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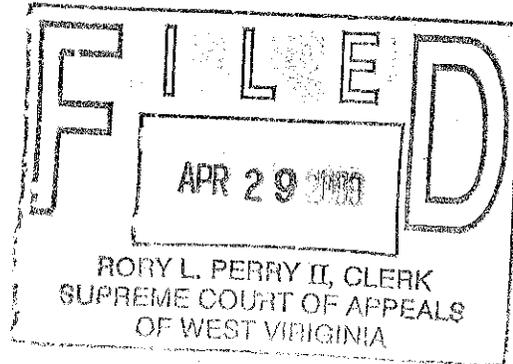
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Appellant,

v.

RICHARD BLAKE, JR. AND JOHN T. PARKER,

Appellees.



*Appeal from the Circuit Court of
Marshall County, West Virginia
Case No. 06-C-72M*

APPELLANT'S BRIEF

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COMES NOW the Appellant, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm"), by and through its counsel, E. Kay Fuller, Michael M. Stevens, and Martin & Seibert, L.C., and, pursuant to Rule 10 of the West Virginia Rules of Appellate Procedure, presents its Appellate Brief respectfully requesting that the June 30, 2008, Order of the Circuit Court of Marshall County, granting Partial Summary Judgment to the Appellees, be reversed.

I. NATURE OF PROCEEDINGS BELOW

This Appeal arises from the June 30, 2008, Order of the Circuit Court of Marshall County, Hon. John T. Madden presiding, granting the Appellees' Motion for Partial Summary Judgment. Therein, the Circuit Court held State Farm's policy language, which mirrors West Virginia's Motor Vehicle Safety Responsibility Law, specifically W.Va. Code §17D-4-12(e), was ambiguous, internally inconsistent, and inconsistent with the aforementioned statute. In addition, the Circuit Court found the existence of a "reasonable expectation" of coverage despite clear policy language to the contrary, and found State Farm had a duty to defend a claim foreign to the risk insured.

It is from this Order, which constitutes a final adjudication pursuant to W. Va. R. Civ. P. 54(b), that State Farm appeals.

II. STATEMENT OF FACTS

1. At all times relevant, Appellee Richard Blake was insured by State Farm under a policy of automobile liability insurance. It is undisputed that the policy provided property damage liability coverage in the amount of \$25,000.00 per

accident. It is further undisputed the policy did not provide comprehensive or collision coverage because Mr. Blake had declined to purchase the same.

2. The policy insuring Mr. Blake was issued on Form 9848.3, which was approved by the Office of the West Virginia Insurance Commissioner on July 1, 2001. The policy stated, under Section I – Liability – Coverage A that State Farm will:

1. Pay damages which an insured becomes legally liable to pay because of:
 - a. Bodily injury to others, and
 - b. Damage to or destruction of property including loss of its use, caused by accident resulting from the ownership, maintenance or use of your car, and
2. Defend any suit against an insured for such damages with attorneys hired and paid by us. 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.

(Policy p. 6.)¹

The policy insuring Mr. Blake also contained a provision, specifically permitted by statute, precluding the extension of liability coverage for damage, *inter alia*, to property “in the charge” of or being “transported by” an insured.

There is no liability coverage “...FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF, OR TRANSPORTED BY AN INSURED...”

(Policy pp. 7-8.)

3. On or about March 31, 2006, Appellee Richard Blake borrowed a trailer from Appellee John Parker and attached it to his vehicle. He was subsequently

¹ Relevant pages of the State Farm policy are contained within the Record as exhibits to State Farm's Memorandum of Law dated January 25, 2008.

involved in a single-vehicle accident that destroyed both his truck and Mr. Parker's trailer.

4. Mr. Blake submitted a claim requesting State Farm pay, under his property damage liability coverage, for the loss to Mr. Parker's trailer. Mr. Blake did not submit a claim for damage to his vehicle.

5. State Farm determined Mr. Parker's trailer, which was physically attached to the Blake vehicle at the time of the collision, constituted an extension of the vehicle in that it was "in his (Mr. Blake's) charge" and was being "transported by" him. Accordingly, State Farm concluded that liability coverage was not applicable to the loss – both in accordance with the policy language set forth above, as well as under W.Va. Code §17D-4-12(e) on which this provision was patterned.²

6. On or about April 27, 2005, Mr. Parker filed suit against Mr. Blake in the Magistrate Court of Marshall County for the value of the trailer. The suit was ultimately dismissed when Mr. Blake confessed judgment in the amount of \$3,000.00, plus costs and fees. This confessed judgment also contained a purported assignment of a portion of a first-party "bad faith" claim.

7. On March 16, 2006, Mr. Blake and Mr. Parker jointly filed the present action against State Farm and Rosalyn Rhodes, a State Farm agent, alleging entitlement to property damage liability coverage for the loss of the trailer, notwithstanding the preclusive language contained within the policy. Mr. Blake and Mr. Parker also alleged first- and third-party "bad faith" – although the latter

² As more fully discussed *infra*, W.Va. Code §17D-4-12(e) provides that a liability carrier is not required to insure for loss to property "in the charge of" or "transported by" an insured.

claim was dismissed with prejudice by the Circuit Court of Marshall County on April 23, 2007.

8. On June 30, 2008, the Circuit Court of Marshall County granted the Appellees' Motion for Partial Summary Judgment. The Circuit Court specifically found the State Farm policy insuring Mr. Blake, albeit issued on a form approved by the West Virginia Insurance Commissioner, was ambiguous and internally inconsistent. In addition, the Circuit Court concluded the language relied upon by State Farm in its denial of liability coverage to the loss in question violated W.Va. Code §17D-4-12. The Circuit Court further determined State Farm owed Mr. Blake a duty of defense in conjunction with the Magistrate Court action filed by Mr. Parker, and that Mr. Blake had a reasonable expectation of coverage for the loss asserted.

11. In its appeal of the Circuit Court's Order, State Farm respectfully contends Judge Madden erred in making these determinations and that the resulting findings were contrary to both the express provisions of the policy in question and West Virginia law.

III. ASSIGNMENTS OF ERROR

1. The Circuit Court erred in refusing to apply the plain language of W.Va. Code §17D-4-12(e), which specifies an insurer is not required to extend liability coverage to property "transported by" or "in the charge of" the insured.

2. The Circuit Court erred in finding State Farm's policy language, which likewise limits the extension of property damage liability coverage in accordance

with W.Va. Code §17D-4-12(e), was ambiguous and internally inconsistent with other policy provisions.

3. The Circuit Court erred in finding the insured had a "reasonable expectation" of property damage liability coverage for the loss in question.

4. The Circuit Court erred in finding State Farm had a duty to defend the suit brought by Mr. Parker because the underlying claim for damage to the trailer was foreign to the risk insured.

IV. STANDARD OF REVIEW

"The interpretation of an insurance contract, including the question of whether the contract is ambiguous, is a legal determination which, like the court's summary judgment, is reviewed *de novo* on appeal." *Dairyland Ins. Co. v. Fox*, 209 W.Va. 598, 601, 550 S.E.2d 388, 391 (2001), quoting *Payne v. Weston*, 195 W.Va. 502, 506-7, 466 S.E.2d 161, 165-66 (1995). "Determination of the proper coverage of an insurance contract when the facts are not in dispute is a question of law." *Id.*, quoting *Murray v. State Farm Fire & Cas. Co.*, 203 W.Va. 477, 483, 509 S.E.2d 1, 7 (1998), quoting *Pacific Indemnity Co. v. Linn*, 766 F.2d 754, 760 (3d Cir. 1985). "Where the issue on appeal from the circuit court is clearly a question of law or involving an interpretation of statute, we apply a *de novo* standard of review." *Id.*, quoting *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995). Likewise, the standard of review concerning a Summary Judgment Order is *de novo*. *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).

V. POINTS AND AUTHORITIES

- A. **The policy language relied upon by State Farm in denying the availability of liability coverage for the damage to the borrowed trailer is fully consistent with W.Va. Code §17D-4-12, et seq. (West Virginia Motor Safety Responsibility Law).**

The State Farm policy at issue contains the following language:

There is no liability coverage "...FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF, OR TRANSPORTED BY AN INSURED..."

(Policy, pp. 7-8.)

W.Va. Code §17D-4-12(e) states as follows:

"Such motor vehicle liability policy need not insure any liability under any workers compensation law nor any liability on account of bodily injury to or death of an employee of the insured when engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of any such vehicle, nor any liability for damage to property owned by, rented to, in the charge of, or transported by the insured." (Emphasis supplied).

The above provisions are substantively equivalent. Nonetheless, the Circuit Court concluded State Farm's policy language was inconsistent with the West Virginia Motor Vehicle Safety Responsibility Law (W.Va. Code §17D-4-12).

Such a determination is erroneous on its face. W.Va. Code §17D-4-12, et seq, proscribes minimum levels of liability coverage which must be maintained on all automobile insurance policies issued in West Virginia and is designed to facilitate the compensation of third-parties for the negligent acts of another.³ It does not, however, compel the extension of liability coverage for property that is

³ W.Va. Code §17D-4-12 requires a minimum of \$20,000.00 per person, \$40,000.00 per accident in bodily injury liability coverage, and \$10,000.00 per accident in property damage liability coverage.

“in the charge of” or being “transported by” the insured. (W.Va. Code §17D-4-12(e), *supra*.)

In reaching this conclusion, the Circuit Court effectively created a statutory exception with respect to a borrowed trailer. No such limitation, however, is present in the statute, and the Circuit Court’s interpretation is both directly contrary to the express language of the statute as well as basic principles of statutory construction that have long been recognized by this Court.

It is always presumed that the legislature will not enact a meaningless or useless statute. Syl. Pt. 4; *State ex rel Hardesty v. Aracoma Chief Logan No. 4523, Veterans of Foreign Wars of the United States, Inc.*, 147 W.Va. 645, 129 S.E.2d 921 (1963). To that end, courts must presume “a legislature says in a statute what it means and means in a statute what it says.” *Martin v. Randolph County Bd. of Educ.*, 195 W.Va. 297, 312, 465 S.E.2d 399, 414 (1995), quoting *Connecticut Nat’l Bank v. German*, 503 U.S. 249 (1992).

When a statute is clear and unambiguous and the legislative intent is plain, the statute should be applied and not construed. *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W.Va. 137, 107 S.E. 2d 353 (1959). Furthermore, just as courts are not to eliminate through judicial interpretation words that were purposefully included, courts “should not arbitrarily read into (a statute) that which it does not say.” *Banker v. Banker*, 196 W.Va. 535, 547, 474 S.E. 2d 465, 477 (1996).

Applying these legal precepts to the present matter, W.Va. Code §17D-4-12(e) clearly establishes limitations on the obligation of an insurance carrier to

extend liability coverage. There is no "exception" for borrowed trailers nor is there any ameliorative language to otherwise diminish the potential effect of this provision. Indeed, the statutory language at issue specifically denotes other instances where liability coverage need not be extended. These include, *inter alia*, property owned by the insured, liability under any workers' compensation law, liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such vehicle. *Id.*

The Appellees may point to the existence of certain "exclusions," such as those pertaining to "owned but not insured" vehicles, which have been found by this Court to be valid and enforceable only above the minimum levels of coverage set forth in W.Va. Code §17D-4-12. Such an argument is misplaced. The provision at issue does not represent an "exclusion" that is facially inconsistent with an otherwise applicable statutory directive and is, therefore, subject to limitation. Rather, it articulates certain situations that are completely outside the scope of liability coverage itself.

It would be contrary to the plain language of the statute and the manifest intent of the legislature to construe W.Va. Code §17D-4-12 in such a manner as to mandate minimum levels of liability coverage for the very exceptions to the applicability of such coverage enumerated therein under W.Va. Code §17D-4-12(e). Any such conclusion would render W.Va. Code §17D-4-12(e) meaningless in stark contrast to the longstanding spirit of deference accorded to

legislative enactments. The June 30, 2008, Order of the Circuit Court is inconsistent with the plain language of the Code and must therefore be reversed.

B. The borrowed trailer was being “transported by” and was “in the charge of” Appellee Blake at the time of loss.

Given the consistency of State Farm’s policy language with the governing statute, the next inquiry turns to whether the borrowed trailer was in the “transport and charge of” Appellee Blake so as to fall under this provision.

This precise issue of what constitutes “transported by “ or “in the charge of” has not yet been considered by this Court. Other jurisdictions, have, under similar facts, concluded a trailer was “transported by” or “in the charge of” an insured – therefore obviating the necessity to provide liability coverage for damage or loss to the same. State Farm respectfully contends these and like decisions, if not controlling, are instructive as to the proper disposition of the case *sub judice*.

For example, in *McMinn v. Peterson*, 777 P.2d 1214 (Id. 1989), the Idaho Supreme Court considered similar policy language and concluded damage to a trailer being towed by the insured was not a covered liability loss because the insured was “in charge of” the trailer. The New York Supreme Court, Appellate Division, also upheld a denial of liability coverage for damage to a trailer towed by an insured. *Mundo, Inc. v. Liberty Mut. Group*, 4 A.D.3d 307, 772 N.Y.S.2d 331 (N.Y.A.D. 1 Dept. 2004).⁴

⁴ At the time of the foregoing decisions, both Idaho and New York had in place financial responsibility statutes similar in nature to W.Va. Code §17D-4-12.

The rationale underlying these decisions is that the connected trailer becomes "part" of the insured automobile and is subject to the same coverage applicable to the towing vehicle. While liability coverage would be activated if the trailer caused damage to another's property, it does not cover loss to the trailer itself. For example, in *State Farm Mut. Auto. Ins. Co. v. Dorough*, 174 So.2d 303 (Ala. 1965), the insured was towing a boat and trailer, each of which was owned by different individuals. The claimant requested State Farm provide indemnification for damage to the borrowed boat and trailer he was towing. Because State Farm's liability coverage did not apply "to injury to or destruction of property owned or transported by the insured or property rented or in charge of the insured other than a residence or private garage," the Alabama Supreme Court held coverage was properly denied. The court found that the boat and trailer were attached to the insured vehicle and, as such, "the movements of the insured's vehicle controlled the movements of the boat on the trailer and the insured vehicle was being operated by a non-owner." The court further found "when the truck stopped so did the boat and trailer, when the truck moved the boat and trailer did also. While the boat and trailer were attached to the truck, the driver of the truck controlled the place, manner, speed, and direction of the boat and trailer." The court concluded by noting "while the boat and trailer were attached to the truck, the boat and trailer were in the charge of the driver of the insured vehicle." As a result, liability coverage was not available for the loss. *Id.* at 305.

Other coverages, which were not purchased by Mr. Blake, would have been available to compensate for the loss in question. The Circuit Court cannot disregard his failure to purchase appropriate and adequate coverage and, in so doing, create for State Farm an otherwise non-existent obligation to indemnify in a manner contrary to the policy and governing law.

C. The policy language relied upon by the Appellant is neither ambiguous nor internally inconsistent.

The Circuit Court also concluded State Farm's policy language was ambiguous and internally inconsistent with other provisions of the policy. In reaching this determination, the Circuit Court failed to apply the policy in a manner consistent with its plain meaning, and further disregarded the presumption of validity accorded to policy forms approved by the West Virginia Insurance Commissioner.

1. The policy language precluding the extension of liability coverage for loss to the borrowed trailer is not ambiguous.

Under West Virginia law, a Court's initial task in interpreting the provisions of an insurance policy is to determine whether the language of the instrument is so unequivocal as to leave no doubt concerning the intended meaning of the parties. *Arnold Agency v. West Virginia Lottery Comm'n*, 206 W.Va. 583, 526 S.E.2d 814 (1999). Accordingly, where the provisions of an insurance policy are clear and unambiguous, they are not subject to judicial construction or interpretation, and the terms contained within the policy will be given their normal meaning in light of all of the relevant circumstances. See: *Glen Falls Ins. Co. v.*

Smith, 217 W.Va. 213, 617 S.E.2d 760 (2005), and *Columbia Gas. Co. v. Westfield Ins. Co.*, 217 W.Va. 250, 617 S.E.2d 797 (2005).

The State Farm policy insuring Mr. Blake contained a clear and unequivocal limitation of coverage for property “in the charge of” or “transported by” the insured. Not only are these terms plain on their face, but when scrutinized, courts have concluded they are enforceable as written. As noted above, the borrowed trailer attached to Mr. Blake’s vehicle became an extension of his vehicle. As a result, it was subject to the same coverage, or lack thereof, associated with the vehicle itself. Given the undisputed failure of Mr. Blake to purchase collision coverage, there can be no contention that coverage existed for the extended portion of his vehicle simply because it was borrowed property belonging to a third party.

This very question was examined in *Allstate Ins. Co. v. Reid*, 934 So.2d 56 (La. App. 1st Cir. 2006), wherein the First Circuit Court of Appeals for Louisiana held that similar policy language was unambiguous. In that case, the claimant was driving a truck and pulling a non-owned boat and trailer when he lost control of his vehicle, causing damage to the boat and the trailer. The insured’s policy contained language declining the extension of liability coverage “for any damages to property owned by, rented to, in the charge of, or transported by an insured.” *Id.* at 60. In the face of an argument of ambiguity, the Louisiana Court concluded the language was both unambiguous and fully enforceable as written, thus affirming the coverage denial.

Indeed, there is only one meaning that can reasonably be ascribed to the phrases "in the charge of" and "transported by." "In the charge of" is understood to mean controlling the movements or actions of something. "Transported by" is widely understood as carrying or conveying something from one point to another. *Black's Law Dictionary* 1505 (7th ed., 1999). Both terms were applicable in the present case as Mr. Blake was towing (conveying) a trailer and, in so doing, controlling its movement. Thus, their clear meaning should be applied.

The fact that the Appellees did not concur with State Farm's interpretation of the policy is irrelevant. Mere disagreement over the meaning of terms and conditions does not establish ambiguity. *Pilling v. Nationwide Mut. Fire Ins. Co.*, 201 W.Va. 757, 500 S.E.2d 870 (1997). Rather, an ambiguity is implicated only where the language of an insurance policy is reasonably susceptible to two different meanings or is of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning. *Hamric v. Doe*, 201 W.Va. 615, 499 S.E.2d 619 (1997), citing Syl. Pt. 1, *Prete v. Merchants Property Ins. Co. of Indiana*, 159 W.Va. 508, 223 S.E.2d 441 (1976).

"In the charge of" and "transported by" are not terms that suggest a double entendre. Rather, they are subject to a common understanding. To suggest a different meaning of these terms – or to rely, as did the Circuit Court, on the fact they were not "defined" in the policy - would be contrary to this Court's holding in *Pilling, supra*, which cautioned "courts should read policy provisions to avoid ambiguities and not torture language to create them." *Id.* at 759. Indeed, as recently reaffirmed by this Court, "In the absence of any definition of the intended

meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used." Syl. Pt. 4, *West Virginia Consolidated Public Retirement Board v. Weaver*, 222 W.Va. 668, 671 S.E.2d 673 (2008).

Based on the undisputed facts and the application of the generally understood terms at issue, according to their ordinary and accepted meanings, Mr. Blake was "in the charge of" and "transporting" the trailer at the time of the accident. As a result, under the express terms of the policy, property damage liability coverage was not available for the loss:

2. **The State Farm policy is not internally inconsistent and to find otherwise ignores the presumption of validity accorded to policy forms approved by the West Virginia Insurance Commissioner.**

The Circuit Court also concluded the policy itself was internally inconsistent, given the existence of specific language under the liability coverage section denoting "trailer coverage." This provision stated, in pertinent part:

Trailer Coverage

The liability coverage extends to the ownership, maintenance or use by an insured of ...

- a.) Trailers designed to be pulled by a private passenger car or utility vehicle, ...

(Policy, p. 7.)

As an initial matter, the policy form was approved by the West Virginia Insurance Commissioner effective July 1, 2001, and, as such, is entitled to a presumption of validity. W.Va. Code §33-6-30(c) states: "Where any insurance policy form, including any endorsement thereto, has been approved by the

commissioner, and the corresponding rate has been approved by the commissioner, there is a presumption that the policy forms and rate structure are in full compliance with the requirements of this chapter. (Emphasis added.) See also: *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W.Va 80, 576 S.E.2d 807 (2002).

A collateral attack on an approved policy form is not only contrary to this presumption and indicative of significant due process concerns, but it also invades the prerogative of the legislature and those agencies to which the legislature has delegated requisite authority. Indeed, once legislative authority has been appropriately delegated, courts must grant deference to agency determinations in accordance with the principles of separation reflected in Article V §1 of the Constitution of West Virginia (titled "Division of Powers"). Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W.Va. 155, 279 S.E.2d 622 (1981) (holding that "Article V, Section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.") See also: *Frymier-Halloran v. Paige*, 193 W.Va. 687, 695, 458 S.E.2d 780, 788 (1995) ("as a result of these and other decisions, we have established that administrative agencies are active players in the Division of Powers, and, while all is subject to properly enacted and valid laws and to constitutional constraints, their actions are entitled to respect from both the Legislature and the Court . . .").

Even if this Court elects to conduct an independent review of the policy, any finding of internal ambiguity would again be contrary to the dictate of *Pilling, supra*. The specific section relied upon by State Farm begins on page 7 of the policy and is prefaced with a bold-faced heading which reads as follows: "**When liability coverage does not apply.**" It then states, "in addition to the limitations of coverage in **Who is an insured** and **Trailer coverage**" (again in bold, as noted), there are certain situations to which liability coverage is not applicable under any circumstances.

"THERE IS NO COVERAGE:

* * *

4. FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF OR TRANSPORTED BY AN INSURED...."

This disclaimer is presented in capitalized font. As a result, any argument that it is not readily ascertainable is without merit. Similarly, any contention that it is fundamentally inconsistent with the "trailer coverage" section under the liability policy is unfounded. The two provisions do not conflict with each other; rather, they are complementary.

Liability coverage would have been applicable had the trailer, notwithstanding the fact it was not specifically insured or otherwise noted on the declarations page, caused personal injury or property damage to another while affixed to the insured's vehicle. Such an event did not occur. The provision relied upon by State Farm clearly and unambiguously states that certain categories of losses are beyond the scope of liability coverage. Among these situations are

damage to property “in the charge of” or “transported by” an insured – which has been approved by the West Virginia Insurance Commissioner and is expressly authorized under W.Va. Code §17D-4-12(e).

The Supreme Court of Montana examined similar policy language in the context of a provision affording “trailer coverage,” and likewise ruled in favor of the insurer in *Babcock v. Farmers Ins. Exchange*, 999 P.2d 347 (Mont. 2000). The policy at issue in *Babcock* stated there was coverage for property damage arising out of ownership, maintenance or use of a utility trailer. The utility trailer was defined as one being attached to a car. *Id.* at 349. The policy also contained express language that liability coverage was not applicable to property “in the charge of” or “being transported by” an insured. *Id.*

The *Babcock* plaintiff argued that, if the policy had intended to exclude liability coverage for damage to trailers, it should have done so explicitly. The plaintiff further theorized the terms “being transported by” and “in the charge of” were ambiguous. The Court disagreed. It found these phrases to be neither ambiguous nor inconsistent with other policy provisions. Rather, the Court reasoned because the policy “clearly demonstrated an intent to exclude liability coverage for the damage of the borrowed trailer at the time of the accident” and “the trailer was in Mr. Babcock’s charge at the time of the accident,” liability coverage did not encompass damage to the trailer.” *Id.* at 350.

Additionally, *Grimsrud v. Hagel*, 119 P.3d 47 (2005), also decided by the Montana Supreme Court and a case on which the Circuit Court relied in support

of its decision, specifically affirmed the validity of policy language disclaiming the extension of liability coverage to property “transported by” or “in the charge” of an insured. The Circuit Court’s focus on *Grimsrud* apparently arose from the fact that the liability carrier, State Farm, paid for loss to the borrowed trailer yet litigated (successfully) the existence of an obligation to compensate for loss to property carried on the trailer.

The Circuit Court’s reliance on *Grimsrud* in this specific context is misplaced because the insured in that matter carried collision coverage which was applicable to the trailer loss.⁵ Conversely, in the present case, the insured declined to purchase collision coverage that would have provided compensation for the loss. The Circuit Court, however, disregarded that distinction.

The Appellees also emphasize the fact that, in briefs submitted in *Grimsrud*, counsel for State Farm affirmed that damage to the trailer itself was properly compensable under the property damage liability component of that policy. Such an argument, however, is unavailing in the present case.

Although State Farm’s counsel did assert that property damage liability coverage was the proper mechanism for addressing the loss to the trailer, this statement cannot be read in a vacuum. Independent coverage, other than property damage liability, was available for the loss. Moreover, the Appellees fail to note the question of coverage for the trailer was not germane to the limited issue under consideration in *Grimsrud* - namely whether coverage was provided for two snowmobiles being carried on the trailer.

⁵ Although the *Grimsrud* opinion failed to reveal the existence of alternate, applicable coverage for the loss to the trailer, the Circuit Court was advised of the same through documentation filed in conjunction with State Farm’s Cross Motion for Summary Judgment.

It is clear that damage to the property or person of third parties caused by the operation of an insured auto with or without a trailer attached would be compensable under the policy's liability coverage. Loss to the auto, an attached trailer or to cargo carried on the trailer, however, would not be covered as such a loss is outside the scope of the policy's liability provisions.

Simply put, representations made in the course of the *Grimsrud* case, to the extent they pertain to the applicability of property damage liability coverage to a borrowed trailer, should not be taken out of context. They were of no significance in the holding and should not be cloaked with precedential value in a subsequent, unrelated matter.

D. The Circuit Court's Order effectively extends liability coverage to bailments in a manner contrary to the policy at issue as well as generally accepted principles of law.

Aside from erroneously finding the existence of an ambiguity, both with respect to the policy provision in question and its relationship to the policy as a whole, the Circuit Court's extension of liability coverage under the facts of this case essentially creates a new obligation to provide liability insurance in the context of a bailment.

It is widely agreed a bailment constitutes "[t]he delivery of personal property by one person to another in trust for a specific purpose pursuant to an expressed or implied contract to fulfill that purpose." Inherent in this arrangement is the understanding the property will be returned on demand or at a stipulated time. *Torix v. Allred*, 100 Id. 905, 606 P.2d 1334 (1980), *Loomis v. Imperial*

Motors Inc., 88 Id. 74, 396 P.2d 467 (1964), *Fulcher v. State*, 32 Tex.Cr.R. 621, 25 S.W. 625 (1894), 8A. Am. Jur. 2D., *Bailment* §1 (2008).

Applying these legal principles to the matter before this Court, it is clear a bailment was established when Mr. Blake borrowed Mr. Parker's trailer. The trailer was personal property, and it was delivered to Mr. Blake for a specific purpose. There also was an apparent understanding that the trailer would be returned.

The mere fact a bailor's property is damaged while in the possession of a bailee will not entitle the bailor to a share of any insurance of the bailee. *Transportation Equipment Rentals Inc. v. Oregon Auto. Ins. Co.*, 257 Or. 288, 478 P.2d 620 (1970), 5A Appleman Ins. Law and Practice §3333 (2008). Rather, when there is no express contractual language regarding insurance for the bailed property, and there is a question of whether a bailee has insured the bailor's interest, the answer is found in the language of the bailee's insurance policy. *Transportation Equipment Rentals Inc.*, *supra*.

When there is a question of whether the bailee is an insurer of the property, the policy language of the bailee's insurance must be analyzed. Mr. Blake's insurance policy with State Farm clearly and explicitly excluded coverage for damage to the trailer because it was property in his "charge" and which he was "transporting." Accordingly, there would be no liability coverage for damage to the trailer owned by Mr. Parker, the bailor, when it was damaged while being towed by Mr. Blake, the bailee.

E. Mr. Blake lacked a reasonable expectation of coverage given the clear and unambiguous policy language precluding the extension of liability coverage to the borrowed trailer.

In its Order of June 30, 2008, the Circuit Court further concluded Mr. Blake had a "reasonable expectation" of liability coverage for damage to the borrowed trailer. The doctrine of "reasonable expectations," however, is a judicially-created remedy that is generally limited to those situations where there is an ambiguity in the policy.

In *Jenkins v. State Farm Mut. Auto. Ins. Co.*, 219 W.Va. 190, 195, 632 S.E.2d 346, 351 (2006), this Court reviewed the doctrine and concluded it provides "that the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of policy provisions would have negated those expectations." *Id.* at 196, citing *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E. 2d 488 (1987), *overruled on other grounds by Potesta v. U.S. Fidelity & Guar. Co.*, 202 W.Va. 308, 504 S.E.2d 135 (1998).

The doctrine of reasonable expectations, however, is primarily a rule of construction, and unambiguous contracts do not require construction by the courts. Syl. Pt. 3, *Luikart v. Valley Brook Concrete & Supply, Inc.*, 216 W.Va. 748, 613 S.E.2d 896 (2005). If the terms of an exclusion are plain and unambiguous, then no interpretation is necessary, and a court need only apply the exclusion to the facts presented.⁶ *State Auto. Mut. Ins. Co. v. Alpha Engineering Services, Inc.*, 208 W.Va. 713, 542 S.E.2d 876 (2000).

⁶ The *Luikart* Court noted discrete examples of when, notwithstanding the lack of an ambiguity, the reasonable expectation of a policyholder could nonetheless apply. The Appellant contends that any such

The insurance policy at issue did not contain an ambiguity and its terms should be applied as written. Accordingly, the Circuit Court erred in finding Mr. Blake had a reasonable expectation of coverage for the loss to the borrowed trailer. This finding again warrants reversal.

F. State Farm had no duty to defend an action “entirely foreign” to the risk insured.

Although it is well recognized that the duty to defend is broader than the duty to indemnify, *Butts v. Royal Vendors, Inc.*, 202 W.Va. 448, 504 S.E.2d 911, 914 (1998), this duty is governed by whether the allegations in the Complaint are reasonably susceptible to an interpretation that the claim may be covered by the terms of the insurance policy. *State Auto., supra*; *One Gateway Associates v. Westfield Ins. Co.*, 184 F.Supp.2d 527 (N.D. W.Va. 2002) (holding the insurer is relieved of its duty to defend if the causes of action alleged in the Complaint are entirely foreign to the risks covered by the policy).

Given the clear and unambiguous policy language precluding the extension of liability coverage to property “in the charge of” or “transported by” the insured, the allegations contained in the Magistrate Court action were entirely foreign to the risks insured under the policy. As a result, under the logic of *State Auto.*, State Farm had no duty to defend Mr. Blake against said action, and the Circuit Court’s contrary determination was in error.

“exceptions” are not applicable in the present case – most notably because the policy provision at issue was not an “exclusion” but rather a limitation of liability coverage that was fully in accord with a specific statutory provision.

VI. CONCLUSION

This is a simple matter of coverage determination and the Circuit Court's entry of Partial Summary Judgment in favor of Mr. Blake and Mr. Parker was erroneous. As an initial matter, the policy language upon which State Farm relied is fully in accord with West Virginia law. Moreover, it is neither ambiguous nor internally inconsistent and, indeed, has been specifically approved by the West Virginia Insurance Commissioner. Lacking any ambiguity, Mr. Blake was neither entitled to nor could he possess a "reasonable expectation" of liability coverage.

The Circuit Court's ruling also served to effectively extend liability coverage in the context of a bailment – notwithstanding the lack of any supporting law and despite contrary policy provisions. Furthermore, given that the allegations of the Magistrate Court action were "totally foreign" to the risks insured under the State Farm policy, there was no duty to defend Mr. Blake in the underlying suit.

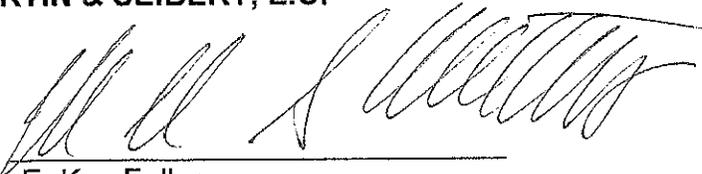
Mr. Blake could have procured coverage that would have provided compensation for loss to the trailer. He elected not to do so. Accordingly, and for the foregoing reasons, the Appellant, State Farm Mutual Automobile Insurance Company, respectfully requests this Court to reverse the Order of Partial Summary Judgment as entered by the Circuit Court of Marshall County on June 30, 2008.

Respectfully submitted,

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**
BY COUNSEL

MARTIN & SEIBERT, L.C.

BY:

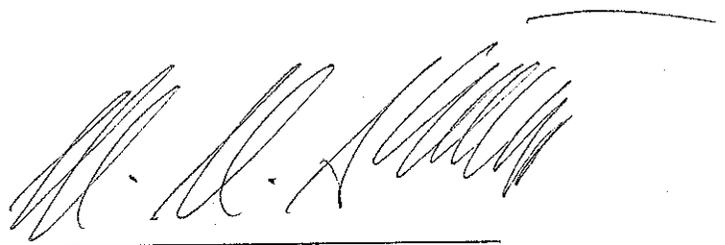


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CERTIFICATE OF SERVICE

This is to certify that I, Michael M. Stevens, Counsel for the Appellant, served the foregoing ***Appellant's Brief*** upon the following individual by United States Mail, first class, postage prepaid on this the **28th** day of **April, 2009**:

Scott S. Blass, Esquire
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A handwritten signature in black ink, appearing to read "M. M. Stevens", is written over a horizontal line. The signature is stylized and somewhat cursive.

Michael M. Stevens