IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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Case No. 2016-000679

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, ...Respondents.

FINAL REPLY BRIEF OF APPELLANT

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SUMMARY OF THE ARGUMENT

If left unaltered, the Circuit Court's ruling constitutes a major shift in South Carolina insurance law. For more than a century, insurers have used exclusions in insurance policies to dictate which risks they will or will not assume on behalf of an insured. According to the Circuit Court, parties entering a contract providing voluntary insurance no longer have the freedom to choose what the policy will or will not cover. Such a change must come from the legislature, not the courts, and the plain language of South Carolina's omnibus statute in § 38-77-142 gives no indication that the General Assembly intended to upend the basic legal principles for voluntary insurance contracts. Therefore, the Circuit Court's Order should be reversed and judgment should be entered in Nationwide's favor.

This case arises out of Korey Mayfield's unlawful decision to disregard a trooper's blue lights and lead law enforcement on a high-speed chase. He was driving at over twice the posted speed limit when he lost control of the car. There is no doubt that the severity of the accident and the resulting injures are directly related to the speed at which Mayfield was driving while trying to elude arrest.

The sole question before this Court is whether an exclusion that limits coverage to the minimum amount required by the Financial Responsibility Law when an insured such as Mayfield is committing a felony and fleeing from law enforcement comports with public policy. It is difficult to conceive of an exclusion that more closely comports with public policy. The General Assembly has shown that South Carolina feels so strongly about the act of fleeing from law enforcement that it has deemed the conduct criminal. Nationwide's policy merely excludes coverage – beyond the mandatory minimum – for conduct that the General Assembly deems criminal: "This coverage does not apply, with regard to any amounts above the minimum limits

required by the South Carolina Financial Responsibility Law . . . to: . . . 6. Bodily injury or property damage caused . . . while committing a felony; or while fleeing a law enforcement officer." (R. p. 109-110). An exclusion that prevents an insured tortfeasor from receiving the benefit of liability coverage while participating in conduct that South Carolina deems criminal does not conflict with public policy.

In their brief to this Court, Respondents concede that Mayfield was fleeing law enforcement and committing a felony. (Brief of Respondents, p. 5). Respondents also argued to the Circuit Court – and the Circuit Court found – that the exclusions were ambiguous. For the first time, Respondents now concede that the policy "unambiguously limits coverage" when Mayfield is committing a felony or fleeing law enforcement. (Brief of Respondents, p. 7). Walls, Harper, and Timms' injuries resulted from Mayfield's felonious conduct while he fled from law enforcement. Therefore, the exclusions for flight from law enforcement and commission of a felony apply to preclude liability coverage beyond the statutory minimum limits.

I. The Supreme Court's holding in *Williams* only applies to exclusions that are arbitrary and capricious.

Respondents rely solely upon the Supreme Court's holding in *Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705 (2014). They contend that the Supreme Court in *Williams* broadly held that South Carolina Code § 38-77-142(c) prohibits all step-down provisions in any automobile liability policy. However, the Supreme Court's holding is not nearly that broad. The Supreme Court explained, "once the face amount of coverage is agreed upon, it may not be ***arbitrarily reduced*** or limited by conflicting policy provisions that effectively retract this stated coverage." *Id.* at 604, 762 S.E.2d at 715 (emphasis added). The Supreme Court reviewed case law from multiple jurisdictions and concluded, "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 (emphasis added). The Supreme Court then went on to hold that the family member exclusion in that case was arbitrary and capricious: "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 and capricious and violative of public policy." *Id.* at 607, 762 S.E.2d at 717. Therefore, the Supreme Court's holding in *Williams* is limited to those exclusions that are arbitrary, capricious, and injurious to the public good.

Therefore, the question before this Court is whether the policy exclusions for Mayfield's liability arising out of his decision to flee from law enforcement and his commission of a felony are arbitrary and capricious. To find the answer, this Court needs to look no further than the fact that the South Carolina General Assembly saw fit to deem Mayfield's conduct a felony under South Carolina's criminal statutes. Certainly, an insurance policy that excludes liability coverage – which indemnifies a tortfeasor – for the insured-tortfeasor's felonious conduct does not conflict with the public policy of the State of South Carolina as set forth in the criminal statutes. If conduct is so abhorrent that South Carolina codifies that conduct as a felony, it certainly is abhorrent enough to be excluded under the plain terms of a voluntary contract for insurance.

The flight from law enforcement and felony exclusions are far from arbitrary, capricious, or harmful. As discussed at length in Nationwide's principal brief, an exclusion that merely prohibits conduct that the South Carolina General Assembly has deemed criminal is not arbitrary or capricious. The Supreme Court in *Williams* discussed what it meant by a provision being arbitrary and capricious:

> Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination of 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.

Id. at 599, 762 S.E.2d at 712 (citation omitted). The exclusions here are not manifestly injurious to the public welfare. To the contrary, the exclusions support important public policy principles that prohibit insuring someone for their criminal conduct.

Numerous courts across the county have found that felony or flight from law enforcement exclusions in automobile and other types of insurance policies do not violate public policy. *See e.g., Southern Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008) (holding that eluding-lawful-arrest exclusion did not violate public policy as stated in state's compulsory insurance statute or no-fault statute); *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 n.2 (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 . . . .") (auto policy); *Cotton States Mut. Ins. Co. v. Neese*, 254 Ga. 335, 341-42, 329 S.E.2d 136, 142 (1985) (holding that application of flight from law enforcement exclusion in automobile liability policy to amounts exceeding state's minimum limits did not violate public policy); *Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195 (Ala. Civ. App. 2005) (holding felony exclusion in automobile liability policy did not violate public policy where insured was fleeing law enforcement); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Bohner v. Ace American Ins. Co.*, 359 Ill. App. 3d 621, 834 N.E.2d 635 (App. 2 Dist. 2005) (holding that criminal act exclusion in auto gap policy was enforceable and did not violate public policy); *Slayko v. Security Mut. Ins. Co.*, 98 N.Y.2d 289, 774 N.E.2d 208 (2002) (holding that a criminal activity exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Co. v. Hadley*, 264 Neb. 435, 445-46, 648 N.W.2d 769, 779-80 (2002) ("As a general rule, the majority of courts that have addressed the issue hold that a provision in a

homeowner's policy which excludes coverage for claims arising from criminal acts . . . does not violate public policy."); *Allstate Ins. Co. v. Peasley*, 131 Wash. 2d 420, 932 P.2d 1244 (1997) (holding that criminal acts exclusion in homeowners policy did not violate public policy); *ANPAC v. Clendenen*, 793 S.E.2d 899, 908 (W. Va. 2016) ("Indeed, the majority of jurisdictions to consider the question raised . . . apply intentional acts exclusions similar to the exclusions in [the] policies to preclude coverage to an insured based on the intentional or criminal acts of a co-insured") (homeowners policy); *Pompa v. American Family Mut. Ins. Co.*, 520 F.3d 1139 (10th Cir. 2008) (applying Colorado law and holding that a criminal acts exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Group v. Kostaneski*, 688 N.W.2d 410, 415 (S.D. 2004) ("It is contra bonos mores to allow a man to insure against the consequences of his own . . . criminal conduct.") (homeowners policy); *Auto Club Group Ins. Co. v. Daniel*, 254 Mich. App. 1, 5, 658 N.W.2d 193, 196 (Ct. App. 2002) ("[A]s a matter of public policy, an insurance policy that excludes coverage for a person's criminal acts serves to *deter* crime, while a policy that provides benefits to those who commit crimes would *encourage* it.") (homeowners policy); *Princeton Ins. Co. v. Chunmuang*, 151 N.J. 80, 698 A.2d 9 (1997) (holding that criminal acts exclusions are "valid and do not violate public policy.") (medical malpractice policy); *New Mexico Physicians Mut. Liability Co. v. LaMure*, 116 N.M. 92, 860 P.2d 734 (1993) (holding that a criminal acts exclusion in a physician's professional liability policy did not violate public policy); *Rivera v. Nevada Medical Liability Ins. Co.*, 107 Nev. 450, 455, 814 P.2d 71, 74 (1991) (same); *Barker v. California-Western States Life Ins. Co.*, 252 Cal. App. 2d 768, 776, 61 Cal. Rptr. 595 (1967), *cert. denied*, 390 U.S. 922, 88 S. Ct. 855 (1968) (concluding felony exclusion clause in a life insurance policy is not contrary to public policy); *James v. Louisiana Laborers Health & Welfare Fund*, 29 F.3d 1029 (5th Cir. 1994) (upholding provision in health

insurance plan excluding coverage for expenses incurred in the course or commission of a felony); *Sisters of the Third Order of St. Francis v. Swedish American Group Health Benefit Trust*, 901 F.2d 1369, 1370 (7th Cir. 1990) (holding that because drunk driving is illegal activity under Illinois law, insured was not able to recover from a health plan for the injuries he sustained in a drunk driving accident); *Littlefield v. Acadia Ins. Co.*, 392 F.3d 1, 12 n.12 (1st Cir. 2004) ("We note that numerous state courts have also held that enforcement of similar insurance policy provisions excluding coverage for criminally caused loss or liability does not violate the public policy of those states.") (boating policy).

"Indeed, this public-policy principle is so compelling that, in many jurisdictions, insurers may actually violate public policy if they fail to include criminal-acts or intentional-acts exclusions in their policies." *Bailey*, 255 P.3d at 1048; *See also Freightquote.com, Inc. v. Hartford Cas. Ins. Co.*, 397 F.3d 888, 893 (10th Cir. 2005) (applying Kansas law); *St. Paul Fire and Marine Ins. Co. v. Jacobson*, 826 F. Supp. 155, 162 (E.D. Va. 1993), *aff'd*, 48 F.3d 778 (4th Cir. 1995) ("To be sure, public policy generally bars coverage for an insured's intentional wrongdoing or criminal misconduct."); *Wilshire Ins. Co. v. S.A.*, 224 Ariz. 97, 101, 227 P.3d 504, 508 (Ct. App. 2010), *review denied* (Sept. 21, 2010) (holding that public policy in favor of protecting rights of victims of criminal wrongdoing to receive compensation for their injuries did not override the "public policy against permitting one to insure himself against civil damages for the consequences of a crime."); *State Farm Fire and Cas. Co. v. Schwich*, 749 N.W.2d 108 (Minn. Ct. App. 2008) (holding that it violates public policy for an insurer to indemnify an insured for commission of a serious criminal act).

"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." Couch on Ins. (3d) § 121:92.

"The reason for the exclusion is to relieve the insurer from the tremendously increased risks attendant to racing vehicles." *Id.* Courts cite various public policy considerations in holding that a criminal acts exclusion is valid and enforceable. These considerations range from discouraging insureds from committing criminal conduct to enabling carriers to better predict risk. *See e.g., Jacobson*, 826 F. Supp. at 163 ("Barring coverage in these circumstances discourages insureds from intentionally harming others, as intentional wrongdoers cannot then rely on the availability of insurance to shield them from the civil consequences of their misconduct."); *Landry v. Leonard*, 720 A.2d 907 (Me. 1998) ("People who purchase homeowners' policies do not intend that victims' injuries caused by convicted robbers during armed robbery be covered by the robber's insurance nor do they expect to pay premiums to share in the coverage of such risks."). The Supreme Court of Colorado in *Bailey* recognized the public policy concerns of protecting the right to freedom of contract and allowing insurers to shift risk based on the insured's conduct, especially when that conduct significantly increases the risk of the insurer's liability and may be encouraged by indemnification. 255 P.3d at 1046-47. "Most felonious criminal misconduct, like intentional misconduct, significantly alters the calculus of risk between the insurer and the insured, subjecting the insurer to increased and significantly greater risk." *Id.* Moreover, insureds "can keep themselves from engaging in felonious conduct . . . ." *Id.*

The South Carolina General Assembly established its public policy with respect to the conduct that is excluded in this case when it criminalized the activity. If Mayfield's conduct subjects him to serious criminal prosecution, then it certainly does not violate public policy for a voluntary contract of insurance to exclude coverage for that conduct. Moreover, the overwhelming majority of courts across the country confirms that flight from law enforcement and felony exclusions do not conflict with public policy.

An exclusion based upon felonious conduct has a clear, intelligible, and logical basis, and is neither arbitrary nor capricious. In addition, application of the flight from law enforcement and felony exclusions do not harm the public welfare. Rather, the exclusion bolsters South Carolina public policy of prohibiting illegal conduct by making sure that – just as there are criminal consequences for Mayfield's conduct – there are civil consequences for his illegal, felonious conduct.

II. Walls' argument that applying the exclusion in this case is unjust because it reduces the coverage available to her as a victim ignores the simple fact that she could have protected herself by purchasing underinsured motorist coverage.

Respondents contend the exclusions produce a harmful effect because they reduce coverage to Sharmin Walls, the named insured, "who was an innocent passenger, as well as the purchaser of the $100,000 coverage." (Brief of Respondents, p. 11). Respectfully, Walls purchased $100,000 in ***liability*** coverage. Walls concedes that she rejected ***optional underinsured motorist*** (UIM) coverage. (Brief of Respondents, p. 1). Had she purchased optional UIM coverage, she and her passengers would have been protected.

Respondents' argument confuses the nature of liability coverage and first-party UIM coverage. Liability coverage focuses on the identity and conduct of the tortfeasor, not the victim. When a carrier issues liability coverage, the insurer agrees to defend and indemnify the insured tortfeasor for his or her liability to third parties, subject to the terms and conditions of the policy. The insurer is not contracting with the injured parties. Therefore, the test of coverage focuses on the identity of the tortfeasor – i.e., does the tortfeasor qualify as an insured – and the conduct of the insured – does the conduct of the tortfeasor fall within the coverage of the policy. The conduct

of the tort victims has no bearing on whether the terms and conditions of the policy provide coverage.[1]

In contrast, UIM coverage focuses on the identity of the victim. When an insured purchases UIM coverage, the insurer agrees to pay an insured victim for injuries caused by the torts of an underinsured motorist. Typically, the identity of the underinsured motorist tortfeasor is not at issue. In fact, an insured can recover first-party uninsured benefits even in situations where the at-fault motorist cannot be identified. *See* S.C. Code Ann. § 38-77-170. Moreover, the conduct of the underinsured motorist will not affect the insurer's obligations to its insured so long as the injuries result from the underinsured motorist's ownership, maintenance or use of a motor vehicle. Rather, the question in a UIM case is whether the victim qualifies as an insured.

Walls did not purchase UIM coverage. She only purchased liability coverage. Therefore, whether the exclusion applies is determined by the conduct of the tortfeasor – Mayfield. As with the vast majority of torts, the Respondents may be innocent, but their innocence does not change the insurer's responsibilities under a liability policy. The question is whether the conduct of the insured party – Mayfield – falls within a policy exclusion. The Circuit Court determined that Mayfield was fleeing law enforcement and committing a felony at the time of the collision. Therefore, Mayfield's conduct falls within two exclusions, and liability coverage for this accident is limited to the minimum amounts required by the Financial Responsibility Act. If this Court refused to apply the exclusion merely because one of the tort victims is the named insured, it would

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[1]. In fact, the Supreme Court's holding in *Williams* is an example where a provision limiting coverage based on the identity of the victim was considered arbitrary and capricious. However, the exclusion in this case focuses on the conduct of the insured, not the identity of the victim. The Supreme Court in *Williams* expressed concern that members of the insured's household would be treated differently from the public at large. 409 S.C. at 606, 762 S.E.2d at 716. Here, the exclusion treats all injured parties the same. Instead, the focus of the felony and flight from law enforcement exclusions is on the wrongful conduct of the insured who caused the injuries.

in effect be converting the policy from one of liability – which she purchased – to UIM coverage – which she rejected. From that perspective, giving Walls coverage that she rejected and never paid for violates public policy.

III. If the *Williams* Court construed § 38-77-142 to prohibit any policy provision that excludes voluntary coverage – regardless of the merits of the exclusion – then the decision in *Williams* should be overturned.

Nationwide believes the Supreme Court in *Williams* meant what it said: a family member exclusion is unenforceable because allowing "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 and capricious and violative of public policy." *Id.* at 605-06, 762 S.E.2d at 716. If the Supreme Court deemed all exclusions to be violative of public policy, then the Supreme Court would not have addressed whether it believed the family member exclusion was arbitrary and capricious. However, if Respondents are correct, and the *Williams* case actually says that all exclusions in automobile insurance policies are prohibited by § 38-77-142(C), then *Williams* should be overturned.

A. The purpose of the omnibus statute is to define who must be insured, not what conduct must be insured.

Section 38-77-142 is South Carolina's "omnibus" statute. *See* Couch on Ins. (3d) § 111:29, n.1 (listing S.C. Code § 38-77-142 as an omnibus statute); *See also St. Paul Fire & Marine Ins. Co. v. American Ins. Co.*, 251 S.C. 56, 60, 159 S.E.2d 921, 923 (1968) ("The legislature has by statute required that liability insurance policies contain coverage while a vehicle is operated with the consent of the named insured. Such provision is referred to as the omnibus clause."). The omnibus statute "defines the individuals who qualify for coverage under the policy." *Id.* These clauses "ordinarily define the term 'insured' to include not only the named insured but also any

other person using a covered automobile with the expressed or implied permission of the named insured." *Id.*

Pursuant to § 38-77-142, a policy cannot contain an exclusion or other provision that reduces the ***coverage*** based on the fact that a driver is a permissive user. However, a policy that provides the same coverage to a permissive user and a named insured is valid and enforceable. The statute requires coverage for permissive users and states that no provision in the policy can attempt to avoid coverage based upon the fact that someone is a permissive user. However, the statute says nothing about ***conduct*** that is not "within the coverage" of a policy. Here, the Nationwide policy does not exclude coverage based on the identity of the driver or victim. Rather, the exclusion applies equally to ***all*** insureds and depends upon the insured's conduct while operating the vehicle. Because the exclusion treats every "insured" the same, the exclusion is valid and enforceable.

Under the Circuit Court's interpretation of the *Williams* case, § 38-77-142 has a far more reaching and disruptive effect on the insurance laws of South Carolina. Instead of merely requiring that the policy treat a permissive user in the same way that it would treat a named insured, the Circuit Court's interpretation of *Williams* removes every exclusion from every automobile insurance policy issued in the State of South Carolina. If the General Assembly intended such a drastic change that would prevent insurers from limiting their risk for voluntary coverage, then it would have done so in much clearer language. Moreover, the Supreme Court would have had to overrule a long line of cases acknowledging the distinction between mandatory and voluntary automobile coverage for such things as intentional acts, use of a vehicle in the automobile business and other recognized exclusions for coverage above the minimum limits required.

B. The Supreme Court incorrectly interpreted "within the coverage" to mean "within the limits."

The Supreme Court's decision in *Williams* was a split 3-2 decision. The majority relied heavily upon language in § 38-77-142(A) and (B) stating that no automobile insurance policy may be issued "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 express or implied consent of the named insured . . ***within the coverage of the policy or contract*** as a result of negligence . . . ." S.C. Code Ann. § 38-77-142(A) (emphasis added). The statute uses the phrase "within the ***coverage***," not "within the ***limits***." To the extent the Supreme Court read § 38-77-142(C) to prohibit all step-down provisions as illegally reducing the "coverage" because they reduce the limits under the policy, then that interpretation ignores the fact that the General Assembly uses the word "limits" when it means "limits."

The General Assembly has shown that it knows the difference between the word "limits" and the word "coverage." For example, in South Carolina Code § 38-31-20(8), the General Assembly defined the term "covered claim" to mean "an unpaid claim . . . which arises out of and is within the ***coverage*** and is subject to the applicable ***limits*** of an insurance policy . . . ." (emphasis added). Likewise, in South Carolina Code § 38-31-100, the General Assembly provides:

> A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim ***within the coverage*** of any policy issued by a solvent insurer, must be required first to exhaust all ***coverage and limits*** provided under the policy issued by the insolvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against . . . the insured of the insolvent insurer.

S.C. Code Ann. § 38-31-100(5) (emphasis added). Moreover, "[a]ny amount payable on a covered claim under this chapter, . . . must be reduced by the full ***limits*** of such other ***coverage*** as set forth on the declarations page of the policy issued by the insolvent insurer." *Id.* (emphasis added).

The General Assembly uses the term "within the coverage" three times in the insurance context. Its uses in §§ 38-31-20 and 38-31-100 both reveal that the General Assembly knows how to use the term "within the limits" when it wants to. In § 38-77-142, the General Assembly instead chose to use the term "within the ***coverage,***" and its intention is manifest. Therefore, § 38-77-142 does not prohibit a step-down provision for a tortfeasor's liability arising out of his decision to flee from law enforcement and commit a felony.

In contrast, the General Assembly plainly states what limits are required for certain types of coverage. Section 38-77-140 requires minimum "limits" of liability coverage for bodily injury and property damage. Section 38-77-160 requires an offer of optional UM coverage "up to the limits of the insured's liability coverage . . . ." Section 38-77-160 goes on to require an offer of UIM coverage "in the event that damages are sustained in excess of the liability limits carried by the at-fault insured . . . ." *Id.* If the General Assembly intended § 38-77-142 to require that all policies provide "limits" of coverage at the face amount listed on the policy declarations under all circumstances, then it would have used the word "limits." It did not.

If the Supreme Court's holding in *Williams* accurately reads § 38-77-142, then the General Assembly would have repealed § 38-77-220 when it enacted § 38-77-142. Section 38-77-220 provides that automobile policies "need not insure any liability under the Workers' Compensation Law nor any liability . . . while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured." However, § 38-77-142(C) prohibits any "endorsement, provision, or rider . . . in

any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this ***section***." (emphasis added). Thus, if ***section*** 38-77-142 prohibits any provision in a policy that would reduce the limit of coverage listed on the policy declarations page, then no policy can exclude coverage when workers' compensation coverage is triggered as allowed by § 38-77-220. Section 38-77-220 has no purpose if § 38-77-142 broadly prevents exclusions in insurance policies even for optional coverage.

The Circuit Court's reading of the *Williams* case fundamentally changes the basic structure of insurance policies as they have been in existence for more than a century. *See e.g.*, *Home Ben. Ass'n v. Sargent*, 142 U.S. 691, 12 S. Ct. 332 (1892) (addressing a life insurance policy that included an exclusion for death of the insured by suicide). Liability insurance policies begin with a broad grant of coverage, and then list exclusions that carve out those risks that the insurance company is not willing to bear. If the Supreme Court in *Williams* read § 38-77-142 to preclude this standard practice for voluntary contracts of insurance, then § 38-77-142 constitutes a monumental shift in insurance law. Put simply, any exclusions for coverage limits in excess of the statutory minimum would be eliminated. Insurers would not be able to assess and control risk and consumers of insurance would see a dramatic increase in premiums.

Certainly, in the nearly 15 years since the enactment of § 38-77-142 leading up to the Supreme Court's decision in *Williams*, the insurance industry, the General Assembly, the courts, or the Department of Insurance would have mentioned such a monumental change in South Carolina's insurance laws. The total silence on the issue until the Supreme Court's holding in *Williams* demonstrates that the General Assembly never intended § 38-77-142 to effect such a broad-reaching change.

CONCLUSION

For the above-stated reasons, the Circuit Court's holding should be reversed and the exclusions should be applied according to their plain terms. Respondents now concede that Mayfield's conduct falls squarely within the language of the flight from law enforcement and felony exclusions. Moreover, the exclusions do not violate the public policy of the State of South Carolina and are consistent with the rationale in *Williams*. Far from being arbitrary or capricious, the exclusions prohibit conduct that the South Carolina General Assembly has already deemed criminal. Therefore, the exclusions promote public policy and should be enforced as written. To the extent the Supreme Court's holding in *Williams* states otherwise and casts such a broad net as to prohibit any exclusion in any automobile insurance policy, *Williams* should be overturned. Therefore, the Circuit Court's judgment should be reversed and judgment should be entered in favor of Nationwide.

Respectfully submitted,

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January 19, 2017

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

RECEIVED
JAN 19 2017
SC Court of Appeals

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

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,

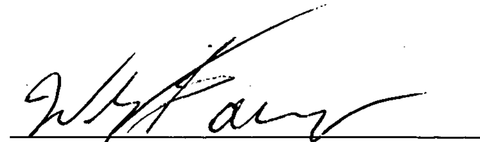
Of whom,

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

CERTIFICATE

I, Wesley B. Sawyer, Esquire, attorney for Appellant, certify that the Final Reply of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

January 19, 2017



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