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IN THE

Supreme Court of Virginia

RECORD NO. 181533

Joseph S. Corriveau, by his mother and next friend,
Tracey Ballagh,

Appellant,

v.

State Farm Mutual Automobile Insurance Company, *et al*.,

Appellees.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES……..ii

ARGUMENT & AUTHORITIES……..1

I. The Intent of the Parties to the State Farm Policy is Embodied in the Language Used…….……..…..1

II. The Safety Harnesses were a Critical Component in the Injuries to Joseph…….….3

CONCLUSION……...…4

CERTIFICATE……...5

TABLE OF AUTHORITIES

Cases

Foti v. Cook,
220 Va. 800, 805 (1980)…….……..1

State Farm Mutual Automobile Insurance Company v. Powell,
227 Va. 492, 501 (1984)……1, 2

Simpson v. Virginia Municipal Liability Pool,
279 Va. 694, 699 (2010)…….2

ARGUMENT & AUTHORITIES

I. The Intent of the Parties to the State Farm Policy is Embodied in the Language Used.

(Relating to Assignment of Error I.A., I.B.)

State Farm asserts that whether to extend coverage to Joseph Corriveau, consideration must be given to the intent of the parties to the insurance policy. The scope of the coverage should reasonably be within the contemplation of the parties to the policy. (State Farm's Br. at 2-3.) State Farm then argues that State Farm and Joseph's parents did not contemplate coverage for Joseph's injuries and the conduct which caused them. (State Farm's Br. at 5-6.)

It is well settled, however, that the intent of the parties to a contract is embodied in its language. *Foti v. Cook*, 220 Va. 800, 805 (1980). State Farm guaranteed coverage for injuries that arose "out of the ownership, maintenance or use of the 'uninsured motor vehicle' or 'underinsured motor vehicle'." This case turns on whether Joseph was using the vehicle as a vehicle at the time of his injuries.

Joseph meets this test. Compare Joseph to the victim in *State Farm Mutual Automobile Insurance Company v. Powell*, 227 Va. 492 (1984) who had at no time was the driver or even a passenger in the truck from which the victim's estate sought coverage. As this Court pointed out,

> …consideration must be given to what the injured person was doing when he was injured as well as his purpose and intent, in determining whether that person was in such position in relation to the vehicle to be injured in its "use". *Id.* at 501.

Joseph was a passenger in the Bedford County school bus, secured in his seat by the harness attached to the bus for the benefit of autistic children. It is clear Joseph was using the school bus as a bus at the time of his injuries.

In *Simpson v. Virginia Municipal Liability Pool*, 279 Va. 694, 699 (2010), this Court stated that "cases involving the terms 'use' and 'occupancy' in automobile insurance policies present to the courts such an infinite variety of factual patterns that it is impossible to formulate bright – line rules of universal application or a list of factors dispositive of the issue in every case." This case presents a corollary to this observation. For coverage to be contemplated by the parties does not require State Farm or Joseph's parents to be able to sit down and list all the various scenarios which might be covered at the time of contract. The term "use" is a broad term. Intentionally so. The parties understood this. Certainly, Joseph's injuries can be fairly said to have arisen out of the "use" of the Bedford County school bus.

Moreover, intentional torts are not a bar to coverage in UM/UIM cases. (Opening Br. of Appellant at 7-9.) State Farm understood this too. State Farm should not be permitted to use an intentional tort as a back door to denying coverage by claiming the parties did not contemplate Holland's and Evans' actions. If State Farm knew its policy covered intentional torts, it cannot now claim it did not intend to cover Joseph's injuries, suffered while he was a passenger strapped in on a Bedford County school bus.

II. The Safety Harnesses were a Critical Component in the Injuries to Joseph.

(Relating to Assignment of Error I.A., I.B.)

State Farm claims the use of the safety harnesses were "merely incidental in the assaults" on Joseph. (State Farm Br. at 4.) Joseph covered this point in his opening brief (Opening Br. of Appellant at 11-12.) Counsel will not repeat this argument here except to say that the analogy of the two men attacking a third man used in Joseph's opening brief refutes State Farm's contention. (Opening Br. of Appellant at 11-12.)

CONCLUSION

Joseph Corriveau asks for the judgment of the Circuit Court below be reversed and this case remanded for further proceedings consistent with this Court's opinion. In the alternative, Joseph Corriveau asks this Court to rule, as a matter of law, that State Farm owes Joseph Corriveau coverage for his injuries and judgment be entered in favor of Joseph Corriveau.

Respectfully submitted,

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CERTIFICATE

In compliance with Rule 5:26 of the Rules of the Supreme Court of Virginia, I hereby certify that this Reply Brief is under the 15 page limit and on August 30, 2019, the correct number of true and accurate copies of this Reply Brief were hand – filed in the Clerk's Office of the Supreme Court of Virginia and the correct number of copies were served upon counsel by email:

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