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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Appellate Case Number: 2024-000107

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Jill S. Amoruso.....Appellant,

v.

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

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# REPLY BRIEF OF APPELLANT

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## INTRODUCTION[1]

As did the Circuit Court's Order, USAA's brief misinterprets the statutory definition of "motor vehicle" and improperly adds to that definition language which the General Assembly did not employ. The clear and unambiguous wording of the statute includes trailers within the definition of "motor vehicles." Therefore, USAA was required to offer UIM coverage on the Montana and the Adams. Given its failure to do so, the Court should reform the Policy to include that coverage.[2]

## ARGUMENT

### 1. The Court Must Apply the Statutory Definition as Written.

Amoruso agrees with USAA that this case presents a question of statutory construction and, therefore, the Court's role is limited to divining the intent of the General Assembly. (Br. of Respondent, p. 14). However, Amoruso disagrees with USAA on the outcome of a proper statutory analysis.

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous[] and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.; see McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute."). The automobile insurance statutes ... fall within

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[1] In this Reply Brief, capitalized terms are defined as in Appellant's primary brief.

[2] USAA correctly notes that Amoruso did not also seek to reform the Policy to add liability insurance coverage. (Br. of Respondent, p. 5, n.2). That is because there is no justiciable controversy with respect to liability coverage, only UIM coverage, and therefore no basis for the court to consider declaratory relief regarding liability coverage. *Orr v. Clyburn*, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982) ("The existence of an actual, justiciable controversy is essential to jurisdiction to render a declaratory judgment.").

> a comprehensive statutory scheme, so they must be read as a whole, not in isolation. *See Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

*USAA Cas. Ins. Co. v. Rafferty*, 439 S.C. 130, 132-33, 886 S.E.2d 222, 223 (2023).

When a statute is clear and unambiguous, the Court must apply the statute as written by the legislature rather than imposing on it another meaning, *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), even if the Court were to disagree with the legislature's policy decisions underlying the statutory language. *Smith v. Tiffany,* 419 S.C. 548, 565, 799 S.E.2d 479, 488 (2017). In short, the language of the statute should dictate the outcome of the Court's analysis.

2. The Statutory Definition Unambiguously Includes Trailers as "Motor Vehicles."

The subject statutory definition reads, in full:

> "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.

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

This definition was adopted as part of the Automobile Reparation Reform Act. 1974 S.C. Act No. 1177. The first sentence has remained unchanged for 50 years.[3] No court has ever found it to be ambiguous – and it is not ambiguous.

The portion of the statutory definition at issue here reads: "'Motor vehicle' means every self-propelled vehicle which is designed for use upon a highway, including trailers and

[3] The definition's second sentence – regarding mopeds – was added in 2017. 2017 S.C. Act No. 89. It is not relevant to the issue before the Court and, in any event, was not effective until after the January 7, 2017, collision giving rise to the subject insurance claim.

The definition's final sentence was added in 1997. 1997 S.C. Act No. 154.

semitrailers designed for use with these vehicles." There is no disagreement about its use of the terms "every self-propelled vehicle which is designed for use upon a highway." Likewise, there appears to be no real disagreement about the terms "trailers and semitrailers designed for use with these vehicles." Rather, the question before this Court is what the General Assembly meant when it used the word "including" in this part of the statute.

Amoruso's position, quite simply, is that the term "including" refers back to "Motor vehicle" and is the same as if the General Assembly had stated: "'Motor vehicle' means **(1)** every self-propelled vehicle which is designed for use upon a highway, ***and (or in addition to)*** **(2)** trailers and semitrailers designed for use with these vehicles."

On the other hand, USAA argues that the term "including" can only be construed to require a physical connection between the category of vehicles that follows that term and the first category of vehicles encompassed by the definition. As a result, under USAA's view, the statute means the same as: "'Motor vehicle' means **(1)** every self-propelled vehicle which is designed for use upon a highway, ***and* (2) *only when used with these vehicles,*** trailers and semitrailers designed for use with these vehicles."

The term "including" can list a specific thing that is included within a previous general term (for example, "domesticated animals, including cats") but can also mean "and or in addition to." *Lealaimatafao v. Woodward-Clyde Consultants*, 75 Haw. 544, 556, 867 P.2d 220, 226 (1994), *quoting Black's Law Dictionary* 763 (6th ed. 1990); *accord State v. Guyton*, 135 Haw. 372, 379, 351 P.3d 1138, 1145 (2015) ("residence, including yard" clearly and unambiguously means the home where one lives *and* the surrounding area adjacent to it). Similarly, "including" has been construed "as a particular specification of something to be included *or to constitute a part of some other thing.*" *Sims v. Moore*, 288 Ala. 630, 635, 264 So. 2d 484, 487 (1972)

(emphasis added). As such, it "is not a word of limitation, rather it is a word of enlargement, and in ordinary significance also may imply that *something else* has been given *beyond the general language which precedes it.*" *Id.* (emphasis added).

In short, unless a term or phrase that follows "including" is an example or subset of a generally described category or thing that precedes it, the Court should construe "including" as meaning "and" or "in addition to."

This is consistent with our General Assembly's use of the term "including" in other statutes pertaining to insurance. For example, "automobile insurance" is defined as meaning:

> 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....

S.C. CODE ANN. § 38-77-30(1) (1976, as amended). Although the two types of insurance described before the term "including" are liability insurance, nothing after that term is liability insurance; thus, clearly, the legislature intended the word "including" to mean "and" or "in addition to." *See also, e.g.,* S.C. CODE ANN. §§ 38-3-110(5)(c)(i)&(iii), 38-61-70(B)(1), 38-61-80(A)(1)&(D), 38-75-30, 38-77-30(13)(a), 38-77-112, 38-77-190 (1976, as amended).

Applying these principles to the statutory definition at issue, it is clear Amoruso's interpretation is correct and that of USAA and the Circuit Court is in error. Even USAA agrees that trailers are not self-propelled; therefore, the term "self-propelled" only modifies the group of vehicles preceding the term "including." Non-self-propelled trailers are not a subset of the category "every self-propelled vehicle which is designed for use upon a highway." Accordingly, the term "including" could not be used in the sense of specifying "a particular thing already included within the general words theretofore used." *See Black's Law Dictionary* 763 (6th ed. 1990). It therefore must be construed in its other sense, which is to identify something to be

included in the definition *in addition to* that already generally described. In short, the definition encompasses both self-propelled highway vehicles *and* trailers designed for use with those vehicles.[4]

For these reasons, USAA is incorrect when it argues that a vehicle must have a motor to be considered a "motor vehicle" within the scope of the statutory definition. (Br. of Respondent, p. 8). Not only is that position unsupported by the statutory analysis above, but it is also contrary to the principle of statutory construction that "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage[] or superfluous...." *USAA Cas. Ins. Co. v. Rafferty*, 439 S.C. 130, 136, 886 S.E.2d 222, 225 (2023), *quoting In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). No further definition would be necessary if the General Assembly only intended for "motor vehicles" to mean vehicles powered by a motor.

USAA relies upon *Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*, 223 S.C. 320, 75 S.E.2d 688 (1953) – a case it admits arose in "a different context" (Br. of Respondent, p. 6) – and *Jack's Custom Cycles v. S.C. Dept. of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023) – which it acknowledges is not an insurance case (Br. of Respondent, p. 8) – in an effort to support its position. However, doing so would be an improper "borrowing" of definitions from unrelated legislation. The Supreme Court rejected that approach in *White v. S.C. Dept. of Parks, Rec. & Tourism*, 271 S.C. 91, 245 S.E.2d 125 (1978), in which it quoted *Fruehauf* to hold:

> There is no definition of "motor vehicle" in the Tort Claims Act. We reject appellant's argument that the definition in the South Carolina Motor Vehicle Financial Responsibility Act should control, thereby requiring a motor vehicle to be operated on the highway. In *Fruehauf Trailer Company v. South Carolina Electric & Gas Company*, 223 S.C. 320,

[4] Also, as noted in Amoruso's primary brief (Br. of Appellant, p. 12), the phrase "designed for use with these vehicles" is contrary to USAA's argument that the Court should construe the definition to mean "when used with these vehicles." The statute only requires the capability to be used with self-propelled highway vehicles, not an actual use by them.

75 S.E. (2d) 688 (1953), we held the definition of "motor vehicle" in one act did not apply to other legislation containing no specific definition. We stated:

> "The attachment statute does not contain a definition of 'motor vehicle,' and there is no statute *in pari materia*, in this state, which contains a definition. It follows that the General Assembly's definition of 'motor vehicle' . . . in unrelated statutes is not controlling in the meaning of 'motor vehicle' as employed in (the attachment statute)." 223 S.C. at 325, 75 S.E. (2d) at 690.

*White*, 271 S.C. at 93, 245 S.E.2d at 126-27.

Finally, USAA argues that the final sentence of Section 38-77-30(9)'s definition ("For purposes of this chapter, the term automobile has the same meaning as motor vehicle.") requires a trailer to have a motor to be considered a motor vehicle. (Br. of Respondent, pp. 9-10). This sentence has no such effect; rather, it simply ensures the definition can be applied to other provisions of the insurance laws that use the term "automobile" rather than "motor vehicle." *See, e.g.,* S.C. CODE ANN. § 38-77-30(1) (1976, as amended) (defining "automobile insurance"). Moreover, although a motorcycle is not an automobile "in the general and popular sense of the term," *Midwest Mut. Ins. Co. v. Fireman's Fund Ins. Co.*, 258 S.C. 533, 538, 189 S.E.2d 823, 826 (1972), it is clearly a self-propelled vehicle as well as a "motor vehicle" within the scope of the insurance laws, *see, e.g.*, S.C. CODE ANN. § 38-77-30(5.5)(iv) (1976, as amended), which also shows that "motor vehicles" are not limited to automobiles.

3. Legislative History Confirms Trailers are Considered "Motor Vehicles" in the Statute.

The definition of "motor vehicle" in Section 38-77-30(9) was clearly based on the definition of "motor vehicle" in the Motor Vehicle Financial Responsibility Act.[5] The latter

[5] Courts have generally considered the Motor Vehicle Financial Responsibility Act and the Automobile Reparation Reform Act in concert when reviewing the validity of insurance policy terms. *See, e.g., Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker,* 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). It is proper for the Court to compare the language of the two Acts because they are *in pari materia. See Amisub of S.C. v. S.C. Dept. of Health & Env. Control,* 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014) ("[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.").

definition is, for purposes of this discussion, identical to the first sentence of Section 38-77-30(4). It reads:

> Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles but excepting traction engines, road rollers, farm tractors, tractor cranes, power shovels, mopeds, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails[.][6]

S.C. CODE ANN. § 56-9-20(4) (1976, as amended).

When what is currently Section 56-9-20(4) was enacted in 1952, it read as follows:

> Motor vehicle means every self-propelled vehicle which is designed for use upon a highway, including trailers and semi-trailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, 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. § 46-702(4) (Cum. Supp. 1954).

A comparison of the original version with the current version illustrates that the exception to the definition was initially included in parentheses using the term "except" but is now set apart with the introductory phrase "but excepting." The exceptions did not change (until mopeds were added) – only the wording introducing the exception and its punctuation were revised. What this clarification in language demonstrates is that the exception is limited to "traction engines, road rollers, farm tractors, tractor cranes, power shovels and well drillers" (and now mopeds) but does not extend to the last clause of the statute, "every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails." Rather, that category of vehicles is governed by the same "including" language that applies to trailers.[7]

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[6] The only differences in the Title 38 and Title 56 statutory definitions are their uses of the interchangeable terms "these vehicles" and "such vehicles" and Section 56-9-20(4)'s addition of "mopeds" to the list of definitional exceptions, a distinction of no relevance here.

[7] Amoruso erroneously stated in her main brief that the phrase "every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails" was included in the

In other words, if one were to remove the exceptions from Section 56-9-20(4), it would read:

> Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles ... and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails[.]

Similarly, eliminating the exceptions from the first sentence of Section 38-77-30(9) results in the following:

> [E]very self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles ... and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

This exercise further demonstrates that USAA's position is flawed. First, it undermines USAA's argument that every vehicle listed after the term "including" must be attached to a "self-propelled vehicle which is designed for use upon a highway" to constitute a "motor vehicle." This is because vehicles powered by overhead electrical wires would have no reason to be attached to or towed by other vehicles. Second, since the statute describes the means of propulsion for the last group of vehicles, it follows that the legislature did not intend for the term "self-propelled" to modify or otherwise to affect the categories of vehicles after the term "including," as USAA contends. Instead, the General Assembly listed trailers as "motor vehicles" regardless of their means of propulsion or whether they are propelled at all – it only required that they be designed for use with self-propelled highway vehicles.

## CONCLUSION

For the reasons set forth above and in her primary brief, Amoruso respectfully requests that this Court reverse the ruling of the Circuit Court and grant her the additional relief requested in her primary brief.

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exception. (Br. of Appellant, p. 9). Instead, Amoruso should have stated that these vehicles are a fourth category within the statutory definition.

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