

11-0750

**IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA**

**ROSE L. THOMAS, as Administratrix of  
the Estate of Dennis L. Thomas,**

**Plaintiff,**

v.

**CIVIL ACTION NO. 10-C-56  
HONORABLE SUSAN B. TUCKER**

**CHARLOTTE JANE CAIN,**

**Defendant.**

**ORDER FOLLOWING JANUARY 24, 2011 FINAL PRE-TRIAL  
CONFERENCE AND GRANTING NOTICE DEFENDANT, STATE FARM  
MUTUAL AUTOMOBILE INSURANCE COMPANY'S MOTION FOR  
SUMMARY JUDGMENT**

On the 24<sup>th</sup> day of January, 2011, came the Plaintiff, Rose L. Thomas, ("Plaintiff") in person and by counsel, John Angotti, Esquire, and the law firm of Angotti & Straface, LC; came the Defendant, by counsel, Michelle Winiesdorffer-Schirripa, Esquire, and the Law Offices of W. Stephen Flesher; and, came the underinsured motorist carrier, State Farm Mutual Automobile Insurance Company, ("State Farm") by counsel, Tiffany R. Durst, Esquire, Kala L. Sowers, Esquire, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC. Also present were Curt Thomas, son of the deceased, Dennis L. Thomas, and Denise Casino, daughter of the deceased. The parties, through their respective counsel, were present before the Honorable Susan B. Tucker, Judge of the Circuit Court of Monongalia County, West Virginia, for a duly noticed final pre-trial conference and hearing on Notice Defendant, State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment.

Whereupon, the Court gave further consideration to the *Notice Defendant, State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment and Incorporated Memorandum of Law*, as well as *Notice Defendant, State Farm Mutual Automobile Insurance Company's Supplement to Motion for Summary Judgment*, *Plaintiff's Response to State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment*, and *Notice Defendant, State Farm Mutual Automobile Insurance Company's Reply to Plaintiff's Response and in Further Support of State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment*. The Court acknowledged that the *Plaintiff's Response to State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment*, in which the Plaintiff responded to State Farm's contentions and further requested summary judgment in the Plaintiff's favor, was not timely filed.

Based upon the argument of counsel, and pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, the Court determined that no genuine issues of material fact existed with respect to State Farm's obligation to provide UIM benefits to the Plaintiff or the deceased, Dennis L. Thomas. Additionally, the Court determined that, as a matter of law, State Farm had no duty to provide UIM benefits to the Plaintiff or her deceased husband as neither had a reasonable expectation of insurance coverage because the tractor driven by the deceased at the time of the accident at issue was never insured for coverage. It is hereby **ORDERED, ADJUDGED** and **DECREED** that Notice Defendant, State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment be and the same is hereby **GRANTED**. The Court, being advised of the premises herein, hereby **ORDERS** that the Plaintiff's claims against State Farm Mutual Automobile Insurance Company be and the same are hereby **DISMISSED WITH PREJUDICE**.

Thereupon, the Court gave consideration to the Defendant, Charlotte Jane Cain's Motion for Approval of Settlement and determined that a Petition for approval of the Wrongful Death Settlement should be filed prior to setting a hearing on the settlement. Therefore, it is **ORDERED** that the parties will file the necessary Petition and set a hearing on the approval of the settlement for a future date.

It is finally **ORDERED** that the Clerk shall deliver certified copies of this Order to the following:

***Tiffany R. Durst, Esquire***  
Pullin, Fowler, Flanagan, Brown & Poe, PLLC  
2414 Cranberry Square  
Morgantown, West Virginia 26508  
***Counsel for State Farm Mutual Automobile Insurance Company***

***John Angotti, Esq.***  
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Morgantown, West Virginia 26505  
***Counsel for Plaintiff***

***Michelle Winiesdorffer-Schirripa***  
Law Offices of W. Stephen Flesher  
53 Fourteenth Street, Suite 602  
Wheeling, West Virginia 26003  
***Counsel for Defendant***

ENTER: April 01, 2011

Susan B. Tucker  
Honorable Susan B. Tucker

April 1, 2011  
129 412

Prepared By:

  

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*Counsel for Underinsured Motorist Carrier,*  
*State Farm Mutual Automobile Insurance Company*

Approved By:

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