THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Appellate Case No.: 2022-000869

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. ....Respondent,

v.

USAA General Indemnity Company .... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 19, 2022.

QUESTIONS PRESENTED

IV. Did the Court of Appeals misinterpret the plain language of S.C. Code Ann. §38-61-10 in finding that a contract of automobile insurance coverage which included underinsured motorist coverage for an out-of-state vehicle also insured "lives and interests" in South Carolina?

V. Did the Court of Appeals violate the Full Faith and Credit Clause of the United States Constitution in expanding South Carolina case law to allow insurance policies to be reformed to conform to South Carolina law, thereby nullifying limitations on voluntary coverage authorized and recognized by the state of California?

VI. Did the lower court correctly grant summary judgment where there was no issue of material fact and the moving party was entitled to judgment as a matter of law?

STATEMENT OF THE CASE

Respondent Young initiated this declaratory judgment action as a result of a coverage dispute with his automobile insurer, Petitioner United Services Automobile Insurance Association ("USAA"), after a motor vehicle accident ("the accident") on or about August 30, 2015, which occurred in Greenville, South Carolina. On that date, Kamika Young was operating a Ford Expedition ("Ford"), which was insured under a USAA South Carolina Policy. The parties to this litigation stipulated to the facts of that accident, which consist of Mrs. Young failing to yield to oncoming traffic as she attempted to make a left turn from a private parking lot. It is undisputed that Mrs. Young was at fault for causing this accident. The initial collision between the vehicles caused Mrs. Young's vehicle to proceed across the northbound lane, to strike a building and to catch fire. Tragically, two of Respondent's children, Tyrin S. Young, Jr. and Micah A. Young, did not survive the accident. A third child, minor J.Y., suffered personal injuries, but he survived the accident. App. 217, ll. 14-23.

Thereafter, Respondent made claims against his personal policy with USAA on behalf of the minor child, J.Y., and the estates of the deceased children related to his wife's negligence. The policy covering the Ford was issued in South Carolina, with the policy number 022260801G71050 ("the SC Policy"). App. 86. USAA tendered the liability limits of $50,000 per accident and the underinsured motorist ("UIM") limits of $50,000 per accident under the SC Policy that insured Respondent's Ford. See App. 334, ll. 2 – 335, ll. 2. The Circuit Court approved the settlements on behalf of Respondent individually, as Guardian of J.Y. and as the Personal Representative of the estates of the two deceased minors. The Covenant Not to Execute signed in exchange for that initial settlement included a provision that would allow Respondent to pursue other excess liability and/or UIM coverage. See App. 5.

Subsequently, Respondent initiated this declaratory judgment action in the lower court in

an attempt to collect uninsured motorist coverage from a separate USAA automobile policy which covered his 2006 KIA Spectra ("the Kia"). App. 17 – 21. The policy, USAA policy number 022260801G71030, ("the California Policy") was issued in California and written pursuant to California law, as Respondent and his family were living on a Naval base in California at the time as part of his military service. App. 113. In mid-2014, while Respondent's wife and children returned to South Carolina, Respondent and the Kia remained in California until he was deployed to Guam in late summer or early fall of 2014. At some point prior to this accident, the Kia was transported to Guam for Respondent's use during his deployment. App. 338, ll. 15-17. Respondent was deployed in Guam when this accident occurred. App. 338, ll. 15-17. The Kia never returned to the Continental United States after this accident as it was sold to avoid shipping costs. App. 338, ll. 18 – 339, ll. 5.

In addition to the facts discussed above, the parties stipulated to the following facts:

- At all times relevant hereto, Respondent considered himself to be a citizen and permanent resident of the State of South Carolina even though he was stationed in other states while in the Navy;
- Respondent and his wife paid South Carolina income taxes every year since getting married in 2008;
- The Ford and Kia were registered in the State of South Carolina;
- Respondent and his wife paid property taxes on the Ford and Kia in the State of South Carolina;
- Respondent's wife and children were physically residing in the State of South Carolina at the time of this accident;
- The Kia had not been located within the State of South Carolina since at least 2009;
- The Kia was insured under a California Policy at the time of the accident;
- The Kia was located in Guam at the time of the accident; and
- Neither Respondent nor his wife ever requested that the Kia be insured under a South Carolina policy after it left the State in 2008.

App. 6.

Respondent's declaratory judgment action, filed on July 26, 2017, sought to reform the California policy covering the Kia to conform to South Carolina statutory and common law, which allows insureds to stack UIM coverage from multiple policies. App. 17 – 21. Petitioner USAA timely answered the Complaint, asserting defenses based on California law against stacking underinsured motorist coverage, and raised additional counterclaims against Respondent. App. 22-58. Respondent timely filed its Reply to Answer and Counterclaim of USAA General Company. App. 59-65.

USAA took the depositions of Respondent and his wife Kamika Young on June 19, 2018. App. 244-356; 357-406. Respondent served its Notice of Rule 30(b)(6) Deposition of Defendant USAA General Indemnity Company on July 6, 2018. App. 191. On July 25, 2018, USAA filed a Motion for Summary Judgment and a Motion for a Protective Order seeking to prevent Respondent from deposing a USAA representative regarding immaterial and irrelevant internal procedures which are not germane to the issues at hand, as our courts have never ruled that failure to abide by internal procedures could be grounds for reforming a policy under S.C. Code Ann. §38-61-10. App. 66-68; 183-190. Respondent filed a Motion to Compel Attendance at Rule 30(b)(6) Deposition on September 5, 2018. App. 194-195. On September 24, 2018, a hearing on all motions was held before the Honorable Perry H. Gravely. App. 213-243.

Judge Gravely granted Petitioner's Motion for Summary Judgment and dismissed all cross motions relating to discovery as moot in an Order issued on October 8, 2018. App. 4-13. Respondent filed a Motion to Reconsider on October 17, 2018. App. 205-211. The trial court denied the motion to reconsider in an Order issued on December 6, 2018. App. 14-16.

Respondent filed a timely Notice of Appeal on December 31, 2018. The Final Brief of Appellant was filed on August 15, 2019. Appendix 408. The Final Brief of Respondent was filed

August 16, 2019. Appendix 435. Oral arguments were held at the South Carolina Court of Appeals on November 10, 2021. On March 9, 2022, the Court of Appeals filed an Opinion reversing the lower court's grant of summary judgment and remanding for proceedings consistent with its opinion. Appendix 463. Petitioner filed a timely Petition for Rehearing and Suggestion for Rehearing *En Banc* on March 24, 2022, Appendix 474, which was denied by the Court of Appeals in an opinion filed May 19, 2022. Appendix 481. This Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c),: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). "Summary judgment is not 'a disfavored procedural shortcut,' but an important mechanism for weeding out 'claims and defenses [that] have no factual bases.'" Okatie Hotel Grp., LLC v. Amerisure Ins. Co., No. : 2:04-2212-23, 2006 U.S. Dist. LEXIS 2980, at 7 (D.S.C. Jan. 13, 2006) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548 (1986)).

ARGUMENT

I. Did the Court of Appeals misinterpret the plain language of S.C. Code Ann. §38-61-10 in finding that a contract of automobile insurance coverage which included underinsured motorist coverage for an out-of-state vehicle also insured "lives and interests" in South Carolina?

The Court of Appeals erred in misinterpreting the plain language of the statute to find that the insurance policy in question insured more than just automobile coverage for an out-of-state vehicle, but it "also insured lives and interests" in South Carolina. App. 464. S.C. Code Ann. §38-61-10 provides that an insurance contract is considered to be made in South Carolina if the contract insures lives, property, *or* interests here. S.C. Code Ann. §38-61-10 (*emphasis added.*) It is important to note the use of the word "or" in analyzing the plain language of the statute, as it indicates that the concepts of lives, property, and interests should be evaluated separately. In drafting this statute, the legislature chose to use the word "or" rather than "and," which would suggest that there are three separate concepts rather than concepts that should be combined to determine whether the policy should be reformed.

The dissent to the Court of Appeals' opinion correctly follows existing law and properly emphasizes the requirement of interpreting the statute by reading its plain meaning, citing to Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (noting the words of a statute "must be given their plan and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation"). App. 469. The insurance policy in question was intended to cover the use of a vehicle, which is a piece of property. Though the policy may potentially create coverage for the insured's lives in its effect, as discussed further below, its primary purpose is to cover property owned by the insureds. Based on a plain reading of the statute, when analyzing whether the contract covers lives, interests, or property, the subject is clearly property. Therefore, because the Court of Appeals erred in misinterpreting a plain reading of the

statute, its holdings are incorrect.

Furthermore, based on its improper reading of the statute discussed above, the Court of Appeals misinterpreted the purpose of the insurance contract in question. The Court's opinion reflects the flawed reasoning that the California automobile policy should essentially be treated as a life insurance policy that insures the lives of its insureds rather than insuring the use of a piece of property, the Kia, and the potential consequential results of using that property.

Petitioner agrees with the dissent's opinion that "[w]hile an automobile policy incidentally benefits the lives of drivers and passengers in automobiles, to construe it as 'a contract of insurance *on … lives'* is strained." App. 469. The insurance contract in question is clearly a contract intended to insure the use of a piece of property, even if it may indirectly affect the lives or interests of the policyholders.

To illustrate that the automobile is the subject of the California policy, one only needs to look at the fact that coverage in question is tied to a vehicle – i.e., an insured cannot purchase underinsured motorist coverage (UIM) coverage separately from the automobile policy. If the subject of the UIM policy was truly the lives of the insureds, one would think that one could purchase a UIM policy independent of an automobile policy. However, UIM coverage not specifically tied to the use of a listed automobile would essentially make UIM coverage supplemental health insurance and/or life insurance, which is not its intended purpose. Accordingly, the intended purpose of the contract was to cover *property,* and the Court of Appeals erred in analyzing the *lives* and *interests* indirectly affected by the policy.

Because the Court of Appeals erred in its interpretation of the law, Petitioner asserts their opinion should be reversed and the lower court's grant of summary judgment should be affirmed because the Respondent failed to prove sufficient grounds for reforming the California Policy to conform to South Carolina law.

II. Did the Court of Appeals violate the Full Faith and Credit Clause of the United States Constitution in expanding South Carolina case law to allow insurance policies to be reformed to conform to South Carolina law, thereby nullifying limitations on voluntary coverage authorized and recognized by the state of California?

The Court of Appeals' holdings violate the Full Faith and Credit Clause of the United States Constitution. Our Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. This Article implies that public acts of every state shall be given same effect by courts of another state that they have by law and usage at home. Chicago & A. Railroad v Wiggins Ferry Co., 119 US 615 (1887). The Full Faith and Credit Clause is an inexorable command, and "its applicability does not turn on a balance of convenience as between litigants." Morris v. Jones, 329 US 545 (1947) (superseded by statute on other grounds).

This case concerns an insurance contract which was entered into in California and was compliant with California law, which California's legislature enacted based on their own individual state interests, some of which differ from the state interests of South Carolina. In choosing to reform the policy in question to conform to South Carolina law, the Court of Appeals disregarded the intentions and interests of California's legislature and judicial system. This is a blatant violation of the Full Faith and Credit Clause.

The reformation of an out-of-state insurance policy is a drastic result that invokes constitutional analysis –specifically, whether this State will give Full Faith and Credit to contracts entered into in other States. Again, it is clear that the subject policy, which contains UIM coverage, is part of an automobile policy that was issued in conformance with California law. California has clearly stated its policy and interests in not allowing stacking of UIM coverage. While our State has found that UIM coverage is personal and portable, courts in this State have also repeatedly held that UIM coverage is voluntary coverage and can be restricted by the contract language. In

this case, there was undoubtedly a meaningful offer of UIM coverage and UIM coverage was provided by the policy. However, that UIM coverage is limited based upon California law. While the facts of this case are clearly tragic, it should not be lost on the Court that the Respondent has already recovered the liability and UIM provided by the policy on the vehicle involved in the accident as a result of the negligence of the Respondent's wife in causing the accident. Essentially, this Court is faced with the decision of whether this case warrants ignoring the Full Faith and Credit Clause of the United States Constitution in order to change out-of-state policy for a vehicle not involved in an accident and not located in this State. This is something our Courts have never done before under these circumstances.

Furthermore, it is worth noting that in reaching its opinion, the Court of Appeals used a new interpretation of S.C. Code Ann. §38-61-10, which will have inevitable unintentional consequences of creating new insured risks which were not contemplated by either party when entering into the insurance contract – i.e. essentially allowing our Courts to reform every automobile policy based upon the location of the insureds regardless of contractual language, location of the insured vehicle, and the intent of the parties to the contract. Again, while our courts have reformed policies before, they have never reformed a policy on a vehicle that was not involved in the collision. This drastic expansion of the law should be reversed.

III. Did the lower court correctly grant summary judgment where there was no issue of material fact and the moving party was entitled to judgment as a matter of law?

The Circuit Court's grant of summary judgment was proper under the facts and circumstances of this case because the undisputed facts are clear that the Kia, which was not the vehicle involved in the accident in question, did not have sufficient ties to South Carolina which would justify a reformation of the policy under the statute in question, which is a drastic remedy saved for certain limited circumstances where the subject of the policy is located in this State.

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Id. (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)).

Rule 56(b), S.C.R.C.P. provides, "A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, **at any time**, move with or without supporting affidavits for a summary judgment in his favor **as to all or any part thereof**." (emphasis added). Under the rule, Petitioner's motion for summary judgment was properly made at any time during the pendency of this action. Rule 56(c), S.C.R.C.P. further explains that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The record before the Court clearly shows that all material facts in this action were stipulated and agreed to by the parties and there were no genuine issues of material fact left to litigate. Because the Petitioner was entitled to judgment as a matter of law as to the issue of reformation of the insurance policy under S.C. Code Ann. §38-61-10 under the undisputed material facts of the case, the lower court's grant of summary judgment was proper and should be affirmed by this Court.

CONCLUSION

Accordingly, based on the issues discussed above, Petitioner respectfully asks this Court to reverse the opinion of the Court of Appeals and affirm the lower court's grant of summary judgment in favor of the Petitioner.

Respectfully submitted,

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