STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Robin E. Otterbacher, Plaintiff, v. Jeremy and Tamara Snyder, individually and as guardians and parents of Blaze Kendall Snyder, Blaze Kendall Snyder individually, Selective Insurance Company of America and Auto-Owners Insurance Company, Defendants.	Civil Action No. 2011-CP-40-1022 **ORDER**

This matter is before this Court on the cross motions for summary judgment filed by the Plaintiff Robin E. Otterbacher and the Defendant Selective Insurance Company of America ("Selective"). A hearing was held with all counsel of record present on December 13, 2012. After a review of the pleadings, the parties' motions, the written submissions by the parties, and the oral arguments of counsel, this Court grants the Defendant Selective's motion for summary judgment and dismisses this action with prejudice.[1]

The Plaintiff Robin E. Otterbacher commenced this declaratory judgment action to determine, in part, whether the Defendant Selective Insurance Company owes coverage to Jeremy Snyder, Tamara Snyder, and/or Blaze Kendall Snyder for injuries the Plaintiff is alleged to have sustained in a November 13, 2010 motor vehicle accident. At the time of the accident, Blaze Kendall Snyder, the minor child of Jeremy and Tamara Snyder, was operating a 2000 Chevrolet truck, VIN 1GCGC34R9YR194762, which he was operating with a learner's permit. His father, Jeremy Snyder, was also in the vehicle. The Snyders were driving to Mr. Snyder's place of employment, Columbia Commercial Tire a/k/a Lugoff Tire Company. *See* Snyder Depo., p. 19.

[1] By Order filed January 22, 2013, this Court has previously granted the motion for summary judgment filed by the Defendant Auto-Owners Insurance Company.

Selective Insurance Company of America issued a Personal Auto Policy to the named insureds, Jeremy Snyder and Tamara Snyder, bearing Policy Number F-5127609, which was in effect at the time of the November 13, 2010 motor vehicle accident. It is undisputed that the 2000 Chevrolet truck was not owned by Jeremy Snyder, Tamara Snyder, or Blaze Kendall Snyder. Instead, the truck was owned by Jeremy Snyder's employer, Columbia Commercial Tire a/k/a Lugoff Tire Company. *See* Snyder Depo., p. 17. It is also undisputed that the 2000 Chevrolet truck is not listed as a "covered auto" on the declarations of the Selective policy.

In his deposition, Jeremy Snyder testified that the 2000 Chevrolet truck was furnished or available for his regular use by his employer. Mr. Snyder testified that the truck was assigned to him by the company and that he had been driving that particular vehicle for five or six months. *See* Snyder Depo., pp. 17-18. He further testified that throughout his employment he was provided a company truck that he was allowed to take home. His job included providing 24 hour road service, and as a result, it was common for him to leave on service calls from his home. *See* Snyder Depo., pp. 17-18. Mr. Snyder further testified that the 2000 Chevrolet vehicle was furnished to him by the company for him to drive to and from work, to use for business purposes, and for making business calls. *See* Snyder Depo., pp. 21-22.

Selective Insurance Company maintains that the Plaintiff's claims against the Snyders are excluded by Exclusion B.2, which provides:

> B. We do not provide Liability Coverage for the ownership, maintenance or use of:
>
> . . .
>
> 2. Any vehicle, other than "your covered auto," which is
>
> a. Owned by you; or
>
> b. Furnished or available for your regular use.

Selective denied coverage for the Plaintiff's claim against the Snyders because the vehicle involved in the accident was not a "covered auto" as defined by the Personal Auto Policy and because that vehicle was furnished or available for Jeremy Snyder's regular use. This Court agrees with Selective's position and finds that coverage for the Snyders is barred by operation of Exclusion B.2.

In applying Exclusion B.2, the Court recognizes that the term "you" is defined by the policy as referring to the named insured and the spouse of the named insured. The named insureds listed on the declaration pages are Jeremy and Tamara Snyder. Thus, "you" for this

policy refers to Jeremy and Tamara Snyder only. The "covered autos" under the policy are a 1995 Chevrolet pick-up, a 1998 Isuzu Trooper, and a 2004 GMC Sierra. The vehicle involved in the November 13, 2010 accident was a 2000 Chevrolet pick-up owned by Columbia Commercial Tire a/k/a Lugoff Tire Company. That vehicle is not listed as a "covered auto" on the declaration pages of the Selective policy. A company truck, as Mr. Snyder testified, was furnished for his regular use. He was always provided with a company vehicle although the vehicles would change. *See* Snyder Depo., pp. 17-18. Because a company truck was furnished or available for Mr. Snyder's regular use, no coverage is provided under the Personal Auto Policy issued by Selective on the Snyders' personal vehicles.

South Carolina case law has upheld similar exclusions barring coverage for automobiles not listed on the policy but which are furnished or available for the regular use of an insured. *See e.g., Willis v. Fidelity & Casualty Co. of New York*, 253 S.C. 91, 169 S.E.2d 282 (1969); *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982). In *Tollison*, the Supreme Court explained the purpose of such an exclusion:

> The purpose of automobile policy provisions excluding coverage for injuries sustained while occupying an automobile "furnished for the regular use of" an insured or relative is clear. It is to afford coverage for the infrequent and casual use of vehicles other than the one described in the policy, but *not to cover the insured with respect to his use of another vehicle which he frequently uses or has the opportunity to use.* It is to protect the insurer from a situation whereby an insured could purchase a policy covering one automobile and be covered without qualification as to all automobiles available for his use.

289 S.E.2d at 165. (Emphasis added).

However, the Plaintiff argues that the 2000 Chevrolet truck was not furnished or available for the regular use of Jeremy Snyder or Blaze Snyder based upon the deposition testimony of Danny Lyell, the owner of Columbia Commercial Tire a/k/a Lugoff Tire Company. In his testimony, Mr. Lyell believed that the truck involved in the accident was not permanently assigned to Mr. Snyder but rather was a truck available for use by all employees. Although he was not certain, Mr. Lyell testified that the 2000 Chevrolet truck may have been temporarily assigned to Mr. Snyder, but he admittedly could not dispute Mr. Snyder's testimony that Snyder had been driving that vehicle for six months. *See* Lyell Depo., pp. 12, 42-46. Mr. Lyell, however, was certain that Mr. Snyder had been assigned a company vehicle at all times during

his employment. *See* Lyell Depo., pp. 42-43. Given Mr. Lyell's and Mr. Snyder's testimony, it is undisputed that Jeremy Snyder was always assigned a company vehicle (although the exact vehicle could change), and that a company vehicle was involved in the accident. Hence, this Court finds no coverage by operation of Exclusion B.2.

The Court's conclusion is supported by case law from other jurisdictions addressing similar issues involving fleet or pool vehicles. In *Hall v. Southern Farm Bureau Casualty. Ins. Co.*, 670 S.W.2d 775 (Tex. App. 1984), the court held as follows:

> If an employee regularly drives a vehicle in his or her employment, and if the driving of such a motor vehicle constitutes the principal duty of the employment, and if a number of vehicles in a pool are available to that employee, subject either to random assignment or assignment based upon the nature of the job involved, or selection by the employee, then all vehicles in the pool are considered as a matter of law to be vehicles furnished for the employee's regular use.

670 S.W.2d at 777. Similarly, in *Galvin v. Amica Mut. Ins. Co.*, 11 Mass. App. Ct. 457, 417 N.E.2d 34 (1981), the court explained that "all motor vehicles in a pool, any one of which is available to the person insured, [are treated] as within the regular use exclusion." 417 N.E.2d at 36. The court found that "an automobile will be excluded under such policy provisions although it is only one of a group of automobiles from which an automobile is regularly furnished to the named insured by his employer." 417 N.E.2d at 37. *See also*, *Ryan v. State Farm Mut. Automobile Ins. Co.*, 397 Ill. App. 3d 48, 921 N.E.2d 458, 461 (2009) (recognizing "cases involving similar fact situations and policy language have been addressed by a number of other jurisdictions, which have held that a vehicle is available for the insured's regular use if it is one of a pool of vehicles and the insured regularly uses vehicles from that pool"). This authority supports this Court's conclusion that the 2000 Chevrolet truck, even if it were not specifically assigned to Jeremy Snyder, it was one of a pool or fleet of company vehicles that were furnished or available for his regular use as part of his employment.

Additionally, instead of Exclusion B.2, the Plaintiff focuses on Exclusion B.3, which this Court finds does not apply. Specifically, Exclusion B.3 applies to vehicles furnished or available for the regular use of "family members." The term "family member" is defined by the policy as a person related by blood, marriage or adoption to the named insured and who is a resident of the named insured's household. This Court concludes that Exclusion B.3 is not applicable because

the 2000 Chevrolet was not furnished to a "family member" but to the named insured himself (Jeremy Snyder).

Moreover, relying on Mr. Lyell's testimony, the Plaintiff also argues that the 2000 Chevrolet was a "temporary substitute" vehicle based on the definition of "your covered auto" set forth in Paragraph J.4 of the "Definitions" section of the Selective policy. According to Paragraph J.4, in order to qualify as a "temporary substitute" vehicle, the vehicle must be replacing "any other vehicle described in this definition." Therefore, even if the 2000 Chevrolet was temporarily replacing another company truck, as Danny Lyell's testimony appears to suggest, it did not replace a "covered auto" under the Selective policy. *See, Nationwide Mut. Ins. Co. v. Douglas*, 273 S.C. 243, 255 S.E.2d 828, 830 (1979) ("under a temporary substitute automobile clause, a vehicle cannot qualify as a temporary substitute unless *the automobile described in the policy* is withdrawn from normal use on the date of the accident"). (Emphasis added). This Court accordingly concludes that the vehicle involved in the accident was not a "temporary substitute" that is under the Selective policy, and as a result, Paragraph J.4 of the policy has no applicability.

THEREFORE, IT IS ORDERED that the Motion for Summary Judgment filed by the Defendant Selective Insurance Company is hereby **GRANTED**, and the Plaintiff's Complaint is dismissed with prejudice. This Court further enters a declaratory judgment and declares that Selective Insurance Company does not owe a duty to defend nor a duty to indemnify to Jeremy Snyder, Tamara Snyder, and/or Blaze Kendall Snyder with respect to any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action including any claims made by the Plaintiff.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Summary Judgment is hereby **DENIED**.

AND IT IS SO ORDERED.

Alison Renee Lee

ALISON RENEE LEE
Circuit Court Judge,
Fifth Judicial Circuit

Columbia, South Carolina
March 25, 2013