

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

RICHARD BLAKE JR. and  
JOHN T. PARKER,

Plaintiffs,

vs.

ROSALYN E. RHODES

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendants.

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CIVIL ACTION NO. 06-C-72 M

2006-11-21 09:40

ORDER

On a previous day came the Plaintiffs, Richard Blake, Jr. and John T. Parker, and filed their motion for partial summary judgment on the issue of Defendant, State Farm's, obligation to provide coverage for the damage caused by Richard Blake, Jr. to the personal property of John T. Parker as a result of a motor vehicle accident which occurred on March 31, 2005. Defendants, State Farm and Rosalyn Rhodes, filed a response in opposition to the Plaintiffs' motion for partial summary judgment as well as their own cross-motion for summary judgment. Plaintiffs thereafter filed a reply to the Defendants' response to the Plaintiffs' motion for partial summary judgment as well as a response to the Defendants' cross-motion for summary judgment. Defendant then filed a reply to the Plaintiffs' response to the Defendants' cross-motion for summary judgment. There is no disagreement concerning the material facts of this case and the case is properly before the Court on Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment. The Court is of the opinion that Oral argument would not aid the decisional process in this case.



After a review of the parties' motions, memoranda, responses, and replies and after a review of the relevant law in the state of West Virginia as well as persuasive authority from other jurisdictions the Court makes the following findings of fact and conclusions of law.

### FINDINGS OF FACT

1. On March 31, 2005, Richard Blake, Jr. borrowed a 1999 Hudson Trailer from his neighbor, John T. Parker.
2. Mr. Blake had never before borrowed or asked to borrow Mr. Parker's trailer.
3. Mr. Blake lost control of his 1997 Dodge Ram pick-up truck and crashed while towing Mr. Parker's trailer via a tow hitch.
4. Mr. Blake's truck and Mr. Parker's trailer were both totaled in the accident.
5. At the time of the accident, Mr. Blake was insured by a policy of motor-vehicle insurance issued by defendant, State Farm. Mr. Blake's local State Farm agent was Defendant, Rosalyn E. Rhodes.
6. Mr. Blake had paid all premiums due and his policy was in full force and effect on March 31, 2005.
7. Mr. Blake's policy provided property damage liability coverage in the amount of \$25,000. The policy did not include collision coverage. The policy's property damage liability coverage language provided that:

Under Section I – Liability – Coverage A, the policy provides 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 damage 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 law suit.

(State Farm WV Policy Form 9848.3 at 6)

8. Mr. Blake's policy extended that property damage liability coverage to trailers.

#### Trailer Coverage

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

1. Trailers designed to be pulled by a private passenger car or utility vehicle[.]

(State Farm WV Policy Form 9848.3 at 7)

9. The policy issued to Mr. Blake further provided that:

THERE IS NO COVERAGE:

\* \* \*

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

...

(State Farm WV Policy Form 9848.3 at 7-8)

10. Mr. Blake, in a timely manner, reported the accident to Defendant, Rosalyn E. Rhodes, and advised her that he was at-fault for the destruction of Mr. Parker's trailer. A claim was then submitted to State Farm for damage to the trailer.

11. Notwithstanding the property damage liability coverage and trailer coverage contained within the policy of insurance issued to Mr. Blake, State Farm denied coverage on the damage to Mr. Parker's trailer.

12. Mr. Blake reasonably believed that because he negligently caused damage to Mr. Parker's property, that he was legally liable for the damage he caused. Mr. Blake reasonably expected that the property damage liability coverage contained within his State Farm policy would cover the damage he caused to Mr. Parker's personal property.

13. Mr. Parker was forced to file a lawsuit against his neighbor and friend, Mr. Blake, in the Magistrate Court of Marshall County, West Virginia.

14. State Farm did not provide a defense to Mr. Blake in the Magistrate Court action and, therefore, Mr. Blake defended himself.

15. Mr. Blake advised the Magistrate Court that he was unable to dispute the allegations contained within Mr. Parker's complaint and a confessed judgment was entered against him on May 23, 2005 in the amount of \$3,000, plus costs and interest.

16. Mr. Blake forwarded the judgment to Defendant Rosalyn Rhodes and again requested that Defendant, State Farm, pay the judgment pursuant to the terms of his State Farm motor vehicle insurance policy.

17. State Farm again refused coverage.

#### **CONCLUSIONS OF LAW**

18. A motion for summary judgment should be granted when "there is no genuine issue as to any material fact" and when "the moving party is entitled to a judgment as a matter of law." W.Va. R. Civ. P. 56.

19. "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syllabus Point 2, Poling v. Pre-Paid

Legal Services, Inc., 212 W.Va. 589, 575 S.E.2d 199 (2002); Syllabus Point 3, Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York, 148 W.Va. 160, 133 S.E.2d 770 (1963).” “A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment.” Poling at Syl. Pt. 6, Aetna Casualty at Syl. Pt. 6.

20. Summary judgment is appropriate in this case because there are no genuine issues of material fact concerning the circumstances surrounding the damage caused to Mr. Parker’s trailer by Mr. Blake and the Plaintiffs are entitled to judgment as a matter of law for the reasons referenced in this Order.

21. “[L]anguage in an insurance policy should be given its plain, ordinary meaning.” Syl. Pt. 2, Russel v. State Auto. Mut. Ins., Co., 188 W.Va. 81, 422 S.E.2d 803 (1992). “Where the provisions of an insurance policy contract are clear and unambiguous they are not subject to judicial construction or interpretation, but full effect will be given to the plain meaning intended.” Glen Falls Ins. Co. v. Smith, 217 W.Va. 213, 220, 617 S.E.2d 760, 767 (2005) (citing Syl. Pt. 3, Soliva v. Shand, Morahan & Co., Inc., 176 W.Va. 430, 345 S.E.2d 33 (1986)).

22. In West Virginia, “an insurance policy is considered to be ambiguous if it can be reasonably understood in two different ways or if it is of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning.” Syl. Pt. 5 Hamric v. Doe, 201 W.Va. 615, 499 S.E.2d 619 (1997); Prete v. Merchants Property Ins. Co. of Indiana, 159 W.Va. 508, 511, 223 S.E.2d 441, 443 (1976). When policy language under consideration is ambiguous, the language should be strictly construed against the insurer and in favor of the insured. Edwards v. Bestway Trucking, Inc.,

212 W.Va. 196, 569 S.E.2d 443 (2002); West Virginia Fire & Cas. Co. v. Stanley, 216 W.Va. 40, 46-47, 602 S.E.2d 483, 489-490 (2004) (both citing National Mutual 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)).

23. "Where the language in an insurance policy is ambiguous, [the West Virginia Supreme Court of Appeals] has recognized that the doctrine of 'reasonable expectations' applies. That doctrine holds that the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even if a painstaking study of the policy terms would negate those expectations." Edwards at 200, 448 (citing National Mutual Ins. Co. v. McMahon & Sons, Inc and State Bancorp, Inc. v. United States Fidelity and Guaranty Insurance Co., 199 W.Va. 99, 483 S.E.2d 226 (1997)).

24. The Court is of the opinion that State Farms' exclusionary clause which purports to exclude coverage ". . .for any damages to property owned by, rented to, in the charge of, or transported by, an insured . . ." is ambiguous, inconsistent with, and contrary to the extension of property damage liability coverage to non-owned trailers.

25. The exclusionary clause relied on by State Farm is ambiguous on two separate levels. First, the policy language in and of itself is ambiguous in that the phrase "in the charge of" is not defined and consequently there is no way to determine the scope of coverage available in numerous different circumstances, most notably in the case at hand. Second, ambiguity arises in the context of the application and interaction between the general property damage liability coverage contained within Mr. Blake's policy, the trailer coverage contained within that policy, and the

exclusionary language upon which State Farm now relies.

26. Grimsrud v. Hagel, 119 P.3d 47 (Mont. 2005) is highly persuasive upon the facts of this case. In Grimsrud, State Farm, under circumstances similar to those at hand, paid for the damage to a borrowed trailer under its insured's \$50,000 property damage liability coverage based upon the application of trailer coverage policy language providing that "[t]railers designed to be pulled by a private passenger car or a utility vehicle . . . are covered while owned or used by an insured." Grimsrud at 49.

27. Because the exclusionary language relied upon by the Defendants is ambiguous and inconsistent with other provisions of the policy, Mr. Blake's reasonable expectations concerning coverage must be applied.

28. Mr. Blake reasonably believed that because he negligently caused damage to Mr. Parker's property that he was legally liable for the damage and that the property damage liability and trailer coverage contained within his State Farm policy would cover those damages.

29. The exclusionary language relied upon by State Farm is unenforceable because it is contrary to and more restrictive than the property damage liability coverage required by the State of West Virginia in the State's Financial Responsibility Statute.

30. For all of the foregoing reasons, State Farm was required to defend and indemnify Mr. Blake against the property damage claims asserted by Mr. Parker.

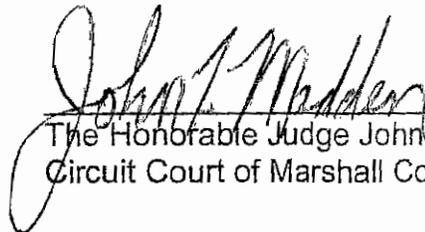
**ACCORDINGLY**, it is hereby **ORDERED** that the Plaintiffs' Motion for Partial Summary Judgment is **GRANTED** and that the Defendants' Motion for Summary Judgment is **DENIED**.

The Clerk shall provide attested copies of this Order to counsel for the parties at the following addresses:

Scott S. Blass, Esq.  
1358 National Road  
Wheeling, WV 26041  
Counsel for the Plaintiffs

Michael M. Stevens, Esq.  
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Martin & Seibert, LC  
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P.O. Box 1286  
Martinsburg, WV 25402  
Counsel for the Defendants

Entered this 30<sup>th</sup> day of June, 2008

  
The Honorable Judge John T. Madden  
Circuit Court of Marshall County

Prepared by:

  
Scott S. Blass, # 4628  
Counsel for the Plaintiffs

Approved as to form by: /s/ Michael M. Stevens (via telephonic authorization)  
Michael M. Stevens, # 9258  
E. Kay Fuller, #5594  
Counsel for the Defendants

**A Copy Teste:**

David R. Ealy, Clerk  
By Donna Crow Deputy