

2021 WL 5114313

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United States District Court, N.D. Oklahoma.

PROGRESSIVE DIRECT  
INSURANCE COMPANY, Plaintiff,

v.

Chad HUDGINS; Jonathan Cullum;  
Brianna Smith; Katlyn McNeill; [Angela  
McNeill](#), individually and as mother  
and next friend of M.M., a minor;  
Victoria Rylant; Katelynn Conner;  
[Sandra Patton](#); [State Farm Mutual  
Automobile Insurance Co.](#); and Farmers  
Insurance Company, Inc., Defendants.

Case No. 20-CV-497-GKF-SH

|  
Signed 09/13/2021

#### Attorneys and Law Firms

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Holden Litigaiton, Tulsa, OK, for Plaintiff.

[Clark Warfield Crapster](#), [Robert Howard Taylor](#), Steidley &  
Neal, Tulsa, OK, for Defendants.

#### ORDER

GREGORY K. FRIZZELL, UNITED STATES DISTRICT  
JUDGE

\*1 Before the court is the Motion for Summary Judgment [Doc. 42] of plaintiff Progressive Direct Insurance Company (Progressive). For the reasons set forth below, the motion is granted in part and denied in part.

#### I. Background

This case arises out of a police pursuit of a vehicle driven by defendant Chad Hudgins. Progressive seeks a judicial declaration that an automobile policy it issued affords no coverage relating to claims arising from motor vehicle

collisions that occurred while Hudgins was eluding the police. Progressive names eleven defendants: (1) Hudgins; (2) Jonathan Cullum, one of Hudgins's two passengers; (3) Brianna Smith, Hudgins's second passenger; (4) Katlyn McNeill, the driver of a vehicle that swerved to avoid being hit by Hudgins; (5) Sandra Patton, the owner of the car driven by Katlyn McNeill; (6) State Farm Mutual Automobile Insurance Co. (State Farm), the insurer of Patton's car; (7, 8) Angela McNeill, individually and as a mother and next friend of M.M., a minor, two of Katlyn McNeill's three passengers; (9) Victoria Rylant, Katlyn McNeill's third passenger; (10) Katelynn Conner, the driver of a car struck by Hudgins; and (11) Farmers Insurance Company, Inc. (Farmers), the insurer of Conner's car. [Doc. 2]. State Farm and Cullum have been dismissed by joint stipulation. [Docs. 30, 48]. Hudgins, Smith, and Rylant have not appeared, though the docket reflects that they may have been served. [See Docs. 11, 16, 37, 39, 40]. On September 10, 2021, Progressive dismissed its claims against defendant Rylant without prejudice. [Doc. 51]. On September 13, 2021, the clerk entered default as to defendants Hudgins and Smith. [Doc. 53.]

Progressive asks the court to issue a judicial determination that its policy affords defendant Hudgins neither indemnity coverage nor a defense to any tort litigation arising from the underlying incident; affords no medical payments (medpay) coverage to any party; and affords no coverage under any part for any punitive or exemplary damages sought by any party as a result of the underlying incident. Defendants Katlyn McNeill; Patton; Angela McNeill, individually and as a mother and next friend of M.M., a minor; Conner; and Farmers (collectively, the "Responding Defendants") have filed responses.

#### II. Legal Standard

Pursuant to [Federal Rule of Civil Procedure 56\(a\)](#), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A fact is "material" if it "might affect the outcome of the suit under the governing law." [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986). A dispute is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

#### III. Undisputed Material Facts

##### A. The Pursuit

On February 26, 2020, Hudgins was operating a 2003 Chevy Avalanche in Creek County, Oklahoma. [Doc. 42, p. 7, ¶ 1; Doc. 44, p. 5, ¶ 1; Doc. 45, p. 7, ¶¶ 1-4]. Defendants Cullum and Smith were riding as passengers. [Id.].

\*2 At approximately 4:08 p.m., based on a report that Hudgins had stolen two 12-inch subwoofers, Corporal Michael Smiley of the Creek County Sheriff's Office, along with other deputies, attempted to initiate a traffic stop of the Avalanche. [Doc. 42, p. 8, ¶¶ 2-3; Doc. 44, p. 5, ¶¶ 2-3; Doc. 45, p. 7, ¶¶ 1-4].

Hudgins accelerated to 85 mph and began driving in both lanes of travel, causing cars to leave the roadway. [Doc. 42, p. 8, ¶ 4; Doc. 44, p. 5, ¶ 4; Doc. 45, p. 7, ¶¶ 1-4]. During the pursuit, defendant Katlyn McNeill swerved in order to avoid being hit by Hudgins. [Doc. 42, p. 8, ¶ 5; Doc. 44, p. 5, ¶ 5; Doc. 45, pp. 7-8, ¶ 5]. She was driving a 2006 Suzuki XL5, owned by defendant Patton and insured by State Farm Mutual. [Id.]. Defendants M.M., a minor; Angela McNeill; and Rylant were all passengers in the Suzuki. [Id.]. Hudgins also struck a 2017 Chevy Spark owned and operated by defendant Conner. [Doc. 42, p. 9, ¶ 6; Doc. 44, p. 6, ¶ 6; Doc. 45, p. 8, ¶ 6]. The Chevy Spark was insured by defendant Farmers. [Id.]. Farmers has declared the Chevy Spark a total loss. [Id.].

Sergeant Steven Ray attempted to deploy stop sticks to stop the Avalanche, but Hudgins swerved towards Sergeant Ray's vehicle, where Sergeant Ray was standing. [Doc. 42, p. 8, ¶ 4; Doc. 44, p. 5, ¶ 4; Doc. 45, p. 7, ¶¶ 1-4]. Hudgins eventually came to a stop near 21st Street and Highway 99 in Creek County, Oklahoma after colliding with another vehicle. [Id.].

Hudgins pleaded guilty to the criminal charges of Running a Roadblock (21 Okla. Stat. § 540B), Eluding a Police Officer (21 Okla. Stat. § 540A), Resisting an Officer (21 Okla. Stat. § 268), and Driving with a Suspended License (47 Okla. Stat. § 6-303(B)). [Doc. 42, p. 9, ¶ 7; Doc. 44, p. 6, ¶ 7; Doc. 45, p. 8, ¶¶ 7-9]. As the factual basis for his guilty plea, Hudgins confirmed he “ran a roadblock, eluded police, and resisted an officer all while [his] license was suspended and in Creek County, OK.” [Doc. 42, p. 9, ¶ 8; Doc. 44, p. 6, ¶ 8; Doc. 45, p. 8, ¶¶ 7-9].

On November 19, 2020, defendants Patton; Katlyn McNeill; and Angela McNeill, individually and as parent and next friend of M.M., a minor, filed a tort Petition against Brown and Hudgins. [Doc. 42, p. 10, ¶ 10; Doc. 44, p. 6, ¶ 10; Doc. 45, p. 8, ¶¶ 10-14]. The Petition characterizes

Hudgins's actions as negligent, negligent per se, and grossly negligent. [Id.]. The Petition seeks damages, including punitive damages, as a result of the injuries these defendants claim to have sustained as a result of the pursuit. [Id.].

*B. The Insurance Policy*

Progressive issued Policy No. 933377725, with effective dates of October 4, 2019 to April 4, 2020, to non-party Helen Brown.<sup>1</sup> [Doc. 42, p. 10, ¶ 11; Doc. 44, p. 6, ¶ 11; Doc. 45, p. 8, ¶¶ 10-14]. The policy identifies the Avalanche as a covered auto and provides liability coverage with limits of \$100,000.00 per person/\$300,000.00 per accident for bodily injury and \$100,000.00 each accident for property damage; \$100,000 each person/\$300,000 each accident for underinsured motorist coverage; and \$500 each person for medical payments coverage. [Doc. 42, p. 10, ¶ 12; Doc. 44, p. 6, ¶ 12; Doc. 45, p. 8, ¶¶ 10-14].

\*3 The policy provides in pertinent part:

**PART I—LIABILITY TO OTHERS**

**INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages include prejudgment interest awarded against an **insured person**.

**We** will settle or defend, at **our** option, any claim for damages covered by this Part I.

**ADDITIONAL DEFINITION**

When used in this Part I:

“**Insured person**” means:

\* \* \*

b. any person with respect to an accident arising out of that person's use of a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;

\* \* \*

**EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION**

**APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.**

Coverage under this Part I, including **our** duty to defend, will not apply to any **insured person** for:

\*\*\*

16. punitive or exemplary damages;

17. **bodily injury** or **property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**. This exclusion applies regardless of whether that **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations[.]

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**PART II—MEDICAL PAYMENTS COVERAGE**

**INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a **motor vehicle** accident because of **bodily injury**:

1. sustained by an **insured person**; and
2. caused by that **motor vehicle** accident.

\*\*\*

**ADDITIONAL DEFINITIONS**

When used in this Part II:

1. “**Insured person**” means:

\*\*\*

b. any other person while **occupying a covered auto** with the permission of **you**, a **relative**, or a **rated resident**.

\*\*\*

**EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.**

Coverage under this Part II will not apply to **bodily injury**:

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15. caused by, or reasonably expected to result from, a criminal act or omission of an **insured person**. This exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

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**PART III—UNINSURED MOTORIST COVERAGE**

**INSURING AGREEMENT**

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**.

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**EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.**

Coverage under this Part III will not apply:

\*\*\*

4. to any punitive or exemplary damages[.]

[Doc. 42, pp. 10-13, ¶ 14; Doc. 44, p. 6, ¶ 14; Doc. 45, p. 8, ¶¶ 10-14].

**IV. Analysis**

“In Oklahoma, interpretation of an insurance contract is a matter of law.” *Boggs v. Great Northern Ins. Co.*, 659 F. Supp. 2d 1199, 1204 (N.D. Okla. 2009) (citing *Max True Plastering Co. v. U.S. Fidelity and Guar. Co.*, 912 P.2d 861, 869 (Okla. 1996)). Oklahoma’s general principles of contract interpretation govern the construction of an insurance policy. *Dodson v. St. Paul Ins. Co.*, 812 P.2d 372, 376 (Okla. 1991). The terms of a contract are construed according to their plain

meaning, and any ambiguities will be “construed liberally in favor of an insured and strictly against the insurer.” *Cont'l Cas. Co. v. Beaty*, 455 P.2d 684, 688 (Okla. 1969). Oklahoma courts “will not impose coverage where the policy language clearly does not intend that a particular individual or risk should be covered.” *BP America, Inc. v. State Auto Prop. & Cas. Ins. Co.*, 148 P.3d 832, 835-36 (Okla. 2005). “When policy provisions are unambiguous and clear, the employed language is accorded its ordinary, plain meaning; and the contract is enforced carrying out the parties’ intentions.” *Id.* at 835.

\*4 “The general declaration of insurance coverage, as established by the insurance policy and limited by its provisions, normally determines the insurance carrier’s liability, and the insured’s respective rights under the contract by identifying what risks are covered and excluded by the policy.” *Boggs*, 659 F. Supp. 2d at 1205 (quoting *Dodson*, 812 P.2d at 377). And any exclusions to general coverage:

are read seriatim; each exclusion eliminates coverage and operates independently against the general declaration of insurance coverage and all prior exclusions by specifying other occurrences not covered by the policy. Thus, subsequent exclusions can further limit or even remove a covered risk from the general declaration of insurance coverage. In case of doubt, exclusions exempting certain specified risks are construed strictly against the insurer.

*Dodson*, 812 P.2d at 377.

“The insured has the burden of showing that its claim is covered under the policy. Once the insured establishes coverage, the insurer has the burden of showing that a loss falls within an exclusionary clause of the policy.” *Boggs*, 659 F. Supp. 2d at 1204 (internal citation and quotation marks omitted).

#### A. Whether an “Accident” Occurred

Part I—Liability to Others of the Progressive policy provides: “If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.” [Doc. 42-7, p. 8].

Progressive first argues that Hudgins’s actions do not qualify as an “accident.” Therefore, in Progressive’s view, Hudgins cannot demonstrate that the liability claims asserted against him qualify as covered losses under Part I.

The term “accident” is not defined by the policy. “Under well-settled Oklahoma law, the term ‘accident’ when used in an insurance contract, has no technical legal meaning but instead should be construed ‘according to common speech and common usage of people generally.’” *United Specialty Ins. Co. v. Homeco, LLC*, 325 F. Supp. 3d 1231, 1235 (W.D. Okla. 2018) (quoting *United States Fid. & Guar. Co. v. Briscoe*, 239 P.2d 754, 756 (1951)). The Oklahoma Supreme Court has “described an accident as an event that is ‘unexpected, unintended and unforeseen in the eyes of the insured’ and said that the standard to be used is that of a reasonable person appraising the event from the insured’s perspective.” *Cranfill v. Aetna Life Ins. Co.*, 49 P.3d 703, 706 (Okla. 2002) (quoting *Willard v. Kelley*, 803 P.2d 1124, 1128-29 (Okla. 1990)). If a party “performs or does a voluntary act, the natural, usual and to-be-expected result of which is to bring injury or damage ... then [the] resulting damage, so occurring, is not an accident, in any sense of the word, legal or colloquial.” *Briscoe*, 239 P.2d at 757. The Tenth Circuit, applying Oklahoma law, has explained that “[n]egligent conduct that, although voluntary, produced an unexpected result will be deemed an ‘accident.’” *Automax Hyundai South, L.L.C. v. Zurich American Ins. Co.*, 720 F.3d 798, 804 (10th Cir. 2013) (citing *Penley v. Gulf Ins. Co.*, 414 P.2d 305, 309 (Okla. 1966)). But “a voluntary action resulting in *foreseeable* injury [is] not an ‘accident.’” *Id.* (emphasis original) (citing *Shelter Mut. Ins. Co. v. Wheat*, 313 F. App’x 76, 81 (10th Cir. 2008) (unpublished)).

With these standards in mind, to determine whether an “accident” occurred, the court must ask whether a reasonable person in Hudgins’s shoes would foresee collisions with third party vehicles as the natural and probable consequence of intentionally running a roadblock and eluding a police officer.<sup>2</sup> See *Cranfill*, 49 P.3d at 707 (“It is only when the consequences of the act are so natural and probable as to be expected by any reasonable person that the result can be said to be so foreseeable as not to be accidental.”).

\*5 Progressive argues “the collisions that Hudgins caused would never have occurred had he complied with the officers’ initial directive to stop the Avalanche instead of speeding away at 85 mph and intentionally driving in an erratic manner in the hopes of eluding the police.” [Doc. 42, p. 21]. Defendants Conner and Farmers argue the collisions “were unintended occurrences that were not certain or even substantially certain to occur. They were accidents.” [Doc. 44, p. 11]. Defendants Katlyn McNeill; Angela McNeill, individually and as mother and next friend of M.M., a minor; and Patton argue “[t]he natural and probable consequences

of eluding the police are not necessarily that others will be injured in a car accident.” [Doc. 45, p. 14].

Evading police and driving in excess of 85 miles per hour in the late afternoon are undoubtedly high-risk activities. And, “[i]f one applied tort principles,” injuries “from such high-risk activit[ies] could be said to be reasonably foreseeable.” *Cranfill*, 49 P.3d at 707. But foreseeability has a more specific meaning in the context of accident insurance. *Id.* “It is only when the consequences of the act are so natural and probable as to be expected by any reasonable person that the result can be said to be so foreseeable as not to be accidental.” *Id.* Otherwise, injuries “resulting from almost any high-risk driving activity would be excluded from coverage under an accident insurance policy (e.g. driving at excessive speed, failing to keep a proper lookout, failing to maintain brakes in good condition, changing lanes without using a proper turn signal, floating a stop sign).” *Id.* at 706-07.

Although Mr. Hudgins's acts created a *possible* risk to others, a reasonable person would not view collisions with third parties as the “natural and *probable*” consequence of Mr. Hudgins's acts. See *Cranfill*, 49 P.3d at 707. Accordingly, Progressive is not entitled to a declaration that the underlying incident is *not* an accident for purposes of Part I—Liability to Others.

*B. Applicability of the Criminal Acts Exclusion to Part I—Liability to Others Coverage*

In the alternative, Progressive argues that coverage provided by “Part I—Liability to Others” is excluded. Specifically, Progressive points to Exclusion 17 which excludes coverage under Part I for any “**bodily injury or property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**.” [Doc. 42-7, p. 10].

It is undisputed that Hudgins pleaded guilty to the criminal charges of Running a Roadblock and Eluding a Police Officer. [See Doc. 42-2]. It is also undisputed that, while Hudgins was criminally evading police, defendant Katlyn McNeill swerved in order to avoid being hit and Hudgins struck the vehicle owned and operated by defendant Conner. [Doc. 42, pp. 8-9, ¶¶ 5-6; Doc. 44, pp. 5-6, ¶¶ 5-6; Doc. 45, pp. 7-8, ¶¶ 5-6]. The criminal acts exclusion, by its terms, applies to these undisputed facts, as the bodily injury and property damage was caused by, or could be reasonably expected to result from, Hudgins's criminal acts.<sup>3</sup>

Nevertheless, the Responding Defendants argue that the criminal acts exclusion does not apply because, in their view, Progressive has not established that Hudgins's criminal acts caused their injuries and property damage. They argue “the criminal acts themselves were not the cause of the Accidents. Instead, the accidents were caused by Hudgins[ ] losing control of his vehicle while speeding and driving erratically.” [Doc. 45, p. 17; *accord* Doc. 44, p. 15]. But this rationale strains the plain meaning of “caused by.” The criminal acts exclusion, by its terms, clearly excludes coverage under these circumstances: the collision with Conner and Katlyn McNeill's swerve were caused by Hudgins's criminal flight. Defendants point to no case law or policy language to support a contrary conclusion.

\*6 The Responding Defendants also argue, regardless of whether the criminal acts exclusion applies, that Progressive must provide mandatory minimum liability coverage limits to them under Oklahoma law. [Doc. 45, p. 18; *accord* Doc. 44, p. 16].

The Oklahoma Supreme Court has explained:

When interpreting automobile insurance contracts, the court strives to strike a balance between freedom of contract principles and the state's interest in protecting the public. Statutorily mandated automobile insurance policies bear some characteristics of a public-law obligation under Oklahoma law and the full range of traditional freedom-of-contract principles do not apply. Parties to an insurance contract are nevertheless free to agree upon such terms as they wish, including whether to limit or restrict the insurer's liability, as long as their agreement does not contravene public policy. A contract violates public policy only if it clearly tends to injure public health, morals or confidence in the administration of law, or if it undermines the security of individual rights with respect to either personal liability or private property. Courts exercise their power to nullify contracts made in contravention of public policy only rarely, with great caution and in cases that are free from doubt.

*Ball v. Wilshire Ins. Co.*, 221 P.3d 717, 726 (Okla. 2009).

“The clearly articulated public policy underlying Oklahoma's compulsory insurance law is to establish a comprehensive compulsory liability insurance law for the benefit of the innocent victims of the negligent operation or use of motor vehicles in this state.” *Mulford v. Neal*, 264 P.3d 1173, 1179 (Okla. 2011). The Oklahoma Supreme Court has “determined that provisions in a liability insurance policy which deny

coverage to the general public are void as contrary to this statutorily articulated public policy, such as 1) excluding drivers under 25 years of age, 2) excluding coverage outside a 200-mile geographical radius, 3) excluding a named insured as a passenger, 4) excluding business automobiles, and 5) excluding loaned automobiles.” *Id.* at 1180 (internal citations omitted). When the court voids provisions as contrary to public policy, it imposes coverage only up to the statutory minimum limits. *See Ball*, 221 P.3d at 723. The statutory minimum limits of coverage are: “Twenty-five Thousand Dollars (\$25,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, Fifty Thousand Dollars (\$50,000.00) because of bodily injury to or death of two or more persons in any one accident, and Twenty-five Thousand Dollars (\$25,000.00) because of injury to or destruction of property of others in any one accident.” 47 Okla. Stat. § 7-324(b)(2).

The parties do not identify any Oklahoma caselaw evaluating whether a criminal act exclusion violates public policy. But the Oklahoma Supreme Court, in *Young v. Mid-Continent Casualty Co.*, 743 P.2d 1084 (Okla. 1987), favorably cited a Georgia case “striking down [a] clause excluding liability coverage when [an] insured was attempting to avoid apprehension or arrest.” *Young*, 743 P.2d at 1087 n. 11 (citing *Cotton States Mut. Ins. Co. v. Neese*, 329 S.E.2d 136 (Ga. 1985)). In *Cotton States*, an insured driver and two friends skipped school without permission. A Georgia state patrolman observed the insured vehicle traveling above 75 mph and passing vehicles in a no passing zone. A high speed chase ensued around sharp curves at speeds approaching 100 mph, terminating in a head on collision with a third party vehicle. The driver of that vehicle was killed. The insurance company denied coverage based on an “attempting to avoid apprehension or arrest” exclusion. *Id.* at 138. The Georgia Supreme Court reasoned:

\*7 [W]hen considering a question of public policy, we focus primarily on the interests of the public. Its identifiable interests in this case are at least threefold: (1) as insureds, to limit the insurer's risks and thereby keep automobile insurance premiums as low as possible; (2) as members of the public in general to improve safety on the highways; and (3) as accident victims, to have access to insurance funds to satisfy their judgments. The exclusion in issue here serves the first of these interests, but ... [t]he exclusion is directly contrary to the third public interest, and our compulsory insurance law was enacted to serve that very interest.

Balancing the interests involved and recognizing that our compulsory insurance law established the public policy that “innocent persons who are injured should have an adequate recourse for the recovery of their damages,” and viewing this unnecessary accident from the standpoint of the deceased driver of the other vehicle involved, we hold that the exclusion in issue here is unenforceable on grounds of public policy as to the deceased ... who was merely driving on the roadway when he was struck head on by a speeding vehicle.

*Id.* at 141 (internal citations omitted).

Oklahoma's compulsory insurance law exists to serve the same public policy: “protecting innocent drivers from the use of automobiles by financially irresponsible persons who operate vehicles in a negligent manner.” *Mulford*, 264 P.3d at 1181. In this case, Hudgins's actions were, at the very least, negligent. And application of the criminal act exclusion would limit recovery to the Responding Defendants, innocent victims who are not parties to the insurance contract. Accordingly, the exclusion—as applied to the Responding Defendants—violates public policy and cannot be enforced.<sup>4</sup> As a result, Progressive is not entitled to a judicial declaration that “Exclusion 17 may be applied to bar all liability coverage from responding on behalf of Hudgins [or] that Oklahoma's public policy is satisfied without the imputation of minimum limits of liability insurance onto the Progressive Policy.” [Doc. 42, p. 22].

### C. Whether Progressive Has a Duty to Defend Hudgins

Progressive also argues that it owes its insureds no duty of defense with respect to any tort litigation instituted against Hudgins as a result of the pursuit. “Coverage under ... Part I, including [Progressive's] duty to defend, will not apply to any **insured person** for[ ] ... **bodily injury** or **property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**.” [Doc. 42-7, pp. 9-10, ¶ 17]. For the reasons set forth above, this exclusion applies. And, under Oklahoma law, the exclusion—as applied to Progressive's duty to defend Hudgins—is enforceable. *Ball*, 221 P.3d at 723-24. The Oklahoma Supreme Court has explained:

Our Compulsory Liability Insurance Law mandates that *vehicles* be secured against liability to innocent victims where harm occurs from a vehicle's negligent operation. It does not mandate an insurer-provided defense of persons driving vehicles that are secured by operation of

the Compulsory Liability Insurance Law. The statutory omnibus clause displaces only those insurance policy provisions that are incompatible with the law's intent to provide minimal compensation to an injured third party. The person whose minimal coverage is law-mandated is not entitled to the insurer's performance of purely contractual obligations that stand outside the law's mandate. This rule gives effect to the public policy underlying the Compulsory Liability Insurance Law while refraining from unduly interfering with the parties' freedom to contract, which can be restricted only in the name of articulated public policy.

\*8 *Id.* Accordingly, Progressive is entitled to a judicial declaration that it owes no duty of defense to Hudgins for any litigation or liability claim arising from the pursuit. [See Doc. 42, p. 23].

#### *D. Applicability of the Criminal Acts Exclusion to Part II—Medical Payments Coverage*

Progressive contends that no coverage is owed under Part II—Medical Payments. Per the policy, “Coverage under ... Part II will not apply to **bodily injury**[ ] ... caused by, or reasonably expected to result from, a criminal act or omission of an **insured person.**” [Doc. 42-7, pp. 13-14, ¶ 15]. Progressive argues this provision excludes coverage as to any injuries suffered by Hudgins or his passengers, defendants Cullum and Smith, as a result of Hudgins's criminal flight. The court agrees. And the court is unaware of any public policy rationale which would invalidate the exclusion with respect to medical payment coverage. See *Starrett v. Oklahoma Farmers Union Mut. Ins. Co.*, 849 P.2d 397, 399 (Okla. 1993) (“Oklahoma law recognizes compelling public policy considerations for uninsured motorist coverage provisions which do not exist for med-pay provisions.”). Accordingly, Progressive is entitled to a judicial declaration that the policy affords no coverage under Part II—Medical Payments to bodily injury caused by Mr. Hudgins's criminal acts.

#### *E. Applicability of the Punitive Damages Exclusions*

Progressive asserts that it has no obligation to indemnify any award of punitive or exemplary damages that may be obtained by any party as a result of the underlying incident. Both Part I—Liability to Others and Part III—Uninsured/Underinsured Motorist Coverage exclude coverage for “punitive or exemplary damages.” [Doc. 42-7, p. 10, ¶ 16; Doc. 42-7, p. 17, ¶ 4]. This complies with Oklahoma law. Indeed, “Oklahoma law prohibits insurance companies from indemnifying insureds against claims for exemplary damages.” *Boggs*, 659 F. Supp. 2d at 1209 n. 7 (citing *Dayton Hudson Corp. v. Am. Mut. Liability Ins.*, 621 P.2d 1155, 1160 (Okla. 1980)). As a result, Progressive is entitled to a judicial declaration that it has no obligation to indemnify any award of punitive or exemplary damages that may be obtained by any party as a result of the underlying incident.

#### **V. Conclusion**

Progressive's Motion for Summary Judgment [Doc. 42] is granted in part and denied in part. The motion is granted with respect to Progressive's request for a judicial declaration that it owes no duty of defense to Hudgins for any litigation or liability claim arising from the February 26, 2020 pursuit; that the policy affords no coverage under Part II—Medical Payments for bodily injury caused by Mr. Hudgins's criminal flight; and that Progressive has no obligation to indemnify any award of punitive or exemplary damages that may be obtained by any party as a result of the underlying incident. The motion is otherwise denied.

IT IS SO ORDERED this 13th day of September, 2021.

#### **All Citations**

Slip Copy, 2021 WL 5114313

#### Footnotes

- 1 For purposes of summary judgment, Progressive assumes Hudgins qualifies as an “insured person” under the policy. [Doc. 42, p. 13].
- 2 Defendants also argue that there is no evidence that Hudgins intended to collide with other private citizens and cause personal injury to them. [Doc. 44, p. 10; Doc. 45, p. 13]. But Hudgins's subjective intent is not dispositive. See *United Specialty Ins. Co.*, 325 F. Supp. 3d at 1236 (rejecting argument that “because [the insured] did not expect or intend to injure ... the act was accidental”).
- 3 The language contained in Exclusion 17 is not as stringent as the “natural and probable consequence” standard applicable to determining whether an “accident” occurred.

- 4 The court expresses no view on whether Exclusion 17 is enforceable as to Hudgins's passengers, Cullum and Smith, as it is unclear whether they are more properly viewed as innocent victims or willing participants in Hudgins's crimes. See [Cotton, 329 S.E.2d at 142](#) (holding the exclusion could be enforceable as to the passengers of the insured vehicle if they were "willing participants in the attempt to elude the pursuing patrolman.").

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