In The

Supreme Court of Virginia

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 Williams and, ROBERT WILLIAMS, Individually, *et al*.,

Appellees.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

I. STATEMENT OF THE NATURE OF THE CASE 1

II. STATEMENT OF FACTS 2

III. ASSIGNMENT OF ERROR 6

IV. QUESTION PRESENTED 6

V. PRINCIPLES OF LAW AND ARGUMENT 7

1. Farm Bureau's UIM coverage for Virginia C. Williams is limited to $300,000.00, and the trial court erred in declaring that the UIM coverage was $550,000.00 7

A) The standard of review 7

B) Virginia law does not require intrapolicy stacking 7

C) The Farm Bureau policy contains clear unambiguous language that precludes intrapolicy stacking 10

D) Any ambiguity in the Farm Bureau policy with respect to the UIM limits has already been resolved by Farm Bureau in favor of Williams 12

E) The Appellees' assignment of cross-error should be denied 14

VI. CONCLUSION 15

VII. CERTIFICATE OF COMPLIACE WITH RULE 5:26(d) OF THE RULES OF THE SUPREME COURT OF VIRGINIA..... 17

TABLE OF AUTHORITIES

Page(s)

CASES

Billings v. State Farm,
680 F. Supp. 778 (E.D. Va. 1988) 8

Bray v. Insurance Co. of Pennsylvania,
705 F. Supp. 1145 (E.D. Va. 1989) 14

Goodville Mut. Cas. Co. v. Borror,
221 Va. 967, 275 S.E.2d 625 (1981) ..... *passim*

PMA Capital Ins. Co. v. US Airways, Inc.,
271 Va. 352, 626 S.E.2d 369 (2006) 7

I. STATEMENT OF THE NATURE OF THE CASE

Virginia C. Williams ("Williams") was injured in an automobile accident on June 9, 2006. Effective on that date, was a motor vehicle insurance policy issued by Appellant Virginia Farm Bureau Mutual Insurance Company ("Farm Bureau") to Robert H. Williams, Jr., which provided uninsured/underinsured ("UM/UIM") coverage for three separate vehicles, in the amounts of $250,000.00, $300,000.00 and $300,000.00 "each person" respectively. There was a dispute as to the amount of UIM coverage that would be available to Williams for her injuries from the accident, and Williams, by her father, filed a Declaratory Judgment Action (CL07-6636) in the Norfolk Circuit Court.

Williams contended that she would be entitled to a total of $850,000.00 of UIM coverage from the Farm Bureau policy, and Farm Bureau took the position that Williams' UIM coverage under the policy was limited to $300,000.00, since there could be no intrapolicy stacking of its UIM limits for the three separate vehicles insured on the policy – pursuant to the policy language and Virginia law. Since no material facts were in dispute, Williams and Farm Bureau each filed a Motion for Summary Judgment.

A summary judgment hearing took place on June 24, 2008, and the Honorable John C. Morrison, Jr. held that Williams is entitled to a total of $550,000.00 of UIM coverage from the Farm Bureau policy. Thereby, Judge Morrison granted in part, and denied in part, Williams' Motion for Summary Judgment, and also granted in part, and denied in part, Farm Bureau's Motion for Summary Judgment.

Farm Bureau thereby filed a Notice of Appeal, and appealed Judge Morrison's partial denial of its Motion for Summary Judgment, as well as Judge Morrison's partial grant of Williams' Motion for Summary Judgment. Farm Bureau seeks a ruling from this Court that Williams' available UIM coverage under the Farm Bureau policy is limited to $300,000.00.

This Court accepted Farm Bureau's Petition for Appeal and awarded an appeal on Farm Bureau's Assignment of Error on January 20, 2009. The Court also granted an appeal on the Appellees' Assignment of Cross-Error.

II. STATEMENT OF FACTS

Williams was injured in an automobile accident on June 9, 2006, while riding as a passenger in a vehicle operated by Matthew Kyle Barbour ("Barbour"). In the accident, Barbour's vehicle came

into contact with a vehicle that was being operated by Jason Robert Thomson ("Thomson"). At the time of the accident, Thomson was insured under an insurance policy issued by USAA Casualty Insurance Company to Samuel Alan Thomson. Barbour was insured by a policy issued by GEICO to Kyle Lynn Barbour.

Effective on the date of the accident, was a motor vehicle insurance policy issued by Farm Bureau to Robert H. Williams, Jr., which provided uninsured/underinsured ("UM/UIM") coverage for three vehicles, in the amounts of $250,000.00 (2004 Ford), $300,000.00 (1998 Jeep) and $300,000.00 (1987 Ford) "each person" respectively. (Appendix at 177). It was conceded that Williams is entitled to UIM coverage under the Farm Bureau policy, whereas she is a "relative" of Robert H. Williams, Jr. within the meaning of the policy, and thus, an insured.

There was a dispute as to the amount of UIM coverage that would be available to Williams under the Farm Bureau policy for her injuries from the accident, and Williams, by her father, filed a Declaratory Judgment Action in the Norfolk Circuit Court. (Appendix at 1). Williams contended that she would be entitled to a total of $850,000.00 of UIM coverage from the Farm Bureau policy, which

was calculated by combining (or stacking) the UIM coverage for each of the three insured vehicles. Farm Bureau took the position that Williams' UIM coverage under the policy was limited to $300,000.00 – the highest UM/UIM limit available for one vehicle on the policy. Farm Bureau argued that its policy language prohibited the intrapolicy stacking of the UIM coverages for each separate vehicle, and that such stacking is not mandated by Virginia law.

In particular, the Farm Bureau policy contained the following language in the UM/UIM section (PART IV):

> *Limits of Liability: Regardless of the number of…(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.

(Appendix at 179).

Williams argued that the Farm Bureau policy was ambiguous, and that the policy language was insufficient to preclude stacking.

Farm Bureau took the position that to the extent that the policy was ambiguous (1 vehicle insured for $250,000.00 in UM/UIM coverage and 2 vehicles insured for $300,000.00 in UM/UIM coverage), the ambiguity had already been resolved against the insurer since Farm Bureau agreed that Williams was entitled to $300,000.00 in UM/UIM coverage, not $250,000.00 in UM/UIM coverage. Farm Bureau also argued that the plain language of its policy clearly prohibited intrapolicy stacking.

As previously stated, on June 24, 2008 the Honorable John C. Morrison, Jr. held that Williams was entitled to a total of $550,000.00 of UIM coverage from the Farm Bureau policy. (Appendix at 185-87). The amount of $550,000.00 is not listed anywhere in the Farm Bureau policy, and was arrived at by combining the UM/UIM limits of two of the three insured vehicles. As set forth previously, Judge Morrison granted in part, and denied in part, Williams' Motion for Summary Judgment, and he also granted in part, and denied in part, Farm Bureau's Motion for Summary Judgment. Thereby, Farm Bureau seeks a ruling that its policy only affords Williams UIM coverage in the amount $300,000.00, and that its UIM limits cannot be stacked to create coverage in any other amount.

Finally, USAA stipulated to the trial court that it owes $100,000.00 of UM/UIM coverage to Williams, and neither USAA, GEICO, Barbour, Thomson, Samuel Alan Thomson nor Kyle Lynn Barbour have any stake in, or have challenged Judge Morrison's ruling. Thus, the sole issue in this appeal pertains to Farm Bureau's UIM coverage for Williams.

III. ASSIGNMENT OF ERROR

1. The trial court erred in ruling that Virginia C. Williams is entitled to UIM coverage in the amount of $550,000.00 from the Farm Bureau policy instead of UIM coverage in the amount of $300,000.00. Thus, the trial court erred by sustaining in part Williams' Motion for Summary Judgment, and by denying in part Farm Bureau's Motion for Summary Judgment.

IV. QUESTION PRESENTED

1. Did the trial court err in ruling that Farm Bureau's UIM coverage for Virginia C. Williams is $550,000.00 instead of $300,000.00? (References Sole Assignment of Error)

V. PRINCIPLES OF LAW AND ARGUMENT

1. Farm Bureau's UIM coverage for Virginia C. Williams is limited to $300,000.00, and the trial court erred in declaring that the UIM coverage was $550,000.00.

A) The standard of review.

Farm Bureau seeks a review of the trial court's ruling on the cross motions for summary judgment filed by Williams and itself. Thereby, this Court should review the issue *de novo* since it reviews "questions of law de novo, including those situations where there is a mixed question of law and fact." *PMA Capital Ins. Co. v. US Airways, Inc.*, 271 Va. 352, 358, 626 S.E.2d 369, 372 (2006).

B) Virginia law does not require intrapolicy stacking.

Although intrapolicy stacking of UM/UIM coverage is permissible in Virginia, it is not mandated if the insurance policy expressly prohibits it. The seminal case in Virginia on intrapolicy stacking is *Goodville Mut. Cas. Co. v. Borror*, in which this Court stated, "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." *Goodville Mut. Cas. Co. v. Borror*, 221 Va. 967, 970, 275 S.E.2d 625, 627

(1981); see also *Billings v. State Farm*, 680 F. Supp. 778 (E.D. Va. 1988).

In *Goodville*, the decedent was the owner and named insured of a policy issued by Goodville Mutual Casualty Company ("Goodville"), which insured two automobiles owned by him. Separate but unequal premiums were charged for each automobile under the policy, and Goodville's UM liability for damages to any one person for a single accident was limited to $25,000.00. *Goodville*, 221 Va. at 967, 275 S.E.2d at 626. Nevertheless, the decedent's administratrix sought to hold Goodville liable for up to $50,000.00 in UM coverage, which was calculated by stacking the UM coverage on the two separate automobiles.

As noted above, this Court held that such intrapolicy stacking of UM coverage is not allowed under Virginia law, so long as the policy contained clear and unambiguous language that prohibited stacking. In that regard, the Goodville policy at issue contained the following language:

> 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 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.

Goodville, 221 Va. at 970, 275 S.E.2d at 627. (Emphasis added) (Appendix at 183).

In its written opinion, this Court took note that "language closely resembling the limitation set forth above has been held *not* to be ambiguous in a number of jurisdictions," and the Court concluded, "**the language of Goodville's policy, *viz.*, '[r]egardless of the number of…motor vehicles to which this insurance applies,' is clear and unambiguous**." *Goodville*, 221 Va. at 970-71, 275 S.E.2d at 627-28. (Emphasis added). Thereby, Goodville's UM liability was limited to $25,000.00, even though two vehicles were insured on the policy, with separate premiums paid for each.

Thus, it is black letter law that intrapolicy stacking of UM/UIM limits is not allowed in Virginia, so long as an insurance policy contains clear and unambiguous language that prohibits stacking. As

such, so long as the Farm Bureau policy at issue contained such language, stacking is not permitted.

C) The Farm Bureau policy contains clear unambiguous language that precludes intrapolicy stacking.

The undisputed Farm Bureau policy at issue herein contains the following language in the UM/UIM section (PART IV - PROTECTION AGAINST UNINSURED MOTORISTS):

> *Limits of Liability:* ***Regardless of the number of…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) (Appendix at 179).

It is also noteworthy to point out that the policy includes an "underinsured motor vehicle" within the definition of an "uninsured motor vehicle," so the limiting language cited directly above applies to UM coverage and to UIM coverage.

In light of *Goodville*, supra, which is controlling precedent, it is clear that the UM/UIM coverage in the Farm Bureau policy cannot be stacked to provide Williams with $550,000.00 of coverage (or any amount other than $300,000.00). The policy language is clear and unambiguous, and prohibits the intrapolicy stacking of UM/UIM coverage, even though there are three insured vehicles on the policy. The total limiting language in the Farm Bureau policy is nearly identical to the total limiting language found in the *Goodville* policy, and it actually contains the exact language cited by this Court in *Goodville* as being clear and unambiguous – i.e. "regardless of the number of…motor vehicles to which this insurance applies." *Goodville*, 221 Va. at 970-71, 275 S.E.2d at 627-28.

Furthermore, the policy states:

> 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…

(Emphasis added)(Appendix at 179).

Thus, it is relevant to emphasize that the term "limit" is singular, not plural, which further indicates that stacking of multiple limits is prohibited.

Thereby, in light of *Goodville*, supra, Farm Bureau's UIM limits cannot be stacked to provide $550,000.00 of coverage for Williams. The most UIM coverage that could be provided would be $300,000.00, the highest "each person" limits for one vehicle.

D) Any ambiguity in the Farm Bureau policy with respect to the UIM limits has already been resolved by Farm Bureau in favor of Williams.

As referenced above, there are three vehicles insured on the Farm Bureau policy. One vehicle, a 2004 Ford, has UM/UIM limits of $250,000.00. The other two vehicles, a 1998 Jeep and a 1987 Ford, have UM/UIM limits of $300,000.00 each. (Appendix at 177). Even though *Goodville* sets forth clear black letter law as to intrapolicy stacking, Williams seeks to take advantage of this alleged ambiguity in the Farm Bureau policy to expand the UM/UIM coverage available to her. Nevertheless, even if the lower UM/UIM limits for one of the three vehicles on the policy actually creates an ambiguity, that alleged ambiguity does not create a situation in which intrapolicy stacking is allowed, and the precedent of *Goodville*, supra still applies.

Since Williams was not occupying any of the three vehicles insured on the policy when she was injured, Farm Bureau conceded

that it owed the higher of the two different “each person” limits provided by the policy -- $300,000.00. **Any alleged ambiguity that existed in the policy involved whether the UM/UIM coverage was $250,000.00 or $300,000.00 – not whether intrapolicy stacking was allowed**. The Farm Bureau policy clearly and unambiguously prohibits the stacking of its UM/UIM limits with language pre-approved by this Court in *Goodville*.

Additionally, the rationale of *Goodville* was in no way focused on the amount of the UM/UIM limits referenced in the applicable policy. This Court, in writing the *Goodville* decision, was focused solely on whether the policy contained clear and unambiguous language that prohibited intrapolicy stacking. As shown above, the Farm Bureau policy at issue contains clear and ambiguous language – and **the pertinent language in the Farm Bureau policy was also present in the policy at issue in *Goodville*.** This Court even specified that the fact that separate premiums are charged for each vehicle is irrelevant to the issue of intrapolicy stacking. If clear and unambiguous anti-stacking language is included in the policy, there can be no stacking.

Even though this Court has never ruled on the issue of different UIM limits for separate vehicles on one policy, the issue was addressed in *Bray v. Insurance Co. of Pennsylvania*, 705 F. Supp. 1145 (E.D. Va. 1989)(rev'd on other grounds). In *Bray*, the plaintiff was insured under a Nationwide policy that insured three vehicles. There were UM/UIM limits of $25,000.00 on two of the vehicles, and UM/UIM limits of $100,000.00 on one other vehicle. *Bray*, 705 F. Supp. at 1148. Nevertheless, citing *Goodville*, the Federal Court concluded that intrapolicy stacking of the three UM/UIM coverages was impermissible, and the plaintiff's UM/UIM coverage under the Nationwide policy was limited to $100,000.00 – the highest limit for one vehicle. *Bray*, 705 F. Supp. at 1154. Farm Bureau seeks from this Court, the same conclusion that was reached by the Federal Court in *Bray*, which is a ruling that the UIM coverage for Williams is limited to $300,000.00, not $550,000.00 (or any other amount).

E) The Appellees' assignment of cross-error should be denied.

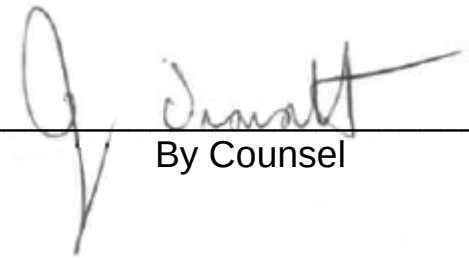
The Assignment of Cross-Error seeks a ruling from this Court that intrapolicy stacking is mandated in the Farm Bureau policy, and that Williams is entitled to $850,000.00 UIM coverage. For the

reasons set forth above, Farm Bureau's UIM coverage for Williams is limited to $300,000.00, and thus, the Assignment of Cross-Error is not well founded, and should be denied.

VI. CONCLUSION

For the reasons set forth above, Judge Morrison's ruling that Williams is entitled to a total of $550,000.00 of UIM coverage from the Farm Bureau policy is, respectfully, erroneous. Thereby, the partial grant of summary judgment for Williams should be overturned, along with the partial denial of summary judgment for Farm Bureau. Farm Bureau asks this Court to find that Williams is entitled to $300,000.00 of UIM coverage from the policy at issue as a result of her accident of June 9, 2006.

VIRGINIA FARM BUREAU
MUTUAL INSURANCE
COMPANY



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VII. CERTIFICATE OF COMPLIACE WITH RULE 5:26(d) OF THE RULES OF THE SUPREME COURT OF VIRGINIA

The Appellant certifies as follows:

This 23rd day of February, 2009, twelve (12) bound copies of this Brief of Appellant and Appendix were hand filed with the Clerk's Office of the Supreme Court of Virginia, one (1) electronic copy of the Brief of Appellant and Appendix were filed on CD and three (3) copies of this Brief of Appellant were mailed, via U.S. Mail, postage prepaid, to the following:

O. L. Gilbert, Esquire, Gilbert & Albiston, P.L.L.C., 580 E. Main Street, Suite 330, Norfolk, Virginia 23510 (Co-Counsel for Appellees Virginia C. Williams and Robert Williams);

John G. Crandley, Esquire, Preston, Wilson & Crandley, 2222 Commerce Parkway, Suite 200, Virginia Beach, Virginia 23454 (Co-Counsel for Appellees Virginia C. Williams and Robert Williams);

Lisa S. Hodges, Esquire, GEICO Staff Counsel, #11 Interstate Corporate Center, Shenandoah Building, Suite 236, Norfolk, Virginia 23502 (Counsel for GEICO, Matthew Kyle Barbour and Kyle Lynn Barbour);

Kevin D. Sharp, Esquire, Taylor and Walker, P.C., P. O. Box 3490, Norfolk, Virginia 23514-3490 (Counsel for USAA Casualty Insurance Company, Jason Robert Thomson and Samuel Alan Thomson).

The Appellant also certifies that three (3) bound copies of the Appendix were mailed, via, U.S. Mail, postage prepaid, on this the 23rd day of February, 2009 to the following:

Lisa S. Hodges, Esquire, GEICO Staff Counsel, #11 Interstate Corporate Center, Shenandoah Building, Suite 236, Norfolk, Virginia 23502 (Counsel for GEICO, Matthew Kyle Barbour and Kyle Lynn Barbour);

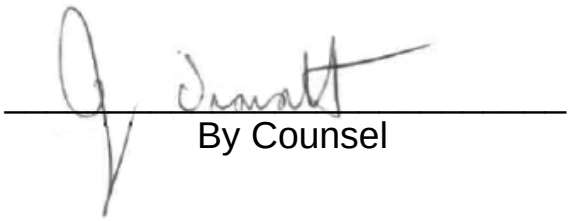
Kevin D. Sharp, Esquire, Taylor and Walker, P.C., P. O. Box 3490, Norfolk, Virginia 23514-3490 (Counsel for USAA Casualty Insurance Company, Jason Robert Thomson and Samuel Alan Thomson).

The Appellant further certifies that three (3) bound copies of the Appendix were mailed, via, U.S. Mail, postage prepaid, on the 17th day of February, 2009 to the following:

O. L. Gilbert, Esquire, Gilbert & Albiston, P.L.L.C., 580 E. Main Street, Suite 330, Norfolk, Virginia 23510 (Co-Counsel for Appellees Virginia C. Williams and Robert Williams);

John G. Crandley, Esquire, Preston, Wilson & Crandley, 2222 Commerce Parkway, Suite 200, Virginia Beach, Virginia 23454 (Co-Counsel for Appellees Virginia C. Williams and Robert Williams);

Counsel for Appellant respectfully requests oral argument.



By Counsel