In the

Supreme Court of Virginia

At Richmond

Record No. 081900

VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY,

Appellant,

– v. –

VIRGINIA C. WILLIAMS, an infant, who sues by her father and next friend,
ROBERT H. WILLIAMS, JR. and
ROBERT H. WILLIAMS, JR., individually, et al.,

Appellees.

BRIEF OF APPELLEES

VIRGINIA C. WILLIAMS, an infant, etc., and ROBERT H. WILLIAMS, JR., individually

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BRIEF OF APPELLEES
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Virginia C. Williams, an infant, and Robert H. Williams, Jr., by counsel, respectfully move the Court to affirm that portion of the judgment entered herein by the Circuit Court of the City of Norfolk whereby $550,000 in uninsured motorists coverage was afforded plaintiffs under the automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company, to reverse that portion of the trial court's judgment not

affording plaintiffs an additional $300,000 of uninsured motorists coverage under the same automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company, and to declare that at the time of the accident underlying this matter, Virginia C. Williams, an infant, and Robert H. Williams, Jr., were afforded uninsured motorists coverage in the total amount of $850,000 under the automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company.

For clarity, the parties will be referred to herein by name or by their positions in the trial court, where Virginia C. Williams, an infant, and Robert H. Williams, Jr., were the plaintiffs and the Virginia Farm Bureau Mutual Insurance Company was a defendant.

References to the Appendix in this matter will be as follows: (A., p. ____).

STATEMENT OF THE NATURE OF THE CASE AND OF THE MATERIAL PROCEEDINGS IN THE TRIAL COURT

Plaintiffs, Virginia C. Williams, an infant, and Robert H. Williams, Jr., filed their Complaint against the Virginia Farm Bureau Mutual Insurance Company and other defendants, pursuant to Virginia Code §8.01-184, et seq., seeking a determination by the court of all uninsured motorists coverage afforded plaintiffs in respect to an automobile accident that occurred on June 9, 2006 in the City of Virginia Beach, Virginia.

The uninsured motorists coverages of two Virginia automobile insurance policies were implicated in this case: (1) the policy issued by the Virginia Farm Bureau Mutual Insurance Company, which described three vehicles with uninsured motorists coverage limits for each person in amounts of $250,000, $300,000 and $300,000 for the respective vehicles; and (2) an automobile insurance policy issued by USAA Casualty Insurance Company, which provided uninsured motorists coverage in the limit of $100,000 for each person.

There was no contest as to the amount of the uninsured motorists coverage afforded plaintiffs under the USAA Casualty Insurance Company policy. The issue presented in the trial court was whether the amount of uninsured motorists coverage afforded plaintiffs under the Virginia Farm Bureau policy was in the combined total of $850,000, or whether the amount of uninsured motorists coverage afforded plaintiffs under such policy was limited to an amount stated for each person as to only one vehicle insured under the policy.

This case came to trial on June 24, 2008. After receiving certain stipulations by counsel and other evidence on behalf of the plaintiffs, the trial court heard argument by plaintiffs and Virginia Farm Bureau Mutual Insurance Company on their respective Motions for Summary Judgment.

The trial court granted plaintiffs' Motion for Summary Judgment in part and denied it in part, and likewise granted Virginia Farm Bureau Mutual Insurance Company's Motion for Summary Judgment in part and denied it in part, finding that the total uninsured motorists coverage afforded plaintiffs under the Virginia Farm Bureau Mutual Insurance Company policy herein is $550,000.

Judgment was entered by the trial court in this matter by Order dated July 21, 2008. Plaintiffs objected as to $300,000 of uninsured motorists coverage under the Virginia Farm Bureau Mutual Insurance Company policy not afforded plaintiffs by the judgment of the trial court, and the Virginia Farm Bureau Mutual Insurance Company objected as to $250,000 of uninsured motorists coverage under its policy which was afforded to plaintiffs by the judgment of the trial court.

QUESTION PRESENTED

Whether the trial court was partially correct in finding that plaintiffs were afforded $550,000 in uninsured motorists coverage under the Virginia Farm Bureau Mutual Insurance Company policy?

STATEMENT OF FACTS

Virginia C. Williams, an infant, was grievously injured in an accident on June 9, 2006, in the City of Virginia Beach, Virginia, involving two motor vehicles. At the time of the accident, Ms. Williams was a passenger in a motor vehicle operated by Jason Robert Thomson. Mr. Thomson's vehicle was insured under a USAA Casualty Insurance Company policy, which provided uninsured motorists protection in a limit of $100,000 per person. As an occupant of Mr. Thomson's vehicle, Ms. Williams was an "insured" under the uninsured motorists provisions of the USAA Casualty Insurance Company policy.

The other vehicle in the accident was operated by Kyle Lynn Barbour. Mr. Barbour's vehicle was insured for liability by the Government Employees Insurance Company in an amount causing it to be an underinsured motor vehicle. Ms. Williams and Robert H. Williams, Jr., have filed claims against Mr. Barbour for the damages caused them as a result of the subject motor vehicle accident.

Virginia C. Williams is the daughter of Robert H. Williams, Jr., and was residing in the same household as Robert H. Williams, Jr. on June 9, 2006, and has continued to reside in such household. At the time of the accident, Robert H. Williams, Jr., was the named insured in a Virginia

automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company. Such insurance policy provided protection against uninsured motorists in the following bodily injury coverage limits: (1) as to a 2004 Ford F-150, $250,000 each person and $500,000 each accident; (2) as to a 1998 Jeep, $300,000 each person and $500,000 each accident; and (3) as to a 1987 Ford pickup, $300,000 each person and $500,000 each accident. (A., p. 177).

Because Virginia C. Williams was related to and residing in the same household as Robert H. Williams, Jr., at the time of the June 9, 2006 accident, Ms. Williams was an "insured" by definition under the uninsured motorists coverage provisions of the subject Virginia Farm Bureau Mutual Insurance Company policy issued to Robert H. Williams, Jr. (A., p. 179).

The pertinent provisions of Virginia Farm Bureau's uninsured motorists coverage endorsement (A., p. 179) read as follows:

PART IV
PROTECTION AGAINST UNINSURED MOTORISTS

> In consideration of the payment of premium and subject to the applicable provisions of the policy, the company agrees with the named insured as follows:
>
> **Schedule**
> **Limit of Liability**
>
> Bodily injury $ See Declarations each person

	$ See Declarations each accident
Property Damage	$ See Declarations each accident

Uninsured Motorists Coverage (Damages for Bodily Injury and Property Damage): The company will pay in accordance with Section 38.2-2206 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall be legally 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 accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle.

. . .

Persons Insured: Each of the following is an insured under this insurance to the extent set forth below:

a) the named insured and, while residents of the same household, the spouse of the named insured, and relatives, wards or foster children of either;

. . .

Limits of Liability: Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies,

a) If the schedule or declarations indicates split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person" the limit of liability for bodily injury stated as applicable to "each accident", is the total limit of the company's liability for all damages because of bodily injury sustained by two

or more persons as the result of any one accident.(Emphasis added.)

The provision **Persons Insured** in the above portion of the Virginia Farm Bureau Mutual Insurance Company policy should be read more expansively as follows: "The named insured and, while resident of the same household, the spouse of the named insured, and relatives, wards or foster children of either, *while in a motor vehicle or otherwise*." The italicized words are part of the definition of "insured" in Virginia Code §38.2-2206, the statute governing uninsured motorists coverage in Virginia, and are therefore part of the subject policy both by reference to Virginia Code §38.2-2206 in the policy itself as well as by operation of law. See, e.g., Bryant v. State Farm Mutual, 205 Va. 897, 140 S.E. 2d 817 (1965).

The declarations page for the Virginia Farm Bureau policy (A., p. 177) reads in pertinent part as follows:

LIABILITY COVERAGES	LIMITS OF LIABILITY	PREMIUMS		
	UNIT #	1	2	4
A	BODILY INJURY $250,000 EA PERSON $500,000 EA OCC	191.20		
A	BODILY INJURY $300,000 EA PERSON $500,000 EA OCC		216.84	689.92
B	PROPERTY DAMAGE $100,000 EA OCCURRENCE	96.00	105.60	336.00
C	MEDICAL EXPENSE $5,000 EACH PERSON	34.56	38.02	120.96
U	UNIN MOTORISTS BI $250,000 EA PERSON $500,000 EA AC	50.00		
U	UNIN MOTORISTS BI $300,000 EA PERSON $500,000 EA AC		45.30	45.30
	UNIN MOTORISTS-PROPERTY DAMAGE $100,000 EA AC	5.00	5.00	5.00
	DEATH BENEFITS-SEE POLICY FOR LIMITS.	4.00	INCL	INCL

As indicated above, separate premiums were charged in the Virginia Farm Bureau policy for each coverage as to each vehicle, including uninsured motorists coverage.

The most significant decision of the Virginia Supreme Court in respect to this case is Goodville Mutual Casualty Company v. Joanne Borror, Administratrix, etc., 221 Va. 967, 275 S.E. 2d 625 (1981). Goodville was an appeal from a judgment of the Rockingham County Circuit Court. A copy of the actual insurance policy reviewed by this Court in Goodville was introduced into evidence in this case along with the deposition of the deputy clerk of the Rockingham County Circuit Court (A., pp. 118-150). The pertinent provisions of Goodville's uninsured motorists coverage endorsement (A., p. 114) read as follows:

PROTECTION AGAINST UNINSURED MOTORISTS INSURANCE
(Virginia)

In consideration of the payment of premium and subject to all of the provisions of this endorsement and to the applicable provisions of the policy, the company agrees with the named insured as follows:

SCHEDULE

Limits of Liability:
Bodily Injury: $25,000 each person; $50,000 each accident
Property Damage: $5,000 each accident

I. UNINSURED MOTORISTS COVERAGE
(Damages for Bodily Injury and Property Damage)

The company will 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 be legally 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 dam-age caused by the accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle.

. . .

II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

(a) the named insured and, while residents of the same household, the spouse and relatives of either;

. . .

III. LIMITS OF LIABILITY

Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies,

(a) the limit of liability for bodily injury stated in the <u>schedule</u> as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provisions respecting "each person", the limit of liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. (Emphasis added.)

The declarations page for the policy in <u>Goodville</u> (A., p. 102) listed two motor vehicles, but stated no "each person" or "each accident" limit for

uninsured motorists coverage, simply by asterisk referring the reader of the policy to the uninsured motorists endorsement to the policy, the pertinent portions of which are reproduced above. Separate premiums were charged for each of the two vehicles insured under the Goodville policy, although no specific allocation of premium for uninsured motorists coverage was indicated.

ARGUMENT

When the limit of liability provisions as to uninsured motorists coverage in a Virginia multi-vehicle automobile insurance policy are ambiguous, such policy provisions must be construed strictly against the insurer and liberally in favor of the insured, and when the insured is a first class insured under the policy's UM provisions, stacking of UM coverages for all vehicles insured under the policy occurs in favor of the first class insured.

This case involves the construction of Virginia Farm Bureau's insurance policy, specifically to determine if its limit of liability provisions as to uninsured motorists coverage are ambiguous and therefore require stacking of the UM coverages for three vehicles insured under the policy.

This Court has long held that Virginia's uninsured motorist statute creates two classes of insured persons. Insurance Company v. Perry, Adm'r, 204 Va. 833, 836, 134 S.E. 2d 418 (1964); Cunningham v. Ins. Co. of N. America, 213 Va. 72, 75, 189 2d 832 (1972); Lipscombe v. Security

Ins., 213 Va. 81, 82-83, 189 S.E. 2d 320 (1972). "The first class includes the named insured and, while resident of the same household, the spouse of any such named insured, and relatives of either…while in a motor vehicle or otherwise." Perry supra, at 836. This class has broadened somewhat since Perry to include "wards or foster children" of the named insured or spouse. See Virginia Code §38.2-2206B. The second class includes those persons other than first class insureds who use the vehicle to which the automobile insurance policy applies. A first class insured is provided "a broad reservoir of coverage" under Virginia's uninsured motorist statute; a first class insured's entitlement to uninsured motorist coverage is not tied to the occupancy of any specific vehicle insured under the policy, as a second class insured's would be. Lipscombe, supra at 84. Only first class insureds can be entitled to stack UM coverages under a multi-vehicle policy. Cunningham, supra, at 77. It is undisputed in this case that Robert H. Williams, Jr., as named insured, and Virginia C. Williams, as a daughter residing the same household as such named insured, are first class insureds under the Virginia Farm Bureau policy.

In general, this Court has said that an insurance policy term is ambiguous "if it is susceptible of two or more meanings." Hill v. State Farm Mutual Automobile Insurance Company, 237 Va. 148, 153, 375 S.E. 2d 727

(1989). The manner in which an insurance policy should be read and the effect of an ambiguity in an insurance policy were stated succinctly in Surety Corporation v. Elder, 204 Va. 192, 197, 129 S.E. 2d 651, 655 (1963) as follows:

> Insurance policies are to be construed according to their terms and provisions and are to be considered as a whole. *Ampy v. Insurance Company,* 200 Va. 396, 400, 105 S.E. 2d 839; *Insurance Company v. Dollins*, 201 Va. 73, 77, 109 S.E. 2d 405; *Combs v. Hunt*, 140 Va. 627, 635, 125 S.E. 661. 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. *Casualty Company v. Fratarcangelo*, 201 Va. 672, 677, 112 S.E. 2d 892. Where two interpretations equally fair may be made, the one which permits a greater indemnity will prevail because indemnity is the ultimate object of insurance. *Ayres v. Harleysville Mut. Cas. Co.,* 172 Va. 383, 389, 2 S.E. 2d 303.

The issue of stacking of uninsured motorists coverages in an automobile insurance policy which insures multiple vehicles has had a long history in Virginia. By reason of its adoption of the rationale of the Supreme Court of Kansas in Sturdy v. Allied Mutual Insurance Company, 203 Kan. 783, 457 P. 2d 34 (1969), this Court has made Sturdy the seminal case on this issue. See Cunningham, supra; Lipscombe, supra; and Goodville Mutual v. Borror, 221 Va. 967, 275 S.E. 2d 625 (1981). In Lipscombe at 83 this Court said:

> Sturdy held that where a single policy insures the owner of two listed automobiles against loss from damages caused by an uninsured motorist and a separate, equal premium is charged for

> each vehicle, an ambiguity is created in the absence of "plain, unmistakable language" restricting the coverage to that applicable to a single vehicle. And the ambiguity is to be construed against the insurance company, with the result that the insured is entitled to double coverage for the double premium paid.

In characterizing the Sturdy holding as the "Sturdy thesis" in its express adoption of such holding in Lipscombe at 84, this Court stated that such thesis requires " 'plain, unmistakable language' to prevent 'stacking' in this type of case." (Emphasis added.) Later, in Goodville, at 969, this Court explained the Sturdy thesis further when it stated:

> In Sturdy it was held that in accordance with "general principles of indemnity" the amount of liability incurred should be proportionate to the amount of premiums charged. 203 Kan. at 793, 457 P. 2d at 42. The court reasoned that, absent plain and unmistakable language to the contrary, if two premiums were charged under one policy, the insured could expect double coverage. 203 Kan. at 792, 757 P. 2d at 41.
>
> With the adoption of the principle espoused in Sturdy, it is now the rule in Virginia that the stacking of UM coverage will be permitted unless clear and unambiguous language exists on the face of the policy to prevent such multiple coverage. (Emphasis added.)

After general reference to "principles previously embraced" (presumably those referred to in Elder, above), establishing that "any ambiguity contained within a policy [of insurance] will be construed against the insurer," this Court examined the following portion of the Goodville

policy and ultimately held that such language was "clear and unambiguous" and "insulate[d] the insurer from any stacking of UM coverage:"

III. LIMITS OF LIABILITY

> *Regardless of the number of … motor vehicles to which this insurance applies,*
>
> (a) the limit of liability for bodily injury stated in the schedule as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person", the limit of liability stated in the schedule as applicable to "each acc-ident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. [Emphasis added.]

The language found by this Court to be clear and unambiguous and therefore sufficient to prevent stacking of UM coverage was contained solely in the UM endorsement of the Goodville policy. Goodville involved no issue of the interpretation of other portions of the policy in the case and it is clear from the actual policy reviewed by the Court in Goodville that there was no need to review other portions of the policy. Unlike the Virginia Farm Bureau policy in this case, the entire subject of uninsured motorists coverage in the Goodville policy was contained in the UM endorsement. The schedule referred to in the limits of liability language in Goodville was clearly and unambiguously laid out at the heading of the UM endorsement itself.

The self-contained clarity of the UM endorsement in Goodville does not exist in the UM endorsement of the Virginia Farm Bureau policy in this case. Not only does the Virginia Farm Bureau policy eschew use of the precise limits of liability language approved in Goodville, but the Virginia Farm Bureau policy further does not state the "each person" and "each accident" limits of UM liability in a schedule at the heading of its UM endorsement, despite the opportunity to do so in the very form drafted by Virginia Farm Bureau for its UM endorsement. The reader of the Virginia Farm Bureau policy is rather directed to the "Declarations." The only option this leaves the reader of the policy is to go to the declarations page of the policy, which upon review shows that the limits of liability language for uninsured motorists coverage is not the clear "each person" and "each accident" statement as seen in the schedule in Goodville, but it is rather indicated as follows:

> U UNIN MOTORISTS BI $250,000 EA PERSON $500,000 EA AC" for "UNIT #1" at a premium charge of $50.00 and "U UNIN MOTORISTS BI $300,000 EA PERSON $500,000 EA AC" for "UNIT #2" and "UNIT #4" at a premium charge of $45.30 each for "UNIT #2" and "UNIT #4"

Virginia Farm Bureau issued its policy with neither the UM language nor the UM endorsement structure approved by this Court in Goodville. In looking at the Virginia Farm Bureau policy, the issue becomes what a first class

insured would expect his UM coverage limits to be upon review of the entire Virginia Farm Bureau policy.

Virginia Farm Bureau implies throughout its brief, and expressly at page 12 of its brief, that Goodville specifies that plaintiffs' highest entitlement to UM coverage under the Virginia Farm Bureau policy is the "each person" limit for one vehicle under the policy. One searches Goodville in vain for such a limitation. Neither the insurance policy in Goodville nor this Court's holding in Goodville indicates that the "each person" limit of UM liability is that which is stated as to one vehicle under the policy. The Goodville policy simply limited UM liability for "each person" to a sum of $25,000 in the schedule provided in its UM endorsement. Since the time of Goodville, Virginia's UM statute has mandated a minimum UM liability limit of $25,000 for each person. See Virginia Code §§38.2-2206 and 46.2-472 and their predecessors, §§38.1-381(b) and 46.1-1(8). The insurance company in Goodville was successful in limiting its UM liability by drafting its policy in a fashion which unambiguously limited its "each person" liability to Virginia's statutory minimum, not to any amount indicated for one vehicle in its policy. The policy in Goodville and this Court's analysis of same are consistent with this Court's statement that "[u]ninsured motorist coverage is designed to protect not vehicles, but

persons; *i.e.*, the innocent victims of negligent uninsured motorists." Lipscombe, supra, at 83.

Furthermore, Virginia Farm Bureau's insistence that its UM liability is limited to the limits of liability specified for one vehicle under its policy raises the question of "What vehicle is being referred to?" Is it the vehicle with stated limits of $250,000 each person and $500,000 each accident, or is it one of the vehicles for which limits of $300,000 each person and $500,000 each accident are indicated? But why should there have to be a choice of one set of limits or another? The Virginia Farm Bureau UM endorsement points the reader to the declarations of the policy and the declarations clearly indicate two sets of coverage, with no indication that a choice needs to be made. Clearly, the UM coverage stated in the declarations amounts at least to $550,000 each person and $1,000,000 each accident. That, however, does not account for all of the coverage indicated in the declarations. If two sets of coverage limits are to be stacked, why not also the third set of limits? Nothing on the face of the declarations to the policy suggests that such should not occur.

Rather than the clear and unambiguous language required by Goodville to prevent stacking, the Virginia Farm Bureau policy on its face is obviously ambiguous. Can Virginia Farm Bureau skirt this ambiguity by the

"magnanimous" gesture of conceding the higher limits of $300,000 each person and $500,000 each accident, but only as to one of the vehicles so insured in its policy? Or, as stated in Goodville at 970, must any ambiguity be construed against the insurer and upon such finding of ambiguity must stacking be required? The logical conclusion to be drawn from Goodville and its predecessors is that, under the facts of this case, stacking of all UM coverages for all three vehicles in Virginia Farm Bureau's policy must occur, leading to a finding that the total UM coverage afforded to the plaintiffs under the Virginia Farm Bureau policy is $850,000; that is, $250,000 as to Unit #1, plus $300,000 as to Unit #2 and $300,000 as to Unit #4.

But, Virginia Farm Bureau says that the operative words of Goodville are those which are italicized and emphasized in Goodville, "*Regardless of the number of … motor vehicles to which this insurance applies*;" that such words are talismanic, rendering any other provisions of the insurance policy clear and unambiguous as a matter of law. Such would be a reading of Goodville beyond its clear language and beyond what this Court actually viewed in Goodville. Goodville does not say, nor should it be claimed to say, that "Once the words 'regardless of the number of … motor vehicles to which this insurance applies' appear in a UM endorsement in a Virginia

automobile insurance policy, all other provisions pertaining to UM coverage in such policy are thereby clear and unambiguous, regardless of what appears in such other provisions."

The other UM provisions appearing in the actual policy reviewed by this Court in Goodville were not contested in Goodville, and upon actual view do not come close to the ambiguity stated on the face of the Virginia Farm Bureau policy in this case. The actual policy reviewed by this Court in Goodville demonstrates why this Court held against stacking in that case. Linguistically and structurally, the actual policy in Goodville supports no other conclusion. When, as Virginia Farm Bureau does in this case, there is an attempt to apply a prior decision of this Court too broadly by extending a pithy statement of the Court beyond the context of what the Court was actually addressing in its prior decision, resort to the record of the prior case should be had; in fact, it is a practice honored by this Court itself. See Nationwide Mutual Insurance v. Hill, 247 Va. 78, 82, 439 S.E. 2d 335 (1994), in which this Court reviewed an automobile insurance policy in the record of one of its prior reported decisions to counter counsel's argument that the prior decision controlled the case then before the Court. The actual policy reviewed in Goodville serves the same purpose in this case. Goodville is therefore properly read to mean that in the absence of

ambiguity in any of the limit of liability provisions regarding uninsured motorist coverage, the words "regardless of the number of … motor vehicles to which this insurance applies…" will prevent stacking of UM coverages. When an ambiguity appears in such provisions, as it has in this case, then Goodville dictates quite clearly that stacking of all UM coverages under such policy must occur.

None of the cases relied upon by Virginia Farm Bureau supports its position. At first reading, Bray v. Insurance Company of Pennsylvania, 705 F. Supp. 1145 (E.D. Va. 1989) appears to deal with an insurance policy similar to the Virginia Farm Bureau policy in this case. Unfortunately, Bray is rather sparse in its rendition of the underlying facts, and there is no way to determine how the insurance policy in Bray was structured. Bray may simply only be an example of the talismanic application of Goodville, discussed above. How the stacking issue was presented to the court in Bray cannot be determined from the court's decision. It is obvious, however, that the actual structure of the Goodville policy was not brought to the attention of the court in Bray. While it might be argued that Bray is some authority and might be an anticipation of how the Virginia Supreme Court might view the issue in this case, that is as far as the argument can go. In light of what actually was reviewed by this Court in Goodville,

however, the stronger argument appears to be that this Court will recognize the significant difference between the Virginia Farm Bureau policy in this case and the insurance policy in Goodville, leading to the conclusion that an ambiguity exists in the limit of liability provisions in the Virginia Farm Bureau policy, which, under Goodville, requires the construction of the Virginia Farm Bureau policy against Virginia Farm Bureau and the ultimate conclusion that stacking of all the UM coverages in the Virginia Farm Bureau policy is required.

Finally, Virginia Farm Bureau presents the novel argument, diametrically opposed to Surety Corporation v. Elder, supra, and a uniform host of other decisions of this Court, that, in the case of an ambiguity in UM coverage provisions, the insurer can choose to resolve the ambiguity in a manner other than stacking. Noticeably absent from this argument is any authority to support it. Goodville controls this case in respect to the remedy for ambiguity in the limit of liability provisions as to UM coverage, and unambiguously requires stacking in the case of such an ambiguity in a multi-vehicle policy. The trial court recognized this to a degree in finding that plaintiffs were afforded $550,000 under the Virginia Farm Bureau policy by the stacking of two coverages under the policy. This, however, was an incomplete application of Goodville. The trial court should have

gone further and found that the remaining UM coverage of $300,000 stacked under the Virginia Farm Bureau policy to afford plaintiffs a total of $850,000 of UM coverage.

ASSIGNMENT OF CROSS-ERROR

The trial court erred in failing to find plaintiffs entitled to the stacking of UM coverage as to all three vehicles insured under the Virginia Farm Bureau policy, thereby denying plaintiffs $300,000 of UM coverage under the Virginia Farm Bureau policy.

QUESTION PRESENTED ON CROSS-ERROR

Whether in the case of an ambiguity in the limit of liability provisions as to UM coverage in a multi-vehicle policy, a court may correctly conclude that partial stacking of UM coverages occurs?

ARGUMENT ON CROSS-ERROR

Neither Goodville nor its significant predecessors, Cunningham, supra, and Lipscombe, supra, allow for the partial remedy fashioned by the trial court in this case. As plaintiffs' preceding argument in this brief demonstrates, the remedy for an ambiguity in the limit of liability provisions as to UM coverage in a multi-vehicle automobile insurance policy is the stacking of the UM coverages applicable to all vehicles under the policy. Both Virginia Farm Bureau and the trial court acknowledged the ambiguity

as to UM coverage on the face of the Virginia Farm Bureau policy. For obvious adversarial reasons, Virginia Farm Bureau urges that plaintiffs have no stacking remedy for the ambiguity, but must rather accept the insurer's suggested resolution. The trial court recognized that the ambiguity in the Virginia Farm Bureau policy requires stacking, but failed to apply such remedy as to all UM coverages indicated in the Virginia Farm Bureau policy as the logical application of Goodville dictates.

STATEMENT OF RELIEF SOUGHT

For the reasons stated above, Virginia C. Williams, an infant, and Robert H. Williams, Jr., by counsel, respectfully urge the Court to affirm that portion of the judgment entered herein by the trial court whereby $550,000 in uninsured motorist coverage was afforded them under the automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company, to reverse that portion of the trial court's judgment not affording them an additional $300,000 of uninsured motorists coverage under the same automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company, and to declare that, at the time of the accident underlying this matter, Virginia C. Williams, an infant, and Robert H. Williams, Jr., were afforded uninsured motorists coverage in the total

amount of $850,000 under the automobile insurance policy issued by the Virginia Farm Bureau Mutual Insurance Company.

Respectfully submitted,

VIRGINIA C. WILLIAMS, an infant,
who sues by her father and next friend,
ROBERT H. WILLIAMS, JR., and
ROBERT H. WILLIAMS, JR., Individually,

BY_____
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CERTIFICATE OF COMPLIANCE WITH RULE 5:26(d)

I hereby certify that on the 11th day of March, 2009, fifteen copies of this Brief of Appellees were filed in the office of the Clerk of the Supreme Court of Virginia, an electronic copy of this Brief of Appellees was filed via email in the office of the Clerk of the Supreme Court of Virginia at scvbriefs@courts.state.va.us, and three copies of this Brief of Appellees were mailed to each of the following counsel:

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