NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0434

AVA FONTENOT, wife of/and LINDSEY M. FONTENOT, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LINDSEY R. FONTENOT

VERSUS

PROGRESSIVE PALOVERDE INSURANCE COMPANY, AND ROY BOURG AS ADMINISTRATOR OF THE ESTATE OF RAYMOND BOURG

consolidated with

2014 CA 0435

SHAREKA MATTHEWS and on behalf of her minor daughter, ROBRIELLE SHORT

VERSUS

ROY BOURG AS ADMINISTRATOR OF THE ESTATE OF RAYMOND BOURG, and PROGRESSIVE PALOVERDE INSURANCE COMPANY

Judgment Rendered: DEC 23 2014

* * * * *

On Appeal from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Trial Court No. 164,095 c/w 164,219

The Honorable Randall L. Bethancourt, Judge Presiding

* * * * *

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Guidry, J. concurs.
McDonald, J. concurs.

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* * * * *

BEFORE: GUIDRY, McDONALD AND DRAKE, JJ.

DRAKE, J.

Plaintiffs, Ava Fontenot, and Lindsey M. Fontenot, individually, and on behalf of the estate of Lindsey R. Fontenot, appeal the trial court's granting of summary judgment dismissing plaintiffs' claims against defendant, Progressive Paloverde Insurance Company (Progressive). For the reasons stated herein, the judgment of the trial court is affirmed.

FACTS AND PROCEDURAL HISTORY

This matter arises out of an accident in which three people were killed on July 2, 2010, in Terrebonne Parish. On that date, plaintiffs' son, Lindsey R. Fontenot, was a passenger in a 2007 Toyota Tacoma being driven by Raymond Bourg in a southerly direction on Louisiana Highway 24. Robert Short was driving another vehicle and was also travelling in a southerly direction on the same highway when the two vehicles collided. All three occupants of the two vehicles, Lindsey R. Fontenot, Raymond Bourg, and Robert Short, sustained fatal injuries.

At the time of the accident, the vehicle driven by Raymond Bourg was insured by an automobile insurance policy issued by Progressive. Plaintiffs filed suit against Roy Bourg, as the administrator of the estate of Raymond Bourg, and Progressive. Progressive filed a motion for summary judgment, which alleged that the policy did not provide either liability or uninsured motorist coverage (UM) for the accident in question because of a named driver exclusion endorsement excluding coverage for Raymond Bourg.[1]

Prior to the summary judgment hearing, all claims of liability against Raymond Bourg and his estate were voluntarily dismissed. The motion for summary judgment was opposed by plaintiffs, who argued that the named driver

[1] A separate lawsuit was filed against Roy Bourg and Progressive by Shareka Matthews, asserting claims for herself and her minor daughter resulting from Robert Short's death. The two cases were consolidated at the trial court level. The Short lawsuit is not at issue in this appeal.

endorsement applied to the liability coverage of the policy and not the UM coverage and did not act to eliminate liability coverage for a passenger occupying the vehicle. The motion for summary judgment was originally heard on June 15, 2012, and the trial court subsequently signed a judgment granting Progressive's motion for summary judgment. This court remanded the case to the trial court for the limited purpose of the trial court signing a valid written judgment with appropriate decretal language. An amended judgment was signed on May 7, 2013, granting Progressive's motion for summary judgment and dismissing plaintiffs' claims. An appeal was taken and this court vacated the May 7, 2013 judgment and remanded the matter to the trial court due to deficiencies in the record. *Fontenot v. Progressive Paloverde Ins. Co.,* 12-1763 c/w 1764 (La. App. 1 Cir. 11/7/13), 2013 WL 5969096 (unpublished). Progressive subsequently filed a motion to re-urge its original motion and attached the appropriate exhibits. A hearing was held on December 3, 2013, regarding the re-urged motion for summary judgment. The trial court granted Progressive's motion for summary judgment and signed a judgment in accordance therewith dated December 16, 2013. This appeal followed.

DISCUSSION

Summary Judgment

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. *Duncan v. U.S.A.A. Ins. Co.,* 06-363 (La. 11/29/06), 950 So. 2d 544, 546; *see* LSA-C.C.P. art. 966(A)(1) and (2). An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo,* using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. *See Smith v. Our Lady of the Lake Hosp., Inc.,* 93-2512 (La. 7/5/94), 639 So. 2d 730, 750. The motion should be granted only if the pleadings,

depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2); *George S. May Int'l Co. v. Arrowpoint Capital Corp.,* 11-1865 (La. App. 1 Cir. 8/10/12), 97 So. 3d 1167, 1171.

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. La. C.C.P. art. 966(C)(2). A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case. La. C.C.P. art. 966(E). However, a summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time. La. C.C.P. art. 966(F)(1).

The issue of whether an insurance policy, as a matter of law, provides or precludes coverage is a dispute that can be resolved properly within the framework of a motion for summary judgment. *Johnson v. Allstate Ins. Co.,* 95-1953 (La. App. 1 Cir. 5/10/96), 673 So. 2d 345, 347, *writ denied,* 96-1292 (La. 6/28/96), 675 So. 2d 1126. In seeking a declaration of coverage under an insurance policy, Louisiana law places the burden on the plaintiff to establish every fact essential to

recovery and to establish that the claim falls within the policy coverage. *McDonald v. American Family Life Assur. Co. of Columbus,* 10-1873 (La. App. 1 Cir. 7/27/11), 70 So. 3d 1086, 1089. The insurer, however, bears the burden of proving the applicability of an exclusionary clause within a policy. *Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana,* 40,096 (La. App. 2 Cir. 9/28/05), 912 So. 2d 400, 404, *writ denied,* 05-2462 (La. 3/24/06), 925 So. 2d 1239. Summary judgment declaring a lack of coverage under an insurance policy may not be rendered unless there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded. *Jones v. Estate of Santiago,* 03-1424 (La. 4/14/04), 870 So. 2d 1002, 1010.

Insurance Contracts

An insurance policy is an agreement between the parties and should be construed according to the general rules of interpretation of contracts as set forth in the Louisiana Civil Code. *Cadwallader v. Allstate Ins. Co.,* 02-1637 (La. 6/27/03), 848 So. 2d 577, 580. When interpreting insurance contracts, the court's responsibility is to determine the parties' common intent. *See* La. C.C. art. 2045; *Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.,* 93-0911 (La. 1/14/94), 630 So. 2d 759, 763. The parties' intent, as reflected by the words of the policy, determines the extent of coverage. *Ledbetter v. Concord Gen. Corp.,* 95-0809 (La. 1/6/96), 665 So. 2d 1166, 1169, *judgment amended,* 95-0809 (La. 4/18/96), 671 So. 2d 915.

When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. Such intent is to be determined in accordance with the general, ordinary, plain, and popular meaning of the words used in the policy, unless the words have acquired a technical meaning. *See* La. C.C. art. 2047;

Ledbetter, 665 So. 2d at 1169. If the policy wording at issue is clear and expresses the intent of the parties, the agreement must be enforced as written. *Ledbetter,* 665 So. 2d at 1169. An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or restrict its provisions beyond what is reasonably contemplated by its terms or to achieve an absurd conclusion. *Reynolds v. Select Properties, Ltd.,* 93-1480 (La. 4/11/94), 634 So. 2d 1180, 1183. Absent a conflict with statutory provisions or public policy, insurers are entitled to limit their liability and to impose and enforce reasonable conditions on the policy obligations they contractually assume. *Parekh v. Mittadar,* 11-1201 (La. App. 1 Cir. 6/20/12), 97 So. 3d 433, 437-38. The insurer, however, has the burden of proving that a loss comes within a policy exclusion.

Analysis

The Louisiana Supreme Court recently enunciated the methodology to determine when and whether UM coverage is available under a disputed insurance policy. The supreme court posited, in *Green ex rel. Peterson v. Johnson*, 14-0292 (La. 10/15/14), ___ So. 3d ___ 2014 WL 5393032, as follows:

> When the existence of UM coverage under a policy of automobile insurance is at issue, *Magnon v. Collins* [98-2822 (La. 7/7/99), 739 So. 2d 191], *Succession of Fannaly v. Lafayette Insurance Company* [01-1144 (La. 1/15/02), 805 So. 2d 1134], *Filipski v. Imperial Fire & Casualty Insurance Company* [09-1013 (La. 12/1/09), 25 So. 3d 742], and *Cadwallader v. Allstate Insurance Company* [02-1637 (La. 6/27/03), 848 So. 2d 577] demonstrate a two-step analysis: (1) the automobile insurance policy is first examined to determine whether UM coverage is contractually provided under the express provisions of the policy; (2) if no UM coverage is found under the policy provisions, then the UM statute is applied to determine whether statutory coverage is mandated. *See also Bernard v. Ellis,* 11-2377 (La. 7/2/12), 111 So. 3d 995, 1000 (recognizing that an automobile insurance policy must first be examined for contractual UM coverage, and if contractual coverage is absent, "if a plaintiff is insured under the auto liability coverage, he is entitled to UM coverage" (citing *Magnon v. Collins* and *Filipski v. Imperial Fire & Casualty Insurance Company*)).

As required by the first step in the two-step analysis, we turn now to an examination of the UM coverage expressly provided in the Bourg's Progressive policy to determine whether contractual UM coverage existed for the accident at issue in this case. *See Green,* ___ So. 3d ___.

The record contains the insurance policy issued by Progressive to Mary L. Bourg, which provided liability and UM coverage on four vehicles, one of which was the 2007 Toyota Tacoma being driven by Raymond Bourg at the time of the accident. The declarations page lists Raymond Bourg as an excluded driver. The policy also includes a named driver exclusion endorsement. The declarations page indicates that the policy has been modified by several forms, one of which was the named driver exclusion endorsement which stated:

> If you have asked us to exclude a resident of your household from coverage under this policy, then we will not provide coverage for **any claim arising from an accident** or loss **involving a motorized vehicle being operated by that excluded driver**. This includes any claim for damages made against you, a relative, or any other person or organization that is vicariously liable for an accident arising out of the operation of a motorized vehicle by the excluded driver.

The plaintiffs argue that Progressive's interpretation of its insurance policy violates public policy, since Progressive claims that both liability and UM coverage are excluded for a guest passenger riding with an excluded driver.

The statutory scheme provided by the Louisiana Motor Vehicle Safety Responsibility Law, *see* La. R.S. 32:851 *et seq.*, is intended to attach financial protection to the vehicle rather than the operator. Accordingly, Louisiana's automobile insurance law requires omnibus coverage in favor of any person using an insured vehicle with the permission of the named insured. La. R.S. 32:900(B)(2); *see Bryant v. United Services Auto. Ass'n,* 03-3491 (La. 9/9/04), 881 So. 2d 1214, 1218. In 1992, however, the Louisiana Legislature added subsection (L) to La. R.S. 32:900, which is an exception to the general rule of omnibus coverage. Louisiana Revised Statute 32:900(L) permits an insurer and an insured,

by written agreement, to exclude from coverage any named person who is a resident of the same household as the named insured at the time that the written agreement is executed. *See* 1992 La. Acts, No. 979, §1. The purpose of Section 900(L) is to allow the named insured the option of paying a reduced premium in exchange for obtaining an insurance policy that affords no coverage for an accident while a covered vehicle is being operated by an excluded driver. *Joseph v. Dickerson,* 99-1046 (La. 1/19/00), 754 So. 2d 912, 917; *see Bryant,* 881 So. 2d at 1219;

The original policy issued to Mary Bourg by Progressive was policy number 19075191-0 for the policy period of April 4, 2006, to October 4, 2006. The original policy provided liability and UM coverage of $250,000/$500,000. The Declaration's Page lists Raymond Bourg as an excluded driver.

On April 15, 2006, Mary Bourg executed a named driver exclusion election that lists Raymond Bourg as an excluded driver. The exclusion states that it remains in effect and applies to any renewal policies unless a named insured revokes the election. A second named driver exclusion election was signed by Mary Bourg on May 8, 2006, which also listed Raymond Bourg as an excluded driver. The second exclusion is similar to the first except that it lists the effective date of the exclusion as April 4, 2006. The Bourg's Progressive policy renewed a total of eight times. On every renewal, Raymond Bourg is listed as an excluded driver.

The plaintiffs have dismissed all claims against Roy Bourg and, thereby, Progressive with regard to liability coverage. The issue before this court is whether there was UM coverage afforded to the guest passenger of the 2007 Toyota Tacoma, Lindsey R. Fontenot, which was being driven by Raymond Bourg, an excluded driver under the policy. The UM coverage of the Progressive policy contains insuring language which states:

PART III-UNINSURED MOTORIST COVERAGE

INSURING AGREEMENT — UNINSURED MOTORIST BODILY INJURY COVERGAGE

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**;

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

An insured person for purposes of Part III of the policy is defined as:

"Insured person" means:

a. **you** or a **relative**;
b. any person while operating a **covered auto** or **temporary substitute auto** with the express or implied permission of **you** or a **relative**;
c. any person **occupying**, but not operating, a **covered auto**, **rental auto**, or **temporary substitute auto**; and
d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.

There is no dispute that Lindsey R. Fontenot was "occupying, but not operating, a covered auto." Therefore, but for the named driver exclusion, Lindsey R. Fontenot would have been afforded UM coverage. The policy issued to Mary Bourg contained an endorsement adding the named driver exclusion.

Plaintiffs first argue that La. R.S. 32:900, which permits a named driver exclusion, applies only to liability coverage and does not apply to UM coverage. However, the Louisiana Supreme Court has held otherwise in *Filipski,* 25 So. 3d at 745 (per curiam). Louisiana Revised Statute 32:900 provides in pertinent part:

> A. "Motor Vehicle Liability Policy" as said term is used in this Chapter, shall mean an owner's or an operator's policy of liability insurance, certified as provided in R.S. 32:898 or 32:899 as proof of financial responsibility, and issued except as otherwise provided in R.S. 32:899, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.
>
> B. Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs with respect to each such motor vehicle as follows:

(a) Fifteen thousand dollars because of bodily injury to or death of one person in any one accident, and

(b) Subject to said limit for one person, thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and

(c) Twenty-five thousand dollars because of damage to or destruction of property of others in any one accident.

(d) An owner may exclude a named person as an insured under a commercial policy if the owner obtains and maintains in force another policy of motor vehicle insurance which provides coverage for the person so excluded which is equal to that coverage provided in the policy for which the person was excluded. The alternative coverage is required for both primary and excess insurance.

* * *

L. (1) Notwithstanding the provisions of Paragraph (B)(2) of this Section, an insurer and an insured may by written agreement exclude from coverage the named insured and the spouse of the named insured. The insurer and an insured may also exclude from coverage any other named person who is a resident of the same household as the named insured at the time that the written agreement is entered into, and the exclusion shall be effective, regardless of whether the excluded person continues to remain a resident of the same household subsequent to the execution of the written agreement. It shall not be necessary for the person being excluded from coverage to execute or be a party to the written agreement. For the purposes of this Subsection, the term "named insured" means the applicant for the policy of insurance issued by the insurer.

Louisiana Revised Statute R.S. 32:900(L) is an exception to the general rule of omnibus coverage as provided in La. R.S. 32:861 and La. R.S. 32:900. *Filipski,* 25 So. 3d at 744. The purpose of this provision is to allow the named insured the option of paying a reduced premium in exchange for insurance that affords no

coverage while a covered vehicle is operated by the excluded driver. *Id.* The person seeking UM coverage in *Filipski* was the driver who was excluded by the named driver exclusion. The court held that a person who is not insured for liability purposes cannot be considered an insured for UM purposes. *Id.* at 745. The supreme court stated, "Any other interpretation would fail to recognize the validity of the exclusion provided for in La. R.S. 32:900(L), thereby imposing on the insurer a coverage obligation that is not commensurate with the premium paid." *Id.*

Plaintiffs argue that the reasoning of *Filipski* applies to the present case, but that the current facts are different, thereby requiring a different result. In *Filipski,* the person seeking UM coverage was the driver excluded by the named driver exclusion. In the present case, the decedent, Lindsey R. Fontenot, for whom his parents seek coverage, was a guest passenger in a vehicle driven by the excluded driver. However, the policy rather clearly does not provide contractual UM coverage for the plaintiffs as a result of the language in the named driver exclusion.

Now addressing the second step of the analysis set out in *Green*, "if no UM coverage is found under the policy provisions, then the UM statute is applied to determine whether statutory coverage is mandated." *Green,* 14-0292 at p. 9, ___ So. 3d ___. Plaintiffs are correct in their assertion that the essential issue for determination is whether Lindsey R. Fontenot was considered an "insured" for liability purposes under the Bourg's policy.

A person who does not qualify as a liability insured under a policy of insurance is not entitled to UM coverage under the policy. In other words, a plaintiff must be an "insured" under auto liability coverage to be entitled to UM coverage. *Magnon,* 739 So. 2d at 196; *Taylor v. Rowell,* 98-2865 (La. 5/18/99), 736 So. 2d 812, 817. There is no public policy against excluding UM coverage when a guest passengers is not an insured. *Id.* at 818. Therefore, this court must

determine if Lindsey R. Fontenot was an "insured" under the liability portion of the policy.

An "insured" is defined in the liability section of the Progressive policy as follows:

> When used in this Part I:
>
> 1. "**Insured person**" means:
>   a. **you** or a **relative** with respect to an accident arising out of the ownership, maintenance, or use of an **auto** or **trailer**;
>   b. any person with respect to an accident arising out of that persons' use of a **covered auto** or **temporary substitute auto** with the express or implied permission of **you** or a **relative**, or with the express or implied permission of a person in lawful possession of the **covered auto[.]**

The plaintiffs rely upon *Bernard v. Ellis,* 11-2377 (La. 7/2/12), 111 So. 3d 995, which contained facts somewhat similar to the present case, for the proposition that guest passengers are insureds for purposes of liability coverage, and therefore, for purposes of statutory omnibus UM coverage. In *Bernard,* an insured was driving a vehicle with two guest passengers when they were struck by a vehicle operated by an uninsured motorist. The insurer agreed that the named insured, the driver of the guest passengers, was entitled to UM coverage but claimed that neither guest passenger met the definition of an "insured person." The guest passengers did not meet the definition of "insureds" under the UM portion of the policy. Therefore, the court had to determine if the guest passengers were "insureds" under the liability portion of the policy and thus entitled to statutory omnibus coverage. *Bernard,* 111 So. 3d at 1001.

The policy at issue in *Bernard* covered any person using a motor vehicle with permission. Therefore, the issue was whether the guest passengers were "using" the vehicle. Louisiana Revised Statute R.S. 32:900(B)(2) mandates that motor vehicle liability policies cover permissive users. *Bernard,* 111 So. 3d at 1001. The Louisiana Supreme Court held that the act of riding as a permissive

guest passenger was considered a "use" of the vehicle within the terms of the policy. *Id.* at 1003. Therefore, the guest passengers as liability insureds under the policy were entitled to UM coverage. *Id.* at 1005.

While *Bernard* is instructive, we do not find it controlling as to the present facts. *Bernard* determined that a **permissive guest passenger** was "using" the vehicle in which he was riding for purposes of the insurance policy. In the present case, Lindsey R. Fontenot was not a permissive guest passenger vis-à-vis the specific insurance policy, since the driver, Raymond Bourg, was an excluded driver.

The policy at issue in this matter contained an endorsement excluding the driver of the vehicle, in which Lindsey R. Fontenot was a passenger, from coverage. That endorsement does not limit itself to the liability provisions of the policy as the plaintiffs argue. Instead, the named driver exclusion endorsement contained in the Progressive policy provides that if a driver is excluded, Progressive "will not provide coverage for ***any claim*** arising from the accident or loss involving a motorized vehicle being operated by that excluded driver." (Emphasis added). The named driver exclusion does not have any limitation with regard to either liability or UM coverage. It specifically applies to "any claim." This court cannot add language into the endorsement limiting it to liability coverage.

An insurance policy is a contract between the parties and should be construed employing the general rules of interpretation of contracts set forth in the Louisiana Civil Code. *Reynolds,* 634 So. 2d at 1183. Words and phrases used in a policy are to be construed using their plain, ordinary, and generally prevailing meaning, unless the words have acquired a technical meaning. *See* LSA-C.C. art. 2047. An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or to restrict its provisions beyond what is

reasonably contemplated by its terms or so as to achieve an absurd conclusion. *Reynolds,* 634 So. 2d at 1183. Where the language in the policy is clear, unambiguous, and expressive of the intent of the parties, the agreement must be enforced as written. *See* LSA-C.C. art. 2046; *Lewis v. Jabbar*, 08-1051 (La. App. 1 Cir. 1/12/09), 5 So. 3d 250, 255.

Policies should be construed to effect, and not to deny, coverage. Thus, a provision that seeks to narrow the insurer's obligation is strictly construed against the insurer, and if the language of the exclusion is subject to two or more reasonable interpretations, the interpretation that favors coverage must be applied. *Reynolds*, 634 So. 2d at 1183. Nevertheless, subject to the above rules of interpretation, insurance companies have the right to limit coverage in any manner they desire, so long as the limitations do not conflict with statutory provisions or public policy. *Id.*

The rule of strict construction does not authorize a perversion of language or the exercise of inventive powers for the purpose of creating an ambiguity where none exists. Nor does it authorize courts to alter the terms of policies under the guise of contractual interpretation when the policy provisions are couched in unambiguous language. *Doiron v. Louisiana Farm Bureau Mut. Ins. Co.,* 98-2818 (La. App. 1st Cir. 2/18/00), 753 So. 2d 357, 363. This court cannot alter the named driver exclusion of Progressive to apply only to liability coverage.

Plaintiffs also rely upon *Calogero v. Safeway Ins. Co. of Louisiana,* 99-1625 (La. 1/19/00), 753 So. 2d 170, for the proposition that the named driver exclusion applies only to losses or damages caused by the named driver. However, the policy at issue in *Calogero* contained language which excluded only losses or damages **caused** by the excluded driver. The excluded plaintiff driver was not at fault in the accident, and the court held that the policy had to pay property damage. *Calogero,* 753 So. 2d at 173.

The Progressive named driver exclusion contains no restriction with respect to the excluded driver's fault, but clearly excludes ***any claims*** arising from an accident while being operated by the excluded driver. The Progressive named driver exclusion is broader than the exclusion contained in the policy in *Calogero.*

The exclusion relied upon by Progressive, the named driver exclusion, is clear and unambiguous and must be enforced as written. The policy excludes coverage for all claims arising out of the operation of the vehicle by the excluded driver, Raymond Bourg. The exclusion at issue does not violate public policy. Therefore, the Progressive policy did not provide UM coverage to Lindsey R. Fontenot.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of the appeal are assessed to plaintiffs, Ava Fontenot and Lindsey M. Fontenot.

AFFIRMED.