RECEIVED

Oct 09 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Op. No. 2025-UP-184 (S.C. Ct. App. filed June 11, 2025)

Jill S. Amoruso.....Petitioner,

v.

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

REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

---

1. The basis for the Petition was raised in the Petition for Rehearing to the Court of Appeals.

Respondent argues Petitioner failed to argue in her Petition for Rehearing that the Court of Appeals exceeded its constitutional role to interpret the law and instead engaged in policy-making, a role reserved to the legislature. (Return, p. 4). That is not accurate.

In her Petition for Rehearing, Petitioner argued:

> [T]he Court [of Appeals] effectively rewrote the statute in a manner inconsistent with its express language and **substituted the Court's own policy determinations for those of the General Assembly.** To achieve this result, the Court overlooked or misapprehended Amoruso's arguments and the applicable law.
>
> > "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly." "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.**" "*What a General Assembly 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 General Assembly.***" The automobile

> insurance statutes ... fall within a comprehensive statutory scheme, so they must be read as a whole, not in isolation.
>
> *USAA Cas. Ins. Co. v. Rafferty*, 439 S.C. 130, 132-33, 886 S.E.2d 222, 223 (2023) (citations omitted; emphasis added).
>
> The Court must apply the express language of a statute **even if it disagrees with the legislative policy decisions underlying the statutory language.** *Smith v. Tiffany,* 419 S.C. 548, 565, 799 S.E.2d 479, 488 (2017).[1] In summary, the actual language of the statute – not what the Court thinks the statute should say – must dictate the outcome of the Court's analysis.

(Pet. for Rehrg., p. 2) (bold emphasis added).

In her Reply to Respondent's Return to Petition for Rehearing, Petitioner reiterated that the Court of Appeals had violated the constitutional principle of separation of powers, arguing:

> Significantly, the General Assembly did not include the phrase Respondent so desperately wants the Court to add, "when they are attached." If the Court were to add that limitation to the statutory definition, **it would improperly invade the province of the General Assembly by substituting its own policy decision. As such, the Court would be legislating rather than applying the law as written and would violate the separation of powers doctrine.** *See Smith v. Tiffany*, 419 S.C. 548, 559-60, 799 S.E.2d 479, 485 (2017) ("[W]here the General Assembly has spoken and established policy, separation of powers demands that courts honor the legislative policy determination. ... In honoring **separation of powers**, we adhere to the principle that a court must not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result."); *Hampton v. Haley,* 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) ("Included within the legislative power is the sole prerogative to make policy decisions; to exercise discretion as to what the law will be."); *State ex rel. McLeod v. Yonce,* 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979) ("The legislative department makes the laws; ... and the judicial department interprets and declares the laws.").

(Reply to Ret. to Pet. for Rehrg., p. 2) (bold emphasis added).

It is therefore clear that Petitioner raised the constitutional issue in her Petition for Rehearing and the Court of Appeals addressed the issue when it denied that Petition.

---

[1] On the page of the *Smith v. Tiffany* opinion that Petitioner cited, this Court held:

> Could the legislature have drafted the statute to achieve the result desired by Appellants? Absolutely. But the policy decision belongs to the legislature, and the legislature has crafted the provisions of the Act as it sees fit. We are a court, not a legislative body. That a court may disagree with a legislative body's policy decisions or believe a perceived "more fair" outcome exists is of no moment.

In addition, the fact that the determination of an issue may rely upon application of existing statutory and case law does not mean it is not a "novel question of law." (*See* Return, p. 5). For example, in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the Court granted certiorari to consider the specific question of whether an order disqualifying a party's attorney was directly appealable and resolved that question by reference to multiple applicable authorities on direct appealability. *Accord Osprey, Inc. v. Cabana Ltd. Partnership,* 340 S.C. 367, 372, 532 S.E.2d 269, 272 (2000); *Clark v. Cantrell,* 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000).

Here, no case has specifically ruled on the statutory interpretation issue presented by this action. The fact that Petitioner argues the answer to that question can be determined by reviewing the applicable statutes, case law, and legislative history is not inconsistent with this fact.

2. *Miller v. Aiken* is factually distinguishable and supports Petitioner's position.

In *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), this Court 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, the insurance policy at issue provided liability insurance and other coverages *in addition to* collision coverage. Since neither Respondent nor the subject policy provided "only collision insurance," the holding in *Miller* is inapplicable. Rather, because the policy provided liability insurance coverage, Respondent was required to satisfy the requirements of Section 38-77-160.

A second distinguishable fact is that, in *Miller*, the only vehicle in question *was* insured for liability, just through a different insurer. *Id.* at 305, 613 S.E.2d at 364. In the present case, neither trailer had liability coverage via any insurer. As a result, different policy considerations were properly in play in *Miller*. There was no reason for the *Miller* Court to be concerned about a motor

vehicle operating on the roads of this State without having mandatory liability insurance coverage, whereas those are legitimate concerns here. (*See* Ptn. for a Writ of Cert., pp. 11-14).

Lastly, the subject trailers were only insured by one insurer and were only insured by one policy. As such, the *Miller* court's concerns about the practical effects of applying Section 38-77-160 to a collision-only policy, *see id.* at 309, 613 S.E.2d at 367, are inapplicable to this case. Thus, the result in *Miller* does not support the Court of Appeals' ruling.

None of the reasons cited by the *Miller* court for holding Section 38-77-160 inapplicable to the insurer in that case are present in this case. Therefore, the Court of Appeals erred by failing to apply the pertinent insurance statutes to Respondent and the subject policy according to the express terms chosen by the General Assembly.

3. The trailers at issue are "motor vehicles" as defined by statute; therefore, Respondent was required to offer UIM coverage on those vehicles.

In response to this argument (Return, pp. 7-8), Petitioner refers the Court to the arguments set forth on pages 5-10 of her Petition for a Writ of Certiorari rather than rehashing them herein.

Respectfully submitted,

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 Fargnoli (SC Bar No. 77528)
2 Amherst Street
Charleston, SC 29403
(843) 970-2700
bert@cfulaw.com
sam@cfulaw.com
christy@cfulaw.com

Attorneys for Petitioner

October 8, 2025
Charleston, South Carolina