

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RANDALL SCOTT NELSON,)	
)	
Plaintiff,)	
)	2:24-CV-01277-SGC
v.)	
)	
FRANKENMUTH MUTUAL)	
INSURANCE COMPANY,)	
)	
Defendant.)	

**DEFENDANT FRANKENMUTH MUTUAL INSURANCE
COMPANY’S MOTION AND BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Plaintiff Frankenmuth Mutual Insurance Company (hereinafter “Frankenmuth”) and moves this Honorable Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter summary judgment in favor of Frankenmuth as to all matters set forth in this action. As grounds therefore, Frankenmuth shows that there are no issues of material fact in dispute and that Frankenmuth is entitled to judgment as a matter of law. This motion is based upon the pleadings presently on file before this Court; the evidentiary submission in support of this Motion for Summary Judgment; the Memorandum of Law in support thereof; and the following summary of undisputed facts:

INTRODUCTION

This is a coverage action where the principal issue is simply whether the vacancy provision of the insurance policy precludes coverage for a water event, and whether or not Frankenmuth breached the insurance policy and/or committed bad faith by not paying the submitted claim.

The insurance policy issued to Randall Scott Nelson dba Scott's Motorcycle Service (hereinafter "Scott's Motorcycle") provides no coverage for a water event that occurred after the insured premises have been vacant for more than sixty consecutive days. The policy's vacancy provision states that a building is considered vacant unless at least 31% of the total square footage is rented and being used by a tenant to conduct its customary operations. As of October 27, 2022, less than 31% of the building was occupied by tenants and/or Scott's Motorcycle conducting its customary operations. This is so because Scott's Motorcycle had closed its business as of May 2021 and was not performing customary operations within 60 days of the water event.

The building was vacant and remained vacant at all times from May, 2021, until the water loss December 26, 2022, which occurred more than 60 days later.

Additionally, because Scott's Motorcycle cannot prove damages in this case, its claims for breach of contract and bad faith fail as a matter of law.

Frankenmuth submits based on the narrative of undisputed facts set forth in its brief, and the law applicable to those facts as also set out in Frankenmuth's brief in support, Frankenmuth is entitled to a judgment in its favor and finding of no coverage as a matter of law and that it did not breach the insurance policy and/or commit bad faith.

STATEMENT OF UNDISPUTED FACTS

A. Facts Regarding Claim.

1. Frankenmuth issued a policy of insurance to Randall Scott Nelson dba Scott's Motorcycle Service, said policy being further identified as policy number CPP 6638617 (hereinafter "the Policy") which contained first party property coverage. See Defendant's Exhibit 1, the Policy. Mr. Nelson admitted he received a copy of the Policy and had reviewed it. See Defendant's Exhibit 3, Examination Under Oath of Nelson, pp. 160:14 –161:14.

2. The Policy covered a commercial building located at 332 Decatur Highway, Gardendale, Alabama 35071 (hereinafter the "Subject Premises"). See Defendant's Exhibit 1, Declarations Page.

3. Scott's Motorcycle alleges that on December 26, 2022, due to inclement weather, a pipe burst at the Subject Premises causing water damage. See Defendant's Exhibit 2, Proof of Loss. Scott's Motorcycle submitted a claim to Frankenmuth for damages to the Subject Premises.

4. Upon receiving notice of the claim, Frankenmuth undertook an investigation of the claim by obtaining photos of the claimed damages, requesting documents from Mr. Nelson, analyzing those documents and conducting an examination under oath of Mr. Nelson for more information. See generally, Defendant's Exhibit 3, Examination Under Oath of Nelson; Doc. 1-1, p. 4, ¶6 (Plaintiff admits that Frankenmuth investigated the claim.)

5. In support of its claim, Scott's Motorcycle submitted a Proof of Loss form. As to its damages, Scott's Motorcycle is relying solely upon the numbers contained therein. See Defendant's Exhibit 2, Proof of Loss Form.

B. Insurance Policy Provisions.

6. With regards to vacancy of the Subject Premises, the Policy states:

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before the loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;

- (d) Water damage;
- (e) Theft; or
- (f) Attempted theft.

See Defendant's Exhibit 1, the Policy, p. 12 of 16.

7. The Policy defines vacancy as follows:

a. Description of Terms

(1) As used in this vacancy condition, the term building and the term vacant have the meanings set forth in (1) (a) and (1) (b) below:

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of the square footage is:

- (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

See Id.

8. After the claim was submitted to Frankenmuth, it began an investigation by gathering documents from Mr. Randall and conducting an Examination Under Oath of Mr. Randall. *Cf.* Generally, Defendant's Exhibit 3, Examination Under Oath ("EUO") of Randall Scott. See also Doc. 1-1, p. 4, ¶6.

C. Vacancy Of The Building.

9. The claim arises out of pipe that burst in the Subject Premises due to inclement weather on December 26, 2022.

10. Mr. Nelson previously operated Scott's Motorcycle Service at the Subject Premises located at 332 Decatur Highway, Gardendale, Alabama 35071. See Defendant's Exhibit 3, EUO of Nelson, p. 32:6-19.

11. Mr. Nelson was diagnosed with myasthenia gravis, which led him to close his business. See Defendant's Exhibit 3, EUO of Nelson, p. 114:1-6.

12. Scott's Motorcycle closed in April/May 2021, and was not open at all in 2022. See Defendant's Exhibit 3, EUO of Nelson, pp. 121; 150:7-16.

13. Scott's Motorcycle generated no income in 2022. See Defendant's Exhibit 3, EUO of Nelson, p. 122:4-9.

14. Scott's Motorcycle performed no work for any customers in 2022 and/or 2023. See Defendant's Exhibit 3, EUO of Nelson, p. 125:4-18.

15. At the time of the loss, it had been 1.5 years since Scott's Motorcycle had been able to run a business and it had been over 1.5 years since the business

had been able to issue an invoice for work performed. See Defendant's Exhibit 3, EUO of Nelson, pp. 22:6-24:4; 116:10-118:3.

16. When Scott's Motorcycle closed its business in 2021, the business placed the following message on its voice mail:

"Thank you for calling Scott's Motorcycle Service. We are closing our store Friday, May the 28th at 7:00 p.m. We would like to thank everyone for all the years of business. We really appreciate it. Gary will be at Peck 46 beginning Tuesday, June 1st. That number is 205-583-4640."

See Defendant's Exhibit 3, EUO of Nelson, pp. 130:1-132:6. After the water event, the recording was still being utilized by Scott's Motorcycle.

17. Since June 1, 2021, until the date of loss, the business has not taken any paying jobs as Mr. Nelson was not capable of working. See Defendant's Exhibit 3, EUO of Nelson, pp. 134:3-135:16; 138:1-19; and 140:9-141:16.

18. From June 2021 to the date of loss, Mr. Nelson never rented the building nor allowed anyone to come onto the premises to perform work. See Defendant's Exhibit 3, EUO of Nelson, pp. 146:3-22; 150:3-6.

19. No remodeling of the premises occurred from June 1, 2021 to December 26, 2022. See Defendant's Exhibit 3, EUO of Nelson, p. 147. During that same time frame, no restoration-type work or repair work to the building was performed. See Defendant's Exhibit 3, EUO of Nelson, pp. 147:3-148:13; and, 149:13-19.

20. Mr. Nelson failed to inform his insurance agent that he was closing his business. See Defendant’s Exhibit 3, EUO of Nelson, pp. 159:17-160:10.

SUMMARY JUDGMENT STANDARD

The Court shall grant summary judgment if the materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials show that there is no genuine dispute as to any material fact, or that the defendant cannot produce admissible evidence to support the fact, and that the movant is entitled to judgment as a matter of law, Fed. R. Civ. P. 56(a) and (c). In Celotex Corp. v. Catrett, 477 U.S. 317, 324-325 (1986), the United States Supreme Court clarified that summary judgment under Rule 56 should be granted where the moving party shows an absence of any genuine dispute over material facts and the nonmoving party fails to prove the existence of all elements of its claim. The moving party does not have to disprove the nonmovant’s claim; rather, its burden may be discharged by merely “showing” – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” Id.

Once the moving party has satisfied this burden, the nonmoving party must “go beyond the pleadings” and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, set forth “specific facts” showing a genuine

issue of material fact for trial that warrants denying summary judgment. Id. at 324. “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986) (emphasis in original). A nonmoving party cannot meet this burden with mere vague and conclusory assertions and unsupported factual allegations. Hawk v. Atlanta Peach Movers, 469 Fed. Appx. 783, 785-786 (11th Cir. 2012).

LEGAL ANALYSIS

I. Rules of Policy Interpretation.

The applicable insurance policy does not contain a choice of law provision. The policy was issued and delivered in Alabama to an Alabama limited liability company. The incident which gives rise to the claim for insurance proceeds occurred in Alabama. Alabama law thus applies to the interpretation of the policy. Ex parte Owen, 437 So. 2d 476, 481 (Ala. 1983) (“[A]labama follows the traditional view that a contract is governed as to its nature, obligation and validity by the law of the state where it was made, unless the parties intended the law of some other place to govern, or unless it is to be wholly performed in some other place.”).

With regards to policy analysis, Alabama law requires unambiguous insurance policies to be enforced as written. Progressive Specialty Insurance Company v. Naramore, 950 So. 2d 1138, 1141 (Ala. 2006). Alabama law provides that a court cannot circumvent the unambiguous terms of an insurance policy by rewriting the insurance contract in an attempt to do equity. State Farm Mut. Auto Ins. Co. v. Brown, 26 So. 3d 1167, 1169 (Ala. 2009); Shrader v. Employers Mutual Cas. Ins. Co., 907 So. 2d 1026, 1034 (Ala. 2005).

II. The Vacancy Provision Precludes Coverage.

The Subject Premises of the Policy issued to Randall Scott Nelson dba Scott's Motorcycle Service is a commercial building, owned by Mr. Nelson, and located at 332 Decatur Highway, Gardendale, Alabama 35071. A loss occurred at this location, but the Policy provides no coverage for this loss because the building had been vacant for more than 60 days when the loss occurred.

The Policy expressly limits the coverage it provides for a loss that occurs at a vacant building. In this regard, the Policy states:

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before the loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of following even if they are Covered Causes of Loss:

(a) Vandalism;

- (b) Sprinkler leakage, unless you have protected the system against freezing;
- (c) Water damage;
- (d) Theft; or
- (e) Attempted theft.

See Defendant's Exhibit 1, the Policy, p. 12 to 16.

The vacancy provision unambiguously states that it does not provide coverage for certain listed causes of loss if the building where the loss occurred had been vacant for more than sixty consecutive days prior to the loss. This raises two issues in the case at hand: 1) was the cause of loss a type for which coverage is precluded; and 2) was the building where the loss occurred vacant for more than sixty consecutive days prior to the loss?

A. THE LOSS WAS CAUSED BY A WATER EVENT.

Mr. Nelson reported a December 26, 2022 water event (burst pipe). The loss at issue was thus caused by a water event at premises not occupied by Scott's Motorcycle or a tenant of Scott's Motorcycle.

The Policy states that it provides no coverage for water damage¹, if the building is vacant at the time of loss.

¹ Vacancy Provision at (1)(d). See Defendant's Exhibit 1, the Policy, p. 12 of 16.

B. THE BUILDING WHERE THE WATER EVENT OCCURRED WAS VACANT.

The Policy provides a definition of “vacancy”, which states in pertinent part as follows:

a. Description of Terms

(1) As used in this vacancy condition, the term building and the term vacant have the meanings set forth in (1) (a) and (1) (b) below:

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of the square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

See Defendant’s Exhibit 1, the Policy, p. 12 of 16. Because the Policy provides a specific definition, that definition controls the analysis of the claim.

In Tate v. Allstate Ins. Co., 692 So. 2d 822, 825 (Ala. 1997), the Alabama Supreme Court adopted language taken from Valliere v. Allstate Ins. Co., 324 Md. 139, 596 A.2d 636 (1991), the relevant portion of which reads as follows:

“When a policy defines a term in a manner which differs from the ordinary understanding of that term, the policy definition controls ...”

See also Smitherman v. Consumers Ins. USA, Inc., 927 F. Supp. 2d 1292, 1298 (M.D. Ala. 2013) (citing State Farm Mut. Auto Ins. Co. v. Barrow, 46 Ala. App. 392, 243 So. 2d 376, 381 (Ala. Civ. App. 1971) (terms contained in an insurance policy are to be given their common meaning only in the absence of a specific definition contained in the policy.)).

1. The Building Was Less Than 31% Occupied.

The Policy was issued to the owner of the building – Scott’s Motorcycle. See Defendant’s Exhibit 1, Declarations Page. Therefore, per the definition contained in the Policy, the building would be deemed vacant unless at least 31% of the square footage was rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations or used by Scott’s Motorcycle. See Defendant’s Exhibit 1, the Policy, p. 12 of 16. Neither occurred.

Here, Scott’s Motorcycle did not use the Subject Premises and Scott’s Motorcycle had not rented to a lessee or a sub-lessee who was using at least 31% of the building for its customary operations.

As of at least May 28, 2021, Scott's Motorcycle was no longer conducting customary operations, i.e. performing as a motorcycle repair shop. Although the term "customary operations" is not defined in the policy, it was defined in Frankenmuth Mut. Ins. Co. v. Five Points West Shopping City, LLC, 2022 WL 949888 (N.D. Ala. March 29, 2022) (J. Bowdre) (unreported), as follows: "customary" to mean "commonly practiced, use, or observed" (Id. at *3 (citing Merriam-Webster.com Dictionary)), and "operation" is the "performance of a practical work." Id. Other courts interpreting this term have found that "customary operations" are "those for which [the lessee] leased the property and used it on a regular basis." See Wilheit Family Props., L.P.C. v. Netherland Ins. Co., 2013 WL 12291715, *4 (N.D. Ga. Jan. 24, 2013) (applying Georgia law).² Courts also look to whether the lessee continued to conduct "the business pursuit identified by the policy." Saiz v. Charter Oak Fire Ins. Co., 299 Fed. Appx. 836, 840 (10th Cir. 2008). So, a lessee whose typical business was a family-style restaurant was not conducting "customary operations" when the lessee's owner closed the restaurant and used the space as an office while trying to find a sublessee. Id.; see also

² In Wilheit, the Court said, "The Policy clearly states that the Property is not considered vacant if it is *used* by the "building Owner" to perform its "customary operations." Slip op. at *3. While the building owner's business included leasing and managing various rental properties, those operations were not conducted *at the damaged property*. It thus did not meet the requirement that the customary operations of the owner occur at the insured premises in order for the property to not be considered "vacant" under the policy definition. Id.

Wilheit, 2013 WL 12291715, at *4 (finding the lessee's performing "minor maintenance and repair" to the property was not customary operations).

Putting these definitions together, the question is whether Scott's Motorcycle was "performing its commonly practiced work" at any point after October 27, 2022 at the Subject Property. The common practice of Scott's Motorcycle was to repair motorcycles. Permanently ending those activities at the Subject Premises is not the common practice of Scott's Motorcycle or any other business.

Scott's Motorcycle confirmed that it was no longer conducting customary operations as to May 28, 2021, when the business placed the following message on its voice mail:

"Thank you for calling Scott's Motorcycle Service. We are closing our store Friday, May the 28th at 7:00 p.m. We would like to thank everyone for all the years of business. We really appreciate it. Gary will be at Peck 46 beginning Tuesday, June 1st. That number is 205-583-4640."

See Defendant's Exhibit 3, EUO of Nelson, pp. 130:1-132:6. After the water event, the recording was still being utilized by Scott's Motorcycle.

Customary operations at the Subject Premises ceased prior to October 27, 2022, thereby rendering the building "vacant" per the terms of the Policy.

2. The Building Had Been Vacant For More Than 60 Consecutive Days When The Loss Occurred.

The fact that the building was vacant does not automatically result in a loss of coverage for the damage caused by a water event. Coverage for such losses is forfeited due to vacancy only if the building had been vacant for more than sixty consecutive days prior to the loss.

The water event occurred on December 26, 2022. Sixty days prior to this date of loss would fall on October 27, 2022. Therefore, if Scott's Motorcycle ceased its operations on any date prior thereto, the building would have been vacant for more than sixty consecutive days when the water event occurred on December 26, 2022. Because Scott's Motorcycle had ceased doing business in May 2021, did not lease the Subject Premises thereafter, and was not conducting customary operations at the Subject Premises, the Subject Premises had been vacant for more than sixty days when the loss occurred and the vacancy provision applies.

C. SCOTT'S MOTORCYCLE ADMITTED THAT NO EXCEPTION TO THE VACANCY PROVISION EXISTS.

The Policy states that buildings within 60 days of the loss, "under construction or renovation are not considered vacant." See Defendant's Exhibit 1, the Policy, p. 12 of 16. Here, Scott's Motorcycle testified that the building was not under repair or renovation or construction within sixty days before the loss.

See Defendant's Exhibit 3, EUO of Nelson, pp. 22:6-24; 116:10-118:3; 147:3-148:13; and 149:13-19.

III. Frankenmuth Is Entitled To Summary Judgment On Scott's Motorcycle's Breach Of Contract Claim.

Scott's Motorcycle has made a claim against Frankenmuth for breach of contract. [Doc. 1-1] To prevail on a breach of contract claim, Scott's Motorcycle must prove: 1) the existence of a contract between the parties; 2) performance by Scott's Motorcycle; 3) Frankenmuth's failure to perform; and 4) resulting damage to Scott's Motorcycle. Harp Law, LLC v. LexisNexis, 196 So. 3d 1219 (Ala. Civ. App. 2015); Reynolds Metal Co. v. Hill, 825 So. 2d 100 (Ala. 2002). Here, Scott's Motorcycle cannot prove a breach of contract because it (1) cannot prove that the claim is covered under the insurance policy (Scott's Motorcycle, not Frankenmuth, bears the burden of proving coverage), see supra and (2) Scott's Motorcycle cannot prove any damages.

First, as set forth supra, the policy language precludes coverage under the Frankenmuth policy as the Subject Premises was vacant. Second, Scott's Motorcycle cannot prove any damages and thus its claim fails as a matter of law.

In this case, Scott's Motorcycle submitted initial disclosures. Instead of setting forth its "description and computation of damages" that it was claiming, Scott's Motorcycle merely stated "[T]he Plaintiff seeks compensatory and punitive damages in such an amount as a jury may award on all counts and claims made the

basis of this lawsuit”. See Defendant’s Exhibit 4, Plaintiff’s Initial Disclosures. Scott’s Motorcycle has produced no documents through its initial disclosures regarding its claimed damages.

Frankenmuth anticipates that Scott’s Motorcycle will contend that it is relying upon some estimates produced in this case to support its claimed damages. However, the Court’s Scheduling Order [Doc. 13] required expert disclosures from Scott’s Motorcycle by June 4, 2025. [Doc. 13, p. 2] Scott’s Motorcycle failed to disclose any expert in this matter. This failure is detrimental, in that Scott’s Motorcycle has no witness to testify as to the costs to repair the damages, and thus, cannot make out a prima facia case. See Dunn v. Allstate Ins. Co., 2008 WL 11407404, *4 to *6 (N.D. Ga. Jan. 22, 2009) (unreported); Five Points, (Slip Op.) at *15-19. Frankenmuth is entitled as a matter of law to dismissal of this claim.

IV. Frankenmuth Did Not Act In Bad Faith Because It Had An Arguable And Debatable Reason Regarding Its Conclusion Regarding No Coverage.

No factual analysis is provided as to this alleged bad faith claim. As to the specific acts of bad faith, Scott’s Motorcycle merely stated that Frankenmuth “in bad faith failed to fairly investigate the claim[.]” [Doc. 1-1, p. 6, ¶4] The elements for the tort of bad faith are as follows: (1) an insurance contract between the parties and a breach thereof; (2) an intentional refusal to pay the insured's claim; (3) the absence of any reasonably legitimate or arguable reason for that

refusal (the absence of a debatable reason); (d) the insurer's actual knowledge of the absence of any legitimate or arguable reason; and (e) if the intentional failure to determine the existence of a lawful basis is relied upon, Scott's Motorcycle must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim. State Farm Fire & Cas. Co. v. Brechbill, 144 So. 3d 248, 257-58 (Ala. 2013). Notwithstanding alternate ways to prove bad faith, there is only one tort for bad faith in Alabama, whether based on refusal to pay or refusal to investigate. Id. To establish an insurer's bad faith, a plaintiff must go beyond a mere showing of non-payment and prove a bad faith nonpayment, a non-payment without any reasonable grounds for dispute. National Security Fire & Cas. Co. v. Bowen, 417 So. 2d 179, 183 (Ala. 1982). Scott's Motorcycle must show the insurance company had no legal or factual defense to the insurance claim. Id. Moreover, "[t]he plaintiff asserting a bad faith claim bears a heavy burden." Shelter Mut. Ins. Co. v. Barton, 822 So. 2d 1149, 1154 (Ala. 2001). "Bad faith ... is not simply bad judgment or negligence. It imports a dishonest purpose and means breach of known duty, *i.e.*, good faith and fair dealing, through some motive of self-interest or ill will." Brechbill, 144 So. 3d at 159-60. Without breach of contract, there can be no bad faith. Id. at 257-58. If the insurer's investigation "**established a legitimate or arguable reason for refusing to pay,**" that is sufficient to preclude a bad faith claim. Id. (emphasis supplied). See

also Davis v. State Farm Fire & Cas. Co., 2017 WL 4038407, at *10–11 (N.D. Ala. 2017); Walker v. Auto-Owners Ins. Co., 2017 WL 4810699 (N.D. Ala. 2017)(no bad faith as a matter of law since there was an arguable, debatable reason to deny the claim).

The undisputed facts show that Scott's Motorcycle submitted a claim for loss that occurred when the owner of the building was not housed on the premises and no lessee or sublessee was on the premises, thus, rendering the property vacant as defined by the insurance policy. Scott's Motorcycle admitted that since May 2021 it had not been utilizing the Subject Premises for its customary operations. Scott's Motorcycle admits that Frankenmuth investigated the submitted claim. [Doc. 1-1, p. 4, ¶6] The outcome of that investigation showed no coverage. These facts alone are sufficient to show that Frankenmuth had an arguable or debatable reason for denying Scott's Motorcycle claim. Weaver v. Allstate Ins. Co., 574 So. 2d 771, 774 (Ala. 1990) (where investigation revealed arguable reason or refusing to pay claim, bad faith claim fails.) The evidence shows that the proper remedy is summary judgment in favor of Frankenmuth. See, e.g., Cook v. Trinity Universal Ins. Co. of Kansas, 2007 WL 9717431 (N.D. Ala. 2007); Payne v. Nationwide Mut. Ins. Co., 456 So. 2d 34, 36 (Ala. 1984).

CONCLUSION

For the reasons stated hereinabove, the Policy issued to Scott's Motorcycle provides no coverage for the loss that occurred on or about December 26, 2022 and Frankenmuth is entitled to summary judgment as a matter of law.

Respectfully Submitted,

/s/ Kori L. Clement

Kori L. Clement

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system:

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