

**IN THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Appeal From Anderson County
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate (Court of Appeals) Case No. 2016-000679

Nationwide Mutual Fire Insurance Company, Respondent

v.

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 Petitioners.

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SC Court of Appeals

Appellate (Court of Appeals) Case No.: 2016-000679

PETITION FOR A WRIT OF CERTIORARI

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 SET FORTH IN S.C. CODE ANN. §38-77-142(C)
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 (GEICO), 409 S.C. 586, 762 S.E. 2ND 705 (2014) RENDERS
 VOID AS AGAINST PUBLIC POLICY NATIONWIDE'S
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CERTIFICATE OF COUNSEL

The Court of Appeals issued its opinion in this case on June 5, 2019, (Appx. p. 345.) Counsel for the petitioners certifies that the Petition for Rehearing was served and filed twelve days later, on June 17, 2019 (Appx. p. 355). The Petition for Rehearing was finally ruled on by the Court of Appeals by an order filed on August 22, 2019. (Appx. p. 376) This Petition for a Writ of Certiorari is timely served and filed.

QUESTION PRESENTED

1. **Whether the legislative pronouncement set forth in S.C. Code Ann. §38-77-142(c) as interpreted in Williams v. Gov't. Emp. Ins. Co. (GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) renders void as against public policy Nationwide's seeking to limit or reduce coverage afforded the petitioners within the coverage of the applicable policy.**

STATEMENT OF THE CASE

The Petitioners, Sharmin Walls and Randi Harper, who were the Respondents below are hereinafter referred to as "Walls/Harper" respectfully move and petition this Court, pursuant to Rule 242 SCACR, as well as all other applicable law, for the issuance of a writ of certiorari to review the final decision of the Court of Appeals in this case. Walls/Harper respectfully submit that this is a proper case for such review by this Court. In an opinion filed June 5, 2019, the Court of Appeals may have overlooked or misapprehended certain points of law affecting the disposition of this case, as the following shows:

In its final decision, the Court of Appeals, in its June 5, 2019 opinion, (Appx. p. 345) ignored the plain meaning of the language contained in South Carolina Code § 38-77-142 (c) and the holding set forth in Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) . The Court of Appeals distinguished this case from Williams, supra, 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, supra, citing SC 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 in the Statute or in the case, as to when the limitation or reduction occurs. SC Code §38-77-142(c) and Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) control the disposition of the so-called "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 declaration page of the policy.

ARGUMENT

The facts of this case were largely stipulated at trial. Walls owned a Chevrolet Lumina insured by Nationwide (Appx. p. 207). The policy provided

liability limits of \$100,000 per person, \$300,000 per accident. (Appx. p. 207). Walls' medical bills exceeded \$200,000.00. However, the policy contained an exclusion (Section designated as Coverage Exclusion) that applied to any coverage in excess of the State's mandatory minimum limits if bodily injury occurred while an insured was fleeing from law enforcement or committing a felony;

Coverage Exclusions:

A.

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. Bodily injury or property damage caused by:

(a) you;

(b) a relative; or

(c) anyone else while operating your auto;

(1) while committing a felony; or

(2) while fleeing a law enforcement officer

(Appx. pp. 221-222).

On July 11, 2008, Walls, Mayfield, Harper and Timms had been at Walls' residence when they left as a group with Mayfield driving Walls' Chevrolet Lumina (Appx. pp. 250-252). No express permission from Walls was given allowing Mayfield to drive. (Appx. p. 249) Trooper Travis Wilson observed the vehicle on South Carolina Highway 81 in Anderson, crossing the yellow line and going approximately 12 miles an hour over the speed limit. (Appx. pp. 112-114). Trooper Wilson decided to pull the vehicle over and activated his blue lights.

(Appx. p. 112). While driving down 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour in an effort to keep up with the Lumina (Appx. p. 112-113).

After several turns on secondary roads, Trooper Wilson received instructions to terminate the pursuit, which he did. (Appx. p. 113). However, by the time Trooper Wilson deactivated his siren and blue lights, the Lumina was out of sight. (Appx. p. 113).

Approximately a mile down the road, Mayfield had lost control of the Lumina and ran off the road in a single vehicle accident. (Appx. p. 113). Trooper Wilson came upon the scene within a minute-and-a-half of terminating the chase. (Appx. p. 113). The Greenville County Accident Reconstruction Team investigated and determined that Mayfield was traveling a minimum of 72 miles per hour when he lost control. (Appx. p. 113). The speed limit on that portion of Leatherdale Road was 35 miles per hour (Appx. p. 113). Timms died as a result of the accident, and Mayfield, Walls and Harper each sustained serious injuries.

Mayfield was charged with and ultimately pled guilty pursuant to North Carolina v. Alford 400 U.S. 25, 91 S.C. 160 (1970), to reckless homicide, a felony. (Appx. p. 114). The Circuit Court made a factual determination that Mayfield was fleeing a law enforcement officer at the time of the accident (Appx. p. 8). The Circuit Court based its factual determination on damage to the vehicle, the speed of the vehicle at the time of the accident, the dash cam video, witness statements,

and the timeline (Appx. pp. 8-9). Even though Trooper Wilson had terminated the chase, the Circuit Court found that Mayfield's unlawful course of conduct and manner of driving continued up until the time of the crash.

Nationwide agreed to tender its \$50,000 of undisputed liability coverage, which the Respondents accepted. Furthermore, Mayfield had excess liability coverage under a policy of insurance issued by State Auto. State Auto also tendered its liability limits of \$50,000. Then, Nationwide filed this declaratory judgment action seeking application of the felony and "flight from law enforcement exclusions."

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 Court of Appeals 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.

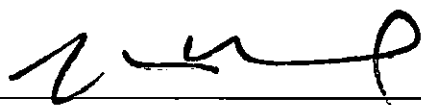
The Supreme Court was particularly focused on the manner in which automobile insurance was marketed, and recognized that the General Assembly in its specific language contained in §38-77-142(c) specifically included language to prevent step-down provisions such as appears in the Nationwide policy. The 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 the Court of Appeals. If the precedent set by Williams is to be overruled, it is the province of the Supreme Court of this State, not the Court of Appeals.

CONCLUSION

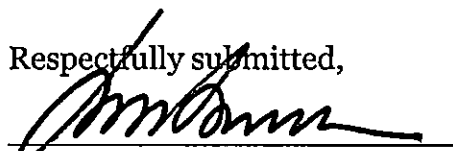
For the reasons stated, Petitioners ask the Court to grant the Petition for a Writ of Certiorari.



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September 19, 2019

Respectfully submitted,



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IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
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vs.

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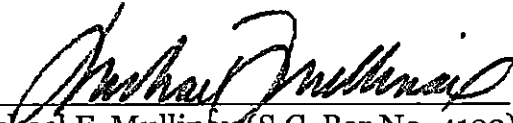
PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on behalf of the Petitioners, Sharmin Christine Walls and Randi Harper (submitted jointly by Michael F. Mullinax and J. Kirkman Moorhead) on the Respondent, Nationwide Mutual Fire Insurance Company, and all counsel of record, by depositing a copy of the Petition for a Writ of Certiorari and the Appendix, in the United States Mail, postage prepaid, on September 20, 2019, addressed as follows:

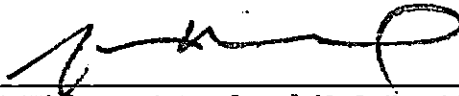
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September 20, 2019

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September 20, 2019

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SC Court of Appeals

Mr. Daniel Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211
HAND DELIVERED

Re: Nationwide Mutual Fire Insurance Company, Respondent
v. 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,
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Christopher Adam Timms, are the Petitioners
Appellate Case No.: 2016-000679

Dear Mr. Shearouse:

Please find enclosed, the original and seven copies of the Petition for a Writ of Certiorari which is being filed today, along with my filing fee check in the amount of \$250.00.. In addition, I enclose an original and one copy of my Proof of Service stating that the foregoing Petition for Writ of Certiorari and the Appendix was served on Mr. J.R. Murphy, of Murphy & Grantland, P.A., by U.S. Mail, on the 20th day of September 2019.

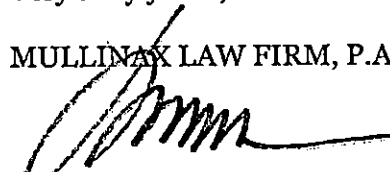
In addition, I enclose the original and an unbound copy of the Appendix, as specified by Rule 267(d).

I would appreciate your returning stamped copies of the above documents to me. I have enclosed a self-addressed, stamped envelope for your convenience.

With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.



Michael F. Mullinax

MFM/lcm
Enclosures
cc: Mr. J. R Murphy
S.C. Court of Appeals

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September 20, 2019

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

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Re:: Nationwide Mutual Fire Insurance Company, Respondent
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Of whom, Sharmin Christine Walls Randi Harper and Wendy Timms,
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Dear Ms. Kitchings:

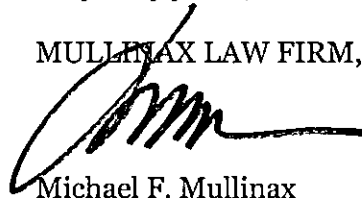
Enclosed for filing, is a Petition for a Writ of Certiorari in the captioned matter, together
with our Proof of Service on Mr. J. R. Murphy.

Also enclosed is a copy of my correspondence to the Clerk of the Supreme Court, filing
the original Petition for Writ of Certiorari and Appendix.

With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.



Michael F. Mullinax

MFM/lcm
Enclosures

cc: Mr. J. R. Murphy, Attorney for the Respondent, Nationwide Insurance Co.