

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 2020-CP-07-01692

FIRST ACCEPTANCE INSURANCE
COMPANY, INC.,

Plaintiff,

v.

TAMASHA FLOYD, INDIVIDUALLY AND
AS GUARDIAN AD LITEM OF JAYVON G,
A MINOR UNDER THE AGE OF
EIGHTEEN (18) YEARS OF AGE; HARRY
C. BROWN AS SPECIAL
ADMINISTRATOR OF KEVIN M; ELSA
VELASQUEZ FERRO; GERALD
WASHINGTON; AND VINCENT
WILLIAMS,

Defendant.

RECEIVED

Jan 12 2024

SC Court of Appeals

ORDER

This matter came before the Court by way of a bench trial on September 5, 2023. Wesley B. Sawyer appeared for Plaintiff First Acceptance Insurance Company, Inc. (“First Acceptance”), Margie Bright Matthews appeared for Elsa Velasquez Ferro, and J. Andrew Smith appeared for Tamasha Floyd, Individually and as Guardian ad Litem of Jayvon G.¹ The matter was originally listed on the jury trial roster, but counsel consented to proceed non-jury. Harry Brown as Special Administrator of Kevin M.² did not appear.

¹ At the time of the filing of the Complaint, Jayvon was a minor. He has since reached the age of majority.

² Kevin was under the age of eighteen at the time of his death.

SUMMARY

This declaratory judgment action involves an automobile liability policy issued by First Acceptance to Carlos Morazan. On September 25, 2018, Kevin M. drove a vehicle listed on the First Acceptance policy and owned by Elsa Ferro with Jayvon G. and others as passengers. Kevin lost control of the vehicle, causing a single vehicle accident that resulted in Kevin's death and injuries to Jayvon. As discussed in greater detail below, the First Acceptance policy included a named driver exclusion listing Kevin as an excluded driver. By this action, First Acceptance seeks a declaration that the named driver exclusion applies and that First Acceptance does not owe any duty to defend, indemnity, or otherwise pay for claims arising out of the accident. For the reasons set forth below, the Court agrees and finds that First Acceptance's requested relief is appropriate.

STIPULATIONS OF THE PARTIES

The parties stipulated on the record that the Named Driver Exclusion endorsement form used by First Acceptance was approved by the director of the Department of Insurance or his designee, as required by South Carolina Code § 38-77-340.

The parties also stipulated that Kevin was fourteen years old when Carlos Morazan applied for the First Acceptance policy. Kevin was seventeen years old on the date of the accident.

REQUESTS FOR ADMISSION

First Acceptance moved to publish Requests for Admissions served on Elsa Ferro on the basis that no responses were provided within thirty days of service and the requests are deemed admitted. The Court heard argument on the motion and granted the motion.

First Acceptance served Interrogatories, Requests for Production, and Requests for Admission on November 11, 2020. Although counsel for Ferro argued she did not receive the requests and that she denied the substance of the requests in her Answer to the Complaint, the

Court received certificates of service showing Requests for Admission were served on each of the three defendants. Moreover, the fact that the substance of a Request for Admission is denied in an answer to a complaint does not vitiate the impact of a failure to respond to the Request for Admission. *See Scott v. Greenville Housing Authority*, 353 S.C. 639, 646, 579 S.E.2d 151, 154-55 (Ct. App. 2003) (“In reviewing the tenets of Rule 36(a), our courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, regardless of whether the admission concerns a matter responded to in a party’s pleadings”). Thus, Ferro admitted the following:³

1. The accuracy of the subject insurance policy;
2. The named driver exclusion was electronically signed by Carlos Morazan on February 26, 2016;
3. Between the date of signing the Named Driver Exclusion and the time of the September 25, 2018 single car collision, Carlos Morazan never notified First Acceptance in writing of a desire to remove the Named Driver Exclusion from the policy;
4. Kevin was operating the 2004 Ford listed on the policy at the time of the September 25, 2018 single car collision; and
5. The Named Driver Exclusion form was approved by the director of the South Carolina Department of Insurance or his designee.

EVIDENCE PRESENTED AT TRIAL

First acceptance published the Requests for Admission, the parties’ stipulations, and the admission in Floyd’s Answer that Kevin was driving at the time of the accident. In addition, First Acceptance called Joe Schlehta as its only witness. First Acceptance submitted the following exhibits, which were admitted without objection:

³ The granting of First Acceptance’s Motion as to the Requests for Admission has very little practical impact because First Acceptance presented evidence at trial on items 1, 2, and 3; the parties stipulated to item 5; and no parties presented any evidence that anyone other than Kevin was driving (item 4). Therefore, the Court would reach the same findings of fact and conclusions of law with or without these admissions.

1. A true and accurate copy of the February 26, 2016 insurance application for Policy Number 28 CSSC000095310 executed by Carlos Morazan, along with the DocuSign Certificate of Completion;
2. A true and accurate copy of Policy Number 28 CSSC000095310 as it was in effect on the date of the accident;
3. A true and accurate copy of Carlos Morazan's license.

FINDINGS OF FACT

The Court makes the following findings of fact based on the above-referenced stipulations of the parties, the exhibits submitted, and the testimony of Joe Schlechta.

1. First Acceptance issued Policy Number 28 CSSC000095310 to Carlos Morazan with initial effective dates of February 26, 2016 to August 26, 2016 (hereinafter, the "Policy").
2. Carlos Morazan applied for the policy in person at a First Acceptance agency located in Beaufort, South Carolina.
3. Joe Schlechta is currently a training supervisor at First Acceptance, and he was a district manager on February 26, 2016 when Carlos Morazan applied for the Policy.
4. Mr. Schlechta's district included the Beaufort agency, and Mr. Schlechta had personal knowledge of the layout of the Beaufort agency and of the agency's policies and procedures. He also helped train the agents involved in this specific insurance transaction.
5. In 2012, First Acceptance adopted a company-wide policy of utilizing electronic signatures for insurance policy applications.
6. In 2016, each agency would include one or more desks with a computer. Each monitor sat on a swivel, much like a lazy Susan. In the Beaufort store, the computer would have two mouses, one facing the agent and another facing the customer.

7. When a customer would come into the agency, the agent would speak with the customer and gather information about the customer's vehicles, household, etc. Relying on the information provided by the customer, the agent would prepare a quote for coverage.

8. If the customer agreed with the quoted price, then the agent and the customer would begin the application process. The agent would take information provided by the customer and input that information into the computer system.

9. Once the information is complete, a DocuSign envelope with the full insurance application and accompanying documents is emailed. When the customer is remote, the DocuSign envelope is emailed to the customer. When the customer is in person – as was the case here – the DocuSign envelope is emailed to the agent.

10. In this case, the DocuSign envelope was emailed to Richel Smith – an agent at the Beaufort agency – to her First Acceptance email address.

11. Richel Smith would open the DocuSign Envelope and then turn the monitor around to face Carlos Morazan. Using the customer's computer mouse, Carlos Morazan was prompted to select a font for his electronic signature and then prompted by DocuSign through each and every signature line in the application.

12. During the process, Carlos Morazan could scroll up and down. If at any point in the process Carlos Morazan saw any errors in the application, he could notify the agent to have the issues corrected.

13. Carlos Morazan electronically signed each required signature by clicking the mouse at each appropriate signature space.

14. Once Carlos Morazan completed the signature process, DocuSign sent the envelope to Richel Smith's email address for her to apply her countersignature. Richel Smith's signature

stated, “I certify that all information contained herein is correct to the best of my knowledge, that this form was complete and then signed by the applicant in my presence, that completed copy has been given to the applicant, and that I have retained a duplicate signed copy.”

15. In addition to Richel Smtih’s signature confirming that Carlos Morazan signed the application in her presence, First Acceptance obtained a copy of Carlos Morazan’s license, confirming that he was the person who was signing the application.

16. When all signatures have been properly obtained, DocuSign creates a Certificate of Completion. The Certificate of Completion is only created if the signature process is properly completed.

17. The application submitted as an exhibit at trial includes the DocuSign Certificate of Completion, confirming that all signatures were completed. The DocuSign Envelope also contains a unique Envelope ID, which is stamped at the top of each page that made up part of the DocuSign Envelope, i.e. the application.

18. The first page of the application signed by Carlos Morazan identified three individuals under “Driver Information,” including Carlos Morazan, Kevin,⁴ and Joseline Velasquez.

19. The “Driver Information” listed Kevin’s “Driver’s License” status as “Excluded.”

20. At all points throughout the application, Kevin’s day and month of birth are correct, but the year of birth is incorrect.

21. All information in the application comes from the applicant.

⁴ The application listed Kevin’s full name.

22. First Acceptance did not have access to a database in 2016 that would have revealed Kevin as a member of Carlos Morazan's household. Therefore, the only source of information about Kevin would have been Carlos Morazan.

23. The application includes a section titled: "UNDERWRITING QUESTIONS-MUST BE COMPLETED." This section includes the question: "Have all members of household 14 years and older been disclosed on this application? If no, please explain." Carlos Morazan responded "Yes."

24. The application also includes a section titled: "APPLICANT'S STATEMENT-READ BEFORE SIGNING." As part of this section, Carlos Morazan stated, "I also certify that all persons age 14 or over who live with me have been reported to the Company."

25. The DocuSign Envelope also included the initial declarations page for Policy CSSC000095310. The declarations page listed "Endorsements made part of this policy at time of issue," which included "NAMED DRIVER EXCLUSION" form number SCC-102.

26. As part of the DocuSign Envelope, Carlos Morazan signed a Named Driver Exclusion form identified by Form Number SCC-307 ed. May 2010.

27. Form SCC-307 ed. May 2010 was approved by the Director of the Department of Insurance or his designee.

28. The Named Driver Exclusion form stated, in part:

In consideration of the premium charged, I, the named insured on my insurance policy, hereby authorize the person(s) listed below to be excluded from my insurance policy. This means that the Company shall not be liable for damages, losses or claims arising out of the operation or use of the automobile described in the policy or any other automobile to which the terms of the policy are extended, whether or not such operation or use was with the express or implied permission of its owner, while said automobile is being driven or operated by the following named person(s). This exclusion includes any claim for damages made against you, a family member

or any other person or organization that is vicariously liable for an accident or loss arising out of the operation of your covered auto or non-owned auto by the excluded driver.

29. The Named Driver Exclusion form identified Kevin as the excluded driver. As with the other portions of the application, the Named Driver Exclusion form lists the correct day and month of Kevin's birth, but the incorrect year. The Named Driver Exclusion describes Kevin as an "Employee."

30. The Kevin listed on the Named Driver Exclusion form is Carlos Morazan's son, who was driving the subject vehicle at the time of the accident.⁵

31. Even if Carlos Morazan had provided the correct year of birth for Kevin, the Policy would have included the Named Driver Exclusion.

32. In the Named Driver Exclusion form, there is an "X" place beside the statement: "An appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded."

33. The Named Driver Exclusion form also includes the following declaration: "I further declare that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles, or (2) an appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded."

34. Carlos Morazan electronically signed the Named Driver Exclusion on February 26, 2016, as part of the DocuSign Envelope.

35. The declarations page in effect on the date of the accident listed a 2004 Ford Expedition with VIN ending in 9832. The declarations page listed Kevin as one of the individuals

⁵ No party presented evidence that Carlos Morazan knew any other Kevin with the same last name or the same day and month of birth.

under “Driver Information” and listed his status as “Excluded.” The declarations page also identified Form SCC-102 NAMED DRIVER EXCLUSION as being one of the endorsements making up the policy. The declarations page does not show any comprehensive or collision coverage in effect for the 2004 Ford.

36. Pursuant to the terms of the Policy, the insurance “contract includes the **Declarations Page**, Endorsements, the **Application**, the Personal Auto Policy, and all attachments.” Thus, the Named Driver Exclusion form signed as part of the insurance application was part of the subject insurance contract.

37. The Policy also states: “This policy is issued and renewed in reliance upon the truth and accuracy of the representations made in the **application** for this insurance.”

38. Form SCC-102 NAMED DRIVER EXCLUSION ENDORSEMENT provides:

Notwithstanding any other provision of the agreement and in consideration of the premium charged for this policy, it is agreed that no coverage is afforded for any claim or **loss** arising from an **accident** when the **insured auto**, or any other **auto** to which the terms of this policy apply is being driven, operated, or under the control of, either with or without the express or implied permission of the **named insured** or **owner**, by those persons specifically listed by **you** on **your** application or as named by **you** on a subsequent policy endorsement as an excluded driver. This includes any claim for damages made against **you**, a **relative**, or any other person or organization that is vicariously liable for an **accident** arising out of the operation of a motorized vehicle by the excluded driver.

This endorsement applies to any continuation, renewal, replacement, or reinstatement of this policy unless changed by **you** in writing.

No Uninsured Motorist Coverage or Underinsured Motorist Coverage will be provided under this policy to anyone while the **insured auto** or any other **auto** to which the terms of this policy are extended is being driven or operated by the excluded driver(s).

All other terms and provisions of this policy remain unchanged.

39. Between the date of the application and the date of the accident, Carlos Morazan did not contact First Acceptance in writing to request that the Named Driver Exclusion be removed from the Policy.

40. On September 25, 2018, Kevin drove the 2004 Ford Expedition with Jayvon as a front seat passenger when a single vehicle accident occurred.

41. As a result, Tamasha Floyd, individually and as guardian ad litem for Jayvon, filed suit against Harry Brown as the Special Administrator for the Estate of Kevin and against Elsa Ferro. Floyd did not file suit against Carlos Morazan.

CONCLUSIONS OF LAW

There was no dispute at trial that the Policy as written excludes coverage for any claims arising out of Kevin's operation of any vehicle. Rather, the parties disputed whether this exclusion is enforceable under South Carolina law. For the reasons set forth below, the Court finds the exclusion is enforceable and that it applies under the facts of this case.

In general, South Carolina law requires that every policy of automobile insurance define "insured" to include:

the named insured and, while resident of the same household, the spouse of any named insured and relatives of either . . . and any other person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies

S.C. Code § 38-77-30(7). Thus, any resident relative of a household, regardless of age or license status, qualifies as a statutory insured.

Recognizing the difficulties that the broad statutory definition of insured can create for persons seeking affordable insurance, the General Assembly chose to codify the insurance company's and the insured's rights to agree to exclude a named individual. S.C. Code § 38-77-

340. The named driver statute protects the parties' freedom of contract rights to choose to exclude coverage when certain persons operate a vehicle. The statute provides:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code § 38-77-340.

South Carolina's appellate courts have repeatedly held that the statutory named driver exclusion applies to all coverage under an automobile insurance policy, including minimum limits liability and uninsured motorist coverage and optional underinsured coverage. *See Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013) ("The MVFRA does not permit recovery of minimum limits liability coverage on a motor vehicle liability policy when a person named in a policy provision pursuant to section 38-77-140 is operating the motor vehicle and the requirements of the statute are satisfied because the policy 'shall not apply' under those circumstances."); *Nationwide Ins. Co. v. Knight*, 433 S.C. 371, 380-81, 858 S.E.2d 633, 637-38 (2021) (holding named driver exclusion valid and that claimant could not recover UIM); *United Services Auto. Ass'n v. Pickens*, 434 S.C. 60, 62, 862 S.E.2d 442, 443 (2021) ("This case requires us to determine whether Section 38-77-340 of the South Carolina Code permits a named driver exclusion that precludes uninsured motorist (UM) coverage to a passenger injured in an accident involving an unknown driver. We hold that it does"). Thus, so long as the

statutory requirements are satisfied, the exclusion is enforceable as to all coverage under the Policy.

I. First Acceptance has met its burden of proving that each element of § 38-77-340 has been satisfied.

As Judge Quattlebaum has observed, “the relevant language of section 38-77-340 is clear and unambiguous.” *Thao v. Nationwide Affinity Ins. Co. of Am.*, 2018 WL 2971784, *3 (D.S.C. June 13, 2018). The requirements set forth in the statute are straightforward. The exclusion applies so long as:

- (a) the form is approved by the director of the Department of Insurance or his designee;
- (b) the form names a “natural person” person designated by name;
- (c) the form is signed by the named insured;
- (d) the insured has not had the exclusion removed from the policy; and
- (e) “the named insured declares in the agreement that (1) the driver’s license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.”

S.C. Code § 38-77-340.

A. The Named Driver Exclusion Form was approved by the Department of Insurance.

As noted above, the parties stipulated to this fact on the record. Therefore, the first element of the statute is satisfied.

B. The Named Driver Exclusion Form names Kevin, a “natural person.”

The Named Driver Exclusion form names Kevin as the excluded driver. Black’s Law Dictionary defines a “natural person” as simply “a human being.” PERSON, Black’s Law Dictionary (11th ed. 2019). It is undisputed that Kevin was a human being. Therefore, this element is satisfied.

C. The Named Driver Exclusion Form was signed by Carlos Morazan.

This element is a factual matter. Joe Schlehta testified regarding the process for securing signatures via DocuSign. He testified that First Acceptance had a separate computer mouse for the customer to use to apply his or her signatures to the application and that the computer monitors sat on swivels so they could be turned to face the customer for signatures. He further testified that DocuSign walked the applicant from signature to signature, that the applicant could select his or her specific font to apply to the signatures. Also, DocuSign does not create a Certificate of Completion unless all signatures are obtained. Furthermore, the Court received into evidence the Certificate of Completion. The Court also received into evidence First Acceptance's copy of Carlos Morazan's license, confirming that he was in fact the person who went into the agency to apply for coverage.

The application admitted into evidence without objection was also countersigned by the agent. The countersignature confirmed that Carlos Morazan signed the application in her presence.

The Defendants did not present any evidence to contradict either the exhibits or Mr. Schlehta's testimony. Therefore, the Court finds that Carlos Morazan signed the Named Driver Exclusion form.⁶

D. First Acceptance never received a request to remove the Named Driver Exclusion.

Again, this element is a factual matter. Joe Schlehta testified that he reviewed First Acceptance's records, and First Acceptance did not have any record of receiving a written request to remove the Named Driver Exclusion. First Acceptance also submitted a copy of the insurance policy that was in place on the date of loss. The declarations page lists Kevin as an excluded driver

⁶ As noted above, this fact was admitted via Ferro's failure to respond to Requests for Admission. However, First Acceptance proved by a preponderance of the evidence via Joe Schlehta's testimony and its exhibits that Carlos Morazan did in fact sign the application.

and listed the excluded driver form as one of the Policy's forms. Defendants did not present any evidence to contradict these facts. Therefore, the Court finds that Carlos Morazan never requested to remove the Named Driver Exclusion.

E. Carlos Morazan declared in the Named Driver Exclusion that Kevin had other insurance.

Once again, this is a factual matter. The statute requires that the named insured "declare" in the Named Driver Exclusion endorsement that either the excluded driver has turned in his license to the Department of Motor Vehicles or has other applicable insurance. The Named Driver Exclusion endorsement signed by Carlos Morazan includes an "X" beside the statement: "An appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded." This plainly satisfies the statutory requirement. Moreover, further down on the Named Driver Exclusion endorsement, it states: "I declare that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles, or (2) an appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded." This language mirrors the statutory language in § 38-77-340.

Therefore, each and every element of § 38-77-340 is satisfied.

II. The legal arguments of Defendants are unavailing.

Defendants primarily argue that an insurer and a named insured cannot agree to exclude a person who is fourteen years old because he cannot obtain insurance and he cannot have turned a license in to the Department of Motor Vehicles. At trial, counsel for defendants argued that the statute does not contemplate excluding a person who cannot legally drive. However, the Court is compelled to apply the plain language of the statute.

As an initial matter, the argument that the statute does not contemplate excluding a person who cannot legally drive fails because one of the options for the named driver exclusion is for the named insured to declare that the excluded driver has turned in his or her license to the DMV. If a person has no license, they cannot drive. Thus, this argument does not comport with the language of the statute.

Alternatively, defendants argue that a fourteen-year-old cannot obtain insurance.⁷ However, defendants' argument ignores South Carolina's insurance statutes. As discussed above, South Carolina's insurance statutes define "insured" to include the named insured, a resident spouse, and resident relatives of either. S.C. Code § 38-77-30(7). Thus, any automobile insurance policy issued to a household resident relative of Kevin would include him as a statutory insured, regardless of Kevin's age, whether he had a license, or whether he had permission to operate the vehicle. It is completely plausible – and routine – that another household member would have a separate policy insuring Kevin.⁸

More importantly, it is not this Court's role to evaluate public policy. *See Knight*, 433 S.C. at 376, 858 S.E.2d at 635 ("To be clear, however, this Court has no authority to invalidate an automobile insurance policy provision simply because we believe it is inconsistent with our own notion of 'public policy'"). Rather, "[w]hen an insured challenges a policy provision on the ground the provision violates public policy, the Court's authority is limited to determining whether the policy provision violates a statute." *Id.* The named driver exclusion statute merely requires that the

⁷ As an initial matter, defendants did not present any testimony to that effect. They did not present an expert in the insurance industry or anyone else to testify whether such coverage is commercially available.

⁸ This statutory definition of insured is the reason that the named driver exclusion statute begins with the statement, "Notwithstanding the definition of 'insured' in Section 38-77-30 . . ." S.C. Code § 38-77-340.

named insured “declare” that the excluded driver has other insurance or has turned in his license. The Named Driver Exclusion form plainly includes that declaration here.

Courts interpreting § 38-77-340 have repeatedly held that the insurer is not required to confirm the veracity of the named insured’s declaration. In *Thao*, the named insured’s wife caused an accident while taking her driver’s examination. When he took out the policy, the named insured chose to exclude his wife and stated in the exclusion that his wife had turned her license in to the DMV. 2018 WL 2971784, *1. After the accident, the named insured and his wife argued that the agent knew that the wife had never had a license and, therefore, could never have turned her license in to the DMV. *Id.* at *3.

Judge Quattlebaum began his analysis with the rule that “it is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question.” *Id.* (quoting *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479, 483 (2017)). “The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will.” *Transportation Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687, 690 (2010) (citation omitted). Finding the language of § 38-77-340 clear and unambiguous, Judge Quattlebaum held that “the named driver exclusion is enforceable so long as the named insured makes the declaration.” *Thao*, 2018 WL 2971784, *3. The truth or accuracy of the insured’s declaration is not relevant under a plain application of the statute.

This Court agrees that the language of the statute is clear and unambiguous. By its plain terms, the statute only requires that the named insured make the appropriate declaration. In this case, the Named Driver Exclusion includes the appropriate declaration. This alone is sufficient to end the Court’s analysis.

When the statutory language is clear, the Court need not resort to reviewing the statutory history. However, in this case, the statutory history confirms the Court's conclusions. In 2005, the General Assembly amended the named driver exclusion statute to the version that applies today. That amendment included two changes that are significant in this present case. First, prior to 2005, the statute required the agent (not the insured) to contact the state highway department and obtain an affidavit confirming that either the excluded person's license had been turned in or the excluded person had other insurance. Second, the prior version of the statute did not have the declaration requirement. Thus, under the pre-2005 version of the statute, the enforceability of the named driver exclusion depended on whether in fact the excluded person had a license and did not have other insurance.

The 2005 amendment shifted the burden to the named insured. Instead of requiring as a factual matter that the excluded driver have other insurance or turned in his license, the 2005 amendment simply required that the named insured "declare" this fact. Second, the 2005 amendment removed the agent's obligation to approach the highway department to confirm whether the excluded driver had actually turned in his license or obtained other insurance. In other words, the General Assembly "determined that enforceability of the exclusion was based on the content of the declaration rather than the truth of the content of the declaration." *Thao*, 2018 WL 2971784, *4. *See also United Fin. Cas. Co. v. Bostic*, 782 F. Supp. 2d 179 (D.S.C. 2011) (holding insurer did not have an obligation to confirm named insured's statement that excluded driver had other insurance).

As stated above, the language of the statute is clear and unambiguous. The Court finds that each element of § 38-77-340 has been satisfied and that the Named Driver Exclusion is valid and enforceable. Moreover, if the statute were in any way unclear, the legislative history makes plain

that the statute is satisfied so long as the named insured makes the required declaration in the Named Driver Exclusion endorsement – which he did here. Therefore, the Court finds that the exclusion applies according to its plain terms.

WHEREFORE, it is ORDERED, ADJUDGED, and DECREED that:

- 1) The First Acceptance Policy named Kevin as an excluded driver;
- 2) The Named Driver Exclusion endorsement satisfied every requirement of South Carolina Code § 38-77-340;
- 3) Pursuant to the terms of the Named Driver Exclusion endorsement and South Carolina Code § 38-77-340, coverage “shall not apply” while any vehicle was operated by Kevin;
- 4) At the time of the September 25, 2018 accident, Kevin was driving the vehicle;
- 5) The First Acceptance Policy provides no coverage for any claims arising out of the September 25, 2018 accident, and First Acceptance has no duty to defend, indemnify, or make any payments whatsoever for any claims arising out of the above-referenced accident.

IT IS SO ORDERED.



Beaufort Common Pleas

Case Caption: First Acceptance Insurance Company Inc VS Tamasha F Floyd,
Individually And As Gal For Jayvon G., A Minor , defendant, et al
Case Number: 2020CP0701692
Type: Order/Other

So Ordered

Jocelyn Newman