**The State of South Carolina**
**In The Supreme Court**



APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2020-000026

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Respondent,

v.

KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,

Petitioner.
~~Appellants.~~

# APPELLANTS' PETITION FOR WRIT OF CERTIOARI

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Petitioner

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Appellants respectfully move for issuance of a writ of certiorari in this matter. The Court of Appeals' October 2, 2019, Order conflicts with prior decisions of the Supreme Court in that it holds underinsured motorist insurance coverage is non-mandatory. Additionally, the Court of Appeals Order approving Nationwide Insurance Company's exclusion of statutorily-mandated automobile uninsurance (UM) and underinsured motorist coverage (UIM) created a novel question of law. *Nationwide v. Knight* is a critically important public policy case because the Court of Appeals approved an exclusion here that eliminated statutorily-mandated automobile UIM coverage of thousands of South Carolina families.

Appellants filed a *Petition for Rehearing en banc* before the South Carolina Court of Appeals. Counsel certifies that on December 16, 2019, that petition was rejected. The Order rejecting the petition for rehearing was a final order of the South Carolina Court of Appeals.

## Question for Review

Does Nationwide's automobile insurance policy, which seeks to exclude all portable UIM and UM coverages to a statutory insured, violate South Carolina public policy?

## Brief Statement of the Case

On February 2, 2016, Daniel Knight was killed by a negligent driver in an Anderson County motor vehicle collision. At the time of the collision, Knight was operating a motorcycle that he owned and which was insured with Progressive Insurance Company. (ROA at 156) Knight purchased UIM coverage on the Progressive policy.[1] Nationwide (Respondent) issued an automobile insurance policy on a Ford Ranger to Knight's spouse, Kristina Knight. The Nationwide policy also included UIM coverage of Kristina Knight's resident relatives. However, the Nationwide policy included Endorsement 3109A ("Voiding Auto Insurance While Named Person Is Operating Car") that excluded all coverages for Daniel Knight under the policy. (ROA at 74) It is undisputed that Knight was a Class I insured. (ROA at 8) Appellants seek to recover the UIM coverage under the Nationwide policy.

On July 18, 2016, Respondent sued Appellants seeking a declaration that its policy was not required to provide any coverage to Daniel Knight. (ROA at 10)

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[1] Knight also owned an automobile that was insured by an ACCC Insurance Company policy. The ACCC policy also included UIM coverage. (ROA at 8)

On September 29, 2016, Appellants filed an answer and counterclaim. Appellants asked the court to declare that Respondent's policy excluding UIM coverage to Danny Knight violated South Carolina public policy and that they were entitled to recovery of the insurance policy UIM limits ($25,000). (ROA at 13-16)

On October 7, 2016, Respondent filed a reply denying Appellants' counterclaim. (ROA at 17)

On March 9, 2017, Respondent filed a motion for summary judgment. (ROA at 45) On April 13, 2017, Appellants filed a motion for summary judgment. (ROA at 51) On May 22, 2017, the trial court conducted a hearing on the parties' cross motions for summary judgment. On May 26, 2017, the trial court granted Respondent's motion for summary judgment and denied Appellants' motion for summary judgment. (ROA at 1)

On June 12, 2017, Appellants filed a notice of appeal. (ROA at 6).

On October 2, 2019, the Court of Appeals denied the appeal and issued an order that found, "UIM coverage is not mandatory in South Carolina." (Order at 5). The Order held that UIM is an optional, non-mandatory coverage subject to "reasonable limitations." (Order's footnote 3) Thus, the Order approved Respondent's automobile insurance policy provision that excluded all coverages, including the portable and remedial UM and UIM coverage as a reasonable limitation on optional coverage. The Court of Appeals Order misapprehended or misinterpreted Section 38-77-340 of the South Carolina Code of Laws which allows exclusion of *only* automobile liability insurance coverage.

The relevant language of S.C. Code Ann. § 38-77-340, with its operative language highlighted, is set forth below.

> 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.

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

The Legislature enacted Section 38-77-340 as a limited exception to the general rule that all South Carolina automobile insurance policies must provide liability insurance coverage to all statutory insureds that might use an insured vehicle. Section 38-77-340 allows automobile insurers and policy-holders, by agreement, to exclude liability insurance coverage on a specific automobile when the designated resident family member (statutory insured) uses the vehicle. The purpose of this exception is to reduce risks (and the associated higher premiums) related to the otherwise required liability insurance coverage when a resident relative with a bad driving record could use an insured vehicle. Under the exclusion permitted by Section 38-77-340, the automobile insurance company and its policy-holder agree that a designated person will not to drive an insured vehicle, and that the designated person will purchase his own automobile insurance policy. There is nothing in Section 38-77-340 that suggests that an automobile insurance carrier may also exclude other required bodily injury coverages such as personal and portable UM and UIM coverages which do not increase the risk to the automobile insurance company of covering a bad driver. The UM and UIM coverages only apply when a third party is at fault. However,

the Court of Appeals upheld the insurance company's use of the statutory exclusion to exclude the personal and portable UIM coverage because, in the Court of Appeals view, the UIM coverage was non-mandatory, and therefore, subject to reasonable policy limitations.

The Court of Appeal's assertion that UIM is not required coverage is contradicted by numerous South Carolina Supreme Court opinions. In *Jackson v. State Farm Mut. Auto. Ins. Co.*, 288 S.C. 335, 337 n.1, 342 S.E.2d 603 (S.C., 1986) (Ness, J.), the Supreme Court stated, "Required coverage is coverage required to be provided or required to be offered." In *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 405, 496 S.E.2d 631, 632 (S.C., 1997), the Supreme Court stated: "Statutorily required coverage is that which is required to be offered or provided." In *Brown v. Continental Ins. Co.*, 434 S.E.2d 270, 272, 315 S.C. 393, 396 (S.C., 1993), the Supreme Court stated, "In *Jackson*, we specifically noted that required coverage includes coverage that is required to be provided or required to be offered." In *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 753 S.E.2d 515, 519 (S.C., 2014), the Supreme Court quoted *Ruppe*, "Statutorily required coverage is that which is required to be offered or provided." The October 2, 2019, order also contradicted a 2010 Court of Appeals opinion. *See Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283, 287 (S.C. App., 2010) ("Statutorily required coverage is that which is required to be offered or provided.") (quoting *Ruppe*) Therefore, the Order's characterization that required UIM coverage is non-mandatory and optional is an incorrect statement of long-standing South Carolina law and public policy.

In enacting Section 38-77-340, the Legislature intended to permit automobile insurance carriers and policy-holders to agree on an exception to the general mandate that liability insurance must cover all statutory insureds, *i.e.*, resident relatives of the policy-holder who might drive an insured vehicle. That the allowed exclusion in Section 38-77-340 was intended narrowly for the liability insurance coverage *only* is shown by the Legislature's use of the terms "policy of liability insurance." "Policy" is a defined term under the automobile insurance statute (Title 38). "Policy" is defined broadly as the "contract" for "bodily injury." S.C. Code Ann. § 38-77-30(10.5). "Policy" therefore encompasses all bodily injury coverages in an insurance contract including liability, UM, and UIM. Thus, by modifying the defined term, "policy," with the undefined words "liability insurance," the Legislature demonstrated its intent to permit a narrow exclusion for liability insurance coverage. Otherwise, the words following the defined term "policy" become surplusage. This is because "policy," as defined by the automobile insurance statute, already includes all bodily injury coverages in an insurance contract. In construing a statute, it must be read so that, "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The Court of Appeals October 2, 2019, Order, disregarding the defined Title 38 term for "policy" and violated this canon of statutory construction.

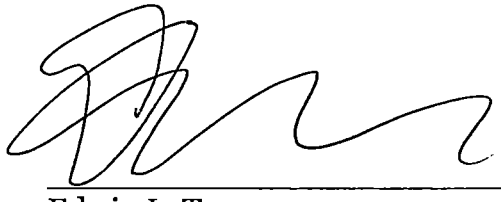
Legislative intent to limit the allowed exclusion to liability insurance coverage *only* is further shown because Section 38-77-340 limits its scope to times, "while the insured vehicle is being operated." This language means Section 38-77-340's exclusion can also *only* refer to liability insurance coverage. In *Hogan v. Home Ins. Co.*, this Court distinguished between liability coverage, which follows the vehicle, and UM coverage, which follows the person. It stated: "Unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household at all times and without regard to the activity in which they were engaged at the time. Such coverage is nowhere limited in the statute to the use of the insured vehicle, and cannot be so limited by the policy provisions." *Hogan v. Home Ins. Co.*, 260 S.C. 157, 161, 194 S.E.2d 890, 892 (1973) (emphasis added). The October 2, 2019, Court of Appeals Order never addressed Appellants' argument that the exclusion relates to use of an insured vehicle, an indication and confirmation of a clear legislative intent to limit the allowed exclusion to *only* liability insurance coverage.

The automobile insurance statute directs the trial courts to "liberally construe[]" the statutory language, "in order to achieve its purposes." S.C. Code Ann. § 38-77-20. The purpose of Title 38 is to insure automobile risk. The Court of Appeals Order allows automobile insurance companies to overbroadly apply the allowed liability coverage exclusion provision (Section 38-77-340) to exclude all other bodily injury coverages of a designated person. Thus, the Order undermines the Legislature's remedial public policy requiring mandatory UM

and UIM insurance coverage of statutory insureds in all automobile insurance policies. If this Court does not accept this writ and reverse the October 2, 2019, Court of Appeals Order, our remedial State policy in this regard will be significantly eroded. The wrongness of permitting an insurance company to undermine a remedial policy like this is obvious. This Court requires strict construction of, "the exclusions recognized in the statutes." *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458 (S.C. App., 1984); *see also McPherson By and Through McPherson v. Michigan Mut. Ins. Co.*, 426 S.E.2d 770, 310 S.C. 316, 319 (S.C., 1992) ("rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed."). Therefore, the October 2, 2019, Order fails to comply with the Supreme Court's guidance to narrowly construe exceptions in remedial statutes.

The Court of Appeals October 2, 2019, Order disregarded clear statutory language and contradicted numerous Supreme Court opinions. Its ruling reduces required UIM and UM coverage for South Carolina families. For this and the above reasons, it is urgent this *Petition for a Writ of Certiorari* be granted.

January 6, 2020



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## Proof of Service

I certify that I have served Appellants' Petition for Writ of Certiorari on Nationwide Insurance Company of America by depositing a copy of it in the United States Mail, postage prepaid, on January 6, 2020, addressed to its attorney of record, Wesley Brian Sawyer, Post Office Box 6648, Columbia, SC 29260

January 6, 2020

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