THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2022-000669

Nationwide Mutual Fire Insurance Co, ... Respondent

v.

Sharmin Christine Walls, Randi Harper,
Estate of Christopher Adam Timms, and Korey Mayfield, ... Appellants

---

RECORD ON APPEAL

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The undersigned certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 25, 2022

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, and Korey Mayfield,

Defendants,

and

Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,

Cross-Plaintiffs,

vs.

Sharmin Christine Walls and Korey A. Mayfield,

Cross-Defendants.

ORDER

This matter comes before me upon motion of the Plaintiff, Nationwide Mutual Fire Insurance Company for an Order granting partial Summary Judgment and declaring that Defendant Korey A. Mayfield was the operator of the insured vehicle at the time of the accident of July 11, 2008. It appearing that this motion is proper, in that there is no genuine issue as to any material fact, the motion for partial summary judgment declaring that Korey Mayfield was the operator of the vehicle insured with Nationwide at the time of the accident on July 11, 2008 is hereby granted.

The accident out of which this declaratory matter arises occurred on July 11, 2008 in Anderson County. The vehicle in which the Defendants were traveling was owned by Defendant Sharmin Walls and insured with Nationwide Mutual Fire Insurance Company under policy number 61-39-m 424 728 07-11-08. The court has been asked to declare that Korey Mayfield was the operator of the vehicle at the time of the accident. In support of Nationwide's motion for summary judgment on this issue, it has submitted the affidavit of Defendant Randi Harper as well as the transcript which Korey Mayfield made an *Alford* plea to the criminal charges filed against him as a result of the accident. There has been no opposition to these filings. Therefore, based on the only evidence in the record before this court, i.e., the affidavit of Randi Harper, Nationwide's motion is proper. Moreover, even if Mayfield was still disputing that he was the operator of the vehicle at the time of the accident, he is collaterally estopped from re-litigating that issue as a result of his offered plea. Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008) (a defendant [who maintains his innocence but pleads guilty] must likewise accept the collateral consequences of that decision, holding that the entry of an *Alford* plea at a criminal proceeding has the same preclusive effect as a standard guilty plea). Id. at 227. Therefore, as a result of his *Alford* plea, Mayfield is collaterally estopped from litigating the issue of whether he was driving the vehicle in this declaratory action and as such, Nationwide is entitled to partial summary judgment as set forth in its motion.

In addition, in light of the court's ruling on this motion, and the prior partial settlement agreement between the parties, the cross claims of the Defendants against SharminWalls and Korey Mayfield are hereby dismissed as moot.

Therefore, it is

ORDERED, ADJUGED and DECREED that Korey Mayfield was the operator of the vehicle owned by Sharmin Walls and insured by Nationwide Mutual Fire Insurance Company under policy number 61-39-M 424 728 at the time of the accident of July 11, 2008 alleged in the Complaint and the cross claims of Wendy Timms v. Sharmin Walls and Korey Mayfield are dismissed as moot.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox
Presiding Judge of the Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2009-CP-04-0907

Nationwide Mutual Fire Insurance Co.,

Plaintiff

vs.

Sharmin Christine Walls, Randi Harper, Estate of Christopher Adam Timms and Korey Mayfield,

Defendants

Sharmin Christine Walls,

Cross-Plaintiff

vs.

Korey A. Mayfield,

Cross-Defendant

ORDER

This matter involves an automobile wreck which occurred on July 11, 2008 when an automobile owned by Sharmin Christine Walls (hereinafter "Walls") crashed causing serious bodily injury to Walls and to Randi Harper (hereinafter "Harper") and Korey Mayfield (hereinafter "Mayfield") who was driving, and the death of Adam Timms.

It is undisputed at this time that Mayfield was driving the automobile, and the sole fault of the wreck and resulting injuries to Walls and others, was directly caused by and due to the gross negligence, recklessness and wilfulness of Mayfield.

Mayfield did not have the express or implied permission of the insured Walls to drive the automobile at the time of the accident or, in the alternative, exceeded the scope of permission after Mayfield's action in attempting to elude the police.

Walls had procured a policy of insurance through Nationwide Mutual Fire Insurance Company in the amount of $100,000/$300,000 liability limits for bodily injury/property damage with similar limits for **Uninsured Coverage**.

LIMITATION OF COVERAGE

The policy of insurance as set forth on pages L3 - L4, contained a clause limiting coverage in excess of the minimum limits required by the South Carolina Financial Responsibility Law (SCFRL) upon the happening of certain events.

Such clause was not explained to, nor was there any meaningful disclosure to Walls at the time of purchase, nor was the exclusion or limitation set out in bold print or otherwise made apparent to Walls at the time of the purchase of the insurance policy.

It is Nationwide's contention that the policy clause limits coverage under the claim to no more than the minimum limits and Nationwide has submitted that paragraph 6C(ii) "while fleeing a law enforcement officer" precludes additional benefits over the $25,000/$50,000 minimum as a result of the crash.

Walls' damages exceed the sum of $200,000.00 in medical costs alone.

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". Walls' position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

1) Such clause in unconscionable.
2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded to Walls, Harper and Timms.
3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls, Harper and Timms should be awarded full damages.

LAW

I. The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994). A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n. 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. PA. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls and to which the other innocent passengers should have the benefits.

The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of $100,000.00 per person, and it was nowhere made clear in the policy, nor was her attention drawn to the limitation language of the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would make it applicable only to the "insured purchaser" being guilty of such conduct. Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, an "uninsured non-permissive driver". Walls, the owner of the automobile and purchaser of the insurance and the other passengers were totally innocent people, and to deprive them of this coverage based on the policy language based upon bad acts over which they had no control, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Walls, Harper and Timms as innocent insureds under the Nationwide policy and in the alternative as an additional ground for recovery, that even if Walls, Harper and Timms should be excluded under the limitation language, that they should be held as an innocent parties to be able to recover under the uninsured provisions contained in this ambiguous insurance policy. Therefore it is my finding and my conclusion as a matter of law, that Walls, Harper and Timms are entitled to recover from Nationwide insurance, based upon their liability limits of $100,000.00 for their damages and injuries.

UNINSURED MOTORIST PROVISION

Walls also purchased in the contract with Nationwide, **Uninsured Motorists Benefits (UM)** in the amount of $100,000.00 and which provision **does not contain any limitation of recovery.** The evidence in the case demonstrates that there was no "permissive use" by Mayfield or, in the alternative, that Mayfield exceeded any "scope of permission" at the

time he began his increased speed in order to elude the Police officer. Therefore, pursuant to United Fire Insurance Company v MaCloskie 320 SC 459, 465 SE2d 759, (1996) the vehicle would then be deemed "uninsured" as to the innocent passengers (including the owner, Sharmin Walls), and they should be permitted to recover pursuant to the UM provisions of the policy.

> "Courts will not extend terms of insurance contracts beyond their plain meaning, nor require coverage for permissive use which was either not contemplated or was expressly prohibited by the named insured..." Macloskie, supra.

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself and innocent passengers, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case ofUnison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000) when in an uninsured motorist case the Court case stated as follows:

> "We **do not** believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt *supra.*

Walls, Harper and Timms in this case are innocent passengers in a vehicle being driven by an unauthorized driver. They are, either entitled to the full benefits which purchased by Walls under the liability portion of the policy, or since all of the facts demonstrate that Mayfield is an unauthorized driver, in that any permission to drive which he may have had, was revoked long before the injury suffered by the passengers; then they are entitled to recover under the **Uninsured Provisions** of the policy (UM), in which it is submitted the limitation would not apply.[as there is no Policy Provision which would limit the recovery to less than the $100.000.00 which Walls purchased in UM coverage]; See also Morris v. John Doe Civil

Action No. 6:12-02236-TMC, United States District Court, South Carolina, Greenville Division, District Judge Timothy M. Cain agreeing with the reasoning set forth in *Schmidt* and other Courts "**that allow innocent insureds to recover from their insurers under uninsured motorist provisions for injuries caused by an uninsured person stealing the insured's car.**

There is uncontroverted evidence that either Mayfield was an unauthorized driver (non-permissive user); or in fact commandeered the vehicle without the consent of Walls, which would then entitle her to recovery under the **Uninsured Provisions** of the policy.

As to Nationwide's claim that Walls, Harper and Timms are judicially estopped from claiming benefits under the uninsured portion of her policy, the Court notes that the pleadings in this matter make claim against Nationwide for any and all benefits payable under the policy of insurance, which would include uninsured and underinsured. Settlement of the undisputed portion of the liability coverage provided as follows:

> "PROVIDED, HOWEVER, all parties agree that this settlement only applies to the undisputed portion of the Nationwide Mutual Policy described above, and Walls retains the right to pursue full coverage of the remaining $100,000.00 per person coverage in the pending action."

Nationwide and any other liability carriers, voluntarily paid sums to partially reimburse Walls for her damages. There was no litigation over whether the coverage applied, or whether the vehicle was insured or uninsured. The fact that Nationwide voluntarily paid their coverage cannot be used to attempt to deny Walls' coverage under valid provisions of her policy.

Therefore, this Court finds that Walls, Harper and Timms are entitled to recover under either the liability portion of the policy, based upon the fact that such language is unconscionable and void as against public policy and in derogation of the rights of its insureds, or in the alternative, the innocent passengers are permitted to recover up to $100,000.00 under the uninsured provision of Wall's policy, for the reasons above stated.

I find however, that Nationwide should receive credit for the sums it has previously paid to Walls, Harper and Timms.

AND IT IS SO ORDERED.

THE HONORABLE J. CORDELL MADDOX, JR.
JUDGE, TENTH JUDICIAL CIRCUIT

Anderson, South Carolina
August ~~July~~ 18, 2014

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COMMON PLEAS AND
GENERAL SESSIONS

Defendant's Proposed Order

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,

Defendants.

ORDER

A TRUE COPY
MAR 22 2016

This matter comes before me on the motion of Nationwide Mutual Fire insurance Company to alter or amend the judgment rendered by the court on August 18, 2014 and filed with the Anderson County Clerk of Court on August 20, 2014. A hearing was held on this motion on Friday, March 6, 2015. Appearing on behalf of the Plaintiff was J.R. Murphy, Esquire. Appearing on behalf of the Defendants were Michael F. Mullinax, III, Esquire and J. Kirkman Moorhead, Esquire. Attorney Chip Howard joined in the arguments on behalf of the Defendants but did not personally attend the hearing. After reviewing the record in this case and hearing the able arguments of counsel, the court hereby grants the motion in part and denies it in part and substitutes this Order for the prior Order entered in the case.

PROCEDURAL HISTORY

On March 4, 2009, Nationwide Mutual Fire Insurance Company (Nationwide) filed this declaratory judgment action against the defendants seeking a declaration that a flight from law enforcement and a felony exclusion in a policy issued to Sharmin Walls applied to an accident that occurred on July 11, 2008. Nationwide also sought a declaration that Korey Mayfield was

the operator of the vehicle at the time of the accident. The defendants asserted various counterclaims that were settled prior to trial in exchange for the undisputed portion of Nationwide's coverage of $50,000 per accident. Defendants also reached settlements with another automobile insurer, Safe Auto, which provided an additional $50,000 of liability coverage for Korey Mayfield's liability. Also, Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. The Court found Mayfield was the driver of the vehicle at the time of the accident and entered an Order of Summary Judgment on that issue on August 29, 2011. The Court held a bench trial on September 12, 2013. The only issue remaining at trial was the application of the flight from law enforcement exclusion and felony exclusion to the Nationwide policy.

UNDISPUTED FACTS

Prior to trial, the parties submitted a Stipulation of Fact and Nationwide submitted an Exhibit List to which all parties stipulated the admissibility of the exhibits. Therefore, many of the facts are undisputed. In addition, the court viewed the dash cam video of the highway patrolman.

On July 11, 2008, Randi Harper, Christopher Timms, and Sharmin Christine Walls were passengers in a Chevrolet Lumina owned by Walls and operated by Korey A. Mayfield travelling in a southerly direction on South Carolina Highway 81 just north of Masters Boulevard in Anderson County. South Carolina State Trooper Travis Wilson observed the vehicle crossing the yellow line and going approximately 12 miles an hour over the speed limit. At that time, Trooper Wilson decided to pull the car over and activated his blue lights.

Mayfield went from the far left lane (81 is a four-lane road) to the far right turning lane and disregarded the stop signal, continuing down 81 South. Trooper Wilson gave chase. The

evidence in the record established that Sharmin Walls and the passengers all demanded that Mayfield stop the vehicle. While driving on 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour. Mayfield then turned left off of 81 South onto Fred Dean Road. In order to keep up with the Mayfield vehicle on Fred Dean Road, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. Mayfield then turned right onto Flat Rock road and left onto Leatherdale Road and, in the process, disregarded multiple stop signs.

After Mayfield turned left onto Leatherdale Road, Trooper Wilson received instructions to terminate the pursuit, which he did. The Mayfield vehicle was out of sight before Trooper Wilson turned off his sirens and blue lights. Trooper Wilson then proceeded down Leatherdale Road to ensure that Mayfield made it safely through several upcoming curves

Approximately one mile from where Trooper Wilson terminated the chase, Mayfield lost control of the vehicle and ran off the road in a single-car accident. Tragically, Timms was killed in the accident and Walls, Harper, and Mayfield each sustained serious bodily injuries. The time between when Trooper Wilson terminated the chase and his arrival at the scene of the accident was approximately 1 minute and 27 seconds. At the time that Mayfield lost control of the vehicle, he was travelling a minimum speed of 72 miles per hour. The speed limit on that portion of Leatherdale Road was 35 miles per hour.

Pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), Korey Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. Mayfield was found to be the driver of the vehicle by an Order of Summary Judgment in this case on August 29, 2011.

Nationwide issued an automobile liability policy number 61-39-M 424 728 09-11-08 to Sharmin Walls that was in effect on the date of the accident. The policy provides stated limits of

coverage of $100,000 per person and $300,000 per occurrence for liability coverage. As to the liability coverage only, the policy provides the following exclusions:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> * * *
>
> 6. **Bodily injury** or **property damage** caused by:
>
> a) **You**;
> b) a **relative**; or
> c) anyone else while operating **your auto**;
>
> (1) while committing a felony; or
> (2) while fleeing a law enforcement officer.

In this action, Nationwide seeks a declaration that these exclusions apply. Because Nationwide does not dispute that the policy provides the State minimum $25,000 per person and $50,000 per accident limits for bodily injury liability, Nationwide has already paid $50,000 collectively to the defendants. Therefore, only the remaining amount is in dispute.

FINDINGS OF FACT

A. Mayfield was still fleeing from law enforcement at the time of the accident.

Although the above-stated facts are all undisputed, the parties at trial did dispute whether Mayfield was still "fleeing a law enforcement officer" at the time the accident occurred. The Court finds that Mayfield was still fleeing law enforcement at the time of the accident because his course of conduct and manner of driving continued up until the time of the crash.

At Mayfield's criminal trial, Harper testified that the last thing she remembered prior to the accident was that she looked back "and the cop was right there." Likewise, Mark Yost – who witnessed the accident – stated that Mayfield was still travelling at a high rate of speed at the time of the accident and that Trooper Wilson arrived shortly afterwards.

The damage to the vehicle was severe and the Greenville County Sheriff's Office Accident Reconstruction Team determined that Mayfield was "traveling a MINIMUM speed of 72 miles per hour" at the time of the accident, emphasizing that the actual speed of vehicle at the time that Mayfield lost control was actually higher. That is over twice the posted speed limit of 35 miles per hour. The Court finds, after reviewing the chase video, timeline, and other evidence, that Mayfield was still fleeing from Trooper Wilson at the time of the accident even though Trooper Wilson had terminated the chase a mile earlier.[1]

B. The accident occurred when Mayfield was committing a felony.

Korey Mayfield was convicted of reckless homicide as a result of this accident. South Carolina Code Annotated § 56-5-2910 states in pertinent part: "A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony . . . ."

LEGAL ANALYSIS

Even though the Court finds that the accident occurred while Mayfield was fleeing from law enforcement and in the commission of a felony, the court finds that the exclusions violate South Carolina public policy, and therefore these exclusions are unenforceable based upon the Supreme Court's recent holding in Williams v. Government Employees Insurance Company (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).[2]

Generally, "[i]nsurers have the right to limit their liability and to impose whatever conditions they desire upon an insured, provided they are not contravening a statute or public policy." Hansen v. United Services Auto. Assoc., 350 S.C. 62, 71-72, 565 S.E.2d 114, 118 (Ct.

[1] Smith v. State Farm Mut. Auto. Ins. Co., 122 Ga. App. 430, 177 S.E.2d 195 (Ct. App. 1970) (holding that a driver was still fleeing from law enforcement even though the accident occurred after the pursuing officer had lost sight of the fleeing car).

App. 2002) (citation omitted). Nationwide contends that the felony and flight from law enforcement provisions comport with public policy because the exclusions do not exclude all coverage, but instead reduce the amount of coverage to South Carolina's minimum statutory limits.

Although Nationwide has called the flight from law enforcement and felony provisions "exclusions," the Supreme Court in Williams, held that such provisions are better referred to as "step-down provisions." Williams, 409 S.C. at 592 n.2, 762 S.E.2d at 708. The Supreme Court held that such step-down provisions violate South Carolina Code § 38-77-142. Id. at 607, 762 S.E.2d at 716-17 ("We find this provision is in direct contravention to the prohibition set forth in section 38-77-142.").

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". The Defendant's position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

1) Such clause in unconscionable.

2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded.

3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls should be awarded full damages.

The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court

[2] The Supreme Court's decision in Williams came out after the trial in this matter and constitutes an intervening change in the law.

must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994). A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n. 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. PA. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death caused by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls.

The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of $100,000.00 per person, and it was nowhere made clear in the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would

make it applicable only to the "insured purchaser" being guilty of such conduct. ***Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, a " non-permissive driver".*** Walls, the owner of the automobile and purchaser of the insurance as well as the remaining passengers were totally innocent, and to deprive them of this coverage based on the "step-down", in my opinion, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Defendant's as an innocent insured under the Nationwide policy.

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case of Unison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000) when in an uninsured motorist case the Court case stated as follows: "We do not believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt supra.

It is clear that the step-down provision violates the public policy of this State and the law of this State, as is set forth in the case of Williams , *supra*.

"Any endorsement, provision... included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this Section is void." S.C. Code Ann. §38-77-142(c).

The Court in *Williams, supra*, stated:

"the purpose of the Motor Vehicle Financial Responsibility Act (MVFRA), contained in Title 56 of the South Carolina Code, is to give greater protection to those injured through the negligent operation of automobiles. [Williams, *supra* 409 S.C. at 599, 762 S.E.2d at 712.].

"Public policy considerations include not only what is expressed in State Law, such as the Constitution and the Statutes, and decision of the Courts, but also a determination whether the Agreement is capable of producing harm, such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare..."

"Therefore, once the face amount of coverage is agreed on, it may not be . . . limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation of S.C. Code §38-77-142(c) would render this Section useless, and the General Assembly is presumed not to perform useless acts...

Sharmin Walls purchased this policy, and the testimony in evidence shows Such clause was not set out in bold print or otherwise made apparent to Walls in the insurance policy

Therefore, Nationwide's flight from law enforcement and felony step-down provisions violate this State's public policy as stated in South Carolina Code § 38-77-142 and are unenforceable.

CONCLUSION

The Court finds that Defendants are entitled to coverage up to the full limits stated on the policy, subject to a reduction for amounts already paid by Nationwide. Although the accident occurred while Mayfield was fleeing from a law enforcement officer and committing a felony, the step-down provisions violate § 38-77-142 and are unenforceable pursuant to the Supreme Court's holding in Williams v. GEICO.

It is so ORDERED.

The Honorable J. Cordell Maddox, Jr.

Date: 2/26/16

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nationwide Mutual Fire Insurance Company, Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, Defendants,

Of whom, Sharmin Christine Walls, Randi Harper, and Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, are the Respondents.

Appellate Case No. 2016-000679

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5653
Heard October 3, 2018 – Filed June 5, 2019

REVERSED

John Robert Murphy and Wesley Brian Sawyer, both of Murphy & Grantland, PA, of Columbia, for Appellant.

John Kirkman Moorhead, of Krause Moorhead & Draisen, PA, of Anderson, for Respondent Randi Harper.

Milford Oliver Howard, III, of Howard Law Firm, P.A. of Greenville, for Respondent Wendy Timms.

Michael F. Mullinax, of Mullinax Law Firm, P.A., of Anderson, for Respondent Sharmin Christine Walls.

LOCKEMY, C.J.: Following a police chase that ended in a deadly single-car accident, Nationwide Mutual Fire Insurance Company brought a declaratory judgment action against Sharmin Walls, Randi Harper, and the estate of Christopher Timms (collectively, Respondents) to determine the amount due under an automobile liability policy. The trial court found Nationwide must provide the policy's maximum coverage of $300,000, despite policy exclusions that reduced coverage to the statutory minimum limit of $50,000 per occurrence when an accident occurred while committing a felony or fleeing law enforcement. On appeal, Nationwide argues the trial court erred in finding the exclusions violated public policy and were therefore unenforceable. We reverse.

FACTS

The facts of this case are not in dispute. On July 11, 2008, Respondents were passengers in a vehicle owned by Walls and being driven by Korey Mayfield. When a state highway patrol officer attempted to stop the vehicle for speeding, Mayfield ignored the passengers' request to pull over and instead accelerated down the highway. Mayfield led the officer on a high-speed chase—at one point reaching a speed of 109 miles per hour—before exiting the highway and speeding down a residential road. The officer then terminated his pursuit. Approximately one mile from where the chase ended, however, Mayfield lost control of the vehicle and crashed into a group of trees.[1] Timms was killed in the collision, while Mayfield, Harper, and Walls suffered catastrophic injuries. Mayfield was ultimately charged with and pled guilty to reckless homicide, a felony.

At the time of the crash, Walls was a named insured on a Nationwide insurance policy with liability coverage of $100,000 per person and $300,000 per accident. With respect to the liability coverage, the policy contained the following provision:

> This coverage does not apply, with regard to any amount above the minimum limits required by the South Carolina

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[1] An accident reconstruction team determined Mayfield was travelling at least seventy-two miles per hour at the time of the crash, nearly forty miles per hour above the legal speed.

Financial Responsibility Law [(MVFRA)][2] as of the date of the loss, to:

. . .

6. Bodily injury or property damage caused by:

a) you;
b) a relative; or
c) anyone else while operating your auto;

(1) while committing a felony; or
(2) while fleeing a law enforcement officer.

Relying on the above provision, Nationwide tendered the undisputed minimum cover of $50,000 to Respondents for their injuries. Respondents received an additional $50,000 from Mayfield's liability insurer. Walls's policy did not include underinsured motorist coverage.

Nationwide subsequently instituted a declaratory judgment action against Respondents, contending the exclusions prevented them from receiving coverage in excess of $50,000 because their injuries occurred while Mayfield was fleeing law enforcement. Respondents filed an answer, asserting the exclusions were unenforceable, ambiguous, and/or violated public policy.

The matter proceeded to a bench trial, during which Nationwide presented evidence establishing Mayfield was fleeing law enforcement at the time of the accident and had pled guilty to a felony as a result. At the trial's conclusion, the trial court agreed Mayfield's conduct fell within the ambit of the policy exclusions but nevertheless concluded Respondents were entitled to the full coverage of $100,000 per person as stated on the policy's declarations page. In a written order, the trial court reasoned the provisions at issue were unenforceable because (1) Nationwide failed to inform Walls of the exclusions or otherwise place them conspicuously on the insurance policy; (2) the exclusions were ambiguous[3]; and (3) the exclusions violated the state's public policy of protecting innocent insureds, namely the three passengers who were deemed not at fault in causing the collision.

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[2] S.C. Code Ann. §§ 56-9-10 through -410 (2018).

[3] Respondents concede on appeal that the exclusions are unambiguous.

Soon after the trial court issued its order, our supreme court decided *Williams v. Gov't Emp. Ins. Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), holding that a family "step-down" provision violated section 38-77-142 of the South Carolina Code (2015) because it reduced the insured's coverage from the amount stated on the policy's declaration page to the statutory minimum limit. Nationwide filed a motion to reconsider, arguing the trial court made multiple findings of fact unsupported by the evidence and asserting the policy exclusions were reasonable because they only applied to criminal conduct. Furthermore, Nationwide argued *Williams* was factually distinct from the case at hand because it addressed an arbitrary and capricious family member exclusion, not a criminal conduct exclusion such as those in Nationwide's policy. The trial court denied the motion. Relying on *Williams*, the trial court found Nationwide's exclusions were unenforceable because they similarly reduced coverage from the amount stated on the face of the policy to the minimum amount required by law. Nationwide appealed.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (citation omitted).

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (citation omitted). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864. "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

LAW/ANALYSIS

In declining to enforce the policy exclusions, the trial court read our supreme court's decision in *Williams* to hold that *any* policy exclusion that reduced the

coverage stated on the policy's declarations page to the statutory minimum limit violated section 38-77-142 and was therefore unenforceable. Nationwide contends the circuit court's reading of *Williams* is overly broad and a criminal conduct exclusion supports, rather than violates, public policy.

"As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams*, 409 S.C. at 598, 762 S.E.2d at 712. "While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted." *Id.* "[S]tatutory provisions relating to insurance contracts become part of the insuring agreement. Where there is a conflict between the statute and the terms of the policy, the statutory provisions prevail." *Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 587, 325 S.E.2d 59, 61 (1985) (citation omitted).

Section 38-77-140(A) of the South Carolina Code (2015) requires every automobile insurance policy issued in this state to provide a minimum of $25,000 per person and $50,000 per accident in liability coverage. However, an insurer may still contract to provide voluntary coverage in excess of the minimum amounts. *Id.* Section 38-77-142 provides in part:

> (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle . . . unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. . . .
>
> (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a . . . without an endorsement or provision insuring the named insured,

> and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .
>
> (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

"The purpose of the MVFRA is to give greater protection to those injured through the negligent operation of automobiles." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 440 (Ct. App. 2013). "The legislation requires insurance for the benefit of the public, and an insurer may not 'nullify its purposes through engrafting exceptions from liability as to uses which it was the evident purpose of the statute to cover.'" *Id.* at 539-40, 753 S.E.2d at 440 (citing *Penn. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984)). "Similarly, the stated purpose of the chapter on automobile insurance in Title 38 was to implement a complete reform of automobile insurance in order to, among other things, make sure every risk meeting certain criteria was entitled to automobile insurance and prevent the evasion of coverage provided for by that chapter." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712. "Therefore, our courts will strike down policy provisions that have 'the effect of limiting the coverage requirements of the statute[s].'" *Lincoln Gen. Ins*, 406 S.C. at 540, 753 S.E.2d at 440. However, "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Penn. Nat'l. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. at 551, 320 S.E.2d at 461.

In *Williams*, a husband and wife suffered a fatal accident while riding together in a car insured under both their names. 409 S.C. at 591, 762 S.E.2d at 708. Afterwards, a dispute arose concerning the amount GEICO owed under the deceased insureds' liability policy. *Id.* The estates argued the proper coverage was $100,000, as stated on the policy's declarations page. *Id.* GEICO asserted it owed only $15,000 based on a family step-down provision that operated to "step down," or reduce, coverage to the statutory minimum limit when the injured party was a

family member of the insured.[4] *Id.* The trial court ruled in favor of GEICO, finding the step-down provision was enforceable because it provided at least the minimum liability coverage mandated by law. *Id.* at 592, 762 S.E.2d at 708. The estates appealed, and the case was certified to the South Carolina Supreme Court.

On appeal, a three-two majority reversed. The court noted sections 38-77-142(A) and (B) require "a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for negligence incurred 'within the coverage of the policy'"—a phrase the majority interpreted as meaning "the face amount of coverage" on the policy, not the minimum amount of coverage required by section 38-77-140. *Id.* at 603, 762 S.E.2d at 713. The court further noted that the following subsection, section 38-77-142(C), states that any policy that "seeks to limit or reduce the coverage afforded by the provisions required by this section is void." *Id.* GEICO's policy, however, did precisely that; while appearing on its face to provide $100,000 in liability coverage to a certain class of insureds—defined in the policy, and by statute, to include the named insured and their family members—the policy actually reduced that coverage to the minimum limit by means of the family step-down provision. *Id.* at 604, 762 S.E.2d at 715. In short, because the family step-down provision directly conflicted with the policy's declarations page that purported to provide a certain amount of coverage to the named insureds and their relatives, the provision was deemed invalid.

After acknowledging a divergence in other jurisdictions as to the validity of family step-down provisions, the majority in *Williams* focused its discussion on the practical effect of the provision at issue:

> The policy provision here has far-reaching effects that can impact a substantial segment of the population, as it serves not only to markedly reduce coverage to family members, but it even reduces the policy's coverage to the *named insureds*, as happened with the Murrys. The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by GEICO's reduction in coverage to injured family members, who are no less innocent victims in accidents solely because they are injured by the negligence of a family member. It would indeed be an unusual public

[4] At the time the policy was issued, section 38-77-140(A) provided for liability coverage with a minimum limit of $15,000 per person.

> policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work.

Id. at 606-07, 762 S.E.2d at 716. Accordingly, the majority held the step-down provision violated public policy because it conflicted with the plain language of section 38-77-142 and was injurious to the public welfare. *Id.* at 604, 762 S.E.2d at 715.

Turning to the instant case, we do not believe Nationwide's flight-from-law enforcement and felony exclusions conflict with a statutory scheme or public policy. Sections 38-77-142(A) and (B) are concerned with the persons who must be afforded coverage under a particular policy. The majority in *Williams* read section 38-77-142(C) as prohibiting policy provisions that reduce the stated liability coverage to the minimum limit when the policy's declaration page purports to provide a higher amount of coverage to a certain class of insureds. *Id.* at 603, 762 S.E.2d at 713. Therefore, once the insured agrees to a certain amount of coverage for a class of persons, the insurer may not render that coverage illusory with a contradicting exclusion. *See id.* at 604, 762 S.E.2d at 715 ("After agreeing on a policy with $100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an 'exclusion' in the policy.").

Unlike the step-down provision at issue in *Williams*, however, Nationwide's policy exclusions do not simultaneously reduce the insured's voluntary coverage. Instead, the exclusions are only triggered in the event an insured seeks coverage for injuries sustained while engaging in certain acts. The exclusion is based not on the injured party's relationship to the insured, but on the conduct of the driver. The policy's coverage remains intact, so long as the injury is not the result of foreseeably dangerous conduct that the insured can reasonably avoid. To that end, we note sections 38-77-142(A) and (B) only require insurers to insure against liability that arises "as a result of *negligence* in the operation or use of the motor vehicle." (emphasis added). If we were to read *Williams* as Respondents suggest, any policy provision that excludes voluntary coverage for intentional acts would also violate section 38-77-142. Such an interpretation would essentially eliminate an insurer's ability to limit exposure against avoidable hazards and is not supported by the plain language of the statute. *See id.* at 598, 762 S.E.2d at 712 ("As a general rule, insurers have the right to limit their liability and to impose conditions on their

obligations provided they are not in contravention of public policy or some statutory inhibition."); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989) ("The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance.").

Furthermore, in enacting section 56-9-20 of the South Carolina Code (2018), the Legislature has permitted insurers to provide different terms to coverage amounts above the minimum limit. That section provides:

> Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants this excess or additional coverage, the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this article.

Thus, so long as the mandatory minimum coverage limits are met, an insurer may provide reasonable limitations on optional coverage. It follows then that an insurer may choose not to insure above the minimum limit against conduct that is inherently more dangerous than what is attendant to the regular operation of a vehicle.

Finally, there is no basis for a finding that the flight-from-law enforcement and felony exclusions are arbitrary and capricious. *See Williams*, 409 S.C. at 605-06, 762 S.Ed.2d at 716. As discussed above, the exclusions are based not on the identity of the victim, but on the conduct of the driver. To the extent there is a countervailing interest in protecting innocent passengers of a vehicle evading law enforcement, the appropriate balance is struck by the compulsory insurance mandate. Accordingly, because the exclusions discourage certain undesirable behavior while at the same time preserving coverage for innocent victims in the amount deemed appropriate by the General Assembly, we find they do not violate public policy.[5]

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[5] We note a number of jurisdictions have reached similar conclusions regarding the applicability of criminal conduct-based exclusions. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 287 S.W.3d 537, 541 (Ark. 2008) (holding eluding-lawful-arrest

CONCLUSION

We conclude therefore that nothing in Nationwide's exclusions violate the statutory schemes of Titles 38 and 56 or offends public policy. The provisions unambiguously limit coverage to the statutory minimum limit when an injury occurs during the commission of a felony or flight from law enforcement. Accordingly, the decision of the trial court is

REVERSED.

THOMAS and GEATHERS, JJ., concur.

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exclusion did not violate public policy as stated in state's compulsory insurance statute); *Thomas v. Benchmark Ins. Co.*, 179 P.3d 421, 432 (Kan. 2008) (upholding an intentional act exclusion as applied to a police chase); *Hix v. Hertz Corp.*, 705 S.E.2d 219, 220 (Ga. App. 2010) (upholding a felony based exclusion in a rental car policy); *Bohner v. Ace Am. Ins. Co.*, 834 N.E.2d 635, 640 (Ill. App. 2005) (holding criminal act exclusion did not violate public policy); *See Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011) ("Of course, many jurisdictions, although not recognizing a public-policy requirement for insurers to include intentional or criminal-act exclusions, hold that public policy is not violated where insurers include in liability or excess insurance policies criminal acts or other similar exclusions. . . ."); *Home Ins. Co. v. Neilsen*, 332 N.E.2d 240, 244 (Ind. App. 1975) ("[A] person should not be permitted to insure against harms he may intentionally and unlawfully cause others, and thereby acquire a license to engage in such activity."); *see also* 8 Lee R. Russ & Thomas F. Segalla, *Couch on Ins.* 3d § 121:92 (1997) ("An exclusion in an automobile policy as to loss while the automobile is used . . . while engaged in unlawful flight from police is not against public policy.").

The Supreme Court of South Carolina

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ORDER

The petition for rehearing is denied. The attached opinion is substituted for the previous opinion, which is withdrawn.

s/ Donald W. Beatty C.J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

We would grant the petition for rehearing and affirm the court of appeals' decision.

s/ John W. Kittredge J.

s/ George C. James, Jr. J.

Columbia, South Carolina
June 3, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 28012
Heard November 19, 2020 – Re-Filed June 3, 2021

REVERSED

Michael F. Mullinax, of Mullinax Law Firm, P.A., of Anderson, for Petitioner Sharmin Christine Walls; John Kirkman Moorhead, of Moorhead LeFevre, P.A., of Anderson, for Petitioner Randi Harper.

John Robert Murphy and Wesley Brian Sawyer, of Murphy & Grantland, P.A., of Columbia, for Respondent Nationwide Mutual Fire Insurance Company.

Roy T. Willey, IV, and Eric M. Poulin, both of Anastopoulo Law Firm LLC, of Charleston, for Amicus Curiae United Policyholders. Frank L. Eppes, of Eppes & Plumblee, PA, of Greenville, Bert G. Utsey, III, of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., of Charleston and Joe Brewer, of the Law Office of D. Josey Brewer, of Greenville, for Amicus Curiae The South Carolina Association for Justice.

JUSTICE HEARN: In this declaratory judgment action, Nationwide relies on flight-from-law enforcement and felony step-down provisions[1] in an automobile liability insurance policy to limit its coverage to the statutory mandatory minimum. Following a bench trial and after issuance of this Court's opinion in *Williams v. Government Employees Insurance Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), the circuit court held the step-down provisions were void pursuant to Section 38-77-142(C) of the South Carolina Code (2015). The court of appeals reversed. We now reverse the court of appeals and hold that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void.

FACTS

Three individuals—Sharmin Walls, Randi Harper, and Christopher Timms—were passengers in a vehicle driven by Korey Mayfield that crashed in Anderson County on July 11, 2008 following a high-speed chase by law enforcement. On the day of the accident, the group left from Walls' home in Walls' vehicle, a Chevrolet Lumina, driven by Mayfield. A trooper with the South Carolina Highway Patrol activated his blue lights after observing the Lumina traveling approximately twelve miles over the speed limit and swerving over the center line. Mayfield refused to pull over, and during the chase, the trooper's vehicle reached speeds of 109 miles per

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[1] While Nationwide characterized the provisions as exclusions, they are more appropriately denominated as step-downs since, in the event the provisions are triggered, Nationwide is obligated to pay the mandatory minimum limits rather than the liability limit for which the parties contracted.

hour. All the passengers begged Mayfield to stop the car, but Mayfield refused. Eventually, the trooper received instructions to terminate the pursuit, which he did. Nevertheless, Mayfield continued speeding and lost control of the vehicle. Timms died in the single-car accident, and Walls, Harper, and Mayfield sustained serious injuries. After being charged with reckless homicide, Mayfield entered an *Alford* plea. *North Carolina v. Alford*, 400 U.S. 25 (1970).

At the time of the accident, Walls' automobile was insured through her Nationwide policy, which included bodily injury and property damage liability coverage with limits of $100,000 per person and $300,000 per occurrence. Walls also maintained uninsured motorist (UM) coverage for the same limits, but she did not have underinsured motorist (UIM) coverage. Walls' liability policy contained the following provisions:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
> ...
> 6. Bodily injury or property damage caused by:
>
> a) you;
> b) a relative; or
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
> (2) while fleeing a law enforcement officer.

In reliance on those provisions, Nationwide paid only $50,000 in total to the injured passengers—the statutory minimum as provided by section 38-77-140—rather than the liability limits stated in the policy. S.C. Code Ann. § 38-77-140(A)(2) (2015). Safe Auto, Mayfield's insurance company, also paid a total of $50,000 to the passengers.

Nationwide brought this declaratory judgment action requesting the court declare that the passengers were not entitled to combined coverage of more than $50,000 for any claims arising from the accident. Walls answered, denying there

was any evidence that the flight-from-law enforcement and felony provisions applied.[2]

Following a bench trial, the circuit court held in part that Mayfield was a non-permissive user and that the provisions at issue were unconscionable and void as against public policy. Thus, the circuit court held that Walls, Harper, and Timms' estate were entitled to recover $100,000 per person pursuant to the liability limits in Walls' policy. In the alternative, the court found that due to Mayfield's conduct in attempting to elude the police, the vehicle would be deemed uninsured as to the innocent passengers, and they should be entitled to recover pursuant to the UM provisions of the policy.

Two days after the issuance of the circuit court's order, *Williams v. GEICO*, 409 S.C. 586, 762 S.E.2d 705 (2014) was decided. Nationwide filed a Rule 59(e), SCRCP, motion. At the hearing on that motion, the passengers abandoned their argument with respect to UM coverage. In its post-trial order, the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident. Nevertheless, the circuit court held that the *Williams* decision prohibited step-down provisions pursuant to section 38-77-142(C).

Nationwide appealed, and the court of appeals reversed, holding the provisions did not violate our state's public policy or the statutory schemes of Titles 38 and 56. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 360, 831 S.E.2d 131, 138 (Ct. App. 2019). More specifically, the court of appeals noted that the *Williams* decision interpreted section 38-77-142(C) to prohibit provisions that reduced the contracted-for coverage to the mandatory minimum limit when "the policy's declaration page purport[ed] to provide a higher amount of coverage to a certain class of insureds." *Id.* at 358, 831 S.E.2d at 136-37 (citing *Williams*, 409 S.C. at 603, 762 S.E.2d at 714). The court of appeals distinguished the family step-down provision at issue in *Williams* from the provisions in this case because Nationwide's provisions were not triggered by a party's relationship to the insured, but rather, by the conduct of the driver. *Walls*, 427 S.C. at 358, 831 S.E.2d at 137. Furthermore, the court of appeals noted that full coverage remained when injury was

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[2] In her answer, Walls also asserted counterclaims and defenses, including: breach of contract regarding the liability, UM, and UIM coverage; bad faith refusal by Nationwide to honor the claims; and unconscionability, asserting that Nationwide's use of the provisions were void as against public policy. Mayfield and the passengers eventually entered into a stipulation of dismissal of the bad faith counterclaim; therefore, that issue is not before this Court.

not the result of "foreseeably dangerous conduct that the insured [could] reasonably avoid." *Id.* at 358-59, 831 S.E.2d at 137. The court of appeals also held that pursuant to section 56-9-20 of the South Carolina Code (2018), insurers were permitted to place reasonable restrictions on coverage above the minimum limits. *Id.* at 359, 831 S.E.2d at 137 (quoting S.C. Code Ann. § 56-9-20(5)(d) (2018)). Therefore, the court of appeals held the provisions were not arbitrary or capricious, and further, the statutory mandatory minimum coverage provided protection to innocent passengers of a vehicle evading law enforcement. *Walls*, 427 S.C. at 359-60, 831 S.E.2d at 137. This appeal—in which only Walls and Harper are involved as appellants—followed.

ISSUE PRESENTED

Do Nationwide's felony and flight-from-law enforcement step-down provisions violate section 38-77-142(C)?[3]

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). The determination of whether coverage exists under an insurance policy is an action at law. *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (quoting *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011)). "'In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them.'" *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (quoting *Crossmann*, 395 S.C. at 46-47, 717 S.E.2d at 592). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864 (citing *Crossmann*, 395 S.C. at 47, 717 S.E.2d at 592).

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[3] At oral argument, counsel for Harper and Walls stated he was not pursuing a public policy argument. While we fully recognize the dissent is correct that courts across the country have upheld similar policy exclusions as not being contrary to public policy, we do not consider that issue because it was abandoned by Appellant. Accordingly, we view the dissent's discussion of public policy as unnecessary since it is neither an issue before us nor a basis for our decision. We reiterate that our decision today is grounded only on the language of the statute and our decision in *Williams*.

DISCUSSION

Harper and Walls argue that section 38-77-142(C), as interpreted by this Court in *Williams*, prohibits any step-down provisions in a liability policy's coverage. Nationwide contends that section 38-77-142 operates as a mere omnibus provision, defining who must be covered in a liability policy, and that subsection (C) requires that policies not treat covered parties differently from one another. We agree with Harper and Walls.

Section 38-77-142(C) states, "Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." S.C. Code Ann. § 38-77-142(C) (2015). Subsections (A) and (B) specify who must be covered in liability insurance policies, including named insureds and permissive users, as well as what injuries must be covered. S.C. Code Ann. § 38-77-142(A)-(B) (2015). More specifically, subsection (A) states in part:

> No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer...unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person.

S.C. Code Ann. § 38-77-142(A) (2015). Subsection (B) similarly provides who and what injuries must be insured and additionally contains a clause regarding notice that states "mere failure of the insured to turn the motion or complaint over to the insurer" would not void coverage if the insured "otherwise cooperate[d] and in no way prejudice[d] the insurer." S.C. Code Ann. § 38-77-142(B) (2015). *See Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 272-73, 831 S.E.2d 406, 412 (2019) (In upholding notice clauses within insurance policies, we discussed the import of section 38-77-142(B) as demonstrating "the legislature's recognition of the role notice provisions play in insurance contracts."). Therefore, subsections (A) and (B) provide required provisions for liability insurance policies, and once the insurer places the required provisions in the policy with the agreed-upon limits of coverage,

any attempt by the insurer to reduce the coverage afforded by the provisions is void pursuant to subsection (C).

In interpreting the same statutory provision, the *Williams* Court found it significant that section 38-77-142 required insurers to provide liability coverage to insureds "'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (quoting S.C. Code Ann. § 38-77-142(A)-(B) (2015)). In that case, a husband and wife—both named insureds—were killed in a car accident when a train struck their vehicle. *Williams*, 409 S.C. at 591, 762 S.E.2d at 708. The couple had a motor vehicle insurance policy with GEICO that included liability limits of $100,000 per person and $300,000 per accident for bodily injury, and $50,000 per accident for property damage. *Id.* Within its policy, GEICO included a step-down provision that reduced coverage to the statutory minimum limits when an insured's relative sustained bodily injury. *Id.* at 592, 762 S.E.2d at 708. Rather than paying the full $100,000 as provided by the couple's policy, GEICO sought to pay the then-statutory minimum of $15,000 pursuant to the family step-down clause. *Id.* The personal representatives of the couple's estates filed a declaratory judgment action to determine the amount of liability proceeds GEICO was required to pay. *Id.* at 592, 762 S.E.2d at 709. The circuit court found in relevant part that the step-down provision was valid and did not violate public policy or section 38-77-142. *Id.* at 593, 762 S.E.2d at 709.

On appeal, this Court held that insurers have the right to "limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Id.* at 598, 762 S.E.2d at 712 (citing *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999); *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989); *Cobb v. Benjamin*, 325 S.C. 573, 580-81, 482 S.E.2d 589, 593 (Ct. App. 1997)). In examining section 38-77-142, the Court stated that the plain language of subsections of (A) and (B) required a policy to provide coverage for the named insureds and permissive users "against liability for damage incurred 'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-142 (A)-(B) (2015)). Further, the Court held that the face amount of coverage was relevant pursuant to section 38-77-142—not the statutory minimum limits of liability. *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-140 (2015)). In conclusion, the Court stated the family step-down provision violated section 38-77-142's prohibition and public policy. *Id.* at 607, 762 S.E.2d at 717.

Here, like GEICO's family step-down provision in *Williams*, Nationwide's provisions reduce coverage from the contracted-for policy limit of $300,000 per occurrence to the statutory minimum of $50,000 per occurrence for damage caused by an insured while fleeing from law enforcement or engaging in a felony. In light of our interpretation of section 38-77-142(C) in our *Williams* decision, Nationwide's step-down provisions are void. Further, we have previously rejected the argument that section 56-9-20(5)(d) of the South Carolina Code (2018) allows limitations on excess coverage so as to render section 38-77-142(C) inapplicable. *Williams*, 409 S.C. at 607 n.8, 762 S.E.2d at 716 n.8 ("We disagree...that section 56-9-20(d) [sic]...somehow serves to thwart the application of section 38-77-142(C) because the [insureds] purchased coverage over the statutory minimum limits.... [S]ection 56-9-20(d) [sic] has no bearing on the application of *other* motor vehicle laws, such as section 38-77-142...."). Rather, we have held and affirm today that section 38-77-142(C) makes no distinction between mandatory minimum limits and excess coverage. *Id.* at 603, 762 S.E.2d at 714 ("Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum limits of liability coverage set forth in section 38-77-140..."). Moreover, in reaching this decision, we find it significant that the General Assembly has not amended section 38-77-142 since this Court decided *Williams* in 2014. *See York v. Longlands Plantation*, 429 S.C. 570, 576, 840 S.E.2d 544, 547 (2020) (finding the General Assembly's "silence over the past seven decades" important); *Wigfall v. Tideland Utils, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) ("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation.").[4]

[4] We reject the dissent's suggestion that our statutory interpretation is a thinly-disguised attempt to legislate from the bench. Our "judicial sleight of hand" is merely an effort to remain faithful to the language of the statute, as interpreted in *Williams*, which the General Assembly has seen fit not to alter in the nearly seven years since the opinion's issuance. Simply put, our decision is controlled by section 38-77-142, and should the General Assembly disagree with our interpretation, it may, of course, correct our construction by codifying certain exclusions or otherwise altering the statute. *See, e.g.*, Ark. Code Ann. § 23-89-205(1)-(2) (West 2020) (providing that an insurer may include an intentional act exclusion, a felony exclusion, and an evasion-from-law-enforcement exclusion); *see also* Ark. Code Ann. § 23-89-214 (West 2020) (expressly prohibiting step-down provisions that reduce coverage when the insured vehicle is involved in an accident and the driver is someone other than the insured).

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

REVERSED.

BEATTY, C.J., and FEW, J., concur. KITTREDGE, J., dissenting in a separate opinion in which JAMES, J., concurs.

JUSTICE KITTREDGE: Today, counter to every other jurisdiction in the country, a majority of this Court holds that a clear provision in an insurance policy—one which reduces coverage to the statutory minimum where an insured causes damage while fleeing a law enforcement officer—is unenforceable. We are told this decision reflects the intent and policy of the South Carolina General Assembly as set forth in section 38-77-142 of the South Carolina Code (2015). Specifically, the majority "hold[s] that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void." I dissent. I would affirm the court of appeals, which I believe correctly held that the provisions reducing liability coverage to the mandatory minimum limit for "committing a felony" or "while fleeing a law enforcement officer" violate neither the statutory laws of South Carolina nor our state's public policy. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 831 S.E.2d 131 (Ct. App. 2019). I would adopt the excellent opinion of the court of appeals in every respect.

I.

Nationwide Mutual Fire Insurance Company issued a standard automobile liability policy to Sharmin Christine Walls. Subsequently, Walls and several friends decided to drive around Anderson in her Chevrolet Lumina, which was insured by the Nationwide policy. Because Walls had consumed a significant amount of alcohol that day, she allowed one of her friends, Korey Mayfield, to drive her car. The parties agree that Mayfield was a permissive user and, thus, an insured under the policy.[5]

A South Carolina state trooper spotted the Lumina speeding and crossing the yellow center line. The trooper activated his emergency lights and siren and attempted a traffic stop. Mayfield refused to pull over, and a chase ensued, reaching speeds in excess of 100 miles per hour. The trooper eventually abandoned the pursuit for public safety reasons, but his decision made no difference, for despite the lack of pursuit, Mayfield continued to drive dangerously in an effort to evade law enforcement. Shortly thereafter, the Lumina crashed on Leatherdale Road in Anderson County. The Lumina was traveling in excess of

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[5] I accept this stipulation notwithstanding the finding of the circuit judge that Mayfield was an unauthorized, non-permissive user. Perhaps this finding by the circuit court is a scrivener's error. The majority takes no issue with the circuit court's finding in this regard, and neither will I.

twice the posted speed limit at the time of the crash. As a result of the crash, one passenger died, and the other three passengers (including Mayfield and Walls) were seriously injured. Mayfield pled guilty to reckless homicide.

Walls's liability policy with Nationwide contained the following:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> . . . .
>
> 6. Bodily injury or property damage caused by:
>
> a) you;
>
> b) a relative; or
>
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
>
> (2) while fleeing a law enforcement officer.

Relying on the validity of this provision, Nationwide tendered $50,000, the statutory minimum required by section 38-77-140 of the South Carolina Code (2015). Walls, however, demanded the policy limits. In an effort to resolve the coverage dispute, Nationwide filed the underlying declaratory judgment action. There is no dispute as to the material facts. This case does not concern a motor vehicle accident involving general negligence or gross negligence principles. Mayfield intentionally fled from law enforcement. As the majority notes, "the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident."[6]

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[6] Failure to stop for blue light—fleeing a law enforcement officer— is a felony in South Carolina when it results in great bodily injury or death. *See* S.C. Code Ann. § 56-5-750(C) (2018).

II.

I begin with the unassailable premise that South Carolina has long recognized that "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Pa. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). In this case, the court of appeals correctly followed the policy decision of our legislature in allowing contracted-for exclusions to reduce coverage for "fleeing a law enforcement officer"—conduct our legislature has deemed a crime. *See* S.C. Code Ann. § 56-5-750. Even our decision in *Williams v. GEICO*, which the majority claims compels the result today, acknowledged the "general rule [that] insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 598, 762 S.E.2d 705, 712 (2014).

An exclusion for criminal conduct does not preclude a claim in its entirety. The public policy, as determined by our legislature, seeks to provide a measure of protection to injured parties. More precisely, section 38-77-140(A) mandates that an automobile insurance policy issued in South Carolina must "contain[] a provision insuring the persons defined as insured against loss from [] liability" in specified minimum amounts. The reduction from excess coverage to a compulsory minimum is often referred to as a step-down. Here, the relevant subsection is section 38-77-140(A)(2) that provides for "[$50,000 in the event] of bodily injury to two or more persons in any one accident." Section 38-77-140 concludes with the following: "Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements." S.C. Code Ann. § 38-77-140(B). In addition, "[w]ith respect to a policy which grants [] excess or additional coverage, the term 'motor vehicle liability policy' shall apply only to that part of the coverage which is *required* by this article." S.C. Code Ann. § 56-9-20(5)(d) (2018) (emphasis added). Walls and Nationwide contracted for liability coverage in excess of the compulsory minimum, and the policy included the "committing a felony" and "fleeing a law enforcement officer" provisions.

Did the South Carolina Legislature intend to render the "committing a felony" and "fleeing a law enforcement officer" provisions void pursuant to section 38-77-142? I am convinced our legislature intended no such thing.

In relevant part, section 38-77-142 provides:

> (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, *docked*, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, *docked*, or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.
>
> (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the

> policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .
>
> (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

(Emphasis added).

Notice the two references in subsection 38-77-142(A) to vehicles that are "docked" in South Carolina. The South Carolina General Assembly patterned this omnibus statute after a corresponding Virginia statute. *See* Va. Code Ann. § 38.2-2204(A) (2020). While South Carolina's statute applies to motor vehicles only, the Virginia statute applies to vehicles *and* watercraft "garaged, docked, or used in" Virginia. The inadvertent inclusion of the word "docked" in the South Carolina omnibus statute makes it abundantly clear that our legislature adopted the Virginia statute.

No decision examining the Virginia law has interpreted the statute so as to prohibit an illegal acts exclusion, as the majority here does today. In fact, I cannot find a single case in any jurisdiction that supports today's decision. Neither the majority nor Petitioner Walls has cited a single reported decision that purports to buttress today's result—that is, except for *Williams v. GEICO*, this Court's most recent foray into judicially legislating public policy as it relates to insurance law in South Carolina.

And so we come to this Court's 2014 decision in *Williams v. GEICO*. Petitioner Walls and the majority rely exclusively on *Williams* to strike down not only the "committing a felony" and "fleeing a law enforcement officer" exclusions in this policy, but *all* so-called step-downs that reduce liability coverage to the statutory minimum when an insured engages in criminal conduct that is clearly addressed in the policy. I dissented in *Williams*. I did not, however, disagree with the Court's policy-making rationale. I dissented because I believed the legislature, not this Court, establishes policy. I did not believe section 38-77-142 mandated the Court's policy decision. I believed (and still believe) the key language in section 38-77-142(C)—any provision that purports "to limit or reduce the coverage afforded by the provisions *required* by this section is void"—addresses the mandatory requirement of minimum coverage. (Emphasis added.) I note the title to section 38-77-142 includes the phrase "required provisions." Beyond the required mandatory coverage, when addressing voluntary coverages and policy provisions, I

would not void policy provisions based on a misguided and myopic view of section 38-77-142.

Yet, if a *Williams* situation were presented to this Court again, I would be inclined to follow the *Williams* decision because, despite being given the chance to do so, the legislature has not overruled that decision. However, the issue before us today does not remotely resemble the issue in *Williams*. In *Williams*, husband and wife insureds were killed in an accident when their vehicle was struck by a train. The GEICO policy provided an exclusion (beyond the statutory minimum) for liability coverage when there is "bodily injury to any insured or any relative of an insured residing in his household." Thus, the Court was presented with a family step-down provision that reduced liability coverage when a family member of the at-fault insured was the claimant.

The *Williams* Court reviewed the Motor Vehicle Financial Responsibility Act and noted that the purpose of the Act "is to give greater protection to those injured through the *negligent* operation of automobiles." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712 (emphasis added). While the majority in *Williams* acknowledged "a wide divergence of authority in this area," it gave controlling weight to cases from jurisdictions that disfavored family step-down provisions, most notably the Commonwealth of Kentucky. *Id.* at 604–07, 762 S.E.2d at 715–16 (discussing in detail *Lewis ex rel. Lewis v. West American Insurance Co.*, 927 S.W.2d 829, 833 (Ky. 1996), in which the Supreme Court of Kentucky found, "To uphold the family exclusion would result in perpetuating socially destructive inequities.").

It appears family step-down provisions were designed to address the possibility of collusion among family members. It further appears that the concern with family collusion was often more theoretical than real, and some courts, as in *Lewis*, struck down the perceived anachronistic family step-down provision on policy grounds. The husband and wife insureds in *Williams* were both killed in the accident—to be sure, no collusion existed and thus the purported rationale for the family step-down did not exist. The *Williams* majority agreed with the public policy reasoning of *Lewis* and observed that "it would indeed be an unusual public policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work." *Id.* at 607, 762 S.E.2d at 716.

However, the Court in *Williams* did not stop with merely declaring its preferred policy. That policy preference had to be tied to the South Carolina Legislature. The answer, of course, was found in a forced construction of section 38-77-142. *Williams* concluded that the family step-down provision was in contravention of

section 38-77-142 and "to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary, capricious and injurious to the public good." *Id.* at 607, 762 S.E.2d at 717.

From either a public policy or statutory construction perspective, the policy exclusions here for "committing a felony" and "fleeing a law enforcement officer" bear not the slightest resemblance to the family step-down provision in *Williams*. The suggestion that *Williams* controls the decision here is specious. The focus in *Williams* was on the purpose of the law—to protect those injured by the *negligent* operation of automobiles. In this regard, section 38-77-142 tracks the stated purpose of the Motor Vehicle Financial Responsibility Act by providing in subsection (A) that mandatory coverage is to provide coverage for "liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract *as a result of negligence in the operation or use of the vehicle by the named insured or by any such person.*" (Emphasis added). Subsection (B) of section 38-77-142 contains a similar reference to "negligence in the operation" of the vehicle. Here, we are confronted not with negligence but the intentional criminal act of an insured fleeing from law enforcement. Next, *Williams* dealt with *who* was covered. The point in *Williams* was that one insured could not be singled out for disfavored treatment as compared to another insured. Here, the focus is instead on the conduct of the insured in causing the injury; there are not different levels of coverage for injured parties—all are treated the same.

I am confident Nationwide's specific criminal conduct policy exclusions are completely consistent with section 38-77-142, but the majority rules otherwise. In so ruling, the Court is legislating. Make no mistake about it. The Court not only interprets section 38-77-142 to its own liking, the Court majority nullifies the many statutory provisions that allow parties freedom to contract for additional coverage and additional provisions, including section 38-77-140(B) and section 56-9-20(5)(d). Attributing the result today to the South Carolina General Assembly under the guise of statutory interpretation is judicial sleight of hand.

Finally, I address the suggestion that the decision today is in line with the public policy of South Carolina. I reiterate that where the legislature has spoken, the legislature establishes public policy. This Court may intervene and overrule a public policy determination of the legislature only when that policy contravenes the South Carolina Constitution or United States Constitution. As noted, with respect to automobile insurance policies, every other jurisdiction in the United States that follows a similar statutory scheme permits criminal conduct exclusions that reduce liability coverage to the statutory minimum where the injury is caused

by an insured. I believe the universal acceptance of the validity of such exclusions (or step-down provisions) reflects the public policy. *See* 8A *Couch on Insurance* § 121:94 & n.3 (3d ed. Dec. 2020 Update) (collecting cases standing for the proposition that "[a]n exclusion in an automobile policy as to loss while the automobile used is engaged in unlawful flight from the police is not against public policy"). Justifications for such exclusions are obvious and common sense. The "committing a felony" and "fleeing a law enforcement officer" exclusions address conduct that significantly increases the insured risk, and an insured can easily avoid the application of the exclusions by obeying the law. *See, e.g.*, David J. Marchitelli, Annotation, *Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured's Flight from Police*, 41 A.L.R.6th § 527 (2009) ("Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct.").[7] The "committing a felony" and "fleeing a law enforcement officer" exclusions manifestly support public policy. To borrow from *Williams*, the "committing a felony" and "fleeing a law enforcement officer" exclusions in the Nationwide and Walls policy are in no manner "arbitrary, capricious [or] injurious to the public good." *See Williams*, 409 S.C. at 607, 762 S.E.2d at 717.

I dissent.

JAMES, J., concurs.

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[7] I fully understand that most every motor vehicle accident is the result of a criminal violation, such as speeding, running a red light, and the list could go on. In the insurance context, those claims are treated as negligence, and properly so. It would be wholly improper for a sneaky insurance company to exclude criminal acts generally, thereby reducing coverage to the mandatory minimum in virtually every case. The policy exclusion for criminal conduct must be precise and transcend the realm of negligence, as the Nationwide and Walls policy here does. Nationwide and Walls excluded liability coverage for "committing a felony" (an understood term of art) and "fleeing a law enforcement officer" (intentional criminal conduct proscribed by a specific statute).

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	CIVIL ACTION NO: 2009-CP-04-00907
Nationwide Mutual Fire Insurance Company, Plaintiff, v. Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, Defendants.	**ORDER DENYING DEFENDANTS SHARMIN WALLS' AND RANDI HARPER'S MOTION FOR INTEREST ON JUDGMENT**

This matter comes before the Court on Defendant Sharmin Walls' "Motion for Interest on Judgment Per S.C. Code § 34-31-20." One day before the hearing on such Motion, Defendant Randi Harper's counsel notified the Court that Defendant Harper joined in Defendant Walls' Motion. On July 29, 2021, a hearing on this Motion was held. Attorney J.R. Murphy of Murphy & Grantland, P.A. appeared on behalf of Plaintiff Nationwide Mutual Fire Insurance Company ("Nationwide"). Attorney Michael Mullinax of the Mullinax Law Firm, P.A. appeared on behalf of Defendant Sharmin Walls. After considering the Motion, Nationwide's Response in Opposition, and the arguments of counsel, the Court denies the Motion for the reasons set forth below.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Declaratory Judgment Action

On March 4, 2009, Nationwide filed this declaratory judgment action seeking declarations as to: (1) the identity of the driver involved in the July 11, 2008 single vehicle accident; and (2) whether certain exclusions reduced the Nationwide policy's available liability limits for the accident. By Order dated August 29, 2011 Order, this Court determined that Kory Mayfield was

the driver of the vehicle at the time of the July 11, 2008 accident. By Order dated February 26, 2016, this Court held that the exclusions were not enforceable and, consequently, the policy limits were not reduced by such exclusions. As to the February 26, 2016 Order, the South Carolina Court of Appeals reversed finding that such exclusions were enforceable for policy limits above the State minimum limits. Certain Defendants then petitioned the South Carolina Supreme Court for a writ of certiorari. The Supreme Court granted the writ of certiorari. By Order dated June 3, 2021, the South Carolina Supreme Court reversed the Court of Appeals' decision and held that the exclusions were not enforceable. No order was ever entered awarding a money judgment to Defendant Walls or Defendant Harper for $100,000 or any other monetary amount.

B. Stipulation and Agreement

On May 10, 2009, Nationwide, Defendant Walls, Defendant Harper and the other Defendants entered into a Stipulation and Agreement. Under the Stipulation and Agreement, the parties agreed to dismiss with prejudice any counterclaims against Nationwide and their claims against each other in other suits. This was done prior to this Court entering its declaratory judgment.

The Stipulation and Agreement set forth certain amounts that would be paid based upon determinations of the declaratory judgment issues. The Stipulation and Agreement provides in pertinent part:

> If Sharmin Walls is found to be a passenger and Nationwide[sp] prevails on the issue that the bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay her $20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be a passenger and the bodily injury coverage is determined to be $100,000/$300,000, Nationwide will pay her $100,000 in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be the driver, she would be barred from recovery under the bodily injury coverage of this policy.
>
> ***

> If the bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay Randi Harper $10,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be $100,000/$300,000, Nationwide will pay Randi Harper $100,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.
>
> ***
>
> WHEREFORE, the parties agree the payments set forth shall be made after a final decision in the above declaratory judgment action, including appeal, in the declaratory judgment action....

Thus, the parties contractually agreed that Nationwide would not pay Defendant Walls or Defendant Harper $100,000 until "after a final decision in the above declaratory judgment action, including appeal." Defendant Walls' Motion seeks interest on such amount from February 26, 2016 until the date of payment.[1] The final Supreme Court Order was entered on June 3, 2021. Nationwide has agreed to pay Defendant Walls interest on the contractual amount due from June 3, 2021 until its payment of $80,000, the amount due under the Stipulation and Agreement, which was received by Walls on July 7, 2021.

II. ANALYSIS

The contractual terms of the Stipulation and Agreement bar Defendants' claims for post-judgment interest from before the Supreme Court's final June 3, 2021 Order. However, even if such contractual terms did not bar Defendants' claims for interest, South Carolina Code § 34-31-20 provides no basis for an award of interest in this case.

The contractual terms of the Stipulation and Agreement state that payment of $100,000 to Defendant Walls and Defendant Harper was not required to be made until "after a final decision

[1] As Defendant Walls' Motion acknowledges, the principal amount owed was $80,000. Nationwide paid such amount on July 7, 2021. The Court is without information as to whether the contractual amount due to Defendant Harper is $100,000 or some lesser amount based on prior payments from Nationwide. Defendant Harper did not file his own Motion, and his counsel did not appear at the hearing.

in the above declaratory judgment action, including appeal...." Therefore, no interest on the amounts due began to accrue until the Supreme Court's final decision was entered on June 3, 2021. Nationwide has agreed to pay interest on the contractual amounts due from June 3, 2021 until the date of its payment of such amounts. Therefore, Defendants have no additional claims for interest, including Defendant Walls' claim for interest beginning on February 26, 2016.

Furthermore, Defendants are not entitled to interest pursuant to South Carolina Code § 34-31-20(B) because no "money decree or judgment" was entered in their favor. Defendant Walls' Motion alleges that she is due interest "pursuant to S.C. Code Ann. §34-31-20(b)". South Carolina Code § 34-31-20(B) states: "A money decree or judgment of a court enrolled or entered must draw interest according to law." S.C. Code § 34-31-20(B) (emphasis added). Here, the judgment of the Court is not a money decree or money judgment.

This is a declaratory judgment action only. When this Court entered judgment, no counterclaims remained. The only judgment entered was a declaration that the policy's exclusions reducing the liability coverage limits were unenforceable. Thus, contrary to Defendant Walls' assertion in her Motion, neither this Court's Order nor the Supreme Court's Order entered an "an award of [] judgment to Sharmin Walls in the amount of $100,000." The Nationwide policy provides liability coverage for certain damages for which an insured is legally liable as a result of an auto accident. Defendants never obtained a judgment against the at-fault driver, Korey Mayfield. Only under the Stipulation and Agreement – and pursuant to its terms – are Defendant Walls and Harper entitled to $100,000 in bodily injury liability coverage. There is no "money decree or judgment of a court" as required for statutory post-judgment interest. *See* S.C. Code § 34-31-20(B).

The South Carolina Supreme Court has also recognized that a "money judgment" is a pre-condition to recovering post-judgment interest. *Hopkins v. Hopkins*, 343 S.C. 301, 307, 540 S.E.2d 454, 458 (2000) ("South Carolina Code Ann. § 34-31-20(B) (1987) states that money decrees and judgments of courts enrolled or entered shall draw interest...Prior to this opinion, Father received no money judgment; accordingly, he is not entitled to post-judgment interest."); *see also Chambers v. Pingree*, 334 S.C. 349, 353, 513 S.E.2d 369, 372 (Ct. App. 1999) ("Interest at the post-judgment rate does not begin until a judgment is entered in a sum certain."). Since there is no "money judgment" in their favor, Defendants are not entitled to post-judgment interest under South Carolina Code § 34-31-20(B).

III. CONCLUSION

The parties' Stipulation and Agreement governs when and how much money Nationwide is to pay to Defendant Walls and Defendant Harper. Based on the terms of this Agreement, Defendants' claims for statutory interest from February 26, 2016 are barred. Such agreement states that amounts owed are not due until after a final decision, including appeal. Therefore, Nationwide had no obligation to pay Defendants until after the Supreme Court's final June 3, 2021 Order. Nationwide has agreed to pay the contractual amounts due plus interest from June 3, 2021 until payment. No additional amounts are due. Moreover, the Defendants are not entitled to post-judgment interest under South Carolina Code § 34-31-20(B) because no money judgment was entered in their favor. The Motion for post-judgment interest is DENIED.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.

November ___, 2021

Anderson Common Pleas

Case Caption: Nationwide Mutual Fire Insurance Company , plaintiff, et al VS Sharmin Christine Walls , defendant, et al

Case Number: 2009CP0400907

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS CASE NO.: 2009-CP-04-00907
Nationwide Mutual Fire Insurance Co., Plaintiff, vs. Sharmin Christine Walls, et al., Defendants.	**ORDER DENYING DEFENDANTS WALLS' AND HARPER'S MOTION TO RECONSIDER**

This matter came before the Court through the Defendants Sharmin Christine Walls' and Randi Harper's Motion to Reconsider the Order of this Court dated November 16, 2021, denying Defendants' Motion for Interest on the Judgment. After careful consideration, the Court finds that the Defendants' Motion to Reconsider should be denied.

Defendants Walls' and Harper's Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

_____
The Honorable J. Cordell Maddox, Jr.

_____ __, 2022

RECEIVED
May 17 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2009-CP-04-00907

Nationwide Mutual Fire Insurance Co, ... Respondent

v.

Sharmin Christine Walls, Randi Harper,
Estate of Christopher Adam Timms, and Korey Mayfield, ... Appellants

---

NOTICE OF APPEAL

Sharmin Christine Walls and Randi Harper appeal the Order of the Honorable J. Cordell Maddox, Jr. dated and filed November 16, 2021. A Motion for Reconsideration was timely filed on November 23, 2021, resulted in an Order Denying the Motion for Reconsideration. Appellants Walls and Harper received written notice of entry of the Order Denying the Motion for Reconsideration dated and filed on April 22, 2022.

May 17, 2022

Michael F. Mullinax
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Attorney for Appellant Walls

J. Kirkman Moorhead
Moorhead LeFevre, P.A.
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(864) 225-9155
Attorney for Appellant Harper

Other Counsel of Record:

J. R. Murphy, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondent

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	CIVIL ACTION NO: 2009-CP-04-00907
Nationwide Mutual Fire Insurance Company, Plaintiff, vs. Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, and Korey Mayfield, Defendants and Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, Cross-Plaintiffs, vs. Sharmin Christine Walls and Korey A. Mayfield, Cross-Defendants.	**STIPULATION AND AGREEMENT**

WHEREAS, Nationwide has initiated the above-referenced matter to determine coverage and the identity of the driver of the vehicle owned by Sharmin Walls and insured by Nationwide under policy number 61 39 M 424728 for accident that occurred on July 11, 2008 in Anderson County; and

WHEREAS, the parties are desirous of stipulating to the value of the bodily injury claims of the various Defendants so that the cross-claims based on negligent operation and/or negligent entrustment of the vehicle and any counterclaims for alleged bad faith of Nationwide can be dismissed while the declaratory judgment action is pending; and

WHEREAS, Nationwide is willing to stipulate to the value of these cases as follows:

1. If Sharmin Walls is found to be a passenger and Nationwide's prevails on the issue that the bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay her $20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be a passenger and the bodily injury coverage is determined to be $100,000/$300,000, Nationwide will pay her $100,000 in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be the driver, she would be barred from recovery under the bodily injury coverage of this policy.

2. If Nationwide prevails on the issue that the bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay the Estate of Christopher Adam Timms $20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be $100,000/$300,000, Nationwide will pay the Estate of Christopher Adam Timms $100,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.

3. If the bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay Randi Harper $10,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be $100,000/$300,000, Nationwide will pay Randi Harper ~~$85,000~~ $100,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.

4. If Korey Mayfield is found to be a passenger and bodily injury coverage is reduced to $25,000/$50,000, Nationwide will pay him $20,000 under the bodily injury coverage in exchange for a release of Sharmin Walls. If Korey Mayfield is found to be a passenger and the bodily injury coverage is determined to be $100,000/$300,000, we will pay him $100,000 in

exchange for a release of Sharmin Walls. If Korey Mayfield is found to be the driver, he would be barred from recovery under the bodily injury coverage of this policy.

WHEREFORE, the parties agree the payments set forth shall be made after a final decision in the above declaratory judgment action, including appeal, in the declaratory judgment action, except that the payments to the Estate of Christopher Adam Timms and Randi Harper, in the amount of $20,000.00 and $10,000.00, respectively, will be paid as soon as this Stipulation and Agreement is executed by all parties. The parties further agree that all tort lawsuits against Sharmin Walls and Korey Mayfield, whether independent from this action or asserted as a crossclaim, and any and all counterclaims or direct actions against Nationwide for bad faith will be dismissed with prejudice upon execution of this Stipulation and Agreement. A consent stipulation of dismissal as to all such claims will be circulated and executed by all parties once this document has been fully executed by those same parties.

WHEREFORE, the undersigned, as counsel for their respective clients, set their hands and seals this 10th day of May, 2009 declaring their acceptance of the terms and conditions of this Stipulation and Agreement.

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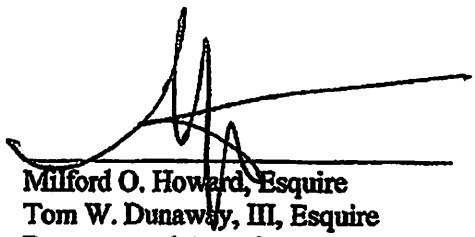
Attorneys for Plaintiff Nationwide Mutual
Fire Insurance Company



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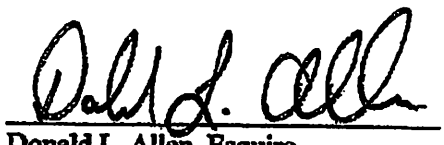
Attorney for Christopher Timms



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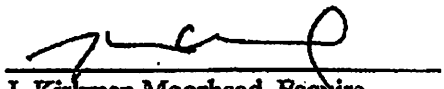

J. Kirkman Moorhead, Esquire
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207 East Calhoun Street
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864-225-4000
Attorney for Randi Harper

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	2009-CP-04-00907
Nationwide Mutual Fire Insurance Co.,)	
)	
Plaintiff)	
)	
vs.)	**MOTION AND NOTICE OF MOTION FOR INTEREST ON JUDGEMENT PER S.C. CODE §34-31-20**
)	
Sharmin Christine Walls, Randi Harper,)	
Estate of Christopher Adam Timms and)	
Korey Mayfield,)	
)	
Defendants)	
)	

TO: J.R. MURPHY, ATTORNEY FOR NATIONWIDE MUTUAL FIRE INSURANCE COMPANY; AND J. KIRKMAN MOORHEAD, ATTORNEY FOR RANDI HARPER

YOU WILL PLEASE take notice that the undersigned will move on behalf of Sharmin Walls for judgement to be rendered against Nationwide Mutual Fire Insurance Company on the tenth day after service hereof, or, on the 27th day of July, 2021 at 10:00 a.m. or as soon thereafter as the matter may be heard, for an Order, pursuant to S. C. Code Ann. §34-31-20(b) on the following basis:

1. This Court issued its judgement, filed February 26, 2016 awarding $100,000.00 against Nationwide Mutual Fire Insurance Company (see copy attached as Exhibit 1) for damages pursuant to its automobile liability policy.

2. That the Plaintiff Nationwide appealed the judgement as far as it could to the South Carolina Court of Appeals and ultimately the case was resolved by the South Carolina Supreme Court on a Writ of Certiorari (filed by Walls and Harper) which overturned the judgement of the South Carolina Court of Appeals, and confirmed the award of the judgement to Sharmin Walls in the amount of $100,000.00

3. Nationwide is entitled to a reduction in the amount of judgement to the sum of $80,000.00 based on its payment to Walls on September 9, 2013; provided, however, Nationwide owes interest pursuant to S.C. Code Ann. §34-31-20(b) in the amount set forth on

the Schedule attached hereto as Exhibit 2.

4. The Remittitur was forwarded to the Honorable Richard A. Shirley, Clerk of Court, Anderson County Court of Common Pleas, on June 3, 2021 and was received on June 4, 2021. See Exhibit 3 attached hereto.

5. That the Defendant has yet to pay the principal amount of the judgement and has refused to pay the interest.

6. The S.C. Code §34-31-20 provides as follows:

> "A money decree or judgement of a Court enrolled or entered must (emphasis added) draw interest according to law ..."

Based on the "plain meaning" of the statute as was held by the Supreme Court in Nationwide v. Walls, there is no basis or excuse for such refusal to pay and further delay should subject Nationwide to Contempt of Court, bad faith, and be subject to payment of attorney's fees and costs.

This Motion is based upon the statutes and case law of the State of South Carolina.

Respectfully submitted,

S/ Michael F. Mullinax
Mullinax Law Firm, P.A.
Post Office Box 2665
Anderson, SC 29622
(864) 261-6242
ATTORNEY FOR THE DEFENDANT,
SHARMIN WALLS

Anderson, South Carolina
June 30, 2021

Defendant's Proposed Order

EXHIBIT 1

FILED-CLERK'S OFFICE

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,

Defendants.

ORDER

A TRUE COPY

MAR 2 2 2016

This matter comes before me on the motion of Nationwide Mutual Fire insurance Company to alter or amend the judgment rendered by the court on August 18, 2014 and filed with the Anderson County Clerk of Court on August 20, 2014. A hearing was held on this motion on Friday, March 6, 2015. Appearing on behalf of the Plaintiff was J.R. Murphy, Esquire. Appearing on behalf of the Defendants were Michael F. Mullinax, III, Esquire and J. Kirkman Moorhead, Esquire. Attorney Chip Howard joined in the arguments on behalf of the Defendants but did not personally attend the hearing. After reviewing the record in this case and hearing the able arguments of counsel, the court hereby grants the motion in part and denies it in part and substitutes this Order for the prior Order entered in the case.

PROCEDURAL HISTORY

On March 4, 2009, Nationwide Mutual Fire Insurance Company (Nationwide) filed this declaratory judgment action against the defendants seeking a declaration that a flight from law enforcement and a felony exclusion in a policy issued to Sharmin Walls applied to an accident that occurred on July 11, 2008. Nationwide also sought a declaration that Korey Mayfield was

the operator of the vehicle at the time of the accident. The defendants asserted various counterclaims that were settled prior to trial in exchange for the undisputed portion of Nationwide's coverage of $50,000 per accident. Defendants also reached settlements with another automobile insurer, Safe Auto, which provided an additional $50,000 of liability coverage for Korey Mayfield's liability. Also, Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. The Court found Mayfield was the driver of the vehicle at the time of the accident and entered an Order of Summary Judgment on that issue on August 29, 2011. The Court held a bench trial on September 12, 2013. The only issue remaining at trial was the application of the flight from law enforcement exclusion and felony exclusion to the Nationwide policy.

UNDISPUTED FACTS

Prior to trial, the parties submitted a Stipulation of Fact and Nationwide submitted an Exhibit List to which all parties stipulated the admissibility of the exhibits. Therefore, many of the facts are undisputed. In addition, the court viewed the dash cam video of the highway patrolman.

On July 11, 2008, Randi Harper, Christopher Timms, and Sharmin Christine Walls were passengers in a Chevrolet Lumina owned by Walls and operated by Korey A. Mayfield travelling in a southerly direction on South Carolina Highway 81 just north of Masters Boulevard in Anderson County. South Carolina State Trooper Travis Wilson observed the vehicle crossing the yellow line and going approximately 12 miles an hour over the speed limit. At that time, Trooper Wilson decided to pull the car over and activated his blue lights.

Mayfield went from the far left lane (81 is a four-lane road) to the far right turning lane and disregarded the stop signal, continuing down 81 South. Trooper Wilson gave chase. The

evidence in the record established that Sharmin Walls and the passengers all demanded that Mayfield stop the vehicle. While driving on 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour. Mayfield then turned left off of 81 South onto Fred Dean Road. In order to keep up with the Mayfield vehicle on Fred Dean Road, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. Mayfield then turned right onto Flat Rock road and left onto Leatherdale Road and, in the process, disregarded multiple stop signs.

After Mayfield turned left onto Leatherdale Road, Trooper Wilson received instructions to terminate the pursuit, which he did. The Mayfield vehicle was out of sight before Trooper Wilson turned off his sirens and blue lights. Trooper Wilson then proceeded down Leatherdale Road to ensure that Mayfield made it safely through several upcoming curves

Approximately one mile from where Trooper Wilson terminated the chase, Mayfield lost control of the vehicle and ran off the road in a single-car accident. Tragically, Timms was killed in the accident and Walls, Harper, and Mayfield each sustained serious bodily injuries. The time between when Trooper Wilson terminated the chase and his arrival at the scene of the accident was approximately 1 minute and 27 seconds. At the time that Mayfield lost control of the vehicle, he was travelling a minimum speed of 72 miles per hour. The speed limit on that portion of Leatherdale Road was 35 miles per hour.

Pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), Korey Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. Mayfield was found to be the driver of the vehicle by an Order of Summary Judgment in this case on August 29, 2011.

Nationwide issued an automobile liability policy number 61-39-M 424 728 09-11-08 to Sharmin Walls that was in effect on the date of the accident. The policy provides stated limits of

coverage of $100,000 per person and $300,000 per occurrence for liability coverage. As to the liability coverage only, the policy provides the following exclusions:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> * * *
>
> 6. **Bodily injury** or **property damage** caused by:
>
> a) **You**;
> b) a **relative**; or
> c) anyone else while operating **your auto**;
>
> (1) while committing a felony; or
> (2) while fleeing a law enforcement officer.

In this action, Nationwide seeks a declaration that these exclusions apply. Because Nationwide does not dispute that the policy provides the State minimum $25,000 per person and $50,000 per accident limits for bodily injury liability, Nationwide has already paid $50,000 collectively to the defendants. Therefore, only the remaining amount is in dispute.

FINDINGS OF FACT

A. Mayfield was still fleeing from law enforcement at the time of the accident.

Although the above-stated facts are all undisputed, the parties at trial did dispute whether Mayfield was still "fleeing a law enforcement officer" at the time the accident occurred. The Court finds that Mayfield was still fleeing law enforcement at the time of the accident because his course of conduct and manner of driving continued up until the time of the crash.

At Mayfield's criminal trial, Harper testified that the last thing she remembered prior to the accident was that she looked back "and the cop was right there." Likewise, Mark Yost – who witnessed the accident – stated that Mayfield was still travelling at a high rate of speed at the time of the accident and that Trooper Wilson arrived shortly afterwards.

The damage to the vehicle was severe and the Greenville County Sheriff's Office Accident Reconstruction Team determined that Mayfield was "traveling a MINIMUM speed of 72 miles per hour" at the time of the accident, emphasizing that the actual speed of vehicle at the time that Mayfield lost control was actually higher. That is over twice the posted speed limit of 35 miles per hour. The Court finds, after reviewing the chase video, timeline, and other evidence, that Mayfield was still fleeing from Trooper Wilson at the time of the accident even though Trooper Wilson had terminated the chase a mile earlier.[1]

B. The accident occurred when Mayfield was committing a felony.

Korey Mayfield was convicted of reckless homicide as a result of this accident. South Carolina Code Annotated § 56-5-2910 states in pertinent part: "A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony . . . ."

LEGAL ANALYSIS

Even though the Court finds that the accident occurred while Mayfield was fleeing from law enforcement and in the commission of a felony, the court finds that the exclusions violate South Carolina public policy, and therefore these exclusions are unenforceable based upon the Supreme Court's recent holding in Williams v. Government Employees Insurance Company (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).[2]

Generally, "[i]nsurers have the right to limit their liability and to impose whatever conditions they desire upon an insured, provided they are not contravening a statute or public policy." Hansen v. United Services Auto. Assoc., 350 S.C. 62, 71-72, 565 S.E.2d 114, 118 (Ct.

[1] Smith v. State Farm Mut. Auto. Ins. Co., 122 Ga. App. 430, 177 S.E.2d 195 (Ct. App. 1970) (holding that a driver was still fleeing from law enforcement even though the accident occurred after the pursuing officer had lost sight of the fleeing car).

App. 2002) (citation omitted). Nationwide contends that the felony and flight from law enforcement provisions comport with public policy because the exclusions do not exclude all coverage, but instead reduce the amount of coverage to South Carolina's minimum statutory limits.

Although Nationwide has called the flight from law enforcement and felony provisions "exclusions," the Supreme Court in Williams, held that such provisions are better referred to as "step-down provisions." Williams, 409 S.C. at 592 n.2, 762 S.E.2d at 708. The Supreme Court held that such step-down provisions violate South Carolina Code § 38-77-142. Id. at 607, 762 S.E.2d at 716-17 ("We find this provision is in direct contravention to the prohibition set forth in section 38-77-142.").

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". The Defendant's position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

1) Such clause in unconscionable.

2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded.

3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls should be awarded full damages.

The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court

[2] The Supreme Court's decision in Williams came out after the trial in this matter and constitutes an intervening change in the law.

must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994). A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n. 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. PA. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death caused by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls.

The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of $100,000.00 per person, and it was nowhere made clear in the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would

make it applicable only to the "insured purchaser" being guilty of such conduct. ***Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, a " non-permissive driver".*** Walls, the owner of the automobile and purchaser of the insurance as well as the remaining passengers were totally innocent, and to deprive them of this coverage based on the "step-down", in my opinion, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Defendant's as an innocent insured under the Nationwide policy.

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case of Unison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000) when in an uninsured motorist case the Court case stated as follows: "We do not believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt supra.

It is clear that the step-down provision violates the public policy of this State and the law of this State, as is set forth in the case of Williams , *supra*.

"Any endorsement, provision... included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this Section is void." S.C. Code Ann. §38-77-142(c).

The Court in *Williams, supra*, stated:

"the purpose of the Motor Vehicle Financial Responsibility Act (MVFRA), contained in Title 56 of the South Carolina Code, is to give greater protection to those injured through the negligent operation of automobiles. [Williams, *supra* 409 S.C. at 599, 762 S.E.2d at 712.].

"Public policy considerations include not only what is expressed in State Law, such as the Constitution and the Statutes, and decision of the Courts, but also a determination whether the Agreement is capable of producing harm, such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare..."

"Therefore, once the face amount of coverage is agreed on, it may not be . . . limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation of S.C. Code §38-77-142(c) would render this Section useless, and the General Assembly is presumed not to perform useless acts...

Sharmin Walls purchased this policy, and the testimony in evidence shows Such clause was not set out in bold print or otherwise made apparent to Walls in the insurance policy

Therefore, Nationwide's flight from law enforcement and felony step-down provisions violate this State's public policy as stated in South Carolina Code § 38-77-142 and are unenforceable.

CONCLUSION

The Court finds that Defendants are entitled to coverage up to the full limits stated on the policy, subject to a reduction for amounts already paid by Nationwide. Although the accident occurred while Mayfield was fleeing from a law enforcement officer and committing a felony, the step-down provisions violate § 38-77-142 and are unenforceable pursuant to the Supreme Court's holding in Williams v. GEICO.

It is so ORDERED.

The Honorable J. Cordell Maddox, Jr.

Date: 2/26/16

EXHIBIT 2

Principal Amount Due	**Interest Calculations**			
$ 80,000.00	Feb. 26, 2016 - Jan. 14, 2017	7.50 % =		$ 86,000.00
$ 86,000.00	Jan. 15, 2017 - Jan. 14, 2018	7.75% = 6,665.00	=	$ 92,665.00
$ 92,665.00	Jan. 15, 2018 - Jan. 14, 2019	8.50% = 7,876.53	=	$100,541.53
$100,541.53	Jan. 15, 2019 - Jan. 14, 2020	9.50%= 9,551.445	=	$110,092.98
$110,092.98	Jan. 15, 2020 - Jan. 14, 2021	8.75% = 9,633.1357	=	$119,726.116
$119,726.12 @$ 23.78 / day	Jan 15, 2021 - July 27, 2021	7.25% = 4,613.32	=	**$124,339.44**

EXHIBIT 3

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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June 3, 2021

The Honorable Richard A. Shirley
Clerk of Court
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: Nationwide v. Sharmin Walls
Lower Court Case No. 2009CP0400907
Appellate Case No. 2019-001596

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

DEPUTY CLERK

Enclosure

cc: John Kirkman Moorhead, Esquire
John Robert Murphy, Esquire
Wesley Brian Sawyer, Esquire
Michael F. Mullinax, Esquire
Roy T. Willey, IV, Esquire
Eric Marc Poulin, Esquire
Frank L. Eppes, Esquire
Daniel Josev Brewer, Esquire
Bert Glenn Utsey, III, Esquire
The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ORDER

The petition for rehearing is denied. The attached opinion is substituted for the previous opinion, which is withdrawn.

s/ Donald W. Beatty C.J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

We would grant the petition for rehearing and affirm the court of appeals' decision.

s/ John W. Kittredge J.

s/ George C. James, Jr. J.

Columbia, South Carolina
June 3, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Nationwide Mutual Fire Insurance Company,
Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom Sharmin Christine Walls and Randi Harper are the Petitioners.

Appellate Case No. 2019-001596

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 28012
Heard November 19, 2020 – Re-Filed June 3, 2021

REVERSED

Michael F. Mullinax, of Mullinax Law Firm, P.A., of Anderson, for Petitioner Sharmin Christine Walls; John Kirkman Moorhead, of Moorhead LeFevre, P.A., of Anderson, for Petitioner Randi Harper.

John Robert Murphy and Wesley Brian Sawyer, of Murphy & Grantland, P.A., of Columbia, for Respondent Nationwide Mutual Fire Insurance Company.

Roy T. Willey, IV, and Eric M. Poulin, both of Anastopoulo Law Firm LLC, of Charleston, for Amicus Curiae United Policyholders. Frank L. Eppes, of Eppes & Plumblee, PA, of Greenville, Bert G. Utsey, III, of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., of Charleston and Joe Brewer, of the Law Office of D. Josey Brewer, of Greenville, for Amicus Curiae The South Carolina Association for Justice.

JUSTICE HEARN: In this declaratory judgment action, Nationwide relies on flight-from-law enforcement and felony step-down provisions[1] in an automobile liability insurance policy to limit its coverage to the statutory mandatory minimum. Following a bench trial and after issuance of this Court's opinion in *Williams v. Government Employees Insurance Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), the circuit court held the step-down provisions were void pursuant to Section 38-77-142(C) of the South Carolina Code (2015). The court of appeals reversed. We now reverse the court of appeals and hold that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void.

FACTS

Three individuals—Sharmin Walls, Randi Harper, and Christopher Timms—were passengers in a vehicle driven by Korey Mayfield that crashed in Anderson County on July 11, 2008 following a high-speed chase by law enforcement. On the day of the accident, the group left from Walls' home in Walls' vehicle, a Chevrolet Lumina, driven by Mayfield. A trooper with the South Carolina Highway Patrol activated his blue lights after observing the Lumina traveling approximately twelve miles over the speed limit and swerving over the center line. Mayfield refused to pull over, and during the chase, the trooper's vehicle reached speeds of 109 miles per

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[1] While Nationwide characterized the provisions as exclusions, they are more appropriately denominated as step-downs since, in the event the provisions are triggered, Nationwide is obligated to pay the mandatory minimum limits rather than the liability limit for which the parties contracted.

hour. All the passengers begged Mayfield to stop the car, but Mayfield refused. Eventually, the trooper received instructions to terminate the pursuit, which he did. Nevertheless, Mayfield continued speeding and lost control of the vehicle. Timms died in the single-car accident, and Walls, Harper, and Mayfield sustained serious injuries. After being charged with reckless homicide, Mayfield entered an *Alford* plea. *North Carolina v. Alford*, 400 U.S. 25 (1970).

At the time of the accident, Walls' automobile was insured through her Nationwide policy, which included bodily injury and property damage liability coverage with limits of $100,000 per person and $300,000 per occurrence. Walls also maintained uninsured motorist (UM) coverage for the same limits, but she did not have underinsured motorist (UIM) coverage. Walls' liability policy contained the following provisions:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> ...
>
> 6. Bodily injury or property damage caused by:
>
> a) you;
> b) a relative; or
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
> (2) while fleeing a law enforcement officer.

In reliance on those provisions, Nationwide paid only $50,000 in total to the injured passengers—the statutory minimum as provided by section 38-77-140—rather than the liability limits stated in the policy. S.C. Code Ann. § 38-77-140(A)(2) (2015). Safe Auto, Mayfield's insurance company, also paid a total of $50,000 to the passengers.

Nationwide brought this declaratory judgment action requesting the court declare that the passengers were not entitled to combined coverage of more than $50,000 for any claims arising from the accident. Walls answered, denying there

was any evidence that the flight-from-law enforcement and felony provisions applied.[2]

Following a bench trial, the circuit court held in part that Mayfield was a non-permissive user and that the provisions at issue were unconscionable and void as against public policy. Thus, the circuit court held that Walls, Harper, and Timms' estate were entitled to recover $100,000 per person pursuant to the liability limits in Walls' policy. In the alternative, the court found that due to Mayfield's conduct in attempting to elude the police, the vehicle would be deemed uninsured as to the innocent passengers, and they should be entitled to recover pursuant to the UM provisions of the policy.

Two days after the issuance of the circuit court's order, *Williams v. GEICO*, 409 S.C. 586, 762 S.E.2d 705 (2014) was decided. Nationwide filed a Rule 59(e), SCRCP, motion. At the hearing on that motion, the passengers abandoned their argument with respect to UM coverage. In its post-trial order, the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident. Nevertheless, the circuit court held that the *Williams* decision prohibited step-down provisions pursuant to section 38-77-142(C).

Nationwide appealed, and the court of appeals reversed, holding the provisions did not violate our state's public policy or the statutory schemes of Titles 38 and 56. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 360, 831 S.E.2d 131, 138 (Ct. App. 2019). More specifically, the court of appeals noted that the *Williams* decision interpreted section 38-77-142(C) to prohibit provisions that reduced the contracted-for coverage to the mandatory minimum limit when "the policy's declaration page purport[ed] to provide a higher amount of coverage to a certain class of insureds." *Id.* at 358, 831 S.E.2d at 136-37 (citing *Williams*, 409 S.C. at 603, 762 S.E.2d at 714). The court of appeals distinguished the family step-down provision at issue in *Williams* from the provisions in this case because Nationwide's provisions were not triggered by a party's relationship to the insured, but rather, by the conduct of the driver. *Walls*, 427 S.C. at 358, 831 S.E.2d at 137. Furthermore, the court of appeals noted that full coverage remained when injury was

[2] In her answer, Walls also asserted counterclaims and defenses, including: breach of contract regarding the liability, UM, and UIM coverage; bad faith refusal by Nationwide to honor the claims; and unconscionability, asserting that Nationwide's use of the provisions were void as against public policy. Mayfield and the passengers eventually entered into a stipulation of dismissal of the bad faith counterclaim; therefore, that issue is not before this Court.

not the result of "foreseeably dangerous conduct that the insured [could] reasonably avoid." *Id.* at 358-59, 831 S.E.2d at 137. The court of appeals also held that pursuant to section 56-9-20 of the South Carolina Code (2018), insurers were permitted to place reasonable restrictions on coverage above the minimum limits. *Id.* at 359, 831 S.E.2d at 137 (quoting S.C. Code Ann. § 56-9-20(5)(d) (2018)). Therefore, the court of appeals held the provisions were not arbitrary or capricious, and further, the statutory mandatory minimum coverage provided protection to innocent passengers of a vehicle evading law enforcement. *Walls*, 427 S.C. at 359-60, 831 S.E.2d at 137. This appeal—in which only Walls and Harper are involved as appellants—followed.

ISSUE PRESENTED

Do Nationwide's felony and flight-from-law enforcement step-down provisions violate section 38-77-142(C)?[3]

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). The determination of whether coverage exists under an insurance policy is an action at law. *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (quoting *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011)). "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (quoting *Crossmann*, 395 S.C. at 46-47, 717 S.E.2d at 592). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864 (citing *Crossmann*, 395 S.C. at 47, 717 S.E.2d at 592).

[3] At oral argument, counsel for Harper and Walls stated he was not pursuing a public policy argument. While we fully recognize the dissent is correct that courts across the country have upheld similar policy exclusions as not being contrary to public policy, we do not consider that issue because it was abandoned by Appellant. Accordingly, we view the dissent's discussion of public policy as unnecessary since it is neither an issue before us nor a basis for our decision. We reiterate that our decision today is grounded only on the language of the statute and our decision in *Williams*.

DISCUSSION

Harper and Walls argue that section 38-77-142(C), as interpreted by this Court in *Williams*, prohibits any step-down provisions in a liability policy's coverage. Nationwide contends that section 38-77-142 operates as a mere omnibus provision, defining who must be covered in a liability policy, and that subsection (C) requires that policies not treat covered parties differently from one another. We agree with Harper and Walls.

Section 38-77-142(C) states, "Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." S.C. Code Ann. § 38-77-142(C) (2015). Subsections (A) and (B) specify who must be covered in liability insurance policies, including named insureds and permissive users, as well as what injuries must be covered. S.C. Code Ann. § 38-77-142(A)-(B) (2015). More specifically, subsection (A) states in part:

> No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer...unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person.

S.C. Code Ann. § 38-77-142(A) (2015). Subsection (B) similarly provides who and what injuries must be insured and additionally contains a clause regarding notice that states "mere failure of the insured to turn the motion or complaint over to the insurer" would not void coverage if the insured "otherwise cooperate[d] and in no way prejudice[d] the insurer." S.C. Code Ann. § 38-77-142(B) (2015). *See Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 272-73, 831 S.E.2d 406, 412 (2019) (In upholding notice clauses within insurance policies, we discussed the import of section 38-77-142(B) as demonstrating "the legislature's recognition of the role notice provisions play in insurance contracts."). Therefore, subsections (A) and (B) provide required provisions for liability insurance policies, and once the insurer places the required provisions in the policy with the agreed-upon limits of coverage,

any attempt by the insurer to reduce the coverage afforded by the provisions is void pursuant to subsection (C).

In interpreting the same statutory provision, the *Williams* Court found it significant that section 38-77-142 required insurers to provide liability coverage to insureds "'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (quoting S.C. Code Ann. § 38-77-142(A)-(B) (2015)). In that case, a husband and wife—both named insureds—were killed in a car accident when a train struck their vehicle. *Williams*, 409 S.C. at 591, 762 S.E.2d at 708. The couple had a motor vehicle insurance policy with GEICO that included liability limits of $100,000 per person and $300,000 per accident for bodily injury, and $50,000 per accident for property damage. *Id.* Within its policy, GEICO included a step-down provision that reduced coverage to the statutory minimum limits when an insured's relative sustained bodily injury. *Id.* at 592, 762 S.E.2d at 708. Rather than paying the full $100,000 as provided by the couple's policy, GEICO sought to pay the then-statutory minimum of $15,000 pursuant to the family step-down clause. *Id.* The personal representatives of the couple's estates filed a declaratory judgment action to determine the amount of liability proceeds GEICO was required to pay. *Id.* at 592, 762 S.E.2d at 709. The circuit court found in relevant part that the step-down provision was valid and did not violate public policy or section 38-77-142. *Id.* at 593, 762 S.E.2d at 709.

On appeal, this Court held that insurers have the right to "limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Id.* at 598, 762 S.E.2d at 712 (citing *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999); *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989); *Cobb v. Benjamin*, 325 S.C. 573, 580-81, 482 S.E.2d 589, 593 (Ct. App. 1997)). In examining section 38-77-142, the Court stated that the plain language of subsections of (A) and (B) required a policy to provide coverage for the named insureds and permissive users "against liability for damage incurred 'within the coverage of the policy.'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-142 (A)-(B) (2015)). Further, the Court held that the face amount of coverage was relevant pursuant to section 38-77-142—not the statutory minimum limits of liability. *Williams*, 409 S.C. at 603, 762 S.E.2d at 714 (citing S.C. Code Ann. § 38-77-140 (2015)). In conclusion, the Court stated the family step-down provision violated section 38-77-142's prohibition and public policy. *Id.* at 607, 762 S.E.2d at 717.

Here, like GEICO's family step-down provision in *Williams*, Nationwide's provisions reduce coverage from the contracted-for policy limit of $300,000 per occurrence to the statutory minimum of $50,000 per occurrence for damage caused by an insured while fleeing from law enforcement or engaging in a felony. In light of our interpretation of section 38-77-142(C) in our *Williams* decision, Nationwide's step-down provisions are void. Further, we have previously rejected the argument that section 56-9-20(5)(d) of the South Carolina Code (2018) allows limitations on excess coverage so as to render section 38-77-142(C) inapplicable. *Williams*, 409 S.C. at 607 n.8, 762 S.E.2d at 716 n.8 ("We disagree...that section 56-9-20(d) [sic]...somehow serves to thwart the application of section 38-77-142(C) because the [insureds] purchased coverage over the statutory minimum limits.... [S]ection 56-9-20(d) [sic] has no bearing on the application of *other* motor vehicle laws, such as section 38-77-142...."). Rather, we have held and affirm today that section 38-77-142(C) makes no distinction between mandatory minimum limits and excess coverage. *Id.* at 603, 762 S.E.2d at 714 ("Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum limits of liability coverage set forth in section 38-77-140...."). Moreover, in reaching this decision, we find it significant that the General Assembly has not amended section 38-77-142 since this Court decided *Williams* in 2014. *See York v. Longlands Plantation*, 429 S.C. 570, 576, 840 S.E.2d 544, 547 (2020) (finding the General Assembly's "silence over the past seven decades" important); *Wigfall v. Tideland Utils, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) ("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation.").[4]

[4] We reject the dissent's suggestion that our statutory interpretation is a thinly-disguised attempt to legislate from the bench. Our "judicial sleight of hand" is merely an effort to remain faithful to the language of the statute, as interpreted in *Williams*, which the General Assembly has seen fit not to alter in the nearly seven years since the opinion's issuance. Simply put, our decision is controlled by section 38-77-142, and should the General Assembly disagree with our interpretation, it may, of course, correct our construction by codifying certain exclusions or otherwise altering the statute. *See, e.g.*, Ark. Code Ann. § 23-89-205(1)-(2) (West 2020) (providing that an insurer may include an intentional act exclusion, a felony exclusion, and an evasion-from-law-enforcement exclusion); *see also* Ark. Code Ann. § 23-89-214 (West 2020) (expressly prohibiting step-down provisions that reduce coverage when the insured vehicle is involved in an accident and the driver is someone other than the insured).

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

REVERSED.

BEATTY, C.J., and FEW, J., concur. KITTREDGE, J., dissenting in a separate opinion in which JAMES, J., concurs.

JUSTICE KITTREDGE: Today, counter to every other jurisdiction in the country, a majority of this Court holds that a clear provision in an insurance policy—one which reduces coverage to the statutory minimum where an insured causes damage while fleeing a law enforcement officer—is unenforceable. We are told this decision reflects the intent and policy of the South Carolina General Assembly as set forth in section 38-77-142 of the South Carolina Code (2015). Specifically, the majority "hold[s] that section 38-77-142(C) renders Nationwide's attempt to limit the contracted-for liability insurance to the mandatory minimum void." I dissent. I would affirm the court of appeals, which I believe correctly held that the provisions reducing liability coverage to the mandatory minimum limit for "committing a felony" or "while fleeing a law enforcement officer" violate neither the statutory laws of South Carolina nor our state's public policy. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 831 S.E.2d 131 (Ct. App. 2019). I would adopt the excellent opinion of the court of appeals in every respect.

I.

Nationwide Mutual Fire Insurance Company issued a standard automobile liability policy to Sharmin Christine Walls. Subsequently, Walls and several friends decided to drive around Anderson in her Chevrolet Lumina, which was insured by the Nationwide policy. Because Walls had consumed a significant amount of alcohol that day, she allowed one of her friends, Korey Mayfield, to drive her car. The parties agree that Mayfield was a permissive user and, thus, an insured under the policy.[5]

A South Carolina state trooper spotted the Lumina speeding and crossing the yellow center line. The trooper activated his emergency lights and siren and attempted a traffic stop. Mayfield refused to pull over, and a chase ensued, reaching speeds in excess of 100 miles per hour. The trooper eventually abandoned the pursuit for public safety reasons, but his decision made no difference, for despite the lack of pursuit, Mayfield continued to drive dangerously in an effort to evade law enforcement. Shortly thereafter, the Lumina crashed on Leatherdale Road in Anderson County. The Lumina was traveling in excess of

[5] I accept this stipulation notwithstanding the finding of the circuit judge that Mayfield was an unauthorized, non-permissive user. Perhaps this finding by the circuit court is a scrivener's error. The majority takes no issue with the circuit court's finding in this regard, and neither will I.

twice the posted speed limit at the time of the crash. As a result of the crash, one passenger died, and the other three passengers (including Mayfield and Walls) were seriously injured. Mayfield pled guilty to reckless homicide.

Walls's liability policy with Nationwide contained the following:

> B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
>
> . . . .
>
> 6. Bodily injury or property damage caused by:
>
> a) you;
>
> b) a relative; or
>
> c) anyone else while operating your auto;
>
> (1) while committing a felony; or
>
> (2) while fleeing a law enforcement officer.

Relying on the validity of this provision, Nationwide tendered $50,000, the statutory minimum required by section 38-77-140 of the South Carolina Code (2015). Walls, however, demanded the policy limits. In an effort to resolve the coverage dispute, Nationwide filed the underlying declaratory judgment action. There is no dispute as to the material facts. This case does not concern a motor vehicle accident involving general negligence or gross negligence principles. Mayfield intentionally fled from law enforcement. As the majority notes, "the circuit court found that Mayfield was committing a felony and fleeing from the police at the time of the accident."[6]

[6] Failure to stop for blue light—fleeing a law enforcement officer— is a felony in South Carolina when it results in great bodily injury or death. *See* S.C. Code Ann. § 56-5-750(C) (2018).

II.

I begin with the unassailable premise that South Carolina has long recognized that "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Pa. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). In this case, the court of appeals correctly followed the policy decision of our legislature in allowing contracted-for exclusions to reduce coverage for "fleeing a law enforcement officer"—conduct our legislature has deemed a crime. *See* S.C. Code Ann. § 56-5-750. Even our decision in *Williams v. GEICO*, which the majority claims compels the result today, acknowledged the "general rule [that] insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 598, 762 S.E.2d 705, 712 (2014).

An exclusion for criminal conduct does not preclude a claim in its entirety. The public policy, as determined by our legislature, seeks to provide a measure of protection to injured parties. More precisely, section 38-77-140(A) mandates that an automobile insurance policy issued in South Carolina must "contain[] a provision insuring the persons defined as insured against loss from [] liability" in specified minimum amounts. The reduction from excess coverage to a compulsory minimum is often referred to as a step-down. Here, the relevant subsection is section 38-77-140(A)(2) that provides for "[$50,000 in the event] of bodily injury to two or more persons in any one accident." Section 38-77-140 concludes with the following: "Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements." S.C. Code Ann. § 38-77-140(B). In addition, "[w]ith respect to a policy which grants [] excess or additional coverage, the term 'motor vehicle liability policy' shall apply only to that part of the coverage which is *required* by this article." S.C. Code Ann. § 56-9-20(5)(d) (2018) (emphasis added). Walls and Nationwide contracted for liability coverage in excess of the compulsory minimum, and the policy included the "committing a felony" and "fleeing a law enforcement officer" provisions.

Did the South Carolina Legislature intend to render the "committing a felony" and "fleeing a law enforcement officer" provisions void pursuant to section 38-77-142? I am convinced our legislature intended no such thing.

In relevant part, section 38-77-142 provides:

> (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, *docked*, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, *docked*, or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.
>
> (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the

> policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .
>
> (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

(Emphasis added).

Notice the two references in subsection 38-77-142(A) to vehicles that are "docked" in South Carolina. The South Carolina General Assembly patterned this omnibus statute after a corresponding Virginia statute. *See* Va. Code Ann. § 38.2-2204(A) (2020). While South Carolina's statute applies to motor vehicles only, the Virginia statute applies to vehicles *and* watercraft "garaged, docked, or used in" Virginia. The inadvertent inclusion of the word "docked" in the South Carolina omnibus statute makes it abundantly clear that our legislature adopted the Virginia statute.

No decision examining the Virginia law has interpreted the statute so as to prohibit an illegal acts exclusion, as the majority here does today. In fact, I cannot find a single case in any jurisdiction that supports today's decision. Neither the majority nor Petitioner Walls has cited a single reported decision that purports to buttress today's result—that is, except for *Williams v. GEICO*, this Court's most recent foray into judicially legislating public policy as it relates to insurance law in South Carolina.

And so we come to this Court's 2014 decision in *Williams v. GEICO*. Petitioner Walls and the majority rely exclusively on *Williams* to strike down not only the "committing a felony" and "fleeing a law enforcement officer" exclusions in this policy, but *all* so-called step-downs that reduce liability coverage to the statutory minimum when an insured engages in criminal conduct that is clearly addressed in the policy. I dissented in *Williams*. I did not, however, disagree with the Court's policy-making rationale. I dissented because I believed the legislature, not this Court, establishes policy. I did not believe section 38-77-142 mandated the Court's policy decision. I believed (and still believe) the key language in section 38-77-142(C)—any provision that purports "to limit or reduce the coverage afforded by the provisions *required* by this section is void"—addresses the mandatory requirement of minimum coverage. (Emphasis added.) I note the title to section 38-77-142 includes the phrase "required provisions." Beyond the required mandatory coverage, when addressing voluntary coverages and policy provisions, I

would not void policy provisions based on a misguided and myopic view of section 38-77-142.

Yet, if a *Williams* situation were presented to this Court again, I would be inclined to follow the *Williams* decision because, despite being given the chance to do so, the legislature has not overruled that decision. However, the issue before us today does not remotely resemble the issue in *Williams*. In *Williams*, husband and wife insureds were killed in an accident when their vehicle was struck by a train. The GEICO policy provided an exclusion (beyond the statutory minimum) for liability coverage when there is "bodily injury to any insured or any relative of an insured residing in his household." Thus, the Court was presented with a family step-down provision that reduced liability coverage when a family member of the at-fault insured was the claimant.

The *Williams* Court reviewed the Motor Vehicle Financial Responsibility Act and noted that the purpose of the Act "is to give greater protection to those injured through the *negligent* operation of automobiles." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712 (emphasis added). While the majority in *Williams* acknowledged "a wide divergence of authority in this area," it gave controlling weight to cases from jurisdictions that disfavored family step-down provisions, most notably the Commonwealth of Kentucky. *Id.* at 604–07, 762 S.E.2d at 715–16 (discussing in detail *Lewis ex rel. Lewis v. West American Insurance Co.*, 927 S.W.2d 829, 833 (Ky. 1996), in which the Supreme Court of Kentucky found, "To uphold the family exclusion would result in perpetuating socially destructive inequities.").

It appears family step-down provisions were designed to address the possibility of collusion among family members. It further appears that the concern with family collusion was often more theoretical than real, and some courts, as in *Lewis*, struck down the perceived anachronistic family step-down provision on policy grounds. The husband and wife insureds in *Williams* were both killed in the accident—to be sure, no collusion existed and thus the purported rationale for the family step-down did not exist. The *Williams* majority agreed with the public policy reasoning of *Lewis* and observed that "it would indeed be an unusual public policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work." *Id.* at 607, 762 S.E.2d at 716.

However, the Court in *Williams* did not stop with merely declaring its preferred policy. That policy preference had to be tied to the South Carolina Legislature. The answer, of course, was found in a forced construction of section 38-77-142. *Williams* concluded that the family step-down provision was in contravention of

section 38-77-142 and "to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary, capricious and injurious to the public good." *Id.* at 607, 762 S.E.2d at 717.

From either a public policy or statutory construction perspective, the policy exclusions here for "committing a felony" and "fleeing a law enforcement officer" bear not the slightest resemblance to the family step-down provision in *Williams*. The suggestion that *Williams* controls the decision here is specious. The focus in *Williams* was on the purpose of the law—to protect those injured by the *negligent* operation of automobiles. In this regard, section 38-77-142 tracks the stated purpose of the Motor Vehicle Financial Responsibility Act by providing in subsection (A) that mandatory coverage is to provide coverage for "liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract *as a result of negligence in the operation or use of the vehicle by the named insured or by any such person.*" (Emphasis added). Subsection (B) of section 38-77-142 contains a similar reference to "negligence in the operation" of the vehicle. Here, we are confronted not with negligence but the intentional criminal act of an insured fleeing from law enforcement. Next, *Williams* dealt with *who* was covered. The point in *Williams* was that one insured could not be singled out for disfavored treatment as compared to another insured. Here, the focus is instead on the conduct of the insured in causing the injury; there are not different levels of coverage for injured parties—all are treated the same.

I am confident Nationwide's specific criminal conduct policy exclusions are completely consistent with section 38-77-142, but the majority rules otherwise. In so ruling, the Court is legislating. Make no mistake about it. The Court not only interprets section 38-77-142 to its own liking, the Court majority nullifies the many statutory provisions that allow parties freedom to contract for additional coverage and additional provisions, including section 38-77-140(B) and section 56-9-20(5)(d). Attributing the result today to the South Carolina General Assembly under the guise of statutory interpretation is judicial sleight of hand.

Finally, I address the suggestion that the decision today is in line with the public policy of South Carolina. I reiterate that where the legislature has spoken, the legislature establishes public policy. This Court may intervene and overrule a public policy determination of the legislature only when that policy contravenes the South Carolina Constitution or United States Constitution. As noted, with respect to automobile insurance policies, every other jurisdiction in the United States that follows a similar statutory scheme permits criminal conduct exclusions that reduce liability coverage to the statutory minimum where the injury is caused

by an insured. I believe the universal acceptance of the validity of such exclusions (or step-down provisions) reflects the public policy. *See* 8A *Couch on Insurance* § 121:94 & n.3 (3d ed. Dec. 2020 Update) (collecting cases standing for the proposition that "[a]n exclusion in an automobile policy as to loss while the automobile used is engaged in unlawful flight from the police is not against public policy"). Justifications for such exclusions are obvious and common sense. The "committing a felony" and "fleeing a law enforcement officer" exclusions address conduct that significantly increases the insured risk, and an insured can easily avoid the application of the exclusions by obeying the law. *See, e.g.*, David J. Marchitelli, Annotation, *Automobile Liability Insurance Policy Exclusion as Applied to Loss or Injury Resulting from Insured's Flight from Police*, 41 A.L.R.6th § 527 (2009) ("Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct.").[7] The "committing a felony" and "fleeing a law enforcement officer" exclusions manifestly support public policy. To borrow from *Williams*, the "committing a felony" and "fleeing a law enforcement officer" exclusions in the Nationwide and Walls policy are in no manner "arbitrary, capricious [or] injurious to the public good." *See Williams*, 409 S.C. at 607, 762 S.E.2d at 717.

I dissent.

JAMES, J., concurs.

[7] I fully understand that most every motor vehicle accident is the result of a criminal violation, such as speeding, running a red light, and the list could go on. In the insurance context, those claims are treated as negligence, and properly so. It would be wholly improper for a sneaky insurance company to exclude criminal acts generally, thereby reducing coverage to the mandatory minimum in virtually every case. The policy exclusion for criminal conduct must be precise and transcend the realm of negligence, as the Nationwide and Walls policy here does. Nationwide and Walls excluded liability coverage for "committing a felony" (an understood term of art) and "fleeing a law enforcement officer" (intentional criminal conduct proscribed by a specific statute).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nationwide Mutual Fire Insurance Company, Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, Deborah Timms, Defendants,

Of whom, Sharmin Christine Walls, Randi Harper, and Wendy Timms in her capacity as Personal Representative of The Estate of Christopher Adam Timms, are the Respondents.

Appellate Case No. 2016-000679

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5653
Heard October 3, 2018 – Filed June 5, 2019

REVERSED

John Robert Murphy and Wesley Brian Sawyer, both of Murphy & Grantland, PA, of Columbia, for Appellant.

John Kirkman Moorhead, of Krause Moorhead & Draisen, PA, of Anderson, for Respondent Randi Harper.

Milford Oliver Howard, III, of Howard Law Firm, P.A. of Greenville, for Respondent Wendy Timms.

Michael F. Mullinax, of Mullinax Law Firm, P.A., of Anderson, for Respondent Sharmin Christine Walls.

LOCKEMY, C.J.: Following a police chase that ended in a deadly single-car accident, Nationwide Mutual Fire Insurance Company brought a declaratory judgment action against Sharmin Walls, Randi Harper, and the estate of Christopher Timms (collectively, Respondents) to determine the amount due under an automobile liability policy. The trial court found Nationwide must provide the policy's maximum coverage of $300,000, despite policy exclusions that reduced coverage to the statutory minimum limit of $50,000 per occurrence when an accident occurred while committing a felony or fleeing law enforcement. On appeal, Nationwide argues the trial court erred in finding the exclusions violated public policy and were therefore unenforceable. We reverse.

FACTS

The facts of this case are not in dispute. On July 11, 2008, Respondents were passengers in a vehicle owned by Walls and being driven by Korey Mayfield. When a state highway patrol officer attempted to stop the vehicle for speeding, Mayfield ignored the passengers' request to pull over and instead accelerated down the highway. Mayfield led the officer on a high-speed chase—at one point reaching a speed of 109 miles per hour—before exiting the highway and speeding down a residential road. The officer then terminated his pursuit. Approximately one mile from where the chase ended, however, Mayfield lost control of the vehicle and crashed into a group of trees.[1] Timms was killed in the collision, while Mayfield, Harper, and Walls suffered catastrophic injuries. Mayfield was ultimately charged with and pled guilty to reckless homicide, a felony.

At the time of the crash, Walls was a named insured on a Nationwide insurance policy with liability coverage of $100,000 per person and $300,000 per accident. With respect to the liability coverage, the policy contained the following provision:

> This coverage does not apply, with regard to any amount above the minimum limits required by the South Carolina

[1] An accident reconstruction team determined Mayfield was travelling at least seventy-two miles per hour at the time of the crash, nearly forty miles per hour above the legal speed.

Financial Responsibility Law [(MVFRA)][2] as of the date of the loss, to:

. . .

6. Bodily injury or property damage caused by:

a) you;
b) a relative; or
c) anyone else while operating your auto;

(1) while committing a felony; or
(2) while fleeing a law enforcement officer.

Relying on the above provision, Nationwide tendered the undisputed minimum cover of $50,000 to Respondents for their injuries. Respondents received an additional $50,000 from Mayfield's liability insurer. Walls's policy did not include underinsured motorist coverage.

Nationwide subsequently instituted a declaratory judgment action against Respondents, contending the exclusions prevented them from receiving coverage in excess of $50,000 because their injuries occurred while Mayfield was fleeing law enforcement. Respondents filed an answer, asserting the exclusions were unenforceable, ambiguous, and/or violated public policy.

The matter proceeded to a bench trial, during which Nationwide presented evidence establishing Mayfield was fleeing law enforcement at the time of the accident and had pled guilty to a felony as a result. At the trial's conclusion, the trial court agreed Mayfield's conduct fell within the ambit of the policy exclusions but nevertheless concluded Respondents were entitled to the full coverage of $100,000 per person as stated on the policy's declarations page. In a written order, the trial court reasoned the provisions at issue were unenforceable because (1) Nationwide failed to inform Walls of the exclusions or otherwise place them conspicuously on the insurance policy; (2) the exclusions were ambiguous[3]; and (3) the exclusions violated the state's public policy of protecting innocent insureds, namely the three passengers who were deemed not at fault in causing the collision.

[2] S.C. Code Ann. §§ 56-9-10 through -410 (2018).

[3] Respondents concede on appeal that the exclusions are unambiguous.

Soon after the trial court issued its order, our supreme court decided *Williams v. Gov't Emp. Ins. Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), holding that a family "step-down" provision violated section 38-77-142 of the South Carolina Code (2015) because it reduced the insured's coverage from the amount stated on the policy's declaration page to the statutory minimum limit. Nationwide filed a motion to reconsider, arguing the trial court made multiple findings of fact unsupported by the evidence and asserting the policy exclusions were reasonable because they only applied to criminal conduct. Furthermore, Nationwide argued *Williams* was factually distinct from the case at hand because it addressed an arbitrary and capricious family member exclusion, not a criminal conduct exclusion such as those in Nationwide's policy. The trial court denied the motion. Relying on *Williams*, the trial court found Nationwide's exclusions were unenforceable because they similarly reduced coverage from the amount stated on the face of the policy to the minimum amount required by law. Nationwide appealed.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (citation omitted).

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (citation omitted). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864. "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

LAW/ANALYSIS

In declining to enforce the policy exclusions, the trial court read our supreme court's decision in *Williams* to hold that *any* policy exclusion that reduced the

coverage stated on the policy's declarations page to the statutory minimum limit violated section 38-77-142 and was therefore unenforceable. Nationwide contends the circuit court's reading of *Williams* is overly broad and a criminal conduct exclusion supports, rather than violates, public policy.

"As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams*, 409 S.C. at 598, 762 S.E.2d at 712. "While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted." *Id.* "[S]tatutory provisions relating to insurance contracts become part of the insuring agreement. Where there is a conflict between the statute and the terms of the policy, the statutory provisions prevail." *Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 587, 325 S.E.2d 59, 61 (1985) (citation omitted).

Section 38-77-140(A) of the South Carolina Code (2015) requires every automobile insurance policy issued in this state to provide a minimum of $25,000 per person and $50,000 per accident in liability coverage. However, an insurer may still contract to provide voluntary coverage in excess of the minimum amounts. *Id.* Section 38-77-142 provides in part:

> (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle . . . unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. . . .
>
> (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a . . . without an endorsement or provision insuring the named insured,

> and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .
>
> (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

"The purpose of the MVFRA is to give greater protection to those injured through the negligent operation of automobiles." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 440 (Ct. App. 2013). "The legislation requires insurance for the benefit of the public, and an insurer may not 'nullify its purposes through engrafting exceptions from liability as to uses which it was the evident purpose of the statute to cover.'" *Id.* at 539-40, 753 S.E.2d at 440 (citing *Penn. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984)). "Similarly, the stated purpose of the chapter on automobile insurance in Title 38 was to implement a complete reform of automobile insurance in order to, among other things, make sure every risk meeting certain criteria was entitled to automobile insurance and prevent the evasion of coverage provided for by that chapter." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712. "Therefore, our courts will strike down policy provisions that have 'the effect of limiting the coverage requirements of the statute[s].'" *Lincoln Gen. Ins*, 406 S.C. at 540, 753 S.E.2d at 440. However, "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Penn. Nat'l. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. at 551, 320 S.E.2d at 461.

In *Williams*, a husband and wife suffered a fatal accident while riding together in a car insured under both their names. 409 S.C. at 591, 762 S.E.2d at 708. Afterwards, a dispute arose concerning the amount GEICO owed under the deceased insureds' liability policy. *Id.* The estates argued the proper coverage was $100,000, as stated on the policy's declarations page. *Id.* GEICO asserted it owed only $15,000 based on a family step-down provision that operated to "step down," or reduce, coverage to the statutory minimum limit when the injured party was a

family member of the insured.[4] *Id.* The trial court ruled in favor of GEICO, finding the step-down provision was enforceable because it provided at least the minimum liability coverage mandated by law. *Id.* at 592, 762 S.E.2d at 708. The estates appealed, and the case was certified to the South Carolina Supreme Court.

On appeal, a three-two majority reversed. The court noted sections 38-77-142(A) and (B) require "a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for negligence incurred 'within the coverage of the policy'"—a phrase the majority interpreted as meaning "the face amount of coverage" on the policy, not the minimum amount of coverage required by section 38-77-140. *Id.* at 603, 762 S.E.2d at 713. The court further noted that the following subsection, section 38-77-142(C), states that any policy that "seeks to limit or reduce the coverage afforded by the provisions required by this section is void." *Id.* GEICO's policy, however, did precisely that; while appearing on its face to provide $100,000 in liability coverage to a certain class of insureds—defined in the policy, and by statute, to include the named insured and their family members—the policy actually reduced that coverage to the minimum limit by means of the family step-down provision. *Id.* at 604, 762 S.E.2d at 715. In short, because the family step-down provision directly conflicted with the policy's declarations page that purported to provide a certain amount of coverage to the named insureds and their relatives, the provision was deemed invalid.

After acknowledging a divergence in other jurisdictions as to the validity of family step-down provisions, the majority in *Williams* focused its discussion on the practical effect of the provision at issue:

> The policy provision here has far-reaching effects that can impact a substantial segment of the population, as it serves not only to markedly reduce coverage to family members, but it even reduces the policy's coverage to the *named insureds*, as happened with the Murrys. The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by GEICO's reduction in coverage to injured family members, who are no less innocent victims in accidents solely because they are injured by the negligence of a family member. It would indeed be an unusual public

[4] At the time the policy was issued, section 38-77-140(A) provided for liability coverage with a minimum limit of $15,000 per person.

> policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work.

Id. at 606-07, 762 S.E.2d at 716. Accordingly, the majority held the step-down provision violated public policy because it conflicted with the plain language of section 38-77-142 and was injurious to the public welfare. *Id.* at 604, 762 S.E.2d at 715.

Turning to the instant case, we do not believe Nationwide's flight-from-law enforcement and felony exclusions conflict with a statutory scheme or public policy. Sections 38-77-142(A) and (B) are concerned with the persons who must be afforded coverage under a particular policy. The majority in *Williams* read section 38-77-142(C) as prohibiting policy provisions that reduce the stated liability coverage to the minimum limit when the policy's declaration page purports to provide a higher amount of coverage to a certain class of insureds. *Id.* at 603, 762 S.E.2d at 713. Therefore, once the insured agrees to a certain amount of coverage for a class of persons, the insurer may not render that coverage illusory with a contradicting exclusion. *See id.* at 604, 762 S.E.2d at 715 ("After agreeing on a policy with $100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an 'exclusion' in the policy.").

Unlike the step-down provision at issue in *Williams*, however, Nationwide's policy exclusions do not simultaneously reduce the insured's voluntary coverage. Instead, the exclusions are only triggered in the event an insured seeks coverage for injuries sustained while engaging in certain acts. The exclusion is based not on the injured party's relationship to the insured, but on the conduct of the driver. The policy's coverage remains intact, so long as the injury is not the result of foreseeably dangerous conduct that the insured can reasonably avoid. To that end, we note sections 38-77-142(A) and (B) only require insurers to insure against liability that arises "as a result of *negligence* in the operation or use of the motor vehicle." (emphasis added). If we were to read *Williams* as Respondents suggest, any policy provision that excludes voluntary coverage for intentional acts would also violate section 38-77-142. Such an interpretation would essentially eliminate an insurer's ability to limit exposure against avoidable hazards and is not supported by the plain language of the statute. *See id.* at 598, 762 S.E.2d at 712 ("As a general rule, insurers have the right to limit their liability and to impose conditions on their

obligations provided they are not in contravention of public policy or some statutory inhibition."); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989) ("The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance.").

Furthermore, in enacting section 56-9-20 of the South Carolina Code (2018), the Legislature has permitted insurers to provide different terms to coverage amounts above the minimum limit. That section provides:

> Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants this excess or additional coverage, the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this article.

Thus, so long as the mandatory minimum coverage limits are met, an insurer may provide reasonable limitations on optional coverage. It follows then that an insurer may choose not to insure above the minimum limit against conduct that is inherently more dangerous than what is attendant to the regular operation of a vehicle.

Finally, there is no basis for a finding that the flight-from-law enforcement and felony exclusions are arbitrary and capricious. *See Williams*, 409 S.C. at 605-06, 762 S.Ed.2d at 716. As discussed above, the exclusions are based not on the identity of the victim, but on the conduct of the driver. To the extent there is a countervailing interest in protecting innocent passengers of a vehicle evading law enforcement, the appropriate balance is struck by the compulsory insurance mandate. Accordingly, because the exclusions discourage certain undesirable behavior while at the same time preserving coverage for innocent victims in the amount deemed appropriate by the General Assembly, we find they do not violate public policy.[5]

[5] We note a number of jurisdictions have reached similar conclusions regarding the applicability of criminal conduct-based exclusions. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 287 S.W.3d 537, 541 (Ark. 2008) (holding eluding-lawful-arrest

CONCLUSION

We conclude therefore that nothing in Nationwide's exclusions violate the statutory schemes of Titles 38 and 56 or offends public policy. The provisions unambiguously limit coverage to the statutory minimum limit when an injury occurs during the commission of a felony or flight from law enforcement. Accordingly, the decision of the trial court is

REVERSED.

THOMAS and GEATHERS, JJ., concur.

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exclusion did not violate public policy as stated in state's compulsory insurance statute); *Thomas v. Benchmark Ins. Co.*, 179 P.3d 421, 432 (Kan. 2008) (upholding an intentional act exclusion as applied to a police chase); *Hix v. Hertz Corp.*, 705 S.E.2d 219, 220 (Ga. App. 2010) (upholding a felony based exclusion in a rental car policy); *Bohner v. Ace Am. Ins. Co.*, 834 N.E.2d 635, 640 (Ill. App. 2005) (holding criminal act exclusion did not violate public policy); *See Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011) ("Of course, many jurisdictions, although not recognizing a public-policy requirement for insurers to include intentional or criminal-act exclusions, hold that public policy is not violated where insurers include in liability or excess insurance policies criminal acts or other similar exclusions. . . ."); *Home Ins. Co. v. Neilsen*, 332 N.E.2d 240, 244 (Ind. App. 1975) ("[A] person should not be permitted to insure against harms he may intentionally and unlawfully cause others, and thereby acquire a license to engage in such activity."); *see also* 8 Lee R. Russ & Thomas F. Segalla, *Couch on Ins.* 3d § 121:92 (1997) ("An exclusion in an automobile policy as to loss while the automobile is used . . . while engaged in unlawful flight from police is not against public policy.").

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	CIVIL ACTION NO: 2009-CP-04-00907
Nationwide Mutual Fire Insurance Co.,)	
)	
Plaintiff)	
)	
vs.)	**MOTION TO RECONSIDER, ALTER, OR AMEND PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE, 59(e)**
)	
Sharmin Christine Walls, Randi Harper,)	
Estate of Christopher Adam Timms and)	
Korey Mayfield,)	
)	
Defendants)	
)	

TO: THE ABOVE NAMED PLAINTIFF, AND ITS ATTORNEY, J.R. MURPHY:

Pursuant to Rule 59(e) S.C.R.C.P, the Defendants Sharmin Christine Walls and Randi Harper file this Motion requesting the Court reconsider, alter, or amend its ruling dated November 16, 2021, denying Defendant's Motion for Interest on the Judgement rendered by this Court on February 26, 2016, pursuant to S.C. Code Ann. §34-31-20(d) (1987 *et seq.*)

BACKGROUND AND HISTORY

This matter was tried before the Court which resulted in the judgement of this Court rendered February 26, 2016 wherein the Court ordered a money judgement in the amount of $100,000.00 against Nationwide Insurance, pursuant to the policy of insurance issued to the Defendant, Sharmin Christine Walls, and $100,000.00 to the Defendant Randi Harper.

The Defendants appealed that judgement to the Court of Appeals, which issued its Order dated June 5, 2019 overruling the judgement of the Circuit Court. The Defendants requested a rehearing which was denied. The Defendants then petitioned the Supreme Court, pursuant to a Writ of Certiorari for relief, which was granted by the Supreme Court on February 12, 2020. Thereafter, the matter was heard by the Court which affirmed the original 2016 ruling of the Circuit Court of Anderson County in its entirety, stating that the plain meaning of the statute

§38-77-142 S.C. Code Ann. 1976, mandated that the definitive judgement of a sum certain as awarded by the Circuit Court be paid to the Defendants Walls and Harper.

This Motion for Reconsideration is based upon facts that the Court overlooked, and failed to recognize and give consideration to the "plain meaning" of S.C. Code Ann. §34-31-20(b) which states as follows:

> "A money decree or judgement of a Court enrolled or entered **MUST** (emphasis added) draw interest according to law . . . . "

1. It is submitted that this Court overlooked or misapprehended the Rules of Statutory Construction when construing the terms as set forth in the above statute and failed to apply the following rules of statutory interpretation:

> "Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Because the Legislature's use of mandatory language is unambiguous, this Court has no right to impose another meaning. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." (citation omitted)). Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018)."

2. It is submitted that this Court further is speculating and giving an improper meaning and interpretation to a stipulation which was entered into in order to streamline and facilitate the original Court action back in 2009, some seven years prior to the 2016 judgement, because the "wherefore" language of the stipulation only referred to the simple fact that no judgement of any Court is ever payable until the appeal process is either abandoned or takes place to its conclusion.

3. It is further submitted that in order for interest under the Statutory mandate of our legislature to be waived, such waiver would have to be unequivocal and clearly established by facts and a definitive statement so that an unequivocal intent to relinquish the known right established by the Statute would then be in place.

"Waiver is the voluntary and intentional relinquishment of a known right." Provident Life and Accident Insurance Co. v. Driver 317 S.C. 471, 451 SE 2nd 924 (Ct. App. 1994).

4. It is further submitted that it is clear that pursuant to §34-31-20, interest at the post judgement rate does not begin to accrue until a judgement is entered in a sum certain. On February 26, 2016 this Court entered judgement for the full amount of coverage defined to be $100,000.00.

5. It is submitted that the Court overlooked the stated awarding of a judgement in its Order of $100,000.00 to each of the undersigned, and that judgement is entitled to interest, pursuant to the plain meaning and Statutory mandate provisions of S.C. Code Ann. §34-31-20.

Respectfully submitted,

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Anderson, South Carolina
November 23, 2021

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2009-CP-04-00907
Nationwide Mutual Fire Insurance Co., Plaintiff vs. Sharmin Christine Walls, Randi Harper, Estate of Christopher Adam Timms and Korey Mayfield, Defendants	)	**DEFENDANT WALLS' SUPPLEMENTAL MOTION TO RECONSIDER, ALTER OR AMEND PURSUANT TO S.C. RULES OF CIVIL PROCEDURE 59(e)**

The law in South Carolina is that Courts do not enforce a contract which is violative of public policy, **statutory law**, or provisions of the Constitution. Carolina Care Plan 361 S.C. 555, 606 S.E. 2d at 758. See also Simpson v. MSA of Myrtle Beach 373 S.C. 14, 25, 644 S.E. 2nd 663, 668.

Respectfully submitted,

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Anderson, South Carolina
March 1, 2022

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Anderson County
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate (Court of Appeals) Case No. 2019-001596

Nationwide Mutual Fire Insurance Company, Respondent

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, Deborah Timms, Defendants

Of whom, Sharmin Christine Walls, Randi Harper and Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, are the Petitioners.

Appellate Case No.: 2019-001596

PETITIONERS' JOINT BRIEF IN RESPONSE TO RESPONDENT'S PETITION FOR REHEARING

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ARGUMENT

Nationwide has filed a Petition for Rehearing contending (1) That the Court misunderstands who is insured by liability coverage and (2) that the Court ignored the rules of statutory construction in order to "legislate from the bench". The first argument is specious and neither argument raises issues that were overlooked or misapprehended by the Court. For these reasons, the Court should deny Nationwide's Petition for Rehearing.

I. The Court's Opinion exhibits a clear understanding of who is an insured with regard to liability insurance.

Nationwide contends that the Majority writing for the Supreme Court exhibit a fundamental misunderstanding of who is insured for liability coverage. In support of the same, Nationwide notes that the opinion states "Nationwide's provisions reduce coverage.for insureds when they are injured while fleeing from law enforcement or engaging in a felony."

While perhaps this lone sentence set forth by Nationwide as evidence of the same might be better clarified to reflect that Nationwide's policy provisions reduce coverage for damages caused by an insured when fleeing from law enforcement or engaging in a felony, the opinion in its entirety overwhelmingly exhibits a clear understanding of liability insurance and its application in this context.

The Court begins noting that "Subsections (A) and (B) [of § 38-77-142] specify who must be covered in liability insurance policies, including named insureds and permissive users..." (Op. p. 61). The Court discussed *Neumayer* and the effects of "mere failure of an insured to turn the motion or complaint over to the insurer" (Op. p. 62). The Court discussed *Williams* and the requirement under § 38-77-142 that the policy provide coverage for "named insured and permissive users against liability for damage within the coverage of the policy. "(Op.

p. 63). These extended discussions reflect that, of course, the South Carolina Supreme Court does not operate under a fundamental misunderstanding of who is insured with respect to liability coverage, but to the contrary, clearly understands that automobile liability insurance provides coverage for damages caused by an insured as a result of an insured's negligent acts or omissions.

In addition, the Court has issued numerous opinions previously addressing liability insurance coverage and to whom it provides coverage, not the least of which are the cases cited by Nationwide in an attempt to make its point. Nationwide cites *Cowan v Allstate* , 357 S.C. 625, 629, 594 S.E. 2d 275, 277 (2004) (admonishing the Court of Appeals for focusing on third parties with respect to §38-77-142 and not solely "the insured and the insurer"). They cite *Kleckley v Northwestern Nat. Cas. Co*, 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000) (recognizing difference between insured for liability coverage and third-party claimant) and *Howard v. Allen* 254 S.C. 455, 460, 176 S.E.2d 127, 129 (1970) (The provision of the policy, insofar as the inure to the benefit of only the insured are ...of no value to anyone other than the insured). While these opinions may be those of past iterations of the Supreme Court, they nonetheless reflect the Supreme Courts body of work and its continued understanding in this case.

The proposition that the Court, in this matter, somehow misapprehends the application of liability insurance to an insured is an argument that is specious, at best.

II. **The Court's Opinion properly applies the rules of statutory construction and does not attempt to "legislate from the bench".**

The Court's Opinion here deals directly with §38-77-142 and whether the statute restricts the right of an insurer to utilize a stepdown provision to reduce the available coverage under the policy when the insured is fleeing law enforcement or is engaged in a felony.

Virtually the entire opinion of the Court in this matter is a discussion of statutory construction and the plain language of the statute. The Court's Opinion goes to great length analyzing the specific language of the statute, reasoning that the terms "within the coverage of the policy" referred to the coverage on the face of the instant policy and not the statutory minimum limits. To suggest that the Court has reviewed the statute without considering other interpretations is unreasonable. Clearly the Justices gave consideration to other opinions (see the Dissent both here and in *Williams*) and the majority saw fit to disagree as to whether there were other reasonable interpretations, as justices often do.

This Court held in Williams v. Geico 409 SC 603, 762 SE 2d 714 (citing SC Code Ann. §38-77-140 (2015) and reiterated in the March 10, 2021 decision in Nationwide Mutual Fire Insurance Co. v. Walls 2021 WL 908511 as follows:

> "On appeal this Court held that insurers have the right to "limit their liability and to impose conditions on their obligations provided they are not in contradiction of public policy or some statutory inhibition." . . . ."

In examining §38-77-142, the Court stated that the plain language of subsections A and B required a policy to provide coverage to the named insureds and permissive users "against liability for damage incurred *within the coverage of the policy*" (citations omitted). The Court evaluated this language and held that the face amount of coverage was relevant pursuant to §38-77-142 not the statutory minimum limits of liability. Williams 409 SC 603, 762 SE 2d at 714 (citing SC Code Ann. §38-77-140 (2015).

In conclusion, the Court stated the family step-down provision in GEICO's policy in *Williams* violated the prohibition established by §38-77-142 and therefore public policy based upon the plain language of the statute. (Citations omitted).

The Court's Opinion in Nationwide v. Walls further noted that the Supreme Court had previously rejected Nationwide's argument made in Williams vs. Geico that S.C. Code Ann. §56-9-20 (5)(d) (2018) allows limits on excess coverage so as to render §38-77-142(c) inapplicable .

The Court affirmed that the plain meaning of §38-77-142(c) makes no distinction between mandatory minimum limits and excess coverage. The Court held in Williams and reaffirmed in Nationwide v. Walls that the face amount of coverage is what is relevant under §38-77-142. The Court further made reference to the fact which Nationwide seems to continue to want to overlook, that since the enaction of the statute in 2002 and the Williams decision in 2014 no action has been by taken by the legislature.

The Court's Opinion further confirmed in footnote four, the dissent's suggestion in Nationwide v. Walls and in the Brief of Nationwide, that this decision is far from "judicial sleight of hand" but it is merely adhering to the plain language and meaning of the statute as it exists and was passed by, voted upon and is the law of the State of South Carolina, as passed by the General Assembly.

Nationwide further contends that the Court's Opinion ignores the "common law right of freedom to contract". However, to the contrary, the Court's opinion *specifically* founds its argument based upon the plain language of the statute, citing *Williams v. GEICO* and § 38-77-142. The Court acknowledges the right of insurers to "limited their liability and to

impose conditions on their obligations provided they are not in contravention of ...some statutory inhibition." (Op. at p. 62 citing *Williams* at 598, 762 S.E.2d at 712 (in turn citing B.L.G. Enters., Inc. v. First Fin. Ins. Co., 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999); Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989); Cobb v. Benjamin, 325 S.C. 573, 580-81, 482 S.E.2d 589, 593 (Ct. App. 1997)).

Nationwide's argument ignores that the Court acknowledges that insurers have the right to limit their liability and impose conditions on their obligations. The Court does so. But, this is only provided that those limitations and conditions are not in contravention of statute or public policy. The Court carefully and thoroughly determined the plain language of the statute and has applied this limitation appropriately. The Court's Opinion here clearly appropriately contemplated all issues raised by Nationwide in their Petition for Rehearing. The Petition for Rehearing should be denied.

CONCLUSION

For the reasons stated above, the Petition for Rehearing should be denied and the ruling of this Court in Nationwide Mutual Fire Insurance Co. v Walls, March 10, 2021 WL 908511, should be affirmed on the basis that the step-down provisions contained in the Nationwide Policy violate S.C. Code §38-77-142 9 (c); and, are unenforceable pursuant to the Supreme Court's holding in Williams v. Government Employees Insurance Company, 409 S.C. 586, 762 S.E. 2nd 705 (2014).

Respectfully submitted,

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Anderson, South Carolina
April 14, 2021

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-001596

Nationwide Mutual Fire Insurance Company..... Respondent.

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, Deborah Timms, ...Defendants.

Of Whom,

Sharmin Christine Walls and Randi Harper are the .....Petitioners.

RESPONDENT'S RETURN TO PETITIONERS' MOTIONS FOR COSTS

Respondent Nationwide Mutual Fire Insurance Company ("Nationwide") hereby submits this Return to Petitioners Sharmin Christine Walls' and Randi Harper's separate motions for costs. Nationwide opposes Petitioners' Motions for Costs on the ground that they have sought more attorney's fees and costs than allowed by Rules 222 and 242 of the South Carolina Appellate Court Rules.

In Petitioner Walls' Motion for Costs, she sought $2,500 in attorney's fees for the appeal to the Court of Appeals and $2,500 in attorney's fees for the Petition for Writ of Certiorari before this Court. In Petitioner Harper's Motion for Costs, he sought $2,500 in attorney's fees for the appeal to the Court of Appeals and $2,500 in attorney's fees for the Petition for Writ of Certiorari

before this Court. Therefore, Petitioners have sought a total of $5,000 in attorney's fees for the appeal and $5,000 in attorney's fees for the Petition – $10,000 total for attorney's fees.

Rule 222 of the South Carolina Appellate Court Rules governs the costs that may be taxed for appeals. With respect to attorney's fees, the Rule states: "[T]he party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court." Rule 222(b), SCACR.[1] Rule 242 of the South Carolina Appellate Court Rules governs the costs that may be taxed for petitions for writs of certiorari. With respect to attorney's fees, the Rule states: "The party may also recover an additional attorney's fee in an amount which shall be set by order of the Supreme Court." Rule 242(j)(2), SCACR.[2] Both Rules refer to a Supreme Court Oder dated January 17, 2018, which is entitled "Attorney's Fees Under Rules 222 and 242 of the South Carolina Appellate Court Rules." Under that Order, the maximum amount of attorney's fees allowed under Rule 222(b) is $2,500 and the maximum amount of attorney's fees allowed under Rule 242(j)(2) is $2,500. Therefore, Petitioners cannot recover $5,000 in attorney's fees for their appeal and $5,000 in attorney's fees for their Petition but are limited to $2,500 for the appeal and $2,5000 for the Petition – i.e. a total of $5,000 for attorney's fees to be split between them. *See Hoefer Fam. Ltd. P'ship v. Cty. of Charleston*, 360 S.C. 403, 404, 602 S.E.2d 47 (2004) (stating that seven (7) appellants were entitled to "a reasonable attorney's fee" – singular– under Rule 222); *Taylor v. Medenica*, 332 S.C. 324, 326, 504 S.E.2d 590, 591 (1998) (stating that under Rule 222 two (2) respondents were entitled to single attorney's fee amount set by Supreme Court's order – i.e. $1,000 total, not $1,000 each).

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[1] The Court of Appeals ruled in favor of Nationwide and against Petitioners. However, Petitioners still seek an award of costs for their appeal before the South Carolina Court of Appeals.

[2] Moreover, both Rules use the singular "the party" when referring to who is entitled to recover costs. Rules 222(b) and 242(j)(2), SCACR.

In addition to the Rules not allowing for such double award of attorney's fees, Petitioners acted as one for purposes of the appeal and Petition. Petitioners jointly filed a single brief in the Court of Appeals. They also jointly filed a single Petition for Writ of Certiorari and a single brief before this Court. Moreover, one attorney represented them jointly for oral arguments. Therefore, their counsel jointly did the work of one counsel, and they should jointly be entitled to only one attorney's fee limit.

Furthermore, Petitioner Walls' Motion seeks costs for two motions for extensions and costs for a petition for rehearing, neither of which are allowed by Rules 222 and 242 of the Appellate Court Rules. *See* Rules 222(b) and 242(j)(2), SCACR. Rules 222 and 242(j)(2) both specifically state: "The allowance of additional costs will generally not be allowed except in the most extraordinary [of] circumstances." Rules 222(b) and 242(j)(2), SCACR. Petitioner Walls' Motion does not set forth any extraordinary circumstances.

CONCLUSION

For the reasons set forth above, Nationwide respectfully requests that Petitioners' Motions for $5,000 each in attorney's fees – $10,000 total – be denied, and Petitioners be awarded jointly no more than $5,000 for attorney's fees. Nationwide also respectfully requests that Petitioner Walls' Motion be denied as to the costs for two motions for extensions and costs for a petition for rehearing listed in her Motion.

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June 14, 2021

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS 2009-CP-04-0907
Nationwide Mutual Fire Insurance Company Plaintiff vs. Sharmin Christine Walls, Randi Harper, Estate of Christopher Adam Timms and Korey Mayfield Defendants Sharmin Christine Walls, Cross-Plaintiff vs. Korey A. Mayfield, Cross-Defendant	)	**ANSWER, COUNTERCLAIM AND CROSS-CLAIM**

The Defendant, Sharmin Christine Walls, hereinafter "Walls", answering the Complaint of the Plaintiff, would respectfully show unto the Court:

1.

This Defendant admits the allegations contained in Paragraph 2 of the Complaint

2.

This Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 1, 3, 4, 5 and 6, and therefore denies same.

3.

Defendant admits the allegations of Paragraphs 7 and 8.

4.

Paragraph 9 is admitted.

5.

Defendant does not have sufficient information with which to form belief as to the identify of the policy issued by Nationwide to Sharmin Walls for the period of June 17, 2008 to December 17, 2008 and would show unto the Court that a certified true copy of said policy as to the policy provisions and dates set and times should be presented to the Court and that policy then would be the best evidence of the coverage, terms, conditions, limitations and exclusions. This Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 10, 11, 12, 13 and 14.

6.

Paragraph 15 is admitted.

7.

Paragraph 16 is admitted.

8.

Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 17.

9.

Paragraph 18 is admitted.

10.

Paragraph 19 is specifically denied.

11.

This Defendant does not have sufficient information with which to form a belief as to Paragraph 20, but would emphatically and specifically state that the driver of the vehicle involved at the time wreck, which occurred on July 11, 2008, was Korey Mayfield.

12.

The allegations contained in Paragraph 21 are specifically denied and strict proof thereof demanded.

13.

Insofar as the allegations of Paragraphs 22, 23, 24, 25 and 26 seek to provide a declaration of rights and responsibilities and a requirement of payment from the Plaintiff, Nationwide, this Defendant would admit same.

14.

This Defendant would specifically deny the allegations contained in Paragraph 26 and 27, and require that the Plaintiffs make such allegations more definite and certain and be required to specifically state any provisions, conditions or limitations of their alleged policy which will be relied upon in the trial of this case.

15.

The allegations of Paragraph 28 are admitted.

16.

This Defendant denies each and every allegation contained in the Complaint except as to those herein above specifically admitted, modified and/or explained.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
BREACH OF CONTRACT

The preceding allegations are re-alleged.

17.

The Plaintiff sold it's policy of insurance to the Defendant Walls and specific inquiries were made in order to purchase both liability, UM and UIM coverage for the named and defined insureds in the policy.

18.

That the Defendant Walls paid all premiums due on said policies and all other acts that she was required to.

19.

That all times relevant hereto, the insurance policy aforementioned was in full force and effect and all premiums were current and Defendant complied with all conditions precedent to payment of first party benefits and UIM benefits in the amount of $100,000.00 each.

20.

That this Defendant is informed and believes that due to the extremely horrendous nature of the injuries that she suffered and the exorbitant amount of medical expenses that she has, that her injuries and damages greatly exceed the coverages provided by the policies and the Defendants failure and refusal to pay the limits provided for in the policy in the amount of $100,000.00 constitutes a breach of contract without reasonable cause, and in bad faith, pursuant to §38-59-40, South Carolina Code of Laws, 1976.

FOR A THIRD DEFENSE

The preceding allegations are re-alleged.

21.

That there is no evidence of any kind or nature that exists or that has been provided to this Defendant by Plaintiff, showing that any alleged exclusion including the "flight from law enforcement" exclusion applies to the facts of this case and therefore, the Plaintiff's Second Cause of Action should be dismissed with prejudice.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

The preceding allegations are re-alleged.

22.

That the attempt by the Plaintiffs to limit liability limits from the limits lawfully contracted for by this Defendant is unconscionable and is in bad faith and should be stricken from the policy as being void and against the public policy of this state.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM

The preceding allegations are re-alleged.

23.

That the Plaintiff has acted in bad faith and/or was negligent, reckless, wilful and wanton in one or more of the following particulars, to wit:

(a) In refusing to honor claims for first party benefits at the limit set in the policy of insurance between Plaintiff and Defendants;

(b) In unreasonably delaying payment of Defendant's claims

(c) In failing to communicate to the Defendants any reasonable justification for failing to honor Defendant's claims;

(d) In failing to attempt in good faith to effect a fair, prompt and equitable settlement of claims;

(e) In compelling Defendant to have to be engaged in a lawsuit in which her rights and benefits are severely limited contrary to her understanding and representations made by the agent of the Plaintiff at the time the policy was issued.

(f) That as a proximate and direct result of the negligence, bad faith, recklessness and wantonness, Defendant has been damaged including but not limited to mental and emotional distress created by the delay and bad faith refusal of the Plaintiff to pay, the cost of hiring legal counsel to pursue the claim, the cost and expenses associated with bringing this action and the loss of interest on the

money owed by the Plaintiff due to their refusal to timely honor claims;

(g) That Defendant is therefore is informed and believes that she is entitled to judgment against the Plaintiff for loss and damage in the sums to be determined by a jury for both actual and punitive damages.

CROSS-CLAIM AGAINST DEFENDANT KOREY MAYFIELD

The preceding allegations are re-alleged.

24.

The preceding allegations not inconsistent herewith are hereby incorporated herein by reference as fully and effectually as if set forth.

25.

The Cross-Plaintiff (hereinafter "Walls"), and the Cross-Defendant, (hereinafter "Mayfield"), are citizens and residents of Anderson County, South Carolina, and the wreck which caused serious injuries to Walls occurred in Anderson County, South Carolina. Accordingly, all parties, matters and things contained herein are within the jurisdiction of this Court.

26.

On July 11, 2008, at approximately 5:16 p.m., Walls was a passenger in a vehicle owned by her and which was being driven at the time by Korey A. Mayfield, traveling on Leatherdale Road in Anderson County in a 1988 Chevrolet automobile.

27.

That Korey A. Mayfield caused or was one of the causes of a serious wreck which resulted in serious and debilitating injuries to Walls.

28.

That Walls suffered injuries to her brain and multiple traumas to her body and was treated and currently continues to be treated for major pain and disability.

29.

The aforesaid collision and resulting injuries were the direct and proximate result of, or were due to and occasioned by, the negligence, gross negligence, recklessness, wilfulness and wantonness of Defendant Mayfield in the following particulars, to wit:

(a) In operating a motor vehicle at a speed that was excessive for the circumstances in there existing ;

(b) In failing to keep a proper lookout for others, when to fail to do so, the Defendant knew, or should have known, would result in damage to others, and, more

particularly, to Walls;

(c) In failing to keep the vehicle under proper control at all time in view of the circumstances then and there existing;

(d) In failing to keep a proper lookout for others on the highway , when to fail to do so, he knew, or should have known, would result in damage to others, and, more particularly, to this Walls;

(e) In failing to devote his full attention to the highway he was operating the vehicle on when he knew, or should have known, that to fail to do so would result in damage to others and more particularly, to the Walls;

(f) In driving said vehicle in a reckless, high speed manner, when the Mayfield knew or should have known that to fail to do so would result in damage and injury to others including the Walls;

(g) In failing to reduce his speed;

(h) In failing to look or to see what Mayfield should have seen had he been looking, when he knew, or should have known that such would cause an accident by failing to do so;

(i) In failing to give any signals or warning to Walls that he was about to proceed at a high rate of speed, or disobey the traffic and other laws of the State of South Carolina;

(j) In operating said vehicle in a highly improper and prudent manner in view of the circumstances then and there existing;

(k) In not being mentally and physically alert to the impending dangers;

(l) In failing to stop, swerve or change the course of the vehicle, when, it was apparent, or should have been apparent, by the exercise and due care, that the vehicle was about to wreck;

(m) In operating said vehicle in violation of the laws of the State of South Carolina;

(n) In failing to exercise the degree of care and prudence a reasonable person would have exercised under the same or similar conditions;

(o) In operating a vehicle under the influence and senses impaired from the use of alcohol and/or drugs;

(p) In overcorrecting his vehicle when it left the road and in failing to take evasive action in order to avoid colliding with a tree.

30.

That by reason of and in consequence of the aforesaid negligence, carelessness, recklessness, wilfulness, wantonness and unlawful acts of Mayfield, and as a direct and

proximate result thereof, Walls received severe personal injuries, necessitating medical treatment therefore, and the Walls was shocked, injured, bruised and lacerated in and about various parts of her body , limbs and suffered brain injury and as a direct result thereof, has been and will be incapacitated permanently, or for a long period of time, during all of which period of time, she has suffered and will continue to suffer great pain and mental anguish, has been prevented and will be prevented from pursuing her normal and ordinary affairs; has expended and will be compelled to expend sums of monies for doctors, medicines, nurses, hospitals, x-rays, and has otherwise been damaged in excess of One Million Dollars, actual and punitive damages.

WHEREFORE, Plaintiff prays:

1. For judgement against the Plaintiffs for actual and punitive damages;

2. For reformation of the insurance policy;

3. For an order striking any provisions as to limitations of coverage in the policy provided by the Plaintiffs;

4. For judgement on its cross-claim against the Defendant for damages actual and punitive in excess of one million dollars.

5. For judgement against the Defendant Mayfield for actual and punitive damages in such amount in excess of one million dollars, as the Court may award.

6. For such other further relief at the Court may deem just and proper.

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Anderson, South Carolina

April 9, 2009

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF ANDERSON	**C/A: 2009-CP-04-907**
Nationwide Mutual Fire Insurance Company,	
Plaintiff,	**ANSWER OF DEFENDANT RANDI M. HARPER**
v.	
Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, Deborah Timms, and Korey Mayfield,	**JURY TRIAL DEMANDED**
Defendants.	

TO: PLAINTIFF AND ITS ATTORNEY, J. R. MURPHY, ESQUIRE:

The Defendant Randi Harper, responding to the Complaint for Declaratory Judgment and Interpleader of the Plaintiff herein, hereby responds, alleges and says as follows:

(1) All allegations of the Plaintiffs Complaint not hereinafter admitted, modified or explained are expressly denied, and strict proof demanded thereof.

FOR A FIRST DEFENSE

(2) The allegations of Paragraphs 1, 2, 4, 5 and 6 are admitted upon information and belief.

(3) Paragraphs 3, 7, 8 and 9 are admitted.

(4) Paragraphs 10, 11, 12, 13 and 14 are denied on the basis that this Defendant does not have sufficient information to admit the same.

(5) Paragraphs 15 and 16 are admitted.

(6) Paragraph 17 is admitted upon information and belief.

(7) Paragraph 18 is admitted.

(8) Paragraph 19 is admitted upon information and belief.

(9) As to Paragraph 20 of the Plaintiff's Complaint, this Defendant alleges that the Defendant Mayfield was the driver of the 1998 Chevrolet involved in the accident on July 11, 2008.

(10) Paragraph 21 is denied.

(11) As to the allegations of Paragraphs 22, 23 and 24, this Defendant craves reference to Paragraph 9 of this Answer.

(12) As to Paragraphs 26 and 27, this Defendant denies that the terms of the policy will allow the Plaintiff's coverage to be limited to the minimum limits under South Carolina Law given the facts and circumstances of the case.

(13) Paragraph 28 of the Plaintiff's Complaint is denied.

FOR A SECOND DEFENSE BY WAY OF COUNTERCLAIM

(14) This Defendant alleges that, assuming the terms of the Plaintiff's policy are as alleged in its Complaint, but without admitting the same, the factual circumstances surrounding the accident of July 11, 2008 do not satisfy the alleged conditions, limitations or exclusions such that the Plaintiff is entitled to limit its exposure below those limits stated in the declarations pertaining to said policy.

WHEREFORE, this Defendant, having fully responded to the allegations of the Plaintiff's Complaint, prays that the Court deny the relief requested by the Plaintiff and declare that the full amount of the policy limits in the declarations of the alleged policy be made available to this Defendant as appropriate. This Defendant further prays for an award of costs from the Plaintiff.

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Dated: 7/2/09

State of South Carolina

Court of Common Pleas

County of Anderson

Nationwide Mutual Fire Insurance Company)
)
Plaintiff,) Transcript of Record
v.) 2009-CP-04-00907
)
Sharmin Christine Walls)
)
Defendant.)

July 29, 2021
Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

A P P E A R A N C E S:

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Attorney for the Plaintiff

Michael Mullinax, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

PROCEEDINGS

* * * * *

THE COURT: Okay. This is not on -- I've got an older docket. Tell me a little bit about it. And as I told them, we're having a little bit of enhanced Covid protocols so I want to get done and out of here so -- and so do you by the way, so go ahead.

MR. MULLINAX: Thank you, Your Honor. This is a case that began almost 14 years ago. This Court issued its order in a declaratory judgment action awarding Sharmin Walls and a co-plaintiff $100,000 on the coverage that was provided by Nationwide. Nationwide contested that the $100,000 was due and said that they were entitled to a stepdown provision reducing it to $25,000.

The case went to the Court of Appeals. Our position was served to the Supreme Court. The Supreme Court reversed the Court of Appeals and reinstated this Court's order. I have a copy of the page of briefs for the Court that JR has been served with and the motion itself.

To be brief, Your Honor, the motion is for damages. JR, on behalf of Nationwide, has now paid $80,000 as it was ordered to by the Supreme Court.

However, they have refused to pay interest on the judgment that was entered by this Court back on February 26, 2016, in the amount of $100,000.

This Court's order is contained in the motion and the brief, and it specifies that this Court finds that the defendants are entitled to coverage up to the full limits stated on the policy subject to a reduction for amounts already paid by Nationwide. The reason for that sentence was that they did pay $20,000 earlier ---

THE COURT: Right.

MR. MULLINAX: --- which left $80,000 to be paid.

Now, Mr. Murphy -- Mr. Murphy says that's not the case and it's not owed. However, if the Court will look on page 4 of the Supreme Court order, which I'm going to pass up so you don't have to thumb through everything, the Supreme Court had no trouble reading this Court's order and finding that Nationwide owed $100,000, saying on the fourth page of the order, "Thus, the Circuit Court held that Walls, Harper, and Timms were entitled to recover $100,000 per person pursuant to the liability limits in the Walls policy."

$100,000 was a sum certain. This Court entered

judgment in February of 2016. Exhibit 2 attached to the motion calculates the interest according to the statute. And the statute says 31 -- 34-31-20(b), "A money decree or judgment of a Court enrolled or entered must draw interest according to the law." Must draw interest. It is a statutory provision when judgements are entered.

Nationwide has a problem saying that a judgment was entered. The Supreme Court of our state had no problem saying that a judgment was entered for a sum certain in the amount of $100,000 back in 2016. The briefs -- and I'm going to sit down, Your Honor, because you can read them. I don't need to reiterate them for you, but those are the important parts.

Although, I will say the two cases cited by Mr. Murphy in his brief are not -- are inapposite to the case. One's a family court case where there was no judgment. The other was a circuit court case where the Court of Appeals order said there can't be a judgment entered until the case is tried, so there was never any judgment entered for a sum certain.

Those cases don't apply in this case, and we're asking for the Court to reinstate the amount of interest, which would be reduced by $80,000.

As my Exhibit 2 says, 124,339, but he's paid 80,000 on the premium. He's paid I think $800 -- I can't remember now. A little bit more, but it's somewhere around 44,000 plus or minus a few bucks.

THE COURT: Yeah, and I'll just say this off the record.

(A discussion was had off the record.)

THE COURT: So the issue really is, at what point does that -- does that amount become ---

MR. MURPHY: Yes, Your Honor. And -- and what we had, just very briefly. If you go back through the pleadings, although there were originally some counterclaim -- claims and cross claims seeking money damages, they were all dismissed by stipulations and orders. Okay. The only relief in front of this Court was declaratory.

The parties -- in lieu of making the injured victims go obtain a judgment against the at-fault motorist, Mr. Mayfield, they agree that if the coverage was ever determined to be more than the statutory minimum that it would be payable at that time. So there was never a money judgment entered in your typical liability case. I've litigated many, many coverage cases where there is a judgment, either a construction defect case, a personal injury

case, and there is a judgment enrolled that could be executed.

Your order, Your Honor, could not have been sent to the sheriff for collection. It simply says and it could only have said because the only relief sought at that time was declaratory, "The Court finds that defendants are entitled to coverage up to the full limits stated on the policy subject to reduction from the balance the parties have paid."

The parties had already agreed that if once that ruling became final after appeal, then the obligation to pay would be triggered, and that's the agreement that the parties entered into. It was not negotiated to pay interest from the day the execution of the agreement, from the day that the trial Court ruled on the declaratory judgement, or from any other day, so there's nothing to trigger interest.

And the cases that Mr. Mullinax says are inapposite are actually very critical. And this case that we cited, *Chambers v. Chambers*, says interest does not begin until a judgment is entered in a sum certain. It must be a money decree. And in that case, no judgment had been entered upon which interest could accrue. It says it would be

paradoxical to postpone collection of the judgement, which in this case the obligation didn't spring until the appeal was filed, yet penalize the party for not promptly paying.

And then the Court said, "We stress that the statutory public interest rate applies only to money awards entered for self-distribution when the award is due and payable immediately."

The -- the coverage that you found was not payable immediately. The parties had already agreed that it was not payable until there was a final ruling after appeal, so there's simply no money judgment that the statute would allow to apply a judgment.

Nationwide did not breach its agreement to pay. The principle amount was paid in full. And even though Nationwide could've possibly said, hey, 30 days is reasonable to pay, Nationwide would've had to pay interest from the date of the filing or the Supreme Court remitting the case was entered until the checks were delivered to Mr. Mullinax and Mr. Moorehead and that was 800 or 900 hundred respectfully.

So, Your Honor, there's no order that could've been executed by the sheriff. Nationwide was not

required to get a bond on appeal. There's been no supplemental proceedings to enforce any judgement nor could there be. And the parties simply agree to avoid all that unpleasantness. And this is an improper attempt to get something that was not bargained for and is not due under the law. There simply was never a money judgement entered and enrolled against Nationwide in this case.

THE COURT: How much are we talking about here?

MR. MULLINAX: $44,000, Your Honor.

THE COURT: Okay.

MR. MULLINAX: Your Honor, there was never any agreement. The Court can read the stipulation. It says payment would be made after the final decision of the declaratory judgement. You don't make any payments. Nationwide makes no payments until the appeal is final. They never make a payment. They don't pay during the appeal. Payments are made after the appeal.

The Supreme Court had no problem reading this Court's order providing for full coverage to mean $100,000. And the Supreme Court by its order said that this Court ordered judgment of $100,000 back in 2016.

I have cited to the Court that these two cases

are inapposite. I've made paper copies of those so you won't have to look them up, Your Honor. These copies have nothing to do with the issues before the Court. This is a statutory matter. Interest must be paid. We didn't ever agree to not pay it. And the Court order is what is referred to in 34-31-20(b), a money decree or judgment of the Court, and that's what we have. Thank you, sir.

THE COURT: All right. Y'all give me some time. I'm out of town the next two weeks. I'll look through it and let you know. Good seeing you.

MR. MURPHY: Thanks, Your Honor.

MR. MULLINAX: Thank you.

(The proceedings concluded at 11:58 a.m.)

* * * * *

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 29th day of July, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 20, 2022

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO. 2009-CP-04-00907

Nationwide Mutual Fire	)	**ORIGINAL**
Insurance Company, et al,	)	
Plaintiff(s),	)	
versus	)	
Sharmin Christine Walls, et al,	)	
Defendant(s).	)	

M O T I O N H E A R I N G

BEFORE: Honorable Judge J. Cordell Maddox

DATE: March 2, 2022

TIME: 10:40 a.m.

LOCATION: Anderson County Courthouse
100 South Main Street
Anderson, South Carolina 29624

REPORTED BY: Lisa M. Nowell, Certified Verbatim Reporter
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT:

The next one is Nationwide Mutual, Rule 59(e).

MR. MULLINAX:

Your Honor, in this case, what we're saying -- and do you need a copy of the motion, or do you have it?

THE COURT:

No, I've got it.

MR. MULLINAX:

We're asking you to reconsider the ruling based upon the fact that we believe that the Court has misapprehended the stipulation which was entered into by the parties, Nationwide Insurance Company, back in 2009 when we first started trying this case. The case went on and it has been all the way through every court that it could possibly go to, and the Supreme Court upheld your ruling that was made in 2016 which awarded a judgment to Sharmin Walls for $100,000. Why they're saying that's not a judgment, I don't know. But the Supreme Court said it was, and the Supreme Court is what counts ultimately in this state. What we're saying, Your Honor, is that the Order refers to a wherefor provision in the stipulation which says Nationwide will pay $100,000 in exchange for the release of Cory Mayfield to Sharmin Walls. The wherefor clause says the parties agree the payment set

forth. "The payment set forth -" the payment set forth is $100,000 - "shall be made after a final decision in the above declaratory judgment action, including appeal in the declaratory judgment action." Your Honor, in the history of the 50 years that I've practiced law, no insurance company has ever paid a judgment until the appeals are final. They don't pay it when you rule back in 2016 and then take it back in 2021 when the Supreme Court upheld what you said. They pay it when the appeal is over with. So that sentence in and of itself doesn't mean anything. Nationwide is trying to get you to ascribe a meaning which makes no sense. What we're asking the Court to do, Your Honor, is to consider the fact that there was a judgment, the fact that interest was not mentioned, interest provided by a statute, SC Code 34-31-20, which says that "a money decree or judgment of a court enrolled or entered must". It is mandatory -- it is a mandatory, unambiguous statement of law by the legislature who says judgments must bear interest. We're asking you to reconsider the ruling based upon the fact that there was no voluntary waiver of interest. Interest was never mentioned. Interest was never a part of any meeting of the minds between the parties, especially seven years before the judgment. Waiver of interest

would have to be a voluntary and intentional relinquishment of a right. It was not. There was no referral to that in any way whatsoever. This Court entered a judgment for $100,000. They didn't pay it because it was appealed, and it took six years to go through all of the courts until it finally came to the Supreme Court and the judgment of this Court in 2016 was upheld. The law in this state is that the courts in our state do not enforce contracts which are violative of public policy, statutory law - which the interest provision is statutory law - or provisions of the Constitution. And that was more recently set forth in the case of Simpson v. Myrtle Beach which was 644 S.E.2nd 663, a copy of that I'll give Your Honor to consider. And in connection with our motion, the most recent case ascribing to the plain meaning rule, the courts are giving words their "plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. 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." The statutory interest statute provides that it is a mandatory requirement. The most recent case is Garrison v. Target Corporation. Matter of

fact, it was an Anderson County case. It was filed most recently by the Supreme Court again, January 26th, 2022. There's a copy of that for the Court and for Nationwide's attorney. After looking at these cases, Your Honor, and considering this argument, we are asking the Court to please reconsider this ruling and award interest which was set forth in the motion and in the proposed Order which was submitted to the Court. Thank you.

THE COURT:

Okay. Yeah, I mean, I'll tell you, I thought about this one a lot. I mean, this one obviously was on your first year in on your motion for interest. So, yeah, this was pretty high on my mind. Yes, sir?

MR. MURPHY:

Just briefly, Your Honor. Seeing we're on Rule 59, there's no argument that was made that is not addressed in your prior ruling. I went through all of their points. Most of them are addressed on page 2 and on page 4. And the crux of their argument, their argument that the statute applies is, was your 2016 Order an Order that the sheriff could have taken to Nationwide and collected the money on it, and the answer is no. There was no direct claim between those parties but for the agreement, and the agreement circumvented the

requirement of Ms. Walls or Ms. Harper from obtaining a judgment on a negligence case against Cory Mayfield. In exchange for that, Nationwide agreed to contractually obligate themselves directly to Walls and Harper as opposed to merely being the indemnitor of Mr. Mayfield. So those are two very different scenarios, and that Order could not have been used to do that. In fact, it would not have even supported a breach of contract after that 2016 because the contractual agreement between Nationwide, Walls, and Harper was that any payments were not due and owing until there was a final ruling in the case after appeal. So as of June 2021, Nationwide was out of appeals, and it was at that moment, June 3rd, 2021, obligated to pay the balance of the coverage that the Court had awarded at that time. Nationwide paid it on July 7th of 2021 and paid the 34 or 35 days of interest in between while they decided. That was the only amount that was ever due and owing. And had they not paid, Walls and Harper could have sued them on the agreement because, "You said you would pay us if you lost, and you lost." There was no agreement to pay interest to that situation. And the statute, as the Court directly ruled already, did not apply because it was not a money judgment. Go back to the original case. It was a

declaratory relief only. All the money damage causes of action were voluntarily dismissed well before your ruling in 2016. So there was not a piece of paper that the sheriff could have taken and collected on. That's what a money judgment is. There wasn't a money judgment. The Court was correct to find that interest did not accrue at that time.

THE COURT:

Okay. Y'all give me a couple of days to look at these cases. One of them, I haven't seen. So I'll let you know. Like I said, I thought long and hard about this whole case.

MR. MULLINAX:

Thank you.

(THERE BEING NOTHING FURTHER, THIS MOTION HEARING CONCLUDED AT 10:50 A.M.)

CERTIFICATE OF REPORTER

I, Lisa M. Nowell, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing motion hearing was taken before me on the date and at the time and location stated on page 1 of this transcript.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Lisa M. Nowell

Lisa M. Nowell, CVR
Notary Public for S.C.
Commission Expires: 11/22/23