

RECEIVED

Dec 22 2025

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.

APPENDIX

Bert G. Utsey, III (SC Bar No. 10093)
Samuel R Clawson, Jr. (SC Bar No. 76065)
Christy Fagnoli (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 Petitioner

Charles R. Norris (SC Bar No. 4238)
Robert W. Whelan (SC Bar No. 71174)
WHELAN MELLEN & NORRIS, LLC
89 Broad Street
Charleston, SC 29401
(843) 998-7099
charles@whelanmellen.com
robbie@whelanmellen.com

Attorneys for Respondent

INDEX

1.	Record on Appeal.....	1
2.	Final Brief of the Appellant.....	138
3.	Final Brief of Respondent.....	159
4.	Reply Brief of Appellant	179
5.	Court of Appeals’ Unpublished Opinion No. 2025-UP-184.....	192
6.	Appellant’s Petition for Rehearing	195
7.	Court of Appeals’ Order Denying Petition for Rehearing	201

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.

RECORD ON APPEAL

Bert G. Utsey, III
Samuel R. Clawson, Jr.
Christy R. Fagnoli
CLAWSON FARGNOLI UTSEY, LLC
2 Amherst Street
Charleston, SC 29403
(843) 970-2700

Attorneys for Appellant

Charles R. Norris
Robert W. Whelan
WHELAN MELLEN & NORRIS, LLC
89 Broad Street
Charleston, SC 29401
(843) 998-7099

Attorneys for Respondent

INDEX

Order dated November 30, 2023	2
Form 4 Order dated November 13, 2023	7
Form 4 Order dated November 13, 2023	10
Form 4 Order dated January 19, 2024	13
Complaint	16
Amended Answer	24
Plaintiff's Motion for Partial Summary Judgment	32
Defendant's Motion for Summary Judgment	34
Defendant's Memorandum in Support of Motion for Summary Judgment	36
Transcript of Hearing	40
Defendant's Responses to Plaintiff's Requests for Production	69
Plaintiff's Responses to Defendant's First Set of Interrogatories	74
Photographs	82
USAA policy	87
Plaintiff's Motion to Alter or Amend Judgment	134
Certificate of Counsel	137

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-08-01971
JILL S. AMORUSO,	)	
	)	
	)	
Plaintiff,	)	<u>ORDER</u>
	)	
v.	)	
	)	
UNITED SERVICES AUTOMOBILE,	)	
ASSOCIATION d/b/a USAA,	)	
Defendant.	)	
	)	

On July 13, 2023, this Court heard cross-motions for summary judgment. The plaintiff moved for summary judgment on the ground USAA was obligated to make an offer of underinsurance motorist (UIM) coverage on a 2016 Montana and a 2007 Adams. The 2016 Montana was a camper, and the 2007 Adams was a horse trailer. USAA moved for summary judgment on the basis it was not obligated to offer UIM coverage on non-self-propelled vehicles such as horse trailers and campers because they were not “motor vehicles” as defined by section 38-77-30(9) of the South Carolina Code. USAA’s motion was supported by interrogatory answers and photographs of the camper and horse trailer.

The underlying facts are not in dispute. On January 7, 2017, the plaintiff was in an accident with Kaira Miller. At the time of the accident the plaintiff was driving a 2014 Nissan. At this time the Nissan and five other vehicles were insured with USAA. Of the total of six vehicles, four vehicles had UIM coverage in addition to statutorily mandated coverages. Two of the vehicles – a camper and horse trailer referenced as a 2016 Montana and a 2007 Adams – were insured for property damage only. Neither of these vehicles had liability, uninsured motorist (UM) or UIM coverage and on neither of these vehicles did USAA offer UIM coverage. Neither of these vehicles

were self-propelled. Instead, they were towed behind a transporting vehicle. On neither the 2016 Montana nor the 2007 Adams did the plaintiff pay a premium for liability, UM or UIM coverage.

Because the parties have filed cross motions for summary judgment this Court is presented with a question of law. *Meier v. Burnsed*, 882 S.E. 2d 863 (S.C. App. 2022); *Progressive Direct v. Groves*, 882 S. E. 2d 464 (S.C. 2022); *South Carolina Public Interest Foundation v. Calhoun County Council*, 854 S.E. 2d 836 (S.C. 2021); *USAA v. Pickens*, 862 S.E. 2d 442 (S.C. 2021) Additionally, where, as here, the court is presented with a question of statutory construction a question of law is involved. *Davis v. South Carolina Educational Credit*, 882 S.E. 2d 754 (S.C. 2023); *Flowers v. Giep*, 871 S. E. 2d 604 (S.C. App. 2021); *Ballard v. Newberry County*, 854 S.E. 2d 848 (S.C. App. 2021); *First Citizens Bank v. Taylor*, 847 S.E. 2d 249 (S. C. App. 2020)

Section 38-77-160 of the South Carolina Code requires insurers to offer UIM coverage "up to the limits of the insured liability coverage..." Section 38-77-140 requires liability coverage on a "motor vehicle." Section 38-77-30 (9) defines "motor vehicle" as every "self-propelled vehicle" including "trailers and semi-trailers designed for use with these vehicles..." It is undisputed neither the Montana nor the Adams were self-propelled vehicles. Requiring liability, UM coverage and offers of UIM coverage on non-self-propelled vehicles such as the Montana and the Adams will vastly transform this statutory scheme and cannot have been the intent of the legislature.

The specific question which with this court is presented is whether the Montana and the Adams, neither of which were self-propelled vehicles, fall within the definition of "motor vehicle" in section 38-77-30 (9) of the South Carolina Code. To fall within the definition of "motor vehicle" a vehicle must be self-propelled and designed for use upon a highway. Trailers and semi-trailers are included within the definition of "motor vehicle" in section 38-77-30 (9). In other words,

trailers and semi-trailers which are designed for use with motor vehicles are included within or are a part of a self-propelled vehicle such that there is one vehicle.

The word "includes" is ordinarily a word of enlargement and not of limitation. *Baker v. Chavis*, 410 S.E. 2d 600, 603 (S.C. App. 1991) Applying this definition to section 38-77-30 (9), the only reasonable statutory construction is that "trailers and semitrailers" are within the category of "self-propelled vehicles" such that a trailer or semitrailer being towed behind a self-propelled vehicle is one vehicle. Any construction otherwise would mean a trailer or semitrailer being towed behind a self-propelled vehicle is a separate vehicle requiring its own separate insurance. Such a construction of section 38-77-30 (9) would reach an absurd result and courts are not to construe statutes to reach an absurd result. *Buff v. South Carolina Department of Transportation*, 505 S.E. 2d 360 (S. C. App. 1998) – courts will reject an interpretation leading to a result so plainly absurd it could not have possibly been intended, or would defeat plain legislative intention. The interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result. *Miller v. Robinson Trucking*, 510 S.E. 2d 431 (S.C. App. 1998); *Ogburn-Mathews v. Loblolly Partners*, 505 S.E. 2d 598 (S.C. App. 1998)

Case law also supports this Court's conclusion the 2016 Montana and the 2007 Adams are not "motor vehicles" within the definition of "motor vehicle" in section 38-77-30 (9) such that USAA was not required to make an offer of UIM coverage on these vehicles. In *Anderson v. State Farm Mutual Automobile Insurance Company*, 442 S.E. 2d 179 (S. C. 1994), the plaintiff argued a farm tractor was a motor vehicle. The Court considered section 38-77-30 (7), now section 38-77-30 (9), and held a farm tractor does not come within the definition of motor vehicle because although it could be incidentally used on a highway it was not designed for use upon a highway. This reasoning applies to the plaintiff's camper and horse trailer.

Miller v. Aiken, 613 S.E. 2d 364 (S. C. 2005), is dispositive. In that case the Supreme Court considered whether, as here, an auto insurer which provided only non-liability collision and other named perils coverage was required offer UIM coverage. In *Miller*, as here, the plaintiff argued an automobile insurer which provided only collision coverage was required to offer UIM coverage. The Supreme Court rejected this argument and stated "an automobile insurer providing only collision coverage to its insured should not be required to make a meaningful offer of UIM." 613 S.E. 2d at 367. The Supreme Court went on to state "requiring an insurer providing only collision coverage to make a meaningful offer of UIM would lead to a result so plainly absurd that it could not possibly have been intended by the legislature." 613 S. E. 2d at 367. The plaintiff's own motion for summary judgment cites this case.

More recently, in *Jack's Custom Cycles v. South Department of Revenue*, 885 S.E. 2d 433 (S.C. App. 2023), the Court defined "motor vehicle" as a vehicle which is self-propelled and a vehicle "operated by power developed within itself..." The Court cited the American Heritage College dictionary definition of a motor vehicle as a "self-propelled wheeled conveyance, such as a car or truck that does not run on rails." The horse trailer and camper in question do not come within this definition nor the statutory definition.

For these reasons the court grants USAA's motion for summary judgment and denies the plaintiff's motion for summary judgment. All of which is so ORDERED.

Jennifer B. McCoy, Presiding Judge
9th Judicial Circuit

Dated:



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-29 17:11:38 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0801971

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Partial Summary Judgment filed January 23, 2023 was heard by this court on July 13, 2023 by WebEx. Plaintiff's Motion is respectfully denied, as this court does not find that a "trailer" is a "motor vehicle" within the context of S.C. Code Sec. 38-77-30(9).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-13 14:22:44 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0801971

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant USAA's Motion for Summary Judgment filed March 15, 2023 and heard July 13, 2023 is GRANTED at this time based on the court's finding that the trailers at issue were not "motor vehicles" within the context of S.C. Code Section 38-77-30(9). Defendant shall draft formal proposed order within 10 days of the date of this order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-13 14:27:09 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0801971

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff filed a Motion to Reconsider with this Court on December 4, 2023. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court DENIES Plaintiff's Motion to Reconsider without the necessity of a hearing, and it was decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/19/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-01-19 11:22:19 page 3 of 3

ELECTRONICALLY FILED - 2024 Jan 19 11:28 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-

COMPLAINT

Plaintiff complains of Defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Berkeley County, South Carolina.
2. Defendant (“USAA”) is a reciprocal interinsurance exchange, has its principal place of business in the State of Texas, and does business as “USAA.”
3. Reciprocal interinsurance exchanges are unincorporated associations of members. Unincorporated entities carry the citizenship of their members. As such, reciprocal insurance exchanges are citizens in each state where their members reside. USAA has members in the State of South Carolina. Therefore, USAA is considered a citizen of the State of South Carolina for jurisdictional purposes as and there is no diversity of citizenship with Plaintiff.
4. USAA is licensed to write and, in fact, writes automobile insurance policies insuring citizens and residents of the State of South Carolina, including Plaintiff.
5. The most substantial part of the acts or omissions giving rise to the causes of action stated herein occurred in Berkeley County, South Carolina; therefore, venue is proper pursuant to S.C. CODE ANN. § 15-7-30 (1976, as amended).

6. Venue is also proper pursuant to S.C. CODE ANN. § 15-7-70 (1976, as amended).

THE POLICY

7. In approximately 2004, Plaintiff purchased an automobile insurance policy from USAA; thereafter, Plaintiff continuously renewed the policy, including a renewal effective November 7, 2016 to May 7, 2017 as policy number 01475 85 15U 7106 2 (“the Policy”).

8. The Policy insured six motor vehicles, including a 2014 Nissan SUV.

9. Among other coverages, the Policy provided liability insurance coverage with limits of \$300,000 per person per accident.

10. The Policy also provided underinsured motorist (“UIM”) coverage on the 2014 Nissan SUV, as well as three other vehicles listed in the Policy, with limits of \$300,000 per person per accident on each of those vehicles.

THE COLLISION

11. On January 7, 2017, while the Policy was in effect, Plaintiff was operating the 2014 Nissan SUV insured under the Policy when she was involved in a motor vehicle collision in Berkeley County, South Carolina (“the Collision”).

12. The Collision caused bodily injuries to Plaintiff.

13. The Collision was caused by the negligence of Kaira Miller (“Miller”).

THE LAWSUIT

14. As a result of the Collision, Plaintiff filed a suit against Miller in Berkeley County, South Carolina, Civil Action Number 2019-CP-08-00758, seeking damages for her bodily injuries (“the Lawsuit”).

15. Plaintiff served USAA with the Lawsuit as Plaintiff’s UIM insurer.

16. Miller was also insured by USAA, with liability insurance limits of \$100,000 per person per accident.

17. After the Lawsuit was filed, USAA tendered Miller's liability limits of \$100,000 to Plaintiff in exchange for a covenant not to execute against Miller.

18. Because Plaintiff's damages exceeded the sum of \$100,000, Miller was an underinsured motorist.

19. Upon payment of Miller's liability coverage limits, USAA, as Plaintiff's UIM insurer, assumed the defense of the Lawsuit.

20. During discovery related to the Lawsuit, USAA represented to Plaintiff that USAA provided a total of \$1,500,000 in UIM coverage under the Policy applicable to Plaintiff's claim as a result of the Collision.

21. Plaintiff offered to settle her UIM claim with USAA and the Lawsuit in exchange for USAA's payment of \$400,000 in UIM coverage.

22. USAA refused to settle for this amount.

23. Instead, USAA offered to settle Plaintiff's UIM claim and the Lawsuit for USAA's payment of \$250,000 in UIM coverage.

24. At the trial of the Lawsuit, on February 2, 2022, the jury returned a verdict in the amount of \$2,500,000 in favor of Plaintiff.

25. The verdict resulted in a judgment of \$2,400,000 in favor of Plaintiff after applying an offset for the \$100,000 in liability coverage paid by USAA on behalf of Miller.

26. The Policy's UIM coverage applied to the judgment resulting from the Lawsuit.

27. In response to the judgment USAA tendered to Plaintiff \$1,200,000 in UIM coverage under the Policy in partial satisfaction of the judgment.

28. At that time, USAA represented that \$1,200,000 was the total of UIM coverage available under the Policy for Plaintiff's claim as a result of the Collision and that its earlier representation of \$1,500,000 in UIM coverage under the Policy was an error.

29. The remaining balance of the judgment remains unsatisfied.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment and Reformation)

30. Plaintiff realleges the above allegations as if fully repeated herein.

31. At the time of the Collision, Plaintiff was a "Class 1" insured under the Policy.

32. As a result, Plaintiff is entitled to stack UIM coverage from each vehicle insured for that coverage under the Policy and to apply that stacked coverage to her claim as a result of the Collision.

33. The Policy's stacked UIM coverage applies to the judgment resulting from the Lawsuit.

34. Plaintiff contends that, for reasons discussed further below, all six motor vehicles insured by the Policy should have UIM coverage of \$300,000 per person per accident, for a total of \$1,800,000 in stacked UIM coverage; alternatively, Plaintiff contends the Policy should provide \$1,500,000 in stacked UIM coverage, as represented by USAA in the Lawsuit.

35. Upon information and belief, USAA contends the Policy provides a total of \$1,200,000 in stacked UIM coverage applicable to Plaintiff's claim as a result of the Collision.

36. The parties disagree as to the amount of stacked UIM coverage the Policy provides for Plaintiff's claim as a result of the Collision; therefore, an actual and justiciable controversy exists, making it proper for the Court to issue a declaratory judgment as to that issue.

37. Per S.C. CODE ANN. § 38-77-160 (1976, as amended), USAA owed a duty to Plaintiff, as named insured on the Policy, to make a meaningful offer of UIM coverage for each motor vehicle insured thereunder.

38. USAA failed to make a meaningful offer of UIM coverage under the Policy regarding two of the motor vehicles insured thereunder (the 2016 Montana and the 2007 Adams).

39. Because of the foregoing, the Court should declare that the Policy provides UIM coverage with limits of \$300,000 per person per accident for all six vehicles insured thereunder, reform the Policy to include UIM coverage with limits of \$300,000 per person per accident applicable to the 2016 Montana and the 2007 Adams motor vehicles insured thereunder, and declare that the Policy provides a total of \$1,800,000.00 in UIM coverage for Plaintiff's claim as a result of the Collision.

40. Alternatively, the Court should declare that the Policy provides a total of \$1,500,000 in stacked UIM coverage applicable to Plaintiff's claim as a result of the Collision.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

41. Plaintiff realleges the above allegations as if fully repeated herein.

42. The issuance of the Policy by USAA to Plaintiff created a mutually binding contract of insurance between Plaintiff and USAA and gave rise to a contractual relationship between Plaintiff and USAA.

43. In the Policy, USAA contractually agreed to pay Plaintiffs for bodily injury damages which she is legally entitled to recover from the operator of an underinsured motor vehicle because of an auto accident.

44. The Policy does not condition USAA's duty to make this payment on the receipt of a release or waiver of further claims from Plaintiff.

45. USAA investigated Plaintiff's claims and made offers to settle her claim for UIM benefits under the Policy in amounts less than the total stacked UIM coverage limits.

46. However, USAA refused to pay Plaintiff the amount of its UIM coverage offer without Plaintiff's agreement to forego any claim for additional UIM coverage.

47. USAA's refusal to tender the amount of its UIM coverage and/or its conditioning of Plaintiffs providing a release or waiver of further claims in exchange for such a payment are in violation of the Policy and constitute a breach of contract.

48. As a direct and proximate result of USAA's breach of contract, Plaintiff was deprived of insurance benefits for which she paid a premium and to which she was entitled and therefore sustained damages.

49. Plaintiff is entitled to a judgment against USAA for her actual damages due to USAA's breach of contract.

50. Plaintiff is also entitled to an award of attorneys' fees pursuant to statutory and/or common law.

FOR A THIRD CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

51. Plaintiff realleges the above allegations as if fully repeated herein.

52. The Policy includes an implied covenant of good faith and fair dealing.

53. Under the implied covenant of good faith and fair dealing, USAA is prohibited from doing anything to impair Plaintiff's rights to receive UIM benefits under the Policy.

54. Under this covenant, USAA owed Plaintiff a duty of care to process, to handle, and to adjust Plaintiff's claims fairly, reasonably, and in good faith.

55. The covenant of good faith and fair dealing also prevents USAA from offering less than what its own investigation reveals to be the value of Plaintiff's UIM claim.

56. Moreover, under the covenant of good faith and fair dealing, USAA owed to Plaintiff a duty to pay undisputed portions of her UIM claim promptly and without conditions.

57. There was no reasonable basis for USAA's refusal to tender to Plaintiff the amount of USAA's evaluation of Plaintiff's UIM claim.

58. There was no reasonable basis for USAA's refusal to tender to Plaintiff the amount of USAA's offer to pay for Plaintiff's UIM claim.

59. In addition, without reasonable basis, USAA defended the Lawsuit by alleging Plaintiff, its own insured, was addicted to drugs and was being untruthful about the cause, nature, and extent of her injuries and damages.

60. USAA was negligent, reckless, grossly negligent, willful, and wanton, acted without a reasonable basis or just cause, and/or acted in bad faith in its processing, handling, adjusting, and defending of Plaintiff's UIM claim in one or more of the following particulars:

- a. In failing to tender promptly and without conditions the amount it offered to pay for Plaintiff's UIM claim;
- b. In failing to tender promptly and without conditions the amount of its evaluation of Plaintiff's UIM claim;
- c. In impairing Plaintiff's rights to receive UIM benefits under the Policy;
- d. In refusing to tender promptly and without conditions the undisputed amounts of UIM coverage it contractually owed to Plaintiff despite requests to do so;
- e. In requiring Plaintiff to undergo the time, cost, and stress of trial to obtain UIM coverage that USAA admitted was due to Plaintiff;
- f. In requiring Plaintiff to undergo the time, cost, and stress of trial to obtain UIM coverage to which Plaintiff was entitled;
- g. In engaging in false accusations and character assassination of Plaintiff as part of its efforts to avoid paying UIM benefits to Plaintiff;
- h. In placing its own interests above those of Plaintiff; and
- i. In failing to place Plaintiff's interests ahead of its own.

61. As a direct and proximate result of USAA's negligence, recklessness, gross negligence, willfulness, wantonness, unreasonable conduct, and/or bad faith, Plaintiff has suffered damages including, without limitation, loss of insurance benefits, loss of use of insurance benefits, mental

anguish, emotional distress, costs related to the Lawsuit, consequential damages, and other actual damages.

62. USAA's actions were willful, wanton, and/or in reckless disregard for the rights of Plaintiff who is, therefore, entitled to an award of punitive damages.

63. Plaintiff is also entitled to an award of attorneys' fees against USAA.

WHEREFORE, Plaintiff prays for a declaratory judgment and reformation as set forth above, a monetary judgment against USAA for actual damages, punitive damages, and attorneys' fees, and such other relief as the Court deems proper.

CLAWSON FARGNOLI UTSEY, LLC

BY: /s/ Bert G. Utsey, III
Bert G. Utsey, III
SC Bar #10093
2 Amherst Street
Charleston, South Carolina 29403
(843) 970-2700
bert@cfulaw.com

August 18, 2022
Charleston, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-08-01971
JILL S. AMORUSO,	)	
	)	
	)	
Plaintiff,	)	<u>AMENDED ANSWER OF</u>
	)	<u>UNITED SERVICES</u>
v.	)	<u>AUTOMOBILE ASSOCIATION</u>
	)	<u>d/b/a USAA</u>
UNITED SERVICES AUTOMOBILE,	)	
ASSOCIATION d/b/a USAA,	)	
Defendant.	)	
_____	)	

The defendant United Services Automobile Association d/b/a USAA (USAA) answers the plaintiff's complaint as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted upon information and belief.
2. USAA admits only that it is a reciprocal interinsurance exchange organized under Texas law that is an unincorporated association but denies the remaining allegations in paragraph 2.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Answering paragraph 5, USAA would show that venue is a matter of law to be determined by the court and otherwise paragraph 5 is denied.
6. Answering paragraph 6, USAA would show that venue is a matter of law to be determined by the court and otherwise paragraph 6 is denied.
7. Answering paragraph 7, USAA refers to the insurance policies purchased by the plaintiff for the dates of coverage and the policy numbers and, to the extent the allegations in

paragraph 7 vary or contradict the dates of policies and the policy numbers, paragraph 7 is denied and otherwise paragraph 7 is denied.

8. Answering paragraph 8, USAA admits only that at the time of the plaintiff's accident referenced in paragraph 11 the policy provided certain coverages on six vehicles including a 2014 Nissan SUV, but USAA would show that liability and UIM coverage existed on only 4 vehicles at the time of the accident referenced in paragraph 11 and otherwise paragraph 8 is denied.

9. Answering paragraph 9, USAA admits only that in January 2017 the plaintiff's policy included liability coverage with limits of \$300,000 per person per accident for 4 vehicles, but 2 vehicles did not include liability coverage.

10. Answering paragraph 10, USAA admits the policy in effect in January 2017 provided UIM coverage on the 2014 Nissan SUV of \$300,000 per person per accident, that the policy provided that coverage on 3 other vehicles and that these coverages are listed in the policy but otherwise paragraph 10 is denied.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted.

13. Answering paragraph 13, USAA admits that, according to the jury's verdict in the plaintiff's case against Kaira Miller, the plaintiff's injuries were caused by the negligence of Miller.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted upon information and belief.

18. Answering paragraph 18, USAA admits the plaintiff claimed the damages caused by Miller exceeded \$100,000, that the plaintiff maintained Miller was an underinsured motorist

and that the plaintiff made an UIM claim under her policy with USAA but otherwise paragraph 18 is denied.

19. Paragraph 19 is admitted upon information and belief.

20. Answering paragraph 20, USAA admits only that during the lawsuit an email was sent to plaintiff's counsel which mistakenly stated there was \$1,500,000 in UIM coverage applicable to the plaintiff's claim but otherwise paragraph 20 is denied.

21. Answering paragraph 21, USAA admits the plaintiff submitted an offer of judgment of \$400,000 in connection with the plaintiff's UIM claim but otherwise paragraph 21 is denied.

22. Paragraph 22 is admitted and USAA would further show it made an offer of judgment of \$250,000 of UIM coverage which the plaintiff did not accept and otherwise paragraph 22 is denied.

23. Paragraph 23 is admitted.

24. Paragraph 24 is admitted.

25. Paragraph 25 is admitted.

26. Answering paragraph 26, USAA admits the policy's UIM coverage applied to the judgment resulting from the plaintiff's lawsuit up to the amount of UIM coverage provided by the policy but otherwise paragraph 26 is denied.

27. Answering paragraph 27, USAA admits that in response to the judgment it tendered \$1,200,000 in UIM coverage and an additional amount of \$79,920 and that this amount partially satisfied the judgment but otherwise paragraph 27 is denied.

28. Answering paragraph 28, USAA admits upon information and belief it represented that \$1,200,000 was the total of UIM coverage available under the policy for the plaintiff's UIM

claim as a result of the collision and that any previous representation to the contrary was in error but otherwise paragraph 28 is denied.

29. Paragraph 29 is admitted.

30. Answering paragraph 30, USAA incorporates its responses to paragraphs 1 – 29 as fully and effectually as if set forth verbatim.

31. Paragraph 31 is admitted.

32. Answering paragraph 32, USAA admits that as a class I insured under the policy the plaintiff was entitled to stack UIM coverage for each vehicle which included that coverage and to apply the stacked coverage to a judgment on the plaintiff's UIM claim, but otherwise paragraph 32 is denied.

33. Paragraph 33 is admitted.

34. Answering paragraph 34, USAA admits that apparently the plaintiff is claiming \$1,500,000 in total UIM coverage or, alternatively, \$1,800,000 in UIM coverage, but USAA denies the plaintiff is entitled to any more than \$1,200,000 in total UIM coverage and, therefore, paragraph 34 is denied.

35. Answering paragraph 35, USAA does contend the policy provides a total of \$1,200,000 in UIM coverage applicable to the plaintiff's judgment but otherwise paragraph 35 is denied.

36. Answering paragraph 36, USAA admits there is a disagreement as to the amount of UIM coverage applicable to the plaintiff's judgment, that an actual and justiciable controversy does exist and that it is proper for this court to issue a declaratory judgment action as to the amount of UIM coverage applicable under the plaintiff's policy to the plaintiff's judgment but otherwise paragraph 36 is denied.

37. Answering paragraph 37, USAA refers to the wording of the statute in paragraph 37 and denies that that statute and any other statute or case requires an offer of UIM coverage on vehicles such as campers and horse trailers which are not self-propelled.

38. Paragraph 38 is denied as the law does not require liability insurance or offers of UIM coverage on such vehicles.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Answering paragraph 41, USAA incorporates its answers to paragraphs 1 – 40 as fully and effectually as if set forth verbatim.

42. USAA admits paragraph 42.

43. Answering paragraph 43, USAA refers to the contract of insurance for the terms and conditions therein and, to the extent paragraph 43 contradicts or varies the provisions of the contract of insurance, paragraph 43 is denied.

44. Answering paragraph 44, USAA refers to the terms and conditions of the contract of insurance and, to the extent paragraph 44 varies or contradicts the terms of the contract of insurance, paragraph 44 is denied and otherwise paragraph 44 is denied.

45. Answering paragraph 45, USAA admits it investigated the plaintiff's claim and it made an offer of judgment to resolve that claim in an amount less than the total UIM limits applicable to the plaintiff's claim and USAA would further show the plaintiff made an offer of judgment to resolve her UIM claim for an amount less than the total UIM coverage limits but otherwise paragraph 45 is denied.

46. Answering paragraph 46, USAA refers to its offer of judgment in the plaintiff's case against Kaira Miller and otherwise paragraph 46 is denied.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied.

49. Paragraph 49 is denied.

50. Paragraph 50 is denied.

51. Answering paragraph 51, USAA incorporates by reference its answer to paragraphs 1 – 50 as fully and effectually as if set forth verbatim.

52. Answering paragraph 52, USAA denies the policy itself includes an implied covenant of good faith and fair dealing and would show that, instead, the duty of good faith and fair dealing is implied into the policy and otherwise paragraph 52 is denied.

53. Answering paragraph 53, USAA would show that which acts an insurer is prohibited from doing or is required to do under the implied covenant of good faith and fair dealing is a matter of law to be decided by the court and USAA would further show in response to paragraph 53 that it paid to the plaintiff all UIM benefits to which the plaintiff is contractually entitled under the policy.

54. Paragraph 54 is admitted.

55. Paragraph 55 is denied.

56. Paragraph 56 is denied and USAA would further show there is no contractual duty to pay UIM benefits until the insured obtains a judgment against the tortfeasor in excess of the tortfeasor's policy limits.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. Paragraph 59 is denied.

60. Paragraph 60 and all subparagraphs therein are denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. Paragraph 63 is denied.

64. Except as is specifically admitted, each and every allegation in the complaint and in the prayer of the complaint is denied.

FOR A SECOND DEFENSE

65. Any award of punitive damages under the facts of this case will violate the South Carolina and United States constitutions.

FOR A THIRD DEFENSE

66. It will be against public policy to require an insurer whose policy includes UIM coverage to pay the amount of its settlement offer to resolve the UIM claim as any such rule will impair the process of settlement negotiations on UIM claims.

FOR A FOURTH DEFENSE

67. Any representations of the amount of UIM coverage external to the policy itself merged into the contract of insurance and cannot vary or contradict the policy of insurance.

FOR A FIFTH DEFENSE

68. The parol evidence rule bars any modification of the contract of insurance.

FOR A SIXTH DEFENSE

69. Under section 38-77-160, cited in paragraph 37 of the plaintiff's complaint, USAA had a statutory right to defend the plaintiff's UIM claim and this statutory right cannot be abrogated by the actions pled in the plaintiff's complaint

FOR A SEVENTH DEFENSE

70. Statements of parties offered in the course of a judicial proceeding and relevant to that judicial proceeding are protected by an absolute privilege, and, thus, the allegations in paragraphs 59 and 60(g) cannot serve as the grounds for a bad faith cause of action.

WHEREFORE, having fully answered the complaint, USAA prays that the complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

Attorneys for USAA

March 15, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-01971

MOTION FOR PARTIAL
SUMMARY JUDGMENT

TO: THE DEFENDANT AND ITS ATTORNEY:

Pursuant to S.C.R.C.P. 56(a), Plaintiff hereby moves the Court for an Order granting judgment in her favor as a matter of law with respect to her First Cause of Action (Declaratory Judgment and Reformation).

Specifically, Plaintiff seeks an Order from the Court declaring that Defendant provides underinsured motorist (“UIM”) coverage under the subject insurance policy (the “Policy”) with limits of \$300,000 per person per accident applicable to the 2016 Montana and the 2007 Adams vehicles insured thereunder, reforming the Policy to include such coverage, and declaring that the Policy provides a total of \$1,800,000.00 in stacked UIM coverage for Plaintiff’s claim as a result of the subject collision.

In support of this motion, Plaintiff submits the following:

1. Under South Carolina law, motor vehicle insurer carriers such as Defendant must offer UIM coverage on all vehicles insured under motor vehicle policies providing liability insurance coverage. S.C. CODE ANN. § 38-77-160 (1976, as amended); *see also Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005).

2. The Policy provides liability insurance coverage.
3. The Montana and Adams vehicles are trailers that are insured under the Policy.
4. Trailers are considered “motor vehicles” under the automobile insurance code. S.C. CODE ANN. § 38-77-30(9) (1976, as amended).
5. The Policy did not provide UIM coverage for the Montana or the Adams.
6. USAA did not offer UIM coverage for the Montana or the Adams. *See* Defendant’s Responses to Plaintiff’s Requests for Production numbers 8-11.
7. When a motor vehicle insurer fails to make a meaningful offer of UIM coverage to an insured, the Court should reform the policy to include such coverage. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987).

This motion will be based on Defendant’s responses to Plaintiff’s discovery requests, the applicable law and rules of civil procedure, the arguments of counsel, and such other matters as may be provided to the Court prior to any hearing hereon.

CLAWSON FARGNOLI UTSEY, LLC

BY: /s/Bert G. Utsey, III
 Bert G. Utsey, III
 SC Bar #10093
 2 Amherst Street
 Charleston, South Carolina 29403
 (843) 970-2700
bert@cfulaw.com

January 23, 2023
 Charleston, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-08-01971
JILL S. AMORUSO,	)	
	)	
	)	
Plaintiff,	)	<u>DEFENDANT'S MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
v.	)	
	)	
UNITED SERVICES AUTOMOBILE,	)	
ASSOCIATION d/b/a USAA,	)	
Defendant.	)	
_____	)	

Pursuant to SCRCP 56 the Defendant moves for summary judgment on the Plaintiff's first cause of action for declaratory relief and for reformation of the contract of insurance.

The ground for this motion is that a 2016 Montana and a 2007 Adams, referenced in the Plaintiff's motion for summary judgment, are not motor vehicles within the meaning of chapter 77 of title 38 of the South Carolina Code and, as such, no liability or underinsurance motorist (UIM) coverage is to be provided or offered on the 2016 Montana or on the 2007 Adams, as these are not self-propelled vehicles and, instead, are towed behind a transporting vehicle.

Under section 38-77-140 of the South Carolina Code liability coverage, in certain minimum amounts, must be provided on a "motor vehicle." Section 38-77-30(9) defines a motor vehicle as a "self-propelled vehicle". Any trailers which fall within this definition must by virtue of this definition be "self-propelled." The Plaintiff's answer to the Defendant's interrogatory 12 states the 2016 Montana and the 2007 Adams are not self-propelled and, instead, are towed behind a transporting vehicle. Thus, the Montana and the Adams are not within the definition of "motor vehicle" in section 38-77-30(9).

Section 38-77-160 requires an offer of UIM coverage "up to the limits of liability coverage..." Where, as here, no liability coverage existed or was required, it follows that no offer of UIM coverage was required by law.

This motion is based upon the Plaintiff's responses to discovery, upon the statutes in Chapter 77 of Title 38 of the South Carolina Code, upon applicable case law and upon such other matters timely provided to the Court prior to any hearing.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

Attorneys for USAA

March 15, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-08-01971
JILL S. AMORUSO,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>DEFENDANT'S</u>
	)	<u>MEMORANDUM IN SUPPORT</u>
	)	<u>OF MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
UNITED SERVICES AUTOMOBILE,	)	
ASSOCIATION d/b/a USAA,	)	
Defendant.	)	
_____	)	

Both USAA and the Plaintiff have moved for summary judgment on the issue of whether an insurer is obligated to offer underinsurance motorist coverage (UIM) on non-self propelled vehicles such as horse trailers and campers. USAA believes no such duty exists, as explained in this memorandum.

FACTS

On January 7, 2017 the Plaintiff was in an accident with Kaira Miller. The Plaintiff was driving a 2014 Nissan. (Plaintiff's complaint paragraph 11) The Nissan and 5 other vehicles were insured with USAA. (Plaintiff's complaint paragraph 8) Four of the vehicles had UIM coverage. Two of the vehicles – a camper and a horse trailer referenced as a 2016 Montana and a 2007 Adams – were insured for property damage only. Neither of these vehicles had liability or UIM coverage. On neither of these vehicles did USAA offer UIM coverage. (USAA's response to plaintiff's request to produce, paragraphs 8 – 11) Neither of these vehicles were self-propelled. Instead, they were towed behind a transporting vehicle. (Plaintiff's answer to defendant's interrogatory 12, attached as Exhibit 1) Color photographs of the Adams – the horse trailer – are attached as Exhibit 2. The 2007 Adams is still insured with USAA and still does not have liability, UM or UIM

coverage. (Plaintiff's answers to defendant's interrogatories 17, 18) On neither the 2016 Montana nor the 2007 Adams did the plaintiff ever pay a premium for liability, UM or UIM coverage. (Plaintiff's answer to defendant's interrogatory 21).¹

THE ISSUE

Are insurance carriers required offer UIM coverage and provide liability and UM coverage on vehicles which are not self-propelled? This duty either exists, or it does not, and the parties have filed cross motions for summary judgment on this issue. In such cases, the issue is one of law for the court. *Meier v. Burnsed*, 882 S.E. 2d 863 (S.C. Ct. App. 2022); *Progressive Direct v. Groves*, 882 S.E. 2d 464 (S. C. 2022)

ARGUMENT

Section 38-77-160 requires insurers to offer UIM coverage "up to the limits of the insured liability coverage..." Section 38-77-140 requires liability coverage on a "motor vehicle." Section 38-77-30 (9) defines "motor vehicle" as every "self – propelled vehicle" including "trailers and semi-trailers designed for use with these vehicles..." Is undisputed neither the Montana nor the Adams were self-propelled vehicles.

In *Anderson v. State Farm Mutual Automobile Insurance Company*, 442 S.E. 2d 179 (S. C. 1994), the plaintiff argued a farm tractor was a motor vehicle. The court considered section 38-77-30 (7), now section 38-77-30 (9), and held a farm tractor does not come under the definition of motor vehicle because although it could be incidentally used on a highway it was not designed for use upon a highway. The same reasoning applies to the Plaintiff's camper and horse trailer.

Miller v. Aiken, 613 S. E. 2d 364 (S.C. 2005), is dispositive. In that case the Supreme Court considered whether, as here, an auto insurer which provided only non-liability collision and other

¹ The USAA policy is exhibit C to USAA's motion for summary judgment filed April 19, 2022. That motion concerns separate issues.

named perils coverage was required offer UIM coverage. In *Miller*, as in the present case, the plaintiff argued an automobile insurer which provided only collision coverage was required to offer UIM coverage. The Supreme Court rejected this argument and stated "an automobile insurer providing only collision coverage to its insured should not be required to make a meaningful offer of UIM." 613 S. E. 2d at 367. The Supreme Court went on to state "requiring an insurer providing only collision insurance to make a meaningful offer of UIM would lead to a result so plainly absurd that it could not possibly have been intended by the legislature." 613 S. E. 2d at 367

More recently, in *Jack's Custom Cycles v. South Carolina Department of Revenue*, 885 S. E. 2d 433 (S. C. Ct. App. 2023), the court defined "motor vehicle" as a vehicle which is self-propelled and a vehicle "operated by power developed within itself..." The court cited the American Heritage College dictionary definition of motor vehicle as a "self – propelled wheeled conveyance, such as a car or truck that does not run on rails." The horse trailer and the camper do not come within this definition.

CONCLUSION

Because UIM coverage need not be offered on vehicles such as the Plaintiff's camper and horse trailer USAA is entitled to summary judgment on the Plaintiff's causes of action for declaratory relief and for reformation of the contract of insurance.²

[Signature Page Follows]

² When an insurer is required to make a commercially reasonable offer of UIM coverage and fails to do so, the remedy is to reform the policy to include UIM coverage up to the liability limits. *Croft v. Old Republic Insurance Company*, 618 S. E. 2d 909 (S. C. 2005) Here, however, the 2 vehicles in question had no liability coverage nor were they required to have this coverage.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

Attorneys for USAA

July 12, 2023

Charleston, South Carolina

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS NONJURY
<u>COUNTY OF BERKELEY</u>	)	
JILL S. AMORUSO,	)	TRANSCRIPT
	)	
PLAINTIFF,	)	OF
	)	
vs.	)	RECORD
	)	
UNITES STATES AUTOMOBILE	)	
ASSOCIATION D/B/A USAA,	)	
	)	2022-CP-08-1971
<u>DEFENDANT.</u>	)	

July 13th, 2023

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, Judge.

A P P E A R A N C E S:

BERT G. UTSEY
ESQ.
Attorney for the Plaintiff

CHARLES R. NORRIS
ESQ.
Attorney for the Defendant

Transcribed by Pamela E. Green, from
WebEx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: And then I have Mr. Utsey and Mr. Norris
4 present for the eleven o'clock. It's a few minutes early
5 but I'm happy to start if you-all are ready or we can wait.

6 MR. UTSEY: I'm ready when you are, Your Honor.

7 THE COURT: All right. Mr. Norris, are you there?

8 MR. NORRIS: Okay. It, it does help to read the
9 prompts on the screen --

10 THE COURT: Yeah, start video, unmute. There we go.
11 Perfect.

12 MR. NORRIS: -- at the bottom of the page.

13 Your Honor, before Mr. Utsey argues his motion, his
14 motion is the first one filed, I, I do have a little
15 housekeeping thing which is this. The -- his motion was
16 filed in January and, and they just go by I guess the oldest
17 one to schedule what's gonna be heard.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. NORRIS: We filed a motion which is really the flip
20 side of Mr. Utsey's motion.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. NORRIS: So they're really cross-motions for
23 summary judgment.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. NORRIS: Our motion on that issue was filed March

1 the 15th and we filed another motion on another issue in
2 April.

3 THE COURT: Okay.

4 MR. NORRIS: So, Mr. Utsey has agreed that we can or
5 Your Honor can, if it's acceptable, hear all of the motions
6 today. So I don't know if that's acceptable to Your Honor
7 or not. But I think, in the interest of judicial economy,
8 it's the best way to go.

9 THE COURT: All right.

10 MR. UTSEY: Your Honor, I---

11 THE COURT: Um.

12 MR. UTSEY: I agree that the --

13 THE COURT: I'm happy to do it.

14 MR. UTSEY: -- first filed motion---

15 THE COURT: Happy to do it.

16 MR. UTSEY: ---for partial summary judgment by
17 Mr. Norris is, as he characterizes it, the flip side of my
18 motion. I think that those two motions present a pure legal
19 issue that, that you're gonna rule with the plaintiff or the
20 defendant. And so it makes sense to hear those two
21 together.

22 After reviewing his most recent motion, which relates
23 to a separate cause of action, I believe that that's one
24 that requires additional discovery and I, I probably earlier
25 jumped the gun by saying I thought it was ripe. But had I

1 realized that, I probably would of done a Rule 56(f)
2 affidavit that, that we haven't conducted any depositions.
3 It goes to the question of whether the insurance company
4 acted in bad faith and, at this stage in the discovery, we,
5 we think that would be premature to address that---

6 THE COURT: All right.

7 MR. UTSEY: ---motion.

8 THE COURT: Well, can we agree that I'll hear the
9 cross-motions for summary judgment?

10 MR. UTSEY: Yes, that's as to the declaratory judgment.
11 They're, they're two causes of action. One's a declaratory
12 judgment on a pure legal issue and I do agree that those
13 should be heard today. The second cause of action is---

14 THE COURT: I'm happy to.

15 MR. UTSEY: ---for bad faith.

16 THE COURT: Oh, okay. Bad faith.

17 Yeah, we won't address that one yet. That's the one
18 you're -- it's a little early you think?

19 MR. UTSEY: And, and, Charles, I apologize for my
20 confusion on that. I -- when I responded earlier, I was
21 thinking only of the -- on the legal issue, the DJ action
22 issue, and, and neglected to look back and see that there
23 was this also motion on the bad faith cause of action. So
24 that was my mistake.

25 MR. NORRIS: Well, that's okay. Just do this for me,

1 skip.

2 why don't you let me know what discovery you think you
3 need to take to defend against the -- a motion for summary
4 judgment. Actually they're, they're three causes of action.

5 The first cause of action is for declaratory judgment
6 relief and reformation of the policy. The second cause of
7 action is for breach of contract. The third and final cause
8 of action is, is for bad faith.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. NORRIS: And we had filed cross-motions for summary
11 judgment on the first cause of action, which is breach of
12 contract or for reformation of the policy. So, we'll argue
13 those cross-motions for summary judgment today, and going
14 forward with -- Mr. Utsey can let me know what discovery he
15 feels he needs to take in order to make our motion for
16 summary judgment on bad faith ripe for a hearing.

17 MR. UTSEY: That's fair.

18 THE COURT: Okay. Well, I'm happy to do it. Normally
19 they kind of frown on that, you know, hearing off-docket
20 motions. But I -- you're in luck because -- mostly because
21 all my other eleven o'clocks have fallen off. So, I got
22 time.

23 So tee it up, gentlemen. I'm happy to hear from you.

24 MR. UTSEY: Thank you, judge, and it's -- this is an
25 interesting legal issue and it's, and it's discrete and I

1 think discrete straightforward.

2 By way of background, you may recall this case cause I
3 understand you were the trial judge in the tort action.
4 Chris Romeo associated me to handle this action. But Chris
5 had represented the plaintiff in a motor vehicle collision
6 suit and I think John Grantland was defense counsel and that
7 resulted in a jury verdict of I think 2.5 million-dollars
8 some time ago.

9 The present action deals with the fact that the amount
10 of coverage USAA says it has was inadequate to pay for the
11 full judgment and, therefore, we are seeking a
12 declaratory -- putting aside the breach of contract and, and
13 bad faith causes of action for a moment. We're seeking a
14 declaratory judgment that the policy provides more
15 underinsured motorist coverage than USAA now concedes that
16 it provides and, and it's as simple as this, Your Honor.

17 The policy at the, at the time of the collision insured
18 a number of vehicles and among those vehicles were four
19 traditional automobile or truck type vehicles and two were
20 trailers.

21 Now, the insurance code in South Carolina defines motor
22 vehicles as including trailers or semitrailers that are
23 designed for use with self-propelled vehicles. And so
24 there's no question that a trailer is a motor vehicle even
25 though we might not commonly say motor vehicle when

1 referring to a trailer that's not self-propelled.

2 The Legislature has, in 38-77-30 in Subsection 9,
3 defined trailers as "motor vehicles for purposes of the
4 insurance code." The insurance code also goes on to say
5 that automobile insurance includes all types of insurance
6 for motor vehicles. Not just liability insurance. But
7 under 38-77-30(1), it includes physical damage insurance
8 such as collision coverage.

9 The dispute comes to us -- comes to -- before you today
10 because, when USAA issued this policy, it provided liability
11 and underinsured coverage, among other coverages, on the
12 four what I'll call traditional motor vehicles. But with
13 respect to the two trailers, it only provided collision
14 coverage and it is our position that USAA was required to
15 offer underinsured coverage on those trailers as well. And
16 because it admits, and this is in their responses to our
17 request for production, it admits it did not make an offer
18 on those trailers. The, the Court must, therefore, reform
19 the policy to include underinsured coverage for each of
20 those two motor vehicles equivalent to the liability
21 coverage on the policy.

22 Now, in fairness to USAA, its position is, because it
23 didn't write liability coverage on the trailers, it was not
24 required to offer underinsured coverage. And so that's
25 really the question before the Court is did USAA have an

1 obligation to offer underinsured coverage under these
2 circumstances.

3 Now, the -- as you probably know, Your Honor, the
4 determinative statute on that topic is Section 38-77-160
5 which says automobile insurance carriers shall offer
6 underinsured motorist coverage, et cetera, et cetera. And
7 so the question here is, for purposes of that statute, is
8 USAA considered a "automobile insurance carrier."

9 The South Carolina Supreme Court has addressed this in
10 a case called Miller versus Aiken and, ironically, it's the
11 case that we cited in our motion and, and that the defense
12 is relying on too. So I think a lot of the Court's work
13 will be divining what the Miller case stands for. This is a
14 2005 case from the Supreme Court and it presented a very
15 similar question to what is before the Court in our case.

16 In the Miller case, there was a vehicle that did not
17 have underinsured motorist coverage. That vehicle was
18 covered by two separate insurance policies, two different
19 insurance carriers actually. One insurance carrier provided
20 the liability coverage on the policy -- rather on the
21 vehicle.

22 The second insurance carrier wrote a separate policy
23 for only collision coverage and the plaintiff, in that case,
24 argued that that second insurance company, the one that
25 provided the collision coverage, should also be required to

1 provide underinsured coverage because it had failed to offer
2 underinsured coverage.

3 So, the Court says -- the question before us, it was
4 based on a certified question from the District Court, is an
5 automobile insurer which provides only non-liability
6 collision and other named perils coverage, a "automobile
7 insurance carrier" within the scope of 38-77-160 and thus
8 required to offer underinsured motorist coverage. It goes
9 on -- and, in that case, the plaintiff, as we do, argued to
10 the Court that an automobile insurer which provides only
11 collision insurance is a "automobile insurance carrier"
12 under the definitional provisions that I quoted to you a
13 moment ago in the code and the Court agreed.

14 The Court said but the question we must decide is
15 whether an insurer which provides only non-liability
16 collision and other named peril coverage constitutes an
17 automobile insurance carrier under Section 38-77-160 and,
18 ultimately, the Court held that, even though the plaintiff
19 was correct that the insurer that provided the collision
20 coverage is an "automobile insurance carrier," it was not
21 required in that case to comply with the mandatory offer
22 provisions of 38-77-160 and this is what's critical, Your
23 Honor.

24 The Court held this, and I, I -- I'll quote from the
25 case. "However, we conclude an automobile insurance

1 carrier -- insurer providing only, and they put the word
2 only in bold type, collision insurance to its insured should
3 not be required to make a meaningful offer of UIM coverage."
4 And that's important, Your Honor, because that case is a
5 little different than ours for a couple of reasons.

6 One, the vehicle involved in that case, the, the
7 subject vehicle for the -- is the question of UIM coverage
8 had liability coverage. It was just through a different
9 insurance carrier. Whereas here, USAA didn't provide
10 liability insurance coverage on either of those two
11 vehicles.

12 Secondly, it's different because the Court's holding in
13 Miller was conditioned on the fact that the second insurance
14 company provided, as it stressed, only collision insurance
15 under its policy and that was the basis for finding that
16 38-77-160 was not triggered. Here, as, as you know, USAA
17 did provide liability insurance coverage under the, under
18 the subject insurance policy.

19 Now, the other part about that that's important, Your
20 Honor, is this. We go how did we end up in a situation
21 where there was no liability coverage on either of these
22 trailers.

23 In the Miller case, that was clear because, in the
24 Miller case, another insurance company provided that
25 liability coverage. Here, nobody did and that's important

1 because, if you look at 38-77-140, which is the provision of
2 our insurance code that deals with mandatory liability
3 coverage, the Legislature says an automobile insurance
4 policy may not be issued or delivered in this, in this state
5 unless it contains a provision insuring the persons defined
6 as insured against loss for liability imposed by loss for
7 damage. In other words, liability insurance coverage, as
8 Your Honor knows, is mandatory and the Miller Court found
9 that an insurer like USAA is an automobile insurer and it
10 issued an automobile insurance policy.

11 So, frankly, this policy should of also had liability
12 coverage on these two trailers. That's really irrelevant to
13 this case cause nothing triggers that liability coverage.
14 But it only comes into play because, to the extent USAA
15 wants to try and excuse its failure to offer underinsured
16 coverage on the basis that there's no liability coverage,
17 the fact remains it should of provided liability coverage on
18 those trailers to begin with and then there wouldn't have
19 been the question before the Court now about whether it had
20 a duty to offer.

21 So, to bring all of that full circle, Your Honor, our
22 position is simple. The trailers are vehicles. This is an
23 automobile insurance policy. USAA is an automobile
24 insurance carrier that is subject to 38-77-160. 38-77-160
25 required it to offer underinsured motorist coverage on all

1 these vehicles. It admittedly failed to do so on the two
2 trailers, which are also considered motor vehicles, and,
3 therefore, the Court should declare that those trailers have
4 UIM coverage equivalent to the liability coverage that is on
5 the policy and should reform the policy to include that
6 coverage.

7 Thank you.

8 THE COURT: All right. Mr. Norris, happy to hear from
9 you.

10 MR. NORRIS: Thank you, Judge McCoy.

11 Yesterday we filed a, a memorandum in support of this
12 motion. If it's not available to the Court, I assume it is,
13 we can, we can certainly send that in a, in a separate
14 email. That memorandum attached photographs of one of these
15 vehicles, which is the horse trailer.

16 Now, it's -- a lot of -- you know, these are
17 cross-motions for summary judgment, which, of course,
18 presents a question of law for the Court and the facts are
19 really undisputed. It is undisputed, from the plaintiff's
20 answers to USAA's interrogatories, that these were not
21 self-propelled vehicles and the definition of motor vehicle
22 in 38-77-39 says it means every self-propelled vehicle which
23 these are not.

24 So, you can't separate UIM coverage from the concept of
25 liability coverage because if you go to 38-77-160 that says

1 insurance carriers have to offer UIM coverage up to the
2 liability limits. So, it has to be the plaintiff's position
3 that these non self-propelled vehicles not only must have
4 UIM coverage but they also have to have liability in UI --
5 in UM coverage which are mandatory coverages.

6 Now, I think that will come as a shock and a surprise
7 to people who have horse trailers just sitting out in
8 pastures as depicted in the pictures we've attached to the
9 brief we filed yesterday cause what the plaintiff is saying
10 is that you have to have liability in UM coverage on non
11 self-propelled vehicles. So, it really kind of boils down
12 to the question of, of whether these are self-propelled.

13 Now, it's interesting that Mr. Utsey would say Miller
14 versus Aiken is different which he just said. If it's
15 different, that raises the question of well, why did you
16 cite it in your motion. The motion of the plaintiff says
17 you have to offer UIM coverage on all vehicles insured under
18 motor vehicle policies providing liability coverage. That's
19 what the plaintiff's motion says. So, that, again, goes
20 back to you have to tie UIM to liability coverage.

21 And so what they're saying is not only do you have to
22 have UIM coverage or offer it on non self-propelled
23 vehicles, but you have to have liability and UM coverage
24 also and the remedy where an insurance carrier has a duty to
25 make an offer of UIM coverage and does not make a

1 commercially offer of UIM coverage is to reform the policy
2 up to the liability limits. Here, however, there were no
3 liability limits and there still aren't. And, and the horse
4 trailer is still insured with USAA and they've never paid a,
5 a premium for that.

6 Now, they're two cases that are cited in the brief that
7 we filed yesterday. In addition to the Miller versus Aiken
8 case, we cited Anderson versus State Farm which is at 442
9 S.E.2d 179. In that case, the plaintiff argued a farm
10 tractor was a motor vehicle and the Court, in that 1994
11 case, considered the predecessor to 38-77-90, Subparagraph
12 9, which was 38-77-37, and they held a farm tractor did not
13 come under the definition of a motor vehicle because
14 although it could be incidentally used on a highway, it was
15 denied -- not designed for use on a highway and that
16 reasoning applies to both the camper and the horse trailer
17 neither of which are going anywhere unless they are towed
18 behind a self-propelled vehicle and, again, the plaintiff---

19 THE COURT: But, but I -- and I don't want to cut you
20 off, Mr. Norris. But I'm, I'm looking at -- I mean let's
21 just look at Subsection 9 of 38-77-30 in the definition
22 section of the insurance code and---

23 MR. NORRIS: Uh-huh. (Affirmative).

24 THE COURT: ---and I agree it's -- the first part says
25 motor vehicle means every self-propelled vehicle which is

1 de -- designed for use upon a highway, including trailers
2 and semitrailers designed for use with these vehicles.

3 So---

4 MR. NORRIS: And the---

5 THE COURT: ---what about that?

6 MR. NORRIS: Well, that applies to 18 wheeler, 16
7 wheeler, or, or whatever. I think it deals with that
8 situation. But, again, this is a question of statutory
9 interpretation because the statute---

10 THE COURT: Right.

11 MR. NORRIS: The statute---

12 THE COURT: I mean you've mentioned the tractor and
13 that there's a -- there's clearly a -- an exception for --
14 let's see. Farm -- except traction engines, rolled -- road
15 rollers, farm trailers.

16 well, what's a horse trailer?

17 That's a farm trailer.

18 MR. NORRIS: Well---

19 THE COURT: Is that right?

20 MR. NORRIS: I, I don't think -- a, a horse trailer
21 it's not used in farming. It's used to transport horses.
22 A, a farm tractor is like what you would, you would plow
23 with.

24 The other case, Your Honor, there's a, there's a
25 case---

1 THE COURT: Well, no, I mean that would play into your
2 argument, Mr. Norris, if you -- like look -- y'all just look
3 with me. Let's, let's all look at it together.

4 MR. NORRIS: Well, the other---

5 THE COURT: Pull it up. Motor vehicle means every
6 self-propelled vehicle included trailers and semitrailers
7 designed for use with these vehicles. That -- that's
8 probably the Legislature contemplating 18 wheelers. I'm
9 with you.

10 MR. UTSEY: If I may, I'm, I'm trying to---

11 THE COURT: But except---

12 MR. UTSEY: ---share something.

13 THE COURT: But except---

14 MR. NORRIS: And -- excuse me.

15 May I finish?

16 THE COURT: ---engines.

17 MR. UTSEY: May I finish my argument please?

18 THE COURT: Are you talking to me or --?

19 MR. NORRIS: No, I was talking to Skip.

20 MR. UTSEY: I'm sorry. I was just putting it on the
21 screen so we could all follow along with the judge.

22 THE COURT: Yeah, I'm just asking everybody -- I'm
23 just -- I, I -- I'm the one that's interrupting you, Mr.
24 Norris.

25 MR. NORRIS: Okay.

1 THE COURT: So, if you're frustrated, be frustrated
2 with me. I just want to make sure---

3 MR. NORRIS: Yeah, you can interrupt me.

4 THE COURT: I just want to make sure that we're all
5 looking at the, the same statute section together.

6 MR. NORRIS: Yeah.

7 THE COURT: You are---

8 MR. NORRIS: Yeah, we are, and let me add one thing,
9 Judge McCoy, that is cited in the case -- in the brief we
10 filed yesterday. Earlier this year there's a case that came
11 out that actually defined motor vehicle and it's Jack's
12 Custom Cycles versus the South Carolina Department of
13 Revenue. It's a 2023 case and it defines "motor vehicle" as
14 a vehicle which is self-propelled and a vehicle "operated by
15 power developed within itself" and it actually cites the
16 American Heritage College Dictionary definition of a motor
17 vehicle as a "self-propelled, wheeled conveyance such as a
18 car or truck that does not run on rails."

19 So, we have the most recent authority from the
20 Appellate Courts defining a motor vehicle and, and I, I
21 guess that the way that you look at this thing, it, you
22 know, Subsection 9 says it means every self-propelled
23 vehicle and then it goes on to say -- well, it includes
24 trailers and semitrailers designed for use with those
25 vehicles.

1 So, you know, that -- I think that's a, a question of
2 statutory interpretation, which is a question of law for the
3 Court about whether that applies to the type of vehicles in
4 this case and I will say this. I, I think that USAA, in not
5 offering UIM coverage and not providing liability and UM
6 coverage on these types of vehicles, is hardly alone. I
7 suspect every other insurance company doing business in this
8 state does the same thing. I don't know that but I have a
9 feeling that that's the case.

10 So, whichever way, way the Court rules, it could have
11 a, a significant impact on automobile insurance in this
12 state. So --.

13 THE COURT: Yeah, I agree with you. I'm just -- if, if
14 you could, take a look with me, just because I want to make
15 sure that I'm, I'm reading this right, it's Subsection 9
16 because I think this goes to your argument, Mr. Norris,
17 which I think you thought earlier I was sort of playing
18 devil's advocate with you. I, I wasn't.

19 I think a horse trailer is a farm trailer and the
20 statute says but excepting traction engines, road rollers,
21 farm trailers, tractor train, train -- tractor, cranes,
22 power shovels, and well drillers and that's---

23 MR. NORRIS: Well, that---

24 THE COURT: That participle phrase between the commas
25 there. So, so, I think that goes to your argument. I don't

1 think that, you know, I don't think a farm trailer, a horse
2 trailer is a motor vehicle but --.

3 MR. NORRIS: Well, the Court is already held in the, in
4 the Anderson case that a farm --

5 THE COURT: Right.

6 MR. NORRIS: -- tractor is not a motor vehicle.

7 That's---

8 THE COURT: Right.

9 MR. NORRIS: ---in Anderson versus State Farm and
10 certainly the, the camper is not a farm trailer because of
11 those are the, those are the two at issue here. It's a --
12 it's a camper that has to be towed by---

13 THE COURT: One is a -- okay. So, I thought we had two
14 horse trailers. So, I misheard that.

15 MR. NORRIS: No, it's, it's a -- one is a camper and
16 one is a horse trailer. I -- we asked for pictures of the
17 two of them. I guess they don't have pictures of the camper
18 anymore cause I don't think they have it anymore. But they
19 did provide pictures of the horse trailer and those pictures
20 are attached to the brief that we filed yesterday.

21 THE COURT: Okay. All right. Well, I, I mean -- I was
22 an equestrian at one point in time. I, I, I think that a
23 horse trailer, a horse trailer's a farm trailer. But Mr.
24 Utsey disagrees with me on that and I understand. To me, a
25 horse trailer is much like a trailer used to move cattle or

1 pigs or chickens or any other sort of, you know, farm type
2 animal. But I'm happy to hear from you in response on that
3 and obviously I didn't -- I thought we were talking about
4 two horse trailers. I didn't know one was a camper.

5 So, at any rate, go ahead.

6 MR. NORRIS: But I don't have anything else, else to
7 add. I think it's a -- it, it really boils down to
8 statutory interpretation by the Court and there are cases,
9 again, the case cited by Mr. Utsey in their motion and the
10 two other cases that are, that are cited in the brief that
11 we filed yesterday that I think offer the Court guidance on
12 this issue.

13 The -- Mr. Utsey quoted from the Miller versus Aiken
14 case and, and, in that case, the Supreme Court rejected the
15 argument and said an, an automobile insurer provided only
16 collision coverage to its insured should not be required to
17 make a meaningful offer of UIM and that's the case we have,
18 have here that, that these two vehicles, the camper and the
19 horse trailer, only had collision coverage.

20 So, if you accept the proposition that the, excuse me,
21 the, the horse trailer is within the definition of motor
22 vehicle in 38-77-30(9), then that means you have to go to
23 the next step which, which means that, on that vehicle, you
24 have to have liability coverage and UM coverage. But you
25 can't -- because you can't have UIM without liability

1 coverage, which then goes to the next issue.

2 well, if there's no liability coverage, and an insurer
3 is required to make a commercially reasonable offer of UIM
4 coverage and does not, the remedy is to reform the policy up
5 to the liability limits. Here there were no liability
6 limits.

7 So, if we're gonna follow this thread of reasoning to
8 its, its ultimate conclusion proposed by Mr. Utsey, then
9 these vehicles are going to have to be reformed to include
10 liability and UM coverage and I'm not sure that -- well,
11 I'm, I'm, I'm pretty confident the Legislature never
12 intended that and, and I don't think the people in this
13 state storing horse trailers or using campers are going to
14 be enthusiastic about being forced to buy liability and UM
15 coverage on non self-propelled vehicles. But it -- if, if
16 you -- if you accept the plaintiff's proposition, you have
17 to take it all the way. You can't take it halfway and
18 that's where you end up.

19 THE COURT: All right. Mr. Utsey, you want to respond?

20 MR. UTSEY: Thank you, Your Honor.

21 Yeah, just briefly.

22 First of all, with respect to the case that Mr. Norris
23 cited, Jack's Custom Cycles, it's in his brief, the case is
24 wholly unrelated to the subject matter before the Court
25 here. That case was a case involving the sales tax

1 statutes. As you know, when you buy a motor vehicle, they
2 cap your sales tax at \$300.00. And so the question wasn't
3 trying to interpret whether that same limitation on sales
4 tax applies to ATVs and UTVs.

5 It was not a Title 38 insurance case. It did not cite
6 any section -- Title 38 section's we're dealing with. It
7 cited tax code sections. So the context is entirely
8 different and certainly that Court's decision could not be
9 used to alter the clear legislative -- the wording of the
10 legislation here that is at issue.

11 With respect to Mr. Norris' position that this policy
12 doesn't provide liability coverage, I was a little surprised
13 and, in our complaint, we alleged, in Paragraphs 8 and 9,
14 that the policy insured six motor vehicles including a 2014
15 Nissan SUV. Paragraph 9, among other coverages, the policy
16 provided liability insurance coverage with limits of
17 \$300,000 per person per accident and then USAA's answer,
18 Paragraph 8, it -- USAA admits only at the time of the
19 plaintiff's accident the policy provided certain coverages
20 on six vehicles including the Nissan SUV but USAA would show
21 liability and UIM coverage existed on only four vehicles at
22 the time of the accident and otherwise denies Paragraph 8.

23 Paragraph 9. USAA admits only in January of 2017 the
24 plaintiff's policy included liability coverage with limits
25 of \$300,000 per person per accident for four vehicles but

1 two vehicles did not include liability coverage. That's
2 important because the language the Court used in the Miller
3 case talks about an insurer that provides only collision
4 coverage on its policy and I think what USAA would like in
5 this case is now to disclaim the fact that it issued a
6 policy with liability insurance coverage and act as if it
7 wrote separate policies on each of these vehicles. It
8 didn't.

9 This is an insurance carrier who did provide more than
10 collision coverage. It provided liability coverage.

11 So, using the language of the statute and of the Miller
12 case, this is a policy providing liability coverage.
13 Therefore, it's a policy where they should of offered
14 underinsured coverage and, similarly, as I said earlier, the
15 fact that the -- there's an absence of liability coverage
16 should not be dispositive because there should of been
17 liability coverage. I know Mr. Norris wants to sort of
18 sound the alarm that the sky is falling, that if, if a
19 trailer that the Legislature has defined as a motor vehicle
20 has to have liability coverage is suddenly going to turn the
21 world upside down, I, I don't know that that's the case.

22 I've had plenty of cases wherein trailers are insured
23 separately on insurance policies as different vehicles and
24 that they are covered for liability coverage. It, it
25 happens all the time in my experience.

1 Finally, Your Honor raises a good question about the
2 definitional section, 38-77-30 Subsection 9 with respect to
3 farm trailer, and as Mr. Norris has said, one of these
4 trailers clearly would not be a farm trailer because it's,
5 you know, it's more in the nature of an RV type trailer.

6 But with respect to the horse trailer, I would submit
7 that that is not a farm trailer in that sense. A, a farm
8 trailer is a trailer that's used on the farm to transport,
9 you know, cargo, whether it be crops or, or maybe livestock
10 on the farm itself. This is an over the road trailer that's
11 used to transport horses for horse shows and other
12 equestrian events. It's not in the nature of simply being a
13 farm trailer and I think that fact is recognized by the fact
14 that they insured it for collision coverage.

15 If, if you just got a, a farm trailer, you know,
16 something you're towing around your farm to haul crops
17 around or, or maybe cattle around or something, you don't
18 need collision coverage on that. You need collision
19 coverage cause you're on the road potentially encountering
20 other vehicles that are gonna cause a collision and,
21 therefore, need that coverage for the vehicle.

22 So, the fact that it's insured for collision coverage,
23 in and of itself, shows that it is an over the road type
24 trailer clearly within the definitional provision of --
25 definition of, of 38-77-30 dash -- Subsection 9 for motor

1 vehicle.

2 Thank you.

3 MR. NORRIS: And let me just make one more point.

4 The policy says what the policy says and there's no
5 dispute about that and the plaintiff has admitted the
6 genuineness and authenticity of the policy.

7 This is one policy which provided coverage on a total
8 of six vehicles. Four of the vehicles, which were
9 self-propelled vehicles, had liability coverage. Two of the
10 vehicles, the camper and the horse trailer, did not have
11 liability coverage, did not have UM coverage, did not have
12 UIM coverage. They only had property coverage.

13 Now, I can understand why you may want to insure a
14 camper just sitting it in your driveway or a horse trailer
15 sitting out in a field for property coverage because it is
16 entirely conceivable that you could have a hurricane that
17 might -- a tree might fall on it or who knows. You might
18 have a wildfire that, that might damage it. What those
19 vehicles do need to be insured for is the policy -- the
20 possibility of damage outside the context of an automobile
21 accident.

22 So, it, it certainly makes sense you'd want to insure
23 those vehicles for property damage. But how you would need
24 liability coverage -- remember, liability coverage is you,
25 the insured, do something wrong.

1 okay. I don't know how pulling a horse trailer or a
2 camper behind a self-propelled vehicle, I don't know how
3 that's gonna be the cause of an accident. I don't know how
4 you -- how do you negligently operate a non self-propelled
5 vehicle?

6 It -- the thing is it doesn't make sense and that's the
7 problem here with the plaintiff's argument is, is, is it
8 just, when you distill it to its essence, it does not make
9 sense. So, you know, the policy says what the policy says.
10 There's no dispute about that.

11 MR. UTSEY: I had more than one case, Your Honor, where
12 people have improperly connected a trailer to a vehicle and
13 the two have separated in movement and the trailer has
14 careened off and caused damage to a person or an -- another
15 vehicle and that will be a basis for a liability claim
16 against the owner of the trailer or the operator of the
17 vehicle that was attached to the trailer. So, it, it --
18 there are some areas where liability coverage is triggered.

19 They're also instances, and I just litigated a case in
20 the Fourth Circuit involving questions like this, where you
21 park a trailer. So you park it on a hill and you don't
22 adequately chock the wheels or otherwise stabilize it and it
23 rolls down the hill and causes damage. That's another basis
24 for liability.

25 So, they're -- there are frequently scenarios where

1 trailers can cause liability though.

2 MR. NORRIS: That would not be an automobile accident.
3 But -- you know, if a trailer -- you know, the brake fails
4 and it's parked on a hill and it falls down, I don't, I
5 don't think that's a -- that's an automobile accident but I
6 don't know what else to say. I think Mr. Utsey and I have
7 both stated our---

8 THE COURT: I think you have too.

9 MR. NORRIS: ---positions.

10 MR. UTSEY: Well, I agree.

11 THE COURT: I think you have.

12 It's an interesting, it's an interesting -- you know,
13 I, I see both sides. So -- and I -- I'm -- thank you for
14 your arguments on both sides.

15 It's an interesting question of interpretation and I
16 look forward to reading your memos that you wrote and
17 hopefully get a -- hope to get a, a decision one way or the
18 other so that you can move on to the next level sooner
19 rather than later.

20 All right. If I need anything else from your offices
21 I'll certainly let you know and thank y'all very much.

22 MR. UTSEY: Yes, Your Honor. To be clear, I didn't
23 submit a memorandum but we did, in our motion, sort of---

24 THE COURT: That's fine, yeah.

25 MR. UTSEY: --- (indiscernible).

1 THE COURT: And that's fine. Yeah, that's---
2 MR. UTSEY: And I'm happy to submit anything else the
3 Court would like if you---
4 THE COURT: Yeah, if we need it we'll let you know.
5 But I, I think that will be sufficient.
6 MR. UTSEY: Thank you.
7 THE COURT: All right. Y'all take care.
8 MR. NORRIS: Thank you, Judge McCoy.
9 THE COURT: Good to see y'all.
10 MR. NORRIS: Thank you.
11 THE COURT: Absolutely.
12 MR. UTSEY: Thank you.

13
14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-08-01971
JILL S. AMORUSO,	)	
	)	
	)	
Plaintiff,	)	<u>DEFENDANT’S RESPONSES</u>
	)	<u>TO PLAINTIFF’S FIRST</u>
v.	)	<u>REQUEST FOR PRODUCTION</u>
	)	
UNITED SERVICES AUTOMOBILE,	)	
ASSOCIATION d/b/a USAA,	)	
Defendant.	)	
_____	)	

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant United Services Automobile Association (“USAA”) responds to the Plaintiff’s First Request for Production as set forth below.

REQUESTS

1. A certified copy of the Policy.

RESPONSE: Attached is a certified copy of the policy in effect at the time of the plaintiff's accident.

2. All documents (written, electronic, or otherwise) created, modified, or received by any adjuster, claims representative, supervisor, or other employee or independent contractor of USAA who handled, supervised, or otherwise performed work on Plaintiff's UIM claim as described in Plaintiff's Complaint, with the exception of any attorney-client communications.

RESPONSE: Attached is the claim file marked USAA_Amoruso_0001 through USAA_Amoruso_0648. A privilege log is set forth in response to plaintiff's interrogatory 3.

3. To the extent USAA is asserting a defense based upon advice of counsel, all documents related to communications between USAA and counsel that would be responsive to request number 2 above but for the attorney-client communications exception stated therein.

RESPONSE: In defense of the plaintiff's UIM claim USAA communicated with its attorney defending the plaintiff's UIM claim, and those written communications are set forth in a privilege log. USAA is not, however, relying upon advice of counsel in defense of this lawsuit against USAA.

4. All demonstrative evidence upon which USAA may rely at trial.

RESPONSE: USAA objects to paragraph 4 because demonstrative evidence USAA may rely upon at trial is a matter of trial strategy and as such is protected from discovery by SCRCP 26 (b)(3).

5. All documents identified in USAA's Answers to Interrogatories.

RESPONSE: Attached are the documents identified in USAA's answers to the plaintiff's interrogatories.

6. All documents, electronic or otherwise, created or modified by any adjuster or other USAA representative who handled, supervised, or participated in any coverage decisions with respect to the Policy.

RESPONSE: To the extent such documents exist, they are included in claim file produced in response to paragraph 2.

7. All documents, electronic or otherwise, created or modified by any adjuster or other USAA representative who handled, supervised, or participated in any settlement decisions with respect to Plaintiff's UIM claim.

RESPONSE: To the extent USAA has documents responsive to paragraph 7, such documents are included in the claim file produced in response to paragraph 2.

8. All documents that USAA contends constitute a meaningful offer of UIM coverage with respect to the 2016 Montana insured under the Policy.

RESPONSE: USAA has no documents responsive to paragraph 8 as that vehicle was not required to have liability coverage, UM coverage or an offer of UIM coverage.

9. All documents that USAA contends constitute a rejection by Plaintiff of UIM coverage with respect to the 2016 Montana insured under the Policy.

RESPONSE: See the response to paragraph 8.

10. All documents that USAA contends constitute a meaningful offer of UIM coverage with respect to the 2007 Adams insured under the Policy.

RESPONSE: See the response to paragraph 8.

11. All documents that USAA contends constitute a rejection by Plaintiff of UIM coverage with respect to the 2007 Adams insured under the Policy.

RESPONSE: See the response to paragraph 8.

12. The complete file regarding Plaintiff's purchase of motor vehicle insurance coverage from USAA.

RESPONSE: See the response to paragraph 13.

13. USAA's complete underwriting file for the Policy.

RESPONSE: Attached is the underwriting file marked Amoruso_UW_0001 through Amoruso_UW_1110.

14. USAA's complete claims file related to Plaintiff's UIM claim.

RESPONSE: See the response to paragraph 2.

15. All recordings, notes, records, and transcripts of any telephone calls between USAA (or any agent thereof) and Plaintiff regarding USAA's offer of UIM coverage to Plaintiff and/or Plaintiff's purchase of UIM coverage from USAA.

RESPONSE: It is USAA's understanding the plaintiff's lawsuit only concerns whether UIM coverage should exist on the vehicles referenced in paragraphs 8 – 11 of the plaintiff's request to produce. With this understanding, USAA has no documents responsive to paragraph 15.

16. All emails and/or faxes between USAA (or any agent thereof) and Plaintiff regarding USAA's offer of UIM coverage to Plaintiff and/or Plaintiffs purchase of UIM coverage from USAA.

RESPONSE: See the response to paragraph 13 wherein USAA is producing its underwriting file.

17. All of USAA's internal policies, rules, guidelines, standards, handbooks, CSR or agent instructions, CSR or agent manuals, procedural manuals, claims manuals, adjusters' manuals, directives, on-line manuals, and other written and electronic documents of whatsoever nature as in effect on November 1, 2016 that refer in any way to:

- a) Proper offer of UIM coverage in automobile insurance policies issued in the State of South Carolina;
- b) Proper documentation of offers of UIM coverage in automobile insurance policies issued in the State of South Carolina;
- c) Proper rejection of UIM coverage in automobile insurance policies issued in the State of South Carolina; and
- d) Proper documentation of rejections of UIM coverage in automobile insurance policies issued in the State of South Carolina.

RESPONSE: USAA objects to the first paragraph 17 because it is overbroad. It is overbroad because it concerns USAA's policies and rules on offering and documenting UIM coverage on all vehicles, whereas the issue in this case concerns UIM coverage on a horse

trailer and a camper, neither of which were self-propelled vehicles. The plaintiff is not contesting the propriety of UIM offers and coverage under 4 self-propelled vehicles insured under the policy.

17. With regard to any expert witnesses identified in Answers to Interrogatories:

- a) All documents prepared by the expert;
- b) All documents sent to the expert by USAA;
- c) All documents relied upon by the expert;
- d) All documents used, consulted, or reviewed by the expert;
- e) All documents setting forth the compensation agreement between USAA and the expert;
- f) All documents that have been or will be shown to the expert prior to trial testimony; and
- g) All documents including current curriculum vitae used to establish the expert's qualifications.

RESPONSE: In response to the second paragraph 17, USAA has not identified an expert witness in response to the plaintiff's interrogatories.

18. If you contend any documents or other items need not or should be produced (whether based on a claim of privilege or for other reasons), identify each such document or item, set forth all bases for your failure or refusal to produce same, and provide a privilege log for all documents as to which you claim a privilege.

RESPONSE: See the privilege log in response to the plaintiff's interrogatory 3.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

Attorneys for USAA

November 18, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

JILL S. AMORUSO,)
)
Plaintiff.)
)
v.)
)
UNITED SERVICES AUTOMOBILE)
ASSOCIATION d/b/a USAA,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-08-01971

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFF**

Plaintiff responds to Defendant's Interrogatories as follows:

1. Give the names and addresses of persons known to the plaintiff or counsel for the plaintiff to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from these witnesses and, if so, who has possession of the statements.

RESPONSE:

- (A) Jill S. Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (B) Darrell Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (C) Kaira Miller
503 Cinder Street
Summerville, SC 29483
- (D) Jerome William Gregg
217 Myrtle Way
Summerville, SC 29483
- (E) Ciara Taylor
238 Cameron Street
Summerville, SC 29483

- (F) Charles Dixon
434 Spectrum Road
Summerville, SC 29483
- (G) John L. McDonald, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (H) Maggie Shortridge, Paralegal
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (I) John Grantland, Esq.
Murphy & Grantland
Columbia, SC
- (J) Christopher Romeo, Esq.
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
- (K) Michael Grabara, Esq.
657 Pawley Road
Mt. Pleasant, SC 29464
- (L) All claims representatives, supervisors, and other employees and agents of Defendant who participated in Plaintiff's underlying claim for UIM benefits, including defense of the resulting lawsuit.

Plaintiff reserves the right to call any witness named by Defendant.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the plaintiff or her attorney that relate to the claim or defense in this case.

RESPONSE: Plaintiff objects to this interrogatory on the grounds and to the extent it seeks information protected by attorney-client privilege, the attorney work product doctrine, or is otherwise confidential. Subject to and without waiving this objection, Plaintiff states that the non-privileged information in her custody or control consists of documents and materials produced by Defendant herein (copies of which Defendant has) and all file materials of

Thurmond, Kirchner & Timbes regarding its representation of Plaintiff in the underlying action (excluding attorney-client communications and work product materials, as to which Plaintiff asserts all applicable privileges). Plaintiff will produce for review and copying the non-privileged portions of the Thurmond, Kirchner & Timbes file at a mutually agreeable time and location.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the plaintiff.

RESPONSE: Unpaid portions of the judgment from the underlying action; loss of use of funds that should have been tendered to Plaintiff in a timely fashion; interest; costs; anxiety and emotional distress; punitive damages.

4. List the names and addresses of any expert witnesses the plaintiff proposes to use as a witness at trial or in any pretrial proceeding.

RESPONSE: Plaintiff has not retained any expert witnesses at this time; however, Plaintiff reserves the right to do so and will supplement this interrogatory as may become necessary. Plaintiff further reserves the right to call all of her treating physicians, nurses, therapists, or other treatment providers as experts in their respective fields of expertise.

5. For each person listed in response to interrogatory 4, set forth every opinion held by the expert witness.

RESPONSE: See response to No. 4 above.

6. For each person known to the plaintiff or the attorney for the plaintiff to be a witness concerning this case set forth a summary sufficient to inform the defendant of the important facts known to or observed by the witness.

RESPONSE:

- (A) Plaintiff is expected to testify as to the lack of an offer of UIM coverage by USAA on the subject vehicles, USAA's handling of her claim, and her damages.
- (B) Darrell Amoruso is the Plaintiff's husband and is expected to testify as to his knowledge of Plaintiff's damages.
- (C) Kaira Miller is the at-fault driver and may testify as to the facts and circumstances of the collision.
- (D) Jerome William Gregg was involved in the collision and may testify regarding same.
- (E) Ciara Taylor was a witness to the collision and may testify as to same.
- (F) Charles Dixon was a witness to the collision and may testify as to same.
- (G) John L. McDonald may testify regarding his defense of the underlying lawsuit, as well as his communications with USAA.
- (H) Maggie Shortridge may testify regarding her assistance in the defense of the underlying lawsuit, as well as her communications with USAA.
- (I) John Grantland may testify regarding his defense of the underlying lawsuit, as well as his communications with USAA.
- (J) Christopher Romeo represented Plaintiff for the underlying claim and resulting litigation. He may testify regarding USAA's conduct in response to Plaintiff's claim, including allegations by USAA against Plaintiff.
- (K) Michael Grabara was an associate of Christopher Romeo and assisted in representing Plaintiff for the underlying claim and resulting litigation. He may testify regarding USAA's conduct in response to Plaintiff's claim, including allegations by USAA against Plaintiff.
- (L) Defendants employees and agents may testify regarding their role in handling of Plaintiff's UIM claim and defense of the resulting lawsuit.

7. Regarding paragraph 20 of the plaintiff's complaint, state what documents this paragraph references and state if the document was listed in an interrogatory response or was produced in response to a request for production of documents.

RESPONSE: See Response to Request for Production number 11.

8. State the name of the person who made the representation referenced in paragraph 20 of the plaintiff's complaint and whether the representation was oral or in writing.

RESPONSE: See Response to Request for Production number 11.

9. Set forth the name and address of each person who relied on the representation of \$1,500,000 in UIM coverage, as alleged in paragraph 20 of the plaintiff's complaint.

RESPONSE:

- (a) Christopher C. Romeo, Esq.
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
- (b) John L. McDonald, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (c) Maggie Shortridge, Paralegal
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (d) Jill S. Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (e) Darrell Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472

10. Set forth the name and address of any medical provider who has provided any medical treatment to the plaintiff for her mental anguish and emotional distress alleged in paragraph 61 of the plaintiff's complaint.

RESPONSE: Plaintiff is informed and believes that her complete medical history is in possession of the Defendant.

11. Set forth the name and address of every medical provider who will testify to a reasonable degree of certainty the plaintiff's mental anguish and emotional distress referenced in paragraph 61 of her complaint was caused by USAA.

RESPONSE: Unknown to Plaintiff.

12. Are the 2016 Montana and the 2007 Adams referenced in paragraphs 8 and 10 of the plaintiff's request to produce self-propelled vehicles, or are these vehicles transported by being towed behind another vehicle?

RESPONSE: These vehicles are towed behind a transporting vehicle but are defined as "motor vehicles" by S.C. Code Ann. § 38-77-30(9) (1976, as amended).

13. State why the plaintiff offered to settle her UIM claim for \$400,000 in UIM coverage, as alleged in paragraph 21 of the plaintiff's complaint.

RESPONSE: Plaintiff objects to this interrogatory on the grounds that seeks information that is irrelevant, is not reasonably calculated to lead to the discovery of relevant evidence, and is the product of communications between Plaintiff and her attorney and therefore privileged.

14. Who made the decision to offer to settle the plaintiff's UIM claim for \$400,000, as alleged in paragraph 21 of the plaintiff's complaint?

RESPONSE: Plaintiff objects to this interrogatory on the grounds that seeks information that is irrelevant, is not reasonably calculated to lead to the discovery of relevant evidence, and is the product of communications between Plaintiff and her attorney and therefore privileged.

15. How was the offer to settle referenced in paragraph 21 of plaintiff's complaint communicated – was it in the form of an offer of judgment or some other communication?

RESPONSE: Plaintiff submitted an Offer of Judgment to John McDonald, Jr., Esq.

16. Does the plaintiff still insure her vehicles with USAA?

RESPONSE: Yes.

17. Is the 2016 Montana or the 2007 Adams still insured with USAA?

RESPONSE: The 2007 Adams is still insured with USAA but the 2016 Montana was removed from the policy on October 26, 2017.

18. If the 2016 Montana or the 2007 Adams are still insured with USAA, are those vehicles now insured for liability, UM or UIM coverage?

RESPONSE: No.

19. When, and how, did the plaintiff first learn there was no UIM coverage on the 2007 Adams and the 2016 Montana?

RESPONSE: Objection. This information is irrelevant inasmuch as it was USAA's duty, as the insurer, to make a meaningful offer of UIM coverage and not the insured's duty. Whether USAA satisfied its statutory duty is the relevant inquiry, not when Plaintiff learned there was no UIM coverage.

20. Prior to the plaintiff's accident in January 2017 referenced in paragraph 11 of plaintiff's complaint, did the plaintiff receive a copy of the USAA policy insuring the plaintiff's vehicles?

RESPONSE: Yes.

21. Regarding the allegation in paragraph 48 of the plaintiff's complaint she has been "deprived of insurance benefits for which she paid a premium..." did the plaintiff ever pay a premium for liability, UM or UIM coverage on the 2016 Montana or the 2007 Adams referenced in paragraphs 8 and 10 of the plaintiff's request to produce?

RESPONSE: No. Plaintiff was denied the benefits for which she paid a premium when USAA, in bad faith, refused to pay those benefits in a timely manner.

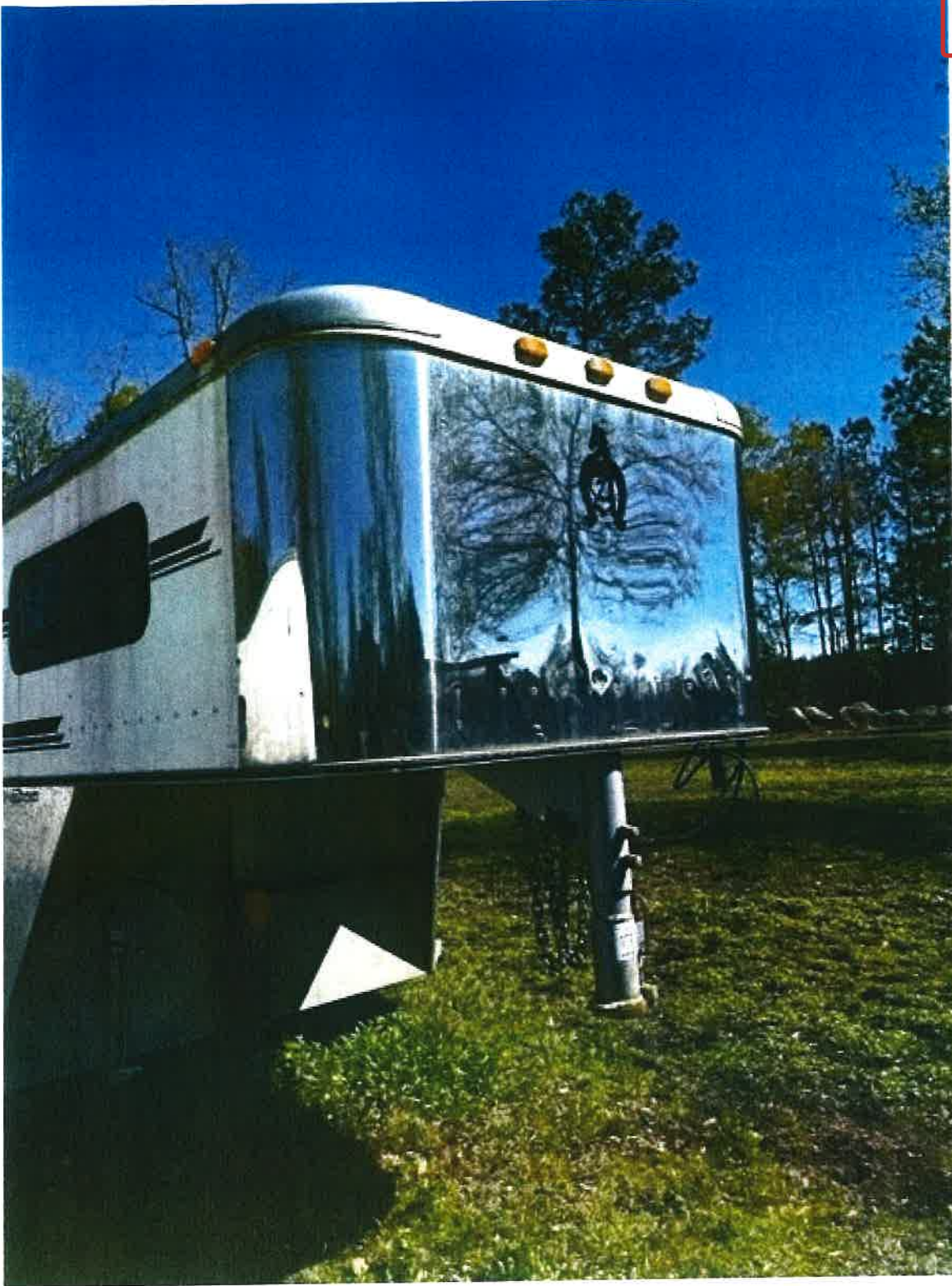
22. Unless the answer to interrogatory 21 is an unequivocal “no,” state the amount of premium paid by the plaintiff for either liability, UM or UIM coverage on the 2016 Montana or on the 2007 Adams.

RESPONSE: Not applicable.

23. Regarding the allegation in paragraphs 59 and 60(g) of the plaintiff’s complaint state:

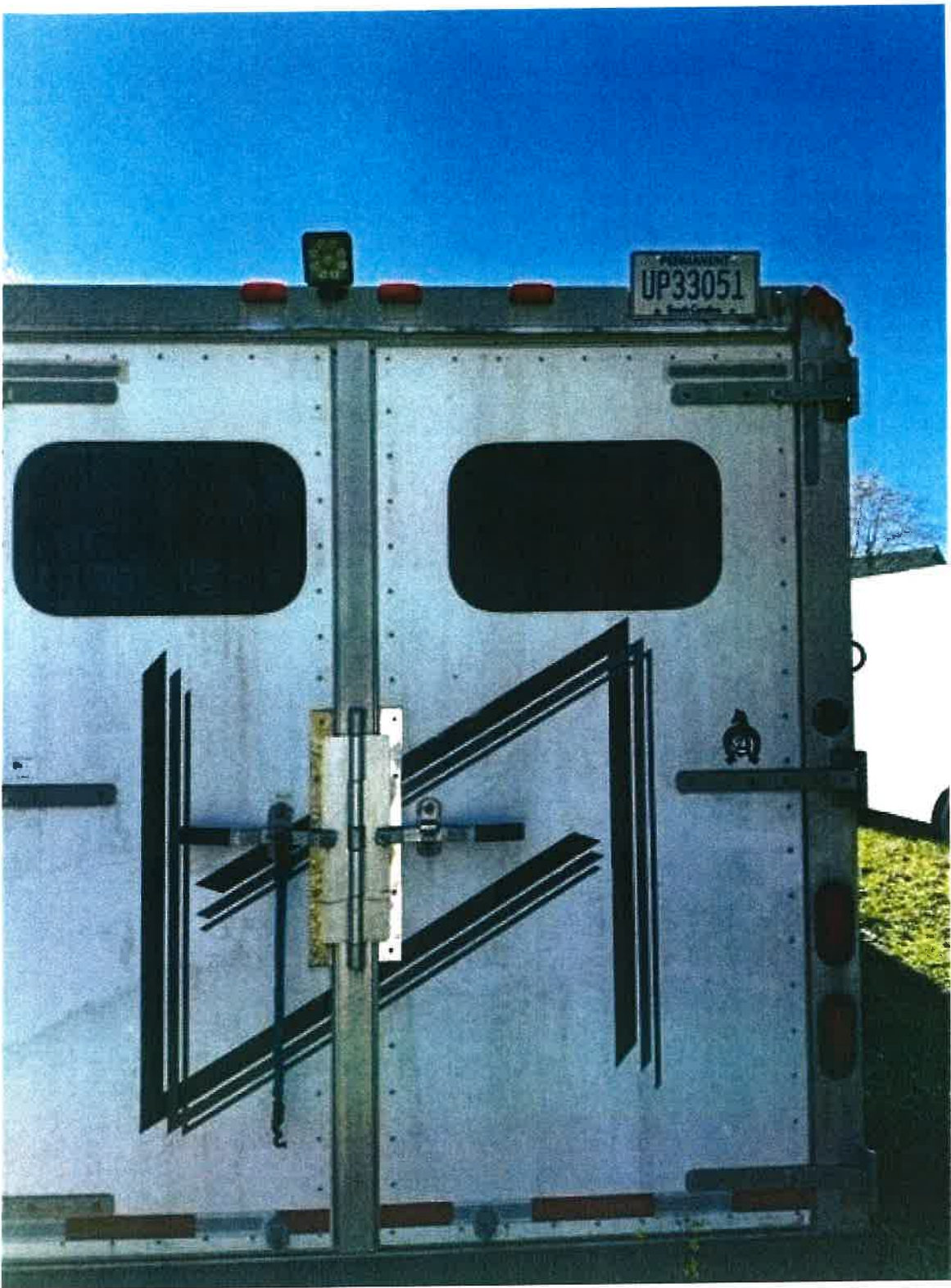
- (a) who made these allegations?
- (b) state whether the allegations were oral, in writing or both.
- (c) state whether the allegations were made in discovery and, if so, specify what discovery – interrogatory answers, depositions or both.
- (d) state the substance of the allegations.
- (e) state whether the allegations were introduced into evidence at the plaintiff’s trial referenced in paragraph 24 of the plaintiff’s complaint.
- (f) if the allegations in question were introduced into evidence at the plaintiff’s trial, state whether counsel for the plaintiff objected to the introduction of this evidence and the ruling on the objection, the basis for the objection.

RESPONSE: The referenced paragraphs of the Complaint refer to oral statements by USAA’s agents (attorneys and Dr. Alfred Rhyne, an expert witness) that Plaintiff was addicted to pain medication and was being untruthful about the extent and duration of her injuries. These were communicated to Plaintiff and her attorney at various times during the underlying litigation, including Dr. Rhyne’s deposition, and to the judge and the jury at trial. Dr. Rhyne’s testimony on these topics was introduced into evidence at trial without objection. These statements are imputable to USAA because they were made by its agents noted above. However, at this stage of discovery, Plaintiff does not know whether other employees or agents of USAA also made such statements.













Member Name: JILL S AMORUSO
Member Number: 01475 85 15U 7106 2
Loss Report Number: 27
Date of Loss: 01/07/2017
Company: UNITED SERVICES AUTOMOBILE ASSOCIATION

Texas Unsworn Declaration

My name is John Bradley, my date of birth is Dec 5, 1966, and my work address is 9800 Fredericksburg Road, San Antonio, Texas 78288, and United States of America.

I declare under penalty of perjury that the foregoing and attached (policy) is a true and correct copy.

E-SIGNED by john bradley
on 2022-09-06 19:26:32 GMT

Signature

Executed in Bexar County, State of Texas, on September 06, 2022.
(Date)



AUTOMOBILE POLICY PACKET

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

USAA 01475 85 15 7106 2

POLICY PERIOD: EFFECTIVE NOV 07 2016 TO MAY 07 2017

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

Check your vehicle for a safety recall today! Visit www.usaa.com/autorecall to learn more.

South Carolina law requires us to add Uninsured Motorists Bodily Injury and Underinsured Motorists Bodily Injury limits equal to your Bodily Injury limits. The law also requires Uninsured Motorists Property Damage and Underinsured Motorists Property Damage limits equal to your Property Damage limits. For more information about these limits, or to reject or lower them, please review the enclosed Offer of Additional Uninsured Motorists Coverage and Optional Underinsured Motorists Coverages notice.

Your Uninsured Motorists Coverage (UM), Underinsured Motorists (UIM), and Uninsured Motorists Property Damage (UMPD) selection/rejection remains in effect. You may quote different coverage limits and make changes at any time to your policy on usaa.com. Or you may call us at 1-800-531-USAA (8722).

Please see your declarations page for information on Accident Forgiveness.

TEXTING & DRIVING ... It Can Wait! Join USAA in the movement against distracted driving by going to <http://itcanwait.usaa.com> to watch powerful videos and take the pledge to not text and drive!

We have provided your ID cards in this packet. You can use the cards to show proof of insurance, if necessary.

This is not a bill. Any premium charge or change for this policy will be reflected on your next regular monthly statement. Your current billing statement should still be paid by the due date indicated.

To receive this document and others electronically, or manage your Auto Policy online, go to usaa.com.

For U.S. calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

ACS1

APPENDIX 89

49708-0406
ROA 088

USAA Confidential

0901119cb2edc19f

ELECTRONICALLY FILED - 2023 Apr 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971

THIS PAGE INTENTIONALLY LEFT BLANK



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2**Effective Date** 11/07/16**Expiration Date** 05/07/17**Year:** 2010**Make/Model:** VOLKS**Vehicle Identification Number:**

3VWAL7AJ6AM155823

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com**Automobile Insurance Identification Card**

We've issued an identification card as evidence of liability insurance for your vehicle(s). This card is valid only as long as liability insurance remains in force.

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident or upon a law enforcement officer's request.

Keep a copy of the ID card in your vehicle at all times.

For your convenience, additional copies are available on usaa.com.

53SC2 Rev. 06-13

55078-0513__03



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
KARA A AMORUSO

Policy Number 01475 85 15U 7106**Effective Date** 11/07/16**Expiration Date** 05/07/17**Year:** 2013**Make/Model:** VOLKS**Vehicle Identification Number:**

3VW2K7AJ6DM378231

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

APPENDIX 91

Additional copies available at usaa.com **ROA 090**

USAA Confidential

0901119cb2edc19f



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2**Effective Date** 11/07/16**Expiration Date** 05/07/17**Year:** 2012**Make/Model:** DODGE**Vehicle Identification Number:**

3C63D3EL9CG330085

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com**Automobile Insurance Identification Card**

We've issued an identification card as evidence of liability insurance for your vehicle(s). This card is valid only as long as liability insurance remains in force.

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident or upon a law enforcement officer's request.

Keep a copy of the ID card in your vehicle at all times.

For your convenience, additional copies are available on usaa.com.

53SC3 Rev. 06-13

55078-0513__03



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2**Effective Date** 11/07/16**Expiration Date** 05/07/17**Year:** 2014**Make/Model:** NISSAN**Vehicle Identification Number:**

5N1AR2MN7EC723065

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

APPENDIX 92

Additional copies available at usaa.com **ROA 091**

USAA Confidential

0901119cb2edc19f



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
9800 Fredericksburg Road - San Antonio, Texas 78288
SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

ADDL INFO ON NEXT PAGE MAIL MCH-M-I
RENEWAL OF

State	08	13	15	16	Veh	POLICY NUMBER
SC	392	392	392	392	Terr	01475 85 15U 7106 2
POLICY PERIOD: (12:01 A.M. standard time)						
EFFECTIVE NOV 07 2016 TO MAY 07 2017						

Named Insured and Address

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

OPERATORS

01 JILL S AMORUSO
02 DARRELL AMORUSO
06 KARA A AMORUSO

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE*	WORKSCHOOL Miles One Way	Days Per Week
08	07	ADAMS	HORSE TRAILER		0	5CLHG20237R002923			
13	10	VOLKS	JETTA 4D TDI	4 DOOR	14000	3VWAL7AJ6AM155823	P		
15	13	VOLKS	JETTA 4D B/S	4 DOOR	2000	3VW2K7AJ6DM378231	P		
16	12	DODGE	RAM 3500	4 DOOR	4000	3C63D3EL9CG330085	P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Personal Use

VEH 08 RIDGEVILLE SC 29472-6637 VEH 15 RIDGEVILLE SC 29472-6637

VEH 13 RIDGEVILLE SC 29472-6637 VEH 16 RIDGEVILLE SC 29472-6637

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES		LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)		VEH 08 6-MONTH D=DED AMOUNT	VEH 13 6-MONTH D=DED AMOUNT	VEH 15 6-MONTH D=DED AMOUNT	VEH 16 6-MONTH D=DED AMOUNT
				PREMIUM \$	PREMIUM \$	PREMIUM \$	PREMIUM \$
PART A - LIABILITY							
BODILY INJURY	EA PER \$	300,000					
	EA ACC \$	500,000			129.40	104.19	204.19
PROPERTY DAMAGE	EA ACC \$	500,000			69.13	60.45	134.29
PART B - PIP							
PERSONAL INJURY PROTECTION							
WORK LOSS BENEFIT AND ESSENTIAL SERVICES EXPENSES INCLUDED					16.40	13.42	14.07
PART C - UNINSURED MOTORISTS							
BODILY INJURY	EA PER \$	300,000					
	EA ACC \$	500,000					
PROPERTY DAMAGE	EA ACC \$	500,000			D 200 29.08	D 200 24.76	D 200 34.44
TOTAL PREMIUM		- SEE FOLLOWING PAGE(S)					

ADDITIONAL INTEREST - LESSOR AND LOSS PAYEE

VEH 15 VW CREDIT LEASING LTD, MINNEAPOLIS MN

LOSS PAYEE

VEH 08 M & T CREDIT SERVICES LLC, BALTIMORE MD

VEH 13 SAC FEDERAL CREDIT UNION, BELLEVUE NE

VEH 16 NAVY FEDERAL CREDIT UNION, MERRIFIELD VA

ENDORSEMENTS: ADDED 11-07-16 - NONE

REMAIN IN EFFECT (REFER TO PREVIOUS POLICY) - 5100SC(05) A072(06) ACCFOR(01)

INFORMATION FORMS: 999SC(23)

E1

V13	XXX4000000	V15	XXX4000000	V16	RMM4810000
-----	------------	-----	------------	-----	------------

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016

Laura Bishop
Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

APPENDIX 93

ROA 092

USAA Confidential

5000 U 07-11

53461-07-11

0901119cb2edc19f



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
 9800 Fredericksburg Road - San Antonio, Texas 78288
 SOUTH CAROLINA AUTO POLICY
 RENEWAL DECLARATIONS
 (ATTACH TO PREVIOUS POLICY)

State	08	13	15	16	Veh	POLICY NUMBER			
SC	392	392	392	392	Terr	01475	85	15U	7106 2
POLICY PERIOD: (12:01 A.M. standard time)									
EFFECTIVE NOV 07 2016 TO MAY 07 2017									

Named Insured and Address

JILL S AMORUSO
 SMSGT USAF RET
 132 EMMAUS CT
 RIDGEVILLE SC 29472-6637

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE*	WORK SCHOOL Miles One Way Per Week
08	07	ADAMS	HORSE TRAILER		0	5CLHG20237R002923		
13	10	VOLKS	JETTA 4D TDI	4 DOOR	14000	3VWAL7AJ6AM155823	P	
15	13	VOLKS	JETTA 4D B/S	4 DOOR	2000	3VW2K7AJ6DM378231	P	
16	12	DODGE	RAM 3500	4 DOOR	4000	3C63D3EL9CG330085	P	

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Personal Use
 VEH 08 RIDGEVILLE SC 29472-6637 VEH 15 RIDGEVILLE SC 29472-6637
 VEH 13 RIDGEVILLE SC 29472-6637 VEH 16 RIDGEVILLE SC 29472-6637

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	VEH 08 6-MONTH		VEH 13 6-MONTH		VEH 15 6-MONTH		VEH 16 6-MONTH	
	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
PART C - UNDERINSURED MOTORISTS								
BODILY INJURY EA PER \$ 300,000								
EA ACC \$ 500,000								
PROPERTY DAMAGE EA ACC \$ 500,000					54.32		46.26	56.73
PART D - PHYSICAL DAMAGE COVERAGE								
COMPREHENSIVE LOSS ACV LESS	D 250	10.15	D 250	99.97	D 250	84.57	D 250	208.94
COLLISION LOSS ACV LESS	D 500	28.73	D 500	115.21	D 500	103.30	D 500	126.75
TOWING AND LABOR		6.63				6.63		
VEHICLE TOTAL PREMIUM		45.51		513.51		443.58		776.41
TOTAL PREMIUM - SEE FOLLOWING PAGE(S)								

VEH 08 XXX4000000 VEH 13 XXX4000000 VEH 15 XXX4000000 VEH 16 RMM4810000

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016

Laura Bishop
 Laura Bishop

President, USAA Reciprocal Attorneys, Inc.

APPENDIX 94

ROA 053

USAA Confidential

5000 U 07-11
 53461-07-11

0901119cb2edc19f

ELECTRONICALLY FILED - 2023 APR 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022-00801971

**UNITED SERVICES AUTOMOBILE ASSOCIATION**

(A RECIPROCAL INTERINSURANCE EXCHANGE)

9800 Fredericksburg Road - San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY

RENEWAL DECLARATIONS

(ATTACH TO PREVIOUS POLICY)

Named Insured and Address

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

State	18	19			Veh	POLICY NUMBER			
SC	392	392			Terr	01475	85	15U	7106 2
POLICY PERIOD:						(12:01 A.M. standard time)			
EFFECTIVE						NOV 07 2016 TO MAY 07 2017			

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM	Miles Or Val	Days Per Week
18	14	NISSAN	PATHFINDER	4 DOOR	18000	5N1AR2MN7EC723065		P	
19	16	MONTANA	3791 RD		0	4YDF37927G4701276			

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated * W/C=Work/School; B=Business; F=Farm; P=Pleasure

VEH 18 RIDGEVILLE SC 29472-6637

VEH 19 RIDGEVILLE SC 29472-6637

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES		LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)		VEH 18 D=DED AMOUNT	6-MONTH PREMIUM \$	VEH 19 D=DED AMOUNT	6-MONTH PREMIUM \$	VEH D=DED AMOUNT	PREMIUM \$	VEH D=DED AMOUNT	PREMIUM \$
PART A - LIABILITY											
BODILY INJURY	EA PER	\$	300,000								
	EA ACC	\$	500,000		154.88						
PROPERTY DAMAGE	EA ACC	\$	500,000		86.95						
PART B - PIP											
PERSONAL INJURY PROTECTION											
WORK LOSS BENEFIT AND ESSENTIAL											
SERVICES EXPENSES INCLUDED					14.89						
PART C - UNINSURED MOTORISTS											
BODILY INJURY	EA PER	\$	300,000								
	EA ACC	\$	500,000								
PROPERTY DAMAGE	EA ACC	\$	500,000	D 200	29.08						
PART C - UNDERINSURED MOTORISTS											
BODILY INJURY	EA PER	\$	300,000								
	EA ACC	\$	500,000								
PROPERTY DAMAGE	EA ACC	\$	500,000		54.32						
PART D - PHYSICAL DAMAGE COVERAGE											
COMPREHENSIVE LOSS	ACV LESS	D 250		86.42	D 500	226.46					
COLLISION LOSS	ACV LESS	D 500		107.08	D 500	191.85					
TOWING AND LABOR				6.63							
LEARNERS PERMIT OP 06											

TOTAL PREMIUM - SEE FOLLOWING PAGE(S)

LOSS PAYEE

VEH 18 NAVY FEDERAL CREDIT UNION, MERRIFIELD VA

VEH 19 BANK OF THE WEST, AMELIA OH

[illegible]

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016 *Laura Bishop*

Laura Bishop

Laura Bishop
President, USAA Reciprocal Attorney in Fact, Inc.

ROA 094

5000 U 07-11

53461-07-11

53461-07-11
0901119cb2edc19f

APPENDIX 95

USAA Confidential



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
9800 Fredericksburg Road - San Antonio, Texas 78288
SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

State		Veh	POLICY NUMBER	
SC		Terr	01475 85 15U 7106 2	
POLICY PERIOD:			(12:01 A.M. standard time)	
EFFECTIVE NOV 07 2016 TO MAY 07 2017				

Named Insured and Address

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

Description of Vehicle(s)[illegible]

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	VEH		VEH		VEH		VEH	
	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
VEHICLE TOTAL PREMIUM		540.25		418.31				
6 MONTH PREMIUM \$ 2766.26 PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL, STATEMENT TO FOLLOW. \$ 31.69 IS INCLUDED IN YOUR 6 MONTH PREMIUM FOR ACCIDENT FORGIVENESS. \$ 124.33 INCLUDED IN PREMIUM FOR VEH 16 AS A RESULT OF AN ACCIDENT(S). THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR: VEH 13 - RENTAL REIMBURSEMENT, TOWING AND LABOR VEH 15 - RENTAL REIMBURSEMENT VEH 16 - RENTAL REIMBURSEMENT, TOWING AND LABOR VEH 18 - RENTAL REIMBURSEMENT ADDITIONAL MESSAGE(S) - SEE FOLLOWING PAGE(S)								

- COMMON PLEAS - CASE#2022CP0801971

[illegible]

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016 *Laura Bishop*

Laura Bishop
Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

ROA 095

5000 U 07-11
53461-07-11

APPENDIX 96

USAA Confidential

0901119cb2edc19f

ELECTRONICALLY FILED - 2023 APR 19 11:58 AM - BERKELEY - COMMUN PLEAS - CASE#2022CP0801971



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
9800 Fredericksburg Road - San Antonio, Texas 78288
SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

State		Veh	POLICY NUMBER	
SC		Terr	01475 85 15U 7106 2	
POLICY PERIOD:			(12:01 A.M. standard time)	
EFFECTIVE			NOV 07 2016 TO MAY 07 2017	

Named Insured and Address	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	
70	
71	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	
91	
92	
93	
94	
95	
96	
97	
98	
99	
100	

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

Description of Vehicle(s)
2010 Ford Focus

[illegible]

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES	LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)	VEH		VEH		VEH		VEH	
		D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
\$ 31.69 IS INCLUDED IN YOUR 6 MONTH PREMIUM FOR ACCIDENT FORGIVENESS.									

- COMMON PLEAS - CASE#2022CP0801971

[illegible]

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016 *Laura Bishop*

Laura Bishop
Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

ROA 096

APPENDIX 97

5000 U 07-11
53461-07-11

53461-07-11
0901119cb2edc19f

USAA Confidential



SUPPLEMENTAL INFORMATION

EFFECTIVE NOV 07 2016 TO MAY 07 2017

The following approximate premium discounts or credits have already been applied to reduce your policy premium costs.

NOTE: Age or **senior citizen** status, if allowed by your state/location, was taken into consideration when your rates were set and your premiums have already been adjusted.

VEHICLE 13

DAYTIME RUNNING LIGHTS DISCOUNT	- \$	3.15
MULTI-CAR DISCOUNT	- \$	84.21
PASSIVE RESTRAINT DISCOUNT	- \$	2.65

VEHICLE 15

ANNUAL MILEAGE DISCOUNT	- \$	65.21
DAYTIME RUNNING LIGHTS DISCOUNT	- \$	2.78
MULTI-CAR DISCOUNT	- \$	70.69
PASSIVE RESTRAINT DISCOUNT	- \$	2.13

VEHICLE 16

ANNUAL MILEAGE DISCOUNT	- \$	72.90
MULTI-CAR DISCOUNT	- \$	130.06
PASSIVE RESTRAINT DISCOUNT	- \$	2.24

VEHICLE 18

DAYTIME RUNNING LIGHTS DISCOUNT	- \$	2.89
MULTI-CAR DISCOUNT	- \$	87.75
PASSIVE RESTRAINT DISCOUNT	- \$	2.39

ELECTRONICALLY FILED - 2023 Apr 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971

OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for the damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, we may refuse to write your automobile liability insurance for a number of reasons. If we decide to write your automobile liability insurance coverage, however, it must provide to you at least \$25,000 of bodily injury for each person whom you may injure and \$50,000 of bodily injury for two or more persons whom you may injure in any single accident. We must also provide to you at least \$25,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that we offer higher than the minimum limits of automobile liability insurance coverage. If we do not offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than your damages in that accident. These coverages are termed additional uninsured motorists coverage and optional underinsured motorists coverage, respectively. You may also see them referred to as UIM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorists coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorists coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorists coverage, in various limits up to the limits of liability coverage you have purchased. The limits of additional uninsured motorist coverage which we are authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorists coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.



Your automobile insurance policy does not automatically provide any underinsured motorists coverage. However, you have the right to buy, and we are required to offer, optional underinsured motorists coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorists coverage which we are authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by us as evidence against you if you make a claim for additional uninsured motorists coverage or optional underinsured motorists coverage.

If you do not complete this form and return it to us within 30 days, we are required by law to add additional uninsured motorists coverage and optional underinsured motorist coverage, in the same limits as the automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be cancelled for non-payment of that additional premium.

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact us. You will not be presented with another copy of this form by us upon renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by us when you extend, change, supersede, or replace your automobile liability insurance policy. You may also complete this form online at usaa.com.

Please read this form carefully. We must answer any questions which you may have. If you have any questions, please call Policy Service at 1-800-531-USAA (8722).

If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
South Carolina Department of Insurance
1201 Main Street, Suite 1000, Columbia, SC 29201
(803) 737-6180
(800) 768-3467 E-mail address: consumers@doi.sc.gov.



REJECTION/SELECTION FORM

Minimum limits of Uninsured Motorists (UM) Coverage are automatically provided. If you wish to purchase additional UM, please select the limit desired. Underinsured Motorists (UIM) coverage is not automatically provided. If you wish to purchase UIM in either the base limit or an additional limit, please select the limit desired. The premiums below reflect the total premium for this coverage for all the vehicles insured on your policy. The coverage-limit combinations displayed in this form are examples. You can create other combinations of the coverage limits displayed in this example.

THESE LIMITS CANNOT EXCEED YOUR AUTOMOBILE INSURANCE LIABILITY LIMITS.

(Semi-annual premiums per policy)

To make a change to your current policy, you must check one of the following boxes or enter your desired UM limits:

UM		Available Limits		UIM	
		UM/UIM/BI	UM/UIM/PD		
Premium		Per person/per accident		Premium	
\$	65.47	☐	\$ 25,000/\$ 50,000 /\$ 25,000	☐	\$ 105.04
\$	73.77	☐	\$ 50,000/\$ 100,000 /\$ 25,000	☐	\$ 130.72
\$	85.60	☐	\$ 100,000/\$ 200,000 /\$ 50,000	☐	\$ 162.22
\$	94.90	☐	\$ 100,000/\$ 300,000 /\$ 100,000	☐	\$ 172.13
\$	104.66	☐	\$ 300,000/\$ 500,000 /\$ 100,000	☐	\$ 205.52
\$	119.35	☐	\$ 500,000/\$ 500,000 /\$ 300,000	☐	\$ 233.52
\$	124.15	☐	\$ 500,000/\$ 1,000,000 /\$ 500,000	☐	\$ 240.17
\$	133.90	☐	\$ 1,000,000/\$ 1,000,000 /\$ 500,000	☐	\$ 285.56

If you prefer a combination of UM limits other than those shown above, please enter those desired here:

UM

(Per person/per accident)

\$ _____ /\$ _____ /\$ _____

UIM

(Per person/per accident)

\$ _____ /\$ _____ /\$ _____

☐ I do not wish to purchase additional UM coverage. ☐ I do not wish to purchase optional UIM coverage.

By my signature, I acknowledge that I have read – or I have had read to me – the above explanations and offers of additional uninsured motorists coverage and optional underinsured motorists coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's law.

I also acknowledge that I have personally marked this form to indicate the coverages and amounts of coverage I wish to purchase. At the time of this signature, no other person has written on, typed in or in any other way marked this form.

USAA Number: _____ Phone Number: _____ Today's Date: _____

Type or Print Your Name: _____

Signature: _____

Address: _____

Please complete this form and fax it to 1-800-531-8877 or mail it to USAA, 9800 Fredericksburg Road, San Antonio, Texas 78288; or complete this form on usaa.com

If this form is sent by facsimile machine (fax), the sender adopts the document USAA receives as a duplicate original and adopts the signature the receiving fax machine produces as the sender's original signature.

THIS PAGE INTENTIONALLY LEFT BLANK





USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained on the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown on the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the board of directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

- By purchasing this policy you are a member of USAA and are subject to its bylaws.
- This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.
- The board of directors may annually allocate a portion of USAA's surplus to Subscriber's Accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

DECLARATIONS PAGE	
Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements	
Beginning on Page 3	Agreement and Definitions
Part A 4	Liability Coverage
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 7	Personal Injury Protection Coverage
	Definitions Insuring Agreement Limit of Liability Exclusions Other Insurance
Part B 10	Medical Payments Coverage
	Definitions Insuring Agreement Limit of Liability Exclusions Other Insurance Special Provisions
(Quick Reference continued on Page 2)	

Part C 13	Uninsured Motorists Coverage and Underinsured Motorists Coverage	Part E 23	General Provisions
	Definitions Insuring Agreement Uninsured Motorists Coverage Underinsured Motorists Coverage Limit of Liability Exclusions Other Insurance Non-Duplication Loss Payable Clause		Bankruptcy Changes Conformity to Law Duties After an Accident or Loss Legal Action Against Us Misrepresentation Non-Duplication of Payment Our Right to Recover Payment Ownership Policy Period and Territory Reducing the Risk of Loss Spouse Access Termination Transfer of Your Interest in this Policy Two or More Auto Policies
Part D 18	Physical Damage Coverage		
	Definitions Insuring Agreement Comprehensive Coverage Collision Coverage Rental Reimbursement Coverage USAA Roadside Assistance Limit of Liability Payment of Loss Loss Payable Clause Waiver of Collision Deductible Exclusions No Benefit to Bailee Other Sources of Recovery Appraisal		

SOUTH CAROLINA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown on the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

- A. **"You"** and **"your"** refer to the "named insured" shown on the Declarations and spouse if a resident of the same household.
- B. **"We," "us,"** and **"our"** refer to the Company providing this insurance.
- C. **"Auto business"** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, towing, repossessing or storing vehicles.
- D. **"Bodily injury"** (referred to as **BI**).
 - 1. **"Bodily injury"** means bodily harm, sickness, disease or death.
 - 2. **"Bodily injury"** does not include mental injuries such as emotional distress, mental anguish, humiliation, mental distress, or any similar injury unless it arises out of physical injury to some person.
- E. **"Driving contest or challenge"** includes, but is not limited to:
 - 1. A competition against other people, vehicles, or time; or
 - 2. An activity that challenges the speed or handling characteristics of a vehicle or improves or demonstrates driving skills, provided the activity occurs on a track or course that is closed from non-participants.
- F. **"Family member"** means a person related to **you** by blood, marriage or adoption who resides primarily in **your** household. This includes a ward or foster child.
- G. **"Fungi"** means any type or form of **fungi**, including mold or mildew, and includes any mycotoxins, spores, scents, or byproducts produced or released by **fungi**.
- H. **"Miscellaneous vehicle"** means the following motorized vehicles: motor home; golf cart; snowmobile; all-terrain vehicle; or dune buggy.
- I. **"Motorcycle"** means a two- or three-wheeled motor vehicle that is subject to motor vehicle licensing in the location where the **motorcycle** is principally garaged.
- J. **"Newly acquired vehicle."**
 - 1. **"Newly acquired vehicle"** means a vehicle, not insured under another policy, that is acquired by **you** or any **family member** during the policy period and is:
 - a. A private passenger auto, pickup, **trailer**, or **van**;
 - b. A **miscellaneous vehicle** that is not used in any business or occupation; or
 - c. A **motorcycle**, but only if a **motorcycle** is shown on the current Declarations.

(DEFINITIONS Cont'd.)

2. **We** will automatically provide for the **newly acquired vehicle** the broadest coverages as are provided for any vehicle shown on the Declarations. If **your** policy does not provide Comprehensive Coverage or Collision Coverage, **we** will automatically provide these coverages for the **newly acquired vehicle** subject to a \$500 deductible for each loss.
 3. Any automatic provision of coverage under J.2. will apply for up to 30 days after the date **you** or any **family member** becomes the owner of the **newly acquired vehicle**. If you wish to continue coverage for the **newly acquired vehicle** beyond this 30-day period, **you** must request it during this 30-day period, and **we** must agree to provide the coverage **you** request for this vehicle. If **you** request coverage after this 30-day period, any coverage that **we** agree to provide will be effective at the date and time of **your** request unless **we** agree to an earlier date.
- K. "**Occupying**" means in, on, getting into or out of.
- L. "**Property damage**" (referred to as **PD**).
1. "**Property damage**" means physical injury to, destruction of, or loss of use of tangible property.
2. For purposes of this policy, electronic data is not tangible property. Electronic data means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from;
 computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 - M. "**Trailer**" means a vehicle designed to be pulled by a private passenger auto, pickup, **van**, or **miscellaneous vehicle**. It also means a farm wagon or implement while towed by such vehicles.
 - N. "**Van**" means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.
 - O. "**Your covered auto**" means:
 1. Any vehicle shown on the Declarations.
 2. Any **newly acquired vehicle**.
 3. Any **trailer you own**.

PART A - LIABILITY COVERAGE

DEFINITIONS

"**Covered person**" as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance or use of any auto or **trailer**.
2. Any person using **your covered auto**.
3. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto**, this provision only applies if the other person or organization does not own or hire the auto or **trailer**.

(PART A Cont'd.)

The following are not **covered persons** under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to **BI** or **PD** resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the **BI** or **PD**.

INSURING AGREEMENT

We will pay damages for **BI** or **PD** for which any **covered person** becomes legally liable because of an auto accident. **We** will settle or defend, as **we** consider appropriate, any claim or suit asking for these damages. **Our** duty to settle or defend ends when **our** limit of liability for these coverages has been paid or tendered. **We** have no duty to defend any suit or settle any claim for **BI** or **PD** not covered under this policy.

LIMIT OF LIABILITY

For **BI** sustained by any one person in any one auto accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown on the Declarations for "each person" for **BI** Liability. Subject to this limit for "each person," the limit of liability shown on the Declarations for "each accident" for **BI** Liability is **our** maximum limit of liability for all damages for **BI** resulting from any one auto accident. The limit of liability shown on the Declarations for "each accident" for **PD** Liability is **our** maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most **we** will pay regardless of the number of:

1. **Covered persons;**

2. Claims made;
3. Vehicles or premiums shown on the Declarations; or
4. Vehicles involved in the auto accident.

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the state's financial responsibility law, **our** limit of liability will be the minimum required by the state's financial responsibility law.

SUPPLEMENTARY PAYMENTS

In addition to **our** limit of liability, **we** will pay on behalf of a **covered person**:

1. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend. But **we** will not pay the premium for bonds with a face value over **our** limit of liability shown on the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of liability, **we** will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing after a judgment is entered in any suit **we** defend. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment which does not exceed **our** limit of liability for this coverage.
4. Up to \$250 a day for loss of wages because of attendance at hearings or trials at **our** request.
5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person**. The most **we** will pay is an amount equal to one month of the basic salary of the **covered person** at the time of a loss. Only Exclusions A.1. and A.8. apply.

(PART A Cont'd.)

6. Other reasonable expenses incurred at our request.
7. All defense costs we incur.

EXCLUSIONS**A. We do not provide Liability Coverage for any covered person:**

1. Who intentionally acts or directs to cause **BI** or **PD**, or who acts or directs to cause with reasonable expectation of causing **BI** or **PD**. This exclusion (A.1.) applies only to the extent that the limits of liability under this Part exceed \$25,000 for each person and \$50,000 for each accident for **BI** and \$25,000 for **PD**.
2. For **PD** to property owned or being transported by a **covered person**.
3. For **PD** to property rented to, used by, or in the care of any **covered person**. This exclusion (A.3.) does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.

6. While employed or otherwise engaged in the **auto business**. This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you**, any **family member**, or any partner, agent, or employee of **you** or any **family member**.
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business**, farming, or ranching. This exclusion (A.7.) does not apply:
 - a. To the maintenance or use of a private passenger auto; a pickup or **van** owned by **you** or any **family member**, or a **trailer** used with these vehicles.
 - b. To the maintenance or use of a pickup or **van** not owned by **you** or any **family member** if the vehicle's owner has valid and collectible primary liability insurance or self-insurance in force at the time of the accident.
8. Using a vehicle without expressed or implied permission.
9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limit of liability.
10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others, or shared as part of a personal vehicle sharing program.
11. For **BI** sustained as a result of exposure to **fungi**, wet or dry rot, or bacteria.
12. For **BI** to a relative who resides primarily in that **covered person's** household. This exclusion (A.12.) applies only to the extent that the limits of liability for **BI** under this Part exceed \$25,000 for each person and \$50,000 for each accident.

(PART A Cont'd.)

B. **We** do not provide Liability Coverage for the ownership, maintenance, or use of:

1. Any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four- or six-wheel land motor vehicle designed for use on public roads;
 - b. A moving van for personal use;
 - c. A **miscellaneous vehicle**; or
 - d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto**, that is owned by **you**, or furnished or available for **your** regular use. This exclusion (B.2.) does not apply to a vehicle not owned by **you** if the vehicle's owner has valid and collectible primary liability insurance or self-insurance in force at the time of the accident.
3. Any vehicle, other than **your covered auto**, that is owned by or furnished or available for the regular use of, any **family member**. This exclusion (B.3.) does not apply:
 - a. To **your** maintenance or use of such vehicle; or
 - b. To a vehicle not owned by any **family member** if the vehicle's owner has valid and collectible primary liability insurance or

self-insurance in force at the time of the accident.

4. Any vehicle while being operated in, or in practice for, any **driving contest or challenge**.

- C. There is no coverage for liability assumed by any **covered person** under any contract or agreement.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, **your** policy will provide at least the minimum amounts and types of liability coverages required by law. However, no one will be entitled to duplicate payments for the same elements of loss.

OTHER INSURANCE

If there is other applicable liability insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide to a **covered person** with respect to the following vehicles shall be excess over (1) any other applicable liability insurance or (2) any self-insurance in compliance with a state's financial responsibility law or mandatory insurance law:

1. A vehicle **you** do not own; or
2. **Your covered auto** while in the possession of an **auto business**.

PART B – PERSONAL INJURY PROTECTION COVERAGE

(referred to as PIP Coverage)

DEFINITIONS

- A. "**Auto**" means a motor vehicle of the kind required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.
- B. "**Covered person**" as used in this Part means:

1. **You** or any **family member**; or
2. Any other person who sustains **BI** while:
 - a. **Occupying your covered auto**; or
 - b. Not **occupying** a motor vehicle as a result of an accident involving **your covered auto**.

(PART B Cont'd.)

C. "**Medical payment fee**" is an amount, as determined by **us** or someone on **our** behalf, that **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. The amount that **we** will pay will be one of the following:

1. The amount provided by an applicable agreement with a Preferred Provider Organization, Preferred Provider Network, or other similar agreement; or
2. The amount required, approved, or allowed by a fee schedule established by a state, federal, or other governmental entity in the relevant geographic area; or
3. The amount negotiated with the provider; or
4. The lesser of the following:
 - a. The actual amount billed; or
 - b. A reasonable fee for the service provided.

D. "**Medically necessary and appropriate medical services**" means services for remedial treatment and care rendered in accordance with a recognized religious healing method or those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;

2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person**, his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person**; and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, "**medically necessary and appropriate medical services**" do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed; or
3. Inpatient services or supplies provided to the **covered person** when these could safely have been provided to the **covered person** as an outpatient.

INSURING AGREEMENT

- A. **We** will pay PIP Coverage benefits to or for a **covered person** who sustains **BI** caused by an accident and resulting from the ownership, maintenance or use of an **auto** as an **auto**.

(PART B Cont'd.)

B. **We**, or someone on **our** behalf, will review and audit claims for benefits under PIP Coverage. **We** are only obligated to pay expenses for the following benefits:

1. Medical Expenses. **We** will pay only the **medical payment fee for medically necessary and appropriate medical services** incurred within three years from the date of the accident. Only semi-private hospital room charges will be paid unless special or intensive care is required.
2. Funeral Expense. **We** will pay the reasonable funeral and burial expense actually incurred for death of a **covered person** that occurs within three years from the date of the accident.
3. Work Loss Benefits. **We** will pay for loss of income from work which a **covered person** would have performed except for the **BI**.
 - a. **We** will pay Work Loss Benefits for no more than three years from the date of the accident.
 - b. Work Loss Benefits will not continue after the death of the **covered person**.

Work loss applies only if the **covered person** was an income or wage producer at the time of the accident.

4. Essential Services Expenses. **We** will pay necessary and reasonable expenses for services which would ordinarily have been performed for the benefit of his or her family by a **covered person** who was not an income earner.
 - a. Expenses must be incurred within three years from the date of the accident.
 - b. **We** will not pay for expenses incurred after the death of the **covered person**.

LIMIT OF LIABILITY

Our maximum limit of liability for all benefits for each **covered person** injured in any one **auto** accident is \$1,000. This is the most **we** will pay regardless of the number of:

1. **Covered persons**;
2. Claims made;
3. Vehicles or premiums shown on the Declarations;
4. Vehicles involved in the accident; or
5. Insurers providing no-fault benefits.

EXCLUSIONS

We do not provide any coverage or benefits under this Part for **BI**:

1. Sustained by any **covered person** who:
 - a. Intentionally causes the accident resulting in the **BI**; or
 - b. Operates or voluntarily rides in a vehicle known by that person to be stolen; or
 - c. Is committing a felony; or
 - d. Fails to stop an **auto** he or she is operating when signaled by any law enforcement vehicle by means of a siren or flashing light.
2. Sustained by any **covered person** while **occupying**, or while a pedestrian as a result of an accident involving, an **auto** (other than **your covered auto**) insured for PIP Coverage.
3. Sustained by any **covered person** while not **occupying** a motor vehicle if the accident occurs outside South Carolina. This exclusion (3.) does not apply to **you** or any **family member**.

(PART B Cont'd.)

4. Sustained by any **covered person** while **occupying** an **auto** located for use as a residence or premises.
5. Caused by or as a consequence of war (declared or undeclared), civil war, a discharge of a nuclear weapon (even if accidental), insurrection, or rebellion or revolution.
6. Resulting from or as a consequence of the following, whether controlled, uncontrolled, or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
7. Sustained by any **covered person** arising out of the ownership, maintenance or use of a **motorcycle** by that person.
8. Sustained by **you** or any **family member** while **occupying** any **auto** owned by **you** which is not insured for PIP Coverage under this policy.
9. Sustained by any **family member** while **occupying** any **auto** owned by that **family member** that is not insured for PIP Coverage under this policy.
10. Sustained while a participant in, or in practice for, any **driving contest or challenge**.
11. Sustained as a result of a **covered person's** exposure to **fungi**, wet or dry rot, or bacteria.

OTHER INSURANCE

No person shall recover benefits from more than one policy or one insurer on either a duplicate or supplemental basis, regardless of the number of motor vehicles covered or insurers (including self-insurers).

PART B – MEDICAL PAYMENTS COVERAGE

DEFINITIONS

- A. "**Covered person**" as used in this Part means:
 1. **You** or any **family member** while **occupying** any auto.
 2. Any other person while **occupying your covered auto**.
 3. **You** or any **family member** while not **occupying** a motor vehicle if injured by:
 - a. A motor vehicle designed for use mainly on public roads;
 - b. A **miscellaneous vehicle**; or
 - c. A **trailer**.
- B. "**Medical payment fee**" is an amount, as determined by **us** or someone on **our** behalf, that **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. The amount that **we** will pay will be one of the following:
 1. The amount provided by an applicable agreement with a Preferred Provider Organization, Preferred Provider Network, or other similar agreement; or
 2. The amount required, approved, or allowed by a fee schedule established by a state, federal, or other governmental entity in the relevant geographic area; or

(PART B Cont'd.)

3. The amount negotiated with the provider; or
4. The lesser of the following:
 - a. The actual amount billed; or
 - b. A reasonable fee for the service provided.

C. "**Medically necessary and appropriate medical services**" are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person**, his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person**; and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, "**medically necessary and appropriate medical services**" do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed; or
3. Inpatient services or supplies provided to the **covered person** when these could safely have been provided to the **covered person** as an outpatient.

INSURING AGREEMENT

A. **We** will pay only the **medical payment fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services. These fees and expenses must:

1. Result from **BI** sustained by a **covered person** in an auto accident; and
2. Be incurred for services rendered within one year from the date of the auto accident.

B. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine if the charges are **medical payment fees** for **medically necessary and appropriate medical services** or reasonable expenses for funeral services. A provider of medical or funeral services may charge more than the amount **we** determine to be **medical payment fees** and reasonable expenses, but such additional charges are not covered.

C. **We** will not be liable for pending or subsequent benefits if a **covered person** or assignee of benefits under Medical Payments Coverage unreasonably refuses to submit to an examination as required in Part E – General Provisions, Duties After An Accident or Loss.

(PART B Cont'd.)**LIMIT OF LIABILITY**

- A. The limit of liability shown on the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident. This is the most **we** will pay regardless of the number of:
1. **Covered persons**;
 2. Claims made;
 3. Vehicles or premiums shown on the Declarations; or
 4. Vehicles involved in an auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Any PIP Coverage; or
 2. Part A or Part C of this policy.

EXCLUSIONS

We do not provide benefits under this Part for any **covered person** for **BI**:

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four- or six-wheel land motor vehicle designed for use on public roads;
 - b. A moving van for personal use;
 - c. A **miscellaneous** vehicle; or
 - d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (2.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available.
5. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by **you**.
6. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by any **family member**. This exclusion (6.) does not apply to **you**.
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person**. This exclusion (8.) does not apply to **BI** sustained while **occupying** a private passenger auto, pickup or **van**, or a **trailer** used with these vehicles.
9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others, or shared as part of a personal vehicle sharing program.
11. Sustained while a participant in, or in practice for, any **driving contest or challenge**.
12. Sustained as a result of a **covered person's** exposure to **fungi**, wet or dry rot, or bacteria.

(PART B Cont'd.)**OTHER INSURANCE**

If there is other applicable auto medical payments insurance, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a vehicle **you** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

SPECIAL PROVISIONS

If **your covered auto** and every other motor vehicle **you** own are within the policy territory referred to in Part E – General Provisions, then coverage under Part B – Medical Payments Coverage will apply to **you** and any **family member** anywhere in the world.

PART C – UNINSURED MOTORISTS COVERAGE (referred to as UM Coverage) and
UNDERINSURED MOTORISTS COVERAGE (referred to as UIM Coverage)

DEFINITIONS

A. **"Covered person"** as used in this Part means:

1. **You** or any **family member**.
2. Any other person **occupying your covered auto**.
3. Any person for damages that person is entitled to recover because of **BI** to which this coverage applies sustained by a person described in 1. or 2. above.

However, **"covered person"** does not include the United States of America or any of its agencies.

B. **"Uninsured motor vehicle"** means a land motor vehicle or **trailer** of any type:

1. To which neither a liability bond or policy, nor cash or securities deposited with the State Treasurer, applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limits for liability are less than the minimum limits specified by the South Carolina Financial Responsibility Act.

3. That is a hit-and-run motor vehicle. This means a motor vehicle whose owner or operator cannot be identified and that hits or that causes an accident resulting in **BI** or **PD** without hitting:

- a. **You** or any **family member**;
- b. A vehicle **you** or any **family member** is **occupying**;
- c. **Your covered auto**; or
- d. Any of **your** property.

If there is no physical contact with the hit-and-run motor vehicle, the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which **you** or any **family member** were **occupying** at the time of the accident.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Successfully denies coverage;
 - b. Is or becomes insolvent;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.

(PART C Cont'd.)

5. For which the owner has not qualified as a self-insurer.

However, "**uninsured motor vehicle**" does not include any vehicle or equipment:

1. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws, 1986, Ratification No. 514, Sub-section 15-78-60, or by other applicable statute.
2. Operated on rails or crawler treads, except for a snowmobile.
3. Designed mainly for use off public roads while not on public roads.

- C. "**Underinsured motor vehicle**" means a land motor vehicle or **trailer** of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy are not enough to pay the full amount the **covered person** is legally entitled to recover as damages.

However, "**underinsured motor vehicle**" does not include an **uninsured motor vehicle** or any vehicle or equipment:

1. Operated on rails or crawler treads, except for a snowmobile.
2. Designed mainly for use off public roads while not on public roads.
3. While located for use as a residence or premises.

INSURING AGREEMENT

A. UM Coverage.

1. **We** will pay damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of:
 - a. **BI** sustained by a **covered person** and caused by an auto accident; and
 - b. **PD** to the property of a **covered person**.
2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.
3. Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us**.
4. **We** will pay under UM Coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. This provision applies only to definition B.2. under this Part.

B. UIM Coverage.

1. **We** will pay the following damages which a **covered person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of an auto accident:
 - a. **BI** sustained by a **covered person**; and
 - b. **PD** to **your covered auto**.
2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

(PART C Cont'd.)

LIMIT OF LIABILITY

A. UM Coverage.

1. For **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown on the Declarations for "each person" for **BI** under UM Coverage. Subject to this limit for "each person," the limit of liability shown on the Declarations for "each accident" for **BI** under UM Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident. For **PD** sustained in any one accident, **our** maximum limit of liability for all resulting damages is the limit of liability shown on the Declarations for **PD** under UM Coverage. These limits are the most **we** will pay regardless of the number of:

- a. **Covered persons;**
- b. Claims made;
- c. Vehicles or premiums shown on the Declarations;
- d. Premiums paid; or
- e. Vehicles involved in the accident.

2. However, if **you** or any **family member** sustains **BI** or **PD** while **occupying your covered auto** and:
 - a. No **covered person** other than **you** or any **family member** sustains **BI** or **PD** in the accident, **our** maximum limits of liability will be the limits of liability in Paragraph A.1., multiplied by the number of premiums shown on the Declarations for UM Coverage.
 - b. **BI** or **PD** is also sustained in the accident by a **covered person** other than **you** or any **family member**:

- (1) The most **we** will pay for **BI** or

PD to **you** or any **family member** is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage for the vehicle **occupied** at the time of the accident; and
 - (b) The "each person" limit of liability shown on the Declarations for **BI** under UM Coverage or the "each accident" limit of liability for **PD** under UM Coverage, multiplied by the number of premiums for UM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
- (2) Subject to the limit of liability for each person in Paragraph A.2.b.(1) above, the most **we** will pay for all **BI** or **PD** sustained by **you** and all **family members** in any one accident is the sum of:
 - (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage for the vehicle **occupied** at the time of the accident; and
 - (b) The "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage, multiplied by the number of premiums for UM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
 - (3) A person's pro-rata share is the proportion that that person's damages bear to the total damages sustained by all **covered persons**.

(PART C Cont'd.)

(4) These limits are the most **we** will pay regardless of the number of:

- (a) **Covered persons**;
- (b) Claims made;
- (c) Vehicles or premiums shown on the Declarations;
- (d) Premiums paid; or
- (e) Vehicles involved in the accident.

B. UIM Coverage.

1. For **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown on the Declarations for "each person" for **BI** under UIM Coverage. Subject to this limit for "each person," the limit of liability shown on the Declarations for "each accident" for **BI** under UIM Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident. For **PD** to **your covered auto** sustained in any one accident, **our** maximum limit of liability for all resulting damages is the limit of liability shown on the Declarations for **PD** under UIM Coverage. These limits are the most **we** will pay regardless of the number of:

- a. **Covered persons**;
- b. Claims made;
- c. Vehicles or premiums shown on the Declarations;
- d. Premiums paid; or
- e. Vehicles involved in the accident.

2. However, if **you** or any **family member** sustains **BI** or **PD** while **occupying your covered auto** and:

- a. No **covered person** other than **you** or any **family member** sustains **BI** or **PD** in the accident, **our** maximum limits of liability will be the limits of liability in Paragraph B.1., multiplied by the number of premiums shown on the Declarations for UIM Coverage.
- b. **BI** or **PD** is also sustained in the accident by a **covered person** other than **you** or any **family member**:

(1) The most **we** will pay for **BI** or **PD** to **you** or any **family member** is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage for the vehicle **occupied** at the time of the accident; and
- (b) The "each person" limit of liability shown on the Declarations for **BI** under UIM Coverage or the "each accident" limit of liability for **PD** under UIM Coverage, multiplied by the number of premiums for UIM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.

(2) Subject to the limit of liability for each person in Paragraph B.2.b.(1) above, the most **we** will pay for all **BI** or **PD** sustained by **you** and all **family members** in any one accident is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage for the vehicle **occupied** at the time of the accident; and

(PART C Cont'd.)

- (b) The "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage, multiplied by the number of premiums for UIM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
- (3) A person's pro-rata share is the proportion that that person's damages bear to the total of all damages sustained by all **covered persons**.
- (4) These limits are the most **we** will pay regardless of the number of:
- Covered persons**;
 - Claims made;
 - Vehicles or premiums shown on the Declarations;
 - Premiums paid; or
 - Vehicles involved in the accident.
- C. Any amounts otherwise payable for damages under UM Coverage or UIM Coverage shall be reduced by all sums paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.
- other than **your covered auto**, that is owned by that **covered person**.
- C. **We** do not provide UM Coverage or UIM Coverage for **BI** or **PD** sustained by any **covered person**:
- While **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (B.1.) does not apply to:
 - A share-the-expense car pool; or
 - Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
 - Using a vehicle without expressed or implied permission.
 - While **your covered auto** is rented or leased to others, or shared as part of a personal vehicle sharing program.
 - While **occupying** any vehicle when it is being operated in, or in practice for, any **driving contest or challenge**.
- D. UM Coverage or UIM Coverage shall not apply directly or indirectly to benefit:
- Any insurer or self-insurer under any workers' compensation law or similar disability benefits law; or
 - Any insurer of property.

EXCLUSIONS

- A. **We** do not provide UM Coverage:
- For **BI** or **PD** sustained by any **covered person** if that person or legal representative settles the **BI** or **PD** claim without **our** consent.
 - For the first \$200 of the amount of **PD** to each **covered person's** property as the result of any one accident.
- B. **We** do not provide UIM Coverage for **BI** or **PD** sustained by any **covered person** while **occupying**, or when struck by, any vehicle,

OTHER INSURANCE

- A. If a **covered person** sustains **BI** while **occupying** a vehicle not owned by that person or while not **occupying** any vehicle, the following priorities of recovery apply:

FIRST PRIORITY	The policy affording UM Coverage or UIM Coverage to the vehicle the covered person was occupying at the time of the accident.
-------------------	---

(PART C Cont'd.)

SECOND PRIORITY Any policy affording UM Coverage or UIM Coverage to the **covered person** as a named insured or **family member**.

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
2. If there is applicable insurance available under the first priority:
 - a. The limit of liability applicable to the vehicle the **covered person** was **occupying** under the policy in the first priority shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. **We** will pay only **our** share of the loss, not to exceed **our** share of the maximum recovery. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits in the same level of priority.

- B. With respect to **PD**, this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

1. Paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible.
2. Paid or payable under any workers' compensation law or similar disability benefits law. This (2.) does not apply to UM Coverage.
3. Paid under Part A of this policy.
4. Paid under any auto policy medical expense coverage.
5. Paid because of **PD** under Part D of this policy or any similar coverage under any other policy.

LOSS PAYABLE CLAUSE

With respect to **PD**, loss or damage under UM Coverage or UIM Coverage will be paid, as interest may appear, to the named insured and the loss payee shown on the Declarations. When **we** pay the loss payee **we** will, to the extent of payment, be subrogated to the loss payee's right of recovery.

PART D – PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. "**Actual cash value**" means the amount that it would cost, at the time of **loss**, to buy a comparable vehicle. As applied to **your covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.
- B. "**Collision**" means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal;

(PART D Cont'd.)

windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision**, you may elect to have it considered a **loss** caused by **collision**.

C. "**Custom equipment**" means equipment, furnishings and parts permanently installed in or upon **your covered auto**, other than:

1. Original manufacturer equipment, furnishings or parts;
2. Any replacement of original manufacturer equipment, furnishings or parts with other equipment, furnishings or parts of like kind and quality;
3. Equipment, furnishings or parts designed to assist disabled persons;
4. Anti-theft devices and devices intended to monitor or record driving activity; and
5. Tires of a substantially similar size as those installed by the manufacturer.

D. "**Loss**" means direct and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto** or personal property contained in **your covered auto**. **Loss** includes a total loss, but does not include any damage other than the cost to **repair** or replace. **Loss** does not include any loss of use, or diminution in value that would remain after **repair** or replacement of the damaged or stolen property.

E. "**Nonowned vehicle**."

1. "**Nonowned vehicle**" means any private passenger auto, pickup, **van**, **miscellaneous vehicle**, or **trailer** not owned by, or furnished or available for the regular use of, **you** or any **family member**. This applies only when the vehicle is in the custody of or being operated by **you** or any **family member**.

2. A **nonowned vehicle** does not include any of the following vehicles used in any business or occupation other than farming or ranching:

- a. A pickup;
- b. A **van**; or
- c. A **miscellaneous vehicle**.

F. "**Repair**."

1. "**Repair**" means restoring the damaged property to its pre-**loss** operational safety, function, and appearance. This may include the replacement of component parts.

2. **Repair** does not require:

- a. A return to the pre-**loss** market value of the property;
- b. Restoration, alteration, or replacement of undamaged property, unless such is needed for the operational safety of the vehicle; or
- c. Rekeying of locks following theft or misplacement of keys.

G. "**Your covered auto**," as used in this Part, includes:

1. **Custom equipment**, up to a maximum of \$5,000, in or on **your covered auto**.
2. A **nonowned vehicle**. If there is a **loss** to a **nonowned vehicle**, **we** will provide the broadest coverage shown on the Declarations.

INSURING AGREEMENT

A. Comprehensive Coverage (excluding **collision**).

1. Physical damage. **We** will pay for **loss** caused by other than **collision** to **your covered auto**, including its equipment,

(PART D Cont'd.)

and personal property contained in **your covered auto**, minus any applicable deductible shown on the Declarations.

No deductible under Comprehensive Coverage or Collision Coverage applies to the cost of repairing or replacing damaged automobile safety glass.

2. Transportation expenses. **We** will also pay:

a. Up to \$30 a day, to a maximum of \$900, for transportation expenses incurred by **you** or any **family member**. This applies only in the event of a total theft of **your covered auto**. **We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not **repairable**, up to seven days after **we** have made a settlement offer.

b. If Rental Reimbursement Coverage is afforded, limits for transportation expenses are the limits of liability shown on the Declarations for Rental Reimbursement Coverage for that vehicle.

B. Collision Coverage. **We** 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.

C. Rental Reimbursement Coverage (for **loss** other than total theft).

1. **We** will reimburse **you** for expenses **you** or any **family member** incurs to rent a substitute for **your covered auto**. This coverage applies only if:

a. **Your covered auto** is withdrawn from use for more than 24 hours due to a **loss**, other than a total theft, to that auto; and

b. The **loss** is covered under Comprehensive Coverage or caused by **collision**, and the cause of **loss** is not otherwise excluded under Part D of this policy.

2. **We** will reimburse **you** only for that period of time reasonably required to **repair** or replace **your covered auto**. If **we** determine **your covered auto** is a total loss, the rental period will end no later than seven days after **we** have made a settlement offer.

D. USAA Roadside Assistance. **We** will pay the reasonable costs **you** or any **family member** incurs for one of the following each time **your covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.

2. Locksmith services to gain entry to **your covered auto**. This does not include the rekeying of locks following theft or misplacement of keys.

3. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.

4. Delivery of gas or oil to, or a change of tire on a disabled vehicle. However, **we** do not pay for the cost of these items.

LIMIT OF LIABILITY

A. Total loss to **your covered auto**. Our limit of liability under Comprehensive Coverage and Collision Coverage is the **actual cash value** of the vehicle, inclusive of any **custom equipment**.

1. The maximum amount **we** will include for **loss** to **custom equipment** in or on **your covered auto** is \$5,000.

(PART D Cont'd.)

2. **We** will declare **your covered auto** to be a total loss if, in **our** judgment, the cost to **repair** it would be greater than its **actual cash value** minus its salvage value after the **loss**.
- B. Other than a total loss to **your covered auto**:
1. **Our** limit of liability under Comprehensive Coverage and Collision Coverage is the amount necessary to **repair** the **loss** based on **our** estimate or an estimate that **we** approve, if submitted by **you** or a third party. Upon request, **we** will identify at least one facility that is willing and able to complete the **repair** for the amount of the estimate.
 2. **Our** estimate may specify used, rebuilt, remanufactured, or non-Original Equipment Manufacturer (non-OEM) parts.
 3. **You** may request that damaged parts be replaced with new Original Equipment Manufacturer (OEM) parts. **You** will be responsible, however, for any cost difference between the parts included in **our** estimate and the new OEM parts used in the **repair**.
 4. **We** will not take a deduction for depreciation. **We** will take a deduction if prior damage has not been **repaired**. Prior damage does not include wear and tear.
- C. Personal property contained in **your covered auto**. The limits of liability described below are separate from the limits available for a **loss** to **your covered auto**.
1. **Our** limit of liability under Comprehensive Coverage and Collision Coverage is the lesser of:
 - a. The amount necessary to replace the damaged or stolen property; or
 - b. \$250.

2. **We** will not take a deduction for depreciation.
- D. Under Rental Reimbursement Coverage, **our** maximum limits of liability are the limits of liability shown on the Declarations for Rental Reimbursement Coverage for that vehicle.
- E. Under USAA Roadside Assistance, **our** limit of liability is the reasonable price for the covered service.

PAYMENT OF LOSS

We may pay for **loss** in money, or **repair** or replace the damaged or stolen property. **We** may, at **our** expense, return any stolen property to **you** or to the address shown on the Declarations. If **we** return stolen property, **we** will pay for any damage resulting from the theft. **We** may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. **We** cannot be required to assume the ownership of damaged property. **We** may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown on the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto**. **We** may cancel the policy as permitted by policy terms and the cancellation will terminate this agreement as to the loss payee's interest. **We** will give the same advance notice of cancellation to the loss payee as **we** give to the named insured shown on the Declarations. **We** may send notices to the loss payee either by mail or by electronic means. However, if the loss payee requests in writing that **we** not send notices, including a notice of cancellation, **we** will abide by that request. When **we** pay the **loss** payee **we** will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

(PART D Cont'd.)

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to **loss** caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss** to **your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss**; and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is being used to carry persons for a fee. This exclusion (1.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
2. Damage due and confined to:
 - a. Road damage to tires;
 - b. Wear and tear;
 - c. Freezing; or
 - d. Mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.
3. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
4. **Loss** to a camper body or trailer owned by **you** or any **family member** that is not shown on the Declarations. This exclusion (4.) does not apply to one **you** or any **family member** acquires during the policy period and asks **us** to insure within 30 days after **you** or any **family member** becomes the owner.
5. **Loss** to any **nonowned vehicle** when used by **you** or any **family member** without a reasonable belief that **you** or that **family member** is entitled to do so.
6. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
7. **Loss** to any **nonowned vehicle** arising out of its use by **you** or any **family member** while employed or otherwise engaged in **auto business** operations.
8. **Loss** to **your covered auto** while it is rented or leased to others, or shared as part of a personal vehicle sharing program.
9. **Loss** to any vehicle while it is being operated in, or in practice for, any **driving contest or challenge**.
10. **Loss** resulting from:

(PART D Cont'd.)

- a. The acquisition of a stolen vehicle;
- b. Any legal or governmental action to return a vehicle to its legal owner; or
- c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion (10.) does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

- 11. **Loss** resulting from use in any illicit or prohibited trade or transportation.
- 12. Any **loss** arising out of any act committed:
 - a. By or at the direction of **you** or any **family member**; and
 - b. With the intent to cause a **loss**.
- 13. **Loss** caused by **fungi**, wet or dry rot, or bacteria. This means the presence, growth, proliferation, spread, or any activity of **fungi**, wet or dry rot, or bacteria. This exclusion (13.) does not apply to damage directly resulting from a **loss** covered under Comprehensive Coverage or Collision Coverage.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the **loss**, **we** will pay only **our** share of the **loss**. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide with respect to a **nonowned vehicle** will be excess over any other collectible source of recovery including, but not limited to:

- 1. Any coverage provided by the owner of the **nonowned vehicle**.
- 2. Any other applicable physical damage insurance.
- 3. Any other source of recovery applicable to the **loss**.

This provision does not apply to USAA Roadside Assistance.

APPRAISAL

If **we** and **you** do not agree on the amount of **loss**, either may demand an appraisal. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the **actual cash value** and the amount of **loss**. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

PART E – GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the **covered person**, as defined in this policy, shall not relieve us of any obligations under this policy.

CHANGES

- A. The premium is based on information **we** have received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, or is incorrect or incomplete, **we** may adjust your premiums accordingly during the policy period.

(PART E Cont'd.)

B. If, during the policy period, the risk exposure changes for any of the following reasons, **we** will make the necessary premium adjustments effective the date of change in exposure. Change in exposure means the occurrence of an event listed in B.1. through B.7. or in E. below, or a similar event that may increase or decrease the policy premium. **You** agree to give **us** notice of any exposure change as soon as is reasonably possible. Changes that may result in a premium adjustment include, but are not limited to, the following:

1. Change in location where any vehicle is garaged.
2. Change in description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
3. Replacement or addition of any vehicle. A replacement or additional vehicle is a **newly acquired vehicle**.
4. Deletion of a vehicle. The named insured may request that a vehicle shown on the Declarations be deleted from this policy. The effective date of this change cannot be earlier than the date of the named insured's request unless **we** agree to an earlier date.
5. Change in date of birth, marital status, driver's license information, or driving record of any operator.
6. Addition or deletion of an operator.
7. Change, addition, or deletion of any coverage or limits.

C. **We** will make any calculations or adjustments of **your** premium using the applicable rules, rates, and forms as of the effective date of the change.

D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that

change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us**. Its terms may not be changed or waived except by endorsement issued by **us**.

E. Deployment.

1. If, because of **your** active-duty deployment in one of the military services of the United States, **you** have reduced the coverage on **your covered auto** and placed the vehicle in storage, then, upon **your** return from the deployment, **we** will reinstate the coverage that was on the vehicle prior to the deployment-caused reduction beginning on the date the vehicle is removed from storage.
2. Any reinstatement of coverage under E.1. will apply for up to 60 days after the date **you** returned from deployment. If **you** wish to continue the reinstated coverage beyond the 60-day period, **you** must request it during the 60-day period. If **you** request reinstated coverage after this 60-day period, any coverage **we** agree to provide will be effective at the date and time of **your** request unless **we** agree to an earlier date.
3. **You** must pay an additional premium, as set out in Part E, Changes, B.7., for the reinstated coverage. However, if **you** return from deployment on furlough or emergency leave for a period of 30 days or less, **we** will waive any increase in the premium for the period of time **you** are on furlough or emergency leave, provided that no claim for coverage under this policy is made for a loss that occurs during that time period. If a loss occurs **we** will, as of the date of the loss, reinstate the coverage that was on the vehicle prior to the

(PART E Cont'd.)

deployment-caused reduction, and **you** must pay an additional premium for that coverage.

CONFORMITY TO LAW

If any of the terms of this policy conflict with state or local law, state or local law will apply.

DUTIES AFTER AN ACCIDENT OR LOSS

We will not be required to provide coverage under this policy unless there has been full compliance with the following duties:

- A. **We** must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B. A person or entity seeking any coverage or payment of any benefits except payment under Part A – Liability must:
 1. Cooperate with **us** in the investigation, settlement, or defense of any claim or suit.
 2. Promptly send **us** copies of any notices or legal papers received in connection with a suit, accident or loss.
 3. Submit, as often as **we** reasonably require:
 - a. To physical exams by physicians **we** select. **We** will pay for these exams.
 - b. To examination under oath. The examination must be signed.
 4. Authorize **us** to obtain medical reports and other pertinent records.
 5. Submit a proof of loss when required by **us**.
 6. Promptly notify the police if a hit-and-run driver is involved.

- C. A person seeking benefits under Part B – PIP Coverage must also submit a written proof of claim when required by **us**.
- D. A person seeking coverage for **PD** under Part C – Uninsured Motorists Coverage and Underinsured Motorists Coverage, or coverage under Part D – Physical Damage Coverage must also:
 1. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. **We** will pay reasonable expenses incurred to do this.
 2. Promptly notify the police if **your covered auto** is stolen.
 3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

LEGAL ACTION AGAINST US

- A. No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against **us** until **we** agree in writing that the **covered person**, as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.
- B. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person**, as defined in this policy.
- C. Unless **we** agree otherwise, any legal action against **us** must be brought in a court of competent jurisdiction in the county and state where the **covered person** lived at the time of the accident.

MISREPRESENTATION

We do not provide any coverage under this policy for any person who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

(PART E Cont'd.)

1. At the time application was made; or
2. At any time during the policy period; or
3. In connection with the presentation or settlement of a claim.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, **we** will pay the claim only once under this policy.

OUR RIGHT TO RECOVER PAYMENT

A. If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** will be subrogated to that right. The person to or for whom payment was made shall do whatever is necessary to enable **us** to exercise **our** rights, and shall do nothing after loss to prejudice them. However, **our** rights in this paragraph do not apply:

1. Under Part B – Medical Payments Coverage or Part B – PIP Coverage.
2. Under Part C:
 - a. To UM Coverage to the extent that such payment does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act; or
 - b. To UIM Coverage.
3. Under Part D, against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

B. If **we** make a payment under this policy and the person to or for whom payment was made recovers damages from another, the person to or for whom payment was made shall hold in trust for **us** the proceeds of the recovery and reimburse **us** to the extent of **our** payment. However, **our** rights in this paragraph do not apply:

1. Under Part B – Medical Payments Coverage or Part B – PIP Coverage.
 2. Under Part C, to UIM Coverage.
- C. With respect to payments under Part C – UM Coverage:
1. If a **covered person** has prosecuted to judgment a suit against any party at fault, **we** will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
 2. **We** will pay **our** proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, **we** reserve the right to retain an attorney of **our** choice to pursue a claim instead of reasonable attorneys' fees.
 3. If a **covered person** making a claim for **PD** under Part C of this policy is also entitled to any other compensation for the **PD**, **we** will not be obligated to pay a claim until the **covered person** has assigned **us** the rights to the compensation. This applies only to the extent of payment under UM Coverage that does not exceed the minimum limit specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- D. If the **covered person**, as defined in this policy, recovers from the party at fault and **we** share in the recovery, **we** will pay our share of the legal expenses. **Our** share is that percent of the legal expenses that the amount **we** recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by **us** from any other insurer under any inter-insurer arbitration agreement.
- E. If **we** make payment for a claim under Part A, and the **covered person**, as defined in Part A:

(PART E Cont'd.)

1. Knowingly concealed or misrepresented any material fact or circumstance relating to this insurance; or
2. Failed or refused to comply with the duties specified in this policy and prejudiced **our** defense of the liability claim by such failure or refusal;

then, the **covered person** shall reimburse **us** to the extent of **our** payment and cost of defense.

- F. If **we** make payment for a claim under Part D and **you** or any **family member** has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance, then **you** shall reimburse **us** to the extent of **our** payment.

OWNERSHIP

For purposes of this policy, a vehicle is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur during the policy period as shown on the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of **your covered auto** between any ports of these locations.
- B. The policy territory also includes Mexico, subject to the following conditions:
1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accident that occurs within 75 miles of the USA border.
 2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican

insurance company at the time of loss. This paragraph (B.2.) applies only if the original liability suit for **BI** or **PD** is brought in the USA.

3. Coverage under this policy does not extend:
 - a. To any **covered person**, as defined in this policy, who does not live in the USA.
 - b. To any **covered person**, as defined in this policy, **occupying** a vehicle which is not principally garaged and used in the USA.
 - c. To any vehicle which is not principally garaged and used in the USA.
4. The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.
5. Losses payable under Part D of the policy will be paid in the USA. If the vehicle must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.
6. Any insurance **we** provide will be excess over any other similar valid and collectible insurance.

REDUCING THE RISK OF LOSS

We may occasionally provide **you** with products or services that assist **you** in preventing or reducing the risk of loss, and may provide an incentive for **your** use of these items.

SPOUSE ACCESS

- A. The named insured and **we** agree that the named insured and resident spouse are "customers" for purposes of state and federal privacy laws. The resident spouse will have access to the same information

(PART E Cont'd.)

available to the named insured and may initiate the same transactions as the named insured.

(2) During the 90 days immediately preceding the last anniversary of the effective date.

- B. The named insured may notify **us** that he/she no longer agrees that the resident spouse shall be treated as a "customer" for purposes of state and federal privacy laws, and **we** will not permit the resident spouse to access policy information.

- c. For any other reason not prohibited by law.

- B. Nonrenewal. If **we** decide not to renew this policy, **we** will send notice to the named insured shown on the Declarations. This notice may be delivered to the named insured, mailed to **you** by postal mail to the most recent address **you** provided to **us** or sent electronically if **we** have **your** consent and agreement on file to receive documents electronically. In any event, notice will be sent at least 15 days before the end of the policy period.

- C. Automatic Termination. If **we** offer to renew and **you** do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal premium when due will mean that **you** have not accepted **our** offer.

D. Other Termination Provisions.

1. Proof of mailing or electronic transmission of any notice will be sufficient proof of notice.
2. If this policy is cancelled, the named insured shown on the Declarations may be entitled to a premium refund. The premium refund, if any, will be computed according to **our** manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice will become the end of the policy period.

TERMINATION

- A. Cancellation. This policy may be cancelled during the policy period as follows:

1. **You** may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request unless **we** agree to an earlier date.
2. **We** may cancel this policy by sending notice to the named insured shown on the Declarations. This cancellation notice may be delivered to the named insured, mailed by postal mail to the most recent address **you** provided to **us** or sent electronically if **we** have **your** consent and agreement on file to receive documents electronically. In any event, **we** will give at least 15 days notice.
3. During the first 90 days this policy is in effect, the policy may be cancelled for any reason.
4. After this policy is in effect for 90 days, or if this is a renewal policy, **we** will cancel only:
 - a. For nonpayment of premium;
 - b. If **your** driver's license, or that of any driver who either resides in **your** household or customarily operates **your covered auto**, has been suspended or revoked. This must have occurred:

- (1) During the policy period; or

TRANSFER OF YOUR INTEREST IN THIS POLICY

- A. **Your** rights and duties under this policy may not be assigned without **our** written consent. However, if the named insured

(PART E Cont'd.)

shown on the Declarations dies, **we** will provide coverage until the end of the policy period for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if the named insured shown on the Declarations; and
2. The legal representative of the deceased person as if the named insured shown on the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto**.

TWO OR MORE AUTO POLICIES

- A. If this policy and any other auto insurance policy **we** issued to **you** apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy.
- B. This provision does not apply to Part C – UM Coverage and UIM Coverage.

Copyright, USAA, 2011. All rights reserved.
Includes copyrighted material of Insurance Services Office, used with permission.

THIS PAGE INTENTIONALLY LEFT BLANK

LEASED AUTOS - ADDITIONAL COVERED PERSON

This Endorsement forms a part of the auto policy to which it is attached.

It is effective from the policy effective date or from the date shown on the amended Declarations.

We agree that, with respect to the covered auto described on the Declarations, insurance under this policy applies to the leasing or rental agency(s) named as an additional covered person, but only to the extent that such agency qualifies as a covered person under Definition 3. of covered person in Part A - Liability Coverage of this policy. Our inclusion of this additional covered person does not operate to increase the limits shown on the Declarations.

The insurance for any described auto which is held under any leasing, rental, or similar agreement expires in the following cases:

(1) The lease or rental agreement is revoked or terminated; or

(2) The additional covered person takes possession of the auto.

We further agree that if the named insured elects to cancel the policy or change coverage, we will give written notice of the cancellation or change in coverage and its effective date to the additional covered person. If we decide to cancel the policy, we will give the same advance notice of cancellation to the additional covered person as we give to the named insured listed on the Declarations.

We may send notices to the additional covered person either by mail or by electronic means. However, if the additional covered person requests in writing that we not send notices, including notice of cancellation, we will abide by that request.

Copyright, USAA, 2004. All rights reserved.
Includes copyrighted material of Insurance Services Office, used with permission.

ACCIDENT FORGIVENESS

When a premium for Accident Forgiveness is shown on the Declarations:

1. If you or any family member shown as an operator on the Declarations:
 - a. Is involved in an at-fault accident that occurs after the effective date of this endorsement, we will waive any premium increase under this policy that would otherwise be applied for the first such at-fault accident.
 - b. Was involved in an at-fault accident forgiven in a policy written by us or one of our affiliates and such operator was removed from that policy and added to this policy without any gap in coverage, we will continue to forgive the accident on this policy for the remainder of the period of time the premium increase would have occurred under this policy if there are no other at-fault accidents for which premium is waived under this policy.

We will waive the premium increase for only one at-fault accident per policy period, regardless of the number of operators shown on the Declarations.

2. We will waive the premium increase for the at-fault accident in Section I for the period of time during which:
 - a. This endorsement is in effect; and
 - b. A premium increase for such at-fault accident would have otherwise applied to this policy.

The Accident Forgiveness Endorsement must remain in effect during any renewal period of this policy over the full accident forgiveness period for the premium increase waiver to remain in effect.

Copyright, USAA 2009. All rights reserved.

ACCFOR(01) 3-09

91228-0309
Page 1 of 1

APPENDIX 134

ROA 133

0901119cb2edc19f

USAA Confidential

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-01971

MOTION TO ALTER OR
AMEND JUDGMENT

Pursuant to S.C.R.C.P. 59(e), Plaintiff hereby moves the Court for an Order altering or amending its Order dated November 29, 2023 (filed November 30, 2023) granting Defendant's Motion for Summary Judgment and denying Plaintiff's Motion for Partial Summary Judgment law with respect to her First Cause of Action (Declaratory Judgment and Reformation).

The grounds for this motion are as follows:

1. While the Court found that *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), "is dispositive" of the issues before it, the Court failed to apply the holding in *Miller* properly. In *Miller*, the Supreme 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). Here, however, as the Defendant admitted (Answer, ¶ 9) and the Court found (Order, p. 1), the policy Defendant issued to Plaintiff provided liability insurance and other coverages in addition to collision coverage. Therefore, the holding in *Miller*, plus the statutory mandate in S.C. CODE ANN. § 38-77-160 (1976, as amended) required Defendant to offer UIM coverage on the 2016 Montana and 2007 Adams.

2. The Court misconstrued S.C. CODE ANN. § 38-77-30(9) (1976, as amended). Under that statute, trailers such as the 2016 Montana and 2007 Adams are considered “motor vehicles” for purposes of the automobile insurance code. The Court erred in concluding that the statute requires trailers to be self-propelled inasmuch as the express statutory language demonstrates the term “self-propelled” applies only to vehicles attached to trailers (“‘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*” (emphasis added)).
3. The Court erred in finding that the 2016 Montana and 2007 Adams were only intended for “incidental use[] on a highway” (Order, p. 3) when the fact that Defendant insured the trailers for collision coverage 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).
4. The 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) – a tax case, not an automobile insurance case governed by Title 38 of the South Carolina Code – in which the Court of Appeals did not apply the S.C. CODE ANN. § 38-77-30(9) definition of “motor vehicle” applicable to motor vehicle insurance but a different, inapplicable definition of “motor vehicle.”
5. The Court failed to reform the policy to include UIM coverage.

For the foregoing reasons, the Court should alter or amend its Order to deny the Defendant’s Motion for Summary Judgment and instead grant the Plaintiff’s Motion for Partial Summary Judgment.

Respectfully submitted,

CLAWSON FARGNOLI UTSEY, LLC

BY: /s/Bert G. Utsey, III
Bert G. Utsey, III
SC Bar #10093
2 Amherst Street
Charleston, South Carolina 29403
(843) 970-2700
bert@cfulaw.com

Attorneys for Plaintiff

December 4, 2023
Charleston, South Carolina

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 Fagnoli (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	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Standard of Review	2
Arguments.....	3
I. Statement of facts.....	3
II. USAA was statutorily required to offer UIM coverage on all vehicles insured by the Policy and the Circuit Court erred in ruling otherwise.....	5
A. Automobile insurers are required to offer UIM coverage on insured vehicles.....	5
B. USAA is an “automobile insurer.”.....	6
C. The Policy is an “automobile insurance policy.”.....	6
D. USAA had a duty to offer UIM coverage on the Montana and the Adams....	7
1. Automobile insurers must provide liability coverage in automobile insurance policies.....	7
2. The Montana and the Adams are “motor vehicles” for purposes of insurance statutes.....	8
3. The Circuit Court erred in relying upon a tax case to interpret an insurance statute.....	13
4. <i>Miller v. Aiken</i> is distinguishable and, in fact, supports Amoruso’s position.....	14
III. The Policy should be reformed to include UIM coverage on the Montana and the Adams.....	15
IV. Amoruso should recover stacked UIM coverage for all vehicles.....	16
Conclusion	16

TABLE OF AUTHORITIES

Cases

<i>Ackerman v. Travelers Indem. Co.</i> , 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995).....	6
<i>Anderson v. State Farm Mut. Auto. Ins. Co.</i> , 314 S.C. 140, 442 S.E. 2d 179 (1994).....	11, 12
<i>Bernard v. United States</i> , 872 F.2d 376 (11th Cir. 1989).....	10
<i>Butler v. Unisun Ins. Co.</i> , 323 S.C. 402, 475 S.E.2d 758 (1996)	6, 15
<i>Carolina Power & Light Co. v. City of Bennettsville</i> , 314 S.C. 137, 442 S.E.2d 177 (1994).....	8
<i>Crossmann Communities of N.C. v. Harleysville Mut. Ins. Co.</i> , 395 S.C. 40, 717 S.E.2d 589 (2011).....	2
<i>Dept. of Revenue v. Williams</i> , 351 S.W.2d 875 (Ky. App. 1961).....	10
<i>Duvall v. S.C. Budget & Control Bd.</i> , 377 S.C. 36, 659 S.E.2d 125 (2008).....	11
<i>Herbert v. West Reading Borough Zoning Hrg. Bd.</i> , 2021 Pa. Commw. Unpub. LEXIS 541 (2021).....	10
<i>In re Decker</i> , 322 S.C. 215, 471 S.E.2d 462 (1995).....	10
<i>In re Toppo</i> , 474 F. Supp. 48 (W.D. Pa. 1979).....	10
<i>J.K. Construction v. W. Carolina Regional Sewer Auth.</i> , 336 S.C. 162, 519 S.E.2d 561 (1999)...	3
<i>Jack's Custom Cycles v. S.C. Dept. of Revenue</i> , 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023)..	13
<i>Judy v. Martin</i> , 381 S.C. 455, 674 S.E.2d 151 (2009).....	2
<i>Miller v. Aiken</i> , 364 S.C. 303, 613 S.E.2d 364 (2005)	5, 6, 7, 8, 14, 15
<i>Nationwide Ins. Co. of Am. v. Knight</i> , 433 S.C. 371, 858 S.E.2d 633 (2021)	5
<i>Neumayer v. Philadelphia Indem. Ins. Co.</i> , 427 S.C. 261, 831 S.E.2d 406 (2019).....	3
<i>Newman v. Basin Motor Co.</i> , 98 N.M. 39, 644 P.2d 553 (1982).....	10
<i>Patapsco Trailer Service & Sales v. Eastern Freightways</i> , 271 Md. 558, 318 A.2d 817 (Ct. App. 1973).....	10
<i>Peagler v. USAA Ins. Co.</i> , 368 S.C. 153, 628 S.E.2d 475 (2006).....	7
<i>Prudential Ins. Co. v. Associated Employers Lloyds</i> , 250 S.W.2d 477 (Tex. App. 1952)	10

<i>Ranucci v. Crain</i> , 409 S.C. 493, 763 S.E.2d 189 (2014)	10
<i>S.C. Dept. of Consumer Affairs v. Rent-a-Center</i> , 345 S.C. 251, 547 S.E.2d 881 (Ct. App. 2001)	9
<i>State Farm Mut. Auto. Ins. Co. v. Windham</i> , 438 S.C. 156, 882 S.E.2d 754 (2022).....	2
<i>State v. Leopard</i> , 349 S.C. 467, 563 S.E.2d 342 (Ct. App. 2002)	9
<i>Strickland v. Strickland</i> , 375 S.C. 76, 650 S.E.2d 465 (2007).....	9
<i>Tomczak v. Industrial Indem. Ins. Co.</i> , 1989 U.S. Dist. LEXIS 5127 (E.D. Pa. 1989)	10
<i>Truck Trailer Mfrs. Assoc. v. Environmental Prot. Agency</i> , 17 F.4th 1198, 1202 (D.C. Cir. 2021)	10
<i>United States v. Kelly</i> , 435 F.2d 1288 (9th Cir.1970).....	10
<i>United States v. Lofty</i> , 455 F.2d 506 (4th Cir. 1972).....	10
<i>Vee v. Ibrahim</i> , 769 N.W.2d 770 (Minn. App. 2009).....	10
<i>WDW Properties v. City of Sumter</i> , 342 S.C. 6, 535 S.E.2d 631 (2000)	2-3

Statutes

S.C. CODE ANN. § 38-77-30 (1976, as amended).....	6, 7, 8, 13
S.C. CODE ANN. § 38-77-140 (1976, as amended).....	7, 8, 15
S.C. CODE ANN. § 38-77-160 (1976, as amended)	5, 14, 15
S.C. CODE ANN. § 56-5-4900 (1976, as amended).....	11

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 conclusion⁵ 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. Fagnoli (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

RECEIVED

Apr 17 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 No. 2024-000107

Jill S. Amoruso, ... Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

WHELAN MELLEN & NORRIS, LLC

Charles R. Norris, Esquire
Robert W. Whelan, Esquire
89 Broad Street
Charleston, SC 29401
(843) 998-7099

E-Mail: charles@whelanmellen.com

Attorneys for Respondent

TABLE OF CONTENTS

Table of Authorities	iii-iv
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Standard of Review.....	3
Introduction.....	3
Argument	4
I. USAA was not required by S.C. Code Sections 38-77-140 and 160 to make a separate offer of UIM coverage for non-motorized trailers, over and above the coverage provided for the plaintiff’s four motor vehicles.	4
A. South Carolina’s mandatory automobile insurance coverages are applicable to “each motor vehicle.”	4
B. Motor vehicles are self-propelled vehicles designed for highways and are generally inclusive of and considered one unit with their trailers.	5
C. USAA’s policy complied with S.C. Code sections 38-77-140 and 160.....	7
D. USAA has complied with the UIM offer requirements and paid Plaintiff \$1,200,000 in UIM benefits on all motorized vehicles she owned and insured.....	7
II. The Plaintiff’s construction of section 38-77-30(9) is wrong.....	8
A. Contrary to Plaintiff’s interpretation, a motor vehicle requires a motor.....	8
B. The last sentence of the subject definition contradicts plaintiff’s construction.....	9
C. Plaintiff’s interpretation misstates the Circuit Court’s holding to create conflicts that do not exist.....	10
D. Miller v. Aiken does not support the plaintiff’s position.....	11
E. The radical revision of “motor vehicle” to include non-motorized trailers proposed by the plaintiff, and the consequent sea change in the way insurance is purchased, sold, and administered, should be accomplished, if at all, by the legislature, not this Court.....	12

1.	In addition to requiring consumers to obtain separate UIM quotes for all of their trailers, Plaintiff also (necessarily) seeks a mandate that they obtain separate liability and UM insurance policies on those trailers.....	12
2.	The radical revision and expansion of automobile insurance proposed by the plaintiff must be done, if at all, by the legislature, not by judicial decision.....	13
3.	The construction of the definition of "motor vehicle" in section 38-77-30 (9) urged by the plaintiff will lead to an absurd result.....	14
Conclusion		15

TABLE OF AUTHORITIES

CASES

<i>Baker v. Chavis</i> , 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991).....	6
<i>Ballard v. Newberry Cnty.</i> , 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021)	17
<i>Bolt v. Life & Cas. Ins. Co. of Tenn.</i> , 156 S.C. 117, 152 S.E. 766, 767 (1930).....	11
<i>Bolt v. Life & Cas. Ins. Co. of Tenn.</i> , 156 S.C. 117, 152 S.E. 766, 772 (1930).....	12
<i>Canal Insurance Company v. Insurance Company of North America</i> , 315 S.C. 1, 4, 431 S.E. 2d 577, 579 (1993).....	18
<i>City of Rock Hill v. Harris</i> , 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011).....	4
<i>Floyd v. C.B. Askins & Co. Contractors</i> , 382 S.C. 84, 87, 675 S.E.2d 450, 452 (Ct. App. 2009). 3	
<i>Franklin v. Maynard</i> , 356 S.C. 276, 279, 588 S.E.2d 604, 605 (2003).....	17
<i>Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.</i> , 223 S.C. 320, 75 S.E.2d 688 (1953).....	4
<i>Gunn v. Burnette</i> , 236 S.C. 496, 498, 115 S.E.2d 171, 172 (1960).....	11
<i>Jack’s Custom Cycles, Inc. v. S.C. Dep’t of Revenue</i> , 439 S.C. 35, 46, 885 S.E.2d 433, 439 (Ct. App. 2023)	10
<i>Miller v. Aiken</i> , 364 S.C. 303, 309, 613 S.E.2d 364, 367 (2005)	8
<i>Miller v. Lawrence Robinson Trucking</i> , 333 S.C. 576, 581-82, 510 S.E.2d 431, 434 (Ct. App. 1998)	17
<i>N.C. Turnpike Authority v. Pine Island, Inc.</i> , 265 N.C. 109, 143 S.E.2d 319 (1965).....	6
<i>North Carolina Farm Bureau Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.</i> , 304 S.C. 110, 113, 403 S.E.2d 151, 153 (Ct. App. 1991)	7
<i>Planned Parenthood S. Atl. v. State</i> , 440 S.C. 465, 483, 892 S.E.2d 121, 131 (2023).....	17
<i>Progressive Direct Ins. Co. v. Groves</i> , 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022)	3
<i>S. C. Pub. Int. Found. v. Calhoun Cnty. Council</i> , 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021)3	
<i>S.C. Coastal Council v. S.C. State Ethics Comm’n</i> , 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)	17
<i>S.C. Dept. of Consumer Affairs v. Rent-A-Ctr., Inc.</i> , 345 S.C. 251, 256, 547 S.E.2d 881, 884 (Ct. App. 2001)	14
<i>Southeast Toyota Distr., LLC v. Jim Hudson Superstore, Inc.</i> , 387 S.C. 508, 512, 693 S.E.2d 33, 35 (Ct. App. 2010)	3
<i>State v. Odom</i> , 412 S.C. 253, 772 S.E.2d 149, 155 (2015).....	16
<i>State v. Sullivan</i> , 82 A.2d 629 (M.E. 1951)	11
<i>Town of Summerville v. City of N. Charleston</i> , 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)	4

<i>White v. S.C. Dept. of Parks, Recreation and Tourism</i> , 271 S.C. 9, 94, 245 S.E.2d 125, 127 (Ct. App. 1978)	11
---	----

OTHER AUTHORITIES

223 S.C. 320, 75 S.E.2d 688 (1953)	7
38-77-30(9). S.C. Code § 56-9-20(4).....	5
60 C.J.S. <i>Motor Vehicles</i> § 1)	11
60 C.J.S. <i>Motor Vehicles</i> § 1, 118-19 (2012).....	10
Black’s Law Dictionary, p. 602 (7 th Ed. 1999).....	14
Dickerson, Reed, <i>the Interpretation and Application of Statutes</i> , 234-35 (1975)	14
S.C. Code § 38-77-30(9).....	6

STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court correctly concluded the Plaintiff's camper and the Plaintiff's horse trailer, neither of which are self-propelled vehicles, are not "motor vehicles" as defined by section 38- 77-30 (9) of the South Carolina Code and, therefore, do not require their own separate liability coverage, their own separate uninsured motorist (UM) coverage and their own separate offer of under-insurance motorist (UIM) coverage.

STATEMENT OF THE CASE

This lawsuit was filed August 18, 2022. The complaint alleged 3 causes of action – a claim for declaratory judgment and reformation, breach of contract and breach of the covenant of good faith and fair dealing, respectively. 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 plaintiff's horse trailer and camper. (Plaintiff's complaint paragraphs 34 – 40); (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 this appeal. (R. 20-23)

This lawsuit arose out of an accident on January 7, 2017, when the plaintiff was in an accident with Kaira Miller. At the time of the accident the plaintiff was driving a 2014 Nissan. At this time the Nissan and 3 other motor vehicles (two Volkswagens and a Dodge) were insured with USAA. All 4 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. (Order granting USAA's motion for summary judgment, page 1) (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 plaintiff pay a separate, additional premium for liability, UM or UIM coverage. (Order granting USAA's motion for summary judgment, page 1, 2) (R. 2, 3) It is undisputed neither the camper nor the horse trailer

were self-propelled. Instead, they could only be towed behind a self-propelled, transporting vehicle. (R. 79; R. 3)

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

In January 2023 the plaintiff 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 that the 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.

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 that 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 these vehicles. USAA submitted a memorandum in support of its motion for summary judgment which referenced the plaintiff's response to USAA's interrogatories (R. 79) and which included photographs of the horse trailer. (R. 82-86) (USAA's memorandum in support of motion for summary judgment with attachments) (R. 36-39)

On July 13, 2023, the lower court heard the plaintiff and USAA's cross motions for summary judgment. (Transcript of July 13, 2023, hearing before Judge Jennifer B. McCoy, page 1 to page 30) (R. 40-68) On November 30, 2023, the lower court issued an order granting USAA's

motion for summary judgment and denying the plaintiff's motion for summary judgment. (Order of Judge Jennifer B. McCoy dated November 30, 2023) (R. 2-6) On December 4, 2023, the plaintiff moved to alter or amend the judgment. (Plaintiff's motion to alter or amend judgment) (R. 134-136) On January 19, 2024, Judge McCoy issued a form 4 order denying the plaintiff's motion to reconsider the order granting USAA's motion for summary judgment. (Form 4 order filed January 19, 2024) (R. 13, 14) This appeal followed.

STANDARD OF REVIEW

This appeal is from cross-motions for summary judgment and involves interpretation of a statute. When parties file cross-motions for summary judgment, the issue becomes a question of law for the appellate court to decide de novo. *S. C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) (citation omitted); *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022). Additionally, “[s]tatutory interpretation is a question of law.” *Floyd v. C.B. Askins & Co. Contractors*, 382 S.C. 84, 87, 675 S.E.2d 450, 452 (Ct. App. 2009) (citation omitted). Determining the proper interpretation of a statute is a question of law and an appellate court reviews questions of law de novo. *Southeast Toyota Distr., LLC v. Jim Hudson Superstore, Inc.*, 387 S.C. 508, 512, 693 S.E.2d 33, 35 (Ct. App. 2010) (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)); *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011).

INTRODUCTION

This appeal concerns competing constructions of the definition of “motor vehicle” in S.C. Code section 38-77-30(9). The first, recognized by the Circuit Court, equates motor vehicles with automobiles; requires motor vehicles to have a motor—a premise recognized in this state since 1905; and considers a trailer to be *part of a single unit* with a motor vehicle towing the trailer—a principle recognized in case law since 1953. *See, Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*,

223 S.C. 320, 75 S.E.2d 688 (1953) (“A trailer in and of itself does not have inherent dangerous properties since it is not self-propelled and can be operated only when attached to a motor vehicle, but when once attached it becomes a part of a power operated vehicle with dangerous potentialities, and therefore subject to lien for damages for the negligent or wilful operation of the power unit of which it has been made a part.”). The Circuit Court’s construction is consistent with the current status quo, as trailers are generally covered by the policy of the motor vehicle towing them. Indeed, in this case, the insurance purchased for each of the insureds’ four motor vehicles, also provides coverage for any trailer the insureds’ own.

The second construction, advanced by the plaintiff, strips “motor vehicle” of its first word, such that non-self-propelled, stationary trailers, with no motor, somehow come within the definition of motor vehicles. Plaintiff admits her construction requires consumers to procure separate and additional liability and UM coverage for each and every trailer they own, as well as receive quotes for UIM coverage on each and every trailer. Thus, consumers would be required to double-insure their trailers—once through their motor vehicle policy, and then a second time through a separate and additional coverage for the trailer itself. This vast and significant change to the status quo, if done at all, should be accomplished by the legislature, not the courts.

ARGUMENT

I. USAA was not required by S.C. Code Sections 38-77-140 and 160 to make a separate offer of UIM coverage for non-motorized trailers, over and above the coverage provided for the plaintiff’s four motor vehicles.

A. South Carolina’s mandatory automobile insurance coverages are applicable to “each motor vehicle.”

S.C. Code sections 38-77-140 and 160 work in tandem with respect to the liability coverages required to be provided and UIM coverages required to be offered. Section 160 requires

UIM offers “up to the limits of the insured liability coverage.”¹ Thus, no UIM offer is required under section 160, unless liability coverage is also required under 140.² Importantly, section 140 sets forth standard liability limits which must be provided “with respect to **each motor vehicle.**” (emphasis added).³

B. Motor vehicles are self-propelled vehicles designed for highways and are generally inclusive of and considered one unit with their trailers.

Section 38-77-30(9), a tortured reading of which serves as the backbone of plaintiff’s argument, provides an explanation of what is meant by “each motor vehicle” in section 140. Subsection 9 makes clear that a motor vehicle includes a trailer or semi-trailer attached to it. S.C. Code § 38-77-30(9) (“‘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”). Thus, an insurer cannot exclude coverage to a motor vehicle because a wreck was caused by its trailer—the trailer would be *included* as part of the motor vehicle and thus subject to liability coverage under section 140.

As noted by Judge McCoy, the word “includes” is ordinarily a word of enlargement and not of limitation. *Baker v. Chavis*, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991)

¹ These statutes also work hand in hand with the state’s Motor Vehicle Financial Responsibility Act, at S.C. Code § 56-9-10, *et seq.* The Motor Vehicle Financial Responsibility Act includes a definition of “Motor Vehicle” that is nearly identical to that contained at section 38-77-30(9). S.C. Code § 56-9-20(4)

² Although plaintiff’s Complaint did not seek to reform the policy to include additional liability limits for her trailers, she now apparently recognizes that additional liability coverage would be necessary to support a duty to offer UIM as she argues USAA “should also have provided liability coverage” on the camper and horse trailer. (App. Br., 13); see also Transcript of hearing on summary judgment, page 12) (“frankly, this policy should have also had liability coverage on these two trailers.”); (R. 51)

³ The plaintiff agrees that her appeal hinges on whether her trailers are “motor vehicles.” She argues the “dispositive question” is whether USAA is an automobile insurer, and whether her trailers (which she gives the monikers the Montana and the Adams) were motor vehicles. (App. Br., 6). USAA does not contest that it is an automobile insurer.

(citing *N.C. Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 143 S.E.2d 319 (1965)). Applying this definition to section 38-77-30 (9), the only reasonable statutory construction is that a motor vehicle is inclusive of its "trailers and semitrailers" designed for use with that motor vehicle, and that separate insurance is not needed for each trailer under Chapter 77.⁴

Although it considered the subject in a different context, the South Carolina Supreme Court has thoroughly analyzed and explained the context in which trailers are to be considered as *one unit* with the motor vehicles that tow them. In *Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*, the court analyzed whether an injured party's lien on a tortfeasor's vehicle would extend to a trailer towed by that vehicle. 223 S.C. 320, 75 S.E.2d 688 (1953). The court explained that a trailer posed no danger until it was attached to and became an appendage of a motor vehicle. "A trailer in and of itself does not have inherent dangerous properties since it is not self-propelled and can be operated only when attached to a motor vehicle, but when once attached it becomes a part of a power operated vehicle with dangerous potentialities, and therefore subject to lien for damages for the negligent or wilful operation of the power unit of which it has been made a part." *Id.* at 325, 75 S.E.2d at 690.⁵ As a result, "The trailer and the truck-tractor are one unit. They are both part of one operation out of which the damages arose." *Id.* at 323, 75 S.E. 2d 689. Along the same lines, this Court referred to this same "'unit' rule" under which "a truck and trailer are to be treated as a unit for the purposes of determining liability for the accident," though that rule was not relevant to the Court's decision. *North Carolina Farm Bureau Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 110, 113, 403 S.E.2d 151, 153 (Ct. App. 1991). *See also*, 60 C.J.S. Motor Vehicles,

⁴ Plaintiff's interpretation, discussed below, is the exact opposite of this: she argues trailers are *separate* "motor vehicles" that are considered *separate* and apart from the motor vehicle that tows them, and are therefore required to have *separate* liability, UM, and UIM insurance.

⁵ This observation is equally applicable if the final phrase is substituted with "and therefore subject to the requirements of the Motor Vehicle Financial Responsibility Act."

1(a)) (“*A trailer or a semi-trailer is a vehicle, but is not a motor vehicle, except that in so far as it facilitates the primary function of a motor vehicle of transporting persons and things, after being attached to the motor vehicle for that purpose, it may be regarded as becoming a part of the motor vehicle, although as to the latter proposition there is also authority to the contrary.*” (as quoted by *Fruehauf Trailer*, at 326, 75 S.E. 2d at 690) (emphasis added); *Miller v. Aiken*, 364 S.C. 303, 309, 613 S.E.2d 364, 367 (2005) (treating “tractor-trailer” as one unit).

The legislature’s drafting of 38-77-30 (9) such that the definition of a motor vehicle includes its trailer is consistent with treatment of motor vehicles and their trailers as one unit by courts in 1953, 1991, and 2005. Judge McCoy’s reading of the statute is consistent with this law, as well as common sense.

C. USAA’s policy complied with S.C. Code sections 38-77-140 and 160.

USAA provided automobile insurance coverage in at least the amounts required by section 140 for “each” of the “motor vehicles” owned by Plaintiff—a 2013 Volkswagen, a 2015 Volkswagen, a 2016 Dodge, and a 2014 Nissan. (R. 92-96) Under section 38-77-30 (9)’s definition of motor vehicle, USAA could not exclude coverage for a trailer designed for use with these vehicles, as the trailer would be considered one unit with the motor vehicle. And USAA complied with the statute: its policy defines “Your covered auto” as including “any trailer you own.” (R. p. 105; Policy, p. 4); see also *Id.* (defining trailer as a “vehicle designed to be pulled by a private passenger auto, pickup, van, or miscellaneous vehicle...”). (R. 105)

D. USAA has complied with the UIM offer requirements and paid Plaintiff \$1,200,000 in UIM benefits on all *motorized* vehicles she owned and insured.

Plaintiff cannot contest that USAA properly offered UIM coverage on all four of her motorized vehicles, and has paid her all of the \$1,200,000 in UIM coverage she chose to purchase.

II. The Plaintiff's construction of section 38-77-30(9) is wrong.

Plaintiff offers a construction that turns section 38-77-30(9) on its head and is not supported by any authority: it excises one half of the phrase “motor vehicle; it relies on a tortured reading that would produce absurd results; it is not supported by any case; and it would result in a radical transformation of the insurance industry.

A. Contrary to Plaintiff's interpretation, a motor vehicle requires a motor.

Plaintiff's construction of “motor vehicle” would contradict the term itself. One could only conclude that a non-self-propelled trailer is a “*motor* vehicle,” by castrating the term's first word—“motor.” To borrow from Mark Twain, this is akin to ignoring one half or the other of “lightning bug.”

At the risk of stating the obvious, a motor vehicle must have, definitionally, some type of motor. This common-sense observation is supported by common-law definitions of “motor vehicle,” only the most recent of which Judge McCoy cited. *See, Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 46, 885 S.E.2d 433, 439 (Ct. App. 2023) (defining “motor vehicle” as a vehicle which is self-propelled and a vehicle “operated by a power developed within itself...”)(citing 60 C.J.S. *Motor Vehicles* § 1, 118-19 (2012)). And though Plaintiff takes issue with *Jack's Custom Cycles* as being a tax case, the simple fact that a motor vehicle requires a motor has been stated in other contexts since the advent of the automobile. “In 1905 the General Assembly, in providing for rules of the road, defined a motor vehicle as used in the Act, as all vehicles propelled by gasoline, explosive vapor, steam, electricity or other kindred power.” *Fruehauf Trailer*, at 324, 75 S.E. 2d at 689-90. *See also, Bolt v. Life & Cas. Ins. Co. of Tenn.*, 156 S.C. 117, 152 S.E. 766, 767 (1930) (“The term ‘motor-driven car’ is made up of two words, motor-driven and car. In Webster's New International Dictionary, the meaning of ‘motor-driven’ is given

as, ‘Driven or actuated by a motor.’”); *Gunn v. Burnette*, 236 S.C. 496, 498, 115 S.E.2d 171, 172 (1960) (“To ‘operate motor vehicle’ usually means ... that *power of motor* is applied to wheels to *move automobile* forward or backward.”) (emphasis added) (quoting *State v. Sullivan*, 82 A.2d 629 (M.E. 1951)); *White v. S.C. Dept. of Parks, Recreation and Tourism*, 271 S.C. 9, 94, 245 S.E.2d 125, 127 (Ct. App. 1978) (“a motor vehicle is defined as one which is operated by *a power developed within itself* and used for the purpose of carrying passengers or materials.”) (emphasis added) (quoting 60 C.J.S. *Motor Vehicles* § 1).

Ironically, the plaintiff acknowledges that “no word, clause, sentence, provision or part shall be rendered surplusage or superfluous” in statutory construction. (Br. p. 11) Yet she would have this Court violate this maxim by ignoring one half of the two-word phrase at issue. For this reason alone, the plaintiff’s construction fails.

B. The last sentence of the subject definition contradicts plaintiff’s construction.

At page 9 of her brief, the plaintiff block quoted the definition she construes, but omitted the last of its three sentences. The missing sentence clearly contradicts her interpretation and reads: “For purposes of this chapter, the term automobile has the same meaning as motor vehicle.”⁶ An automobile is manifestly a *motor-driven* car. *See, Bolt v. Life & Cas. Ins. Co. of Tenn.*, 156 S.C. 117, 152 S.E. 766, 772 (1930) (“an automobile [] manifestly is a ‘motor-driven car...’”). Its etymology is a combination of the words auto and mobile, and translates as self-propelled.

⁶ The full text of the subject section is as follows:

“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.

Merriam-Webster's online dictionary, Etymology, available at <https://www.merriam-webster.com/dictionary/automobile> (last checked March 5, 2024).

As plaintiff readily admits in her footnote 4, a trailer is not self-propelled. It therefore cannot come within the meaning of automobile. Thus, the legislature's statement that motor vehicle "has the same meaning" as automobile "for purposes of this chapter" further supports the Circuit Court's ruling that a non-self-propelled trailer is not a motor vehicle.⁷

C. Plaintiff's interpretation misstates the Circuit Court's holding to create conflicts that do not exist.

Plaintiff twists the language of 38-77-30(9) in knots that are simply not present. A strawman is first constructed through the claim that the Circuit Court "concluded that this definition's phrase 'self-propelled' applies to trailers." (App. Br., 9). Then four full pages are spent knocking down this strawman. (App. Br., 9-12). But the Circuit Court never made such a conclusion, it merely held that motor vehicles *include* their trailers. Thus, the plaintiff's odyssey through the rules of grammatical and statutory construction that this supposed conclusion violated are immaterial and based upon a faulty premise.

The plaintiff also improperly divides the statute into "three categories of vehicles"; actually, there are two: (1) self-propelled vehicles designed for highway use, including their trailers; and (2) a list of certain exceptions. It is true the exceptions appear to fall outside the definition, as none of them are vehicles designed for highway use, and at least one, farm trailers, is not self-propelled. But it is not true, as Plaintiff contends, that this renders the definition nugatory, such that "motor vehicle" includes anything not specifically excluded, whether or not it

⁷ Plaintiff's interpretation is also contradicted by the Legislature's express "declaration of purpose" in Chapter 77, *Automobile Insurance*, which purpose was to "reform *automobile* insurance," to establish criteria for "*automobile* insurance risk" to ensure "entitle[ment] to *automobile* insurance," and to make benefits available "for *motor* vehicles registered in this State." S.C. Code 38-77-10 (1)-(4) (emphasis added).

falls within the definition. The fact the legislature may have, perhaps in an abundance of caution, due to political reasons, or due to changes in the statute over time, included exceptions which all fall outside of the subject definition, does not render the definition meaningless.

The plaintiff argues that because campers and horse trailers are not included in these 7 listed exceptions, the corollary is that they must be included within the definition of "motor vehicle." Such statutory construction would require the legislature to specifically list every conceivable type of non-motorized vehicle—from a wheelbarrow to a train—to be itemized in the exclusion. Plaintiff bases this argument on the *expressio unis est exclusio alterius* canon, which has been criticized as “not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not depends on the particular circumstances of context.” Black’s Law Dictionary, p. 602 (7th Ed. 1999) (quoting, Dickerson, Reed, *the Interpretation and Application of Statutes*, 234-35 (1975)). This Court has held the *expressio unis* maxim “should be used with care” and “should be used to accomplish legislative intent, not defeat it.” See, e.g. *S.C. Dept. of Consumer Affairs v. Rent-A-Ctr., Inc.*, 345 S.C. 251, 256, 547 S.E.2d 881, 884 (Ct. App. 2001) (internal quotations and citations omitted). Plaintiff’s application of the maxim defeats legislative intent as it would render meaningless the phrases “self-propelled” and “designed for use upon a highway,” such that any non-excepted vehicle, from wheelbarrows, to trailers, to trains, would all become “motor vehicles,” which would contravene another principle of statutory construction—a statute should not be construed to reach an absurd result.

D. *Miller v. Aiken* does not support the plaintiff’s position.

From page 14 through 16, the plaintiff argues that *Miller v. Aiken* “actually supports Amoruso’s position.” It does not. *Miller* affirms the proposition that “Section 38–77–160 requires

an offer of optional UIM coverage ‘up to the limits of the liability coverage.’” 364 S.C. 303, 309, 613 S.E.2d 364, 367 (2005). In other words, as discussed above, *Miller* supports that the key question here is whether a trailer is a “motor vehicle,” each of which is required to carry the limits specified in section 38-77-140. Additionally, although the question of whether a trailer is a motor vehicle under Title 38 wasn’t directly before the court, the vehicle involved in *Miller* was a “tractor-trailer.”⁸ A tractor-trailer consists of two parts, a tractor and a trailer. Consistent with USAA’s interpretation of section 38-77-30(9), the court in *Miller* treated that vehicle as a single unit—it did not separate them into two separate “motor vehicles” as plaintiff advocates is required by section 38-77-30(9). In fact, had plaintiff’s interpretation been correct, the plaintiff in *Miller* would have argued that not one but two UIM offers were required, as the tractor and trailer would be two separate “motor vehicles” under 38-77-30(9).

E. The radical revision of “motor vehicle” to include non-motorized trailers proposed by the plaintiff, and the consequent sea change in the way insurance is purchased, sold, and administered, should be accomplished, if at all, by the legislature, not this Court.

1. In addition to requiring consumers to obtain separate UIM quotes for all of their trailers, Plaintiff also (necessarily) seeks a mandate that they obtain separate liability and UM insurance policies on those trailers.

The plaintiff acknowledges that because section 38-77-160 requires UIM offers only to the extent of liability coverage, she can only prevail if USAA was required to provide separate and additional liability and UM coverage to each of plaintiff’s trailers in addition to the separate and additional UIM offers she contends must be made for all trailers in the state. (App. Br., p. 8, 13) (arguing that USAA was required to and “should have” provided additional liability coverage for

⁸ *Miller* would have been on all fours with this case had the plaintiff in *Miller* insured the tractor for liability and UIM coverage, and the insured claimed that a separate UIM offer was required for the trailer.

the trailers). These immobile vehicles are often stationary for extended periods, but under the plaintiff's theory they will have to be covered by separate and additional liability, UM, and (if accepted) UIM coverage 365 days a year, in addition to the coverage provided through the motor vehicles towing them.

It is common knowledge of which a court can take judicial notice that our interstates, state highways and local roads (not to mention our driveways, back yards, and garages) are frequented by trailers that can only be transported behind a motorized vehicle. “Courts will take judicial notice of subjects and facts of general knowledge...” *State v. Odom*, 412 S.C. 253, 772 S.E.2d 149, 155 (2015) (citations and internal quotations omitted). The examples abound: college students towing moving trailers to campuses, landscapers towing riding lawn mowers and other equipment, boaters towing boats, pitmasters pulling grills, outdoorsmen towing recreational vehicles, equestrians towing horse trailers, vacationers towing campers, and all sorts of general purpose and utility trailers. In all of these instances, the motorized vehicle is required to have liability and UM coverage which *includes* trailers designed for use with these vehicles. Forcing insurers to sell, and insureds to purchase, separate liability and UM coverage and receive offers of UIM coverage on both motorized and on non-motorized vehicles will be illogical, unnecessary and a radical expansion of the system of automobile insurance regulated by chapter 77 of title 38.⁹

2. The radical revision and expansion of automobile insurance proposed by the plaintiff must be done, if at all, by the legislature, not by judicial decision.

⁹ Notably, the legislature has specifically exempted owners of boat trailers under 2,500 pounds and privately owned utility trailers from having to license and register these trailers. S.C. Code 56-3-130 (“Boat trailers under twenty-five hundred pounds, farm trailers and other utility trailers which are privately owned and not for hire need not be licensed or registered.”); *see also*, S.C. Code 56-3-400 (Defining “automobile utility trailer” as “any trailers suitable for towing by a private passenger automobile, the use of which is confined to the private hauling of personal property...”.) Yet, under the plaintiff’s interpretation, this same legislature has defined utility trailers as “motor vehicles” that must obtain additional, stand-alone insurance for these un-registered, unlicensed trailers, and receive and sign UIM offer forms for each one.

The effect or result of what the plaintiff proposes – a separate and additional offer of UIM coverage up to liability limits and mandatory separate and additional liability and UM coverage on virtually all trailers in this state– will be to radically expand and alter the system of automobile insurance in chapter 77 of title 38. Any such expansion of the statutory system of automobile insurance should be accomplished legislatively, not judicially. It is the legislature, not the courts, which makes policy determinations. *Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 483, 892 S.E.2d 121, 131 (2023). Courts are not at liberty to add to statutory law or subtract from it. *Ballard v. Newberry Cnty.*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021). If the definition in a statute is to be altered, it must be by the legislature. *See, e.g., Franklin v. Maynard*, 356 S.C. 276, 279, 588 S.E.2d 604, 605 (2003).

3. The construction of the definition of "motor vehicle" in section 38-77-30 (9) urged by the plaintiff will lead to an absurd result.

As noted by the lower court, statutes are not to be construed to reach an absurd result. (Trial court order of November 30, 2023, page 3) (R. 4); *see also Miller v. Lawrence Robinson Trucking*, 333 S.C. 576, 581-82, 510 S.E.2d 431, 434 (Ct. App. 1998) (quoting *S.C. Coastal Council v. S.C. State Ethics Comm’n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991)). As explained in section A, however, that is exactly the result proposed by the plaintiff – every non-motorized vehicle which is stationary except when towed behind a motorized vehicle with its own liability and UM coverage must have its own separate liability and UM coverage and offer of UIM coverage.¹⁰ Requiring consumers to, in effect, pay for coverages on both motorized and non-motorized vehicles – in

¹⁰ See also, *Canal Insurance Company v. Insurance Company of North America*, 315 S.C. 1, 4, 431 S.E. 2d 577, 579 (1993), which defined “use of a motor vehicle” is limited to transportation uses. This evinces a legislative purpose to require liability, UM and an offer of UIM coverage on vehicles used as a means of transportation. The camper and horse trailer, while capable of being transported, are not themselves a means of transportation.

effect paying for double coverages – is unlikely to sit well with the consuming public. Any attempt to do that must, as explained in the previous section, be accomplished legislatively.

CONCLUSION

Footnote 4 of the plaintiff's brief references "common sense." Common sense is indeed fundamental to the analysis of the dispositive issue – whether a camper and horse trailer must have their own separate liability, UM and offer of UIM coverage while being towed behind motor vehicles having the same coverages.

What is being attempted is a radical change of the system of automobile insurance which, if accepted, will have a significant impact upon all automotive insurers and consumers of automotive insurance, the latter of which will be surprised to learn they must now buy separate and additional liability and UM insurance on any each and every trailer they tow. If this is to be done, it must be done to the legislature, not the courts.

USAA respectfully requests the order of the lower court be affirmed.

Respectfully submitted,

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

Robert W. Whelan

Bar No. 71174

E-Mail: robbie@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

Attorneys for Respondent

Charleston, South Carolina

April 17, 2024

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.

REPLY BRIEF OF APPELLANT

Bert G. Utsey, III (SC Bar No. 10093)
Samuel R Clawson, Jr. (SC Bar No. 76065)
Christy Fagnoli (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.....	ii
Introduction.....	1
Argument	1
1. The Court Must Apply the Statutory Definition as Written.	1
2. The Statutory Definition Unambiguously Includes Trailers as “Motor Vehicles”	2
3. Legislative History Confirms Trailers are Considered “Motor Vehicles” in the Statute ...	6
Conclusion	8

TABLE OF AUTHORITIES

CASES

<i>Amisub of S.C. v. S.C. Dept. of Health & Env. Control</i> , 407 S.C. 583, 757 S.E.2d 408 (2014)	6
<i>Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.</i> , 223 S.C. 320, 75 S.E.2d 688 (1953)	5, 6
<i>Higgins v. State</i> , 307 S.C. 446, 415 S.E.2d 799 (1992)	2
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	1, 2
<i>In re Decker</i> , 322 S.C. 215, 471 S.E.2d 462 (1995)	5
<i>Jack's Custom Cycles v. S.C. Dept. of Revenue</i> , 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023).....	5
<i>Lealaimatafao v. Woodward-Clyde Consultants</i> , 75 Haw. 544, 867 P.2d 220 (1994)	3
<i>McClanahan v. Richland Cnty. Council</i> , 350 S.C. 433, 567 S.E.2d 240 (2002).....	1
<i>Midwest Mut. Ins. Co. v. Fireman's Fund Ins. Co.</i> , 258 S.C. 533, 189 S.E.2d 823 (1972)	6
<i>Orr v. Clyburn</i> , 277 S.C. 536, 290 S.E.2d 804 (1982).....	1
<i>Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker</i> , 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984)..	6
<i>Sims v. Moore</i> , 288 Ala. 630, 264 So.2d 484 (1972).....	3, 4
<i>Smith v. Tiffany</i> , 419 S.C. 548, 799 S.E.2d 479 (2017).....	2
<i>State v. Guyton</i> , 135 Haw. 372, 351 P.3d 1138 (2015).....	3
<i>USAA Cas. Ins. Co. v. Rafferty</i> , 439 S.C. 130, 886 S.E.2d 222 (2023)	2, 5
<i>White v. S.C. Dept. of Parks, Rec. & Tourism</i> , 271 S.C. 91, 245 S.E.2d 125 (1978).....	5, 6

STATUTES

S.C. CODE ANN. § 38-3-110(5)(c)(i)&(iii) (1976, as amended)	4
S.C. CODE ANN. § 38-61-70(B)(1) (1976, as amended)	4
S.C. CODE ANN. § 38-61-80(A)(1) (1976, as amended).....	4

S.C. CODE ANN. § 38-61-80(D) (1976, as amended).....	4
S.C. CODE ANN. § 38-75-30 (1976, as amended)	4
S.C. CODE ANN. § 38-77-30(1) (1976, as amended)	4, 6
S.C. CODE ANN. § 38-77-30(4) (1976, as amended)	7
S.C. CODE ANN. § 38-77-30(5.5)(iv) (1976, as amended).....	6
S.C. CODE ANN. § 38-77-30(9) (1976, as amended)	2, 6, 8
S.C. CODE ANN. § 38-77-30(13)(a) (1976, as amended)	4
S.C. CODE ANN. § 38-77-112 (1976, as amended)	4
S.C. CODE ANN. § 38-77-190 (1976, as amended)	4
S.C. CODE ANN. § 46-702(4) (Cum. Supp. 1954).....	7
S.C. CODE ANN. § 56-9-20(4) (1976, as amended).....	7, 8

LEGISLATION

1974 S.C. Act No. 1177	2
1997 S.C. Act No. 154	2
2017 S.C. Act No. 89	2

OTHER AUTHORITIES

<i>Black's Law Dictionary</i> 763 (6th ed. 1990)	3, 4
--	------

INTRODUCTION¹

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

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

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.

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

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. Fagnoli (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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Jill S. Amoruso, Appellant,

v.

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

Appellate Case No. 2024-000107

Appeal From Berkeley County
Jennifer B. McCoy, Circuit Court Judge

Unpublished Opinion No. 2025-UP-184
Submitted May 1, 2025 – Filed June 11, 2025

AFFIRMED

Bert Glenn Utsey, III and Christina Rae Fagnoli, of
Clawson Fagnoli Utsey, LLC, and Samuel Richard
Clawson, Jr., all of Charleston, all for Appellant.

Charles R. Norris, of Whelan Mellen & Norris, LLC, of
Charleston, for Respondent.

PER CURIAM: Jill Amoruso appeals a circuit court order granting USAA's motion for summary judgment and a circuit court order denying her motion to reconsider the order granting summary judgment. On appeal, she argues (1) the

circuit court erred when it ruled USAA was not required to offer underinsured motorist (UIM) coverage on her camper and horse trailer, (2) her automobile insurance policy should be reformed to include UIM coverage on her camper and horse trailer, and (3) she should recover stacked UIM coverage on her camper and horse trailer in addition to the UIM coverage she had already recovered from the other vehicles insured under her policy. We affirm pursuant to Rule 220(b), SCACR.

We hold the circuit court did not err when it found Amoruso's camper and horse trailer did not qualify as "motor vehicles" under section 38-77-30(9) of the South Carolina Code (Supp. 2024). *See S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021) ("When the parties file cross-motions for summary judgment, the issue becomes a question of law for [appellate courts] to decide de novo."); *id.* ("Additionally, the interpretation of a statute is a question of law for [appellate courts] to review de novo."). Section 38-77-30(9) defines a motor vehicle as "every self-propelled vehicle which is designed for use upon a highway including trailers and semitrailers designed for use with these vehicles." The parties agreed the horse trailer and camper were not self-propelled vehicles and were designed to be used with self-propelled vehicles. Because section 38-77-30(9) specifies trailers must be "designed for use with these vehicles," this language indicates 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. *See* § 38-77-30(9) ("'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"); *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005) ("However plain the ordinary meaning of the words . . . in a statute . . . , the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention."); *id.* ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect."). In addition, 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. *See Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 143, 442 S.E.2d 179, 181 (1994) ("[T]he meaning of 'motor vehicle' for insurance purposes should be considered in its ordinary and popular sense rather than in a generic sense."). Because the horse trailer and camper do not constitute motor vehicles under the statute, USAA was not required to make an offer of UIM coverage on these vehicles. *See* S.C. Code Ann. § 38-77-140(A) (2015) ("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 the law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States"); S.C. Code Ann. § 38-77-160 (2015) ("Automobile insurance carriers shall offer, at the option of the insured . . . [UIM] coverage up to the limits of the insured['s] liability coverage . . .").¹

AFFIRMED.²

KONDUROS, HEWITT, and CURTIS, JJ., concur.

¹ Because the circuit court correctly found USAA was not required to provide a meaningful offer of UIM coverage on Amoruso's camper and trailer, we need not consider whether Amoruso's automobile insurance policy should be reformed and whether Amoruso should recover stacked UIM coverage on all of her vehicles. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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.

PETITION FOR REHEARING

INTRODUCTION

Pursuant to Rules 221(a) and 240, SCACR, Petitioner Jill S. Amoruso petitions for a rehearing of the Court’s decision in *Amoruso v. United Services Automobile Association d/b/a USAA*, Unpub. Op. No. 2025-UP-184 (S.C. Ct. App. filed June 11, 2025). The Court overlooked or misapprehended the applicable law and several of Amoruso’s arguments and failed to account for these opposing points in its opinion.

ARGUMENT¹

This case presents the simple question of whether Amoruso’s camper trailer and horse trailer are “motor vehicles” as defined by the General Assembly in an unambiguous motor vehicle insurance statute. The Court failed to apply the governing statute as written and therefore erred.

¹ In this Petition, capitalized terms are as defined the same as in Appellant’s Briefs.

The lynchpin of the Court’s decision was its conclusion that the General Assembly’s use of the phrase “trailers and semitrailers designed for use with [self-propelled] vehicles [designed for use upon a highway],” S.C. CODE ANN. § 38-77-30(9) (1976, as amended), 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.” Opinion, p. 2 (emphasis added). In doing so, the Court 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). 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.

Here, Section 38-77-30(9) includes trailers within the definition of motor vehicles subject to only one condition – that the trailer be “*designed for use*” with “vehicle[s] designed for use upon a highway.”² Significantly, the General Assembly did not impose the additional condition of

² As the Court noted, all parties agree the subject trailers “were designed to be used with self-propelled vehicles.” Opinion, p. 2. They therefore meet all requirements of the statutory definition.

requiring a trailer to be attached to such a vehicle to satisfy the statutory definition. The Court's decision created this additional condition without any statutory basis.

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's definition would only encompass trailers at specific, varying points in time even though, as a necessary predicate of that definition, they are designed for use with highway vehicles.

As such, the Court's conclusion 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's “when attached to a self-propelled vehicle which is designed for use upon a highway” construction, the General Assembly's condition of “designed for use with these vehicles” becomes superfluous since the trailer would necessarily satisfy that condition to meet the Court's definition.

Moreover, the Court's 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. *USAA Cas. Ins. Co. v. Rafferty*, 439 S.C. 130, 135-36, 886 S.E.2d 222, 225 (2023). Instead, it creates an unreasonable and unmanageable situation where the trailers would have to be insured for liability at some points in time but not at others. *Cf. Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 324, 523 S.E.2d 766, 771 (1999) (Where the court observed, in the context of workers' compensation coverage – a different statutory scheme which is also based on the public policy of providing broad protection via coverage – that it would be

undesirable to construe a statute such that “employees of a subcontractor would constantly 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 protecting the public at all times.

A legislative decision to require protection on a consistent and continuing 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 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,” Opinion, 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.

Requiring liability insurance on trailers designed for use with highway vehicles is not absurd. Not only can a trailer owner or operator 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), but he can also be liable for damages caused when the trailer strikes persons or property after it negligently becomes unattached from a towing vehicle and (at which time it would no longer be a “motor vehicle” as defined by this Court) 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.³

³ 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, in addition to deriving additional first-party coverage for any bodily injuries so caused.

Additionally, the Court’s analysis overlooked and failed to address the legislative history of the definition of “motor vehicle” in Section 38-77-30(9), as outlined in greater detail in Appellant’s Reply Brief, pages 6-8. As discussed there, the General Assembly included 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 highway vehicles.

The Court’s reasoning seems to have been influenced by the inclusion of the word “motor” in the defined term “motor vehicles” and the fact that the trailers at issue do not have motors. Opinion, p. 2 (*citing Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 143, 442 S.E.2d 179, 181 (1994)). But such an approach overlooks the definition itself, which is what the Court was called upon to apply. The Court’s use of the “ordinary and popular sense” of the term “motor vehicle” was inconsistent with the fact that the General Assembly deemed it proper to include trailers within the definition of “motor vehicles.” If a vehicle must have a motor to meet the definition, this would have been an unnecessary inclusion since trailers do not have motors. That fact is clear proof that a vehicle need not have a motor to fall within the definition and that adding such a requirement to the definition is contrary to legislative intent.⁴

Lastly, the Court failed to address the fact that the Supreme Court’s decision in *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), supports Amoruso’s position in this appeal, as discussed in Appellant’s Brief, pages 14-15.

This Court should have applied the statute as written and reversed the Circuit Court’s conclusion that the subject trailers were not “motor vehicles” within the statutory definition. Each trailer was designed for use with self-propelled vehicles on the highway. USAA insured both for

⁴ Amoruso also directs the Court’s attention to the discussion regarding the term “self-propelled” on pages 8-12 of Appellant’s Brief, a topic not addressed in the Opinion.

physical damage, including collision coverage. This is an acknowledgement that the trailers would be used in an environment where they could be involved in collisions with other vehicles, a setting where liability coverage (as well as uninsured and underinsured motorist coverage) would be desirable and consistent with public policy. In line with this conclusion, USAA described both of the trailers as “vehicles” in the Policy and charged separate premiums for each.

Because the trailers were “motor vehicles” within the statutory insurance scheme, USAA was required to insure them for liability coverage and, consequently, to make a meaningful offer of underinsured motorist coverage for each (which it failed to do). As such, the Court erred in concluding otherwise and should instead hold that USAA insured both trailers for underinsured coverage in the amount of the Policy’s liability coverage limits.

CONCLUSION

Amoruso therefore requests that the Court grant her petition for rehearing, reverse the ruling of the Circuit Court, and grant her the relief requested in her Briefs.

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

June 26, 2025
Charleston, South Carolina

Attorneys for Petitioner

The South Carolina Court of Appeals

Jill S. Amoruso, Appellant,

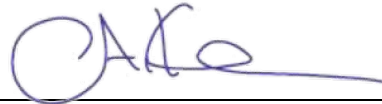
v.

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

Appellate Case No. 2024-000107

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED
Aug 08 2025

cc:

Bert Glenn Utsey, III, Esquire
Samuel Richard Clawson, Jr., Esquire
Christina Rae Fagnoli, Esquire
Charles R. Norris, Esquire
The Honorable Jennifer B. McCoy