IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

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Jan 28 2022

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-000005

Stephany A. Connelly and James M. Connelly, ... Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona ..... Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company are the... Petitioners

And

Stephany A. Connelly and James M. Connelly are the..... Respondents.

AMICUS CURIAE BRIEF

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January 27, 2022

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I. **Did the Court of Appeals err in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme?**

II. **Did the Court of Appeals err in finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle?**

STATEMENT OF THE CASE

This Amicus Brief addresses the first certified question, which concerns the interpretation of South Carolina Code § 38-77-150(A). The statutory phrase at issue is "legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle." S.C. Code § 38-77-150(A). By its plain language, this phrase means the law must allow the insured to recover damages from the uninsured motorist. Under the South Carolina Workers' Compensation Act, the insured is barred from bringing suit against or recovering damages from a co-employee, the alleged uninsured motorist. Consequently, she is not legally entitled to recover damages from this person, as required to sustain a UM claim. To avoid this result, the lower courts improperly tortured the meaning of the statutory phrase, interpreting it to mean "demonstrating fault and resulting damages" without regard to legal entitlement to recover damages.

On September 30, 2016, Stephany Connelly and James Connelly filed this declaratory judgment action seeking a declaration that auto insurance policies issued by The Main Street America Group ("Main Street"), Old Dominion Insurance Company ("Old Dominion"), and Allstate Fire and Casualty Insurance Company ("Allstate") provided liability and/or uninsured motorist ("UM") coverage for a February 24, 2015 accident. (Compl.) At the time of the accident, Stephany Connelly was a passenger in a 2012 Jeep operated by her co-employee Freya Trezona. (Compl. ¶ 11). It is undisputed that Connelly and Trezona were in the course and scope of their

employment at the time of the accident. (*Id.*). The Complaint alleges that Trezona was at fault for the accident and caused Ms. Connelly's injuries. (Compl. ¶¶ 12-16).

As a result of the accident, Ms. Connelly applied for and received workers' compensation benefits. (Compl. ¶ 17). She also made liability and uninsured motorist ("UM") claims under the auto insurance policies. (Compl. ¶¶ 19-20). The Old Dominion policy insured the 2012 Jeep involved in the accident. (Compl. ¶ 9). Old Dominion denied that Connelly had a valid liability claim based on the exclusivity provision of the South Carolina Workers' Compensation Act. (Compl. ¶ 19). All the insurers denied that Connelly had a valid UM claim based on the exclusivity provision. (Compl. ¶¶ 19-20). As a result of such provision, the co-employee driver is immune from tort liability and no suit can be brought against her. For UM coverage, each of the auto insurance policies require that the insured be "legally entitled to recover" damages from the owner or operator of an uninsured motor vehicle. (Compl. ¶¶ 26, 33). Likewise, South Carolina's UM statute states that UM coverage is provided for "sums which [the insured] is ***legally entitled to recover*** as damages from the owner or operator of an uninsured motor vehicle." S.C. Code § 38-77-150(A).

The insurer Defendants moved for summary judgment arguing: (1) that the 2012 Jeep involved in the accident was not an uninsured motor vehicle; and (2) that the policies' UM coverage was not triggered because the Connellys were not "legally entitled to recover damages" from the co-employee driver. (Allstate Mot. for Summ. J. Mem. pp. 3-13); (Old Dominion Mot. for Summ. J. Mem. pp. 3-13). The Plaintiffs also moved for summary judgment. (Pls.' Mot. for Summ. J.). The Circuit Court granted the Plaintiffs' Motion for Summary Judgment and denied the Defendants' Motions for Summary Judgment. (September 28, 2017 Order). The Circuit Court held that the vehicle involved in the accident was uninsured because the liability insurer had

successfully denied coverage based on the exclusivity provision of the Workers' Compensation Act. (*Id.* at pp. 3-4). The Circuit Court also held that the "*legally entitled to recover* language of South Carolina Code § 38-77-150(A) is ambiguous" and "simply mean[s] demonstrating fault and resulting damages." (*Id.* at pp. 5, 8).

The insurers appealed both of these holdings arguing that: (1) the immunity granted by the Workers' Compensation Act does not transform a fully insured vehicle into an uninsured vehicle; and (2) legal entitlement to recovery is a condition precedent to recovery of uninsured motorist coverage. The South Carolina Court of Appeals affirmed the Circuit Court's holdings. *Connelly v. Main St. Am. Grp.*, 432 S.C. 122, 850 S.E.2d 627 (Ct. App. 2020), *reh'g denied* (Dec. 3, 2020).

STANDARD OF REVIEW

Questions of statutory interpretation are questions of law, which the Court is "'free to decide without any deference to the court below.'" *In re Estate of Hover*, 407 S.C. 194, 202, 754 S.E.2d 875, 879 (2014) (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012)); *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (same).

ARGUMENT

The South Carolina Court of Appeals interpreted the phrase "legally entitled to recover" to mean "demonstrating fault and resulting damages." This interpretation is inconsistent with the plain language of the phrase, the context of the statute, and prior South Carolina case law. As this Court recently stated in *Nationwide Ins. Co. of Am. v. Knight*, "the General Assembly establishes the public policy relating to automobile insurance and enacts statutes to let the public and courts know what that policy is." 433 S.C. 371, 858 S.E.2d 633, 635 (2021). The Court of Appeals is not free to ignore the plain language of those statutes and substitute its own notions of "public policy"

to invalidate insurance policy provisions. *See id.* Read in statutory context and given its plain meaning, the phrase "legally entitled to recover" means the law entitles the insured to recover damages from the owner or operator of an uninsured motor vehicle. Where, as here, the owner/operator of the uninsured motor vehicle is a co-employee within the exclusivity provision of the Workers' Compensation Act, the law does not.

I. The Court of Appeals' interpretation of the statutory phrase "legally entitled to recover" is incompatible with its plain language, giving no effect to the word "legally."

"The plain language of a statute is considered the best evidence of the legislature's intent." *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). "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, 555, 799 S.E.2d 479, 483 (2017). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); *Doe v. South Carolina Dep't of Soc. Servs.*, 407 S.C. 623, 634, 757 S.E.2d 712, 717 (2014) (same); *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (same).[1] Although undefined,

[1] As this Court explained in *Key Corp. Cap., Inc. v. Cty. of Beaufort*:

> "If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." *State v. Corey D.*, 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

the statutory phrase "legally entitled to recover as damages" is clear and unambiguous on its face. Therefore, it must be construed according to its literal meaning – i.e. that the insured can bring a valid lawsuit against the owner or operator of an uninsured motor vehicle and recover a judgment against him/her. Lawsuits are the mechanism by which one becomes "legally" – as opposed to merely morally, ethically, or emotionally – entitled to recover damages.

With undefined statutory terms, this Court often looks to the dictionary definition of the term to find its "ordinary meaning." *See, e.g., Doe*, 407 S.C. at 634–35, 757 S.E.2d at 718; *Centex Int'l, Inc. v. South Carolina Dep't of Revenue*, 406 S.C. 132, 142, 750 S.E.2d 65, 70 (2013); *State v. Duncan*, 392 S.C. 404, 409, 709 S.E.2d 662, 664 (2011); *Sloan v. Dep't of Transp.*, 379 S.C. 160, 173, 666 S.E.2d 236, 243 (2008); *Perry*, 409 S.C. at 140, 761 S.E.2d at 253 ("The phrase 'medical records' is not defined within the statute and therefore, we turn to its normal and customary meaning."). After all, statutes are enacted "to let the public...know" what public policy is. *Knight*, 433 S.C. 371, 858 S.E.2d at 635. Black's Law Dictionary defines "legally" as "according to the law." Legally, Black's Law Dictionary (11th ed. 2019). Merriam-Webster also defines "legally" as "in a legal manner: in accordance with the law." Merriam–Webster Online, http://www.merriam-webster.com/dictionary/legally.

Thus, plainly stated, "legally entitled to recover" means the law entitles you to recover – "according to the law" you are entitled to recover. In the context of the UM statute and policies, the law must entitle the insured to recover damages from the owner or operator of the uninsured vehicle – not from the insurer. S.C. Code § 38-77-150 (A) ("legally entitled to recover as damages

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373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007); *see also Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.").

from the owner or operator of an uninsured motor vehicle"). Here, South Carolina law does not entitle Ms. Connelly to recover damages from her co-employee driver. Rather, South Carolina law bars her from recovering damages from her co-employee driver. *See Strickland v. Galloway*, 348 S.C. 644, 649, 560 S.E.2d 448, 450 (Ct. App. 2002) (holding "the exclusive remedy doctrine of section 42–1–540 bars [the employee] from suing co-employee Galloway for his alleged negligence in the accident"); *Powers v. Powers*, 239 S.C. 423, 427, 123 S.E.2d 646, 647 (1962) ("[T]he Workmen's Compensation Act precludes a common law action for damages by an employee under the act against a co-employee based on the latter's negligence during the course of their employment."); *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (holding causes of action against co-employee were "barred by the exclusivity provision of the Workers' Compensation Act"); *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 224, 661 S.E.2d 395, 403 (Ct. App. 2008) ("The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer" or co-employee.). Thus, under the exclusivity provision, Connelly cannot even bring a lawsuit against Trezona to establish legal liability, much less recover damages from her.

The Court of Appeals' interpretation – "demonstrating fault and resulting damages" – is a forced construction to expand the statute's operation.[2] It gives absolutely no meaning to the word "legally" used by the General Assembly. There is a difference between being morally, emotionally, or intellectually entitled to something and being legally entitled to it. It is an elementary principle that a lawsuit determines whether one is legally entitled to damages. Under South Carolina law,

[2] *See Hardee*, 371 S.C. at 499, 640 S.E.2d at 459 ("Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.").

Ms. Connelly cannot bring a lawsuit against her co-employee driver and is not legally entitled to recover damages from her co-employee driver.

II. The Court of Appeals' interpretation of "legally entitled to recover" in South Carolina Code § 38-77-150(A) is incompatible with the context in which the General Assembly used such phrase.

The Court of Appeals' interpretation divorces the phrase from its context and is incompatible with that context. As this Court has repeatedly stated: "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *South Carolina State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006); *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881; *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992). "A statute should not be construed by concentrating on an isolated phrase." *South Carolina State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629. Contrary to these clear directives, the lower courts concentrated on the isolated phrase "legally entitled to recover" in South Carolina Code § 38-77-150(A) without construing it together with the rest of the statute in which it is found.

Sections (A) and (B) of the statute provide in full:

> (A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist 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, within limits which may be no less than the requirements of Section 38-77-140. The uninsured motorist provision also must provide for no less than twenty-five thousand dollars' coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used.
>
> (B) 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. The insurer has the right to appear and defend in the name of the uninsured motorist in

> any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

S.C. Code § 38-77-150(A)-(B). As section (B) makes clear, an insured cannot sue an insurer for UM coverage unless he/she has first sued the at-fault uninsured motorist, which comports with the plain language reading of section (A)'s "legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle" language.[3]

"The right to sue and collect from one's own liability insurance carrier in case of a loss caused by a...driver of an uninsured automobile is a creature of the legislature." *Collins v. Doe*, 352 S.C. 462, 467, 574 S.E.2d 739, 741 (2002). The Court of Appeals' interpretation - "demonstrating fault and resulting damages" – is incompatible with the section (B) statutory right of the insurer to appear and defend in the lawsuit against the uninsured motorist – "a right which arises by operation of law and is not within the discretion of the courts." *See Tiffany*, 419 S.C. at, 557, 799 S.E.2d at 484. Moreover, how are fault and damages determined apart from a lawsuit

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[3] The plain language of Section (B) states that "[n]o action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served...upon the insurer writing the uninsured motorist provision" and that the "insurer has the right to appear and defend" in the action against the uninsured motorist. S.C. Code § 38-77-150(B). The lower courts' rationale that "interpreting the statute to require that plaintiffs first secure a judgment undermines legislative intent" is an utter distortion of the intent of legislature as embodied in the plain language of this statute. *See Connelly*, 432 S.C. at 130, 850 S.E.2d at 631 (citation omitted); *see also Grier,* 397 S.C. at 535, 725 S.E.2d at 695 ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.") (citation omitted); *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) ("The legislature's intent should be ascertained primarily from the plain language of the statute."); *Peake v. South Carolina Dep't of Motor Vehicles*, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (Ct. App. 2007) ("The legislature's intent should be derived primarily from the plain language of the statute. The text of a statute is considered the best evidence of the legislative intent or will.") (citations omitted). Under the plain language of the statute, the plaintiffs first had to bring a tort action against the uninsured motorist before bringing an action against the alleged uninsured motorist carrier to recover UM benefits. Here, they cannot do so because the alleged uninsured motorist is immune from suit.

against the uninsured motorist – a lawsuit which is barred in this case by the Workers' Compensation Act? Even in the case of an unknown driver, the General Assembly provided a mechanism for bringing suit against such person for purposes of recovering uninsured motorist coverage. *See* S.C. Code §§ 38-77-170 and 38-77-180. The Court strictly construes those statutes and their numerous safeguards because "[e]xcept for the statute, and endorsements required, no right exists to recover from one's own insurance carrier." *Collins*, 352 S.C. at 467, 574 S.E.2d at 741. However, the General Assembly has not provided any mechanism for suit against someone who is immune from suit under the Workers' Compensation Act, even for purposes of recovering uninsured motorist coverage. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed."). As this Court stated: "It is the province of the lawmakers to create a right of action, to provide for process and to declare the procedure for collecting from one's own insurance carrier" – not the province of the courts. *Id.* (quoting *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 290, 188 S.E.2d 459, 462 (1972)). Where Workers' Compensation immunity is involved, the lawmakers have provided no such procedure despite clearly knowing how to create one.

Moreover, from the context of the statute "legally entitled" necessarily takes into account whether the claim against the alleged tortfeasor is legally valid. Any other interpretation is incompatible with section (B) of the statute. For example, it is well recognized in this State that if the statute of limitations has expired, then the claim is legally barred, and, consequently, no coverage is available. *See, e.g., Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 65, 488 S.E.2d 327, 332 (1997); *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). In *Williams v. Selective Ins. Co. of Se.*, this Court stated:

> [A]n action against the at-fault driver can never be brought since the statute of limitations has run on that cause of action. Since § 38–77–160 bars an action for

> underinsured benefits absent compliance with the requirement that pleadings in the action establishing liability be served on the underinsured carrier, Williams cannot maintain her action against Insurer.

315 S.C. 532, 534, 446 S.E.2d 402, 404 (1994) (affirming grant of summary judgment in favor of insurer on breach of contract claim because insured would never be legally entitled to recover damages from the underinsured motorist). In such case, the insured may have been able to "demonstrate[e] fault and resulting damages" but she was not "legally entitled to recover as damages from the owner or operator of an un[der]insured motor vehicle." *See* S.C. Code §§ 38-77-150 and 38-77-160. Taking the Court of Appeals' interpretation to its logical end, the insured in *Williams* should have been able to obtain UIM coverage regardless of whether the statute of limitations had run as long as she could "demonstrate[e] fault and resulting damages." As *Williams* demonstrates, this interpretation and result is incompatible with the context of the statute, specifically the requirements in section (B).[4]

Other auto insurance statutes also show that the General Assembly intended to condition payment of the UM benefits on the insured's recovery of a judgment against the at-fault driver. South Carolina Code § 38-77-190 states:

> An insurer paying a claim under the uninsured motorist provision required by Section 38-77-150 is subrogated to the rights of the insured to whom the claim was paid against any and every person causing the injury, death, or damage to the extent that payment was made.

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[4] The uninsured motorist statute at issue in this case – § 38-77-150 – has the same relevant language that this Court addressed in *Williams*. Like South Carolina Code § 38-77-160, South Carolina Code § 38-77-150(B) "bars an action for [un]insured benefits absent compliance with the requirement that pleadings in the action establishing liability be served on the [un]insured carrier." *See Williams*, 315 S.C. at 534, 446 S.E.2d at 404; S.C. Code § 38-77-150(B) ("No action may be brought under the underinsured 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 underinsured motorist provision.") (emphasis added). Like in *Williams*, here there can be no action establishing liability on the part of the uninsured motorist. Another intersecting law does not allow it.

S.C. Code § 38-77-190. Any other interpretation undermines these statutorily-created subrogation rights. How can an insurer be subrogated to the rights of the insured to the extent of its UM payment when the insured has no right to sue the at-fault party? Therefore, the Court of Appeals' interpretation is incompatible with the context of § 38-77-150 itself and other auto insurance statutes in that Chapter.

III. South Carolina's Workers' Compensation Act provides a different, exclusive means of recovery for the insured.

As this Court has previously recognized, the Motor Vehicle Financial Responsibility Act's remedial public policy does not guarantee recovery, particularly where it intersects with other statutory public policy. *See United Servs. Auto. Ass'n v. Pickens*, 434 S.C. 60, 66, 862 S.E.2d 442, 445 (2021); *Knight*, 433 S.C. 371, 858 S.E.2d at 637. Under the Workers' Compensation Act, the General Assembly provided for a swift and sure form of recovery but also made clear that there is no double recovery for those that come within the Act. The exclusivity provision provides:

> The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, ***shall exclude all other rights and remedies of such employee***, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

S.C. Code Ann. § 42–1–540. Therefore, an insured employee is no longer "legally entitled to recover damages" from his/her uninsured motorist employer or co-employee. As the Court in *Edens v. Bellini* explained:

> The exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001). "The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee." *Strickland*, 348 S.C. at 646, 560 S.E.2d at 449. The immunity is conferred not only on the direct employer, but also on co-employees. *Id.* Under the

> exclusivity provision, a Workers' Compensation action is the exclusive means to determine claims against an individual's employer for work-related accidents and injuries.

359 S.C. 433, 441–42, 597 S.E.2d 863, 867–68 (Ct. App. 2004). Thus, those that come within the exclusivity provision of the Act are not "legally entitled to recover" damages from an uninsured motorist co-employee. Given the plain language of § 38-77-150, no UM benefits are available for an insured that comes within the exclusivity provision of the Workers' Compensation Act. If the General Assembly intends for an employee to be "legally entitled" to both forms of recovery, then it is up to the General Assembly to either: (1) enumerate a carve out for UM coverage in the Workers' Compensation Act;[5] or (2) create a procedure for suing the immunized co-employee under the UM statutes. Such actions are not within the province of the courts – particularly where they contravene the plain language of the statute.

CONCLUSION

For the above-stated reasons, the Court of Appeals err in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme. Reading the plain language of South Carolina Code § 38-77-150(A) in context, there can be no other conclusion but that the law must allow the insured to recover damages from the uninsured motorist – i.e. bring suit and obtain a judgment – before the insured may recover UM benefits. Otherwise, "legally entitled" in that statute has no meaning.

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[55] There is currently no such carve out. Contrary to the Circuit Court's improper interpretation, § 42-1-560 of the Workers' Compensation Act only applies when "the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540, to pay damages therefor." S.C. Code § 42-1-560; *see* (September 28, 2017 Order, pp. 13-14). Under the facts of this case, there is no allegation that anyone other than Trezona and her employer – persons exempt from liability under Section 42-1-540 – is legally liable for the Connellys' injuries. Therefore, that statute has no application.

"Demonstrating fault and resulting damages" may make one entitled to damages but not legally entitled to damages. Otherwise, there would be no need for a judiciary system. Therefore, Progressive respectfully requests that the Court reverse the Court of Appeals' decision and declare that legal entitlement to recovery against an uninsured motorist is not a condition precedent to the recovery of UM coverage.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Megan Walker, Esquire, attorney for Progressive Select Insurance Company, certify that the Amicus Curiae Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

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