SUPREME COURT OF KENTUCKY
CASE NO. 2012-SC-000731-D

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY — APPELLANT

vs.

BRIEF FOR APPELLEE

TAMRA HOSKINS — APPELLEE

* * * * *

ON DISCRETIONARY REVIEW
FROM THE COURT OF APPEALS
NO. 2011-CA-001454-MR

* * * * *

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CERTIFICATE OF SERVICE

I certify that copies of this Brief were served upon Samuel Givens, Jr., Clerk – Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601-9229; Hon. Jeffrey Burdette, P.O. Box 1324, Somerset, KY 42502-1324; Michael D. Risley, Esquire and Bethany A. Breetz, Esquire, Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, KY 40202-3352; and, John Adams, Esquire, P.O. Box 35, Somerset, KY 42502-0035, by mail, this 18th day of September, 2013.

Richard Hay
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STATEMENT CONCERNING ORAL ARGUMENT

The issue involved in this appeal is straightforward and can be resolved by the briefs and Record on Appeal based on well-established case law. Oral argument is welcome, but not necessary.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

COUNTERSTATEMENT OF THE CASE

Appellee, Tamra Hoskins ("Hoskins"), accepts the material portions of Appellant's ("Farm Bureau") Statement of the Case.[1]

ARGUMENT

Words Matter

As the Court will recognize, the primary issue in this case boils down to the distinction between claims "***because of*** bodily injury" and a claim "***for*** bodily injury." Although "because of" and "for" are commonly used and understood words, these words are also recognized terms of art when contained in contracts of insurance.

Farm Bureau's "Insuring Agreement" for Underinsured Motorist ("UIM") coverage provides: "We will pay compensatory damages which an insured is legally entitled to recover ... ***because of*** bodily injury."[2] The Insuring Agreement provides UIM coverage for Bernard Hoskins' bodily injury claim and Tamra Hoskins' loss of spousal consortium claim.

However, Farm Bureau's UIM "motorcycle exclusion" *only* excludes coverage "***for*** bodily injury sustained by any insured ... occupying or operating a motorcycle owned by any insured."[3] For purposes of this appeal, it is admitted that the motorcycle exclusion excludes coverage for Bernard's bodily injury claim.[4] The motorcycle exclusion

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[1] Farm Bureau diminishes the bodily injury suffered by Tamra's husband, Bernard Hoskins, as a "badly injured" left leg. (Farm Bureau Brief at 1) Bernard's left leg had to be amputated. The loss of Bernard's left leg and his ability to work and function is a significant factor in Tamra's loss of spousal consortium claim.

[2] Farm Bureau's insurance policy, Stipulated Record on Appeal ("R.A.") at 43 (emphasis added); Appendix at tab 2, page 22. [Farm Bureau's certified declaration sheet and insurance policy are found in the Appendix of Farm Bureau's brief. They are also included in the Appendix of this Brief for ease of reference.]

[3] *Id.* (emphasis added)

[4] No claim for UIM coverage was made by Bernard Hoskins due to the motorcycle exclusion. It was stipulated that Bernard sustained bodily injury while operating his Harley-Davidson motorcycle. R.A. at 1.

Hoskins would point out that the question of whether UIM coverage can legally be excluded because the insured was operating a motorcycle is not before the Court, and has not been decided by this Court. (*But see Baxter v. Safeco Ins. Co.*, 46 S.W.3d 577

does not exclude coverage for Tamra's separate and independent claim for loss of spousal consortium. Tamra was not occupying or operating the motorcycle, was not involved in the motor vehicle collision, and did not sustain bodily injury.[5]

Despite its policy language, Farm Bureau claims its motorcycle exclusion removes from coverage "all damages ***flowing from*** the bodily injury...."[6] If the motorcycle exclusion excluded all claims or damages "flowing from," "arising out of" or "because of" bodily injury, we would not be here. But that is not what the motorcycle exclusion says. Words matter.

The Farm Bureau Policy

Bernard and Tamra Hoskins, husband and wife, purchased a policy of automobile insurance from Farm Bureau. Both Bernard and Tamra are "named insureds" under the contract of insurance.[7] They paid an extra premium[8] to buy Farm Bureau's optional UIM

(Ky. App. 2001). The UIM statute, KRS §304.39-320, is part of Kentucky's Motor Vehicle Reparation Act ("MVRA"). It provides:

> Every insurer shall make available upon request to its insureds underinsured motorist coverage, whereby subject to the terms and conditions of such coverage not inconsistent with this section the insurance company agrees to pay its own insured for such uncompensated damages as he may recover on account of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.

While the MVRA makes Basic Reparation Benefits ("BRB," a/k/a PIP or no-fault benefits) optional for motorcycles, *see* KRS §304.39-040(4), the UIM statute does not. In *Troxell v. Trammell,* 730 S.W.2d 525, 527 (Ky. 1987), this Court held that "The MVRA applies to motorcycles the same as it applies to all motor vehicles ... except where the Act specifies otherwise." This Court also stated that KRS §304.39-040 "is confined to denying a motorcyclist the right to receive payment of 'basic reparation benefits,'" but it "says nothing about denying the motorcyclist any other provisions of the Act." *Id.* This Court has upheld the motorcycle exclusion for Uninsured Motorist (UM) coverage (*State Farm Auto. Ins. Co. v. Christian,* 555 S.W.2d 571 (Ky. 1977)). UM claims are governed by KRS §304.20-020, which is not part of Kentucky's remedial MVRA, KRS §304.39 *et. seq.*

[5] R.A. at 1-3.
[6] Farm Bureau Brief at 5 (emphasis added).
[7] See Farm Bureau Declaration Sheet, R.A. at 30-31; Appendix at tab 1.
[8] *Id.*

coverage.[9] UIM coverage, like uninsured motorist (UM) coverage, "is *first party coverage,* which means that it is a contractual obligation directly to the insured ... ."[10]

The two UIM contract provisions in issue, are:

UIM INSURING AGREEMENT

A. We will pay compensatory damages which an ***insured*** is legally entitled to recover from the owner or operator of an ***underinsured motor vehicle*** *because of* ***bodily injury:***

1. Sustained by an ***insured***; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the ***underinsured motor vehicle.***[11]

....

UIM EXCLUSIONS

A. We do not provide Underinsured Motorist Coverage *for* ***bodily injury*** sustained by any ***insured:***

....

4. While ***occupying*** or operating a motorcycle owned by any ***insured.***[12]

The bold words appear in the contract, and are words which are defined in the Definitions Section of the policy.[13] As defined by the policy: **"Bodily injury** means bodily

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[9] KRS §304.39-320(b)(2)("every insurer shall make available upon request to its insureds underinsured motorist coverage...."); *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 247 (Ky. 1992)("UIM coverage is optional....")

[10] *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895, 898 (Ky. 1993)(emphasis in original).

[11] R.A. at 43; Appendix at tab 2, page 22.

[12] R.A. at 43; Appendix at tab 2, page 23.

[13] The Definition Section of the policy is found at R.A. 34-35; Appendix at tab 2, pages 5-7.

harm, sickness or disease, including death that results."[14] Bodily injury does not include loss of consortium.

Farm Bureau does not, and cannot, dispute that a spouse is "legally entitled" to recover compensation for loss of consortium because of bodily injury sustained by the other spouse. Loss of spousal consortium is a long recognized tort claim. If the motorcycle exclusion had excluded all claims arising "because of" bodily injury, the language used in the Insuring Agreement, then Tamra Hoskins would not be seeking UIM benefits. But the insurance contract only excludes claims "for" bodily injury sustained by an insured occupying or operating a motorcycle. Simply put, Tamra is not seeking damages "for" bodily injury, nor was she occupying or operating a motorcycle. Tamra is entitled to the insurance coverage the policy she purchased from Farm Bureau provides.

I. Loss of consortium is derivative of a spouse's bodily injury claim, but it is a separate and independent claim which the uninjured spouse is "legally entitled to recover."

Just as there can be no claim for loss of parental consortium unless a parent is wrongfully killed,[15] and no claim for loss of a child's consortium unless a minor child is wrongfully killed[16] - a spouse has no claim for loss of consortium unless the marital partner suffers bodily injury due to the negligence of another. Just as there can be no insurance bad faith claim without a breach of an insurance policy, no divorce without a marriage and no chicken without an egg – a spouse has no claim for loss of consortium unless the marital partner suffers bodily injury due to the negligence of another. It is true, loss of spousal consortium derives from the marital partner's bodily injury tort claim – but this is a contract case.

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[14] R.A. at 34; Appendix at tab 2, page 5.
[15] *Giuliani v. Guiler*, 951 S.W.2d 318 (Ky. 1997).
[16] KRS §411.140.

The fact is, as this Court has repeatedly held, and as the Kentucky Legislature has legislated, a spouse's loss of consortium claim is a separate and independent tort claim belonging to the uninjured spouse.[17]

KRS §411.145[18] provides:

> (1) As used in this section "consortium" means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.
>
> (2) Either a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person.

Farm Bureau makes the "strawman" argument that since a spousal consortium claim cannot legally exist without bodily injury, it does not have to provide the contractual UIM coverage it sold to Tamra Hoskins.

Again, Farm Bureau confuses Torts with Contracts. In *Daley v. Reed,*[19] this Court recognized that its opinions in tort cases involving the "separate and independent" nature of loss of consortium were not intended "to change the law applicable to insurance coverage for loss of consortium claims ... ."[20] This Court stated in *Fryman v. Pilot Life Ins. Co.,*[21] an insurance contract case involving the meaning of the words "accidental means,":

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[17] *Floyd v. Gray,* 657 S.W.2d 936, 938 (Ky. 1983)("Loss of consortium is an independent cause of action...."); *Martin v. Ohio County Hosp. Corp.,* 295 S.W.3d 104, 109 (Ky. 2009)("loss of consortium is a separate cause of action, "there is not a 'common and undivided interest' in the spouse's claim for loss of consortium and the underlying tort claim.").

[18] Surprisingly, despite devoting much of its brief to the proposition that loss of consortium is not a separate and independent claim, Farm Bureau fails to cite or mention KRS §411.145, our loss of consortium statute.

[19] 87 S.W.3d 247 (Ky. 2002).

[20] *Id.* at 249.

[21] 704 S.W.2d 205 (Ky. 1986).

> Just as principles of tort law and criminal law have no application to the contract issue in question; our decision likewise has no application to those areas of law.[22]

Or, as more succinctly stated in *Ohio Cas. Ins. Co. v. Ruschell,*[23] the "clear dichotomy" between contractual claims and tort claims is like "dealing with apples and oranges."[24]

The two questions

There are only two pertinent questions regarding Tamra's contractual entitlement to her UIM coverage:

> Question 1. Is loss of consortium a claim Tamra "is legally entitled to recover from the owner or operator of an underinsured motorist vehicle because of bodily injury"[the Insuring Agreement]?
>
> Answer: Yes.
>
> Question 2. Is loss of consortium a claim "for bodily injury" [the motorcycle exclusion]?
>
> Answer: No.

While the answers to these questions are obvious, Farm Bureau attempts to persuade this Court with snippets from numerous cases – which are either irrelevant or support Tamra's entitlement to UIM coverage. The 12 cases cited by Farm Bureau in its Argument I are:

1. *Moore v. State Farm Mutual Ins. Co.*[25] *Moore* involves the interpretation of an insurance contract, not the legal right to pursue a consortium claim. In *Moore,* this Court held that the injured husband's bodily injury claim and the uninjured wife's loss of consortium claim are jointly limited to the lower "per person" coverage of the insurance

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[22] *Id.* at 206.
[23] 834 S.W.2d 166 (Ky. 1992).
[24] *Id.* at 167, *quoting Holzhauser v. West American Ins. Co.,* 772 S.W.2d 650, 651 (Ct. App. 1989).
[25] 710 S.W.2d 225 (Ky. 1986); Farm Bureau Brief at 5.

contract, not the higher "per accident" coverage. This was obviously the correct interpretation of the insurance contract, which read: "The limit of liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages *arising out of bodily injury* sustained by one person... ."[26] In other words, *this Court's holding in Moore is based on the distinction between claims "arising out of" bodily injury and claims "for" bodily injury.*[27] *Moore* completely supports Tamra's right to coverage.

2. *Daley v. Reed.*[28] Farm Bureau cites *Daley* for the proposition that "loss of consortium is not a separate 'bodily injury.'"[29] Appellee agrees – Tamra does not have, nor is she making, a claim "for bodily injury." This is why the motorcycle exclusion does not apply to her consortium claim. *Daley,* like *Moore,* involved the interpretation of an

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[26] *Id.* 226 (emphasis added).

[27] The phrase "arising out of" has been discussed in numerous Kentucky appellate decisions, many involving motor vehicle insurance contracts. In *Hugenberg v. West American Ins. Co.*, 249 S.W.3d 174, 186 (Ky. App. 2006), the Court of Appeals wrote:

> The words 'arising out of' ... in an automobile liability insurance policy, are broad, general and comprehensive terms meaning 'originating from,' or 'having its origin in,' 'growing out of' or 'flowing from' .... (citations omitted)

See also Eyler v. Nationwide Mut. Fire Ins. Co., 824 S.W.2d 855, 857-58, (Ky. 1982)(exclusion of liability for claims "arising out of" premises owned but not insured); *State Farm Mut. Auto. Ins. Co. v. Rains*, 715 S.W.2d 232 (Ky. 1986)(discussing whether injury was one "arising out of" maintenance or use of a motor vehicle); and, *Stamper v. Hyden*, 334 S.W.3d 120, 124-25, fn. 2 (Ky. App. 2011)(discussing the "arise out of" language in an automobile insurance policy).

Our Kentucky Legislature also recognizes the significance of such terms as "arising out of" and "on account of," and the like. *See e.g.*, KRS §304.39-030(1)("every person suffering loss from injury *arising out* of maintenance or use of a motor vehicle has a right to basic reparation benefits....")(emphasis added); KRS §304.39-110(1)("requirement of security for payment of tort liabilities is fulfilled by providing ... [s]plit limits liability coverage ... for all damages *arising out of* bodily injury....")(emphasis added); KRS §304.39-320(2)("Every insurer shall make available upon request to its insureds underinsured motorist coverage ... for such uncompensated damages as he may recover *on account of* injury due to a motor vehicle accident....")(emphasis added).

[28] 87 S.W.3d 247 (Ky. 2002); Farm Bureau Brief at 6 .

[29] Farm Bureau Brief at 6.

insurance contract, again involving the applicable coverage limits. This Court held that the Estate's wrongful death claim and the four minor children's loss of parental consortium claims must share the lower "each person" liability limits, not the higher "each accident" limits. The Allstate policy at issue provided: "The sum of the coverage limits shown on the declarations page for this coverage for ... each person is the maximum we will pay for damages *arising out of bodily injury* to one person ... *including damages sustained by anyone else as a result of that bodily injury.*[30] Like *Moore,* the *Daley* case turns on the distinction between a claim "for" bodily injury, and a claim "arising out of" bodily injury. *Daley* completely supports Tamra's right to coverage.

3. *Department of Education v. Blevins.*[31] In *Blevins,* this Court held that each parent had a separate and independent consortium claim, apart from the Estate's claim, for the wrongful death of their minor child (thus three separate Board of Claims actions were allowed). This Court recognized that each parent's statutory consortium claim[32] was a separate and independent claim, distinct from the underlying wrongful death claim.[33] *Blevins,* a tort case, shows that this Court has separated consortium claims from the underlying bodily injury claim. *Blevins* completely supports Tamra's right to coverage.

4. *Godbey v. University Hospital.*[34] This case involves the *res judicata* effect of a finding by the Workers' Compensation Board that the employee's injuries were not caused by breathing chemical fumes at his employment.[35] The Court of Appeals held that where the husband could not prove the chemicals caused his injuries, then no damages, including loss of consortium, were recoverable. *Godbey,* a tort case, has nothing to do with this contract case.

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[30] *Id.* at 248 (emphasis added).
[31] 707 S.W.2d 782 (Ky. 1986); Farm Bureau Brief at 6.
[32] KRS §411.35 (Damages in action for wrongful death of minor).
[33] *Blevins, supra,* at 783.
[34] 975 S.W.2d 104 (Ky. App. 1988); Farm Bureau Brief at 6.
[35] *Id.* at 105.

5. *Cooley v. Medtronic, Inc.*[36] In *Cooley,* Mr. and Mrs. Cooley sought to recover damages against the manufacturer of a cardiac defibrillator surgically implanted in Mr. Cooley. As the product liability claims were found to be pre-empted by the Federal Medical Device Amendments, 21 *U.S.C.* §360K(a), the trial court dismissed the case. *Cooley,* a tort case, has nothing to do with this contract case.

6. *Brooks v. Burkeen.*[37] In *Brooks,* the Plaintiff's husband was injured at work and covered by workers' compensation insurance. Ms. Brooks filed a civil action against the employer for loss of consortium. This Court held that the exclusive remedy provision of KRS §342.690 barred her claim.[38] *Brooks,* a tort case, has nothing to do with this contract case.

7. *McDaniel v. BSN Medical, Inc.*[39] In *McDaniel,* the trial court held that the defendant was entitled to the "up the ladder" immunity provided by Kentucky's Workers' Compensation Act. As the injured wife's claim was barred, so was the husband's loss of consortium claim.[40] *McDaniel,* a tort case, has nothing to do with this contract case.

8. *Boggs v. 3M Co.*[41] In this product liability case, the trial court held that the husband's one-year statute of limitation "began to run in September 1999," thus his 2011 lawsuit was time barred. As the trial court granted summary judgment against the husband's product liability claim, the wife's consortium claim was also dismissed.[42] *Boggs,* a tort case, has nothing to do with this contract case.

9. *Norton v. Canadian American Tank Lines.*[43] *Norton* involved a two vehicle motor accident. The jury found the defendant driver 65% at fault and the plaintiff

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[36] 2012 WL 1380265 (E.D. Ky. 2012); Farm Bureau Brief at 7.
[37] 549 S.W.2d 91 (Ky. 1977); Farm Bureau Brief at 7.
[38] *Id.* at 93-94.
[39] 2010 WL 2464970 (W.D. Ky. 2010); Farm Bureau Brief at 7.
[40] *Id.* slip opinion at 4.
[41] 2012 WL 4062018 (U.S. Dist. Ct. E.D. Ky. 2012); Farm Bureau Brief at 7.
[42] *Id.*, slip opinion at 10.
[43] 2009 WL 931137 (U.S. Dist. Ct. W.D. Ky. 2009); Farm Bureau Brief at 7.

driver/husband 35% at fault (perhaps due to his failure to wear a seat belt). The issue was whether the plaintiff wife's loss of consortium would be reduced for her husband's comparative negligence. The trial court held that reducing the wife's loss of consortium award by 35% was "consistent with the principles of comparative fault."[44] *Norton,* a tort case, has nothing to do with this contract case.

10. *Floyd v. Gray.*[45] In *Floyd,* this Court held that the bodily injury claim of the injured husband, which arose from a motor vehicle accident, was governed by the two plus years statute of limitations contained in the MVRA, but that the uninjured wife's loss of consortium claim did not fall within the purview of the MVRA and was governed by the one year statute of limitations of KRS §413.140(1).[46] *Floyd,* a tort case, affirms that this Court has separated derivative consortium claims from the underlying bodily injury claim, and supports Tamra's right to coverage.

11. *Kotsiris v. Ling.*[47] In *Kotsiris,* this Court abandoned the "ancient rule that the wife does not have the cause of action [for loss of consortium]."[48] This Court recognized that the husband's settlement and release of his bodily injury claim did not foreclose the wife's "distinct and separate"[49] loss of consortium claim. *Kotsiris,* a tort case, affirms that this Court has separated derivative consortium claims from the underlying bodily injury claim, and supports Tamra's right to coverage.

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[44] *Id.,* slip opinion at 2.
[45] 657 S.W.2d 936 (Ky. 1983); Farm Bureau Brief at 7. In *Floyd,* Justice Liebson, *dissenting,* gives an excellent explanation of the derivative, yet independent nature of consortium claims (and why *Floyd v. Gray* was wrongly decided).
[46] *Id.* at 938. Now that this Court has recognized loss of spousal consortium as a statutory cause of action, *Martin v. Ohio County Hosp. Corp.,* 295 S.W.3d 104 (Ky. 2009), the five year statute of limitation found in KRS §413.120(2)("action upon a liability created by statute, when no other time is fixed by the statute creating liability") should apply, and *Floyd v. Gray* should be reversed.
[47] 451 S.W.2d 411 (Ky. 1970); Farm Bureau Brief at 8 (mistakenly cited by Farm Bureau as *Kotsiris v. Long*).
[48] *Id.*
[49] *Id.* at 413.

12. *Martin v. Ohio County Hospital Corp.*[50] Farm Bureau cannot ignore this recent landmark opinion, but cites it solely for the proposition that "a spouse's loss of consortium claim did not end at the death of the injured spouse."[51] Not only does *Martin* discuss and emphasize the "separate cause of action for spousal consortium,"[52] "which belongs specifically to [the uninjured] spouse,"[53] this Court recognized that:

> A loss of consortium action can continue even when the injured spouse ...has settled **or otherwise been excluded from an action,** because there is not a "common and undivided interest" in the spouse's claim for loss of consortium and the underlying tort claim.[54]

So, even where Bernard Hoskins' bodily injury claim has been excluded by the motorcycle exclusion, Tamra has a legal right of recovery for her loss. *Martin,* a tort case, again affirms that this Court has consistently separated derivative consortium claims from underlying bodily injury claims, and supports Tamra's right to coverage.

To summarize, of the 12 cases cited by Farm Bureau in its Argument I, the two contract cases support Tamra's entitlement to UIM coverage; four of the tort cases (opinions by this Court) affirm the separate and independent nature of consortium claims; and, the other six tort cases (four of these being federal District Court opinions) are irrelevant.

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[50] 295 S.W.3d 104 (Ky. 2009); Farm Bureau Brief at 8.
[51] Farm Bureau Brief at 8.
[52] *Martin, supra,* at 108.
[53] *Id.* at 107.
[54] *Id.* at 109 (citations omitted; emphasis added).

II. This Court has consistently separated loss of consortium from bodily injury in tort cases. This Court has combined consortium and bodily injury damages in insurance coverage cases where the plain language of the insurance contract so required.

Even though bodily injury and consortium are separate and distinct claims involving different damages to different people, Farm Bureau attempts in its Argument I to squeeze these separate claims into one so that it can justify denial of Tamra's UIM claim. Then, in Argument II, Farm Bureau attempts to squeeze together tort law and contract law to support its denial of coverage.

Farm Bureau argues that this Court has not separated loss of consortium claims from bodily injury claims. This argument is directly contradicted by this Court's opinions in the following tort cases (all of which are cited and relied upon by Farm Bureau in its Argument I):

1. *Kotsiris v. Ling*[55] - husband's settlement and release of his bodily injury claim did not foreclose wife's loss of consortium claim.

2. *Floyd v. Gray*[56] - husband's bodily injury claim governed by two plus year statute of limitations of the MVRA, but wife's loss of consortium claim governed by one year statute of limitations of KRS §413.140, thus time barred.

3. *Department of Education v. Blevins*[57] - Board of Claims erred in holding that the Estate of a wrongfully killed minor child, the child's Father and the child's Mother were limited to filing one Board of Claims action against the State Department of Education, as the consortium claims of Father and Mother were separate and independent claims. Thus, all three could recover up to the Board's then $50,000 damage cap.

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[55] 451 S.W.2d 411 (Ky. 1970).
[56] 657 S.W.2d 936 (Ky. 1983).
[57] 707 S.W.2d 782 (Ky. 1986).

4. *Martin v. Ohio County Hospital Corp.*[58] - landmark opinion re-affirming the separate and independent nature of a loss of consortium claim, and holding that consortium was not dependent on how long the injured spouse lived following bodily injury, as the consortium claim "survived" the death of the spouse. *Martin* also specifically recognized that the "loss of consortium action can continue even when the injured spouse ... has settled or otherwise been excluded from an action... ."[59]

These tort opinions and KRS §411.145 firmly establish the separate and independent nature of loss of consortium.

Construction of Insurance Contracts

Before looking at the contract cases cited by Farm Bureau, one must first recognize the longstanding precedents of this Court regarding interpretation of insurance contracts.

Kentucky law regarding the construction of insurance contracts is well established. There are "two cardinal principles" which apply when construing insurance policies:

> (1) the contract should be liberally construed and all doubts resolved in favor of the insureds; and,
>
> (2) exceptions and exclusions should be strictly construed to make insurance effective.[60]

The reason behind these cardinal principles, as discussed by this Court in *Jones v. Bituminous Cas. Corp.*,[61] is:

> Standard form insurance policies ... are recognized as contracts of adhesion because they are not negotiated; they are offered to the insurance consumer on essentially

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[58] 295 S.W.3d 104 (Ky. 2009).
[59] *Id.* at 109.
[60] *Kentucky Farm Bureau Mut. Ins. Co. v. McKinney,* 831 S.W.2d 164, 166 (Ky. 1992)(citations omitted).
[61] 821 S.W.2d 798 (Ky. 1991).

> a "take it or leave it" basis without affording the consumer a realistic opportunity to bargain.[62]

Rather than give a long string citation to support our rules of construction, counsel for Tamra Hoskins has prepared a list of this Court's opinions for the past 100 years, which states the rules for interpreting contracts of insurance. This list is located in the Appendix at tab 3. Of the 54 Kentucky Supreme Court opinions located and cited, Farm Bureau cites not a single one in its Brief, preferring instead to cite "cherry-picked" quotes from federal district court opinions.[63] A review of the cases listed in the Appendix at tab 3 confirms the accuracy and consistency of the rules of construction stated above.

Farm Bureau cites 11 contract cases, *Moore* and *Daley* from Kentucky and nine foreign opinions, to support its argument that this Court has not separated consortium from bodily injury "for insurance coverage purposes."[64] Tamra agrees with the holding of these 11 cases, as the Courts deciding them correctly enforced the plain language of the insurance contracts.

Moore, Daley and the nine foreign opinions involve construction of insurance contracts to determine applicable policy limits. More specifically, the issue in all 11 cases cited by Farm Bureau is whether the lower "per person" policy limits or the higher "per accident" policy limits apply when derivative claims exist. Farm Bureau argues that there is no difference between "because of" bodily injury (Insuring Agreement) and "for" bodily injury (motorcycle exclusion), yet the 11 cases it relies upon are based on this very distinction.

1. *Moore v. State Farm* (Kentucky)[65] – per person liability limits applied to bodily injury claim and spousal consortium claim where insurance

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[62] *Id.* at 801.
[63] Farm Bureau Brief at 12.
[64] Farm Bureau Brief at 9.
[65] 710 S.W.2d 225 (Ky. 1986); Farm Bureau Brief at 9.

contract so limited recovery for "all damages arising out of bodily injury."[66]

2. *Daley v. Reed* (Kentucky)[67] - per person liability limits applied to bodily injury/wrongful death claim and minor children's consortium claim where insurance contract so limited recovery as follows:

> **Limits of Liability**
> The sum of the coverage limits shown on the declarations page for this coverage for:
>
> 1. "each person" is the maximum we will pay for damages arising out of *bodily injury to one person* in any one motor vehicle accident, *including damages sustained by anyone else as a result of that bodily injury.*[68]

3. *Westfield Ins. Co. v. DeSimone* (California)[69] - per person liability limits applied to Estate's wrongful death claim and heirs' claim for "care or loss of services" where insurance contract so limited recovery "for all damages for bodily injury sustained by any one per person in any one auto accident ... *regardless of the number of ... [c]laims made.*"[70] (The Court also noted that "the heirs do not each possess a separate and distinct cause of action," nor could the heirs "qualify under a cause of action for loss of consortium....")[71]

4. *Conner v. Stanford* (Louisiana)[72] - per person liability limits applied to wrongful death claim and children's consortium claims as the derivative consortium claims "are expressly included within the per person

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[66] *Id.* at 226.
[67] 87 S.W.3d 247 (Ky. 2002); Farm Bureau Brief at 9-11.
[68] *Id.* at 248 (emphasis in original).
[69] 201 Cal. App.3d 598, 247 Cal. Rptr. 291(Cal. App. 1988); Farm Bureau Brief at 10, fn. 5.
[70] *Id.* at 201 Cal. App. 3d 600 (omitted portions and emphasis in original).
[71] *Id.* at 601.
[72] 692 So.2d 1146, (La. App. 1997); Farm Bureau Brief at 10, fn. 5.

limits...."[73] (The exact contract language of the State Farm policy was not quoted in the Court's opinion.)

5. *Auto Club Ins. Ass'n v. Lanyon* (Michigan)[74] - per person liability limits applied to wrongful death claim and minor child's consortium claim where insurance contract so limited recovery as follows:

> The bodily injury Liability Limit for each person is the maximum amount that will be paid for bodily injury sustained by one person in any one occurrence. *This limit includes all claims for derivative damages allowed under the law."*[75]

6. *State Farm Mut. Auto. Ins. Co. v. Chambers* (Missouri)[76] - per person liability limit applied to child's bodily injury claim and mother's derivative claim where insurance contract so limited recovery as follows:

> **Limits of Liability**
>
> Under "Each Person" is the amount of coverage for all damages, including damages for care and loss of services, arising out of and due to ***bodily injury*** to one ***person.***[77]

7. *Smock v. Hall* (Ohio)[78] - per person UIM liability limits applied to wrongful death claim, spousal consortium claim and minor children's consortium claims where insurance contract so limited recovery as follows:

> The limit of liability shown in the Declarations for "each person" for Bodily Injury Liability is our maximum limit of liability for damages ... arising out of bodily injury sustained by any one person in any one accident. ... . This is the most we will pay regardless of the number of: 1. Insureds; 2. Claims

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[73] *Id.* at 1148.
[74] 369 N.W.2d 269 (Mich. App. 1985); Farm Bureau Brief at 10, fn. 5.
[75] *Id.* at 271 (emphasis in original).
[76] 860 S.W.2d 19 (Mo. App. 1993); Farm Bureau Brief at 10, fn.5.
[77] *Id.* at 21-22.
[78] 725 N.E.2d 673 (Ohio App. 1999); Farm Bureau Brief at 10, fn. 5.

> made; 3. Vehicles or premiums shown in the Declarations; or 4. Vehicles involved in the auto accident. [79]

8. *Miller v. Public Employees Mut. Ins. Co* .(Washington)[80] - per person UIM limits applied to wrongful death claim, spousal consortium claim and child's consortium claim where insurance contract so limited recovery as follows:

> These limits are the most we'll pay for any one *accident* regardless of the number of *insured persons*, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an *accident.*[81]

9. *Federal Kemper Ins. Co. v. Karl*et (West Virginia)[82] - per person liability limits applied to wrongful death claim and minor children's consortium claim where insurance contract so limited recovery as follows:

> The limit of liability shown in the Declarations applicable to "each person" is our maximum limit for all damages arising out of *bodily injury* sustained by one person as a result of any one accident. [83]

10. *Richie v. American Family Mut. Ins. Co.* (Wisconsin)[84] - per person liability limits applied to bodily injury claim, spousal consortium claim and children's consortium claims where insurance contract so limited recovery as follows:

> The *bodily injury* liability limit for "each person" is the maximum for *bodily injury* sustained by one person in any one occurrence.
> ....

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[79] *Id.* at 675.
[80] 795 P.2d 703, (Wash. App. 1990); Farm Bureau Brief at 10, fn. 5.
[81] *Id. at* 705-06.
[82] 428 S.E.2d 60 (W.Va. 1993); Farm Bureau Brief at 10, fn. 5.
[83] *Id.* at 62.
[84] 409 N.W.2d 146 (Wis. 1987); Farm Bureau Brief at 10, fn. 5.

> *We* will pay no more than these maximums no matter how many vehicles are described in the declarations, or *insured persons,* claims, claimants, policies, or vehicles are involved.[85]

11. *Lepic v. Iowa Mut. Ins. Co.* (Iowa)[86] - per person liability limits and per person UIM limits applied to child's bodily injury claim and parents' consortium claims where insurance contracts so limited recovery as follows:

> The limit of liability shown in the Schedule or in the Declarations for "each person" for Underinsured Motorists Coverage is our maximum limit of liability *for all damages for bodily injury sustained by any one person in any one accident.*
> ....
> This is the most we will pay regardless of the number of: 1. Covered persons; [or] 2. Claims made.[87]

Based on these 11 cases, Farm Bureau argues "the loss of consortium claim cannot be separated from the bodily injury claim, a fact seemingly lost on the Court of Appeals... ."[88] In fact, what the Court of Appeals held was that "Farm Bureau was free to specify that derivative claims were included in the motorcycle exclusion, but did not do so."[89] The Court of Appeals further correctly stated that "Farm Bureau's reliance on [*Moore* and *Daley*] is misplaced," as those cases were decided "under the specific terms of the insurance agreements at issue."[90] And finally, the Court of Appeals correctly pointed out:

> The *Moore* and *Daley* courts were asked to determine whether the loss of consortium claim was a part of the underlying claim for purposes of determining the

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[85] *Id.* at 146-47.
[86] 402 N.W.2d 758 (Iowa 1987); Farm Bureau Brief at 10, fn. 5.
[87] *Id.* at 760 and 765.
[88] Farm Bureau's Brief at 11.
[89] *Hoskins v. Kentucky Farm Bureau Mut. Ins. Co.*, Kentucky Court of Appeals, No. 2011-CA-00145-MR (Oct. 12, 2012) Slip Opinion at 6.
[90] *Id.*

> maximum recovery available, not whether the derivative claim was excluded from coverage.[91]

Nothing was "lost on" the Court of Appeals here.[92]

Another Important Distinction

There is another important distinction between what Farm Bureau argues and the facts of the 11 "per person" cases it relies upon. In each and every one of those cases, the insurance company either voluntarily paid, or offered to pay, the "per person" insurance coverage limits, with each appeal involving a claim for the higher "per accident limits."[93] Here, Tamra only seeks the per person coverage. Farm Bureau has paid nothing.

III. Did Farm Bureau intend to exclude from coverage all damages flowing from bodily injury?

Farm Bureau argues: "The owned motorcycle exclusion is intended to exclude from coverage all damages flowing from the bodily injury...."[94] In response:

1. There is not one word in the Stipulated Record on Appeal that states, discusses, or pertains to Farm Bureau's alleged "intent."[95]

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[91] *Id.*

[92] One Judge dissented, but gave no reason for doing so. *Id.*

[93] (1)*Moore* v. *State Farm, supra,* at 226, (State Farm voluntarily paid its $50,000 per person liability limits); (2) *Daley* v. *Reed, supra,* at 248, (Allstate voluntarily paid its $100,000 per person liability limits); (3) *Westfield Ins. Co.* v. *DeSimone, supra,* at 601 (Westfield tendered its $100,000 per person liability limits); (4) *Conner* v. *Stanford, supra,* at 1147-48 (State Farm voluntarily paid its $100,000 per person liability limits for husband's death, and its $100,000 per person liability limits for wife's bodily injury); (5) *Auto Club Ins. Assoc* v. *Lanyon, supra,* at 270 (Auto Club filed a declaratory action for determination that it only owed the per person liability limits); (6) *State Farm Mut. Auto. Ins. Co.* v. *Chambers, supra,* at 20 (State Farm "offered to pay its $25,000 per person liability limits); (7) *Smock* v. *Hall, supra,* at 674 (Declaratory action where Motorists Mutual argued it was only required to pay its $100,000 per person UIM coverage limits); (8) *Miller* v. *Public Employees Mut. Ins. Co., supra,* at 872 (PEMIC paid its $250,000 per person UIM limits); (9) *Federal Kemper Ins. Co.* v. *Karlet, supra,* at 62 (Federal Kemper filed a declaratory action seeking declaration that children's loss of parental consortium claims were included in the $100,000 per person liability limits); (10) *Richie* v. *American Family Mut. Ins. Co., supra,* at 146 (American Family paid its $100,000 per person liability limits); and, (11) *Lepic* v. *Iowa Mut. Ins. Co., supra,* at 760 (consolidated declaratory actions where UIM carrier in one case and liability carrier in other case acknowledged the per person limits applied).

[94] Farm Bureau Brief at 12.

[95] Even if Farm Bureau had attempted to offer oral evidence of intent, it would have been excluded pursuant to the parol evidence rule. *Childers and Venters, Inc.* v.

2. If Farm Bureau intended to exclude all damages "flowing from" bodily injury, it could have. As the Court of Appeals stated, "Farm Bureau was free to specify that derivative claims were included on the motorcycle exclusion, but did not do so."[96] The first two sentences found in the Farm Bureau policy read: "This policy is a legal contract between the policy owner and the Company. READ YOUR POLICY CAREFULLY."[97] "Flowing from" or "because of" bodily injury is not the same thing as "for" bodily injury. Farm Bureau should have followed its own advice.

3. The Rules of Construction for all contracts require that unambiguous provisions be construed as written, not as one party to the contract later "intends" the contract be written. Perhaps Bernard Hoskins intended for his UIM coverage to provide insurance protection when he was operating his motorcycle.

4. Finally, isn't this argument a tacit admission by Farm Bureau that its motorcycle exclusion does not exclude coverage for Tamra's claim? That Farm Bureau, on appeal, attempts to impermissibly broaden the scope of its exclusion with its language (i.e., damages "flowing from" bodily injury),[98] rather than use the actual exclusionary language in the policy (i.e. damages "for" bodily injury), speaks volumes.

Even the "intended" wording would not exclude coverage.

Assume for the moment that the motorcycle exclusion read:

> A. We do not provide Underinsured Motorist Coverage for claims because of, arising out of or flowing from bodily injury sustained by any insured:
>
> ....
>
> 4. While occupying or operating a motorcycle owned by any insured.

Sowards, 460 S.W.2d 343 (Ky. 1970); *New Life Cleaners v. Tuttle,* 292 S.W.3d 318 (Ky. App. 2009). And as parol evidence is only admissible when a term of a contract is ambiguous, and as ambiguous insurance contracts are construed against the insurer, Farm Bureau's now alleged intent is irrelevant.

[96] *Hoskins v. Kentucky Farm Bureau Mut. Ins. Co., supra,* Slip Opinion at 5.

[97] R.A. at 33 (emphasis in original); Appendix at tab 2, page 2.

[98] Farm Bureau brief at 5, 12, 13, 14, 15 and 18.

While such an exclusion would obviously encompass all derivative claims, it would not apply to Tamra because her consortium claim was not "sustained ... while occupying or operating a motorcycle." At the very least, the exclusion would be found ambiguous, thus construed in Tamra's favor. This is just another reason why Farm Bureau's arguments lack merit.

IV. All rules of policy interpretation call for the result reached by the Court of Appeals.

Tamra Hoskins set forth Kentucky's longstanding rules for construction of insurance contracts in Argument II, and summarized the past 100 years of Supreme Court opinions discussing these rules in the Appendix to this Brief at tab 3. The Court of Appeals properly followed these rules; Farm Bureau ignores them.

Farm Bureau argues that "Courts should not rewrite an insurance contract to enlarge the risk to the insurer."[99] Yet, Farm Bureau has no hesitation asking this Court to rewrite its policy to eliminate coverage due its insured.

V. Two other states appear to hold that an exclusion "for bodily injury" includes consortium claims, but these opinions are not reliable, and they do not comport with Kentucky law.

Farm Bureau identifies two states, Washington and Michigan, which *appear* to have accepted the arguments made by Farm Bureau. Differences in the wording of the insurance policies, the facts, and the statutory law governing the underlying tort claims in *Eurick v. Pemco Ins. Co.*,[100] *Eddy v. Fidelity and Guaranty Ins.* [101] and *Hollenbeck v.*

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[99] Farm Bureau Brief at 12, *citing Estate of Clem v. Western Heritage Ins. Co.*, 195 Fed. Appx. 328 (E.D. Ky. 2005).

[100] 738 P.2d 251 (Wash. 1987). The portion of motorcycle exclusion in *Eurick* quoted by the Court states: "This policy does not apply ... to bodily injury to an insured while operating, occupying or using a motorcycle." *Id.* at 252. We don't know what the missing words before "to bodily injury" are. Maybe it says the motorcycle exclusion applies to "any claims arising due to bodily injury" – we don't know. Also, Washington's UIM statute, RCW 48.22.030(2), specifically "permitted insurers to exclude from their underinsured policies losses by persons 'operating or occupying a motorcycle.'" *Id.*

Farm Bureau Mut. Ins. Co.,[102] the three cases cited by Farm Bureau, make these decisions meaningless.

Assuming the *Eurick* and *Eddy* cases stand for the proposition cited by Farm Bureau, then the Washington Supreme Court simply re-wrote the insurance contracts, changing the policy exclusion in *Eurick* ("...to bodily injury"[103]) and the policy exclusion in *Eddy* ("for property damage or bodily injury") to exclude: "*all* claims *arising from* injuries sustained by a motorcycle driver or rider."[104] The Michigan Court of Appeals opinion in *Hollenbeck* appears to be based on the rationale that "loss of consortium ... is not a separate claim ... [as it is] subject to the per person coverage limits for the person who suffered the bodily injury."[105]

Other states reject Farm Bureau's argument

Farm Bureau neglects to mention the following appellate opinions from other states which reject the argument it makes:

California. In *Allstate Ins. Co. v. Fibus,*[106] the issue was whether the plaintiffs' bodily injury and consortium claims were controlled by their original insurance policy or the amended insurance policy (which was amended before the date of the 1985 accident). The original policy provided:

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[101]776 P.2d 996 (Wash. 1989). In *Eddy,* the exclusion at issue was the "regular use" exclusion, not a motorcycle exclusion. *Eddy* at 967.

[102]2011 WL 2585979 (Mich. App. 2011)(unpublished opinion). In *Hollenbeck,* the policy provision in question was a "household exclusion," which reduces higher policy limits to minimum statutory limits for claims made by family members. Slip op. at 2. The Michigan court upheld the exclusion, limiting recovery of all claims to the minimum per person limits mandated by statute. Farm Bureau fails to mention that *Hollenbeck* is an unpublished opinion, and, fails to include a copy with its Brief. CR 76.28(4)(c). A copy of this unpublished opinion is found in the Appendix of this Brief at tab 5, page 1.

[103] *Eurick* at 252.

[104] *Eurick* at 253; *Eddy* at 970.

[105] *Hollenbeck, supra,* at 3.

[106] 855 F.2d 660 (9th Cir. 1988).

> the limit stated for each person *for bodily injury* applies to all damages arising from bodily injury, sickness, disease, or death sustained by one person in any one occurrence.[107]

The Ninth Circuit Court of Appeals stated: "Under California law, this language is ambiguous and would be interpreted to provide separate coverage for Celeste Foran's consortium claim."[108] The Court went on to hold: "We conclude therefore that [the] original policy must be reasonably interpreted to provide separate coverage for Celeste Foran's consortium claim."[109]

Iowa. In *Jones v. State Farm Mut. Auto. Ins. Co.*,[110] the insurance policy at issue contained an insuring agreement which provided coverage for all damages which an insured became liable to pay "because of ... *bodily injury*,"[111] yet excluded coverage "for any bodily injury" to a family member.[112] The Iowa Supreme Court held that the injured child's bodily injury claim was excluded, but: "Under the plain language of the policy, we conclude the exclusion does not apply to [the father's] independent claim for loss of consortium."[113]

Massachusetts. In *Bilodeau v. Lumbermens Mut. Cas. Co.*,[114] the Massachusetts Supreme Court held that where the per person limit applied "*for injuries* to any one person as a result of any one accident," then "a claim for loss of consortium was entitled to a separate 'per person' limit from the underlying claim for bodily injuries in the accident."[115]

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[107] *Id.* at 662 (emphasis added).
[108] *Id., citing Abellon v. Hartford Ins. Co.*, 167 Cal. App. 3d 21, 212 Cal. Rptr. 852, 857-60 (1985).
[109] *Id.* at 663.
[110] 760 N.W.2d 186 (Iowa 2008).
[111] *Id.* at 188 (emphasis in original).
[112] *Id.* at 189.
[113] *Id.* The Court went on to hold that the father was also entitled to UIM coverage. *Id.* at 189-90.
[114] 467 N.E.2d 137 (Mass. 1984).
[115] *Id.* at 141 (emphasis in original). Counsel for Tamra Hoskins points out that the Massachusetts Division of Insurance changed the policy in response to the *Bilodeau* opinion, so that it limited the per person coverage to apply to "injuries to one or more persons *as a result of* bodily injury to any one person... ." *McNeil v. Metropolitan Property*

Ohio. Ohio Appellate Courts have addressed this issue on numerous occasions. *Brunn v. Motorists Mut. Ins. Co.*[116] involved an UIM Insuring Agreement which covered claims "because of bodily injury," and a motorcycle exclusion which excluded claims "for bodily injury."[117] The Court stated:

> As relevant here, the exclusion states Motorists does not provide UIM coverage "for bodily injury sustained by an insured while occupying any motor vehicle owned by any family member which is not insured for this coverage under this policy ..." Clearly this exclusion serves to exclude coverage for the bodily injuries sustained by Mr. Brunn while he was occupying his motorcycle which was not insured under the Policy. But does it clearly and unambiguously exclude appellant's [consortium] claim? We conclude it does not.
>
> Appellant's loss of consortium claim is not for bodily injury she sustained while occupying the motorcycle operated by her husband. The exclusion does not specifically exclude coverage for uninjured insured persons, such as appellant, who may have claims for compensatory damages incurred "because of" bodily injury to an insured (Mr. Brunn). Appellant's claim is not for "bodily injury." Appellant was not occupying the "other owned" motor vehicle when her claim arose. We find the exclusions do not apply to appellant's loss of consortium claim.[118]

Numerous other opinions from the Ohio Court of Appeals hold the exact same way.[119]

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and Liability Ins. Co., 650 N.E.2d 193, 194 (Mass. 1995). ("[U]nder this new language, consortium claims are subject to the same 'per person' limits as the bodily injury claims... .") *Id.* at 197 (citation omitted).

[116] 2006 WL 29116 (Ohio App., 5th Dist. 2006)(unreported opinion).

[117] *Id.* at 3.

[118] *Id.* at 3-4.

[119] *Estate of Monnig v. Progressive Ins. Co.*, 2004 WL 869269 (Ohio App. 4th Dist. 2004)(unreported opinion); *Kotlarczyk v. State Farm Mut. Auto. Ins. Co.*, 2004 WL 1468336 (Ohio App. 6th Dist. 2004)(unreported opinion); *Aldrich v. Pacific Indemn. Co.*, 2004 WL 614824 (Ohio App. 7th Dist. 2004)(unreported opinion); *Adams v. Crider*, 2004 WL 231785 (Ohio App. 3rd Dist. 2004)(unreported opinion); *Gaines v. State Farm Mut. Auto. Ins. Co.*, 2002 WL 755884 (Ohio App. 10th Dist. 2002)(unreported opinion); *American Modern Homes Ins. Co. v. Safeco Ins. Co. of Illinois*, 2007 WL 4147932 (Ohio App. 11th Dist. 2007)(unreported opinion). These unpublished opinions are found in the Appendix at tab 5.

The number of foreign cases on this issue favor Tamra's position, but in light of the commonly understood distinction between "because of" and "for," these foreign opinions have little value. Especially since this Court has already addressed this distinction in *Moore v. State Farm*[120] and *Daley v. Reed.*[121]

VI. Even if the Farm Bureau policy is ambiguous, and Appellee does not believe it is, Tamra is entitled to the UIM coverage.

Appellee begins her Argument with this sentence: "As the Court will recognize, the primary issue in this case boils down to the distinction between claims ***'because of'*** bodily injury and a claim ***'for'*** bodily injury."[122] The distinction between these words is simple and clear. Yet, Appellee would be remiss if she did not acknowledge that two judges (trial court and Judge Taylor, *dissenting* without written opinion) read these words one way, while two other judges (Judge Lambert and Judge Nickell) read them another way. And (perhaps) courts in Washington and Michigan read the words one way, while courts in California (including the Ninth Circuit Court of Appeals), Iowa, Massachusetts and Ohio read them another way.

Doesn't this diverse interpretation, at the least, indicate an ambiguous insurance exclusion? And, "when ambiguities exist, we resolve them against the drafter."[123]

Counsel for Tamra Hoskins point out that these cited decisions from Ohio were decided under prior versions of R.C. 3937.18, the Ohio statute governing the wording of UM and UIM insurance policies. *See King Estate v. Wachauf,* ___ N.E.2d ___, (2013 WL 3089060) (Ohio App. 3rd Dist. 2013.]

[120] 295 S.W.2d 225 (Ky. 1986).

[121] 87 S.W.3d 247 (Ky. 2002).

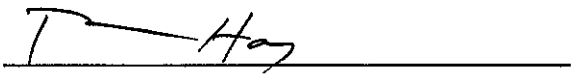
[122] Appellee's Brief at 1.

[123] *Bidwell v. Shelter Mut. Ins. Co.,* 367 S.W.3d 585, 588 (Ky. 2012). *And see* "100 years of Supreme Court case law list," Appendix at tab 3.

CONCLUSION

Tamra Hoskins is entitled to UIM coverage for her loss of consortium claim. The opinion of the Court of Appeals should be affirmed.

Respectfully submitted,



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INDEX TO APPENDIX