

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

95880

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APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

MAR 24 2022

SC Court of Appeals

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Case No.: 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14. Appellant,

v.

USAA General Indemnity Company Respondents.

**PETITION FOR REHEARING
WITH SUGGESTION FOR
REHEARING *EN BANC***

Pursuant to Rules 219, 221(a), and 240 of the South Carolina Appellate Court Rules, Respondent USAA General Indemnity Company (“Respondent”) respectfully requests that the Court of Appeals grant a rehearing *en banc* in this matter to reconsider the Court’s decision filed on March 9, 2022. In its opinion, this Court reversed the lower court’s grant of summary judgment and remanded the case to the trial court. Rule 221(a) SCACR permits a party who asserts the Court overlooked or misapprehended points in question to petition the Court for rehearing. Accordingly, Respondent requests this Court rehear and reconsider its opinion based on the following.

ARGUMENT

I. Rehearing *En Banc*

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Respondent respectfully requests that the Court of Appeals grant a rehearing *en banc*. Rehearing *en banc* is appropriate in this case because consideration by the full court is necessary to secure uniformity of its decision and because this proceeding involves a question of exceptional importance.

First, there are differing opinions stated in the majority's opinion and the dissent, creating a question of uniformity. It is imperative to have this issue considered by all judges of the Court of Appeals to ensure the uniformity of this Court's decisions since there is clearly a plurality of opinions in the three-judge panel reflected in the significant differences in the majority's opinion and the dissent. Specifically, the majority's opinion takes the drastic measure of reforming an insurance policy of a non-involved vehicle that was not located in this State—something that has never been done in South Carolina. Meanwhile, the dissent applied the plain language of the subject statute and existing case law to reach an opposite result. Because the difference in the statute's interpretation by the majority and the dissent leads to opposite outcomes in this case and potentially others like it, the matter should be reheard *en banc* by the full court in order to secure a uniform decision among this court.

Furthermore, this case also involves a question of exceptional importance because the Court's opinion interprets a South Carolina statute in a way that infringes upon the Full Faith and Credit Clause of the United States Constitution. This interpretation changes, or at least expands, existing law to a point that has never been previously considered by this Court. In that regard, the opinion essentially ignores the Constitutional principle of Full Faith and Credit of out-of-state policies based upon a new interpretation of S.C. Code Ann. §38-61-10. Essentially, the Court's opinion would have the effect of nullifying limitations on voluntary coverage authorized and recognized by other states for every active military family who has connections to this State. The

opinion of the Court creates precedent which could open the floodgates to a deluge of litigation reforming policies of insurance from other states to comply to South Carolina law, providing unforeseen amounts of additional insurance coverage which was not contracted or paid for. The effect could cause significant economic loss to insurers and, in turn, to their insureds and policy holders. Accordingly, based upon the Court's inconsistent opinions and the drastic impact this Court's ruling will have on the insurance industry, a hearing *en banc* is appropriate under the circumstances pursuant to Rule 219, SCACR.

II. Petition for Rehearing

In the alternative, Respondent requests that the Court grant a rehearing pursuant to Rule 221, SCACR.

First, the Court erred in misinterpreting the plain language of the statute to find that the insurance policy in question insured more than just liability coverage for an out-of-state vehicle, but it "also insured lives and interests" in South Carolina. Opinion p. 2. As discussed in the briefs and opinion, S.C. Code Ann. §38-61-10 provides that an insurance contract is considered to be made in South Carolina if the contract insures lives, property, or interests here. S.C. Code Ann. §38-61-10 (*emphasis added*.) It is important to note the use of the word "or" in analyzing the plain language of the statute, as it indicates that the concepts of lives, property, and interests should be evaluated separately. In drafting this statute, the legislature chose to use the word "or" rather than "and," which would suggest that there are three separate concepts rather than concepts that should be combined to determine whether the policy should be reformed.

Rehearing is clearly warranted when you consider the dissent to this opinion, which follows existing law. The Court's dissent properly emphasizes the requirement of interpreting the statute by reading its plain meaning, citing to *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (noting the words of a statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation").

Opinion p. 7. The insurance policy in question was intended to cover the use of a vehicle, which is a piece of property. Though the policy may potentially create coverage for the insured's lives in its effect, as discussed further below, its primary purpose is to cover property owned by the insureds. Based on a plain reading of the statute, when analyzing whether the contract covers lives, interests, or property, the subject is clearly property. Therefore, because the Court erred in misinterpreting a plain reading of the statute, its holdings are incorrect.

Second, based on its improper reading of the statute discussed above, the Court misinterpreted the purpose of the insurance contract in question. The Court's opinion reflects the flawed reasoning that the California automobile policy should essentially be treated as a life insurance policy that insures the lives of its insureds rather than insuring the use of a piece of property, the Kia, and the potential consequential results of using that property.

Respondent agrees with the dissent's opinion that "[w]hile an automobile policy incidentally benefits the lives of drivers and passengers in automobiles, to construe it as 'a contract of insurance *on ... lives*' is strained." Opinion p. 7. The insurance contract in question is clearly a contract intended to insure the use of a piece of property, even if it may indirectly affect the lives or interests of the policyholders.

To illustrate that the automobile is the subject of the California policy, one only needs to look at the fact that coverage in question is tied to a vehicle – i.e., an insured cannot purchase UIM coverage separately from the automobile policy. If the subject of the UIM policy was truly the lives of the insureds, one would think that one could purchase a UIM policy independent of an automobile policy. However, UIM coverage not specifically tied to the use of a listed automobile would essentially make UIM coverage supplemental health insurance and/or life insurance, which is not its intended purpose. Accordingly, the intended purpose of the contract was to cover *property*, and the Court erred in analyzing the *lives* and *interests* indirectly affected by the policy.

Third, the Court should rehear this matter because its holdings violate the Full Faith and Credit Clause of the United States Constitution. Our Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” U.S. Const. art. IV, § 1. This case concerns an insurance contract which was entered into in California and was compliant with California law, which California’s legislature enacted based on their own individual state interests, some of which differ from the state interests of South Carolina. In choosing to reform the policy in question to conform to South Carolina law, this Court disregarded the intentions and interests of California’s legislature and judicial system. This is a blatant violation of the Full Faith and Credit Clause.

The reformation of an out-of-state insurance policy is a drastic result that invokes constitutional analysis –specifically, whether this State will give Full Faith and Credit to contracts entered into in other States. Again, it is clear that the subject policy, which contains UIM coverage, is part of an automobile policy that was issued in conformance with California law. California has clearly stated its policy and interests in not allowing stacking of UIM coverage. While our State has found that UIM coverage is personal and portable, courts in this State have also repeatedly held that UIM coverage is voluntary coverage and can be restricted by the contract language. In this case, there was undoubtedly a meaning offer of UIM coverage and UIM coverage was provided by the policy. However, that UIM coverage is limited based upon California law. While the facts of this case are clearly tragic, it should not be lost on the Court that the Appellant has already recovered the liability and UIM provided by the policy on the vehicle involved in the accident as a result of the negligence of the Appellant’s wife in causing the accident. Essentially, this Court is faced with the decision of whether this case warrants the Court ignoring the Full Faith and Credit Clause of the United States Constitution in order to change out-of-state policy for a vehicle not involved in an accident and not located in this State.

Finally, it is worth noting that in reaching its opinion, this Court used a new interpretation of S.C. Code Ann. §38-61-10, which will have inevitable unintentional consequences of creating new insured risks which were not contemplated by either party when entering into the insurance contract – i.e. essentially allowing our Courts to reform every automobile policy based upon the location of the insureds regardless of contractual language, location of the insured vehicle, and the intent of the parties to the contract. Again, while this Court has reformed policies before, they have never reformed a policy on a vehicle that was not involved in the collision. This drastic expansion of the law should be reconsidered.

CONCLUSION

Because the property which is the subject of the insurance contract was not involved in the accident, it does not have sufficient contacts to South Carolina to create a state interest. Therefore, S.C. Code Ann. §38-61-10 does not apply and the policy cannot be reformed to conform to South Carolina law. Accordingly, for the reasons discussed above, the Court erred in reversing the grant of summary judgment and remanding to the trial court, and Respondent respectfully requests a rehearing of the issues and that the Court affirm the lower court's grant of summary judgment.

Respectfully moved,

CLAWSON and STAUBES, LLC



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Columbia, South Carolina

March 24, 2022

STATE OF SOUTH CAROLINA

Tyrin S. Young, Sr., Individually, as PR of
the Estates of Tyrin Young, Jr. and Micah
A. Young and as Legal Guardian of J.Y., a
minor under the age of 14,

Plaintiffs

vs.

USAA General Indemnity Company,

Defendant.

IN THE COURT OF APPEALS

Case No.: 2019-000009

CERTIFICATE OF SERVICE

RECEIVED

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SC Court of Appeals

The undersigned hereby certifies that a true copy of the foregoing PETITION FOR REHEARING was served upon the following parties on the 24th day of March, 2022, via:

<input checked="" type="checkbox"/>	United States Postal Service
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Email
<input type="checkbox"/>	Via Hand Delivery

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March 24, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, SC 29201
Via hand delivery

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File No.: 20152493.001

Re: Tyrin S. Young, Sr., Individually, as PR of the Estates of Tyrin Young, Jr. and
Micah A. Young and as Legal Guardian of J.Y., a minor under the age of 14 vs.
USAA General Indemnity Company
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Dear Ms. Kitchings:

Enclosed please find Respondent's Petition for Rehearing With Suggestion for
Rehearing *En Banc* in the above-referenced matter. A copy of this petition has also
been served upon opposing counsel as documented by the attached Certificate of
Service.

Very truly yours,

CLAWSON and STAUBES, LLC



Julie Coleman Hunter

JCH/JCH