STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER)	IN THE THIRD JUDICIAL CIRCUIT
)	
)	Civil Action No.: 2019-CP-43-00926
)	
JOSHUA GALLISHAW,)	
)	**ORDER**
Plaintiff,)	
)	
vs.)	
)	
FIRST ACCEPTANCE INSURANCE) COMPANY)	
)	
Defendant.)	
)	

This matter comes before the Court on Defendants' Motion for Summary Judgement. On May 6, 2020 the Court held a video conference regarding Defendants' motion. Peter Farr, Esquire, appeared on behalf of First Acceptance Insurance Company, and Tyler Bathrick, Esquire, appeared on behalf of Joshua Gallishaw. During the conference both parties agreed, pursuant to the Supreme Court of South Carolina's Order entitled "Operation of the Trial Courts During the Coronavirus Emergency, Appellate Case No. 2020-000447," that this matter could be decided on written submissions only. Additionally, during the conference, both parties agreed that this matter was ripe for adjudication and that any order would represent a final disposition of Plaintiff's pending declaratory judgement action. After reviewing the pleadings, motions, and memorandums the Court Denies First Acceptance Insurance Companies Motion for Summary Judgement.

UNDISPUTED FACTS

This declaratory judgement action involves the application of an excluded driver endorsement. First Acceptance Insurance Company issued a personal auto policy to Joshua

Gallishaw listing a 2015 GMC Sierra as an insured vehicle. One term of that policy was that Erica Singletary was excluded from operating the 2015 GMC Sierra listed on the policy. The excluded driver endorsement states, "[I]t is agreed that no coverage is afforded for any claim or loss arising from an accident when the insured auto...by those persons specifically listed by you on your application or as named by you on a subsequent policy endorsement as an excluded driver." It goes on to state, "No Uninsured Motorist Coverage or Underinsured Motorist Coverage will be provided under this policy to anyone while the insured auto or any other to which the terms of this policy are extended is being driven or operated by the excluded driver(s)." The excluded driver endorsement further states:

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

On July 28, 2017 Erica Singletary was operating the 2015 GMC Sierra, with Joshua Gallishaw as a passenger, when an uninsured motor vehicle crossed the center line and struck the 2015 GMC Sierra head on. Following the accident Joshua Gallishaw attempted to make an uninsured motor vehicle claim with his carrier, First Acceptance Insurance Company. First Acceptance Insurance Company denied coverage alleging Erica Singletary's operation of the motor vehicle voided Mr. Gallishaw's uninsured motorist policy. Mr. Gallishaw maintains First Acceptance Insurance Company's policy provision limiting the portability of UM coverage violates public policy South Carolina Law and is therefore void.

LAW

"An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." *Auto Owners Ins. Co. v. Rollison* , 378 S.C. 600, 606, 663 S.E.2d 484, 487 (2008). "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 v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 598, 762 S.E.2d 705,712 (2014). "Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination whether the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare." *Id.* at 599, 762 S.E.2d at 712.

When construing a statute, courts must determine the intent of the Legislature. *Horn v. Devis Elec. Constructors, Inc.*, 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). "[S]tatutes relating to an insurance contract are generally part of the contract as a matter of law. To the extent a policy conflicts with an applicable statute, the statute prevails." *Lincoln Gen. Ins.* , 406 S.C. at 539, 753 S.E.2d at 439. The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation. *First Baptist Church of Mauldin v. Cidty of Mauldin*, 308 S.C. 226, 229, 417 S.E.2d 592, 593 (1992). One principal of statutory construction is that a court must assume the legislature intended to accomplish something through an enacted statute and did not engage in futile action. *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 288, 403 S.E.2d 662, 666 (Ct. App. 1991). A statute ought to be read so that no word, clause, sentence, provision or part shall be rendered surplusage or superfluous. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C 67, 74, 716, S.E.2d

877, 881 (2011).

South Carolina's excluded driver statute provides in pertinent part:

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

S.C. Code Ann. § 38-77-340.

The parties agree that the excluded driver endorsement was approved by the Department of Insurance, that the excluded driver endorsement lists "Erica Singletary" as the driver to be excluded from the Policy's coverage, and that Joshua Gallishaw marked the box on the excluded driver endorsement indicating Erica Singletary had turned her driver's license in to the Department of Motor Vehicles. Thus, there is no genuine issue of material fact regarding the excluded driver endorsement's compliance with S.C. Code Ann. § 38-77-340.

Joshua Gallishaw maintains First Acceptance Insurance Company's policy provision(s) limiting the portability of UM coverage violates public policy and South Carolina Law and is therefore void. The Court agrees.

S.C. Code Ann. § 38-77-30 (10.5) defines "policy" as all forms of automobile insurance coverage. The term "liability insurance" is not defined under Title 38.

The phrase "policy of liability insurance" as used in § 38-77-340 indicates the Legislature intended to limit the exclusion to a policy's liability coverage only. Otherwise the words "liability insurance" are superfluous and serve no purpose. If the Legislature intended to permit

the exclusion to apply to all coverage they simply would have used the term "policy" not the phrase "policy of liability insurance."

Additionally, the Legislative intent to limit the exclusion of § 38-77-340 to liability coverage only is evident by the Legislatures use of the phrase, "while the motor vehicle is being operated...."Our courts have held that a key distinction between liability coverage and UM coverage is that liability coverage follows the vehicle and UM coverage follows the person. *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 201, 603, S.E.2d 861 (S.C. App., 20040)). Since liability insurance follows the vehicle and § 38-77-340 includes the phrase "while the motor vehicle is being operated" it is clear that the Legislature intended § 38-77-340 to only apply to liability coverage.

Liability insurance is the only automobile insurance coverage that is always implicated by careless operation of a motor vehicle. Liability coverage follows the vehicle. Thus, by limiting the coverage exclusion to allowed to persons operating a vehicle, the Legislature confirmed its intent to limit the allowed exclusion to liability insurance coverage of prescribed individuals using the vehicle.

Our Supreme Court determined uninsured motorist coverage is not to provide coverage for the uninsured vehicle but to afford additional protection to the insured. *Nationwide Mut. Ins. Co. v. Howard*, 288 S.C.5, 12, 339 S.E.2d 501, 504 (citing *Hogan v. Home Ins. Co.*, 260 S.C. 157, 162, 194 S.E.2d 890, 892 (1973)). The court in *Hogan* found that, "unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household at all times and without regard to the activity in which they were engaged at the time. Such coverage is nowhere limited in the statute to the use of the insured vehicle." *Hogan*, 260 at 162, 194 S.E.2d at 892. Our UM statute is

remedial in nature and enacted for the benefit of injured persons. As a result, it should be construed liberally to effect the purpose intended by the legislature. (See *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338, 356 (Ct. App. 2003) which found that the provisions of a code should be construed liberally if the code is remedial in nature). Uninsured motorist coverage is personal and portable. "In jurisdictions where the coverage follows the person any person who enjoys the status of an insured under a motor vehicle policy of insurance which includes uninsured coverage enjoys coverage protection simply by reason of having been injured by an uninsured motorist." 9 Couch on Ins.3d Section 123:3.

As uninsured motor vehicle coverage is personal and portable. The Legislature would not have used the phrases "motor vehicle is being operated" and "policy of liability insurance" in Section 38-77-340 if it intended to allow insurance companies to exclude it from UM coverage as UM coverage follows the person. Liability coverage follows the vehicle.

As for public policy, Section 38-77-340 allows an insurance company to exclude a bad driving resident relative from the liability insurance coverage on an insured vehicle thus allowing the parties to set an affordable premium on car insurance. *Lincoln General v. Progressive*, 406 S.C. 534, 753, S.E.2d 437, 441 (S.C. Ct. App. 2013). This public policy supports a narrow reading of Section 38-77-340. There is an increased risk for liability insurance to come into play when a bad driving resident relative operates a motor vehicle as a bad driving resident relative is more likely to cause and accident. However, UM coverage only comes into play when a third uninsured party causes an accident. As a result, there is no increased risk for the carrier because the bad driving resident relative did not cause the accident for which UM coverage is sought. Public policy, reduced premiums to the insured, is not furthered by interpreting § 38-77-340 to permit denial of uninsured motorist coverage.

The Defendants rely on *Nationwide Ins. Co. of America v. Knight*, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019). In *Knight* the named insured signed an excluded driver endorsement naming her then-fiance as an excluded driver. *Id* at 539-40. After the policy was issued, her then-husband, the excluded driver, was operating his own motorcycle insured by another carrier when he was struck and killed by an underinsured motorist. *Id* at 540. After collecting from the at-fault motorist's liability carrier and the motorcycle policy's UIM coverage, the estate sought to stack UIM coverage from the wife's policy. The Court of Appeals reviewed Title 38 and Tile 56 of the South Carolina Code, the nature of UIM coverage as being optional additional coverage, and public policy before ultimately finding, "... the Excluded Driver endorsement validly excluded Decedent from the UIM coverage Knight now seeks to stack." *Id* at 460.

The present case is distinguishable as it relates to UM coverage, not UIM. Liability insurance is by definition predicated upon the risk of the driver. A worse driver is a greater risk, requires a greater premium, and therefore should be excluded if not properly accounted for. Underinsured motorist coverage follows in the same vein, insofar as an injured passenger will be able to tap into underinsured motorist coverage after exhausting liability coverage for the negligence of a riskier driver. This is compounded by the fact that underinsured motorist coverage is not a required coverage under state law, and has traditionally been allowed to operate more freely within the realm of general contract law. Uninsured motorist coverage is a different animal altogether. It is a required. Further, none of the policy considerations that have previously been used to justify excluding drivers are applicable here. It is not the excluded, riskier driver whose behavior is being indemnified, but rather it is that of a John Doe.

CONCLUSION

For the foregoing reasons, the Court finds as follows: a) Both parties consent to this matter being decided on written submissions only pursuant to the Supreme Court of South Carolina's Order entitled "Operation of the Trial Courts During the Coronavirus Emergency, Appellate Case No. 2020-000447"; b) This Order represents a full and final adjudication of Plaintiff's pending declaratory judgement action; c) First Acceptance Insurance Company's policy provision(s) limiting the portability of UM coverage violates public policy and South Carolina Law and is therefore void; c) Plaintiff is entitled to uninsured motorist coverage through the policy on the GMG Sierra with First Insurance Company.

AND IT IS SO ORDERED.

JUDGES ELECTRONING SIGNATURE TO FOLLOW.

Sumter Common Pleas

Case Caption: Joshua Gallishaw VS Acceptance Insurance Company Of Tn

Case Number: 2019CP4300926

Type: Order/Summary Judgment

So Ordered

s/ R. Kirk Griffin 2768