

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

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**RECEIVED**

JUL 17 2014

**SC Court of Appeals**

Opinion No. 5231 (S.C Ct App filed May 21, 2014)

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Centennial Casualty Co., Inc .....Petitioner

v

Western Surety Co., d/b/a CNA Surety ... Respondent

Western Surety Co., d/b/a CNA Surety ... Defendant/Third-Party Plaintiff

v

Charleston Auto Auction, A3 Auto Center, LLC,  
and Wylie Mickle..... Third-Party Defendants

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**PETITION FOR A WRIT OF CERTIORARI**

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 25, 2014

## QUESTION PRESENTED

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, Petitioner Centennial Casualty Co., Inc., hereby petitions this Court for a writ of certiorari to the Supreme Court to review the Court of Appeals' decision in this matter. In making this petition, Petitioner respectfully asserts that the Court of Appeals erred in its order dated May 21, 2014, Opinion No 5231, reversing the decision of the Circuit Court and that this Court should review the following issue

- 1 Should this Court grant certiorari to correct the erroneous ruling by the Court of Appeals, which misinterpreted the South Carolina Dealer Bond Statute, S C Code § 56-15-320(B).

## STATEMENT OF THE CASE

### **I. The Dealer Bond Statute**

This action centers on South Carolina's licensing statute for motor vehicle dealers, which requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute" or "Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, **or his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter

*Id* (emphasis added) “An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter.” *Id* This Court has stated that

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute

*Mid-State Auto Auction v Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).

## II. Factual Background

Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for dealerships in the transactions. (R p. 51 (Affidavit of Laura Taylor ¶ 3)).

Before Charleston Auto Auction will facilitate the sale of an automobile, dealers must enter into an agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transaction. (R p. 51 (Affidavit of Laura Taylor ¶ 4))

A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction (the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. (R. p. 51 (Affidavit of Laura Taylor ¶ 5)) Charleston Auto Auction was the auctioneer, the agent and legal representative pursuant to the Dealer Bond Statute. (R. p. 51 (Affidavit of Laura Taylor ¶ 6)). Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. (R. p. 68 (Ex. 7 to motion for summary judgment))

Each Vehicle's Bill of Sale explicitly made Charleston Auto Auction the "legal representative" by stating, "Seller and Buyer each appoint Auction Company as their **agent and legal representative** for the purpose of processing this transaction through Auction Company . . ." (R. p. 58 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2), emphasis added)), *see also* R. pp 59-62 (title clerk authorizations).

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305 in damage. (R. pp 51-52 (Affidavit of Laura Taylor ¶¶ 7-8)) Centennial repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Petitioner made demands on Respondent for payment under the bond, which Respondent rejected. (R. p. 69 (Ex. 8 to motion to summary judgment)) Respondent's stated reason for not paying under the bond was that Respondent

believed that neither Centennial nor Charleston Auto Auction is the “owner” or “legal representative” as required by the Dealer Bond Statute.

### **III. Procedural background**

Petitioner filed a claim against Respondent in the Circuit Court, seeking payment under the bond. The Circuit Court ruled in Petitioner’s favor, holding that Petitioner qualified as a “legal representative” under the Dealer Bond Statute. (R. p. 3). Respondent appealed that issue of statutory interpretation to the Court of Appeals. The Court of Appeals reversed the order of the Circuit Court, in its Opinion No 5231, filed May 21, 2014 (the “Order”). Petitioner filed a petition for rehearing with the Court of Appeals, which was denied in an order dated June 25, 2014.

### **ARGUMENT**

There is no dispute that documents explicitly made Petitioner the “legal representative” (R. pp. 58, 59-62). The Court of Appeals’ Order misinterprets the Dealer Bond Statute to exclude Petitioner. In doing so, the Court of Appeals disregarded the clear language of the Statute, and effectively rewrote the Statute’s meaning to exclude some types of legal representatives, and include others. The Order provides no adequate legal basis for its interpretation of the Statute, and provides no guidance on how to apply the Court of Appeals’ interpretation. If the Order is allowed to stand, the citizens and courts of South Carolina will, for years, struggle to understand and apply the Court of Appeals’ incorrect interpretation of the Statute.

**I. The Court of Appeals misinterpreted the Dealer Bond Statute.**

The Order is based on several erroneous legal interpretations. First, that the Statute's language does not cover legal representatives such as the Petitioner. Second, that the Statute only covers legal representatives of sellers, not buyers. Third, that the Statute is limited to legal representatives who "stand in the shoes" of a party (without defining what that means). Fourth, that S.C. Code § 56-15-520 supports the Court of Appeals' holding on these issues.

**A. The Court of Appeals erred in holding that the Statute does not cover legal representatives such as the Petitioner.**

The core issue is whether Petitioner is a "legal representative" under the Dealer Bond Statute. Where a statute's language is plain and unambiguous, the rules of statutory interpretation are not needed and a court may not impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Anderson v. S. Carolina Election Comm'n*, 397 S.C. 551, 556-57, 725 S.E.2d 704, 707 (2012) ("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.")

The Dealer Bond Statute is clear that an owner's legal representative may recover under the bond:

An owner **or his legal representative** who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter . . .

S.C Code § 56-15-320(B) (emphasis added) The purpose of the bond is to, *inter alia*, indemnify

for loss or damage suffered by an owner of a motor vehicle, **or his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter

*Id.* (emphasis added) This Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute

*Mid-State Auto Auction*, 324 S.C. at 69, 476 S.E.2d at 692 (emphasis added).

In this action, the undisputed evidence is that each vehicle's Bill of Sale explicitly made Petitioner the "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their **agent and legal representative** for the purpose of processing this transaction through Auction Company . . . ." (R p. 58 (terms of Purchase Agreement and Bill of Sale (p. 4, para 2); emphasis added)); *see also* R pp 59-62 (title clerk authorizations). However, the Court of Appeals erroneously held that "We find [Petitioner was] not legal representative[] of the Sellers". Order at p. 5. Contrary on the clear statutory language and evidence, the Court of Appeals erroneously held that Petitioner was not a "legal representative" under the Statute.

**B. The Court of Appeals erred in holding that the Statute only applies to sellers.**

The Order appears to hold that the Statute only applies to sellers of motor vehicles, not to buyers.<sup>1</sup> The language of the Statute has no such limitation. Instead, the Statute is intentionally broad and includes fraud “made **in connection** with the sale or **transfer** of a motor vehicle . . . .” S C Code § 56-15-320(B) (emphasis added). The language “in connection with” the “transfer” of a motor vehicle does not, under any reasonable interpretation, exclude purchases or buyers. It is a significant, unfounded change for the Court of Appeals to now limit the Statute to only sellers, particularly without explanation or citation to clear legal authority supporting such an interpretation. Such a change would require rewriting the entire statutory section.

The primary case arguably on point does not support the Court of Appeals’ interpretation. In *Mid-State Auto Auction*, 324 S.C. at 69-70, 476 S E 2d at 692, the issue presented was whether a person other than an “owner or his legal representative” may recover under the bond. This Court held that the statute allowed a cause of action only to “the owner of a motor vehicle, or the owner’s legal representative.” *Id.* There is no indication in the ruling that the Court was limiting the Statute to protect sellers only.<sup>2</sup>

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<sup>1</sup> The Order appears to include legal representatives of sellers and exclude those of buyers. “We find CAA and Centennial were not legal representatives **of the Sellers**”, “We find CAA’s inclusion of the term ‘legal representative’ in the purchase agreements did not give CAA the same rights **as Sellers**” Order at pp 5, 6 (emphasis added)

<sup>2</sup> See also *Connecticut Indemnity v Burdette Chrysler Dodge Corp.*, 317 S C 406, 453 S E 2d 902 (1994). *Burdette* was overruled by *Mid-State*, 324 S C at 69-70, 476 S E 2d at 692. Additionally, the ruling in *Burdette* was based on the understanding that the purchaser had not established “fraud” under the statute. In this action, there is no serious dispute that “fraud” was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop payment placed on the third check. (R pp 51-52, 63-65)

Moreover, limiting the law to sellers only does not make sense under the Statute. A cardinal rule of statutory construction is that a statute must receive a practical and fair interpretation, which harmonizes its subject matter. *See Jones v State Farm Mut Auto Ins. Co*, 364 S C 222, 232, 612 S.E 2d 719, 724 (Ct App 2005). For example, the Statute requires Charleston Auto Auction to obtain a bond. *See* S.C. Code § 56-15-320; (R pp. 83-84 (Ex. A to Supp. Memo. of Authorities)), (R. p. 50 (Respondent Motion at Ex 2 (Aff of Laura Taylor))). If the Court of Appeals' holding were correct—that because the auction is not a seller, neither the Statute nor bond apply—the bonds that Charleston Auto Auction and other auctions throughout South Carolina must purchase under the Statute would be worthless, and nobody could legally make a claim on those bonds. The only reasonable interpretation is that buyers, sellers, and their legal representatives are permitted to make claims on the bond “in connection” with the “transfer” of an automobile.

**C. The Court of Appeals erred in holding that the Statute is limited to legal representatives who “stand in the shoes” of a party to a transaction.**

In the alternative, the Order may be read to hold that Petitioner is not the type of legal representative covered by the Statute, and that the Statute only covers legal representatives who “stand in the shoes” of a party to the transaction. *See* Order at 5 (“Therefore, unlike an executor or conservator, [Petitioner] acted only as a processor and did not stand in the shoes of the Sellers”). This interpretation of the Statute means that the term “legal representative” has a specific, narrow definition that excludes some legal representatives and includes other legal representatives, depending on the circumstances and context, which are not specified in the Statute (or by the Court of

Appeals) That interpretation would require the courts of South Carolina create a new, separate, complex definition of “legal representative” that apparently would apply only in certain situations.<sup>3</sup>

Accordingly, the Court of Appeals’ interpretation of “legal representative” under the Statute is not supported by the statutory language, or the legislative history, or the relevant case law. Instead, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Grier v AMISUB of S Carolina, Inc*, 397 S C 532, 535, 725 S E.2d 693, 695 (2012) (“Thus, we must follow the plain and unambiguous language in a statute and have ‘no right to impose another meaning’” (internal citations omitted)) The Court of Appeals erred in ruling that Petitioner was not a legal representative under the Statute

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<sup>3</sup> Other states’ courts have construed dealer bond statutes to apply to persons beyond those indicated by the Court of Appeals here. *Cf Bryant Motors, Inc. v Am States Ins Companies*, 118 Idaho 796, 799, 800 P 2d 683, 686 (Ct App 1990) (joint venturer allowed to recover under dealer bond statute “We note, however, that the statute draws no such distinction between the consuming public and business merchants, the legislature did not limit the scope of the statute to buyers or consumers, nor did it exclude creditors, joint venturers, or other non-consumer classes”), *Massachusetts Bonding & Ins Co v Cent Fin Corp.*, 124 Colo 379, 381, 237 P 2d 1079, 1080 (1951) (finance company could recover under dealer bond statute), *Sun Ins Co v Aetna Ins Co*, 169 Neb 94, 109–112, 98 N W 2d 692 (1959) (statutory motor vehicle dealer’s bond was not limited to protecting buyers only, and the coverage afforded by bond extended to dealer’s creditors as well); *State v General Ins Co of America*, 179 N W 2d 123, 125–27 (N D 1970) (dealer bond statute covered lending bank), *Lawrence v Ward*, 5 Utah 2d 257, 260–62, 300 P 2d 619 (1956) (mortgagee was entitled to recover under bond)

**D. The Order misconstrues the application of S.C. Code § 56-15-520 to these issues.**

The Order states that S.C Code § 56-15-520 does not convert an auto auction into an owner, seller, transferor, or assignor of the title of vehicles, and concludes that Petitioner's inclusion of the term "legal representative" in the purchase agreements did not give Petitioner the same rights as the sellers. Order at p 6. The Dealer Bond Statute, however, does not confine the right of recovery to owners (or sellers). The Statute states that a motor vehicle owner, "or his legal representative", may recover under the bond. This Court has stated that a "legal representative" of an owner may recover under the bond. *Mid-State Auto Auction*, 324 S.C. at 69, 476 S.E.2d at 692. Accordingly, even if the auction is not the owner, seller, transferor, or assignor under § 56-15-520, and even if the auction does not have the same rights as a seller § 56-15-520, the Dealer Bond Statute still provides a right of recovery to a legal representative of the owner.

**CONCLUSION**

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari

Respectfully submitted,

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July 15, 2014

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Charleston Auto Auction, A3 Auto Center, LLC,  
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**PROOF OF SERVICE**

I, Ian S. Ford, attorney for Petitioner Centennial Casualty Co , Inc do hereby certify that I have on this \_\_\_\_ day of July, 2014, served all counsel of record with copies of Petition for Rehearing by Respondent Centennial Casualty Co. and Proof of Service by mailing copies by United States Mail, first class postage pre-paid, to counsel at the following address:

APPELLANT'S COUNSEL OF RECORD:

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And

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
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# FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

July 15, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

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JUL 17 2014

**SC Court of Appeals**

Re: *Centennial Casualty Co., Inc. vs. Western Surety Co., d/b/a/ CAN Surety vs. Charleston Auto Auction, A3 Auto Center, LLC and Wylie Mickle*  
Opinion No.: 5231 (S.C. Ct. App. Filed May 21, 2014)  
Appellate Case No.: 2013-0013816577  
FWT File No.: 0066

Dear Ms. Kitchings:

Please find enclosed for filing please find a copy of the Petition for Writ of Certiorari and my Proof of Service for the same.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,



Ian S. Ford

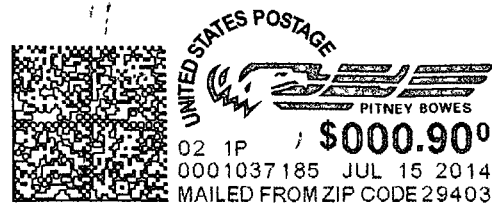
ISF/smb  
Enclosures: as stated

cc: S. Markey Stubbs, Esq.

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## SC Court of Appeals

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