STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	CIVIL ACTION NO.: 2014-CP-16-1027
James Lee Williams, as Personal Representative of the Estate of Mary Frances Williams, Plaintiff,	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
vs.	)	
South Carolina Farm Bureau Mutual Insurance Company, Defendant.	)	

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SCOTT B. SUGGS
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DARLINGTON COUNTY, S.C.

This is a declaratory judgment action in which Plaintiff seeks uninsured motorist ("UM") coverage pursuant to an automobile insurance policy issued by the Defendant. This matter came before the Court on Tuesday, November 28th, 2017 on cross-motions for summary judgment filed by each of the parties. Present before the Court was the Plaintiff and his counsel, William E. Hopkins, Jr. and Kathy Price Elmore, and counsel for the Defendant, Louis, D. Nettles.

This case arises out of a collision which occurred at approximately 5:00 p.m., on or about March 17, 2012. Plaintiff's wife was travelling southbound on Society Hill Road, a/k/a South Carolina Highway 133 ("Society Hill Road"), and her two minor children were passengers in the vehicle. At that same time, Dennis James Shaw ("Shaw") was travelling northbound on Society Hill Road. At the same time, Stuart Walter Berry ("Berry") was operating an ATV, while intoxicated, and traveling on Watkins Road approaching the intersection with Society Hill Road. At the time that Berry reached the stop sign at the intersection of Watkins Road and Society Hill Road,

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he failed to stop for the stop sign and entered the roadway in the southbound lane of travel. By turning directly into the path of Mrs. Williams, Berry forced her to swerve to avoid hitting him on his ATV, which caused her to collide with the 1990 Chevrolet truck being operated by Shaw. Mrs. Williams was killed and her two children were injured in the collision. Plaintiff thereafter submitted a claim for UM benefits under his auto policy since the ATV was uninsured and Farm Bureau denied the claim, arguing that since the ATV was "not designed for use on public roads". This action then followed.

The following facts are not in dispute:

1. That at all times relevant hereto, to include the time and place of the accident out of which this dispute arises, Stuart R. Berry was operating a 2006 Kawasaki ATV on a public road.

2. Stuart W. Berry pled guilty to, and was sentenced for, Felony DUI, Hit and Run, and violation of South Carolina Code Section 56-5-510, the traffic statute requiring the registration and fee payment of an uninsured motor vehicle.

3. That at all times relevant hereto, to include the time and place of the accident out of which this dispute arises, the Defendant had issued an automobile insurance policy (hereinafter "the Policy"), wherein Farm Bureau issued a personal auto policy that included uninsured motorist coverage.

4. On Page 1 of the Policy, it states that "[t]he language of this insurance policy includes certain common words for easy understanding." Thereafter the Policy specifically defines certain terms and meanings as follows:

> 4. **Auto(s)** means a self-propelled **motor vehicle**, designed primarily to be used on public roads and required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.
>
> . . .

10. **Motor vehicle** means a self-propelled vehicle or **trailer** designed for use on public roads.

A **motor vehicle** does not include:

a. Tractor engines;
b. Road rollers;
c. Farm tractors;
d. Tractor cranes;
e. Power shovels;
f. Well drillers;
g. Electric trolleys; or
h. Vehicles designed to operate on rails or crawler treads.

5. Part II of the Policy sets forth the provisions of uninsured-underinsured motorist coverage as follows:

Uninsured Motorist Coverage

We will pay damages for **bodily injury** or **property damage** a **covered person** is legally entitled to collect from the owner or operator on an **uninsured motor vehicle.** The **bodily injury** or **property damage** must be caused by accident arising out of the operation or ownership of the **uninsured motor vehicle.**

6. Also set forth in Part II as referenced herein above, the Policy provides as follows:

5. **Uninsured motor vehicle** means:

a. a **motor vehicle**, the ownership, maintenance or wish of which is:

(1) not insured or bonded for **bodily injury** and **property damage** liability at the time of the accident; or

7. South Carolina law defines "motor vehicle" as follows:

"'Motor vehicle' means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well-drillers, and every vehicle which is propelled by electric power obtained from overhead wires bit not operated upon rails. For purpose of this

chapter, the term automobile has the same meaning as motor vehicle." South Carolina Code Ann. **§38-77-30(9).**

In South Carolina, insurance policies are construed most strongly in favor of coverage and against the insurer who drafted them. Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101, 245 S.E.2d 598 (1978); Trimper v. Nationwide Ins. Co., 540 F. Supp. 1188, 1192 (D.S.C. 1982). Further, exclusions in an insurance policy are always construed most strongly against the insurer. American Credit v. Nationwide, 663 S.E.2d 492, 378 S.C. 623 (2008).

Initially, the Court notes that Farm Bureau could have easily avoided this predicament if it had specifically excluded ATVs from its definition of "motor vehicle". The Farm Bureau policy specifically identifies eight (8) separate things which it states are not considered or to be construed as motor vehicles, including tractors. Farm Bureau drafted the policy at issue and could have easily included ATVs in its list of items which are not motor vehicles.

While Farm Bureau defines "auto" as a motor vehicle "designed *primarily* to be used on public roads", it defines "motor vehicle" as a self-propelled vehicle "designed for use on public roads", deleting the term "*primarily*". As set forth above, the South Carolina Legislature has defined "motor vehicle" broadly as every vehicle which is self-propelled and designed for use upon a highway. The Legislature clearly did not exclude ATVs as a motor vehicle, which it could have done. Farm Bureau argues, however, that the Legislature did intend to exclude ATVs from uninsured motorist coverage because the definition defines "motor vehicle", liked the policy, as a self-propelled vehicle "designed for use upon a highway". Like the policy, however, the Legislature provides a

list of specific vehicles which are not motor vehicles and ATVs are not among those identified and listed.

Farm Bureau cites the case of Anderson v. State Farm, 442 S.E.2d 179 (1993) in support of its position. This case is inapplicable. First, this case involved a farm tractor, which are specifically excluded as a motor vehicle in Farm Bureau's policy. If anything, this case may actually hurt Farm Bureau's argument as it shows the company knows full well how to draft and include a specific exclusion. The policy specifically excludes tractors but not ATVs. Second, there is no real dispute that a farm tractor is not designed to ever be used on a highway. ATVs, however, have many attributes necessary for it to be operated on a highway. In fact, this was the basis for the Court's holding in Montgomery v. Progressive Advanced Ins. Co., Civil Action No. 2:14-cv-00231 (E.D. Va. March 6, 2015).

In Montgomery, the United States District Court for the Eastern District of Virginia first determined that an ATV is a motor vehicle in that it is self-propelled and does not travel on rails and therefore meets the standard definition of a motor vehicle, which is the exact same definition used in South Carolina. Moving on to the issue of whether or not the ATV is "designed for use primarily on public roads", the Court noted that the ATV, just like the one in this case, was a four wheeled vehicle, self-propelled, capable of being driven forward or in reverse, had headlamps for night driving, was capable of traveling up to 45 mph, and, according to the ticket issued by law enforcement to Stuart Berry, should have been registered with the State. The Court concluded that while the ATV manual, as here, indicated the vehicle was designed for off road use, "the reality is that the vehicle was equipped to legally operate both on public highways and off-road,

and was operated both on and off public highways." The Court further found that since the insurer did not specifically exclude ATVs, like Farm Bureau in this case, the policy was ambiguous and coverage was afforded. This identical holding was reached by the Chief District Court Judge in Porter v. Buck, Civil Action No. 7:14-cv-00176 (W.D.Va. February 24, 2015).

In Reed v. Government Employees Insurance Company, Civil Action No. 4:11-cv-00109-DPJ-FKB (S.D.Miss. June 19, 2012), the Southern District of Mississippi held that where the policy excluded motor vehicles "designed for use principally off public roads", but the ATV was being used on a public road at the time of the accident, as here, the exclusion was ambiguous and must be construed against the insurer and found coverage available.

At least two other states, including our sister state of Georgia, have found the term "designed for use on public roads" or "designed for use primarily on public roads" to be ambiguous and therefore construed against the drafter (insurance company) in favor of UM coverage. In Georgia, like South Carolina, the financial responsibility laws define motor vehicle as any self-propelled vehicle which is designed for use on public roads. OCGA § 36-92-1. Initially, in Crider v. Zurich Ins. Co., 474 S.E.2d 89 (Ga. App. 1996), the Georgia Court of Appeals "rejected the narrow definition of "motor vehicle" contained in Georgia's automobile insurance statutes, concluding that a vehicle does not have to be designed primarily for use on public roads to constitute a motor vehicle . . ." . Then, McDuffie v. Coweta County, 682 S.E.2d 609 (Ga. App. 2009), the Georgia Court of Appeals found that while a vehicle may not have been "made" for use on a public highway it "could" be driven on public highways and was capable of being driven

on public roads and was, in fact, driven on public roads from time to time. The Court found that because "this provision may be fairly understood in more ways than one" and "is susceptible to two or more constructions", it was ambiguous. Id. at 613. This holding was again confirmed in Glass v. Gates, 716 S.E.2d 61 (Ga. App. 2012).

Likewise, in Waters v. Farmers Ins. Co., 924 P.2d 37 (Wash. App. 1996), the Washington Court of Appeals also found the phrase "designed for use primarily on public roads" to be ambiguous, where the vehicle was capable of being driven on a public road, and therefore construed against the insurer.

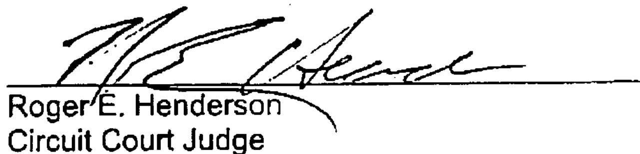
In Harper v. Lumbermens Mut. Ins. Co., 572 N.Y.S.2d 195, 174 A.D.2d 1031 (N.Y.A.D. 1991), the New York Supreme Court, Appellate Division, determined and held that where the New York Legislature, like South Carolina, did not insert a specific exclusion of ATVs from its statutory definition of motor vehicle, it should presume they are not excluded. Even after the New York Legislature, like South Carolina, later amended its uninsured motorist coverage statues to specifically exclude ATVs from the statutory definition of motor vehicle, the New York Supreme Court, Appellate Division held that "notwithstanding" the amendment an ATV was still included in the statutory definition of motorcycle and therefore covered by the UM endorsement. Nationwide Mut. Ins. Co. v. Riccadulli, 183 A.D.2d 111 (N.Y.A.D. 1992).

Similarly, the Missouri Court of Appeals used the same logic in American Family Mutual Insurance Company v. Peck, 169 S.W.3d 563 (Mo. 2005) in holding that under the state legislature's definition of motor vehicle, which did not specifically exclude ATVs, the three-wheeled vehicle, even if designed primarily for off-road use, constituted a vehicle and therefore coverage existed.

Having considered the record, including the pleadings and the materials filed by the parties, as well as the case law and argument of counsel, based on the foregoing the Court finds Plaintiff's motion for summary judgment should be granted and the Defendant's motion should be denied. Farm Bureau failed to specifically exclude ATVs from its definition of motor vehicles. The ATV clearly meets the definition of the SOutrh Carolina Legislature's definition of "motor vehicle". Furthermore, although the policy does define motor vehicle as every vehicle "designed for use on public roads", the Court finds this term ambiguous and, in accord with well-settled South Carolina law, must construe this ambiguity against the drafter/insurer and in favor of coverage. Not only is the ATV in this case capable of being driven on public highways, it was in fact being driven on a public road at the time of the incident and it has the characteristics and attributes of vehicles designed to be operated on public roads, not incidentally, and thus creates yet another ambiguity which must be resolved against the insurer and in favor of coverage.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion for summary judgment is hereby GRANTED and judgment entered in favor of Plaintiff.

AND IT IS SO ORDERED!



Roger E. Henderson
Circuit Court Judge

Chesterfield, South Carolina

December 20, 2017