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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case Number: 2025-001717

Jill S. Amoruso ..... Petitioner,

v.

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

BRIEF OF PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in holding that two trailers which USAA insured as vehicles on the subject motor vehicle insurance policy were not "motor vehicles" as defined by S.C. CODE ANN. § 38-77-30(9)?
2. Did the Court of Appeals improperly invade the province of the General Assembly and thereby violate the separation of powers doctrine by substituting its own policy decision in applying the language of S.C. CODE ANN. § 38-77-30(9)?
3. Should the Court of Appeals have held that USAA was required to offer underinsured motorist coverage on all six vehicles insured by the subject motor vehicle liability insurance policy, that the policy should be reformed to include underinsured motorist coverage on all six vehicles, and that Amoruso can recover stacked underinsured motorist coverage for all six vehicles?

STATEMENT OF THE CASE

Petitioner Jill S. Amoruso ("Amoruso") filed this action on August 18, 2022, seeking a declaratory judgment that a motor vehicle liability insurance policy ("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). Additionally, Amoruso 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]

[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.

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).

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.

The Court of Appeals decided the appeal without oral argument. In an unpublished opinion, it affirmed the Circuit Court. *Amoruso v. United Services Auto. Assoc.*, Unpub. Op. No. 2025-UP-184 (S.C. App., June 11, 2025). Petitioner filed a Petition for Rehearing of that

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

decision with the Court of Appeals on June 26, 2025. The Court of Appeals denied the Petition for Rehearing by Order dated August 8, 2025.

Petitioner then petitioned this Court for a Writ of Certiorari to the Court of Appeals. The Court granted that petition on November 18, 2025.

STANDARD OF REVIEW

The Court should apply a *de novo* standard to review the issues presented by this Petition.

"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). An appellate court reviews questions of law via a *de novo* standard. *Richards v. Spicer*, 445 S.C. 514, 523, 915 S.E.2d 486, 491 (2025).

"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).

> 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 relevant to 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 Amoruso's six vehicles for liability coverage 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 ("Montana") and a 2007 Adams horse trailer ("Adams"), both of which USAA described as "vehicles" on the Policy's declarations pages. (R. pp. 92-94). In fact, USAA did not 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, those vehicles were only insured for "physical damage coverage," which included collision coverage and comprehensive coverage. (R. pp. 93-94).

On January 7, 2017, while the Policy was in effect, Amoruso was seriously injured in a motor vehicle collision while occupying an insured vehicle other than the Montana or the Adams, which were not involved. (R. p. 17, ¶¶ 10-12; p. 25, ¶¶ 10-12). She filed suit against the at-fault motorist and served the pleadings on USAA, as her UIM insurer. (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). That action was tried to a jury verdict, which resulted in a judgment in favor of Amoruso in the amount of $2,400,000 after a setoff for the liability coverage previously paid. (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 should also pay $300,000 in UIM coverage on the Montana and $300,000 in UIM coverage on the Adams. She argued 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. Amoruso 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. 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 and comprehensive coverages on the Montana and the Adams, it had no duty to offer UIM coverage on those vehicles. (R. p. 5).

The Court of Appeals affirmed the Circuit Court, ruling that the Montana and the Adams "did not qualify as 'motor vehicles' under section 38-77-30(9) of the South Carolina Code" and that "trailers, which are not self-propelled, only become a motor vehicle [for purposes of 38-77-

30(9)] when attached to a self-propelled vehicle which is designed for use upon a highway." (Unpub. Op., p. 2).

II. THE COURT OF APPEALS ERRED IN HOLDING THAT THE MONTANA AND THE ADAMS WERE NOT "MOTOR VEHICLES" AS DEFINED BY S.C. CODE ANN. § 38-77-30(9).

Question: When is a trailer a "motor vehicle" for purposes of automobile insurance statutes?

Answer: *When the General Assembly says it is.*

Here, the General Assembly defined "motor vehicles" to include trailers like the Montana and the Adams. Therefore, the Court of Appeals should have held that those vehicles were "motor vehicles" for purposes of Title 38, Chapter 77 of the South Carolina Code of Law.

Specifically, Section 38-77-30(9), the unambiguous statute at issue, states that "motor vehicles" are self-propelled highway vehicles, including trailers designed for use with those vehicles. It is undisputed that the Montana and the Adams are trailers designed for use with self-propelled highway vehicles. (Unpub. Op., p. 2).[3] Despite this, the Court of Appeals held they were not "motor vehicles" within the scope of the statute. It therefore erred in failing to apply the governing statute as written.

Specifically, the subject statutory definition reads, in pertinent part:

> "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).

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[3] The fact that USAA insured the trailers for collisions – events that most commonly occur on public roads – demonstrates they were intended for highway use. In addition, photographs show the Adams was equipped with running lights and even had its own license tag. (R. pp. 82-86).

The statute lists three categories of vehicles:

1. Self-propelled vehicles designed for highway use.

2. Trailers designed for use with self-propelled highway vehicles.

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 first two categories are "included" in the definition of "motor vehicles" but the third category is "excepted" from the definition. The lynchpin of the Court of Appeals' decision was its conclusion that the General Assembly's use of the phrase "trailers ... designed for use with [self-propelled] vehicles [designed for use upon a highway]" means "trailers, which are not self-propelled, *only become a motor vehicle when attached to a self-propelled vehicle* which is designed for use upon a highway." (Unpub. Op., p. 2) (emphasis added). In so reasoning, it effectively rewrote the statute in a manner inconsistent with its express language.

> "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 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).

In short, the wording of the statute dictates the outcome of the Court's analysis. The proper application of the statutory language hinges on the General Assembly's use of the word "including" before "trailers and semitrailers" in the statutory definition.

This statutory definition was adopted as part of the Automobile Reparation Reform Act. 1974 S.C. Act No. 1177. The first sentence has remained unchanged for over 50 years.[4] No court has ever found it to be ambiguous – and it is not ambiguous.

The term "including" refers to the statute's initial term "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."

Contrary to this, the Court of Appeals construed the term "including" to require a physical connection between the category of vehicles following that term (*i.e.*, trailers) and the first category of vehicles encompassed by the definition (*i.e.*, self-propelled highway vehicles). As a result, it erroneously held 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 attached to a self-propelled vehicle which is designed for use upon a highway*, trailers and semitrailers designed for use with these vehicles." (Unpub. Op., p. 2).

Generally, the term "including" can list a specific thing that is included within a previous broad category (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). 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

[4] A sentence regarding mopeds was added by 2017 S.C. Act No. 89 but is not relevant to the issue before the Court. Another unrelated sentence was added by 1997 S.C. Act No. 154.

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 which precedes it, "including" means "and" or "in addition to." Here, "trailers and semitrailers designed for use with [self-propelled] vehicles [designed for use upon a highway]" is not a subset of "every self-propelled vehicle which is designed for use upon a highway." Therefore, the Court of Appeals should have held that, in this context, the General Assembly intended the term "including" to mean "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) (emphasis added). Although the two types of insurance described before the term "including" are liability insurance, nothing after that term is liability insurance. Thus, clearly, the General Assembly intended the word "including" to mean "and" or "in addition to."

This construction is consistent with the General Assembly's use of the term "including" in other automobile insurance statutes. *See, e.g.,* S.C. CODE ANN. §§ 38-77-30(13)(a) ("'Small commercial risks' means; (a) Garage risks including nonmotor vehicle insurance when written in combination with automobile liability coverage."); 38-77-112 (automobile insurers are required to retain "a record of its refusals of coverage including the reason for the refusal"); 38-77-190 (an insurer seeking subrogation after payment of an uninsured motorist claim "shall pay its proportionate part of any reasonable costs and expenses incurred in connection with any

recovery, including reasonable attorneys' fees.") (1976, as amended). It is also consonant with the General Assembly's use of the term "including" in other insurance statutes. *See, 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 (1976, as amended).

Furthermore, Section 38-77-30(9) 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 or attached to be considered a vehicle, only that it be *designed for use* with a roadworthy, self-propelled vehicle. The Court of Appeals, in effect, rewrote the statute to support its conclusion rather than simply construing the statute based upon its plain and unambiguous meaning, as it was required to do.

The Court of Appeals' reasoning seems to have been influenced by the inclusion of the word "motor" in the defined term "motor vehicles" and by the fact that the Montana and the Adams are not self-propelled. (Unpub. Op., p. 2 (*citing Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 143, 442 S.E.2d 179, 181 (1994)).[5] But its approach overlooks the statutory definition itself, which is what it was required to apply.

The Court of Appeals' use of the "ordinary and popular sense" of the term "motor vehicle" was inconsistent with the legislative decision that it was proper to include trailers within the definition of "motor vehicles." *See Strother v. Lexington Cty. Recreation Comm.*, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) (courts should defer to the usual and customary meaning of a statutory term *when it is undefined by the legislature*). If a vehicle must have a motor to meet the

[5] The Court of Appeals quoted *Anderson* for its general statement: "[T]he meaning of 'motor vehicle' for insurance purposes should be considered in its ordinary and popular sense rather than in a generic sense." (Unpub. Op., p. 2). However, it failed to give effect to the *Anderson* court's more specific statement: "Under the Motor Vehicle Financial Responsibility Act, *a vehicle must be designed to operate on the highway in order to come within the term 'motor vehicle.'*" *Anderson*, 314 S.C. at 143, 442 S.E.2d at 181 (footnote omitted; emphasis added). The latter statement demonstrates this Court's recognition of and appropriate deference to the General Assembly's emphasis on a vehicle's design rather than its actual use at a given moment in time.

definition, it would not have been necessary for the General Assembly to mention trailers in the definition of "motor vehicles" since trailers do not have motors. The fact the General Assembly included trailers in the definition is clear proof that a vehicle – including the Montana and the Adams – need not have a motor to fall within the statutory definition and that judicially adding such a requirement to the definition is contrary to legislative intent.

The General Assembly did not require that a trailer have its own motor to be considered a "motor vehicle." The fact that it used the adjective "self-propelled" with regard to the first group of vehicles listed in the statute but not the second group shows it did not intend for "self-propelled" to modify trailers. *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).

If the General Assembly had intended for "self-propelled" to modify trailers, it could have easily done so. In that 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." That is not what the General Assembly did.

The Montana and the Adams were trailers designed for use with self-propelled vehicles on the highway and were thus statutorily defined as "motor vehicles." Consistent with this conclusion, USAA described both the Montana and the Adams as "vehicles" in the Policy, insured both vehicles for physical damage (including collision coverage), and charged separate

premiums for each. (R. pp. 92-94). Both the Montana and the Adams constitute "motor vehicles" within the statutory definition. Therefore, the Court of Appeals erred in holding otherwise.

This Court should reverse the Court of Appeals, apply the statutory definition of "motor vehicles" consistently with the General Assembly's chosen language, and rule that the Montana and the Adams are "motor vehicles" within the scope of Title 38, Chapter 77 of the South Carolina Code of Laws.

III. THE COURT OF APPEALS IMPROPERLY INVADED THE PROVINCE OF THE GENERAL ASSEMBLY AND VIOLATED THE SEPARATION OF POWERS DOCTRINE BY SUBSTITUTING ITS OWN POLICY DECISION IN APPLYING THE LANGUAGE OF S.C. CODE ANN. § 38-77-30(9).

When a statute is clear and unambiguous, a court must apply the statute as written by the General Assembly rather than imposing on it another meaning, *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A court must do so to maintain the constitutionally distinct powers of the judicial and legislative branches, even if it disagrees with the General Assembly's policy decisions underlying the statutory language. *Smith v. Tiffany,* 419 S.C. at 565, 799 S.E.2d at 488. In summary, the actual language of the statute – not what a court thinks the statute should say – must dictate the outcome.

Here, Section 38-77-30(9) includes trailers within the definition of motor vehicles subject to only one condition – that a trailer be "designed for use" with a "self-propelled vehicle which is designed for use upon a highway."[6] Significantly, the General Assembly did not impose the additional condition of requiring a trailer to be attached to a self-propelled vehicle to satisfy the statutory definition. The Court of Appeals' decision created this additional condition without any statutory basis.

[6] As the Court of Appeals noted, the parties agree the subject trailers "were designed to be used with self-propelled vehicles." (Unpub. Op., p. 2).

The difference between "designed for use with" and "when being used with" is significant. The former establishes a broader category of motor vehicles, whereas the latter is narrower. Under the express language of the statute, trailers designed for use with highway vehicles fall within the definition regardless of whether they are attached to those vehicles. The Court of Appeals' judicially fashioned definition only encompasses trailers at specific, varying points in time even though, as a necessary predicate of that definition, they are designed for use with highway vehicles, the only requirement imposed by the General Assembly.

As such, the Court of Appeals' holding was 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...." *Rafferty*, 439 S.C. at 136, 886 S.E.2d at 225, *quoting In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). Under the Court of Appeals' "only ... when attached to a self-propelled vehicle which is designed for use upon a highway" construction (Unpub. Op., p. 2), the General Assembly's condition of "designed for use with these vehicles" becomes superfluous since a trailer would necessarily satisfy that condition to meet the court's definition.

Moreover, the Court of Appeals' holding runs afoul of this State's policy of construing motor vehicle insurance statutes liberally and broadly in favor of providing greater coverage for and public protection from vehicular risks. *Rafferty*, 439 S.C. at 135-36, 886 S.E.2d at 225. Instead, it creates an unreasonable and unmanageable situation where trailers would be insured for liability at some points in time but not at others.[7] *Cf. Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 324, 523 S.E.2d 766, 771 (1999) (in the context of workers' compensation coverage –

[7] As discussed under heading IV below, even under the Court of Appeals' interpretation of the statute, the Montana and the Adams would be considered "motor vehicles" when attached to other vehicles, which means automobile insurers like USAA would have to provide liability coverage, at least for certain times, and would have to offer UIM coverage.

a statutory scheme also based on the public policy of providing broad protection via coverage – it would be undesirable to construe a statute such that covered workers "move in and out of workers' compensation coverage throughout the workday based on the type of work they were engaged in at that very moment."). The statutory definition *as written* avoids this uncertainty by requiring liability coverage on trailers designed for use with highway vehicles, thereby consistently protecting the public without gaps in coverage depending on the use of the trailer.

A legislative decision to require protection on a continuous basis, independent of a trailer's use at a specific point in time, is not absurd but is consistent with this State's public policy. However, when the Court of Appeals concluded, without further explanation, that "Amoruso's interpretation would also lead to *an absurd result* of categorizing vehicles that are otherwise stationary and designed to be used with self-propelled vehicles as motor vehicles," (Unpub. Op., p. 2) (emphasis added), it applied its own policy determination rather than interpreting and implementing those of the General Assembly based on the express language of the statute. *See Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 376, 858 S.E.2d 633, 635 (2021), *quoting S.C. Farm Bureau Mut. Ins. Co. v. Mumford,* 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) ("Once the Legislature has made that choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.").

The *Mumford* case amply demonstrates this point. There, the Court of Appeals addressed the validity of a motor vehicle liability insurance policy exclusion for intentional acts in light of the General Assembly's requirement that such policies provide coverage for "loss from liability imposed by law." S.C. CODE ANN. § 38-77-140 (1976, as amended). In holding that the exclusion was contrary to the statute and therefore invalid, the court relied upon the express language of the statute and deferred to the General Assembly's policy choices, holding:

The statute requires any automobile insurance policy issued in this State to insure against "loss from liability imposed by law" for damages arising out of the use of a covered motor vehicle. It draws no distinction between intentional acts and negligent acts of the insured – if liability for damages is "imposed by law," coverage must be provided. Without question, the law imposes liability on one who intentionally uses an automobile in a manner that causes damage to another.

. . .

South Carolina Farm Bureau argues that the Financial Responsibility Act requires only that "accidents" be covered by a third party liability insurer. The Bureau contends that reasonable exclusionary clauses which do not conflict with the plain wording or legislative purpose of the Act are permissible. Moreover, it asserts that to invalidate an "intentional acts" exclusion in the insurance contract violates the well established public policy that prohibits persons from insuring themselves against their own intentionally harmful acts.

These arguments overlook both the actual wording of the statute and a critical distinction between voluntary insurance and compulsory insurance.

The statute does not say insurers must cover "accidents" arising from the use of the insured vehicle; it says they must cover "liability imposed by law" on the insured. ... Since the Act mandates coverage if the law imposes liability for damages on the at fault insured, the exclusionary clause conflicts with the plain wording of the Act.

The exclusion also conflicts with the legislative purpose of the Act. Insurance against third party loss arising out of the use of a motor vehicle is compulsory under South Carolina law. The primary purpose of compulsory insurance is to compensate victims who have been injured by at fault motorists, not, like that of voluntary insurance, to save harmless the insured himself. Accordingly, the victim's right to recover from the insurance carrier does not depend upon whether the conduct of its insured was intentional or negligent.

The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance. Where the Legislature makes coverage compulsory, instead of leaving it to the voluntary market, *it has already balanced the public interest in prohibiting insurance for intentionally harmful acts against the public interest in compensating the victims of at fault motorists*. By making coverage compulsory, it chooses to weigh the latter interest more heavily than the former. *Once the Legislature has made that choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy*.

Mumford, 299 S.C. at 16-19, 382 S.E.2d at 13-14 (citations omitted; emphasis added).[8]

[8] While *Mumford* is a Court of Appeals decision, this Court has cited it with approval on several occasions. *See Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 858 S.E.2d 633 (2021); *Peagler v. USAA Ins. Co.*, 368 S.C. 153, 628 S.E.2d 475 (2006); *State Auto Property & Cas. Ins. Co. v. Gibbs,* 314 S.C. 345, 444 S.E.2d 504 (1994).

Requiring liability insurance on trailers designed for use with highway vehicles is not absurd. While a trailer owner or operator can cause damage and incur liability using a trailer while attached to another vehicle (*e.g.*, a driver causes a trailer to block the lane of oncoming traffic while completing a turn), he can also be liable for damages caused when the trailer strikes persons or property after it negligently becomes unattached from a towing vehicle (at which time, paradoxically, it would no longer be a "motor vehicle" as defined by the Court of Appeals) or when it rolls down a hill after being unhitched from a vehicle, parked, and inadequately secured. Coverage under these scenarios was certainly intended by the General Assembly given the public policy undergirding this State's automobile insurance statutes.[9]

If the General Assembly had intended for the statutory definition to read as the Court of Appeals held, it could have easily drafted the statute to say that. But it did not. Instead, the General Assembly adopted different language and *only* required that a trailer be "designed for use with these vehicles" to constitute a "motor vehicle."

Significantly, the General Assembly did not include the phrase the Court of Appeals added, "when attached to a self-propelled vehicle which is designed for use upon a highway." (Unpub. Op., p. 2). By inserting that limitation into the statutory definition, the Court of Appeals improperly invaded the province of the General Assembly by substituting its own policy decision. As such, it legislated rather than applying the law as written and violated the separation of powers doctrine. *See Smith v. Tiffany*, 419 S.C. at 559-60, 799 S.E.2d at 485 ("[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

[9] Likewise, the owner of a trailer would benefit from statutorily required first-party property damage coverage on his trailer when it is damaged by an uninsured or underinsured motorist.

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.").

This Court should reverse the Court of Appeals' decision as being contrary to what the General Assembly enacted.

IV. THE COURT OF APPEALS SHOULD HAVE HELD THAT USAA WAS REQUIRED TO OFFER UIM COVERAGE ON ALL VEHICLES INSURED BY THE POLICY, THAT THE POLICY SHOULD BE REFORMED TO INCLUDE UIM COVERAGE ON ALL SIX VEHICLES, AND THAT AMORUSO CAN RECOVER STACKED UIM COVERAGE FOR ALL SIX VEHICLES.

Given its definition of "motor vehicles," the Court of Appeals did not address the remaining issues raised by this action. (Unpub. Op., p. 3, n.1). This Court should address these purely legal issues to bring this matter to a conclusion without the necessity of a remand.

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). 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. at 380-81, 858 S.E.2d at 638. That is, insurers are required to offer UIM coverage and are also required to provide it when an insured chooses to purchase it.

If an insurer fails to make a meaningful offer of UIM coverage, a 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).

Although USAA did not write liability coverage on the Montana or the Adams, it should have done so. 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 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" within the scope of Title 38, Chapter 77. *See Miller v. Aiken*, 364 S.C. 303, 308, 613 S.E.2d 364, 367 (2005).

The Policy was an "automobile insurance policy" as defined in that chapter of the Code.

> "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. As a result, the Policy is an "automobile insurance policy" or "policy of automobile insurance." *See also Peagler v. USAA Ins. Co.*, 368 S.C. at 159, 628 S.E.2d at 478 (equating the term "automobile insurance policy" with "policy of automobile insurance" as used in Section 38-77-30 (10.5)).

USAA was therefore prohibited from issuing a motor vehicle policy in this State – and, specifically, the Policy – without providing liability coverage on each insured motor vehicle. S.C. CODE ANN. § 38-77-140 (1976, as amended) ("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...."). Thus, liability coverage was mandated on the Montana and the Adams. The Court should not allow USAA to avoid its duty to offer statutorily required UIM coverage based on its failure to provide mandatory liability coverage.

Because USAA should have offered UIM coverage on the Montana and the Adams but admittedly failed to do so, the Court should reform the Policy to include that coverage. *See, e.g., Butler v. Unisun Ins. Co.,* 323 S.C. at 405, 475 S.E.2d at 760. The Policy provided bodily injury liability insurance coverage limits of $300,000 per person. (R. pp. 92-94). The Court should therefore reform the Policy to include UIM coverage with limits of $300,000 per person for the Montana and for the Adams.

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

As a final matter, it is worth noting that, even if the Court were to apply the Court of Appeals' interpretation of the statutory term "motor vehicles" (a conclusion Amoruso opposes), it should nevertheless grant Amoruso the relief requested above. Curiously, the Court of Appeals' construction of the statutory definition does not necessarily result in its holding that the Montana and the Adams are not "motor vehicles." Rather, under the Court of Appeals' construction, either of the trailers would have been a "motor vehicle" if it had been attached to

the vehicle Amoruso was operating at the time of the collision (or when attached to any other vehicle). Since USAA issued a policy insuring the Montana and the Adams, it was required to provide liability coverage and offer UIM coverage on those vehicles for times when they are "motor vehicles," even if those instances were limited as held by the Court of Appeals. In other words, the Court of Appeals' interpretation of the term "motor vehicles" creates a "sometimes a motor vehicle, sometimes not" distinction that makes it impossible to implement Sections 38-77-140 and 38-77-160 unless the subject vehicles are always subject to the statutory requirements for liability, uninsured motorists, and UIM coverages.[10]

CONCLUSION

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

1. Reverse the Court of Appeals;
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 $300,000 per person on 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.[11]

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[10] If the Court were to agree that USAA was required to insure each trailer for liability coverage but somehow conclude that the liability coverage only applies when the trailer is attached to a self-propelled highway vehicle, its holding should still trigger USAA's duty to offer UIM coverage. Given USAA's admitted failure to offer that coverage, the Court should reform the Policy to add that coverage by operation of law.

However, it would be an error for the Court to hold that the judicially added UIM coverage does not apply to Amoruso's judgment because neither the Montana nor the Adams was attached to a self-propelled highway vehicle at the time of the collision. Such a ruling would be contrary to the "personal and portable" nature of UIM coverage. *See, e.g., Nationwide Mut. Ins. Co. v. Rhoden*, 398 S.C. 393, 728 S.E.2d 477 (2012) (our state's well-settled public policy is that UIM coverage is personal to the insured and is portable such that it applies to an insured injured in a collision even if the insured vehicle is not involved).

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

Respectfully submitted,

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