
In The
Court of Appeals of Maryland

No. 290

September Term, 2005

HARLEYSVILLE MUTUAL INSURANCE COMPANY

Petitioner,

v.

WALTER ZELINSKI, et al.

Respondents.

Appeal From The Court Of Special Appeals Of Maryland

BRIEF OF AMICI CURIAE

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IN THE
COURT OF APPEALS OF MARYLAND

NO. 81
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HARLEYSVILLE MUTUAL INSURANCE COMPANY

Petitioner,

v.

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ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF AMICI CURIAE
AMERICAN INSURANCE ASSOCIATION, *et al.*

In motions filed on October 3, 2005 and October 24, 2005, American Insurance Association, Property Casualty Insurers Association of America, Insurance Agents & Brokers of Maryland, Inc., Nationwide Mutual Insurance Company, State Farm Mutual Insurance Company, and Zurich American Insurance Company requested permission from this Court pursuant to Maryland Rule 8-511 to file a Brief of Amici Curiae in support of the position of Petitioner Harleysville Mutual Insurance Company in the event this Court issued a writ of certiorari to the Court of Special Appeals of Maryland to review *Zelinski v. Townsend*, 163 Md. App. 211 (2005). On November 10, 2005, this

Court issued a writ of certiorari to the Court of Special Appeals and granted Amici Curiae permission to file a Brief in this case.

STATEMENT OF THE CASE

Amici Curiae adopt the Statement of the Case of the Petitioner.

QUESTION PRESENTED

Did the Court of Special Appeals err in holding that a named driver exclusion in a commercial automobile insurance policy is void because the exclusion is not authorized by Insurance Article, §27-606?

STATEMENT OF FACTS

Amici Curiae adopt the Statement of Facts of the Petitioner.

INTERESTS OF AMICI CURIAE

In *Zelinski v. Townsend, supra*, 163 Md. App. at 216-17, the Court of Special Appeals held that the named driver exclusion in a commercial automobile insurance policy issued by Harleysville Mutual Insurance Company to Mac's Septic Service is void because the exclusion is not authorized by Insurance Article, § 27-606.

Each of the Amici Curiae listed below has an interest, as a trade association or insurance company, in having this Court reverse the decision of the Court of Special Appeals.

American Insurance Association is a national trade association representing more than 400 property and casualty insurance companies. These companies write commercial automobile insurance in all 50 states and the District of Columbia. In Maryland, they write approximately one-third of all commercial automobile insurance.

Property Casualty Insurers Association of America is a national trade association representing more than 1,000 property and casualty insurance companies. These companies write commercial automobile insurance in all 50 states and the District of Columbia. In Maryland, they write 45.3% of all commercial automobile insurance.

Insurance Agents & Brokers of Maryland, Inc. is a trade association of 257 independent insurance agencies, representing more than 2,000 licensed agents and brokers producing property and casualty insurance, including commercial automobile insurance, in Maryland.

Nationwide Mutual Insurance Company (domiciled in Ohio), State Farm Mutual Insurance Company (domiciled in Illinois), and Zurich American Insurance Company (domiciled in New York) are major property and casualty insurers that issue commercial automobile insurance policies in Maryland.

This case is of great importance to the companies that issue commercial automobile insurance policies in Maryland, to the businesses these policies insure, and to the agents and brokers who produce these policies. Although not required by Maryland law, many companies that write commercial automobile insurance policies in Maryland offer a named driver exclusion. Therefore, the decision of the Court of Special Appeals in this case adversely affects not only Harleysville Mutual Insurance Company but the entire commercial automobile insurance industry in Maryland and the policyholders it serves.

ARGUMENT

The Court of Special Appeals erred twice in holding that an insurer may not exclude a named driver from a commercial automobile insurance policy.

First, the Court looked beyond the words of the statute to the legislative history of Insurance Article, § 27-606. In doing so the Court violated a basic rule of statutory interpretation. As Chief Judge Bell explained in *Whiting-Turner Contracting Company v. Fitzpatrick*, 366 Md. 295, 301-302 (2001):

The paramount object of statutory construction is the ascertainment and effectuation of the real intention of the Legislature. The pursuit of that goal begins with the words of the statute, which we give their ordinary and common meaning, and, when they are clear and unambiguous, ends there, as well. *Only if the words of the statute are ambiguous need we seek the Legislature's intent in the legislative history or other extraneous sources.*

(Emphasis supplied; citations omitted.) Because the words of Insurance Article, § 27-606 are not ambiguous, the Court of Special Appeals erred in seeking meaning in the legislative history of Insurance Article, § 27-606.¹

Second, in seeking meaning in the legislative history of Insurance Article, § 27-606, the Court of Special Appeals relied exclusively on an erroneous floor report prepared by committee counsel in connection with House Bill 62 (1989).² The floor

¹ The decision of the Court of Special Appeals brings to mind Justice Frankfurter's admonition that the "spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute." Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 543 (1947).

² House Bill 62 (1989) was ultimately enacted as Chapter 367 of the Laws of Maryland, 1989. Among other things, Chapter 367 amended Article 48A, § 240C-1 of the

report inaccurately stated that House Bill 62 “clarifies that the right to exclude drivers does not accrue to policies of commercial motor vehicle insurance.” *Zelinski v. Townsend, supra*, 163 Md. App. at 217. In fact, as demonstrated by the words of the statute and other legislative history, House Bill 62 did not revoke an insurer’s *right* to exclude named drivers from commercial policies; rather, it removed the *requirement* that an insurer offer the named driver exclusion to commercial policyholders.

I.

A NAMED DRIVER EXCLUSION IN A COMMERCIAL POLICY SERVES IMPORTANT PURPOSES.

The named driver exclusion in a commercial automobile insurance policy serves a number of important purposes. It permits an insurer to maintain acceptable risks while at the same time allowing a business owner to maintain affordable insurance. It also benefits employer-employee relations, brings added flexibility to the employment relationship, and enhances public safety.

The named driver exclusion in a commercial policy increases the availability of standard market insurance to businesses, particularly smaller businesses like Mac’s Septic Service. The exclusion permits an insurer to carve out single drivers who present significant increases in risk apart from the risks of other drivers and the business in general. If the excluded driver must drive for the business, the owner can procure a

Annotated Code of Maryland, which regulated the named driver exclusion in automobile insurance policies. In 1997, Article 48A, § 240C-1 was recodified “without substantive change” as Insurance Article, § 27-606. *See* Revisor’s Note, 1997 Laws of Maryland, Chapter 35. Documents relating to the revision of Article 48A, §240C-1 are included in Appendix G to this Brief.

separate insurance policy to cover only that one driver and vehicle at rates appropriate to the increased hazard. The owners of Mac's Septic Service should have procured a separate policy for their son at nonstandard rates if they wished their son to continue driving for the business.

Many insurers that issue commercial policies have neither the underwriting expertise nor the rating tools needed to cover high-risk drivers. The named driver exclusion allows affected businesses to purchase automobile insurance for the rest of the fleet in the standard market. Without the availability of the named driver exclusion, many insurers in the standard market would be unable to provide coverage for the fleet, and the business owner would be forced to purchase coverage for the entire fleet in the more expensive nonstandard market. Thus, the named driver exclusion makes commercial automobile insurance more affordable, which is particularly important for small businesses like Mac's Septic Service, and allows the business owner to manage insurance costs more effectively.

The named driver exclusion benefits both employers and employees. A valued employee may be a high-risk driver. The named driver exclusion permits the employer to separate that employee and the vehicle the employee drives from the rest of the fleet so as to avoid the Hobson's choice of either paying more for insurance or terminating a valued employee.

In the business context, the list of individual drivers and vehicles can change often and dramatically. The use of the named driver exclusion permits the employer to buy or continue coverage with the knowledge an employee can no longer drive an insured

vehicle. The employer then can either reassign the employee to duties other than driving or buy a separate policy to cover the high-risk driver. The flexibility offered by the named driver exclusion benefits the high-risk employee, the business purchasing the insurance, and the insurance carrier.

By far, the leading category of causes of accidents involving commercial motor vehicles is human error, which may take the form of reckless driving, speeding, driving too close to the vehicle ahead, improper lane change, or impaired driving. Regardless of the specific cause, the human factor looms large as the major cause of commercial vehicle accidents and their resulting deaths, injuries, and economic loss. The vast majority of those killed in accidents involving large trucks are occupants of the other vehicles. Therefore, as a matter of public safety, it is important to prevent human actions that lead to commercial vehicle accidents.

Insurance plays a role in promoting public safety by risk-based underwriting and loss prevention programs with insured businesses. Fundamental to the ability of insurers to play their part in promoting public safety is the right to exclude from coverage commercial drivers who have prior drunk driving convictions, speeding convictions, or a driving record that otherwise indicates unacceptable risk of loss. Although business owners can secure separate coverage in the nonstandard market for high-risk drivers, many employers will simply prevent excluded drivers from operating vehicles and will reassign these employees to other tasks that do not threaten public safety.

A named driver exclusion in a commercial policy may well prevent a dangerous driver from operating an 80,000 pound truck carrying hazardous materials on a Maryland

highway. This inures to everyone's benefit. By means of the named driver exclusion, the insurance industry and the businesses it insures are able to complement and execute public highway safety policies that benefit the public and businesses alike.

II.

INSURANCE ARTICLE, § 27-606 DOES NOT PROHIBIT AN INSURER FROM EXCLUDING A NAMED DRIVER IN A COMMERCIAL AUTOMOBILE INSURANCE POLICY.

1.

The Words of the Statute

Statutory construction “begins with the words of the statute...,” *Whiting-Turner Contracting Company v. Fitzpatrick*, 366 Md. at 301, and the words of Insurance Article, § 27-606 are as follows:

(a)(1) This subsection applies to an automobile liability insurance policy issued in the State to a resident of a household, under which more than one individual is insured.

(2) If an insurer is authorized under this article to cancel, nonrenew, or increase the premiums on a policy of automobile liability insurance subject to this subsection because of the claim experience or driving record of one or more but less than all of the individuals insured under the policy, the insurer, instead of cancellation, nonrenewal, or premium increase, *shall offer to continue or renew the insurance*, but to exclude all coverage when a motor vehicle is operated by the specifically named excluded individual or individuals whose claim experience or driving record could have justified the cancellation, nonrenewal, or premium increase.

(b) If an insurer legally could refuse to issue a policy of automobile liability insurance under which more than one individual is insured because of the claim experience or driving record of one or more but less than all of the

individuals applying to be insured under the policy, the insurer may issue the policy but exclude all coverage when a motor vehicle is operated by the specifically named excluded individual or individuals whose claim experience or driving record could have justified the refusal to issue.

(c) The policy described in subsection (a) or (b) of this section may be endorsed to exclude specifically all coverage for any of the following when the named excluded driver is operating a motor vehicle covered under the policy whether or not that operation or use was with the express or implied permission of an individual insured under the policy:

(1) The excluded operator or user;

(2) The vehicle owner;

(3) Family members residing in the household of the excluded operator or user or vehicle owner; and

(4) Any other individual, except for the coverage required by §§ 19-505 and 19-509 of this article if that coverage is not available under another automobile policy.

(d) The premiums charged on a policy that excludes a named driver or drivers under this section may not reflect the claim experience or driving record of the excluded named driver or drivers.

(Emphasis supplied.)

Paragraph (1) of subsection (a) limits the application of subsection (a) to private passenger motor vehicle liability insurance policies by the use of the phrase “issued in the State to a resident of a household.” Md. Code Ann., Insurance §27-606(a)(1). Some variation of this phrase, “issued in the State to a resident of a household,” is used throughout Title 27, Subtitle 6 of the Insurance Article to distinguish private passenger motor vehicle liability insurance from commercial automobile insurance. *See* Md. Code

Ann., Insurance §§ 27-601(a)(3), 27-604(a)(3), 27-605(a)(1), and 27-606(a)(1). Paragraph (2) of subsection (a) states that, when an insurer is authorized to nonrenew or cancel a policy or increase a premium based on the claim experience or driving record of an individual insured under the policy, an insurer “shall offer” to continue or renew the insurance but exclude all coverage of the policy when a motor vehicle is being operated by the excluded driver. Md. Code Ann., Insurance §27-606(a)(2).

Subsection (b), which is not limited to private passenger motor vehicle liability insurance policies, allows insurance carriers to exclude a named driver when issuing a motor vehicle liability insurance policy. Md. Code Ann., Insurance §27-606(b). Subsection (c) provides that the continuation or renewal of a policy under subsection (a)(2) or the issuance of a policy under subsection (b) “may be endorsed to exclude specifically all coverage...when the named excluded driver is operating a motor vehicle covered under the policy” even if there is express or implied permission to operate the vehicle by others insured under the policy. Md. Code Ann., Insurance §27-606(c). Finally, subsection (d) states that, when a policy excludes a named driver or drivers, the premiums charged on that policy may not reflect the claim experience or driving record of the excluded driver or drivers. Md. Code Ann., Insurance §27-606(d).

The words of §27-606 are clear and unambiguous. They neither state nor imply that an insurer, when continuing or renewing a commercial automobile insurance policy, is prohibited from excluding a named driver. The statute is simply silent on the subject of an insurer’s right to exclude a named driver when continuing or renewing a commercial automobile insurance policy. Silence is not a prohibition.

This Court has often stated that it will “neither add nor delete words in order to give the statute a meaning not otherwise communicated by the language used.” *Harris v. Board of Education of Howard County*, 375 Md. 21, 31 (2003)(quoting *Blind Industries & Services of Maryland v. Maryland Department of General Services*, 371 Md. 221, 231 (2002)). If this Court were to construe the words of §27-606 to prohibit an insurer from excluding a named driver when continuing or renewing a commercial automobile insurance policy, this Court would be adding language to §27-606 that simply does not exist. *See also Dyer v. Warren Real Estate*, 371 Md. 576, 585 (2002)(“for the petitioner’s interpretation to be adopted,...there would need to be additional language added to [the statute]”); *Montrose Christian School Corporation v. Walsh*, 363 Md. 565, 595 (2001)(to “insert the phrasecontended for by the petitioner, would be to re-draft the statute under the guise of construction”)(internal citations omitted).

As this Court has observed, statutory construction also ends with the words of the statute when the words are clear and unambiguous. *Whiting-Turner Contracting Company v. Fitzpatrick*, 366 Md. at 301. In that the words of §27-606 are clear and unambiguous and neither state nor imply that an insurer is prohibited from excluding a named driver when continuing or renewing a commercial automobile insurance policy, the inquiry of the Court of Special Appeals into the meaning of §27-606 should have ended there. The Court of Special Appeals erred in seeking meaning in the legislative history of Chapter 367 of the Laws of Maryland, 1989. Yet even that improper search resulted in error; for the legislative history of Chapter 367 confirms that the legislative

intent in enacting that statute was to remove a statutory requirement, not to restrict a contract right.

2.

Chapter 367 of the Laws of Maryland, 1989

Chapter 367 of the Laws of Maryland, 1989, began as a “Proposal for Legislation” submitted to the Governor’s Legislative Office by the Department of Licensing and Regulation, Insurance Division. Governor’s Legislative Office Bill File for House Bill 62, 1989, Maryland State Archives (permission to inspect the file granted by the Governor’s Legislative Office). *See* Appendix A to this Brief.³

In the “Proposal for Legislation” the Department of Licensing and Regulation, Insurance Division states the following:

EXPLANATION

The bill provides for the following:it is clarified that the *required exclusion* of named drivers on automobile liability insurance policies is limited to private passenger automobile insurance policies.

JUSTIFICATION

[U]nder a private passenger automobile liability insurance policy on which there is more than one driver, an insurer may not cancel or nonrenew the entire policy because of the claim experience or driving record of one driver, the insurer must offer to exclude the driver. The amendments make it clear that the *requirement that the insurer exclude the driver only*

³ In 1989, the Governor’s Legislative Office required each department desiring to introduce departmental legislation to prepare a “Proposal for Legislation” with a required attachment for an explanation and justification of the bill. These documents were used by the Governor’s Legislative Office to draft the legislation if the proposal was approved by the Governor. Request Form, Department of Legislative Services Bill File for House Bill 62, 1989 (noting Bruce Martin, Governor’s Assistant Legislative Officer, as the bill drafter). *See* Appendix B-1 to this Brief.

applies to private passenger automobile insurance, and does not for example apply to commercial automobile insurance.

Id. (Emphasis supplied.) See Appendix A-2 to this Brief.⁴

Legislation was drafted by the Governor's Legislative Office to implement this proposal. Draft Bill, Department of Legislative Services Bill File, House Bill 62, 1989. See Appendix B-2 to this Brief. The bill order form sent to the Department of Legislative Services by the Governor's Legislative Office accurately reflects the changes proposed to §240C-1 as "clarifying that certain motor vehicle liability insurance policy exclusions must only be offered to certain insureds" Bill Order Form, Department of Legislative Services Bill File for House Bill 62, 1989. See Appendix B-3 to this Brief.

The legislation was introduced as House Bill 62 (1989) by the Chairman of the House Economic Matters Committee on behalf of the Department of Licensing and Regulation. The title of House Bill 62 stated that the purpose of the legislation was to "[clarify] that certain motor vehicle liability insurance policy exclusions *must* only be offered to certain insureds...." (Emphasis supplied.) 1989 Laws of Maryland, Chapter 367.⁵ To accomplish its purpose, House Bill 62 added to Article 48A, §240C-1(a)(1) the words "issued in this State to any resident of a household." As introduced, House Bill 62 would have amended Article 48A, §240C-1(a)(1) to read as follows:

⁴ *Cf. State v. Ghajari*, 346 Md. 101, 110-111 (1997) (use of bill request form to explain intent behind legislation).

⁵ See *Board of County Commissioners of Carroll County v. Stephans*, 286 Md. 384, 395 (1979) (the purpose of the title is to inform the General Assembly and the public of the nature of the legislation and it is well settled the "title of an act is relevant to ascertainment of its intent and purposes").

(a)(1) In any case where an insurer is authorized under this article to cancel or nonrenew or increase the premiums on an automobile liability insurance policy ISSUED IN THIS STATE TO ANY RESIDENT OF A HOUSEHOLD AS SET FORTH IN §240AA, under which more than 1 person is insured because of the claim experience or driving record of 1 or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude all coverage when a motor vehicle is operated by the specifically named excluded person or persons whose claim experience or driving record would have justified the cancellation or nonrenewal

House Bill 62, 1989.⁶ This amendment, by its plain language, limited the applicability of Article 48A, §240C-1(a) (and, hence, the *obligation* to offer to exclude a named driver) to private passenger motor vehicle insurance policies.

The Bill Analysis prepared for the House Economic Matters Committee does not mention the specific change proposed to §240C-1. Bill Analysis, House Economic Matters Committee, House Bill 62, 1989. *See* Appendix B-6 to this Brief. The shorthand notes taken from the hearing before the House Economic Matters Committee from Darah Kohremzi, representing the Insurance Division, cryptically mention the “exclusion of drivers limited to commercial auto.” Notes of the House Economic Matters Committee, House Bill 62, 1989. *See* Appendix B-7 to this Brief; Witness List, House Economic Matters Committee, House Bill 62, 1989. *See* Appendix B-8 to this Brief.⁷

⁶ The bill synopsis and the 1989 Session Review prepared by the Department of Legislative Reference also stated this same purpose. Legislative History/Bill Synopsis, House Bill 62, 1989. 1989 Session Review, Department of Legislative Reference, p. 84. *See* Appendix B-4, B-5 to this Brief.

⁷ The name of the witness representing the Insurance Division is not legible on any witness list. “Darah Kohremzi” is a best guess.

It was after the House Economic Matters Committee hearing that things went awry. The error in describing the purpose and effect of the proposed amendment to Article 48A, §240C-1(a)(1) first appears in the Floor Report of the House Economic Matters Committee.⁸ Floor Report, House Economic Matters Committee, House Bill 62, 1989. *See* Appendix B-9 to this Brief. The “Summary” section of the Floor Report describes the bill as “[c]larify[ing] that the right to exclude a driver under an automobile policy issued in Maryland is limited to policies of private passenger motor vehicle liability insurance.” *Id.* at 1. The “Background section” of the Floor Report states:

Currently, the language of Art. 48A, §240C-1 generally deals with the exclusion of an individual in the insured’s household and is applied to policies of private passenger motor vehicle policies. The bill clarifies that the right to exclude drivers does not accrue to policies of commercial motor vehicle insurance.

Id. at 2.⁹ The fiscal note also contains the same error. Fiscal Note for House Bill 62, Department of Fiscal Services, 1989. *See* Appendix B-10 to this Brief. An amendment was adopted by the House Economic Matters Committee that deleted the reference to Article 48A, §240AA in §240C-1(a). Amendment offered by the House Economic Matters Committee, HB0062/198443/1, 1989. *See* Appendix B-11 to this Brief.¹⁰

⁸ Just as bill drafting errors occur during the legislative process, so too can errors occur in other documents created by legislative staff. *See Kaczorowski v. City of Baltimore*, 309 Md. 505, 519 (1987)(noting a bill drafting error); *Heron v. Strader*, 361 Md. 258, 294 (2000)(Cathell, J., dissenting)(noting a mistake in a bill analysis).

⁹ This was the inaccurate statement the Court of Special Appeals relied upon. *See Zelinski v. Townsend, supra*, 163 Md. App. at 216-217.

¹⁰ The amendment was described as correcting “an error that would have prevented MAIF from excluding a member of the insured’s household where the excluded person

When the bill arrived in the Senate, it was assigned to the Senate Finance Committee. Legislative History/Bill Synopsis, House Bill 62, 1989. See Appendix B-4 to this Brief. The shorthand notes taken from the testimony of Darah Kohremzi, representing the Insurance Division, in the Senate Finance Committee state “[§]240C-1. [T]akes out [§]240C-1 applic[ation] to commerc[ial] auto[mobile insurance].”¹¹ Notes of the Senate Finance Committee on House Bill 62, 1989. See Appendix B-12 to this Brief; Witness List, Senate Finance Committee, House Bill 62 (1989). See Appendix B-13 to this Brief.

According to the Senate Finance Committee notes, when responding to a question from Senator O’Reilly about the impact of the bill on companies with bad drivers, Darah Kohremzi states “[p]erhaps [they] can take care [with] insurer. Not intended for commercial risks.” *Id.* See Appendix B-12 to this Brief. In the context of the then current Article 48A, §240C-1, which *required* insurance companies to *offer* to exclude high-risk drivers from both private automobile and commercial insurance policies in lieu of cancellation, nonrenewal, or premium increases, these statements from the Insurance Division witness about the purpose of House Bill 62 imply that the insurance company’s obligation under §240C-1 to offer the exclusion should be limited to private passenger automobile insurance because commercial policyholders are better able to fend for themselves in the automobile insurance market than are individual drivers. Despite the

would otherwise not have been qualified to be insured by MAIF.” Floor Report, House Economic Matters Committee, House Bill 62, 1989. See Appendix B-9 to this Brief.

¹¹ The notes taken by the Senate Finance Committee can be distinguished from the notes from the House Economic Matters Committee because the Senate notes contain references to questions asked by senators.

testimony of the sponsor of the bill, the Floor Report of the Senate Finance Committee inaccurately characterizes the effect of the proposed changes to §240C-1 stating that the bill “clarifies that exclusion of certain drivers from a policy is limited to private passenger policies.”¹² Floor Report, Senate Finance Committee, House Bill 62, 1989. *See* Appendix B-14 to this Brief. The Senate Finance Committee also adopted an amendment that struck the language requiring all policy notices to be sent by certified mail. Amendment offered by the Senate Finance Committee, HB0062/577704/1, 1989. *See* Appendix B-15 to this Brief.

The legislative history of Chapter 367 confirms that the General Assembly, in amending Article 48A, §240C-1 in the manner proposed by the Department of Licensing and Regulation, had no intent to prohibit an insurer from excluding a named driver when continuing or renewing a commercial automobile insurance policy. If the General Assembly had intended to prohibit a commercial carrier from excluding a named driver, the likely language that would have been employed in House Bill 62 would have been “when determining whether to cancel, nonrenew or increase a premium, an insurer may not exclude from coverage under a commercial automobile insurance policy an individual or individuals whose claim experience or driving record would have justified the cancellation, nonrenewal, or premium increase ... ” and the title of the bill would have stated “prohibiting an insurer from excluding certain persons from commercial

¹² The Floor Report is not identified as being prepared by the Senate Finance Committee. However, the reference in the Floor Report to an amendment that eliminated the requirement that all policy notices be sent by certified mail indicates the Floor Report was prepared by the Senate Finance Committee since this amendment was offered in the Senate.

automobile insurance policies under certain circumstances.” Yet, House Bill 62 did nothing of the sort. *See Gallegos v. Allstate Insurance Company*, 372 Md. 748, 759 (2003)(“As even a casual perusal of the Insurance Article will attest, the Legislature is not a novice when it comes to regulating insurance companies and practices. It is familiar with that industry and with the kinds of policies and contracts issued by insurance companies, and it knows well how to mandate coverage and limit or preclude conditions to, exclusions from, and limitations of, coverage.”)

If patent mistakes in bill text are to be ignored in order to effectuate the legislative intent of the General Assembly, then surely drafting errors in legislative documents are all the more to be ignored. *Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md. 505, 519 (1987); *see also* 82 Opinions of the Attorney General 165 (1997) (retailers could continue to collect a "bad check fee" notwithstanding the apparent repeal of legislation authorizing such fees due to a drafting error). An error in legislative documents created by legislative staff because they did not read the language of the bill carefully should not be allowed to overcome the plain language of the statute passed by the General Assembly.

The Department of Licensing and Regulation’s bill request form to the Governor’s Legislative Office reveals no intent on the part of the Department to prohibit insurers from excluding named drivers in commercial automobile insurance policies. The Department’s statements about the purpose of the proposed legislation could not be more illuminating. The Department sought to limit the “*required exclusion* of named drivers on automobile liability insurance policies ... to private passenger automobile insurance

policies.” (Emphasis supplied.) Proposal for Legislation, Governor’s Legislative Office Bill File for House Bill 62, 1989, Maryland State Archives. *See* Appendix A-2 to this Brief.

Moreover, it is absurd to conclude that the Department would have proposed a bill that would have reduced the availability of commercial automobile insurance in the Maryland market. Surely, the policy objective of the Department was to promote, not to restrict, the availability of commercial automobile insurance in Maryland so that fewer employers would have to be insured by the State-run Maryland Automobile Insurance Fund. *See Neale v. Wright*, 322 Md. 8, 21 (1991)(“Without the named driver exclusion provision, insurance might be difficult to obtain for many vehicles.”); *See also* Memorandum in Support of Motion of the Maryland Insurance Administration For Leave to Participate as *Amicus Curiae*, p. 2, 9, and 13.

Following the enactment of House Bill 62 (1989) as Chapter 367 of the Laws of Maryland, 1989, an insurer (i) was *required* to offer to exclude a named driver in lieu of canceling, nonrenewing or increasing the premiums on a private passenger automobile insurance policy issued in Maryland (Article 48A, § 240C-1(a)), and (ii) was *permitted* to exclude a named driver when issuing a private passenger *or commercial* automobile insurance policy in Maryland (Article 48A, § 240C-1(b)). An insurer was no longer *required* to offer to exclude a named driver in lieu of canceling, nonrenewing or increasing the premiums on a *commercial* automobile insurance policy.¹³

¹³ If a bill drafting error was made in House Bill 62 (1989), it was the failure of the drafter to amend Article 48A, §240C-1 to explicitly state that insurers are permitted to

Chapter 73 of the Laws of Maryland, 1972 and
Chapter 663 of the Laws of Maryland, 1984

The full legislative history of Insurance Article, §27-606 (formerly Article 48A, § 240C-1), dating back to 1972, likewise reveals no intent on the part of the General Assembly to prohibit insurers from excluding a named individual when continuing or renewing a commercial motor vehicle insurance policy.

In 1972, the Maryland General Assembly enacted Chapter 73, which, among other things, added § 240C-1 to Article 48A. Chapter 73 was introduced as an omnibus bill on behalf of the Governor's Office to reform insurance industry practices and to create the Maryland Automobile Insurance Fund. House Bill 444, 1972. House Bill 444 was, in part, a result of a report prepared by the Secretary of the Department of Licensing and Regulation at the behest of Governor Mandel to study the overall problems relating to automobile insurance, including problems with insurance policy nonrenewals and cancellations. Report to the Governor by the Secretary of Licensing and Regulation on Auto Insurance Problems, Proposed Reforms and Feasibility of a State-Operated Insurance System, 1972, p. 1, 35, on file with the Department of Legislative Services. See Appendix C to this Brief.

A Special Committee on No-Fault Insurance was also created by the Legislative Council to study and consider no-fault insurance. Report of the Special Committee on No-Fault Insurance, January 31, 1972, on file with the Department of Legislative

exclude named drivers when continuing or renewing a commercial automobile insurance policy even though they are no longer required to offer the exclusion in commercial policies.

Services. *See* Appendix D to this Brief. The Special Committee was briefed on the Governor's insurance proposal by Alan Wilner from the Governor's office. *Id.* at 5. *See* Appendix D to this Brief. The minutes of the January 11, 1972 meeting of the Special Committee reflect the following exchange concerning the named driver exclusion:

[Mr. Wilner] said another consideration was allowing companies to offer family policies which would exclude a named person, one usually considered a bad risk, and state what the premium costs would be with and without that person. Delegate Resnick said the problem involved "permissive use." Senator Conroy said it could be in the contract. Delegate Burgess said that Travelers already does it. When the parent signed the contract it excluded the bad-risk teenager. Mr. Wilner asked for a copy of such a policy.

Id. at p. 2 of the Minutes of January 11, 1972. *See* Appendix D to this Brief.

Although the discussion in front of the Special Committee centered around private passenger motor vehicle insurance, the proposed § 240C-1 in House Bill 444 applied to all automobile liability insurance policies and provided:

In any case where an insurer is authorized under this article to cancel or non-renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer *shall* in lieu of cancellation, non-renewal, or premium increase offer to continue or renew the insurance, but to exclude from coverage, by name, the person or persons whose claim experience or driving record would have justified the cancellation or non-renewal.

(Emphasis supplied.) The title of House Bill 444 described the purpose of §240C-1 as "permitting insurers to exclude certain named drivers from coverage under certain circumstances." 1972 Laws of Maryland, Chapter 73.

The purpose of this provision was to mandate that insurers offer their policyholders an option that would allow them to keep their automobile insurance policies in force. Section 240C-1 *required* an insurer to offer to continue or renew coverage if the insured agreed to exclude a named driver. The *right* to do so was simply assumed as a matter of private contract.

In 1984, the Maryland General Assembly enacted Chapter 663, which amended § 240C-1 by adding the following provision as part of a new subsection (b):

In any case where an insurer could legally refuse to issue a policy of automobile liability insurance under which more than 1 person is insured because of the claim experience or driving record of 1 or more but less than all of the persons applying to be insured under the policy, the insurer *may* issue the policy but exclude from coverage, by name, the person or persons whose claim experience or driving record could have justified the refusal to issue.

(Emphasis supplied.) According to its title, the purpose of Chapter 663 was to “[permit] certain insurers to issue a policy of automobile insurance with a named driver exclusion on any prospective insured whose driving record does not meet the company’s underwriting standards so that that person’s record does not impair the ability of the other operators to secure insurance in the voluntary market....” 1984 Laws of Maryland, Chapter 663.

Chapter 663 was introduced as House Bill 999 (1984). The Bill Analysis for the House Economic Matters Committee noted it was “unclear what HB 999 accomplishes because an insurer already has the legal right to exclude the excludibles and cover the good risk drivers. HB 999 does not apparently alter the practices of insurers as they

currently exist.” Bill Analysis, House Economic Matters Committee, House Bill 999, 1984. See Appendix E-1 to this Brief.¹⁴ The Summary of Committee Report for the Senate Economic Affairs Committee, under the “Changes Made By the Bill” section, stated that:

[The bill] extend[ed] current law to cases of initial issuance of insurance. Thus, under House Bill 999, an insurance company is authorized to issue a policy to less than all the policy applicants based on the poor record or insurance claims of the excluded drivers.

Summary of Committee Report, Senate Economic Affairs Committee, House Bill 999, 1984. See Appendix E-2 to this Brief. The Report, in the “Background” section, stated “[e]xpress statutory authority for issuance of such policies would prevent a court challenge to an insurance company’s authority to do this.” *Id.*

Following the enactment of Chapter 663 in 1984, an insurer (i) was *required* to offer to exclude a named driver in lieu of canceling, nonrenewing or increasing the premiums on an automobile insurance policy issued in Maryland (Article 48A, § 240C-1(a)), and (ii) was *permitted* to exclude a named driver when *issuing* an automobile insurance policy in Maryland (Article 48A, § 240C-1(b)). At that time and until the enactment of Chapter 367 in 1989, Article 48A, § 240C-1 drew no distinction between private passenger and commercial automobile insurance policies.¹⁵

¹⁴ This Bill Analysis is not identified as being created for the House Economic Matters Committee. However, since the Senate Committee Report is on the letterhead for the Senate Economic Affairs Committee, it is reasonable to assume that this unlabeled Bill Analysis was prepared for the House committee.

¹⁵ Article 48A, §240C-1 was also amended by Chapter 698 of the Laws of Maryland, 1985. Although the amendment enacted by Chapter 698 is not relevant to the question to

The full legislative history of §27-606 demonstrates that insurance companies were excluding named drivers from policies when continuing or renewing policies without express statutory authority before 1972. When Chapter 73 of the Laws of Maryland, 1972 was enacted requiring insurers to offer to exclude named drivers in lieu of cancellation, nonrenewal, or a premium increase, the notes from the Special Committee on No-Fault Insurance reveal insurance companies were already excluding named drivers. Report of the Special Committee on No-Fault Insurance, January 31, 1972, p. 2 of the Minutes of January 11, 1972. *See* Appendix D to this Brief.

Insurance companies were also excluding named drivers from policies when issuing policies from 1972 until 1984 without express statutory authority to do so. Indeed, in 1984, the Bill Analysis noted the authority to exclude named drivers when issuing a policy was not necessary and would not “alter” current industry practices since “an insurer already has the legal right to exclude the excludibles and cover the good risk drivers.” Bill Analysis, House Economic Matters Committee, House Bill 999, 1984. *See* Appendix E-1 to this Brief.

Even though the General Assembly in 1984 added statutory authority to exclude named drivers when issuing policies, the General Assembly apparently saw no reason to expressly authorize insurers to exclude named drivers when continuing or renewing insurance policies. It is, therefore, not at all surprising that the bill drafter of House Bill 62 (1989) did not add express statutory authority for insurance companies to exclude

be decided in this case, documents relating to the legislative history of Chapter 698 are included in Appendix F to this Brief.

named drivers when continuing or renewing an insurance policy. It had been assumed since before 1972 that insurance companies already had that right as a matter of private contract.

If a carrier may exclude a named driver when issuing a commercial automobile insurance policy, as it may pursuant to Insurance Article, §27-606(b), it is simply illogical to hold, as the Court of Special Appeals did, that a carrier may not exclude a named driver when continuing or renewing a commercial automobile insurance policy. If the latter authority does not exist, the commercial carrier will simply cancel or nonrenew a policy because of the driving record of a covered driver, which is permitted under Insurance Article, §27-501(a)(2) and issue a new policy under the explicit authority of Insurance Article, § 27-606(b) excluding that driver. *See Whiting-Turner Contracting Company v. Fitzpatrick*, 366 Md. at 302 (“[A] statute is to be given a reasonable interpretation, not one that is illogical or incompatible with common sense”).

CONCLUSION

By disregarding the plain language of Insurance Article, § 27-606, ignoring the full legislative history of that section, and relying exclusively upon an inaccurate Floor Report, the Court of Special Appeals erred in holding that a carrier may not exclude a named driver from a commercial automobile insurance policy.

Respectfully submitted,

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December 30, 2005