Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #005

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **28th day of January, 2022** are as follows:

BY Crichton, J.:

2021-C-00621 CALVIN LANDRY & MARY LANDRY VS. PROGRESSIVE SECURITY INSURANCE COMPANY, ET AL. (Parish of Lafayette)

REVERSED; SEE OPINION.

Hughes, J., dissents and assigns reasons.
Genovese, J., dissents and assigns reasons.
Griffin, J., dissents for the reasons assigned by Justice Hughes and Justice Genovese and assigns additional reasons.

SUPREME COURT OF LOUISIANA

No. 2021-C-00621

CALVIN LANDRY & MARY LANDRY

VS.

PROGRESSIVE SECURITY INSURANCE COMPANY, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

CRICHTON, J.

We granted the writ in this matter to address whether the court of appeal erred in finding public policy mandates liability coverage by a defendant driver's automobile insurance policy for an accident occurring while operating a non-owned automobile. Under the narrow facts presented, we find neither statutory law nor public policy considerations require automobile insurance liability coverage related to a defendant driver's negligent operation of a non-owned vehicle. Accordingly, we reverse the court of appeal and reinstate the ruling of the district court granting summary judgment in favor of the defendant insurer.

FACTS AND PROCEDURAL HISTORY

Calvin Landry and Mary B. Landry ("Plaintiffs") filed a petition for damages alleging they suffered injuries arising out of an automobile collision occurring on or about July 10, 2019. Plaintiffs brought the action against defendant-driver Riyad Shaibi, his insurer Financial Indemnity Company ("Financial"), and Progressive Security Insurance Company ("Progressive"), as the insurer of the 2008 Toyota Sienna that Mr. Shaibi was driving at the time of the collision. As will be explained

further herein, Mr. Shaibi was bringing the 2008 Toyota Sienna to a tire shop to repair a flat tire as a favor to its owner, Aziz Ali.[1]

On January 6, 2020, Financial filed a motion for summary judgment asserting its right to summary judgment as a matter of law because the undisputed facts establish that the "Louisiana Private Passenger Auto Policy" issued by Financial to Mr. Shaibi at the time of the collision (the "Financial Policy") excluded coverage for liability related to Plaintiffs' alleged damages. Exhibits attached to the motion included the Plaintiff's petition, the Financial Policy, and the transcript of Mr. Shaibi's deposition testimony.

With respect to its liability coverage, the Financial Policy provided as follows:

> We will pay damages, except for punitive damages, for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident arising out of the:
>
> 1. Ownership;
> 2. Maintenance ***or use***; or
> 3. Loading or unloading;
>
> ***of "your covered auto."***

(Emphasis added.) The policy defines "your covered auto" to mean:

> a. The vehicle(s) described in the Declarations.
> b. Any "newly acquired auto";
> c. Any owned "trailer" while attached to a vehicle insured under this policy; or
> d. ***A "Non owned auto".***

(Emphasis added). The parties dispute the application of subsection (d), a "non-owned auto,"[2] which is defined by a Louisiana addendum to the policy as follows:

> "Non owned auto" means or refers to any "private passenger auto" you do not own while:
>
> A. Used as a temporary substitute for "your covered auto" which is out of normal use because of its:

[1] According to Plaintiffs, it is undisputed that Progressive has agreed to pay its minimal $15,000/$30,000 policy limits. On December 12, 2019, Plaintiffs stipulated that their damages do not exceed $50,000.

[2] Because the 2008 Toyota Sienna is not listed or described in the Financial Policy's Declarations page and it is undisputed Mr. Shaibi did not own the 2008 Toyota Sienna, the "non-owned auto" category of a "covered auto" is the only one for which the 2008 Toyota Sienna may qualify.

1. Breakdown;
2. Repair
3. Servicing;
4. “Loss”; or
5. Destruction.

B. Rented by an “insured;” or

C. Used by you or a family member for demonstration or test drive purposes.

In his deposition Mr. Shaibi testified that at the time of the accident he was driving the 2008 Toyota Sienna to a tire shop in order to repair its flat tire. He further testified that at the time of the accident his owned vehicles insured by the Financial Policy were running properly, were not broken down, and were not in need of repair or servicing. It is undisputed that the only reason he was not driving his own vehicles was to help Mr. Ali.

Financial contended the foregoing documents, together with Plaintiff’s petition, established the following undisputed facts: (1) the underlying accident involved a 2008 Toyota Sienna operated by Mr. Shaibi; (2) the Financial Policy does not list the 2008 Toyota Sienna on its Declaration Page; (3) at the time of the accident, both listed autos under the Financial Policy were not broken down, were in good working order, and were not in need of service or repair; and (4) at the time of the accident, Mr. Shaibi had volunteered to change a tire on the 2008 Toyota Sienna, owned by Mr. Ali, and was driving the 2008 Toyota Sienna to a tire shop. Financial asserted these undisputed facts support the conclusion that the 2008 Toyota Sienna involved in the accident is neither a covered auto pursuant to the listed vehicles in the Declarations Page nor a “non-owned auto” under the Financial Policy such that the Financial Policy does not provide coverage for damages alleged by the Plaintiffs as a result of the July 1, 2019 accident.

Plaintiffs opposed the motion for summary judgment, asserting Financial's argument conflicts with La. R.S. 22:1296(A),[3] violates public policy, and would lead to absurd conclusions if upheld.

The district court held a hearing on Financial's motion and on March 23, 2020, granted summary judgment in favor of Financial and dismissed all claims of the Plaintiffs against it with prejudice. In oral reasons for judgment, the district court stated neither law nor public policy required Financial to provide insurance coverage of non-owned vehicles "in this particular case." The district court noted that when a plaintiff's damages exceed the policy limits of the vehicle insurance (here, the Progressive policy), an injured plaintiff can then seek relief from their uninsured/underinsured motorist policy. Plaintiffs acknowledged, however, that they did not have uninsured/underinsured coverage and thus could not avail themselves of this relief.[4]

On April 7, 2021, the court of appeal reversed. *Landry v. Progressive Sec. Ins. Co.*, 2020-426 (La. App. 3 Cir. 4/7/21), 318 So. 3d 283. The court found no statutory authority for Plaintiffs' claims against Financial, noting that Plaintiffs abandoned their temporary substitute vehicle argument under La. R.S. 22:1296 and that La. R.S.

---

[3] La. R.S. 22:1296(A) provides:

> Every approved insurance company, reciprocal or exchange, writing automobile liability, physical damage, or collision insurance, ***shall extend to temporary substitute motor vehicles as defined in the applicable insurance policy and rental motor vehicles*** any and all such insurance coverage in effect in the original policy or policies. Where an insured has coverage on a single or multiple vehicles, at least one of which has comprehensive and collision or liability insurance coverage, those coverages shall apply to the temporary substitute motor vehicle, as defined in the applicable insurance policy, or rental motor vehicle. Such insurance shall be primary. However, if other automobile insurance coverage or financial responsibility protection is purchased by the insured for the temporary substitute or rental motor vehicle, that coverage shall become primary. The coverage purchased by the insured shall not be considered a collateral source.

(Emphasis added.)

[4] Every automobile liability insurance policy is required by law to include liability coverage for the protection of the insured "from owners or operators of uninsured or underinsured motor vehicles" unless the named insured makes a written rejection thereof or selects limits lower than the liability limits of the policy. La. R.S. 22:1295; *Taylor v. Rowell*, 98-2865 (La. 5/18/99), 736 So. 2d 812.

32:900(C), which requires coverage of the named insured while using a non-owned vehicle, was inapplicable because the policy at issue is not a motor vehicle liability policy.[5] *Id*. at 286, 290. Nevertheless, the court held that "public policy requires coverage for the named insured while operating a non-owned vehicle with permission in the fulfillment of a good deed for a friend." *Id*. at 291. Because Financial's definition of "non-owned vehicle" conflicted with public policy, the court remanded for further proceedings in accordance therewith. *Id*.

Financial subsequently filed a writ application with this Court, which we granted on October 5, 2021. *Landry v. Progressive Sec. Ins. Co.*, 2021-00621 (La. 10/5/21), 325 So. 3d 1065.

ANALYSIS

The issue before the Court is whether Louisiana law requires an insurer to provide coverage for its named insured while operating a non-owned vehicle in the fulfillment of a good deed. Because we find the application of the exclusions in the Financial Policy do not violate Louisiana law or public policy in their application to the facts at hand, we reverse.

This matter arises in the context of a motion for summary judgment, a procedure favored by law and designed to secure the just, speedy, and inexpensive determination of legal actions. La. C.C.P. art. 966(A)(2); *but see* La. C.C.P. art. 969 (prohibiting summary judgment in certain actions). "Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's

---

[5] As this Court explained in *Simms v. Butler*:

> An "automobile liability policy" is to be distinguished from a "motor vehicle liability policy." A motor vehicle liability policy, as defined in La. R.S. 32:900(A), is "an owner's or an operator's policy of liability insurance, certified ... as proof of financial responsibility."
>
> * * *
>
> La. R.S. 32:900 applies to "motor vehicle liability policies." La. R.S. 32:900(B)(2) (the statutory omnibus clause) is the only provision of this statute which is incorporated into the automobile liability policy. . . .

97-0416 (La. 12/2/97), 702 So. 2d 686, 688.

consideration of whether summary judgment is appropriate." *Elliott v. Cont'l Cas. Co.*, 2006–1505, p. 10 (La. 2/22/07), 949 So. 2d 1247, 1253. Where the facts are undisputed and the matter presents a purely legal question, summary judgment is appropriate. *See Bernard v. Ellis*, 2011-2377 (La. 7/2/12), 111 So. 3d 995, 1002 ("Interpretation of an insurance policy ordinarily involves a legal question that can be properly resolved by a motion for summary judgment.").

Financial moved for summary judgment on the basis that its policy unambiguously excluded coverage for the named insured's operation of non-owned vehicles unless one of the listed, covered autos under the policy were "out of normal use" because of breakdown, repair, servicing, loss or destruction. It is undisputed that Mr. Shaibi was driving the 2008 Toyota Sienna while his vehicles were in good working condition and that he was doing so not out of exigency or necessity but as a favor to a friend. Under these facts, the insurance contract unambiguously excludes coverage for the collision in which Plaintiffs were allegedly injured because the 2008 Toyota Sienna does not qualify as a "non-owned auto" for which the Financial Policy provides liability coverage. The relevant question for summary judgment, therefore, is whether the definition of "non-owned auto" set forth in the Financial Policy is enforceable as a matter of law.

An insurance policy is a contract and, as with all other contracts, constitutes the law between the parties. *Pareti v. Sentry Indem. Co.*, 536 So. 2d 417, 420 (La. 1988). Absent a conflict with statutory provisions or public policy, insurers are entitled to limit their liability and to impose reasonable conditions upon the obligations they contractually assume. *La. Ins. Guar. Assoc. v. Interstate Fire & Cas. Co.,* 93-0911, p. 6 (La. 1/14/94), 630 So. 2d 759, 763; *Simms v. Butler*, 97-0416 (La. 12/2/97), 702 So. 2d 686, 689. However, exclusions in an insurance policy that conflict with statutes or public policy will not be enforced. *Marcus v. Hanover Ins. Co.,* 98-2040, p. 4 (La. 6/4/99), 740 So. 2d 603, 606. The Court's search for the

public policy governing automobile insurance policies must begin with the statutes enacted by the Legislature. *Sensebe v. Canal Indem. Co.*, 2010-0703 (La. 1/28/11), 58 So. 3d 441, 446.

The Louisiana Motor Vehicle Safety Responsibility Law, La. R.S. 32:851, *et seq*. (the "LMVSRL"), provides a comprehensive scheme for the protection of the public from damage caused by motor vehicles. *Hawkins v. Redmon,* 2009-2418, p. 4 (La. 7/6/10), 42 So. 3d 360, 362. When adopted in 1952, the LMVSRL did not require a driver carry proof of insurance except upon conviction of certain traffic offenses. *See* Acts 1952, No. 52, § 21. In the event of such conviction, such person would be required to furnish "proof of financial responsibility," including a certificate of insurance, to prevent suspension of his or her license and registration. La. R.S. 32:898; La. R.S. 32:899. The certificate of insurance required the driver obtain a "motor vehicle liability policy," which was defined as a policy that complied with the requirements of what is now La. R.S. 32:900. *See* La. R.S. 32:900(A) (A "motor vehicle liability policy" is defined as "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 . . . to or for the benefit of the person named therein as insured."); William Shelby McKenzie & H. Alston Johnson, III, *Vehicles insured-Non-owned automobiles, Insurance Law & Practice,* 15 La. Civ. L. Treatise § 3:45 (4th ed.).

In 1977, the Legislature significantly expanded compulsory automobile liability insurance with the enactment of La. R.S. 32:861. Subject to some exceptions not relevant here, this law applies to "[e]very self-propelled motor vehicle registered in this state" and, as originally enacted, required each such vehicle "be covered by a motor vehicle liability policy ***as defined by R.S. 32:900***." *See* Acts 1977, No. 115, §1 (emphasis added). By incorporating La. R.S. 32:900, La. R.S. 32:861 made *all* of the requirements of La. R.S. 32:900 applicable to every registered motor vehicle in

the state and even used the same terminology – "motor vehicle liability policy" – to describe the compulsory insurance. In effect, the enactment rendered the type of insurance mandated for those registering a vehicle to be the same as the requirements imposed on persons who furnish a liability policy as "proof of financial responsibility."[6]

Relevant here, La. R.S. 32:900(A) permits either "an owner's or an operator's policy of liability insurance" to serve as proof of financial responsibility. Subsection B of La. R.S. 32:900 defines an owner's policy of liability insurance, commonly referred to as the statutory omnibus clause, and provides that a vehicle owner's policy of liability insurance "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" subject to minimal policy limits as indicated therein. La. R.S. 32:900(B)(2) (emphasis added). As indicated by the plain language, this coverage applies to the named insured and a permissive driver (together, the "omnibus insured") for liability arising out of the ownership, maintenance, or use of the motor vehicles described in the policy. An owner's policy thus provides insurance *on the vehicle*, just as Progressive paid the limits of Mr. Ali's insurance coverage in this case for the 2008 Toyota Sienna, despite the vehicle being driven by a permissive driver and not the named insured at the time of the collision.

Subsection C of La. R.S. 32:900, by contrast, provides that an operator's policy "shall insure ***the person named as insured*** therein against loss from the liability imposed upon him by law for damages arising out of the use by him of ***any***

[6] When registering a vehicle, an applicant must provide proof of compliance with this statutory scheme and a declaration in writing that the applicant will remain in compliance as required. La. R.S. 32:862(C); *see also* La. R.S. 32:862(D)(2) (requiring same for application for driver's license unless applicant declares he or she does not own a motor vehicle).

motor vehicle not owned by him." This type of policy is thus tied to the named insured rather than the vehicle described in the policy and extends insurance to his or her operation of non-owned vehicles.

> In 1985, the Legislature amended La. R.S. 32:861(A) as follows:
>
> Every self-propelled motor vehicle registered in this state . . . shall be covered by ~~**a motor vehicle**~~ **an automobile** liability policy **with liability limits** as defined by R.S. 32:900**(B)(2)**. . . .

See Acts 1985, No. 229, §1 (redactions and additions emphasized). As indicated, the amendment changed the terminology of the insurance policy required for the state's compulsory liability insurance to "an automobile liability policy." More importantly, the amendment limited the incorporation of La. R.S. 32:900 to Subsection B(2) thereof. We find this exclusion of the remaining requirements of La. R.S. 32:900 to be intentional. *See Theriot v. Midland Risk Ins. Co.,* 1995-2895, p. 4 (La. 5/20/97), 694 So. 2d 184, 187 ("[T]the time honored maxim, *expressio unius et exclusio alterius* . . . teaches us that when the legislature specifically enumerates a series of things, the legislature's omission of other items, which could have been easily included in the statute, is deemed intentional.").

By incorporating La. R.S. 32:900(B)(2), insurance mandated by La. R.S. 32:861(A) requires insurance *on the vehicle* for the omnibus insureds. 702 So.2d at 688 (finding plaintiff's contention that La. R.S. 32:900(C) must be incorporated into an automobile policy was without merit); *see also Hearty v. Harris*, 574 So. 2d 1234, 1240 n. 19 (La. 1991). While La. R.S. 32:900(B)(2) is incorporated into every policy of insurance to which it is applicable, as if it were written in the policy itself, the remainder of La. R.S. 32:900 is not. *See id*. Accordingly, and critically to this case, the Legislature has determined that an automobile liability policy is not required by La. R.S. 32:861(A) to provide coverage for a named insured's use of non-owned autos.

Since it is undisputed that the Financial Policy was not obtained as proof of financial responsibility, we consider the policy at issue to be an "automobile liability policy" subject to the requirements of La. R.S. 32:861(A) and not a "motor vehicle liability policy" subject to the requirements of La. R.S. 32:900. Plaintiffs' contention that La. R.S. 32:861(A) requires Financial to provide coverage for Mr. Shaibi's use of the 2008 Toyota Sienna, whether through purported incorporation of La. R.S. 32:900(C) or otherwise, is without merit.[7]

Plaintiffs assert that regardless of whether Financial is required to provide coverage by statute, the exclusion of coverage to their named insured violates the public policy of this state to require insurance for the benefit of the injured person and the insured.[8] Notwithstanding the fact that the underlying purpose of the LMVSRL is to protect the public from damage caused by motor vehicles, the public policy thereof is not to mandate coverage of the named insured in all instances. Instead, "[a]t the heart of [the LMVSRL] is the decision to attach the financial protection to the *vehicle* rather than to the operator." *Hearty*, 574 So. 2d at 1237

---

[7] Although the plain language of the LMVSRL does not require insurance of the named insured while operating a non-owned vehicle, the Commissioner of Insurance's "Consumer's Guide to Auto Insurance" as of May 2016 provides: "Liability insurance covers bodily injury or property damage caused by you, your family members, and others driving your vehicle with your permission. ***You and your family members are also covered when driving another person's automobile*** including rental private passenger vehicles." Jim Donelon, *Consumer's Guide to Auto Insurance*, (updated May 2016), https://www.ldi.la.gov/docs/default-source/documents/publicaffairs/consumerpublications/auto-insurance-guide.pdf?sfvrsn=15 (emphasis added). While we acknowledge that these statements might mislead Louisiana's insureds, Plaintiffs point to no law providing the Commissioner authority to change the statutory insurance mandates and provide no argument in support of finding that this statement somehow imposes an obligation on insurers to insure persons and not vehicles.

Similarly, Plaintiffs note that legal scholars have likewise stated: "Policies insuring personal automobiles ***generally*** extend coverage to the named insured and relatives for liability arising out of the operation of automobiles which are not owned by the named insured." William Shelby McKenzie & H. Alston Johnson, III, *Vehicles insured-Non-owned automobiles, Insurance Law & Practice,* 15 LA. CIV. L. TREATISE §3:23 (4th ed.) (emphasis added). The statement that automobile liability policies generally extend coverage to the named insured for operating non-owned autos does not conflict with our finding that statutory law does not require it. Regardless of whether insurers generally provide this coverage, the Financial Policy at issue in the instant case did not.

[8] Plaintiffs assert the Legislature's expression of the foregoing policy is found in La. R.S. 22:1269(D). However, the plain language of this subsection unambiguously applies the pronouncement therein only to La. R.S. 22:1269. *See* La. R.S. 22:1269(D) ("It is also the intent ***of this Section*** that all liability policies within their terms and limits are executed for the benefit of all injured persons. . .").

(emphasis in original). The public policy of the statutory scheme, then, as we have recognized it, is to require insurance coverage on the vehicle in all instances, not on the named insured.

Moreover, the fallacy in the argument that insurance policies must be invalidated where they do not protect the person injured or the insured is self-evident and unsupported by law. If we were to hold that an insurance policy is invalid simply on account of its failure to provide the coverage excluded, *every* insurance exclusion would violate public policy. Of course, this Court has repeatedly upheld the right of insurers to limit their liability where permitted by the Legislature. *Simms*, 702 So. 2d at 689 (policy provided no coverage for defendant driver operating rental vehicle without rental agency's permission); *Hearty*, 574 So. 2d at 1242 (policy provision excluding coverage of a driver other than one specified in rental contract was not against Louisiana law or public policy); *La. Ins. Guar. Assoc.*, 630 So. 2d at 772 (La. 1994) (absent policy language, insurer was not required to provide drop down coverage); *Carbon v. Allstate Ins. Co.*, 97-3085 (La. 10/20/98), 719 So. 2d 437, 440 (requiring physical presence in the household for a covered resident relative clearly does not violate any statutory law or public policy.). While the public policy of the state favors coverage of injured persons and insureds, "it is not the public policy of this state to protect and provide compensation to injured persons at all times." *Hearty*, 574 So. 2d at 1242.[9]

We reject the contention that courts can invalidate an insurance policy's exclusion of coverage based on so-called "public policy" that is devoid of – or, in fact, contrary to – statutory authority. The role of the judiciary is not to generate public policy for the state related to automobile liability insurance or to determine

[9] We further note that the Legislature has considered the risk that a plaintiff will not be protected due to the low policy limits or lack of insurance coverage for the vehicle driven by a defendant driver and, in apparent anticipation of such scenarios, has mandated uninsured/underinsured liability coverage under La. R.S. 22:1295. Unfortunately, Plaintiffs were not (by their own acknowledgement) covered by uninsured/underinsured insurance at the time of the collision.

the bounds of contractual liberty of insurers. That power rests with the Legislature. Ultimately, "[t]he court's search for the public policy governing automobile insurance policies . . . must begin with the statutes enacted by the legislature." *See Sensebe*, 58 So. 3d at 446 (finding business use exclusion against public policy where in conflict with requirements of La. R.S. 32:900(B)(2)); *Marcus v. Hanover*, 740 So. 2d at 606 (same).

Lacking statutory authority for their public policy position, Plaintiffs cite a Third Circuit opinion, *State Farm Mut. Auto. Ins. Co. v. Safeway Ins. Co. of La.*, for the proposition that Financial's restrictions on non-owned auto coverage violate public policy by penalizing a one-time good deed. 2016-357 (La. App. 3 Cir. 11/2/16), 205 So. 3d 981. In *Safeway*, the insurer's policy provided coverage of a "temporary substitute motor vehicle" only if the named insured's vehicle was in the process of "being serviced or repaired by a person engaged in the business of selling, repairing, or servicing motor vehicles." *Id*. at 983. The named insured's vehicle was broken down at the time of the collision, but he chose to repair the vehicle himself in lieu of bringing it to a mechanic. *Id*. In support of its denial of coverage, *Safeway* cited the policy's unambiguous exclusion of coverage where the covered auto was not being repaired by a professional. *Id*. Writing for the majority, then-Judge Genovese held that such clause unreasonably limited the mandatory coverage required by La. R.S. 22:1296(A) and violated public policy by "penalizing poverty." *Id*. at 985.

The *Safeway* ruling is easily distinguishable from the legal issues presented herein for numerous reasons. Most importantly, *Safeway* relied on "the public policy of [La. R.S.] 22:1296(A)" and found the temporary substitute vehicle definition therein unreasonably restricted coverage. *Id*; *citing State Farm Mutual Automobile Ins. Co. v. Safeway, Ins. Co*., 50,098 (La. App. 2 Cir. 9/30/15), 180 So. 3d 450; *see also Litton v. White*, 49,958 (La. App. 2d Cir. 07/01/15), 169 So. 3d 819. In the

present matter Plaintiffs originally supported their opposition to Financial's motion for summary judgment by citing La. R.S. 22:1296(A) for the proposition that coverage of the 2008 Toyota Sienna as a "temporary substitute motor vehicle" was required; however, they later abandoned this argument and do not cite La. R.S. 22:1296(A) in their brief to this Court. Unlike in *Safeway*, the question of whether La. R.S. 22:1296(A) is violated by the definition of "non-owned auto" in the Financial Policy – an issue this Court has not resolved – cannot be properly addressed here, as it is not before us. *See Safeway Ins. Co. of Louisiana v. Gov't Emps. Ins. Co.*, 2021-01382 (La. 12/21/21) (where insurer strategically did not argue non-owned vehicle was a "temporary substitute motor vehicle" under La. R.S. 22:1296, the sole matter for the court of appeal to consider was whether the "non-owned" vehicle was afforded coverage under the policy.).[10]

The facts in the instant suit are also distinguishable from *Safeway*, as it is undisputed that both vehicles covered under the Financial Policy were not broken down or in need of service or repair and were, instead, in good working order at the time of the accident. Unlike the defendant driver in *Safeway*, Mr. Shaibi could have easily driven either vehicle listed in the Financial Policy but elected to drive Mr. Ali's vehicle as a favor to him and out of convenience. We therefore need not and do not reject the ruling in *Safeway* that the "temporary substitute motor vehicle" definition at issue *in that case* violates public policy in order to find that the Financial Policy's exclusion of coverage *in this case* does not.

---

[10] Whether Plaintiffs abandoned the temporary substitute vehicle argument because they do not believe it applicable or because different legal implications attach to La. R.S. 22:1296(A), Plaintiffs cannot simultaneously elect to omit argument that coverage is required under La. R.S. 22:1296(A) and then veil their reliance on this statute by citing to case law interpreting its policy.

In any event, due to their failure to argue its applicability, any opinion on La. R.S. 22:1296(A)'s applicability to the facts at hand would be advisory. *St. Charles Par. Sch. Bd. v. GAF Corp.*, 512 So. 2d 1165, 1170 (La. 1987), *on reh'g* (Aug. 7, 1987) ("It is well settled that courts will not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies.").

Likewise, Plaintiffs' assertion that excluding coverage in this situation could lead to future absurd results with regard to personal exposure to drivers is overstated. In support of this contention, Plaintiffs set forth a hypothetical situation regarding good Samaritans driving their intoxicated friends' vehicles. Again, the legal question of whether public policy would mandate coverage in a scenario presenting exigency, necessity, or safety concerns is not before us. Rather than present a situation where operating a non-owned auto is necessary for the safety of its passengers, the narrow facts in this case involve a named insured driving a non-owned auto out of no necessity at all. Our finding that coverage is not required, then, has no effect on whether public policy would require coverage where exigency, necessity, or safety concerns are present.

While admirable that this defendant driver sought to help his friend, Plaintiffs cite no authority – statutory or otherwise – for their proposition that insurers must provide coverage in instances of good deeds or convenience. Whether we agree with the Legislature's policy to permit insurers to exclude coverage here, it is not our duty to create policy mandates that are unsupported by statutory law. *See Sensebe*, *supra*.[11] It is undisputed that the Financial Policy excluded coverage of non-owned vehicles in the circumstances presented and, accordingly, we can infer that Financial and Mr. Shaibi agreed upon such limits on Financial's duty and liability. Stated

[11] We acknowledge some courts of appeal decisions, including the one under review, have decided this issue differently; however, for the reasons set forth herein, to the extent these cases stand for the proposition that "public policy" generally requires insurers to broadly provide coverage of their named insured's use of non-owned autos, we reject their reasoning as unsupported by the law. *See, e.g.*, *Walker v. Herbert*, 2013-495 (La. App. 3 Cir. 12/10/14), 155 So. 3d 114 (basing its holding on the ambiguous policy language but nevertheless stating "Louisiana law does not permit any insurance company to include language in a policy covering a Louisiana motor vehicle *owner* to provide that its policy only extends to a particular vehicle rather than covering the *owner, the person insured,* when driving any automobile, including an automobile owned by someone else, if he is a permissive driver of that vehicle."); *Pontico v. Roussel*, Nos. 10225, 10226 (La. Ct. App. 4 Cir. 1980), 380 So. 2d 649 ("A reasonable person, in the position of a father who buys a family automobile policy with coverage for occasional use (with permission) of non-owned automobiles, would not interpret [the policy business use exclusion] to exclude coverage for a one-time, non-essential and unanticipated driving of a non-owned automobile in his minor son's summer job, but instead would interpret it to exclude regular driving as part of employment.").

simply, Financial was free to limit its contractual liability in this instance, and no countervailing policy exists. *Simms*, *supra*.

CONCLUSION

For the foregoing reasons, we reverse the court of appeal and reinstate the ruling of the district court granting summary judgment in favor of the defendant insurer.

REVERSED.

SUPREME COURT OF LOUISIANA

NO. 2021-C-0621

CALVIN LANDRY & MARY LANDRY

VERSUS

PROGRESSIVE SECURITY INSURANCE COMPANY, ET AL

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

HUGHES, J., dissents.

Respectfully, the exclusion at issue will be adopted wholesale in short order if approved by this court. It is against public policy and sets a trap for the unwitting citizens of Louisiana who actually pay for car insurance. While contractual freedom is always to be respected, this exclusion goes too far.

The exclusion provides coverage for a non-owned vehicle only when the owner's car is not in use – when it's in the shop or the owner has been forced to rent a vehicle. The concept of a "permissive user" is thus negated.

Thus one who has purchased liability insurance who temporarily uses the vehicle of another, even with the owner's permission, may find themselves bare of coverage. We are constantly told to take the keys of a friend who has had too much to drink. Perhaps you've blocked somebody in at a party so you toss them the keys. Maybe a family member is driving the car of another family member in a funeral procession. Or as in this case, you're simply doing a good deed. But no coverage from the policy you've paid for.

It is the policy of Louisiana that drivers have liability insurance. There are many reasonable exclusions that prevent drivers from enjoying extra coverage when they have not paid a premium, for instance the "regular use" exclusion. This

exclusion does the opposite. It takes away coverage when the premium has been paid. A driver can only drive one car at a time. The exclusion at issue should be deemed contrary to the policy of Louisiana that encourages drivers to buy insurance and that they be covered when they do so.

SUPREME COURT OF LOUISIANA

No. 2021-C-00621

CALVIN LANDRY & MARY LANDRY

VS.

PROGRESSIVE SECURITY INSURANCE COMPANY, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

Genovese, J., dissents and assigns reasons.

To briefly reiterate the facts as laid out in the majority opinion, defendant in this case was driving his friend's car to a tire shop in order to fix a flat tire as a favor and got into an accident. Both defendant and his friend had automobile liability insurance. However, defendant's insurance company denied coverage for the accident because the vehicle defendant was driving did not qualify as a "temporary substitute vehicle" under the terms of the policy.

I find that this policy exclusion violates public policy. Simply stated, and as acknowledged by the majority, the Louisiana Motor Vehicle Safety Responsibility Law, La. R.S. 32:851, *et seq*. (the "LMVSRL"), is intended to protect the public from damage caused by motor vehicles. As correctly set forth in the court of appeal opinion, the liability insurance policy herein runs afoul of La.R.S. 32:900 and also *State Farm Mut. Auto. Ins. Co. v. Safeway Ins. Co. of Louisiana*, 16-357 (La. App. 3 Cir. 11/2/16), 205 So.3d 981. It is against public policy to strip an insured of liability insurance coverage when using a friend's vehicle in assisting that friend on a one-time, limited basis. The result is that plaintiff herein who has and pays for liability insurance is rendered uninsured. Allowing such a restriction in a liability insurance policy leads to an absurd result by leaving an unknowing insured exposed. As noted in the majority opinion, the Commissioner of Insurance's Consumer's Guide to Auto Insurance, while not binding legal authority, illustrates this

completely reasonable expectation of people who purchase liability insurance coverage:

> Liability insurance covers bodily injury or property damage caused by you, your family members, and others driving your vehicle with your permission. *You and your family members are also covered when driving another person's automobile including rental private passenger vehicles*. Company cars and other non-owned cars regularly available to you are not covered.

Jim Donelan, *Consumer's guide to Auto Insurance*, p. 4 (Updated May 2016), available at https://www.ldi.la.gov/docs/default-source/documents/publicaffairs/consumerpublications/auto-insurance-guide.pdf (emphasis added).

The majority is careful to confine its ruling to this particular set of circumstances and leaves for another day whether public policy considerations would mandate coverage in a case presenting "exigency, necessity, or safety concerns." However, I find that the public policy considerations extend beyond true emergencies. Take, for example, your adult child visiting you with the grandchildren in tow. As a parent would do on occasion, you take and fill up your child's car up with gas, or change the windshield wipers, or any number of other similar scenarios, and while in transit, you get into an accident wherein you are at fault. Under the majority's opinion, you, as an individual, would have no liability insurance coverage, and you would be exposed for damages, even though you have ample liability insurance (but no uninsured motorist coverage) on your vehicles. Additionally, any persons injured in said accident would be limited to the liability insurance (if any) on the vehicle being driven by you and involved in the accident, but would not have any access to your liability insurance. This derogates Louisiana's compulsory liability insurance law. Extending this reasoning to a scenario wherein you are *not* at fault and incur damages only heightens the absurdity of the result. Therein, you would be subject to the "no pay, no play" provision of La.R.S. 32:866, and would not be able to collect the first $15,000 in damages.

The ruling in this case has far-reaching effects of which few, if anyone, would be aware of, believing that such a circumstance is covered by liability insurance. This expectation is so prevailing that the Commissioner of Insurance included it in a document distributed by the state meant to inform people about the benefits of purchasing liability coverage. To reiterate, the result in this case is absurd and runs afoul of the public policy considerations behind the LMVSRL, which provides a comprehensive scheme for the protection of the public from damage cause by motor vehicles. Therefore, I would affirm the ruling of the appellate court.

SUPREME COURT OF LOUISIANA

No. 2021-C-00621

CALVIN LANDRY & MARY LANDRY

VS.

PROGRESSIVE SECURITY INSURANCE COMPANY, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

GRIFFIN, J., dissents for the reasons assigned by Justice Hughes and Justice Genovese and assigns additional reasons.

I respectfully dissent. Insurance clauses that conflict with statutory provisions and public policy are not to be enforced. *See Marcus v. Hanover Ins. Co*., 98-2040, p. 4 (La. 6/4/99), 740 So. 2d 603, 606. I would affirm the court of appeal's adoption of *Walker v. Hebert*, 2013-0495 (La.App. 3 Cir. 12/10/14), 155 So.3d 114, and its resulting decision that public policy requires coverage for a named insured while operating a non-owned vehicle with permission in the fulfillment of a good deed for a friend. The majority's strict interpretation of the statutory scheme invites scenarios where no good deed goes unpunished.[1]

[1] Despite the majority's qualification that cases presenting "exigency, necessity, or safety concerns," might be distinguishable, it is doubtless that this decision will have a chilling effect on positive behavior such as individuals serving as designated drivers for their intoxicated friends. Further problematic is that, in many instances, this result will effectively "penalize poverty" for motorists who would otherwise be able to occasionally rely on such friendly favors. *See State Farm Mutual Auto Ins. Co. v. Safeway Ins. Co. of Louisiana*, 16-0357, p. 5 (La.App. 3 Cir. 11/2/16), 205 So.3d 981, 985; *see also* A.N. Yiannopoulos, *Civil Liability for Abuse of Rights: Something Old, Something New…*, 54 LA. L. REV. 1173, 1195 (1994) ("function of the abuse of right doctrine in civil law systems is to soften the harshness of the positive law and of contractual provisions in light of society's concerns that transcend individual interests").