RECEIVED

Nov 18 2020

S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-000439

Circuit Court Case No. 2019-CP-40-03702

United Services Automobile Association..... Respondent.

v.

Belinda Pickens..... Appellant.

RESPONDENT'S INITIAL BRIEF

J.R. Murphy, Esquire
S.C. Bar No. 7941
Wesley B. Sawyer, Esquire
S.C. Bar No. 100229
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondent

Other Counsels of Record:

Richard C. Alexander, Esquire
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Road
N. Charleston, SC 29418

Thomas J. Rode, Esquire
15 Middle Atlantic Wharf
Charleston, SC 29402

TABLE OF CONTENTS

Table of Authorities iii

Statement of Issues on Appeal 1

Statement of the Case 1

Statement of Facts 2

Procedural History 4

Standard of Review 6

Argument 6

I. The Circuit Court correctly applied South Carolina Code § 38-77-340 and held coverage under the USAA policy of liability insurance did not apply while Kevin Simms operated the 1997 Chevrolet 8

A. By its plain terms, § 38-77-340 precludes coverage under the policy of liability insurance while a vehicle is operated by the excluded driver 8

B. A reading of the phrase "policy of liability insurance" in the context of the excluded driver statute, and as that same phrase is used in South Carolina's other insurance statutes, confirms coverage "shall not apply" while Kevin Simms operated a vehicle 11

i. The General Assembly's use of the phrase "policy of liability insurance" in other statutes confirms the phrase means the entire contract of automobile insurance, including all of its component coverage parts. 11

ii. The plain meaning of the term "policy of liability insurance" as used in common practice and by USAA here confirms that the "policy of liability insurance" means the entire insurance policy 14

iii. The Circuit Court's application of the excluded driver statute to UM coverage comports with the statutory scheme because UM cannot be sold as standalone coverage and its limits are capped at the amount of liability coverage on the involved vehicle 15

iv. The Circuit Court's reading effectuates the purpose of the excluded driver statute 16

C. Once signed by the named insured, the Named Driver Exclusion is "binding upon every insured to whom the policy applies," including Appellant 19

D. The Circuit Court correctly held application of the Named Driver Exclusion to UM coverage – as set forth in the excluded driver statute – comports with South Carolina's public policy 20

II. Appellant raises a new argument on appeal that was never raised to the Circuit Court and that is not preserved to appellate review 24

Conclusion 26

TABLE OF AUTHORITIES

Cases

Abramski v. U.S., 573 U.S. 169, 134 S. Ct. 2259 (2014) 11-12

Cain v. Nationwide Property and Casualty Insurance Company, 378 S.C. 25, 661 S.E.2d 349 (2008) 14

Calhoun v. Calhoun, 399 S.C. 96, 529 S.E.2d 14 (2000) 16

Century Surety Company v. Nafel, 2015 WL 5012146 (M.D. La. Aug. 24, 2015) 15

CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011) 9, 15

Engebretson v. Humana Insurance Company, 2006 WL 2871824 (E.D. Wis. Oct. 6, 2006) 15

Epstein v. Coastal Timber Co., Inc., 393 S.C. 276, 711S.E.2d 912 (2011) 16-17

Executive Risk Indemnity, Inc. v. Integral Equity, L.P., 2004 WL 438936 (N.D. Tex. March 10, 2004) 15

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) 9, 21

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 24-25

Jackson v. Charleston County School District, 316 S.C. 177, 447 S.E.2d 859 (1994) 12

Lincoln General Insurance Company v. Progressive Northern Insurance Company, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013) 17, 20-21

Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc., 424 S.C. 256, 818 S.E.2d 447 (2018) 26

Nationwide Insurance Company of America v. Knight, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019) 5, 13

Neumayer v. Philadelphia Indemnity Insurance Company, 427 S.C. 261, 831 S.E.2d 406 (2019) 6

Philadelphia Indemnity Insurance Company v. Austin, 2011 Ark. 2883, 383 S.W.3d 815 (2011) 15

Progressive Direct Insurance Company v. Reeves, 427 S.C. 291, 831 S.E.2d 422 (2019) 12

Smith v. Tiffany, 429 S.C. 548, 799 S.E.2d 479 (2017) 9, 18

South Carolina Insurance Company v. Barlow, 301 S.C. 502, 392 S.E.2d 795 (Ct. App. 1990) 17

Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000) 24

Thao v. Nationwide Affinity Insurance Company of America, 2018 WL 2971784 (D.S.C. June 13, 2018) 9, 11

Timmons v. South Carolina Tricentenial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970) 9

Transportation Insurance Company v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010) 9

Unisun Insurance Company v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000) 22-23

Statutes and Rules

South Carolina Code § 38-77-140 13

South Carolina Code § 38-77-144 13

South Carolina Code § 38-77-150 ..... 5, 13, 16

South Carolina Code § 38-77-160 ..... 5, 8, 13, 16, 23

South Carolina Code § 38-77-280 13

South Carolina Code § 38-77-310 13

South Carolina Code § 38-77-340 ..... *passim*

South Carolina Code § 56-1-110 12-14

South Carolina Code § 56-9-20 13-14

South Carolina Code § 56-10-10 23-24

South Carolina Code § 56-10-20 23-24

Rule 59, SCRCP 6, 8, 24, 26

STATEMENT OF ISSUES ON APPEAL

Whether the Circuit Court properly honored Appellant's decision to name her son as an excluded driver and found coverage under the policy did not apply to her uninsured motorist claim when she allowed her excluded driver son to operate the vehicle, chose to ride as a passenger, and the vehicle was struck by an uninsured motorist?

STATEMENT OF THE CASE

This declaratory judgment action arises out of two of Appellant Belinda Pickens' choices. She chose to name her son as an excluded driver on her policy issued by Respondent United States Services Automobile Association (USAA). Then, she chose to allow her son to operate her vehicle with herself as a passenger. Appellant claims her excluded driver son was driving her 1997 Chevrolet when a John Doe vehicle struck the rear of her vehicle. Her son then ran off the road, causing injuries to Appellant. Because Appellant chose to allow her excluded driver son to operate her vehicle, the named driver exclusion signed by Appellant applies. As a result of her decisions, coverage under the policy of insurance did not apply at the time of the automobile accident.

Despite the named driver exclusion, Appellant sought uninsured motorist (UM) coverage from USAA and claimed the accident was caused by John Doe. In response, USAA filed this declaratory judgment action seeking enforcement of the exclusion, and the Honorable Robert E. Hood entered an Order granting USAA's Motion for Summary Judgment and denying Appellant's Motion. The Circuit Court relied on South Carolina's excluded driver statute. *See* S.C. Code § 38-77-340. Appellant would have this Court rewrite the statute, limiting its application only to liability coverage. However, the statute states that "coverage under a policy of liability insurance shall not apply while" Kevin Simms operates a vehicle, and the exclusion "is binding upon every insured to whom the policy applies." S.C. Code § 38-77-340. Although Appellant spends

significant energy trying to limit the undefined phrase "policy of liability insurance" to only liability coverage, the policy is the entire contract, including all of it coverage parts. The Circuit Court applied this plain reading of the statute. In doing so, it looked to how the General Assembly uses the phrase "policy of liability insurance" in other automobile insurance statutes, which confirms that the phrase references the entire insurance policy, not just one coverage part under the policy. Because the Circuit Court correctly applied the plain language of the statute, its Order should be affirmed.

STATEMENT OF FACTS

A. Appellant chose to exclude coverage under the USAA policy while her son Kevin Simms operated a vehicle.

Respondent USAA issued a policy of automobile liability insurance to Appellant Pickens. Appellant chose to list her son as an excluded driver and executed a form titled "VOIDING AUTOMOBILE INSURANCE WHILE NAMED PERSON IS OPERATING CAR" ("Named Driver Exclusion"). (Named Driver Exclusion, Ex. B to Pl.'s Mem. in Supp. of Mot. for Summ. J.). The Named Driver Exclusion listed Appellant's son as the "person to be excluded."[1] (Id.). The Named Driver Exclusion states in relevant part:

> In consideration of the continuation of this policy in force by the Company at the rate applicable because of this endorsement, it is hereby agreed that with respect to such insurance as is afforded under this policy, including any obligation to defend, the Company shall not be liable for damages, losses or claims arising out of the operation or use of the automobile described in the policy or any other automobile to which the terms of the policy are extended, whether or not such operation or use was with the express or implied

[1] Appellant's son's name is Kevin Simms. The Named Driver Exclusion listed the person to be excluded as "Kevin S. Pickens." (Id.). On November 1, 2019, the parties entered into a Stipulation and Agreement that "both USAA and Belinda Pickens intended to exclude 'Kevin Simms' from coverage under the USAA policy . . ." (Ex. A to Pl.'s Mem. In Supp. of Mot. For Summ. J. ¶ 4). Thus, there is no dispute in this case that Kevin Simms was the excluded driver.

> permission of its owner, while said automobile is being driven or operated by the following named person: [Kevin S. Pickens].

(Id.). Appellant also declared in the form that her son had "obtained a policy of insurance (or other security) to enable" him to drive vehicles. (Id.). Appellant stipulated that: (1) she signed the form, (2) the form was part of the USAA policy; and (3) the form was approved by the Department of Insurance pursuant to the requirements of S.C. Code § 38-77-340. (Ex. A to Pl.'s Mem. in Supp. of Mot. for Summ. J. ¶¶ 1, 2, & 5).

In reliance on the Excluded Driver Form, USAA issued the policy Declarations, which stated "***COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY KEVIN SIMMS***." (Renewal Declarations, Ex. C to Pl.'s Mem. in Supp. of Mot. for Summ. J., p. 4). The Declarations are part of the policy. (Ex. A. to Compl., Form 5100SC, p. 1 of 26) ("The automobile 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."). Thus, the policy's coverage did not apply while Appellant's son operated any vehicle.

B. Despite expressly excluding coverage while her son operated any vehicle, Appellant allowed her son to drive her vehicle with Appellant as a passenger.

On March 10, 2016, Appellant allowed her son to operate the 1997 Chevrolet listed on the USAA policy, with Appellant riding as a passenger, even though she knew coverage was excluded while he drove the vehicle. Appellant claims a John Doe vehicle struck the rear of the 1997 Chevrolet. Appellant's son then lost control of the vehicle, ran off the road, and struck an object, resulting in injuries to Appellant. Despite her prior decision to exclude coverage while Kevin Simms operated a vehicle, Appellant sought UM coverage under the USAA policy. In response, USAA filed this declaratory judgment action.

PROCEDURAL HISTORY

Appellant filed a John Doe action and served USAA as a purported UM insurer. In response, USAA filed this declaratory judgment action on July 9, 2019, and sought a declaration enforcing the Named Driver Exclusion and the policy language.

On October 2, 2019, Appellant filed a Motion for Summary Judgment "on the grounds that South Carolina Code Annotated § 38-77-340 et seq. only applies to liability insurance." (Def.'s Mot. for Summ. J., p. 1). On November 1, 2019, Respondent filed a cross Motion for Summary Judgment. (Pl.'s Mot. for Summ. J, p. 1). The Circuit Court held a hearing on the cross motions on January 13, 2020.

On February 10, 2020, the Circuit Court entered a Form 4 Order granting Respondent USAA's Motion and denying Appellant Pickens' Motion. (Feb. 10, 2020 Form 4 Order). The Circuit Court then entered a written Order on February 12, 2020. (Feb. 12, 2020 Order).

In its written order, the Circuit Court evaluated the application of South Carolina's excluded driver statute, South Carolina Code § 38-77-340, and found the execution of the Named Driver Exclusion by Appellant satisfied each element of the statute. (*Id.* at p. 3). As a result, "[b]ecause the excluded driver endorsement was part of the policy on the date of the accident, Kevin was driving the vehicle without liability insurance at the time of the accident." (*Id.* at p. 2).

Both in her brief and at the hearing before the Circuit Court, Appellant made two arguments: (1) the Named Driver Exclusion was unenforceable because it incorrectly listed "Kevin S. Pickens" as the excluded driver; and (2) the Named Driver Exclusion cannot be applied to UM coverage because the excluded driver statute says "coverage under a policy of liability insurance shall not apply" while the vehicle is operated by the excluded driver. Appellant made no other arguments to the Circuit Court.

As to the first argument, the Circuit Court found, "the parties . . . agree that although the excluded driver endorsement lists 'Kevin S. Pickens' as the driver to be excluded from the Policy's coverage, both USAA and Pickens intended to exclude 'Kevin Simms." (*Id.* at 3). As a result, the Circuit Court held the form must be treated as having properly named Kevin Simms:

> Therefore, any error in listing the excluded driver as "Kevin S. Pickens" instead of "Kevin Simms" is a mere mutual mistake. . . . Even if the mistake on the excluded driver endorsement were substantive, the Court would be required to reform the excluded driver endorsement to conform to the undisputed intent of the parties and read the endorsement to name Kevin Simms.

(*Id.* at 4) (internal citation omitted). Appellant has not appealed this ruling, which leaves only her second argument for appellate review.

As to the second argument, the Circuit Court closely reviewed the excluded driver statute and the Court of Appeals' decision in *Nationwide Insurance Company of America v. Knight*, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019) *cert. granted* (2020), and found the exclusion properly applied to the entirety of coverage under the policy of liability insurance, not just liability coverage. First, the Circuit Court looked to the Court of Appeals' analysis in *Knight* and the General Assembly's use of the phrase "policy of liability insurance" in other insurance statutes and determined the phrase was not restrictive. Instead, the phrase refers to the entire insurance contract, including UM and UIM coverage. (*Id.* at 5). The Circuit Court also found UM coverage is a statutorily required part of the coverage under a "policy of liability insurance" and can only be offered up to the limits of liability. (*Id.* at 5) (*quoting* S.C. Code § 38-77-150 & 38-77-160). Therefore, UM "coverage is not sold as standalone insurance" and UM "coverage could not be offered as standalone coverage." (*Id.* at 5). In sum, UM coverage never exists apart from a policy of liability insurance.

The Circuit Court also found application of the Named Driver Exclusion comported with South Carolina's public policy set forth in the state's insurance statutes because "the main goal of the MVFRA is to ensure that owners of vehicles purchase insurance for their vehicles that will protect the motoring public." (*Id.* at 6). Allowing an insured to keep UM protection for herself, while the Named Driver Exclusion precludes protection for the motoring public, conflicted with the public policy of South Carolina's insurance statues. (*Id.* at 6).

Lastly, the Circuit Court rejected Appellants' argument that UM, which is mandatory under South Carolina law, should be treated differently. "The excluded driver statute specifically authorizes a policy to exclude mandatory coverage when the vehicle is operated by an excluded driver." (*Id.* at 7). Therefore, because Appellant "purposefully chose to sign the excluded driver endorsement and agreed that coverage afforded under the USAA policy would not be in effect while a vehicle was operated by her son," the Circuit Court honored Appellant's decision and enforced the exclusion.

Appellant did not file a Rule 59 Motion. Instead, she filed a Notice of Appeal on March 10, 2020.

STANDARD OF REVIEW

"When cross motions for summary judgment are filed, the issue is decided as a matter of law." *Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citation omitted). "An insurer may impose conditions on a policy provided they do not contravene public policy or violate a provision of law." *Id.* (citation omitted). The interpretation of a statute is a question of law, which is reviewed de novo. *Id.* (citation omitted).

ARGUMENT

By enacting the excluded driver statute, the South Carolina General Assembly expressly authorized exclusions of coverage while a vehicle is operated by a named individual. The statute provides "coverage" – an unqualified word – under the "policy of liability insurance ***shall not apply*** while the motor vehicle is being operated by" the excluded driver. S.C. Code § 38-77-340 (emphasis added). Moreover, the exclusion, when signed by the named insured – Appellant here – "is binding upon ***every*** insured to whom the policy applies." *Id.* (emphasis added). Thus, by the plain terms of the statute, coverage under the USAA policy "shall not apply" because the 1997 Chevrolet was being operated by the excluded driver at the time of the accident.

The plain language of the statute compels the conclusion reached by the Circuit Court. Although Appellant places great emphasis on the phrase "policy of liability insurance" and argues this phrase should be given a restrictive meaning, a reading of the phrase in the context of the excluded driver statute and in the greater context of South Carolina's other automobile insurance statutes confirms the undefined phrase "policy of liability insurance" means the entire insurance contract, not just liability coverage. In reality, Appellant asks this Court to rewrite the statute to place the word "liability" before the word "coverage" – i.e., "[liability] coverage under such a policy of liability insurance shall not apply." However, the Court must apply the statute according to the words chosen by the General Assembly.

The Circuit Court's plain reading of the statute also promotes three public policy interests set out by the General Assembly in the insurance statutes: (1) the remedial named driver exclusion statute allows insureds to purchase more affordable coverage; (2) the excluded driver statute discourages a named insured from allowing an excluded driver to operate her vehicle – which better protects the motoring public; and (3) applying the exclusion to "coverage" promotes the

General Assembly's decision to limit the amount of available UM coverage to the amount of liability coverage applicable to an accident vehicle. *See* S.C. Code § 38-77-160 ("the policy shall provide that the insured . . . is protected only to the extent of coverage he has on the vehicle involved in the accident."). Thus, the General Assembly structured the excluded driver statute to preclude "coverage" – including UM or any other part of the policy – while the excluded driver operates a vehicle.

Appellant's arguments regarding the policy language are incorrect. The USAA policy Declarations – which is a part of the policy and sets forth the coverages and limits – plainly state "***COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY KEVIN SIMMS." (Ex. C to Pl.'s Mem. in Supp. Of Summ. J. p. 4).

Moreover, Appellants raise their policy language argument for the first time on appeal. Because Appellant did not raise this issue to the Circuit Court or file a Rule 59 motion, the issue is not preserved for appellate review.

I. The Circuit Court correctly applied South Carolina Code § 38-77-340 and held coverage under the USAA policy of liability insurance did not apply while Kevin Simms operated the 1997 Chevrolet.

The plain language of the excluded driver statute states coverage under the policy of liability insurance "shall not apply" while the excluded driver operates a vehicle. Moreover, a reading of the statute in the context of South Carolina's insurance statutes confirms the "shall not apply" language applies to the entirety of coverage under the policy, not one coverage part. Lastly, this result promotes the competing public policy goals of protecting the motoring public, on the one hand, and the freedom of contract goals established in § 38-77-340, on the other hand. Therefore, none of the coverage under the USAA policy was in effect while Kevin Simms operated the 1997 Chevrolet, and Appellant is not entitled to any UM coverage.

A. By its plain terms, § 38-77-340 precludes coverage under the policy of liability insurance while a vehicle is operated by the excluded driver.

"It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question." *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479, 483 (2017). "If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning." *Timmons v. South Carolina Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805, 817 (1970). "The text of a statute as drafted by the legislature is considered the best evidence of legislative intent or will." *Transportation Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687, 690 (2010) (citation omitted).

"[T]he words found in the statute [must be given] their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Thao v. Nationwide Affinity Ins. Co. of Am.*, 2018 WL 2971784 *3 (D.S.C. June 13, 2018) (quoting *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citations omitted)). "Thus, if the words are unambiguous, we must apply their literal meaning." *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. "If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute." *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 582 (2000) (citation omitted). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* at 581 (citation omitted). *See Thao*, 2018 WL 2971784 at *4-5 (Quattelbaum, J.) (holding that "policy was not in effect at the time of the accident when [the excluded driver] was operating the vehicle and Nationwide does not owe any coverage under the policy for claims arising out of the accident," which included claims for first-party collision coverage).

South Carolina's excluded driver statute provides:

> Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that ***coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name.*** The agreement, when signed by the named insured, ***is binding upon every insured to whom the policy applies*** and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code § 38-77-340 (emphasis added).

A plain reading of this statutory language confirms the USAA policy is not in effect while Kevin Simms operates a vehicle. By the terms of the statute, "coverage" – an unqualified term – under a "policy of liability insurance" – the insurance contract – "shall not apply" – is not in force – "while the motor vehicle is being operated by" Kevin Simms. There is no coverage under the USAA policy while Kevin Simms is driving. Moreover, this exclusion is not limited to Kevin Simms as the named excluded driver. Instead, the "agreement, when signed by the named insured" – Appellant Pickens – "is binding upon every insured" – all insureds – "to whom the policy" – the contract – "applies." Because the statutory language is plain and unambiguous, this ends the analysis. No coverage under the contract applies while Kevin Simms operates a vehicle, and the "shall not apply" language binds every insured, including Appellant Pickens.

In a case involving first-party collision coverage and liability coverage, the United States District Court for the District of South Carolina in *Thao* addressed application of an excluded driver provision and held:

> The language of section 38-77-340 is clear and unambiguous. The statute allows the named insured and the insurer to agree in writing that the policy will not be in effect while a vehicle is operated by a person properly excluded from coverage. . . . Therefore, the Court finds that, under the language of section 38-77-340, the policy excludes all coverage for damages arising from [the excluded driver's] operation of the vehicle.

Thao, 2018 WL 2971784 at *3. Judge Quattlebaum in *Thao* – like the Circuit Court here – properly construed the excluded driver statute in accordance with its plain terms. When the excluded driver operates a vehicle "the policy will not be in effect." Because Appellant's excluded driver son was operating her 1997 Chevrolet at the time of the accident, coverage under her USAA policy did not apply.

B. A reading of the phrase "policy of liability insurance" in the context of the excluded driver statute, and as that same phrase is used in South Carolina's other insurance statutes, confirms coverage "shall not apply" while Kevin Simms operated a vehicle.

Appellant asks the Court to wear blinders and focus only on the phrase "policy of liability insurance" used in the excluded driver statute. Moreover, Appellant asks this Court to construe the phrase in a manner that is different from and inconsistent with how the General Assembly uses the phrase in other automobile insurance statutes. However, such an isolated reading violates canons of statutory construction. A reading of the statute in context confirms the excluded driver statute's use of the phrase "policy of liability insurance" is not restrictive.

i. The General Assembly's use of the phrase "policy of liability insurance" in other statutes confirms the phrase means the entire contract of automobile insurance, including all of its component coverage parts.

Courts do not consider a statute in isolation, and a court does not look at any particular word in a statute without considering the statute in its entirety and in context with other statutes. *See Abramski v. U.S.*, 573 U.S. 169, 180 n.6, 134 S. Ct. 2259, 2267 n.6 (2014) ("We simply recognize that a court should not interpret each word in a statute with blinders on, refusing to look

at the word's function within the broader statutory context. As we have previously put the point, 'a provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.") (citation omitted). As this Court has held, "The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose." *Jackson v. Charleston County School Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 862 (1994) (citation omitted).

Statutes dealing with the same subject matter "are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Progressive Direct Ins. Co. v. Reeves*, 427 S.C. 291, 291 n.2, 831 S.E.2d 422, 424 n.2 (2019) (citation omitted). Appellants argue that the undefined phrase "policy of liability insurance" should be given a restrictive reading. However, the phrase "policy of liability insurance" must be given the same reading in the excluded driver statute that it is given in other automobile insurance statutes. When the General Assembly uses the phrase "policy of liability insurance," it refers to the entire insurance contract, not just the liability coverage part.

For example, South Carolina Code § 56-1-110 uses the same phrase – "policy of liability insurance" – and the General Assembly makes clear that this phrase includes the entire policy, not just liability insurance:

> Any negligence or willful misconduct of a minor when driving a motor vehicle upon a highway must be imputed to the person who has signed the application of such minor for a beginner's permit, instruction permit, or driver's license, which person is jointly and severally liable with such minor for any damage caused by such negligence or willful misconduct, except that if such minor is protected by a ***policy of liability insurance*** in the form and in the amounts required under Chapter 9 of this title ***and Sections 38-77-140 through 38-77-310***, then such parent or guardian or other

> responsible adult is not subject to the liability otherwise imposed under this section.

S.C. Code § 56-1-110 (emphasis added). Importantly, the General Assembly states the phrase "policy of liability insurance" – the very phrase Appellant contends should be given a restrictive reading – refers to one policy that provides the amounts required under "Section 38-77-140 through 38-77-310." *Id.* The range of statutes from 38-77-140 to 38-77-310 encompasses a number of different coverage parts that may make up a "policy of liability insurance" including: (1) liability coverage (38-77-140(A)); (2) personal injury protection (38-77-144); (3) UM coverage (38-77-150(A)); (4) underinsured motorist (UIM) coverage (38-77-160); and (5) comprehensive and collision coverage (38-77-280(A)). Because all these coverages are within "the amounts required under . . . Sections 38-77-140 through 38-77-310," they make up one "policy of liability insurance." S.C. Code § 56-1-110.

Likewise, the General Assembly gives the phrase "policy of liability insurance" a similarly inclusive meaning in South Carolina Code § 56-9-20(5):

> "Motor vehicle liability policy": An owner's or an operator's ***policy of liability insurance*** that fulfills all the requirements of ***Sections 38-77-140 through 38-77-230***, as certified as provided in Sections 56-9-550 or 56-9-560 as proof of financial responsibility[2]

S.C. Code § 56-9-20(5) (emphasis added).

---

[2] Appellant conveniently misstates the Circuit Court's and the *Knight* Court's reference to this statute. Appellant argues that the Circuit Court and the Court of Appeals in *Knight* erred "in adopting the definition of 'motor vehicle liability policy' from § 56-9-20(5)(d) [and] ignored that this definition expressly excludes UM coverage in excess of the minimum limits." (Appellant's Initial Br. P. 13). The Circuit Court here and the Court of Appeals in *Knight* did not adopt the definition of § 56-9-20(5)(d). Instead, those courts recognized that the definition of "motor vehicle liability policy" used the exact same phrase – "policy of liability insurance" – in an expansive, rather than restrictive, manner. Moreover, the fact that the similar phrase "motor vehicle liability policy" is not restricted to liability coverage refutes Appellant's premise that "liability" when used alongside the word "policy" is restrictive.

In both § 56-1-110 and § 56-9-20(5), the General Assembly uses the phrase "policy of liability insurance" in a non-restrictive manner. The phrase means the insurance contract in its entirety, including all its constituent parts. Because the General Assembly chose to use exactly the same undefined phrase in the excluded driver statute – another automobile insurance statute – the phrase must be given the same meaning. Therefore, "policy of liability insurance" means the entire contract, including liability, UM, UIM, and any other component coverage parts.

Without expressly stating so, Appellants ask this Court to rewrite the excluded driver statute by adding the word "liability" in front of the word "coverage," so that the statute would read: "[liability] coverage under a policy of liability insurance shall not apply . . .." However, that is not the language the General Assembly chose. Instead, the General Assembly used the unqualified term "coverage," and stated that such "coverage" under a "policy of liability insurance shall not apply" while a vehicle is operated by the excluded driver. The statute must be construed according to the words the General Assembly chose.

ii. The plain meaning of the term "policy of liability insurance" as used in common practice and by USAA here confirms that the "policy of liability insurance" means the entire insurance policy.

As this Court has held in other insurance cases, "[w]e cannot construe a statute without regard to its plain and ordinary meaning . . .." *Cain v. Nationwide Property and Cas Ins. Co.*, 378 S.C. 25, 29, 661 S.E.2d 349, 351-52 (2008) (citation omitted). The General Assembly's treatment of the term "policy of liability insurance" as a policy that encompasses all its constituent parts is also how the phrase is used in common parlance. A person who purchases an insurance policy with liability, UM, UIM, PIP, and comprehensive and collision coverage does not purchase five separate insurance policies. Instead, she purchases one "policy of liability insurance" with multiple coverage parts.

USAA issued its insurance policy to Appellant in conformity with this statutory and industry understanding. The Declarations page lists one policy number with the various coverage parts listed as separate letters: (1) Part A – Liability, (2) Part B – PIP, (3) Part C – UM, (4) Part C – UIM, and (5) Part D – Physical Damage Coverage. (Ex. A to Compl., Declarations). Moreover, the main form of the USAA policy is titled "South Carolina Auto Policy," and it includes parts for all five of these types of coverage. (*See* Ex. A to Compl., "South Carolina Auto Policy", Quick Reference, pp. 1-2 of 25). Thus, the General Assembly's use of the phrase "policy of liability insurance" as representing a single insurance contract with multiple coverage parts is consistent with the common use of the phrase in the insurance industry, common used by courts,[3] and as that phrase is used in the USAA policy. Instead of applying this plain meaning of the phrase, Appellant asks this Court to give the phrase a strained construction, which the rules of statutory interpretation prohibit. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[T]he words found in the statute [must be given] their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.") (citations omitted)).

[3] *See e.g.*, *Philadelphia Indem. Ins. Co. v. Austin*, 2011 Ark. 283, 383 S.W.3d 815, 821 (2011) (finding that insurer that issued a single policy number and where the policy stated, "This policy consists of the following coverage parts for which a premium is indicated" was "only one insurance policy—not multiple policies . . .."); *Engebretson v Humana Ins. Co.*, 2006 WL 2871824, *8 n.3 (E.D. Wis. Oct. 6, 2006) ("As used in several cases, 'coverage parts' are different coverages that may each be provided by the same insurer under one policy."); *Executive Risk Indem., Inc. v. Integral Equity, L.P.*, 2004 WL 438936, *5 (N.D. Tex. March 10, 2004) ("Clearly, there is but one Policy at issue, albeit a Policy that contains three separate "Coverage Parts."); *Century Surety Co. v. Nafel*, 2015 WL 5012146, *14 (M.D. La. Aug. 24, 2015) ("Century issued a single 'Commercial Lines Policy.' Although there are separate 'Coverage Parts' under the policy, it is still one single policy, [and it is] ***mere sophistry to argue otherwise***.") (emphasis added).

iii. The Circuit Court's application of the excluded driver statute to UM coverage comports with the statutory scheme because UM cannot be sold as standalone coverage and its limits are capped at the amount of liability coverage on the involved vehicle.

As the Circuit Court recognized in its Order, South Carolina's insurance statutes actually prohibit the sale of a separate UM insurance policy. (Order, p. 5). In doing so, the Circuit Court looked to South Carolina's UM statute, which requires that all automobile insurance policies issued in South Carolina contain UM coverage. S.C. Code § 38-77-150(A). Therefore, UM coverage is – by statute – an integral part of the policy of liability insurance. No automobile policy can be issued in South Carolina without UM coverage included in the policy.

Furthermore, insurers must offer UM coverage "up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150." S.C. Code § 38-77-160. Thus, the General Assembly chose to tie the limits of available UM coverage to the limits of available liability coverage. The General Assembly made this restriction clear in the statute, stating, "If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident." S.C. Code § 38-77-160 (emphasis added); *see also Calhoun v. Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000) ("Use of the word 'shall' in a statutory provision indicates the provision is mandatory.'") (citation omitted). Thus, by statutory design, UM coverage cannot be sold as standalone insurance. Instead, UM coverage is part and parcel of the "policy of liability insurance," and UM coverage cannot exceed the applicable liability limits.

iv. The Circuit Court's reading effectuates the purpose of the excluded driver statute.

"Statutory language must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Epstein v. Coastal Timber Co., Inc.*, 393 S.C. 276, 285, 711

S.E.2d 912, 917 (2011) (citation omitted). The purpose of the excluded driver statute is well established: "The purpose of this section is to 'alleviate the problem often faced by the owner of a family policy, who ... has a relatively safe driving record but is forced to pay higher premiums because another member of the family is ... by definition also included in the policy coverage." *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 541, 753 S.E.2d 437, 441 (Ct. App. 2013) (quoting *Lovette v. U.S. Fid. & Guar. Co.*, 274 S.C. 597, 600, 266 S.E.2d 782, 783 (1980)). Because the statute remedies the problem faced by a named insured – such as Appellant here – who faces increased premiums because of a high-risk relative, the statute "is remedial [and] must be liberally construed to effect the purpose of the statute." *South Carolina Ins. Co. v. Barlow*, 301 S.C. 502, 507, 392 S.E.2d 795, 798 (Ct. App. 1990) (holding the predecessor to South Carolina Code § 38-77-340 is remedial).

Appellant is attempting to erode the statute such that its purpose can no longer be accomplished. The exposures arising out of a risky driver's operation of a vehicle are not limited to liability coverage. Rather, various forms of coverage under the policy create exposure for an insurance carrier if a risky driver operates a car – resulting in increased insurance premiums. For example, if Appellant's contention is correct and the excluded driver statute only applies to liability coverage, then Appellant could recover UM coverage in an accident solely caused by her excluded driver son. Appellant could also recover PIP and collision coverage on her vehicle. If the risk of exposure for the excluded driver's operation of a vehicle could simply be shifted to other coverage parts, like UM, then the goal of the statute is defeated. Insurers would still be required to charge a premium based on the risk that the excluded driver will operate a vehicle because they would face the exposure for such operation.

Likewise, Appellant's focus on the excluded driver's liability is misplaced and ignores the reality of insuring motoring risks. For example, states and insurers routinely encourage drivers to take defensive driving courses. Defensive driving is designed to avoid accidents that would otherwise be caused by other drivers. The entire principle of defensive driving is based on the understanding that good and safe drivers can take steps to avoid accidents even if those accidents would have been caused by other drivers. A risky driver subject to an excluded driver provision can be the sort of driver who is less likely to drive defensively and to avoid an accident with an uninsured or underinsured motorist. Thus, requiring coverage for UM, UIM, or any other coverage on the policy for passengers or anyone else in the vehicle operated by the excluded driver increases the risk and, as a result, can result in an increased insurance premium.

The accident in this case poses another problem with Appellant's contention that UM cannot be excluded because it is not based on Kevin Simms' fault. In this case Appellant's vehicle was allegedly rear ended by a John Doe vehicle, and then Appellant's son lost control of the vehicle and ran off the road. If Appellant sues only John Doe, then a jury cannot apportion any fault of Appellant's excluded driver son. *See Smith*, 419 S.C. at 559-60, 799 S.E.2d at 486 (holding that the apportionment statute only allows "defendants" to be listed on a jury form and included in fault allocation). Thus, if Appellant's contention is correct, insurers would be forced to pay UM coverage for exposure caused by the excluded driver's contribution to the accident. If an insurer is forced to assume that exposure, then it will charge a commensurate premium – defeating the very purpose of the statute and defeating the benefit of paying a decreased premium for which the Appellant bargained.

In sum, the word "liability" used in § 38-77-340 cannot be read in isolation. Read in its context – both within the statute itself and in the broader scheme of South Carolina's insurance

statutes – the excluded driver statute acts to do exactly what USAA's Named Driver Exclusion form's title states: "Voiding Automobile Insurance While Named Person is Operating Car." Stated differently, "coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name." S.C. Code § 38-77-340. Because Appellant chose to allow her excluded driver son to operate her 1997 Chevrolet, the USAA policy provision stating "COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY KEVIN SIMMS" applied, and coverage was not in effect at the time of the accident.

C. Once signed by the named insured, the Named Driver Exclusion is "binding upon every insured to whom the policy applies," including Appellant.

The excluded driver statute states the exclusion applies to all insureds, regardless of whether they are driving or otherwise. In relevant part, the statute states, "[t]he agreement, when signed by the named insured, is binding upon ***every*** insured to whom the policy applies . . .." S.C. Code § 38-77-340 (emphasis added). As a person seeking UM coverage, Appellant claims she is an "insured to whom the policy applies." The statute does not differentiate between a named insured, a guest, or a resident relative who may occupy the vehicle or be stuck by the vehicle while operated by the excluded driver. Instead, ***every*** insured to whom the policy applies is subject to the "shall not apply" language.[4]

---

[4] Yet again, Appellant seeks to rewrite the statute, claiming the statute "excludes Kevin from the definition of 'an insured' while he is operating the Chevy." (Initial Br. of Appellant, p. 7). Although the statute begins by stating "Notwithstanding the definition of insured . . . .," this is not the operative language of the statute. The operative language states that "coverage . . . shall not apply while the motor vehicle is being operated by" the excluded driver. Thus, it is not Kevin Simms who is excluded. Instead, "coverage" is excluded when Kevin Simms operates a vehicle. Moreover, once triggered, the coverage "shall not apply" and this exclusion is binding upon every insured, not just Kevin Simms. S.C. Code § 38-77-340. This also refutes Appellant's proposed distinction between Kevin's ability to collect UM as a passenger, but not as a driver. Because the exclusion applies when he operates a vehicle, the General Assembly chose to make this distinction, which accomplishes the purpose of the statute.

This rule should apply even more strongly to Appellant, who is the named insured who chose to sign the Named Driver Exclusion. Appellant is the very person who benefited from a reduced premium by choosing to exclude coverage while her son operated a vehicle. Appellant is the very person who then chose to allow her son to drive the 1997 Chevrolet on the policy – thus allowing the vehicle to be operated on the roadway without coverage under her policy. Appellant is the very person who chose to ride as a passenger while her son operated the vehicle. She is certainly an "insured to whom the policy applies." Therefore, she is subject to the statute's directive that "coverage under such a policy of liability insurance shall not apply."[5]

D. The Circuit Court correctly held application of the Named Driver Exclusion to UM coverage – as set forth in the excluded driver statute – comports with South Carolina's public policy.

The General Assembly established South Carolina's public policy as applied to named driver exclusions when it chose to codify its approval of such provisions. By expressly authorizing the exclusion, the General Assembly declared such provisions comport with South Carolina public policy.

Although South Carolina's insurance statutes generally extend coverage, the excluded driver statute protects the parties' freedom of contract rights. The Court of Appeals in *Lincoln General* addressed two competing public policy interests: (1) the general goal of protecting the

---

[5] This language also moots Appellant's lengthy argument regarding the difference between liability and UM coverage. USAA does not dispute that liability and UM coverages are different. However, both liability and UM coverage are part of a single "policy of liability insurance" – i.e., one contract. Thus, when coverage under such a policy does not apply, there is no UM, liability, UIM, PIP, comprehensive, or collision coverage. It is as if the policy is turned off while the excluded driver operates a vehicle. This also moots Appellant's arguments regarding the opening line of the statute, which refers to the definition of "insured" in § 38-77-30. The exclusion is binding upon "every insured to whom the policy applies." Appellant claims she is an insured to whom the policy applies, so the exclusion necessarily applies to her.

motoring public; and (2) the more specific goal of the excluded driver statute in giving parties the freedom to exclude coverage while a named person operates a vehicle:

> "'[T]he legislature has determined that for all vehicles registered in South Carolina, at least minimal coverage is necessary to protect the public.'" *Markosky*, 340 S.C. at 230, 530 S.E.2d at 664 (quoting *Shores*, 315 S.C. at 355, 433 S.E.2d at 917). However, the legislature has also determined that "coverage under such a policy of liability insurance shall not apply" while a named driver is operating the vehicle so long as the remaining statutory requirements are satisfied. § 38–77–340. As in *Barlow*, the named driver endorsement statute "*is not inhibited by*" the MVFRA's public policy because it constitutes separately approved public policy. *Barlow*, 301 S.C. at 507–08, 392 S.E.2d at 797 (emphasis added). While the MVFRA protects the public, the named driver endorsement statute "protects, in limited situations, the right of the parties to make their own contract." *Id.*

Lincoln General, 406 S.C. at 546-47, 753 S.E.2d at 443-44. Thus, when the excluded driver operates the car, the General Assembly has chosen to allow the parties' freedom of contract rights to prevail over the more general goal of providing protection to the motoring public. As a result, all coverage – even "minimum" limits that would otherwise be mandatory – "shall not apply" while the vehicle is operated by the excluded driver.

Because the General Assembly expressly authorizes the Named Driver Exclusion, a more general analysis of public policy is unnecessary. However, the Circuit Court's conclusion promotes other aspects of public policy as set forth in South Carolina's insurance statutes.

"The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." *Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 (citation omitted). Appellant allowed her son – the one person's whose operation of the vehicle would void coverage – to operate her vehicle. Had he run off the road, struck a pedestrian, and then struck a tree, the pedestrian could not recover any liability payments under the USAA policy. However, according to Appellant, she should still be entitled

to collect UM coverage. This is an absurd result that runs counter to the very design of South Carolina insurance statutory scheme.

To mitigate the absurdity of her position, Appellant contends that the fortuity of the fact that the vehicle was struck by a John Doe should negate application of the statute. The Circuit Court correctly found Appellant's position is incongruous with the statute and actually harms public policy:

> By executing the excluded driver endorsement, the owner is relieved of his or her obligation to provide protection to the motoring public when the vehicle is operated by the named excluded driver. In exchange, the owner pays a lower premium. If the owner can pay a reduced premium and yet still protect herself as a passenger in the vehicle while operated by the excluded driver, then an owner has a perverse incentive to exclude all members of his or her household. It is a legal position that actually harms the public by incentivizing the exclusion of drivers to create lower premiums.

(Order at 6).

Appellant argues she should be entitled to UM coverage even when she allowed her excluded driver son to operate the 1997 Chevrolet, meaning the USAA policy would provide UM coverage even when it did not provide liability coverage. In doing so, Appellant points to *Unisun Insurance Company v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000). In that case, the named insured permitted his daughter and her friend to take a car to a party. When the friend was sleeping in the backseat, a non-permissive user took the vehicle, causing an accident. This Court found the innocent permissive passenger in the backseat of the car could collect UM coverage when the vehicle was operated by an excluded driver. Otherwise, a named insured who "is the victim of a carjacking" would be precluded from UM coverage. *Id.* at 368, 529 S.E.2d at 368.

The facts of this case present a stark contrast to those in *Schmidt*. Appellant was not an unsuspecting, sleeping passenger whose car was taken without her knowledge or consent. Appellant is the very named insured who chose to sign the Named Driver Exclusion. She is the

very person who chose to allow her excluded driver son to operate her vehicle. Thus, the holding in *Schmidt* is simply inapplicable. Moreover, this Court in *Schmidt* was not dealing with an exclusion that was expressly authorized by statute.

The General Assembly chose to limit the amount of UM coverage an insured may purchase to the amount of liability insurance purchased by the insured. South Carolina Code § 38-77-160 mandates that insurers "shall offer" UM coverage "up to the limits of the insured's liability coverage . . .." S.C. Code § 38-77-160. The statute goes on to state: "If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy ***shall provide*** that the insured or named insured is protected ***only to the extent of the coverage he has on the vehicle involved in the accident.***" S.C. Code § 38-77-160 (emphasis added). This limitation on the amount of UM coverage that can be provided to an insured shows the General Assembly's primary goal of the insurance statutes is to protect members of the motoring public. First party coverages such as UM and UIM – which protect the insured as opposed to the motoring public – are a secondary goal and take a backseat to the primary goal of ensuring that every vehicle registered in this State carries minimum limits of liability coverage to protect the motoring public. S.C. Code § 56-10-10 & 56-10-20. In order to promote this primary goal, the General Assembly prohibits an insured from purchasing more UM or UIM coverage – for his or her own protection – than the amount of liability coverage they purchase – for the protection of the motoring public.[6]

---

[6] This public policy goal is codified in South Carolina Code §§ 56-10-10 and 56-10-20, which require the owner of every vehicle registered in South Carolina to carry "the minimum coverages specified in Sections 38-77-140 through 38-77-230" unless the insured shows another adequate form of security. S.C. Code § 56-10-20. Appellant incorrectly argues that Title 56 should be ignored because the excluded driver provision is located in Title 38. However, the excluded driver statute was placed in Title 38 because it set out the requirements for a policy complying with both Chapter 9 (SR-22 policies) and Chapter 10 (policies required for all vehicles registered in South

In light of this statutory design, it makes perfect sense that the General Assembly chose to use the unqualified word "coverage" in the excluded driver statute and stated that "coverage under the policy of liability insurance shall not apply" while the excluded driver operates a vehicle. S.C. Code § 38-77-340. If the policy provides zero liability limits for members of the motoring public who may be injured while the excluded driver operates the vehicle, then the UM limits – which cannot exceed the liability limits – are also zero. Thus, application of the Named Driver Exclusion in accord with the plain language of § 38-77-340 supports public policy – i.e., coverage "shall not apply" while Kevin Simms operates a vehicle, and the exclusion "is binding upon every insured to whom the policy applies," including Appellant.

II. Appellant raises a new argument on appeal that was never raised to the Circuit Court and that is not preserved for appellate review.

On appeal, Appellant argues for the first time that the policy language itself does not exclude UM coverage while a vehicle is operated by Kevin Simms, and Appellant includes this argument as part of her proposed Issue on Appeal. (Appellant's Initial Br. pp. 1-3).[7] This issue was never argued to the Circuit Court, was not raised via a Rule 59 Motion, and is therefore not preserved for consideration on appeal.

"It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). South Carolina has a "long-

---

Carolina) of Title 56. Both Chapter 9 and Chapter 10 of Title 56 incorporate the requirements of Title 38. *See* S.C. Code § 56-9-10 and 56-10-20. The vast majority of insurance policies in South Carolina are purchased because vehicle owners are required by § 56-10-20 to purchase those policies. Because § 56-10-20 and § 56-9-10 incorporate the requirements of Chapter 77 of Title 38, the statutes are all read together. In essence, Title 56 talks to purchasers of insurance, and Title 38 talks to insurers.

[7] For example, Appellant argues "So, in order to give effect to its interpretation of § 38-77-340, the trial court had to, and did, rewrite the Policy." (Appellant's Initial Br. p. 3).

established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (citations omitted). "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *Id.* (citations omitted). While this requirement ensures the lower court was given an opportunity to "rule properly after it has considered all relevant facts, law, and arguments," it also "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give [her] another opportunity to prove [her] case." *Id.*

Appellant never challenged USAA's arguments that the named driver exclusion – which was titled "VOIDING AUTOMOBILE INSURANCE WHILE NAMED PERSON IS OPERATING CAR" – voided coverage under the USAA policy while Kevin Simms operated a vehicle. (Named Driver Exclusion, Ex. B to Plt.'s Mem. in Supp. Of Mot. For Summ. J.) (R. p. __). Moreover, Appellant conveniently omits from her brief the fact that the Declarations Page states "***COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY KEVIN SIMMS ***". (Renewal Declarations, Ex. C to Plt.'s Mem. in Supp. of Mot. for Summ. J., p. 4) (R. p. __). As noted above in Section I of Respondent's Argument, the Declarations is part of the USAA policy. Therefore, the Policy provides, "coverages excluded when any vehicle operated by Kevin Simms." Thus, Appellant's argument regarding the terms of the policy lack merit. However, this issue need not be addressed because it was not preserved.

Appellant never argued to the Circuit Court that the language of the contract provided coverage for this accident. Appellant filed a Motion for Summary Judgment, stating the sole basis

for her Motion as "South Carolina Code Annotated § 38-77-340 et seq. only applies to liability insurance." (Def.'s Mot. Summ. J.) (R. p. __). Appellant never filed a Memorandum in Support of her Motion, but she did file an Opposition to USAA's cross-motion. In her Opposition, Appellant made two arguments:

1. "The first issue is that the excluded driver form was never properly consummated and therefore should not serve as a bar to coverage." (Opp. to Pl.'s Mot. Summ. J., p. 1)[8]
2. "The second issue is that uninsured motorist coverage should not be excludable under the excluded driver statute." (Opp. to Pl.'s Mot. Summ. J., p. 2).

At the hearing on the cross-motions, Appellant only argued these two points. (Tr. Pp. 8-12). Appellant never argued to the Circuit Court that the terms of the USAA policy's excluded driver language was limited to liability coverage.

In addition to never raising the issue in the original motions or at the hearing, Appellant failed to file a Rule 59 motion to raise the issue. Therefore, Appellant cannot now – for the first time – argue that the exclusionary language in the Policy does not apply, and the issue is not preserved for appellate review.

CONCLUSION

For the above-stated reasons, the Circuit Court's Order should be affirmed. Appellant made the intentional decision to exclude coverage under her USAA policy while her vehicles were operated by Kevin Simms, thereby benefiting from a reduced insurance premium. Appellant then made the intentional decision to allow her son to operate the vehicle – placing her vehicle on the roadway without insurance. She made the intentional decision to ride as a passenger with her excluded driver son as the driver. As a result of those decisions, "coverage under [Appellant's]

[8] Appellant does not argue this issue on appeal and has therefore abandoned this argument. *See Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 270, 818 S.E.2d 447, 455 (2018) (holding that an issue not argued in the brief is deemed abandoned).

policy of liability insurance shall not apply," and the exclusion "is binding upon every insured to whom the policy applies," including the named insured Appellant.

Therefore, the Circuit Court's Order should be affirmed.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

J.R. Murphy, Esquire
S.C. Bar # 7941
Wesley B. Sawyer, Esquire
S.C. Bar # 100229
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Respondent

Columbia, South Carolina
November 18, 2020

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-000439

Circuit Court Case No. 2019-CP-40-03702

United Services Automobile Association..... Respondent

v.

Belinda Pickens..... Appellant..

CERTIFICATE OF COMPLIANCE

I, Wesley B. Sawyer, attorney for Respondent, certify that the Initial Brief of Respondent and Designation of Matter comply with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

November 18, 2020

J.R. Murphy, Esquire (SC Bar #7941)
Wesley B. Sawyer, Esquire (SC Bar #100229)
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-000439

Circuit Court Case No. 2019-CP-40-03702

United Services Automobile Association..... Respondent.

v.

Belinda Pickens..... Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Certificate of Compliance by depositing a copies of the same in the United States Mail, postage prepaid, on November 18, 2020, addressed to her attorneys of record, Richard C. Alexander, Esquire, Shelly Leeke Law Firm, LLC, 3614 Ashley Phosphate Road, N. Charleston, SC 29418, and Thomas J. Rode, Esquire, 15 Middle Atlantic Wharf, Charleston, SC 29402.

J.R. Murphy, Esquire
S.C. Bar No. 7941
Wesley B. Sawyer, Esquire
S.C. Bar No. 100229
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorney for Respondent