

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,^{as} Personal Representative
Of the Estate of Mary Frances Williams,.....Respondent

Vs.

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

Record on Appeal

RECEIVED

DEC 31 2018

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2014-CP-16-1027

James Lee Williams, as Personal
Representative of the Estate of Mary
Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau Mutual
Insurance Company,

Defendant.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

2018 JAN 18 AM 11:26
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

FILED

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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Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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 but 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 statutes 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).

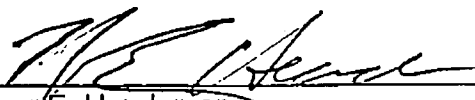
Similarly, the Missouri Court of Appeals used the same logic in American Family Mutual Insurance Company v. Peck, 169 S.W.3d 563 (Mo. 2005) in holding that under the state legislature's definition of motor vehicle, which did not specifically exclude ATVs, the three-wheeled vehicle, even if designed primarily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

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

James L. Williams as Personal
Representative of the Estate of
Mary Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau
Mutual Insurance Company

Defendant

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Case No.: 2014-CP-16-1027

ORDER

HEARING DATE:

January 18, 2018

PRESIDING JUDGE:

Roger E. Henderson

PLAINTIFF'S ATTORNEY:

William E. Hopkins

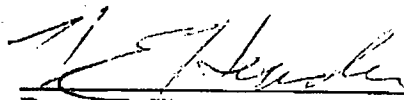
DEFENDANT'S ATTORNEY:

Louis D. Nettles

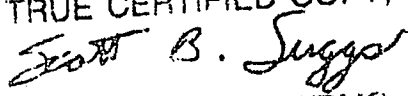
Having read and considered the Motion to Alter or Amend Judgement filed by the Defendant, after reading the arguments of counsel for the Plaintiff and Defendant, it is hereby

ORDERED that the Defendant South Carolina Farm Bureau's Motion to Alter or Amend Judgement in the case of Estate of Mary Frances Williams vs. South Carolina Farm Bureau is respectfully denied.

AND, IT IS SO ORDERED.


Roger E. Henderson
Circuit Court Judge

¹⁸
Date: July 16, 2018
Chesterfield, South Carolina

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

2018 JUL 23 PM 12:52
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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JUL 27 2018

Folkens Law Firm, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

James L. Williams, as Personal
Representative of the Estate of Mary
Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau
Mutual Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

14CP161027

SUMMONS

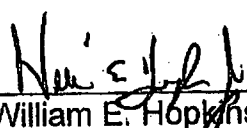
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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TO THE ABOVE NAMED DEFENDANT:

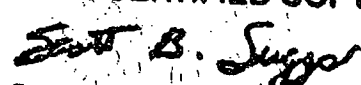
YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 12019 Ocean Highway, Post Office Box 1885, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

HOPKINS LAW FIRM, LLC


William E. Hopkins, Jr.
12019 Ocean Highway
Post Office Box 1885
Pawleys Island, South Carolina 29585
T: (843) 314-4202
F: (843) 314-9365
bill@hopkinsfirm.com

TRUE CERTIFIED COPY,


CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

JAN 02 2015

December 17, 2014

Pawleys Island, South Carolina

JAN 02 2015

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

James L. Williams, as Personal
Representative of the Estate of Mary
Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau
Mutual Insurance Company,

Defendant.

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT

14CP161027

COMPLAINT
(Declaratory Judgment Action)

2014 DEC 19 AM 10:06
FILED
SCOTT B. SUGGS
CLERK OF COURT/R.D.D.
DARLINGTON COUNTY, S.C.

Plaintiff, James L. Williams, as Personal Representative of the Estate of Mary Frances Williams, brings this declaratory judgment action against Defendant, South Carolina Farm Bureau Mutual Insurance Company, and respectfully alleges and shows this Court as follows:

PARTIES AND VENUE

1. Plaintiff, James L. Williams, is the duly appointed Personal Representative of the Estate of Mary Frances Williams, deceased, who was a citizen and resident of Darlington County, South Carolina. The Estate of Mary Frances Williams is being probated in Darlington County, South Carolina.

2. Defendant, South Carolina Farm Bureau Mutual Insurance Company, is a corporation organized and existing under the laws of South Carolina, with its principal place of business in Lexington County, South Carolina.

3. Venue is proper in Darlington County as this is where the events complained of herein occurred.

JAN 02 2015

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.
Record on Appeal 013

JURISDICTION

4. This matter is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and pursuant to the Uniform Declaratory Judgments Act, South Carolina Code Ann. sections 15-53-10 through 15-53-140.

STATEMENT OF THE CLAIM

5. On or about March 17, 2012, Plaintiff was driving her automobile southbound on Society Hill Road a/k/a South Carolina Highway 133 ("Society Hill Road"). Dennis James Shaw was travelling northbound on Society Hill Road. Stuart Walter Berry was operating an ATV and traveling on Watkins Road approaching the intersection of Society Hill Road. As Berry reached the stop sign at the intersection of Watkins Road and Society Hill Road, he failed to stop the ATV at the stop sign, and he entered the roadway in the southbound lane of travel. By turning directly into the path of Plaintiff, Berry forced Plaintiff to swerve to avoid hitting Berry on his ATV, which caused Plaintiff to collide with a truck being operated by Shaw. Plaintiff sustained bodily injury, property damage, and ultimately, lost her life as a result of the subject accident.

6. At the time of the accident, Plaintiff was insured by Defendant, and her policy included Uninsured Motorist Coverage, whereby Defendant agreed to "pay damages for bodily injury or property damage a covered person is legally entitled to collect from the owner or operator of an uninsured motor vehicle."

7. Defendant denied coverage for Plaintiff's claim on the premise that the at-fault driver's (Berry) four-wheeler, or ATV, was not a motor vehicle as defined by the policy. Defendant's policy defines a motor vehicle as a "self-propelled vehicle or trailer designed for use on public roads." Defendant's policy further defines certain "motor

vehicles" covered under their definition, and those that are not. ATVs are absent from both lists.

8. This incident caused Plaintiff to suffer injuries, and ultimately lose her life. Plaintiff also incurred property loss as a result of this accident.

**FIRST CAUSE OF ACTION
(Declaratory Judgment – Determination of Coverage)**

9. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

10. As aforementioned, Plaintiff's collision was caused by an at-fault driver operating an uninsured four-wheeler, or ATV. At the time of the subject accident, Plaintiff was insured by a personal insurance policy issued by Defendant covering uninsured motor vehicles.

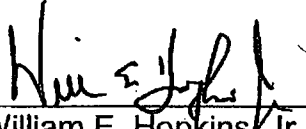
11. Plaintiff is entitled to a declaratory judgment that the respective policy issued by Defendants affording coverage for the at-fault vehicle and the at-fault driver personally were at all times valid and enforceable and afford coverage to Plaintiff at the time of the subject accident.

12. Plaintiff is also entitled to costs and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter a declaratory judgment against Defendant, in favor of Plaintiff, which declares that the contract of insurance covering Plaintiff for uninsured motor vehicles was at all times valid and enforceable and afforded coverage at the time of the subject accident, costs, attorney's fees, and any other relief the Court may deem just and proper.

HOPKINS LAW FIRM, LLC



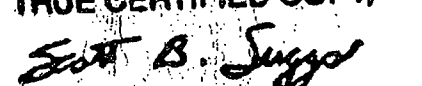
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kpe@orrfirm.com
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ATTORNEYS FOR THE PLAINTIFF

Pawleys Island, South Carolina

December 16, 2014

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-16-1027

James L. Williams as Personal)
Representative of the Estate of)
Mary Frances Williams,)
)
Plaintiff,)

vs.)

ANSWER

South Carolina Farm Bureau)
Mutual Insurance Company)
)
Defendant.)

The Defendant answering the Complaint would allege as follows:

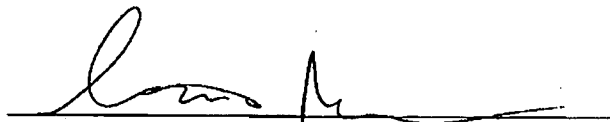
FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, modified or explained is denied.
2. The allegations of ¶s 1 through 10 of the Complaint are admitted.
3. The allegations of ¶s 11 and 12 are denied.

FOR A SECOND DEFENSE

4. The claims for the death and injuries to Plaintiff's decedent are not covered because the vehicle operated by Shaw because the Shaw vehicle is not an uninsured motor vehicle under the Defendant's policy.

WHEREFORE, the Defendant having fully answered the Complaint asks that the same be dismissed.



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(843) 665-0100
Attorney for Defendants

Florence, South Carolina
March 24, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	CASE NO. 2014-CP-16-1027
	)	
James L. Williams as Personal	)	
Representative of the Estate of	)	
Mary Frances Williams,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
	)	
South Carolina Farm Bureau	)	
Mutual Insurance Company	)	
	)	
Defendant.	)	
_____	)	

The Defendant through undersigned counsel moves for summary Judgment on the grounds that there is no genuine issue of material fact and the Defendant is entitled to Judgment as a matter of law. The insurance policy issued by Defendant provides underinsured motorist coverage for losses caused by motor vehicle. The 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 alleged motor vehicle was an all-terrain vehicle and does not qualify as a motor vehicle under the policy because it was not designed for use on public roads.

Respectfully submitted,



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September 28, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	CASE NO. 2014-CP-16-1027
	)	
James L. Williams as Personal	)	
Representative of the Estate of	)	
Mary Frances Williams,	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
vs.	)	
	)	
South Carolina Farm Bureau	)	
Mutual Insurance Company	)	
	)	
Defendant.	)	
_____	)	

Defendant has moved for summary judgment in the declaratory judgment action on the grounds that the ATV causing Plaintiff's loss does not qualify as an underinsured motor vehicle.

The complaint alleges that the at fault vehicle was an ATV (paragraph 5) and that the policy defined a motor vehicle as a "self-propelled or trailer designed for use on the public roads." (paragraph 7)

Defendant has submitted the affidavit of Don Miller. Mr. Miller has worked for many years selling motorcycle and ATV. His affidavit establishes that ATVs are not designed for use on public roads and that the operator's manual for the ATV states that it is not designed for use on public road The manual contains warnings that the ATV is not to be used on public roads. The manual points out that the design features of the ATV make it dangerous to use on paved surfaces and dirt roads.

The South Carolina Highway Patrol MAIT team report is submitted with this

memorandum. It establishes that the ATV was a 2006 model year Kawasaki ATV. Mr. Miller identified the ATV as a Brute Force model and identifies the warning from the owner's manual.¹

A history of the regulation of ATVs can be found in a document published by the U.S. Consumer Product Safety Commission at https://www.cpsc.gov/PageFiles/84803/atv2006_3.pdf.

The South Carolina Farm Bureau Mutual Insurance Company policy² defines "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;
- f. well drillers;
- g. electric trolleys; or
- h. vehicles designed to operate on rails or crawler treads.

An all-terrain vehicle (ATV), also known as a quad, quad bike, three-wheeler, or four-wheeler, is defined by the American National Standards Institute (ANSI) as a vehicle that travels on low-pressure tires, with a seat that is straddled by the operator, along with handlebars for steering control. As the name implies, it is designed to handle a wider variety of terrain than most other vehicles.

¹ The report is admissible under Rule 803 (8) SCRE since this is not a negligence action..

² The definition is the same as the Section 38-77-30 (9) S.C. Code of Laws

The MAIT team report shows 2006 ATV was not licensed for use on the public highways of South Carolina.

The 2008 ATV was not equipped for legal use on the public highways of South Carolina.

These documents show that there is no genuine issue as to the design of the ATV. The burden of proof to establish coverage is on the Plaintiff. Because the Plaintiff has shown no evidence to rebut the assertions of the Defendant, Defendant should be granted judgment dismissing the Plaintiff's claim.

Respectfully submitted,



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September 27, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	CASE NO. 2014-CP-16-1027
	)	
James L. Williams as Personal	)	
Representative of the Estate of	)	
Mary Frances Williams,	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
vs.	)	
	)	
South Carolina Farm Bureau	)	
Mutual Insurance Company	)	
	)	
Defendant.	)	
	)	

Defendant has moved for summary judgment in the declaratory judgment action on the grounds that the ATV causing Plaintiff's loss does not qualify as an underinsured motor vehicle.

The complaint alleges that the at fault vehicle was an ATV (paragraph 5) and that the policy defined a motor vehicle as a "self-propelled or trailer designed for use on the public roads." (paragraph 7)

Defendant has submitted the affidavit of Don Miller. Mr. Miller has worked for many years selling motorcycle and ATV. His affidavit establishes that ATVs are not designed for use on public roads and that the operator's manual for the ATV states that it is not designed for use on public road The manual contains warnings that the ATV is not to be used on public roads. The manual points out that the design features of the ATV make it dangerous to use on paved surfaces and dirt roads.

The South Carolina Highway Patrol MAIT team report is submitted with this

memorandum. It establishes that the ATV was a 2006 model year Kawasaki ATV. Mr. Miller identified the ATV as a Brute Force model and identifies the warning from the owner's manual. ¹

A history of the regulation of ATVs can be found in a document published by the U.S. Consumer Product Safety Commission at https://www.cpsc.gov/PageFiles/84803/atv2006_3.pdf.

The South Carolina Farm Bureau Mutual Insurance Company policy² defines "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;
- f. well drillers;
- g. electric trolleys; or
- h. vehicles designed to operate on rails or crawler treads.

An all-terrain vehicle (ATV), also known as a quad, quad bike, three-wheeler, or four-wheeler, is defined by the American National Standards Institute (ANSI) as a vehicle that travels on low-pressure tires, with a seat that is straddled by the operator, along with handlebars for steering control. As the name implies, it is designed to handle a wider variety of terrain than most other vehicles.

¹ The report is admissible under Rule 803 (8) SCRE since this is not a negligence action.,

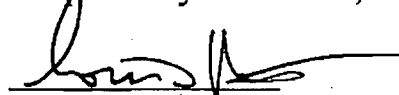
² The definition is the same as the Section 38-77-30 (9) S.C. Code of Laws

The MAIT team report shows 2006 ATV was not licensed for use on the public highways of South Carolina.

The 2008 ATV was not equipped for legal use on the public highways of South Carolina.

These documents show that there is no genuine issue as to the design of the ATV. The burden of proof to establish coverage is on the Plaintiff. Because the Plaintiff has shown no evidence to rebut the assertions of the Defendant, Defendant should be granted judgment dismissing the Plaintiff's claim.

Respectfully submitted,



Louis D. Nettles
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September 27, 2017

gen

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2014-CP-16-1027

James Lee Williams, as Personal
Representative of the Estate of Mary
Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau Mutual
Insurance Company,

Defendant.

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

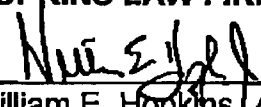
Plaintiff James Lee Williams, as Personal Representative of the Estate of Mary Frances Williams, hereby moves this Honorable Court for summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. The undisputed facts and legal conclusions to be reached therefrom establish that there is no genuine issue of material fact regarding the insurance coverage at issue in this matter.

This motion shall be supported by a memorandum of law, the South Carolina Rules of Civil Procedure, applicable statutes, as well as common law and any other evidence which may be presented or considered by the Court at any hearing on the matter.

[Signature Page Follows]

FILED
2017 NOV 17 PM 1:20
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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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Attorneys for Plaintiff

Pawleys Island, South Carolina
November 14, 2017

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-16-1027

James Lee Williams, as Personal
Representative of the Estate of Mary
Frances Williams,

Plaintiff,

vs.

South Carolina Farm Bureau Mutual
Insurance Company,

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, by and through undersigned counsel, hereby submits this memorandum in support of his motion for summary judgment and in opposition to Defendant's motion for summary judgment.

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 and Stuart Walter Berry was operating an ATV, while intoxicated, and traveling on Watkins Road approaching the intersection of Society Hill Road. At the time that Berry reached the stop sign at the intersection of Watkins Road and Society Hill Road, 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 a 1990 Chevrolet truck being operated by Shaw. Mrs. Williams was

killed and her two children were injured in the collision. (See Exhibits to Defendant's Motion for Summary Judgment, including MAIT Team Report and Traffic Collision Report Form).

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"), a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, wherein Farm Bureau Insurance 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 vehicle which is self-propelled, and every vehicle is propelled by electric power obtained from overhead trolley wires but not operated upon rails." South Carolina Code Ann. §56-1-10.

ARGUMENT

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).

Defendant cannot dispute that Berry was charged with, and pled guilty to, operating an uninsured motor vehicle on a public highway, as well as operating a motor vehicle while impaired. (See Exhibit 2 attached hereto.). Berry has admitted to the operation of this operation of a motor vehicle and Defendant should not be allowed to argue otherwise. Because of Berry's admission, this fact is now established, which Plaintiff submits should end the inquiry into whether Berry was operating an "uninsured motor vehicle" and summary judgment should be granted in favor of Plaintiff finding IM coverage for the claim.

Even if, however, the Court finds the criminal charges and guilty plea by Berry to operating an unregistered, uninsured motor vehicle and operating a motor vehicle on a public highway while impaired is not binding on Defendant, the Court should still find that UM coverage exists for the claim. While there does not appear to be a South Carolina appellate court decision on point, this precise issue has been considered by a number of other courts around the country, all of whom have found in favor of UM coverage.

Roberts v. Country Mutual Insurance Company, 596 N.E.2d 185, 231 Ill.App.3d 713 (Ill. App. 1992) is directly on point. In Roberts, like here, the insurer contended the

ATV was not a "motor vehicle" for UIM purposes because the policy had a definition identical to the policy here defining "motor vehicle" as "designed for use principally on public roads". The Illinois statute defining "motor vehicle", however, is identical to South Carolina's statute, both of which define "motor vehicle" as "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs." (Ill.Rev.Stat.1989 ch. 95 ½, par 1-146). In affirming the lower court, which found UIM coverage, the Illinois appellate court noted that "[I]f an ATV was not to be considered a motor vehicle for purposes of the uninsured motorist statute, the legislature could have provided an exclusion". 596 N.E.2d at 187. A copy of the opinion is attached hereto as **Exhibit 3**. Likewise, Farm Bureau itself could have expressly stated that ATVs are excluded from coverage, but ATV appears nowhere in its list of eight (8) vehicles which are specifically excluded.

The same conclusion was reached in Harper v. Lumbermens Mut. Ins. Co., 572 N.Y.S.2d 195, 174 A.D.2d 1031 (N.Y.A.D. 1991), in which the New York Supreme Court, Appellate Division, determined and held that where the Legislature did not insert a specific exclusion of ATVs from its statutory definition of motor vehicle, it should presume they are not excluded. A copy of the opinion is attached hereto as **Exhibit 4**.

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 exclude ATVs, the three-wheeled vehicle, even if designed primarily for off-road use, constituted a vehicle and therefore coverage existed. A copy of the opinion is attached hereto as **Exhibit 5**.

Likewise, in Montgomery v. Progressive Advanced Ins. Co., Civil Action No. 2:14-cv-00231 (E.D. Va. March 6, 2015), 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. 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, 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 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, as here, the policy was ambiguous and coverage was afforded. This identical holding was reached in Porter v. Buck, Civil Action No. 7:14-cv-00176 (W.D.Va. February 24, 2015). A copy of both opinions are attached hereto as Exhibit 6 and Exhibit 7.

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 where the policy excluded motor vehicles "designed for use principally off public roads", but when the ATV was being used on a public road at the time of the accident, the exclusion was ambiguous and must be construed against the insurer and found coverage available. A copy of the opinion is attached hereto as Exhibit 8.

Based on the foregoing, Plaintiff respectfully requests that his motion for summary judgment be granted, that Defendant's motion for summary judgment be denied, that UM coverage be found and determined to exist for Plaintiff's claim(s), that Plaintiff be awarded his costs and attorney's fees, and any other relief the Court may deem just and proper.

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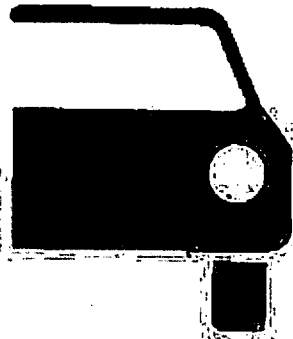
Pawleys Island, South Carolina
November 14, 2017

EXHIBIT 1

**South Carolina Farm Bureau
Mutual Insurance Company or
Southern Farm Bureau Casualty
Insurance Company**

Personal Auto Policy

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.



**Visit our website at www.scfbins.com
or contact us at:**

**Post Office Box 2124
West Columbia, SC
29171**

**724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-8700**

**Policy conditions require immediate notice of accident or claim.
To report an accident or claim, call us toll-free, at
1-800-799-7500**

Seat Belts Save Lives. Buckle Up for Safety!

FORM #9426

REVISED 1/2009

YOUR PERSONAL AUTO POLICY

QUICK REFERENCE

DECLARATIONS PAGE

Your Policy Period
Your Name and Address
Your Auto or Trailer
Endorsements
Coverages and Amounts of Insurance
Lienholder Identification

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COUNTY MEMBERSHIP PROVISIONS

1. As a prerequisite to your purchase of this policy and any renewal of this insurance, you must make application to be a member of and maintain your membership in the applicable county Farm Bureau agricultural organization and affiliated state Farm Bureau agricultural organization (hereinafter collectively known as "Farm Bureau Federation").
2. Your failure to apply for membership and to maintain your membership with the applicable Farm Bureau Federation as our sponsoring organization, including but not limited to your failure to pay the required membership dues to the Farm Bureau Federation, shall require us to cancel or nonrenew your policy.
3. Dues payable to the Farm Bureau Federation are in consideration of membership in the Farm Bureau Federation and other agriculture-related services from Farm Bureau Federation and:
 - a. are not in consideration of coverage under this policy; and
 - b. are not payable to South Carolina Farm Bureau Mutual Insurance Company, Southern Farm Bureau Casualty Insurance Company, or any other insurer named on the Declarations.

INSURING AGREEMENT

We will provide the coverages you have selected subject to your payment of premiums in amounts we require. This agreement is made in reliance upon your statements to obtain coverage and subject to all of the terms and conditions of this policy. Your coverage selections are shown in the latest policy Declarations which completes this policy.

DEFINITIONS

The language of this insurance policy includes certain common words for easy understanding. They have specifically defined meanings. In this policy:

1. You and your mean the named Insured shown in the Declarations; and the spouse if a resident of the same household.
2. We, us, our and the Company mean the South Carolina Farm Bureau Mutual Insurance Company, the Southern Farm Bureau Casualty Insurance Company, or Palmetto Casualty Insurance Company, as shown on the latest Declarations.
3. Covered person(s) means or refers to the person(s) and organization(s) specifically indicated as entitled to protection under the coverage being described.
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.
5. Your auto(s) means the vehicle(s) described on your policy Declarations.
6. Your covered auto(s) means your auto and any newly acquired auto(s).

7. Newly acquired auto(s) means any private passenger auto, which you purchase as an addition to or a replacement for your auto.
8. Private passenger auto(s) means an auto used for farming, pleasure or driving to and from work. It does not include trucks or vans with a rating capacity of more than one ton used in any business other than farming or ranching.
9. Auto business means a business or job, the purpose of which is to sell, lease, repair, service, rent, transport, tow, store or park autos.
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.

11. Actual cash value means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.
12. Bodily injury means injury or death of any person.
13. Covered equipment means any items permanently attached to the auto, except power-operated machinery or other customized equipment, not specifically covered by endorsement.

A trailer is not considered equipment.

14. Declarations means the page that completes this policy by showing your auto(s), the coverages afforded, limits of liability, and other basic information.
15. Deductible means the amount of loss to be paid by you when a loss occurs.
16. Employee(s) means all persons while employed by you, by family members or by other persons using your auto with your permission, including being transported to and from work, except domestic employees not subject to workers' compensation laws.
17. Family member(s) means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

18. **Occupying** means having actual physical contact with an auto while in, upon, entering, or alighting from it.
19. **Pedestrian** means a person on foot or while using a wheelchair or a non-motorized bicycle.
20. **Property damage** means damage to or destruction of tangible property.
21. **Sexual harm** means the actual, alleged, threatened, attempted, or coerced involvement in, or witnessing of, verbal or physical sexual molestation, rape, abuse, assault, or harassment.
22. **Trailer(s)** means a vehicle designed to be pulled by a private passenger auto.

TERRITORY

This Territory applies to all policy coverages, extensions, and exclusions. While your policy is in force, the coverage(s) you select apply to auto accidents or covered losses in the United States of America and its territories and possessions, Canada, Puerto Rico or between their ports. This policy does not apply elsewhere.

PART I - LIABILITY COVERAGE

BODILY INJURY LIABILITY COVERAGE PROPERTY DAMAGE LIABILITY COVERAGE

We will:

1. pay for bodily injury and property damage you or any covered persons are legally obligated to pay caused by an accident arising out of the ownership, maintenance or use of your covered auto.
2. use attorneys of our choice to defend suits against you or any covered person for such bodily injury and property damage. We will not defend any suit after we have paid the applicable limit of our liability for the accident, which is the basis of the lawsuit.
3. investigate, negotiate, settle, deny or defend any claim or suit as we consider appropriate.

For the purpose of this coverage, covered person(s) means:

1. you or any family member;
2. any other person using your covered auto with your permission, provided the actual operation or, if he/she is not operating, his or her other actual use thereof is within the scope of such permission.
3. any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above.

SUPPLEMENTARY PAYMENTS

In addition to our limits of liability, we will pay on behalf of you or any covered person:

1. All of our expenses, including premiums on appeal bonds; all costs taxed against you and other covered persons in any suit; and all interest added to awarded damages, until such damages, falling within our limits of liability, are paid, offered or tendered in court;
2. up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in bodily injury or property damage covered under this policy;
3. reasonable expenses you or any covered persons incur at our request, because of attendance at hearings or trials, but not more than \$50 per day for loss of earnings;
4. reasonable expenses you or any covered persons incur for direct first aid to others at the time of an accident which is covered under this policy.

COVERAGE EXTENSIONS FOR PART I

USE OF OTHER AUTOS

When your policy insures a private passenger auto for Bodily Injury and Property Damage Liability Coverage, we will provide those same coverages and limits for the use of certain other private passenger autos:

1. NON-OWNED AUTOS:

We will provide coverage for you and dependent relatives of your household for the use of other private passenger autos. This other autos coverage does not apply to your auto, other autos that are owned by you or members of your household or to autos that are available for the regular use of you or other covered persons.

2. TEMPORARY SUBSTITUTE AUTOS:

You and dependent relatives living in your household have coverage for other private passenger autos not owned by or available for the regular use of you or members of your household, while such other private passenger autos substitute temporarily for your private passenger auto. Your private passenger auto must be out of use because of breakdown, repair, servicing, loss or destruction.

3. ADDITIONAL AUTOS:

When you acquire an additional private passenger auto, liability coverage begins at the time of delivery and continues for thirty (30) consecutive days, or to the termination date of the policy, whichever occurs first, provided that you ask us to insure the additional private passenger auto and pay the premium within this period of time. You must pay any additional premiums resulting from this extension of coverage on or before the date and time shown in any policy termination notice or before policy expiration. This premium must be paid before we can make any claim payment.

4. REPLACEMENT AUTOS:

You have liability coverage for a private passenger auto you acquire as a replacement for one we already insure. You must ask us to insure the replacement private passenger auto within 30 days of you acquiring it. You must pay any additional premiums resulting from this extension of coverage, as of the date you take delivery of the replacement private passenger auto, on or before the date and time shown in any policy termination notice or before policy expiration. This premium must be paid before we can make any claim payment.

THESE COVERAGE EXTENSIONS DO NOT APPLY:

1. to losses that involve the use of an auto in your business or occupation or the business or occupation of a relative living in your household. This exclusion will not apply to a private passenger auto as defined in this policy which is used by you or your employee;
2. to any auto used without the permission of the owner or the person in charge of that auto, or which is stolen or is reasonably known to be stolen;
3. to non-owned autos or temporary substitute autos while used:
 - a. to carry persons or property for a fee or while leased, rented or hired to others without our permission and a premium paid. Shared expense car pools will not be considered carrying persons for a fee;
 - b. in the commission of a felony; or by any person while seeking to elude lawful apprehension or arrest by any law enforcement official;
4. If any premium due is not paid by the termination date and time.

USE OF TRAILERS

Bodily Injury and Property Damage Liability Coverage applies to a trailer or farm machinery used with a private passenger auto described on your Declarations.

This coverage will not apply when the trailer or farm machinery:

1. is used for any business other than farming unless the policy is classified for business use;
2. is used for an office, store, display, demonstration, semi or passenger trailer, home or temporary living quarters.

OUT-OF-STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

1. If the state or province has a financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limits;

2. This policy does not conform to any requirement by any other state or province as to types and/or amounts of coverages other than bodily injury and property damage liability coverage.
3. We do not provide, and this policy does not conform to, Medical Payments; personal injury protection; accidental death, dismemberment, or disability; or any other similar no fault type coverage requirement in any other state, province, country, territory or political subdivision in excess of our coverage or limits, for anyone.

No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY LAW

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required but not more than our limits of liability for bodily injury or property damage liability coverages.

COVERAGE EXCLUSIONS FOR PART I

We will not provide coverage for:

1. bodily injury or property damage resulting from intentional acts or directions of you or any covered person or acts carried out at the direction of you or any covered person. The expected or unexpected results of these acts are not covered;
2. property damage to property owned by, rented to, in charge of, or transported by you or any covered person. However, we will provide coverage for damage to a residence or private garage rented to you;
3. any person for bodily injury to an employee of that person during the course of employment. This exclusion does not apply to bodily injury to a domestic employee unless workers' compensation benefits are required or available for that domestic employee;
4. bodily injury or property damage for any person protected under a Nuclear Energy Liability Insurance Contract or indemnity coverage, even if the contract has ended upon use of its liability limits, or as a consequence of nuclear reaction, radiation or radioactive contamination;
5.
 - a. The United States of America or any of its agencies;
 - b. Any person with respect to bodily injury or property damage resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the bodily injury or property damage.
6. bodily injury or property damage when your private passenger auto is used to carry persons or property for a fee or while leased, rented or hired to others without our permission and a premium paid, for any amount in excess of the required limits of any applicable motor vehicle financial

responsibility law. Shared expense car pools will not be considered carrying persons for a fee;

7. bodily injury or property damage resulting from the ownership, maintenance or use of your auto(s) in any business for any amount in excess of the required limits of any applicable motor vehicle financial responsibility law. This exclusion does not apply to the ownership, maintenance or use of your auto by you, a member of your household, partners, agent(s), or anyone employed by you in such a business;
8. bodily injury or property damage while any person is using your covered auto without your permission or if any person is using or occupying your covered auto if stolen;
9. bodily injury or property damage resulting from the use of any trailer insured under this policy if used with any auto not insured with us for like insurance.
10. bodily injury or property damage arising from sexual harm committed in or upon your covered auto by anyone, or caused, instigated, or directed by:
 - a. you or any covered person; or
 - b. your or any covered person's employee or agent;
whether or not such bodily injury or property damage is:
 - (1) intended;
 - (2) expected; or
 - (3) foreseeable;by anyone.
 - c. This exclusion also applies to bodily injury or property damage arising from the negligent:
 - (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
 - (2) investigation of, or reporting or failure to report to the proper authorities, a person:
 - (a) employed;
 - (b) hired;
 - (c) contracted; or
 - (d) retained;by you or any covered person and who commits sexual harm;
 - (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:

- (a) involvement in;
- (b) instigation of; or
- (c) continuation of;

sexual harm by:

- 1) you or any covered person;
- 2) your or any covered person's agent; or
- 3) any person employed, hired, contracted and/or retained by you or any covered person;
- (4) supervision of a person who commits sexual harm;
- (5) entrustment of a person to any other person who commits sexual harm;
- (6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;
- (7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm; including, but not limited to failure to warn such other or any person; and
- (8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

11. bodily injury arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, or by any person seeking coverage.

LIMITS OF LIABILITY AND OTHER INSURANCE

Our obligation to pay bodily injury or property damage liability losses is limited to the Per Person and Per Accident amount shown in your Declarations. The following conditions shall apply:

1. The bodily injury liability limits shown for each person are for all legal damages because of bodily injury to each person from one accident. Subject to the limit for each person, the total limit of our liability shown for any one accident is for all damages suffered by two or more persons.
For property damage liability, the limits shown are for all property damage incurred in one accident and which may be legally recoverable.
2. Subject to the first paragraph of item 1 above, the most we will pay for damages due to bodily injury:

- a. for which any person described in subparagraph (1) or (2) below becomes legally liable to pay is shown on the Declarations page under "Policy Limits - Liability - Bodily Injury", applies only to:
 - (1) you, your family member(s), and others listed on your policy with us; and
 - (2) your employee, but only while your employee is acting within the course and scope of employment with you; and
 - b. for which any covered person not described in subparagraph (1) or (2) above becomes legally liable to pay is the minimum limits of liability for bodily injury required by the applicable state motor vehicle compulsory insurance, financial responsibility or similar law.
3. Subject to the second paragraph of item 1 above., the most we will pay for property damage, including loss of its use:
- a. for which any person described in subparagraph (1) or (2) below becomes legally liable to pay is shown on the Declarations page under "Policy Limits - Liability - Property Damage", applies only to:
 - (1) you, your family member(s), and others listed on your policy with us; and
 - (2) your employee, but only while your employee is acting within the course and scope of employment with you; and
 - b. for which any covered person not described in subparagraphs (1) or (2) above becomes legally liable to pay is the minimum limit of liability for property damage required by the applicable state motor vehicle compulsory insurance, financial responsibility or similar law.
4. The limits of liability under all liability coverages, including use of other autos, will not add, stack, pyramid or in any way be increased even if:
- a. there is more than one auto liability policy issued or applicable to you or any other covered person by us or any other company;
 - b. there is more than one auto on your Declarations and a separate premium charge for each;
 - c. there is more than one covered person against whom a claim is made or suit is brought;
 - d. there is more than one person injured in an auto accident.
5. An auto and attached trailer are considered one unit for purposes of bodily injury and property damage liability coverage.
6. For loss involving the use of other autos (which includes non-owned, temporary substitute, additional or replacement autos), or use of trailers, we will pay the insured loss in excess of and not covered by other insurance, provided:
- a. the limits of our liability will not exceed the highest applicable limits of liability on any one policy written for you by us; and

- b. If there are similar coverages provided by any other company which will apply to the use of other autos or trailers for this loss, then our coverage will be subject to pro rata contribution until the highest applicable limits of liability for any one policy we provide are exhausted.

7. If your covered auto is involved in any covered loss, we will be liable only for our pro rata share of the loss if there is other collectible insurance, which also applies to this loss. Our share is determined by the proportion that our policy limits bear to the total collectible limits available for the loss.

PART II - UNINSURED/UNDERINSURED MOTORIST COVERAGE

UNINSURED MOTORIST COVERAGE

This coverage applies if limits of liability are shown for Uninsured Motorist Coverage on your policy Declarations page or subsequent amendment for the policy term.

We will pay damages for bodily injury or property damage a covered person is legally entitled to collect from the owner or operator of 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.

UNDERINSURED MOTORIST COVERAGE

This coverage applies if limits of liability are shown for Underinsured Motorist Coverage on your policy Declarations page or subsequent amendment for the policy term.

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

ADDITIONAL DEFINITIONS - AS USED FOR PART II:

1. Basic limits means the minimum liability limits required by the South Carolina Financial Responsibility Act for bodily injury and property damage.
2. Covered person means:
 - a. you and any family member;
 - b. any other person occupying your covered auto with your permission;
 - c. any legal representative for damages sustained by persons described in a. or b. above, under any wrongful death statute.
3. Property damage means injury to or destruction of the property of a covered person.

4. **Underinsured motor vehicle** means a motor vehicle, the ownership, maintenance or use of which:

- a. is insured or bonded with limits of liability for bodily injury and property damage at least equal to those required by the South Carolina Financial Responsibility Act, but
- b. has limits of liability less than the amount of the covered person's damages.
- c. An underinsured motor vehicle does not include any motor vehicle:
 - (1) owned by any government or any of its political subdivisions or agencies; or
 - (2) while being used as a residence or premises.

5. **Uninsured motor vehicle** means:

- a. a motor vehicle, the ownership, maintenance or use of which is:
 - (1) not insured or bonded for bodily injury and property damage liability at the time of the accident; or
 - (2) insured, self-insured or bonded for bodily injury and property damage liability at the time of the accident; but
 - (a) the limits of liability are less than required by the South Carolina Financial Responsibility Act; or
 - (b) the insuring company successfully denies coverage or is, or becomes, insolvent; or
- b. a motor vehicle as to which there is no deposit of cash or securities in lieu of such bodily injury and property damage liability insurance; or
- c. a hit-and-run motor vehicle whose operator or operator is unknown and which strikes:
 - (1) a covered person; or
 - (2) the vehicle a covered person is occupying and causes bodily injury to such covered person; or
 - (3) property of a covered person.
- d. An uninsured motor vehicle does not include any motor vehicle owned by any government or any of its political subdivisions or agencies, when such vehicle is being operated with proper authorization.

LIMITS OF LIABILITY

UNINSURED MOTORIST COVERAGE

1. **Bodily Injury** – the amount of coverage is shown on the Declarations page under Limits of Liability – Uninsured Motorist Coverage – Each Person, Each Accident.

Under Each Person is the amount of coverage for all damages due to bodily injury to one person. Under Each Accident is the total amount of coverage, subject to the amount shown under Each Person, for all damages due to bodily injury to two or more persons in the same accident.

2. **Property Damage** – the amount of coverage is shown on the Declarations page under Limits of Liability – Uninsured Motorist Coverage – Property Damage, Each Accident. This is the amount of coverage for all property damage as a result of one accident.

3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of liability of this coverage.

4. The most we will pay is the lesser of:

a. the difference between:

- (1) the amount of the covered person's damages; and
- (2) the amount paid to the covered person by or for any person or organization who is or may be held legally liable for the bodily injury or property damage; or

b. the limits of liability of this coverage.

LIMITS OF LIABILITY

UNDERINSURED MOTORIST COVERAGE

1. **Bodily Injury** – the amount of coverage is shown on the Declarations page under Limits of Liability – Underinsured Motorist Coverage – Each Person, Each Accident.

Under Each Person is the amount of coverage for all damages due to bodily injury to one person. Under Each Accident is the total amount of coverage, subject to the amount shown under Each Person, for all damages due to bodily injury to two or more persons in the same accident.

2. **Property Damage** – the amount of coverage is shown on the Declarations page under Limits of Liability – Underinsured Motorist Coverage – Property Damage, Each Accident. This is the amount of coverage for all property damage as a result of the accident.

3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of liability of this coverage.

4. The most we will pay is the lesser of:
- a. the difference between the amount of the covered person's damages; and
 - (1) the amount paid to the covered person by or for any person or organization who is or may be held legally liable for the bodily injury or property damage; and
 - (2) any applicable uninsured motorist coverage; or
 - b. the limits of liability of this coverage.
5. We will make no payment until:
- a. the covered person's damages exceed the limits of liability of all applicable:
 - (1) bodily injury liability and property damage liability insurance policies or bonds; or
 - (2) uninsured motor vehicle coverages; and
 - b. the limits of liability that apply to the bodily injury or property damage have been used up by payment of judgments or settlements.

ADDITIONAL LIMITS OF LIABILITY AND OTHER INSURANCE

UNINSURED MOTORIST COVERAGE UNDERINSURED MOTORIST COVERAGE

1. The limits of liability are not increased because more than one motor vehicle or person is insured under this policy.
2. Any amounts otherwise payable for damages under these coverages will be reduced by any amounts paid or payable for the same damages under the liability coverage or physical damage coverage of this policy and by any amounts paid or payable by or on behalf of persons or organizations who may be legally responsible.
3. If you or any family member, while not occupying a motor vehicle, sustains bodily injury or property damage, and uninsured or underinsured motorist coverage from more than one policy issued by us to you or any family member applies to the accident, any amount payable under such policies shall be limited to the coverage on the one motor vehicle with the highest limit.
4. If you or any family member sustains bodily injury or property damage while occupying your covered auto and you or any family member has uninsured or underinsured motorist coverage on another motor vehicle under the policy or under another policy issued by us that applies to the accident, you or any family member may recover the uninsured or underinsured motorist coverage on all other motor vehicles insured under the policy and under all other automobile policies issued by us to you or any family member, but neither you nor any family member may recover

any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the motor vehicle involved in the accident.

5. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or a family member that is insured under another policy not issued by us, you or any family member may recover the uninsured or underinsured motorist coverage on all automobile policies issued by us to you or any family member, but neither you nor any family member may recover any amount under such coverages that is greater than the amount of uninsured or underinsured motorist coverage on the motor vehicle involved in the accident.
6. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle not owned by you or a family member, and uninsured or underinsured motorist coverage from more than one policy issued by us to you or any family member applies to the accident, any amount payable under such policies shall be limited to the amount of coverage on the one motor vehicle with the highest limit.
7. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or any family member, and the occupied motor vehicle only has the minimum amount of uninsured motorist coverage required by law, neither you nor any family member may recover any uninsured motorist coverage on any other motor vehicle insured under the policy or under any other policies issued by us to you or any family member that is greater than the minimum amount of uninsured motorist coverage required by law.
8. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or any family member and the occupied motor vehicle has no underinsured motorist coverage, neither you nor any family member may recover any underinsured motorist coverage on any other motor vehicle insured under the policy or under any other policies issued by us to you or any family member.
9. If a covered person, other than you or any family member, sustains bodily injury or property damage while occupying your covered auto, he or she is only entitled to recover the uninsured or underinsured motorist coverage on your covered auto. He or she cannot recover any other uninsured or underinsured motorist coverage on any other motor vehicle insured by you or any family member with us or under any other policy issued by us to you or any other family member.
10. No covered person may recover both uninsured and underinsured motorist coverage under this policy for damages arising out of the ownership, operation or use of the same motor vehicle.
11. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle not owned by you or any family member and you or any family member elects to seek uninsured or underinsured motorist coverage under this policy, any uninsured or underinsured motorist coverage available under this policy will be excess

over any policy on the occupied motor vehicle providing uninsured or underinsured motorist coverage.

12. If you or any family member sustains bodily injury or property damage while occupying a motor vehicle owned by you or a family member that is not your covered auto, any uninsured or underinsured motorist coverage available under this policy will be excess over any policy on the occupied motor vehicle providing uninsured or underinsured motorist coverage.
13. If uninsured or underinsured motorist coverage is available to you or any family member under a policy issued by another insurer, we are liable only for our share. Our share is the proportion that the amount of the limits of liability of our policy bears to the total amount of all uninsured and/or underinsured motorist coverage applicable to the accident.

EXCLUSIONS

Under Uninsured Motorist and Underinsured Motorist coverages, we do not provide and there is no coverage:

1. for any person who, without our written consent, settles with any person or organization who may be liable for the bodily injury or property damage and thereby impairs our right to recover our payment.
2. for the benefit of:
 - a. any workers' compensation or disability benefits insurance company;
 - b. a self-insurer under any workers' compensation or disability benefits or similar law;
3. for property damage for which the covered person has been paid.
4. for bodily injury or property damage while a covered person, other than you, your spouse or any resident relative, is occupying a motor vehicle other than your covered auto;
5. for bodily injury or property damage resulting from intentional acts of you or any covered person or acts carried out at the direction of you or any covered person. The expected and unexpected results of these acts or directions are not covered;
6. for bodily injury or property damage arising from sexual harm committed in or upon your covered auto by anyone, or caused, instigated, or directed by:
 - a. you or any covered person; or
 - b. your or any covered person's employee or agent;whether or not such bodily injury or property damage is:
 - (1) intended;
 - (2) expected; or
 - (3) foreseeable;

by anyone.

- c. This exclusion also applies to bodily injury or property damage arising from the negligent:
 - (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
 - (2) investigation of, or reporting or failure to report to the proper authorities, a person:
 - (a) employed;
 - (b) hired;
 - (c) contracted; or
 - (d) retained;by you or any covered person and who commits sexual harm;
 - (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:
 - (a) involvement in;
 - (b) instigation of; or
 - (c) continuation of;sexual harm by:
 - 1) you or any covered person;
 - 2) your or any covered person's agent; or
 - 3) any person employed, hired, contracted and/or retained by you or any covered person;
 - (4) supervision of a person who commits sexual harm;
 - (5) entrustment of a person to any other person who commits sexual harm;
 - (6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;
 - (7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm, including but not limited to failure to warn each other or any person; and
 - (8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

7. for the first \$200 of property damage sustained by each covered person in each accident.
8. for bodily injury arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, by any person seeking coverage, or any other person using any other auto.

CONFORMITY TO STATUTE

This coverage is intended to be in full conformity with the South Carolina Uninsured and/or Underinsured Motorist Law. If any provision of this coverage conflicts with that law, it is changed to comply with the law.

PART III - MEDICAL PAYMENTS COVERAGE

This coverage applies when limits of liability are shown for this coverage on the Declarations page.

We will pay Medical Payments benefits to or for a covered person who sustains bodily injury. The bodily injury must be caused by an accident:

1. resulting from the ownership, maintenance or use of an auto as an auto; or
2. resulting from being struck by any motor vehicle while a pedestrian.

DEATH BENEFITS

We will pay Death Benefits:

1. to or for you or any family member, for death caused by an automobile accident while occupying a motor vehicle, other than:
 - a. motorcycles;
 - b. recreational vehicles or utility vehicles not licensed or required to be licensed for road use; or
2. to or for any employee while occupying your covered auto.
3. to or for you or any family member resulting from being struck by any vehicle while a pedestrian.

We will pay the limit of liability, less any payments otherwise made under this coverage on account of such bodily injury.

The death must be a direct and independent result of such accident, and the death must occur within sixty (60) days of the date of the accident which caused the injury.

ADDITIONAL DEFINITIONS - AS USED FOR PART III:

1. Covered person means:

- a. You or any family member while occupying a motor vehicle other than a motorcycle, recreational vehicle or utility vehicle not licensed or required to be licensed for road use; or while a pedestrian; or
- b. anyone else who sustains bodily injury only while occupying your covered auto.

2. Medical Payments benefits consist of the following:

- a. Medical Expenses, meaning the reasonable and necessary medical expense incurred within one (1) year from the date of the accident for a covered person's care or recovery.
- b. Funeral Expenses, meaning reasonable funeral and burial expenses incurred.

EXCLUSIONS

We do not provide Medical Payments coverage for bodily injury:

1. sustained by anyone:
 - a. who intentionally causes the incident resulting in the injury. The expected or unexpected results of these acts are not covered;
 - b. who drives or uses a motor vehicle without the permission from its owner; or when the vehicle is stolen or is reasonably known to be stolen;
 - c. while participating in any racing, time trial, road rally, or any other motor vehicle event that declares a winner based on speed, time, handling, or endurance, whether organized or not;
 - d. while seeking to elude lawful apprehension or arrest by any law enforcement official; or
 - e. while you, or anyone using your covered auto, are involved in the commission of a felony.
2. sustained by any person resulting from the ownership, maintenance or use of an auto while being used as a residence or premises.
3. caused by or as a consequence of war, or war-like act whether declared or undeclared.
4. from or as a consequence of any nuclear or radioactive occurrence.
5. to any person who operates or rides as a passenger upon a motorcycle.
6. to any person who is injured while riding, using or occupying a recreational vehicle or utility vehicle not licensed or required to be licensed for road use.
7. to you or any family member while occupying or being struck by any auto (other than your covered auto) that is owned by you or any family member.
8. arising from sexual harm committed in or upon your covered auto by anyone, or caused, instigated, or directed by:

- a. you or any covered person; or
- b. your or any covered person's employee or agent;
whether or not such bodily injury or property damage is:
- (1) intended;
 - (2) expected; or
 - (3) foreseeable;
- by anyone.
- c. This exclusion also applies to bodily injury or property damage arising from the negligent:
- (1) employment, hiring, contracting, and/or retention by anyone of a person who commits sexual harm.
 - (2) investigation of, or reporting or failure to report to the proper authorities, a person:
 - (a) employed;
 - (b) hired;
 - (c) contracted; or
 - (d) retained;
 by you or any covered person and who commits sexual harm;
 - (3) failure of you or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:
 - (a) involvement in;
 - (b) instigation of; or
 - (c) continuation of;
 sexual harm by:
 - 1) you or any covered person;
 - 2) your or any covered person's agent; or
 - 3) any person employed, hired, contracted and/or retained by you or any covered person;
 - (4) supervision of a person who commits sexual harm;
 - (5) entrustment of a person to any other person who commits sexual harm;
 - (6) allowing, by anyone, of any other person to be in the presence of any person who commits sexual harm;

(7) failure by anyone to take action to stop any other person from being in the presence of any person who commits sexual harm, including, but not limited to failure to warn such other or any person; and

(8) failure to anyone to prevent the commission of sexual harm.

Paragraphs c. (1), (2), (4), (5), (6), and (7) above also apply to any person who may commit, has committed or is alleged to have committed sexual harm.

8. arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, other organism, sickness, condition or illness by any covered person, by any insured, by anyone in the insured's employ, by any other person acting on any insured's behalf or at any insured's direction, or by any person seeking coverage.

LIMITS OF LIABILITY

The limits of liability shown in the Declarations for Medical Payments coverage is our maximum limit of liability for each covered person injured in any one auto accident, provided that covered persons may not collect Medical Payments Coverage from more than one automobile, regardless of the number of:

1. covered persons;
2. claims made;
3. vehicles involved in the accident;
4. vehicles or premiums listed on the Declarations;
5. multiple policies.

In consideration of the premium charged for this coverage, we do not intend Medical Payments Coverage to stack with any other automobile Medical Payments coverage that you may have with this company, or any self-insurer.

Any amount payable under this insurance shall be reduced by any amounts paid or recovered under the Workers' Compensation or similar law of any state or federal government.

CONFORMITY

This Medical Payments coverage does not provide benefits other than those stated in this section, nor does it provide limits above those shown in the latest policy Declarations or amendment. We do not provide, and this policy does not conform to, Medical Payments; personal injury protection; accidental death, dismemberment, or disability; or any other similar no fault type coverage requirement in any other state, province, country, territory or political subdivision in excess of our coverage or limits, for anyone.

DUTIES AFTER AN ACCIDENT

You or someone on your behalf must notify us within six months of how, when and where the accident happened. Notice should also include the names and addresses of any other injured persons and of any witnesses.

A person seeking coverage must:

1. cooperate with us in the investigation or settlement of any claim;
2. submit, at our expense and as often as we reasonably require, to physical examinations by physicians we select;
3. provide and/or authorize us to obtain medical reports and other pertinent records in support of your claim;
4. submit a written proof of claim when required by us;
5. submit to examination under oath, if we require, by a person named by us, and sign any written copy of the same.

PAYMENT PROVISIONS

1. We may pay the insured person or any person or organization rendering the services and such payment shall reduce the amount payable under this coverage for such injury. In the event of death, benefits may be paid by the Company to the surviving spouse, next of kin, or legal representative of the deceased, as we may elect.
2. We will pay covered persons 100% of incurred Medical Payments benefits up to \$1,000.
3. If your Declarations indicate more than \$1,000 for Medical Payments benefits for this coverage, we will pay only you, family members or employees incurred Medical Payments benefits at 80% of the excess above \$1,000 not to exceed the per person limit of liability indicated in the Declarations.
4. If you, any family member, or employee are killed in an automobile accident while utilizing and protected by an air bag and safety belt system, we will double any payable death benefits this coverage provides.
5. Benefits under this policy may not be assigned without our prior written consent.
6. In the event that you or any other payee of Medical Payments benefits has collected or may collect other benefits due from any Federal or State Medicare, Medicaid, veterans or other government program that would seek reimbursement from us, we will not pay you or other payee until we determine that reimbursement will not be required.

DUPLICATION OF BENEFITS

No one will be entitled to duplicate payments for the same elements of loss under this coverage regardless of the number of motor vehicles covered or insurers (including self-insurers).

If there is other applicable automobile Medical Payments insurance, we will pay only our share of the loss. Our share is the proportion that our limits of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

VALIDITY CLAUSE

If a court of competent jurisdiction declares any provision of this coverage invalid, we will have the right to amend that provision to comply with the law and to recompute the premium for this coverage.

PART IV - PHYSICAL DAMAGE COVERAGES

COMPREHENSIVE COVERAGE

We will pay for direct and accidental loss of, or damage to your auto and its covered equipment not caused by collision or upset, but including fire theft, animal collision and glass breakage. We will pay the actual cash value of loss or damage less any deductible shown on your Declarations. The deductible that applies to safety glass breakage claims will be that deductible that is permitted by law and shown on your Declarations. We will pay reasonable expenses to protect your auto from more damage.

If your auto is stolen we will pay you for transportation expenses. We will pay up to \$15 per day, not to exceed \$300 per occurrence. Payment begins 48 hours after you tell us and the police about the theft. Payment ends when the auto is returned for your use or when we offer to pay you for your loss, whichever occurs first.

COLLISION COVERAGE

We will pay for direct and accidental collision or upset, which causes loss or damage to your auto and its covered equipment. For each accident, we will pay, subject to the limits of liability, the actual cash value of loss or damage less any deductible shown on your Declarations.

EXTENSION OF COLLISION COVERAGE

Emergency Road Service

If your private passenger auto is disabled, we will pay reasonable expenses for:

1. subject to a maximum of \$75, we will pay for delivery of gasoline, oil, battery or tires, but excluding the cost of such items or;
2. subject to a maximum of \$75, we will pay for mechanical labor performed at the place of breakdown or;
3. subject to a maximum of \$75, we will pay for towing to the nearest garage or service station where the necessary repairs can be made if your auto is not driveable.

For each covered Emergency Road Service event, only one of the above benefits (Items 1, 2 or 3) will apply. Emergency Road Service coverage is not subject to a deductible.

WAIVER OF DEDUCTIBLE

We will not subtract a deductible for a collision loss when your private passenger auto collides with another private passenger auto insured for liability by us.

This waiver of deductible is subject to a maximum of \$250.

However, your deductible will apply if you collide with another vehicle that you own.

COVERAGE EXTENSIONS FOR COMPREHENSIVE AND/OR COLLISION COVERAGE

USE OF OTHER AUTOS

When your policy insures a private passenger auto for comprehensive and/or collision coverages, we will provide those same coverages for the use of certain other private passenger autos. These extensions of coverage do not include loss from your operation of an auto business.

We will provide coverage for:

1. NON-OWNED AUTOS:

We will provide coverage for you and dependent relatives of your household for the use of other private passenger autos. This other autos coverage does not apply to your auto, other autos that are owned by you or members of your household or to autos that are available for the regular use of you or other covered persons.

2. TEMPORARY SUBSTITUTE AUTOS:

You and dependent relatives living in your household have coverage for other private passenger autos not owned by you or members of your household or available for your regular use, while such private passenger auto(s) substitutes temporarily for your private passenger auto. Your private passenger auto must be out of use because of breakdown, repair, servicing, loss or destruction.

3. ADDITIONAL AUTOS:

When you acquire an additional private passenger auto, comprehensive and/or collision coverage begins at the time of delivery and continues for thirty (30) consecutive days or to the termination date of the policy, whichever occurs first, provided that you ask us to insure the additional private passenger auto and pay the premium within this period of time. You must also pay any additional premiums resulting from this extension of coverage on or before the date and time shown in any policy termination notice or before policy expiration. Any premiums due must be paid before we can make any claim payment.

4. REPLACEMENT AUTOS:

If the private passenger auto you acquire replaces one we already insure, we will provide the same coverages for the replacement private passenger auto for a period of thirty (30) days following the date of its delivery or to the end of the policy termination date, whichever occurs first. If you want to continue the physical damage coverage, you must notify us within 30 days following the date of its delivery, or before the policy termination date, whichever occurs first, and pay the premium for this extension of coverage. You must pay on or before the date and time shown in any policy termination notice or before policy expiration. Any premiums due must be paid before we can make any claim payment.

CARGO COVERAGE

If we insure your pickup truck for farm use, and if you have either comprehensive or collision coverage, we will pay up to \$250 for damage to feed, seed, fertilizer, pesticides, farm produce and livestock while being hauled in your pickup truck. This coverage is subject to the following provisions:

1. this cargo loss must be a direct result of a covered loss to your pickup truck;
2. the items damaged must be owned by you;
3. this coverage is not subject to a deductible;
4. this coverage does not apply to loss by theft unless your pickup truck is stolen; and
5. we will only pay for loss not covered by other insurance.

COMPREHENSIVE AND COLLISION COVERAGE EXCLUSIONS

We will not pay for loss or damage:

1. if any premium for the coverage(s) has not been paid before the termination date and time. Premiums due must be paid before we can make any claim payment;
2. to a camper or living quarters unit designed to be mounted on or attached to an auto, unless the unit has been reported to us and any required premium paid;
3. caused by wear and tear, freezing, mechanical or electrical breakdown or failure or road damage to tires. This exclusion does not apply if any of the above are the direct result of a loss which is otherwise covered by comprehensive or collision coverage under this policy;
4. to clothes or personal effects;
5. to any private passenger auto while used to carry persons or property for a fee, or while leased, rented or hired to others without our permission. Shared expense car pools will not be considered carrying passengers for a fee;

6. caused from an act of war, or any radioactive contamination, however caused;
7. when your auto is used in preparation for or used in any race or speed contest;
8. when you or any employee intentionally conceals or misrepresents any material fact or circumstance relating to this insurance coverage;
9. when you are driving or using an auto without permission from its owner; or when the auto is stolen or is reasonably known to be stolen;
10. for any radar detection or similar equipment, used to detect or foil enforcement of speed or other traffic laws;
11. while you or anyone using your auto with your permission is involved in the commission of a felony or while seeking to elude lawful apprehension or arrest by any law enforcement official;
12. due to the taking or use of your auto by any governmental authority, its agencies, departments or services;
13. to any auto which is owned by any person or organization in the auto business, if you or the owner has other similar coverage;
14. to any custom equipment or furnishings in or upon any pickup, panel truck, or van. Custom furnishings or equipment include but are not limited to:
 - a. awnings or cabanas; or
 - b. custom murals, painting or other decals or graphics;
 - c. equipment designed to create additional living facilities;
 - d. facilities for cooking and sleeping;
 - e. height-extending roof;
 - f. special carpeting and insulation, furniture, bars.

This exclusion does not apply if the custom equipment or furnishings are specifically endorsed upon the policy and the premium paid for coverage.

15. to any of the following or their accessories for more than a limit of \$1,000:
 - a. citizen band radio;
 - b. two-way mobile radio;
 - c. telephone;
 - d. scanning monitor receiver;
 - e. television receivers and their accessories; or
 - f. computers, including their hardware and/or software.

This exclusion and limit does not apply if the equipment is permanently installed in the console or dash of your covered auto or is endorsed on the

policy. This opening must be normally used by the auto manufacturer for the installation of a radio.

16. to equipment designed for the reproduction of sound for more than a limit of \$1,000. This exclusion and limit does not apply if the equipment is permanently installed in your covered auto in the opening used by the auto manufacturer for the installation of a radio, speakers, or similar equipment; or is endorsed on the policy;
17. to tapes, records or other devices for use with equipment designed for the reproduction of sound;
18. caused by or resulting from the atmospheric condition known as acid rain;
19. caused by any intentional acts by or at the direction of you or any covered person. The expected or unexpected results of these acts are not covered.
20. due to any inherent loss in value, regardless of the reason(s) for such loss in value, of your covered auto(s) or covered equipment;
21. due to any diminished value, regardless of the reason(s) for such diminished value, in the repair of your covered auto(s) or covered equipment;

LIMITS OF LIABILITY

Our duty to pay for comprehensive or collision loss is limited to the actual cash value of the auto or its damaged parts at the time of loss.

Actual cash value will include consideration of fair market value, age and condition of the item in question at the time of loss. We may at our option pay you directly for a loss or repair or replace the auto or its damaged part(s) with like kind and quality, including used or non OEM parts (non OEM parts are those produced by someone other than the Original Equipment Manufacturer). However, we are not required to:

1. return your covered auto(s) or covered equipment to pre-accident market value; or
2. restore, alter, or replace undamaged property or parts, unless required for the safe operation of the vehicle.

If your stolen property is recovered prior to any loss settlement, we may return the property at our expense. We will pay for any damage because of the theft.

OTHER INSURANCE

When there is other insurance for any loss to which this coverage applies, we will pay for only our proportional share of the loss. Our share is determined by the proportion that our coverage bears to the total insurance collectible for the loss.

For losses involving the use of non-owned, temporary substitute, additional or replacement autos, we will pay the insured loss not covered by other insurance.

APPRAISAL

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire.

The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. The decision agreed upon by any two will be binding. Each party will:

1. pay its chosen appraiser; and
2. bear the expenses of the appraisal and umpire equally.

We do not waive any of our rights under this policy by agreeing to an appraisal.

PART V - GENERAL POLICY CONDITIONS

We, you and any covered person must comply with certain conditions in order for the policy to apply. The following are policy conditions:

1. Abandonment of Property.

We will not accept any property abandoned by you.

2. Assignability or Transfer of Your Interest in this Policy.

Your rights, duties and coverage under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

- a. the surviving spouse if a resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; or
- b. the legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use your covered auto.

Coverage will only be provided until the end of the policy period.

3. Changes.

- a. The premium is based on information we have received from you and other sources. You agree to cooperate with us in determining if this information is correct and complete. You agree that if this information changes, or is incorrect or incomplete, we may adjust your premiums accordingly during the policy period.
- b. If during the policy period the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. You agree to give us notice of such exposure changes as soon as is reasonably possible for:

- (1) Change in location where any vehicle is garaged;

- (2) Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven to or from work or school, business or farm use, or operators of any vehicle;

- (3) Replacement, deletion, or newly acquired auto. You must request coverage for a newly acquired auto within 30 days from the date the auto is acquired and pay any premiums by the policy termination date and time if you wish to continue any coverage;

- (4) Change, addition, or deletion relating to the date of birth, marital status, driving record or driving license status of any operator;

- (5) Addition or deletion of an operator;

- (6) Change, addition, or deletion of any coverage or limits.

4. Changing Policy Provisions.

A change of any provision of this policy must be in writing by us and be shown on an endorsement or successive Declarations to be valid.

5. Conformity to Statutes.

If any of the terms or conditions of your policy conflict either with existing laws or with laws as amended or enacted by the State of South Carolina, we will interpret your policy in conformity to such laws.

6. Declarations.

By accepting this policy, you agree that the statements in the applications, Declarations, or change forms are your agreements and representations.

This policy is issued in reliance upon the truth of your representations. It contains all agreements existing between you and us.

7. Duties After Loss.

You, any covered person, or any person or organization seeking coverage must:

- a. immediately notify the appropriate law enforcement authority in the event of bodily injury or damage to property, the theft of your covered auto, or injury or damage if it is reasonable that a crime was committed;
- b. promptly give us or our agent written notice of all accidents, occurrences and losses as soon as possible;
- c. immediately deliver to us each and every document, notice, demand, summons, complaint or any other document(s) received relating to any alleged claim, accident, occurrence, bodily injury or property damage, however caused;
- d. cooperate with us in the investigation, settlement or defense of any claim or suit;

- e. take reasonable steps after loss to protect your covered auto and its equipment from further loss. We will pay reasonable expenses incurred to do this;
- f. permit us to inspect and appraise your covered auto or other damaged property after loss before its repair or disposal, and thereafter as often as we may require;
- g. provide all records, receipts, invoices or certified copies thereof to support your claim;
- h. submit a sworn statement and proof of loss, completed fully and stating the amount of any claim, when required by us;
- i. submit, separate and apart from any other insured or covered person, to examination under oath, if we require, by any person named by us, and sign any written copy of the same;
- j. attempt to identify the vehicle and operator of any other vehicles which strike you or your covered auto.

8. Excluded Driver.

When your policy is endorsed to exclude any person as a driver, none of the coverages under this policy will be in force when any such excluded driver operates any motor vehicle.

- 9. Fair Credit Reporting Act Statement.** At our option, we may conduct a credit investigation or obtain credit information on you, any insured or future insured, under this policy. This report will be used for underwriting purposes to determine if an offer of coverage will be made; if coverage may continue; or to determine rates, terms, or any other condition.

10. Grace Period.

This grace period applies only to the premium due at the renewal inception date and does not apply to any payments due as part of any installment or premium finance plan, nor any additional premium due to a policy change.

If your premium due for renewal is received by the Company within 15 days, exclusive of the due date, your policy will provide continuous protection without a lapse in coverage. After 15 days, the policy is expired on its own terms as of the expiration date, and an application for a new policy may be required.

11. Liberalization.

You will automatically have the benefit of any extension or broadening of coverage in this policy, as of the effective date of the change, provided it does not require additional premium.

- 12. Misrepresentation.** We do not provide coverage for any covered person, as defined in this policy, who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

- a. at the time application was made; or

- b. at any time during the policy period; or
- c. in connection with the presentation or settlement of a claim.

13. No Benefit to Bailee.

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

14. Our Right to Recover Payment.

If we make a payment under this policy and the person or organization to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person or organization shall:

- a. do whatever is necessary to enable us to exercise our rights; and
- b. do nothing after loss to prejudice them; and
- c. reimburse us to the extent of our payment if such person or organization has made recovery from another person or party responsible for the loss; and
- d. be required to reimburse us if any settlement or judgment duplicates our payments.

These provisions will be applied according to state law.

15. Policy Period and Premium Payments.

Your Declarations or renewal certificate will show the policy period. Unless canceled, this policy may be renewed at our option if the required premium is paid by you and accepted by us. Failure to pay before the date and time of policy termination or policy expiration will end coverage. If your policy does expire and you send a later payment of the required premium, we may reinstate at our option. We will determine the effective date and time of the new policy and the coverages and limits we will provide. However, a new application may be required. If we reinstate, a new or additional premium may be required. A new policy period is then established.

If, while this policy is in force, you request any change in your policy or if your policy is changed by us, any premium difference will be transacted as follows:

- a. refunds, if any, will either be returned to you or applied as a credit to your existing policy;
- b. additional premium due, if any, on any existing policy will be billed to you and you will be required to pay such additional premium on or before the date and time of policy termination or policy expiration.

16. Prejudgment Interest.

This policy does not pay any prejudgment interest for any coverages.

17. Suit Against the Company.

You may not bring legal action against us on any of the coverages provided in this policy until you comply with all terms of this policy.

No legal action may be brought by you or any covered person against us under the liability coverage until the amount of damages you are legally liable to pay has been finally determined by:

- a. a judgment after actual trial and appeal if any; or
- b. agreement between you, the claimant and us.

No one can make us a party to any suit to determine our liability:

- a. under Medical Payments coverage, until thirty (30) days after we get proof of claim and the amount of loss is determined by the terms of this policy.
- b. under Physical Damage Coverages until thirty (30) days after we get proof of claim and the amount of loss is determined by the terms of this policy.

18. Termination.

- a. Cancellation. This policy may be canceled during the policy period as follows:

- (1) During the first 60 days this policy is in effect, this policy may be canceled only if:

- (a) A check or bank draft tendered for payment of premium is returned unpaid for insufficient funds or other reasons by the financial institution. If we cancel for this reason, we will cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date on which cancellation is to take effect or;

- (b) Proof is furnished from the Department of Motor Vehicles that:

- 1) your covered auto shown in the Declarations has been sold or otherwise disposed of; or
- 2) the tags and registration of your covered auto shown in the Declarations have been surrendered.

- (2) If this policy has been in effect for more than 60 days, you may cancel by:

- (a) returning this policy to us; or
- (b) giving us advance written notice of the date cancellation is to take effect.

- (3) If this policy has been in effect for more than 60 days but not more than 90 days, we may cancel by mailing notice to the named insured shown in the Declarations at the address shown

in this policy at least 15 days prior to the date on which cancellation is to take effect.

- (4) If this policy has been in effect for more than 90 days, we may cancel by mailing notice to the named insured at the address shown in the Declarations at the address shown in this policy at least 15 days prior to the date on which cancellation is to take effect, only if:

- (a) the named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under this policy has had his or her driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date; or

- (b) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either directly or indirectly under any premium finance plan or extension of credit; or

- (c) Membership in your local county Farm Bureau agricultural organization is not maintained.

- (d) for any other reason lawfully permitted.

- b. Nonrenewal. If we decide not to renew or continue this policy, we will mail notice to the named insured at the address shown in the Declarations of policy. Notice will be mailed at least 15 days before the end of the policy period. We may non-renew or refuse to continue this policy for the following reasons:

- (1) there exists a valid and enforceable judgment against the named insured shown in the Declarations or any principal operator who is a member of the insured's household for failure to pay when due any payment of automobile premium. This does not apply if the named insured shown in the Declarations pays the entire premium for the renewal or continuation policy in advance; or

- (2) the named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under this policy has had his or her driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date; or

- (3) for failure to maintain membership in your local county Farm Bureau agricultural organization; or

- (4) for any other reason lawfully permitted.

- c. Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the

required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on your covered auto, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

d. Other Termination Provisions.

- (1) We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
- (2) If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals and as of the date of cancellation. However, making or offering to make the refund is not a condition of cancellation.
- (3) The effective date and time of cancellation stated in the notice shall become the end of the policy period.

MUTUAL COMPANY CONDITIONS

(Applies only to South Carolina Farm Bureau Mutual Insurance Company)

This policy is issued by a mutual company having special regulations lawfully applicable to its organizations; membership, policies or contracts of insurance, of which the following shall apply to and form a part of this policy:

By virtue of this policy, the policyholder is a member of the Company and is entitled to vote, in person or by proxy, at all meetings of the members of the Company.

The policyholder shall participate in the return of unused premiums (dividends) to the extent and on the conditions determined, fixed and declared by the Board of Directors in accordance with the law.

This policy is nonassessable. The holder of this policy is not subject to any contingent liability nor liability to assessment.

The Insured is hereby notified that by virtue of this policy he is a member of the South Carolina Farm Bureau Mutual Insurance Company and that the bylaws of the Company fix the annual meeting at 12:00 o'clock Noon on the last Thursday in October of each year at the Company's Home Office.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company.



President



Secretary

PARTICIPATING CONDITIONS

For Policies Issued in Southern Farm Bureau
Casualty Insurance Company Only.

While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of the Company in accordance with the dividends declared by the Board of Directors on this and like policies.

IN WITNESS WHEREOF, THE COMPANY has caused this policy to be signed by its President and Secretary and countersigned on the Declarations page by a duly authorized representative of the Company.



President



Secretary

LOSS PAYABLE ENDORSEMENT

If a Lienholder is named in the Declarations, the following conditions apply in respect to Comprehensive Coverage and Collision Coverage.

"Loss or damage, if any, under the policy shall be payable as provided in the policy and this insurance as to the interest of the Bailment Lessor, Conditional Vendor or Mortgagee or Assignee of Bailment Lessor, Conditional Vendor or Mortgagee (herein called the Lienholder) shall not be invalidated by any act or neglect of the Lessee, Mortgagor or Owner of the within described automobile nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the Lessee, Mortgagor or Purchaser in possession of the property insured under a bailment lease, conditional sale, mortgage or other encumbrance is not covered under such policy, unless specifically insured against and premium paid therefore; and provide, also, that in case the Lessee, Mortgagor or Owner shall neglect to pay any premium due under such policy the Lienholder shall, on demand, pay the same.

"Provided also, that the Lienholder shall notify the Company of any change of ownership or increase of hazard which shall come to the knowledge of said Lienholder and, unless permitted by such policy, it shall be noted thereon and the Lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise such policy shall be null and void.

"The Company reserves the right to cancel such policy at any time as provided by its terms, but in such case the Company shall notify the Lienholder when not less than 10 days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the Company shall have the right, on like notice, to cancel this agreement.

"If the insured fails to render proof of loss within the time granted in the policy conditions, such Lienholder shall do so within 60 days thereafter, in form and manner as provided by the policy, and, further, shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

"Whenever the Company shall pay the Lienholder any sum for loss or damage under such policy and shall claim that, as to the Lessee, Mortgagor or Owner, no liability therefore existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lienholder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the Lienholder to recover the full amount of its claim.

"Nothing herein contained shall be held to vary, alter, waive, or extend any of the terms, conditions, agreements or limitations of such policy, other than as above stated."

STATEMENT REQUIRED BY STATUTE

No new policy or original premium notice of insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle may be issued or delivered unless it contains the following statement printed in boldface type, or unless the statement is attached to the front of or is enclosed with the policy or premium notice.

IMPORTANT NOTICE

In addition to the insurance coverage required by law to protect you against a loss caused by an uninsured motorist, if you have purchased liability insurance coverage that is higher than that required by law to protect you against liability arising out of the ownership, maintenance, or use of the motor vehicles covered by this policy, and you have not already purchased uninsured motorist insurance coverage equal to your liability insurance coverage:

- (1) your uninsured and underinsured motorist insurance coverage has increased to the limits of your liability coverage and this increase will cost you an extra premium charge; and
- (2) your total premium charge for your motor vehicle insurance coverage will increase if you do not notify your agent or insurer of your desire to reduce coverage within twenty days of the mailing of the policy or the premium notice, as the case may be;
- (3) If this is a new policy and you have already signed a written rejection of such higher limits in connection with it, paragraphs (1) and (2) of this notice do not apply.

After 20 days, the insurer is relieved of the obligation imposed by this subsection to attach or imprint the foregoing statement to any subsequently delivered renewal policy, extension certificate, other written statement of coverage continuation, or to any subsequently mailed premium notice.

South Carolina Code of Laws

Section 38-77-141, Act 154 of 1997.

EXHIBIT 2



Darlington County Fourth Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Stuart Walter Berry

Case Number:	F439661	Court Agency:	General Sessions	Filed Date:	04/02/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:		Disposition Judge:	Burch, Paul M.
Disposition:	Pled Guilty				
Disposition Date:	08/26/2014	Date Received:	04/02/2012	Arrest Date:	03/17/2012
Law Enf. Case:		True Bill Date:	11/29/2012	No Bill Date:	
Prosecutor Case:		Indictment Number:	2012GS1601767	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Berry, Stuart Walter	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	2560-Traffic / Uninsured motor vehicle fee violation, 1st offense	08/26/2014

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Darlington County Fourth Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Stuart Walter Berry

Case Number:	M820249	Court Agency:	General Sessions	Filed Date:	04/02/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Thomas, James Edward	Disposition Judge:	Burch, Paul M.
Disposition:	Pled Guilty				
Disposition Date:	08/26/2014	Date Received:	04/02/2012	Arrest Date:	03/19/2012
Law Enf. Case:		True Bill Date:	11/29/2012	No Bill Date:	
Prosecutor Case:		Indictment Number:	2012GS1601748	Waiver Date:	
Probation Case:					

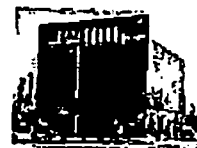
Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Berry, Stuart Walter	0395-DUI / Felony driving under the influence, death results	0395-DUI / Felony driving under the influence, death results	08/26/2014

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Switch View

The State of South Carolina VS Stuart Walter Berry

Case Number:	M820250	Court Agency:	General Sessions	Filed Date:	04/02/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Thomas, James Edward	Disposition Judge:	Burch, Paul M.
Disposition:	Pled Guilty				
Disposition Date:	08/26/2014	Date Received:	04/02/2012	Arrest Date:	03/19/2012
Law Enf. Case:		True Bill Date:	11/29/2012	No Bill Date:	
Prosecutor Case:		Indictment Number:	2012GS1601749	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Berry, Stuart Walter	2463-Traffic / Hit and run, duties of driver involved in accident with death	2463-Traffic / Hit and run, duties of driver involved in accident with death	08/26/2014

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EXHIBIT 3

Roberts v. Country Mut. Ins. Co., 231 Ill.App.3d 713 (1992)
596 N.E.2d 185, 172 Ill.Dec. 906

231 Ill.App.3d 713
Appellate Court of Illinois,
Third District.

James ROBERTS, a Minor, by Cheryl Roberts,
his Mother and Next Friend, and Cheryl Roberts
and James Roberts, Plaintiffs-Appellees,

v.

COUNTRY MUTUAL INSURANCE
COMPANY, Defendant-Appellant.

No. 3-91-0597. | July 9, 1992.

Parents of injured minor brought suit against insurer to recover under uninsured motorist coverage for injuries suffered by minor as passenger on ATV. The Circuit Court, Peoria County, Robert Casben, J., entered summary judgment in insureds' favor, and insurer appealed. The Appellate Court, Gorman, J., held that: (1) ATV was motor vehicle for purposes of uninsured motorist statute, and exclusion of ATV from coverage under policy thus violated insurance code, and (2) insurer was not entitled to set off medical payments made against payments for uninsured motorist coverage.

Affirmed.

West Headnotes (3)

[1] Insurance

↪ Uninsured Motorists or Vehicles

ATV, which according to its owner's manual, was designed for off-road use only was not motor vehicle within uninsured motorist coverage in policy which defined motor vehicle as land motor vehicle designed for use principally on public roads, and definition controlled with respect to policy definition of uninsured motor vehicle as "any type of motor vehicle" to which bodily injury liability policy did not apply.

2 Cases that cite this headnote

[2] Insurance

↪ Nature of Automobile

ATV is motor vehicle for purposes of uninsured motorist statute, such that exclusion of ATV from uninsured motorist policy violated insurance code and was unenforceable. S.H.A. ch. 73, ¶¶ 755a, 1054.

3 Cases that cite this headnote

[3] Insurance

↪ Recovery Under Other Insurance

Insurer was not entitled to set off medical payments made against payments for uninsured motorist coverage if insured's damages, as determined by arbitration, exceeded a total of limits for medical payments and uninsured motorist coverage.

Cases that cite this headnote

Attorneys and Law Firms

*714 **185 ***906 Gary D. Nelson (argued), Heyl, Royster, Voelker & Allen, Karen L. Kendall, Timothy D. Seifert, Peoria, for Country Mut. Ins. Co.

Gary Clark (argued), Nessler, Clark & Shay, Peoria, for James Roberts.

Opinion

*715 Justice GORMAN delivered the opinion of the court:

This action was brought by plaintiffs to recover under an insurance policy issued to them by defendant. On a motion for summary judgment, the trial court determined that the uninsured all-terrain vehicle (ATV) on which minor plaintiff was a passenger was covered as an uninsured motor vehicle under the policy and that defendant could not set off medical payments made against amounts payable under plaintiffs' uninsured motorist coverage. We affirm.

Defendant Country Mutual Insurance Company issued a policy to plaintiffs Cheryl and James Roberts which provided uninsured motorist coverage with limits of \$100,000 and

Roberts v. Country Mut. Ins. Co., 231 Ill.App.3d 713 (1992)

596 N.E.2d 185, 172 Ill.Dec. 806

medical payments coverage with limits of \$25,000. The policy defined "motor vehicle" as "[a] land motor vehicle designed for use principally on public roads." In the uninsured motorist provision, the policy stated that "uninsured motor vehicle" was "any type of motor vehicle or trailer to which a bodily injury liability bond or policy does not apply at the time of the accident." Moreover, in the same provision, it was set out that "an uninsured or underinsured motor vehicle does not include any motor vehicle which is a farm-type tractor or self-propelled equipment designed principally for use off public roads. This applies only while the equipment is not on public roads."

****186 ***907** The policy also provided that "[a]mounts payable for damages under Uninsured Motorists coverage will be reduced by all sums paid under Medical Payments, Personal Injury Protection or Underinsured Motorists coverage of any personal vehicle policy issued by us."

On June 27, 1989, minor plaintiff James Roberts was injured while a passenger on an ATV, a "Yamaha Moto 4", which was driven by a friend of his. Plaintiffs sought uninsured motorist benefits under their policy. Defendant did not pay these benefits because it claimed that the ATV was not a "motor vehicle" under the policy definitions. Plaintiffs also sought benefits under the medical payment provision. Defendant paid plaintiffs \$25,000, its maximum liability under that provision.

Plaintiffs filed a declaratory judgment action to determine the applicability of the policy to the uninsured motorist claim. Granting plaintiffs' motion for summary judgment, the trial court entered an order finding that the language of the policy defining "motor vehicle" was contrary to the statutory requirements of the Illinois Insurance Code. It also found that defendant may not set off medical payments made against amounts payable under plaintiffs' uninsured motorist *716 coverage if plaintiffs' total damages determined in arbitration should exceed \$125,000.

The first issue raised for review is whether there is coverage for this ATV under the terms of the policy or by virtue of Insurance Code provisions.

[1] Under the general rule, in the absence of ambiguity, words in an insurance policy are to be given their plain and ordinary meaning. (*State Farm Mutual Automobile Insurance*

Company v. Childers (1977), 50 Ill.App.3d 453, 8 Ill.Dec. 52, 365 N.E.2d 290) This policy unambiguously excludes the ATV from coverage. The policy defines a "motor vehicle" as "a land motor vehicle designed for use principally on public roads." This definition controls when the policy defines "uninsured motor vehicle" as "any type of motor vehicle ... to which a bodily injury liability ... policy does not apply at the time of the accident." A Yamaha Motor 4, according to the owner's manual, is designed for off-road use only. It is not designed for use principally on public roads. Under the terms of this policy, plaintiffs' ATV is not a motor vehicle.

[2] However, the real issue is not whether the ATV comes within the definition of uninsured motor vehicle contained in the policy, but whether the policy's exclusionary language violates section 143a of the Illinois Insurance Code and therefore is rendered unenforceable by section 442 of that Code (Ill.Rev.Stat.1989, ch. 73, par. 1054).

With regard to uninsured motorist coverage, the Illinois Insurance Code sets forth the following:

No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be renewed or delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7-203 of the Illinois Vehicle Code for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit and run motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. Ill.Rev.Stat.1989 ch. 73, par. 755a.

The Insurance Code does not contain a definition of "motor vehicle". However, in *Hartford Accident and Indemnity v.*

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Holada (1970), 127 Ill.App.2d 472, 262 N.E.2d 359, the Illinois Vehicle Code definition of "motor vehicle" was incorporated by reference into the Insurance *717 statute. In accord with that case, we look to the Vehicle Code definition of "motor vehicle".

The Vehicle Code broadly defines "motor vehicle" as "every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from **187 ***908 overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs". (Ill.Rev.Stat.1989 ch. 95½, par. 1-146.) This statute defines "motor vehicle" in such a way that it clearly includes this ATV.

If an ATV was not to be considered a motor vehicle for purposes of the uninsured motorist statute, the legislature could have provided an exclusion. Moreover, even the exception for farm equipment and off road vehicles in the uninsured motorist statute applies only when those vehicles are, in fact, not being operated on public roads.

[3] The second issue for review is whether the trial court erred in declaring that defendant is not entitled to set off medical payments made against payments for uninsured motorist coverage if plaintiff's damages, as determined in arbitration, exceed \$125,000.

In *Glidden v. Farmers Automobile Insurance Association* (1974), 57 Ill.2d 330, 312 N.E.2d 247, the supreme court stated that setoffs apply only where necessary to prevent double exposure for medical payments. In that case, plaintiff's wife was struck and killed by an uninsured motorist. He sued his insurance company in a declaratory judgment action to construe the limits of coverage under his three automobile liability policies issued by defendant. The defendant contended that payments made under the medical payments provisions must be set off against the payments made under the uninsured motorist coverage. The supreme court disagreed and enunciated the rule stated above. We believe that the same rule is applicable in this instance. Moreover, if plaintiffs here are in a better position than if the uninsured driver had had the minimum limits, "if there is to be a 'windfall' ... it should be to the insured who paid the several premiums, rather than to the insurer who collected them." *Greenawalt v. State Farm Insurance Company* (1991), 210 Ill.App.3d 543, 155 Ill.Dec. 154, 569 N.E.2d 154, affirmed (1991), 148 Ill.2d 272, 170 Ill.Dec. 351, 592 N.E.2d 1031.

Affirmed.

BARRY, P.J., and SLATER, J., concur.

Parallel Citations

231 Ill.App.3d 713, 596 N.E.2d 185

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EXHIBIT 4

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572 N.Y.S.2d 195

174 A.D.2d 1031

David HARPER, Shirley Harper, and
Heidi Harper, as Parents
and Natural Guardians of Dana
Harper, an Infant
under the Age of Fourteen Years,
Appellants,

v.

LUMBERMENS MUTUAL CASUALTY
CO., Respondent.

Supreme Court, Appellate Division,
Fourth Department.

June 7, 1991.

Sheldon M. Markel & Associates, P.C. by
Howard Lipman, Buffalo, for appellants.

Daniel J. Moore, Harris, Beach & Wilcox,
Rochester, for respondent.

Before [174 A.D.2d 1032] CALLAHAN,
J.P., and DENMAN, GREEN, PINE and
LOWERY, JJ.

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[174 A.D.2d 1031] MEMORANDUM:

Supreme Court erred in determining that, as a matter of law, an All Terrain Vehicle (ATV) was not a motor vehicle within the scope of plaintiffs uninsured motorist coverage. The insurance policy issued by defendant covers injuries resulting from an accident with an uninsured automobile. As a matter of law, the coverage extends to all motor vehicles as defined by Vehicle & Traffic Law § 125 (see, Insurance Law § 5202[a]; Matter of Country-Wide Ins. Co. v. Wagoner, 45 N.Y.2d 581, 412 N.Y.S.2d 106, 384 N.E.2d 653; Matter of Askey v. General Acc. Fire & Life Assur. Corp., 30 A.D.2d 632, 290 N.Y.S.2d 759, affd. 24 N.Y.2d 937, 302 N.Y.S.2d 576, 250 N.E.2d 65; see also, Insurance Law § 3420[f](1).

Vehicle & Traffic Law § 125 defines a motor vehicle as every vehicle operated or driven upon a public highway and propelled by any power other than muscular power. The statute, as it existed at the time of the subject accident, did not exclude ATVs (Vehicle & Traffic Law § 125 now excludes ATVs, but applies only to actions accruing after January 1, 1987; the action here accrued on May 13, 1986).

[174 A.D.2d 1032] Because no specific exclusion for ATVs existed, we may presume that the Legislature intended that ATVs were not excluded from the statutory definition of motor vehicles (see, Eaton v. New York City Conciliation & Appeals Bd., 56 N.Y.2d 340, 346, 452 N.Y.S.2d 358, 437 N.E.2d 1115; McKinney's Cons. Laws of N.Y., Book 1, Statutes § 240; see also, Matter of Buffalo Columbus Hosp. v. Axelrod, 165 A.D.2d 605, 569 N.Y.S.2d 310). Thus, consistent with this State's policy of protecting its citizens from uninsured motorists on its highways (see, Matter of Allstate Ins. Co. v. Shaw, 52 N.Y.2d 818, 819-820, 436 N.Y.S.2d 873, 418 N.E.2d 388), we conclude that defendant is obligated to provide plaintiffs with uninsured motorist benefits for injuries caused by the uninsured ATV operator. Because this issue is solely a question of law, we grant plaintiffs partial summary judgment declaring that obligation (see, CPLR 3212[b], [e]).

[174 A.D.2d 1031] Order and judgment unanimously reversed on the law with costs, motion denied, complaint reinstated and summary judgment granted in part to plaintiffs.



EXHIBIT 5

Page 563

169 S.W.3d 563
**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, Respondent,**
v.
Jerry PECK and Mary Ann Peck,
Appellants,
Shane Michael Bakalar, Defendant.
No. WD 64645.
Missouri Court of Appeals, Western
District.
August 23, 2005.

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Russell Clark Purvis, Kansas City, for
Appellant.

Keith Joseph Schieber, St. Joseph, for
Respondent.

Shane Michael Bakalar, pro se, for
Defendant.

**RONALD R. HOLLIGER, Presiding
Judge.**

Jerry and Mary Ann Peck appeal a trial court declaratory judgment in favor of American Family. The Pecks allege that the trial court erred in declaring that a homeowner's insurance policy issued by American Family did not cover an off road accident involving a three wheel recreational vehicle that caused the death of their son, Devon Peck. We hold (1) that the policy language provides coverage for ATV's that are not subject to motor vehicle registration, (2) ATV registration is not the same as motor vehicle registration, and (3) the vehicle involved in this accident was not subject to motor vehicle registration and was, therefore, covered under the Policy. Accordingly, we reverse.

Facts

On the evening of October 14, 2001, Shane Bakalar was operating a three-wheeled Honda motorized vehicle near North Platte High School in Platte County, Missouri. Devon Lee Peck was a passenger on the vehicle when an accident occurred from which he sustained fatal injuries. At the time of the accident Bakalar was not the owner of the vehicle, but he was insured by a homeowner's insurance policy issued by American Family Mutual Insurance Company (American Family).

The parents of Devon Peck (the Pecks) filed an action for wrongful death against

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Bakalar in the Circuit Court of Platte County, Missouri. Ultimately judgment was taken against Bakalar in the amount of \$500,000 pursuant to Section 537.065, RSMo.

Prior to the entry of judgment against Bakalar, American Family filed a Petition for Declaratory Judgment seeking a judicial determination of whether the homeowner's policy issued to Bakalar provided coverage for the accident. American Family took the position that the policy did not provide coverage because an exclusion to the policy specifically excepted coverage for injuries resulting from the use of any motorized vehicle "subject to motor vehicle registration." American Family argued that the vehicle driven by Bakalar was an all terrain vehicle (ATV) and, therefore, subject to motor vehicle registration under Missouri law.

The Pecks, conversely, disputed that the vehicle was within the statutory definition of an ATV and claimed that the wording of the policy was ambiguous. Alternatively, in the event that the vehicle was an ATV, the Pecks claimed that ATV registration, as required under Missouri law, was categorically different than the exclusion for "motor vehicle registration" found in the policy.

At the hearing, Bakalar testified that the vehicle he was driving the night of the accident did not have a horn, turn signals, rear view mirror, or a speedometer. Bakalar testified that he had only been in possession of the vehicle for approximately 24 hours prior to the accident and that he had driven the vehicle several times on public highways during that time. Testimony was also admitted that the vehicle had a manual transmission, was 50 inches or less in width, and weighed less than 600 pounds. The vehicle had three low-pressure tires with knobby tread that were designed for off-road use.

The trial court found in favor of American Family and the Pecks now appeal.

Discussion

Generally, we review court-tried cases under the standard set forth in *Murphy v. Carron* and will affirm the judgment unless it is against the weight of the evidence, it is not supported by substantial evidence, or it erroneously declares or applies the law. 536 S.W.2d 30, 32 (Mo. banc 1976). "In a court-tried declaratory judgment action, however, interpretation of an insurance policy is a question of law, and the trial court receives no deference where resolution of the controversy is a question of law." *Auto. Club Inter-Ins. Exch. v. Medrano*, 83 S.W.3d 632, 637 (Mo.App.2002). The disposition of this case turns on the interpretation of certain exclusionary language from the insurance policy issued to Bakalar. The exclusion excepts liability for bodily injury or property damage resulting from the use of any vehicle "subject to motor vehicle registration." The exclusion and its corresponding exception read in relevant part:

We will not cover bodily injury or property damage arising out of the ownership, supervision, entrustment, maintenance, operation, use, loading or

unloading of any type of motor vehicle, motorized land conveyance or trailer, except:

We will provide specific coverage on only the following types owned or operated by or rented or loaned to any insured:

(3) a motorized land conveyance including a motorized bicycle, tricycle or similar type of equipment designed principally for recreational use off public roads, which is not subject to motor vehicle registration and is:

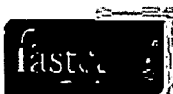
(a) not owned or leased by an insured

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(Emphasis added). It is undisputed that Bakalar was not the owner of the vehicle involved in the crash. What is in dispute is how to classify the vehicle in question and whether the vehicle was "subject to motor vehicle registration." The policy leaves the term undefined.

American Family argues that the vehicle Bakalar was driving at the time of the accident is clearly within the statutory definition of an ATV, Section 301.010(1), RSMo 2000, and that ATVs are required to be registered with the Department of Revenue. See Section 301.707, RSMo 2000. American Family claims that the statutorily required registration of ATVs renders the vehicle "subject to motor vehicle registration" and, thus, excluded from coverage by the express terms of the policy.

The Pecks argue in response that the vehicle does not qualify as an ATV under the statutory definition. They argue further that, even if it does qualify as an ATV, such vehicles are not specifically removed from coverage by the exclusion and that ATV registration is categorically different than motor vehicle registration under Missouri law.



First we turn to the classification of the instrumentality in question, and then we will discuss whether it was subject to motor vehicle registration.

Classifying the vehicle

The Pecks argue that the three-wheeled vehicle driven by Bakalar, which was controlled with handlebars and equipped with low-pressure, knobby tread, tires "designed specifically for off road use," is not an ATV. The Pecks then argue by extension that, as a non-ATV, the vehicle is not subject to the ATV registration requirement. See Section 301.707, RSMo 2000. This argument is based on an overly narrow reading of the statutory definition of an ATV; it reads:

"All-terrain vehicle," any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of six hundred pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control[.]

Section 301.010(1), RSMo 2000 (emphasis added). The Pecks aver that since Bakalar testified that he operated the vehicle on a public highway several times, the vehicle necessarily does not fit within the plain meaning of the statutory definition of an ATV because it was not used exclusively off the highway.

American Family responds that the vehicle in question is clearly an ATV because it falls squarely within the definition being less than 50 inches in width, less than 600 pounds, and is designed for use by a straddled operator who controls it with handlebars. American Family argues, and we agree, that the Pecks' reliance on the statute's peculiar literal wording to support such an argument is absurd because any motorized vehicle, including this one, which lacked rear taillights, a horn or directional signals, can be

illegally driven on a public roadway. It would be illogical to allow such flaunting of the law to redefine

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the nature of the vehicle.³ Practically speaking, however, it ultimately matters little (for the purposes of this case anyway) whether this vehicle fits within the statutory definition of an ATV for at least two reasons: (1) even if it is an ATV, as American Family claims, the vehicle is not "subject to motor vehicle registration" as contemplated by statute and the policy, and (2) if it's not an ATV, the vehicle clearly falls within the term *motorized land conveyance* from the exception to the exclusion. In other words, ATV or not, the vehicle is not subject to motor vehicle registration. We discuss (1) below; as for (2), it is self evident that this vehicle has a motor and is used on land. The word "conveyance" will be given its plain and ordinary meaning, *Mo. Employers Mut. Ins. Co. v. Nichols*, 149 S.W.3d 617, 625 (Mo.App.2004), as "[a] means of conveying, esp. a vehicle for transportation." *AMERICAN HERITAGE DICTIONARY* 304 (3d ed.1993). Thus, the vehicle in question is clearly a "motorized land conveyance."

In sum, the three-wheeled vehicle at issue is not excluded from coverage by its vehicular classification because the policy exclusion does not specifically exempt ATVs and, regardless, the vehicle fits into the term "motorized land conveyance" from the exception to the exclusion. Thus, the only remaining issue is whether bodily injury resulting from the operation of this vehicle was not covered by the policy because the vehicle was "subject to motor vehicle registration." If the vehicle is subject to motor vehicle registration, then the trial court properly found that coverage did not exist.

For ease of analysis, we will assume for the remainder of this discussion that the

vehicle is indeed an ATV as American Family claims.

ATV's are not "subject to motor vehicle registration" as contemplated by the policy and Missouri law

The Pecks allege that the term "subject to motor vehicle registration" is ambiguous and, therefore, should be construed against American Family in favor of insurance coverage. The Pecks initially appear to argue that since the term is not specifically defined in the Policy it is, *ipso facto*, ambiguous. This is not the law regarding ambiguity in insurance contracts. The fact that a term remains undefined in a policy does not necessarily render it ambiguous, see *State Farm Mut. Auto. Ins. Co. v. DeCaigney*, 927 S.W.2d 907, 910 (Mo.App.1996), and courts should take care not to create ambiguities where none exist. *Mansion Hills Condo. Ass'n v. Am. Family Mut. Ins. Co.*, 62 S.W.3d 633, 637 (Mo.App.2001). "An ambiguity arises where there is a duplicity, indistinctness, or uncertainty in the meaning of the words used in an insurance contract." *Nichols*, 149 S.W.3d at 625. When interpreting an insurance contract, we read the contract as a whole and determine the intent of the parties, giving effect to that intent by enforcing the contract as written. *Id.* Language is ambiguous if it is reasonably open to different constructions and the language used will be viewed in the meaning that would ordinarily be understood by the layperson that bought and paid for the policy. *Lincoln County Ambulance Dist. v. Pac. Employers Ins. Co.*, 15 S.W.3d 739, 743

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(Mo.App.1998). A term may be deemed ambiguous in the context of one insurance policy, and not ambiguous in another. *DeCaigney*, 927 S.W.2d at 910. If a term appearing in an insurance contract is not otherwise defined, an appellate court is free to give a reasonable construction to the term,

applying general contract principles and resolving doubts in favor of the insured. *Mansion Hills*, 62 S.W.3d at 638. Since the policy exclusion invokes state law provisions regarding vehicle registration, we will look to the controlling statutes, state regulations, and the policies behind them in construing the meaning of the term "subject to motor vehicle registration" and evaluating any resulting ambiguity.

The crux of American Family's assertion that Bakalar's vehicle is subject to motor vehicle registration rests on American Family's reading of Section 301.707, which requires all ATV's operated in the state to be registered with the Department of Revenue. It straightforwardly provides: "No person shall operate an all-terrain vehicle within the state unless the all-terrain vehicle has been registered with the Department of Revenue." Section 301.707.1, RSMo 2000. American Family points to Section 301.707 and argues that the ATV Bakalar drove was, therefore, clearly "subject to motor vehicle registration." At first blush American Family's position seems appealing; however, upon closer examination of Missouri statutes, clear distinctions emerge between registering a motor vehicle for the purposes of legally driving on a public highway and registering an ATV. While both forms of registration are recorded with the Department of Revenue, we believe the policy language in dispute refers to the former.

The general purpose behind motor vehicle registration requirements is to identify vehicles in relation to their owners. See generally Jay M. Zitter, Annotation, *What Constitutes Farm Vehicle, Construction Equipment, or Vehicle Temporarily on Highway Exempt from Registration as Motor Vehicle*, 27 A.L.R.4th 843 Section 2. This is especially important when motor vehicles are involved in accidents resulting in damage or injury. *Id.* In addition to providing for ATV registration, Chapter 301 of the Missouri statutes also governs the



registration of motor vehicles to be driven on the public highways. Section 301.020.1 requires that every owner of a motor vehicle to be driven on the public highways must annually file an "application for registration" with the Director of Revenue. This application must contain, among other things, a description of the vehicle, the name of the manufacturer, the vehicle identification number, and the vehicle's horsepower. Section 301.020.1(1), RSMo 2000. Missouri law further requires that all motor vehicles, prior to registration, pass an "inspection of their mechanism and equipment." Section 307.350.1(3), RSMo 2000. This inspection is for the purpose of ensuring that the vehicle is in compliance with all of the relevant equipment regulations from Chapter 307 that apply to roadworthy vehicles but not to ATVs. Additionally, prior to completion of motor vehicle registration, the owner of the motor vehicle must prove compliance with Missouri's financial responsibility law, which generally requires some kind of liability insurance coverage on the vehicle. Section 303.025, RSMo 2000. Upon completion of motor vehicle registration the owner of the vehicle receives license plates from the Department of Revenue that must be appropriately displayed in accordance with the law. Section 301.130, RSMo 2000.

ATV registration is controlled by Section 301.707 *et seq.* Sections 301.709 and 301.711 detail the requirements to complete ATV registration. The process involves

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merely filling out a form describing the vehicle and paying a ten-dollar fee. Few of the above-described procedures apply to ATV registration and the process is utterly dissimilar from the practice of registering a motor vehicle to be driven on the public highways. Chapter 301 makes the distinction by implication between ATV's and motor vehicles by assigning different registration

protocols for the two distinct vehicular creatures.

The Missouri Code of State Regulations also offers useful insight on the alleged similarity of ATV registration and motor vehicle registration. Chapter 12 reveals that it is indeed possible to register an ATV as a motor vehicle in the event that the ATV's character is completely altered. 12 CSR 10-23.428(1) declares that "[a]n all-terrain vehicle (ATV) is not a motor vehicle and may not be operated on the streets and highways...." If an ATV is modified to pass a vehicle examination and otherwise become fit to be driven on a public roadway, the regulation requires that it "must be retitled as a motor vehicle and appropriately registered" prior to being used as such. 12 CSR 10-23.428(1)-(2). The obvious implication of this provision is that any previous registration (presumably as an ATV) is insufficient to legally permit the vehicle to be driven on the public highways. The regulation goes on to enumerate the steps that need be taken to register a road-worthy ATV which, conspicuously, mirror the requirements to register a motor vehicle. Only after these steps are taken may an ATV be legally driven on the public roadways.

After careful review of these statutes and regulations, we find that the undefined Policy term "subject to motor vehicle registration" does not include registering an ATV under Section 301.707. Taking guidance from the statutes, we find its plain meaning, as understood by a layperson, invokes the process of registering a vehicle to be driven on the public roadways of this State. An unmodified ATV, like the one at issue in this case, simply cannot be registered as a motor vehicle and, thereby, permitted to be legally driven on public roadways. We recognize that American Family points us to non-controlling case law equating the two types of registration. See *Safeco Ins. Co. of Am. v. Clifford*, 896 F.Supp. 1032 (D.Or.1995).⁴ We note this contrary precedent and decline to

follow it, finding other authority on the issue to be a more commonsense and persuasive approach. See *Concord Gen. Mut. Ins. Co. v. Woods*, 175 Vt. 212, 824 A.2d 572 (2003) (ATV was not subject to motor vehicle registration even though the insured occasionally operated it on public roads and registered it as an ATV with the commissioner of motor vehicles); *MacLean v. Hingham Mut. Fire Ins. Co.*, 51 Mass.App.Ct. 870, 750 N.E.2d 494 (2001) (ATV, while subject to "environmental registration," was not subject to motor vehicle registration and, thus, fell within an exception to the exclusion of insurance policy); *Pelter v. Dep't. of Transp.*, 663 A.2d 844 (Pa.Cmwlt.1995) (registration of ATV with the State did not confer authority to operate it on highways nor require compliance with financial responsibility law and, therefore, was not the same as motor vehicle registration).

Nor are we persuaded by American Family's reference to *Ferguson v. Gateway Insurance Co.*, 151 S.W.3d 911 (Mo.App.2004) (holding that a horse-drawn

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buggy was not a motor vehicle for purposes of uninsured motorist coverage), or *Meeks v. Berkbuegler*, 632 S.W.2d 24 (Mo.App.1982) (holding that a dune buggy being operated off-road was not an uninsured motor vehicle). The issue here is not whether the ATV was a motor vehicle or came within the definition of an uninsured motor vehicle of an automobile liability policy. Rather, the question is whether the ATV was subject to "motor vehicle registration" under Missouri law. These cases simply do not aid in that analysis.

Similarly, we are not persuaded by American Family's argument equating ATV registration to motor vehicle registration simply because both are administered by the Department of Revenue. Construing the policy's language to provide or deny coverage based upon the administrative agency that

receives and processes the registration is a tortured interpretation that we resist entertaining here. The more reasoned approach, the one we have chosen, is to decide whether registering a motor vehicle for operation on a public highway and registering an ATV is the same thing; for the purposes of the insurance policy at issue, we find that they are not. It is illogical to equate the two types of registration in light of the statutes and regulations reviewed above.

Finally, American Family also appears to argue that since ATVs have previously been held to be within the broad statutory definition of a "motor vehicle," see *Rice v. Fire Ins. Exch.*, 946 S.W.2d 40 (Mo.App.1997), that ATVs are necessarily subject to motor vehicle registration. This argument is also unpersuasive. Section 301.010.33, defines "motor vehicle" broadly as "any self-propelled vehicle not operated exclusively upon tracks, except farm tractors." To be sure, the vehicle at issue likely falls within this broad description. However, simply because a vehicle with a motor is considered within the broad statutory definition of a "motor vehicle" does not mean that it is "subject to motor vehicle registration." See *Stonger v. Riggs*, 85 S.W.3d 703 (Mo.App.2002) (riding lawnmower was "motor vehicle" where mower was used on the street); *Covert v. Fisher*, 151 S.W.3d 70 (Mo.App.2004) (golf cart was motor vehicle when driven on public highway). In neither of these cases would anyone reasonably argue that the "motor vehicles" at issue were subject to the motor vehicle registration procedures required of road worthy vehicles (nor could they qualify to be so) even though they were technically within the broad statutory definition of a motor vehicle. The term motor vehicle can be used in many contexts; the relevant question here is not whether this ATV is a motor vehicle, but whether it is subject to motor vehicle registration. We conclude that it is not.

As such, the vehicle Bakalar was driving at the time of the accident that resulted in Devon Peck's death was not "subject to motor vehicle registration" as the term is used in the policy issued to him. Therefore, the vehicle falls within the exception to the exclusion and coverage exists under the policy.

plain language of the statutes suggested that ATV's were to be registered the same way as other motor vehicles.

The judgment is reversed and remanded with directions to enter judgment in favor of the Plaintiffs.

ROBERT G. ULRICH, Judge, and
JOSEPH M. ELLIS, Judge, concur.

Notes:

1. This characterization comes directly from the owner's manual admitted as an exhibit during trial.
2. The Pecks provide this court with the dictionary definition for the word exclusive: [a]ppertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone. Apart from all others, without admission of others to participation. BLACK'S LAW DICTIONARY 564 (6th ed.1990).
3. Indeed, the statute's use of the words "used exclusively for off-highway use" in conjunction with Bakalar's admission that he drove on the highway, is the Pecks' only support for their assertion that Bakalar's vehicle is not an ATV. The reality is that driving an unmodified ATV on the highway is a class C misdemeanor, see Section 304.013, RSMo 2000, and such illegality cannot support the Pecks' argument that Bakalar's vehicle does not qualify as an ATV.
4. Holding that an ATV was subject to motor vehicle registration under Oregon law within the meaning of the policy despite that ATV registration was controlled by a separate chapter of the Oregon Revised Statutes. The

last

EXHIBIT 6

AMANDA MONTGOMERY, Plaintiff,
v.
PROGRESSIVE ADVANCED
INSURANCE COMPANY, Defendant.

Action No. 2:14cv231

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
VIRGINIA Norfolk Division

March 6, 2015

OPINION & ORDER

This declaratory judgment action is before the Court on cross motions for summary judgment, as well as Plaintiff's motion to amend responses to requests for admissions. Plaintiff is seeking a declaration that the 2007 Yamaha Rhino, in which she was a passenger during an off-road accident in Arizona, is an "uninsured or underinsured motor vehicle" as defined in the policy of motor vehicle liability insurance Defendant issued to Plaintiff in Virginia. On January 28, 2015, the Court held a hearing on the motions. W. Lawrence Perkins, III, Esq., represented Plaintiff, and T. Jeffrey Salb, Esq., represented Defendant. Jody Stewart was the Official Court Reporter. For the reasons stated on the record, the Court **GRANTS** Plaintiff's motion to amend responses to requests for admissions (ECF No. 20), **GRANTS** Plaintiff's motion for summary judgment (ECF No. 13), **DENIES** Defendant's motion for summary judgment (ECF No. 10), and **FINDS** that the 2007 Yamaha Rhino is an "uninsured or underinsured motor vehicle" as defined in the insurance policy.

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I. UNDISPUTED FACTS

This action relates to injuries Plaintiff sustained in Arizona while riding off-road in a 2007 Yamaha Rhino ("the Rhino") operated

by her brother, Joseph Montgomery. The relevant facts are not in dispute. Plaintiff is seeking coverage for her injuries under the uninsured/underinsured endorsements in the motor vehicle liability insurance policy issued to her by Defendant in Virginia ("the Policy"), which has uninsured/underinsured coverage limits of \$100,000. Policy, Ex. 1 to Def.'s Mem. in Support of Sum. Judg. ("Def.'s Mem."), ECF No. 11-2. The Policy defines "uninsured motor vehicle" and "underinsured motor vehicle" as "a land motor vehicle or trailer of any type" that does not meet certain coverage limits, but provides, "neither 'uninsured motor vehicle' nor 'underinsured motor vehicle' includes: [] [a] farm type tractor or other equipment designed for use principally off public roads while not on public roads." Policy 12-13, ECF No. 11-2.

On February 12, 2012, Plaintiff was riding in the front passenger seat of the Rhino operated by her brother, Joseph Montgomery, in Globe, Arizona. Compl. ¶¶ 9-10. The Rhino is a four-wheel vehicle with two bucket seats in the front, a bench seat in the back, an open top, open sides, and roll bars. See Ex. 3-6 to Def.'s Mem., Photos of the Rhino, ECF Nos. 11-4, 11-5. Joseph Montgomery was driving the Rhino off-road at Round Mountain Park where there was no improved, paved, or maintained road. Dep. of Joseph Montgomery ("Dep.") 23:2-4, ECF No. 11-7, 12-10; Arizona Police Crash Report, ECF No. 11-6; Ans. to Req. for Admission 13, ECF No. 11-1. Joseph Montgomery began driving the Rhino up a hill, and then attempted to back down the hill, when the vehicle rolled onto its passenger side injuring Plaintiff. Dep. 23:11-21, ECF No. 11-7; Ans. to Req. for Admission 11, ECF No. 11-1.

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The Owner's Manual for the Rhino states that the vehicle is designed for off-road use only, and should not be used on paved surfaces or public roads. Owners Manual,

ECF No. 11-3 at 5, 15, 21, 93. The third page of the manual states,

[t]his vehicle is designed and manufactured for off-road use only. Use on public streets, roads, or highways is not only illegal in most areas, it also increases the risk of an accident involving other vehicles. This vehicle does not meet federal motor vehicle safety standards for on-road use.

ECF No. 11-3 at 5. The manual explains that the vehicle handles and maneuvers differently from cars, ATVs, go-carts, golf-cars, and grounds-keeping vehicles. ECF No. 11-3 at 16, 72. The vehicle "has higher ground clearance and other features to handle rugged terrain," and must be driven slowly and turned gradually if it must be driven on pavement. ECF No. 11-3 at 15, 21, 72. The vehicle is intended for use by an operator sixteen years old or older with a valid motor vehicle license. ECF No. 11-3 at 17.

Joseph Montgomery testified that the previous owner made several modifications to the Rhino, including the addition of rear view lights, rear view mirrors, seatbelts, and other lighting. Dep. 9:4-21. Joseph Montgomery understood that these modifications were made so that the Rhino could be used on the highway. *Id.* Following his purchase of the Rhino, Joseph Montgomery registered the Rhino with the Arizona Motor Vehicle Division, and obtained license plates for the vehicle. Dep. 7:11-22; Vehicle Registration, ECF No. 12-1. Joseph Montgomery insured the Rhino through a motor vehicle liability insurance policy issued by Defendant in Arizona, with liability limits of \$15,000. Dep. 13:25-14:8; ECF No. 11-7. Joseph Montgomery explained that he used the Rhino primarily for driving on public roads, and that the Rhino would travel at speeds up to 45 miles per hour. Dep. 11:11-25, 22:24-23:1; ECF No. 11-7. In order to

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drive the Rhino off-road, Joseph Montgomery was required to purchase an "off-road vehicle sticker" from Arizona, and this sticker was necessary to operate the Rhino in the area where the accident occurred. Dep. 15:20-16:6, 22:13-23:16, 24:2-12; ECF No. 11-7.

II. MOTION TO AMEND RESPONSES TO REQUESTS FOR ADMISSION

Plaintiff has moved to amend the responses given to two requests for admissions propounded by Defendant. ECF No. 20. Courts may permit amendment of responses to requests for admission "if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits." Fed. R. Civ. Proc. 36(b).

Defendant's requests for admission, Plaintiff's original responses, and Plaintiff's proposed amended responses are as follows:

2. Please admit that at the time of the vehicle incident referred to in the Complaint herein, the plaintiff was a passenger on a 2007 Yamaha model RGG All-Terrain vehicle (ATV).

RESPONSE: Admitted, except that the plaintiff believes the model was R66.

AMENDED RESPONSE: The plaintiff admits that she was a passenger on a 2007 Yamaha model R66 vehicle. The plaintiff admits that the body style of the vehicle according to the Arizona vehicle registration indicated

ATV. The plaintiff denies that the vehicle was an All-Terrain Vehicle (ATV) as defined in § 46.2-100 of the Code of Virginia (2011).

4. Please admit that the document attached as Exhibit 2 is a true, correct and complete copy of the Yamaha Owner's Manual for the model ATV in which the plaintiff was riding as a passenger at the time of the incident referred to in the Complaint.

RESPONSE: Plaintiff does not own the vehicle and does not have access to the Owner's Manual and therefore is unable to truthfully admit or deny this request. This appears to be the Owner's Manual applicable to the vehicle and this can be confirmed at the deposition of the owner.

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AMENDED RESPONSE: Plaintiff does not own the vehicle and does not have access to the Owner's Manual and therefore is unable to truthfully admit or deny this request. This appears to be the Owner's Manual applicable to the vehicle and this can be confirmed at the deposition of the owner. The plaintiff admits that the body style of the vehicle according to the Arizona vehicle registration indicated ATV. The plaintiff denies that the vehicle was an All-Terrain Vehicle (ATV) as

defined in § 46.2-100 of the Code of Virginia (2011).

Plaintiff asserts her original responses were based on the fact that the vehicle registration issued by the Arizona Motor Vehicle Division referred to the body style of the Rhino as "ATV," as well as the fact that off-road vehicles, such as the Rhino, are often referred to generically as "ATVs." Pl.'s Mem. in Support Mot. to Amend Resps. 3; ECF No. 21. Plaintiff argues the Rhino is not an ATV under the Virginia Code definition of an ATV that was in effect on the date of the accident, February 12, 2012.¹

The Court FINDS that allowing the amendment promotes the presentation of the case on the merits, and does not prejudice Defendant in defending the case on the merits. Accordingly, Plaintiff's motion to amend responses to requests for admission is GRANTED.

III. STANDARD OF REVIEW FOR CROSS MOTIONS FOR SUMMARY JUDGMENT

A. Summary Judgment

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

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party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). For the evidence to present a "genuine" issue of material fact, it must be "such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party "seeking summary judgment always bears the initial responsibility of informing the [court] of the

basis for its motion." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In deciding a motion for summary judgment, the Court must view the facts, and inferences to be drawn from the facts, in the light most favorable to the non-moving party. *Id.* at 255. Finally, either party may submit as evidence "pleadings, depositions, answers to interrogatories, and admissions on file, together with . . . affidavits" to support or rebut a summary judgment motion. Fed. R. Civ. P. 56(c).

Both parties in this case agree that there are no issues of genuine fact, and that the case should be decided on the cross-motions for summary judgment.

B. Virginia Insurance Contract Interpretation

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, diversity of citizenship, so it must apply state law in interpreting the relevant insurance policy provisions. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The Court employs the choice-of-law rules of the Commonwealth of Virginia to determine which state's laws to apply. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Under Virginia law, "the law of the place where an insurance contract is written and delivered controls issues as to its coverage." *Firemen's Ins. Co. v. Kline & Son Cement Repair, Inc.*, 474 F. Supp. 2d 779, 788 (E.D. Va. 2007) (quoting *Buchanan v. Doe*, 431 S.E.2d 289 (Va. 1993)). It is undisputed that the Policy was issued and delivered to Plaintiff in Virginia. Therefore, this Court will apply the federal standard for summary judgment,

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and will apply Virginia law to analyze the underlying insurance policy issue. See *Gen. Accident Fire and Life Assurance Corp., Ltd. v. Akzona, Inc.*, 622 F.2d 90, 93 n. 5 (4th Cir. 1980); *Resource Bankshares Corp. v. St. Paul*

Mercury Ins. Co., 407 F.3d 631, 635-36 (4th Cir. 2005).

Under Virginia law, "[c]ourts interpret insurance policies, like other contracts, in accordance with the intention of the parties gleaned from the words they have used in the document." *Seals v. Erie Ins. Exch.*, 674 S.E.2d 860, 862 (Va. 2009) (quoting *Floyd v. N. Neck Ins. Co.*, 427 S.E.2d 193, 196 (Va. 1993)). Therefore, "a court must adhere to the terms of a contract of insurance as written, if they are plain and clear and not in violation of law or inconsistent with public policy." *Blue Cross & Blue Shield v. Keller*, 450 S.E.2d 136, 140 (Va. 1994). Virginia courts "interpret the unambiguous terms of a contract according to their plain meaning." *Uniwest Constr., Inc. v. Amtech Elevator Servs.*, 699 S.E.2d 223, 231 (Va. 2010). However, "[b]ecause insurance companies typically draft their policies without the input of the insured, the companies bear the burden of making their contracts clear." *Resource Bankshares Corp.*, 407 F.3d at 636. "Accordingly, if an ambiguity exists, it must be construed against the insurer." *Id.* (citing *Caldwell v. Transp. Ins. Co.*, 364 S.E.2d 1, 3 (Va. 1988)). "[L]anguage is ambiguous when it may be understood in more than one way or when it refers to two or more things at the same time." *Granite State Ins. Co. v. Bottoms*, 415 S.E.2d 131, 134 (Va. 1992). Moreover, "[l]anguage in a policy purporting to exclude certain events from coverage will be construed most strongly against the insurer." *Seals*, 674 S.E.2d at 862 (quoting *St. Paul Fire & Marine Ins. Co. v. S.L. Nusbaum & Co., Inc.*, 316 S.E.2d 734, 736 (Va. 1984)). With these principles of law in mind, the Court will address the motions for summary judgment.

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IV. ANALYSIS

The issue in this case is whether the Rhino meets the Policy's definition of uninsured motor vehicle or underinsured

motor vehicle. The Policy defines "uninsured motor vehicle" and "underinsured motor vehicle" as "a land motor vehicle or trailer of any type" without sufficient insurance coverage, but provides, "neither 'uninsured motor vehicle' nor 'underinsured motor vehicle' includes: [] [a] farm type tractor or other equipment designed for use principally off public roads." Policy 12-13, ECF No. 11-2. This Court FINDS that the Rhino was an uninsured or underinsured motor vehicle under the Policy and was not a "farm type tractor or other equipment designed for use principally off public roads."

A. The Rhino Falls Within the Definition of an Uninsured or Underinsured "land motor vehicle or trailer of any type"

To determine whether coverage exists, the Court must first determine whether the Rhino falls within the Policy's broad definition for an uninsured or underinsured motor vehicle. The Policy defines uninsured motor vehicle as:

a land motor vehicle or trailer of any type . . . [t]o which no liability bond, policy, deposit or money or security applies at the time of the accident in at least the minimum limits required by Va. Code Ann. Section 46.2-472.

ECF No. 11-2 at 20. The undisputed evidence is that the Rhino was insured under a policy of motor vehicle liability insurance carrying liability limits of \$15,000 per person. Def.'s Mem 2, ECF No. 11; Compl. ¶ 11, ECF No. 1. As section 46.2-472 of the Code of Virginia provides for minimum limits of \$25,000 for bodily injury, the Rhino's insurance does not meet the minimum requirements of the Virginia statute. Based on the limited record before the Court, it appears that

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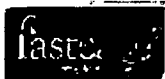
the Rhino qualifies as uninsured under the Policy's definition.

The Rhino is also apparently underinsured under the Policy definition, because "the sum of [] the limits of liability under all liability bonds or policies" for the Rhino is less than the uninsured motorists coverage under the Policy. ECF No. 11-2 at 19. The Policy has uninsured/underinsured coverage limits of \$100,000. Policy, ECF No. 11-2 at 3. With respect to the coverage limits, the parties have not contested that the Rhino was uninsured or underinsured under the Policy. Based on the information in the record, it appears the Rhino was both.

The next issue, which is contested by the parties, is whether the Rhino is a motor vehicle, defined in the Policy as "a land motor vehicle or trailer of any type." Applying the Policy's definition of motor vehicle, "a land motor vehicle or trailer of any type," does not require reference to the definitions contained in the Virginia Code. Both parties addressed the issue of whether the Rhino is an all-terrain vehicle or "ATV" as defined by Section 46.2-100 of the 2011 Code of Virginia. Def.'s Mem. 14, ECF No. 11; Pl.'s Mem. in Support Sum. Judg. 2-3, ECF No. 12. The Supreme Court of Virginia, however, refused to rely on statutory definitions when determining whether a moped was an uninsured motor vehicle where the definition of motor vehicle was very similar to that used in the instant Policy² because, "[t]he policy contains no indication to the insured that cross-reference must be made to provisions scattered through the Code of Virginia in order to determine the meaning of the seemingly unambiguous term 'motor vehicle.'" *Hill v.*

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State Farm Mut. Auto. Ins. Co., 375 S.E.2d 727, 729 (Va. 1989).³ The Court construed the policy's definition for uninsured motor vehicle to include a moped even though a moped was not included in the statutory



definition of an uninsured motor vehicle. *Id.* at 730. Accordingly, the Court finds the discussion of whether the Rhino qualifies as an ATV under § 46.2-100 of the 2011 Code of Virginia irrelevant to determining whether the Rhino is covered by the Policy.

As opposed to relying on the statutory definition, the Court in *Hill* referenced a dictionary definition of motor vehicle as "a self-propelled wheeled conveyance that does not run on rails." *Hill*, 375 S.E.2d 727, 729 (citing *The American Heritage Dictionary* 817 (2d ed. 1982)). In *Hill*, a moped, that was not required to be, and was not, registered, licensed, or insured, collided with a truck on a public highway. *Id.* at 728. The Court found that there was no clear indication that mopeds were intended to be excluded from coverage. *Id.* at 729-30. The Court noted that implicit in the arguments of both parties regarding the meaning of the term "motor vehicle" was the fact that the policy language may be subject to two or more interpretations. *Id.* at 730. Finding that any ambiguity must be construed against the insurer, the Court concluded the policy's

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definition of motor vehicle included the moped. *Id.* at 730; *See also CUNA Mutual Ins. Soc. v. Norman*, 375 S.E.2d 724, 725 (Va. 1989) (holding that disputes over ambiguous policy language are resolved against the insurer because the insurer selected the language of the policy); *White Tire Dist. v. Pennsylvania Nat. Mutual*, 367 S.E.2d 518, 519 (Va. 1988) ("Where there is doubt or uncertainty and where the language of a policy is susceptible of two constructions, it is to be construed liberally in favor of the insured and strictly against the insurer.").

The Rhino is a four-wheeled, self-propelled, vehicle that was registered with the Arizona Department of Motor Vehicles, with a license plate that allowed the Rhino to be legally operated on public highways. The

Rhino is most certainly a "self-propelled wheeled conveyance that does not run on rails." *Hill*, 375 S.E.2d at 729. The Court finds that, under a plain reading of the Policy, and giving the terms their normal and customary meaning, the Rhino is "a land motor vehicle or trailer of any type." Further, to the extent the term "motor vehicle" is ambiguous, the language must be construed against the insurer to include the Rhino. *See Hill*, 375 S.E.2d at 730. The question becomes whether the Rhino is "[a] farm type tractor or other equipment designed for use principally off public roads," and, thus, excluded from coverage. Policy 12-13, ECF No. 11-2.

B. The Rhino is not clearly a "farm type tractor or other equipment designed for use principally off public roads"

The Policy's broad inclusive definition of uninsured and underinsured motor vehicle as "a land motor vehicle or trailer of any type" is qualified by language excluding:

1. A farm type tractor or other equipment designed for use principally off public roads while not on public roads; or
2. Any vehicle:
 - a. Operated on rails or crawler treads; or

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- b. While located for use as a residence or premises.

ECF No. 11-2 at 19-20. Accordingly the Court must next determine whether this language applies to the Rhino such that the Rhino is not included in the Policy's definition of an uninsured or underinsured motor vehicle.

The Supreme Court of Virginia has allowed insurers to include reasonable exclusions in their uninsured motor vehicle coverage to exclude certain risks. See *State Farm Mut. Auto. Ins. Co. v. Gandy*, 383 S.E.2d 717, 717 (Va. 1989). The caveat is that "it is incumbent upon the insurer to employ exclusionary language that is clear and unambiguous." *Id.* at 718. The Court has found the exclusion contained in the Policy for "farm type tractor or other equipment designed for use principally off public roads, while not upon public roads" to be clear and unambiguous. *Id.* at 719; See also *Moore*, 448 S.E.2d at 613. Applying this unambiguous exclusion, the Supreme Court of Virginia has found a forklift operated on private property was not a covered uninsured or underinsured motor vehicle, while a moped operated on a public highway and a family-class stock car operating on a racetrack were covered.

The Virginia Supreme Court found no coverage existed for injuries sustained when a forklift ran over Harold Gandy's foot while he was standing on private property. *State Farm Mut. Auto. Ins. Co. v. Gandy*, 383 S.E.2d 717, 718-19 (Va. 1989). Assuming without deciding that the forklift was a motor vehicle, the Court found the forklift was "equipment designed for use principally off public roads." *Id.* In reaching this conclusion, the Court referenced the dictionary definition of forklift in addition to noting that the forklift had one seat for the operator only, was not registered with the Division of Motor Vehicles, was not licensed with a vehicle tag, was used only in the private yard of the company that owned it, could reach a speed of

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approximately twenty miles per hour, and was not on a public highway at the time of the accident. *Id.*; See also *Reese v. Wheeler, et. al.*, 2004 WL 1320900, *4 (Del. Super. 2004) (the Superior Court of Delaware, applying Virginia law, found a Yard Dog roll-off jockey truck used to move trailers around a loading

dock was "equipment designed principally for use off public roads, while not upon public roads" because it was equipment in the ordinary meaning of the word, not designed for use on public roads, not used on public roads, not registered with the Department of Motor Vehicles, not licensed, and not on a public road at the time of the accident).

In the *Hill* case, the Court found the policy language did not clearly exclude mopeds from coverage, as the only clear exclusions were for "farm tractors, vehicles operated on rails or crawler treads, and vehicles located for use as a residence." *Hill*, 375 S.E.2d at 729-30. Presumably, the Court did not address the exclusion for "other equipment designed for use principally off public roads while not on public roads," because the accident in *Hill* occurred on a public road. *Id.* Finding that any ambiguity must be construed against the insurer, the Court concluded the policy's definition of motor vehicle included the moped. *Id.* at 730.

Similarly, the Court found a family-class stock car involved in an accident off public roads was not "a farm type tractor or other equipment designed for use principally off public roads." See *Moore v. State Farm Mut. Auto. Ins. Co.*, 448 S.E.2d 611, 613 (Va. 1994). In *Moore*, the plaintiff was struck by the stock car during warm-ups at a speedway. *Id.* at 612. The stock car, which was used exclusively for racing on race tracks, was a Chevrolet Nova that had been stripped of head lights, tail lights, turn signals, muffler, side mirrors, and emergency brake. *Id.* Recognizing that "to bar coverage, exclusionary language must clearly bring the particular event, thing, or circumstance in question within its scope," the Supreme Court of Virginia held that even

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with the modifications, the stock car was not "so altered as to place it clearly within the class of equipment designed for use principally off public roads." *Id.* at 613 (citing

Floyd v. Northern Neck Ins. Co., 427 S.E.2d 193, 196 (Va. 1993)).

Although the Rhino accident occurred off public roads, the Virginia Supreme Court made clear in *Moore* that the location of the accident is not dispositive. Instead, the nature of the motor vehicle at the time of the accident determines whether it falls within the definition of uninsured or underinsured motor vehicle—whether the Rhino is a “farm type tractor or other equipment designed for use principally off public roads.” The Rhino is a four-wheeled vehicle, that is self-propelled, operates in forward and reverse, and reaches speeds of up to 45 miles per hour. It has two seat-belted bucket seats in the front, a bench seat in the back, rear-view mirrors, head lights, tail lights, and break lights. It was registered with the Arizona Division of Motor Vehicles, with a license plate that allowed the Rhino to be legally operated on public highways, as well as a sticker that allowed off-road use. The Rhino was insured under a policy of motor vehicle liability insurance issued by Defendant in Arizona. According to Mr. Montgomery, the Rhino was principally used on public highways. Despite an owner’s manual that indicates the Rhino was designed for off-road use, the reality is that the vehicle was equipped and licensed to legally operate both on public highways and off-road, and was operated both on and off public highways. The Rhino is much more similar to the moped and family-class stock car, than it is to a forklift or a roll-off jockey truck.

The Court must apply Virginia law requiring that the “language in a policy purporting to exclude certain events from coverage will be construed most strongly against the insurer,” and that “to bar coverage, exclusionary language must clearly bring the particular event, thing, or

S.E.2d at 613. Construing the exclusionary language in the Policy against Defendant, and applying the normal and customary use of the phrase “farm type tractor or other equipment designed for use principally off public roads,” the Court cannot find that the Rhino clearly falls within the exclusion. Therefore, the Rhino is an uninsured and underinsured motor vehicle as defined in the Policy.

IV. CONCLUSION

The Court GRANTS Plaintiff’s motion to amend responses to requests for admissions, GRANTS Plaintiff’s Motion for Summary Judgment, DENIES Defendant’s Motion for Summary Judgment, and FINDS that the 2007 Yamaha Rhino is an “uninsured or underinsured motor vehicle” as defined in the Policy. The Clerk is DIRECTED to send copies of this Opinion and Order to all counsel of record.

/s/ _____
Tommy E. Miller
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia
March 6, 2015

Footnotes:

1. Section 46.2-100 of the 2011 Code of Virginia provides, “All-terrain vehicle” means a three-wheeled or four-wheeled motor vehicle powered by gasoline or diesel engine and generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering that is intended for off-road use by an individual rider on various types of unpaved terrain.”

2. The insurance policy in *Hill* contained the following definition, “Motor vehicle - means a land motor vehicle or trailer other than: (a) a farm type tractor or other

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circumstance in question within its scope.” See *Seals*, 674 S.E.2d at 862; *Moore*, 448

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equipment designed for use principally off public roads, while not upon public roads, (b) a vehicle operated on rails or crawler-treads or, (c) a vehicle while located for use as a residence or premises." *Hill v. State Farm Mut. Auto. Ins. Co.*, 375 S.E.2d 727, 728 (Va. 1989).

² *Hill* explains that the statute must be consulted in those cases where the insurance policy at issue is not providing the minimum coverage required by law. 375 S.E.2d at 729 (citing *USAA Ins. Co. v. Yaconiello*, 309 S.E.2d 324, 325 (Va. 1983)). There has been no argument made in this case, however, that the Policy does not provide at least the minimum coverage required by the uninsured motorist statute. See Va. Code §38.2-2206.

Similarly, both parties have cited and discussed a case out of West Virginia holding that a policy did not provide uninsured motorist coverage for an injury sustained while the plaintiff was a passenger on an ATV being driven off road. See *Boniley v. Kuchinski*, 677 S.E.2d 922, 929 (W. Va. 2009). When defining uninsured motor vehicle, the *Boniley* policy provided that "[a]n uninsured motor vehicle does not include a motor vehicle . . . Designed for use mainly off public roads, except while on public roads." *Id.* at 925. There was no question in *Boniley* that the ATV was excluded from the policy's definition of uninsured motor vehicle; the sole issue was whether the policy's provision excluding certain vehicles from coverage violated West Virginia's uninsured motorist statute. *Id.* As the *Boniley* case was decided based on the policy's compliance with a West Virginia statute, the Court does not find it instructive in resolving the instant case.

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EXHIBIT 7

ABIGAIL LAN PORTER, Plaintiff,
v.
JACOB CECIL BUCK, et al.,
Defendants.

Civil Action No. 7:14CV00176

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
VIRGINIA ROANOKE DIVISION

February 24, 2015

MEMORANDUM OPINION

By: Hon. Glen E. Conrad Chief United States
District Judge

This declaratory judgment action is presently before the court on the motion for judgment on the pleadings filed by The Peninsula Insurance Company ("Peninsula"). For the reasons set forth below, the motion will be denied.

Background

On July 28, 2012, plaintiff Abigail Lan Porter was seriously injured in an accident involving two all-terrain vehicles ("ATVs"). The Kawasaki four-wheeled ATV on which Porter was riding as a passenger was driven by Jacob Cecil Buck. The second ATV was operated by Patrick Thomason. The accident occurred while the ATVs were being operated on a public roadway in Franklin County, Virginia. As a result of the accident, Porter sustained a catastrophic brain injury, causing her to incur over \$590,000.00 in medical expenses. She filed a personal injury action against Buck and Thomason in the Circuit Court of Franklin County, which remains pending.

At the time of the accident, Buck was insured under a liability insurance policy issued by Foremost Insurance Company. Buck's policy provided a total of \$25,000.00 in bodily injury coverage applicable to his

operation and use of the vehicle on which Porter was riding as a

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passenger. Because Porter's medical expenses exceed the liability coverage provided under Buck's policy, Porter contended that Buck was an underinsured motorist, and sought payment from Peninsula based on the uninsured/underinsured motorist coverage provided in an endorsement ("the Endorsement") to a commercial automobile insurance policy issued to Porter's father, Steve L. Porter ("the Policy").

The Endorsement at issue provides as follows:

"We" will pay in accordance with the Virginia Uninsured Motorists Law, all sums the "insured" is legally entitled to recover as damages from the owner or operator of an "uninsured motor vehicle."

Endorsement at 2. The Endorsement further provides that "the most 'we' will pay for all damages resulting from any one 'accident' is the limit of Uninsured Motorists Insurance shown in the Schedule of Declarations," *Id.* at 2, which is \$500,000.00. *See* Policy Renewal Declaration at 1.

The Endorsement defines the term "uninsured motor vehicle" to include "a motor vehicle . . . [w]hich is an 'underinsured motor vehicle.'" *Id.* The Endorsement also contains the following definition of the term "underinsured motor vehicle":

"Underinsured motor vehicle" means a motor vehicle, when, and to the extent that, the total amount of "bodily injury" and "property damage" coverage applicable to the operation or use of the motor vehicle and

"available for payment" for such "bodily injury" or "property damage[.]" including all bonds or deposits of money or securities made pursuant to Article 15 (Section 46.2-435 et seq) of Chapter 3 of Title 46.2 of the Code of Virginia, is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the motor vehicle.

Id. at 1. The term "motor vehicle" is not defined in the Endorsement.

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Peninsula denied Porter's claim for uninsured/underinsured motorist coverage. To resolve the coverage dispute, Porter filed a complaint in the Circuit Court of Franklin County, seeking a declaratory judgment that the uninsured/underinsured motorist coverage provided in the Endorsement is applicable to the injuries she sustained in the ATV accident.

Peninsula removed the action to this court on the basis of diversity jurisdiction, and then moved for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. Peninsula argues that an ATV is not a "motor vehicle" and, thus, that it is not an "uninsured motor vehicle" within the terms of the Endorsement. On this basis, Peninsula maintains that it is entitled to judgment as a matter of law.¹ See Peninsula's Reply Br. at 2 (emphasizing that the "single, determinative question that the Motion[] asks the Court to decide" is whether "the Buck ATV [is] a motor vehicle, particularly as that term is used in the Insurance Contract's UM/UIM endorsement").

Standard of Review

In reviewing a Rule 12(c) motion filed by a defendant, the court applies the same standard that would apply to a Rule 12(b)(6) motion to dismiss for failure to state a claim. Independence News, Inc. v. City of Charlotte, 568 F.3d 148, 154 (4th Cir. 2009). The court must accept all of the factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. Burbach Broad. Co. v. Elkins Radio Corp., 278 F.3d 401, 406 (4th Cir. 2002). To survive a motion for judgment on the pleadings, the complaint must contain sufficient facts "to

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raise a right to relief above the speculative level" and "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In considering a Rule 12(c) motion, the court may consider exhibits attached to or referred to in the complaint. See Occupy Columbia v. Haley, 738 F.3d 107, 116 (4th Cir. 2013).

Discussion

I. Applicable Law

Under Virginia law, which the parties agree applies in the instant case, the interpretation of an insurance policy presents a question of law. Va. Farm Bureau Mut. Ins. Co. v. Williams, 677 S.E.2d 299, 302 (Va. 2009). "Courts interpret insurance policies, like other contracts, by determining the parties' intent from the words they have used in the document." Id. The policy's provisions "must be considered and construed together, and any internal conflicts between provisions must be harmonized, if reasonably possible, to effectuate the parties' intent." Id.

When a contested policy term is unambiguous, courts must apply its plain meaning as written. Id. "However, if disputed policy language is ambiguous and can be understood to have more than one meaning, [courts must] construe the language in favor

of coverage and against the insurer." *Id.*; see also S.F. v. W. Am. Ins. Co., 463 S.E.2d 450, 452 (Va. 1995) (emphasizing that "language is ambiguous when it may be understood in more than one way," and that "ambiguous language in an insurance policy will be given an interpretation which grants coverage, rather than one which withholds it") (internal citations and quotation marks omitted). Accordingly, "when an insurer seeks to limit coverage under a policy, the insurer must use language that is reasonable, clear, and unambiguous." Williams, 677 S.E.2d at 302; see also Dooley v. Hartford Accident & Indem. Co., 716 F.3d 131, 135 (4th Cir. 2013) (noting that the burden is "rightfully place[d] ... on

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the insurer, the customary drafter of the policy, to articulate clearly both the coverage afforded and any exclusions from that coverage").

II. The Uninsured Motorist Endorsement

In moving for judgment on the pleadings, Peninsula contends that an ATV is not a "motor vehicle" and, thus, that it is not an "uninsured motor vehicle" for purposes of the uninsured motorist coverage provided under the Endorsement. Although the Endorsement does not define the term "motor vehicle," Peninsula presents three primary arguments to support its position that the term unambiguously excludes ATVs. First, Peninsula argues that the term "motor vehicles" must be considered in conjunction with the term "auto," which is defined in another section of the Policy to exclude vehicles that are not designed principally for use on public roads. Second, Peninsula argues that its position is supported by the Supreme Court of Virginia's decision in State Farm Mutual Automobile Insurance Company v. Gandy, 383 S.E.2d 717, 719 (Va. 1989), in which the Supreme Court held that expenses

for treatment of bodily injuries sustained by an insured who was struck by a forklift were validly excluded from coverage under the medical payments provision of an insurance policy. Finally, Peninsula argues that its position is supported by several Virginia statutes, which exclude ATVs from the requirements of licensure and registration, and limit their use on public highways. For the following reasons, the court finds Peninsula's arguments unpersuasive.

Peninsula first argues that the term "motor vehicle" must be considered in conjunction with the term "auto," which is defined in another section of the Policy to exclude vehicles that are not

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designed principally for use on public roads.² The problem with this argument is that the Endorsement's plain language demonstrates that it operates separately from the other Policy provisions. The Endorsement states in large capital letters that it "CHANGES THE POLICY," and that it includes words and phrases that have special meaning for purposes of the Endorsement. Endorsement at 1. The coverage provided under the Endorsement is not limited to damages resulting from the operation of an uninsured "auto." Instead, Peninsula used the broader term "motor vehicle." See USAA Casualty Ins. Co. v. Yaconiello, 309 S.E.2d 324, 324-25 (Va. 1983) (recognizing that the term "motor vehicle" has a broader meaning than the word "automobile"). Thus, even if Peninsula is correct that an ATV is not an "auto" for purposes of other provisions of the Policy, this does not compel the conclusion that an ATV is not a "motor vehicle" for purposes of the Endorsement.

Peninsula's reliance on Gandy fares no better. In Gandy, the Supreme Court of Virginia was tasked with deciding "whether expense for treatment of bodily injuries, sustained by an insured when struck by a

forklift, was excluded validly from coverage under the medical payments provisions of the insurance policy." Gandy, 383 S.E.2d at 258. The Supreme Court assumed, without deciding, that the language of inclusion in the policy's medical payments provisions, standing alone, "arguably afford[ed] coverage because a forklift qualifies within the definition of 'motor vehicle,' and the insured sustained 'bodily injury . . . caused by accident . . . through being struck by [a motor vehicle]." Id. at 259. However, the policy's medical payments provisions

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were subject to an exclusion, which made them inapplicable to bodily injuries sustained by an insured "through being struck by . . . a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads." Gandy, 383 S.E.2d at 717 (internal quotation marks omitted). Under the facts presented, the Supreme Court concluded that "the forklift, which struck the insured on private property, was 'equipment designed for use principally off public roads,'" and, thus, that coverage was precluded by the exclusion. Id. at 717-18. In this case, the Endorsement contains no similar exclusion precluding coverage for injuries or damages arising from the operation of a vehicle designed for use principally off roads. Accordingly, Gandy does not compel the result urged by Peninsula.

In its final argument, Peninsula maintains that certain Virginia statutes support its position that an ATV is not a "motor vehicle" for purposes of the Endorsement. Although an ATV is defined in the Code of Virginia as a type of "motor vehicle," Va. Code § 46.2-100, Peninsula emphasizes that ATVs are excluded from the statutory licensure and registration requirements applicable to other motor vehicles; that ATVs are recognized, by statute, as being manufactured for off-highway use; and that ATVs may be lawfully driven on

public highways in only limited circumstances. See Va. Code §§ 46.2-100, 46.2-679.1, 46.2-705 & 46.2-915.1. Thus, Peninsula contends that ATVs are implicitly excluded from the coverage required by Virginia's uninsured motorist statute, Va. Code § 38.2-2206, and that the Endorsement should be construed in the same manner. For the following reasons, however, the court finds this argument unpersuasive in light of the Supreme Court of Virginia's decision in Hill v. State Farm Mutual Automobile Insurance Company, 375 S.E.2d 727 (Va. 1989).

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In Hill, the Supreme Court considered "whether a 'moped' [was] a 'motor vehicle' within the terms of the uninsured motorist coverage in an automobile liability insurance policy." a Hill, 375 S.E.2d at 728. In rejecting a similar statutory argument, the Supreme Court explained that "[t]here is no prohibition against an insurer offering broader coverage than the minimum prescribed by law," and that the coverage mandated by statute "take[s] effect only where an insurer seeks, by policy language, to narrow, avoid, vary or restrict the coverage the legislature has required." Id. at 729. The Court emphasized that "[w]hen the policy affords broader coverage than the law requires, no inconsistency exists; the policy provides all the coverage the statute demands, and more." Id.

In this case, the language of the Endorsement is not in conflict with the minimum coverage provisions required by Virginia law. See Va. Code 38.2-2206. Consequently, the court must look to the language of the Endorsement itself, and give the words used "their ordinary and customary meaning when they are susceptible of such construction." Hill, 375 S.E.2d at 729. In Hill, the Supreme Court noted that the term "motor vehicle" is "seemingly unambiguous," and that it has been defined by one dictionary

as "a self-propelled wheeled conveyance that does not run on rails." *Id.* (quoting *The American Heritage Dictionary* 817 (2d ed. 1982)). An ATV would plainly qualify as a "motor vehicle" under this definition cited by the Supreme Court, and the Endorsement provides no indication that ATVs are intended to be excluded from coverage. Likewise, as was true in *Hill*, the Endorsement "contains no indication to an insured that

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cross-reference must be made to provisions scattered through the Code of Virginia in order to determine the meaning of [this] seemingly unambiguous term" *Id.*

In its brief in support of the pending motion, Peninsula notes that another dictionary defines a "motor vehicle" as "a vehicle on wheels having its own motor and not running on rails or tracks, for use on streets or highways; especially an automobile or truck." Peninsula's Br. in Supp. 19 (quoting *Webster's New World Dictionary* 930 (2d Coll. Ed. 1984)). Even if this particular definition could be read to support the more limited interpretation advocated by Peninsula, it does not help the insurer. As explained above, "[a] term is ambiguous if it is susceptible of two or more meanings," *Hill*, 375 S.E.2d at 730, and any ambiguous policy language must be construed against the insurer and in favor of coverage. *See Williams*, 677 S.E.2d at 302 ("[I]f disputed policy language is ambiguous and can be understood to have more than one meaning, [courts must] construe the language in favor of coverage and against the insurer.").

Here, Peninsula, in selecting the language of the Endorsement, elected to use the term "motor vehicle," without defining this term in a particular manner or otherwise limiting its application. Even if the court assumes, without deciding, that Peninsula could have excluded ATVs from the

Endorsement's uninsured motorist coverage without violating the minimum requirements imposed under Virginia law, Peninsula nevertheless failed to do so in a clear and unambiguous manner. Because any doubt concerning the meaning of disputed policy language must be resolved against the insurer, the court concludes that the term "motor vehicle," as used in the Endorsement, includes ATVs. *See Reese v. Wheeler*, No. 99C-04-002-RFS, 2004 Del. Super. LEXIS 180, at *18-20 (Del. Super. Ct. June 10, 2004) (holding, under Virginia law, that a yard truck that was not equipped to be driven legally on public roads nonetheless qualified as an "motor

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vehicle" for purposes of the uninsured motorist section of an automobile insurance policy issued by Commercial Union Insurance Company, since the uninsured motorist section contained no provisions which clearly excluded such vehicles from coverage) (citing *Hill*, 375 S.E.2d at 730). Accordingly, Peninsula is not entitled to judgment on the pleadings.

Conclusion

For the reasons stated, Peninsula's motion for judgment on the pleadings will be denied. The Clerk is directed to send certified copies of this memorandum opinion and the accompanying order to all counsel of record.

ENTER: This 24th day of February, 2015.

/s/ _____
Chief United States District Judge

Footnotes:

1. At this stage of the proceedings, Peninsula does not dispute that Porter is an "insured" for purposes of the coverage

provided under the Endorsement. The Endorsement defines the term "insured" to include the named insured "or any 'family member.'" Endorsement at 1-2. The term "family member" is defined as "a person related to [the named insured] by blood, marriage or adoption who is a resident of [the named insured's] household, including a ward or foster child." *Id.* at 1. In this case, Porter alleges in her complaint that she is the daughter of the named insured, and that she "resided with her father and her mother . . . at their residence . . . on the date that she was injured." Decl. J. Compl. at 6.

² Section V of the Business Coverage Auto Form defines the term "auto" as "a land motor vehicle, 'trailer' or semitrailer designed for travel on public roads but does not include 'mobile equipment.'" Business Coverage Auto Form at 9. The term "mobile equipment" is defined to include, among other things, "[b]ulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads." *Id.* at 11.

³ The policy in *Hill* provided that the insurer would "pay in accordance with Section 38.1-381 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall legally be entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured or property damage, caused by the accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle." *Hill*, 375 S.E.2d at 728.

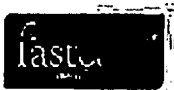


EXHIBIT 8

LISA C. REED, et al. PLAINTIFFS
v.
GOVERNMENT EMPLOYEES
DEFENDANT INSURANCE COMPANY

CIVIL ACTION NO. 4:11cv109-DPJ-FKB

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI EASTERN DIVISION

Dated: June 19, 2012

ORDER

This insurance-coverage dispute is before the Court on cross-motions for partial summary judgment [10, 18]. The question is whether an ATV is an uninsured motor vehicle under Defendant's policy. Having fully considered the issues and the parties' submissions in light of the applicable standards, the Court finds that the policy is ambiguous and therefore Plaintiffs' Motion for Partial Summary Judgment [10] should be granted and Defendant's Motion for Summary Judgment [18] should be denied.

I. Facts and Procedural History

This case arises from a February 10, 2010, collision between a vehicle driven by Plaintiff Haley Reed and a 2006 Honda Rancher ATV being operated by William C. Wooten. Am. Compl. [14] ¶ 10. Plaintiffs allege that Haley suffered injuries in the collision and that the vehicle Haley was driving, which is owned by Plaintiffs Lisa C. Reed and Jackie M. Reed, sustained property damage. Am. Compl. ¶ 11. According to the Reeds, the ATV had no liability policy of insurance covering it at the time of the accident and is therefore an uninsured motor vehicle within the meaning of their automobile insurance policy issued by Defendant Government Employees Insurance Company ("GEICO"). *Id.* ¶ 12. In their Amended Complaint, Plaintiffs assert breach

of contract, bad faith, and defamation claims against GEICO.

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The parties have filed cross-motions for partial summary judgment solely on the issue of whether the subject ATV qualifies as an "uninsured motor vehicle" for purposes of uninsured motorists coverage under the GEICO policy ("the Policy").¹ The Court has personal and subject matter jurisdiction and is prepared to rule.

II. Standard

Summary judgment is warranted under Rule 56(a) of the Federal Rules of Civil Procedure when evidence reveals no genuine dispute regarding any material fact and that the moving party is entitled to judgment as a matter of law. The rule "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323. The nonmoving party must then "go beyond the pleadings" and "designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (citation omitted). In reviewing the evidence, factual controversies are to be resolved in favor of the nonmovant, "but only when . . . both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). When such contradictory facts exist, the court may "not make credibility

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determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). Conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments have never constituted an adequate substitute for specific facts showing a genuine issue for trial. *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1997); *Little*, 37 F.3d at 1075.

This diversity case involves Mississippi's rules for the construction of insurance contracts, which have been summarized by the Fifth Circuit as follows:

First, where an insurance policy is plain and unambiguous, a court must construe that instrument, like other contracts, exactly as written. *See George v. Mississippi Farm Bureau Mut. Ins. Co.*, 250 Miss. 847, 168 So. 2d 530, 531 (1964). Second, it reads the policy as a whole, thereby giving effect to all provisions. *See Brown v. Hartford Ins. Co.*, 606 So. 2d 122, 126 (Miss. 1992). Third, it must read an insurance policy more strongly against the party drafting the policy and most favorably to the policyholder. *See Canal Ins. Co. v. Howell*, 248 Miss. 678, 160 So. 2d 218, 221 (1964). Fourth, where it deems the terms of an insurance policy ambiguous or doubtful, it must interpret them most favorably to the insured and against the insurer. *See Mississippi Ben. Ass'n v. Majure*, 201 Miss. 183, 29 So. 2d 110, 112 (1947). Fifth, when an insurance policy is subject to two equally reasonable interpretations, a court must adopt the one giving the greater

indemnity to the insured. *See Caldwell v. Hartford Accident & Indem. Co.*, 248 Miss. 767, 160 So. 2d 209, 213 (1964). Sixth, where it discerns no practical difficulty in making the language of an insurance policy free from doubt, it must read any doubtful provision against the insurer. *See State Farm Mut. Auto. Ins. Co. v. Scitzs*, 394 So. 2d 1371, 1372 (Miss. 1981). Seventh, it must interpret terms of insurance policies, particularly exclusion clauses, favorably to the insured wherever reasonably possible. *See id.* at 1373. Finally, although ambiguities of an insurance policy are construed against the insurer, a court must refrain from altering or changing a policy where terms are unambiguous, despite resulting hardship on the insured. *See id.*

Centennial Ins. Co. v. Ryder Truck Rental, Inc., 149 F.3d 378, 382-83 (5th Cir. 1998).

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III. Analysis

To decide whether the ATV was an "uninsured motor vehicle," the Court looks first to the terms of the Policy. The Policy covers "damages for bodily injury caused by accident which the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle . . . arising out of the ownership, maintenance or use of that vehicle." Cross-Mot. [18] Ex. D, Policy at 12. "Uninsured motor vehicle" is defined as follows:

Uninsured motor vehicle means:

(a) A motor vehicle which has no bodily injury liability bond,

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policy of insurance or cash or securities on file to cover bodily injury at the time of the accident

The term uninsured motor vehicle does not include:

(e) A farm-type tractor or equipment designed for use principally off public roads, except while used upon public roads.

Id. Significantly, though, the Policy never defines "motor vehicle."

GEICO presents two primary arguments for finding that "motor vehicle" unambiguously excludes ATVs. It first urges the Court to follow *Dowdle v. Mississippi Farm Bureau Mutual Insurance Co.*, where the Mississippi Supreme Court found that a golf cart was not a motor vehicle. 697 So. 2d 788, 789 (Miss. 1997). Next, GEICO contends that ATVs are not "motor vehicles" under Mississippi's Motor Vehicle Responsibility Act ("MVRA"), Miss. Code Ann. §§ 63-15-1-63-15-75 (1972). See *id.* § 63-15-3(c) (defining "motor vehicle"). Neither argument removes the ambiguity.

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The problem with the *Dowdle* argument is that the policy in that case clearly and unambiguously excluded recreational vehicles from UIM coverage. That policy defined "automobile" as not including "[m]otorcycles, motor driven cycles, all-terrain vehicles or any other recreational vehicle" and excluded from the definition of "uninsured motor vehicle" "any all-terrain (ATV) motorized vehicle or motorcycle or farm type tractor or equipment designed for use principally off public roads." 697 So. 2d at 789. The court concluded that a golf cart was a "recreational vehicle 'designed for use principally off public roads'" and was therefore excluded under the

specific policy definitions there. *Id.* at 791. In this case GEICO could have used similar language but did not, leaving the term "motor vehicle" undefined.

GEICO then argues that ATVs are not covered under the MVRA and are not therefore "motor vehicles" under the terms of the Policy. GEICO again relies on *Dowdle*, but again the case falls short. Though the Mississippi Supreme Court turned to the MVRA definition of "motor vehicle" after concluding that the policy excluded recreational vehicles from UIM coverage, the court never stated that this was an alternative holding. Instead, it is clear from Justice McRae's dissent that the majority examined the MVRA to determine whether excluding recreational vehicles would not violate the MVRA. *Dowdle*, 697 So. 2d at 791 (McRae, J., dissenting) (arguing that exclusion violated the remedial nature of the MVRA). Indeed, "[i]nsurers may not use policy language to diminish coverage mandated by statute; however, they may enhance coverage." *Guardianship of Lacy v. Allstate Ins. Co.*, 649 So. 2d 195, 197 (Miss. 1995). Accordingly, the Court cannot read *Dowdle* as holding that the Policy incorporates the definition of a "motor vehicle" from the MVRA. And while other states may have different interpretations, that fact that Mississippi allows coverage to exceed the scope of the MVRA

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forecloses this argument. *Id.*

In the absence of a definition for the term "motor vehicle," the Court must "look for its 'ordinary and popular meaning.'" *Corban v. United Servs. Auto. Ass'n*, 20 So. 3d 601, 613 (Miss. 2009) (quoting *Noxubee Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 883 So. 2d 1159, 1165 (Miss. 2004)). Looking exclusively to that term without the benefit of surrounding contract language could support GEICO's position that ATVs are not "motor vehicles." Merriam-Webster Dictionary, for example,

defines "motor vehicle" as "an automotive vehicle not operated on rails; *especially*: one with rubber tires for use on highways," and the Oxford English Dictionary defines "motor vehicle" as "a road vehicle powered by an engine (usually an internal-combustion engine)."

But "[i]n determining the meaning of contract terms, this Court reads the contract as a whole, gives contract terms their plain meaning, and construes any ambiguities against the drafter." *Aspired Custom Homes, LLC v. Melton*, 72 So. 3d 540, 548 n.6 (Miss. Ct. App. 2011) (citation omitted). And according to the Reeds, the scope of "motor vehicle" as used in the UIM coverage section is explained in the exclusions and exceptions. Plaintiffs argue that "even if the Honda Rancher does not fit the definition of 'uninsured motor vehicle,' th[e] exception to the exclusion [for farm-type tractors or other equipment] gives rise to uninsured motorist coverage" Pls.' Mem. [24] at 6. The Court notes that, as a general rule, "exclusionary language . . . cannot be used to create coverage where none exists." *Architex Ass'n, Inc. v. Scottsdale Ins. Co.*, 27 So. 3d 1148, 1160 (Miss. 2010) (quoting *ACS Constr. Co., Inc. of Miss. v. CGU*, 332 F.3d 885, 892 (5th Cir. 2003)). "However, this proposition does not preclude considering the policy 'as a whole,'" and "policy exclusions and exceptions thereto can be (and often are) valuable in

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determining the parameters of coverage." *Id.* at 1160 (quoting *U.S. Fid. & Guar. Co. of Miss. v. Martin*, 998 So. 2d 956, 963 (Miss. 2008)).

Here, the Policy excludes from the definition of "uninsured motor vehicle," "[a] farm-type tractor or equipment designed for use principally off public roads, except while used upon public roads." If the definition of "motor vehicle" cannot be understood to

include vehicles other than those designed for use on roads or highways as GEICO contends, then "an exclusion that exempts from coverage [farm-type tractors or equipment designed for use principally off public roads] is nugatory." *Architex*, 27 So. 3d at 1160 (quoting *Stanley Martin Co. v. Ohio Cas. Grp.*, 313 F. App'x 609, 613 n.2 (4th Cir. 2009)). Thus, for the exclusion to have any meaning, "motor vehicle" must be broad enough to include at least "farm-type tractor[s] or equipment designed for use principally off public roads."

The parties dispute the breadth of the exclusion, and the exception to the exclusion, as they relate to the subject ATV. The Reeds contend that the ATV falls within the exception to the exclusion because it is "equipment designed for use principally off public roads" that was being used on a public road at the time of the accident. GEICO argues that the exclusion has no bearing on the case because the phrase "farm-type" modifies both "tractor" and "equipment" and the ATV is not "farm-type . . . equipment." In view of the parties' conflicting reasonable interpretations, as well as the many cases from other jurisdictions construing similar exclusions in a variety of ways,² the Court is of the opinion that "a reasonable person could have understood

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[the exclusion] to have more than one reasonable meaning." *Farmland Mut. Ins. Co. v. Scruggs*, 886 So. 2d 714, 717 (Miss. 2004). The exclusion is therefore ambiguous and must be "construed most strongly against the preparer, the insurance company." *U.S. Fid. & Guar. Co. v. Omnibank*, 812 So. 2d 196, 198 (Miss. 2002). That would mean that the ATV was "equipment designed for use principally off public roads," and because it was being "used upon public roads" at the time of the accident, UIM coverage would exist. The ATV therefore qualifies as an "uninsured motor vehicle" under the Policy.³

IV. Conclusion

Unlike the insurer in *Dowdle*, GEICO failed to define "motor vehicle." Had it done so, then an exclusion of UIM coverage for ATVs would have survived a challenge under the MVRA. As it is, the Policy is ambiguous. Thus, Plaintiffs' motion for partial summary judgment [10] is

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granted and Defendant's cross-motion for summary judgment [18] is denied. The parties are directed to contact the magistrate judge to enter a new scheduling order.

Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE

Notes:

¹ Though Defendant's motion is captioned Cross-Motion for Summary Judgment, Defendant acknowledges that its motion does not address Plaintiffs' defamation claim and is therefore a motion for partial summary judgment. Def.'s Rebuttal [29] at 6.

² See *Puckett v. GEICO Indem. Co.*, No. 2009-CA-000594-MR, 2010 WL 2629562, at *2 (Ky. Ct. App. July 2, 2010) (concluding that "farm-type" unambiguously modifies both tractor and equipment); *Corbett v. Smith*, 507 S.E.2d 303, 305 (N.C. Ct. App. 1998) (concluding that "farm type" unambiguously modifies only tractor so that coverage for ATV is excluded); *State ex rel. Toastmaster, Inc. v. Mummert*, 857 S.W.2d 869, 872 (Mo. Ct. App. 1993) (concluding that "farm-type" unambiguously modifies only tractor); *Fletcher v. Aetna Cas. & Sur. Co.*, 477 N.W.2d 90, 93 (Wis. Ct. App. 1991) (concluding that the exclusion is ambiguous and affording uninsured motorists coverage to a dune buggy); *State Farm Mut. Auto. Ins.*

Co. v. Gandy, 383 S.E.2d 717, 719 (Va. 1989) (concluding that the exclusion unambiguously excludes a forklift as "equipment designed for use principally off public roads"); *State Farm Mut. Auto. Ins. Co. v. Beck*, 734 P.2d 398, 400 (Or. Ct. App. 1987) (concluding that "farm-type" in statutorily-mandated language modifies only tractor); *Stallcup v. Duncan*, 684 S.W.2d 643, 645 (Tenn. Ct. App. 1984) (concluding that "farm-type" unambiguously modifies only tractor so that dune buggy is within exclusion); *Lane v. Hartford Ins. Grp.*, 447 A.2d 818, 820 (Me. 1982) (concluding that "farm type" unambiguously modifies only tractor so that crane is within exclusion); *Gov't Emps. Ins. Co. v. Daniels*, 434 A.2d 648, 656 (N.J. Super. Ct. App. Div. 1981) (concluding that motorbike is excluded as "other equipment designed for use principally off public roads").

³ Though the Reeds do not raise the issue, the Policy employs a number of undefined terms including "auto," "automobile," "vehicle," and of course "motor vehicle." Merriam-Webster defines automobile as "a usually four-wheeled automotive vehicle designed for passenger transportation." The Oxford Dictionary defines the word as "a road vehicle, typically with four wheels, powered by an internal combustion engine or electric motor and able to carry a small number of people." This begs the question whether UIM coverage for "motor vehicles" was intended to encompass more than "automobiles," as used elsewhere in the Policy.

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State of South Carolina)
County of Darlington)

In Circuit Court of the
Fourth Judicial Circuit
2014-CP-16-01027

JAMES L. WILLIAMS, a Personal)
Representative of the Estate)
of MARY FRANCES WILLIAMS,)

Plaintiff,)

vs.)

SOUTH CAROLINA FARM BUREAU)
MUTUAL INSURANCE COMPANY,)

Defendant.)
_____)

Transcript of Record

Darlington, South Carolina
November 28, 2017

B E F O R E:

The Honorable Roger E. Henderson

A P P E A R A N C E S:

Mr. William E. Hopkins, Esquire
Ms. Kathy P. Elmore, Esquire
Attorneys for Plaintiff

Mr. Louis D. Nettles, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

(NO WITNESSES WERE CALLED TO TESTIFY DURING HEARING)

(NO EXHIBITS WERE INTRODUCED DURING HEARING)

1 THE COURT: Mr. Nettles, it looks like your motion
2 was filed first.

3 MR. NETTLES: Yes, Your Honor.

4 THE COURT: Do you want to go ahead and identify
5 this matter. We'll argue your motion and then we'll argue
6 opposing counsel's motion.

7 MR. NETTLES: Your Honor, this is James C. Williams,
8 as Personal Representative of the Estate of Mary Frances
9 Williams versus South Carolina Farm Bureau Mutual Insurance
10 Company. I'm here on the behalf of the defendant, South
11 Carolina Farm Bureau Insurance Company. This is a
12 declaratory judgment action to determine whether or not
13 there's under insured motorist coverage for an accident
14 involving the plaintiff's decendent who was operating a
15 automobile who was involved in an accident on a public
16 highways caused by a driver of a ATV. We've determined
17 that this was a Kawasaki ATV, for the maker for it and we
18 have information from an affidavit about the design of the
19 ATV. You're about to hear more about ATV's than you care
20 to. The short answer is that ATV's are not designed for
21 use on a public highway. We have provided an affidavit to
22 you identifying the contents of the owners manuals for this
23 particular model here, ATV's, and the fact that these
24 contains warnings that have been in ATV's for years. I
25 have cited to you the reports from the Consumer Product

1 Safety Commission about ATV's, their definition and why
2 they're dangerous on the highway. The warnings in the
3 owners manual for the ATV's for this model here can be
4 summarized as please, please, please don't drive these on
5 the public highway, they're dangerous. And this is
6 important because the definition of a motor vehicle in the
7 South Carolina Insurance Code, Chapter 3877, define motor
8 vehicles as vehicles, self propelled vehicles design for
9 use on the public highway. That definition is in the
10 statue regarding insurance. It's also, specifically,
11 included in the South Carolina Farm Bureau Mutual Insurance
12 Policy. Based on this we'd say that this is not an
13 uninsured motor vehicle under the insurance code and the
14 policy because it's not a self-propelled vehicle designed
15 for use of the public highways. In South Carolina the case
16 on, closes on point is, Anderson versus State Farm Bureau
17 Automobile Insurance Company, 442 S.E. 2d 179 from 1993,
18 which involved whether or not a farm tractor was a motor
19 vehicle under the South Carolina Insurance Code Financial
20 Responsiblity Act. And the Court, at that time, the
21 Supreme Court determined that it was not. We don't think
22 there's any significant differences between this case and
23 that case and we think it's clear that there's no argument
24 that this is a vehicle designed for use of the public
25 highways even though at the time it was being operated on a

1 vehicle and we think we're entitled to summary judgment
2 declaring this is not an under insured motor vehicle under
3 the South Carolina Farm Bureau Policy. Thank you, Your
4 Honor.

5 THE COURT: Thank you, Mr. Nettles. Yes, sir?

6 MR. HOPKINS: Thank you, Your Honor. May it please,
7 the Court? Judge, I'm Bill Hopkins. Kathy Elmore and I
8 represent Mr. Williams in the estate of his wife who is now
9 deceased.

10 Your Honor, we have, in addition opposing Farm
11 Bureau's motion, we've submitted our on motion for summary
12 judgment. We submit that there should be uninsured UM,
13 motorist coverage, for this accident. And I'll get
14 straight to the point, Your Honor. First of all the
15 Anderson case is easily distinguishable. The Farm Bureau
16 Policy issues specifically excludes farm tractors. Your
17 Honor, as we've put in our undisputed facts Farm Bureau has
18 said that the following things are not a motor vehicle, a
19 tractor, a road roller, a farm tractor, a crane, a power
20 shovel, a driller, an electric trolley for a vehicle
21 designed to operate on rails. They did not exclude an ATV.
22 If they had put an ATV in here, we wouldn't be here. It's
23 very simple.

24 Also, Your Honor, we believe at the beginning there
25 should be no question this is a motor vehicle. South

1 Carolina Legislature has defined motor vehicle as every
2 self-propelled vehicle which is propelled by electric power
3 obtain from an overhead trolley and not operated on rails.
4 Your Honor, we've attached many, many cases to our brief.
5 Virtually, every decision we could find around -- we do not
6 find any South Carolina decision involving an ATV.
7 Virtually, every decision we found around the country
8 involving an ATV that bases it's -- that uses this policy
9 language is found in favor of coverage of UM. First of
10 all, as all of these cases say, if the South Carolina
11 Legislature wanted to say that an ATV is not a motor
12 vehicle it could have said so. It did not. Secondly, Farm
13 Bureau wrote the policy. They were welcoming an addition
14 to the other nine items they've said don't constitute a
15 motor vehicle, they could have put that in policy. They
16 did not. So for these reasons all of these cases we've
17 attached around the country, Your Honor, have said that
18 coverage should apply.

19 Your Honor, in addition to these cases we've cited, my
20 son who's much better with computers, has also found that
21 apparently the States of Connecticut and Vermont have also
22 found coverage should apply where an ATV is involved. And
23 again all these cases, Your Honor, involve the exact same
24 language. Which what it comes down to, Your Honor, is this
25 language about, well, it's not designed primarily for off

1 road use. Primarily, what does mean? Obviously, they're
2 used on highways. As the federal judge in Virginia found
3 he said well, of course, the manual says primarily don't
4 use it on a highway, but look at how they are designed.
5 They have headlights just like this one. Tail lights.
6 They drive 45 miles an hour. I've hunted by whole life,
7 I've never gone 45 miles an hour through the woods quail
8 hunting, judge. These things are used on highways. And
9 some of these cases noted was the most important is that
10 the accident occurred on a public highway. Mr. Berry,
11 Stuart, Berry was operating this ATV on a highway, judge.
12 Secondly, they have language which Mr. Nettles didn't
13 address, but several of these cases do in other policy
14 language they have, subject to registration. Mr. Berry,
15 Stuart Barry, the operator of the vehicle has been
16 convicted of failing to register this vehicle. He's pled
17 guilty and was sentenced to that, Your Honor. So we
18 believe that vehicle -- certainly it's a motor vehicle.
19 There can be no dispute it's a motor vehicle. Is it
20 designed primarily for off road use? We don't -- we think
21 that it primarily in-and-of itself, judge, is some
22 ambiguity. As your, Your Honor, knows in South Carolina,
23 like all these other states, the exclusions must be
24 narrowly construed. Anytime there's an ambiguity it should
25 be found in favor of the insured for coverage and against

1 the insurer. I'm not going to get into the characteristics
2 of ATV's again, Your Honor. We admit that the owner's
3 manual says, well, these things, don't drive along a
4 highway, but they are used on highways regularly. They're
5 designed to, at least, in part to be used on highways,
6 judge. In other words, it doesn't say, nowhere does it
7 say, that this thing is not designed to be used on a
8 highway, they're driven on them everyday.

9 Finally, Your Honor, I've already addressed the fact
10 of the Anderson case, specifically, dealt with farm
11 tractor. We could find no South Carolina decision dealing
12 with this issue, but we have cited a large number of cases
13 from many other states, Your Honor. Virtually, around the
14 country, every court that's considered this that said an
15 ATV is a motor vehicle even with the language designed
16 primarily for off road use coverage was found.

17 Thank you.

18 THE COURT: Thank you, Mr. Hopkins. Anything else,
19 Mr. Nettles?

20 MR. NETTLES: Yes, Your Honor, please. There's a
21 tell in the plaintiff's argument in that in his brief he
22 cites the South Carolina definition of "motor vehicle". In
23 the Motor Vehicle Act he cites 56-1-10. The issue in this
24 case comes under the insurance statute and under the
25 insurance statute there is a different definition with the

1 "motor vehicle". In fact, that statute is identical to,
2 almost identical to the definition of a "motor vehicle" in
3 the Farm Bureau policy and again it speaks to vehicles
4 designed for use on the public roads. In the definition in
5 the Motor Vehicle Act 56-1-10 doesn't restrict the
6 definition of "motor vehicles". The vehicle is designed
7 for use on the public roads and that's the difference in
8 this case. The Farm Bureau policy requires to be included
9 the definition of "motor vehicle". That the vehicle be
10 designed for use on the public roads. The ATV's are not
11 designed for the use of the public roads. Plaintiff's
12 counsel points out that vehicles, ATV's are sometimes
13 operated on public roads but if they're seen by a law
14 enforcement officer operating an ATV on public roads,
15 they'll be arrested. It's not the purpose of an ATV. So
16 because the definition "motor vehicles" requires that
17 vehicles be designed for use of the public roads to be
18 included in the definition of "motor vehicles" this ATV is
19 not because it's not designed for use for the public roads.
20 He has suggested to you that the language in all the other
21 state's cases is identical to the definition of South
22 Carolina, it's not. For example, one case the policy
23 difference, turn on the fact that the definition of "motor
24 vehicle" actually required, actually had the exception when
25 the motor vehicle was being operated on the public roads

1 that's not included in the South Carolina definition. It
2 is not included in the policy definition. In states where
3 insurance companies were foolish enough not to define
4 "motor vehicle" in the policy as vehicles operated, as
5 vehicles designed for use on the public highway, they lost
6 those cases. That's not this case. The ATV is not
7 designed for use for the public roads. The policy has the
8 language which excludes that from the definition of "motor
9 vehicle". The statute in the insurance act requires that
10 for it to be a motor vehicle that it be one designed for
11 use of the public highway. That makes all the difference
12 in the world and we're entitled to a summary judgment in
13 this case.

14 THE COURT: Okay. Anything else, Mr. Hopkins?

15 MR. HOPKINS: Just briefly, Your Honor. I would
16 point out that the South Carolina statute regarding ATV's
17 specifically defines it as, "a motor vehicle." So even our
18 legislature has specifically said in Section 56-1-10-20
19 that an all-terrain vehicle is a motor vehicle. So we
20 think it's a motor vehicle and again if there's some
21 ambiguity in the statute, the legislature on the one hand
22 to define "motor vehicle" broadly. And then on the other
23 hand to say designed primarily for off-road, for on road
24 use, that would seem to think, we would submit it would be
25 an ambiguity that should be resolved in favor of Mr.

1 Williams. I'm not sure how you can have two definitions of
2 "motor vehicle". But in any event, Your Honor, the keyword
3 primarily I think that's an ambiguous term. They don't
4 dedind it in the policy anywhere. They could've excluded
5 it under their definition which says, "motor vehicles" do
6 not include these items. Thank you.

7 THE COURT: All right. Thank you, gentlemen. I'm
8 going to take this matter under advisement. I'm going to
9 review your memorandums and the cases that you've cited.
10 I'll let you hear from me in the next couple of days.
11 Thank you.

12 MR. HOPKINS: Thank you, Your Honor.

13 MR. NETTLES: Thank you.

14 (CONCLUSION OF THE HEARING ON NOVEMBER 28, 2017)
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25



South Carolina Department of Public Safety

South Carolina Highway Patrol

DF-035-12

Darlington

County

Pee Dee

M.A.I.T.

Team Members

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L/Cpl. J.A. Alban
L/Cpl. J.T. Leach
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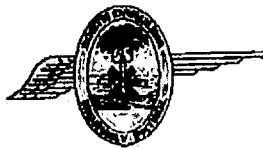
**Forward all Subpoenas for MAIT to
the FOIA Officer**

MAY 17 2012

SOUTH CAROLINA HIGHWAY PATROL

MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

Leroy Smith
Director



M.R. Oliver
Colonel

INVESTIGATIVE REPORT

The South Carolina Highway Patrol Multi-Disciplinary Accident Investigation Team reserves the right to amend, correct, or detract any or all inferences, conclusions, or opinions presented in this report. This report is the intellectual property of the South Carolina Department of Public Safety and shall not be duplicated or copied for distribution, unless written permission is granted by the Office of General Counsel.

MAIT CASE NO:	DF-035-12	CAD/CASE NO:	12FL03B007
REQUESTING AGENCY:	SCHP		
TROOP:	5		
COUNTY:	DARLINGTON	COLLISION LOCATION:	SECONDARY 133
INVESTIGATING OFFICER:	I/CPL. B.P. NORRIS		
DATE:	03/17/2012		
MAIT REGION:	FEE DEE	TEAM LEADER:	SGT.M.A. DANGERFIELD

1. MAPPING / CAD.

MAIT completed a forensic mapping and CAD of the collision scene.

2. MECHANICAL.

MAIT conducted a mechanical examination on unit # 3 and concluded that unit # 3 was in poor mechanical condition prior to this collision; however no mechanical failure contributed to this collision.

3. AUDIO / INTERVIEWS.

MAIT conducted audio recordings during the course of this investigation.

4. PHOTOGRAPHS.

MAIT took digital photographs during the course of this investigation.

5. VIDEO.

MAIT took digital video footage during the course of this investigation.



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



MAY 17 2012

6. ANIMATION.

MAIT produced an animation of the collision which reflects the findings of the MAIT investigation.



Team Leader / Region Commander

ACTAR Number: 1661



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
Post Office Box 1993
Blythewood, SC 29016



APR 17 2012

ORIGINAL-AMENDED

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM				Jr. Units		Amended - Attach Copy of Original Report		Notified		Arrived											
Date				Time of Collision				County				Collision Location (Rt. # / Name)				Miles		Dir.		In (Near) City or Town of:					
03-17-2012				1700				16				E 133 / SOCIETY HILL RD				.13		N E S W		DARLINGTON					
Lane # / Dir.				Distance Offset				Direction				Base Intersection (Rt. # / Name)				GPS COORDINATES 00 00 00 00		DEGREES MINUTES SECONDS							
# 1				2				S W				1169 / WILLCOX ST				Latitude		34 19 05.59							
R.R. Id.				From				To				Second Intersection (Rt. # / Name)				Longitude		79 51 36.40							
E-302870				Driver/Pedestrian's Full Name				E-302871				Driver/Pedestrian's Full Name													
WILLIAMS MARY FRANCES				SHAW DENNIS JAMES																					
Unit # 01				Sex F Race B				Unit # 02				Sex M Race W				Street/R.F.D.									
832 SOCIETY HILL RD				1044 HARMONY HALL DR																					
Birth Date 03-03-1958				City, State, & Zip DARLINGTON SC 295408069				Birth Date 07-14-1956				City, State, & Zip DARLINGTON SC 295408643													
State SC				Driver's License # 004987039				State SC				Driver's License # 008035562				Class D				Insurance Company FARM BUREAU					
Year 1992				Body 4S				Year 1990				Body TK				Vehicle Make CHEV				VIN # 1GCGC33F1XF055619					
State SC				Year 2012				State SC				Year 2013				License Plate # P234167				Owner's D.L. # 008035562					
Home Telephone (843) 3950113				Owner's Full Name WILLIAMS JAMES LEE				Home Telephone (843) 6407765				Owner's Full Name SHAW DENNIS JAMES													
Bus. Telephone ()				Street/R.F.D. 832 SOCIETY HILL RD				Bus. Telephone ()				Street/R.F.D. 1044 HARMONY HALL DR													
Contributed To Collision Yes				City, State, & Zip DARLINGTON SC 295408069				Contributed To Collision Yes				City, State, & Zip DARLINGTON SC 295408643													
Estimated Speed 30				Speed Limit 45				Estimated Speed 45				Speed Limit 45				C.D.L. Req. Yes (No) T/B S Req. Yes (No) Alc/Drg Info (see back): Yes (No)				Summons #		Code			
E-302872				Driver/Pedestrian's Full Name BERRY STUART WALTER				NONE				004147136													
Unit # 03				Sex M Race W				Unit # 01				Sex M Race W				Street/R.F.D. 471 LAWSON ROAD									
Birth Date 08-18-1974				City, State, & Zip DARLINGTON SC 29532				Birth Date 08-18-1974				City, State, & Zip DARLINGTON SC 29532													
State SC				Driver's License # 004147136				State SC				Driver's License # 004147136				Class D				Insurance Company NONE					
Year 2006				Body ATV				Year 2006				Body KAWK				VIN # UNABLE TO LOCATE									
Dir. of Travel: Unit 1: N (S) E W Unit 2: (N) S E W Unit 3: N S (E) W								Unit 1: N (S) E W Unit 2: (N) S E W Unit 3: N S (E) W																	
Unit 1 Dam. \$8000				Unit 2 Dam. \$8000				Unit 3 Dam. \$0				Prop. Dam. 1 \$				Prop. Dam. 2 \$									
Property Owner (Witness) HANCOCK JASON				Property Owner (Witness) LOCKLAIR MARSHA																					
Address 402 SOCIETY HILL RD				City DARLINGTON				Address 333A RENFIELD ROAD				City FLORENCE													
State SC				Zip 29532				State SC				Zip 29501				Phone 843 601 5692				Phone 843 601 2220					
Photo: () N				Describe What Happened (Refer to Units by Number)																					
UNIT # 1 WAS TRAVELING SOUTH AND UNIT # 2 WAS TRAVELING NORTH, BOTH ON SEC-133. UNIT # 3 WAS TRAVELING EAST ON WATKINS ROAD (COUNTY DIRT). THE DRIVER OF UNIT # 3, UNDER THE INFLUENCE OF ALCOHOL, DISREGARDED A STOP SIGN AND ENTERED SEC-133. UNIT # 1 SWERVED LEFT OF CENTER TO AVOID UNIT # 3 AND COLLIDED WITH UNIT # 2. THE DRIVER OF UNIT # 3 THEN FLED THE SCENE. UNIT # 1 AND UNIT # 2 DID NOT COLLIDE WITH UNIT # 3.																									
MAIT INVESTIGATION COMPLETE. NARRATIVE AND UNIT # 1 SPEED AMENDED.																									
SGT. M.A. DANGERFIELD																									
MAIT CASE: DF-035-12																									
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																									
Investigating Officer's Name NORRIS - B P				Rank LCPL				Badge # T 1 8 7				Jurisdiction Code H P O 5				Review Date 03-18-2012				Reviewer's Name DW Geliney					
Rank CPL				Internal Agency Code 12FL038007																					

MAY 17 2012

Unit	Date of Birth	Sex	Race	INJ	Seat	R/S/D	A/B/O	Eject	LAI	Tran	Name	Street Address	DR-035-12	Zip Code
01	03-03-1958	F	B	4	01	13	7 3	1	1	1	WILLIAMS MARY FRANC	632 SOCIETY HILL RD	DARLINGTON SC	295408089
02	07-14-1956	M	W	0	01	13	4 3	1	1	2	SHAW DENNIS JAMES	1044 HARMONY HALL DR	DARLINGTON SC	295408643
03	08-16-1974	M	W	0	01	00	7 3	1	1	2	BERRY STUART WALTE	471 LAWSON ROAD	DARLINGTON SC	28532
01	05-10-2001	M	B	3	03	13	7 3	1	1	1	WILLIAMS JASON	632 SOCIETY HILL RD	DARLINGTON SC	29532
01	09-19-2003	F	B	2	06	13	7 3	1	1	1	WILLIAMS JASMIN	632 SOCIETY HILL RD	DARLINGTON SC	29532

Race			W - Caucasian			a) Injury Status			2-Non-Incapacitating			Seating Loc.			20-Pedestrian			60-Sleeper of Cab			Restrain/Safety Device		
B - African American	H - Hispanic	O - Other	0 - Not Injured	3 - Incapacitating	01 02 03	30-Trailing Unit	70-Riding on Unit Exterior	00-None Used	21-Child														
I - Alaskan Native or American Indian	U - Unk.		1-Possible Injury	4-Fatal	04 05 06	40-Bus or Van (4th row or Higher)	80-Lap	11-Shoulder belt	Safety Seat														
Air Bag Deployment / Switch			Ejection			b) 2 or 3 Wheel Motorized Vehicle			3-Freedom (non-mech.)			50-Other Enclosed Area (nontrailing)			80-Link, FNA			Pedestrian, Motor/Pedestrian Only					
1-Deployed Front 4-Not Deployed			1-Not Ejected			Head Injury			1-Yes 2-No			51-Other Unenclosed Area (nontrailing)						13-Shoulder & Lap Belt 99-Unk.					
2-Deployed Side 7-Not Applicable			2-Part Ejected			Location After Impact			3-Freedom (non-mech.)			B - Transported to Medical Facility						Pedestrian, Motor/Pedestrian Only					
3-Deployed Both 9-Deployment Unk			3-Tot Ejected			1-Not Trapped			4-Not Applicable			1-Yes 2-No 3-Unknown						31-Helmet 61-Reflective Clothing					
1-Switch In On Position 3-No Switch			7-Not App			2-Extricated (Mechanical Means)			4-Unknown			b) By: 1-EMS 2-Police 8-Other 9-Unk.						41-Protective Pads 81-Lighting					
2-Switch In Off Position 8-Unknown			9-Unk.			Sequence of Events																	

Non-Collision			Collision: Not Fined			Collision: Fined Object			47-Entrapment			65-Mail Box			68-Other		
01-Cargo/Equip Loss or Shift	05-Fire/Explosion	06-Overturn/Rollover	20-Animal (Deer Only)	28-Railway Veh	40-Bridge Overhead Structure	48-Equipment	60-Median Barrier	88-Unk.									
02-Cross Median/Center	08-Inversion	09-Run off Road Left	21-Animal (All Other)	29-Work Zone Mkt. Equip.	41-Bridge Pier/End	49-Fence	67-Overhead Sign Support										
03-Downhill Runaway	07-Jackknifed	10-Run off Road Right	22-Motor Veh. (In Transport)	29-Other Movable Object	42-Bridge Pier or Abutment	50-Gasoline End	68-Other (Post, Pole, Support, Etc.)										
			23-Motor Veh. (Blipped)	29-Other Movable Object	43-Bridge Rail	51-Overhead Face	69-Other (Wall, Building, Tunnel, Etc.)										
			24-Motor Veh. (Other Roadway)	29-Other Movable Object	44-Culvert	52-Highway Traffic Sign Post	80-Tree										
			25-Motor Veh. (Parkd)	29-Unk. Movable Object	45-Curb	53-Inspect Alternator/Crash Cauton	81-Utility Pole										
			26-Pedestrian		46-Ditch	54-Light/Luminaire Support	82-Work Zone Mkt. Equipment										

Manner of Collision (Struck Veh.)			1st / Most Deformed Area			1st Deformed			Most Deformed		
120-00-Not Coll. w/ Motor Veh	41-Angle (N/A)	60-Sideswipe Same Dir	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
120-12-Pickup Truck	42-Angle (N/A)	60-Sideswipe Opposite Dir									
120-20-Head On	43-Angle (N/A)	70-Backed Into									
		89-Unknown									

Vehicle Type			1st / Most Deformed Area			1st Deformed			Most Deformed		
101-01-Automobile	16-Mini Van	27-Pedestrian	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
101-12-Pickup Truck	17-Sport Utility	38-Animal (Deer Only)									
101-13-Truck Tractor	25-Motorcycle	38-Animal (All Other)									
101-14-Other Truck	26-Other Motorbike	41-Pedestrian									

Vehicle Use Code			1st / Most Deformed Area			1st Deformed			Most Deformed		
101-01-Personal	04-Ambulance	08-Farm Use	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
101-02-Driver Training	05-Military	09-Wrecker or Tow									
101-03-Construction/Maint	06-Transport Passengers	10-Police									
	07-Transport Property	11-Government									

Vehicle Attachment			1st / Most Deformed Area			1st Deformed			Most Deformed		
101-1-None	4-Utility Trailer	8-Towed Motor Vehicle	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
101-2-Mobile Home	5-Farm Trailer	9-Petroleum Tanker									
101-3-Semi-Trailer	6-Trailer w/Boat	A-Lowboy Trailer									
	7-Camper Trailer	B-Autocarrier Trailer									

Action Prior to Impact			1st / Most Deformed Area			1st Deformed			Most Deformed		
108-01-Backing	08-Parked	21-Approaching Leaving Vehicle	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
108-02-Changing Lanes	09-Slowing or	22-Entering/Crossing Location									
108-03-Entering traffic lane	Stopped in traffic	23-Playing/Working on Vehicle									
108-04-Leaving traffic lane	10-Turning left	24-Pushing Vehicle									
108-05-Making U-turn	11-Turning right	25-Standing									
108-06-Movements Essentially Straight Ahead		26-Walking, Playing, Cycling									
108-07-Overlapping/parking	88-Other	89-Unk.									

Weather Condition			1st / Most Deformed Area			1st Deformed			Most Deformed		
1-1-Clear (no adverse conditions)	3-Cloudy	6-Fog, Smog, Smoke	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
1-2-Rain	4-Steel, Hail	7-Blowing Sand, 8-Severe Crosswinds									
	5-Snow	Od, Dirt or Snow									

Light Condition			1st / Most Deformed Area			1st Deformed			Most Deformed		
1-1-Daylight	3-Dusk	6-Dark (Street Lamp Not Lit)	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
1-2-Dawn	4-Dark (Lighting Unspecified)	7-Dark (No lights)									
	5-Dark (Street Lamp Lit)										

Junction Type			1st / Most Deformed Area			1st Deformed			Most Deformed		
01-Crossover	03-Five/More Points	07-Shared Use Paths or Trail	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
02-Driveway	04-Four-way Intersection	08-T-Intersection									
	05-Railway Grade Crossing	09-Traffic Circle									
		13-Nonjunction									

Contributing Factors			1st / Most Deformed Area			1st Deformed			Most Deformed		
01-01-Disregarded Signs, Signals, Etc	09-Made an Improper Turn	12-Aggressive Operation of Vehicle	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
01-02-Distracted/Inattention	10-Medical Related	13-Over-correcting/Over-steering									
01-03-Driving Too Fast for Conditions	11-Swerving to Avoiding Object	14-Swerving to Avoiding Object									
01-04-Exceeded Authorized Speed Limit	12-Wrong Side or Wrong Way	15-Under the Influence									
01-05-Failed to Yield Right of Way	16-Under the Influence	17-Vision Obscured (Within Unit)									
01-06-Run off Road	18-Improper Lane Usage/Change	19-Cell Phone									
01-07-Fatigued/Asleep	20-Texting										
01-08-Followed Too Closely	26-Other Improper Action	26-Unk.									

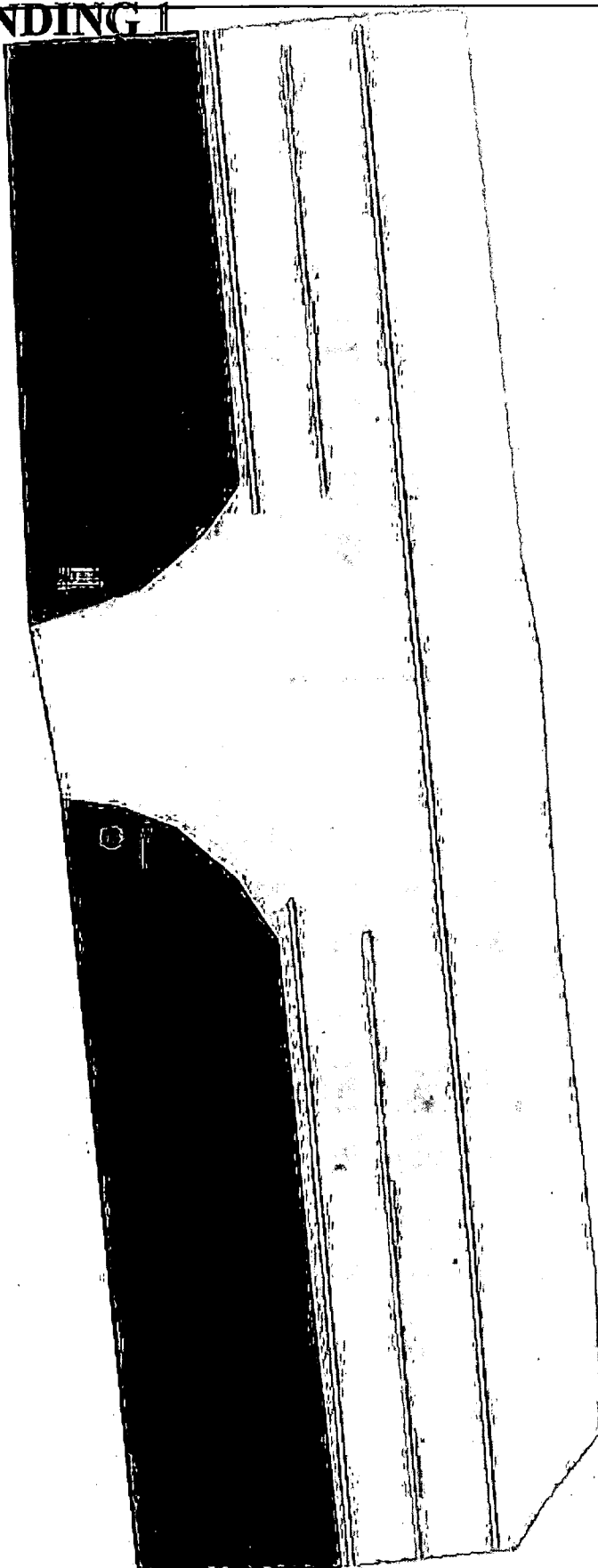
Roadway			1st / Most Deformed Area			1st Deformed			Most Deformed		
30-Debris	48-Other	60-Inattentive	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
31-Non-highway Work	49-Unk.	61-Lying &/or Illegally in Roadway									
32-Obstruction in Roadway		62-Failure to Yield R. of W.									
33-Road Surface Condition (i.e., Wet)		63-Not Visible (Dark Clothing)									
34-Rail, Holes, Bumps		64-Disregard Signs, Signals, Etc.									
35-Shoulders (None, Low, Soft, High)		65-Improper Crossing									
36-Traffic Control Device (i.e., Missing)		66-Darting									
37-Work Zone (Const./Maint./Utility)		67-Wrong Side of Road									
38-Warn, Travel/Polished Surface		68-Other									
		69-Unk.									
		70-Under the Influence									
		71-Other Person Under Influence									

Environmental			1st / Most Deformed Area			1st Deformed			Most Deformed		
60-Animal in Road	61-Glare	62-Obstruction	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100								
		63-Weather Cond.									
		64-Other									
		65-Unk.									

Vehicle Defect			1st / Most Deformed Area			1st Deformed			Most Deformed		
70-Brakes	76-Windows/Shield	77-Weather Cond.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47								

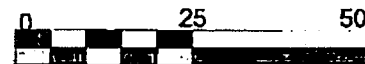
FINDING 1

DF-035-12



S-16-133

**Society Hill Rd
Darlington County**



**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN: 3/19/2012**

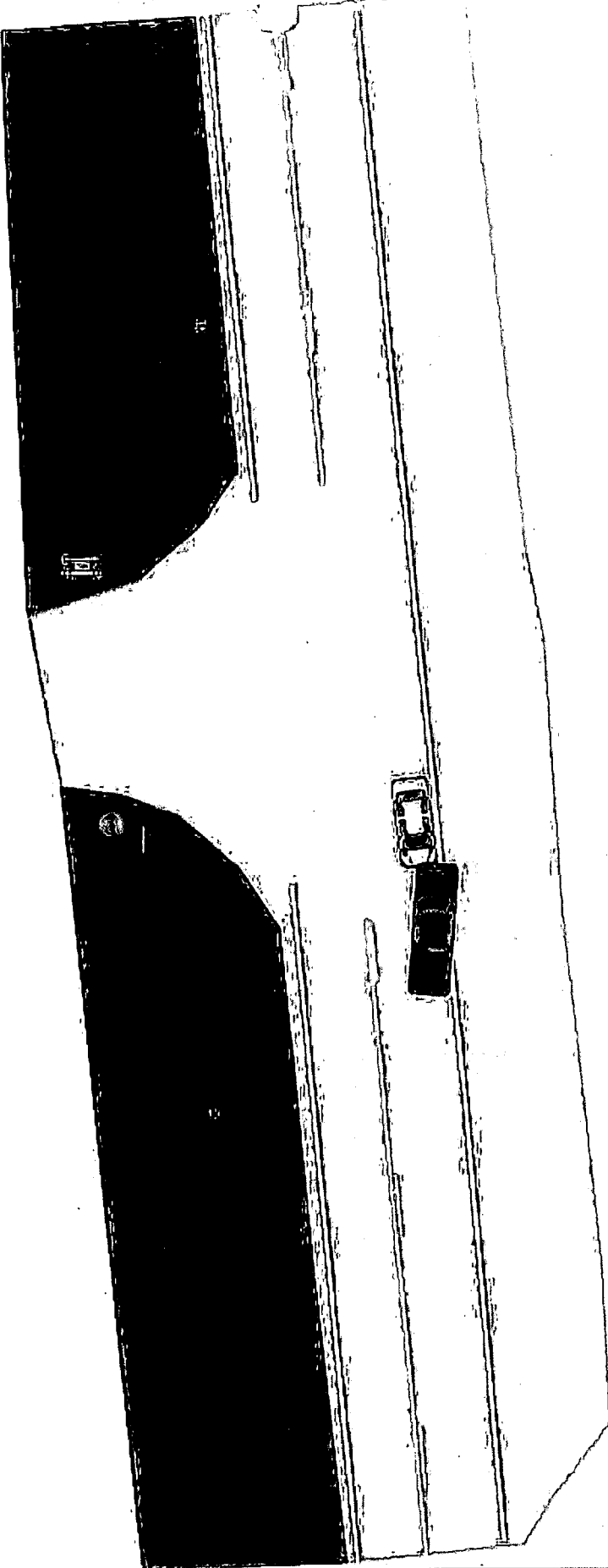
ROADWAY

**TROOP 5/DARLINGTON
OCCURRED ON: 3/17/2012
DF-035-12**

3/17/2012

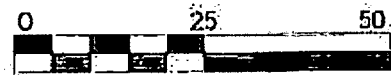
DF-035-12

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S-16-133

Society Hill Rd
Darlington County



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN:

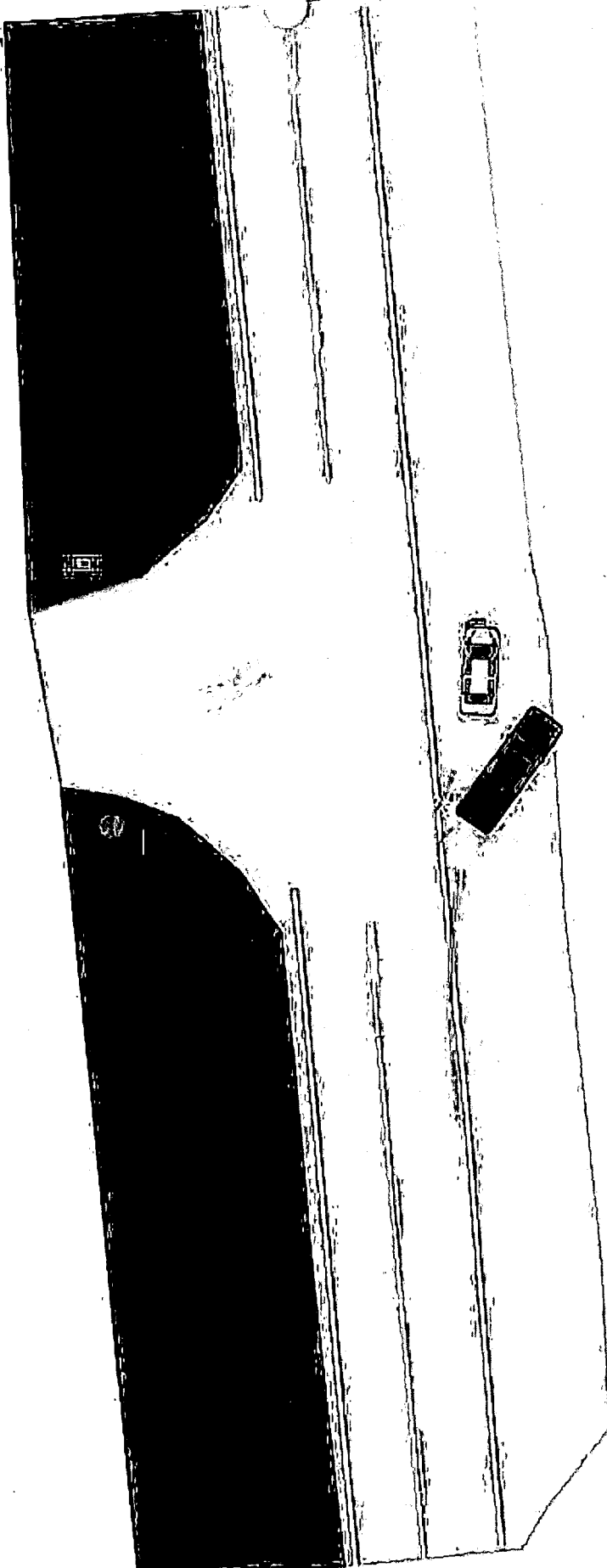
IMPACT

TROOP 5/DARLINGTON
OCCURRED ON:
DF-035-12

17 2012

F

DF-035-12



S-16-133

Society Hill Rd
Darlington County



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN:

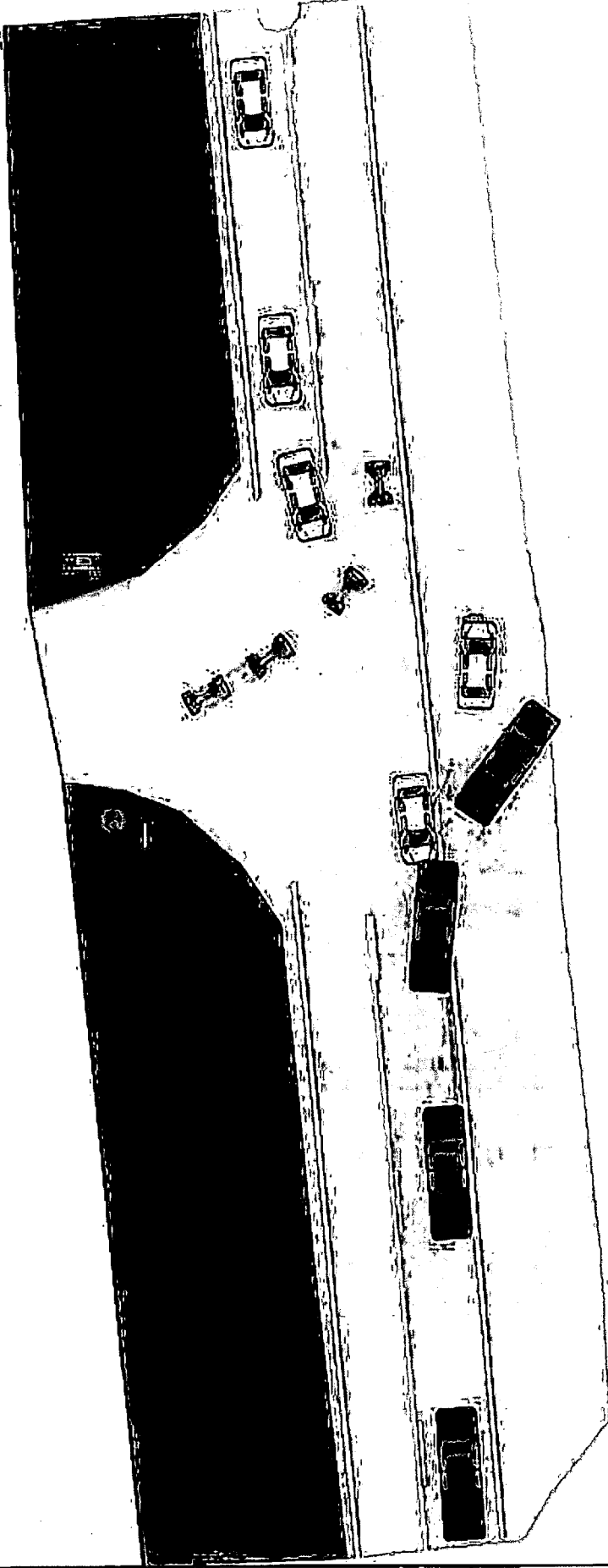
EVIDENCE AND FINAL REST

TROOP 5/DARLINGTON
OCCURRED ON:
DF-035-12

117 2012

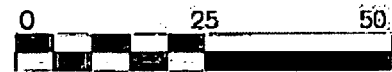
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DF-035-12



S-16-133

Society Hill Rd
Darlington County

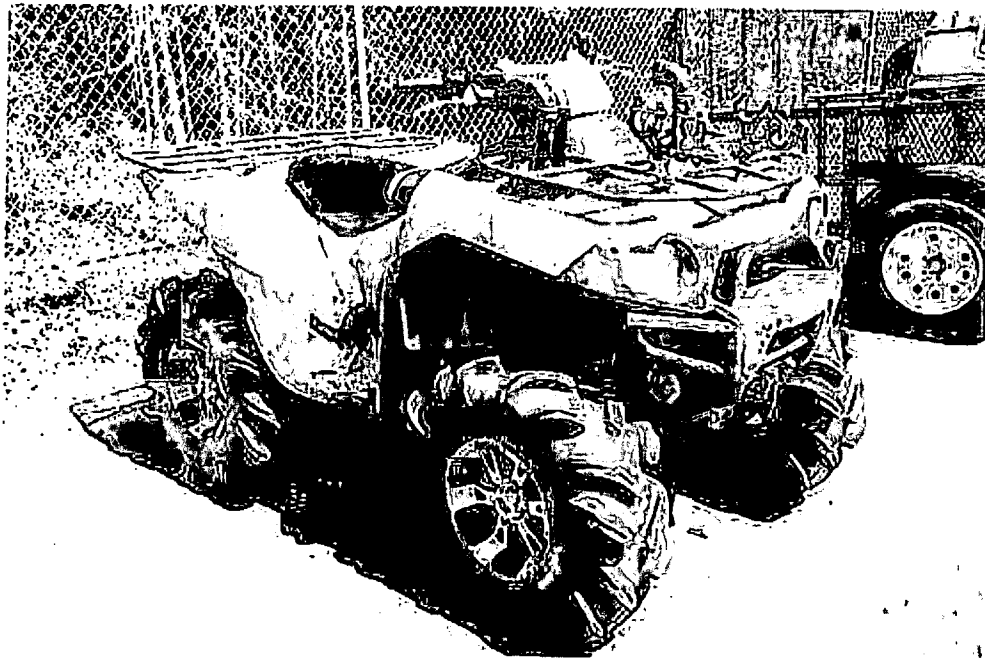
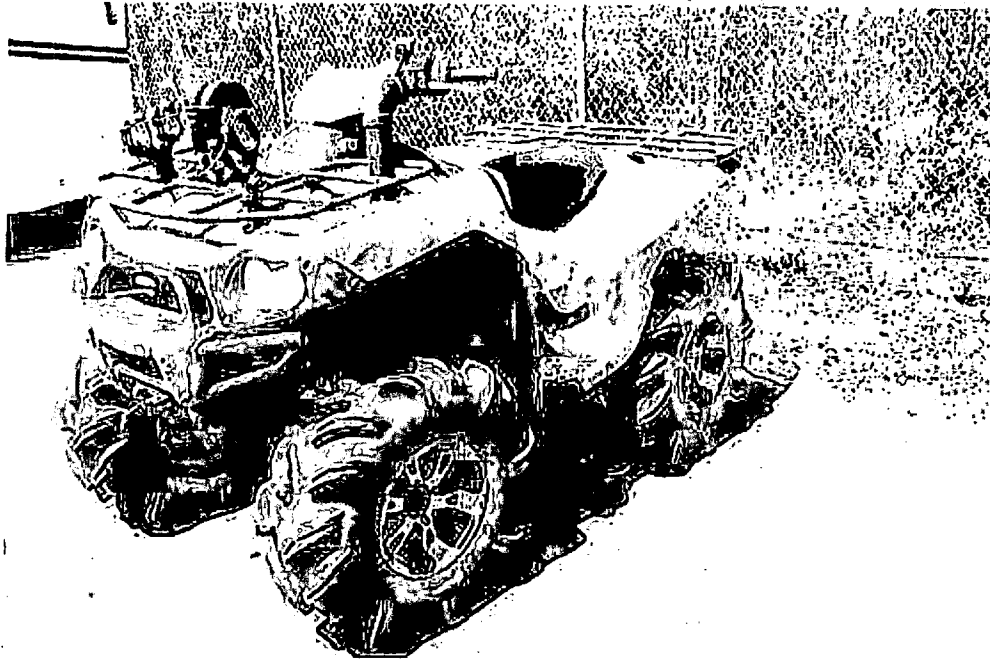


SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN:

SEQUENCE OF EVENTS

TROOP 5/DARLINGTON
OCCURRED ON:
DF-035-12

MAY 17 2012



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	CASE NO. 2014-CP-16-1027
	)	
James L. Williams as Personal	)	
Representative of the Estate of	)	
Mary Frances Williams,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	
South Carolina Farm Bureau	)	
Mutual Insurance Company	)	
	)	
Defendant.	)	
_____	)	

Personally, appeared before me, a notary public, Don Miller, who upon be duly sworn,
deposed as follows:

1. That he is a person over the age of eighteen and makes this affidavit upon his own knowledge.
2. That he has been in the business of selling and repairing Motorcycles and All-Terrain Vehicles for more than 20 years, and he is currently employed with Generation 3 Powersports in Florence SC.
3. That he has reviewed photos in Exhibit A and recognizes the vehicle as a Brute Force model Kawasaki All Terrain Vehicle (ATV) and that it is either a 650 or 750 Model.
4. All ATVs had been subject to industry safety standards since the early 1990s

5. That both models of Brute Force ATV came with the same cautions and warning in the 2006 model year.

6. All ATVs for the 2006 model year, including the Brute Force models, contained warning that they should not be used on paved surfaces or public highways and that such use was dangerous.

7. An all-terrain vehicle (ATV), also known as a quad, quad bike, three-wheeler, or four-wheeler, is defined by the American National Standards Institute (ANSI) as a vehicle that travels on low-pressure tires, with a seat that is straddled by the operator, along with handlebars for steering control. As the name implies, it is designed to handle a wider variety of terrain than most other vehicles.

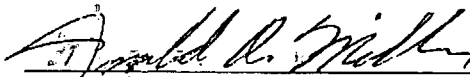
8. The 2006 Brute Force model ATVs were not equipped for legal use on the public highways of South Carolina.

9. In 2006 all ATVs sold in the United States, including the Brute Force Models carry a warning label that says the vehicles are not to be driven on the road: Their high center of gravity and low-pressure tires mean they are likely to tip over or go out of control on pavement.

10. ATVs, such as the Brute Force Models have a high center of gravity and low-pressure tires making them likely to tip over or go out of control on pavement.

11. Exhibit B is a copy of portions of the 2006 Kawasaki Brute Force ATV Owner's Manuals regarding use on public roads and paved surfaces.

Further deponent saith not


Don Miller

SWORN to before me this

28 day of September, 2016

[Signature]
Notary Public for South Carolina (L.S.)

My Commission Expires: 9/24/18

EXHIBIT A

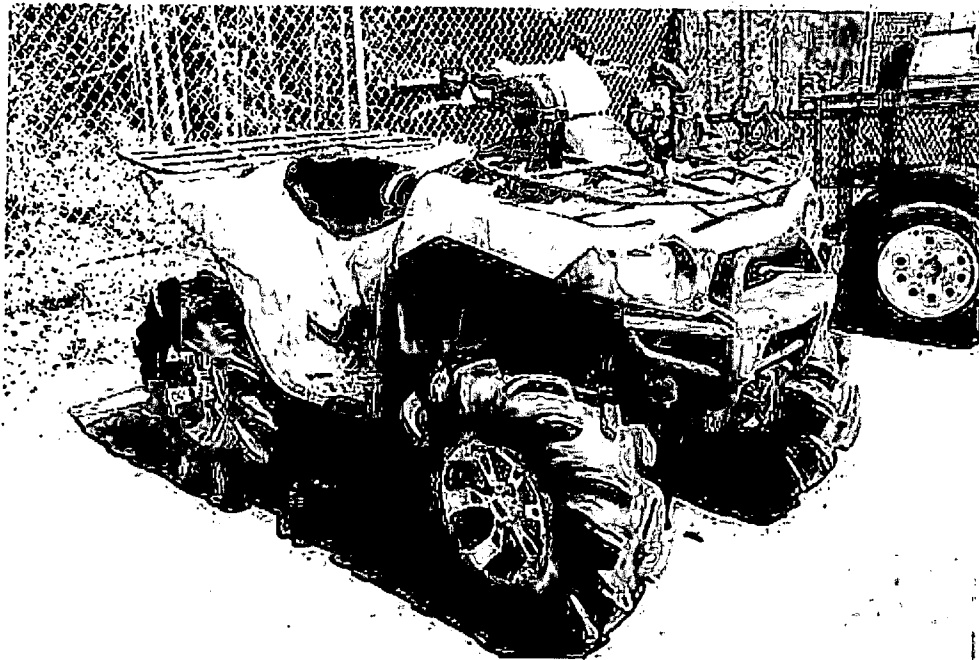
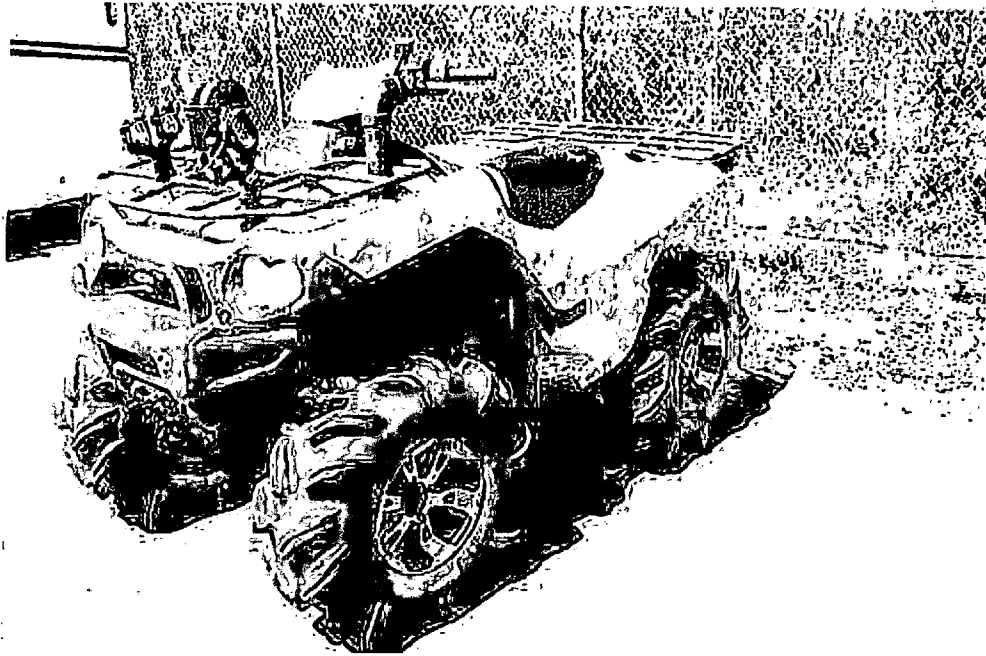


EXHIBIT B

SAFE RIDING INFORMATION

AN ATV IS NOT A TOY AND CAN BE HAZARDOUS TO OPERATE. An ATV handles differently from other vehicles including motorcycles and cars. A collision or rollover can occur quickly, even during routine maneuvers such as turning and driving on hills or over obstacles, if you fail to take proper precautions.

SEVERE INJURY OR DEATH can result if you do not follow these instructions:

- Read this manual and all labels carefully and follow the operating procedures described.
- The Owner's Manual should be kept in the waterproof plastic bag and stored in the storage case provided.
- Never operate an ATV without proper instruction. Take a training course. Beginners should receive training from a certified instructor. Contact an authorized ATV dealer or call 1-800-887-2887 to find out about the training courses nearest you.
- Never allow a child under age 16 to operate this ATV.
- Never carry a passenger on an ATV.
- Never operate an ATV on any paved surfaces, including sidewalks, driveways, parking lots and streets.
- Never operate an ATV on any public street, road or highway, even a dirt or gravel one.
- Never operate an ATV without wearing an approved motorcycle helmet that fits properly. You should also wear eye protection (goggles or face shield), gloves, boots, long-sleeved shirt or jacket, and long pants.
- Never consume alcohol or drugs before or while operating this ATV. Alcohol and drugs impair your judgment and reaction time.
- Before starting: put transmission in neutral and check the throttle control for proper operation.
- Remember to apply the parking brake before getting off your ATV.
- Never operate at excessive speeds. Always go at a speed that is proper for the terrain, visibility and operating conditions, and your experience.
- Never attempt wheelies, jumps, or other stunts.
- Always inspect your ATV each time you use it to make sure it is in safe operating condition. Always follow the inspection and maintenance procedures and schedules described in this manual.
- Always keep both hands on the handlebars and both feet on the footboards of the ATV during operation.
- Always go slowly and be extra careful when operating on unfamiliar terrain. Always be alert to changing terrain conditions when operating the ATV.
- Never operate on excessively rough, slippery or loose terrain until you have learned and practiced the skills necessary to control the ATV on such terrain. Always be especially cautious on these kinds of terrain.

- Always follow proper procedures for turning as described in this manual. Practice turning at low speeds before attempting to turn at faster speeds. Do not turn at excessive speed.
- Never operate the ATV on hills too steep for the ATV or for your abilities. Practice on smaller hills before attempting larger hills.
- Always follow proper procedures for climbing hills as described in this manual. Check the terrain carefully before you start up any hill. Never climb hills with excessively slippery or loose surfaces. Shift your weight forward. Never open the throttle suddenly or make sudden gear changes. Never go over the top of any hill at high speed.
- Always follow proper procedures for going down hills and for braking on hills as described in this manual. Check the terrain carefully before you start down any hill. Shift your weight backward. Never go down a hill at high speed. Avoid going down a hill at an angle that would cause the vehicle to lean sharply to one side. Go straight down the hill where possible.
- Always follow proper procedures for crossing the side of a hill as described in this manual. Avoid hills with excessively slippery or loose surfaces. Shift your weight to the uphill side of the ATV. Never attempt to turn the ATV around on any hill until you have mastered the turning technique described in this manual on level ground. Avoid crossing the side of a steep hill if possible.
- Always use proper procedures if you stall or roll backwards when climbing a hill. To avoid stalling, use proper gear and maintain a steady speed when climbing a hill. If you stall or roll backwards, follow the special procedure for braking described in this manual. Dismount on the uphill side or to a side if pointed straight uphill. Turn the ATV around and remount, following the procedure described in this manual.
- Always check for obstacles before operating in a new area. Never attempt to operate over large obstacles, such as large rocks or fallen trees. Always follow proper procedures when operating over obstacles as described in this manual.
- Always be careful when skidding or sliding. Learn to safely control skidding or sliding by practicing at low speeds and on level, smooth terrain. On extremely slippery surfaces, such as ice, go slowly and be very cautious in order to reduce the chance of skidding or sliding out of control.
- Never operate an ATV in fast flowing water or in water deeper than that specified in this manual. Remember that wet brakes may have reduced stopping ability. Test your brakes after leaving water. If necessary, apply them several times to let friction dry out the linings.
- Always be sure there are no obstacles or people behind you when you operate in reverse. When it is safe to proceed in reverse, go slowly.
- Always use the size and type tires specified in this manual. Always maintain proper tire pressure as described in this manual. Type of tire and inflation can affect vehicle handling.
- A tire pressure gauge is provided in the tool kit container. Keep it with the vehicle at all times.

- Never modify an ATV through improper installation or use of accessories. Installation of accessory items may affect vehicle handling. Refer to the Loading Information chapter in this manual.
- Never exceed the stated load capacity for an ATV. Cargo should be properly distributed and securely attached. Reduce speed and follow instructions in this manual for carrying cargo or pulling a trailer. Allow greater distance for braking.
- Preserve the environment, ride responsibly and always know and obey laws and regulations governing ATV operation.
- Refueling: Shut engine off and make sure the area is well ventilated and free from any source of flame or sparks.
- Use an antenna flag in hilly terrain and sand dune areas.

FOR MORE INFORMATION ABOUT ATV SAFETY, call the Consumer Product Safety Commission at 1-800-638-2772, or the ATV Distributor's Safety Hotline at 1-800-852-5344.

18 LOCATION OF LABELS

(1)

⚠ WARNING

Improper use can result in SEVERE INJURY or DEATH






ALWAYS USE
AN APPROVED
HELMET AND
PROTECTIVE
GEAR

NEVER USE
ON PUBLIC
ROADS

NEVER CARRY
PASSENGERS

NEVER USE
WITH DRUGS
OR ALCOHOL

NEVER operate

- without proper training or instruction
- at speeds too fast for your skills or the conditions
- on public roads - a collision can occur with another vehicle
- as a passenger - passengers affect balance and steering and increase risk of losing control

ALWAYS

- use proper riding techniques to avoid vehicle overturns on hills and rough terrain and in turns
- avoid paved surfaces - pavement may seriously affect handling and control

**READ THE OWNER'S MANUAL
FOLLOW ALL INSTRUCTIONS AND WARNINGS**

58070-1151

58070-1151

(2)

CAUTION

Vehicle must be stopped before
shifting transmission.
Shifting while moving may
result in transmission
damage

58070-1170

(3)

⚠ WARNING

Moving parts can cut fingers
or catch clothing and cause
other severe injuries.
Never operate vehicle without
protective cover installed.

58070-1269

82 SAFE OPERATION

⚠ WARNING

WARNINGS indicate a potential hazard that could result in personal injury or death.

Off-Road Use Only

This vehicle is designed for off-road use only. Operation on public streets, roads, and highways is not recommended and is not safe.

ATV tires are not designed to operate on paved or concrete surfaces. The tires will not slip as necessary which may seriously affect control of the vehicle.

⚠ WARNING

HAZARD

Operating this ATV on paved surfaces, including sidewalks, paths, parking lots, driveways, and streets.

WHAT CAN HAPPEN

ATV tires are designed for off-road use. Paved surfaces may seriously affect handling and control of the ATV, and may cause the vehicle to go out of control.

HOW TO AVOID THE HAZARD

Avoid operating the ATV on pavement whenever possible. If you must ride on a paved surface, go slowly and do not make sudden turns or stops.

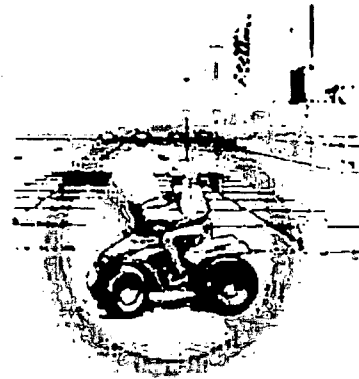


ILLUSTRATION 1

SAFE OPERATION 83

By operating on a public road you take the risk that you could collide with another vehicle. Also, in many states use on public streets is illegal.

⚠ WARNING

HAZARD

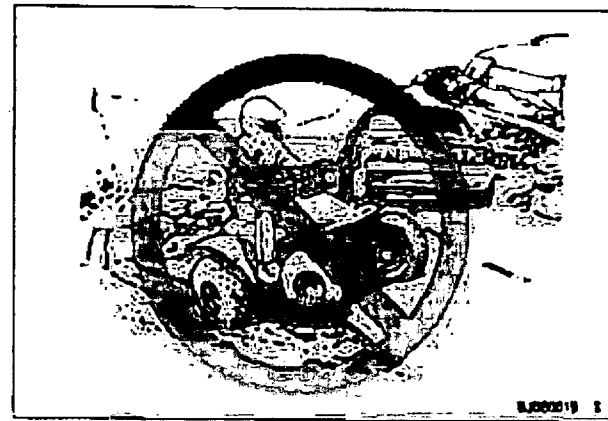
Operating this ATV on public streets, roads or highways.

WHAT CAN HAPPEN

You can collide with another vehicle.

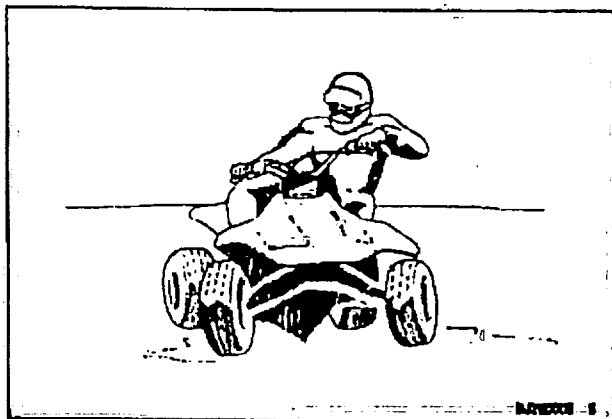
HOW TO AVOID THE HAZARD

Never operate this ATV on any public street, road or highway, even a dirt or gravel one. In many states it is illegal to operate ATVs on public streets, roads and highways.



110 SAFE OPERATION

○ Don't ride on public streets, roads, or highways.



Riding In Water

Choose a location to enter and exit the water where the banks are not too steep or slippery. Check the water before entering for rocks, holes or other obstacles which may cause you to overturn or become stuck or submerged.

Observe the following rules for operating the vehicle in water:

Never operate the vehicle in rivers or streams where the water is flowing quickly. Such operation could lead to an accident if the vehicle loses traction and is swept into the current.

Never operate the vehicle in deep water. The maximum fording depth is up to the bottom edge of the axle caps in quiet (slow-moving) water. Vehicle operation in deeper water may be unpredictable and hazardous, and could lead to an accident.

⚠ WARNING

Improper ATV use can result in SEVERE INJURY or DEATH



**ALWAYS USE
AN APPROVED
HELMET AND
PROTECTIVE
GEAR**



**NEVER USE
ON PUBLIC
ROADS**



**NEVER CARRY
PASSENGERS**



**NEVER USE
WITH DRUGS
OR ALCOHOL**

NEVER operate:

- without proper training or instruction
- at speeds too fast for your skills or the conditions
- on public roads - a collision can occur with another vehicle
- with a passenger - passengers affect balance and steering and increase risk of losing control

ALWAYS:

- use proper riding techniques to avoid vehicle overturns on hills and rough terrain and in turns
- avoid paved surfaces - pavement may seriously affect handling and control

**READ THE OWNER'S MANUAL.
FOLLOW ALL INSTRUCTIONS AND WARNINGS.**

**KVF650D6F
KVF650E6F**



KAWASAKI HEAVY INDUSTRIES, LTD.
Consumer Products & Machinery Company

Part No. 99987-1318

Printed in Japan

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

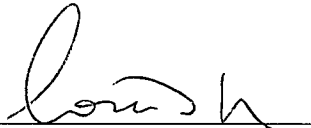
Vs.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 27, 2018



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Folkens Law Firm, PA
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Florence, South Carolina 29502
Attorney for Appellant
843-665-0100