STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Circuit Court Judge

Opinion No. 5755 (S.C. Ct. App. filed Aug. 12, 2020)

Appellate Case No. 2021-000005

Stephany A. Connelly and James M. Connelly……..……Respondents.

v.

The Main Street America Group, Old Dominion Insurance Company,
and Allstate Fire and Casualty Insurance Company…….…….……...Petitioners.

RETURN TO PETITIONS FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the Court of Appeals correctly hold that Respondents are "legally entitled to recover" damages against the at-fault motorist although they cannot collect from the motorist personally?

II. Did the Court of Appeals correctly conclude that the at-fault motorist was an uninsured motorist?

III. Did the Court of Appeals correctly determine that, under the facts of this case, Respondents perfected their claims for uninsured motorist coverage?

STATEMENT OF THE CASE

This matter is before the Court on separate Petitions for a Writ of Certiorari to the Court of Appeals, one of which was filed by Petitioners The Main Street America Group and Old Dominion Insurance Company (collectively, "Old Dominion") and the other of which was filed by Petitioner Allstate Fire and Casualty Insurance Company ("Allstate"). By letter dated January 12, 2021, the Court advised the parties that it had combined the Petitions. In light of this consolidation, and because the arguments in the two Petitions largely overlap, Respondents submit this single Return in response to both Petitions.

This action arises out of a motor vehicle collision that occurred on February 24, 2015. (J.A. 122; 146). The vehicle that caused the collision was owned by Debbie Cohn ("Cohn") and Freya Trezona ("Trezona") and operated by Trezona. (J.A. 121; 146). Respondent Stephany Connelly ("Stephany") was a permissive passenger in that vehicle and sustained injuries in the collision. (J.A. 146). Trezona was the at-fault motorist; her negligence caused the collision and Stephany's injuries. (J.A. 146). Stephany's husband, Respondent James Connelly ("James"), alleges he sustained a loss of consortium as a result of Stephany's injuries in the collision. (J.A. 122).

Trezona and Stephany were fellow employees of an employment agency at the time of the collision and were within the course and scope of their employment. (J.A. 146).

At the time of the collision, the vehicle operated by Trezona was insured by Old Dominion. Its policy provided bodily injury liability ("BI") coverage with limits of $100,000 per person and uninsured motorist ("UM") coverage with limits of $100,000 per person. (J.A. 145). Respondents were insured by Allstate at the time of the collision. Allstate's policy included UM coverage with limits of $250,000 per person. (J.A. 145-46).

Respondents made a claim against Old Dominion for BI coverage due to Trezona's fault in causing the collision and, alternatively, against both Old Dominion and Allstate for UM coverage. Old Dominion and Allstate refused to tender any coverages.

Respondents then filed this action naming Cohn, Trezona, Old Dominion, and Allstate as defendants. (J.A. 120). They alleged in their Complaint that Trezona was negligent and caused their injuries and damages. (J.A. 122). Petitioners initially denied most of these allegations (J.A. 128, 138-39) but later admitted them via a stipulation filed on January 31, 2017. (J.A. 146). After they filed the stipulation, the parties agreed to dismiss Cohn and Trezona. (J.A. 4; 221).

Old Dominion denied Respondents' claim for BI coverage because, as Stephany's co-employee, Trezona could not be personally liable to pay damages due to workers' compensation exclusive remedy principles and its policy only indemnifies the insured if she is "legally responsible" for damages resulting from a collision. (J.A. 146-47). Old Dominion and Allstate denied Respondents' UM claims on the grounds that Trezona was immune from personal liability given workers' compensation exclusivity and that Trezona was not an uninsured motorist. (J.A. 146-47).

Petitioners and Respondents filed cross-motions for summary judgment. (J.A. 151; 164; 181). Circuit Judge Jocelyn Newman heard these motions on May 17, 2017. (J.A. 218). By Order dated September 28, 2017 (J.A. 5), Judge Newman granted Respondents' Motion for Summary

Judgment and denied Petitioners' Motions for Summary Judgment. Specifically, she found that, because of workers compensation exclusivity, Old Dominion's BI coverage did not apply to Respondents' claims against Trezona, thereby making her an uninsured motorist. (J.A. 7-8). Judge Newman also found that, for purposes of UM coverage, Respondents were "legally entitled to recover" from Trezona by establishing her fault that caused Respondents' damages (which was stipulated) despite Respondents' inability to collect from Trezona personally due to workers compensation exclusivity. (J.A. 9-18).

Petitioners appealed Judge Newman's Order. The Court of Appeals affirmed. (J.A. 375). Petitioners sought a rehearing (J.A. 386; 402), which the Court of Appeals denied. (J.A. 413).

ARGUMENT

This Court should deny the Petitions for a Writ of Certiorari. There are not "special and important reasons" for the Court to exercise its discretion to review the Court of Appeals' decision. *See* Rule 242(b), SCACR. Allstate cites subsections (1) and (3) of that rule as grounds for issuing a Writ of Certiorari. (Allstate's Pet. for a Writ of Cert., pp. 6-7; *accord* Old Dominion's Pet. for a Writ of Cert., p. 4). Those two subsections provide that the Court should consider a discretionary review when "there are novel questions of law" or "[w]here the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court."

Here, the Court of Appeals' decision does not break new ground but is in accord with prior Supreme Court precedent on the question of whether an injury victim is "legally entitled to recover" from an at-fault motorist; thus, neither of these subsections apply to the present case. Moreover, given the parties' stipulation, this case is in a unique procedural posture such that allowing it to proceed to judgment does not threaten established procedure in UM cases.

I. THE COURT OF APPEALS' HOLDING THAT RESPONDENTS ARE "LEGALLY ENTITLED TO RECOVER" DAMAGES FROM THE AT-FAULT MOTORIST WAS CONSISTENT WITH ESTABLISHED CASE LAW, CONSONANT WITH THE LEGISLATIVE INTENT BEHIND THE UNINSURED MOTORIST ACT, AND CORRECT.

The primary issue in this case is whether the Legislature's use of the phrase "legally entitled to recover" from an uninsured motorist in S.C. CODE ANN. § 38-77-150(A) (1976, as amended) means simply an insured's ability to prove an uninsured motorist was at fault for a collision and caused the insured's damages or whether it also includes consideration of the at-fault motorist's immunity under the South Carolina Workers' Compensation Act ("SCWCA"). The Court of Appeals properly understood this question (J.A. 378), acknowledged that the statute does not define the phrase (J.A. 378), and considered both sides' arguments as to whether the Circuit Court had properly construed the Legislature's intent. (J.A. 380-82).[1] Based upon its proper interpretation of the phrase, it held that Respondents have the right to pursue their UM claims.

The Legislature addressed UM coverage and claims (as well as underinsured ("UIM") coverage and claims) in several sections of the Automobile Insurance chapter of the State Insurance Code, Chapter 77 of Title 38. Aside from the distinct applications of UM and UIM coverages and the mandatory nature of minimum limits UM coverage, the two coverages are generally treated the same in the Code. As such, in divining legislative intent, it is appropriate for the Court to review these related provisions and to harmonize them. *Stewart v. Charleston County Sch. Dist.,* 386 S.C. 373, 379, 688 S.E.2d 579, 582 (Ct. App. 2009) ("Statutes dealing with the same subject matter are to be construed together, if possible, to produce a harmonious result."), *citing Joiner ex rel. Rivas v. Rivas,* 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

[1] Because the phrase is undefined and susceptible to more than one meaning, the Court of Appeals correctly affirmed the trial court's finding that it is ambiguous and therefore subject to rules of statutory construction to determine the Legislature's intent. *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 482, 646 S.E.2d 162, 166 (Ct. App. 2007) *aff'd* 383 S.C. 310, 680 S.E.2d 1 (2009).

A review of these code sections demonstrates the Legislature employed several terms when describing the liability of a motorist necessary to support a claim for UM or UIM coverage:

- Section 38-77-150(A): Describes UM coverage as a policy provision "undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle."

- Section 38-77-150(B): Characterizes an action against an uninsured motorist as an "action establishing liability."

- Section 38-77-160: Characterizes an action against an underinsured motorist as an "action establishing liability."

- Section 38-77-160: Also describes UIM coverage as "coverage in the event that *damages are sustained* in excess of the liability limits carried by an at-fault insured or underinsured motorist"; subsequently refers to the adverse driver as the "putative *at-fault* insured" (emphasis added).

- Section 38-77-170: Refers to an unknown motorist against whom an insured may pursue a UM claim as "the owner or operator of any motor *vehicle which causes bodily injury or property damage* to the insured" (emphasis added).

- Section 38-77-180: Refers to an unknown motorist against whom an insured may pursue a UM claim as "the owner or operator of any vehicle *causing injury or damages*" via physical contact and to the same motorist, once identified, as "the owner or operator who *caused the injury or damages*" (emphasis added).

- Section 38-77-190: In authorizing subrogation of a UM insurer, permits such a claim against a "person *causing the injury, death, or damage*" (emphasis added).

When considered together, these statutes clearly demonstrate the Legislature's intent. Specifically, they show that its use of the phrase "legally entitled to recover" is synonymous with "establishing liability." All subsequent references to recovery against an uninsured or underinsured motorist employ concepts of fault, causation, and damages without any mention of an affirmative defense based on immunity (except for setting the amount at which UIM coverage is triggered when damages are capped by statute). Thus, it is evident that when the Legislature used the phrases "legally entitled to recover" and "establishing liability" it meant actions where an insured can prove the adverse motorist was at fault and caused the insured's damages.

This conclusion is consistent with the manner in which the Court of Appeals has interpreted UIM coverage since 1995. In *Ackerman v. Travelers Indem. Co.,* 318 S.C. 137, 456 S.E.2d 408 (Ct. App. 1995), it held that the plaintiffs were entitled to pursue a tort action against an at-fault motorist for the purpose of recovering UIM benefits (*i.e.,* an "action establishing liability" under Section 38-77-160) even though the at-fault motorist was not "'legally obligated to pay' damages" because of a covenant not to execute. *Id.* at 146, 456 S.E.2d at 412-13. In doing so, the Court of Appeals differentiated between whether the plaintiffs were "entitled to recover damages" from the at-fault driver – the same language as in Section 38-77-150(A) – and whether they were entitled "to legally enforce the judgment" against him, *id.* at 147, 456 S.E.2d at 413, and concluded the plaintiffs were still "entitled to recover" even though the named defendant was, in effect, personally immune from any judgment.

While this Court did not review *Ackerman*, it apparently regards the Court of Appeals' decision as a correct construction of the law. In *Wade v Berkeley County*, 348 S.C. 224, 228, 559 S.E.2d 586, 587 (2002), this Court cited Ackerman favorably regarding the effects of a covenant not to execute. For more than 25 years, this Court has never suggested *Ackerman* is bad law or should be overruled.

More significantly, in *O'Neill v Smith*, 388 S.C. 246, 695 S.E.2d 531 (2010), this Court applied the same rationale as *Ackerman* to conclude that a plaintiff could pursue a UIM claim to recover punitive damages against an at-fault motorist from whom the plaintiff could not collect personally due to a covenant not to execute. While discussing cases from other jurisdictions that had addressed whether a plaintiff was "legally entitled to recover" damages under UM or UIM coverages, this Court noted that the existence of a covenant not to execute in that case made "no practical difference" and did not affect its holding that the plaintiff was entitled to be compensated

by his UIM insurer. *Id.* at 255 n.3, 695 S.E.2d at 535 n.3. In other words, this Court held in *O'Neill* that the question of whether a plaintiff is "legally entitled to recover" from an at-fault motorist is not answered by whether the plaintiff can collect from the motorist personally but, rather, by whether the plaintiff can establish the at-fault motorist's liability for damages.

While these cases were decided in the UIM context, there is no reason to believe the Legislature intended a different result for UM and UIM coverages. The statutes governing the two coverages are *in pari materia* – that is, they deal with the same subject. *Howell v. U.S. Fid. & Guar. Ins. Co.,* 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006). Additionally, they employ the identical "action establishing liability" language, *compare* S.C. CODE ANN. § 38-77-150(A) & -160 (1976, as amended), which is the equivalent of "legally entitled to recover."

The legislative intent discussed above validates the Court of Appeals' decision in this case. Additionally, its holding is supported by the South Carolina case law the Court of Appeals cited differentiating between the need to establish the adverse motorist's liability in tort and the contractual claim for UM coverage. (J.A. 381-82). Petitioners – insurers who are contractually required to afford UM coverage consistent with the above-referenced statutory scheme – should not be able to avoid their obligations when, at the same time, they have conceded the adverse motorist was negligent and caused damages. (J.A. 146).

The Court of Appeals' conclusion on this issue is not only consistent with the Oklahoma, West Virginia, and Georgia cases it cited (J.A. 379-80; 382) but also with cases from other jurisdictions that have held an insured is entitled to recover UM coverage despite an at-fault motorist's statutory immunity. *See, e.g., Watkins v. United States,* 462 F. Supp 980 (S.D. Ga. 1977), *aff'd* 586 F.2d 279 (5th Cir. 1979); *Marusa v. Erie Ins. Co.,* 136 Ohio St. 3d 118, 991 N.E.2d 232 (2013); *Borjas v. State Farm Auto. Ins. Co.,* 33 P.3d 1265 (Colo. App. 2001); *Kmonk-*

Sullivan v. State Farm Mut. Auto. Ins. Co., 746 A.2d 1118 (Pa. Super. 1999); *Williams v. Holsclaw,* 128 N.C. App. 205, 495 S.E.2d 166 (1998); *Gardner v. Erie Ins. Co.,* 722 A.2d 1041 (Pa. 1998); *West Am. Ins. Co. v. Popa,* 108 Md. App. 73, 670 A.2d 1021 (1996); *Mich. Millers Mut. Ins. Co. v. Bourke,* 607 So.2d 418 (Fla. 1992); *Hoglund v. State Farm Mut. Auto. Ins. Co.,* 592 N.E.2d 1031 (Ill. 1992); *General Acc. Fire & Life Assur. Corp. v. Klatt,* 121 Ill. App. 3d 862, 460 N.E.2d 339 (1984); *Oates v. Safeco Ins. Co. of Am.,* 583 S.W.2d 713 (Mo. 1979); *Wilkinson v. Vigilant Ins. Co.,* 236 Ga. 456, 224 S.E.2d 167 (1976); *Guillot v. Travelers Indem. Co.,* 338 So.2d 334 (La. App. 1976), *impliedly overruled on other grounds Breaux v. Government Employees Ins. Co.,* 369 So.2d 1335 (La.1979).

For all of these reasons, the Court of Appeals was correct in concluding that the *sine qua non* for a UM claimant to prove he is "legally entitled to recover" is his ability to prove fault and causally related damages (neither of which is disputed here). The fact an at-fault motorist may be insulated from any obligation to pay damages personally is irrelevant in this context.

II. THE COURT OF APPEALS PROPERLY CONCLUDED THAT THE AT-FAULT MOTORIST WAS AN UNINSURED MOTORIST.

Because Respondents are legally entitled to recover against the at-fault motorist (Trezona) for purposes of UM coverage, the remaining issue before the Court of Appeals was whether Trezona was an uninsured motorist. If the insurance applicable to Trezona's car was willing to provide BI coverage for amounts Respondents are legally entitled to recover from her, then she would not be uninsured; however, Old Dominion denied the claim for BI coverage because its policy only indemnifies an insured if she is "legally responsible" for damages resulting from a collision. (J.A. 146, ¶ 14; 147, ¶ 15). Simply put, because Old Dominion's denial was based on the language of its policy's insuring agreement, it was a denial of liability insurance coverage,

which the Court of Appeals correctly held made Trezona an uninsured motorist under S.C. CODE ANN. § 38-77-30(14) (1976, as amended).

The result is the same as in *Unisun Ins. Co. v. Schmidt,* 339 S.C. 362, 529 S.E.2d 280 (2000), upon which the Court of Appeals relied in affirming the Circuit Court. In that case, as Allstate concedes "[t]he liability policy simply did not apply to the accident because it was not an insured event." (Allstate's Pet. for a Writ of Cert., p. 11). Like the insurer in *Schmidt*, Old Dominion denied BI coverage because the insured event necessary to trigger that coverage (Trezona's legal responsibility for Respondents' damages) did not exist; but, this is different from the question of whether Respondents are legally entitled to recover from Trezona. *See Ackerman,* 318 S.C. at 146-47, 456 S.E.2d at 412-13 ("legally obligated to pay damages" and ability "to legally enforce the judgment" – each of which may be equated with "legal responsibility" – are different from "entitled to recover").

Under S.C. CODE ANN. § 38-77-160 (1976, as amended), a motorist is considered underinsured if a claimant's damages exceed "any damages cap or limitation imposed by statute." This not only expresses a legislative intent that UIM coverage – which is part of the same statutory scheme as UM coverage – applies when recovery is statutorily limited, it also supports the conclusion that the Legislature intended for UM coverage to apply despite statutory limitations like SCWCA immunity. Otherwise, the effect of the legislation would be to allow a claim for an injured party where there is a limited statutory recovery, regardless of how small, but to deny the same claim if there is no statutory recovery. Such a result would be directly contrary to the legislative purpose of having UM coverage provide a liberally construed remedy in favor of injured persons. *See, e.g., Gunnels v. American Liberty Ins. Co.,* 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).

Paradoxically, a contrary interpretation of the Legislature's intent in using this statutory language would result in Respondents' ability to collect *UIM* coverage as a result of Trezona's negligence (*i.e.,* all of their damages would be in excess of a statutory limitation) but not UM coverage. This latter construction would make less sense than the former, further demonstrating that the legislative intent is to allow UM claims under the present circumstances.

III. GIVEN THE PROCEDURAL HISTORY OF THIS CASE, RESPONDENTS PROPERLY PERFECTED THEIR CLAIMS FOR UNINSURED MOTORIST COVERAGE AND THE COURT OF APPEALS WAS CORRECT IN SO HOLDING.

Respondents alleged in their Complaint that Trezona was negligent and caused their injuries and damages. (J.A. 122, ¶¶ 12-16). They named Trezona as a defendant. (J.A. 120). Although they initially denied Trezona's fault, Petitioners later admitted these allegations via stipulation. (J.A. 146, ¶ 10). The parties agreed to dismiss Trezona after they filed the stipulation. (J.A. 221).

Petitioners rely upon S.C. CODE ANN. § 38-77-150(B) (1976, as amended) in support of their argument that Respondents had to file a separate tort action against Trezona in order to perfect their right to recover UM coverages. Specifically, that statute states: "No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision."

Although a separate tort action is the typical route to satisfy this requirement, the statute does not require a separate action as suggested by Petitioners. Rather, it only requires an action that establishes the adverse driver's liability. In fact, Allstate does not even attempt to argue the statutory language is broader, noting only that Section 38-77-150(B) "implies that some action must be filed against the uninsured motorist to establish the uninsured motorist was, in fact, liable."

(*See* Allstate's Pet. for a Writ of Cert., p. 8). Certainly, "some action" could be an action other than a separate tort action.

If Petitioners believed that this action was an improper vehicle to establish Trezona's liability for the collision, they could have moved for severance under Rule 21, SCRCP, or separate trials under Rule 42(b), SCRCP. They did not.

Instead, Petitioners entered into a stipulation that established Trezona's liability for the subject collision and Respondents' resulting damages. Having agreed to that – and thereafter requesting and obtaining Respondents' consent to dismiss Trezona from this action – Petitioners should not be heard to complain that they did not receive the procedural protection of the UM statute.[2] In short, this *is* the action that established Trezona's liability and, as such, this action satisfied any procedural obligation on Respondents to exercise their right to pursue UM coverage.

The Court of Appeals' ruling did not give UM claimants *carte blanche* to "circumvent the statutory requirements that they establish the legal liability of the uninsured motorist." (Allstate's Pet. for a Writ of Cert., p. 10). Similarly, it did not produce a "scenario that is contrary to South Carolina law" by allowing Respondents to proceed with a hearing on remand without Trezona as a party. (Allstate's Pet. for a Writ of Cert., p. 12). Petitioners created the scenario about which they now complain. Trezona would still be a party to this action if they had not sought and obtained her dismissal. Moreover, Respondents have not circumvented the requirement of establishing Trezona's liability; in fact, Respondents did so in this action, with Petitioners' consent.

To the extent Petitioners complain they will not be able to litigate affirmative defenses if this case proceeds, it is noteworthy that they had the right to plead affirmative defenses in this action and in fact raised several affirmative defenses in their Answers. (J.A. 130; 136-37; 141-

[2] The statute also requires that the UM carrier be served, as Petitioners were in the present action.

43). Unless these defenses were resolved by the parties' stipulation or the Courts' ruling on "legally entitled to recover," Petitioners retain the ability to litigate them on remand.

If Petitioners dispute the nature or extent of Respondents' damages, they can still do so on remand, in the fashion contemplated by the Circuit Court. (J.A. 19). In that proceeding, the trial court can take measures to avoid prejudice resulting from insurance companies rather than a tortfeasor defending the damages hearing, as is often done in tort actions given the collateral source rule. *See* Rule 16(b), SCRCP; *see also* S.C. Code Ann. § 38-77-150(B) (1976, as amended) (a UM insurer "has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability"). The result will be a declaratory judgment stating the amount to which Respondents are entitled to recover from Petitioners pursuant to the subject insurance policies.

Moreover, if a separate action had been filed, nothing more would have been achieved. The same reasons that motivated Petitioners to stipulate to Trezona's negligence and causation would likely have prevailed in a separate action. Petitioners would likely have raised immunity under the SCWCA as a defense to that action but that would have simply returned the Court to the initial issue of Respondents' substantive right to pursue their UM claims – an issue resolved by this action. Petitioners remaining affirmative defenses would have been the same.

In the end, Allstate's contention that "the Court's analysis essentially nullifies the uninsured motorist insurer's statutorily prescribed ability to defend the uninsured driver and assert any defenses available to the uninsured motorist" (Allstate's Pet. for a Writ of Cert., p. 6) falls flat. Given its unique history and procedural posture, this action has provided Petitioners with the ability to defend the claims against Trezona, including presenting the surviving affirmative defenses alleged in their Answers.

As a result, the Court should not be distracted by Petitioners' arguments that Respondents failed to perfect their UM claims. Under the facts of this case, Respondents did all that was necessary to satisfy the statute and Petitioners effectively agreed with that procedure via their stipulation and dismissal of Trezona. The Court of Appeals was correct in affirming the Circuit Court's ruling on this issue.

Alternatively, even if the Court were to agree that Respondents need to pursue a separate tort action against Trezona, the fact that Trezona enjoys immunity from personal liability under the SCWCA does not require a finding that such a tort action cannot proceed for the purpose of establishing Respondents' right to collect UM coverage. There are several contexts in which practices employed in this State allow plaintiffs to pursue actions against defendants from whom no personal recovery can be had for the purpose of establishing the plaintiffs' right to recover insurance coverage – for example:

- An action against an underinsured motorist protected by a covenant not to execute but who remains a defendant so that the plaintiff can pursue UIM coverage.
- An action against a governmental entity subject to the Tort Claims Act (or, possibly, its negligent employee) for the purpose of pursuing UIM coverage above the cap set forth in S.C. CODE ANN. § 15-78-120 (1976, as amended).
- An action against an uninsured charitable organization and/or its uninsured reckless employee for the purpose of pursuing UM coverage above the cap set forth in S.C. CODE ANN. § 33-56-180 (1976, as amended).
- An action against a charitable organization and/or its reckless employee for the purpose of pursuing UIM coverage above the cap set forth in S.C. CODE ANN. § 33-56-180 (1976, as amended).
- An action against a defendant whose debts have been discharged in bankruptcy when recovery is limited to applicable liability insurance coverage. *See, e.g., Matter of Edgeworth,* 993 F.2d 51, 53-54 (5th Cir. 1993).

While Petitioners may claim the statutory scheme for UM coverage does not provide a specific mechanism for recovery where the at-fault motorist is immune under the SCWCA – a

claim Respondents dispute, as discussed above – that would not deprive UM claimants like Respondents of their right to recover UM coverage. Where a right is created by statute, courts cannot deny that right without providing due process of law. *Wicker v. S.C. Dept. of Corrections,* 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004). Thus, where there is no clearly defined remedy for deprivation of a statutory right, courts have the equitable power to fashion a remedy. *Santee Cooper Resort v. S.C. Pub. Serv. Comm.,* 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); *see also State ex rel. Daniel v. Strong,* 185 S.C. 27, 43, 192 S.E. 671, 678 (1937) ("[E]quity abhors a wrong without a remedy."); *Lane v. New York Life Ins. Co.,* 147 S.C. 333, 369, 145 S.E. 196, 207 (1928) ("Equity will not suffer a wrong without a remedy."). To find otherwise would elevate form over substance by denying a substantive right due to a perceived technical deficiency arising from an unclear procedural path. *See Atkins v. Wilson,* 417 S.C. 3, 18, 788 S.E.2d 228, 235 (Ct. App. 2016) (rejecting a technical/procedural argument that a party had waived its substantive rights because "[t]o hold otherwise would place form over substance when doing so would not further the ends of justice.").

In other words, even if the Circuit Court or Court of Appeals had concluded that Respondents' use of the present action as a vehicle to establish Trezona's liability for the subject collision was inadequate or improper because the UM statute does not specifically authorize a procedure for suing an uninsured motorist immune under the SCWCA (despite the language of Section 38-77-150(B)), they were not without options. Specifically, those courts had the equitable power to fashion a remedy – that is, a procedure that does not deny claimants their right to seek UM coverage without due process. Under the facts of this case, however, that undertaking was not necessary because the courts correctly held Respondents have properly asserted and protected their UM claims.

Ultimately, although this case has not followed the typical procedural path, it has followed a proper path, one that has provided Petitioners with all procedural safeguards to which they are entitled. The Court of Appeals' holding on the procedural aspect of this case does not extend beyond the present case and other cases where insurers similarly stipulate to fault and causation. In other contexts, UM claimants can continue with the more common process of an independent action against the at-fault motorist.

This fact is not only important to the Court's evaluation of the propriety of the Court of Appeals' holding but also in determining whether this case presents a procedural issue that is likely to recur frequently enough to create a truly "special and important" reason for a discretionary review via certiorari as contemplated by Rule 242(b), SCACR.

CONCLUSION

For the foregoing reasons, the Court should deny the Petitions for a Writ of Certiorari.

Respectfully submitted,

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