

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Judge

Case No. 2014-CP-16-1027

James Lee Williams, Personal Representative
Of the Estate of Mary Frances Williams,Respondent

Vs.

South Carolina Farm Bureau Mutual Insurance Company.....Appellant

REPLY BRIEF OF APPELLANT

LOUIS D. NETTLES
Folkens Law Firm, PA
PO Box 6139
Florence, South Carolina 29502
Attorney for Appellant
843-665-0100

RECEIVED

DEC 31 2018

SC Court of Appeals

TABLE OF CONTENTS

Contents

TABLE OF AUTHORITIES ii

QUESTIONS PRESENTED..... iii

QUESTION ONE..... iii

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR WILLIAMS BECAUSE THE PHRASE “DESIGNED FOR USE ON THE PUBLIC ROADS” IS NOT AMBIGUOUS UNDER THE FACTS OF THIS CASE AND THE ATV IS CLEARLY NOT DESIGNED FOR USE ON THE PUBLIC ROADS. iii

QUESTION TWO iii

DID THE LOWER COURT ERR IN FAILING TO GRANT SUMMARY JUDGMENT TO SCFB AS THE ONLY EVIDENCE BEFORE THE COURT WAS THAT THE ATV WAS NOT DESIGNED FOR USE ON PUBLIC ROADS. iii

STATEMENT OF THE CASE 1

ARGUMENT 3

QUESTION ONE..... 3

QUESTION TWO 5

CONCLUSION 6

TABLE OF AUTHORITIES

Cases

<i>American Family Mut. Ins. Co. v. Peck</i> , 169 S.W.3d 563 (Mo., 2005)	5
<i>Dowdle v. Mississippi Farm Bureau Mut. Ins. Co.</i> , 697 So.2d 788 (Miss., 1997)	6
<i>Harper v. Lumbermens Mut. Ins. Co.</i> , 572 N.Y.S.2d 195, 174 A.D.2d 1031 (N.Y. App. Div. 1991)	5
<i>Insura Property And Cas. Co. v. Steele</i> , 800 N.E.2d 91, 344 Ill. App.3d 466, 279 Ill.Dec. 249 (Ill. App., 2003)	4
<i>Montgomery v. Progressive Advanced Ins. Co.</i> , 2015 U.S. Dist. LEXIS Civil Action No. 2:14-cv-00231 (E.D. Va. March 6, 2015)	5
<i>Porter v. Buck</i> , 137 F. Supp. 3d 890 (W.D. Va. 2015)	6
<i>Reed v. GEICO</i> 4:11cv109 So. Dist. Mississippi, E.D.	6
<i>Roberts v. Country Mut. Ins. Co.</i> , 596 N.E.2d 185, 231 Ill. App. 3d 713 (Ill. App. 1992) .	4
<i>Farm Mutual Automobile Insurance Co. v. Gandy</i> , 238 Va. 257, 383 S.E.2d 717 (1989) ..	6

Statutes

§38-77-30 ((9) S.C. Code of Laws	3
§56-1-10(7) S.C. Code Ann (2012),	3
Chapter 77 of Title 28 of the South Carolina Code	3

Other Authorities

QUESTIONS PRESENTED

QUESTION ONE

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR WILLIAMS BECAUSE THE PHRASE “DESIGNED FOR USE ON THE PUBLIC ROADS” IS NOT AMBIGUOUS UNDER THE FACTS OF THIS CASE AND THE ATV IS CLEARLY NOT DESIGNED FOR USE ON THE PUBLIC ROADS.

QUESTION TWO

DID THE LOWER COURT ERR IN FAILING TO GRANT SUMMARY JUDGMENT TO SCFB AS THE ONLY EVIDENCE BEFORE THE COURT WAS THAT THE ATV WAS NOT DESIGNED FOR USE ON PUBLIC ROADS.

STATEMENT OF THE CASE

Respondent, James Williams, (Williams) as Personal Representative of the Estate Mary Frances Williams, brought this suit on an automobile insurance contract issued by Appellant South Carolina Farm Bureau Mutual Insurance Company (SCFB) seeking to recover Uninsured Motorist Insurance Benefits arising from a motor vehicle accident involving negligent operation of an All-Terrain Vehicle (ATV). The Complaint was filed December 19, 2014. SCFB answered denying the material allegations of the Complaint and specifically denying that the ATV was an uninsured vehicle under the SCFB policy. The South Carolina Farm Bureau Mutual Insurance Company policy defines “A Motor Vehicle” as follows:

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;
1. well drillers;
- g. electric trolleys; or
- h. vehicles designed to operate on rails or crawler treads.

The case came before Judge Roger Henderson of the Darlington County Court of Common Pleas on November 28, 2017 on cross motions for summary judgment by the parties. Judge Henderson granted summary judgment in favor

of Williams by order dated January 18, 2018 and received by SCFB on January 29, 2018. SCFB filed a motion to alter or amend the judgment on February 8, 2018. Judge Henderson denied the motion to alter or amend by order dated July 23, 2018 and received by SCFB on July 24, 2018. SCFB served it Notice of Appeal on August 22, 2018.

ARGUMENT

QUESTION ONE

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR WILLIAMS BECAUSE THE PHRASE “DESIGNED FOR USE ON THE PUBLIC ROADS” IS NOT AMBIGUOUS UNDER THE FACTS OF THIS CASE AND THE ATV IS CLEARLY NOT DESIGNED FOR USE ON THE PUBLIC ROADS.

Laws are made for men of ordinary understanding, and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything mean everything or nothing, at pleasure. Thomas Jefferson, Letter to Justice William Johnson, June, 12, 1823
<http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl272.php>

The facts of the design of the ATV are set forth in Appellants’ Brief. The ATV incorporates features that make it incompatible with use on public roads.

Both the insurance policy R. p. 039 ¶10. and Chapter 77 of Title 28 of the South Carolina Code¹ define Motor vehicle as a vehicle designed for use on upon a highway. Respondent cites both *Boyett v. Redland Ins. Co.*, 741 F.3d 604 (5th Cir. 2014) and §56-1-10(7) S.C. Code Ann (2012), neither are applicable to the case. The *Boyette* case turned on a determination that Louisiana law did not have a restriction on the definition Motor Vehicle in the separate chapter that governed uninsured motorist coverage. The clear implication of the case is the forklift was **not** designed for use on public highways and it that if Louisiana statutes were the same as South Carolina, the court would have been compelled

¹ §38-77-30 ((9) S.C. Code of Laws

to hold that the forklift was not an uninsured motor vehicle. The definition of motor vehicle in Title 56 of the South Carolina Code is not applicable since Underinsured Coverage is governed by the Insurance Code, Title 38 of the South Carolina Code. Title 38 includes the provision restricting the definition of motor vehicle to vehicle designed for use upon public highways.

Respondent argues that the definition of “auto” in the policy creates and ambiguity. Respondent does not argue that the term “auto” can be construed in a manner favorable to his position. In any event the term “auto” is used to describe insured vehicles and is not included in the insuring clause of the underinsured coverage². R. p. 033

Respondent cites *Roberts v. Country Mut. Ins. Co.*, 596 N.E.2d 185, 231 Ill. App. 3d 713 (Ill. App. 1992) as favorable to him, but an opposite result was obtained in *Insura Property And Cas. Co. v. Steele*, 800 N.E.2d 91, 344 Ill. App.3d 466, 279 Ill.Dec. 249 (Ill. App., 2003) once the Illinois Legislature amended the underinsured statute to restrict underinsured coverage to “any motor vehicle **designed for use on public highways** and required to be registered in this State” emphasis added.

Respondent also cites a 1992 case from New York, *Harper v. Lumbermens Mut. Ins. Co.*, 572 N.Y.S.2d 195, 174 A.D.2d 1031 (N.Y. App. Div. 1991). New York had no language restricting the definition of underinsured vehicle to vehicle designed for use upon public roads at the time that case was decided.

² We will pay damages ... a **covered person** is legally entitled to collect from the owner or operator of an **underinsured motor vehicle**.

American Family Mut. Ins. Co. v. Peck, 169 S.W.3d 563 (Mo., 2005) also did not involve restriction limiting coverage to vehicles designed for use upon the public highway. It was decided on a question of whether ATV registration was the same as the separate motor vehicle registration law.

Montgomery v. Progressive Advanced Ins. Co., 2015 U.S. Dist. LEXIS Civil Action No. 2:14-cv-00231 (E.D. Va. March 6, 2015) involved a 4 passenger vehicle with bucket seats that was licensed and insured for use on the public roads of Arizona. The case acknowledges that under Virginia law a forklift is a vehicle designed or use primarily for use principally off public roads. *State Farm Mutual Automobile Insurance Co. v. Gandy*, 238 Va. 257, 383 S.E.2d 717 (1989) *Porter v. Buck*, 137 F. Supp. 3d 890 (W.D. Va. 2015) cited by Respondent also involved a policy in which the term motor vehicle was not defined. *Reed v. GEICO* 4:11cv109 So. Dist. Mississippi, E.D acknowledges that under *Dowdle v. Mississippi Farm Bureau Mut. Ins. Co.*, 697 So.2d 788 (Miss., 1997) the language “designed for use principally off public roads” excludes a golf cart from coverage.

QUESTION TWO

THE TRIAL COURT ERRED IN FAILING TO GRANT SUMMARY JUDGMENT TO SCFB AS THE ONLY EVIDENCE BEFORE THE COURT WAS THAT THE ATV WAS NOT DESIGNED FOR USE ON PUBLIC ROADS.

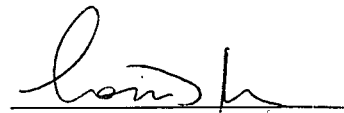
As argued above, SCFB produced evidence that the ATV was not designed

for use on public roads. Because the ATV was not designed for use on public roads, and contained specific design elements that made it dangerous use in on roads of any kind, it did not qualify as a motor vehicle as defined by the SCFB policy and the South Carolina Insurance Code. Williams failed to meet his burden of setting forth facts which would establish coverage under the policy and the Court erred in failing to grant SCFB summary judgment.

CONCLUSION

SCFB produced evidence that the ATV involved in this accident was not designed for use on public roads and was unsuitable and dangerous for such. The SCFB insurance policy and the definition of "motor vehicle" in the S.C. insurance code are unambiguous. The Trial Court erred in granting summary judgment to Respondent and failing to grant Judgment to Appellant.

Respectfully submitted,



Louis D. Nettles
Folkens Law Firm, PA
PO Box 6139
Florence SC 29502
843-665-0100

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Judge

Case No. 2014-CP-16-1027

RECEIVED
DEC 31 2018
SC Court of Appeals

James Lee Williams, Personal Representative
Of the Estate of Mary Frances Williams,.....Respondent


Vs.

South Carolina Farm Bureau Mutual Insurance Company.....Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Brief and Reply Brief comply with
Rule 211.:

December 28, 2018



LOUIS D. NETTLES
Folkens Law Firm, PA
PO Box 6139
Florence, South Carolina 29502
Attorney for Appellant
843-665-0100