THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-001717

Jill S. Amoruso, ... Appellant,

v.

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

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

For both procedural and substantive reasons the Petition should be denied. Procedurally, none of the considerations governing review in South Carolina Appellate Court Rule (SCACR) 242 (b) apply. There is no novel question of law, there is no substantial constitutional issue, and these arguments were not raised in the Petition for Rehearing in the Court of Appeals and are now barred.

Substantively, case law supports the Court of Appeals' decision that the Petitioner's camper and horse trailer, neither of which were self-propelled, are not motor vehicles within section 38 - 77-30 (9) and, as such, do not require an offer of underinsurance motorist (UIM) coverage. Additionally, the position urged by the Petitioner – that non-motorized, stationary vehicles only transported when attached to a motorized vehicle are themselves motor vehicles and, as such, must have liability, uninsured motorist (UM) and an offer of UIM coverage – will lead to an absurd result and will violate the separation of powers because the result advocated by the Petitioner will

effect a radical change to statutory law regulating insurance on motor vehicles. If there is to be such a radical change in the statutory system of automobile insurance, that change must be effected by the Legislature, not by the Judiciary.

STATEMENT OF THE CASE

This lawsuit was filed August 18, 2022. The complaint alleged three causes of action – a claim for declaratory judgment and reformation, breach of contract, and breach of the covenant of good faith and fair dealing. (R.16-23) 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 Petitioner's horse trailer and camper. (R. 19, 20) 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 the Petition. (R. 20 – 23)

This lawsuit arose out of an accident on January 7, 2017, between the Petitioner and Kaira Miller. At the time of the accident the Petitioner was driving a 2014 Nissan. The Nissan and 3 other motor vehicles (two Volkswagens and a Dodge) were insured with USAA. All 4 of these 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. (R. 2; R. 92 – 96) 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 Petitioner pay a separate, additional premium for liability, UM or UIM coverage. (R. 2, 3) It is undisputed neither the camper nor the horse trailer were motorized or otherwise self-propelled. Instead, they could only be towed behind a self-propelled, transporting vehicle (R. 79; R. 3)

The Petitioner filed suit against Miller. That lawsuit was tried in February 2022. The jury returned a verdict of $2,500,000 in favor of the Petitioner. 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 Petitioner $1,200,000 in UIM coverage which represented $300,000 on each of the 4 insured motor vehicles. (R. 24-27; R. 18)

In January 2023 the Petitioner filed a motion for partial summary judgment on her first cause of action for declaratory judgment and reformation. (R. 32, 33) The ground for this motion was a 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. The Petitioner cited South Carolina case law in support of her motion. (R. 32)

On March 15, 2023, USAA filed a cross motion for summary judgment. (R. 34, 35) The basis for USAA's motion for summary judgment was 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 those vehicles. USAA submitted a memorandum in support of this motion for summary judgment which referenced the Petitioner's response to USAA's interrogatories (R. 79) and which included photographs of the horse trailer. (R. 82 – 86; R. 36 – 39)

On July 13, 2023, the lower court heard the Petitioner and USAA's cross motions for summary judgment. (R. 40 – 68) On November 30, 2023, the lower court issued an order granting USAA's motion for summary judgment and denying the Petitioner's motion for summary judgment. (R. 2 – 6) On December 4, 2023, the Petitioner moved to alter or amend the judgment. (R. 134 – 136) On January 19, 2024, the lower court issued a form 4 order denying the Petitioner's motion to reconsider the order granting USAA's motion for summary judgment. (R. 13, 14)

The Petitioner then filed an appeal to the Court of Appeals. In an unpublished decision filed June 11, 2025, the Court of Appeals affirmed the lower court's order granting USAA's motion

for summary judgment and denying the Petitioner's motion. The Petitioner then filed a Petition for Rehearing. The Petition for Rehearing was denied. The Petitioner then submitted a Petition for Writ of Certiorari to this Court.

ARGUMENT

I. The Petition should be denied because the basis of the Petition – this case involves a novel question of law and a substantial constitutional issue – was not raised in the Petition for Rehearing to the Court of Appeals and cannot now be asserted for the first time in this Petition.

Page 4 of the Petition asserts this case involves a novel question of law. This argument was not raised in the Petition for Rehearing. To the contrary, the first page of the Petition for Rehearing argued the Court of Appeals "overlooked or misapprehended the applicable law…."

Page 4 of the Petition also claims this case involves "a substantial constitutional issue." This argument, presumably based upon the separation of powers doctrine, was not argued in the Petition for Rehearing. At most, the Petition for Rehearing claimed the Court of Appeals applied its own policy determination rather than interpreting that of the General Assembly based on the express language of the statute. (Petition for Rehearing, page 4) The Petition for Rehearing never expressly argued the opinion of the Court of Appeals violated the separation of powers.

A question raised in a petition for writ of certiorari is not presented for review by the Supreme Court where it was not raised in a petition for rehearing in the Court of Appeals. *Mazloom v. Mazloom*, 392 S.C. 403, 709 S.E. 2d 661 (2011); *Williams v. Jeffcoat*, 444 S.C. 224, 906 S.E. 2d 588 (2024).

II. The Petitioner's argument that this matter involves a novel question of law is inconsistent with the Petitioner's prior positions.

The Petitioner in January 2023 moved for summary judgment. That motion was based upon, among other things, "applicable law." (R. 32, 33) After the trial court granted summary judgment to USAA, the Petitioner moved to alter or amend the judgment. (R. 134 – 136) The Petitioner argued the case of *Miller v. Aiken*, 364 S.C. 303, 613 S.E. 2d 364 (2005), plus the statutory mandate in section 38-77-160, "required Defendant to offer coverage on the 2016 Montana and 2007 Adams." (R. 134) Again, the Petitioner did not assert this case presented a novel question of law; rather, the Petitioner argued South Carolina case law supported the position of the Petitioner.

The Petitioner continued in her brief to the Court of Appeals to argue South Carolina case law supported her position. At page 14 of this brief the Petitioner stated *Miller v. Aiken* is dispositive and, in fact, "actually supports Amoruso's position."[1] Now, for the first time in her Petition for Writ of Certiorari, the Petitioner claims this matter "involves a novel question of law…." (Petition for Writ of Certiorari, page 4) This new argument, contrary to prior positions, is submitted only for the purpose of seeking a Writ of Certiorari and the Petition should be denied.

III. If the "substantial constitutional issue" involves an issue of separation of powers, it is the Petitioner's argument, not the Respondent's, which if accepted will usurp the authority of the General Assembly.

The trial court concluded the Petitioner's construction of section 38-77-30 (9) would reach an absurd result and courts are not to construe statutes to reach an absurd result. (R. 4) Likewise, the Court of Appeals stated "Amoruso's interpretation would also lead to an absurd result of categorizing vehicles that are otherwise stationary and designed to be used for self-propelled

[1] *Miller v. Aiken* supports the Respondent's position. In the present case the camper and horse trailer were insured only for property damage, *Miller* held "an automobile insurer providing **only** collision insurance to its insured should not be required to make a meaningful offer of UIM." (emphasis in original) The Court concluded such a requirement would lead to a result plainly absurd.

vehicles as motor vehicles." Citing *Miller v. Aiken*, the Court of Appeals stated courts will reject meanings when to accept it could lead to a result so plainly absurd it could not possibly have been intended by the legislature or would defeat the plain legislative intention.

As USAA argued to the trial court and to the Court of Appeals, acceptance of the Petitioner's argument will effect a radical transformation of the statutory system of insurance on motor vehicles. The interpretation of section 38-77-30 (9) to require all persons owning non-motorized vehicles to have separate and independent liability insurance, UM insurance and an offer of UIM coverage 365 days a year will constitute a radical revision of South Carolina's statutory system of automobile insurance. If this is done, it must be done by the Legislature instead of the Judiciary. (Respondent's final brief, page 15; Respondent's return to Petition for Rehearing, page 6) It is, therefore, the Petitioner's argument, not the Respondent's, which if accepted will usurp the General Assembly's authority to dictate when and under what circumstances liability, UM and an offer of UIM coverage must exist.[2]

As further noted in the Respondent's Return to the Petition for Rehearing, while the insurance urged by the Petitioner "may constitute a boon to the insurance industry by collecting additional premiums on vehicles frequently not in use, the consuming public will be forced to pay for separate insurance on vehicles already insured when attached to a motor vehicle (under the motor vehicle's policy), but now subject to an additional separate and independent policy." (page 6) One can only imagine the public's reaction to such a judicially imposed requirement, not to mention the reaction of the General Assembly which will no doubt contend the courts have violated

[2] It cannot be disputed it is the Legislature which determines when and under what circumstances automobile insurance is required. In 1974 the Legislature enacted the Automobile Reparation Repair Reform Act. *Shore v. Weaver*, 315 S.C. 347, 433 S.E.2d 913 (Ct. App. 1993). The Legislature also enacted the Motor Vehicle Responsibility Act. *Lincoln General v. Progressive*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013).

the separation of powers principle. That is why the construction of section 38-77-30 (9) urged by the Petitioner would reach an absurd result never intended by the General Assembly.

IV. The Petitioner's camper and horse trailer are not motor vehicles and, therefore, it was unnecessary to offer UIM coverage on these vehicles.

As noted by the trial court, a motor vehicle includes a trailer designed for use with the motor vehicle when the trailer – in this case a camper or horse trailer – is attached to a mobile vehicle, i.e. a vehicle with a motor, such that the combination of the motor vehicle and the camper or horse trailer constitutes one vehicle. (R. 4) A number of cases have held a non-motorized trailer when attached to a motorized vehicle constitutes one unit. (See, page 3 of Respondent's Return to Appellant's Petition for Rehearing which discusses these cases.) The opinion of the Court of Appeals does not mean a trailer "becomes" a motor vehicle in and of itself when attached to a motor vehicle; rather, the motor vehicle (the automobile) includes the trailer once attached and the trailer or, in this case, the camper or horse trailer, becomes part of the motor vehicle unit.

The Petitioner's argument misdescribes the Court of Appeals' decision as meaning non–motorized vehicles suddenly become separate, distinct motor vehicles when attached to self-propelled vehicles. (Petition for Writ of Certiorari, page 6) This argument is unsupported by case law or the statute itself. Furthermore, the construction of section 38-77-30 (9) urged by the Petitioner tortures the plain meaning of this statute. It ignores the first phrase of the statute defining a "motor vehicle" as every self-propelled vehicle. The Petitioner’s argument also deletes the word "motor" from this statute. The construction of the statute urged by the Petitioner further ignores the word "including" by arguing the camper and horse trailer are separate motor vehicles and, as such, are not included as part of the self-propelled vehicle.

The status quo, affirmed by the Circuit Court and the Court of Appeals, has been in effect for many years. The Legislature could have expressly stated non-motorized vehicles towed behind

a motor vehicle require separate liability, UM and an offer of UIM coverage, but it has not. No court has held non-motorized vehicles towed behind motor vehicles must have their own separate liability, UM and offer of UIM coverage. What the Petitioner urges will be a radical transformation of the system of automobile insurance by judicial fiat.

Courts are not at liberty to add to or subtract from statutory law. *Ballard v. Newberry County*, 432 S. C. 526, 854 S.E. 2d 848, 851 (Ct. App. 2021). Courts do not make policy decisions as this is a central feature of the separation of powers. *Planned Parenthood South Atlantic v. State of South Carolina*, 440 S.C. 465, 892 S.E. 2d 121 (2023). Whether to require separate liability, UM and an offer of UIM coverage on non-motorized vehicles is a policy decision. Courts are constrained by their judicial role to interpret the law as written and not create exceptions to plainly worded statutes. Doing so is the province of the legislature alone. *Connelly v. Allstate*, 439 S.C. 81, 886 S.E. 2d 196 (2023).

CONCLUSION

The Petition for Writ of Certiorari should be denied. The grounds for the Petition are not within SCACR 242 (b), the basis of the Petition was not raised in the Petition for Rehearing to the Court of Appeals, well-established case law is that a non-motorized vehicle towed behind a motorized vehicle does not constitute a separate motor vehicle, the construction of section 38-77-30 (9) urged by the Petitioner will lead to an absurd result, and the result urged by the Petitioner must be effected by the Legislature, not the Judiciary.

[*Signature Page Following*)

Respectfully submitted,

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