

Trivett premises, in return for paying Trivett one-third of the proceeds of the tobacco sales. On August 30, 1999, Ricky Barr, while in the process of harvesting the tobacco, was driving a truck owned by Trivett when Timmy Barr, the third defendant in this action, fell or was thrown from the back of the truck and was injured.

Timmy Barr thereafter filed suit against Trivett and Ricky Barr in state court seeking recovery for his injuries on the ground of negligence.¹ The Insurance Company then filed the present declaratory judgment action, asking this court to declare that the Insurance Company had no obligation to defend the state negligence action or to indemnify its insured from any judgment awarded.² After discovery, the Insurance Company filed a motion for summary judgment, which motion is now ripe for decision on the basis of the record.³

¹ Timmy Barr initially also claimed that Trivett intentionally or recklessly delayed emergency medical personnel from treating him, but he later withdrew that claim.

² Jurisdiction of this court exists pursuant to diversity of citizenship and amount in controversy. *See* 28 U.S.C.A. § 1332(a) (West 1993 & Supp. 2000). In a case of actual controversy within its jurisdiction, the court is authorized to issue a declaratory judgment. *See* 28 U.S.C.A. § 2201 (West 1994).

³ The Insurance Company has submitted in support of its motion a copy of the state court suit papers, deposition extracts, and a copy of the insurance policy.

II

Summary judgment is appropriate when there is “no genuine issue of material fact,” given the parties’ burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and defenses [that] have no factual basis.” *Id.* at 327.

Virginia law must be applied to construe the insurance policy in this case, since the policy was issued in Virginia and the risk is located there. *See Heavner v. State Auto. Mut. Ins. Co. of Columbus, Ohio*, 350 F. Supp. 859, 862 (W.D. Va. 1972). Under Virginia law, the plain language of unambiguous terms in an insurance policy

must be enforced as written. *See State Farm Mut. Auto. Ins. Co. v. Bowers*, 500 S.E.2d 212, 214 (Va. 1998).

The policy clearly excludes from liability coverage any claims for bodily injury arising out of “[t]he ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances” (Policy § II(1)(e).) While the policy exempts from this exclusion “[a] vehicle or conveyance not subject to motor vehicle registration which is . . . [u]sed in the farming activities of the insured” (*id.* § II(1)(e)(4)(d)), it is established that the truck here, a 1978 Chevrolet, was in fact registered with the Virginia Department of Motor Vehicles.

Trivett relies on another exemption, which provides that the aforementioned motor vehicle exclusion “do[es] not apply to bodily injury and personal injury to a residence employee or insured farm employee arising out of and in the course of the employee’s employment by an insured.” (*Id.* § II, unnumbered para.) The only evidence in this record, however, is that Timmy Barr was an “unpaid volunteer assisting Ricky Barr in his joint venture.” (Amend. Mot. J. ¶ 3.) There is no indication in the policy that the term “employee” has any meaning other than its normal one and therefore a plain reading of the policy precludes Timmy Barr from being considered any type of employee of Trivett, the insured.

III

For the foregoing reasons, the Insurance Company's motion for summary judgment will be granted and a final judgment entered declaring that no coverage exists under the policy for the accident in question.

DATED: March 21, 2001

United States District Judge