IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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Case No. 2025-CP-29-00096
Appellate Case No. 2026-000227

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South Carolina Farm Bureau Mut. Ins. Co. ..... Appellant,

v.

John Milin and Angela M. Leone..... Respondents.

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# INITIAL BRIEF OF APPELLANT

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Respectfully submitted,

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April 9, 2026

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## STATEMENT OF ISSUE ON APPEAL

I. **Whether the Circuit Court improperly refused to enforce an "escape" clause in a Farm Bureau Farm Policy, finding it mutually repugnant to the "excess" clause in the Farm Bureau Homeowners Policy issued to the same insured.**

## STATEMENT OF THE CASE

In this appeal, South Carolina Farm Bureau Mutual Insurance Company ("Farm Bureau") seeks to have the Court enforce a farm policy escape clause as written. Farm Bureau issued two policies to Angela Leone -- a Homeowners Policy and a Farm Policy. The policies were intended to cover separate liabilities, and the Farm Policy included an escape clause to prevent overlapping coverage for the same liability. On June 13, 2023, a dog bite incident occurred adjacent to the insured's home while John Milin was cutting her fenced-in yard. As a result of the incident, John Milin filed suit against Angela Leone. Farm Bureau is providing a defense to Angela Leone under its Homeowners Policy and has tendered the Homeowners Policy's $300,000 liability limit to John Milin.

Farm Bureau filed this declaratory judgment action seeking a declaration that the escape clause in its Farm Policy is enforceable, and, consequently, the Farm Policy provides no liability coverage for the dog bite incident. Farm Bureau and John Milin filed cross motions for summary judgment. The Circuit Court refused to enforce the escape clause and granted Milin summary judgment. Farm Bureau appealed.

## FACTUAL AND PROCEDURAL BACKGROUND

### I. The Underlying Action

On August 15, 2024, John Milin filed suit in the Lancaster County Court of Common Pleas against Angela Leone, Civil Action No. 2024-CP-29-01058 (hereinafter the "Underlying Action"). (Underlying Complaint). The complaint in the Underlying Action alleges that on June 13, 2023

John Milin was cutting the grass at Angela Leone's property when he was attacked by her dog. (*Id.* at ¶¶ 3-12). The complaint in the Underlying Action alleges that John Milin sustained injuries as a result of the dog attack. (*Id.* at ¶ 12). It alleges that the incident took place on Angela Leone's property located at 3135 Old Hickory Road in Lancaster, South Carolina. (*Id.* at ¶¶ 3-4).

## II. The Farm Bureau Homeowners Policy

Farm Bureau issued a homeowners policy, Policy No. HO 0482350, to Angela Leone with effective dates of February 9, 2023 to October 7, 2023 (the "Homeowners Policy"). (Homeowners Policy). The Homeowners Policy lists the residence premises as 3135 Old Hickory Road, Lancaster, South Carolina. (*Id.*). The Homeowners Policy provides a $300,000 personal liability limit. (*Id.*). Farm Bureau is providing a defense for Angela Leone in the Underlying Action under the Homeowners Policy. (Aff. of Joseph Barrett ¶ 4). Farm Bureau has tendered the Homeowners Policy's $300,000 personal liability limit to counsel for John Milin for the claims he alleges against Angela Leone in the Underlying Action. (*Id.* at ¶ 5). The Homeowners Policy provides liability coverage for the claims alleged against Angela Leone in the Underlying Action. *See* (Homeowners Policy). Despite Farm Bureau having tendered its liability limit under the Homeowners Policy to Defendant John Milin for the June 13, 2023 incident, he continues to make claims for liability coverage under the Farm Policy for the June 13, 2023 incident.

## III. The Farm Bureau Farm Policy

Farm Bureau also issued a farm policy, Policy No. 390100000547, to Angela Leone with effective dates of October 6, 2022 to October 6, 2023 (the "Farm Policy"). (Farm Policy). The Farm Policy lists the farm location as 3135 Old Hickory Road, Lancaster, South Carolina. (*Id.*). The Farm Policy provides coverage to persons qualifying as insureds for liability arising out of

certain risks set forth in the insuring agreement and excludes certain risks through the policy exclusions and limitations. The Farm Policy provides in pertinent part:

**SECTION III – FARM LIABILITY CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:
**Loss Conditions**

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**6. Other Insurance**

This condition applies only if, in addition to the insurance provided under this Coverage Form, the "insured" has other insurance under this or any other policy covering the same obligations to pay damages and provide defense against "suits" for damages.

a. We will pay only the portion of covered damages and related defense costs that the applicable Limit of Insurance under this Coverage Form bears to the total amount of all your insurance, in covered "occurrences" arising from any cause except the ownership, maintenance, use, operation or "loading or unloading" of a:
   (1) "Motor vehicle";
   (2) Vehicle which qualifies as "mobile equipment" only while used on premises you own or rent; or
   (3) Watercraft.

b. In covered "occurrences" arising from the ownership, maintenance, operation, use, or "loading or unloading" of a conveyance described in Paragraphs a.(1), (2) or (3) above, this insurance will not apply to the extent that any collectible insurance, whether primary, excess or contingent, is available to any "insured".

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**INSURANCE UNDER MORE THAN ONE POLICY**

This endorsement modifies insurance provided under the following:

FARM LIABILITY COVERAGE FORM

The following Paragraph c. is added to Loss Condition **6.** Other Insurance in Section **III** – Farm Liability Conditions:

c. However, regardless of the provisions of Paragraphs **a.** and **b.** above, this Policy does not apply to any loss or damage or defense against a "suit" which:
   (1) Is covered under any other policy or any renewal or replacement thereof; or

(2) Would be covered under another policy or any renewal or replacement thereof, had the limits of such policy not been exhausted.

***

(*Id.* at pp. 102-103, 111). Thus, the Farm Policy does not provide liability coverage for any loss or damage or defense against any suit which is covered under any other policy or would be covered had the limits of such policy not been exhausted.

## IV. The Procedural History

On January 24, 2025, Farm Bureau filed the present action seeking a declaration that the Farm Policy does not provide any liability coverage for any injuries or damages resulting from the June 13, 2023 incident and Farm Bureau has no duty to defend Angela Leone under the Farm Policy against any suits resulting from such incident. (Compl. ¶¶ 17-22). John Milin and Farm Bureau filed cross motions for summary judgment, Farm Bureau filed a Memorandum in Support of its Motion for Summary Judgment, and Angela Leone filed a Memorandum in Support of Milin's Motion for Summary Judgment. (Milin Mot. for Summ. J.); (Farm Bureau Mot. for Summ. J.); (Farm Bureau Mem. in Support); (Leone Mem. in Support).

On September 3, 2025, the Circuit Court held a hearing on the Motions. (October 27, 2025 Order, p. 1). On October 27, 2025, the Circuit Court entered an Order granting Milin's Motion for Summary Judgment and denying Farm Bureau's Motion for Summary Judgment. (October 27, 2025 Order). The Circuit Court held that the Farm Policy's "Insurance Under More Than One Policy" endorsement was unenforceable. (*Id.* at pp. 3-4). The Circuit Court further held that the Farm Policy's escape clause was "mutually repugnant to the Homeowners Policy's excess clause." (*Id.* at p. 4). On October 31, 2025, Farm Bureau filed a Motion to Alter or Amend the Order or, In the Alternative, Motion to Clarify. (Farm Bureau Mot. to Alter). By Form 4 Order dated January

13, 2026, the Circuit Court denied Farm Bureau's Motion. (January 13, 2026 Order). This appeal followed.

## STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP...." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) "Whether coverage exists under an insurance contract is a question of law for the Court. Further, cross-motions for summary judgment are treated as questions of law." *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022) (citations omitted). "As to questions of law, this court's standard of review is de novo." *Pearson v. Richland Cnty.*, 445 S.C. 246, 249, 912 S.E.2d 286, 288 (Ct. App. 2025) (citation omitted). "An appellate court may decide questions of law with no particular deference to the trial court." *Id.* (citation omitted).

## ARGUMENT

Farm Bureau issued two policies to Angela Leone – a Homeowners Policy and a Farm Policy. The policies were intended to cover separate liabilities, and the Farm Policy included an escape clause to prevent overlapping coverage for the same liability. Under South Carolina law, the Farm Policy's escape clause is enforceable as written. It precludes liability coverage for any loss or damage or defense against a suit which is covered under any other policy. The Homeowners Policy provides liability coverage for the June 13, 2023 dog bite incident. Farm Bureau is providing a defense and indemnification to its named insured under the Homeowners Policy. (Aff. of Joseph Barrett ¶¶ 4-5). Therefore, the Farm Policy's escape clause is enforceable in accordance with its plain terms. Moreover, contrary to the Circuit Court's holding, the "excess" clause in the Homeowners Policy is not mutually repugnant with the "escape" clause in the Farm Policy.

Therefore, the Circuit Court's holding should be reversed, and Farm Bureau should be granted summary judgment.

## I. Under South Carolina law, the Escape Clause is enforceable as written.

"Insurance companies and insureds are generally free to contract for exclusions or limitations on coverage." *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 375, 858 S.E.2d 633, 635 (2021). "[I]nsurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition." *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 104 (2006). Courts "must enforce, not write, contracts of insurance and . . . must give policy language its plain, ordinary and popular meaning." *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994). "[P]arties have a right to make their own contract and it is not the function of the court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties." *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.E.2d 636, 643, 216 S.E.2d 547, 550 (1975). Therefore if "the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Ballard v. Admiral Ins. Co.*, 442 S.C. 22, 34, 897 S.E.2d 183, 189 (Ct. App. 2023); *see also Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 579, 757 S.E.2d 399, 406 (2014) ("Thus, when a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.") (citation omitted). "The court's duty is limited to the interpretation of the contract made by the parties themselves ...." *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 549, 535, 514 S.E.2d 327, 330 (1999) (cleaned up) (citations omitted).

The Farm Policy provision at issue states: "[T]his Policy does not apply to any loss or damage or defense against a "suit" which [i]s covered under any other policy...or [w]ould be

covered under another policy...had the limits of such policy not been exhausted." (Farm Policy, p. 111). The provision at issue is a type of "escape clause" – "which provides that an insurer is absolved of all liability if other coverage is available." *South Carolina Ins. Co. v. Fid. & Guar. Ins. Underwriters, Inc.*, 327 S.C. 207, 211, 489 S.E.2d 200, 202 (1997). Farm Bureau is paying for the insured's defense in the Underlying Action under the Homeowners Policy. (Aff. of Joseph Barrett ¶ 4). Farm Bureau is also providing indemnity for the insured under the Homeowners Policy. (*Id.* at ¶ 5). The Homeowners Policy provides coverage for the claims in the Underlying Action. Therefore, the Farm Policy provision applies according to its plain terms. The Farm Policy does not apply to the loss, damages, or defense in the Underlying Action because they are "covered under another policy" – the Homeowners Policy. (Farm Policy, p. 111). This does not leave the named insured without any liability coverage. She has liability coverage under the Homeowners Policy for the incident at issue. Th escape clause in the Farm Policy simply prevents overlapping, double coverage for the same insured and same incident.

No South Carolina statute or public policy prevents enforcement of an escape clause, particularly when the same insurer has issued another policy to the same insured that provides coverage for the loss at issue. *See Ferromontan, Inc. v. Georgetown Steel Corp.*, 535 F. Supp. 1198, 1213 (D.S.C. 1982), *aff'd*, 758 F.2d 646 (4th Cir. 1985), *and aff'd sub nom. Raw Material Corp. v. Ryan-Walsh Stevedoring Co.*, 758 F.2d 648 (4th Cir. 1985) (enforcing escape clause and citing numerous other cases that have enforced them). The South Carolina Supreme Court has sustained the validity of escape clauses where only one of two policies contains such a clause. In *Spann v. Phoenix Ins. Co. of Hartford, Conn.*, 83 S.C. 262, 65 S.E. 232 (1909), the court upheld the validity of an escape clause which stated:

> The entire policy... shall be void, if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on the property covered ...by this policy.

*Id.* at 232. The court held that the policy was voided by the purchase of additional insurance by the insured. This principle was reiterated in *Camden Wholesale Grocery v. Nat'l Fire Ins. Co. of Hartford, Conn.*, 106 S.C. 467, 91 S.E. 732, 734 (1917), *Young v. St. Paul Fire & Marine Ins. Co.*, 68 S.C. 387, 47 S.E. 681, 682 (1904), and *Walker v. Queen Ins. Co.*, 136 S.C. 144, 134 S.E. 263, 273 (1926).

In short, these South Carolina cases indicate that escape clauses such as the one present in the Farm Policy are valid and are to be construed and applied according to their plain terms. With respect to these clauses, a policy of insurance is nothing more than a contract between the insurance carrier and its insured and is to be governed by the ordinary rules of contract interpretation. Moreover, Farm Bureau – being the same entity that issued both the Homeowners Policy and the Farm Policy to the same named insured – was aware of its other policy issued to this insured when setting the premium rates for the policies.[1] As demonstrated by the escape clause, it did not intend to provide liability coverage under the Farm Policy for a loss covered under the Homeowners Policy.

## II. Contrary to the Circuit Court's holding, the "excess" clause in the Farm Bureau Homeowners Policy is not mutually repugnant with the "escape" clause in the Farm Bureau Farm Policy.

Contrary to the Circuit Court's legal conclusions, the Farm Policy's escape clause does not "conflict[] with the Homeowners Policy's excess Framework, creating a circular conflict" nor are the excess clause and escape clause "mutually repugnant." *See* (October 27, 2025 Order, pp. 2, 4).

[1] Both policies were obtained from insurance agent Tom Baker. *Compare* (Ex. B, Homeowners Policy, pp. 1,4) *with* (Ex. D, Farm Policy, p. 3).

According to the South Carolina Supreme Court, the four most common forms of "other insurance" clauses are:

> (1) the "pro rata" clause, which provides that the insurer will pay its share of the loss in the proportion its policy limits relates to the aggregate liability coverage available; (2) **an "excess" clause, which provides that an insurer will pay a loss only after other available primary insurance is exhausted**; (3) **an "escape" clause, which provides that an insurer is absolved of all liability if other coverage is available**; and (4) an "excess escape" clause, which provides that the insurer is liable for that amount of a loss exceeding other available coverage and that the insurer is not liable when other available insurance has limits equal to or greater than its own.

*South Carolina Ins. Co.*, 327 S.C. at 211–12, 489 S.E.2d at 202 (emphasis added).

The Homeowners Policy's "other insurance" provision provides:

> **Other Insurance – Coverage E – Personal Liability**. This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

(Homeowners Policy, p. 66-67). As the Circuit Court correctly recognized, this is an "**excess**" clause. *See* (October 27, 2025 Order, p. 4 ¶ D); s*ee also S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.*, 353 S.C. 249, 254, 578 S.E.2d 8, 11 (2003) (labeling this exact "other insurance" provision as an "excess" provision).

The Farm Policy's "Other Insurance" provision states that "this Policy does not apply to any loss or damage or defense against a "suit" which is covered under any other policy… or [w]ould be covered under another policy…had the limits of such policy not been exhausted." (Farm Policy, p. 111). This is an "**escape**" clause – one that provides that "an insurer is absolved of all liability if other coverage is available." *See South Carolina Ins. Co.*, 327 S.C. at 211–12, 489 S.E.2d at 202; *see also* (October 27, 2025 Order, p. 2) (recognizing this as "escape" language).

The Circuit Court cited only one case for its legal conclusion that the excess clause in the Homeowners Policy and the escape clause in the Farm Policy are "mutually repugnant" – *South*

*Carolina Ins. Co. v. Fid. & Guar. Ins. Underwriters, Inc.*, 327 S.C. 207, 489 S.E.2d 200 (1997). However, that case involved two excess provisions – not an excess provision v. an escape provision. *Id.* at 212, 489 S.E.2d at 202 ("[I]n this matter we have a competition between two 'excess' 'other insurance' clauses...."). The South Carolina Supreme Court cases dealing with escape clauses have enforced them. *See, e.g., Spann v. Phoenix Ins. Co. of Hartford, Conn.*, 83 S.C. 262, 65 S.E. 232 (1909).

The only other case the Circuit Court cited in its Order – *South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Grp.* – involved a primary and excess clause and found those clauses were "not mutually repugnant." 353 S.C. 249, 254, 578 S.E.2d 8, 11 (2003) ("Under the plain language of SECURE's 'other insurance' clause, its insurance is primary. Under the plain language of Farm Bureau's 'other insurance' clause, its insurance is 'excess.' Because these two provisions are not mutually repugnant, it was unnecessary to apply the 'total policy insuring intent' rule to allocate priority between the two carriers.").

Additionally, courts in other jurisdictions do not find an escape clause and an excess clause mutually repugnant. *See, e.g., Hodgen v. Forest Oil Corp.*, 862 F. Supp. 1567, 1577 n. 43 (W.D. La. 1994) (reviewing three policies – one with a pro-rata other insurance clause, one with an excess other insurance clause, and one with an escape other insurance clause – and holding that "[s]ince neither clause is mutually repugnant from the...'escape' clause, we find that the escape clause may be enforced"); *State Farm Mut. Auto. Ins. Co. v. Burgin*, 752 F. Supp. 877, 884-86 (W.D. Ark. 1990) (comparing two policies, one with an excess other insurance clause and one with an escape other insurance clause, and enforcing the escape clause); *State Auto. Mut. Ins. Co. v. Ryder Truck Rental, Inc.*, 627 So. 2d 1326, 1327 (Fla. Dist. Ct. App. 1993) (same).

Moreover, the interaction of these two different clauses does not create "a circular conflict" as the Circuit Court held. *See* (October 27, 2025 Order, p. 2). The Homeowners Policy provides some type of coverage irrespective of whether there is other coverage provided by another insurance carrier. In other words, the Homeowners Policy always provides either primary coverage or excess coverage. *See Monumental Paving & Excavating, Inc. v. Pennsylvania Manufacturers' Ass'n Ins. Co.*, 176 F.3d 794, 800 (4th Cir. 1999) ("Under an excess clause the insurer remains liable up to the limits of the policy containing the excess clause. This is distinct from an 'escape' clause which provides that the insurer has no liability if there is other insurance.") (citations omitted). The Homeowners Policy provides primary coverage unless there is "other valid and collectible insurance" – which is the trigger for its excess clause. (Homeowners Policy, pp. 66-67). On the other hand, the Farm Policy clearly and unambiguously states that it will provide no coverage where another policy covers all or any part of the loss. Thus, there is no conflict between the Homeowners Policy provision and the Farm Policy provision. Under these circumstances, the Homeowners Policy provides primary coverage. There is no other valid and collectible insurance because the Farm Policy specifically provides no coverage. Consequently, the "excess" clause in the Homeowners Policy is not triggered and does not create a "circular conflict."

## CONCLUSION

For the foregoing reasons, Farm Bureau respectfully requests that the Court reverse the Circuit Court's holding and grant summary judgment in favor of Farm Bureau on its declaratory judgment claim. Under South Carolina law, the Farm Policy's escape clause is enforceable as written.

Respectfully submitted,

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