

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2020-000026

Nationwide Insurance Company of America.....Respondent

vs.

Kristina Knight, individually and as
Personal Representative of the
Estate of Daniel P. Knight Petitioners

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

WHETHER THE CIRCUIT COURT AND COURT OF APPEALS CORRECTLY FOUND THAT THE EXCLUDED DRIVER ENDORSEMENT NAMING DANIEL KNIGHT, WHICH WAS REQUESTED AND SIGNED BY PETITIONER KRISTI CALL KNIGHT, BARRED HER CLAIM FOR UNDERINSURED MOTORIST BENEFITS FOR AN ACCIDENT THAT OCCURRED WHILE MR. KNIGHT WAS OPERATING A VEHICLE?

STATEMENT OF THE CASE

This insurance coverage dispute centers on the application of an excluded driver endorsement contracted for and signed by Petitioner Kristina Call Knight wherein she named her husband, Danny Knight, as an excluded driver. Petitioner entered into an insurance contract with Respondent Nationwide Insurance Company of America (Nationwide). While purchasing the Policy, Petitioner made the decision to sign an excluded driver endorsement, titled "Voiding Auto Insurance While Named Person Is Operating Car." (R. p. 74). The Named Driver Exclusion, signed by Petitioner, stated that "all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle."¹ (R. p. 74). When she signed the Named Driver Exclusion, Petitioner declared that Mr. Knight had "obtained insurance or other security to operate motor vehicles." (R. p. 74). Thus, Petitioner chose to enter into the contract, chose to sign the form, and as a result of her decision, the Policy was issued with the Named Driver Exclusion.

On February 2, 2016, Mr. Knight was driving a vehicle – and thus, the "all coverages in [the] policy [were] not in effect" – when an accident occurred, resulting in Mr. Knight's death. At the time of the accident, Mr. Knight was operating his own motorcycle, on which he carried separate insurance in his name. As a result, his estate recovered liability insurance from the at-fault motorist and underinsured motorist (UIM) coverage from his own motorcycle policy. Mr.

¹ When she applied for the Nationwide Policy Danny Knight was Kristina's fiancé, and Kristina's last name was Call.

Knight also had other at-home automobile insurance in his own name, and his estate collected UIM coverage under that policy as well. (R. p. 8, ¶ 9 & p. 13, ¶ 5). Because Petitioner elected to exclude Mr. Knight from her Nationwide Policy, the Policy did not provide UIM coverage to Mr. Knight for the accident.

After the accident, Petitioner sought to treat Mr. Knight as an insured and to stack UIM coverage under the Nationwide Policy despite having elected to exclude Mr. Knight when she purchased the Policy. Because Petitioner made a claim for coverage under the Nationwide Policy for a driver she specifically chose to exclude, Nationwide filed this declaratory judgment action.

On cross-motions for summary judgment, the Honorable Judge William H. Seals, Jr. granted Nationwide summary judgment and denied Petitioner's motion for summary judgment. The Circuit Court analyzed the exclusion's plain language, the excluded driver statute, and the various cases interpreting statute. Petitioner contended the excluded driver form could not apply to UIM coverage because UIM coverage is required by statute. The Circuit Court rejected this argument, noting that the South Carolina Court of Appeals in *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013), had previously held the excluded driver statute specifically applies even when the excluded driver would otherwise be a statutory insured. In fact, the excluded driver statute begins by stating: "Notwithstanding the definition of 'insured' in Section 38-77-30 . . ." S.C. Code § 38-77-340. Therefore, the exclusion applies even to coverage that is otherwise required to be provided to a statutory "insured."

Petitioner also argued the excluded driver statute only applies to liability coverage. The Circuit Court rejected this argument, finding the position was not supported by the terms of the exclusion signed by Kristina Knight nor the statutory language. The endorsement's plain language states that *all* coverage is excluded when Mr. Knight operates *any* vehicle. As to the statute, the

Circuit Court noted there is no such thing as a standalone UIM policy. Rather, “a policy of liability insurance must encompass all coverages provided to the policyholder because UIM coverage cannot be sold as a stand-alone policy. . . . All of those types of coverage are attached to the policy of liability insurance.” (R. p. 3). The Circuit Court found support for its conclusion in other statutory definitions, which give context to the undefined statutory phrase “policy of liability insurance.” For example, the defined phrase “Motor Vehicle Liability Policy” includes those coverages described within §§ 38-77-140 to 38-77-230, which includes UIM coverage. (R. p. 3). Lastly, the Circuit Court held the interpretation promoted by Petitioner was contrary to the public policy of South Carolina. In South Carolina, an insured can only purchase UM and UIM coverage up to the limits of liability coverage. “Thus, an individual is not allowed to protect himself from injury in an amount greater than that which he protects the public. Allowing an excluded driver to collect UIM coverage when he is explicitly and purposefully excluded from coverage for his liability to others undercuts that legitimate public policy objective.” (R. p. 4).

Petitioner appealed. In a thorough, unanimous, published decision, the Court of Appeals affirmed. In addition to finding UIM coverage is one of a number of voluntary coverages that may be included in a policy of liability insurance, the Court of Appeals found that “to interpret § 38-77-340 to allow for the intentional exclusion of a resident relative from liability coverage, but not UIM coverage offered as optional, ‘additional coverage’ in conjunction with the same liability policy, would impose a forced construction of the statute not intended by the General Assembly.” (Appx. p. 255). Instead, in the excluded driver statute, “the Legislature empowered consumers to choose to limit their coverage—and corresponding premium—within applicable statutory constraints.” (Appx. p. 255). This Petition followed.

ARGUMENT

Petitioner made the decision to name Mr. Knight as an excluded driver, agreeing that the policy was “not in effect” when Mr. Knight operated any vehicle. South Carolina applies the foundational rule of contract that parties are free to choose the contract’s terms, and courts will not rewrite the terms chosen by the parties unless the terms violate the established public policy of the State. Rather than conflicting with public policy, the Named Driver Exclusion is expressly authorized by South Carolina’s excluded driver statute, S.C. Code § 38-77-340. The plain terms of the statute, those terms in their statutory context, and the public policy of the State each support application of the named driver exclusion to all coverage parts under a “policy of liability insurance” when the named driver is operating a motor vehicle. As a result, the Named Driver Exclusion must be enforced according to its plain terms, and the Nationwide Policy was “not in effect” and did not provide any protection while Mr. Knight operated a vehicle.

I. THE PLAIN LANGUAGE OF THE POLICY AND THE PLAIN LANGUAGE OF THE EXCLUDED DRIVER STATUTE STATE THAT COVERAGE “SHALL NOT APPLY” WHILE THE EXCLUDED DRIVER OPERATES A VEHICLE.

There is no dispute the Policy’s Named Driver Exclusion, signed by Petitioner, plainly and unambiguously excludes all coverage when Mr. Knight is operating any vehicle. Petitioner signed the Excluded Driver Endorsement, agreeing that “[w]ith this endorsement, all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle.” (R. p. 74) (emphasis added). It is also undisputed Mr. Knight was protected by his own insurance – for which he paid a premium – on the vehicle he was operating when the accident occurred. As a result, Mr. Knight’s estate has recovered UIM coverage under the policies to which he was not an excluded driver. (R. p. 8, ¶ 9 & p. 13, ¶ 5). This is the expectation of the excluded driver statute. Either the excluded driver (1) will not drive because he does not have a license, or (2) he will have other insurance.

The excluded driver statute requires that the named insured make a declaration to that effect. Thus, the statutory purpose was fulfilled here.

Petitioner's contention that the excluded driver statute only applies to liability coverage is inconsistent with both the plain meaning of the statute and the purpose behind the statute. Moreover, Petitioner's interpretation creates an absurd result. The statute states that "coverage under a policy of liability insurance shall not apply while the motor vehicle is being operated by" the excluded driver. S.C. Code § 38-77-340 (emphasis added). Petitioner asks this Court to rewrite the statute to insert the word "liability" before the word "coverage." If the General Assembly had intended such a restriction – which would be illogical – it could have done so. It did not.

a. The Named Driver Exclusion Unambiguously Excludes All Coverage While Danny Knight Operated any Vehicle.

This Court has long held that "[i]nsurance policies are subject to the general rules of contract construction." *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999) (citations omitted). Like any contract, the "Court must give policy language its plain, ordinary, and popular meaning." *Id.* (citation omitted). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *Id.*

This rule is based on the simple principle that parties have the right to freedom of contract. Therefore, the court's duty when addressing matters of contract is "limited to the interpretation of the contract made by the parties themselves 'regardless of its wisdom or folly, apparent unreasonableness, or failure [of the parties] to guard their interests carefully.'" *Id.* (quoting *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Finance Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988) (internal citations omitted)). Although courts construe ambiguities in a contract against an insurer, "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 a statutory prohibition.” *Id.* (citing *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989)) (other citations omitted).

Relying on the strong public policy of protecting freedom of contract rights, South Carolina’s appellate courts have often repeated courts must enforce, not write, insurance contracts:

In concluding that the lower court should be affirmed, we have kept in mind our own line of cases holding that ambiguous insuring clauses should be liberally construed in favor of the insured. ***At the same time, the parties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties. The contract must be interpreted in the light of the whole agreement in such a way as to carry out the intention of the parties.***

Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975) (emphasis added). As discussed in greater detail below in Part III.A., these basic principles of freedom of contract are particularly applicable here because South Carolina’s excluded driver statute is a remedial statute “enacted . . . for the purpose of preserving, in a limited sense, the right to contract by insurance companies and their insureds.” *South Carolina Ins. Co. v. Barlow*, 301 S.C. 502, 508, 392 S.E.2d 795, 798 (Ct. App. 1990). Other courts have recognized that, while uninsured motorist statutes may be designed to protect, an excluded driver statute “presents a countervailing public policy consideration – the freedom to contract . . .” See *Moore v. State Farm Mut. Auto. Ins. Co.*, 119 N.M. 122, 125-26, 888 P.2d 1004, 1007-08 (Ct. App. 1995). Thus, when the named driver endorsement is signed in accordance with the requirements of the excluded driver statute, the language of the endorsement controls.

When she purchased the Nationwide Policy, Petitioner chose to exclude Mr. Knight. She signed a form titled “Voiding Auto Insurance While Named Person Is Operating Car.” (R. p. 74). The endorsement states, “With this endorsement, *all* coverages in your policy are not in effect

while Danny Knight is operating *any* motor vehicle.” (R. p. 74) (emphasis added). Thus, Nationwide and Petitioner agreed that the Nationwide Policy would not be in effect while Mr. Knight operated any vehicle. She and Nationwide exercised their freedom of contract rights by agreeing the Policy would not be in effect while Mr. Knight operated any vehicle. The policy language is plain and unambiguous and best reflects the intent of the parties. In accordance with South Carolina’s long-standing rules of contract construction, it should be enforced as written.

b. According to the Plain Language of the Excluded Driver Statute, Coverage Under the Nationwide Policy “Shall Not Apply” While Danny Knight Was Operating a Motor Vehicle.

“The primary rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Jackson v. Charleston County School Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994) (citations omitted). “Provisions should be given a reasonable construction, consistent with the purpose and policy of the Act.” *Id.* (citations omitted). “[T]he words found in the statute [must be given] their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citations omitted).

Courts do not consider a statute in isolation, and a Court does not look at any particular word in a statute without considering the statute in its entirety and in its context with other statutes. *See Abramski v. U.S.*, 573 U.S. 169, 180 n.6, 134 S. Ct. 2259, 2267 n.6 (2014) (“We simply recognize that a court should not interpret each word in a statute with blinders on, refusing to look at the word’s function within the broader statutory context. As we have previously put the point, ‘a provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.’”) (citation omitted). As this Court has held, “The true

guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose.” *Jackson*, 316 S.C. at 181, 447 S.E.2d at 862 (citation omitted).

Both a plain reading of the excluded driver statute by itself and a reading of the statute in the context of South Carolina’s overall automobile insurance statutes show that “coverage” under an insurance policy “shall not apply” while an excluded driver operates a vehicle.

South Carolina Code § 38-77-340 statutorily authorizes the right of parties to agree to exclude coverage when vehicles are operated by certain named drivers:

*Notwithstanding the definition of “insured” in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that **coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name.** The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. . . .*

S.C. Code § 38-77-340 (emphasis added). By its plain terms, the statute authorizes a named insured – Petitioner – and an insurer – Nationwide – to agree in writing that “coverage under such a policy of liability insurance shall not apply while” the excluded driver – Mr. Knight – is operating a vehicle. That is exactly what the Named Driver Exclusion in this case did.

Bound by the unambiguous exclusion that Petitioner contracted for and signed, Petitioner asks this Court to ignore the plain language of the contract because she now claims the excluded driver statute only applies to liability coverage. In making this argument, Petitioner asks this Court to reword not only the Named Driver Exclusion that she signed, but also to reword the excluded driver statute by injecting the word “liability” before the word “coverage” in the statute.

Petitioner asks this Court to limit application of “shall not apply” language in the excluded driver statute to only liability “coverage.” However, the General Assembly did not say “liability coverage” shall not apply. Instead, the statute states that “coverage” – an unqualified word – “under such a policy of liability insurance shall not apply” while the vehicle is operated by the excluded driver. Underinsured motorist coverage is “coverage” under a policy of liability insurance. Therefore, the statute plainly and logically applies to UIM coverage as well as any other “coverage” under the policy.

The Circuit Court correctly held that UIM coverage is not sold as a separate policy or as standalone coverage. Instead, it is one part of a “policy of liability insurance.” Petitioner here applied for one policy. The “coverage” under that policy – like all policies in South Carolina – included multiple forms, including liability, UM, and (here) UIM. These different coverage parts form one contract or policy of liability insurance. Petitioner cannot carve out one type of coverage from the statute.

A review of the related automobile insurance statutes confirms a “policy of liability insurance” consists of all coverage in the policy, not just liability. Perhaps the most obvious example is found in the definition of “motor vehicle liability policy”:

“Motor vehicle liability policy”: An owner’s or an operator’s policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230

S.C. Code § 56-9-20(5) (emphasis added). Thus, in the General Assembly’s mind, a “policy of liability insurance” – the very phrase that Petitioner urges should be given a restrictive reading – is given a broad meaning by the General Assembly, encompassing multiple forms of coverage, including UIM coverage (S.C. Code § 38-77-160).

In her brief, Petitioner mistakenly argues the Court of Appeals erroneously considered this definition in its analysis because Chapter 9 of Title 56 is part of the MVFRA, and the Nationwide Policy was not issued pursuant to the MVFRA. (Pet. Br. pp. 7-8). This argument misses the point. Both statutes address the same issue – automobile insurance, and Chapter 77 of Title 38 and Chapter 9 of Title 56 cross-reference one another.² See *Progressive Direct Ins. Co. v. Reeves*, 427 S.C. 291, 296 n.2, 831 S.E.2d 422, 424 n. 2 (2019) (holding that insurance statutes dealing with the same subject matter “are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.”) (citation omitted). Therefore, the fact that the General Assembly does not give a restrictive, liability only, definition of the term “motor vehicle liability policy” in the MVFRA shows that the term “policy of liability insurance” is not implicitly a restrictive phrase.

Going beyond the defined term “motor vehicle liability policy,” the body of the definition in Section 56-9-20(5) uses the very phrase at issue: “policy of liability insurance.” The plain wording of the statute shows the General Assembly understands a “policy of liability insurance” is the entire contract, consisting of all its component coverage parts. The definition provides a “motor vehicle liability policy” is a “***policy of liability insurance*** that fulfills all the requirements of Section 38-77-140 through 38-77-230.” S.C. Code § 56-9-20(5) (emphasis added). Importantly, the coverages addressed in Sections 38-77-140 through 38-77-230 encompass not only liability insurance (S.C. Code § 38-77-140), but also personal injury protection (PIP) (S.C. Code § 38-77-144), uninsured motorist (S.C. Code §§ 38-77-150), and underinsured motorist (S.C. Code § 38-77-160). Therefore, a reading of Section 56-9-20(5) gives plain meaning to the use of the phrase “coverage under a policy of liability insurance” as used in the excluded driver statute.

² See e.g., S.C. Code § 38-77-30(1) (“An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56-9-20 . . .”).

Giving the “policy of liability insurance” the same meaning in the two statutes – as the court must – the excluded driver statute’s use of the phrase “coverage under a policy of liability insurance” incorporates all coverage in the policy, including liability, PIP, uninsured motorist, and underinsured motorist. Therefore, the excluded driver statute provides that when an excluded driver operates a vehicle, coverage under the policy – meaning the entire policy – shall not apply.

c. Uninsured and Underinsured Motorist Coverage Only Apply to an “Insured,” and by Operation of the Excluded Driver Statute, Danny Knight Was Not an “Insured” While Operating a Motor Vehicle.

Going beyond the excluded driver statute itself and other uses of the phrase “policy of liability insurance” in South Carolina’s insurance code, a general review of the UM and UIM statutes confirms that the excluded driver statute extends to these additional forms of coverage.

South Carolina’s UM requirements are set forth in South Carolina Code § 38-77-150(A):

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle The uninsured motorist provision also must provide for no less than twenty-five thousand dollars’ coverage for injury to or destruction of the property of the insured in any one accident

S.C. Code § 38-77-150 (A) (emphasis added). Likewise, the UIM statute requires coverage to be offered for “the insured” and stating that “if an insured or named insured is protected by” other coverage, their protection is limited to the extent of coverage “on the vehicle involved in the accident.” S.C. Code § 38-77-160. Thus, only a person who falls within the definition of an “insured” qualifies for UM or UIM coverage.

The very first line of the excluded driver statute states that an excluded driver is not an insured: “Notwithstanding the definition of ‘insured’ in Section 38-77-30, the insurer and any

named insured [may] . . . agree that coverage under such a policy of liability insurance shall not apply while” the excluded driver is operating a vehicle. S.C. Code § 38-77-340 (emphasis added). The excluded driver statute is designed to preclude an excluded driver or anyone else from the definition of “insured” while he operates a vehicle. Therefore, while Mr. Knight was operating a vehicle, he was not an “insured” for purposes of UM or UIM coverage.

This legislative design is made even clearer by the fact that UM and UIM coverage is limited to the amount of liability coverage provided by an insurance policy. *See* S.C. Code § 38-77-160 (“Automobile insurance carriers shall offer . . . uninsured motorist coverage up to the limits of the insured’s liability coverage Such carriers shall also offer . . . underinsured motorist coverage up to the limits of the insured liability coverage . . .”). This commonsense approach promotes the public policy of ensuring vehicle owners and drivers buy as much liability coverage as possible to protect the motoring public. The excluded driver provision effectively reduces the amount of liability coverage to zero when the excluded driver operates a vehicle. Allowing an insured to exclude a driver for liability purposes – and thus put the motoring public at risk of being injured by an uninsured motorist – while still enjoying the protections of UIM and UIM protection for herself or the excluded driver, would clearly defeat this legislative purpose.

Numerous courts have found a driver who is excluded by way of an excluded driver statute is not an “insured” for purposes of UM or UIM coverage. For example, the Supreme Court of Iowa “adopted the ‘prevailing view’ that ‘persons who must be insured by the underinsured motorist insurance are those who are protected by the liability coverage.’” *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 686 (2008) (citations omitted). The Supreme Court of Louisiana applied the same rule, holding a named driver exclusion applied to UM coverage because “a person

must be an ‘insured’ for liability purposes in order to be entitled to UM coverage.”³ *Filipski v. Imperial Fire & Cas. Ins. Co.*, 25 So. 3d 742, 744 (La. 2009) (holding “This jurisprudence leads to the inescapable conclusion that a person who is not an insured for liability purposes cannot be considered an insured for UM purposes.”). Likewise, in *O’Brien v. Dorrough*, 928 P.2d 322, 236 (Okla. Ct. App. Div. 3 1996), the Oklahoma Court of Appeals held an excluded driver is not an “insured” for purposes of UM coverage: “The purpose of uninsured motorist coverage is to compensate innocent *insureds*. O’Brien was not an insured because when she was operating the automobile, the insurance policy, including UM insurance, was not in effect.”⁴

By operation of the Named Driver Exclusion, and as authorized by the excluded driver statute, Mr. Knight was not an “insured” under his spouse’s Policy when he operated a vehicle. When he operated the vehicle, the Nationwide Policy was “not in effect.” Therefore, no coverage – liability, UM, UIM, or otherwise – applies under the Nationwide Policy for injuries resulting from the collision. This plain reading and application on of the Named Driver Endorsement and the excluded driver statute is required by South Carolina contract and statutory construction rules.

II. THE EXCLUDED DRIVER STATUTE IS A LEGISLATIVELY-AUTHORIZED EXCLUSION THAT APPLIES TO ALL COVERAGE REGARDLESS OF WHETHER THAT COVERAGE IS “MANDATORY” OR “VOLUNTARY.”

The Court of Appeals below focused on the voluntary nature of UIM coverage. Despite Petitioner’s arguments to the contrary, UIM coverage is voluntary, and the Named Driver

³ Notably, the excluded driver statute in Louisiana was located within the definition of “motor vehicle liability policy.” *See* LSA-R.S. 32:900.

⁴ The Court of Appeals in *O’Brien* also disregarded the plaintiff’s arguments that she would have been covered had she been injured as a pedestrian or as a passenger; because “whether she would be covered in such a situation is an abstract question which has no application to the facts of this case.” *Id.* at 326 n.11.

Exclusion would have applied to UIM coverage even without clear statutory authorization from the excluded driver statute. However, because the excluded driver statute specifically authorizes the Named Driver Exclusion, the exclusion applies to all coverage, regardless of whether the coverage is mandatory and voluntary. Therefore, the distinction is unnecessary.

A. The Court of Appeals Correctly Held UIM Coverage is Voluntary Coverage and Can be Excluded in a Named Driver Exclusion.

This Court has plainly held UIM coverage is voluntary and insurers and insureds can agree on reasonable limitations on the portability of voluntary UIM coverage. In *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 644 S.E.2d 40 (2007), this Court upheld a reasonable limitation on the portability of UIM coverage even though the limitation was not expressly permitted by statute:

Neither § 38-77-160 nor our prior decisions decide the issue presented here: *Is public policy offended by an automobile insurance policy provision that limits basic UIM portability when an insured is involved in an accident while in a vehicle he owns, but does not insure under the policy? We find it is not. UIM coverage is entirely voluntary*, and permits insureds, at their option, to purchase insurance coverage for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds' damages. Essentially, the insured is buying insurance coverage for situations, as where he is a passenger in another's vehicle or is a pedestrian, where he cannot otherwise insure himself. When, however, the insured is driving his own vehicle, he has the ability to decide whether to purchase voluntary UIM coverage. Burgess chose not to do so when insuring his motorcycle.

An automobile insurance company, in setting its rates, bases those rates at least in part on the probabilities involving the insured and the vehicle(s) he is insuring. Where, as here, the vehicle is not insured by the company from whom coverage is sought, the carrier cannot accurately calculate its risks. It is one thing to insure against "unknowable" risks, such as the chance that one will be injured by an underinsured at-fault driver while a passenger in another's vehicle, or as a pedestrian; it is an entirely different calculus where a company's insured owns and operates a motor vehicle, especially a motorcycle, not insured by the carrier making its risk assessment.

373 S.C. at 41-42, 644 S.E.2d at 43 (emphasis added). Thus, UIM coverage is voluntary, and the

parties can agree to reasonable limitations on portability. If a portability limitation based upon an insured's failure to procure UIM coverage for another vehicle does not offend public policy, then it certainly should not offend public policy to limit UIM portability where an insured has chosen to exclude liability coverage entirely when the excluded driver is operating any vehicle.

Many courts have held an insured who chooses to sign a named driver exclusion has chosen to reject optional UIM or UM coverage for accidents that happen while the excluded driver operates a vehicle. *See, e.g., McCullough v. Standard Fire Ins. Co. of Alabama*, 404 So.2d 637 (Ala. 1981) ("The statute specifically provides for the insured to reject coverage. Had [the named insured] wanted to reject uninsured motorist coverage altogether she could have done so. It would seem to us that a partial rejection of the coverage should be no different."); *O'Brien*, 928 P.2d at 326 ("Because the failure of a motorist to carry any uninsured motorist coverage *at all* does not violate the expressed public policy of this state, we refuse to hold that this named driver exclusion, which excludes UM coverage only as to one named individual, violates public policy."). Thus, the Court of Appeals' finding that UIM coverage is voluntary under South Carolina law and can be excluded via a Named Driver Exclusion signed by the named insured is proper and conforms with the prior holdings of this Court and other courts. However, this distinction is unnecessary because the excluded driver statute expressly authorizes the exclusion here. Therefore, the exclusion applies to both voluntary and mandatory coverages.

B. A Statutorily-Authorized Exclusion Applies to All Coverage, Regardless of Whether the Coverage is Mandatory or Voluntary.

As discussed above, the default rule in South Carolina is that insurance contracts are governed by their plain terms. An exclusion in an insurance policy applies unless it contravenes public policy as set forth in South Carolina's insurance statutes. Thus, there is no need for statutory authorization for an exclusion that only applies to voluntary coverage. The statute would be

meaningless. Instead, statutory authorizations for exclusions give insurers and insureds authorization to exclude coverage that would otherwise be mandatory.

This issue has already been addressed in South Carolina in the context of the excluded driver statute. In *Lincoln General*, an uninsured motorist insurer argued that a named driver exclusion issued by the at-fault vehicle's insurance company could not be applied as to mandatory minimum limits of liability coverage. The Court of Appeals rejected that argument. The South Carolina Court of Appeals acknowledged that, "[t]he purpose of the MVFRA is to give greater protection to those injured through negligent operation of automobiles" and that the statute "requires insurance for the benefit of the public, and an insurer may not 'nullify its purposes through engrafting exceptions from liability as to uses which it was the evident purpose of the statute to cover.'" *Id.* at 539-40, 753 S.E.2d at 440. "Nevertheless, our courts have consistently cautioned that 'reasonable 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.'" *Id.*

The Court of Appeals in *Lincoln General* looked to the plain language of the excluded driver statute and found the insurer was "not required to provide minimum limits. The named driver endorsement statute says that, '[n]otwithstanding the definition of 'insured' in Section 38-77-30, ... a policy of liability insurance shall not apply' when the named driver is operating the vehicle." *Id.* at 541, 753 S.E.2d at 441 (emphasis in original). The Court of Appeals held:

Thus, "the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes" specifies that an insurer's obligation to provide minimum limits for "insureds" is inapplicable when the person named in the endorsement is driving and the statute's remaining requirements are satisfied. Because the policy is not in effect when the named driver is operating the vehicle and *such an endorsement is part of our state's public policy*, the MVFRA's mandate that "[t]he liability of

the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage *covered by the motor vehicle liability policy* occurs” does not apply.

Id. (emphasis in original).

Once again, South Carolina is not alone in this application of the law. In *Nationwide Mutual Insurance Company v. Miller*, 305 Md. 614, 505 A.2d 1338 (1986), the Court of Appeals of Maryland addressed whether a statutorily-permitted named driver exclusion applied to mandatory UM coverage. The excluded driver statute stated that an insurer could offer an excluded driver endorsement “on an automobile liability insurance policy.” *Id.* at 616 (quoting the then-applicable version of Maryland’s excluded driver statute). Like Petitioner here, the named insured in *Miller* signed a named driver exclusion naming her husband as the excluded driver. Her husband thereafter drove a vehicle when he was injured in an accident. Like Petitioner here, the party opposing application of the exclusion relied on “the general principle that provisions in insurance policies which attempt to limit or create exclusions from coverage mandated by the Legislature, where such limitations or exclusions are not specifically authorized by statute, are ordinarily void.” *Id.* at 620, 505 A.2d at 1340-41. The Court of Appeals rejected this argument, holding that “the named driver exclusion provision of the policy, at least as applied in the circumstances of this case, was specifically authorized by statute.” *Id.*

The South Carolina General Assembly expressly authorized the use of named driver exclusions. Therefore, when the requirements of the statute have been satisfied, the exclusion applies to all coverage, and the policy “shall not apply while” the excluded driver operates a motor vehicle. Because the exclusion is statutorily authorized, it does not matter whether the coverage to be excluded is voluntary or mandatory. Simply put, none of the coverage in the Policy applies because Petitioner excluded her husband from the Nationwide Policy.

III. APPLICATION OF THE EXCLUDED DRIVER ENDORSEMENT TO UNDERINSURED MOTORIST COVERAGE SUPPORTS THE PUBLIC POLICY SET OUT IN SOUTH CAROLINA'S INSURANCE STATUTES.

The excluded driver statute is a remedial statute designed to promote the public policy of making insurance affordable to insureds who have household members who are difficult to insure. The statute chooses, in the context of excluded driver agreements, to allow traditional freedom of contract rights to prevail over the more general goal of the insurance statutes of protecting the motoring public. Because the public policy goal of the excluded driver statute is to promote freedom of contract and to keep insurance premiums affordable, the statute must be interpreted in accordance with those goals by enforcing the Named Driver Exclusion according to its plain terms and not requiring Nationwide to provide coverage for which Petitioner did not pay a premium.

The exclusion of all coverage under the Policy while the excluded driver operates a vehicle is a necessary component of the public policy goals of this State. If an insured can avoid paying increased premiums by excluding an expensive driver while still enjoying the protections of UM, UIM, and other first-party coverages when that excluded driver operates a vehicle, the named insured is encouraged to exclude the driver and to allow that excluded driver to operate a vehicle. As recognized by other courts, such a rule would cause blatant harm to the public policy.

The General Assembly placed safeguards in the excluded driver statute so that an excluded driver who lawfully drives will still enjoy insurance protections under other policies while operating a vehicle. The statute requires the named insured to declare that the excluded driver either has no license or has other insurance. S.C. Code § 38-77-340. If he has no license, he cannot legally drive. If he has other insurance, then South Carolina Code § 38-77-150 ensures that other policy would provide UM coverage, and South Carolina Code § 38-77-160 ensures the excluded driver will have had the option of purchasing UIM coverage under that other policy. That

is exactly what happened here. Mr. Knight purchased other insurance, and that other insurance provided coverage. The policy for which Mr. Knight paid a premium insured him. That makes sense. It does not make sense for the Nationwide Policy that specifically excluded Mr. Knight by name and for which no premium was paid for Mr. Knight to provide coverage for him.

a. The Excluded Driver Statute is a Remedial Statute Designed to Protect the Parties' Freedom of Contract Rights and Petitioner Exercised Her Freedom of Contract Rights by Choosing to Execute the Excluded Driver Endorsement and Pay a Reduced Premium.

South Carolina Code § 38-77-340 is a remedial statute. *Barlow*, 301 S.C. at 507, 392 S.E.2d at 798. “A remedial statute must be liberally construed to effect the purpose of the statute.” *Id.* As the Court of Appeals held in *Barlow*, courts decline to interpret the excluded driver statute “so narrowly as to defeat the very purpose of the statute.”⁵ *Id.* Also, the court will not make a “sacrifice of substance to form” when interpreting the statute. *Id.* Instead, the statute should be construed to promote its purpose: to provide a mechanism for insureds to purchase affordable insurance coverage when they reside with someone who is expensive to insure. The General Assembly chose to promote this function by creating a mechanism by which the insured and insurer can agree the insurer will not provide coverage while the excluded driver operates a vehicle. Petitioner here asks the Court to ignore the purpose of the statute and to make Nationwide pay for risks arising out of the excluded driver’s operation of a vehicle – the very thing the General Assembly intended to avoid.

The Court of Appeals in *Barlow* explained the competing public interests that the General

⁵ Petitioner argues that the general remedial nature of the overall automobile insurance law in South Carolina should control the Court’s analysis. However, the General Assembly’s purpose in enacting the remedial named driver exclusion, which is more specific, must prevail. *See e.g., Atlas Food Systems and Services, Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 585, 859 (1995) (“The general rule of statutory construction is that a specific statute prevails over a more general one.”).

Assembly balanced when it enacted the excluded driver statute:

On the one hand, we hold that the intent of the legislature in passing . . . the omnibus clause statute, was to expand the coverage of automobile liability policies. In this the public are obviously third party beneficiaries; thus, the statute subserves a clear public policy. On the other hand, we hold that the intent of the legislature in passing [the excluded driver statute] was to provide a means in hardship cases of excluding certain persons from the omnibus clause. Such a provision, we hold, is not inhibited by public policy. The thrust of [the omnibus statute] is to protect the public; while the thrust of [the excluded driver statute] is to protect, in limited situations, the right of the parties to make their own contract.

Id. at 508, 392 S.E.2d at 798; *see also Lincoln General*, 406 S.C. at 547, 753 S.E.2d at 444 (“As in *Barlow*, the named driver endorsement statute ‘*is not inhibited by*’ the MVFRA’s public policy because it constitutes separately approved public policy.”) (emphasis in original). Therefore, while South Carolina has a general public policy of allowing omnibus insureds to have insurance coverage, that public policy does not apply to a person specifically excluded in an excluded driver endorsement pursuant to South Carolina Code § 38-77-340. When an excluded driver endorsement is signed, the “provision . . . is not inhibited by public policy.” *Id.* Instead, “the right of the parties to make their own contract” controls.

South Carolina is not alone in its use of the excluded driver endorsement as a means of protecting the parties’ freedom of contract rights. In *Moore*, the New Mexico Court of Appeals rejected arguments that application of an excluded driver provision to UM coverage violated public policy, holding the “exclusion agreement presents ‘a countervailing public policy consideration—the freedom to contract” the Court of Appeals held: “Upholding the validity of State Farm’s driver exclusion agreement protects insurers while allowing people freedom of choice in their insurance coverage.” 119 N.M. at 125-26, 888 P.2d at 1007-08 (citation omitted). These are the same public policy considerations recognized by the South Carolina Court of Appeals in *Barlow* and

Lincoln General.

This Court has also confirmed freedom of contract controls when an agreement is not prohibited by statute. *See Willis v. Fidelity & Cas. Co. of New York*, 253 S.C. 91, 97, 169 S.E.2d 282, 284-85 (1969) (“Since the Act did not require the insurer to afford liability coverage to a motor vehicle not described in the policy, this part of the insuring agreement was a voluntary contract as to which the parties were free to choose their own terms.”). If the parties are free to choose their own terms for an exclusion to which the insurance statutes are silent – such as the exclusion in *Willis* – then they should have even more freedom when choosing to be bound by an exclusion expressly permitted by statute.

Petitioner exercised her freedom of contract rights when she signed the Named Driver Exclusion, stating that “all coverages in your policy are not in effect while Danny Knight is operating any vehicle.” (R. p. 74). She agreed Nationwide would not be responsible for risks associated with Mr. Knight’s operation of a vehicle. As a result, the premium was set based on that agreement. Because the public policy behind the omnibus definition of “insured” does not inhibit the statutorily permitted excluded driver provision, the plain language of the contract controls. Petitioner chose to exclude coverage for when Mr. Knight operated any vehicle. Her choice should be honored.

b. Allowing an Excluded Driver to Receive Underinsured Motorist Coverage While He is Excluded from Liability Coverage as a Vehicle Operator Defeats Strong Public Policy.

If an insurer is limited to excluding only liability coverage in an excluded driver provision, then it is unable to avoid insuring risks associated with an excluded driver’s operation of a vehicle. Numerous courts have recognized this basic principle. In *Miller*, the Maryland Court of Appeals rejected arguments that the named driver exclusion could only be applied to liability coverage:

We believe that the position urged by Horace Mann would defeat the purpose of the named driver exclusion provision in [the statute]. As the plain language of that section shows, the purpose was to exclude risks arising from the named person's negligence in driving the car. ***If the uninsured motorist coverage on a vehicle were deemed applicable when the driver is excluded from the vehicle's ordinary liability coverage, then the insurer would in effect still be insuring the liable driver, who had a bad claims or driving record, but the insurer would be denied the appropriate premium.***

Other jurisdictions generally agree that when a named excluded person drives, passengers in the otherwise insured vehicle may recover under neither liability nor uninsured motorist coverages from the vehicle's insurer.

Miller, 305 Md. at 618-19, 505 A.2d at 1340 (citations omitted) (emphasis added).

Petitioner also contends that the excluded driver endorsement must be limited to situations in which the excluded driver operates the vehicle described on the Nationwide Policy.⁶ Such a reading is absurd. *See State v. Glenn*, 429 S.C. 108, 120, 838 S.E.2d 491, 497 (2019) (refusing to apply a “hyper-technical reading of [a] statute [that] would lead to absurd results”); *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364, 366 (2005) (“However plain the ordinary meaning of words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.”).

The excluded driver statute would be eviscerated if an insurer could not exclude coverage while an excluded driver operated other vehicles to which coverage may apply. Policies routinely

⁶ This issue is not preserved for appeal. The Circuit Court did not rule on this question, and Petitioner did not file a Rule 59 motion. “The circuit court did not specifically address the issue, and where an issue presented to the circuit court in a civil case is not explicitly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review. If the issue is not raised in a post-trial motion, it is error for the appellate court to consider it.” *Summersell v. South Carolina Dept. of Public Safety*, 337 S.C. 19, 22, 522 S.E.2d 144, 145-46 (1999).

provide coverage to household residents for their permissive use of unlisted vehicles. In fact, excluded drivers likely would drive unlisted vehicles more often than they would drive the vehicles described on the insurance policy. If an insurer is able to exclude the calculable risk that the excluded driver may operate a vehicle specifically described on the policy, but it cannot exclude the harder-to-calculate risk of exposure that may arise while the excluded driver operates other vehicles, then the premium savings intended by the General Assembly in the excluded driver statute will be lost, defeating the very purpose of the statute.

The Court of Appeals in *Moore* held that it would be illogical to require an insurer to cover injuries arising when the excluded driver operates an unlisted vehicle:

[I]f we were to adopt Plaintiff's interpretation of the statute, State Farm would have been required to insure Plaintiff for liability, medical coverage, and all other provisions of the policy if he had been driving any other vehicle than his father's. Clearly, this result is not what the legislature intended. It would be illogical to allow State Farm to exclude a certain driver from uninsured motorist coverage when he is operating an *insured* vehicle, and at the same time require it to cover that person while operating an *uninsured* vehicle.

Moore, 119 N.M. at 125, 888 P.2d at 1007 (emphasis in original). Here, Mr. Knight owned his own vehicles. It would be illogical to allow Nationwide to exclude the risks associated with Mr. Knight operating one of his wife's vehicles, but not to allow Nationwide to exclude the larger risk associated with Mr. Knight's regular operation of his own vehicles.

Allowing an excluded driver to enjoy UM benefits defeats another important interest grafted into the excluded driver statute. The excluded driver statute creates an exception to the general rule that omnibus insureds are entitled to coverage. As a result of this exception, the motoring public is not protected under the policy from the risk that the excluded driver – who will generally be a person with a poor driving record – will cause injury to the motoring public.

Therefore, the exclusion “deter[s] insured drivers from entrusting their vehicles to unsafe excluded drivers which [keeps] those unfit drivers off the road.” *Thomas*, 749 N.W.2d at 688.

If Petitioner’s contentions were correct, and a named driver exclusion could exclude liability coverage, then the excluded driver statute would create perverse incentives that actually *encourage* a named insured to allow the excluded driver to operate the vehicle. A named insured – the person in the best position to know that the driver is excluded – can hand the keys to an excluded driver, climb into the passenger seat, and ride down the road knowing that even if the excluded driver causes an accident, she is protected because she will enjoy the protections of UM coverage.⁷ If the excluded driver injures the motoring public, there will be no coverage for those injured persons. However, under Petitioner’s theory, if the named insured passenger is injured in that same accident, she will collect UM benefits. This absurd result encourages, rather than discourages, named insureds to allow excluded drivers to operate their vehicles. The Supreme Court of Iowa aptly addressed this issue:

Requiring coverage of an excluded driver whenever the excluded driver is not at fault (an after-the-fact determination) would *encourage* such unfit drivers to take a chance driving, hoping they would not drive negligently, rather than *detering* them from driving. Not only would the deterrent effect of the exclusion be undermined, the general public would be put at greater risk. Under the plaintiff’s argument, if an excluded driver is in an accident while operating a motor vehicle and is not at fault, the excluded driver will have uninsured or underinsured coverage for his damages. Unfortunately, if the excluded driver *is* at fault, victims of his fault will not be so fortunate. In that instance, the exclusion would apply, so there would be no liability coverage for damages sustained by the

⁷ This example is not some unlikely hypothetical. These are the facts at issue before the South Carolina Court of Appeals in *United Services Automobile Association v. Pickens*, Appellate Case No. 2020-0439. The Circuit Court in *Pickens* granted USAA’s Motion for Summary Judgment and found that a named driver exclusion applied to prevent a named insured from collecting UM benefits when she was riding as a passenger in a vehicle operated by her excluded driver son. USAA has filed a Motion for Certification with this Court asking that the matter be considered at the same time that the Court considers the present case.

unfit driver's victims and the public policy of protecting potential claimants from such drivers would be undermined. We question whether it is in the public interest to "rewrite" the named driver exclusion in such a way that more protection is provided to the excluded driver than to the general public. Because the exclusion as written promotes the public policy underlying named driver exclusions, we will not invalidate it or restrict its application as urged by the plaintiffs.

Thomas, 749 N.W.2d at 688 (emphasis in original).

Even according to Petitioner's argument, when Mr. Knight operated his motorcycle, the Nationwide Policy did not provide any liability protection to those who may have been injured by Mr. Knight's driving. If that vehicle's only coverage was the Nationwide Policy, then Mr. Knight would be operating an uninsured motor vehicle. If Petitioner could do this while allowing herself and Mr. Knight to still enjoy the protections of UM, UIM, or other first-party coverage under the Nationwide Policy, then she takes on even less risk by excluding Mr. Knight, creating dangerous incentives that make it more likely that an excluded driver will operate a vehicle. Petitioner's arguments do not stand up to reasoned scrutiny. The Iowa Supreme Court's reasoning is sound, clear, and persuasive. Application of the Named Driver Exclusion to UM and UIM coverage supports South Carolina public policy.

c. The Structure of the Excluded Driver Statute Assures that Danny Knight and Other Excluded Drivers Should have Access to Underinsured Motorist Coverage when they Operate a Vehicle Because he Was Required to Have Obtained Other Applicable Insurance.

The General Assembly did not leave Mr. Knight without any protection if he were to lawfully drive a vehicle. The excluded driver statute is designed to ensure that an excluded driver who lawfully drives will have other insurance, through which that driver will have access – as a rated risk for which a premium is paid – to UM and optional UIM coverage. The excluded driver statute provides:

However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code § 38-77-340. Therefore, the General Assembly designed the excluded driver statute so that, if a named insured is being truthful in the declaration, the excluded driver will either: (1) not be legally allowed to drive because he does not have a license; or (2) the excluded driver will have other applicable insurance when he drives. If the excluded driver has other applicable insurance, then he will have UM coverage (S.C. Code § 38-77-150) and he will have had the option of purchasing UIM coverage (S.C. Code § 38-77-160). Therefore, although the policy to which the excluded driver endorsement is attached will not provide liability, UM, or UIM coverage to the excluded driver, there should be a different policy that does provide such coverage.

The General Assembly's intentions were satisfied in this case. Petitioner excluded Mr. Knight from the Nationwide Policy and declared in the Named Driver Endorsement that "[t]he excluded person has obtained insurance or other security to operate motor vehicles." (R. p. 74). This was a truthful declaration. Mr. Knight had insurance on his motorcycle. (R. p. 8). Because he had insurance – for which he paid a premium and was rated on a policy – Mr. Knight was protected by UIM coverage at the time of the accident. Thus, the legislative design of the excluded driver statute worked. Although the Nationwide Policy does not provide coverage – because Mr. Knight was not a rated driver and no premium was paid for him – another policy did provide coverage.⁸

⁸ The other possibility under the statutory design is that the excluded driver operates a vehicle without insurance. It would be difficult to contend that an unlicensed, excluded driver should enjoy UM or UIM protections while operating any vehicle.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests that the Court of Appeals' decision be affirmed. South Carolina's excluded driver statute protects the parties' freedom of contract rights. The default rule in South Carolina is to enforce the contract agreed to by the parties. Because the excluded driver statute reinforces the parties' freedom of contract rights, the Named Driver Exclusion should be enforced as written and agreed to by the parties. Petitioner should not be allowed to rewrite the agreement that she signed and for which she enjoyed a reduced premium.

The plain language of the excluded driver statute, the structure of South Carolina insurance statutes, and common sense dictate that a person who is excluded from mandatory liability coverage can also be excluded from UM, UIM, or any other coverage that may otherwise apply under the policy. The statute states that "coverage under such a policy of liability insurance shall not apply" while the excluded driver operates a vehicle. S.C. Code § 38-77-340 (emphasis added). If coverage in the contract "shall not apply," then it is as if the contract simply is not in effect while a vehicle is operated by the excluded driver. This plain reading of the statute comports with common sense and with the way that numerous courts across the country have treated excluded driver provisions. In contrast, Petitioners' strained and forced construction of the statute is not supported by the General Assembly's use of the term "policy of liability insurance" in other automobile insurance statutes, with the public policy supporting the excluded driver statute, or with how the above-cited courts have treated these issues. Most importantly, it is not consistent with the intention of the parties at the time of contracting – the prevailing consideration when freedom of contract applies.

Lastly, applying the Named Driver Exclusion to all coverage, including UM, UIM, PIP,

and other coverages, promotes the public policy considerations underlying the excluded driver statute. By excluding all coverage, risky drivers will not be incentivized to operate a vehicle that will not carry liability insurance for the protection of the public. Excluding all coverage also ensures that the goal of the statute is accomplished: lower insurance premiums for persons with high-risk drivers in their households. Lastly, the General Assembly included a safeguard in the statute by requiring the named insured to declare that either the excluded driver has no license – and therefore cannot drive – or has other insurance – and therefore will be protected by that other insurance while driving. That safeguard worked in this case, and the policy of insurance that Mr. Knight purchased on his motorcycle and his other vehicles paid all the UIM coverage he purchased.

For all of these reasons, the Circuit Court and Court of Appeals properly enforced the plain language of the Named Driver Exclusion. Those holdings should be affirmed.

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Columbia, South Carolina
July 2, 2020

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2020-000026

Nationwide Insurance Company of America.....Respondent

vs.

Kristina Knight, individually and as
Personal Representative of the
Estate of Daniel P. Knight Petitioners

CERTIFICATE OF COMPLIANCE

I, Wesley B. Sawyer, 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.



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