FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JULY 26, 2022
STATE OF NORTH DAKOTA

IN THE SUPREME COURT OF NORTH DAKOTA

Farm Family Casualty Insurance Company, Defendant/Appellant, vs. Nodak Insurance Company, Plaintiff/Appellee, and Mountain West Farm Bureau Mutual Insurance Company; Samuel Hamilton; Gordon Williams, individually and as parent and next friend of H.W., a minor; and Dawn Hustad and Kris Meduna, individually and as parents and next friends of A.M., a deceased minor, Defendants and Appellees.	**Supreme Court No.** ~~**20220144**~~ -- 20220114 **Williams County No.** **53-2019-CV-01787**

On Appeal from Summary Judgment entered on February 22, 2022, following an Order on Cross Motions for Summary Judgment dated July 30, 2021, and Second Order on Cross Motions for Summary Judgment dated February 22, 2022

BRIEF OF DEFENDANT AND APPELLANT FARM FAMILY CASUALTY INSURANCE COMPANY ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES

[¶1] Whether the District Court erred in determining that the Vermont Automobile Policy issued by Defendant and Appellant Farm Family Casualty Insurance Company ("Farm Family") to its named insureds, Bruce and Diana Hamilton (the "Hamilton's"), was in full force and effect and provided insurance coverage on a 2011 GMC Sierra pickup truck being driven by the Hamilton's son, Defendant and Appellee Samuel Hamilton, at the time of a motor vehicle accident which occurred on April 6, 2019, in Williams County, North Dakota.

[¶2] Whether the District Court erred in failing to conclude that the Vermont Automobile Policy issued by Farm Family to its named insureds, Bruce and Diana Hamilton, had effectively ceased, or terminated, on December 2, 2018—the date the Hamilton's obtained a policy of insurance through Defendant and Appellee Mountain West Farm Bureau Mutual Insurance Company ("Mountain West") which provided similar insurance coverage on the 2011 GMC Sierra pickup truck being driven by Samuel Hamilton at the time of the April 6, 2019, motor vehicle accident.

[¶3] Whether the District Court erred in concluding that North Dakota law—as opposed to Vermont law or, alternatively, Montana law—applied to the determination of whether the Vermont Automobile Policy issued by Farm Family to its named insureds, Bruce and Diana Hamilton, was in full force and effect and provided insurance coverage on the 2011 GMC Sierra pickup truck being driven by Samuel Hamilton at the time of the April 6, 2019, motor vehicle accident.

ORAL ARGUMENT REQUESTED

[¶4] Farm Family respectfully requests oral argument. This appeal presents unique issues of insurance law, choice-of-law, and the interpretation of insurance policies.

Oral argument will be helpful to the Court in further defining and clarifying the issues and arguments on appeal.

STATEMENT OF THE CASE

[¶5] This appeal arises from a declaratory judgment action involving the interpretation of a Vermont Automobile Policy issued by Farm Family to its named insureds, Bruce and Diana Hamilton, regarding a motor vehicle accident that occurred on April 6, 2019, in Williams County, North Dakota (the "accident").

[¶6] The material facts are undisputed. At the time of the accident, the Hamilton's son, Samuel Hamilton, reportedly ran a stop sign while intoxicated, seriously injuring minor, H.W., and killing minor, A.M., both of whom were occupants of the vehicle struck by Samuel Hamilton. Plaintiff and Appellee Nodak Insurance Company ("Nodak") insured the vehicle that was occupied by H.W. and A.M.

[¶7] Nodak commenced the underlying declaratory judgment action seeking, among other things, a declaration that: 1) Farm Family's Vermont Automobile Policy issued to the Hamilton's was in full force and effect at the time of the April 6, 2019, motor vehicle accident under North Dakota law; 2) Farm Family's policy cannot be retroactively cancelled; and 3) the vehicle being driven by Samuel Hamilton was not an "underinsured motor vehicle" under North Dakota law because Farm Family's policy provides underlying liability limits identical to the underinsured motorist coverage limits contained within the Nodak policy insuring the vehicle occupied by H.W. and A.M.

[¶8] In response, Farm Family sought a declaration that, among other things, its policy was not in effect at the time of the accident. Farm Family argued that its policy had effectively ceased or terminated—thereby allowing it to be retroactively cancelled—because of the Hamilton's subsequent purchase of a policy of insurance through Mountain

West that also provided similar insurance on the vehicle Samuel Hamilton was operating at the time of the accident.

[¶9] In the underlying declaratory judgment action, Nodak and Farm Family brought cross motions for summary judgment. This appeal arises from summary judgment entered in favor of Nodak and against Farm Family, in part, on February 22, 2022 (Index Doc. #94), the Honorable Kirsten M. Sjue, presiding, following an Order on Cross Motions for Summary Judgment dated July 30, 2021 (Index Doc. #70), and Second Order on Cross Motions for Summary Judgment dated February 22, 2022. (Index Doc. #92.)

[¶10] In her Order on Cross Motions for Summary Judgment dated July 30, 2021, the Honorable Kirsten M. Sjue concluded, as a matter of law, that the Farm Family policy issued to the Hamilton's was in full force and effect at the time of the accident and, furthermore, that the subsequent, or replacement policy, issued by Mountain West to the Hamilton's was also in effect at the time of the accident. (Index Doc. #70, ¶2.)

[¶11] In her Order on the Cross Motions for Summary Judgment dated July 30, 2021 (Index Doc. #70), the Honorable Kirsten M. Sjue reserved judgment on the following issues: 1) whether Nodak is liable to pay underinsured motorist benefits ("UIM") pursuant to its policy covering the vehicle occupied by H.W. and A.M. at the time of the accident; and 2) whether the liability policies issued by Farm Family and Mountain West to the Hamilton's should be combined, or whether each insurer must share pro rata in covering and defending the Hamilton's in proportion to the total limits of both policies. (Index Doc. #70, ¶3.)

[¶12] In her Second Order on Cross Motions for Summary Judgment dated February 22, 2022, the Honorable Kirsten M. Sjue concluded that, as a matter of law, Farm Family and Mountain West must share pro rata in paying the loss in the proportion that the

separate limits of their respective coverages bear to the total of the limits of the two policies. (Index Doc. #92, ¶2.) The Honorable Kirsten M. Sjue further concluded that the vehicle being driven by Samuel Hamilton at the time of the accident was not an "underinsured motor vehicle" under North Dakota law or the language of the Nodak policy and, therefore, Nodak was not obligated to provide any UIM coverage in connection with the accident. (*Id.,* ¶3.)[1]

[¶13] Following entry of final judgment by the district court (Index Doc. #94), Farm Family timely filed its Notice of Appeal. (Index Doc. #97.)

STATEMENT OF THE FACTS

[¶14] The underlying cases entitled *State of North Dakota v. Samuel W. Hamilton,* Williams County No. 53-2019-CR-0058, and *Gordon Williams, et al. v. Samuel Hamilton, et al.,* Williams County No. 53-2020-CV-00570, provide a detailed background of the accident that occurred on April 6, 2019. The following facts, however, are undisputed and relevant to this appeal.

[¶15] Samuel Hamilton is the son of Bruce and Diana Hamilton. At the time of the April 6, 2019, accident, Samuel Hamilton was a resident of the state of North Dakota, and his parents, Bruce and Diana Hamilton, were residents of the state of Montana. *See* Williams County No. 53-2020-CV-00570, Doc. #4, ¶¶2, 3.

[¶16] Prior to the accident, Farm Family issued a Vermont Automobile Insurance Policy, Policy No. 44-V-698-63Y-5, to Bruce and Diana Hamilton with an effective policy period of October 19, 2018, to October 19, 2019 (the "Farm Family Policy). (Index Doc. #47.) The Farm Family Policy was initially negotiated and issued to the Hamilton's in the

[1]The issues that were reserved for determination and later decided by the Honorable Kirsten M. Sjue in her Second Order on Cross Motions for Summary Judgment have not been appealed by any party.

state of Vermont. In that regard, the rating address and principal location of the insured vehicle—a 2011 GMC Sierra 1500 pickup truck—was listed as being 760 Spencer Hill, Coventry, Vermont. (Index Doc. #46.) Furthermore, the Farm Family Policy identifies the insurance agent as being Richard Isabel, who is located in Newport, Vermont. (*Id.*) The Farm Family Policy provided underlying bodily injury liability coverage limits of $250,000 per person and $500,000 per accident. (Index Doc. #46 at 000019.)

[¶17] After obtaining the Farm Family Policy and, thereafter, moving to the state of Montana, the Hamilton's obtained a policy of insurance from Mountain West that also insured the 2011 GMC Sierra 1500 pickup truck. (Index Doc. # 38.) The Mountain West Policy, Policy No. 20M51913, had an effective policy term that ran from December 2, 2018, to June 2, 2019, and afforded underlying bodily injury liability coverage limits of $100,000 per person and $300,000 per accident. (Index Doc. # 39.)

[¶18] On April 6, 2019, Samuel Hamilton was driving the insured vehicle at issue—the 2011 GMC Sierra 1500 pickup truck—southbound on 105th Avenue Northwest in Williams County, North Dakota. He reportedly ran a stop sign while intoxicated and struck a vehicle being driven by H.W., who was traveling westbound on Highway 1804 at the same time. At the time of the accident, A.M. was a passenger in the vehicle being driven by H.W. As a result of the accident, H.W. was seriously injured and A.M. was killed. (*See* Williams County No. 53-2019-CR-00558, Doc. #104, ¶4, and Doc. #120, ¶4; Williams County No. 53-2020-CV-00570, Doc. #4, ¶¶5, 7.)

[¶19] Nodak insured the vehicle that H.W. and A.M occupied at the time of the accident. (Index Doc. #7.)

[¶20] Following the accident, Farm Family was placed on notice of the accident involving the 2011 GMC Sierra 1500 pickup truck being driven by Samuel Hamilton.

After its investigation and upon learning that the Hamilton's subsequently obtained a policy of insurance through Mountain West which similarly insured the 2011 GMC Sierra 1500 pickup truck Samuel Hamilton was driving at the time of the accident, Farm Family denied coverage for the subject accident and issued a refund of the Hamilton's unearned premium. (Index Doc. ##48, 49.)

[¶21] Farm Family's denial of coverage was based upon the following clear and unambiguous language of the Farm Family Policy:

PART V - GENERAL CONDITIONS

* * *

10. **CANCELLATION OR NONRENEWAL OF THIS POLICY**

* * *

> If other insurance is obtained by **you** on **your insured car,** similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.
>
> If different requirements for cancellation and nonrenewal or termination of policies are applicable because of the laws of **your** state, **we** will comply with those requirements.

(Index Doc. #47 at 000050.)

[¶22] Farm Family contends that the Farm Family Policy was not in effect at the time of the accident. The Farm Family Policy had effectively ceased or terminated—thereby allowing it to be retroactively cancelled—because of the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West that also insured the vehicle Samuel Hamilton was operating at the time of the accident.

[¶23] The Farm Family Policy provided in further part as follows:

FAMILY AUTOMOBILE POLICY

POLICY AGREEMENT

We agree to insure **you** subject to the terms of this policy.

This agreement is based on our reliance upon:

(1) the fact that the statements in the application, any change request, and the Declarations are **your** statements and are true. The contents of these documents are made a part of this policy by reference;

(2) the policy containing all of the agreements between **you** and **us** or any of our representatives; and

(3) **your** payment of the premium for the coverages **you** chose as shown in the Declarations. If any premium payment made by check or other negotiable instrument is not honored by the bank, no insurance is provided.

* * *

DEFINITIONS USED THROUGHOUT THIS POLICY

Some words or phrases in the policy have been defined below. Defined words or phrases are printed in bold type and have the following meanings, unless a different meaning is described in a particular coverage or endorsement.

(1) **"You"** and **"your"** mean the Policyholder named in the Declarations and:

(a) spouse; or

(b) a party who has entered into a civil union with the Policyholder named on the Declarations under Vermont law;

if living in the same household.

* * *

(6) **"Financial responsibility law"** means a law which requires a certain level of financial responsibility, or certain level of insurance coverage, to own, operate, or allow others to operate a motor vehicle in the jurisdiction in which *coverage* under this policy is sought. It includes motor vehicle **financial**

responsibility laws, compulsory insurance laws, or similar laws of another state or Canada.

(7) **"Insured" or "Insured person"** means the person, persons, or organization defined as an insured person in or with reference to a specific *coverage.*

* * *

(13) **"Relative"** means a person living with **you** and related to **you** by blood, marriage, civil union under Vermont law, or adoption, including **your** ward or foster child, provided neither the relative nor the relative's spouse owns, in whole or in part, a car.

* * *

(17) **"Your insured car"** means:

(a) the car described in the Declarations for which a premium charge is shown;

* * *

PART I - LIABILITY

COVERAGE A - BODILY INJURY AND COVERAGE B - PROPERTY DAMAGE

We will pay damages for which an **insured person** becomes legally liable because of **bodily injury or property damage** resulting from the ownership, maintenance, or use of **your insured car** or a **non-owned car.** This coverage applies to any **utility trailer** while attached to or towed by **your insured car** or a **non-owned car.** Damages include prejudgment interest awarded against the **insured person.**

* * *

CONFORMITY WITH STATE FINANCIAL RESPONSIBILITY LAWS

When **we** certify this policy as proof under a state **financial responsibility law,** it will comply with that law to the extent of the coverage and limits of liability required by that law.

OUT-OF-STATE INSURANCE

If an **insured person** becomes subject to the **financial responsibility law,** compulsory insurance law, or similar laws of another state or Canada because of the ownership, maintenance, or use of **your insured**

> **car** in that state, **we** will interpret this policy to provide any broader coverage required by those laws. Any broader coverage so afforded shall be reduced to the extent that other auto liability insurance applies. No person may, in any event, collect more than once for the same elements of loss.
>
> * * *
>
> **OTHER INSURANCE**
>
> If there is other applicable auto liability insurance on a loss covered by this Part, we will pay **our** proportionate share as **our** limits of liability bear to the total of all applicable liability limits. Insurance afforded under this Part for a **non-owned car or temporary substitute car** is excess over any other collectible auto liability insurance.
>
> * * *

(Index Doc. #47 at 000037-38, and 000040-000041.) (Emphasis in original.)

[¶24] The material facts are undisputed, the policy language is unambiguous, and the case law is clear. This Court should reverse the district court and enter summary judgment in favor of Farm Family determining, as a matter of law, that the Vermont Automobile Policy it had previously issued to the Hamilton's was not in effect at the time of the accident. The Farm Family policy effectively ceased because of the Hamilton's subsequent purchase of a policy of insurance through Mountain West that also provided similar insurance on the vehicle Samuel Hamilton was operating at the time of the accident.

STANDARD OF REVIEW

[¶25] This Court's standard for reviewing summary judgment is well established:

> Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can be reasonably drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the

> record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.

Borsheim Builders Supply, Inc. v. Manager Ins., Inc., 2018 ND 218, ¶ 7, 917 N.W.2d 504 (quoting *Forsman v. Blues, Brews & Bar-B-Ques, Inc.,* 2017 ND 266, ¶ 9, 903 N.W.2d 524) (other citations omitted).

[¶26] Regarding the specific issues involved in this appeal, "[i]nsurance policy interpretation is a question of law, which is fully reviewable on appeal." *Borsheim Builders,* 2018 ND 218, ¶ 8 (quoting *Forsman,* 2017 ND 266, ¶ 10). This Court is to independently examine and construe the insurance contract on appeal to decide whether coverage exists. *Borsheim Builders,* 2018 ND 218, ¶ 8; *K & L Homes, Inc. v. American Fam. Mut. Ins. Co.,* 2013 ND 57, ¶ 8, 829 N.W.2d 724. Indeed, this Court is to construe policy language to give effect to the parties' mutual intention at the time of contracting:

> We look first to the language of the insurance contract, and if the policy language is clear on its face, there is no room for construction. If coverage hinges on an undefined term, we apply the plain, ordinary meaning of the term in interpreting the contract. While we regard insurance policies as adhesion contracts and resolve ambiguities in favor of the insured, we will not rewrite a contract to impose liability on an insurer if the policy unambiguously precludes coverage. We will not strain the definition of an undefined term to provide coverage for the insured. We construe insurance contracts as a whole to give meaning and effect to each clause, if possible. The whole of a contract is to be taken together to give effect to every part, and each clause is to help interpret the others.

Borsheim Builders, 2018 ND 218, ¶ 8 (quoting *Forsman,* 2017 ND 266, ¶ 10) (other citations omitted).

[¶27] "Exclusions from coverage . . . must be clear and explicit and are strictly construed against the insurer. *Borsheim Builders,* 2018 ND 218, ¶ 8 (quoting *Schleuter v. Northern Plains Ins. Co., Inc.,* 2009 ND 171, ¶ 8, 772 N.W.2d 879) (other citations

omitted). "While exclusionary clauses are strictly construed, a contract will not be rewritten to impose liability when the policy unambiguously precludes coverage." *Borsheim Builders,* 2018 ND 218, ¶ 8 (quoting *Forsman,* 2017 ND 266, ¶10).

[¶28] In interpreting an insurance policy, this Court first examines its coverages before examining its exclusions. *Borsheim Builders,* 2018 ND 218, ¶ 9. "If and only if a coverage provision applies to the harm at issue will the court then examine the policy's exclusions and limitations on coverage." *Id.* (quoting *Wisness v. Nodak Mut. Ins. Co.,* 2011 ND 197, ¶ 16, 806 N.W.2d 146 (other citations omitted). "An exclusionary provision, or the absence of one, cannot be read to provide coverage that does not otherwise exist." *Id.* "Similarly, while an exception to an exclusion results in coverage, 'an exception to an exclusion is incapable of initially providing coverage; rather, an exception may be applicable if, an only if, there is an initial grant of coverage under the policy and the relevant exclusion containing the exception operates to preclude coverage.'" *Borsheim Builders,* 2018 ND 218, ¶ 9 (quoting *Forsman,* 2017 ND 266, ¶ 11) (other citations omitted). The burden of proof rests upon the party claiming coverage under an insurance policy. *Borsheim Builders,* 2018 ND 218, ¶ 10.

[¶29] Similarly, this Court's standard of review for interpreting a statute is well-established:

> The interpretation of a statute is a question of law, which is fully reviewable on appeal. The primary objective in interpreting a statute is to determine the legislature's intent, and we look at the language of the statute first to determine intent. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless they are defined by statutory or unless a contrary intention plainly appears.

State v. Vandermeer, 2014 ND 46, ¶ 13, 843 N.W.2d 686.

ARGUMENT

I. The District Court Erred In Determining That The Vermont Automobile Policy Issued By Farm Family To Its Named Insureds, Bruce And Diana Hamilton, Was In Full Force And Effect And Provided Insurance Coverage On The 2011 GMC Sierra Pickup Truck Being Driven By Samuel Hamilton At The Time Of The April 6, 2019, Accident.

A. The Farm Family Policy Is Clear And Unambiguous And Effectively Ceased On December 2, 2018—The Date The Hamilton's Obtained A Similar Policy Of Insurance Through Mountain West.

[¶30] The Farm Family Policy is clear and unambiguous and allows for the cancellation based upon the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West. The Farm Family Policy provides in part:

> 10. **CANCELLATION OR NONRENEWAL OF THIS POLICY**
>
> * * *
>
> If other insurance is obtained by **you** on **your insured car,** similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.
>
> If different requirements for cancellation and nonrenewal or termination of policies are applicable because of the laws of **your** state, **we** will comply with those requirements.

(Index Doc. #47 at 000050.) (Emphasis in original.)

[¶31] Based upon this clear and unambiguous policy language, the Farm Family Policy "ceased" on December 2, 2018, the effective date the Hamilton's obtained "similar insurance" on the 2011 GMC Sierra 1500 pickup truck. Put simply, because Farm Family's Policy "ceased" on December 2, 2018, it logically follows that it was not in effect at the time of the accident and, therefore, cannot provide coverage on the vehicle Samuel Hamilton was operating at the time of the April 6, 2019, accident. The term "cease" is clear and unambiguous—*i.e.,* the Farm Family Policy came to an end, it did not exist.

[¶32] The "termination by substitution" or "cancellation by substitution" doctrine is a well-grounded insurance law principle. *See Ohio Cas. Ins. Co. v. Dentek, Inc.,* 283 F. Supp. 2d 655, 659 (D. Conn. 2003) ("Termination of one insurance policy by substitution of a different policy is a well-settled insurance concept"). As set forth by the court in *Ohio Cas. Ins. Co.,* termination or cancellation by substitution takes place when "the insured has existing insurance covering a specific risk . . . and purchases additional insurance on the same property while (a) intending the new insurance to replace the existing insurance, or (b) the terms of the existing insurance specify that the purchase of additional insurance shall have the effect of cancellation." *Ohio Cas. Ins. Co.,* 283 F. Supp. 2d at 659 (quoting 2 *Couch on Insurance* § 31:126 (3rd Ed. and Dec. 2002 Supp.). Both apply here.

[¶33] *Ohio Cas. Ins. Co. v. Gentile,* 102 Fed. App. 737 (2nd Cir. 2004) is also instructional and directly on point. In *Ohio Cas. Ins. Co. v. Gentile,* the Second Circuit considered the effect of an automatic termination provision contained in an automobile policy, which was nearly identical to the one at issue in the Farm Family Policy. The case involved the issue of insurance coverage for an accident in which two separate policies potentially provided coverage applicable to the accident. *Id*. at 738. One of the insurers took that position that its policy did not cover the vehicle for the accident in question because there was an automatic termination provision in the policy which was activated by the purchase of the second insurance policy on the same vehicle. *Id*. The Second Circuit held that the termination provision applied, and the language of the provision was clear—the subject vehicle was a "designated" auto within the meaning of the provision, and the insured purchased the second policy on the same vehicle, thereby triggering termination. *Id*.

[¶34] Similarly, in *Providence Washington Ins. Co. v. Advance Auto Rental, Inc.*, 1994 WL 401325 (Sup. Ct. Conn. Jul. 15, 1994), an automatic termination provision contained in a nonrenewal clause was examined. The subject policy stated, "[w]ith respect to automobile liability insurance policies only, your policy shall terminate on the effective date of any other insurance policy you purchase with respect to any automobile designated in both policies." *See Providence Washington Ins. Co.,* 1994 WL 401325 at *3. When the insured obtained other insurance coverage effective at 12:01 a.m. on September 20, 1990, the court held that the policies issued by the initial insurer terminated at that point and did not provide any coverage for an accident that occurred at 1:01 a.m. on September 20, 1990. *Id*.

[¶35] The foregoing cases are not only directly on point, but dispositive—mandating reversal of the district court and the entry of summary judgment as a matter of law in favor of Farm Family based upon the clear and unambiguous language of the Farm Family Policy. The Farm Family Policy "ceased" on December 2, 2018—the effective date the Hamilton's obtained "similar insurance" on the 2011 GMC Sierra 1500 pickup truck that Samuel Hamilton was operating at the time of the accident.

B. Farm Family's Policy Was Not Cancelled, Non-Renewed, Or Terminated As The Result Of Any Unilateral Act By Farm Family And, Therefore, There Were No Additional Termination Requirements Beyond The Clear And Unambiguous Language Of The Farm Family Policy Itself.

[¶36] Again, based upon the clear and unambiguous language of the Farm Family Policy, it effectively "ceased" on December 2, 2018. There was no "cancellation" or "non-renewal" or "termination" other than by operation of the Farm Family Policy language itself due to the Hamilton's own conduct in purchasing other insurance. The Farm Family

Policy "ceased" on December 2, 2018—the effective date the Hamilton's obtained similar insurance through Mountain West.

[¶37] Assuming, *arguendo,* the Farm Family Policy had been cancelled, or non-renewed, or terminated for reasons other than the Hamilton's obtaining similar insurance through Mountain West and, moreover, there existed different requirements for cancellation and nonrenewal or termination of polices—other than those set forth in the Farm Family Policy itself—because of the laws of the Hamilton's state (*i.e.,* Montana), then Farm Family was required to comply with those requirements. That, however, was not the case.

[¶38] To that end, Farm Family's Policy provided:

> If different requirements for cancellation and nonrenewal or termination of policies are applicable because of the laws of **your** state, **we** will comply with those requirements.

(Index Doc. #47 at 000049.) (Emphasis in original.) Farm Family's Policy was not cancelled or non-renewed or terminated because of the unilateral act of Farm Family. Rather, it "ceased" by operation of the policy language itself due to the Hamilton's own conduct in purchasing other insurance through Mountain West. Accordingly, any argument that either Montana law (or North Dakota law) somehow requires a different result is misplaced and contrary to the plain and unambiguous language of the Farm Family Policy itself.

[¶39] More specifically to the point, if, for example, Farm Family had grounds to cancel or non-renew or terminate the Farm Family Policy other than if the Hamilton's had obtained similar insurance through Mountain West, *i.e.,* for nonpayment of premium or a material misrepresentation, etc., then the Farm Family Policy sets forth specific requirements regarding notice, mailing, etc. And, if different requirements for notice,

mailing, etc.—separate and apart from those contained in the Farm Family Policy—were applicable because of the laws of the state of Montana, the state where the Hamilton's resided, then Farm Family was required to comply with the state of Montana's requirements. Again, this was not the case. Farm Family's Policy was not cancelled or non-renewed or terminated because of the unilateral act of Farm Family. Rather, it undeniably "ceased" by operation of the policy language itself due to the Hamilton's own conduct in purchasing similar insurance through Mountain West.

[¶40] But, even assuming this Court were to determine that Montana law applied, the result is the same. In *Yovish v. United Servs. Auto Ass'n,* 794 P.2d 682 (Mont. 1990), *overruled on other grounds,* the Montana Supreme Court held that an insurance company must follow its own policies regarding non-renewal and cancellation provided they are not narrower than the protections afforded by the Montana legislature. *Id.* at 684. There is no Montana statute that prohibits Farm Family from following the automatic termination provision in its policy, which it properly did.

[¶41] Moreover, because the Farm Family Policy "ceased" by operation of the policy language itself resulting from the Hamilton's own conduct in purchasing a subsequent liability policy through Mountain West, Montana's statute regarding notice cancellation, Mont. Code Ann. § 33–23–212, is inapplicable.[2] Indeed, Mont. Code Ann. § 33–23–212, governs cancellation by the insurer, and not termination by unilateral acts of the insured.

[¶42] Although no Montana case has construed this statutory provision, other courts construing similar statutory provisions, have determined that there is no notice

[2]Mont. Code Ann. § 33–23–212 provides that a cancellation is not effective until 45 days after the date of mailing the cancellation notice.

requirement when cancellation is predicated on the insured's purchase of another insurance policy. In *Ohio Farmers Ins. Co. v. Estate of Brace*, 116 Ohio App.3d 395, 399, 688 N.E.2d 298, 301 (1997), for example, the Ohio Appellate Court held that the Ohio statute governing the method of cancellation of motor vehicle insurance is inapplicable when cancellation is predicated upon the insured's purchase of other insurance pursuant to an automatic termination provision of a policy.

[¶43] Similarly, *Stith v. Milwaukee Guardian Ins., Inc.,* 44 Ohio App.3d 147, 541 N.E.2d 1071 (1988), is also instructive and directly on point. In *Stith,* the court examined, among other things, whether an insurer must comply with statutory written notice provisions in the context of an automatic termination provision contained within the policy. The automatic termination provision examined by the court in *Stith* was nearly identical to that contained within the Farm Family Policy. It provided: "If other insurance is obtained on your insured car, any similar insurance afforded under this policy for that car will cease on the effective date of the other insurance." 541 N.E.2d at 1072.

[¶44] In *Stith,* the insured, Joseph Stith, argued that despite the "automatic termination" provision contained within his Milwaukee Guardian insurance policy, Milwaukee Guardian could not cancel his insurance without proper statutory written notice. The court in *Stith* disagreed, holding:

> It is apparent that the purpose of this statute is to provide the insured with adequate notice of an impending cancellation, thus affording the opportunity to obtain other automobile insurance. However, when the automobile insurance cancellation is predicated upon the insured's purchase of other insurance, the purpose of the statute remains unimpaired. We hold, therefore, that such an automatic termination provision is valid.

Id. at 1073, citing *Taxter v. Safeco Ins. Co.,* 44 Wash. App. 121, 721 P.2d 972 (1986), *rev. denied,* 108 Wash.2d 1037 (1987) (construing nearly identical policy language to that

contained within the Farm Family Policy and holding automatic termination provision in policy valid).

[¶45] The rationale and analysis set forth in the foregoing cases applies in analogous fashion here. Even assuming Montana law applied, the Farm Family Policy "automatic termination" provision is valid and enforceable, thereby entitling Farm Family to a reversal of the district court and the entry of summary judgment in favor of Farm Family as a matter of law. Farm Family's Policy ceased, or terminated, as a result of the Hamilton's purchase of similar insurance through Mountain West. Put simply, Farm Family's "automatic termination" provision was predicated upon the Hamilton's own conduct and purchase of subsequent insurance through Mountain West. Indeed, it was the Hamilton's own actions that resulted in the termination of the Farm Family Policy. And, that termination did not leave the Hamilton's without coverage. The Hamilton's had coverage under through the subsequent or replacement policy they obtained through Mountain West. No statutory written notice was required under this circumstance—whether under Montana law, North Dakota law, Vermont law, or any other state. The purpose of any notice statute—to provide the insured the opportunity to obtain other insurance prior to cancellation—remains unimpaired. *See Taxter v. Safeco Ins. Co.,* 721 P.2d at 974.[3]

[3]Should this Court determine Montana law applies and, moreover, that Farm Family erroneously relied upon the automatic cancellation provision contained with its policy, then Farm Family's indemnity obligation is subject to the minimum limits set forth in Mont. Code Ann. § 61-6-103(1)(b)(i) and (ii), to wit: $25,000 per person and $50,000 per accident.

II. The District Court Erred In Determining That North Dakota Law—As Opposed To Vermont Law, Or Alternatively, Montana Law—Applied In Concluding The Farm Family Policy Was In Full Force And Effect At The Time Of The April 6, 2019, Accident.

[¶46] In its Order on Cross Motions for Summary Judgment, the district court concluded that the Farm Family Policy covering the 2011 GMC Sierra was not terminated when Bruce and Diana Hamilton later obtained another policy of insurance from Mountain West because the Mountain West policy did not provide "equal or more extensive coverage" for the vehicle as required by N.D.C.C. § 26.1-40-09 in order for Farm Family to terminate its policy coverage.[4] (*See* Index Doc. #70, ¶2.) As a result of the foregoing determination, the district court further concluded that the Farm Family Policy was in full force and effect and provided coverage for the 2011 GMC Sierra driven by Samuel Hamilton at the time of the April 6, 2019, accident. (*Id.*)

[¶47] As discussed *supra,* the Farm Family Policy is clear and unambiguous and allows for the cancellation based upon the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West. Farm Family's policy language notwithstanding, the district court erred in concluding that North Dakota law—as opposed to Vermont law, or alternatively, Montana law—applied to the determination of whether the Vermont Automobile Policy issued by Farm Family to its named insureds, Bruce and Diana Hamilton, was in full force and effect and provided insurance coverage on the 2011

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[4]N.D.C.C. § 26.1-40-09 provides in part:

> ". . . if an insured obtains a replacement policy providing equal or more extensive coverage for a motor vehicle covered in both policies, the first insurer's coverage of that motor vehicle may be terminated either by cancellation or nonrenewal. The termination is effective on the effective date of the second policy providing duplicate replacement coverage. Upon termination, the insured is entitled to a refund of the premium and written notice must be mailed or delivered to the named insured."

GMC Sierra pickup truck being driven by Samuel Hamilton at the time of the April 6, 2019, accident. Put simply, the district court erred in failing to conduct a choice-of-law analysis given the multistate contacts involved in the underlying declaratory judgment action and, had it done so, Vermont law, rather than North Dakota law or Montana law, indisputably applies as a matter of law.[5]

A. As A Matter Of Law, The Application Of Vermont Law Applies Following A Choice-Of-Law Analysis By This Court.

[¶48] To determine which state's law to apply, this Court must first consider the nature of the action. The fundamental nature and genesis of Nodak's Amended Complaint for declaratory judgment resonates in contract. (Index Doc. #7.) Policy coverage, not tort liability, is the question.

[¶49] Under North Dakota law, it is well established that a "significant contacts" approach governs choice of law issues. "The trend in resolving choice of law issues is to apply the law of the state with the most "significant relationship to the dispute." *Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 9, 687 N.W.2d 226, 230 (citing 4 Eric Mills Holmes, *Holmes' Appleman on Insurance 2d* § 21.11, at 325 (1998)). "In general, it is fitting that the state whose interests are most deeply affected should have its local law applied." *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Design, Inc.,* 382 N.W.2d 386, 390 (N.D. 1986) (citations omitted); *Plante v. Columbia Paints,* 494 N.W.2d 140, 141 (N.D. 1992) ("[t]he significant contacts approach is . . . appropriate in contract cases with multistate factual contacts").

[5]As discussed, *supra,* even assuming this Court were to determine that Montana law applies following a choice-of-law analysis, the result is the same. As of December 2, 2018, Farm Family's Policy ceased, or was effectively cancelled, due to the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West. As discussed *supra,* nothing under Montana law prevents this result.

[¶50] In deciding which forum's law to apply in a case presenting multistate contacts, the significant contacts test for deciding a choice-of-law question requires a two-pronged analysis. *Wamsley,* 2004 ND 174, ¶13, 687 N.W.2d 226, 231 (citing *Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 10, 587 N.W.2d 159, 161.) First, the court determines "all of the relevant contacts which might logically influence the decision of which law to apply." *Id*. Second, the court applies the choice-influencing considerations set forth in *Plante* "to determine which jurisdiction has the more significant interest with the issues in the case." *Id.* Those factors are as follows: 1) predictability of results; 2) maintenance of interstate and international order; 3) simplification of the judicial task; 4) advancement of the forum's governmental interests; and 5) application of the better rule of law. *See Issendorf v. Olson,* 194 N.W.2d 750, 755 (N.D. 1972).[6]

[¶51] The two-pronged choice-of-law analysis required under *Wamsley* compels the determination that Vermont law, rather than North Dakota law, applies in this multistate contract case as a matter of law.

1. Significant Contact Analysis

[¶52] This matter involves the following undisputed contacts: (1) the accident occurred in North Dakota; (2) Farm Family is a New York company; (3) the policy issued by Farm Family covered a Vermont vehicle and a contract of insurance negotiated and issued in the state of Vermont; (4) Farm Family's named insureds, Bruce and Diana Hamilton, applied for the Farm Family policy in Vermont through a Vermont insurance agent; (5) the Hamilton's made premium payments in Vermont for the Farm Family policy; (6) the Hamilton's were residents of Montana at the time of the accident involving the

[6]Vermont has adopted the Restatement (Second) of Conflicts for choice of law questions in contract cases, placing heightened emphasis on the place of performance. *See McKinnon v. F.H. Morgan* & Co., *Inc.,* 750 A.2d 1026, 1028 (Vt. 2000).

vehicle being driven by their son, Samuel Hamilton; (7) minors H.W. and A.M., the occupants of the other vehicle struck by Samuel Hamilton, were residents of North Dakota; and (8) at the time of the accident, all witnesses are listed as being from North Dakota.

[¶53] Contacts that relate specifically to the accident, such as the location of the accident, residence of the parties involved in the accident, location of the witnesses, *etc.,* are significant in a tort claim, but not significant factors when determining choice-of-law in an insurance contract claim such as this. *Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 14, 687 N.W.2d 226, 232. Rather, in insurance coverage cases such as this, the law of the state in which the policy was applied for, negotiated, paid for, and issued will be applied than the law of another state. *Id.* at ¶ 14, 687 N.W.2d at 233; *see also Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 26, 587 N.W.2d 159, 164; *Plante v. Columbia Paints,* 494 N.W.2d 140, 143 (N.D. 1992); *Vigen Constr. Co. v. Millers Nat'l Ins. Co.,* 436 N.W.2d 254, 257 (N.D. 1989); and *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Design, Inc.,* 382 N.W.2d 386, 390 (N.D. 1986). Here, that analysis compels the application of Vermont law.

2. Five Choice-Influencing Consideration Analysis

a. Predictability of Results

[¶54] "Predictability of results includes the ideal that parties to a consensual transaction should be able to know at the time they enter upon it that it will produce, by way of legal consequences, the same socioeconomic consequences . . . regardless of where the litigation occurs." *Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 16, 687 N.W.2d 226, 232. Simply stated, the objective of the predictability factor is to fulfill the parties' justified expectations. *Id.*; *Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 24, 587 N.W.2d 159, 164. Again, in insurance contract cases such as this, it is undeniably

clear that courts have said this consideration favors application of the law of the state in which the insurance policy was negotiated, issued, and the premiums paid. *Wamsley,* 2004 ND 174, ¶ 16, 687 N.W.2d at 232; *Daley,* 1998 ND 225, ¶26, 587 N.W.2d 159, 164; *Plante v. Columbia Paints,* 494 N.W.2d 140, 143 (N.D. 1992); *Vigen Constr. Co. v. Millers Nat'l Ins. Co.,* 436 N.W.2d 254, 257 (N.D. 1989); and *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Design, Inc.,* 382 N.W.2d 386, 390 (N.D. 1986). Here, that state is Vermont.

[¶55] As stated by the North Dakota Supreme Court in *Wamsley*:

> In the automobile liability situation, the law of the state where the policy was negotiated, the premiums were paid, and the insurer and the insured resided provided more significant contacts than the mere occurrence of the accident in another state . . .. Generally speaking, the site of the accident is not a sufficient contact to require the application of that state's law in the absence of other interests or contacts.

Wamsley, 2004 ND 174, ¶ 17, 687 N.W.2d at 233 (quoting 4 Eric Mills Holmes, *Holmes' Appleman on Insurance 2d* § 21.11, at 325 (1998) (emphasis added).

[¶56] In *Plante v. Columbia Paints*, 494 N.W.2d 140, 142-43 (N.D. 1992), a declaratory judgment action was brought to determine the coverage provided by an insurance policy for injuries occurring in an explosion in North Dakota. The insurance policy at issue was obtained through a Washington insurance broker and agent. Additionally, the policy was delivered in Washington, the insurance premiums were paid in Washington, and the policy was intended to cover manufacturing functions in Washington. The only contacts in North Dakota were primarily related to the underlying tort claims. The court concluded that although the injury occurred in North Dakota, the contacts related to the insurance contract between the parties, being primarily Washington contacts, were "the most significant."

[¶57] In *Nodak Mut. Ins. Co. v. Wamsley*, 2004 ND 174, ¶ 2, 687 N.W.2d 226, 228, the Wamsleys, while riding in their car in Montana, were involved in a deadly collision

with a Montana insured vehicle. At the time of the accident, the Wamsleys owned three vehicles and each was insured by a North Dakota policy issued by Nodak. Under North Dakota law, coverages under the policies may not be stacked, but under Montana law, the coverages may be stacked. Stacking allows for combined coverage limits for multiple vehicles. The Wamsleys argued that Montana law—rather than North Dakota law—should apply in the resolution of the litigation. This Court held that North Dakota law applied. In reaching its conclusion, this Court reasoned that Montana's contacts were merely related to the underlying tort claims (due to the location of the accident), whereas the contacts related to the insurance contract between Nodak and the Wamsleys were the "most significant contacts" because they had bearing upon the "contractual relationship" between the parties.

[¶58] The rationale set forth in the foregoing cases, including *Wamsley,* applies here. North Dakota's contacts are solely related to the underlying tort claims. This declaratory judgment action, however, is an insurance contract coverage dispute. Accordingly, the state of Vermont has the more "significant contacts" due to the contractual nature of the insurance contract and insurance contract claim. Those contacts, as noted above, are as follows: (1) the policy issued by Farm Family covered a Vermont vehicle and a contract of insurance negotiated and issued in the state of Vermont; (2) Farm Family's named insureds, Bruce and Diana Hamilton, applied for the Farm Family policy in Vermont through a Vermont insurance agent; and (3) the Hamilton's made premium payments in Vermont for the Farm Family policy.

[¶59] Under existing case law and precedent, coupled the undisputed facts of this case, the analysis of the "predictability of results" factor weighs clearly in favor of the application of Vermont law.

b. Maintenance of Interstate and International Order

[¶60] Choice-of-law rules should further harmonious relations between states, facilitate commerce between states, and avoid interstate friction. *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Design, Inc.,* 382 N.W.2d 386, 390 (N.D. 1986). Neither application of North Dakota law nor Vermont law would "manifest disrespect" for the other state, or cause interstate friction under the factual scenario set forth in this matter. *See, e.g., Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 20, 687 N.W.2d 226, 233. Accordingly, this factor does not favor application of either state's law.

c. Simplification of Judicial Task

[¶61] In analyzing the "simplification of judicial task" factor, courts have indicated that "[i]t will usually be easier for the forum court to apply its own law than any other." *Plante v. Columbia Paints,* 494 N.W.2d 140, 143 (N.D. 1992). However, in insurance contract cases, such as this case, "[s]implification of the judicial task is not a relevant factor" because the "law of either state could be applied without difficulty." *Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 30, 587 N.W.2d 159, 165. Accordingly, this factor also does not favor application of either state's law. Certainly, this Court (or any district court) will be able to apply any state's law without difficulty.

d. Advancement of the Forum's Governmental Interests

[¶62] A state's governmental interest in a choice-of-law case is discoverable by (a) identifying the factual contacts which the litigated transaction had with that state, then (b) determining whether those contacts give rise to real reasons (socioeconomic or political justifications) for applying the state's law to litigated issues in the case. *Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 21, 687 N.W.2d 226, 234. North Dakota courts have previously determined that North Dakota can have no substantial governmental interest in

regulating the relationship between out-of-state insurance companies and their out-of-state insureds. *See Plante v. Columbia Paints,* 494 N.W.2d 140, 143 (N.D. 1992); *Apollo Sprinkler Co. v. Fire Sprinkler Suppliers & Design, Inc.,* 382 N.W.2d 386, 391 (N.D. 1986). "The fortuitous location of the accident in [North Dakota] does not change that, absent some other contact with the state." *Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 33, 587 N.W.2d 159, 165.

[¶63] The court's reasoning and analysis in *Apollo Sprinkler Co.* is instructive and provides further guidance in this matter. In *Apollo Sprinkler Co.,* the court held:

> North Dakota can have no substantial governmental interest in regulating the relationship between a Minnesota insurance company and its Minnesota insured or in construing the contractual agreement between them in accordance with North Dakota law when the Minnesota contacts are much more significant than the North Dakota contacts.

Apollo Sprinkler Co., 382 N.W.2d at 391.

[¶64] Thus, while the state of North Dakota admittedly has governmental interests in promoting travel and commerce within its state, securing a source of funds for the payment of an insured's creditors, and in seeking to make sure that insureds injured by underinsured motorists recover damages to the extent possible, the state of North Dakota can have no substantial governmental interest in regulating the contractual agreement between Farm Family and its insureds insofar as it pertains to an insurance policy that was applied for, negotiated, paid for, and issued in the state of Vermont. Under the case law cited above, the state of Vermont's governmental interests are, therefore, more appropriately advanced. As set forth above, "[t]he fortuitous location of the accident in does not change that, absent some other contact with the state." *Daley*, 1998 ND 225, ¶ 33, 587 N.W.2d at 165. Accordingly, this factor favors the application of Vermont law.

e. Application of the Better Rule of Law

[¶65] The final factor for consideration is whether North Dakota or Vermont has, in an objective sense, the better rule of law. *Nodak Mut. Ins. Co. v. Wamsley,* 2004 ND 174, ¶ 22, 687 N.W.2d 226, 234. Analysis of this factor favors neither North Dakota nor Vermont in an objective sense. As the Minnesota Supreme Court has stated, "sometimes different laws are neither better nor worse in an objective way, just different. *Jepson v. General Cas. Co*., 513 N.W.2d 467, 473 (Minn. 1994).

[¶66] In sum, contacts that relate specifically to the accident, such as the location of the accident, residence of the parties involved in the accident, location of the witnesses, *etc.,* are significant in a tort claim, but not significant factors when determining choice-of-law in an insurance contract claim such as this. *Wamsley*, 2004 ND 174, ¶ 14, 687 N.W.2d at 232. Rather, the significance of contacts are to be measured according to the five choice-influencing considerations set forth above. *Daley v. American States Preferred Ins. Co.,* 1998 ND 225, ¶ 12, 587 N.W.2d 159, 162. Following this choice-of-law analysis, Vermont has the more significant contacts and interest with regard to the issues of insurance coverage. Vermont law, therefore, applies.

B. Under Vermont Law, Farm Family's Policy Ceased As A Result Of The Hamilton's Subsequent Purchase Of A Similar Policy Of Insurance Through Mountain West.

[¶67] As set forth *supra,* the Farm Family Policy is clear and unambiguous. Farm Family's Policy ceased as a result of the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West. Farm Family's Policy was not in effect at the time of the accident and, therefore, does not provide coverage on the vehicle that Samuel Hamilton was operating at the time of the accident.

[¶68] As noted above, the Farm Family Policy contains the following relevant provision:

PART V - GENERAL CONDITIONS

* * *

10. **CANCELLATION OR NONRENEWAL OF THIS POLICY**

* * *

> If other insurance is obtained by **you on your insured car,** similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.
>
> If different requirements for cancellation and nonrenewal or termination of policies are applicable because of the laws of **your** state, **we** will comply with those requirements.

(Index Doc. #47 at 000049.) (Emphasis in original.)

[¶69] Neither the Vermont courts—nor any other court for that matter—has construed the above clause. There exists, however, a Vermont statute, 8 V.S.A. § 4225, Notice of Nonrenewal, that is not only instructional, but provides direct support for the effective cessation or termination of Farm Family's Policy under the undisputed fact of this case. 8 V.S.A. § 4225, Notice of Nonrenewal, provides, in part, as follows:

> Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

See 8 V.S.A. § 4225.

[¶70] Here, 8 V.S.A. § 4225 is plain an unambiguous in stating that one auto policy terminates on the effective date of another auto policy that covers the same vehicle. That is precisely the situation in this case. In contrast to the North Dakota statute relied upon by the district court, N.D.C.C. § 26.1-40-09, which provides that retroactive cancellation is only allowed when an insured purchases a replacement policy "providing

equal or more extensive coverage," the Farm Family Policy provision and Vermont statute provide only that the two policies must designate the same vehicle and afford "similar insurance" for the vehicle. *See* 8 V.S.A. § 4225; *Employers Mut. Cas. Co. v. Martin*, 671 A.2d 798, 800 (R.I. 1996) (the only additional requirement for enforcement of the termination provision is "the policies [must] be sufficiently similar in order that one policy could reasonably be considered a substitute for the other").[7] Although the Farm Family Policy does not define "similar," it is commonly defined as "resembling without being identical." *See* Merriam-Webster Dictionary (2019). *See also California Dairies, Inc. v. RSUI Indem. Co.*, 617 F. Supp.2d 1023, 1036 (E.D. Cal. 2009).

[¶71] Here, there is no question that both the Farm Family and Mountain West policies provided coverage for and designated the 2011 GMC Sierra 1500 pickup truck as an insured vehicle. Furthermore, 8 V.S.A. § 4225 does not contain any requirement whatsoever that the amount of coverage afforded be "equal or more extensive" before the automatic cancellation applies. Put simply, under Vermont law, the Farm Family policy terminated as of the effective date of the Mountain West policy, *i.e.,* December 2, 2018.

[¶72] The material facts are undisputed, the Farm Family Policy language is unambiguous, and the law is clear. Farm Family is entitled to a reversal of the district court and the entry of judgment as a matter of law declaring that the Vermont Automobile Policy issued by Farm Family to the Hamilton's had effectively ceased as a result of the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West.

[7] *See also* case cites *supra* at ¶¶32-34 discussing the "termination by substitution" or "cancellation by substitution" doctrine.

CONCLUSION

[¶73] The material facts are undisputed, Farm Family's Policy is unambiguous, and the law is clear. The district court erred in determining that the Vermont Automobile Policy issued by Farm Family to its named insureds, Bruce and Diana Hamilton, was in full force and effect and provided insurance coverage on the 2011 GMC Sierra pickup truck being driven by Samuel Hamilton at the time of the April 6, 2019, accident. By operation of the Farm Family Policy language itself, it had effectively ceased, or terminated, as a result of the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West that also provided insurance on the 2011 GMC Sierra. Specifically, the Farm Family Policy ceased on December 2, 2018—the date the Hamilton's obtained a similar policy of insurance through Mountain West on the 2011 GMC Sierra.

[¶74] Moreover, the district court erred in determining North Dakota law applied in concluding that the Farm Family Policy was in full force and effect at the time of the April 6, 2019, accident. Following the required choice-of-law analysis given the multistate contacts involved in the underlying declaratory judgment action, Vermont law, rather than North Dakota law, indisputably applies and unequivocally results in the determination that the Farm Family Policy had ceased as a result of the Hamilton's subsequent purchase of a similar policy of insurance through Mountain West.

[¶75] Based upon the foregoing, the Farm Family Policy was not in effect at the time of the April 6, 2019, accident. Therefore, no coverage exists and Farm Family is not obligated to provide any defense or indemnity coverage for the April 6, 2019, accident. Accordingly, Farm Family respectfully requests that this Court reverse the district court's judgment on this issue and enter judgment in favor of Farm Family as a matter of law.

[¶76] Alternatively, if it is determined that Montana law applies following this Court's choice-of-law analysis and, moreover, Farm Family erroneously relied upon the automatic cancellation provision contained within its policy, then Farm Family is entitled to summary judgment as a matter of law that it is only obligated to provide up to the statutorily required minimum liability limits set forth in Mont. Code Ann. § 61-6-103(1)(b)(i), *i.e.,* $25,000 per person and $50,000 per accident, subject to its pro rata indemnity contribution with Mountain West as previously determined by the district court.

Dated this 26th day of July, 2022.

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CERTIFICATE OF COMPLIANCE WITH N.D.R.APP.P. 32

[¶77] I certify this Brief contains 36 pages and, therefore, is in compliance with N.D.R.App.P. 32(a)(8)(A). I further certify this Brief complies with the paper size, line spacing, and margins requirements of N.D.R.App.P. 32(a)(4), type face requirements of N.D.R.App.P. 32(a)(5), type style requirements of N.D.R.App.P. 32(a)(6), and paragraph number requirement of N.D.R.App.P. 32(a)(7).

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CERTIFICATE OF SERVICE

[¶78] I hereby certify that on the 26th day of July, 2022, a true and correct copy of the Brief of Defendant and Appellant Farm Family Casualty Insurance Company was electronically served on the following through North Dakota System's Odyssey File and Electronic Service:

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