

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13252

D.C. Docket No. 1:16-cv-02932-LMM

ELIZABETH BENTON,
BRUCE W. BENTON, JR.,
individually and as the personal administrator
of the Estate of Chase Palmer Benton,

Plaintiffs - Appellants,

versus

ZURICH AMERICAN INSURANCE COMPANY,
a foreign insurance company,
NORTHERN INSURANCE COMPANY OF NEW YORK,
a foreign insurance company,
MARYLAND CASUALTY COMPANY,
a foreign insurance company,
STEVEN LANDRESS,
individually,
d.b.a. Landress Trucking,
JOHN DOES,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(August 17, 2020)

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Following oral argument, and a review of the record, we affirm the district court's grant of summary judgment in favor of Zurich American Insurance Company. First, we agree with the district court that Kerby Grading was not operating as a motor carrier under O.C.G.A. § 46-1-1(9)(A)-(B) (2004) at the time it submitted its insurance application to Zurich. Second, even if the evidence created an issue of fact as to whether Kerby was operating as a motor carrier, Zurich did not know this status given the information Kerby provided. *See Sapp v. Canal Ins. Co.*, 706 S.E.2d 644, 650 (Ga. 2011) (“[W]hen a insurer purports to issue coverage to an insured which it *knows* is a motor carrier, the insurer assumes responsibility to indemnify the motoring public for injuries sustained by virtue of the carrier's negligence”) (emphasis added). Third, at the time of the accident Mr. Landress was driving a dump truck owned by Landress Trucking (not by Kerby). Fourth, Georgia courts have not extended the equitable reformation rationale of *Sapp* to a scenario like the one here involving the cancellation of a policy for non-payment.

AFFIRMED.