THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-001596

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, Randi Harper, and 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 the Petitioners.

AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS

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Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

Interest of *Amicus Curiae*

United Policyholders is a non-profit 501(c)(3) organization dedicated to the mission of serving as a trustworthy and useful information resource and as an effective, well-informed advocate for consumers of all types of insurance—in all 50 states. Founded in 1991, United Policyholders helps level the playing field between insurers and insureds.

Among other things, United Policyholders: (1) provides useful tools and resources for solving insurance problems after an accident, loss, illness, or other adverse event; (2) promotes disaster preparedness and insurance literacy through outreach and education in partnership with civic, faith-based, business, and other nonprofit associations; and (3) advances pro-consumer laws, judicial decisions, and public policy related to insurance matters.

United Policyholders speaks for a wide range of policyholders. It has filed over 400 *amicus curiae* briefs in state and federal courts, including in the South Carolina Supreme Court and in the United States Supreme Court. *See Bell v. Progressive Direct Insurance Co.*, 407 S.C. 565, 757 S.E.2d 399 (2014) (United Policyholders appears as *amicus curiae*); *Humana Inc. v. Forsyth*, 525 U.S. 299 (1999) (same).

United Policyholders has a strong interest in ensuring that all insureds are able to obtain the benefits they bought to protect themselves and others in time of calamity. In particular, as a matter of public policy and statutory implementation, United Policyholders has a fundamental interest in helping insureds receive the coverage they paid for, especially when insureds are confronting unusual situations, such as misuse of their vehicles and unwise driving that ends in interaction with law-enforcement personnel.

It is in hard and unexpected situations that insurance is most needed.

Argument

1. Insurance companies cannot unfairly use exclusions to limit the essential coverage that insureds have purchased to protect themselves and others.

The South Carolina General Assembly has enacted some of our nation's strongest protections for insurance consumers. In particular, the General Assembly has directed that insurance policies issued in South Carolina must have an endorsement or provision insuring for death or injury resulting from negligence in a motor vehicle's operation. S.C. Code Ann. § 38-77-142(B).

In 2014, this Court examined the legislative history and public policy goals of the Motor Vehicle Financial Responsibility Act. It concluded the Act's purpose was "to give greater protection to those injured through the negligent operation of automobiles." *Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 599, 762 S.E.2d 705, 712 (2014). "This legislation requires insurance for the benefit of the public, and an insurer may not nullify its purposes by engrafting exceptions from liability as to uses that the evident purpose of the legislation was to cover." *Id*.

Vigorous protection for South Carolina insurance consumers matters because they buy insurance to safeguard themselves, their loved ones, and all people the insureds let operate their motor vehicles. Moreover, liability insurance also serves the public purpose of protecting the innocent victims of motor-vehicle collisions. *Factory Mutual Liability Ins. Co. of Am. v. Kennedy*, 256 S.C. 376, 380-81, 182 S.E.2d 727, 729 (1971).

Strong legislative protection for insureds prevents insurers from creating so many

exclusions and exceptions to coverage that it becomes an illusion. That principle is consistent with S.C. Code Ann. § 38-77-142(C), which states that: "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." The "this section" phrase refers to all of the statute's subparts—including to S.C. Code Ann. § 38-77-142(B).

Here, Nationwide's policy purported to deny any coverage for death or injury that a named insured, a relative of a named insured, or a permissive driver causes during a motor vehicle's operation: (1) while committing a felony or (2) while fleeing from a law-enforcement officer. (Appx. 221-22). But that exclusion is irreconcilable with S.C. Code Ann. § 38-77-142(C)'s plain, powerful words. The General Assembly's intent in enacting a law with such strong language is to ensure that South Carolinians who buy motor-vehicle insurance can indeed have their purchased protection when tragedy strikes.

It is significant that, based on its direct familiarity with South Carolina insurance law, the United States District Court for the District of South Carolina has explained that in South Carolina law, "an 'accident' is viewed from the victim's perspective and, if the injury, although intentionally inflicted, is as to the victim 'unforeseen and not the result of his own misconduct,' it is accidentally sustained within the meaning of the ordinary accident insurance policy." *Wausau Underwriters Ins. Co. v. Howser*, 727 F.Supp. 999, 1001 (D.S.C. 1990) (citing *Chapman v. Allstate Ins. Co*., 263 S.C. 565, 570, 211 S.E.2d 876, 879 (1975)). *See also South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 382 S.E.2d 11 (App. 1989) (Statute requiring that auto insurance policies have a

provision insuring the insured "against loss from liability imposed by law for damages" resulted in coverage where the insured deliberately crashed her vehicle into a truck in an attempt to commit suicide, although the policy contained an exclusion for intentional injury.).

The statutory text makes the legislative intent clear. Insureds may wind up in situations where a crash occurs during commission of a felony (even one that is just reckless driving) or while fleeing from a law-enforcement officer (even if that flight resulted from panic or confusion). But even in those unfortunate cases, coverage will remain intact under S.C. Code Ann. § 38-77-142(C)'s plain text. Insurance, after all, is most critically needed when unexpected events strike.

Unlike the situation in almost all other states, in South Carolina, once the insurer and the insured agree on the face amount of coverage, the insurer may not arbitrarily reduce or limit that coverage by using conflicting policy provisions that "effectively retract" the promised insurance coverage. *Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 604, 762 S.E.2d 705, 715 (2014).

The clear, plain terms of S.C. Code Ann. § 38-77-142(C) are no fluke. Indeed, what the General Assembly says in the text of any statute "is the best evidence of its intent, and this Court is bound to give effect to the legislature's expressed intent." *Aiken v. South Carolina Dept. of Rev.*, 429 S.C. 414, 419, 839 S.E.2d 96, 99 (2020). The "cardinal rule" of statutory construction remains ascertaining and effectuating legislative intent as evidenced by a statute's plain language. *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019).

2. Courts should broadly construe S.C. Code Ann. § 38-77-142(C).

A broad interpretation of S.C. Code Ann. § 38-77-142(C) is consistent with two of the General Assembly's pro-consumer declarations that:

- No violation of a motor-vehicle insurance policy "shall defeat or void the policy." S.C. Code Ann. § 56-9-20(5)(b)(3).
- An insurance carrier's liability with respect to the insurance the Motor Vehicle Financial Responsibility Act requires "shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs." S.C. Code Ann. § 56-9-20(5)(b)(1).

Indeed, the General Assembly has also directed that the provisions set out above are not optional. They are instead automatically incorporated into every South Carolina insurance policy. The policy need not even mention them. S.C. Code Ann. § 56-9-20(5)(b)(5). Moreover, it is only the provisions of the policy's written application and the provisions of the policy itself (including any riders or endorsements) that do *not* conflict with the provisions of the Motor Vehicle Financial Responsibility Act that "constitute the entire contract between the parties." S.C. Code Ann. § 56-9-20(5)(b)(6).

Whatever conflicts with South Carolina statutory insurance law is not a part of the insurance contract. As this Court has emphasized, "any limiting language in an insurance contract which ha[s] the effect of providing less protection than made obligatory by the statutes is contrary to public policy and is of no force and effect." *Ferguson v. State Farm Mutual Auto, Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973).

Another basis for a broad interpretation of S.C. Code Ann. § 38-77-142(C) is its

status as a remedial statute. As a general matter, after all, insurance statutes are remedial in nature and are "entitled to a liberal construction to effectuate the purpose thereof." *Gunnels v. Am. Liberty Ins. Co*., 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968). The legislation at issue here, "being remedial in nature, must be liberally interpreted to subserve the clear public policy reflected in the statute to broaden the coverage of automobile liability policies." *St. Paul Fire and Marine Ins. Co. v. American Ins. Co.*, 251 S.C. 56, 60, 159 S.E.2d 921, 923 (1968).

Further, although the General Assembly has ordered that motor-vehicle policies need not cover certain things, such as workers' compensation liability and liability for an insured's employee while on the job, S.C. Code Ann. § 56-9-20(5)(c), it specifically did *not* exclude coverage for death or injury occurring during commission of a felony or while fleeing from a law-enforcement officer. That legislative choice implicates the concept of *expressio unius est exclusion alterius*, a "canon of construction holding that to express or include one thing implies the exclusion of the other or of the alternative." *Black's Law Dictionary* 726 (11th ed. 2019).

This Court has held that, "when determining the effect of statutory language, 'the canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or the alternative.'" *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (quoting *State v. Bolin*, 378 S.C. 96, 100, 662 S.E.2d 38, 40 (2008) (quoting *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)). By listing the few allowable exceptions to the coverage of South Carolina motor-vehicle insurance policies, under the *expressio*

unius est exclusio alterius doctrine, the General Assembly has implicitly forbidden the two exclusions that Nationwide is trying to rely on in the present case.

Significantly, in other states with similar pro-insurance-consumer public policies and statutes, courts have been exceptionally reluctant to approve and allow the use of exclusions like the ones that Nationwide seeks to impose in South Carolina's automobile liability policies. *See e.g. Mendoza v. Rivera-Chavez*, 140 Wash.2d 659, 666, 999 P.2d 29, 32 (2000) (Felony exclusion from automobile policy that excludes liability for use of vehicle in "any felony," including vehicular homicide and vehicular assault, violates public policy and is void; exclusion is only operable after injuries to victims have been assessed as severe enough to warrant felony conviction, and exclusion is not linked to insurer's risk, but to victim's injuries.); *Allstate Indemnity Co. v. Wise*, 818 So.2d 524, 527 (Fla. App. 2001) ("Indeed, courts in other states have been reluctant to apply criminal acts exclusions when examined in light of the public policy concerns inherent in automobile liability policies."); *Sledge v. Continental Casualty Co.*, 639 So.2d 805, 812 (La. App. 1994) ("Insurance policies should be generally construed to effect, not deny, coverage."); *Bass v. Horizon Assurance Co.*, 562 A.2d 1194, 1195 (Del. 1989) (An auto policy exclusion denying personal injury protection coverage to insured who contributes to his bodily injury by driving under influence of alcohol was incompatible with no-fault nature of personal injury law, and thus was unenforceable.).

"The rationale of all of those cases is that applying criminal acts exclusions would deny insurance coverage to innocent victims of the criminal acts, which would run afoul of the mandatory automobile liability insurance statutory provisions enacted in 47 states

and the District of Columbia. See *Wise*, 818 So.2d at 527; *Mendoza*, 140 Wash.2d at 672, 999 P.2d at 34; *Sledge*, 630 So.2d at 812; *Bass*, 562 A.2d at 1197." *Bohner v. Ace Am. Ins. Co.*, 359 Ill. App. 3d 621, 626, 834 N.E.2d 635, 641 (2005) (The very "same public policy concern of innocent accident victims being left without coverage exists in Illinois."). Given its vibrant tradition and record of protecting insurance consumers, South Carolina should follow that same approach.

Conclusion

United Policyholders advocates for the vigorous interpretation and application of the strong pro-consumer protections that the General Assembly has enacted for South Carolina's insurance consumers.

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