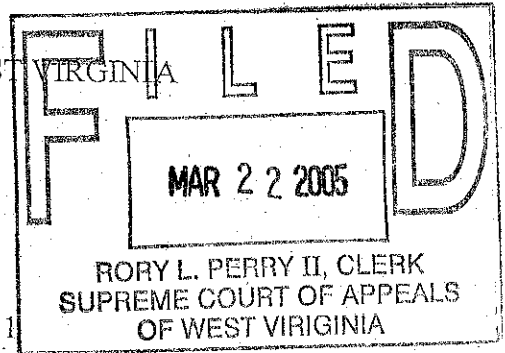


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



JESSICA SATTERFIELD,

Plaintiff/Appellant

vs.

No. 32511

ERIE INSURANCE PROPERTY AND
CASUALTY COMPANY,

Defendant/Appellee

APPELLANT'S BRIEF

APPEAL FROM THE AWARD OF SUMMARY JUDGMENT
GRANTED TO DEFENDANT/APPELLEE IN PLEASANTS
COUNTY CIVIL ACTION NO. 00-C-45

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Authority:

Painter v. Peavy, 192 W.Va. 189, 451 SE2d 755 (1994)

II. LIABILITY COVERAGE SHOULD BE AUTOMATICALLY EXTENDED TO MS. SATTERFIELD PURSUANT TO THE NEWLY ACQUIRED AUTO CLAUSE SET FORTH IN ERIE'S COMMERCIAL AUTO POLICY.

Authority:

Gorling v. Allstate Ins. Co., 125 Ga. App. 497, 188 SE2d 128 (1972);

Carey v. State Farm Mutual Insurance Company, 367 F.2d 938 (4th Cir. 1966) (applying Virginia Law);

Christiansen v. Mountain West Farm Bureau Mutual Insurance Company, 303 Mont. 493, 498-503, 22 P.3d 624, 626-629 (2000);

Key v. Allstate Insurance Company, 90 F.3d 1546 (11th Cir. 1966);

Goodman v. Allstate Insurance Company; 523 N.Y.S.2d 391, 137 Misc. 2d 963 (1987);

State Farm Mutual Auto Ins. Co. v. Carpenter, 116 N.H. 783, 367 A.2d 609 (1976)

Horace Mann Mutual Casualty Co. v. Bell 134 F. Supp. 307 (1955, DC Ark);

State Farm Insurance Company vs. Thompson, 244 F.2d 291 (5th Cir. 1947) (applying Louisiana law);

Dolan v. Welch, 123 Ill. App. 277, 462 N.E.2d 794 (1984);

St. Paul Mercury Insurance Company vs. Pennsylvania Lumberman's Mutual Insurance Company, 378 F.2d 312 (4th Cir. 1967) (applying South Carolina law); and

Keffer v. Prudential Insurance Company of America, 153 W.Va. 813, 172 S.E.2d 714 (1970).

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I. KIND OF PROCEEDING AND NATURE OF RULING IN CIRCUIT COURT

This case is a declaratory judgment action stemming from a car crash which took place in Pleasants County, West Virginia, on October 7, 1999. The question presented is an issue of first impression in West Virginia, involving whether or not automobile liability coverage should be extended through an after acquired auto clause when coverage was provided by another policy.

Jessica Satterfield, (plaintiff below, and hereafter referred to as "Ms. Satterfield") brought this action against Erie Insurance Property and Casualty Company (defendant below, hereinafter referred to as "Erie") because she believes that Erie should provide liability coverage to her pursuant to that certain Pioneer Commercial Auto Insurance Policy (Policy Number Q04 6530068 W07) which Erie issued to Dale R. Williamson. Ms. Satterfield believes that the newly acquired auto clause set forth in Erie's policy clearly and unambiguously provides for automatic liability coverage, and that there is no language in Erie's policy which would limit or otherwise exclude coverage. Erie asserts that coverage is not available under its commercial auto policy because Erie extended coverage to Ms. Satterfield under another automobile liability policy it issued to Mr. Williamson; Pioneer Family Auto Insurance Policy (Policy Number Q04 6540677 WO).

In granting summary judgment to Erie, the Circuit Court reasoned that:

. . . In line with subsection 5, Mr. Williamson acquired the subject vehicle, and all vehicles he owned were insured by Erie Insurance. Nevertheless, the present obstacle to coverage under the Commercial Policy persists: namely, that when Mr. Williamson informed Erie Insurance of the purchase of the subject vehicle, he did not contract to include it on the declarations sheet of the Commercial Policy. Instead, Mr. Williamson contracted with Erie Insurance to include it on the declarations sheet of the Family Policy.

Had Mr. Williamson not yet contracted at the time of the accident to cover the subject vehicle under the Family Policy, given the time line, Ms. Satterfield would in all probability have been entitled to recover the per PERSON limit of \$100,000 under the Newly Acquired Autos provision of the Commercial Policy. However, once Mr. Williamson contracted for and was charged a premium under a separate policy, any temporary coverage provided for under the Commercial Policy naturally ceased. Essentially, once the subject vehicle was listed on the declarations sheet of another policy it ceased to be a newly acquired auto for the purposes of the Commercial Policy. *Circuit Court's Order dated March 3, 2004, pp. 4-5.*

Ms. Satterfield appeals the Circuit Court's ruling because there is nothing in the subject commercial auto policy which excludes or otherwise prohibits application of the automatic liability coverage provided by the newly acquired auto clause.

II. STATEMENT OF THE FACTS OF THE CASE

(THE WRECK)

Rosanna R. Williamson turned sixteen years of age on September 20, 1999. *Defendants' Answers and Responses to Appellants' Interrogatories and Motion to Produce to Defendants.* On or about September 15, 1999, as a birthday present, Rosanna's mother and father purchased a 1993 Pontiac Grand Am SE for Rosanna to drive. *Id. See also Bill of Sale produced in discovery.* This car was titled in the name of Rosanna Williamson and Dale R. Williamson, her father.

During the morning of October 7, 1999, Rosanna stopped at the home of Danielle Butler, her friend. Ms. Satterfield, also a friend of Danielle Butler, was at Danielle's home when Rosanna arrived. Rosanna offered to give both Ms. Butler and Ms. Satterfield a ride to school.

While headed to school Rosanna lost control of the car she was driving and crashed in to a tree at a high rate of speed. Danielle Butler and Ms. Satterfield each sustained severe injuries. *Official Accident Report and Accompanying Statements prepared by Sgt. Stephen M. McFarland, PSD.* Although not of record in this proceeding, Ms. Satterfield has been awarded judgment against Rosanna Williamson, Dale R. Williamson and Teresa A. Williamson in the amount of \$558,572.54; Ms. Satterfield lost her spleen, sustained severe orthopedic injuries, has undergone several surgeries, and has incurred \$95,949.81 in medical expenses as a result of the underlying incident. *See Findings of Fact and Conclusions of Law and Judgment Entry*, respectively, entered on September 13, 2003, in Pleasants County Civil Action No. 99-C-43.

(APPLICABLE ERIE POLICIES)

Dale R. Williamson purchased two separate automobile liability policies from Erie: Pioneer Family Auto Insurance Policy (Policy Number Q04 6540677 WO); and Pioneer Commercial Auto Insurance Policy (Policy Number Q04 6530068 W07). *Affidavit of Edward H. Vallery, and accompanying policies.* Erie paid Ms. Satterfield the \$100,000.00 "per person" limit of liability available under the family auto policy, but disputes that coverage is also available to Ms. Satterfield under the commercial auto policy. Ms. Satterfield believes that coverage is also available under Erie's commercial auto policy because of the newly acquired auto provision contained in that policy.

(COMMERCIAL AUTO POLICY)

The subject commercial auto policy provides that Erie "... will pay all sums **anyone we protect** legally must pay as damages caused by an **accident** covered by this policy. The **accident**

must arise out of the ownership, maintenance, use, loading or unloading of an **auto we insure**."

Subject Policy, p. 6.

The policy indicates that "auto we insure" includes "Newly Acquired Autos", defined as: "... autos you acquired during the policy period. They may ... be additional autos we insure if, on the day such autos are acquired, we insure all autos you own. You must tell us about newly acquired autos during the policy period in which the acquisition takes place." *Subject Policy, p. 5.*

There is no dispute that Dale R. Williamson was a titled owner of the 1993 Pontiac Grand-Am driven by Rosanna Williamson on October 7, 1999. There is likewise no dispute that Rosanna had permission to use the 1993 Pontiac Grand-Am on the morning of October 7, 1999. Every motor vehicle owned by Dale R. Williamson at the time when he purchased the 1993 Pontiac Grand-Am was insured by Erie. *Subject Declarations; See Also Defendants' Answers and Responses to Appellants' Interrogatories and Motion to Produce to Defendants.* Finally, there is no question that Dale R. Williamson notified Erie's on or about September 20, 1999, that he had purchased the 1993 Pontiac Grand Am SE. *Declarations; See Also Defendants' Answers and Responses to Appellants' Interrogatories and Motion to Produce to Defendants.*

III. ASSIGNMENT OF ERROR

The circuit court erred by granting summary judgment to Erie (and by failing to grant summary judgment to Ms. Satterfield) in that liability coverage provided pursuant to the newly acquired auto clause set forth in Erie's commercial auto policy automatically applies regardless of the fact that coverage might also be available under a different policy.

IV. AUTHORITY RELIED UPON, DISCUSSION OF LAW AND RELIEF REQUESTED

I.
STANDARD OF REVIEW

This Court should apply a *de novo* standard of review with regard to the circuit court's entry of summary judgment. See Syllabus Point 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994) ("A circuit court's entry of summary judgment is reviewed *de novo*.").

II.

LIABILITY COVERAGE SHOULD BE AUTOMATICALLY EXTENDED TO MS. SATTERFIELD PURSUANT TO THE NEWLY ACQUIRED AUTO CLAUSE SET FORTH IN ERIE'S COMMERCIAL AUTO POLICY.

Erie's Pioneer Commercial Auto Insurance Policy (Policy Number Q04 6530068 W07) issued and delivered to Dale R. Williamson expressly provides insurance coverage for newly acquired autos. "Newly Acquired Auto" is defined under the subject policy as "autos you acquired during the policy period." *Subject Policy, p. 5*. The policy further provides that "newly acquired autos . . . may . . . be additional autos we insure if, on the day such autos are acquired, we insure all autos you own." *Subject Policy, p. 5*. This coverage is automatic, and applies even if a wreck occurs before an insured notifies the carrier about a newly acquired. The only limitation to this automatic coverage is the condition that "[y]ou must tell us about newly acquired autos during the policy period in which the acquisition takes place." *Subject Policy, p. 5*.

There is no dispute that Dale R. Williamson acquired the subject 1993 Grand Am SE on or about September 15, 1993; this is clearly within the applicable policy period. *Defendants' Answers*

and Responses to Appellants' Interrogatories and Motion to Produce to Defendants; See also Bill of Sale produced in discovery. Likewise, there is no dispute that Erie insured each auto owned by Dale R. Williamson on the date that the subject 1993 Pontiac Grand Am SE was acquired. *Defendants' Answers and Responses to Appellants' Interrogatories and Motion to Produce to Defendants.* It is equally undisputed that Erie, through its agent Family Insurance, Inc., was notified during the applicable policy period that Dale R. Williamson had purchased the subject Pontiac Grand Am SE. *Declarations; See Also Defendants' Answers and Responses to Appellants' Interrogatories and Motion to Produce to Defendants.* As a consequence, there can be no question that the 1993 Pontiac Grand Am SE driven by Rosanna Williamson on October 7, 1999, is an "auto we insure."

The foregoing is particularly true given the fact that the subject Erie policy is expressly intended "[t]o provide . . . as near PERFECT PROTECTION . . . as is humanly possible.", *See Policy at p. 3.*

The issue now before the Court is a one of first impression in West Virginia. Courts from other jurisdictions, including the United States Fourth Circuit Court of Appeals, have ruled that the fact that an insured may be entitled to coverage for a newly acquired auto under one policy which specifically describes the newly acquired auto does not preclude additional liability coverage for the same auto under a different policy issued to the insured.

In *Carey v State Farm Mutual Insurance Company*, 367 F.2d 938 (4th Cir. 1966) (applying Virginia law), the court held that an insured's purchase of a liability policy specifically describing

his newly acquired Chevrolet did not preclude the Chevrolet from newly acquired status under a liability policy describing another automobile owned by the insured. The court reasoned that the insurer expressly undertook to insure all of the insured's after-acquired vehicles without any language limiting such coverage. It would be unreasonable, the court concluded, to ascribe to the insured, by virtue of his applying for a separate policy covering the Chevrolet, an intent to waive or reject any additional protection to which he may have been entitled to receive under the policy.

The court plainly stated:

The defendant, in [the newly acquired clause] expressly undertook to insure all after-acquired private passenger vehicles of the insured, provided that notice of the acquisition is given within 30 days. . . . If the defendant intended to insure newly acquired automobiles only as long as no specific insurance was taken out to cover them, it could have stated this expressly. If, as defendant suggests, it is anomalous to have two policies covering the same automobile, specific language obviating this could have been included in the family policy. Indeed, the simple omission of the provision in question would have avoided all question. The provision means what it says.

Carey v State Farm Mutual Insurance Company, 367 F.2d at 941-942; *See Christiansen v.*

Mountain West Farm Bureau Mutual Insurance Company, 303 Mont. 493, 498-503, 22 P.3d 624, 626-629 (2000).

Gorling v Allstate Ins. Co., 125 Ga. App. 497, 188 S.E.2d 128 (1972), is illustrative because the facts are similar to the facts presented in the case now before the bench. In *Gorling* the wreck occurred two weeks after the insured's purchased a new pickup truck, and shortly after the insured obtained a liability policy describing the pickup truck as the insured vehicle. A declaratory judgment action was initiated to determine the extent of liability coverage as result of an accident involving the newly acquired pickup truck. In rejecting the insurer's argument that the newly acquired auto clause did not apply once the insured obtained a policy specifically covering

the truck, the *Gorling* court, in reversing the trial court, stated that the literal language of the policy covering without qualification was controlling. *Gorling v Allstate Ins. Co.*, 125 Ga. App. at 500-501, 188 S.E.2d at 131-132 (“we think the policy means exactly what it says”).

In *Key v Allstate Insurance Company*, 90 F.3d 1546 (11th Cir. 1996), a women owned two cars which she insured through two different insurance companies. She sold one car, and replaced it with another. She notified the insurance carrier insuring the car she sold that she had sold that car and that she had bought a new car. She also requested coverage for the new car. However, she did not obtain bodily injury liability coverage for the new car. Several days after buying the new car the woman was involved in a wreck where a third party was seriously injured. A coverage dispute arose regarding whether or not the insurance company which insured the woman’s other vehicle had to provide coverage as a result of the newly acquired auto clause found in that policy.

The Eleventh Circuit plainly stated:

We find no ambiguity in the “newly acquired automobile” provision, and therefore, find it unnecessary to analyze the unstated intentions of the parties or the purposes of the provision. Under the plain language and natural reading of the provision, Allstates’s insurance coverage automatically extends to an automobile as long as [the policy requirements were met]. If Allstate intended to insure such automobiles only so long as no other specific insurance was taken out on them, or only until some other event occurs, then Allstate should have stated so expressly.

Key v Allstate Insurance Company, 90 F.3d at 1549, citing *Carey v State Farm Mutual Insurance Company*, 367 F.2d at 941-942.

Similarly, in *Goodman v. Allstate Insurance Company*, 523 N.Y.S.2d 391, 137 Misc.2d 963 (1987), a case where the insured purchased a second car and had two liability policies issued

by the same company, the court ruled that an insured was entitled to the automatic coverage provided by a policy's newly acquired auto clause despite the fact that the newly acquired auto was specifically insured by its own policy. Despite the fact that the newly acquired auto was specifically insured under one policy, the *Goodman* court ruled that coverage was available under the second policy:

... requiring the insured to purchase an additional policy did not alter the terms of the 1961 policy already in existence, which provided coverage for a newly-acquired vehicle. This Court will not attempt to find a hidden meaning or an unexpressed intention in the cited clause in order to relieve the insurer of a liability it unambiguously assumed. Rather, the clause must be given its plain and ordinary meaning. [Citation omitted]. If the insurer intended to cover newly-acquired automobiles only so long as no specific insurance was purchased to cover them, it could and should have stated this expressly. [Citation omitted]. . . . Absent a specific provision such as the aforesaid, providing for an election or coverage or terminating automatic coverage, the insurer is bound by its agreement, even though there is another policy specifically covering the newly-acquired automobile.

Goodman v. Allstate Insurance Company, 523 N.Y.S.2d at 394, 137 Misc.2d at 967.

Other illustrative cases are *State Farm Mutual. Auto. Ins. Co. v Carpenter* 116 N.H. 783, 367 A.2d 609 (1976) (an insured does not waive an automatic insurance provision contained in a liability policy by reason of filing a claim against another liability policy covering the same newly acquired auto), *Horace Mann Mutual Casualty Company v Bell*, 134 F. Supp 307 (1955, DC Ark) (applying Arkansas law) (collision insurance which an insured was required to maintain on a newly acquired vehicle for the benefit of the secured party did not void liability coverage afforded under an automatic insurance clause in his liability policy); *State Farm Insurance Company v Thompson* 244 F.2d 291 (5th Cir. 1957) (applying Louisiana law)(even when an insurance policy was obtained by an insured to cover his newly acquired Chevrolet which the insured allowed to

lapse, the Chevrolet was still covered by a policy describing a Ford that the insured had traded in on the Chevrolet); and *Dolan v. Welch*, 123 Ill.App.3d 277, 281-282, 462 N.E.2d 794, 797-798 (coverage is automatic under the express terms of policy despite insured's actions to specifically cover newly acquired automobile under another policy).

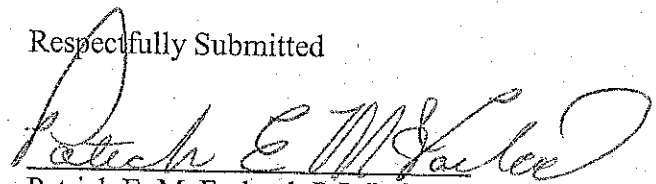
Although distinguishable due to the fact that an insured negotiated for but did not purchase specific liability insurance for a newly acquired automobile, the case of *St. Paul Mercury Insurance Company v Pennsylvania Lumbermen's Mutual Insurance Company*, 378 F.2d 312 (4th Cir. 1967) (applying South Carolina law) nonetheless warrants mention. In that case an accident occurred at a time when the "grace period" provided by the newly acquired auto clause was in effect. The court held that an insured's negotiations with regard to specific liability coverage for a newly acquired additional vehicle did not constitute an election against coverage under the newly acquired auto clause contained in a policy covering the insured's other vehicle. Rejecting the insurer's contention that the insured by his conduct elected against continued coverage of the newly acquired vehicle under the automatic insurance clause, and reversing the trial court's determination that the insured's newly acquired vehicle was not covered, the court stated that the trial court's determination was clearly erroneous because the insured did not waive or modify his express contractual right to coverage under the policy. *St. Paul Mercury Insurance Company v Pennsylvania Lumbermen's Mutual Insurance Company*, 378 F.2d at 315.

In the matter now before this Court the circuit court concluded that "[h]ad Mr. Williamson not yet contracted at the time of the accident to cover the subject vehicle under the Family Policy, given the time line, Ms. Satterfield would in all probability have been entitled to recover the per

PERSON limit of \$100,000 under the Newly Acquired Autos provision of the Commercial Policy." The circuit court erred, however, because, absent policy language to the contrary, Erie's commercial auto policy clearly and unambiguously provides automatic coverage to Ms. Satterfield. There is no requirement to pay an additional premium, to further contract for, or to otherwise designate the newly acquired auto in any particular way. And, importantly, it does not matter that the 1993 Pontiac Grand-Am was specifically insured by another policy. Coverage was automatic! Erie's policy clearly and unambiguously provides coverage, and the circuit court should have given effect to the after acquired auto clause without giving consideration to the parties' intent or to the general purpose of after acquired clause. *See Keffer v. Prudential Ins. Co. of America*, 153 W.Va. 813, 172 S.E.2d 714, Syllabus (1970)("[w]here the provisions of an insurance policy are clear and unambiguous they are not subject to judicial construction or interpretation, but full effect will be given to the plain meaning intended.").

As the court stated in *Carey v State Farm Mutual Insurance Company*, 367 F2d at 942: "The provision means what it says." This court should, therefore, reverse the circuit court and direct the circuit court to declare that Erie must extend coverage to Ms. Satterfield under the subject commercial auto policy (Policy Number Q04 6530068 W07).

Respectfully Submitted

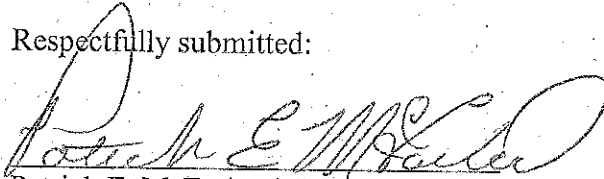


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CERTIFICATE OF SERVICE

The undersigned counsel for Appellant hereby certifies that on March 21, 2005, he served a true and accurate copy of the foregoing Appellant's Brief, *via* ordinary United States mail, upon George Torres, 3901 Briscoe Rd, Parkersburg, WV 26104, attorney for Erie Insurance Property and Casualty Company.

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