



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

MARTHA IRENE GONZALEZ :  
LANKFORD, and UNITED FARM :  
FAMILY INSURANCE COMPANY :

Defendants Below, :  
Appellants, :

v. :

MARIE SAINT HILAIRE, :  
Individually, and as wife and :  
Administratrix of the Estate of :  
Therisson Augustin, and MARCEA :  
AUGUSTIN, and EDNEST :  
AUGUSTIN, :

Plaintiffs Below. :  
Appellees. :

No.: 102, 2018

Court Below: Superior Court  
of the State of Delaware

C.A. No.: K16C-12-026 JJC

**ANSWERING BRIEF OF APPELLEES MARIE SAINT HILAIRE,  
MARCEA AUGUSTIN, AND EDNEST AUGUSTIN**

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## NATURE OF PROCEEDINGS

Appellees Marie Saint-Hilaire, individually and as wife and administratrix of the Estate of Therisson Augustin; Marceau Augustin; and Ednest Augustin (“Plaintiffs/Appellees”) filed their Complaint for Declaratory Judgment in this action on December 30, 2016 against Martha Irene Gonzalez Lankford (“Lankford”) and Appellant United Farm Family Insurance Company (“Farm Family”). All parties agreed that no disputes of fact existed. An initial Stipulated Statement of Facts was submitted to the trial court. Then, based on the Stipulated Statement of Facts, the parties submitted briefs on the singular question of law presented to the trial court for decision.

Specifically, the trial court was asked to interpret the application of a Farm Family umbrella policy. Appellees sought a declaration that they were entitled to access the umbrella policy to the extent that their damages exceeded other applicable insurance coverage. This legal position was based on the umbrella policy’s language. The trial court agreed with Appellees. The trial court declared that the umbrella policy issued by Farm Family can be accessed by Appellees, and Farm Family is legally obligated to pay damages to Appellees in excess of \$250,000. Farm Family filed the instant appeal.

## SUMMARY OF ARGUMENT

1. **ADMITTED.**        There has been and is no dispute that the Umbrella Policy has a stated primary insurance requirement of \$250,000.
  
2. **DENIED.**            Per the terms of the Umbrella Policy drafted by Farm Family, there is no language that requires actual payment of any underlying primary insurance amount of \$250,000. The language of the Umbrella Policy requires that, when an insured does not obtain the requisite amount of underlying coverage, Farm Family will be required to indemnify the insured for damages fixed above \$250,000.
  
3. **DENIED.**            Per the terms of the Umbrella Policy drafted by Farm Family, there is no language that requires actual payment of the underlying primary insurance amount of \$250,000. The Umbrella Policy's triggering mechanism to Farm Family's coverage obligation is damages in excess of \$250,000 – not actual payment of the \$250,000.

## STATEMENT OF FACTS<sup>1</sup>

On December 30, 2014, Therisson Augustin (“Augustin”) was travelling southbound on Seaford Road just outside of Laurel, Delaware in Sussex County. Martha Irene Gonzalez Lankford (“Lankford”) had been travelling on Oneals Road, and was stopped at the intersection of Oneals Road and Lankford Road. Lankford entered Seaford Road from the stop sign, and the two vehicles collided. As a result of the accident, Augustin suffered injuries and subsequently died.

At the time of the accident, Lankford’s vehicle, which was owned by her husband, Douglas Robert Lankford, was insured by United Farm Family Insurance (“Farm Family”). This policy provided for \$100,000 per person liability coverage. At the time of the accident, Lankford and her husband lived with her husband’s father, Robert Alan Lankford (“father-in-law”), in Delmar, Maryland. Father-in-law also owned a one million dollar umbrella policy issued by Farm Family (“the Umbrella Policy”).<sup>2</sup> The Umbrella Policy outlines, in several sections of the policy, that it will provide coverage and pay out damages in this type of factual circumstance.<sup>3</sup>

On December 28, 2015, Plaintiffs entered into a Settlement Agreement and Release whereby they accepted the \$100,000 policy limits from Farm Family in

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<sup>1</sup> Much of this Statement of Facts tracks the Stipulated Statement of Facts submitted by the Appellants at A8-A11.

<sup>2</sup> A12-45.

<sup>3</sup> A20, A27, A28.

partial settlement of their claims against Lankford and agreed to release Lankford from all further personal liability. In exchange for the limited release of liability against Lankford describe above, Lankford and father-in-law assigned to the Plaintiffs all rights they would have for insurance benefits available under the Umbrella Policy as a result of the accident of December 30, 2014. State Farm also tendered its UIM limits to Plaintiffs.

Plaintiffs next sought compensation from the Umbrella Policy under its explicit terms that it would pay out damages in the instant factual situation. The parties agree that Lankford qualifies as an insured pursuant to the terms of the Umbrella Policy. The parties further agree that Maryland law applies to the interpretation and application of the Umbrella Policy. The parties further agree that this legal issue is an issue of first impression in Maryland.

## ARGUMENT

**I. The Decision of the Superior Court should be affirmed because Farm Family is required to provide coverage and pay damages pursuant to the terms of its policy.**

**A. Question Presented**

Is Farm Family's obligation to provide umbrella coverage triggered by damages in excess of its underlying coverage requirement?

**B. Scope of Review**

Appellee agrees that the trial court's decision is to be reviewed *de novo* for errors of law. Sullivan v. Mayor of Elsmere, 23 A.3d 128 (Del. 2011).

**C. Merits of Argument**

The trial court based its declaratory judgment on its review and interpretation of the terms and conditions of the Umbrella Policy. The trial court examined each of the defined terms, conditions, and sections referenced by the parties in making their arguments. This examination, by necessity, involved dissection of the definition of "primary insurance."

The Umbrella Policy defines primary insurance as "any insurance collectible by the insured which covers the insured's liability for personal injury."<sup>4</sup> The trial court highlights, in its review of essential policy terms, that the verbatim definition

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<sup>4</sup> A19.



of primary insurance “does not reference the amount of coverage necessary other than to refer to that which is ‘collectible.’”<sup>5</sup> This statement by the trial court is accurate. There is no reference to a numeric value or required dollar figure amount in the actual language defining what constitutes primary insurance.<sup>6</sup> There is also no reference to a numeric value or required dollar figure amount anywhere in the Part I – Definitions section of the Umbrella Policy.

Farm Family misconstrues the trial court’s definitional analysis of “primary insurance” as a negation of the Umbrella policy’s requirement that there be \$250,000 in underlying liability coverage. In fact, the trial court accepts as a Stipulated Fact, pursuant to oral argument before it below, that \$250,000 per person bodily injury coverage is required by the Umbrella Policy.<sup>7</sup> However, the trial court does emphasize that any monetary or numeric value attached to primary insurance, by necessity, derives from other language in the Umbrella Policy.<sup>8</sup>

After analyzing the definition of primary insurance under the Umbrella Policy, the trial court examined the three relevant portions of the Umbrella Policy: Part II – Coverages, Part IV – Limit of Liability, and Part IV – Primary Insurance

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<sup>5</sup> Appellants’ Ex. A, p. 4, 5.

<sup>6</sup> A19.

<sup>7</sup> Appellants’ Ex. A, p. 3.

<sup>8</sup> Appellants’ Ex. A, p. 4, 5.

Requirements.<sup>9</sup> Part II of the Umbrella Policy, which addresses coverages, provides that:

We will pay on an INSURED's behalf DAMAGES for which an INSURED becomes legally responsible due to PERSONAL INJURY or PROPERTY DAMAGE caused by an OCCURRENCE. *This coverage applies only to DAMAGES in excess of the PRIMARY INSURANCE or the RETAINED LIMIT, whichever applies.*<sup>10 11</sup>

This section of the Umbrella Policy highlights that the coverage afforded by the Umbrella Policy is conditional – and only applies in certain situations. The applicable situation here is for damages “in excess of the Primary Insurance.”<sup>12</sup>

Part IV of the Umbrella Policy details Farm Family's coverage exposure. The Umbrella Policy enumerates various contemplated factual and contractual situations requiring Farm Family to provide coverage and pay out damages. Under this section, Part IV, of the Umbrella Policy, Farm Family forecasts complex scenarios in which compliance, cooperation, primary insurance, excess coverage, and multiple policies might intersect to complicate its exposure under the Umbrella Policy. In short, Farm Family outlines its hypothetical list of insurance exposures to inform its insured(s) how the Umbrella Policy will react to those circumstances.

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<sup>9</sup> Appellants' Ex. A, p. 4-5.

<sup>10</sup> A20 (emphasis added).

<sup>11</sup> The parties agree that the Retained Limit contingency does not apply to the circumstances in this case.

<sup>12</sup> A20.

The relevant portion of Part IV of the Umbrella Policy outlines that:

Regardless of the number of INSUREDS, claims[,] or injured persons, the maximum we pay as DAMAGES resulting from one OCCURRENCE shall not exceed the amount stated in the declarations page, subject to the following . . . [i]f the PRIMARY INSURANCE terminates or *the limits are less than the limits shown in the declarations page*, we pay DAMAGES we would have paid as if the PRIMARY INSURANCE had not been terminated or if *its limits had not been less than the limits shown in the declarations page*.<sup>13</sup>

Finally, Part V of the Umbrella Policy, which discusses Primary Insurance Requirements, emphasizes Policy 2's mandate that all insureds have and maintain Primary Insurance coverage at or above the limits shown on the declarations page – in this case, \$250,000. Specifically, Part V reads:

This policy requires that all INSUREDS have and maintain the PRIMARY INSURANCE coverage at or above the limits of liability shown on the declarations page . . . . If the PRIMARY INSURANCE does not provide at least the limits indicated, you will be responsible for the loss up to the required limits. We will only pay for the amount of loss which is: (1) above the required PRIMARY INSURANCE limits.<sup>14</sup>

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<sup>13</sup> A27 (emphasis added).

<sup>14</sup> A28.

The definition of primary insurance, as noted by the trial court, does not include a specific amount of underlying coverage. The trial court notes, “[s]eparate from that definition inserted throughout the [Umbrella] policy, Part V of the [Umbrella] policy places an independent obligation upon the insured to maintain the \$250,000 per person bodily injury coverage referenced in the declaration page.”<sup>15</sup> The parties agree that primary insurance in this case refers to the underlying automobile liability policies. The parties further agree that the Umbrella Policy has a \$250,000 primary insurance requirement.

Under Maryland law, insurance policies are construed like any other contract, and are to be viewed as a whole.<sup>16</sup> “In determining the meaning of contractual language, Maryland courts have long adhered to the principle of the objective interpretation of contracts.”<sup>17</sup> “The primary principle of construction is to apply the terms of the insurance contract itself.”<sup>18</sup> Furthermore, under the objective interpretation principle, “where the language employed in a contract is unambiguous, a court shall give effect to its plain meaning[,] and there is no need

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<sup>15</sup> Appellants’ Ex. A, p. 5.

<sup>16</sup> Empire Fire & Marine Insurance Co. v. Liberty Mut. Ins. Co., 699 A.2d 482, 493 (Md. Ct. Spec. App. 1997)(citing North River Ins. Co. v. Mayor & City Council of Baltimore, 680 A.2d 480, 483 (Md. 1996).

<sup>17</sup> Kendall v. Nationwide Ins. Co., 702 A.2d 767, 770-71 (Md.1997).

<sup>18</sup> Id. at 770-71.

for further construction by the court.”<sup>19</sup> Maryland law generally requires giving legal effect to the clear terms of the contract.<sup>20</sup>

Here, there is no ambiguity about Farm Family’s statement about the terms and conditions of its coverage and payment for damages. The Umbrella Policy is, as the trial court pointed out, conditionally triggered.<sup>21</sup> The Umbrella Policy informs its insured, in Parts IV and V of the policy, as to how Farm Family will perform in the instant factual scenario. Part IV provides that, even if the insured does not obtain the required underlying coverage of \$250,000, Farm Family will provide coverage and pay damages as “if its limits had not been less than the limits shown in the declarations page.”<sup>22</sup> Part V then reminds the insured that failure to obtain the requisite amount of underlying coverage will result in limited indemnity to the insured. In other words, Farm Family must provide coverage if the insured’s legal liability for damages exceeds \$250,000. As the trial court summarized:

Farm Family’s coverage obligation is conditionally triggered. The [Umbrella] policy provides (1) the insured had the obligation to purchase \$250,000 of relevant underlying coverage, and (2) the consequence if the insured did not purchase that amount. Namely, the consequences of Mrs. Lankford’s failure is Farm Family’s

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<sup>19</sup> ABC Imaging of Washington, Inc. v. The Travelers Indem. Co. of America, 820 A.2d 628, 632-33 (Md. Ct. Spec. App. 2003) (quoting Wells v. Chevy Chase Bank, 768 A.2d 620, 630 (Md. 2001)).

<sup>20</sup> Calomiris v. Woods, 727 A.2d 358, 361 (Md. 1999).

<sup>21</sup> Appellants’ Ex. A, 14.

<sup>22</sup> A27.

relief from its duty to indemnify Mrs. Lankford for damages fixed at less than \$250,000. Since the policy provides that the insured must absorb this gap, the injured parties, as assignees, must likewise absorb this gap. This will result in a credit of \$150,000 toward any damages ultimately assessed over \$100,000 in the tort action. Accordingly, Farm Family's obligation to indemnify its insured cannot be determined until final disposition of an underlying action that fixes the amount of damages.<sup>23</sup>

The Umbrella Policy's obligation – Farm Family's obligation – to pay damages in no way correlates to any actual payment by or on behalf of the insured of \$250,000. The Umbrella Policy's coverage is triggered by the fact that the damages exceed \$250,000, which, given that there has never been argument proffered to the contrary, is undisputed.

There is no language contained in the Umbrella Policy that requires that \$250,000 actually be paid by or on behalf of the insured. Farm Family, however, points to language contained in Part II, Part IV, and Part V of the Umbrella Policy to support a contrary proposition.<sup>24</sup> An examination of the language to which Farm Family points reveals its deficiency.

Part II of the Umbrella Policy reads that Farm Family will pay damages “for which an insured becomes legally responsible due to personal injury or property

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<sup>23</sup> Appellants' Ex. A, p. 8-9.

<sup>24</sup> Appellants' Op. Br. 9-10.

damage caused by an occurrence,” but only for “damages in excess of the primary insurance.”<sup>25</sup> Part IV of the Umbrella Policy outlines that Farm Family will only pay after the limits of any applicable primary and excess insurance “have been paid by you or on your behalf.”<sup>26</sup> Part V reaffirms that, “if the primary insurance does not provide at least the limits indicated,” the insured is “responsible for the loss up to the required limits.”<sup>27</sup>

Farm Family argues that this language mandates actual payment by the insured of \$250,000 before Farm Family has any obligation to pay under the Umbrella Policy. Farm Family misinterprets its own policy language and terms. Specifically, Farm Family defines and utilizes “primary insurance” and “\$250,000” as interchangeable terms under the Umbrella Policy. They are not.

As the trial court pinpointed, the Umbrella Policy’s definition of primary insurance does not include a defined, numerical amount of underlying coverage.<sup>28</sup> The primary insurance definition refers only to “any insurance collectible by the insured.”<sup>29</sup> Any reference to \$250,000 of required underlying coverage exists outside the actual definition of primary insurance.

With this distinction highlighted, Farm Family’s insistence on enforcement of the unequivocal pronouncements of the Umbrella Policy becomes redundant.

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<sup>25</sup> A20 (emphasis added).

<sup>26</sup> A27.

<sup>27</sup> A28.

<sup>28</sup> Appellants’ Ex. A, p. 5.

<sup>29</sup> A20.

What the actual policy language mandates is payment of any insurance collectible by the insured, which has already occurred pursuant to the Stipulated Facts present in this case. Therefore, under Part II of the Umbrella Policy, Farm Family becomes obligated to pay damages “in excess of the primary insurance,” or, rather, “in excess of *any insurance collectible by the insured which covers the insured’s liability for personal injury.*” That amount is \$100,000 by stipulation – not \$250,000.

Likewise, under Part IV of the Umbrella Policy, the Umbrella Policy pays “only after the limits of the primary insurance . . . have been paid by you or on your behalf.”<sup>30</sup> Stated another way, the Umbrella Policy pays “only after the limits of *any insurance collectible by the insured which covers the insured’s liability for personal injury . . . have been paid by you or on your behalf.*” Again, that amount, \$100,000, was already paid on behalf of the insured.

Finally, Part V of the Umbrella Policy reminds that, “if the primary insurance does not provide at least the limits indicated,” the insured remains responsible for the loss up to the required limits, which all parties agree is \$250,000. Restated, if “*any insurance collectible by the insured which covers the insured’s liability for personal injury*” does not provide for at least \$250,000 of coverage, Farm Family will only pay for the amount of loss which is above that

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<sup>30</sup> A27.



\$250,000 amount. This section confirms that Farm Family's coverage obligation is triggered irrespective of a disparity in "insurance collectible by the insured" and a "required, underlying coverage amount."

Mrs. Lankford did not, in fact, have \$250,000 of underlying coverage. She had \$100,000. This \$150,000 difference does not relieve Farm Family of its legal duty to pay under the language of the Umbrella Policy it drafted. The undisputed damages in this case – from a death – obligate Farm Family to pay damages in excess of the \$250,000.

**II. The Decision of the Superior Court should be affirmed because Farm Family cannot obviate its contractual obligations without policy language that permits it to do so.**

**A. Question Presented**

Can Farm Family fail to provide coverage to an insured when that coverage is mandated by the terms of the policy?

**B. Scope of Review**

Appellee agrees that the trial court's decision is to be reviewed *de novo* for errors of law. Sullivan v. Mayor of Elsmere, 23 A.3d 128 (Del. 2011).

**C. Merits of Argument**

As the trial court ascertained, Farm Family references no provision in its Umbrella Policy that provides that a failure to obtain the listed underlying limits results in umbrella coverage not being triggered.<sup>31</sup> There is no language contained anywhere in the Umbrella Policy that provides for anything other than coverage contingent upon damages in excess of \$250,000. Farm Family drafted an umbrella policy premised upon *collectible* primary insurance – not primary insurance *defined by a set limits amount that must be exhausted*.

As propounded by both parties, Maryland law requires that, “unless a statute, regulation, or public policy would be violated, the first principle of

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<sup>31</sup> Appellants' Ex. A, p. 11.

construction of insurance policies it to apply the terms of the contract.<sup>32</sup> “The written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract.”<sup>33</sup> Whenever possible, each clause, sentence, or provision shall be given force and effect.<sup>34</sup>

The Umbrella Policy pronounces its obligation to pay damages throughout the Umbrella Policy. We will pay damages we would have paid as if the primary insurance limits had not been less than the limits shown in the declarations page.<sup>35</sup> We pay only those damages which exceed the required limits of the primary insurance as shown in the declarations page.<sup>36</sup> We will only pay for the amount of loss which is above the required primary insurance limits.<sup>37</sup> These repeated pronouncements of Farm Family’s duty and obligation to pay damages in excess of \$250,000 contain no reference to, requirement of, or contingency upon actual payment of a sum certain before coverage is triggered.

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<sup>32</sup> Mutual Fire, Marine & Inland Ins. Co. v. Vollmer, 508 A.2d 130, 133 (Md. 1986).

<sup>33</sup> Maryland Cas. Co. v. Blackstone Int’l Ltd., 114 A.3d 676, 681 (Md. 2015).

<sup>34</sup> Empire Fire, 699 A.2d at 494 (citing Sullins v. Allstate Ins. Co., 667 A.2d 617, 619 (Md. 1995)).

<sup>35</sup> A27.

<sup>36</sup> A27.

<sup>37</sup> A28.

As noted by the trial court, Farm Family, as the drafter of the Umbrella Policy, could easily have included language in the policy providing for the outcome for which it advocates.<sup>38</sup> The trial court hypothesizes:

For instance, had the policy included in the definition of primary insurance a phrase such as, “and at limits no less than those required in the declaration page,” that revised definition would have engendered a different outcome. The Court is unable to read such a provision into the contract, however, and it must give full force and effect to all of the policy’s provisions.<sup>39</sup>

In applying Maryland law regarding insurance contract interpretation and construction, the trial court proffered the only outcome available to it under the law – to give effect to the express terms of the Umbrella Policy. The express terms of the Umbrella Policy mandate Farm Family’s legal responsibility for damages above \$250,000.

Finally, Farm Family’s attempt to compare the instant Umbrella Policy language to Maryland’s statutory scheme of underinsured motorist (“UIM”) coverage is misplaced. Citing statutory language and case law, Farm Family’s analysis centers around UIM’s general rule that underlying insurance coverage must be both exhausted and paid out before UIM coverage is triggered. However, Farm Family, again, misses the importance of specificity of language.

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<sup>38</sup> Appellants’ Ex. A, p. 14.

<sup>39</sup> Appellants’ Ex. A, p. 14.

Exhaustion is distinct from actual payment. As Appellants' brief highlights, "exhaustion contemplates the complete use of a primary liability policy before resort to any secondary or excess policy."<sup>40</sup> Exhaustion is a triggering mechanism for coverage. Here, damages are the triggering mechanism for coverage – as spelled out by Farm Family's Umbrella Policy.

Farm Family drafted the Umbrella Policy. If what Farm Family intended was "actual payment" of \$250,000, it was within Farm Family's power to insert the words "actual payment" or some other language into the Umbrella Policy's terms and definitions. Farm Family failed to do so. Instead, the Umbrella Policy speaks to the instant situation.

Farm Family contemplated a factual scenario in which an insured's underlying liability policy or underlying coverage might be less than \$250,000 – and then wrote how it would respond to that scenario into its Umbrella Policy.<sup>41</sup> The Umbrella Policy mandated that it would pay damages fixed at over \$250,000. Coverage is triggered. Farm Family's responsibility is triggered. Nothing has been presented by Farm Family to obviate that legal obligation under a contract for which it bargained.

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<sup>40</sup> Appellants' Op. Br. 16-17.

<sup>41</sup> See A20, A27, A28.

**CONCLUSION**

For the foregoing reasons, Appellees request that the decision of the Superior Court, declaring that Farm Family is obligated to pay damages to Appellees in excess of \$250,000, be affirmed.

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