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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case Number: 2025-001717

Jill S. Amoruso..... Petitioner,

v.

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

REPLY BRIEF OF PETITIONER

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ARGUMENTS

1. USAA’s arguments fail to place the determinative issue into proper context.

The determinative issue in this case is whether the Montana and the Adams¹ are “motor vehicles” as defined by the General Assembly in motor vehicle insurance statutes. Before replying to USAA’s arguments on this issue, it is important to refocus on what makes this question relevant. In other words, in the context of this case, why does it matter whether those trailers are motor vehicles as defined in Title 38, Chapter 77, of the Code? To answer this question, one must work through the other insurance statutes applicable to this case.

Although UIM coverage is not mandatory in South Carolina, 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, automobile insurers are required to offer UIM coverage and to provide it when an insured chooses to purchase it. S.C. CODE ANN. § 38-77-160 (1976).² If an insurer fails to make a meaningful offer of UIM coverage, the court must reform the policy to include that coverage as a matter of law, with limits equal to the policy’s liability coverage limits. *See, e.g., Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 760 (1996).

Because USAA did not offer UIM coverage on the Montana and the Adams, the next question is whether it was an “automobile insurer” required to offer that coverage to Amoruso for all “motor vehicles” covered by the Policy. If USAA was an “automobile insurer” with respect to the Policy, the Policy was an “automobile insurance policy,” and that the Montana and the Adams

¹ Capitalized terms in this Reply Brief are defined as in the Brief of Petitioner.

² Section 38-77-160 imposes this duty on “automobile insurance carriers” rather than “automobile insurers.” However, this 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).

were “motor vehicles,” then the Court should reverse the Court of Appeals and reform the Policy to include UIM coverage on the Montana and the Adams.

An “automobile insurer” is defined 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). 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). USAA 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.

In addition, the Policy was an “automobile insurance policy.”

“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) (emphasis added).

The Policy was issued in this State and provides “automobile insurance” via various coverages, including bodily injury liability insurance, property damage liability insurance, and physical damage insurance. Thus, it meets the definition of an “automobile insurance policy” or “policy of automobile insurance.” *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)).

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) (emphasis added).

The Policy provided liability coverage on four vehicles that USAA acknowledges were “motor vehicles.” Moreover, it provided “automobile insurance” (collision and comprehensive coverage) on the Montana and the Adams, both of which USAA described as “vehicles” on the Policy’s declarations pages. (R. pp. 92-94). Because Section 38-77-140 mandates liability coverage on “each motor vehicle” insured by the Policy, USAA should have provided liability coverage on the Montana and the Adams if they are defined as “motor vehicles” within the same statutory scheme. And, if so, USAA was then statutorily required to offer UIM coverage to Amoruso. S.C. CODE ANN. § 38-77-160 (1976).

As discussed in the Brief of Petitioner, the automobile insurance code unambiguously defines “motor vehicles” as including “every self-propelled vehicle which is designed for use upon a highway, *including trailers and semitrailers designed for use with these vehicles.*” S.C. CODE ANN. § 38-77-30 (9) (1976) (emphasis added). There is no dispute that the Montana and the Adams are trailers designed for use with self-propelled vehicles designed for use on a highway. Unless the Court judicially adds language to this statute (as the Court of Appeals appears to have done) or assigns a meaning other than that clearly stated in the statute, it must find that the Montana and the Adams are “motor vehicles” and apply the above statutory scheme step-by-step to hold that USAA was required to offer UIM coverage on the Montana and the Adams.

2. USAA’s “single unit” approach is flawed.

USAA contends that a trailer attached to a self-propelled vehicle constitutes a “single unit” such that “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 [38-77-]140.” (Br. of Resp., p. 10) (emphasis in original). Even if this were true, it does not answer the question of whether the General Assembly’s mandate to provide liability coverage on “each motor vehicle” insured by an “automobile insurance policy” applies to a trailer designed for use with self-propelled highway vehicles. The Court must give deference to the language chosen by the Legislature; here, it chose to tie the statutory insurance mandate to its defined term “motor vehicle.” It could have worded Section 38-77-140 to limit the mandate to “self-propelled vehicles,” but it did not. Instead, replacing the term “motor vehicle” in Section 38-77-140 with the statutory definition of that term shows the General Assembly intended for the mandate to extend to trailers like the Montana and the Adams, as shown below:

An automobile insurance policy may not be issued or delivered in this State to the owner of a self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles, or may not be issued or delivered by an insurer licensed in this State upon a self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles, 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 self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles, within the United States or Canada, subject to limits exclusive of interest and costs, with respect to each self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles, as follows....

S.C. CODE ANN. § 38-77-140 (1976) (substituted terms underlined).

USAA’s position that trailers are already covered for liability under its “single unit” approach would render the inclusion of the phrase “including trailers and semitrailers designed for use with these vehicles” unnecessary in Section 38-77-30(9). If trailers are considered a “single unit” with a towing vehicle, there would have been no need for the General Assembly to add a phrase specifically identifying trailers designed for use with self-propelled highway vehicles.

Additionally, USAA’s reliance on *Fruehauf Trailer Co. v. S.C. Elec. & Gas Co.*, 223 S.C. 320, 75 S.E.2d 688 (1953) (*see* Br. of Resp., pp. 6-7) is misplaced as it is fully distinguishable.

That case construed a statute providing for a lien on a “motor vehicle.” S.C. CODE § 45-551 (1952) (now codified as S.C. CODE ANN. § 29-15-20 (1976)). However, unlike the automobile insurance code, that statutory scheme did not define the term “motor vehicle,” which required the Court to construe the term without any deference to a legislative definition.³ Moreover, the statutory scheme involved in *Fruehauf* clearly distinguished between “motor vehicles” and “trailers” and did not include the latter in the definition of the former, as Section 38-77-30(9) does. *See* S.C. CODE § 45-550(G) (1952) (now codified as S.C. CODE ANN. § 29-15-10(G) (1976)).

Also, the *Fruehauf* case dealt specifically with a trailer that was attached to a tractor when it caused damages, not the more abstract question of whether an unattached trailer is a “motor vehicle” under a specific statutory definition. Thus, the court’s “single unit” considerations were understandable. In addition, the *Fruehauf* court’s dicta about a trailer becoming dangerous when attached to a self-propelled vehicle (*see* Br. of Resp., p. 7) cannot – and does not – change the reality that trailers do have the potential to cause injuries and damages even when unattached. (*See* Br. of Pet., p. 16).

As a final matter, Amoruso is compelled to point out the inconsistency of USAA’s current position from that when it issued the Policy. When Amoruso purchased the Policy, USAA did not extend comprehensive and collision coverage from the self-propelled insured vehicles to the Montana and the Adams as a conceptual “single unit.” Instead, it labeled the Montana and the Adams as separate vehicles and charged separate premiums to cover those vehicles for comprehensive and collision coverage. (R. pp. 93-94).

³ In fact, the Court in *Fruehauf* expressly rejected the suggestion that it should define the term “motor vehicle” by reference to other statutory definitions, including that in the insurance code. 223 S.C. at 324-25, 75 S.E.2d at 690. Similarly, its reliance on a quote from 60 C.J.S., *Motor Vehicles*, § 1, is irrelevant to this Court’s application of the statutory language of S.C. CODE ANN. § 38-77-30(9) (1976).

3. Miller v. Aiken is factually distinguishable and supports Amoruso’s position.

In *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), this Court held that “an automobile insurer providing **only** collision insurance to its insured should not be required to make a meaningful offer of UIM.” *Id.* at 308, 613 S.E.2d at 367 (emphasis in original). The facts in this case are different. Here, the Policy provided liability insurance and other coverages *in addition to* collision coverage. Since neither USAA nor the subject policy provided “only collision insurance,” the holding in *Miller* is inapplicable. Rather, because the Policy provided liability insurance coverage, USAA was required to satisfy the requirements of Section 38-77-160.

A second distinguishable fact is that, in *Miller*, the only vehicle in question – a trailer – *was* insured for liability, just through a different insurer. *Id.* 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, different policy considerations were properly in play in *Miller*. There was no reason for the *Miller* Court to be concerned about a motor vehicle operating on the roads of this State without having mandatory liability insurance coverage, whereas that is not the case here. The fact that the trailer in *Miller* was insured for liability by a separate insurer also undermines USAA’s implication that the Court there did not believe the insurer issuing the liability policy had a duty to offer UIM on that policy (*see* Br. of Resp., p. 8, n.7) inasmuch as that insurer’s policy was not at issue on appeal.

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

4. Section 38-77-30(9)’s use of the term “automobile” does not change the analysis.

USAA contends that the final sentence of Section 38-77-30(9) (“For purposes of this chapter, the term automobile has the same meaning as motor vehicle.”) requires the Court to

modify the rest of the statutory definition with the term “self-propelled.” (Br. of Resp., pp. 10-11). That is not the effect of the sentence. Rather, that sentence was added to equate the undefined term “automobile” – which appears approximately 79 times in various statutes throughout Title 38, Chapter 77 – with the defined term “motor vehicle.”

5. USAA’s focus on the term “use” when applied to trailers actually supports Amoruso’s position.

As pointed out in the Brief of Petitioner, there is a difference between “designed for use” (the language chosen by the General Assembly) and “being used with” (the language employed by the Court of Appeals). (Br. of Pet., p. 13). USAA suggests this is no distinction because a trailer can only be “used” by a self-propelled vehicle when it is towed by that vehicle. (Br. of Resp., p. 14).

However, this narrow construction overlooks the fact that Section 38-77-140 requires coverage for liability “arising out of the *ownership, maintenance, or use*” of an insured vehicle. S.C. CODE ANN. § 38-77-140 (1976) (emphasis added). USAA’s position would only consider one of these sources of potential liability whereas a proper application of the statutory definition of “motor vehicles” – one which is limited to the language “designed for use” with self-propelled highway vehicles – would achieve the legislative purpose of insuring such trailers for liability arising out of ownership or maintenance as well.

6. USAA’s “freedom of contract” argument ignores the mandates of state insurance statutes.

USAA argues the Court should preclude reformation of the Policy to add UIM coverage because Amoruso freely chose not to purchase liability coverage. (Br. of Resp., p. 18).

Certainly, Amoruso could have elected not to insure the Montana or the Adams at all, but that is not what happened. Once USAA undertook to insure those vehicles pursuant to an “automobile insurance policy” (as defined by statute), it was *required* to provide liability coverage

on them. S.C. CODE ANN. § 38-77-140 (1976). That Amoruso did not purchase liability coverage or UIM coverage is irrelevant once USAA breached this statutory duty. *See Ackerman v. Travelers Indem. Co.*, 318 S.C. 137, 145, 456 S.E.2d 408, 412 (Ct. App. 1995) (“Travelers contends the deficiencies in the offer are not controlling or fatal in this ‘unique’ case because there was no disagreement between the insurance company and the named insured as to what coverage the insured wanted to purchase, and it cannot force the coverage onto an unwilling buyer. [The insured] stated unequivocally that he did not want additional underinsured coverage. ... Nevertheless, our Supreme Court has held even if the insured expressly rejects the optional coverage, a noncomplying offer has the legal effect of no offer at all.”).

CONCLUSION

Amoruso respectfully requests that this Court grant the relief requested in the Brief of Petitioner, page 20.

Respectfully submitted,

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