

# Insurance Policies: Where Is the Proper Balance Between Limitation of Liability and Adherence to Public Policy

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It is well established that policies of insurance are contracts, subject to basic contract law. While parties are generally permitted to contract as they wish, such privilege is not absolute in the context of insurance; required coverage may not be omitted. Rather, statutory obligations relating to insurance contracts become part of an insurance agreement. Thus, while insurers may generally limit their liability and impose conditions on their coverage obligations, they may not contravene public policy or statutory inhibition. Not surprisingly, legitimate questions abound from the efforts to balance contractual freedom and adherence to public policy. Where are the boundaries? The South Carolina Court of Appeals recently examined an insurer's limitation of liability against the backdrop of public policy, while contrasting an earlier and somewhat similar limitation. *Nationwide Mutual Fire Insurance Company v. Sharmin Christine Walls, et al*, 2019 WL 2363539 (June 5, 2019).

Sharmin Walls (Walls), along with two others were passengers in a vehicle she owned that was being driven by Korey Mayfield. A state trooper attempted to stop the vehicle for speeding. Despite the requests of Walls and the other passengers to stop the car, Mayfield instead led the police on a high speed chase, ultimately leaving the highway and heading down a residential road. The officer abandoned the pursuit, following which Mayfield lost control of the car and crashed, killing one passenger and catastrophically injuring the other two, including Walls. Mayfield was charged with and pled guilty to reckless homicide, which is a felony.

Walls was a named insured in a policy issued by Nationwide that provided liability coverage of \$100,000 per person and \$300,000 per accident. The policy contained an exclusion, providing that the coverage did not apply to any amount above minimum limits required by the South Carolina Motor Vehicle Financial Responsibility Act for bodily injury or property damage caused by the insured, the insured's relative or anyone else operating the insured auto while committing a felony or while fleeing a law enforcement officer.

Nationwide instituted a declaratory judgment action seeking the court's determination that because Mayfield was fleeing law enforcement at the time of the loss, and pled guilty to a felony, its liability was limited to the statutory limits, to the exclusion of the additional, optional coverage. The trial court concluded that while Mayfield's conduct fell squarely within the policy's exclusions, the exclusions were unenforceable because Nationwide failed to inform Walls of the exclusions or conspicuously place them on the policy, the exclusions were ambiguous and they violated the public policy of protecting innocent insureds, specifically the three passengers. The case came before the court on Nationwide's appeal. In its review of *Walls*, the court examined and contrasted it to *Williams v. Gov't Emp. Ins. Co.*<sup>[1]</sup> wherein a family "step-down" provision was found violative of South Carolina law.

In *Williams*, a husband and wife were riding in a car insured under both their names at the time of a fatal accident. A dispute arose when the estates argued the proper coverage was \$100,000, as shown on the policy declaration page, but GEICO asserted its liability was limited to the statutory minimum based upon a family "step-down" provision. The "step-down" policy provided, in part, GEICO's responsibility under the policy would be reduced to the statutory minimum when an injured party was a family member of the insured. The trial court found the step-down was enforceable as it provided at least the statutory minimum coverage. Upon appeal by the estates, the South Carolina Supreme Court reversed. Noting SC Code §§38-77-142(A) and (B) require a policy insure the named insureds and permissive users against liability for negligence incurred 'within the coverage of the policy,' the court found that phrase to equate to the face amount of coverage shown on the policy – not the minimum statutory coverage. The court went on to find the GEICO policy also violated SC Code Section 38-77-142(C), as it appeared on its face to provide \$100,000 in coverage to its insureds, including the named insured and family members, but reduced that to the minimum limits under the family step-down provision. Because the family step-down conflicted with the amount of coverage shown on the declarations page, the provision was found invalid.

In contrast, Nationwide's exclusions were only triggered when an insured sought coverage for injuries sustained in the context of certain acts, such as fleeing law enforcement. The exclusions were based on the conduct of the driver, not the injured party's relationship to the insured. In short, Nationwide's coverage remained intact if the injury did not result from foreseeably dangerous conduct the insured could reasonably avoid. The court concluded that an insurer may impose reasonable limitations on coverage above the statutory minimum as long as the mandatory coverage limits are satisfied. In other words, an insurer may exclude coverage above the minimum limit against conduct inherently more dangerous than what is anticipated in the regular operation of a vehicle.

Finally, the court found no support for the position that the exclusions of the Nationwide policy were arbitrary and capricious, as they were based upon the conduct of the driver. Because the exclusions act to discourage dangerous behavior all the while preserving coverage for innocent victims they are not violative of public policy. The interest in protecting innocent passengers of a vehicle evading law enforcement is balanced by the mandatory insurance coverage.

It is not difficult to draw a distinction between the exclusions at issue, e.g. those in *Williams* are based only upon a family relationship while in *Walls* the exclusions are based upon dangerous conduct of the driver. Nonetheless, this case raises interesting issues. In *Williams* and *Walls*, the policies set forth conditions pursuant to which the required coverages differed from those shown in the declarations page. Such difference was determined to be dispositive in *Williams*, but not in *Walls*. Additionally, *Walls* may, in fact, act to violate the public policy of protecting the innocent. The three passengers in *Walls* were clearly innocent; they were placed in the path of deadly harm at the hand of a driver

who made the unilateral decision to flee law enforcement and thereby commit a felony. As the recitation of facts establishes, the passengers, including Walls, instructed Mayfield to pull over and he instead accelerated.

Literal application of Nationwide's exclusions to a more overarching scenario suggests the result would be the same if Mayfield had taken and used Walls' vehicle without her permission or knowledge and injured others. Such situation would result in harm to those injured as well as to Walls who would face personal exposure for Mayfield's act. Again, the exclusions affect harm to the innocent.

It seems the freedom of parties to contract within statutory requirements is not an impossible accomplishment, but the exclusions of the Nationwide policy at issue appear to lack necessary refinement.

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<sup>[1]</sup> 762 S.E.2d 705 (2014).

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