THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman
Circuit Court Judge

Appellate Case No.: 2020-001245
Case No.: 2016-CP-26-05356

Progressive Northern Insurance Co., ... Respondent,

v.

Brandon Lawrence and Ashley Outlaw, ... Defendants,

Of whom Brandon Lawrence is the Appellant and Ashley Outlaw is a Respondent.

FINAL BRIEF OF RESPONDENT PROGRESSIVE NORTHERN INSURANCE CO.

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Columbia, South Carolina
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STATEMENT OF ISSUES ON APPEAL

Respondent Progressive Northern Insurance Company submits that the issues presented on appeal are as follows, rather than as set forth in Appellant's brief:

I. DID THE LOWER COURT ERR IN RULING THAT RESPONDENT ASHLEY OUTLAW ACTED AS THE AGENT OF APPELLANT BRANDON LAWRENCE WHEN SHE REJECTED RESPONDENT PROGRESSIVE NORTHERN INSURANCE COMPANY'S OFFER TO SELL UNDERINSURED MOTORIST COVERAGE?

II. DID THE LOWER COURT ERR IN RULING THAT RESPONDENT PROGRESSIVE NORTHERN INSURANCE COMPANY MADE A MEANINGFUL OFFER OF UNDERINSURED MOTORST COVERAGE TO APPELLANT BRANDON LAWRENCE AS REQUIRED BY S.C. CODE ANN. § 38-77-160 THROUGH LAWENCE'S AGENT, RESPONDENT ASHLEY OUTLAW?

STATEMENT OF THE CASE

Progressive Northern Insurance Company (hereinafter "Progressive") alleges that a meaningful offer of underinsured motorist (UIM) coverage was made to Appellant Brandon Lawrence (hereinafter "Lawrence") because he specifically appointed Respondent Ashley Outlaw (hereinafter "Outlaw") as his agent for purposes of obtaining a South Carolina motorcycle insurance policy and is bound by Outlaw's rejection of UIM coverage.

Progressive filed a declaratory judgment action on August 12, 2016. (R. pp. 79-82). Lawrence filed his Answer and Counterclaim to Plaintiff's Declaratory Judgment on October 21, 2016, denying that he rejected UIM benefits and seeking reformation of the policy to include UIM coverage, as well as alleging that Progressive violated its duty of good faith and fair dealing. (R. pp. 130-34). Progressive served its Reply to Lawrence's Counterclaim on November 22, 2016. (R. pp. 135-37).

This declaratory judgment action was tried before the Honorable Clifton B. Newman on October 18, 2017 in a non-jury trial. The parties agreed to submit the action for ruling based upon

their trial briefs and the exhibits attached thereto, the depositions of the Defendants and the live testimony of Lawrence, as well as arguments made by the parties in their trial briefs and orally at the hearing. (R. p. 14). The trial court filed its Order and Judgment on November 28, 2017, ruling that Progressive made a valid, meaningful and effective offer of UIM coverage to Lawrence through his appointed agent, Outlaw; that Outlaw, pursuant to Lawrence's authorization to procure an insurance policy on his behalf, rejected Progressive's meaningful offer of UIM coverage, as a result of which UIM coverage is unavailable under the subject policy. (R. p. 23).

After the trial court filed its order on November, 28, 2017, Lawrence timely filed a Rule 59(e) motion pursuant to the South Carolina Rules of Civil Procedure. On June 16, 2020, the trial court heard Lawrence's Rule 59(e) Motion to Alter, Amend, and/or Reconsider the Court's Order dated November 28, 2017. (R. pp. 226-230). On August 31, 2020, the trial court issued its Order denying Lawrence's Motion to Alter, Amend and/or Reconsider the Court's Order of November 28, 2017. (R. pp. 4-12). Lawrence timely filed his Notice of Appeal of the August 31, 2020 Order on September 15, 2020.

FACTS

Lawrence and Outlaw lived in the same house with their children from 2008 until 2013 but were never legally married. (R. p. 301, lines 7-18; p. 330, lines 13-20; p. 351, lines 3-25; p. 354, lines 13-15).[1] Lawrence and Outlaw both contributed to the purchase of their home and split the household expenses. (R. p. 331, lines 7-24; p. 371, line 11-p. 372, line 14; p. 373, lines 10-14). Outlaw handled the couple's bills as well as the insurance needs of the household. (R. p. 332, lines 3-17; p. 335, line 24-p. 336, line 2; p. 373, line 15-p. 374, line 1; p. 380, lines 5-8).

[1] The depositions were taken in connection with a tort suit that was filed by Lawrence in Horry County with civil action number 2015-CP-26-6563. The same attorneys who have appeared in this action were present at the depositions.

On August 19, 2009, Outlaw obtained a South Carolina Motorcycle Policy with Progressive, covering Lawrence's 2004 Big Dog Chopper motorcycle. Outlaw procured this policy with Lawrence's express permission and knowledge. (R. p. 332, lines 23-24; p. 333, lines 11-20; p. 333, line 25-p. 334, line 6; p. 334, lines 7-9; p. 334, lines 15-17; p. 374, lines 2-15; p. 378, line 23-p. 379, line 2; p. 384, lines 18-22). Outlaw was listed on the application as "Married" and as an "Insured," and Lawrence was listed as "Married" and as the "Spouse." (R. p. 217). On September 5, 2009, on her own behalf and on behalf of Lawrence, Outlaw filled out and signed the application form, rejecting Progressive's offer of optional UIM coverage on the policy. (R. p. 379, lines 9-13). Outlaw ultimately paid the premium for the policy and was reimbursed by Lawrence. (R. p. 336, lines 3-11; p. 376, lines 14-18; p. 379, lines 3-8).

On May 13, 2013, Lawrence was involved in an accident in Surfside Beach while operating the insured motorcycle. (R. p. 34, ¶5). Lawrence filed suit against the alleged at-fault driver and settled with her liability carrier on a covenant not to execute. (R. p. 15). Progressive appeared in the tort suit, as did IDS Property Casualty Insurance Company (hereinafter "IDS"), which is also alleged to have UIM coverage available for Lawrence. (R. p. 15). IDS filed a separate declaratory judgment action alleging there is no UIM coverage available under its policy because the vehicle Lawrence was operating at the time of the accident did not have UIM coverage. (R. p. 41, ¶6). That action is currently pending in Horry County. Progressive filed this declaratory judgment action seeking a declaration that a meaningful offer of UIM coverage was made to Lawrence because he specifically appointed Outlaw as his agent for purposes of obtaining the policy and is bound by her rejection.

STANDARD OF REVIEW

A declaratory judgment action is determined by the nature of the underlying issue. *Nationwide Mutual Fire Insurance Company v. Walls*, 427 S.C. 348, 354, 831 S.E.2d 131, 135 (Ct.App. 2019). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Id.*

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Id.*

ARGUMENT

I. RESPONDENT ASHLEY OUTLAW REJECTED PROGRESSIVE'S OFFER OF UNDERINSURED MOTORIST COVERAGE FOR APPELLANT BRANDON LAWRENCE AS HIS AUTHORIZED AGENT.

Lawrence argues Outlaw's rejection of UIM coverage should not be binding on him. However, as set forth below, Outlaw's rejection is binding on Lawrence because Lawrence had appointed Outlaw as his agent for the specific purpose of obtaining the motorcycle policy.

Several South Carolina cases have addressed agency in the context of UIM offers. In *Nationwide Mutual Insurance Co. v. Prioleau*, 359 S.C. 238, 597 S.E.2d 165 (Ct.App. 2004), a husband and wife applied for automobile insurance with both listed on the application as named insureds, like Outlaw and Lawrence. However, the husband ultimately went to the agency alone to apply for the insurance and was the only one who signed as an applicant. *Id.* at 240, 597 S.E.2d at 166-67. At that time, a form offering optional UIM coverage was presented to and signed by the husband alone, rejecting UIM coverage, even though the policy was issued with both as named insureds. *Id.* In holding that the husband was acting as his wife's implied agent at the time, the Court of Appeals summarized agency relationships as follows:

> It is well-settled that the relationship of agency between a husband and wife is governed by the same rules which apply to other agencies, and no presumption

> arises from the mere fact of the marital relationship that one spouse is acting as agent for the other. However, the relationship of agency need not depend upon express appointment and acceptance thereof. Rather, an agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case.
>
> > The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency.

Id. at 242-43, 597 S.E.2d at 168 (quoting *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979)) (internal citations omitted).

In support of its conclusion that an implied agency relationship existed between the husband and wife, the Court of Appeals emphasized that the wife admitted to knowing about her husband's task of obtaining insurance, although she claimed that she did not know when he was going to do so. *Id.* at 243, 597 S.E.2d at 168. Moreover, while the wife denied that her husband had express authority to act as her agent, in South Carolina "[t]he law is clear . . . that the relationship of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied by the words and conduct of the parties and the circumstances of the particular case. Indeed, the law creates the relationship of principal and agent where the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts." *Id.* Ultimately, the Court determined that facts existed to "demonstrate an implied agency existed between the parties for the purpose of acquiring the automobile insurance policy in question." *Id.* at 244, 597 S.E.2d at 168.

The *Prioleau* Court also emphasized that by making a claim under the policy, the wife "essentially placed herself in such a position that the court must infer an agency relationship.

Otherwise, no policy would exist under which [she] could claim UIM coverage." *Id.*; see also *Messerly v. State Farm Mut. Auto. Ins. Co.*, 277 Ill.App.3d 1065, 1070, 662 N.E.2d 148, 151 (1996) ("It is inconsistent for plaintiff to argue (1) she was covered by the policy procured exclusively by her husband but admittedly for her benefit; (2) she was entitled to recover from defendant under the terms of the policy, but (3) with respect to one aspect of the policy, her husband acted without her authority and his decision cannot bind her. To allow such an argument would permit plaintiff to accept the benefit of the bargain her husband made on her behalf but not the burden.").

In *Allstate Fire & Casualty Insurance Co. v. Simpson*, 152 F.Supp.3d 487 (D.S.C. 2016), a girlfriend completed and signed a form declining UIM coverage on a policy in which she and her boyfriend were both listed as named insureds. *Id.* at 490. Both parties sought UIM coverage under their policy after an accident. *Id.* The District Court found that the boyfriend, as a named insured and applicant, should have been offered UIM coverage. *Id.* at 491-93. However, not ending the inquiry there, the District Court analyzed whether there was an implied agency relationship between the boyfriend and girlfriend like the Court found in *Prioleau*. *Id.* at 493-96. But unlike *Prioleau*, the District Court determined that there was no evidence that the couple had discussed insurance prior to the policy being issued; no evidence that the boyfriend knew that his girlfriend was obtaining the policy; and no evidence that the boyfriend knew that UIM coverage was declined. *Id.* at 495. Based on these facts, the Court determined that there was no evidence to support the existence of an implied agency relationship. *Id.* at 495-96.

In *Ridgway v. Shelter Ins. Companies*, 22 Kan.App.2d 218, 913 P.2d 1231 (1996), the Kansas Court of Appeals dealt with a rejection issue with facts nearly identical to the ones in this case. In *Ridgway*, the plaintiff had purchased a motorcycle and instructed his girlfriend, Billie

Lewis, with whom he had been living for five years and had a child, to purchase insurance for the motorcycle. *Id.* at 219, 913 P.2d at 1232. Lewis went to the agent's office and signed forms rejecting PIP and UM coverage. *Id.* at 219-20, 913 P.2d at 1232-33. Lewis had been given no specifics from Ridgway about what coverage to procure and she did not read any of the forms she signed. *Id.* In finding that the rejections were proper, the Court noted that even though the case did not involve a husband and wife, the same agency principles applied. *Id.* at 223, 913 P.2d at 1234. The Court noted that Ridgway had placed no restrictions or limitations on what coverage Lewis was or was not to obtain and therefore Lewis had implied authority to make those decisions. *Id.* at 224, 913 P.2d at 1235. The Court ultimately found that there was no genuine issue of material fact as to the agency issue and the rejections were proper under the applicable Kansas statutes. *Id.*

Applying the agency principles outlined above to the case at bar, Lawrence gave Outlaw the express authority to act as his agent for the purposes of procuring insurance for his motorcycle. The application represents that Ms. Outlaw and Mr. Lawrence were a married couple. However, the Court of Appeals' analysis in *Prioleau* did not rely on the legal status of the insureds' relationship in order to find an implied agency. In *Prioleau*, the spouse who did not sign the application denied giving express authority to her husband to decline an offer of UIM coverage; nevertheless, the Court found an implied agency relationship. In the case at bar, Lawrence acknowledges that he authorized Outlaw to obtain the policy for him. Outlaw did not procure the policy for her own benefit, but rather for Lawrence, for a motorcycle that he owned and would be operating. Although Lawrence did not know when Outlaw spoke to Progressive about obtaining a policy on a motorcycle, Lawrence testified that he knew Outlaw was getting insurance. (R. p. 333, line 9-p. 334, line 6; p. 378, line 23-p. 380, line 2). Outlaw further testified that "[Lawrence] was the one that wanted [her] to get the Progressive policy," and that Outlaw "got a quote and then

[she] took that to [Lawrence]." (R. p. 378, lines 11-12; p. 375, lines 21-22). According to Outlaw, "[she] [did]n't remember if [they] had gotten any other quotes, but Progressive was the cheaper price, so [Lawrence] wanted to go with that one." (R. p. 375, line 25-p. 376, line 2). Outlaw's deposition contains the following exchange concerning her conversations with Lawrence about insurance on the motorcycle:

> Q When you were going through the purchase and application process, what conversations did you have?
>
> A Well, I mean, I'm pretty sure we discussed the – the – you know, the minimums, maximums and additional options. And I mean, that – you know, we discussed it and compared it with the other, you know, policy, you know, other insurance companies.
>
> Q Did you discuss underinsured motorist coverage?
>
> A I can't say for definite, but I know that, you know, you have to deny coverage and I – I mean, I feel sure I would have – wouldn't – I wouldn't have signed anything that – without, you know, getting his approval. I guess you could say that because, I mean, he was the one paying for it.

(R. p. 377, lines 1-18). Outlaw further testified that the two discussed the insurance coverage and compared coverages, including the previous insurance coverage on the motorcycle, prior to deciding on the Progressive policy. (R. p. 380, lines 9-11; p. 388, lines 2-14).

Both Lawrence and Outlaw testified that Lawrence expressly authorized Outlaw to procure the Progressive policy on the subject motorcycle. Lawrence stated, "I asked Ashley to get insurance. I asked her – since she paid all the bills I asked her to get the vehicles insured." (R. p. 335, lines 3-5). He also testified as follows:

> Q So you asked her to get coverage and you knew she was going to get coverage. Do you – did you specifically give her permission to take out the policy?
>
> A Yes, I asked her to get coverage.

(R. p. 335, lines 8-12). Outlaw confirmed that she had express permission from Lawrence to apply for coverage on the motorcycle. (R. p. 384, lines 18-22).

Thus, Lawrence testified that he knew about Outlaw's intent to obtain insurance coverage on the motorcycle because he specifically asked her to do so. According to Outlaw's testimony, she and Lawrence discussed the Progressive quote and compared policies, and ultimately Lawrence decided on the Progressive policy. Outlaw had express permission and therefore authority to act on behalf of Lawrence in obtaining the motorcycle policy with Progressive. As an agent with express authority, Outlaw's decision to reject optional UIM coverage is binding on Lawrence.

Even if there was no express authority, there was implied authority based on the words and conduct of Lawrence and Outlaw. Lawrence acknowledged that Outlaw handled all the insurance needs of the household, and that he deferred to her with regard to the motorcycle policy. As in *Prioleau*, Lawrence knew that Outlaw was getting insurance on the motorcycle. He did not participate in obtaining insurance for the household and left such matters to be handled by Outlaw, implicitly granting her authority to act on the Progressive policy. Both ultimately were listed on the policy, as was also the case in *Prioleau*, and Lawrence gave Outlaw authority to act in order to obtain coverage on the motorcycle. Outlaw's decision to reject UIM coverage is therefore binding on Lawrence, and to hold otherwise would allow Lawrence to be bound by and benefit from Outlaw's procurement of the policy, but not by her rejection of UIM coverage.

II. RESPONDENT PROGRESSIVE NORTHERN INSURANCE CO. MADE A MEANINGFUL OFFER OF UNDERINSURED MOTORIST COVERAGE TO APPELLANT BRANDON LAWRENCE AS REQUIRED BY S.C. CODE ANN. § 38-77-160 THROUGH RESPONDENT ASHLEY OUTLAW.

As a matter of law, Progressive made a meaningful offer of underinsured motorist coverage to Lawrence. Lawrence argues that, because he and Outlaw were both listed as named insureds

on the Application for Insurance, Progressive's failure to address the application to both Lawrence and Outlaw in the salutation equated to a failure to make an intelligible explanation of coverage to Lawrence as required in order to make a meaningful offer.

Unlike basic uninsured motorist coverage, UIM coverage is optional in South Carolina. Section 38-77-160 of the South Carolina Code requires insurers to "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. To comply with this statutory obligation, the insurer's offer of UIM coverage must be "meaningful." *Tucker v. Allstate Ins. Co.*, 337 S.C. 128, 130, 522 S.E.2d 819, 820 (Ct.App. 1999). The insurer bears the initial burden of establishing that it made a meaningful offer. *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 759 (1996).

In *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987), the South Carolina Supreme Court addressed the manner in which offers of UIM coverage should be made and adopted the following standards for determining whether such offers are effective:

> (1) The insurer's notification process must be commercially reasonable, whether oral or in writing;
>
> (2) The insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;
>
> (3) The insurer must intelligibly advise the insured of the nature of the optional coverage; and,
>
> (4) The insured must be told that optional coverages are available for an additional premium.

Wannamaker, 291 S.C. 518, 521, 354 S.E.2d 55, 556 (1987).

If all four elements of the *Wannamaker* test are met, then the offer is meaningful. *Ackerman v. Travelers Indem. Co.*, 318 S.C. 137, 456 S.E.2d 408 (Ct.App. 1995). The goal is to

provide the insured with adequate information to make an intelligent decision on whether to accept or reject UIM coverage. *Wannamaker*, 291 S.C. at 521, 354 S.E.2d at 556.

A. Progressive's Notification Process Was Commercially Reasonable.

Progressive offered UIM coverage to Lawrence by mailing the "Offer of additional uninsured motorist and optional underinsured motorist coverage" to Outlaw at the residence she shared with Lawrence. (R. p. 221-22). As discussed above, Outlaw possessed both express and implied authority to act on Lawrence's behalf in acquiring insurance for his motorcycle. It is undisputed in the law of agency that while the agent is acting for the principal, notice to the agent is notice to the principal. See *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979); *Norris v. Hartford Fire Ins. Co.*, 57 S.C. 358, 35 S.E. 572 (1900); *Knobeloch v. Germania Sav. Bank*, 50 S.C. 259, 27 S.E. 962 (1897).

"The use of mail is a reasonable method of communicating with the insured about an important business transaction." *Atkins v. Horace Mann Ins. Co.*, 376 S.C. 625, 631, 658 S.E.2d 106, 109 (Ct.App. 2008). In *Atkins*, the court specified that even when an agent does not speak directly to the applicant, mailing a selection/rejection form is a commercially reasonable notification process. Thus, Progressive's notification process was commercially reasonable as a matter of law.

B. Progressive Specified The Limits Of Optional Coverage And Did Not Merely Offer UIM Coverage In General Terms.

Progressive's form listed the limits of optional underinsured motorist coverage which Progressive was authorized to write and for which Outlaw and Lawrence were eligible in one column and specifically listed four limits of coverage, $25,000/$50,000/$25,000, $50,000/$100,000/$25,000 (the limits of liability coverage under Lawrence's policy), $100,000/$300,000/$50,000 and $250,000/$500,000/$100,000. In a column titled "Amounts of

Increased Premium," Progressive listed the amounts of increased premium corresponding to each of these limits. Therefore, Progressive specified the limits of optional coverage and did not merely offer additional coverage in general terms. *Contra Ray v. Austin*, 388 S.C. 605, 698 S.E.2d 208 (2010) (finding this element not met when the form contained blank lines for the insurer to fill in commonly sold limits of underinsured motorist coverage along with the increased premium for the selection of coverage and the insurer failed to fill in the blanks, but still holding that a meaningful offer was made to the insured). Thus, as a matter of law, Progressive met this prong of the *Wannamaker* standard.

C. Progressive Intelligibly Advised Lawrence, Through Outlaw, of the Nature of the Optional UIM Coverage.

Progressive intelligibly advised Lawrence and Outlaw of optional UIM coverage by incorporating into its form the paragraphs identical to the explanation of this coverage that appear in the form promulgated by the SCDOI for insurers' use in offering additional uninsured and optional underinsured coverage. (R. pp. 221-22; pp. 417-18). The explanation of coverages was included in a package with the application for insurance. (R. pp. 221-22). Outlaw admitted in her deposition that she received every page of the Application for Insurance and her signature appears in all of the required places. (R. p. 388, lines 15-20). By signing the "Applicant's Acknowledgement," Outlaw, and through her, Lawrence, is deemed to understand the contents of the form. *Cohen v. Progressive N. Ins. Co.*, 402 S.C. 66, 74, 737 S.E.2d 869, 873 (Ct.App. 2013).

In addition, "evidence of the insured's knowledge or level of sophistication is relevant and admissible when analyzing, under *Wannamaker*, whether an insurer intelligibly advised the insured of the nature of the optional UM or UIM coverage." *Grinnell Corp. v. Wood*, 389 S.C. 350, 357, 698 S.E.2d 796, 800 (2010). At the time she signed the acknowledgement, Outlaw had an Associate's Degree in paralegal studies from Central Carolina Technical College and had

worked as a paralegal for a number of law firms. (R. p. 354, line 23-p. 355, line 6; p. 357, line 22-p. 358, line 14). She also had experience in and knowledge of the process of purchasing insurance for motor vehicles as she handled the household's insurance needs. (R. p. 332, lines 3-17; p. 335, line 24-p. 336, line 2; p. 373, line 15-p. 374, line 1; p. 380, lines 5-8). Additionally, Outlaw compared the types of coverage Lawrence had on his other vehicles to the Progressive motorcycle policy at the time she was making it. (R. p. 388, lines 2-14). Outlaw's life experience shows that she had sufficient knowledge and sophistication to understand the explanation of coverages differentiating between the different types of coverage and the different levels of the limits of coverage. Thus, as a matter of law, Progressive intelligibly advised Outlaw, and thereby Lawrence, of the nature of the optional coverage.

D. Lawrence, Through Outlaw, Was Told That Optional Coverages Were Available For An Additional Premium.

Progressive's form advised Lawrence, through Outlaw, that he would be required to pay an additional premium for each of the optional underinsured motorist coverages for which he was eligible and that Progressive was authorized at the time to write. In the third paragraph of the explanation of coverages, using identical language as that used in the SCDOI's form, Progressive indicates: "If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages." (R. p. 221, ¶3). In addition, on the offer of underinsured motorist coverage page, in the column titled "Amounts of Increased Premium," Progressive listed the amounts of increased premium corresponding to each of the three limits of coverage listed. (R. p. 224).

The insurer is only required to offer the coverage amounts that it is specifically authorized by SCDOI to write. *Progressive Cas. Ins. Co. v. Leachman*, 362 S.C. 344, 352, 608 S.E.2d 569, 573 (2005). Progressive offered Lawrence, through Outlaw, the optional coverages it was

authorized to write up to the liability limits requested. Therefore, Progressive complied as a matter of law with the fourth Wannamaker requirement.

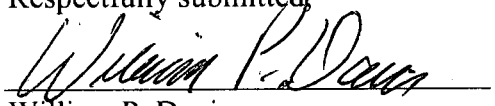
E. Progressive Made a Meaningful Offer Of UIM Coverage To Lawrence Through Outlaw.

As shown above, Progressive's offer met all four prongs of the Wannamaker test and, consequently, Progressive made as a matter of law a meaningful offer of underinsured motorist coverage to Lawrence. Lawrence argues that, as a named insured, Progressive was required to directly put him on notice of the availability of optional UIM coverage. This argument ignores the basic fundamentals of agency law. Lawrence, through his express words and his conduct, gave Outlaw the authority to procure insurance on his behalf. As held in *Prioleau*, the actions of an agent with proper authority are binding upon the principal regarding a rejection of UIM insurance coverage. *Prioleau*, 359 S.C. at 244, 597 S.E.2d at 168-69. Therefore, Progressive's meaningful offer of UIM coverage made to Outlaw is effectively a meaningful offer made to Lawrence.

CONCLUSION

For the foregoing reasons and upon the foregoing authorities, Progressive submits that the order of the trial court should be affirmed.

Respectfully submitted,



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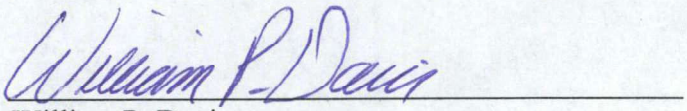
CERTIFICATE OF COUNSEL

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



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