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An Insurer is Not Required to Make a New Offer of UIM Coverage Upon a Mere Change of an Existing Policy

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08.06.2019

S.C. Code Ann. Section 38-77-160 serves to establish an insurer's duty to offer, at the option of an insured, underinsured motorist coverage ("UIM") up to the limits of the insured liability coverage, in order to provide coverage should the insured suffer damages in excess of the liability coverage of an at-fault or underinsured driver or in excess of any damages limitation imposed by statute. If, however, an insurer fails to make a meaningful offer of UIM coverage, as required, the policy will be reformed by operation of law, to provide UIM coverage in accordance with the applicable statute.[1] An insurer is not required to make a new offer of UIM coverage, however, on any policy that renews, extends, changes, supersedes, or replaces an existing policy. S.C. Code Ann. Section 38-77-250(C). Thus, the question – what is a "change" such that an insurer is excused from the requirement of making a new offer of UIM coverage. The Supreme Court offered guidance in the recent case of *Progressive Direct Insurance Company v. Bryan Reeves*, 2019 WL 3310487 (July 24, 2019), in which it addressed a certified question from the United States District Court for the District of South Carolina.

In 2012, Jennifer Reeves, the wife of Wayne Reeves, acting as his express and implied agent, submitted a policy application to Progressive. The coverage offer included in the application satisfied the statutory requirements for an offer of optional coverages. Progressive issued a policy covering Wayne's motorcycle, in which he was the only named insured. Jennifer and Bryan, both of whom drove motorcycles, were subsequently added to the policy, as "drivers and household residents." Shortly after the fifth renewal of the policy, wherein Bryan was designated a named insured and his new motorcycle added as a covered vehicle, Bryan was involved in an accident while driving the recently added motorcycle. Following his accident, Bryan made a claim against Progressive, seeking to reform the policy to include UIM coverage, based upon Progressive's failure to offer that optional coverage to him when he was added to the policy as a named insured.

In the course of Bryan's quest for reformation of the policy before the District Court, motions for summary judgment were filed on behalf of both Bryan and Progressive. As a result, the District Court certified the following question:

> *Whether the addition of a named insured (Added Named Insured) to an existing insurance policy under which the Added Named Insured was previously a resident[-]relative insured is a "change" under 38-77-350(C)...and, consequently does not require an additional offer of optional coverages if an offer that satisfies 38-77-350(A) and (B) was previously made to the named insured who originally applied for the policy (Original Named Insured)*

Appreciating the ambiguity of the word "change," the Supreme Court looked to other jurisdictions that have interpreted similar statutory language, for instruction. Upon examination, the Supreme Court found persuasive those instances wherein "change," sufficient to trigger the necessity of a new offer of optional coverage, was determined to be *material* change. While lacking more specificity as to the meaning, the court rejected Bryan's argument that the addition of a named insured constitutes material change sufficient to require a new offer of optional coverages. In other words, the addition of a named insured is a change to an existing policy pursuant to 38-77-350(C), which does not require a new offer of coverage. Thus, the Supreme Court answered the certified question in the affirmative.[2] The only modifications made upon the fifth renewal of the policy in question were the revision of Bryan's classification from resident-relative to named insured and the addition of Bryan's motorcycle as a covered vehicle. Otherwise, neither the coverage nor the policy limits were altered and no material change was instituted.

The *Reeves* court provided valuable clarification to 38-77-350(C), establishing that a *material* change is required to generate the necessity of a new offer of optional coverage; the necessity of a new offer is not prompted upon a minimal or logistical adjustment to a policy. While the court offers guidance, it is clearly and, logically, within the confines of the facts presented to the court. As practitioners, we yearn for absolutes that govern all scenarios. Unfortunately, however, it is often difficult, if not impossible, for the court to fashion 'one size fits all' opinions. Such is the case here.

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[1] See *Butler v. Unisun Ins. Co.*, 323 S. C. 402, 475 S.E. 2d 758 (1996).

[2] The District Court certified a second question; however, due to the affirmative response to the first, the Court declined to answer the second one.
