

**RECEIVED**

**Nov 15 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-000703

Progressive Northern Insurance Company, ..... Respondent,

v.

Gloria Oliver, Richard Prothro, and Sharon Prothro, Defendants,  
Of Whom Gloria Oliver is the ..... Appellant.

**INITIAL REPLY BRIEF OF APPELLANT**

J. Thomas McElveen, III  
John R. Moorman  
Bryan Law Firm of SC, L.L.P.  
Post Office Box 2038  
Sumter, South Carolina 29151  
(803) 775-1263  
Attorneys for Appellant

Other Counsel of Record:

J.R. Murphy, Esquire  
Wesley B. Sawyer, Esquire  
Sarah E. Caiello, Esquire  
Murphy & Grantland, P.A.  
P.O. Box 6648  
Columbia, South Carolina 29260  
Attorneys for Respondent Progressive Northern Insurance Company

## TABLE OF CONTENTS

	<b>Page</b>
Table of Authorities .....	i
Argument in Reply .....	1
Conclusion .....	6

**TABLE OF AUTHORITIES**

**CASES**

**Page**

Auto Owners Insurance Company v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).....1 and 5

Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 161 S.E.2d 822 (1968).....2 and 3

Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005).....3

Lovette v. U.S. Fid. & Guar. Co., 274 S.C. 597, 600, 266 S.E.2d 782, 783 (1980).....3

Nationwide Insurance Company of America v. Knight, 433 S.C. 371, 858 S.E.2d 633 (2021).....1, 2, and 3

Nationwide Insurance Company of America v. Knight, 428 S.C. 451, 835 S.E.2d 538, (Ct. App 2021).....2 and 3

Owens v. Graham, 258 S.C. 46, 186 S.E.2d 816 (1972).....5

United Services Automobile Association v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021).....1 and 4

**STATUTES**

S.C. Code Ann. § 38-77-20.....3

S.C. Code Ann. § 38-77-340.....2 and 3

## ARGUMENT IN REPLY

Without restating the issues or making redundant arguments which were previously set forth in the Initial Brief of Appellant, Appellant now offers the following points of clarification and rebuttal to the arguments raised by the Initial Brief of Respondent.

Respondent inaccurately contends in its Initial Brief that the South Carolina Supreme Court answered the very issue before this Court in United Services Automobile Association v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021), an opinion which relies heavily upon another recent decision in Nationwide Insurance Company of America v. Knight, 433 S.C. 371, 858 S.E.2d 633 (2021). The issue in the instant case is whether or not an *innocent guest passenger* is entitled to uninsured motorist (UM) coverage protection as the result of an automobile wreck caused by an excluded driver, and the closest the South Carolina Supreme Court has come to directly addressing this issue is in Auto Owners Insurance Company v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).

The differences between the case at bar and the Knight and Pickens cases are significant and cannot be ignored, whereas the most appreciable differences between the facts in this case and the facts in Rollison are minor and insignificant from a practical standpoint as they pertain to the applicability of coverage: the Rollison case involved the extension of underinsured motorist (UIM) coverage to an innocent guest passenger where a non-permissive driver was involved and the present situation involves the extension of UM coverage to an innocent guest passenger where an excluded driver was involved.

In Knight, Kristina Knight's husband, Danny Knight, was an excluded driver on her automobile insurance policy with Nationwide. Nonetheless, following Danny Knight's death in a motorcycle wreck, Kristina Knight attempted to collect UIM coverage from Nationwide. In stark contrast to the facts of the present case, Kristina Knight attempted to collect UIM coverage from

Nationwide despite her actual knowledge that Danny Knight was an excluded driver on her policy, and despite the fact that she was literally “at the table” when the decision to exclude Danny Knight was made.

As such, the South Carolina Court of Appeals and the South Carolina Supreme Court held that the coverage exclusion in the Nationwide policy was valid and no UIM coverage was available under the automobile insurance policy with Nationwide.

Both the South Carolina Court of Appeals and the South Carolina Supreme Court spent considerable time in Knight addressing the legislative intent behind South Carolina Code Ann. § 38-77-340. The South Carolina Court of Appeals stated that to allow for the intentional exclusion of a resident relative from liability coverage, but not UIM coverage offered as optional, “additional coverage” in conjunction with the same liability policy, would impose a forced construction of the statute not intended by the General Assembly. Nationwide Insurance Company of America v. Knight, 428 S.C. 451, at 459, 835 S.E.2d 538, at 542 (Ct. App. 2021). Additionally, the South Carolina Court of Appeals stated that “[i]n enacting § 38-77-340, the Legislature empowered consumers to choose to limit their coverage—and corresponding premium—within applicable statutory constraints.” Id.

The South Carolina Supreme Court expounded upon the South Carolina Court of Appeals’ analysis by stating that South Carolina Code Ann. § 38-77-340 permits an insured—like Knight—to purchase insurance for herself at a reasonable rate without having to pay the cost of insuring the excluded driver, whose bad driving record could make the cost of the policy much higher, if not prohibitive and stating that “[t]he purpose of [section 38-77-340] is to ‘alleviate the problem often faced by the owner of a family policy, who ... has a relatively safe driving record but is forced to pay higher premiums because another member of the family ... is by definition also included in the

policy coverage.” Knight, 433 S.C. at 379, 858 S.E.2d at 637, quoting Lovette v. U.S. Fid. & Guar. Co., 274 S.C. 597, at 600, 266 S.E.2d 782, at 783 (1980). Accordingly, the South Carolina Supreme Court held that the Excluded Driver endorsement validly excluded Danny Knight from the UIM coverage that his estate was attempting to stack. Id., at 381, 858 S.E.2d at 638.

Respondent inaccurately states that Appellant wishes for the Court to simply ignore the excluded driver form altogether. To the contrary, Appellant is not ignoring the excluded driver form but rather contests the excluded driver form’s applicability to the claims of an innocent guest passenger. Further, Respondent claims that Appellant incorrectly ignores the named driver exclusion statute (South Carolina Code Ann. § 38-77-340) in the hopes that its impact will be negated – but Respondent completely ignores a directive set forth in one of the cases it has previously relied upon as a South Carolina Court of Appeals opinion and now also relies upon as an opinion of the South Carolina Supreme Court, Knight, that “[a] court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.” Knight, 428 S.C. at 455, 835 S.E.2d at 539, quoting Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, at 231, 612 S.E.2d 719, at 724 (Ct. App. 2005).

So while Respondent relies heavily on the Knight analysis of the legislative intent behind South Carolina Code Ann. § 38-77-340, the analysis is different in the present case when taken in conjunction with the whole statute and the policy of the law. According to South Carolina Code Ann. § 38-77-20, “[t]his chapter is to be liberally construed in order to achieve its purposes.” The uninsured motorist statute “is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose intended may be accomplished.” Gunnels v. American Liberty Ins. Co., 251 S.C. 242, at 247, 161 S.E.2d 822, at 824 (1968).

Here, the Respondent would have the Court completely disregard the liberal interpretation of Chapter 77 as well as the purpose of requiring uninsured motorist coverage for the protection of injured persons like the Appellant. Unlike the excluded driver in Knight, the Appellant was *not* the spouse of the actual insured but was an innocent guest passenger. In the instant case, Appellant had no knowledge of any excluded driver provision, and this is undisputed by the parties. Furthermore, the Appellant was *not* a party to the insurance contract between Progressive Northern Insurance Company and its insured, Sharon Prothro, and Appellant derived no benefit from the excluded driver provision of that contract.

In Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021), Belinda Pickens attempted to collect UIM coverage from her insurance policy with USAA after sustaining injuries in a vehicle driven by her son, who was an excluded driver on her insurance policy with USAA insurance company. Again, Belinda Pickens was literally “at the table” with the insurance company and was privy to the decision to list her son Kevin Simms as an excluded driver. Yet she rode in a vehicle covered by the policy with her son (whom she knew to be an excluded driver under the policy) driving, and nonetheless sought UM coverage under the policy after suffering injuries in a collision which occurred while her excluded son was driving.

The Pickens Court applied much of the same reasoning espoused by the South Carolina Supreme Court in Knight. Specifically, the South Carolina Supreme Court in Pickens held that “where the parties agree to exclude coverage when a named driver is operating a vehicle, that exclusion extends to all forms of coverage in the policy.” Id., at 65, 862 S.E.2d at 445. The Respondent states that this is an unequivocal holding, yet the Respondent ignores an obvious distinction that cannot be ignored: unlike the individuals in both Pickens and Knight, the Appellant was an innocent guest passenger – not a party to the insurance contract or the decision to exclude

a driver which was reached between the Respondent and its insured, Sharon Prothro. The facts of Pickens and Knight are distinguishable from the present case in that the individuals making claims under the respective policies in those cases were each aware of the exclusions in effect under those policies yet attempted to reap coverage benefits that they had every reason to know would be denied. The Pickens and Knight scenarios are appreciably different from the situation involving the Appellant, an innocent guest passenger.

Finally and despite the fact that the Rollison opinion addressed an insurance coverage dispute involving a non-permissive driver rather than an excluded driver, to deny UM coverage to the Appellant – an innocent guest passenger – would create the same “absurd result” that the South Carolina Supreme Court cautioned against in Rollison, and furthermore would frustrate the liberal construction of the uninsured motorist statute which was intended by the General Assembly. As stated by the South Carolina Supreme Court in Rollison, “whether one is a mere passenger or a ‘guest’ for purposes of determining an ‘insured’ is largely dependent upon the facts and circumstances of each case, *particularly the relationships among the involved parties*. Rollison, 378 S.C. at 612, 663 S.E.2d at 491, citing Owens v. Graham, 258 S.C. 46, at 51, 186 S.E.2d 816, at 818 (1972) (“Whether one is a passenger or a guest depends largely upon the facts and circumstances of each particular case.”) [emphasis added]. As illustrated in the previous paragraphs, the relationships among the involved parties are remarkably different in the present case than the relationships among the involved parties in the Pickens and Knight cases, which did not involve innocent guest passengers.

### CONCLUSION

Based upon the foregoing, in addition to the arguments and conclusion previously submitted in Appellant’s Initial Brief, the analyses in both the Knight and Pickens opinions are

distinguishable from the present case because the Appellant was an innocent guest passenger and had no relationship whatsoever with the Respondent, an insurance company, nor did she have any sort of relationship with the Respondent's insured or the excluded driver.

Wherefore and based upon the foregoing, Appellant respectfully requests that the Court reverse the lower court's ruling granting Respondent's Motion for Summary Judgement, that Respondent's named driver exclusion shall not prevent Appellant, an innocent guest passenger, from recovering uninsured motorist coverage provided by Respondent under policy number 55178995, and that the Court find that the uninsured motorist coverage provided by Respondent pursuant to policy number 55178995 is applicable to claims for damages sustained by Appellant as a result of the automobile collision which occurred on July 24, 2016.

Respectfully submitted,



---

J. Thomas McElveen, III  
John R. Moorman  
Bryan Law Firm of SC, L.L.P.  
Post Office Box 2038  
Sumter, South Carolina 29151  
(803) 775-1263  
Attorneys for Appellant

November 15, 2022

**RECEIVED**

**Nov 15 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-000703

Progressive Northern Insurance Company, ..... Respondent,

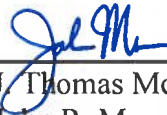
v.

Gloria Oliver, Richard Prothro, and Sharon Prothro, Defendants,  
Of Whom Gloria Oliver is the ..... Appellant.

**PROOF OF SERVICE**

I certify that I have served the Initial Reply Brief of Appellant on Progressive Northern Insurance Company by email on November 15, 2022, to its attorneys of record, Wesley B. Sawyer, Esquire at [wsawyer@murphygrantland.com](mailto:wsawyer@murphygrantland.com), John R. "J.R." Murphy Esquire, at [jrmurphy@murphygrantland.com](mailto:jrmurphy@murphygrantland.com), and Sarah E. Caiello, Esquire at [scaiello@murphygrantland.com](mailto:scaiello@murphygrantland.com).

November 15, 2022

  
\_\_\_\_\_  
J. Thomas McElveen, III  
John R. Moorman  
Bryan Law Firm of SC, L.L.P.  
Post Office Box 2038  
Sumter, South Carolina 29151  
(803) 775-1263  
Attorneys for Appellant