STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Progressive Northern Insurance)
Company,)
)
Plaintiff,)
) **ORDER**
Vs.)
)
Stanley K. **Medlock,** Corey K. **Medlock,**) Civil Action Number: **2011-CP-42-2965**
and The **Standard Fire Insurance**)
Company,)
Defendants.)

DATE OF HEARING	:	**June 20, 2012**
JUDGE	:	**J. Derham Cole**
PLAINTIFF'S ATTYS	:	**J. R. Murphy, Wesley B. Sawyer**
MEDLOCK DEFENDANTS' ATTY	:	**Brian A. Martin**
DEFENDANT STANDARD FIRE ATTY	:	**William P. Davis**

THIS MATTER came before me for a hearing at the Spartanburg County, South Carolina Court of Common Pleas on June 20, 2012 on cross motions for summary judgment by Plaintiff and Defendants Stanley K. Medlock and Corey K. Medlock. Present at the hearing were the Plaintiff's attorneys, J.R. Murphy and Wesley B. Sawyer, the Medlock Defendants' attorney, Brian A. Martin and Defendant Standard Fire attorney, William P. Davis.

The issues before the Court relate to the availability of underinsured motorist (UIM) coverage and arise out of a contract of insurance between Plaintiff and the Medlock Defendants. Since both parties have moved for summary judgment, there is agreement of the parties that there are no issues of fact to be decided by the Court in this matter.

In addition to the pleadings, affidavits, exhibits and memoranda filed, Plaintiff and Medlock Defendants each presented their arguments for summary judgment. Defendant Standard Fire did not present any argument regarding the motions. Based upon the materials and information presented and arguments of counsel, and for good cause shown, the Court finds that summary judgment should be granted in favor of the Medlock Defendants as to the claims of the Plaintiff.

FINDINGS OF FACTS

1. Corey Medlock was injured on October 9, 2010 when the motorcycle he was driving and insured by Plaintiff under policy number 8561390-0 was struck by another vehicle. (Affidavit of Corey K. Medlock & Stipulation of Fact #1 and #12)

2. The driver of the other vehicle was insured by GEICO at the time, who tendered their full coverage of $50,000.00 in settlement of Corey Medlock's claim in exchange for a Covenant Not to Execute. (Affidavit of Corey K. Medlock & Stipulation of Fact #12)

3. On February 10, 2011, an action was filed in South Carolina Court of Common Pleas for the Seventh Judicial Circuit Spartanburg County captioned *Corey K. Medlock v. Jon C. Owens*, Civil Action Number 2011-CP-42-649 alleging that Mr. Owens was at fault in the accident and caused unspecified damages in excess of $50,000.00 to Corey Medlock. (Affidavit of Corey K. Medlock & Stipulation of Fact #13)

4. Plaintiff entered a Notice of Appearance as a UIM carrier on April 14, 2011, reserving any rights under any applicable policy of insurance. (Stipulation of Fact #13)

5. On October 15, 2009, Stanley Medlock applied for a policy of insurance with Plaintiff to insure a 2001 Polaris Sportsman 500 4-wheel all terrain vehicle owned by him. (Affidavit of Stanley K. Medlock, Exhibit B, Stipulations of Fact Exhibit B & Stipulation of Fact #1 and #2)

6. The application was prepared by the Agency of Keith Young & Associates with the named insured as "Stanley K. Medlock" (Affidavit of Stanley K. Medlock, Exhibit B p2 & Stipulations of Fact, Exhibit B p. 2) and the application was only signed by Stanley Medlock. (Affidavit of Stanley K. Medlock, Exhibit B, p. 6, 9 and 10, Stipulations of Fact, Exhibit B p. 6, 9 and 10 & Stipulation of Fact #4)

7. On the first page of the application under the section titled "Drivers and household residents" and the column listed as "Relationship," Stanley Medlock is listed as "Insured" and Corey Medlock is listed as "Child." (Affidavit of Stanley K. Medlock, Exhibit B p. 2 & Stipulation of Facts, Exhibit B p. 2)

8. The application contained an offer of optional underinsured motorist coverage pursuant to S.C. Code §38-77-250 and Stanley Medlock rejected that offer and signed and dated this section of the application below it. (Affidavit of Stanley K. Medlock, Exhibit B p. 10, Stipulation of Facts, Exhibit B p. 10 & Stipulation of Facts #5)

9. Plaintiff issued policy number 8513910-0 on October 15, 2009 for a policy period of October 15, 2009 through October 15, 2010 covering the 2001 Polaris Sportsman 500 with liability limits of $25,000/$50,000, Uninsured Coverage of $25,000/$50,000, and Underinsured Coverage showing as "Rejected." (Affidavit of Stanley K. Medlock, Exhibit A, Stipulation of Facts, Exhibit A & Stipulations of Fact #1 and #7)

10. On the first page of the Declarations to the policy under the section titled "Drivers and household residents" and the column listed as "Additional Information," Stanley Medlock is shown as the named insured and Corey Medlock has no information in this column. (Affidavit of Stanley K. Medlock, Exhibit A p. 2 & Stipulation of Facts, Exhibit A p. 2)

11. Corey Medlock is the biological son of Stanley Medlock and at all times relevant to this policy, Corey Medlock was residing in the same household as his father. (Affidavit of Corey K. Medlock & Stipulations of Fact #3)

12. Under the terms of the policy issued by Plaintiff to Stanley Medlock, Corey Medlock is defined as a "Relative" rather than a named insured. (Affidavit of Stanley K. Medlock, Exhibit A p. 7 & Stipulation of Facts, Exhibit A p.7)

13. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to add a 2001 Suzuki SV650/S motorcycle owned solely by Corey Medlock as an additional vehicle under the policy. (Affidavit of Stanley K. Medlock, Exhibit C p. 1, Stipulation of Facts, Exhibit C p. 1 & Stipulations of Fact #8)

14. On June 9, 2011, Plaintiff changed the existing policy number 85613910-0 between Plaintiff and Stanley Medlock to reflect that Corey Medlock was changed from being a "Relative" under the policy as a second named insured. (Affidavit of Stanley K. Medlock, Exhibit C p. 1, Stipulation of Facts, Exhibit C p. 1 & Stipulation of Facts #8)

15. As a result of these changes, the premium increase due was $37.00. (Affidavit of Stanley K. Medlock, Exhibit C p. 1 & Stipulation of Facts, Exhibit C p. 1)

16. Corey Medlock paid the premium increase and has always paid the premium for the coverage on the Suzuki under the policy, although Stanley Medlock has paid the premium for the Polaris. (Affidavit of Corey K. Medlock)

17. No additional offer of UIM coverage was made to either Stanley Medlock or Corey Medlock at the time these changes were made to the policy. (Affidavit of Corey K. Medlock, Affidavit of Stanley K. Medlock & Stipulation of Facts #6 and #10)

18. Prior to being changed from a "Relative" to a named insured on this policy, Corey Medlock had never been a "Named Insured" on any other policy of insurance with Plaintiff (Affidavit of Corey K. Medlock & Stipulations of Fact #11)

19. Corey Medlock has never been given the opportunity to accept or reject UIM coverage with Plaintiff. (Affidavit of Corey K. Medlock & Stipulation of Facts #6 and #10)

STANDARD OF REVIEW

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). Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). Since both Plaintiff and Medlock Defendants have moved for summary judgment, there is agreement that there is no genuine issue of material fact and that summary judgment is appropriate in this case.

LEGAL ANALYSIS

The paramount issue before the Court in these cross motions for summary judgment is whether Corey Medlock was entitled to an offer of UIM coverage and the opportunity to reject such coverage when the Plaintiff made Corey Medlock a named insured on a policy of automobile insurance previously issued by the Plaintiff to Stanley Medlock. For the reasons stated below, I find that making Corey Medlock a named insured created a new policy with a new named insured and that he was entitled to an offer of UIM coverage and opportunity to reject UIM coverage. Therefore, summary judgment should be granted in favor of the Medlock Defendants and since no such offer was made, the policy issued by the Plaintiff should be reformed to include UIM coverage up to the

limits of liability coverage in that policy.

An offer of UIM coverage is a mandatory requirement under S.C. Code Ann. § 38-77-160 on all Automobile insurance carriers up to the limits of liability obtained under a policy by a new insured. S.C. Code Ann. § 38-77-160. The form used for such offer and the information it must contain is mandated by S.C. Code Ann. §38-77-350 to assure that all new applicants have been provided sufficient information to make an informed choice whether to buy such optional coverage. S.C. Code Ann. § 38-77-350. If the form is signed by the named insured, it is conclusively presumed that there was an informed selection of coverage made and the insurance company is not liable for the choice not to buy the coverage. S.C. Code Ann. § 38-77-350(B). Once an offer of coverage has been made, the carrier is not required to make a new offer when the policy is renewed, extended, changed or replaced. S.C. Code § 38-77-350(C).

The Supreme Court of South Carolina has addressed the issue of whether an offer of UIM coverage must be made in very similar circumstances in the case of *McDonald v. South Carolina Farm Bureau Insurance Company*, 336 S.C. 120, 518 S.E.2d 624 (Ct. App. 1999). In *McDonald*, a mother purchased insurance for her car in 1993 through Farm Bureau and in completing the application, rejected UIM coverage. In 1996, the mother informed Farm Bureau that she had sold the car to her son, McDonald, and wanted the insurance put in his name. McDonald had never been a named insured on any policy with Farm Bureau and was not a member of Farm Bureau. McDonald paid a membership fee but did not complete an application or sign any document to become a named insured on the policy. *Id.* at 122, 518 S.E.2d at 625.

After McDonald paid the membership fee, Farm Bureau issued a policy with McDonald as the named insured which had the same policy number as his mother's policy and carried the same

limits of liability and did not provide UIM coverage. Farm Bureau admitted it had not offered McDonald UIM coverage but that it was simply their policy to change the name on the policy when a vehicle transferred from parent to child. *Id.* at 122, 518 S.E.2d at 625.

Farm Bureau argued, as does Plaintiff in the present case, that Farm Bureau was not required to make an offer of UIM coverage to McDonald because he was not a "new applicant" under S.C. Code Ann. § 38-77-350. *Id.* at 123, 518 S.E.2d at 625. In making its decision, the Court in *McDonald* rejected Farm Bureau's argument holding:

> **We see no inconsistency in the term "new applicant" in Section 38-77-350(A) and "insured" in Section 38-77-160. Clearly, the legislature intended for insurers to afford all named insured the opportunity to accept or reject UIM coverage. In using the term "new applicant," the legislature simply distinguished between those who had never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage.**

Id. at 124, 518 S.E.2d at 626 (emphasis added).

The Court further held that McDonald had never been a named insured with Farm Bureau, that he had never been given the opportunity to accept or reject UIM coverage and that regardless of how Farm Bureau processed the issuance of the policy, McDonald was a new named insured with Farm Bureau and was entitled to an offer of UIM coverage. *Id.* at 124, 518 S.E.2d at 626. The Court went on to state that "[a]ny other construction of the statute would defeat the legislature's intent that all named insured be offered UIM coverage. *Id.* at 124, 518 S.E.2d at 626.

The circumstances of the present case are nearly identical to *McDonald*. Stanley Medlock applied for a policy of insurance with Plaintiff, completed the application and rejected UIM coverage. Ten months later, Plaintiff added a vehicle owned by Corey Medlock as a covered vehicle on the policy and made Corey Medlock a named insured on that policy. Like McDonald, Corey

Medlock had never been the named insured on any policy of insurance with Plaintiff, has never been given the opportunity to accept or reject UIM coverage, and was not required to fill out an application. Similar to the membership fee McDonald was required to pay, there was a premium increase on the policy which was paid by Corey Medlock.

Plaintiff argues that Corey Medlock was only made a named insured because he was the registered owner of a vehicle added to the policy. However, it is irrelevant how Corey Medlock became a named insured on the policy of insurance issued by the Plaintiff; he was a new named insured with the Plaintiff. Based on the Court's interpretation of the statutes in *McDonald*, the legislature intended that all named insureds must be afforded the opportunity to accept or reject UIM coverage, which by the evidence submitted in this case, necessarily includes Corey Medlock.

Plaintiff argues that the present case is materially different from *McDonald* in that (1) Stanley K. Medlock was never removed from the policy but remained a named insured; (2) Corey K. Medlock, although not a named insured, was already a Class I insured under the existing policy as a resident relative whereas McDonald was not; and (3) since Stanley K. Medlock was not removed, there remains a valid offer and rejection by a named insured that is binding on all other insureds on the policy under S.C. Code Ann. § 38-77-350(B). Plaintiff's arguments and support are not compelling given the clear direction of the Court in *McDonald*, the clear terms of the policy, and the Court's interpretation of S.C. Code Ann. § 38-77-350.

The Court in *McDonald* held the legislative intent of the statutes was to afford "all" named insured the opportunity to accept or reject UIM coverage, not "a" or "any" named insured as the Plaintiff contends the phrase "or another insured under the policy" in § 38-77-350(B) should be interpreted. It naturally would make sense that a decision by the named insured on a policy of

insurance taken out by that named insured who is the primary beneficiary of that policy, has the legal obligation to pay for it, and the only right to change or cancel it, should be binding on other insureds who only stand to benefit under such policy without the burden of paying for it. But when Corey Medlock was made a named insured, he no longer only stood to benefit but became burdened with the obligations under the policy as well. The legislature recognized this in its distinguishing between a named insured and an insured relative under the law. An insured relative has no legal authority, even if he so desires, to require the insurer to provide him UM or UIM coverage under that policy as a matter of law.

Under Plaintiff's theory, a carrier that made someone a named insured on a policy they were already an insured driver under would allow the carrier to hold that insured to all the other legal requirements, obligations and rights of a named insured both under the policy and the law, except for the mandatory requirement of providing them the opportunity to make an informed and intelligent decision on whether to purchase UIM coverage. The Court in *McDonald* recognized this potential inequity but resolved it in their holding that the legislature's intent was that "all named insured be offered UIM coverage." *McDonald*, 336 S.C. at 124, 518 S.E.2d at 626.

Plaintiff offers the cases of *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002), *Wilkinson v. Louisiana Indemnity/Patterson Ins.*, 682 So.2d 1296 (La. Ct. App. 1996), *writ denied*, 695 So.2d 964 (La. 1997), and *Isaacson v. Country Mut. Ins. Co.*, 767 N.E.2d 862 (Ill. Ct. App. 2002), as support that in the jurisdictions of Rhode Island, Louisiana and Illinois, a rejection of coverage by the initial named insured has been held valid against subsequently added named insureds. These cases, however, are clearly distinguishable from the present case.

In *Ferreira v. Integon Nat. Ins. Co.*, 809 A.2d 1098 (R.I. 2002), the Courts decision hinged

on Rhode Island General Law § 27-7-2.1(d), which provides in pertinent part:

> **After the selection of limits by the named insured . . . the insurer or any affiliated insurer shall be required to *notify* the policyholder, in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy, as to the availability of that coverage or optional limits.**

Ferriera, 809 A.2d at 1101 (emphasis added). The carrier had carried out this duty when Ferreira had been added to the policy and failed to take action at that time. *Id.* The failure to seek coverage when notice was provided was the reason the Court held the original rejection valid as to the additional named insured. South Carolina has no such mandatory notice requirement when a policy is changed; in fact S.C. Code Ann. § 38-77-350(c) specifically relieves a carrier of the obligations to make a new offer when a policy "renews, extends, changes, supersedes, or replaces an existing policy." S.C. Code Ann. § 38-77-350(c).

In *Wilkinson v. Louisiana Indemnity/Patterson Ins.*, 682 So.2d 1296 (La. Ct. App. 1996), *writ denied*, 695 So.2d 964 (La. 1997), the Court of Appeals in Louisiana determined that the definition of "insured" in the policy included the named insured and his spouse if a resident of the same household, and that since Mrs. Wilkinson was already covered as the spouse under the policy from the time they were married, that adding her as a named insured did not alter her coverage under the policy at all and therefore, did not constitute a new policy. This is very different from the case at hand where Corey Medlock is clearly defined as a "Relative" under the policy issued by the Plaintiff with limited rights and coverage versus the named insured or spouse included in the definition of "you" under the policy. The *Wilkinson* decision was also a limited exception for spouses only from its prior decision in *Dempsey v. Automotive Cas. Ins.*, 680 So.2d 675 (La. Ct. App.1996), which held that the addition of an insured driver to an existing automobile liability insurance policy, without any change in the bodily injury limits, increases the policy's coverage and constitutes a new policy,

requiring the execution of a separate selection/rejection of UM coverage. *Id.* at 681. Based on the *Dempsey* decision, Louisiana would seem to be in line with the holding of *McDonald* and actually support the Medlock Defendants position rather than the Plaintiff.

Finally, Plaintiff offers *Isaacson v. Country Mut. Ins. Co.*, 767 N.E.2d 862 (Ill. App. Ct. 2002), as support that the addition of a daughter to a policy did not require a new rejection of UM coverage. In this case, the policyholder's daughter was added to the policy as an insured but not as a named insured. The Court specifically held that the daughter "was not substituted as a named insured and was not responsible for policy decisions. In addition, a new vehicle was not added or substituted for coverage" therefore "the addition of Bartola's daughter did not reflect a coverage change but a driver information change." *Id.* at 866. A much more applicable case from this jurisdiction and cited by the Court in *Isaacson* is the case of *Nila v. Hartford Ins. Co.*, 728 N.E.2d 81 (Ill. App. Ct. 2000). In *Nila*, a policy was issued with a husband as the named insured and his wife as a covered driver. *Id.* at 83. Like the case at hand, that policy defined "you" to include the named insured and spouse if a resident of the same household. *Id.* at 84. The husband passed away and the carrier replaced the husband with the wife as the named insured on the policy. The wife did not complete an application and had never been offered the opportunity to accept or reject UM coverage. *Id.* at 84. The Court held that this was the first time the wife had been a named insured and the first time she was responsible for decisions as to the type and amount of coverage, that the purpose of the uninsured motorist statute is to make sure the insured makes an informed and intelligent decision regarding such coverage, and that she had never had the opportunity to make an informed and intelligent decision regarding UM coverage. *Id.* at 88-89. As such the Court found that making the wife the named insured was the creation of a new policy requiring a new offer of UM coverage and

their failure to do so required reformation of the policy. *Id.* at 89. Based on this decision, the Illinois jurisdiction would also seem to be in line with our Court's holding in *McDonald.*

Plaintiff also argues that Corey Medlock was already a Class I insured under the existing policy therefore the legal relationship between Plaintiff and Corey Medlock did not change when he was made a named insured. The terms of the policy itself bear out that this is not true.

Under the policy terms, Corey Medlock was defined as a "Relative" when Stanley Medlock was the only named insured, but changed to being defined under the term "you" when he was made a named insured on the policy. With this change, Corey Medlock now had increased coverage such as in paragraph 13 of the Exclusions section of Part I – Liability to Others, where coverage is excluded for bodily injury or property damage arising out of the ownership, maintenance, or use of any non-covered motorcycle owned by a relative, but this exclusion does not apply to a named insured's maintenance or use of such motorcycle. (Affidavit of Stanley K. Medlock, Exhibit A p. 8) Additionally, only the named insured has the legal obligation to pay the premium and the legal right to enforce coverage upon tender of the premium. The policy terms also restrict other significant rights and obligations to only the named insured, such as the duty to report changes (Affidavit of Stanley K. Medlock, Exhibit A p. 18 & Stipulation of Facts, Exhibit A p. 18), the ability to cancel the policy (Affidavit of Stanley K. Medlock, Exhibit A p. 19 & Stipulation of Facts, Exhibit A p. 19), and the entitlement to a refund of any premium refund. (Affidavit of Stanley K. Medlock, Exhibit A p. 19 & Stipulation of Facts, Exhibit A p. 19)

Plaintiff's final argument that adding Corey K. Medlock as a named insured simply recognized that he was the owner of the vehicle added to the policy and merely constituted a change to an existing policy under S.C. Code §38-77-350(c) also fails in light of the facts of this case and the

decision in *McDonald*. While it is clear from the Court's decision in *Smith v. South Carolina Ins. Co.*, 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002), that the addition of a vehicle to an existing policy does not require a new offer under § 38-77-350(c) the Court in *McDonald* specifically addressed that the changing of the named insured does require a new offer and the Court in *Smith* confirmed that the decision in *McDonald* was an entirely different situation than in *Smith.* 350 S.C. at 88, 564 S.E.2d at 361.

S.C. Code Ann. § 38-77-350(C) states, "[a]n automobile insurer is not required to make a new offer of coverage on any automobile insurance policy which renews, extends, changes, supersedes, or replaces an existing policy." Citing the Court's decision in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995), the *McDonald* Court held: **"Where Section 38-77-350(C) states the insured is not required to make a "new" offer, it clearly envisions the circumstances where the insurer has already made an "old" offer."** *McDonald*, 336 S.C. at 125, 518 S.E.2d at 626 (emphasis added).

The Court in *McDonald* also believed this section should not be used to avoid the requirement of § 38-77-160, citing its holding in *Ackerman v. Travelers Indem. Company*, 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995):

> **If §38-77-350(C) were interpreted to relieve [carrier] of the general requirement of offering [the insured] underinsured motorist coverage up to the liability limits of the policy, it would amount to an absolute repeal of §38-77-160, which mandates that an automobile insurer offer underinsured motorist coverage up to the limits of the insured's liability coverage.**

McDonald, 336 S.C. at 125, 518 S.E.2d at 626 (emphasis added).

Applying this reasoning, the *McDonald* Court found that making McDonald a named insured was not just a minor change to the policy. "It was the creation of a new insurance policy with a new

named insured." *Id.* at 125, 518 S.E.2d at 626. The same would also necessarily be true for Corey Medlock. When Plaintiff made Corey Medlock a named insured, it created a new insurance policy requiring a new offer of UIM coverage.

It is undisputed that Corey Medlock became a named insured on a policy of automobile insurance issued by the Plaintiff and it is undisputed that Corey Medlock was never given the opportunity to accept or reject UIM coverage by the Plaintiff. Regardless of how Plaintiff made Corey Medlock a named insured, he was a new named insured with the Plaintiff. Under S.C. Code Ann. § 38-77-160 and authority of *McDonald*, it is clear that Plaintiff was required to provide all named insureds with the opportunity to accept or reject an offer of UIM coverage, including Corey Medlock. Since no such offer was made to Corey Medlock, summary judgment must be granted in favor of the Medlock Defendants and the policy of the Plaintiff ordered to be reformed to reflect UIM coverage in amounts equal to the limits of liability.

Based upon the foregoing this Court finds that **Plaintiff's motion** for summary judgment should be and is therefore **denied** and **Defendants Medlocks' motion** for summary judgment should be and **is** therefore **granted** and the **policy** of insurance issued by the Plaintiff in this matter with Corey Medlock as a named insured **is** hereby **reformed** to include underinsured motorist coverage in the same amount as the liability coverage afforded under the policy.

J. Derham Cole, Circuit Court Judge

March 26, 2013