

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

SHANE A. PULLAM, as Personal
Representative of the Estate of
LAURA ELIZABETH PULLAM, and
As next friend of their child,
VICTORIA CLARABELLE PULLAM

Plaintiff,

v.

ROBERT ALLEN CUMBIE;
SPARTA INSURANCE COMPANY,
ALFA MUTUAL INSURANCE
COMPANIES; et al.,

Defendants.

CIVIL ACTION NO.: 2011-901291

PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiff, by and through undersigned counsel, and submits the following brief in support of his Motion for Partial Summary Judgment on the issue of coverage for uninsured/underinsured benefits pursuant to the policy of insurance issued by Defendant Sparta Insurance Company to Laura Pullam's employer. As grounds in support thereof, Plaintiff states as follow:

NARRATIVE SUMMARY OF UNDISPUTED MATERIAL FACTS

The present motion involves a question of coverage that is clearly answered under well-settled Alabama law. The complete facts of this case reveal a paramedic who lost her life while answering the call of duty and helping the people of our community. The case involves a defendant driver who made choice after choice to ignore other drivers, ignore the weather, and ignore law enforcement. These choices led to him striking and killing paramedic Laura Pullam who was simply doing her job and helping another motorist. The totality of the facts paints an egregious picture of recklessness. Yet, the present motion involves a simple coverage issue important to this family who lost a wife and mother. As such, the undersigned has presented a more abbreviated version of undisputed facts material to that coverage issue.

1. On December 15, 2010, Laura Elizabeth Pullam was employed by Lifestar Response of Alabama, Inc., as a paramedic. (Company known locally as “Care Ambulance”)(See, Parties prior Workers’ Compensation Agreement and Joint Petition in CV-2011-1256 filed in Montgomery County Circuit Court).
2. The morning of December 15, 2010, was icy. (Dep. Deputy Cox, p. 10). Road conditions were hazardous. (Id.). Care Ambulance had received numerous calls of accidents. (Dep. Jeniece Oliver, pp. 14-15).
3. Laura Pullam and her partner that day Chester Odom had worked the night

shift in their ambulance. They were scheduled to get off work at 8 am that morning. (Dep. Odom, pp. 37-38). However, Care Ambulance crews were already handling numerous accidents and "all the Montgomery units were tied up." (Dep. Odom, p. 38). So, Laura and Chester decided to continue working beyond their shift "just to help out." (Dep. Odom, p. 38).

4. Laura and Chester responded to a wreck in Fort Deposit. (Dep. Odom, p. 39). Then, they contacted Care Ambulance's dispatch office and were told help was needed on Interstate 65 in Montgomery County. (Dep. Odom, p. 39). Laura and Chester drove up the Interstate, passing an accident already being serviced by a Care Ambulance crew. (Dep. Odom, p. 39). Just beyond this first accident ("First Accident") was a second one ("Second Accident"). (Dep. Odom, p. 40)¹. Laura and Chester proceeded to the Second Accident where a truck was laying on its side off the Interstate. (Dep. Odom, pp. 40-42). They were the first responders at this Second Accident. (Dep. Odom, p. 41).
5. Upon arriving at the Second Accident, Laura and Chester parked and positioned their ambulance so that they could continue using it as a traffic safety block while on the ground at the scene. (Dep. Odom, pp. 29-30). In

¹Chester Odom said the second accident was about 30 yards beyond the first one. (Dep. Odom, p. 40). The State Troopers who investigated Laura Pullam's death drew a diagram showing both this first non-involved accident and the second accident being attended by Laura when she was struck and killed. (Dep. of Trooper taken but not yet transcribed).

his testimony, Chester stated he had been trained to use the ambulance in this manner for safety while at accident scenes. (Dep. Odom, p.29).

According to Deputy Henry Cox, “the first and foremost thing they teach you is how to position your unit to secure the scene. That’s the number one thing is secure the scene of the accident.” (Dep. Deputy Cox, p. 20).

6. Laura and Chester then called Care Ambulance dispatch. (Dep. Odom, p. 42). Before exiting the ambulance, the partners made sure the flashing lights were activated. (Dep. Odom, pp. 42-43). Again, the responders used the ambulance for its flashing warning lights while on the ground at the scene. (Dep. Odom, pp. 25-26). Laura and Chester used the ambulance’s strobe warning lights the entire time they were on the ground at this fatal scene. (Dep. Odom, pp. 30,43).
7. Laura and Chester continued to use the ambulance engine while outside the vehicle at the scene. (Dep. Odom, p. 23). This is necessary for several reasons related to the patient being attended on the ground, including the need to have quick transport to the hospital and the need to have lights inside the ambulance for patient care. (Dep. Odom, pp. 22-23). They also continued to use the ambulance’s heater while on the ground at the scene to keep the vehicle warm for potential accident victims. (Dep. Odom, pp. 43-44). Finally, the ambulance was used as a tracking device while Laura and

Chester were on the ground at the scene, continuing to transmit back to base their location. (Dep. Odom, pp. 26-27).²

8. It is undisputed that emergency responders continue to use their vehicles while outside on the scene of an accident. According to Deputy Cox, Care Ambulance worker Chester Odom, and Trooper Darryl Phillips, they are all trained and required to continue using the vehicles in order to perform parts of their jobs. (See, Depos submitted of each witness). Moreover, in working accidents, paramedics continue using their ambulances to store medical equipment needed on the scene and to load victims for transport.
9. Laura and Chester began working the scene of this Second Accident. They discovered a man still in the overturned truck. (Dep. Odom, p. 40). This victim was complaining of back pain. (Id.).³
10. It is at this point that Robert Cumbie arrives. Cumbie is driving down Interstate 65 in a 3/4 ton Silverado pick-up truck. (Dep. Cumbie, p. 19).

Cumbie knew his truck was bigger than a normal truck and not as easy to

²This is an important continuing use. Because of this continuing use, the ambulance company was able to dispatch help to the exact scene when Laura was struck in an effort to save her life.

³Laura and Chester's exact activities are unclear. They were working a scene with an accident victim. Following Laura's death, Chester related to the State Troopers that she was returning to the ambulance for supplies when struck by Cumbie. (Dep. Trooper Phillips and Investigative Report). Later, Chester indicated that Laura had walked back up to the ambulance and was standing near it for better reception in an effort to call Care Ambulance dispatch for more help.

maneuver on the highway. (Dep. Cumbie, pp. 19-20). Cumbie knew it was cold enough that morning to make ice. (Dep. Cumbie, p. 28).

11. When Cumbie passed the First Accident, Deputy Cox tried to get him to slow down. According to Deputy Cox:

At that time, I'm walking to my car and going proceed on down the road to the next one. And I look up, and I see this vehicle coming down the road in the left lane. Most everybody sees the lights. I mean, I've got my car positioned on the shoulder with blue lights. It was an unmarked car, but I had blue lights all in the car. The trooper's behind me with his blue lights on. The ambulance is sitting in the left lane with their emergency lights on up ahead of me. So I step up in the roadway and just motion and holler, you know, slow down. So this subject moves to the right lane, slows down. But once he gets past my car, he engages his -- his speed and moves back to the left lane. And once he does --

(Dep. Deputy Cox, pp. 12-13).

Once he gets past my car, he accelerates and moves into the left lane which is the lane that the ambulance is going to be positioned in once you cross the bridge south of my location.

(Dep. Deputy Cox, pp. 14-15).

12. Cumbie accelerated after passing Deputy Cox. (Dep. Deputy Cox, pp. 14-15). He crossed the short bridge (which was icy) and attempted to swerve back out of the left lane to avoid Laura Pullam's ambulance with its lights

flashing. He lost control, went off the Interstate, and killed Laura.⁴ Later, the Alabama State Troopers pulled the black box on Cumbie's truck. The black box recorded him driving 85 miles per hour seconds before the deadly crash. (Dep. Trooper Phillips - Depo to be provided upon transcription).⁵⁶

13. The Defendant Sparta Insurance Company ("Sparta") issued coverage to Care Ambulance for its Alabama-based fleet of ambulances. (Exh. A). The policy lists 63 covered Alabama ambulances. (Exh. A).
14. In the Liability Coverage section of the Sparta policy, it specifically defines who is an "insured." The Sparta policy states as follows:

SECTION II – LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance, or use of a covered "auto".

⁴It is difficult to determine exactly where Laura was struck because Cumbie dragged her with his 3/4 ton truck down the slope.

⁵Trooper Phillips testified that Laura Pullam could likely have survived if Cumbie had not been driving at such excessive speeds when he left the roadway.

⁶Despite a black box reading 85 mph and a Deputy waving him to slow, Cumbie remains unrepentant for killing a mother and wife. He escaped jail time in the criminal proceeding. In this proceeding, he actually testified in deposition that he committed NO driving errors and was NOT at fault for the death. (Dep. Cumbie, p. 9)

...

1. Who Is An Insured

The following are “insureds”:

- a. You for any covered “auto”.
- b. Anyone else while using with your permission a covered “auto” you own, hire or borrow except:

(See, Exhibit A – The entire policy is attached as an Exhibit for the Court.

The cited language is contained on page 50 of the document.) (The policy defines “you” and “your” to mean the Named Insured in the declarations page. See, preceding page of policy which is page 49 of the complete document. It is undisputed that Laura Pullam’s employer Care Ambulance is the Named Insured on the declarations page. As such, Laura Pullam was an insured for liability purposes under Section A.1.b.).

- 15. It is undisputed that the policy extended liability coverage to Laura Pullam for her activities as a paramedic using this ambulance. (See, Liability Provisions, above.)⁷

⁷The policy contains a subsequent and separate endorsement titled Alabama Uninsured Motorists Coverage that attempts to narrow the definition of “insured” solely for payment of uninsured/underinsured motorist coverage. However, it is illegal under Alabama law for a policy to provide UIM coverage that is more narrow than Liability Coverage. Plaintiff will address this prohibition in his brief.

LAW / ARGUMENT

I. STANDARD OF REVIEW

Rule 56 of the Alabama Rules of Civil Procedure provides that Summary Judgment is proper where there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *King v. Breen*, 560 So.2d 186 (Ala. 1990). In the case at bar, the issues are simple. First, was Laura Pullam covered under the liability portions of the subject policy? Second, in such situations, does Alabama law require that UIM coverage be equally broad? The sole fact material to this issue is the language in the portion of the subject policy providing liability coverage.

Once the movant makes a prima facie showing that no genuine issue of material fact exists, then the burden shifts to the party opposing summary judgment to proffer evidence demonstrating the existence of a material fact. *Grider v. Grider*, 555 So. 2d 104 (Ala. 1989). The non-movant must meet the burden by substantial evidence. *See, Bass v. Southtrust Bank of Baldwin County*, 538 So. 2d 794 (Ala. 1989). Under this substantial evidence test, the non-movant must present “evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the facts sought to be proved. *West v. Founders Life Assur. Co. of Florida*, 547 So. 2d 870, 871 (Ala. 1989).

II. LAURA PULLAM WAS AN INSURED UNDER THE LIABILITY PROVISIONS OF THE SPARTA POLICY AT THE TIME OF HER DEATH

In the case at bar, the liability language in Care Ambulance's policy issued by Sparta is without dispute. That language expressly states that Laura Pullam is an insured for liability purposes if she was using the ambulance with permission at the time of her death.⁸

On the morning of December 15, Laura Pullam was working for Care Ambulance, taking her ambulance to accident scenes, and performing her required paramedic duties. Indeed, in the workers' compensation death claim, Care Ambulance agreed that she was performing her normal job duties as an ambulance paramedic at the time of her death.

Those duties required Laura to use the ambulance. This use involved a means and mode of transportation but it was not limited to that. It also involved a continuous and necessary use at accident scenes in order to perform all the tasks of safely attending to victims.

This fact is one in which the witnesses, both those who work for Care Ambulance and other law enforcement personnel, all agree. Indeed, Laura's partner Chester Odom explained how they were trained to use the ambulance while on the ground at an accident scene attending to victims. According to Chester, they were using the ambulance for

⁸"Use" or "using" is not restricted to driving in the policy. As Trooper Phillips testified, emergency responders are using their vehicles while on the ground at traffic scenes.

multiple purposes at the moment Laura was killed. Those current uses are undisputed and included:

1. Using the ambulance's flashing lights as warning devices as Laura and Chester worked outside at the scene (Dep. Odom, pp. 25-26);
2. Using the ambulance's body as a continuous traffic block to direct oncoming traffic away from them while Laura and Chester worked outside at the scene (Dep. Odom, pp. 29-31);
3. Using the ambulance's engine to keep the vehicle running for emergency movement while Laura and Chester assessed and stabilized any accident victims outside at the scene (Dep. Odom, p. 23);
4. Using the ambulance's heater to keep the vehicle warmed for the care of victims attended by Larua and Chester outside at the scene (Dep. Odom, pp. 43-44);
5. Using the ambulance's GPS to transmit continuously the work location of Laura and Chester while they performed their duties outside at the scene (When Laura was struck by Cumbie at this accident scene, Care Ambulance used this GPS device to direct another paramedic crew to the exact scene. Dep. Jeneice Oliver, p. 18) ;
6. Using the ambulance's body as a storage and retrieval area for medical equipment and supplies while Laura and Chester attended to accident victims outside at the scene (Dep. Odom, p. 56).

Throughout her work at accident scenes, paramedic Laura Pullam continuously used her ambulance. It was an essential part of her job.

In his recent deposition, Alabama State Trooper Darryl Phillips expressed that he is often outside his vehicle at traffic scenes and that he continues to use his patrol vehicle

while outside at scenes as a necessary part of the job. (Deposition not yet transcribed).⁹

No provisions of the subject policy appear to qualify or limit the meaning or definition of “use” as it relates to the ambulance.¹⁰

Alabama law is well-settled that “[a] contract of insurance will be construed strictly against the insurer and liberally in favor of the insured.” *Roberts v. American Nat. Property and Cas. Co.*, 976 So. 2d 1005, 1007 (Ala. 2007). In the case of UIM benefits, our Courts have clearly expressed the liberal purposes of the statute to compensate those injured and damaged. Here, the witnesses agree that the ambulance was being used at the time Laura Pullam was killed and no policy provisions limit this normal, understood meaning.

In the case at bar, it is without dispute that Laura Pullam continued to use her ambulance at the accident scene exactly as trained. Moreover, under the specific policy language in Sparta’s policy, she possessed liability coverage at the time.¹¹

⁹It is important to remember that Alabama has a specific statute which contemplates that emergency responders will continue to use their vehicles for visible warnings while out on a scene and that oncoming drivers are required to heed those visible warning lights.

¹⁰An ambulance is different than a normal passenger vehicle. Paramedics spend significant time using the vehicle for multiple purposes at accident scenes as a normal and necessary part of their jobs. Thus, paramedic workers face different issues and risks than a normal driver on our highways.

¹¹The undersigned stands ready, willing, and able to brief the use by Laura Pullam of the subject ambulance in exhaustive detail. However, that issue has been admitted by all the witnesses deposed, including several witnesses of Care Ambulance.

III. IN ALABAMA, THE SCOPE OF UNINSURED COVERAGE MUST BE COEXTENSIVE WITH LIABILITY COVERAGE

In Alabama, the provision of UIM coverage is mandated by statute. In pertinent part, that statute begins:

No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death . . .

Ala. Code § 32-7-23. The mandate of UIM coverage serves a valuable and necessary purpose to our citizens. “Uninsured motorist coverage is intended to provide financial recompense to innocent persons who are injured and to dependents of those who are killed because of the wrongful conduct of uninsured motorists. . .” *Gulf American Fire and Casualty Company v. Gowan*, 218 So. 2d 688, 691 (1969).

As our Supreme Court stated years ago in *Gowan*, UIM benefits “came into being as the result of ‘public concern over the increasingly important problems arising from injuries by motorists who are uninsured and financially irresponsible.’” *Id.* Here, a paramedic was killed while on the scene of an earlier accident with her ambulance. A family lost a mother and wife to a reckless driver with far too inadequate coverage. This

is precisely the conduct our UIM laws were designed to protect. Yet, the present Defendant has refused to accept coverage based solely on limiting language outside the liability portions of the policy which attempt to narrow greatly the class of insureds within the policy's liability portions. If this construction which is contrary to Alabama law is allowed, the purposes of our UIM laws in this case will have been thwarted in the worst possible way – by denying our emergency responders and their families the protections of our insurance laws while they are on our highways performing their jobs.

The legal question in this case is simple. Can Laura Pullam who is clearly covered under the liability portions of the Sparta policy be excluded from UIM coverage under the same policy? The answer is well-settled by Alabama law and is a clear, no. Laura Pullam is covered by the Sparta policy for UIM benefits.

On several occasions, Alabama's Supreme Court has re-iterated the principle that:

[I]f a person is insured under the liability coverage provision of a motor vehicle insurance policy and uninsured motorist coverage is not rejected, the uninsured motorist coverage dictated by § 32-7-23 cannot be excluded from the policy as to such an insured person.

State Farm Mutual Automobile Insurance Company v. Jackson, 462 So. 2d 346, 350 (Ala. 1984)(Supreme Court quotes Federal District Judge Propst as correctly interpreting Alabama law); *See also, State Farm Automobile Insurance Co. v. Reaves*, 292 So. 2d 95, (Ala. 1974).

Again, the law in Alabama is undisputed in that “the scope of uninsured motorist

coverage must be coextensive with liability coverage.” *Billups v. Alabama Farm Bureau Mut. Cas. Ins. Co.*, 352 So. 2d 1097, 1100 (1977). As our Supreme Court noted in *Billups*, once an automobile liability policy extends coverage to a certain class of individuals (like employees using the ambulances in this case), then uninsured coverage MUST be offered to cover the same class of insureds. *Id.*

Thus, we must look to the liability provisions in this policy issued by Sparta. Here, Laura Pullam is covered by the liability portions of the policy. She was using the vehicle as a necessary part of her job when struck and killed by Robert Cumbie. She met the provisions extending liability coverage protections to her. Thus, Laura (or her dependent minor daughter in this case) is entitled to UIM benefits because she was struck by a negligent/reckless driver who failed to possess sufficient insurance.

The undersigned stands ready to brief the more restrictive and illegal clause in the separate UIM endorsement portion of said policy. Counsel believes Laura Pullam’s dependents remain covered under that provision based on specific facts in this case and recent interpretations of our courts. However, that is unnecessary as Alabama law is well-settled. The key question is whether Laura Pullam was an insured at the time of her death under the liability portions of said policy. The answer to that question without dispute, is yes.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this Honorable Court grant partial summary judgment holding that Laura Pullam was

entitled to uninsured/underinsured motorist coverage at the time of her death pursuant to the insurance policy issued by the Defendant Sparta Insurance Company.



JEFFREY G. BLACKWELL (BLA070)
Attorney for Plaintiff

OF COUNSEL:

Hornsby, Watson, Hornsby & Blackwell
1110 Gleneagles Drive
Huntsville, Alabama 35801
Ph: (256) 650-5500
Fax: (256) 650-5504
E-mail: jblackwell@hornsbywatson.com

CERTIFICATE OF SERVICE

I hereby certify that on 24 day of June, 2013, I electronically filed the foregoing with the Clerk of the Court using the Alafile system which will send notification of such filing to:

Brett Ross
Kristi Driskill
Carr Allison
100 Vestavia Parkway
Birmingham, Alabama 35216



OF COUNSEL