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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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

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

v.

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

FINAL REPLY BRIEF OF APPELLANT

Respectfully submitted,

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SUMMARY

The sole question in this appeal is whether the Farm Policy's "escape" clause is enforceable according to its plain terms. Under South Carolina Supreme Court precedent, "escape" clauses are enforceable as written. Contrary to Respondent's argument, reading the Homeowners Policy's "excess" clause with the Farm Policy's "escape" clause does not create a "circular conflict." The Homeowners Policy's "excess" clause is not triggered under these circumstances. Consequently, the Farm Policy's "escape" clause should be enforced according to its plain terms.

ARGUMENT

I. As an initial matter, Respondent's reliance on "expert" testimony is improper with this pure question of law.

As Respondent Milin admits in his Brief, "'[w]hether coverage exists under an insurance contract is a question of law for the Court.'" [Respondent's Br., p. 7 (quoting *Progressive Direct Ins. Co. v. Groves*, 438 S.C. 26, 31, 882 S.E.2d 464, 466 (2022))]. The sole question in this appeal is whether the Farm Policy's escape clause is enforceable – a question of law. As the South Carolina Supreme Court and this Court have repeatedly stated: "'In general, expert testimony **on issues of law** is inadmissible.'" *Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 632, 891 S.E.2d 682, 697 (Ct. App. 2023) (quoting *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003)) (emphasis in orig.); *see also State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (same); *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 106–07, 249 S.E.2d 734, 739–40 (1978) (where expert testimony was offered to establish a conclusion of law, the Court held that the trial court properly excluded the testimony because that was within the exclusive province of the trial court); *Carter v. Bryant*, 429 S.C. 298, 313, 838 S.E.2d 523, 531 (Ct. App. 2020) (stating that "[t]he common law and the federal rules of evidence forbid opinions on issues of law, except foreign law" and "Rule 704, SCRE, is identical to Rule 704 of the Federal Rules of Evidence as it existed before a 1984 amendment"); Rule

702, SCRE ("If ... specialized knowledge will assist the trier of fact to understand the evidence or **to determine a fact in issue**, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.") (emphasis added).

Despite this rule, Respondent's Brief is replete with "expert" testimony allegedly supporting Respondent's position on this pure question of law. [Respondent's Brief pp. 10, 12, 14, 21]. This is an improper attempt to "usurp" the Court's role in determining this question of law. *See Dawkins*, 354 S.C. at 65, 580 S.E.2d at 437. Therefore, the "expert" opinions included in Respondent's Brief should be disregarded and not considered as support for Respondent's position.

II. Escape clauses are enforceable under South Carolina Supreme Court precedent, and Respondent's disregard for such case law is improper.

Respondent's Brief is devoid of any South Carolina cases addressing "escape" clauses. *See* [Respondent's Br.]. This is likely because South Carolina has a long history of enforcing "escape" clauses in insurance policies.

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).

Respondent attempts to distinguish these cases by arguing that they are old and that these "escape" clauses served an "over insuring" function that is not present in this case. [Respondent's Br. pp. 14-15].

Respondent's age argument is without merit. The age of these cases does nothing more than demonstrate that it has been South Carolina's longstanding practice to enforce "escape" clauses according to their plain terms. Nowhere in his Brief does Respondent suggest that these Supreme Court cases have been overturned by subsequent Supreme Court cases, nor could he properly make such a suggestion. *See* [Respondent's Br.]. "*Stare decisis* exists to insure a quality of justice which results from certainty and stability." *State v. One Coin-Operated Video Game Mach.*, 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996) (citation omitted); *see also Dean v. Timmerman*, 234 S.C. 35, 42, 106 S.E.2d 665, 669 (1959) ("The Opinions of an Appellate Court should remain as constant as the proper administration of justice under an enlightened government will permit…."); *Butts v. Mace*, 448 S.C. 39, 49, 930 S.E.2d 698, 703 (2026), *reh'g denied* (June 29, 2026) ("*Stare decisis* promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.") (citation omitted).

Moreover, contrary to Respondent's arguments, the holdings in these cases did not turn on public policy arguments, but the plain language of the policy provisions. *See Spann*, 83 S.C. 262, 65 S.E. at 232–33 ("The provisions of the policy with respect to additional insurance are perfectly clear and consistent, and their validity has universal judicial recognition."); *Camden Wholesale Grocery*, 106 S.C. 467, 91 S.E. at 734 ("[I]t violated that provision of the policy that it would be void if the insured thereafter made or procured any other contract of insurance whether valid or not, and thereby worked a forfeiture of the policy".); *Young*, 68 S.C. 387, 47 S.E. 681, 682 (1904)

("To hold the insured not to be bound by this provision would be equivalent to holding that, when a contract is made for a policy of insurance, and the ordinary policy is issued with the usual conditions printed in it, all these conditions would be void, and have no effect on the liability under the policy, unless expressly brought to the notice of the insured, and assented to by him. To state such a proposition is to reject it."); *Walker*, 136 S.C. 144, 134 S.E. at 273 ("The total defense is based upon the provision in the policy....It follows that, if the condition was a valid one, that it was breached by the insured, and that there was no waiver by the company, the direction of a verdict in favor of the defendant company was inevitable."). Thus, Respondent's revisionist history arguments are without merit.

Additionally, even if these holdings had "prevention of over insuring" as a primary concern, the same "over insuring" function is present in this case. The same insurer would not typically issue two primary policies to an insured that cover the same liability – in this case Bodily Injury and Property Damage Liability coverage for premises liability claims at the same premises. However, many farms include a residence. Consequently, the Farm Policy includes an "escape" clause instead of an "excess" clause. The Homeowners Policy defines residence premises to include the area within 250 feet of the masonry owner occupied dwelling located at 3135 Old Hickory Road, Lancaster, South Carolina. (Homeowners Policy, R. p. 161). Likewise, the Farm Policy defines "insured location" to include the farm premises and "residence premises" shown in the Declarations. (Farm Policy, R. p. 123). It defines "residence premises" as Angela Leone's principal residence and the grounds and structures appurtenant to her principal residence. The Declarations define this location as 3135 Old Hickory Road, Lancaster, South Carolina. (Farm Policy, R. pp. 99, 125). Thus, both the Homeowners Policy and Farm Policy define the insured location to include Angela Leone's residence located at 3135 Old Hickory Road, Lancaster, South

Carolina and the area within 250 feet of this dwelling. Moreover, exemplifying this potential for over insuring between the two policies is Respondent's claim that both policies provide coverage for a single premises liability "occurrence." In light of this potential for over insuring by the same insurer, Farm Bureau included an "escape" clause in the Farm Policy (contained in its own endorsement) and a corresponding "Farm Package Discount". *See* (Farm Policy, R. pp. 19, 127).

Therefore, under South Carolina law, the Farm Policy's "escape" clause must be enforced according to its plain terms.

III. The "Other Insurance" provisions of the Policies do not create a circular conflict.

Respondent's sole argument for why this Court should disregard the plain language of the Farm Policy's "escape" clause is because it allegedly creates a "circular conflict" when read with the Homeowners Policy's "excess" clause, making them mutually repugnant. There is no such "circular conflict".

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. v. Fid. & Guar. Ins. Underwriters, Inc., 327 S.C. 207, 211–12, 489 S.E.2d 200, 202 (1997) (emphasis added).

The Farm Bureau 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, R. pp. 223-224). As Respondent correctly recognized, this is an "**excess**" clause. [Respondent's Br., pp. 8-10]; *see 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 Bureau 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, R. p. 127). 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* [Respondent's Br., p. 10] (recognizing this as an "escape" clause).

Respondent cited only one South Carolina case for his argument that this excess clause and escape clause are "mutually repugnant" – *South Carolina Ins. Co. v. Fid. & Guar. Ins. Underwriters, Inc.*, 327 S.C. 207, 489 S.E.2d 200 (1997). *See* [Respondent's Br., pp. 9-15]. 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*, 83 S.C. 262, 65 S.E. 232. Additionally, courts 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) ("A review of the INA and Store-brand policies indicates that the INA policy has a 'pro-rata' other insurance clause, and the Store-brand policy has an 'excess' other insurance clause....Since neither clause is mutually repugnant from the Commercial Union/Albany '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); *State Auto. Mut. Ins. Co. v. Ryder Truck Rental, Inc.*, 627 So. 2d 1326, 1327 (Fla. Dist. Ct. App. 1993).

The interaction of these two different clauses does not create "a circular conflict" making them mutually repugnant. The Homeowners Policy provides some type of coverage irrespective of whether there is other coverage provided by another insurance policy. In other words, that 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 "Other Insurance" provision in the Homeowners Policy provides:

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

(Homeowners Policy, R. pp. 223-224) (underline emphasis added). Respondent's reading of this provision glosses right over the underlined language and reads it out of the provision. [Respondent's Br., pp. 12-13]. The Homeowners Policy provides primary coverage unless there is "other valid and collectible insurance" – which is the trigger for its excess clause. (Homeowners Policy, R. pp. 223-224). Thus, the first question when reading this policy provision is whether there is other valid and collectible insurance applicable to the loss. Here, there is not.

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:

> …[T]his 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.

(Farm Policy, R. p. 127). It is indisputable that the Homeowners Policy provides some liability coverage for the loss at issue. The Homeowners Policy does not include an "escape" clause. Respondent's own Brief contains numerous admissions that the Homeowners Policy provides some liability coverage for Respondent's alleged loss. [Respondent's Br., pp. 1, 3, 5].

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. Therefore, no "circular conflict" prevents the enforcement of the plain language of the "escape" clause.

Contrary to Respondent's arguments, Farm Bureau is not disregarding the Homeowners Policy's "excess" clause but, rather, applying it and the "escape" clause according to their plain terms. This is exactly what a South Carolina court is also required to do. *See, e.g.*, *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994) (Courts "must enforce, not write, contracts of insurance and . . . must give policy language its plain, ordinary and popular meaning."); *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.E.2d 636, 643, 216 S.E.2d 547, 550 (1975) ("[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."); *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 549, 535, 514 S.E.2d 327, 330 (1999) ("The court's duty is limited to the interpretation of the contract made by the parties themselves ….") (cleaned up) (citations omitted).

As shown above, there is no "circular conflict." Respondent's Brief correctly states that South Carolina courts enforce "other insurance" clauses as written where they can be harmonized. [Respondent's Br., p. 19]; *see also S.E.C.U.R.E. Underwriters Risk Retention Grp.*, 353 S.C. at 254, 578 S.E.2d at 11 (enforcing "other insurance" provisions according to their "plain language" when such provisions were not mutually repugnant). As shown above, there is no circular conflict, and the "excess" and "escape" clause can be harmonized. Therefore, they should be enforced according to their plain terms.

IV. The "reasonable expectations" doctrine does not apply given the plain language of the Policies.

South Carolina courts do not apply the doctrine of reasonable expectations "where a contract of insurance unambiguously denies coverage under its plain terms." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 578–79, 757 S.E.2d 399, 406 (2014). As shown above, the Farm Policy unambiguously denies coverage under its plain terms in this circumstance. South Carolina "jurisprudence does not support the creation of a substantive right in reasonable expectations." *Id.* at 579, 757 S.E.2d at 406. It "cannot be used to alter the plain terms of an insurance policy" – which is how Respondent is asking the Court to use this doctrine. *Id.* at 581, 757 S.E.2d at 407. Therefore, the doctrine is inapplicable.

Moreover, Respondent's "reasonable expectations" argument is simply an argument that "escape" clauses in general are not enforceable under South Carolina law when an insured has paid a premium. That is not the law in South Carolina. *See, e.g.*, *Spann*, 83 S.C. 262, 65 S.E. at 232–33 *Camden Wholesale Grocery*, 106 S.C. 467, 91 S.E. at 734; *Young*, 68 S.C. 387, 47 S.E. at 682; *Walker*, 136 S.C. 144, 134 S.E. at 273; *see also 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).

CONCLUSION

For the above-stated reasons and those set forth in its prior Brief, Farm Bureau respectfully requests that this Court reverse the Circuit Court's ruling and grant summary judgment in favor of Farm Bureau, holding that the Farm Policy's "escape" clause is enforceable according to its plain terms.

Respectfully submitted,

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