

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

FIDELITY AND GUARANTY)	CIVIL ACTION NO.:6:01CV00042
INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
OAK RIDGE IMPORTS, INC., et al.,)	
)	
Defendants.)	JUDGE NORMAN K. MOON

The case comes before the Court on Plaintiff Fidelity and Guaranty Insurance Company (“USF&G”) and Defendant Nancy Watkins’ cross-Motions for Summary Judgment.

I. FACTS AND PROCEDURAL HISTORY

USF&G Insurance Co. filed this declaratory judgment action against multiple Defendants who have an interest in the outcome of a case arising out of a June 26, 2000 accident in which Defendant Nancy Watkins sustained serious injuries after her Ford Explorer ran off the road. In a concurrent action in the Prince Edward County Circuit Court, Ms. Watkins alleges that Defendant Shawn Jones caused her to drive off the road while he was driving a Toyota Tacoma pickup titled in the name of his employer.

At the time of the accident, Mr. Jones was a sales manager at Blue Ridge Mitsubishi and an employee of Defendant Ememessay, Inc., a Lynchburg, Virginia car dealership which conducts business under the names of several unincorporated car dealerships and related businesses,

including Blue Ridge Mitsubishi and Oak Ridge Auto. For the period between December 1, 1999 through December 1, 2000, USF&G issued a policy of liability insurance to Ememessay, Inc., Oak Ridge Imports, Inc., and Lynchburg Toyota and Associates, all of which are owned by Howard Sodikoff, the majority shareholder of Ememessay, Inc. The policy, numbered DRE 2085399, lists Mr. Jones as a “Class I” employee who regularly operates automobiles. A regular operator is defined in the policy as an “employee whose principal duty involves the operation of covered autos or who is furnished a covered auto.”

In May of 2000, Mr. Jones was permitted to drive the Toyota but, according to Defendant Ememessay, was required by his employer to purchase his own insurance policy. Mr. Jones did so and the policy, with bodily injury limits of Twenty-Five Thousand Dollars per person, became effective on May 11, 2000.

On November 17, 2000, Mr. Jones received a letter from Discover RE on behalf of USF&G denying him coverage under the Ememessay garage policy in accordance with the following language:

“C. WE WILL NOT COVER - EXCLUSIONS This insurance does not apply to: . . .
7. Any covered auto while leased or rented to others. . . .”

In its Motion for Summary Judgment, Plaintiff USF&G asserts that this rental exclusion relieves USF&G of any duty to indemnify and defend Mr. Jones. In her Motion for Summary Judgment, Defendant Watkins argues that the C. 7. Exclusion is invalid under Virginia’s Omnibus Clause, Va. Code Ann. § 38.2-2204.

II. SUMMARY JUDGMENT STANDARD

Summary judgment should only be granted if, viewing the record as a whole in the light most favorable to the non-moving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986); *Terry's Floor Fashions, Inc. v. Burlington Industries, Inc.*, 763 F.2d 604, 610 (4th Cir. 1985). In considering a motion for summary judgment, “the court is required to view the facts and draw reasonable inferences in a light most favorable to the non-moving party.” *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994) (citations omitted).

III. ANALYSIS

§ 38.2-2205(B)(1) and the USF&G C. 7. Exclusion

In Virginia, auto insurance policies must contain a provision insuring the named insured, as well as any driver who has the permission to use the named insured’s automobile. *See* Va. Code. Ann. § 38.2-2204¹ (known as the “Omnibus Clause”). In other words, auto policies in Virginia must apply to permissive users. *See also American Motors Ins. Co. v. Kaplan*, 209 Va. 53, 161 S.E.2d 675 (1968). With a few exceptions, set forth in § 38.2-2205, any liability insurance policy language that does not afford permissive users the same coverage as the named insured violates § 38.2-2204 and is therefore void. *See* § 38.2-2204(D). *See also Aetna Casualty and Surety Co. v. State Farm Mutual Automobile Ins. Co.*, 212 Va. 15, 181 S.E.2d 614 (1971)

¹§ 38.2-2204(C) reads, in relevant part:

No policy or contract of bodily injury . . . liability insurance relating to the ownership, maintenance or use of a motor vehicle shall be issued or delivered in this Commonwealth . . . without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the express or implied consent of the named insured, against liability for death or injuries sustained . . . as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other such person. . . .

(voiding exclusion in a garage insurance policy because it was inconsistent with the Omnibus Clause).

One exception to the Omnibus Clause involves insurance policies known as “garage policies.” For example, § 38.2-2205(A)(1)² states that a policy which provides coverage in connection with a garage and its employees will not cover a permissive user of the garage’s car if that permissive user suffers a “loss” and has insurance which is applicable to that loss and meets the minimum limits of Virginia law. This permissive user exception is limited to the three scenarios enumerated in § 38.2-2205(A)(1): the exception applies only to motor vehicles which are either i) for the purpose of demonstrating to the permissive user as a prospective purchaser, ii) loaned or leased to the permissive user during the repair and service of the permissive user’s vehicle, or iii) leased to the permissive user for a period of six months or more. In this case, the parties agree that this permissive user exception is limited to these three instances, and both parties agree that none of these three exceptions applies to the facts of their dispute. As a result, the Court also concludes that § 38.2-2205(A) does not apply to Oak Ridge/Ememessay’s USF&G

²§ 38.2-2205(A)(1) reads, in relevant part:

Each policy or contract of bodily injury or property damage liability insurance which provides insurance to a named insured in connection with the business of selling, leasing, repairing, servicing, storing or parking motor vehicles, against liability arising from the ownership, maintenance, or use of any motor vehicle incident thereto shall contain a provision that the insurance coverage applicable to those motor vehicles shall not be applicable to a person other than the named insured and his employees in the course of their employment if there is any other valid and collectible insurance applicable to the same loss covering the other person under a policy which limits at least equal to the financial responsibility requirements specified in § 46.2-472. Such provision shall apply to motor vehicles which are either for the purpose of demonstrating to the other person as a prospective purchaser, or which are loaned or leased to the other person as a convenience during the repairing or servicing of a motor vehicle for the other person, or leased to the other person for a period of six months or more. This provision shall apply whether such repair or service is performed by the owner of the vehicle being loaned or leased by some other person or business.

policy.

However, the parties do contest the question of whether Part (B) of § 38.2-2205 applies to this case. According to the plain language § 38.2-2205(B), the statute applies not just to garage policies, but to “[a]ny” automobile liability policy. The statute, in relevant part, reads as follows:

1 B. 1. Any policy or contract of bodily injury or property damage liability insurance
2 relating to the ownership, maintenance, or use of a motor vehicle shall exclude coverage
3 to persons other than (i) the named insured, or (ii) directors, stockholders, partners,
4 agents, or employees of the named insured, or (iii) residents of the household of either (i)
5 or (ii), while those persons are employed or otherwise engaged in the business of selling,
6 repairing, servicing, storing, or parking motor vehicles if there is any other valid or
7 collectible insurance applicable to the same loss covering the persons under a policy with
8 limits at least equal to the financial responsibility requirements specified in § 46.2-472.

USF&G and Ms. Watkins offer competing interpretations of this statute, both of which turn on the meaning of “those persons” in line 5, above. USF&G asserts that the phrase “those persons” in line 5 refers to “(i) the named insured, or (ii) directors, stockholders, partners, agents, or employees of the named insured, or (iii) residents of the household of either (i) or (ii).” In contrast, Defendant Watkins asserts that “those persons” in line 5 refers to “persons *other than*” those in sections (i), (ii), or (iii). The Court agrees with Defendant Watkins.

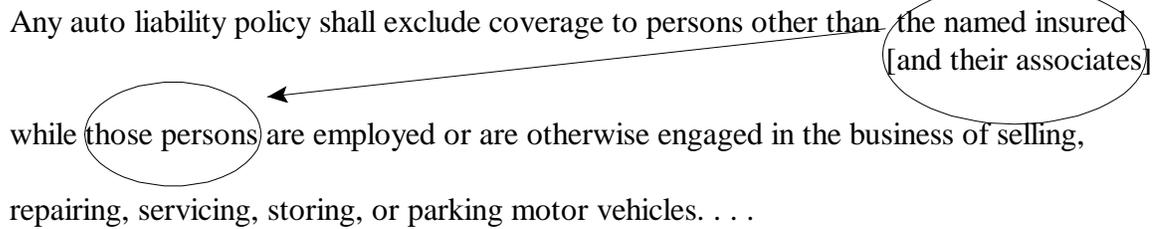
Avoiding Absurd Results

A fundamental canon of statutory interpretation requires courts to interpret statutes in a manner that avoids absurd results. *See, e.g., Branch v. Commonwealth*, 14 Va.App. 836, 839, 419 S.E.2d 422, 424 (1992). In this case, USF&G’s interpretation of “those persons” in § 38.2-2205(B)(1) would lead to an absurd result. To illustrate, the Court considers the statute as the Plaintiff would have it written, where “those persons” refers to the named insured and their

associates as described in sections (i), (ii), and (iii):

Plaintiff USFG’s Reading of § 38.2-2205(B)(1)

Any auto liability policy shall exclude coverage to persons other than the named insured [and their associates] while those persons are employed or are otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles. . . .



When the statute is rewritten to reflect Plaintiff’s interpretation, it can be summarized as follows:

Any auto liability policy shall exclude coverage to persons other than the named insured [and their associates] while the named insured [and their associates] are employed or are otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles. . . .

Under this reading, the Plaintiff asserts that “if [the named insured and their associates] are *not* employed or otherwise engaged in the business of the garage operation, they *shall* be excluded from coverage.” However, this interpretation leads to absurd results, especially since this section applies to “any” automobile liability policy. For example, under USF&G’s scenario, a family auto policy would provide coverage only for garage operations, a manifestly absurd result.³ Under this same reading, a garage policy would exclude coverage to everybody except the named insured, who would be employed in garage operations.⁴ While this application may at first appear

³Under USF&G’s reading, the provision would be summarized as follows:

Any family auto liability policy shall exclude coverage to persons other than the named insured [and their associates] while the named insured [and their associates] are employed or are otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor vehicles. . . .

⁴Under USF&G’s reading, the provision would be summarized as follows:

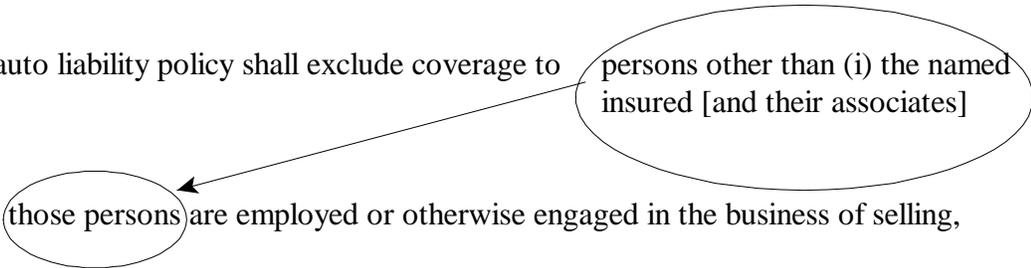
Any garage auto liability policy shall exclude coverage to persons other than the named insured [and their associates] while the named insured [and their associates] are employed or are otherwise engaged in the business of selling, repairing, servicing, storing, or parking motor

logical, it nevertheless contravenes § 38.2-2205(A) which excludes garage coverage for *only* three types of permissive users: demonstration drivers, drivers of temporary loaners, and six-month-or-more leasers. In addition, given that the logical conclusion of the Plaintiff's interpretation mandates coverage only for those somehow employed in the automobile business, it would render garage operators the only persons not excluded from automobile insurance coverage in Virginia.

The Court now turns to Defendant Watkins' interpretation, which considers that the phrase "those persons" refers to persons *other* than the "named insured" and their associates as described in sections (i), (ii), and (iii):

Defendant Watkins' Reading of § 38.2-2205(B)(1)

Any auto liability policy shall exclude coverage to persons other than (i) the named insured [and their associates] while those persons are employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles



When the statute is rewritten to reflect her interpretation, it can be summarized as follows:

Any auto liability policy shall exclude coverage to persons other than (i) the named insured [and their associates] while persons other than (i) the named insured [and their associates] are employed or otherwise engaged in the business of selling, repairing, servicing, storing or parking motor vehicles

When this interpretation is applied to the context of family and garage policies, the application does not yield absurdity. In fact, under this reading, a family auto policy excludes coverage to

vehicles. . . .

garage operators – not an absurd result.⁵ In addition, any garage policy would exclude coverage to persons other than those garage employees named on the policy – also not an absurd result. Finally, in restricting garage coverage to the named insured and their employees, Defendant Watkins’ interpretation is consistent both with the permissive user exception in § 2205(A) and the fact that the General Assembly has carved out only three enumerated exceptions within that section.

c. Conclusion

As a general rule, the Virginia Omnibus Clause requires that automobile insurance companies must contain a provision insuring the named insured, as well as any driver who has the permission to use a named insured’s automobile. Any language in contravention of this clause is void. Although there are some limited exceptions to this rule, none of them applies to the policy language at issue in this case. As a result, the following language in Part IV, Section C, Number 7 in Plaintiff USF&G’s policy must be voided as conflicting with the Virginia omnibus clause:

“C. WE WILL NOT COVER - EXCLUSIONS This insurance does not apply to: . . .

7. Any covered auto while leased or rented to others. . .”

Accordingly, Defendant’s Motion for Summary Judgment shall be GRANTED, and Plaintiff’s Motion for Summary Judgment must be DENIED.

⁵ Family auto policies do not cover third-parties who are in the business of selling and servicing automobiles presumably because insurance companies would rather not bear the risk of such coverage. Whether this explanation is true or not, it is nonetheless a rational outcome.

U.S. District Court

ENTERED:

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v.)	ORDER
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OAK RIDGE IMPORTS, INC., et al.,)	
)	
Defendants.)	JUDGE NORMAN K. MOON

For the reasons articulated in the accompanying MEMORANDUM OPINION, Plaintiff's Motion for Summary Judgment shall be, and hereby is, DENIED. Defendant's Motion for Summary Judgment shall be, and hereby is, GRANTED.

It is so ORDERED.

The Clerk of the Court is directed to send certified copies of this MEMORANDUM OPINION and ORDER to all Counsel of record.

U.S. District Court

ENTERED: _____