

RECEIVED

Jul 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000069

First Acceptance Insurance Company, Inc., Respondent,

v.

Tamasha Floyd,

Appellant.

FINAL BRIEF OF APPELLANT

Law Office of Clifford Bush, III, LLC
J. Andrew Smith
28 Old Jericho Road
Beaufort, South Carolina 29906
(843) 379-9500
drew@lawofficeofcbushiii.com
SC Bar Number 14086

Attorney for Appellant

TABLE OF CONTENTS

Table of Authoritiesiii

Statement of Issues on Appeal..... 1

Statement of the Case..... 1

Standard of Review 6

Arguments

1. BECAUSE THE NAMED DRIVER'S EXCLUSION ATTACHED AS AN ENDORSEMENT TO THE SUBJECT AUTOMOBILE LIABILITY POLICY, ISSUED BY RESPONDENT ON FEBRUARY 16, 2016, TO CARLOS MORAZAN, EXCLUDED A "KEVIN MORAZAN", A MARRIED EMPLOYEE OF CARLOS MORAZAN, WITH A DATE OF BIRTH OF SEPTEMBER 6, 1993, THE COURT ERRED WHEN IT DECLARED THAT THE NAMED DRIVER EXCLUSION PROPERLY EXCLUDED KEVIN MORAZAN, CARLOS MORAZAN'S 14-YEAR-OLD SINGLE CHILD, WITH DATE OF BIRTH OF SEPTEMBER 6, 2001.7

2. BECAUSE THE LANGUAGE, PURPOSE, AND PUBLIC POLICY BEHIND THE NAMED DRIVER EXCLUSION STATUTE IS TO PROTECT THE MOTORING PUBLIC BY REQUIRING THE EXCLUDED DRIVER TO SURRENDER HIS DRIVER'S LICENSE OR BE INSURED UNDER HIS OWN POLICY, THE COURT ERRED WHEN IT HELD THAT THE NAMED DRIVER EXCLUSION PROPERLY EXCLUDED KEVIN MORAZAN, A FOURTEEN-YEAR-OLD, INCAPABLE OF OBTAINING A DRIVERS LICENSE OR SECURING HIS OWN POLICY OF INSURANCE..... 16

Conclusion.....19

TABLE OF AUTHORITIES

CASES

<u>Auto-Owners Ins. Co. v. Hamin</u> , 368 S.C.536, 629 S.E.2d 683 (S.C. App. 2006)....	6
<u>Auto-Owners Ins. Co. v. Rhodes</u> , 385 S.C. 83, 682 S.E.2d 857 (S.C. App. 2009)	6,11
<u>Auto-Owners Ins. Co. v. Rollinson</u> , 378 S.C. 600, 663 S.E.2d 484 (S.C. 2008)....	10
<u>Boggs v. Aetna Cas. And Sur. Co.</u> , 272 S.C. 460, 252 S.E.2d 565 (S.C. 1979)	11
<u>Crosby v. Protective Lift Ins. Co.</u> , 293 S.C. 203, 359 S.E.2d 298 (S.C. App. 1987)	14
<u>Epworth Children's Home v. Beasley</u> , 365 S.C. 157, 616 S.E.2d 710 (S.C. 2005)....	6
<u>George v. Empire Fire and Marine Ins. Co.</u> , 344 S.C. 582, 545 S.E.2d 500 (S.C. 2001)	14
<u>Hardy v. Aiken</u> , 369 S.C. 160, 631 S.E.2d 539 (S.C. 2006).....	6
<u>Laidlaw Env. Serv (TOC) v. Aetna Cas. & Sus. Co. of Ill.</u> , 338 S.C. 43, 524 S.E.2d 847 (S.C. App. 1999)	10
<u>Lincoln General Ins. Co. v. Progressive N. Ins. Co.</u> , 406 S.C. 534, 753 S.E.2d 437 (S.C. App. 2013).....	18
<u>Lovette v. U.S. Fidelity & Guar. Co.</u> , 274 S.C. 597, 266 S.E.2d 782 (S.C. 1980)...	18
<u>McPherson v. Mich. Mut. Ins. Co.</u> , 310 S.C. 316, 426 S.E.2d 770 (S.C. 1993)	11
<u>Nationwide Ins. Co. of Am. v. Knight</u> , 428 S.C. 451, 835 S.E. 2d 538 (S.C. App. 2019)	10
<u>Nationwide v. Knight</u> , 858 S.E.2d 633 (S.C. 2021).....	18

<u>Neumayer v. Philadelphia Indem. Ins. Co.</u> , 427 S.C. 261, 831 S.E.2d 406 (S.C. 2019).....	7
<u>Owners Ins. Co. v. Clayton</u> , 364 S.C. 555, 614 S.E.2d 611 (S.C. 2005)	11
<u>Progressive Northern Insurance Company v. Holloway</u> , 615 F. Supp. 3d 408 (D.S.C. 2022).....	17
<u>Stringer v. State Farm Mut. Auto Ins. Co.</u> , 386 S.C. 188, 687 S.E.2d 58 (S.C. App. 2009)	10
<u>Town of Summerville v. City of N. Charleston</u> , 378 S.C. 107, 662 S.E.2d 40 (S.C. 2008)	7
<u>USAA v. Pickens</u> , 434 S.C. 60, 862 S.E.2d 442 (S.C. 2021).....	7
<u>Williams v. GEICO</u> , 409 S.C. 586, 762 S.E.2d 705 (S.C. 2014)	10

STATUTES

S.C. Code Ann. § 38-77-30.....	17
S.C. Code Ann. § 38-77-140.....	16
S.C. Code Ann. § 38-77-150.....	16
S.C. Code Ann. § 38-77-340.....	17
S.C. Code Ann. § 56-1-50.....	18

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT THE NAMED DRIVER EXCLUSION APPLIED TO KEVIN MORAZAN (D.O.B. 9/6/2001), THE SINGLE SON OF THE INSURED, WHEN THE POLICY'S EXCLUSION LISTED KEVIN MORAZAN (D.O.B. 9/6/1993), A MARRIED EMPLOYEE OF THE INSURED?
2. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT THE NAMED DRIVER EXCLUSION APPLIED TO A FOURTEEN-YEAR-OLD WHEN NAMED DRIVER EXCLUSION REQUIRES THAT THE NATURAL PERSON EXCLUDED FROM THE POLICY EITHER SURRENDER THEIR DRIVER'S LICENSE OR OBTAIN THEIR OWN INSURANCE POLICY AND WHEN KEVIN MORAZAN, A THEN FOURTEEN-YEAR-OLD, IS INCAPABLE OF OBTAINING A DRIVERS LICENSE OR POLICY OF INSURANCE.

STATEMENT OF THE CASE

On August 25, 2020, First Acceptance Insurance Company ("Respondent") brought this declaratory judgment action against Tamasha Floyd, Individually and as Guardian ad Litem, for Jayvon G., a minor under the age of eighteen years old ("Appellant"). (R. p. 25). Respondent alleged that it issued an automobile insurance policy to Carlos Morazan, policy number 28 CSSC 000095310, with effective dates of August 26, 2018, through February 26, 2019, ("The Policy"). (R. p. 28). Respondent attached a copy of The Policy to its complaint. (R. pp. 35-76).

Respondent alleged that The Policy listed two vehicles, including a 2004 Ford Expedition identified by VIN 1FMEU15W64LB19832, with bodily injury liability and uninsured motorist limits of \$25,000 per person and \$50,000 per accident, and property damage liability and uninsured motorist limits of \$25,000 per accident. (R. pp. 29, 36).

Respondent's complaint further alleged that The Policy contained a Named Driver Exclusion Endorsement ("Named Driver Exclusion") listing Kevin Morazan as the named driver. (R. p. 29). Respondent alleged that Carlos Morazan, the named insured, signed the policy via an electronic signature. (R. p. 29). Respondent alleged that the declarations of the insurance and the Named Driver Exclusion endorsement listed Kevin Morazan as excluded. (R. p. 29).

Respondent further indicated that Carlos Morazan, in the Named Driver Exclusion, stated that "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." (R. pp. 33, 78). Respondent cited policy provisions stating that the Named Driver Exclusion remains effective for all subsequent policy renewals and reinstatements. (R. pp. 29-30). Respondent pointed out that the exclusion applies to claims for liability, underinsured motorist, and uninsured motorist coverage. (R. pp. 30-31).

Respondent affirmed that Tamasha Floyd, individually and as Guardian ad

Litem of Jayvon Garrett, filed a Summons and Complaint in the Court of Common Pleas for Beaufort County, alleging that Kevin Morazan was operating the 2004 Ford Expedition involved in a single car accident on September 25, 2018. (R. pp. 31-32). Respondent averred that in Appellant's complaint, Appellant alleges that Kevin Morazan lost control of said vehicle, resulting in a collision that caused injuries to Jayvon Garrett, a passenger in the vehicle.¹ (R. p. 32).

Respondent requested the Court to declare that Carlos Morazan executed a Named Driver Exclusion that designated Kevin Morazan as the natural person to be excluded from coverage. (R. pp. 32-33). Respondent requested the Court to declare that Kevin Morazan was an excluded driver under the policy at the time of the said collision. (R. p. 33). Respondent requested that the Court declare that coverage under the policy was not in effect at the time of said collision. (R. p. 33). Respondent requested the Court to declare that Respondent has no duty to defend, indemnify, or make any payments whatsoever for any claims arising out of the said collision. (R. p. 33).

Appellant admitted that Respondent issued the insurance policy in question. (R. p. 80). Appellant admitted that Kevin Morazan was driving the Ford Expedition when the automobile accident occurred. (R. p. 81). However, Appellant denied that

¹ At the time of the application for The Policy, February 26, 2016, and on the date of the subsequent automobile accident, September 25, 2018, both Kevin Morazan and Jayvon Garrett were minors. As of the present date both Mr. Morazan and Garrett would no longer be minors. As such, their full names will be used in this brief for clarity.

the Named Driver Exclusion listed Kevin Morazan as the person to be excluded. (R. p. 80). Appellant also alleged that Respondent's complaint failed to state a cause of action for which relief could be granted. (R. p. 82).

The Parties tried this declaratory judgment action before the lower court at a bench trial on September 5, 2023. (R. p. 98). At trial, Respondent contended that pursuant to the terms of a Named Driver Exclusion to The Policy issued by Respondent to Carlos Morazan, the named insured, coverage under The Policy did not apply when Kevin Morazan operated a vehicle listed by the policy. (R. pp. 116-121). Respondent argues that it is entitled to a declaratory judgment that it owes no duty to defend or indemnify any claims arising out of an automobile accident that occurred on September 25, 2018, while a vehicle was operated by Kevin Morazan. (R. pp. 33, 121).

Appellant argued that on its face the Named Driver Exclusion of The Policy did not exclude the same person as the Kevin Morazan who was the driver of the listed vehicle involved in the automobile accident that resulted in injuries to Jayvon Garrett, a passenger in the listed vehicle. (R. pp. 121, 124, 125, 126, 169, 170, 192, 193, 197). The "Kevin Morazan" designated as the Named Driver, excluded in the Named Driver Exclusion of The Policy and declarations, was listed as a married employee of Carlos Morazan with a date of birth of September 6, 1993. (R. pp. 121, 124, 125, 126, 169, 170, 192, 193, 197, 201, 205, 217). The

"Kevin Morazan" driving the listed vehicle, covered by The Policy, on the date of the accident is a minor child of Carlos Morazan with a date of birth of September 6, 2001. (R. pp. 170, 192, 193, 197). Appellant argued that the mistake of the insurance agent in the application and exclusion should not be held against a third-party passenger injured in an automobile accident. (R. 169).

Alternatively, Appellant argued that the South Carolina statutory law authorizing the Named Driver Exclusion, Section 38-77-340 of the South Carolina Code of Laws, does not apply to a fourteen-year-old child that is unable to lawfully obtain a Driver's License in the State of South Carolina. (R. pp. 121-123, 168-170, 184-185, and 192-194). Appellant argued that a fourteen-year-old cannot surrender a Driver's License to the Department of Motor Vehicles (DMV) or obtain their own policy of insurance or other lawful security. (R. pp. 121-123, 168-170, 184-185, and 192-194). Appellant pointed out in motions for directed verdict that Kevin Morazan was only fourteen years old at the time that Carlos Morazan applied for The Policy and as such the Named Driver Exclusion does not apply to Kevin Morazan, the fourteen-year-old. (R. pp. 121-123, 168-170, 184-185, and 192-194).

On December 7, 2023, the lower court issued a decision and order declaring the following:

- 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; and

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.

(R. pp. 20-21). Appellant timely served a Notice of Appeal on Respondent on January 4, 2024. (R. pp. 257-259).

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable but is determined by the nature of the underlying issue." Hardy v. Aiken, 369 S.C. 160, 164-65, 631 S.E.2d 539, 541 (S.C. 2006). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." Auto-Owners Ins. Co. v. Hamin, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (S.C. App. 2006). "When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law." Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (S.C. 2005). "[T]he appellate court will not disturb the trial court's findings of fact unless they are found to be without evidence that reasonably supports those findings." Hamin, 368 S.C. at 540, 629 S.E.2d at 685. Auto-Owners Ins. Co. v. Rhodes, 385 S.C. 83, 682 S.E.2d 857 (S.C. App. 2009).

"Further, the interpretation of a statute is a question of law, which we review de novo." USAA v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (S.C. 2021), (citing Neumayer v. Philadelphia Indem. Ins. Co., 427 S.C. 261, 265, 831 S.E.2d 406, 408 (S.C. 2019), Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (S.C. 2008)).

ARGUMENTS

1. BECAUSE THE NAMED DRIVER'S EXCLUSION ATTACHED AS AN ENDORSEMENT TO THE SUBJECT AUTOMOBILE LIABILITY POLICY, ISSUED BY RESPONDENT ON FEBRUARY 16, 2016, TO CARLOS MORAZAN, EXCLUDED A "KEVIN MORAZAN" AND LISTED "KEVIN MORAZAN" AS A MARRIED EMPLOYEE OF CARLOS MORAZAN, WITH A DATE OF BIRTH OF SEPTEMBER 6, 1993, THE COURT ERRED WHEN IT DECLARED THAT THE NAMED DRIVER EXCLUSION PROPERLY EXCLUDED CARLOS MORAZAN'S 14-YEAR-OLD SINGLE CHILD, WITH DATE OF BIRTH OF SEPTEMBER 6, 2001.

The lower court erred in determining that Carlos Morazan's minor child, Kevin Morazan, the driver of the automobile involved in the automobile accident, was properly excluded from The Policy for three main reasons: a. a plain reading of the policy language in the Named Driver Exclusion, presented to the lower court did not support that Kevin Morazan, who was the driver in the automobile accident of September 25, 2018 injuring Jayvon Garrett, was the named driver in the exclusion, b. the testimony of Joe Schlehta presented by Respondent to the lower court did not support the findings of fact that Carlos Morazan's son, Kevin Morazan, was the person named in the Named Driver Exclusion, and c.

Respondent failed to assert in its Complaint or in the case an action to reform the policy.

a. **A plain reading of the policy language in the Named Driver Exclusion, presented to the lower court, did not support that Kevin Morazan, who was the driver in the automobile accident of September 25, 2018, injuring Jayvon Garrett, was the named driver in the exclusion.**

The plain reading of the policy language in the Named Driver Exclusion, presented to the lower court did not support that Kevin Morazan, who was the driver in the automobile accident of September 25, 2018, injuring Jayvon Garrett, was the named driver in the exclusion. It was stipulated at trial that the driver in the accident, Kevin Morazan's date of birth was **September 6, 2001**, and therefore Kevin Morazan was **fourteen-years-old** at the time of the application for the policy coverage. However, the declarations listed the excluded driver's information as:

Date of Birth: **09061993**; Marital Status: **Married**.

DRIVER INFORMATION								
No.	DRIVER NAME (as shown on driver's license)		Date of Birth	SEX M or F	Marital Status	AD	License State	Driver's License
001	CARLOS	MORAZAN	05021974	M	M		SC	On File
002	KEVIN	MORAZAN	09061993	M	M		SC	Excluded
003	JOSELINE	VELASQUEZ	09121982	F	M		IT	On File

(R. p. 201, Further, in Plaintiff's Exhibit 1, the actual Named Driver Exclusion in The Policy, the exclusionary language listed the Excluded Driver with a Date of

Birth of September 6, 1993 (opposed to the driver in the actual accident, with DOB of September 6, 2001); the actual Named Driver Exclusion listed the relationship to named insured as "Employee" (opposed to the driver in the accident being the "son", not "employee", of the Named Insured): (R. p. 205)

DocuSign Envelope ID: 8F40BA53-337A-46F6-A3F7-F67D13E14A47

Date: 02/26/16

Policy No: CSSC 600095310

NAMED DRIVER EXCLUSION

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(s).

Named Excluded Driver(s)

Excluded Driver	DOB	Relationship
KEVIN MORAZAN	9/06/1993	EMPLOYEE

The drivers license of the excluded person has been turned in to the Department of Motor Vehicles, or

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.

Plaintiff's Exhibit 3, the declaration page for the policy period of August 26, 2018 through February 26, 2019 (in effect at the time of the accident) **still** had the excluded driver listed with a DoB of 09061993 and a marital status as married:

DRIVER INFORMATION							
Driver #	Name	Date of Birth	Gender	M/S	DL State	DL Status	Driver Status
1	CARLOS MORAZAN	05/02/1974	M	M	SC		Active
2	KEVIN MORAZAN	09/06/1993	M	M	SC		Excluded
3	JOSELINE VELASQUEZ	09/12/1982	F	M	IT		Active
4	JORGE MORAZAN	12/09/1981	M	M	SC		Active

(R. p. 217). As such, a plain reading of the policy exclusion **did not exclude the driver involved in the accident** (Kevin Morazan, DOB: 09/06/2001, minor son of Carlos Morazan), but instead excluded another person (Kevin Morazan, DOB: 09/06/1993, married, employee of Carlos Morazan).

South Carolina law provides that "[a]s 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." Nationwide Ins. Co. of Am. v. Knight, 428 S.C. 451, 835 S.E.2d 538, 540 (S.C. App. 2019) (quoting Williams v. GEICO, 409 S.C. 586, 762 S.E.2d 705 (S.C. 2014)). "An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." Knight, 835 S.E.2d at 540 (quoting Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (S.C. 2008)). Accordingly, unambiguous insurance policies "must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary and popular sense." Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 687 S.E.2d 58, 60 (S.C. App. 2009).

"Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed." Laidlaw Env. Serv. (TOC) v. Aetna Cas. & Sur. Co. of Ill., 338 S.C. 43, 47, 524 S.E.2d 847, 849 (S.C.

App. 1999) (quoting McPherson v. Mich. Mut. Ins. Co., 310 S.C. 316, 319, 426 S.E.2d 770, 771 (S.C. 1993)). Auto-Owners Ins. Co. v. Rhodes, 385 S.C. 83, 682 S.E.2d 857 (S.C. App. 2009). "**Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability.** Boggs v. Aetna Cas. and Sur. Co., 272 S.C. 460, 252 S.E.2d 565 (S.C. 1979)." Owners Ins. Co. v. Clayton, 364 S.C. 555, 614 S.E.2d 611 (S.C. 2005)

The present case involves an interpretation of a policy exclusion, the Named Driver Exclusion. Reviewing the exclusion in the present case, the insurance company has failed to prove that the policy exclusion applies to Kevin Morazan, the fourteen-year-old son of Carlos Morazan, with date of birth of September 6, 2001. With a plain reading of the face of the policy, the exclusion applies only to a Kevin Morazan, **a married, employee of Carlos Morazan with date of birth of September 6, 1993.** Without evidence to the contrary, the written exclusion must be construed against the insurance company as on its face is inapplicable to Kevin Morazan with date of birth of September 6, 2001. As no evidence supports the court's order that this policy excludes the driver that injured Jayvon Garrett in the single car accident of September 25, 2018, the court must reverse the order of the lower court and declare that the exclusion is inapplicable.

b. The testimony of Joe Schlechta, presented to the lower court, did not support the findings of fact that Carlos Morazan's son, Kevin Morazan, was the person named in the Named Driver Exclusion.

Joe Schlechta's testimony did not confirm that Kevin Morazan, the fourteen-year-old son of Carlos Morazan, was the excluded driver. Joe Schlechta testified that he was the district manager for about 14 stores in 2016, including the Beaufort store where Carlos Morazan applied for the policy. (R. p. 129 - lines 2-13). Joe Schlechta was able to discuss general policy and procedure for the application process, but not the actual application transaction, because he was not physically present when Carlos Morazan applied for the policy of insurance. (R. pp. 129-131, 160 - lines 12-20). Schlechta testified that he did not see the application process the day that Carlos Morazan applied for the policy. (R. pp. 160-161).

Slechta testified that the agent physically present for the application process was Richel Smith. (R. p. 140, lines 17-18). Schlechta testified that he made no attempts to reach out to Richelle Smith prior to the hearing. (R. p. 153, lines 8-10). Schlechta testified that Richelle Smith is no longer with the company. (Transcript, p. 43, lines 19-20).

Slechta testified that Respondent, First Acceptance Insurance Company, Ins. does not request the birth certificate of Kevin Morazan listed in the policy

documents. (R. p. 158, lines 14-17). Schlecta confirmed that certain demographic information in the automobile accident was not on the face of the policy. (R. pp. 134-135, 164). Schlecta confirmed that a plain reading of the policy excluded a Kevin Morazan, with a date of birth of September 6, 1993, and listed as the employee of Carlos Morazan. (R. p. 134, lines 11-24). The Parties stipulated that Kevin Morazan, the driver in the accident, had a date of birth of September 6, 2001, making him 14 years old at the time Carlos Morazan applied for the policy of insurance. (R. p. 105). Respondent's attorney admitted that Respondent does not contend that the actual driver was an employee of Carlos Morazan. (R. p. 120). Therefore, Respondent admitted that the Named Driver Exclusion on the face of the policy had inaccurate information and Schlecta's testimony did nothing to correct the inaccuracy of the information in the Named Driver Exclusion.

c. Respondent failed to request the Court to reform The Policy in its complaint and failed to present evidence to allow the Court to reform The Policy.

It was the Respondent's, not the Appellant's, duty to prove by clear and convincing evidence that The Policy should be reformed based upon mutual mistake. Further, Respondent failed to list a cause of action for reformation of The Policy in its complaint and failed to request the lower court to reform The Policy to

correct the excluded driver's information based upon mutual mistake. There were no discussions of reformation or mutual mistake in Respondent's complaint. Therefore, without reformation of the information in the Excluded Driver Endorsement and declaration, Kevin Morazan, the driver in the motor vehicle collision that injured Jayvon Garrett on September 18, 2018, is not excluded from coverage in The Policy.

According to George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (S.C. 2001), to reform a policy, "mutual mistake must be shown by clear and convincing evidence." George, 344 S.C. at 590, citing Crosby v. Protective Lift Ins. Co., 293 S.C. 203, 206, 359 S.E.2d 298, 300 (S.C. App. 1987). Further, "a contract may be reformed on the ground of mistake when the mistake is mutual and consists of the omission or insertion of some material element affecting the subject matter or the terms or stipulations of the contract, inconsistent with those of the parol agreement which necessarily preceded it." George, 344 S.C. at 590, citing Crosby v. Protective Life Ins. Co., 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987). "A mistake is mutual where both parties intended a certain thing and by mistake in drafting did not obtain what was intended." *Id.*

In the present case, Respondent argues that Kevin Morazan (DOB: 9/6/2001; single son of Carlos Morazan) should be the excluded driver. Respondent

insinuates that the actual excluded driver, Kevin Morazan (DOB: 9/6/1993; married employee of Carlos Morazan) is a mutual mistake in drafting between Carlos Morazan and Richel Smith. However, argument is not evidence.

Respondent did not call Carlos Morazan or Richel Smith to testify that the date of birth, marital status, and relationship status of the excluded driver were a product of mutual mistake in drafting. As such, **the only evidence on the record** is that **a person by the name of Kevin Morazan**, with a **date of birth of September 6, 1993**, a **marital status of married**, and **relationship to Carlos Morazan of employee** was excluded. **Such a Kevin Morazan is not the Kevin Morazan who was driving the automobile involved in the accident injuring Jayvon Garrett on September 25, 2018.**

The Kevin Morazan driving the automobile in the accident had an undisputed and stipulated date of birth of September 6, 2001, and at the time of the application when the exclusion was created was the fourteen-year-old son of Carlos Morazan, not the 23-year-old married employee of Carlos Morazan. (R. p. 105). As Respondent did not meet its burden of proof to reform the policy, the lower court erred in finding that the policy excluded Kevin Morazan (DOB: 9/6/2001; son of Carlos Morazan) who was the driver in the accident. The lower court order must be reversed, and Respondent should be ordered to indemnify and

defend Jayvon Garrett's claim for injuries that he sustained in the automobile accident of September 25, 2018, when he was a passenger in the vehicle being driven by Kevin Morazan.

2. BECAUSE THE LANGUAGE, PURPOSE, AND PUBLIC POLICY BEHIND THE NAMED DRIVER EXCLUSION STATUTE IS TO PROTECT THE MOTORING PUBLIC BY REQUIRING THE EXCLUDED DRIVER TO SURRENDER HIS DRIVER'S LICENSE OR BE INSURED UNDER HIS OWN POLICY, THE COURT ERRED WHEN IT HELD THAT THE NAMED DRIVER EXCLUSION EXCLUDED KEVIN MORAZAN, A FOURTEEN-YEAR-OLD, INCAPABLE OF EVEN OBTAINING A DRIVERS LICENSE OR SECURING HIS OWN POLICY OF INSURANCE.

The Named Driver Exclusion does not apply to a Fourteen-Year-Old child because a Fourteen-Year-Old child cannot lawfully obtain a Driver's License in the State of South Carolina and cannot secure their own Policy of Insurance. Even if The Policy were reformed to exclude Kevin Morazan, Carlos Morazan's son with date of birth of September 16, 2001, the Named Driver Exclusion would be invalid because at the time the Named Driver Exclusion was written into The Policy, February 26, 2016, Kevin Morazan was only Fourteen Years Old.

Under normal circumstances, South Carolina law mandates insurance policies to include liability coverage and UM coverage. S.C. Code Ann. § 38-77-140 (requiring automobile insurance policies to include liability coverage); S.C. Code Ann. § 38-77-150 (requiring insurance policies to include UM coverage). Despite these mandates, South Carolina law also provides that insurers and

insureds may agree to exclude coverage when a particular named person operates an automobile. See S.C. Code Ann. § 38-77-340.

S.C. Code Ann. § 38-77-340 provides: Notwithstanding the definition of "insured" in Section 38-77-30 of the South Carolina Code of Law, 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. Id.** As such, a valid agreement to exclude a person from insurance coverage must (1) use a South Carolina Department of Insurance approved form, (2) name the excluded driver, and (3) the named insured must provide that the excluded person has turned over their driver's license to the South Carolina DMV or secured an alternative and appropriate insurance policy. Progressive Northern Insurance Company v. Holloway, 615 F.Supp.3d 408 (D.

S.C. 2022).

The statute's purposes are listed clearly in USAA v. Pickens as "providing the named insured an opportunity to pay lower premiums when a **bad driver** would otherwise be included within the policy and protecting the motoring public **by requiring the excluded driver to surrender his license or be insured under his own policy.**" 434 S.C. 60, 862 S.E.2d 442 (S.C. 2021), citing Nationwide v. Knight, 858 S.E.2d 633 (S.C. 2021); Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co., 406 S.C. 534, 541, 753 S.E.2d 437, 441 (S.C. App. 2013) (citing Lovette v. U.S. Fidelity & Guar. Co., 274 S.C. 597, 600-601, 266 S.E.2d 782, 784 (S.C. 1980)).

On the date of the alleged Named Driver Exclusion's origination, Mr. Kevin Morazan was Fourteen-Years-Old. The genesis date of the named driver exclusion was February 26, 2016, and Kevin Morazan's date of birth is September 6, 2001. Simply put, there is no reason for Mr. Carlos Morazan to have his Fourteen-Year-Old surrender his Driver's License when he cannot lawfully obtain one. Per South Carolina statutory law, one must be Fifteen Years Old to obtain a beginner's permit. See Section 56-1-50 of the South Carolina Code of Law. Respondent's only witness, Schlecta, testified that if a fourteen-year-old came into First Acceptance Insurance Company and asked for a policy of automobile liability insurance, he would not issue a policy. (R. pp. 150, 165). As such, Mr. Kevin

Morazan at Fourteen Years Old could not have secured alternative or appropriate insurance on the date of the inception of the Named Driver Exclusion in The Policy.

CONCLUSION

In conclusion, Appellant respectfully requests this Court to reverse the decision and order of the lower court for two main reasons. First, The Policy does not identify the driver involved in the accident injuring Jayvon Garrett on September 25, 2018. No evidence was presented by Respondent of mistake as no one present at the creation of the policy was called to testify at the trial. Finally, Respondent did not plead or request policy reformation to identify the driver involved in the accident injuring Jayvon Garrett on September 25, 2018.

Second, even if the driver involved in the accident was properly listed on the face of the Named Driver Exclusion, the Named Driver Exclusion does not apply to a fourteen-year-old as a fourteen-year-old cannot legally obtain a license to surrender, and therefore does not require a separate policy of insurance as he cannot legally drive. In conclusion, Appellant respectfully requests this Honorable Court to reverse the decision and order of the lower court and require Respondent to indemnify and defend Appellant's claim for personal injuries incurred as a result of the motor vehicle accident on September 25, 2018, when Jayvon Garrett was a passenger in the vehicle driven by Kevin Morazan (DOB: 9/6/2001).

Respectfully submitted,

July 11, 2024

/s/ J. Andrew Smith
James Andrew Smith
28 Old Jericho Road
Beaufort, South Carolina
29906
(843) 379-9500
drew@lawofficeofcbushiii.
com

Attorney for Appellant