

**IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Nationwide Mutual Fire Insurance Company, Appellant

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in
her capacity as Personal Representative of the Estate of
Christopher Adam Timms, Deborah Timms, Defendants

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Of whom, Sharmin Christine Walls, Randi Harper, and
Wendy Timms in her capacity as Personal Representative of
the Estate of Christopher Adam Timms, are the Respondents

JUN 17 2019

SC Court of Appeals

Appellate Case No.: 2016-000679

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

PETITION FOR REHEARING

The Respondents, Sharmin Walls and Randi Harper respectfully move and petition, pursuant to Rules 219 and 221(a) SCACR, as well as all other applicable law, for an Order granting rehearing in this case as to certain issues and submits the below memorandum in support of the same. In an opinion filed June 5, 2019, this Court may have overlooked or misapprehended certain points of law affecting the disposition of this case, as the following shows:

The Court of Appeals, in its June 5, 2019 opinion, found that the conduct of the insured in fleeing law enforcement and/or committing a felony allowed Nationwide to reduce the automobile liability limits from 100,000/300,000 to the statutory minimum limits, based upon an unambiguous clause in the policy.

The Court distinguished this case from Williams v GEICO, saying that in Williams the clause in the policy reducing coverage to a class of persons reduced coverage at the time of the issuance of the policy, while in the instant case coverage was reduced as a result of conduct of the insured at a later time. However, the Supreme Court's finding in Williams, citing South Carolina Code §38-77-142(c), makes clear that "any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." There is no temporal distinction as to when the limitation or reduction occurs. South Carolina Code §38-77-142(c) and the Supreme Court case of Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) control the disposition of the "step-down" provision in issue in the case before the Court, and invalidate and make void that step-down provision. Therefore, Nationwide should be required to provide the \$100,000/\$300,000.00 coverage set forth in the declarations page of the policy.

I. Nationwide's "step-down" provision violated S.C. Code Ann. §38-77-142(c) and was unenforceable per Williams v. Gov't Emp. Ins. Co. (GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014).

It is respectfully submitted that the Court of Appeals overlooked the specific holdings in the Williams case which exhaustively reviewed the law of this state and other states, and concluded that the statutory provision as set forth in

S.C. Code Ann. §38-77-142(c) mandatorily voided any provision seeking to limit or reduce coverage to the named insured (Walls). The Court in Williams made two specific rulings.

First, it ruled that the clear terms of §38-77-142 (c) were controlling of this state's public policy and that the step-down provision conflicted with §38-77-142(c) and was therefore invalid and void, and that no policy may limit or reduce the coverage required by this section and if any attempt was made to do so, it was void... Williams at page 714.

“The cardinal rule of statutory construction is for a court to ascertain the intent of the legislature and to give it effect. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). If a statute's language is plain, unambiguous, and conveys a clear meaning “the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). This plain meaning rule ensures a court will not change the meaning of an unambiguous statute. *Id.*” *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002).

Second, the Court ruled that in addition to the above, the provision in Williams as to family members was arbitrary, capricious and injurious to the public good; the Court stating “ **that in addition** [emphasis added] to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage, based solely on a familial relationship, is arbitrary, capricious and injurious to the public good”.... See Williams at page 717.

The opinion issued June 5, 2019 focused solely on the Second basis for the ruling and ignored the plain meaning of the statute and Williams.

The Court of Appeals, in its opinion, further attempted to buttress its

decision based upon S.C. Code §56-9-20. This view is similar to the dissenting opinion in Williams which was expressly rejected by the Supreme Court, and the Supreme Court by its majority decision in Williams, in footnote 8 made clear that §56-9-20, “ had no bearing on the application of **other** [emphasis added] motor vehicle laws, such as §38-77-142, or the related consideration of our state’s public policy”. Williams at page 717

We contend that the public policy of this state expressed by the Legislature, in §38-77-142 (c) prevents the insurer from reducing the coverage from the amount stated in the policy, which in this case was \$300,000.00, to the statutory minimum limit required by §38-77-142(a), which was \$25,000.00 per person for bodily injury the policy period at issue.

In Williams, the Supreme Court stated as follows:

“The PR’s contend the public policy of this state, as evidenced in §38-77-142, prevents an insurer from reducing the amount stated in the policy, which here was \$100,000, to the statutory minimum limit required by the §38-77-140 (A), which was 15,000 per person for bodily injury during the policy period at issue. **We Agree.** [emphasis added] See Williams at page 712.

The Williams Court further specifically found and concluded as a matter of law as follows:

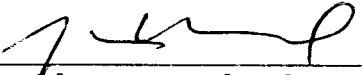
“Finally, Subsection (c) provides that no policy provision may limit or reduce the coverage required by this section, which refers to §38-77-142, or it is void”. See Williams at page 714.

The Supreme Court further stated that insurance companies could not limit or reduce liability coverages below the amount provided in §38-77-142(c) and held that the face amount of the coverage was relevant, not the statutory minimum limits as set forth in §38-77-140. Williams, at page 714


The Supreme Court was particularly focused on the manner in which automobile insurance was marketed, and recognized that the General Assembly in its specific language contained in §38-77-142(c) specifically included language to prevent step-down provisions such as appears in the Nationwide policy. The Court of Appeals has failed to recognize this distinction and has failed to follow the precedent of the Williams case, *supra*.

S.C. Code §38-77-142(c) is an unambiguous statement by the General Assembly of this state and the plain meaning of this statute must be enforced as was done in the Williams case. Walls, the named insured, purchased the 100,000/300,000 limits. The Petitioners were essentially innocent victims of a “car-jacking”. If the law is to be changed, that is for the Legislature, not this Court. If the precedent set by Williams is to be overruled, it is the province of the Supreme Court of this State, not this Court.

Respectfully submitted,



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June 14, 2019

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Trial Case No.: 2009-CP-04-00907

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No.: 2016-000679

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SC Court of Appeals

Nationwide Mutual Fire Insurance Company Appellant

vs.

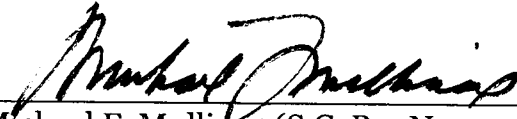
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in her capacity as Personal Representative of the Estate
of Christopher Adam Timms, Deborah Timms, Defendants,
Of whom, Sharmin Christine Walls Randi Harper, and
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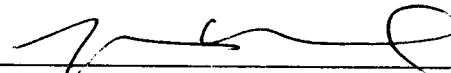
I certify that I have served the Petition for Rehearing on behalf of the Respondents, Sharmin Christine Walls and Randi Harper (submitted jointly by Michael F. Mullinax and J. Kirkman Moorhead) on the Appellant, Nationwide Mutual Fire Insurance Company, and all counsel of record, by depositing copies of the Petition for Rehearing in the United States Mail, postage prepaid, on June 14, 2019, addressed as follows:

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Wesley B. Sawyer, Esquire
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Attorney for Respondent, Christopher Timms



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June 14, 2019

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The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re.: Nationwide Mutual Fire Insurance Company vs. Sharmin Christine Walls,
Randi Harper, Wendy Timms in her capacity as Personal Representative of
the Estate of Christopher Adam Timms, Deborah Timms, Defendants
Of whom, Sharmin Christine Walls, Randi Harper, and Wendy Timms in
her capacity as Personal Representative of The Estate of Christopher
Adam Timms, are the Respondents
Appellate Case No.: 2016-000679

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven copies of the Petition for Rehearing, on behalf of the Respondents Sharmin Walls, and Randi Harper.

Also enclosed is the original and two copies of my Proof of Service, indicating that a copy of the Petition has been served opposing counsel.

I have also enclosed my filing fee check in the amount of \$50.00.

I would appreciate your returning clocked copies of the above documents to me in the self-addressed, stamped envelope I have provided.

Thank you for your assistance in this matter.

With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.



Michael F. Mullinax

MFM/lcm
Enclosures

cc: Mr. J. Kirkman Moorhead, Attorney for Respondent Randi Harper
Mr. J. R. Murphy, Attorney for the Appellant
Mr. Milford O. Howard, Attorney for Respondent Christopher Timms



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To
 The Honorable Jenny Abbott Kitchings
 Clerk, South Carolina Court of Appeals
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