

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-001596

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S.C. SUPREME COURT

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

v.

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

Of Whom,

Sharmin Christine Walls and Randi Harper are thePetitioners.

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STATEMENT OF ISSUES ON APPEAL

- I. **Whether the Court of Appeals properly enforced exclusions in an automobile liability policy that prevent an insured from being indemnified beyond the minimum limits for injuries caused by his decision to flee law enforcement and commit a felony?**

- II. **Whether the Court of Appeals properly held this Court's prior decision in *Williams v. GEICO* only applies to arbitrary and capricious exclusions that reduce coverage for a class of omnibus insureds?**

STATEMENT OF THE CASE

This appeal arises out of a single-vehicle accident that resulted from Korey Mayfield's decision to flee from law enforcement. Mayfield was driving a Chevrolet Lumina insured by Nationwide and owned by Petitioner Sharmin Walls. Walls, Christopher Timms, and Randy Harper were passengers in the vehicle when State Trooper Travis Wilson observed Mayfield crossing the yellow line and speeding. Trooper Wilson activated his blue lights. Instead of pulling over, Mayfield led Trooper Wilson on a high-speed chase. Mayfield ultimately lost control of the vehicle and ran off the road in a single-car accident that caused Timms' death and severe injuries to Walls and Harper.

The Nationwide policy insuring the Chevy Lumina provided liability limits of \$100,000 per person and \$300,000 per accident. However, the policy included two exclusions relevant to this appeal: (1) a flight from law enforcement exclusion; and (2) a felony exclusion. The exclusions applied "with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law . . ." (R. pp. 109-110). In addition, although Walls had the option to purchase underinsured motorist coverage, she chose not to. (R. p. 119, lines 21-22). Therefore, the recoveries for her and the other passengers in the Lumina are limited to the applicable liability coverage.

After the accident, Nationwide tendered the minimum limits required by the South Carolina Financial Responsibility Act, \$50,000, to the Petitioners here and to Timms' estate.¹ Nationwide then filed this declaratory action seeking a declaration applying the felony and flight from law enforcement exclusions. The case came before the Honorable J. Cordell Maddox, Jr. for a bench trial on September 12, 2013.

On August 18, 2014, the Circuit Court entered an Order in favor of Petitioners and against Nationwide. (R. pp. 11-17). The August 18 Order found that Mayfield was a non-permissive user of the vehicle and, therefore, Petitioners and Timms' Estate were entitled to uninsured motorist coverage. (R. p. 16). On August 26, 2014, Nationwide served a Motion to Alter or Amend the August 18 Order. (R. pp. 83-84, 85-106). In particular, Nationwide argued that the Petitioners had failed to raise the issue of Mayfield's non-permissive use in their pleadings, and that Petitioners were precluded from seeking uninsured motorist coverage because they had recovered liability payments equal to the mandatory minimum limits from two different insurers. (R. p. 86). Nationwide also argued that the Order failed to make the key factual determinations of whether Mayfield was fleeing law enforcement and committing a felony at the time of the accident. (R. pp. 88-92, 103-104).

The Circuit Court held a hearing on Nationwide's Motion to Alter or Amend on March 6, 2015. At the hearing, Petitioners withdrew their contention that the uninsured motorist coverage applied. (R. p. 123, lines 10-23). Furthermore, the Circuit Court made the factual determination that Mayfield was fleeing from law enforcement at the time of the accident. (R. p. 122, lines 12-17). Subsequently, on February 26, 2016, the Circuit Court entered an Order finding Mayfield

¹ The Estate of Christopher Timms did not file a Petition for Rehearing before the South Carolina Court of Appeals, and it did not sign onto the Petition for Certiorari. Therefore, Timms' Estate does not appear to be a Petitioner here.

was fleeing from law enforcement at the time of the accident and that his conduct constituted a felony. (R. p. 5). Nonetheless, the Circuit Court ruled in favor of Petitioners based on this Court's then-recent decision in *Williams v. Government Employees Insurance Company*, 409 S.C. 586, 762 S.E.2d 705 (2014). The Circuit Court gave the 3-2 decision in *Williams* an incredibly broad reading, finding that the case prohibited *any* exclusion that had the effect of reducing coverage from the face amount on the policy. (R. p. 9).

Nationwide appealed, and the Court of Appeals entertained oral arguments on October 3, 2018. On June 5, 2019, the Court of Appeals entered a detailed, unanimous Opinion reversing the Circuit Court and holding that the flight from law enforcement and felony exclusions comported with South Carolina's public policy and were enforceable as written.

After closely analyzing this Court's decision in *Williams*, the Court of Appeals held that Nationwide's flight from law enforcement and felony exclusions do not conflict with South Carolina public policy. (Appendix 349-352). As to South Carolina Code § 38-77-142, the Court of Appeals held that provision dealt with who must be insured, not what conduct must be insured. (Appendix 352). Moreover, the Court of Appeals held that, unlike the family member step-down provision at issue in *Williams*, the flight from law enforcement and felony exclusions were not arbitrary and capricious. (Appendix 353).

Petitioners filed a Petition for Rehearing, which the Court of Appeals denied. This Petition followed.

STATEMENT OF FACTS

The facts of the case were largely stipulated at trial. Walls owned a Chevrolet Lumina insured by Nationwide. (R. p. 2). The policy provided liability limits of \$100,000 per person, \$300,000 per accident. (R. p. 109). However, the policy contained exclusions that applied to

any coverage in excess of the State's mandatory minimum limits if bodily injury occurred while an insured – either the named insured, a resident relative, or a permissive user – was fleeing from law enforcement or committing a felony:

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. **Bodily injury or property damage** caused by:

- a) **You**;
- b) a **relative**; or
- c) anyone else while operating **your auto**:
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

(R. p. 110).

On July 11, 2008, Walls, Mayfield, Harper, and Timms had been drinking at Walls' residence when they left as a group. (R. p. 244-246). Walls had been drinking wine all morning, so she got in the car and allowed Mayfield to drive her Chevy Lumina without protest. (R. p. 245-246). The group made a number of stops before Trooper Travis Wilson observed the vehicle on South Carolina Highway 81 in Anderson crossing the yellow line and going approximately 12 miles an hour over the speed limit. (R. p. 248); (R. p. 108). Trooper Wilson decided to pull the vehicle over and activated his blue lights. (R. p. 108). Then, the Lumina – operated by Mayfield – went from the far-left lane (81 is a four-lane road) to the far right turning lane, disregarded a stop signal, and continued down 81 South. (R. p. 108). While driving down 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour in an effort to keep up with the Lumina. (R. p. 108).

Mayfield turned left off 81 South onto Fred Dean Road. (R. p. 109). In order to keep up, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. (R. p. 109). Mayfield then turned right onto Flat Rock Road and then left onto Leatherdale Road, disregarding multiple stop signs. (R. p. 109). At that time, Trooper Wilson received

instructions to terminate the pursuit, which he did. (R. p. 109). However, by the time Trooper Wilson deactivated his siren and blue lights, the Lumina was out of sight. (R. p. 109).

Knowing that Leatherdale Road was a curvy road, Trooper Wilson proceeded down Leatherdale to ensure that the Lumina made it through several upcoming curves. (R. p. 109). Approximately a mile down the road, Mayfield lost control of the Lumina and ran off the road in a single-vehicle accident. (R. p. 109). Trooper Wilson came upon the scene within a minute-and-a-half of terminating the chase. (R. p. 109). The Greenville County Accident Reconstruction Team investigated and determined that Mayfield was travelling a minimum of 72 miles per hour when he lost control. (R. pp. 109 & 194). The speed limit on that portion of Leatherdale Road was 35 miles per hour. (R. p. 109). Timms died as a result of the accident, and Mayfield, Walls, and Harper each sustained serious injuries.

Mayfield was charged with and ultimately pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970), to reckless homicide – a felony. (R. p. 110). Furthermore, the Circuit Court made a factual determination that Mayfield was fleeing a law enforcement officer at the time of the accident. (R. p. 4). The Circuit Court based its factual determination on damage to the vehicle, the speed of the vehicle at the time of the accident, the dash cam video, witness statements, and the timeline. (R. pp. 4-5). Even though Trooper Wilson had terminated the chase, the Circuit Court found that Mayfield's unlawful course of conduct and manner of driving continued up until the time of the crash.

Relying on the flight from law enforcement and felony exclusions in the policy, Nationwide agreed to tender its \$50,000 of undisputed liability coverage, which the Petitioners accepted. (R. pp. 253, 256 & 261). Furthermore, Mayfield had liability coverage under a policy of insurance issued by State Auto. State Auto also tendered its liability limits of

\$50,000. (R. pp. 20 & 26). Then, Nationwide filed this declaratory judgment action seeking application of the felony and flight from law enforcement exclusions. (R. p. 33).

STANDARD OF REVIEW

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Lee v. University of South Carolina*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014) (citation omitted). “When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law.” *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 576, 757 S.E.2d 399, 404 (2014) (citation omitted). “In an action at law tried without a jury, the appellate court will not disturb the trial court’s findings of fact unless there is no evidence to reasonably support them.” *Id.* (citation omitted). However, the Court “need not defer to the trial court’s rulings” on questions of law. *Id.* (citation omitted).

ARGUMENT

South Carolina has long held “[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted.” *Pennsylvania Nat’l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 246, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). The Court of Appeals properly held that exclusions reducing coverage for activities that South Carolina’s General Assembly has deemed illegal – fleeing law enforcement and reckless homicide – fully comport with the State’s public policy. In doing so, the Court of Appeals adopted a rule that has been reached by nearly every court in the country that has addressed this question. Nothing in the Court of Appeals’ decision conflicts with South Carolina’s statutory requirements or the reasoning set out by this Court in *Williams*.

Petitioners’ reliance on *Williams* is misplaced. First, *Williams* addressed application of the South Carolina omnibus statute, which only addresses who must be insured, not the conduct that

must be insured. Second, the *Williams* Court found that a family member step-down provision violated South Carolina public policy because it arbitrarily and capriciously reduced coverage available to a class of tort claimants solely based upon what the Court viewed as antiquated and misguided assumptions. Unlike the family member step-down in *Williams*, the felony and flight from law enforcement exclusions merely apply when an insured chooses to participate in illegal activities that significantly increase the insured risk. Therefore, Nationwide's felony and flight from law enforcement exclusions are vastly different from the step-down provision in *Williams*.

I. The Court of Appeals properly followed the strong majority rule when it found Nationwide's felony and flight from law enforcement exclusions comport with public policy.

The felony and flight from law enforcement exclusions plainly and unambiguously limit coverage for conduct that the State of South Carolina has already recognized as being against public policy. The General Assembly has answered the question of whether it is proper to discourage individuals from fleeing law enforcement or committing felonies by making such conduct a crime. *See* S.C. Code Ann. § 56-5-2910 ("A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony . . ."); S.C. Code Ann. § 56-5-750 ("[I]t is unlawful for a motor vehicle driver . . . to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light."). Nationwide's policy exclusions promote the public policy of these criminal statutes by providing that an insured will not be indemnified for this illegal conduct above the mandatory minimum limits.

Courts across the country enforce similar exclusions, finding that the exclusions comport with public policy. Those courts find the exclusions reasonably target volitional criminal conduct that significantly increases the risk beyond those risks attendant to the regular operation of a vehicle. By adopting the same rule, the Court of Appeals joined this strong majority – if not unanimous – rule.

A. South Carolina has a long history of enforcing reasonable exclusions in insurance policies.

Generally, South Carolina has consistently decided that voluntary coverage – i.e., coverage in amounts above the minimum limits – is subject to the general rules of contract construction. Insurance contracts are construed according to traditional contract principles. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *Id.* (citation omitted). “Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage.” *Id.* (citing *Gambrell v. Travelers Ins. Co.*, 280 S.C. 69, 310 S.E.2d 814 (1983)).

This general rule is the default rule for insurance policies providing optional coverage. Therefore, an insurer may include plainly worded exclusions in voluntary coverage so long as those exclusions do not violate public policy. *See e.g., South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 13 (Ct. App. 1989) (“The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance.”); *Cowan v. Allstate Ins. Co.*, 357 S.C. 625, 594 S.E.2d 275 (2004) (reaffirming the holding in *Shores v. Weaver*, 351 S.C. 626, 571 S.E.2d 715 (Ct. App. 2002), that an insured’s failure to cooperate cannot relieve the insurer’s obligations to pay a judgment up to the mandatory minimum limits); *Parker*, 282 S.C. at 556, 320 S.E.2d at 464 (holding that a business use exclusion “is void to the extent of minimum coverage . . .”); *Universal Underwriters Ins. Co. v. Metropolitan Prop. and Life Ins. Co.*, 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989) (approving provision that limited liability coverage to mandatory minimum coverage when vehicle is being operated by a statutory permissive insured); S.C. Code Ann. § 56-9-20(d) (“excess or

additional coverage shall not be subject to the provisions of this chapter” and “the term ‘motor vehicle liability policy’ shall apply only to that part of the coverage which is required by this article.”); S.C. Code Ann. § 38-77-140(B) (“Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements.”). The Supreme Court in *Williams* reiterated this well-settled principle of South Carolina law: “As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition.” *Williams*, 409 S.C. at 599, 762 S.E.2d at 712 (citations omitted).

The Court of Appeals in *Universal Underwriters* put the issue succinctly: “It is clear that, while additional coverage is permitted by the Act, only the minimum limit is mandatory. Therefore, the Act provides no basis to hold that the provision of the policy limiting coverage to the statutory minimum is contrary to public policy.” *Id.* at 410, 380 S.E.2d at 862. Therefore, reasonable exclusionary provisions that do not have the effect of reducing coverage below the minimum limits set forth in § 38-77-140 are generally acceptable.

B. By limiting application of the exclusion to amounts in excess of the state’s mandatory minimum limits, Nationwide accurately describes the exclusions’ effect.

Typically, an exclusion for illegal conduct would apply to an entire claim. However, because South Carolina’s General Assembly has determined that the State also has a public policy of protecting injured members of the public, state law requires minimum limits of coverage even when an insured’s conduct violates the law. *See e.g.*, S.C. Code Ann. § 38-77-140 (providing minimum limits of required liability coverage). The Court of Appeals in *United Services Auto. Ass’n v. Markosky*, 340 S.C. 223, 530 S.E.2d 660 (Ct. App. 2000), recognized that § 38-77-140 defines the extent of the state’s public policy as to mandatory liability coverage:

The public policy, however, has been effected by the enactment of the minimal limits coverage statute found in S.C. Code Ann. § 38-77-140. As recognized in *Shores*, “the legislature has determined that for all vehicles registered in South Carolina, at least minimal coverage is necessary to protect the public.” To the extent the legislature determines this public policy is not being effected, it has the option of raising the minimum limits. We will not construe the plain language of the statute to extend the public policy beyond that which was plainly intended.

340 S.C. at 230, 5350 S.E.2d at 664. Therefore, an exclusion that attempts to exclude all coverage for criminal or intentional conduct violates South Carolina public policy because it conflicts with the minimum insurance requirements of § 38-77-140. However, exclusions that reduce coverage to the State’s mandatory minimum limits are enforceable to the extent that they otherwise comply with South Carolina’s public policy. Nationwide’s exclusions for criminal conduct do just that.

Nationwide’s flight from law enforcement and felony exclusions plainly and unambiguously define what conduct is subject to the exclusions, and to whom the exclusions apply:

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

(R. p. 109-110).

On its most basic level, Petitioners’ argument is that Nationwide’s flight from law enforcement and felony exclusions violate South Carolina law because they are worded as step-down provisions. Petitioners point to this Court’s holding in *Williams*, which focused specifically on a family member step-down, and Petitioners extrapolate from that holding to broadly preclude *any* exclusion for *any* conduct in *any* insurance policy issued in South Carolina. However,

Nationwide phrased the exclusions as only applying to amounts above the state's minimum requirements so that the exclusions would conform to the requirements of South Carolina law.

As noted above, South Carolina Code § 38-77-140 mandates minimum limits of coverage even when an insured is committing illegal or intentional acts. *See* S.C. Code Ann. § 38-77-140; *Mumford*, 299 S.C. at 17, 382 S.E.2d at 12-13 (holding that the Act mandates minimum limits coverage and “draws no distinction between intentional acts and negligent acts . . .”). Therefore, Nationwide could not exclude bodily injuries for felonious conduct or flight from law enforcement if the exclusion had the impact of reducing coverage below the minimum limits. The exclusion acknowledges this rule by plainly informing the insured that it applies “with regards to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law . . .” (R. p. 109). The exclusion applies, but only for amounts in excess of the mandatory minimum limits.

By wording the exclusion as a step-down provision, Nationwide accurately conveys the legal effect of the exclusion to the insured. In fact, a provision merely stating that felony or flight from law enforcement is “excluded” would likely lead an insured to the incorrect conclusion that the policy provides no coverage for that conduct. Instead, the Nationwide policy language accurately describes how the exclusion works. If anything, the fact that these exclusions are worded as a step-down should confirm that the exclusions are valid and enforceable under South Carolina law.

C. Felony and flight from law enforcement exclusions have been approved by courts across the country, with some courts holding it violates public policy if a carrier fails to include these exclusions.

The Court of Appeals looked to courts from across the country that have held felony and flight from law enforcement exclusions comport with public policy. (Appendix p. 353). The number of jurisdictions finding that similar exclusions do not violate public policy is

overwhelming. In fact, Petitioners have not cited a single case finding a similar exclusion violates public policy when applied to coverage in excess of a state's minimum limits of liability coverage.

In *Williams*, the Court found a family member step-down provision was arbitrary and capricious because it reduced coverage for a specific class of claimants. The Court spent a significant portion of its analysis discussing the reasoning from a number of courts that have struck down similar family member limitations. In contrast, courts from across the country routinely uphold and enforce felony and flight from law enforcement exclusions.² If the rule is not unanimous, then it certainly is the overwhelming majority rule.

² *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); *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); *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.*

Unlike the family member provision at issue in *Williams* (discussed below in Section II), an exclusion that merely excludes illegal conduct can no more be arbitrary and capricious than the criminal statutes that make this same conduct illegal. “An exclusion in an automobile policy as to loss while the automobile used is engaged in unlawful flight from the police is not against public policy.” 8A Couch on Ins. § 121:92; *see also* 41 A.L.R.6th 527 (“Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct.”). Because the General Assembly has already deemed Mayfield’s conduct reprehensible by making it criminal, Nationwide’s exclusion for the same reprehensible conduct is not at all arbitrary.

Public policy is always harmed when a policy gives insureds license to engage in criminal conduct. *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011). In fact, public policy strongly *favours* criminal acts exclusions: “Indeed, this public-policy principle is so

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).

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.” *Id.* at 1048.

In the *Bailey* case, the Supreme Court of Colorado considered the flight from law enforcement exclusion and concluded that the exclusion did not violate public policy. The Supreme Court began by recognizing three competing public policy interests: (1) protecting tort victims; (2) protecting the freedom of contract rights of insurers and insureds; and (3) allowing insurers to shift risk based on their insureds’ conduct, especially when that conduct significantly increases the risk of the insurers’ liability and may be encouraged by indemnification. 255 P.3d at 1046-47. South Carolina recognizes these same principles. *See Williams*, 409 S.C. at 598, 762 S.E.2d at 712 (recognizing (1) the purpose of the MVFRA of protecting tort victims and (2) the parties’ freedom of contract rights); *Columbia Real Estate & Trust Co. v. Royal Exch. Assurance*, 132 S.C. 427, 128 S.E. 865, 867-68 (1925) (recognizing that one purpose of the stated value policy statute is to reduce the moral hazard created by over insuring property).

The Colorado Supreme Court recognized the purpose of the flight from law enforcement exclusion: “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 of liability.” *Bailey*, 255 P.3d at 1047. “If a single insured is allowed, through an intentional act, to consciously control risks covered by the policy, the central concept of insurance is violated.” *Bohner*, 359 Ill. App. 3d at 626, 834 N.E.2d at 84 (citation omitted). “[M]ost insureds can keep themselves from engaging in felonious criminal conduct in the same way that [m]ost individuals can protect themselves from causing intentional harm.” *Bailey*, 255 P.3d at 1047. Because the exclusions have a clear, intelligible, and logical basis, they are neither arbitrary nor capricious.

The Colorado Supreme Court also held that the flight from law enforcement exclusion supports public policy: “Finally, public policy is also concerned with insurers giving insureds license to engage in intentional misconduct, which may be ‘more likely if . . . insured[s] believe [they] will not have to bear the financial costs of the intentional conduct.’” *Id.* at 1047-48. “The concern with giving insureds license to engage in intentional misconduct applies with equal force to most felonious criminal misconduct.” *Id.* This public policy is so important, many jurisdictions hold that an insurer actually violates public policy if it fails to include a criminal-acts or intentional-acts exclusion. *Id.* at 1048 (citing several cases).

In addition to the courts across the county that have generally addressed felony and flight from law enforcement exclusions, the United States District Court for the Eastern District of Virginia specifically found that an illegal acts exclusion does not conflict with Virginia’s nearly identical omnibus statute, which served as the model for the South Carolina statute addressed by the Court in *Williams*. See *Standard Fire Ins. Co. v. Armstrong*, 2013 WL 1933828 (E.D. Va. May 8, 2013).

In *Williams*, the Court address South Carolina’s omnibus statute, located at South Carolina Code § 38-77-142. Importantly, the South Carolina General Assembly adopted § 38-77-142 from Virginia’s statute, as evidenced by a typographical error in South Carolina’s statute that was copied from Virginia’s statute. South Carolina’s statute applies only to motor vehicles, but Virginia’s statute applies to both vehicles and watercraft. Thus, the Virginia statute applies to vehicles and watercraft “garaged, docked, or used in” Virginia. Va. Code § 38.2-2204(A). South Carolina’s omnibus statute only applies to “motor vehicles,” which are defined in the statute as vehicles “designed for use upon a highway.” Nonetheless, when South Carolina adopted Virginia’s omnibus statute, the General Assembly inadvertently kept the word “docked” from the Virginia

statute. See S.C. Code § 38-77-142(A) (“No policy . . . covering liability arising from the . . . use of a motor vehicle may be issued . . . upon a motor vehicle that is principally garaged, docked, or used in this State Each policy or contract of liability insurance . . . insuring private passenger automobiles principally garaged, docked, or used in this State . . .”) (emphasis added). Obviously, motor vehicles are not “docked.” Therefore, this typographical error in the South Carolina statute makes it obvious that South Carolina adopted this omnibus statute from Virginia.

Applying the Virginia statute, the District Court in *Armstrong* enforced an “illegal act” exclusion in a policy insuring the operation of a watercraft. In that case, the insured operated an insured boat while intoxicated, collided with another watercraft, and pled guilty to charges arising out of the collision. The District Court held the illegal acts exclusion applied. *Id.* at *3. The District Court reviewed section 38.2-2204 and held it could find nothing in the statute “forbidding an exclusion of coverage for dishonest and illegal actions where an intoxicated boater causes property damage.” *Id.* Thus, whereas Petitioners fail to cite any case holding a similar statute prohibits a felony or flight from law enforcement exclusion, at least one other court applying a nearly identically worded statute has held that statute does not invalidate an illegal acts exclusion.

In sum, an overwhelming number of jurisdictions that have evaluated felony and flight from law enforcement exclusions have found that these exclusions do not conflict with a state’s public policy. The justifications for the exclusions are obvious and common sense. Exclusions that merely preclude coverage for conduct that the General Assembly has deemed criminal are reasonable. The felony and flight from law enforcement exclusions specifically address conduct that significantly increases the insured risk, and a driver can easily avoid their application by simply obeying the law. The exclusions support public policy. Because South Carolina has a long

history of enforcing exclusions in automobile policies for amounts in excess of the minimum limits, the Court of Appeals properly enforced the exclusions as written.

II. The Court of Appeals correctly held that an insurer may provide reasonable limitations on optional coverage against voluntary conduct that is both criminal and inherently more dangerous than what is attendant to the regular operation of a vehicle.

Nationwide's policy excludes conduct that South Carolina's General Assembly has deemed criminal. It is easy for an insured to avoid application of these exclusions – do not flee from law enforcement and do not use a vehicle in the commission of a felony. The exclusions aim to deter criminal conduct by ensuring that an insured cannot shift the financial consequences of his volitional, criminal actions to an insurance company and its other premium paying insureds. Courts across the county have enforced similar exclusions and found that these exclusions support, rather than harm, public policy.

To the extent South Carolina has recognized a countervailing interest of protecting the public from injuries caused by the tortious act of a driver, that interest has been stated to be up to the minimum amount of coverage required by statute, not more. The *Williams* case does not change this outcome, especially for exclusions that promote rather than defeat public policy. The *Williams* Court merely struck down a provision that arbitrarily and capriciously reduced coverage for an entire class of claimants who fall within the class of individuals intended to be treated as “insureds” under South Carolina's omnibus statute. Because the felony and flight from law enforcement exclusions are conduct-based exclusions that treat all insureds the same, the omnibus statute and the Court's holding in *Williams* are inapplicable.

A. Petitioners' reading of *Williams* ignores the very nature of omnibus statutes and the issues before the Court in that case.

On its face, the *Williams* decision strikes down as violative of public policy a family member step-down provision because it arbitrarily and capriciously reduced coverage to those who

would qualify as omnibus insureds under § 38-77-142(A). Petitioners incorrectly contend *Williams* was intended to strike down all exclusions in any automobile insurance policy that have the effect of reducing the available limits of liability coverage regardless of whether the exclusion is supported by a reasonable justification. Petitioners' interpretation of *Williams* completely ignores the context of the decision and the narrow issue before the Court in that case.

The Court in *Williams* evaluated whether a family member step-down provision violated South Carolina's omnibus statute. The omnibus statute identifies who must be insured under an insurance policy:

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

(C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

S.C. Code Ann. § 38-77-142. Paragraph (A) of the statute defines those who must be included as an insured in the policy, stating that "No 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 expressed or implied consent of the named insured" S.C. Code § 38-77-142(A). Thus, the policy must insure the named insured and permissive users. As stated above,

these statutes are commonly referred to as omnibus statutes. *See e.g.*, 8 Couch on Ins. § 111:22 (listing S.C. Code § 38-77-142(A) as an omnibus statute).

Omnibus statutes define who must be insured. Thus, when Paragraph C of the statute states that any “endorsement, provision, or rider . . . which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void,” it is referring to policy provisions that would treat a permissive user differently from a named insured. For example, an insurer may want to provide certain limits to an adult named insured, but to provide reduced limits when the insured’s children permissively operate the vehicle. This statute prevents a provision that reduces the policy’s coverage when those children operate the vehicle.

Likewise, a business may want to purchase automobile insurance that gives a higher level of liability protection to the business’ executives, but only provides minimal protection when a business employee operates the vehicle. The omnibus statute and Paragraph C prohibit such a provision. As permissive drivers, the young driver in the first example and the employee in the second example are statutory, omnibus insureds, and they must receive the same protections as the named insured.

If Petitioners are correct that the *Williams* Court intended to strike down all provisions in insurance policies that have the effect of reducing coverage from the amount stated on the policy declarations – even when those exclusions treat the named insured and permissive users the same – then such a holding would be inconsistent with the purpose of the omnibus statute. The omnibus statute is designed to make sure that all persons required to be an “insured” under the policy are treated the same. As long as an exclusion treats all insureds – named insureds and permissive users – the same, then the statute is satisfied. Nationwide’s flight from law enforcement and felony

exclusions apply equally to the named insured and “anyone while operating [the named insured’s] vehicle.” (R. p. 109-110). Therefore, the exclusions fully comport with the omnibus statute.

Insurance policies have included reasonable exclusions for well over 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). The basic structure of the modern-day insurance policy includes a broad grant of coverage in the insuring agreement followed by a list of exclusions and conditions. Certainly, if the General Assembly intended to change this foundational approach to insurance, then it would have used much clearer language. The only legislative intent that can be gleaned from the General Assembly’s adoption of an omnibus statute is that it wanted to have permissive users treated the same as named insureds. Going beyond this plain purpose of an omnibus statute to find that the General Assembly intended to exclude all exclusions in an insurance policy simply is not supported by the statute’s text or design.

Section 38-77-142 was enacted in 1997. The *Williams* decision was issued in 2014. If Petitioners’ interpretation of *Williams* is correct, it is difficult to imagine that such a significant change in South Carolina insurance law would have gone unnoticed for the almost 20 years between the statute’s enactment and this Court’s decision in *Williams*. Put simply, Petitioners’ reading of *Williams* is not supported by the omnibus statute or South Carolina law.

B. The *Williams* Court prohibited a family member step-down because it arbitrarily and capriciously reduced coverage for a class of claimants based on what this Court viewed as antiquated assumptions that perpetuated socially destructive inequities – none of which applies to Nationwide’s exclusions.

Petitioners rest their entire argument on the Court’s holding in *Williams*. In *Williams*, the Court addressed a family member step-down provision that reduced the available limits of liability coverage when a family member of the at-fault insured was the claimant. The *Williams* Court found the exclusion was arbitrary and capricious because its application depended entirely on who

was injured, not on what the insured did to cause the injury. In other words, the exclusion was class-based and not conduct-based. The narrow holding in *Williams* has no application here because the felony and flight from law enforcement exclusions here apply based on an insured's conduct, and they are not based upon the status of any particular claimant.

Petitioners contend the holding in *Williams* stands for a much broader rule that insurers can no longer include reasonable limitations in their insurance policies regardless of how they apply. Essentially, Petitioners argue that *Williams* stands for the rule that, once a monetary coverage limit has been stated on the policy declarations page, no provision in the policy can act to reduce that amount of coverage, ever. Certainly, such a shocking rule would constitute a sea change in insurance law.

Fortunately, the holding in *Williams* is not nearly so broad. The *Williams* Court addressed South Carolina's omnibus statute, § 38-77-142. By their very design, omnibus statutes address who must be insured, not what conduct must be insured. The omnibus statute prevents a policy from treating one insured – such as a named insured – differently from other insureds – such as family members or permissive users. A close reading of *Williams* – a 3-2 decision – makes clear the *Williams* court held the family member exclusion violated public policy because it arbitrarily and capriciously reduced coverage for a class of persons who fell within the omnibus definition of an insured. Petitioners' argument ignores the context and the reasoning applied in *Williams*. Because the felony and flight from law enforcement exclusions are conduct based and not class based, the decision in *Williams* have no relationship to Nationwide's felony and flight from law enforcement exclusions.

The structure and logical approach taken by the Court in *Williams* disproves Petitioners' claim. After finding the family-member exclusion was unambiguous, the *Williams* Court spends

several pages of its opinion discussing South Carolina Code § 38-77-142 and its meaning. *See Williams*, 409 S.C. at 598-603, 762 S.E.2d at 712-715. Section 38-77-142(A) of the omnibus statute requires insurers to insure both named insureds and permissive users. Section 38-77-142(C) prevents an insurer from including provisions that would reduce coverage “afforded by the provisions required by this section” – i.e., a provision that treats one class of omnibus insureds differently from another class of omnibus insureds.

After discussing the omnibus statute, the *Williams* Court found a class-based family member exclusion that reduced available coverage for family members – who qualify as omnibus insureds as permissive users of the vehicle – violated public policy. Importantly, at the end of its extensive discussion of § 38-77-142, the *Williams* Court includes a conclusion paragraph beginning with the word “Therefore” and holding:

Therefore, 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. Any other interpretation of Section 38-77-142(C) would render this section useless, and the General Assembly is presumed not to preform useless acts.

Williams, 409 S.C. at 604, 762 S.E.2d at 714 (emphasis added). Thus, the *Williams* Court concluded that § 38-77-142 prohibits an arbitrary policy exclusion that reduces coverage that would otherwise be available to an omnibus insured. In other words, a contractual step-down provision is only void under § 38-77-142 if it is arbitrary and it targets those who would qualify as omnibus insureds.

After the “Therefore” paragraph concluding that coverage cannot be arbitrarily reduced in contravention of § 38-77-142(C), the *Williams* Court spends several more pages of its opinion

analyzing whether the family member step-down provision was arbitrary and capricious.³ *Id.* at 604-607, 762 S.E.2d at 715-717. The *Williams* Court agreed with the reasoning of the Kentucky Supreme Court in *Lewis v. West American Insurance Co.*, 927 S.W.2d 829 (Ky. 1996), which found that the exclusion “prevents a specific class of innocent victims from receiving adequate financial protection” based solely on the person’s status. *Id.* at 605, 762 S.E.2d at 715 (quoting *Lewis*, 927 S.W.2d at 832). Like the Court in *Lewis*, the *Williams* Court found, “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 606, 762 S.E.2d at 716. The *Williams* Court further discussed the public policy implications of the family member step-down:

The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by GEICO’s reduction in coverage to injured family members, who are no less innocent victims in accidents solely because they are injured by the negligence of a family member. It would indeed be an unusual public policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work.

Id. at 606-07, 762 S.E.2d at 716. Thus, the *Williams* Court found the family member step-down provision offensive because it was a class-based exclusion rather than a conduct-based exclusion, and the exclusion discriminated against one class of claimants solely based on their familial relationship to the insured owner or driver.

Because the *Williams* Court ultimately found the family member exclusion was arbitrary and capricious, it struck down the provision. Although Petitioners argue that the *Williams* Court

³ If the Court’s holding in *Williams* did not require a determination of whether the exclusion was arbitrary and capricious, it would seem odd for the *Williams* Court to unnecessarily spill so much ink on the issue.

reached two independent bases for striking down the provision, the two bases were interdependent. As an omnibus statute, § 38-77-142 defines who the legislature intends to qualify as an insured under a policy. The family member exclusion had the effect of reducing coverage for injuries to those very persons – the persons most likely to be injured as passengers when an insured operates a vehicle. Because the exclusion arbitrarily focused on the class of the victim instead of the conduct of the insured driver, the *Williams* Court found the exclusion was arbitrary and capricious. Had the exclusion not been arbitrary, it would have been enforced.

A key aspect of the Supreme Court’s holding in *Williams* was the arbitrariness of holding that an injured person’s recovery could be limited solely because that injured person was related to the tortfeasor. Family members are part of the group specifically defined as “insureds” under the statutory scheme. See § 38-77-30(7). “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.” *Williams*, 409 S.C. at 607, 762 S.E.2d at 717. In other words, the limitation applied based upon the identity of the victim, not the nature of the insured’s – Mayfield’s – conduct.

The Court of Appeals below recognized that the flight-from-law-enforcement exclusion operates in a very different manner from the family-member step-down provision. Specifically, the Court of Appeals held: “The exclusion is based not on the injured party’s relationship to the insured, but on the conduct of the driver. The policy’s coverage remains intact, so long as the injury is not the result of foreseeably dangerous conduct that the insured can reasonably avoid.” 427 S.C. 348, 358-59, 831 S.E.2d at 137. Thus, the felony and flight from law enforcement exclusions are dependent upon the **conduct of the insured**, not the identity of the victim. The exclusion is designed to discourage certain undesirable behavior by limiting the protections

afforded by the policy when the insured undertakes that conduct. Certainly, these exclusions comport with and parallel the legislature's stated public policy because the legislature has criminalized such conduct. Therefore, rather than violating public policy, the flight from law enforcement and felony exclusions actually *support* public policy.⁴

C. This Court's subsequent decision in *Neumayer v. Philadelphia Indemnity Insurance Company* makes clear that the holding in *Williams* is limited to arbitrary and capricious class-based exclusions that target omnibus insureds in violation of § 38-77-142(C).

This Court has already made clear that the holding in *Williams* does not prohibit all policy provisions that may reduce coverage to the minimum limits. In *Neumayer v. Philadelphia Indemnity Insurance Company*, 427 S.C. 261, 831 S.E.2d 406 (2019), this Court approved a policy provision that excluded coverage based on an insured's failure to forward suit papers. In doing so, this Court held that it was "convinced that in enacting section 38-77-142(C) in 1999, the General Assembly did not intend to eviscerate settled law concerning notice clauses." *Id.* at 272, 831 S.E.2d at 411.

In *Neumayer*, this Court upheld enforcement of a notice provision that had the effect of reducing the available liability coverage to the minimum limits. This Court recognized that such policy provisions "balance the insurer's important interests in receiving notice of a lawsuit and an injured person's right to recover against a negligent motorist." *Id.* "Further, these clauses are routinely found in insurance policies and do not implicate the same public policy interests inherent

⁴ It is important to recognize the nature of automobile liability coverage, which insures a driver for liabilities arising out of his operation of a motor vehicle. The exclusions here focus on specific conduct that the insured driver can easily avoid and conduct that significantly increases the insured risk. To the extent that Petitioners argue that they should be protected from Mayfield's conduct, they could have purchased that protection in the form of underinsured motorist coverage. Unlike liability coverage – which focuses on the conduct and fault of the insured driver – underinsured motorist coverage focuses on the identity of the insured. However, Petitioners admit that Walls declined to purchase underinsured motorist coverage. (R. p. 119, lines 21-22).

in *Williams*.” *Id.* at 272, 831 S.E.2d at 412. Thus, *Williams* does not stand for the proposition that all provisions in an insurance policy that could serve to reduce the amount of coverage stated on the face of the policy declarations are invalid. This Court has already rejected that argument in *Neumayer*.

Like the notice provision at issue in *Neumayer*, the felony and flight from law enforcement exclusions in the Nationwide policy are commonplace. Insurance policies routinely exclude coverage for an insured’s intentional or criminal acts. As discussed above in Section I, these provisions are ubiquitous and have been approved by courts across the country. Moreover, by limiting application of the exclusion to amounts above South Carolina’s minimum limits, the exclusions balance the insurer’s important interests of not insuring avoidable, criminal conduct that significantly increases the insured risk with the right of injured persons to recover against an at-fault motorist.

The Court’s subsequent decision in *Neumayer* also provides clarification on the importance of the arbitrary and capricious nature of the family member step-down provision on this Court’s holding in *Williams*. Summarizing the holding in *Williams*, the Court in *Neumayer* explained the reasoning for the *Williams* decision:

We agreed with the Supreme Court of Kentucky, which, in invalidating a similar provision, refused to embrace the antiquated argument that such provisions were designed to deter potential collusion between family members. Quoting *Lewis*, this Court stated, “To uphold the family [step-down] exclusion would result in perpetuating socially destructive inequities.”

427 S.C. at 271, 831 S.E.2d at 411 (quoting *Williams*, 409 S.C. at 605, 762 S.E.2d at 715)). Thus, the holding in *Williams* was dependent on the finding that the family member step-down provision was arbitrary and capricious.

The plain language of the Court's holding in *Williams*, the structure of the opinion, the length to which this Court analyzed the public policy issues, and this Court's subsequent discussion in *Neumayer* all confirm that § 38-77-142, standing alone, does not invalidate all exclusions in all automobile insurance policies issued in this State. Rather, the holding in *Williams* narrowly applies to provisions that arbitrarily reduce coverage that would otherwise be available to injured persons who fall under the definition of "insured" in the omnibus statute.

The felony and flight from law enforcement exclusions in this case do not suffer from the same defects as the family member step-down that was at issue in *Williams*. Insurers agree to protect against fortuitous accidents. Insurers do not agree to indemnify – and premium paying insureds do not want to share in the cost of – the consequences an insured's volitional, criminal activities. Because the felony and flight from law enforcement exclusions are conduct-based exclusions and apply only when an insured chooses to participate in clearly illegal activity, these exclusions are perfectly appropriate under South Carolina law. Thus, the Court of Appeals correctly held that Nationwide's felony and flight from law enforcement exclusions comport with South Carolina's public policy.

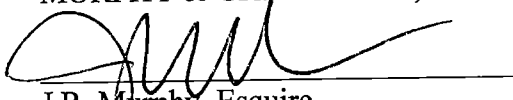
CONCLUSION

The Court of Appeals properly held that felony and flight from law enforcement exclusions that prevent an insured from receiving indemnification above the state's minimum limits for volitional, criminal conduct comport with South Carolina public policy. The overwhelming number of jurisdictions across the country – possibly even unanimously – hold that such exclusions are proper, at least when applied to amounts above the state's minimum limits. Nothing in this Court's decision in *Williams* suggests otherwise. Moreover, unlike the family member step-down at issue in *Williams*, which was a class-based exclusion that focused on who was injured, the flight

from law enforcement and felony exclusions apply equally to all insureds and are based on avoidable conduct. For all of these reasons, Respondents respectfully ask that this Court affirm the Court of Appeals' decision.

Respectfully submitted,

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IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-001596

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S.C. SUPREME COURT

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

v.

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

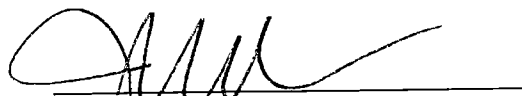
Of Whom,

Sharmin Christine Walls and Randi Harper are thePetitioners.

CERTIFICATE OF COMPLIANCE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Brief of Respondent
complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of
the South Carolina Court Rules.

May 7, 2020



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