THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2020-000857

Barbara Brooks, as Personal Representative of the Estate of James Macomson,…….....Appellant,

v.

State Farm Mutual Automobile Insurance Company,…….....Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

As the Appellant stated in its initial brief, the South Carolina Supreme court has "acknowledge[d] that in the context of section 38-77-350(C), the word 'change' is ambiguous" and has recently held that "an insurance company must make a new offer of coverage when there has been a *material* change to the policy." *Progressive Direct Ins. Co. v. Reeves*, 427 S.C. 291, 296, 831 S.E.2d 422 (2019). The issue of whether a change in policy limits constitutes a material change such that a new offer of UIM coverage must be made has not been addressed by this Court before. However, applying the South Carolina Supreme Court's reasoning in *Progressive*, this Court should find that a change in policy limits necessitates a new offer of UIM coverage.

In its initial brief, the Respondent argues that a change in policy limits is not material in part because the premium charged to an insured is subject to change. In making this argument, the respondent mistakenly equates a change in policy limits with a change in premium. Premiums regularly change for a variety of reasons. Indeed, insureds can even be expected to anticipate fluctuations in their premiums. However, those premium changes do not necessitate or precipitate policy changes. While the premiums charged to an insured may vary over time, the coverage remains the same unless and until the insured materially changes his policy to increase or decrease his limits.

The Respondent's argument that the public policy at stake is to avoid making decisions that are properly legislative decisions is similarly flawed. In American jurisprudence, it is axiomatic that courts interpret the law. As the Marshall Court so notably held, "it is emphatically the duty and province of the Court to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177. In this case, the Appellant is not asking this Court to circumvent the Legislature, but rather to interpret laws created and enacted by the Legislature.

The South Carolina Legislature highlights the importance of covering risk in three of its four declared purposes of Chapter 77-38 and orders the liberal construction of statutes within this section to ensure that those purposes can be achieved. S.C. Code Ann. § 38-77-10. A liberal construction of the relevant UIM statutes to meet the Legislature's stated objects would extend the benefit of coverage to the largest possible class and resolve any doubts in favor of the injured party. It would also serve public policy by ensuring that more drivers are covered by insurance policies and protected from risk.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests the Court find that a change in the liability limits of a policy is a material change, such that State Farm was required to make a new meaningful offer of UIM coverage. The Appellant further respectfully requests the Court find that, since no meaningful offer was made, the decedent's policy be reformed to include UIM coverage up to the amount of the decedent's liability coverage of 25,000/50,0000/25,000.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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