RECEIVED
Apr 23 2024
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 Number: 2024-000107

Jill S. Amoruso.....Appellant,

v.

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

BRIEF OF APPELLANT

Bert G. Utsey, III (SC Bar No. 10093)
Samuel R Clawson, Jr. (SC Bar No. 76065)
Christy Fargnoli (SC Bar No. 77528)
CLAWSON FARGNOLI UTSEY, LLC
2 Amherst Street
Charleston, SC 29403
(843) 970-2700
bert@cfulaw.com
sam@cfulaw.com
christy@cfulaw.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

1. Was USAA required to offer underinsured motorist coverage on all six vehicles insured by the subject motor vehicle liability insurance policy?
2. Should the policy be reformed to include underinsured motorist coverage on all six vehicles?
3. Can Appellant recover stacked underinsured motorist coverage for all six vehicles?

STATEMENT OF THE CASE

Appellant Jill S. Amoruso ("Amoruso") filed this action on August 18, 2022, seeking a declaratory judgment that a motor vehicle liability insurance policy (the "Policy") issued to her by Respondent United Services Automobile Association ("USAA") provided underinsured motorist ("UIM") coverage in the amount of $300,000 per person for all six vehicles listed on the Policy and reforming the Policy accordingly. (R. pp. 19-20, ¶¶ 30-39). Amoruso also sought declarations that she could stack all UIM coverage afforded by the Policy and that the stacked UIM coverage was applicable to her judgment for bodily injury damages as a result of a collision that occurred while the Policy was in effect. (R. pp. 17-20, ¶¶ 11-15, 24-34, 39).[1]

USAA filed an Amended Answer on March 15, 2023. (R. p. 24). There, it admitted most of the operative factual allegations but denied that the Policy provided UIM coverage for two of the six insured vehicles. (R. pp. 24-27, ¶¶ 7-19, 24-29).[2]

On January 23, 2023, Amoruso filed a Motion for Partial Summary Judgment. (R. p. 32). USAA filed its Motion for Summary Judgment on March 15, 2023. (R. p. 34). On July 12, 2023, USAA filed a Memorandum in Support of its Motion for Summary Judgment. (R. p. 36).

---

[1] Amoruso also alleged causes of action for breach of contract and bad faith. (R. pp. 20-24, ¶¶ 41-63). Those claims are not at issue in this appeal.

[2] USAA previously paid Amoruso UIM coverage on four of the six vehicles insured by the Policy; so, UIM coverage on those vehicles was not in dispute. (R. pp. 17-18, ¶¶ 8, 10, 27; pp. 25-26, ¶¶ 8, 10, 27).

The pending motions came before Circuit Court Judge Jennifer B. McCoy for a hearing on July 13, 2023. (R. p. 40). By Form 4 Orders dated November 13, 2023, Judge McCoy granted USAA's Motion for Summary Judgment and denied Amoruso's Motion for Partial Summary Judgment. (R. pp. 7, 10). The Form 4 Orders stated a formal Order would follow. On November 30, 2023, Judge McCoy filed a formal Order granting USAA's Motion for Summary Judgment and denying Amoruso's Motion for Partial Summary Judgment. (R. p. 2).

On December 4, 2023, Amoruso filed a Motion to Alter or Amend Judge McCoy's Order. (R. p. 135). Judge McCoy denied the Motion to Alter or Amend without a hearing via a Form 4 Order dated January 19, 2024. (R. p. 13).

On January 23, 2024, Amoruso filed a timely Notice of Appeal from Judge McCoy's Order granting USAA's Motion for Summary Judgment and denying Amoruso's Motion for Partial Summary Judgment as well as her Order denying Amoruso's Motion to Alter or Amend.

STANDARD OF REVIEW

"Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Crossmann Communities of N.C. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011). Additionally, where the court is presented with a question of statutory construction a question of law is involved. *State Farm Mut. Auto. Ins. Co. v. Windham*, 438 S.C. 156, 159, 882 S.E.2d 754, 756 (2022).

"When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Properties v. City*

of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *J.K. Construction v. W. Carolina Regional Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

> When cross motions for summary judgment are filed, the issue is decided as a matter of law. When reviewing an insurance policy, the general rules of contract construction apply. ... Further, the interpretation of a statute is a question of law, which [the appellate court must] review de novo.

Neumayer v. Philadelphia Indem. Ins. Co., 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (internal citations omitted).

ARGUMENTS

I. STATEMENT OF FACTS.

The facts related to the issues presented by the parties' cross motions for summary judgment (and, therefore, by this appeal) are undisputed.

USAA issued the Policy. (R. p. 17, ¶ 7; p. 24, ¶ 7; p. 87). Amoruso was the named insured on the Policy. (R. p. 92). The Policy insured six vehicles. (R. p. 17, ¶ 8; p. 25, ¶ 8; pp. 92-94). The Policy provided several types of coverages, including liability insurance coverage. (R. p. 17, ¶ 9; p. 25, ¶ 9; pp. 92-94).

However, the Policy only insured four of its six vehicles for liability and UIM coverage. (R. p. 17, ¶ 9; p. 25, ¶ 9; pp. 92-94). The two insured vehicles without those coverages were listed on the Policy as a 2016 Montana camper (the "Montana") and a 2007 Adams horse trailer (the "Adams"), both of which USAA described as "vehicles" on the Policy's declarations pages. (R. pp. 92-94). In fact, USAA did not even offer Amoruso liability coverage or UIM coverage on the Montana or the Adams. (R. p. 20, ¶ 38; p. 28, ¶ 38; p. 71, ¶¶ 8-10). Rather, these two vehicles were only insured for "physical damage coverage," which included collision coverage and comprehensive coverage. (R. pp. 93-94).

The Policy's collision coverage stated: "[USAA] will pay for **loss** caused by **collision** to **your covered auto**, including its equipment, and personal property contained in **your covered auto**, minus any applicable deductible shown on the Declarations." (R. p. 121) (bold in original). The Policy defined "your covered auto" as "any vehicle shown on the Declarations." (R. p. 105). The Policy's comprehensive coverage applied to losses caused "other than by collision" to covered autos. (R. p. 120).

On January 7, 2017, while the Policy was in effect, Amoruso was seriously injured in a motor vehicle collision while occupying one of the insured vehicles. (R. p. 17, ¶¶ 10-12; p. 25, ¶¶ 10-12). She filed suit against the at-fault motorist and served USAA, as her UIM insurer, with the pleadings. (R. p. 17, ¶¶ 14-15; p. 25, ¶¶ 14-15). After the Defendant's liability coverage of $100,000 was tendered, USAA assumed defense of the lawsuit. (R. p. 18, ¶¶ 17, 19; pp. 25-26, ¶¶ 17, 19). The action was tried to a jury verdict, which resulted in a judgment in favor of Amoruso in the amount of $2,400,000 after the setoff for liability coverage. (R. p. 18, ¶¶ 24-25; p. 26, ¶¶ 24-25).

USAA conceded it provided UIM coverage with limits of $300,000 on the vehicle Amoruso occupied at the time of the collision, as well as on three other vehicles listed on the Policy; it also agreed that Amoruso was entitled to stack that UIM coverage as a Class 1 insured. (R. pp. 18-19, ¶¶ 26-27, 31; pp. 26-27, ¶¶ 26-27, 31). As a result, USAA tendered to Amoruso a total of $1,200,000 in UIM coverage. (R. p. 18, ¶ 27; p. 26, ¶ 27). This left $1,200,000 of the judgment unsatisfied.

Amoruso claimed that USAA was required by statute to offer UIM coverage on the Montana and the Adams and, because it failed to do so, the Policy should be reformed to include UIM coverage on those vehicles, with limits on each equal to the $300,000 liability coverage

limits afforded by the Policy. USAA disagreed. Plaintiff then filed this action setting forth, among other allegations, this justiciable controversy between the parties.

Ruling on the summary judgment motions, the Circuit Court rejected Amoruso's position and ruled in favor of USAA. In doing so, it concluded that S.C. CODE ANN. § 38-77-160's requirement that an insurer offer UIM coverage on vehicles insured by South Carolina automobile insurance policies did not apply to the Montana and the Adams. The Circuit Court reasoned that, because the Montana and the Adams are not self-propelled vehicles, they are not "motor vehicles" for purposes of automobile insurance statutes (R. pp. 3-4) and that, because USAA only provided collision coverage on the Montana and the Adams, it had no duty to offer UIM coverage on those vehicles. (R. p. 5).

II. USAA WAS STATUTORILY REQUIRED TO OFFER UIM COVERAGE ON ALL VEHICLES INSURED BY THE POLICY AND THE CIRCUIT COURT ERRED IN RULING OTHERWISE.

A. Automobile insurers are required to offer UIM coverage on insured vehicles.

Automobile insurers in South Carolina must offer to their insureds UIM coverage, the purpose of which is "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...." S.C. CODE ANN. § 38-77-160 (1976, as amended).[3] Although UIM coverage is not mandatory like uninsured motorist coverage, it is "statutorily required coverage." *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 380-81, 858 S.E.2d 633, 638 (2021). That is, insurers are required to offer UIM coverage and are also required to provide it when an insured chooses to purchase it.

[3] Section 38-77-160 actually imposes this duty on "automobile insurance carriers" rather than "automobile insurers." However, our Supreme Court has ruled that the term "automobile insurance carrier" is synonymous with the terms "insurer" and "automobile insurer" for purposes of Title 38, Chapter 77. *Miller v. Aiken*, 364 S.C. 303, 305, 613 S.E.2d 364, 365 (2005).

If an insurer fails to make a meaningful offer of UIM coverage, the court must reform the policy to include UIM coverage as a matter of law, with limits equal to the policy's liability coverage limits. *Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 760 (1996); *Ackerman v. Travelers Indem. Co.*, 318 S.C. 137, 144, 456 S.E.2d 408, 411 (Ct. App. 1995).

It is undisputed USAA did not offer UIM coverage on the Montana and the Adams. Thus, the dispositive question presented to the Circuit Court – and now in this appeal – is whether USAA was an "automobile insurer" required to offer UIM coverage to Amoruso for all "motor vehicles" covered by the Policy. If the Court concludes USAA was an "automobile insurer" with respect to the Policy and that the Montana and the Adams were "motor vehicles," then it should reverse the Circuit Court and reform the Policy to include UIM coverage on the Montana and the Adams.

B. USAA is an "automobile insurer."

Automobile insurance in South Carolina is governed by Title 38, Chapter 77 of the South Carolina Code. Code Section 38-77-30 (2) defines "automobile insurer" as "an insurer licensed to do business in South Carolina and authorized to issue automobile insurance policies." S.C. CODE ANN. § 38-77-30 (2) (1976, as amended).

USAA admits it is an insurer licensed to do business and to write automobile insurance policies in this State. (R. p. 16, ¶ 4; p. 24, ¶ 4). It is therefore an "automobile insurer" and an "automobile insurance carrier." *See Miller v. Aiken*, 364 S.C. at 308, 613 S.E.2d at 367.

C. The Policy is an "automobile insurance policy."

Title 38, Chapter 77 also includes the following definitions relevant to this appeal:

> "Automobile insurance" means automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, *and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical*

> *damage insurance* and economic loss benefits as provided by this chapter written or offered by automobile insurers.
>
> . . .
>
> "Policy of automobile insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this State covering liability arising from the ownership, maintenance, or use of any motor vehicle....

S.C. CODE ANN. § 38-77-30 (1) & (10.5) (1976, as amended) (emphasis added).

The Policy provides "automobile insurance" via various coverages, including bodily injury liability insurance, property damage liability insurance, and physical damage insurance. Thus, the Policy is an "automobile insurance policy" or "policy of automobile insurance" because it provides liability insurance and was issued in this State. *See also Peagler v. USAA Ins. Co.*, 368 S.C. 153, 159, 628 S.E.2d 475, 478 (2006) (equating the term "automobile insurance policy" with "policy of automobile insurance" as used in Section 38-77-30 (10.5)).

D. USAA had a duty to offer UIM coverage on the Montana and the Adams.

1. Automobile insurers must provide liability coverage in automobile insurance policies.

Despite the above statutory provisions, the Circuit Court concluded USAA was not required to offer UIM coverage on the Montana and the Adams. Its rationale was based on two premises. First, the Circuit Court reasoned USAA was not required to provide liability insurance coverage on those vehicles because they are not "motor vehicles." (R. pp. 3-4). Second, it relied upon *Miller v. Aiken* for the proposition that an insurer which provides collision coverage without liability coverage has no duty to offer UIM coverage. (R. p. 5). Both of the Circuit Court's premises are flawed, as is its conclusion.

Although USAA did not write liability coverage on the Montana or the Adams, that does not answer the question of whether it should have done so. The Circuit Court apparently appreciated this distinction because it began its analysis with reference to Section 38-77-140, the statutory mandate to provide liability insurance coverage. (R. p. 3). That statute states:

> *An automobile insurance policy* may not be issued or delivered in this State to the owner of a motor vehicle or may not be issued or delivered *by an insurer licensed in this State upon a motor vehicle* then principally garaged or principally used in this State, unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States or Canada, subject to limits exclusive of interest and costs, *with respect to each motor vehicle*, as follows....

S.C. CODE ANN. § 38-77-140 (1976, as amended) (emphasis added).

2. The Montana and the Adams are "motor vehicles" for purposes of insurance statutes.

As discussed above, the Policy is an automobile insurance policy and USAA is an automobile insurer, so the statute squarely applies to the Montana and the Adams if they are "motor vehicles," which they are. The Circuit Court erred in reaching the contrary conclusion.

In analyzing this issue, the Circuit Court began by analyzing the correct statutory definition set forth in Section 38-77-30 (9), but misinterpreted it. That statute provides:

> "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.

S.C. CODE ANN. § 38-77-30 (9) (1976, as amended) (emphasis added).

The Circuit Court erroneously concluded that this definition's phrase "self-propelled" applies to trailers such as the Montana and Adams, which are admittedly not self-propelled. (R. pp. 3-4). Specifically, it found: "To fall within the definition of 'motor vehicle' a vehicle must be self-propelled and designed for use upon a highway." (R. p. 3). However, that conclusion is at odds with the express language of the statute. *See Miller*, 364 S.C. at 307, 613 S.E.2d at 366 ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."), *citing Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994).

The statute lists three categories of vehicles, the first two of which are included in the definition of "motor vehicles" and the third of which is not:

1. Self-propelled vehicles designed for highway use.
2. Trailers intended for use with self-propelled vehicles designed for highway use.
3. "[T]raction 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."

The General Assembly could easily have specified that trailers must be self-propelled to be considered within the definition of "motor vehicles" – in which case the statute would have stated "every self-propelled vehicle which is designed for use upon a highway, including self-propelled trailers and semitrailers" or "every self-propelled vehicle which is designed for use upon a highway, every self-propelled trailer and semitrailer which is designed for use upon a highway" – but it did not. The fact that the General Assembly used the subject adjective with regard to one group of vehicles but not the other shows it did not intend for "self-propelled" to modify "trailers and semitrailers" and the Circuit Court erred in reaching the contrary conclusion. *See State v. Leopard*, 349 S.C. 467, 472-73, 563 S.E.2d 342, 345 (Ct. App. 2002) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'"), *quoting S.C. Dept. of Consumer Affairs v. Rent-a-Center*, 345 S.C. 251, 256, 547 S.E.2d 881, 883-84 (Ct. App. 2001); *see also Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007) (when interpreting a statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute's operation).

That the General Assembly did not intend to apply "self-propelled" to trailers is even more clearly demonstrated by the fact that, in the clause listing trailers, it modified "trailers and

semitrailers" to mean those used with "these vehicles," a reference to the statute's first clause listing "self-propelled vehicles." Also, even if there could be such a thing as a self-propelled trailer,[4] it would not need to be used with a self-propelled vehicle because it would have its own means of locomotion. By construing the statute in this fashion, the Circuit Court rendered the clause "designed for use with these vehicles" meaningless and produced an absurd result. *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.") (citation omitted); *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192-93 (2014) ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.").

Moreover, applying the adjective "self-propelled" to trailers in the statute's second category of vehicles would also require one to add it to "farm trailers" in the exceptions set forth in the third category, making that exception "self-propelled farm trailers." Otherwise, there would be no need to list farm trailers as an exception because non-self-propelled farm trailers would not have been included with self-propelled trailers in the second category initially. In other words, why would a statute specifically exclude something from a definition if it were

[4] Common sense dictates the conclusion that trailers, by nature, are not self-propelled. In *United States v. Lofty*, 455 F.2d 506 (4th Cir. 1972), the Fourth Circuit Court of Appeals summarily rejected the argument that a trailer should be considered self-propelled vehicle. Likewise, many other courts have held that trailers are not "self-propelled vehicles." *See, e.g., Truck Trailer Mfrs. Assoc. v. Environmental Prot. Agency*, 17 F.4th 1198, 1202 (D.C. Cir. 2021) ("a trailer, by itself, is not self-propelled"); *Herbert v. West Reading Borough Zoning Hrg. Bd.*, 2021 Pa. Commw. Unpub. LEXIS 541, at *10 (2021); *Vee v. Ibrahim*, 769 N.W.2d 770, 775 (Minn. App. 2009); *Tomczak v. Industrial Indem. Ins. Co.*, 1989 U.S. Dist. LEXIS 5127, at *5 (E.D. Pa. 1989); *Bernard v. United States*, 872 F.2d 376, 377 (11th Cir. 1989); *Newman v. Basin Motor Co.*, 98 N.M. 39, 44, 644 P.2d 553, 558 (1982); *In re Toppo*, 474 F. Supp. 48, 53 (W.D. Pa. 1979); *Patapsco Trailer Service & Sales v. Eastern Freightways*, 271 Md. 558, 563, 318 A.2d 817, 820 (Ct. App. 1973); *United States v. Kelly*, 435 F.2d 1288 (9th Cir.1970), *cert. denied*, 401 U.S. 921 (1971); *Dept. of Revenue v. Williams*, 351 S.W.2d 875, 876 (Ky. App. 1961); *Prudential Ins. Co. v. Associated Employers Lloyds*, 250 S.W.2d 477, 480 (Tex. App. 1952).

never included? *See Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008) (In construing statutory language, a court must presume the General Assembly meant for its chosen statutory language "to accomplish something and did not intend a futile act."). But doing so would be contrary to clear legislative intent because the General Assembly does not consider "farm trailers" as self-propelled. *See* S.C. CODE ANN. § 56-5-4900 (1976, as amended) (defining "farm trailers" as those that "are pulled behind farm tractors or trucks"). In short, the fact that farm trailers are not self-propelled further demonstrates that the Circuit Court erred in applying that modifier to all vehicles described in the definitional statute.

Additionally, taking this construction to its logical conclusion would mean that, while self-propelled farm trailers are excluded, all non-self-propelled farm trailers are unaffected by the exclusion and are therefore included in the definition of motor vehicles because they can be used with a self-propelled highway vehicle. However, defining a trailer designed for use on a farm as a "motor vehicle" cannot be reconciled with the decision in *Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 442 S.E. 2d 179 (1994) – a case cited by the Circuit Court (R. p. 4) – in which the Supreme Court noted "a vehicle must be designed to operate on the highway in order to come within the term 'motor vehicle.'" *Id.* at 143, 442 S.E.2d at 181.

Finally, if one were to accept the Circuit Court's conclusion that "self-propelled" applies to the entire statute, then it should also modify all vehicles in the third category – those that are excluded from the definition. However, this would render the use of the term "propelled" in that category ("every vehicle which is propelled by electric power") unnecessary. This is further evidence that the Legislature did not intend the phrase "self-propelled" to apply beyond the first category and that the Circuit Court erred in ruling otherwise.

The Circuit Court attempted to support its conclusion that the Montana and the Adams are not motor vehicles by reading the statute to mean they only become "self-propelled vehicles" when being towed by such a vehicle, effectively becoming "one vehicle" with the towing vehicle. (R. p. 4). This reasoning is also flawed.

A trailer towed by another vehicle is propelled by that other vehicle, but it is not "*self-propelled*" as the Circuit Court believed the statute required. Furthermore, the statute says nothing about treating two vehicles as one when a trailer is involved; in fact, it does not even require a trailer to be towed to be deemed a vehicle, only that it be *designed for use* with a roadworthy, self-propelled vehicle. The Circuit Court, in effect, rewrote the statute to support its conclusion[5] rather than simply construing the statute based upon its plain and unambiguous meaning, as it was required to do.

The Circuit Court also erred in finding that the 2016 Montana and 2007 Adams were only intended for "incidental use[] on a highway." (R. p. 4). The fact that USAA insured those trailers for collisions – events that most commonly occur on public roads – demonstrates that they were intended for highway use, unlike the farm tractor discussed in *Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 442 S.E.2d 179 (1994), the case cited by the Circuit Court. (R. p. 4). In addition, photos introduced by USAA show the Adams was equipped with running lights and even had its own license tag (R. pp. 82-86) – further evidence that it was designed for more than "incidental" use on the highway.

---

[5] The Circuit Court arguably applied its own policy determinations rather than interpreting those of the General Assembly as expressed in the language of the statute. This is apparent from the Circuit Court's unexplained and factually unsupported statement that treating non-self-propelled trailers as motor vehicles would "vastly transform this statutory scheme" (R. p. 3), as well as its *ipse dixit* that requiring a trailer to have "its own separate insurance" would be "an absurd result." (R. p. 4). Neither is a proper substitute for its duty to divine and to implement legislative intent via a detailed analysis of the statutory language.

This Court should apply the statute as written and hold that USAA was an "automobile insurer" with respect to the Montana and the Adams. Each was a trailer designed for use with self-propelled vehicles on the highway and was thus a statutorily defined "motor vehicle." Consistent with this conclusion, USAA described both the Montana and the Adams as "vehicles" in the Policy and charged separate premiums for each. (R. pp. 92-94). USAA insured both vehicles for physical damage, including collision coverage, and should have also provided liability coverage. This Court should reverse the Circuit Court.

3. The Circuit Court erred in relying upon a tax case to interpret an insurance statute.

Additionally, the Circuit Court erred in relying upon *Jack's Custom Cycles v. S.C. Dept. of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023), to support its ruling. (R. p. 5).

Jack's Custom Cycles is a tax case, not an automobile insurance case governed by Title 38, Chapter 77. There, this Court construed a sales tax statute that employed but – unlike insurance statutes – did not define the term "motor vehicle." *Id.* at 43, 885 S.E.2d at 437-38. Consequently, the Court resorted to "dictionary definitions of a motor vehicle" to affirm the Administrative Law Court on the tax law issue. *Id.* at 47, 885 S.E.2d at 440. Significantly, the Court did not construe or apply the S.C. CODE ANN. § 38-77-30 (9) definition of "motor vehicle" at issue here.

Furthermore, unlike the context of *Jack's Custom Cycles*, the Court here has no need to search for a definition of "motor vehicles." In the automobile insurance setting, the General Assembly has provided that definition in Section 38-77-30 (9).

Simply put, *Jack's Custom Cycles* is wholly inapplicable to the insurance law issues presented in this case. The Circuit Court therefore erred in relying upon it.

4. *Miller v. Aiken* is distinguishable and, in fact, supports Amoruso's position.

While the Circuit Court found that *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), "is dispositive," it failed to apply the holding of that case properly for two reasons. When properly applied, *Miller* actually supports Amoruso's position.

As an initial distinction, the Supreme Court in *Miller* held that "an automobile insurer providing **only** collision insurance to its insured should not be required to make a meaningful offer of UIM." *Id.* at 308, 613 S.E.2d at 367 (emphasis in original). The facts in this case are different. Here, as USAA admitted (R. p. 25, ¶ 9) and the Circuit Court found (R. p. 2), the Policy as issued by USAA to Amoruso provided liability insurance and other coverages in addition to collision coverage. Because neither USAA nor the Policy provided "only collision insurance," the holding in *Miller* is inapplicable. Rather, since the Policy provided liability insurance coverage, USAA was required to satisfy the requirements of Section 38-77-160.

A second distinguishable fact from the present case is that, in *Miller*, the only vehicle in question was insured for liability, just through a different insurer. 364 S.C. at 305, 613 S.E.2d at 364. In the present case, neither the Montana nor the Adams had liability coverage via any insurer. As a result, in *Miller*, different policy considerations were properly in play. There was no reason for the court there to be concerned about a motor vehicle operating on the roads of this State without having mandatory liability insurance coverage. Also, the *Miller* court had concerns about the practical effects of applying Section 38-77-160 to a collision-only policy:

> If an automobile insurer providing *only collision insurance* to its insured falls within the UIM requirements of Section 38-77-160, then arguably under the statute, it must provide liability coverage up to the amount provided *by another insurer* despite the fact the collision insurer never contracted to provide liability insurance. If interpreted broadly, it would also require an insurer providing only collision insurance to the insured to make a meaningful offer of UIM to *an insured who previously bought liability insurance from another carrier.* This would be a far-reaching conclusion, which would require a subsequent insurer providing only collision insurance *to determine what, if any, liability*

> *insurance the insured may have with another carrier*. We do not believe the Legislature intended an insurer providing only collision coverage be subject to potential liability in amounts under a contract to which it was not a party.

Id. at 309, 613 S.E.2d at 367 (emphasis added).

Here, the Montana and the Adams were only insured by one insurer, USAA, and were only insured by one policy, the Policy. As such, the above bases for the *Miller* holding are inapplicable to this case. Thus, the result in *Miller* does not support the Circuit Court's ruling.

Importantly, however, the Supreme Court in *Miller* held that Occidental, the insurer in question, was an "automobile insurance carrier" for purposes of Title 38, Chapter 77, even though its policy only provided collision coverage. *Id.* at 308, 613 S.E.2d at 367. The only question was whether it was somehow excluded from Section 38-77-160's requirement to offer UIM coverage. None of the reasons cited by the *Miller* court for holding Section 38-77-160 inapplicable to Occidental are present in this case. Here, USAA is also an "automobile insurance carrier" but, unlike Occidental, is subject to Section 38-77-160. Therefore, the Circuit Court erred by failing to apply the pertinent insurance statutes to USAA and the Policy according to the express terms chosen by the General Assembly.

III. THE POLICY SHOULD BE REFORMED TO INCLUDE UIM COVERAGE ON THE MONTANA AND THE ADAMS.

Because USAA should have offered UIM coverage on the Montana and the Adams but admittedly failed to do so, the Policy should be reformed to include that coverage. *See, e.g., Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 760 (1996). The Policy provided bodily injury liability insurance coverage limits of $300,000 per person.[6] Thus, the Circuit Court

[6] These are the liability limits applicable to the four vehicles other than the Montana and the Adams. In Circuit Court, USAA suggested that, because it provided no liability coverage on the Montana and the Adams, there can be no reformation remedy even if it were required to offer UIM on those vehicles. (R. p. 61). However, USAA should have also provided liability coverage on the Montana and the Adams pursuant to S.C. CODE ANN. § 38-6 (1976, as amended)

should have reformed the Policy to include UIM coverage on the Montana and the Adams with limits on each vehicle of $300,000 per person. It erred in failing to do so.

This Court should therefore reform the Policy to include UIM coverage with limits of $300,000 per person for the Montana and for the Adams.

IV. AMORUSO SHOULD RECOVER STACKED UIM COVERAGE FOR ALL VEHICLES.

It is undisputed that Amoruso was a Class 1 insured who was entitled to stack all applicable UIM coverages. In addition to reforming the Policy to include UIM coverage on the Montana and the Adams, the Court should also declare that Amoruso is entitled to stack those coverages in addition to the UIM coverage she has already recovered and declare that she is entitled to recover those coverages given the amount of the judgment.

CONCLUSION

For the reasons set forth above, Amoruso respectfully requests that this Court:

1. Reverse the ruling of the Circuit Court;
2. Hold that USAA was required to offer UIM coverage on the Montana and the Adams;
3. Reform the Policy to include UIM coverage with limits of $300,000 per person on the Montana and the Adams; and
4. Declare that Amoruso can stack all UIM coverage afforded by the Policy and therefore recover an additional $600,000 in UIM coverage from USAA.[7]

("An automobile insurance policy may not be issued or delivered in this State ... unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles...."). The Court should not allow USAA to avoid providing statutorily required UIM coverage based on its failure to provide mandatory liability coverage.

[7] Alternatively, the Court should remand this action to the Circuit Court with instructions for it to enter judgment consistent with the above results.

CLAWSON FARGNOLI UTSEY, LLC

BY: */s/ Bert G. Utsey, III*

Bert G. Utsey, III (SC Bar No. 10093)
Samuel R. Clawson, Jr. (SC Bar No. 76065)
Christy R. Fargnoli (SC Bar No. 77528)
2 Amherst Street
Charleston, SC 29403
(843) 970-2700
bert@cfulaw.com
sam@cfulaw.com
christy@cfulaw.com

April 23, 2024
Charleston, South Carolina

Attorneys for Appellant