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.

REPLY BRIEF OF APPELLANT

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I. STATEMENT OF THE NATURE OF THE CASE

Appellant Virginia Farm Bureau Mutual Insurance Company ("Farm Bureau") will rely upon the Statement of the Nature of the Case that was submitted in its Brief of Appellant.

II. STATEMENT OF FACTS

Appellant Virginia Farm Bureau Mutual Insurance Company will rely upon the Statement of Facts that was submitted in its Brief of Appellant.

III. ASSIGNMENT OF ERROR

1. The trial court erred in ruling that Virginia C. Williams ("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?

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) Any ambiguity in an insurance policy does not mandate intrapolicy stacking of UM/UIM coverages.

Williams correctly states in her Brief of Appellees, "any ambiguity contained within a policy [of insurance] will be construed against the insurer." (Brief of Appellees at 14); citing *Goodville Mut. Cas. Co. v. Borror*, 221 Va. 967, 970, 275 S.E.2d 625, 627 (1981). Williams also cites the rule that where "two interpretations equally fair may be made, the one which permits the greater indemnity will prevail because indemnity is the ultimate object of insurance." (Brief of Appellees at 13); *Ayres v. Harleysville Mut. Cas. Co.*, 172 Va. 383, 389, 2 S.E.2d 303, 305 (1939). Relying on those rules of law, Williams then implicitly, if not explicitly, argues that **any ambiguity** in an insurance policy mandates the intrapolicy stacking of UM/UIM coverages. Thus, Williams correctly cites black letter insurance law, but draws a completely erroneous conclusion as to how that law applies herein.

In her Brief of Appellees, Williams writes, "Virginia Farm Bureau presents the novel argument…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." (Brief of Appellee at 22).

Nevertheless, counsel for Farm Bureau is unaware of any case law that states or implies that **any** ambiguity mandates intrapolicy stacking – and Williams has not cited any such cases in her Brief of Appellees. She relies only upon the general principles referenced above. The law simply provides that an ambiguity, whatever it may be, is simply resolved against the insurance company. Obviously, there can be ambiguities in an insurance policy that have nothing to do with intrapolicy stacking – which is the case here.

As much as Williams has tried to obscure the true issue in this appeal, the actual alleged ambiguity in the Farm Bureau policy does not involve stacking. In the Farm Bureau policy, three different vehicles were specifically insured on the Declarations. (Appendix at 177). The Declarations showed UM/UIM coverage of $250,000.00 for "each person" for one insured vehicle, and $300,000.00 for "each person" for two other insured vehicles. Since Williams was injured while occupying a non-owned vehicle that was not listed on the Declarations, **the question at issue was whether Williams was**

entitled to UM/UIM coverage of $250,000.00 or $300,000.00, not whether the UM/UIM coverages for the three vehicles are stacked.

As outlined in its Brief of Appellant, Farm Bureau resolved this alleged ambiguity in favor of its insured by conceding that Williams was entitled to the higher of the two limits, which is all that Virginia insurance law requires. Thus, the question of Williams' available UM/UIM coverage should end there.

B) The Farm Bureau policy clearly and unambiguously precludes stacking of the UM/UIM limits.

Both sides seem to agree that 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*, 221 Va. at 970, 275 S.E.2d at 627. The UM/UIM section of the Farm Bureau policy contains the following language:

> *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)(Emphasis added).

As noted in Farm Bureau's Brief of Appellant, the policy contains the exact anti-stacking language that this Court found to be clear and unambiguous in *Goodville*, supra – 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. Thereby, Williams' contention that the Farm Bureau policy is ambiguous as to intrapolicy stacking is simply erroneous. The Farm Bureau policy fulfills the *Goodville* requirement, which is that a policy contain language that clearly an unambiguously precludes stacking. *Goodville*, 221 Va. at 970, 275 S.E.2d at 627.

Additionally, in her Brief of Appellees, Williams correctly points out that insurance policies "are to be construed according to their terms and provisions and are to be considered as a whole." (Brief of Appellees at 13); citing *Surety Corporation v. Elder*, 204 Va. 192, 197, 129 S.E.2d 651, 655 (1963). Williams thus concludes, "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. (Brief of Appellees at 16-17)(Emphasis added).

In reviewing the policy as a whole, a reasonable person would have to conclude that the stacking of the UM/UIM limits for multiple vehicles is not allowed, whereas the UM/UIM section of the Farm Bureau policy states, "Regardless of the number of…(4) motor vehicles to which this insurance applies." (Appendix at 179). In light of that language, **a reasonable person could never conclude that the UM/UIM limits for more than one vehicle are added together**. Thereby, the question posed by Williams cannot be answered with the figure of $550,000.00 (or $850,000.00) unless the UM endorsement of the Farm Bureau policy is completely disregarded – which is impermissible. The only figures that a reasonable person could choose between would be $250,000.00 or $300,000.00, whereas those are the two different "each person" limits listed on the declarations. Farm Bureau has already conceded that the figure for Williams is $300,000.00, as Virginia insurance law requires.

C) The location of the UM/UIM limits in the Farm Bureau policy is irrelevant to the issue of stacking.

Williams next argues that this matter is distinguishable from *Goodville* since the Farm Bureau policy contains the UM/UIM "each person" and "each occurrence" limits in the Declarations, as opposed to locating the limits in "a schedule at the heading of its UM endorsement." (Brief of Appellees at 16). Williams states, "the only option this leaves the reader of the policy is to go to the declarations page of the policy," to locate the UM/UIM limits, and then, "the issue becomes what a first class insured would expect his UM coverage limits to be upon a review of the entire Virginia Farm Bureau policy." (Brief of Appellees at 16-17). Williams then proceeds to try to answer the coverage question by referring only to the Declarations, and by ignoring the language of the UM/UIM endorsement.

First, this Court's only concern in *Goodville* was whether the policy contained anti-stacking language that was "clear and unambiguous." *Goodville*, 221 Va. at 971, 275 S.E.2d at 628. Ultimately, this Court held that the policy language in *Goodville* was clear and unambiguous, and required "the construction that stacking is not permissible." *Id.* As previously argued, the Farm Bureau policy

contains the same language that this Court specifically cited in the *Goodville* opinion.

Second, this Court made no mention in its opinion as to the importance of the location of the UM "each person" and "each occurrence" limits in the Goodville Mutual Casualty Company policy at issue. Counsel for Farm Bureau can only assume that if this Court believed that the location of the UM/UIM limits in the *Goodville* policy was important, then the Court would have made mention of the same in its written opinion. Instead, the opinion focused solely upon the fact that the anti-stacking language was clear and unambiguous.

The fact that Williams makes this argument in her Brief of Appellees shows the lengths to which she feels the need to go to distinguish this Court's opinion in *Goodville*, whereas *Goodville* is directly on point, and supports Farm Bureau's position herein.

D) *Bray v. Insurance Company of Pennsylvania* is directly on point, and is persuasive authority that supports Farm Bureau's position.

In its Brief of Appellant, Farm Bureau cited and relied upon *Bray v. Insurance Co. of Pennsylvania*, 705 F. Supp. 1145 (E.D. Va. 1989) (rev'd on other grounds) as persuasive authority to support its position that Williams' UM/UIM coverage is limited to $300,000.00.

Bray is the only known case that applies Virginia law that has dealt with the issue of different UM/UIM limits for different vehicles on a policy, and the effect that those different limits have on intrapolicy stacking.

In *Bray*, the plaintiff was insured under a Nationwide policy that insured three vehicles. There was $25,000.00 of UM/UIM coverage on two of the vehicles, and $100,000.00 of UM/UIM coverage on one vehicle. *Bray*, 705 F. Supp. at 1148. Citing *Goodville*, supra, 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 in the policy for one vehicle. *Bray*, 705 F. Supp. at 1154. Thus, the exact issue before the Federal Court in *Bray* is at issue before this Court, and the Federal Court decided the stacking issue in the same manner that Farm Bureau asks this Court to decide the stacking issue herein. Nevertheless, Williams argued in her Brief of Appellees that "none of the cases relied upon by Virginia Farm Bureau supports its position." (Brief of Appellees at 21).

Williams attempts to marginalize and discredit the *Bray* decision by arguing, "[h]ow the stacking issue was presented to the Court in

Bray cannot be determined from the Court's decision." (Brief of Appellees at 21). Yet, the decision in *Bray* makes it clear as to exactly how the stacking issue was presented to the Court. The plaintiff in *Bray* took the position that the two different UM/UIM limits for the three insured vehicles on the Nationwide policy were stacked – just as Williams has done herein. The *Bray* Court noted,

> The plaintiff also seeks to "stack" underinsurance coverages on three vehicles owned by the plaintiff and insured under one policy by defendant Nationwide. The uninsured/underinsured coverages on the vehicles are $ 25,000/$ 50,000, $ 100,000/$ 300,000, and $ 25,000/$ 50,000.

Bray, 705 F. Supp. at 1154. When presented with that issue, the Federal Court, relying upon *Goodville*, ruled against stacking, just as Farm Bureau asks this Court to do.

The Appellees also attempt to discredit *Bray* by arguing that "the actual structure of the *Goodville* policy was not brought to the attention of the Court in *Bray*." (Brief of Appellees at 21). The *Bray* decision makes no reference to the structure of the Nationwide policy, so Williams could be correct in this assertion, but it is impossible to say for certain since the opinion did not elaborate on that issue. Again, however, the policy structure was not addressed by this Court in its *Goodville* decision, and thus, the structure of the Nationwide

policy at issue in *Bray* would have been irrelevant – as it is irrelevant herein as well.

The Federal Court in *Bray* correctly concluded that there could be no stacking of the Nationwide UM/UIM limits, even though there were two different limits for three insured vehicles. The *Bray* Court correctly applied Virginia insurance law, and is persuasive authority for this Court to agree that Farm Bureau's UM/UIM limits cannot be stacked.

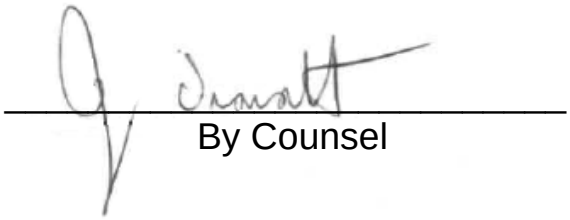
2. The trial court did not err in refusing to stack the UM/UIM coverage of all three insured vehicles, and the Appellees' assignment of cross-error should be denied.

Williams argues that she is entitled to a total of $850,000.00 of UM/UIM coverage, which is combined by stacking the UM/UIM coverage for each of the three insured vehicles ($250,000.00 for one vehicle and $300,000.00 for two vehicles). For the reasons set forth above, the Farm Bureau policy clearly and unambiguously precludes intrapolicy stacking, and no reasonable interpretation of the policy would lead to the conclusion sought by Williams. Thereby, Williams' assignment of cross-error 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 25th day of March, 2009, Fifteen (15) bound copies and one (1) electronic copy on CD of the Reply Brief of Appellant were hand filed with the Clerk's Office of the Supreme Court of Virginia, and three (3) copies of this Reply Brief were mailed, via U.S. Mail, postage prepaid, to the following:

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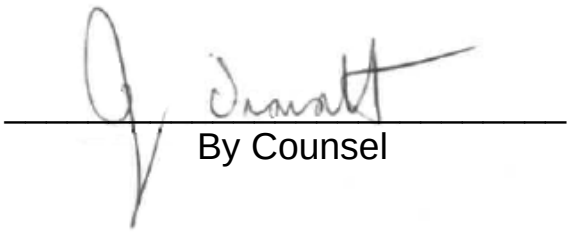

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