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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-001510

Francine Steineman.....Respondent,

v.

Meridian Security Insurance Company .....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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Defendant/Appellant Meridian Security Insurance Company ("Meridian") submits this Reply Brief to address certain issues raised in the Brief of Plaintiff/Respondent Francine Steineman ("Steineman").

A. Contrary to Steineman's Brief of Respondent, the Policy's Nonduplication Provisions Unambiguously Preclude Coverage Under the UM or UIM Coverage Parts.

Steineman first argues in her Brief of Respondent that the trial court "correctly concluded that the duplicate payments provisions of the Policy do not preclude Steineman's recovery of UM or UIM coverage under the Policy." (*See* Br. of Respondent, at 4). In support of this argument, she states that "the ordinary and plain meaning of 'duplicate payment' is an identical payment or paying twice for the same thing." (*See id.*). For the reasons that follow, Steineman's arguments are an unreasonable interpretation of the Policy's nonduplication provisions.

As discussed in Meridian's Brief of Appellant, all coverage parts of the Policy contained "nonduplication" provisions prohibiting duplicate payments for the same elements of loss:

- **Underinsured Motorist Coverage:** "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A [Liability], Part C [Uninsured Motorist coverage] or Part D [Coverage for Damage to Your Auto] of this policy." (*See* Pl.'s Compl. Ex. A (Form SC0488 (07/15))).

- **Uninsured Motorist Coverage:** "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part A of this policy [Liability]; 2. Any Underinsured Motorists coverage provided by this policy; or 3. Part D [Coverage for Damage to Your Auto] of this policy or any other similar coverage under any other policy." (*See* Pl.'s Compl. Ex. A (Form SC0465 (07/15))).

- **Liability Coverage:** "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part B [Medical Payments Coverage] or Part C of this Policy [Uninsured Motorist Coverage]; or [a]ny Underinsured Motorists Coverage provided by this Policy." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 4))).

These provisions unambiguously provide that Meridian is not obligated to make payments under both the Policy's liability and UM/UIM coverage parts for the same injuries to the same insured

person from the same accident. Respectfully, Steineman's approach in her Brief of Respondent to the nonduplication provisions is mistaken, because she focuses only on the words "duplicate payments" in the nonduplication provisions. She interprets "duplicate payments" to mean only a literal payment for the same thing, such as a particular medical bill being paid twice. Steineman posits that, if she has damages totaling $1 million, she is entitled to recover under any and all applicable coverage parts until she recovers $1 million. However, Steineman's interpretation of the nonduplication provisions disregards the important words "for the same elements of loss" that immediately follow "duplicate payments." When the nonduplication provisions are read as a whole, it is clear that they prohibit one insured from recovering damages for the same *type of injury from the same accident* for which payment has already been made under the liability coverage. Steineman has received payment of the full liability coverage limit for all of her personal injuries (including pain and suffering, medical expenses, lost earning capacity, etc.) sustained in the accident at issue. In other words, Meridian paid her the full liability coverage limits for those "elements of loss." The nonduplication provisions would inherently prohibit any further payment to Steineman under UM or UIM coverage parts for those same "elements of loss." The Policy clearly distinguishes between "elements of loss" and the amount of damages. The Policy uses the term "damages" dozens of times, but in this instance it references "elements of loss." If "elements of loss" had the same meaning as "damages," Meridian would have used the word "damages." It did not, because "elements of loss" has a different meaning.

The only reasonable construction of the entire phrase "duplicate payments for the same elements of loss" is that it precludes a single claimant from receiving payments under *both* liability and UM/UIM coverage parts. As set forth in Meridian's Brief of Appellant, the purpose of liability coverage is to protect the insured from liability to third-persons. On the other hand, the purpose of UM/UIM coverage is to protect the insured from injuries *caused by* a third-person. Steineman's position would cause the costs of UM and UIM coverage to dramatically increase, defeating the sound public policy (embodied in South Carolina statute) of making those coverages affordable.

In her Brief of Respondent, Steineman argues that her construction of the nonduplication provisions is more appropriate because the purpose of those provisions is to "prevent a double recovery — a duplication — but not to prevent an insured from recovering fully for her damages, up to applicable policy limits." (*See* Br. of Respondent, at 5). In other words, under Steineman's construction, the nonduplication provisions would only apply after an injured person is paid the full amount of their damages. This interpretation makes the nonduplication provisions superfluous. For the reasons that follow, Steineman's construction of the nonduplication provisions is not reasonable because those provisions are not necessary to accomplish that result.

The UIM and UM coverage parts provide coverage for damages that an insured is "*legally entitled to recover* from the owner or operator" of an underinsured or uninsured motor vehicle. (*See* Pl.'s Compl. Ex. A (Form SC0488 (07/15)); Pl.'s Compl. Ex. A (Form SC0465 (07/15)) (emphasis added)). If the insured is not "legally entitled" to recover damages, she is not able to receive payments under the UIM or UM coverage parts. Under South Carolina law, an injured person is *never* "legally entitled to recover" a payment that would constitute a true "double recovery." "It is well settled in this state that 'there can be no double recovery for a single wrong and a plaintiff may recover his actual damages only once.'" *Collins Music Co. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) (*quoting Taylor v. Hoppin' Johns, Inc.*, 304 S.C. 471, 475, 405 S.E.2d 410, 412 (Ct. App. 1991); *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 397 S.E.2d 774 (Ct. App. 1990)). As a result, irrespective of the nonduplication language, there would never be coverage for true "double recoveries." Consequently, Steineman's construction of the nonduplication provisions — that they only apply to prevent a true "double recovery" — would render those provisions superfluous and meaningless, "in contravention of the well-settled principles of contract law." *See Crenshaw v. Erskine Coll.*, 432 S.C. 1, 42, 850 S.E.2d 1, 22 (2020); *accord Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 344, 225 S.E.2d 344, 349 (1976) ("That construction will be adopted which will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so."). Steineman's construction of the nonduplication provisions would render

those provisions meaningless. UIM/UM coverage can only be triggered when underlying liability coverage is exhausted; *i.e.,* when the total damages exceed liability limits (or there is no liability coverage in the first place).

As Judge Herlong concluded in *Sibert v. State Auto. Mut. Ins. Co.*, No. 8:20-4000-HMH, 2021 U.S. Dist. LEXIS 149971 (D.S.C. Aug. 10, 2021), "the nonduplication provisions are unambiguous and plainly prohibit duplicate payments for the same elements of loss under the Policy's liability and UIM coverages." *See id.*, 2021 U.S. Dist. LEXIS 149971, at *6; *accord Diamond State Ins. Co. v. Estate of McNeal,* Civil Action No. 1:11-cv-02528-JMC, 2013 U.S. Dist. LEXIS 33092 (D.S.C. Mar. 11, 2013); *Marchio v. W. Nat. Mut. Ins. Co.*, 747 N.W.2d 376, 380 (Minn. Ct. App. 2008) ("The policy language referring to 'duplicate payments' and 'elements of loss' is not reasonably susceptible to multiple interpretations. . . . We will not strain to find ambiguity when the meaning is clear.").

The Policy's nonduplication provisions cannot reasonably be read more than one way, since the way that Respondent advocates would render them meaningless. A contract is ambiguous only when it can reasonably be read more than one way. *Bardsley v. Gov't Emples. Ins. Co.*, 405 S.C. 68, 75, 747 S.E.2d 436, 439-40 (2013) ("'A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.'") (*quoting Ellie, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 494 (Ct. App. 2004)). Stated otherwise, a contract is ambiguous where it is "an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *See Bruce v. Blalock*, 241 S.C. 155, 160, 127 S.E.2d 439, 441 (1962). Steineman's Brief of Respondent does not set forth any ground for the Court to disregard the unambiguous language of the nonduplication provisions.

B. Contrary to Steineman's Arguments in Her Brief of Respondent, the Policy's Nonduplication Provisions Do Not Violate South Carolina Public Policy or Statute.

Steineman further argues that, even if the Court does not accept her construction of the nonduplication provisions, those provisions are unenforceable because they violate South Carolina public policy, as set forth in statute.

1. South Carolina Code § 38-77-160

Steineman first argues that a South Carolina statute requiring that insurers *offer optional* UIM coverage and "additional" UM coverage (above the $25,000 mandatory minimums) prohibits the nonduplication provisions:

> Automobile insurance carriers shall offer, *at the option of the insured*, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, *at the option of the insured*, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

See S.C. Code § 38-77-160 (emphasis added); *see also Bratcher v. National Grange Mut. Ins. Co.*, 356 S.E.2d 151, 292 S.C. 330 (Ct. App. 1987).

Plaintiff contends that — with respect to these optional coverages that the insured voluntary chooses to purchase — the only permissible limit upon UM and UIM coverage is that they may not exceed the amount of liability coverage. For the reasons that follow, Steineman's arguments are misplaced. Section 38-77-160 does not prohibit the nonduplication provisions as to voluntary (called "statutorily required" because they must be *offered*) UM and UIM coverages.

a. Steineman's Brief Does Not Undermine Meridian's Argument That the Nonduplication Provisions Do Not Violate Public Policy Under Section 38-77-160 With Regard to "Statutorily Required" Coverage.

In her Brief of Respondent, Steineman argues that UIM and UM (in excess of the $25,000 mandatory minimum) coverages are not "voluntary" coverages:

> Viewing different automobile coverages from the perspective of an insured, Meridian argues that any coverage an insured is legally required to carry on her policy (*i.e.*, minimum limits Bf and UM) is "mandatory" but any other coverage

> an insured may add (including what Meridian characterizes as "optional" coverage) is ·'voluntary."
>
> To the contrary, the Supreme Court has made it clear that the relevant distinction in the automobile insurance context is between "statutorily required" coverages and other coverages. In making this distinction, the court has focused on the viewpoint of the insurer, not the insured.

(*See* Br. of Respondent, at 9). Steineman's Brief cites *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 858 S.E.2d 633 (2021), for the proposition that "additional UM coverage and UIM coverage (and, when selected by the insured, to provide those coverages), they are considered statutorily required coverages." (*See* Br. of Respondent, at 10). She asserts that "as is the case with mandatory coverages such as basic UM coverage, all statutorily required coverages must comply with State insurance statutes." (*See id.*). For the following reasons, Steineman's arguments in her brief that Section 38-77-160 should apply to "statutorily required" (but voluntary) coverages is misplaced.

Knight, which Steineman relies upon in her Brief of Respondent, notes that there is a distinction between "mandatory" and "statutorily required" coverages:

> Knight also argues the policy provision violates section 38-77-160 of the South Carolina Code (2015) because it excludes statutorily required UIM coverage. We disagree on this point as well. "[S]tatutorily required coverage is that which is required to be offered or provided." *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 616, 753 S.E.2d 515, 519 (2013) (*quoting Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 404-05, 496 S.E.2d 631, 632 (1998)). Thus, UIM coverage is statutorily required coverage because it must be offered. However, UIM coverage is not mandatory because an insured can choose whether or not to purchase it. *Carter*, 406 S.C. at 621-22, 753 S.E.2d at 521-22. Unlike UIM coverage, liability coverage is statutorily required coverage that is also mandatory. *See* S.C. Code Ann. § 38-77-140(A) (2015) (providing an automobile insurance policy may not be issued unless it contains liability coverage).

Nationwide Ins. Co. of Am. v. Knight, 433 S.C. 371, 380-81, 858 S.E.2d 633, 638 (2021). Steineman's Brief of Respondent cites no authority supporting that the legislature intended that Section 38-77-160's requirement of an offer of optional UIM and excess UM coverage invalidate all contractual limitations on such optional UIM and UM coverage. Irrespective of whether the

insurer is required to offer such coverages, the insured has the ability to choose whether to purchase it.

Consistent with Meridian's argument, the courts have permitted contractual limitations on optional UIM coverage. For example, in *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 644 S.E.2d 40 (2007), Burgess was injured on his motorcycle insured by Alpha. Burgess' damages exceeded the at-fault driver's coverage, but he had no UIM coverage on the motorcycle. He had Nationwide UIM coverage on three other vehicles he owned. Nationwide denied the UIM claim, relying on the following policy language:

> If a vehicle owned by you or a relative is involved in an accident where you or a relative sustains bodily injury or property damage, this policy shall . . . be excess if the involved vehicle is not your auto described on this policy. The amount of coverage applicable under this policy shall be the lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident.

The Supreme Court held that Section 38-77-160 did not prohibit this provision as a matter of South Carolina public policy, because of the "voluntary" nature of that coverage:

> Neither § 38-77-160 nor our prior decisions decide the issue presented here: Is public policy offended by an automobile insurance policy provision that limits basic UIM portability when an insured is involved in an accident while in a vehicle he owns, but does not insure under the policy? We find it is not. *UIM coverage is entirely voluntary, and permits insureds, at their option, to purchase insurance coverage for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds' damages.* Essentially, the insured is buying insurance coverage for situations, as where he is a passenger in another's vehicle or is a pedestrian, where he cannot otherwise insure himself. When, however, the insured is driving his own vehicle, he has the ability to decide whether to purchase voluntary UIM coverage. Burgess chose not to do so when insuring his motorcycle. . . .
>
> We hold that public policy is not offended by an automobile insurance policy provision which limits the portability of basic "at-home" UIM coverage when the insured has a vehicle involved in the accident.

See id., 373 S.C. at 41-42, 644 S.E.2d at 43 (emphasis added).

Various other Court have also — notwithstanding Section 38-77-160 — allowed for the limitation of statutorily required insurance coverage:

- *State Farm Mutual v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000), *overruled on other grds. by Sweetser v. South Carolina Dep't of Ins. Res. Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010) → "[S]ection 38–77–160 does not prohibit a setoff provision, regardless of whether the employer or the employee purchased the UIM policy."

- *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) → Enforcing policy provision stating that "[a]ny amount payable under this insurance shall be reduced by . . . [a]ll sums paid or payable under any workers' compensation, disability benefits or similar law."

- *Brand v. Allstate Ins. Co.*, 2018 S.C. App. Unpub. LEXIS 49, at *1-*2 (Ct. App. Jan. 31, 2018) → "Allstate had the right to offset employee-purchased UIM coverage with paid workers' compensation benefits."

- *Rowzie v. Allstate Insurance Company*, 556 F.3d 165 (4th Cir. 2009) → "Under South Carolina law, UIM coverage is not mandatory and must be paid only up to the amount of damages incurred by the injured driver."

- *Koulpasis v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 22336, at *14 (D.S.C. Feb. 5, 2021) → Enforcing plain language where "UIM exclusion prohibits UIM coverage on an owned vehicle that is not insured for UIM coverage"

- *Siron v. Allstate Fire & Cas. Ins. Co.*, 225 F. Supp. 3d 574, 580 (D.S.C. 2016) → "The Court adopts the *Rowzie* court's rationale, as detailed above, in concluding the South Carolina Supreme Court would likely hold that a provision authorizing the offset of UIM benefits payable under a personal automobile insurance policy by MedPay benefits issued is enforceable under South Carolina law."

- *Diamond State Ins. Co. v. Estate of McNeal*, Civil Action No. 1:11-cv-02528-JMC, 2013 U.S. Dist. LEXIS 33092, at *13 (D.S.C. Mar. 11, 2013) → "Under South Carolina law, an insured may be contractually prohibited from claiming UIM policy benefits by valid policy provision."

Similarly, in this case, Meridian merely seeks to enforce nonduplication provisions contained in a UIM and UM coverage that the insured was free to accept or reject. As Meridian argued in its opening brief, Steineman's argument seeks to unduly broaden the scope of *Bratcher v. National Grange Mut. Ins. Co.*, 356 S.E.2d 151, 292 S.C. 330 (Ct. App. 1987). Nothing in the South Carolina caselaw cited in Steineman's Brief of Respondent supports her blanket rule that Section 38-77-160 prohibits any and all limitations on UIM (or extra UM) coverage.

The cases that Steineman cites in her brief are inapplicable. For example, Steineman's Brief of Respondent cites *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 198 S.E.2d

522 (1973), for her argument that "UM coverage may not be limited or reduced because of other recoverable insurance, including 'other insured motorist coverage'" (*See* Br. of Respondent, at 12). However, Steineman ignores two key differences between this case and *Ferguson*. First, and foremost, the UM coverage at issue in *Ferguson* was the then-mandatory level of coverage; it was not the "statutorily required" *offer* of additional voluntary UIM coverage. Additionally, the policy provision at issue in *Ferguson* involved benefits paid by "other insurance" in the form of workers' compensation coverage. Because workers' compensation benefits plainly do not include all of the elements of damage recoverable in tort (most notably pain and suffering), it is not surprising that the provision was not applicable under those circumstances. To apply the "other insurance" provision in *Ferguson* would have denied the injured person any chance for compensation for specific "elements of loss" not covered by the "other insurance."

Similarly, Steineman cites *Nationwide Mut. Ins. Co. v. Howard*, 288 S.C. 5, 12, 339 S.E.2d 501, 504 (1985) ("The obligation of the insurer under the terms of the statute is to pay an insured all sums which he is legally entitled to recover from the tortfeasor up to the limit of insurance provided."), for the proposition that "once an insured purchases additional UM coverage, that coverage must pay the insured's damages up to the UM coverage limits." (*See* Br. of Respondent, at 11). However, this isolated language from *Howard* — which was a stacking case and did not involve a provision like the ones at issue here — does not mean that an insurer may not utilize nonduplication provisions. To the contrary, the Nationwide policy provision at issue in *Howard* sought to reduce UM coverage by the amount of UM coverage paid by *another policy issued by another insurer.*

With regard to "statutorily required" (but voluntary and not "mandated") UIM coverage, Steineman cites *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 753 S.E.2d 515 (2013) — a case that the trial judge did not cite — for the proposition that "an exclusion of UIM coverage for an insured while occupying an owned vehicle not insured under the policy was unenforceable because it was contrary to public policy, as established by S.C. Code Ann. § 38-77-160." (*See* Br. of Respondent, at 13-14). In making this argument, Steineman focuses on the following

language of *Carter*: "Our precedents, read in the context of section 38-77-160, unequivocally require the insurer to provide coverage in an amount equal to the excess UIM coverage purchased on the vehicle involved in the accident." *See Carter*, 406 S.C. at 622, 753 S.E.2d at 522. However, *Carter* does not support Steineman's arguments.

The exclusion at issue in *Carter* prohibited coverage for injuries sustained while occupying a "motor vehicle owned by you or any 'family member' which is not insured for this [UIM] coverage under this policy." *See id.,* at 612, 753 S.E.2d at 516. In other words, it acted to deprive a whole class of insureds (*i.e.,* those who are injured in an owned vehicle not insured by the UIM carrier) of *any* coverage. The Court did not address a nonduplication provision like that at issue here, which merely prevents the same insured from recovering from multiple coverage parts for the same accident. Unlike the policy at issue in *Carter*, under which Standard Fire argued it was not obligated to pay *anything,* Meridian has already paid Steineman $250,000 under its liability coverage. This is not the sort of situation where South Carolina courts would find a violation of Section 38-77-160.

For the foregoing reasons (and for those set forth in Meridian's Brief of Appellant), the Court should reverse the trial court and should conclude that the nonduplication provisions do not violate Section 38-77-160.

b. The Recent Supreme Court Decisions Cited in Steineman's March 29, 2023 Letter to the Court Do Not Support Her Arguments.

Since filing her Brief of Respondent, Steineman has cited additional legal authority to support her argument that the nonduplication provisions violate Section 38-77-160. Specifically, on March 29, 2023, pursuant to S.C.A.C.R., Rule 208(b)(7), Steineman's counsel wrote a letter to this Court to bring to two recent Supreme Court cases to its attention. Steineman stated that cited these cases because "they address the distinction between mandatory coverage and statutorily required coverage." For the reasons that follow, these cases do not support Steineman's contentions.

In *USAA Cas. Ins. Co. v. Rafferty*, No. 28143, 2023 S.C. LEXIS 63 (Mar. 29, 2023), the United States District Court for the District of South Carolina certified the following question to the South Carolina Supreme Court: "Under South Carolina law, may an auto insurer validly limit underinsured motorist property damage coverage to property damage to vehicles defined in the policy as 'covered autos'?" USAA had issued a personal automobile policy to Megan Jenkins, which listed a Toyota Corolla as the insured vehicle and provided $100,000 in UIM coverage for property damage to "your covered auto." The policy defined "your covered auto" as any vehicle shown on the policy's declaration, any newly acquired vehicle, and any trailer owned by the insured. While riding her bicycle, Jenkins was struck and killed by an underinsured motorist. The personal representative of Ms. Jenkins made a UIM claim for property damage to the bicycle, and USAA denied coverage, because the bicycle was not a "your covered auto."

The South Carolina Supreme Court began its analysis by stating: "Whether USAA prevails depends upon whether automobile insurers are required to offer UIM property damage coverage at all. If insurers are not required to offer UIM property damage coverage, they are free to restrict such coverage to an insured's 'covered auto.'" *See id.*, 2023 S.C. LEXIS 63, at *2. The question of first impression for the Court was whether S.C. Code § 38-77-160[1] mandates an insurer to offer UIM property damage coverage.

The Supreme Court rejected USAA's argument that Section 38-77-160 did not require an insurer to offer UIM coverage for property damage:

> Section 38-77-160 plainly requires an automobile insurer to offer UIM coverage "up to the limits of the insured['s] liability coverage to provide coverage in the event that damages are sustained" in excess of the liability limits carried by an underinsured motorist. (emphasis added). This language brings into play section 38-77-140 (2015). Section 38-77-140 requires an insured to carry liability coverage in the minimum amount of $25,000 per person per accident for bodily injury; the minimum amount of $50,000 for bodily injury for all persons injured in an accident; and the minimum amount of $25,000 for property damage per

[1] This statute requires that insurers "offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured['s] liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute."

> accident. Because an insurer is required to offer UIM coverage "up to the limits of the insured['s] liability coverage" (section 38-77-160) and because the insured's liability coverage must include property damage coverage (section 38-77-140), the UIM offer must include UIM property damage coverage. It would be absurd to conclude otherwise.
>
> Also, the word "damages" as it is used in section 38-77-160 must be read in conjunction with subsection 38-77-30(4). Subsection 38-77-30(4) plainly states the term "damages," as used in the automobile insurance statutes, "includes both actual and punitive damages." USAA does not dispute that the term "actual damages" includes property damage.

See id., 2023 S.C. LEXIS 63, at *6-7. Having concluded that the statute required an offer of UIM property damage coverage, it determined that (as a matter of public policy) USAA could not restrict that coverage to only "your covered auto":

> USAA conceded during oral argument that if an insurer is required to offer UIM property damage coverage, such coverage cannot be limited to the insured's "covered auto." We agree. The statutory definition of "damages" includes "actual damages." S.C. Code Ann. § 38-77-30(4). "Actual damages" include property damage. Section 38-77-160 does not distinguish between damage to a covered automobile and damage to other types of property owned by the insured. Therefore, "damages" include damage to all property owned by the insured.

See id., 2023 S.C. LEXIS 63, at *8.

On the same day, the Supreme Court also decided *Nationwide Affinity Ins. Co. of Am. v. Green*, No. 28144, 2023 S.C. LEXIS 62 (Mar. 29, 2023). In *Green*, Nationwide issued an automobile policy to Shameika Clark, Andrew Green's mother, which included $25,000 in UIM property damage coverage for Clark and her family members. The UIM endorsement narrowly defined "property damage" to mean "injury to or destruction of 'your covered auto.'" A motor vehicle struck Green while he was walking home from school. Nationwide refused to provide UIM coverage for property damage because the damaged property was not a "covered auto." Relying on *Rafferty*, the Court held that "Section 38-77-160 requires insurers to offer UIM property damage coverage, and insurers may not limit that coverage to vehicles defined in a policy as 'covered autos.'"

Rafferty and *Green* do not render the nonduplication provisions here violative of South Carolina statute (Section 38-77-160) or public policy. Unlike the nonduplication provisions at

issue here — which govern when a claimant may recover under multiple coverage parts of the same policy — the provisions at issue in *Rafferty* and *Green* involve substantive provisions denying coverage for an entire class of damages: *i.e.,* property other than insured automobile. The nonduplication provisions here do not prohibit recovery for damages. To the contrary, these provisions (contained in voluntary coverages) merely avoid the situation where more than one coverage would be triggered for the same insured, the same elements of loss, and the same accident. Nothing in *Rafferty* or *Green* would prohibit the nonduplication provisions in the Policy. The Court did not, in those case, state the Section 38-77-160 outright prohibits any provision limiting statutorily required coverage in any way. It merely held that UIM policies may not exclude coverage by defining "property damage" in a manner hostile to Section 38-77-160. As a result, *Rafferty* and *Green* do not support Steineman's argument that Section 38-77-160 prohibits the nonduplication provisions.

Additionally, the *Rafferty* and *Green* Courts did not analyze in detail the question that Steineman raises here: whether "statutorily required" (to be offered) voluntary coverage may be limited by exclusion or other policy provision, beyond limits explicitly set forth in South Carolina statute. In fact, in *Rafferty* "USAA *conceded during oral argument* that if an insurer is required to offer UIM property damage coverage, such coverage cannot be limited to the insured's 'covered auto.'" *See Rafferty*, 2023 S.C. LEXIS 63, at *8 (emphasis added). The Supreme Court did not analyze in *Rafferty* and *Green* whether Section 38-77-160 prohibits any limitation of statutorily required (but voluntarily purchased) UIM coverage.

For the foregoing reasons, the recent Supreme Court decisions in *Rafferty* and *Green* do not support Steineman's argument that the nonduplication provisions violate Section 38-77-160. To the contrary, as argued in Meridian's Brief of Appellant and herein, the Court should not extend Section 38-77-160 to such voluntarily purchased coverage.

2. South Carolina Code § 38-77-142

As argued in detail in Meridian's Brief of Appellant, the trial court's reliance on S.C. Code § 38-77-142 to find a violation of public policy is misplaced because that Section unambiguously applies only to *liability* insurance coverage. *See* S.C. Code § 38-77-142(A) & (B) (referring only to policies or contracts of "bodily injury or property damage liability insurance"). It is beyond dispute that Meridian paid Steineman the Policy's full liability coverage limit. Steineman does not argue in this appeal that Meridian failed to provide *liability* coverage; rather, she seeks coverage under the Policy's UM and UIM parts. Under its plain, unambiguous terms and cases interpreting the statute, Section 38-77-142 simply does not, and cannot apply, here to UIM and UM coverage.

Steineman argues that Section 38-77-142 speaks in terms of "insurance covering liability," and that this "Court could interpret this broadly to include not just BI coverage but also insurance (such as UM and UIM coverages) that applies when another's liability is established (here, Eric Steineman and Sarah Smith)." (*See* Br. of Respondent, at 18). However, Steineman does not cite to any authority actually supporting her overbroad reading of Section 38-77-142's unambiguous language. On its face, the statute applies only to "bodily injury or property damage liability insurance." If the legislature had intended for Section 38-77-142 to encompass UM or UIM coverage, it would have said so. There is no authority to support that Section 38-77-142 should apply to UIM or UM coverages.

Steineman contends that, even if Section 38-77-142 does not apply, "the rationale applied by the Supreme Court in [*Williams v. Gov't Empl. Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705 (2014)] applies equally to the requirements of Sections 38-77-150 and -160." (*See* Br. of Respondent, at 18). However, *Williams* was based heavily on the *language* of Section 38-77-142 and was limited to the actual statutory provisions:

> In viewing the plain wording of section 38-77-142, we find subsections (A) and (B) require a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for damage incurred "within the coverage of the policy." Subsection (B) additionally contains a provision regarding notice that states the mere failure to turn over a motion or complaint

> will not void coverage. Finally, subsection (C) provides that no policy provision may limit or *reduce* the coverage required by *this section*, which refers to section 38-77-142, or else it is void.
>
> We think it is significant that section 38-77-142 provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the amount provided *in this section*, meaning section 38-77-142. Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum limits of liability coverage set forth in section 38-77-140, which are not even mentioned in the statute. In contrast to the circuit court's interpretation, we believe the General Assembly could have simply stated coverage may not be reduced below the statutory minimum limits and/or below the amount provided in section 38-77-140, if that was its intent. However, it did not do so. Here, the circuit court has engrafted an additional restriction into section 38-77-142 that was not included by the General Assembly by determining coverage may be reduced to the statutory minimum, in direct contravention to the explicit language of section 38-77-142(C) that coverage may not be reduced below the coverage in the policy.

See id., 409 S.C. at 603, 762 S.E.2d at 714 (emphasis in original). Steineman has not cited to any authority supporting that Section 38-77-142 should apply to UIM and UM coverage.

As set forth herein and in Meridian's Brief of Appellant, Section 38-77-142 unambiguously does not apply to UM or UIM coverage. As a result, the trial judge erred in finding that the nonduplication provisions of the Policy violated South Carolina public policy as embodied in that statute.

CONCLUSION

For the foregoing reasons (and those set forth in Meridian's Brief of Appellant), this Court should reverse and vacate the trial court's grant of judgment on the pleadings to Respondent Steineman and should reverse the denial of Meridian's motion.

April 14, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-001510

Francine Steineman.....Respondent,

v.

Meridian Security Insurance Company .....Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on the above-referenced Respondent and all other parties by email and by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2023, addressed to her attorneys of record:

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