mr. Bronner was also provided with the range of premiums on the rejection form, as approved by the Department of Insurance. Mr. Bronner also testified that anything with the range was acceptable to him, so counsel's argument that he needed to know the specific premium in order to choose coverage does not make sense. The form itself is a conclusive presumption that an informed knowing decision was made.

C. Defendant is not entitled to the presumption afforded by S.C. Code Ann. §38-77-350 (1976 as amended) because Defendant's UM/UIM selection/rejection form:

- a. The process used by Defendant to notify Appellant about the availability of UIM coverage was not commercially reasonable;**
- b. Fails to provide a clear explanation of the premium Defendant would charge Appellant if he selected UIM coverage;**
- c. Fails to provide an accurate description of available UIM Limits; and**
- d. Was not "completed by an insurance producer or a representative of the insurer".**

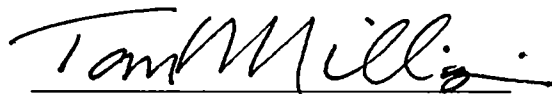
Items a-c are addressed in the body of the memorandum above. In regard to item d, the Appellant asserts that the statute requires that an "insurance producer or representative of the insurer" complete the form. That is an illogical argument, as the approved form provides simple boxes for the insured to check to make his choice. Mr. Bronner explicitly testified that he signed the form where it was required to show that he did not wish to purchase UIM coverage. In Floyd v. Nationwide, 367 S.C. 253, 626 S.E.2d 6 (2005), the Supreme Court held that when an insured makes the marks on the form, it would guarantee that an insured would be more educated because he actually had to read it. The legislature amended the statute to change this requirement so that the form was effective even if filled out by the representative of the insurer. It is more effective if

filled out by the insured personally. It would be absurd to find that the marks made by Mr. Bronner are insufficient. The South Carolina Department of Insurance addressed this issue in Bulletin 2006-03, pointing out that the signature of the named insured on the form was what was important, as opposed to who marked the selection. The fact that Mr. Bronner checked the boxes himself is even more evidence of a knowing selection than if the insurer had filled it out.

CONCLUSION

For the reasons stated above, GEICO maintains there is no genuine issue as to any material fact that Mr. Bronner rejected UIM coverage after receiving a meaningful offer in compliance with S.C. Code Ann. § 38-77-350(A) and Wannamaker. Consequently, Mr. Bronner is not entitled to reformation of his policy to include UIM coverage and is not entitled to any UIM coverage beyond what was already paid, thereby entitling GEICO to summary judgment.

RESPECTFULLY SUBMITTED:



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November 14, 2019
Mt. Pleasant, South Carolina

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INDEMNITY COMPANY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2019-001096

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SC Court of Appeals

Jamar Markel Bronner,

Appellant,

vs.

GEICO Indemnity Company,

Respondent.

Proof of Service

I, certify that I have served the INITIAL BRIEF OF RESPONDENT and DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL upon the Appellant herein by mailing same via U.S. First Class Mail, postage prepaid, on November 14, 2019, addressed to:

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November 14, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

RECEIVED
NOV 15 2019
SC Court of Appeals

RE: Jamar Markel Bronner vs. GEICO
Appellate Case Number: 2019-001096
M&H Number: 101.17027

Dear Ms. Kitchings:

Enclosed please find the original and one copy each of the Initial Brief of Respondent and Designation of Matter to be included in the Record on Appeal in the above-referenced matter. Please file the originals, clock the copies and return same to me in the provided self-addressed stamped envelope for my file.

By copy of this transmittal to counsel for record, I am serving copies to the enclosed upon the Appellant herein.

With kind regards, I am

Sincerely yours,


Thomas H. Milligan

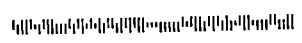
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