

THE STATE OF SOUTH CAROLINA  
In the Supreme Court  
Appellate Case No. 2020-001693

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**Feb 08 2021**

**S.C. SUPREME COURT**

APPEAL FROM LEXINGTON COUNTY  
Civil Action No. 2016-CP-32-815  
G. Thomas Cooper, Jr., Circuit Court Judge

State Farm Mutual Automobile Insurance Company ..... Petitioner

vs.

Myra M. Windham ..... Respondent

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**REPLY TO RESPONDENT’S RETURN TO PETITION FOR A WRIT OF  
CERTIORARI OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

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Petitioner State Farm Mutual Automobile Insurance Company hereby submits this Reply to the Return to the Petition for Writ of Certiorari to review Opinion No. 5764 of the Court of Appeals. As shown below, Windham has failed to demonstrate why this Court should not grant certiorari on the grounds set forth in the Petition for Writ of Certiorari. In fact, as outlined below, Windham's Return only further justifies the need for this Court's review.

First, Windham notes in her Return that her "involved" interpretation is bolstered by the "common understanding" of the words "replace" and "substitute." Further, she insists that the policy's language indicating that a "temporary substitute car" is not a "non-owned car" naturally means it will be treated like an owned vehicle even though the insured does not actually own it. But these arguments fly in the face of the plain and unambiguous terms of the policy. "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977) (citation omitted). Courts and litigants cannot ignore the plain language of a policy simply because they desire a different result. To do so renders insurance policies and the terms contained therein utterly meaningless.

Windham has cherry-picked certain policy language, while advantageously ignoring all relevant terms and definitions therein. For instance, the policy states that a car is a "temporary substitute car" if "neither you nor the person operating it own or have registered [it]." Thus, despite Windham's extrapolation, a temporary substitute car cannot, by its own definition, be owned by the insured. This is further supported by the definition of "owned by", also ignored by Windham, which includes cars "owned by," "registered to", or "leased, if the lease is written for

a period of 31 or more consecutive days, to[.]” Furthermore, the UIM portion of the policy, specifically with respect to stacking, states:

If *you* or any *resident relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle other than *your car that is owned by you or any resident relative*, then this coverage applies only to the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the *insured* was occupying.

“Owned by” is a defined term in the policy and its definition does not include “temporary substitute car.” “Temporary substitute car” is defined in the policy and by definition cannot be owned by an insured. The plain and unambiguous definition of “owned by,” in conjunction with the “temporary substitute car” definition, and the resulting prohibition on stacking is consistent with section 38-77-160 and *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012)<sup>1</sup> (“[h]aving a vehicle involved in the accident reasonably implies ownership of the vehicle”).<sup>2</sup>

Windham also seeks to ignore the plain policy language and attempts to avoid an “undesirable” result of limiting stacking by advancing the doctrine of reasonable expectations. The Court of Appeals did not base its decision on the reasonable expectations doctrine, presumably because the Supreme Court has held that the doctrine of reasonable expectations will not be used to alter the plain terms of an insurance policy. *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 581, 757 S.E.2d 399, 407 (2014) (stating that “while we now hold that reasonable expectations

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<sup>1</sup> Windham misconstrues the interplay between *Rhoden* and *Concrete Servs., Inc. v. U.S. Fid. & Guar. Co.*, 331 S.C. 506,, 498 S.E.2d 865 (1998). First, *Rhoden* characterized the *Concrete Services*’ discussion as “purely academic” dicta; *Rhoden*’s discussion was not such. Moreover, *Concrete Services* is not inapposite to the result reached by the circuit court when read in its full context. *Concrete Services* merely clarified that stacking, where applicable, is permitted among the entire class of Class I insureds, so as to not penalize families who do not collectively own each insured vehicle under an insurance policy.

<sup>2</sup> Windham also conflates the notions of portability and stacking. The statement contained in Windham’s Return that “Class I insureds have the right to stack UIM because the definition of insured explains they are insured ‘while in a motor vehicle or otherwise’ which means their status as an insured is portable” is incorrect. It is absolutely clear that a named insured or resident relative cannot stack UIM coverages if not in a vehicle at the time of the accident. The insured must “have” a vehicle involved in the accident.

may be used as another interpretive tool, the doctrine cannot be used to alter the plain terms of an insurance policy”). While the Court of Appeals glossed over the policy language in reaching its conclusion, it is beyond debate that the policy language is plain and unambiguous and as such, the doctrine of reasonable expectations does not apply.

Further, Windham’s argument that a reversal of the Court of Appeals would render the policy illusory and worthless is wholly without merit. Again, the Court of Appeals did not base its decision on this issue. Further, Windham has received \$100,000 in UIM coverage from this policy as a result of the accident. Windham has been provided the benefit she is entitled to under the policy. Pursuant to State Farm’s policy and South Carolina statutory law, Windham recovered one level of UIM, she is simply not permitted to stack additional coverages under the facts presented in this case.

In the interest of judicial economy, Petitioner hereby also incorporates its arguments made in its Petition for a Writ of Certiorari and all other briefings, both appellate and at the circuit court, in support of its Petition.<sup>3</sup> Petitioner requests the Court grant its Petition for a Writ of Certiorari in this matter.

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<sup>3</sup> Windham’s “involved in” argument is also without merit. Again, the Court of Appeals did not base its decision on this issue. Further, to find that the plaintiff’s vehicle that was in the shop was involved in this accident would lead to absurd results. Under that logic, any of the plaintiff’s other vehicles could also be involved in the accident just because she decided not to use them and rented a car instead.