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To: Property and Casualty Insurers Writing Automobile Insurance

From: Eleanor Kitzman 
Director

Subject: What Constitutes a Meaningful Offer of Underinsured Motorist Coverage

The purpose of this Bulletin is to bring to your attention the recent South Carolina Supreme Court decision in *Floyd v. Nationwide Mutual Insurance Company*, Opinion Number 26088, filed December 28, 2005. A copy of this opinion was posted on the Department's website earlier this month.

As you are aware, automobile insurers are required to offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured's liability coverage. See S.C. Code Ann. §38-77-160 (2002). In the *Floyd* decision, the South Carolina Supreme Court held that allowing an agent or employee to partially complete the offer form is inconsistent with S.C. Code Ann. §38-77-350 (Supp. 2004). An insurer is therefore not entitled to the statutory presumption that a meaningful offer was made. When an insurer fails to comply with the statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured.

According to the analysis in *Floyd*, in order to constitute a meaningful offer under § 38-77-350, the following conditions must be met: (1) the insurer's notification process, whether written or oral, must be commercially reasonable; (2) the insurer must specify the limits of the 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 coverage is available for an additional premium. Most importantly, the form must be completed in accordance with the requirements of §38-77-350. The insured, not the producer, must complete the form indicating whether he chooses to accept or reject the coverage and the insured must sign the form acknowledging that he has been offered the optional coverage. According to *Floyd*, the offer form is not properly completed unless the insured personally marks his selection and signs the document.

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