

PUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

DAVID PEAGLER, personal
representative of the Estate of
Kathy Marie Thompson,
Plaintiff-Appellee,
v.
USAA INSURANCE COMPANY,
Defendant-Appellant.

No. 04-2257

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
David C. Norton, District Judge.
(CA-02-3977-2-18)

Argued: May 27, 2005

Decided: May 17, 2006

Before GREGORY and DUNCAN, Circuit Judges,
and HAMILTON, Senior Circuit Judge.

Reversed by published opinion. Senior Judge Hamilton wrote the
opinion, in which Judge Gregory and Judge Duncan joined.

COUNSEL

ARGUED: William Oglesby Sweeny, III, SWEENY, WINGATE &
BARROW, P.A., Columbia, South Carolina, for Appellant. John Cal-
houn Land, IV, LAND, PARKER & WELCH, Manning, South Caro-
lina, for Appellee. **ON BRIEF:** William R. Calhoun, Jr., SWEENY,

WINGATE & BARROW, P.A., Columbia, South Carolina, for Appellant.

OPINION

HAMILTON, Senior Circuit Judge:

On August 31, 2001, Kathy Thompson was fatally injured when her husband, Greg, was unloading shotguns from the pickup truck she was occupying. At the time of the accident, Kathy Thompson and her husband were covered under an automobile insurance policy issued to them by USAA Insurance Company (USAA).

On October 24, 2002, David Peagler (Peagler), the personal representative of the estate of Kathy Thompson, brought this action in the South Carolina Court of Common Pleas for Clarendon County. The action was removed to the United States District Court for the District of South Carolina on November 25, 2002, based on diversity of citizenship. The action sought a declaration that the automobile insurance policy issued to the Thompsons provided coverage for the accident that occurred in this case.

After the parties entered into a stipulation of facts, both parties filed motions for summary judgment. On June 24, 2004, the district court granted Peagler's motion and denied USAA's motion. USAA filed a timely notice of appeal.

In order to resolve USAA's appeal, we certified a question to the South Carolina Supreme Court. The South Carolina Supreme Court reformulated the question and answered the following question in the negative:

Did Decedent's fatal injury arise out of the "ownership, maintenance, or use" of a motor vehicle pursuant to S.C. Code Ann. § 38-77-140 (2002), such that the vehicle's insurance policy provides coverage for the accidental discharge of a shotgun which occurred during the unloading of

firearms from a stationary, occupied vehicle which had been used for hunting purposes the previous day?

The South Carolina Supreme Court's negative answer to this question requires that we reverse the district court's grant of summary judgment in favor of Peagler with respect to the coverage issue presented in this appeal.*

REVERSED

*We note that Peagler filed a petition for rehearing in the South Carolina Supreme Court which was denied by that court on April 26, 2006.