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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-000107

Jill S. Amoruso, ... Appellant,

v.

United Services Automobile Association d/b/a USAA..... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court correctly concluded the Plaintiff's camper and the Plaintiff's horse trailer, neither of which are self-propelled vehicles, are not "motor vehicles" as defined by section 38- 77-30 (9) of the South Carolina Code and, therefore, do not require their own separate liability coverage, their own separate uninsured motorist (UM) coverage and their own separate offer of under-insurance motorist (UIM) coverage.

STATEMENT OF THE CASE

This lawsuit was filed August 18, 2022. The complaint alleged 3 causes of action – a claim for declaratory judgment and reformation, breach of contract and breach of the covenant of good faith and fair dealing, respectively. The gist of the first cause of action for declaratory judgment was a request that USAA provide a total of $600,000 additional UIM coverage on the plaintiff's horse trailer and camper. (Plaintiff's complaint paragraphs 34 – 40) The second and third causes of action concerned issues separate from the first cause of action and those causes of action are not germane to this appeal.

This lawsuit arose out of an accident on January 7, 2017, when the plaintiff was in an accident with Kaira Miller. At the time of the accident the plaintiff was driving a 2014 Nissan. At this time the Nissan and 3 other motor vehicles (two Volkswagens and a Dodge) were insured with USAA. All 4 motor vehicles had UIM coverage in addition to statutorily mandated coverages. Two additional, non-motor vehicles – the camper and the horse trailer – were separately insured for property damage only. (Order granting USAA's motion for summary judgment, page 1) Neither had separate liability, UM or UIM coverage, nor did USAA offer separate UIM coverage for them. On neither the horse trailer nor the camper did the plaintiff pay a separate, additional premium for liability, UM or UIM coverage. (Order granting USAA's motion for summary judgment, page 1,

2) It is undisputed neither the camper nor the horse trailer were self-propelled. Instead, they could only be towed behind a self-propelled, transporting vehicle.

The plaintiff filed suit against Miller. That lawsuit was tried in February 2022. The jury returned a verdict of $2,500,000 in favor of the plaintiff. The verdict was reduced to $2,400,000 by applying an offset of $100,000 in liability coverage paid by USAA which also insured Miller. USAA tendered to the plaintiff $1,200,000 in UIM coverage which represented $300,000 on each of the 4 insured motor vehicles. (Plaintiff's complaint paragraphs 24 – 27)

In January 2023 the plaintiff filed a motion for partial summary judgment on her first cause of action for declaratory judgment and reformation. The ground for this motion was that the horse trailer and camper were "motor vehicles" under section 38-77-30 (9) of the South Carolina Code and, because USAA did not offer UIM coverage on the horse trailer or the camper, the USAA policy should be reformed to include UIM coverage on the camper and the horse trailer.

On March 15, 2023, USAA filed a cross motion for summary judgment. The basis for USAA's motion for summary judgment was that the horse trailer and the camper were not self-propelled vehicles within the definition of section 38-77-30 (9), section 38-77-140 requires liability coverage on a "motor vehicle" and, because the horse trailer and camper did not fall within the definition of motor vehicle under section 38-77-30 (9), USAA was not required to offer UIM coverage on these vehicles. USAA submitted a memorandum in support of its motion for summary judgment which referenced the plaintiff’s response to USAA's interrogatories and which included photographs of the horse trailer. (USAA's memorandum in support of motion for summary judgment with attachments)

On July 13, 2023, the lower court heard the plaintiff and USAA's cross motions for summary judgment. (Transcript of July 13, 2023, hearing before Judge Jennifer B. McCoy, page 1 to page 30) On November 30, 2023, the lower court issued an order granting USAA's motion for

summary judgment and denying the plaintiff's motion for summary judgment. (Order of Judge Jennifer B. McCoy dated November 30, 2023) On December 4, 2023, the plaintiff moved to alter or amend the judgment. (Plaintiff's motion to alter or amend judgment) On January 19, 2024, Judge McCoy issued a form 4 order denying the plaintiff's motion to reconsider the order granting USAA's motion for summary judgment. (Form 4 order filed January 19, 2024) This appeal followed.

STANDARD OF REVIEW

This appeal is from cross-motions for summary judgment and involves interpretation of a statute. When parties file cross-motions for summary judgment, the issue becomes a question of law for the appellate court to decide de novo. *S. C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) (citation omitted); *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022). Additionally, "[s]tatutory interpretation is a question of law." *Floyd v. C.B. Askins & Co. Contractors*, 382 S.C. 84, 87, 675 S.E.2d 450, 452 (Ct. App. 2009) (citation omitted). Determining the proper interpretation of a statute is a question of law and an appellate court reviews questions of law de novo. *Southeast Toyota Distr., LLC v. Jim Hudson Superstore, Inc.*, 387 S.C. 508, 512, 693 S.E.2d 33, 35 (Ct. App. 2010) (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)); *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011).

INTRODUCTION

This appeal concerns competing constructions of the definition of "motor vehicle" in S.C. Code section 38-77-30(9). The first, recognized by the Circuit Court, equates motor vehicles with automobiles; requires motor vehicles to have a motor—a premise recognized in this state since 1905; and considers a trailer to be *part of a single unit* with a motor vehicle towing the trailer—a principle recognized in case law since 1953. *See, Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*,

223 S.C. 320, 75 S.E.2d 688 (1953) ("A trailer in and of itself does not have inherent dangerous properties since it is not self-propelled and can be operated only when attached to a motor vehicle, but when once attached it becomes a part of a power operated vehicle with dangerous potentialities, and therefore subject to lien for damages for the negligent or wilful operation of the power unit of which it has been made a part."). The Circuit Court's construction is consistent with the current status quo, as trailers are generally covered by the policy of the motor vehicle towing them. Indeed, in this case, the insurance purchased for each of the insureds' four motor vehicles, also provides coverage for any trailer the insureds' own.

The second construction, advanced by the plaintiff, strips "motor vehicle" of its first word, such that non-self-propelled, stationary trailers, with no motor, somehow come within the definition of motor vehicles. Plaintiff admits her construction requires consumers to procure separate and additional liability and UM coverage for each and every trailer they own, as well as receive quotes for UIM coverage on each and every trailer. Thus, consumers would be required to double-insure their trailers—once through their motor vehicle policy, and then a second time through a separate and additional coverage for the trailer itself. This vast and significant change to the status quo, if done at all, should be accomplished by the legislature, not the courts.

ARGUMENT

I. USAA was not required by S.C. Code Sections 38-77-140 and 160 to make a separate offer of UIM coverage for non-motorized trailers, over and above the coverage provided for the plaintiff's four motor vehicles.

A. South Carolina's mandatory automobile insurance coverages are applicable to "each motor vehicle."

S.C. Code sections 38-77-140 and 160 work in tandem with respect to the liability coverages required to be provided and UIM coverages required to be offered. Section 160 requires

UIM offers "up to the limits of the insured liability coverage."[1] Thus, no UIM offer is required under section 160, unless liability coverage is also required under 140.[2] Importantly, section 140 sets forth standard liability limits which must be provided "with respect to **each motor vehicle**." (emphasis added).[3]

B. Motor vehicles are self-propelled vehicles designed for highways and are generally inclusive of and considered one unit with their trailers.

Section 38-77-30(9), a tortured reading of which serves as the backbone of plaintiff's argument, provides an explanation of what is meant by "each motor vehicle" in section 140. Subsection 9 makes clear that a motor vehicle *includes* a trailer or semi-trailer attached to it. S.C. Code § 38-77-30(9) ("'Motor vehicle' means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles"). Thus, an insurer cannot exclude coverage to a motor vehicle because a wreck was caused by its trailer—the trailer would be *included* as part of the motor vehicle and thus subject to liability coverage under section 140.

As noted by Judge McCoy, the word "includes" is ordinarily a word of enlargement and not of limitation. *Baker v. Chavis*, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991)

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[1] These statutes also work hand in hand with the state's Motor Vehicle Financial Responsibility Act, at S.C. Code § 56-9-10, *et seq.* The Motor Vehicle Financial Responsibility Act includes a definition of "Motor Vehicle" that is nearly identical to that contained at section 38-77-30(9). S.C. Code § 56-9-20(4)

[2] Although plaintiff's Complaint did not seek to reform the policy to include additional liability limits for her trailers, she now apparently recognizes that additional liability coverage would be necessary to support a duty to offer UIM as she argues USAA "should also have provided liability coverage" on the camper and horse trailer. (App. Br., 13); see also Transcript of hearing on summary judgment, page 12) ("frankly, this policy should have also had liability coverage on these two trailers.")

[3] The plaintiff agrees that her appeal hinges on whether her trailers are "motor vehicles." She argues the "dispositive question" is whether USAA is an automobile insurer, and whether her trailers (which she gives the monikers the Montana and the Adams) were motor vehicles. (App. Br., 6). USAA does not contest that it is an automobile insurer.

(citing *N.C. Turnpike Authority v. Pine Island, Inc*., 265 N.C. 109, 143 S.E.2d 319 (1965)). Applying this definition to section 38-77-30 (9), the only reasonable statutory construction is that a motor vehicle is inclusive of its "trailers and semitrailers" designed for use with that motor vehicle, and that separate insurance is not needed for each trailer under Chapter 77.[4]

Although it considered the subject in a different context, the South Carolina Supreme Court has thoroughly analyzed and explained the context in which trailers are to be considered as *one unit* with the motor vehicles that tow them. In *Fruehauf Trailer Co. v. S.C. Elec. & Gas Co*., the court analyzed whether an injured party's lien on a tortfeasor's vehicle would extend to a trailer towed by that vehicle. 223 S.C. 320, 75 S.E.2d 688 (1953). The court explained that a trailer posed no danger until it was attached to and became an appendage of a motor vehicle. "A trailer in and of itself does not have inherent dangerous properties since it is not self-propelled and can be operated only when attached to a motor vehicle, but when once attached it becomes a part of a power operated vehicle with dangerous potentialities, and therefore subject to lien for damages for the negligent or wilful operation of the power unit of which it has been made a part." *Id.* at 325, 75 S.E.2d at 690.[5] As a result, "The trailer and the truck-tractor are one unit. They are both part of one operation out of which the damages arose." *Id.* at 323, 75 S.E. 2d 689. Along the same lines, this Court referred to this same "'unit' rule" under which "a truck and trailer are to be treated as a unit for the purposes of determining liability for the accident," though that rule was not relevant to the Court's decision. *North Carolina Farm Bureau Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 110, 113, 403 S.E.2d 151, 153 (Ct. App. 1991). *See also*, 60 C.J.S. Motor Vehicles,

[4] Plaintiff's interpretation, discussed below, is the exact opposite of this: she argues trailers are *separate* "motor vehicles" that are considered *separate* and apart from the motor vehicle that tows them, and are therefore required to have *separate* liability, UM, and UIM insurance.

[5] This observation is equally applicable if the final phrase is substituted with "and therefore subject to the requirements of the Motor Vehicle Financial Responsibility Act."

1(a)) ("'*A trailer or a semi-trailer is a vehicle, but is not a motor vehicle*, except that in so far as it facilitates the primary function of a motor vehicle of transporting persons and things, *after being attached to the motor vehicle for that purpose, it may be regarded as becoming a part of the motor vehicle*, although as to the latter proposition there is also authority to the contrary.'" (as quoted by *Fruehauf Trailer*, at 326, 75 S.E. 2d at 690) (emphasis added); *Miller v. Aiken*, 364 S.C. 303, 309, 613 S.E.2d 364, 367 (2005) (treating "tractor-trailer" as one unit).

The legislature's drafting of 38-77-30 (9) such that the definition of a motor vehicle includes its trailer is consistent with treatment of motor vehicles and their trailers as one unit by courts in 1953, 1991, and 2005. Judge McCoy's reading of the statute is consistent with this law, as well as common sense.

C. USAA's policy complied with S.C. Code sections 38-77-140 and 160.

USAA provided automobile insurance coverage in at least the amounts required by section 140 for "each" of the "motor vehicles" owned by Plaintiff—a 2013 Volkswagen, a 2015 Volkswagen, a 2016 Dodge, and a 2014 Nissan. Under section 38-77-30 (9)'s definition of motor vehicle, USAA could not exclude coverage for a trailer designed for use with these vehicles, as the trailer would be considered one unit with the motor vehicle. And USAA complied with the statute: its policy defines "Your covered auto" as including "any trailer you own." (R. p. __; Policy, p. __); see also *Id.* (defining trailer as a "vehicle designed to be pulled by a private passenger auto, pickup, van, or miscellaneous vehicle…").

D. USAA has complied with the UIM offer requirements and paid Plaintiff $1,200,000 in UIM benefits on all *motorized* vehicles she owned and insured.

Plaintiff cannot contest that USAA properly offered UIM coverage on all four of her motorized vehicles, and has paid her all of the $1,200,000 in UIM coverage she chose to purchase.

II. The Plaintiff's construction of section 38-77-30(9) is wrong.

Plaintiff offers a construction that turns section 38-77-30(9) on its head and is not supported by any authority: it excises one half of the phrase "motor vehicle; it relies on a tortured reading that would produce absurd results; it is not supported by any case; and it would result in a radical transformation of the insurance industry.

A. Contrary to Plaintiff's interpretation, a motor vehicle requires a motor.

Plaintiff's construction of "motor vehicle" would contradict the term itself. One could only conclude that a non-self-propelled trailer is a "*motor* vehicle," by castrating the term's first word—"motor." To borrow from Mark Twain, this is akin to ignoring one half or the other of "lightning bug."

At the risk of stating the obvious, a motor vehicle must have, definitionally, some type of motor. This common-sense observation is supported by common-law definitions of "motor vehicle," only the most recent of which Judge McCoy cited. *See, Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 46, 885 S.E.2d 433, 439 (Ct. App. 2023) (defining "motor vehicle" as a vehicle which is self-propelled and a vehicle "operated by a power developed within itself…")(citing 60 C.J.S. *Motor Vehicles* § 1, 118-19 (2012)). And though Plaintiff takes issue with *Jack's Custom Cycles* as being a tax case, the simple fact that a motor vehicle requires a motor has been stated in other contexts since the advent of the automobile. "In 1905 the General Assembly, in providing for rules of the road, defined a motor vehicle as used in the Act, as all vehicles propelled by gasoline, explosive vapor, steam, electricity or other kindred power." *Fruehauf Trailer*, at 324, 75 S.E. 2d at 689-90. *See also, Bolt v. Life & Cas. Ins. Co. of Tenn.*, 156 S.C. 117, 152 S.E. 766, 767 (1930) ("The term 'motor-driven car' is made up of two words, motor-driven and car. In Webster's New International Dictionary, the meaning of 'motor-driven' is given

as, 'Driven or actuated by a motor.'"); *Gunn v. Burnette*, 236 S.C. 496, 498, 115 S.E.2d 171, 172 (1960) ("To 'operate motor vehicle' usually means … that *power of motor* is applied to wheels to *move automobile* forward or backward.") (emphasis added) (quoting *State v. Sullivan*, 82 A.2d 629 (M.E. 1951)); *White v. S.C. Dept. of Parks, Recreation and Tourism*, 271 S.C. 9, 94, 245 S.E.2d 125, 127 (Ct. App. 1978) ("a motor vehicle is defined as one which is operated by *a power developed within itself* and used for the purpose of carrying passengers or materials.") (emphasis added) (quoting 60 C.J.S. *Motor Vehicles* § 1).

Ironically, the plaintiff acknowledges that "no word, clause, sentence, provision or part shall be rendered surplusage or superfluous" in statutory construction. (Br. p. 11) Yet she would have this Court violate this maxim by ignoring one half of the two-word phrase at issue. For this reason alone, the plaintiff's construction fails.

B. The last sentence of the subject definition contradicts plaintiff's construction.

At page 9 of her brief, the plaintiff block quoted the definition she construes, but omitted the last of its three sentences. The missing sentence clearly contradicts her interpretation and reads: "For purposes of this chapter, the term automobile has the same meaning as motor vehicle."[6] An automobile is manifestly a *motor-driven* car. *See, Bolt v. Life & Cas. Ins. Co. of Tenn.*, 156 S.C. 117, 152 S.E. 766, 772 (1930) ("an automobile [] manifestly is a 'motor-driven car…"). Its etymology is a combination of the words auto and mobile, and translates as self-propelled.

[6] The full text of the subject section is as follows:
"Motor vehicle" means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well-drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. Mopeds are considered to be motor vehicles for the purposes of uninsured motor vehicle insurance coverage and underinsured motor vehicle insurance coverage only. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

Merriam-Webster's online dictionary, Etymology, available at https://www.merriam-webster.com/dictionary/automobile (last checked March 5, 2024).

As plaintiff readily admits in her footnote 4, a trailer is not self-propelled. It therefore cannot come within the meaning of automobile. Thus, the legislature's statement that motor vehicle "has the same meaning" as automobile "for purposes of this chapter" further supports the Circuit Court's ruling that a non-self-propelled trailer is not a motor vehicle. [7]

C. Plaintiff's interpretation misstates the Circuit Court's holding to create conflicts that do not exist.

Plaintiff twists the language of 38-77-30(9) in knots that are simply not present. A strawman is first constructed through the claim that the Circuit Court "concluded that this definition's phrase 'self-propelled' applies to trailers." (App. Br., 9). Then four full pages are spent knocking down this strawman. (App. Br., 9-12). But the Circuit Court never made such a conclusion, it merely held that motor vehicles *include* their trailers. Thus, the plaintiff's odyssey through the rules of grammatical and statutory construction that this supposed conclusion violated are immaterial and based upon a faulty premise.

The plaintiff also improperly divides the statute into "three categories of vehicles"; actually, there are two: (1) self-propelled vehicles designed for highway use, including their trailers; and (2) a list of certain exceptions. It is true the exceptions appear to fall outside the definition, as none of them are vehicles designed for highway use, and at least one, farm trailers, is not self-propelled. But it is not true, as Plaintiff contends, that this renders the definition nugatory, such that "motor vehicle" includes anything not specifically excluded, whether or not it

[7] Plaintiff's interpretation is also contradicted by the Legislature's express "declaration of purpose" in Chapter 77, *Automobile* Insurance, which purpose was to "reform *automobile* insurance," to establish criteria for "*automobile* insurance risk" to ensure "entitle[ment] to *automobile* insurance," and to make benefits available "for *motor* vehicles registered in this State." S.C. Code 38-77-10 (1)-(4) (emphasis added).

falls within the definition. The fact the legislature may have, perhaps in an abundance of caution, due to political reasons, or due to changes in the statute over time, included exceptions which all fall outside of the subject definition, does not render the definition meaningless.

The plaintiff argues that because campers and horse trailers are not included in these 7 listed exceptions, the corollary is that they must be included within the definition of "motor vehicle." Such statutory construction would require the legislature to specifically list every conceivable type of non-motorized vehicle—from a wheelbarrow to a train—to be itemized in the exclusion. Plaintiff bases this argument on the *expressio unis est exclusia alterius* canon, which has been criticized as "not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not depends on the particular circumstances of context." Black's Law Dictionary, p. 602 (7th Ed. 1999) (quoting, Dickerson, Reed, *the Interpretation and Application of* Statutes, 234-35 (1975)). This Court has held the *expressio unis* maxim "should be used with care" and "should be used to accomplish legislative intent, not defeat it." *See, e.g. S.C. Dept. of Consumer Affairs v. Rent-A-Ctr., Inc.*, 345 S.C. 251, 256, 547 S.E.2d 881, 884 (Ct. App. 2001) (internal quotations and citations omitted). Plaintiff's application of the maxim defeats legislative intent as it would render meaningless the phrases "self-propelled" and "designed for use upon a highway," such that any non-excepted vehicle, from wheelbarrows, to trailers, to trains, would all become "motor vehicles," which would contravene another principle of statutory construction—a statute should not be construed to reach an absurd result.

D. *Miller v. Aiken* does not support the plaintiff's position.

From page 14 through 16, the plaintiff argues that *Miller v. Aiken* "actually supports Amoruso's position." It does not. *Miller* affirms the proposition that "Section 38–77–160 requires

an offer of optional UIM coverage 'up to the limits of the liability coverage.'" 364 S.C. 303, 309, 613 S.E.2d 364, 367 (2005). In other words, as discussed above, *Miller* supports that the key question here is whether a trailer is a "motor vehicle," each of which is required to carry the limits specified in section 38-77-140. Additionally, although the question of whether a trailer is a motor vehicle under Tille 38 wasn't directly before the court, the vehicle involved in *Miller* was a "tractor-trailer."[8] A tractor-trailer consists of two parts, a tractor and a trailer. Consistent with USAA's interpretation of section 38-77-30(9), the court in *Miller* treated that vehicle as a single unit—it did not separate them into two separate "motor vehicles" as plaintiff advocates is required by section 38-77-30(9). In fact, had plaintiff's interpretation been correct, the plaintiff in *Miller* would have argued that not one but two UIM offers were required, as the tractor and trailer would be two separate "motor vehicles" under 38-77-30(9).

E. The radical revision of "motor vehicle" to include non-motorized trailers proposed by the plaintiff, and the consequent sea change in the way insurance is purchased, sold, and administered, should be accomplished, if at all, by the legislature, not this Court.

1. In addition to requiring consumers to obtain separate UIM quotes for all of their trailers, Plaintiff also (necessarily) seeks a mandate that they obtain separate liability and UM insurance policies on those trailers.

The plaintiff acknowledges that because section 38-77-160 requires UIM offers only to the extent of liability coverage, she can only prevail if USAA was required to provide separate and additional liability and UM coverage to each of plaintiff's trailers in addition to the separate and additional UIM offers she contends must be made for all trailers in the state. (App. Br., p. 8, 13) (arguing that USAA was required to and "should have" provided additional liability coverage for

[8] *Miller* would have been on all fours with this case had the plaintiff in *Miller* insured the tractor for liability and UIM coverage, and the insured claimed that a separate UIM offer was required for the trailer.

the trailers). These immobile vehicles are often stationary for extended periods, but under the plaintiff's theory they will have to be covered by separate and additional liability, UM, and (if accepted) UIM coverage 365 days a year, in addition to the coverage provided through the motor vehicles towing them.

It is common knowledge of which a court can take judicial notice that our interstates, state highways and local roads (not to mention our driveways, back yards, and garages) are frequented by trailers that can only be transported behind a motorized vehicle. "Courts will take judicial notice of subjects and facts of general knowledge..." *State v. Odom*, 412 S.C. 253, 772 S.E.2d 149, 155 (2015) (citations and internal quotations omitted). The examples abound: college students towing moving trailers to campuses, landscapers towing riding lawn mowers and other equipment, boaters towing boats, pitmasters pulling grills, outdoorsmen towing recreational vehicles, equestrians towing horse trailers, vacationers towing campers, and all sorts of general purpose and utility trailers. In all of these instances, the motorized vehicle is required to have liability and UM coverage which *includes* trailers designed for use with these vehicles. Forcing insurers to sell, and insureds to purchase, separate liability and UM coverage and receive offers of UIM coverage on both motorized and on non-motorized vehicles will be illogical, unnecessary and a radical expansion of the system of automobile insurance regulated by chapter 77 of title 38.[9]

2. The radical revision and expansion of automobile insurance proposed by the plaintiff must be done, if at all, by the legislature, not by judicial decision.

[9] Notably, the legislature has specifically exempted owners of boat trailers under 2,500 pounds and privately owned utility trailers from having to license and register these trailers. S.C. Code 56-3-130 ("Boat trailers under twenty-five hundred pounds, farm trailers and other utility trailers which are privately owned and not for hire need not be licensed or registered."); *see also,* S.C. Code 56-3-400 (Defining "automobile utility trailer" as "any trailers suitable for towing by a private passenger automobile, the use of which is confined to the private hauling of personal property…") Yet, under the plaintiff's interpretation, this same legislature has defined utility trailers as "motor vehicles" that must obtain additional, stand-alone insurance for these un-registered, unlicensed trailers, and receive and sign UIM offer forms for each one.

The effect or result of what the plaintiff proposes – a separate and additional offer of UIM coverage up to liability limits and mandatory separate and additional liability and UM coverage on virtually all trailers in this state– will be to radically expand and alter the system of automobile insurance in chapter 77 of title 38. Any such expansion of the statutory system of automobile insurance should be accomplished legislatively, not judicially. It is the legislature, not the courts, which makes policy determinations. *Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 483, 892 S.E.2d 121, 131 (2023). Courts are not at liberty to add to statutory law or subtract from it. *Ballard v. Newberry Cnty.*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021). If the definition in a statute is to be altered, it must be by the legislature. *See, e.g., Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 605 (2003).

3. The construction of the definition of "motor vehicle" in section 38-77-30 (9) urged by the plaintiff will lead to an absurd result.

As noted by the lower court, statutes are not to be construed to reach an absurd result. (Trial court order of November 30, 2023, page 3); *see also Miller v. Lawrence Robinson Trucking*, 333 S.C. 576, 581-82, 510 S.E.2d 431, 434 (Ct. App. 1998) (quoting *S.C. Coastal Council v. S.C. State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)). As explained in section A, however, that is exactly the result proposed by the plaintiff – every non-motorized vehicle which is stationary except when towed behind a motorized vehicle with its own liability and UM coverage must have its own separate liability and UM coverage and offer of UIM coverage.[10] Requiring consumers to, in effect, pay for coverages on both motorized and non-motorized vehicles – in effect paying for

[10] See also, *Canal Insurance Company v. Insurance Company of North America*, 315 S.C. 1, 4, 431 S.E. 2d 577, 579 (1993), which defined "use of a motor vehicle" is limited to transportation uses. This evinces a legislative purpose to require liability, UM and an offer of UIM coverage on vehicles used as a means of transportation. The camper and horse trailer, while capable of being transported, are not themselves a means of transportation.

double coverages – is unlikely to sit well with the consuming public. Any attempt to do that must, as explained in the previous section, be accomplished legislatively.

CONCLUSION

Footnote 4 of the plaintiff's brief references "common sense." Common sense is indeed fundamental to the analysis of the dispositive issue – whether a camper and horse trailer must have their own separate liability, UM and offer of UIM coverage while being towed behind motor vehicles having the same coverages.

What is being attempted is a radical change of the system of automobile insurance which, if accepted, will have a significant impact upon all automotive insurers and consumers of automotive insurance, the latter of which will be surprised to learn they must now buy separate and additional liability and UM insurance on any each and every trailer they tow. If this is to be done, it must be done to the legislature, not the courts.

USAA respectfully requests the order of the lower court be affirmed.

Respectfully submitted,

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