

IN THE SUPREME COURT OF MISSOURI

SC 90139

JASON L. RICE,

Respondent,

vs.

SHELTER MUTUAL INSURANCE COMPANY,

Appellant.

**APPEAL FROM THE
CIRCUIT COURT OF JOHNSON COUNTY, MISSOURI
DIVISION NO. 17
HONORABLE JOSEPH P. DANDURAND, JUDGE**

**BRIEF OF *AMICUS CURIAE* MISSOURI ASSOCIATION OF TRIAL
ATTORNEYS IN SUPPORT OF RESPONDENT**

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INTERESTS OF AMICUS CURIAE

The Missouri Association of Trial Attorneys (MATA) is a professional organization of approximately 1,400 trial lawyers in Missouri, most of whom are engaged in personal injury litigation involving Missouri citizens. Whether an insurance agency can eliminate purchased uninsured motorist coverage from an insured based on receipt of workers' compensation benefits is an important question. Injured plaintiffs should be able to collect their purchased uninsured coverage when injured by an uninsured driver. Accordingly, this issue is of considerable interest to MATA and its members.

On behalf of the citizens of the State of Missouri, MATA urges this court to affirm the ruling of the trial court – that is to find the exclusionary language in Shelter's policy overly broad, against the reasonable expectations of the insured and thus contrary to public policy in Missouri.

CONSENT OF THE PARTIES

MATA has received consent from counsel for Respondent, Jason L. Rice, to file this brief. MATA has sent a request for consent for the filing of this brief to counsel for the Appellant, Shelter Mutual Insurance Company, on June 23, 2009; however, counsel for the Appellant has not consented to the filing of this brief. Therefore, MATA is seeking an order from this Court pursuant to Rule 84.05(f)(3) granting leave to file this *Amicus Curiae* brief. (See Motion of Missouri Association of Trial Attorneys for Leave to File Brief as Amicus Curiae in Support of Respondent).

JURISDICTIONAL STATEMENT

MATA hereby adopts the Jurisdictional Statement of Respondent.

STATEMENT OF FACTS

MATA hereby adopts the Statement of Facts of Respondent.

ARGUMENT AND AUTHORITY

I. Denying an Insured the Full Amount of Purchased Uninsured Motorist Coverage Violates the Public Policy of Missouri in that it Defeats the Reasonable Expectations of the Insured By Providing Only Illusory Coverage.

Insurance policies which purport to provide coverage above the statutory minimum but also contain clauses which are punitive in nature and ultimately result in a substantial deprivation of the purchased coverage are contrary to the reasonable expectations of the insured, illusory in nature and should be against public policy. Public policy in Missouri requires that every insured receives the full amount of coverage purchased under an uninsured motorist policy.

An insured purchases an insurance policy providing for coverage above that of the statutory minimum to provide protection for themselves and their family. They purchase uninsured motorist coverage because they are worried of the consequences of an accident involving an uninsured motorist. They pay premiums for this additional coverage with the expectation that this insurance will be available in the event of an accident. This expectation is perfectly reasonable; to think otherwise contradicts the common sense of consumers. “[C]ases should not and will not turn on how well the insurer drafts a limiting clause because the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear or unambiguous it may be.” *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 545 (Mo. 1976) (quoting *Great Central Ins. Co. v. Edge*, 298 So. 2d 607 (Ala. 1974)). An exclusion within the policy that eliminates the purchased coverage and leaves the insured

with only the statutory minimum amount is inequitable, unfair, against the reasonable expectations of any insured and thus, against the public policy of Missouri.

Mindful of the need to protect its citizens during the operation, maintenance and use of motor vehicles, the Missouri Legislature enacted financial responsibility laws in 1945 to mandate, oversee and regulate the presence of automobile liability insurance. Later, facing the ever increasing occurrence of motor vehicle injuries and deaths, many involving motorists without liability coverage, the Legislature required the presence of Uninsured Motor Vehicle Liability coverage. “Such coverage was designed to close the gap in the protection afforded the public under existing financial responsibility laws and, within fixed limits, to provide recompense to innocent persons injured by motorists who lack financial responsibility.” *Steinhaefel v. Reliance Ins. Co.*, 495 S.W.2d 463, 467 (Mo. Ct. App. 1973).

Since the enactment of State mandated insurance coverage under RSMO Sections 303 and 379, insurance carriers have attempted to include provisions within their policies which assert an unfair limitation or outright exclusion of coverage under various circumstances. The Courts frequently encounter disputes in which policy exclusions, offsets, exceptions and restrictions are inserted into motor vehicle insurance policies. These exclusions, offsets, exceptions and restrictions have been deemed to circumvent mandated coverage, frustrate the purposes of the Financial Responsibility Laws and defeat the reasonable expectations of individuals who rely on and purchase such coverage.

While insurance companies will likely argue that these questions of enforceability are determined solely on statutory construction or ambiguity, the Court’s decision making authority also includes determining whether the insurance policy in question defeats the reasonable expectations of Missouri’s insured. Such an inquiry requires the Court to view the policy

through the eyes of a reasonable lay person, and based upon that perspective, determine what coverage the reasonable insured believes and expects the policy to provide. This case presents yet another effort by an insurance company to undermine the attempts of the legislature to provide the citizens of Missouri with the necessary insurance protection. .

Missouri requires the presence of uninsured motorist coverage in a minimal amount but allows that all parties are free to contract for coverage above that minimum.

In relevant part the statute reads:

[n]o automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto . . . **in not less than the limits for bodily injury or death set forth in section 303.030**, RSMo , for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

§ 379.203.1 RSMo (emphasis added).

The purpose of Section 379.203 “is to establish a level of protection equivalent to the liability coverage the insured would have received had the insured been involved in an accident with an insured tortfeasor.” *Kuda v. Am. Family Mut. Ins. Co.*, 790 S.W.2d 464, 467 (Mo. banc 1990). The policy established in Section 379.203 requires this even when the uninsured motorist coverage is greater than the statutory minimums. “The Safety Responsibility Laws, and the policy expressed in § 379.203, RSMo [2000], is to disallow a diminution in benefits to motorists injured by uninsured drivers.” *Barker v. Palmarin*, 799 S.W.2d 117, 119 (Mo. Ct. App. 1990). Exclusionary clauses like those in

this particular case, which significantly eliminate the insured's coverage purchased, are contrary to Section 379.203.

The “insured[,] under uninsured motorist coverage[,] is entitled . . . to the full bodily injury protection that he purchases and for which he pays premiums. It is useless and meaningless and uneconomic to pay for additional bodily injury insurance and simultaneously have this coverage cancelled by an insurer's exclusion.” *Cameron Mut. Ins. Co.*, 533 S.W.2d at 543. “The principle of reasonable expectations insures that ‘[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.’” *Tegtmeyer v. Snellen*, 791 S.W.2d 737, 740 (Mo. Ct. App. 1990) (quoting R. Keeton, *Basic Text on Insurance Law* § 6.3(a), at 351 (1971)). Thus, the insurance contract needs to be viewed through the eyes of a reasonable person. *See Niswonger v. Farm Bureau Town & County Ins. Co.*, 992 S.W.2d 308, 320 (Mo. Ct. App. 1999).

Considerations of public policy are not dependant on the presence of some ambiguity. Public policy concerns can result in even clear and unambiguous policy provisions being declared void and unenforceable. In the present case, the Court should look beyond the language in Shelter's exclusions to determine whether the insurance policy as a whole was illusory, contrary to the reasonable expectations of insureds in Missouri, and hence, contrary to public policy. The Shelter Insurance policy fails to adequately inform a reasonable insured that the uninsured motorist liability is limited to statutory minimums if payments are received from a workers' compensation benefit.

Consequently, the uninsured motorist policy creates an illusion of coverage that cannot be ignored. Because the Shelter policy is illusory and contrary to the reasonable expectations of the insured, it is against public policy and should be construed against the insurer, and the insured should be awarded the full uninsured motorist benefits under the policy.

The Rice family bought three separate policies from Shelter Mutual Insurance Company. Jason Rice was insured under each policy purchased. The family paid separate uninsured motorist premiums for each policy. These three insurance policies were purchased to protect themselves and their family in the event there was an injury caused by an uninsured motorist. Respondent, Jason Rice, had the reasonable expectation that he would be covered in full for bodily injury caused by an uninsured motorist. When tragedy struck, Shelter refused payment full payment, and instead paid the statutory minimum based on an exclusion in its policies. The ordinary and reasonable expectations of a consumer who purchases uninsured motorist coverage above that of the statutory minimum is that he will be covered to the extent of insurance purchased in the event a disaster occurs.

The exclusion in question would considerably eliminate any purchased uninsured motorist coverage based on the receipt, by the insured, of even a single dollar in compensation law benefits. Further, the policy is broad enough that compensation law benefits can include health insurance, workers' compensation and social security disability laws, just to name a few. By largely eliminating coverage, this clause proves to

be punitive in nature, and as such, should not be enforced because it violates the public policy of Missouri.

To represent a substantial amount of uninsured motorist coverage when, in fact, that figure is not attainable and will likely be reduced, is inequitable and contrary to the reasonable expectations of insureds. The policy, in and of itself, is misleading and violates the public policy of Section 379.203. Regardless of the clarity of the language contained in an insurance policy, would it ever be reasonable for an insured to expect to pay a premium for insurance benefits that could never be collected? Obviously not. No insured would ever reasonably expect to be deceived by his or her insurer. Stated another way, it is logical for an insured to expect coverage for premiums paid, regardless of the clarity of the language contained in the insurance policy.

Allowing exclusionary policies such as this opens the door for insurance companies to exclude away purchased coverage under limitless circumstances. For instance, insurance companies may exclude coverage if life insurance benefits are collected because an insured is killed by an uninsured motorist. Shelter's policy purports to not only reduce coverage to the statutory minimum if the insured collects **any** money from **any** compensation law, but also reduces coverage to the minimum if the damages to the insured are caused by the operator of a vehicle owned by any government unit or agency. Permitting these types of exclusions by insurance companies creates an injustice the citizens of Missouri cannot afford.

Enforcing this exclusionary provision in insurance policies renders the insured's expected coverage **meaningless**. Section 379.203, RSMo, requires a mandatory

minimum amount of uninsured motorist coverage. If an insured decides to purchase excess coverage, above that of the statutory minimum, they should not be placed in a position which leaves their expense for such additional coverage irrelevant. Enforcing this exclusionary provision, and others like it, completely eliminates an insured's incentive to protect themselves and their loved ones by purchasing excess coverage. "[U]ninsured benefits should not be reduced to injured motorists just because workers' compensation also applied to the injuries." *Barker*, 799 S.W.2d at 119 (citing *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266). Insurance policies which purport to provide coverage above the statutory minimum but also contain clauses which are punitive in nature and ultimately result in a substantial deprivation of the purchased coverage are contrary to the reasonable expectations of the insured, illusory in nature and against public policy.

II. The Shelter Insurance Contract is an Unconscionable Contract of Adhesion in that it Prohibits the Insured From Negotiating the Terms of the Policy, and as Such Should be Viewed in Favor of the Insured.

Missouri courts have defined an adhesion contract as "a form contract submitted by one party and accepted by the other on the basis of this or nothing." *Estrin Construction Co., Inc. v. Aetna Casualty & Surety Co.*, 612 S.W.2d 413, fn. 3 (Mo. Ct. App. 1982). "It is a transaction not negotiated but to which one literally adheres from want of choice." *Id.* at 423. Missouri courts have long recognized that "although customers typically adhere to standardized agreements and are bound by them without even appearing to know the standard terms in detail, they are not bound to unknown terms which are beyond the range of reasonable expectation." *Id.*

The Respondent chose his coverage without the ability to negotiate the terms of the policy. He reasonably believed that the maximum limits were attainable. When a contract contains provisions that are standardized in the industry, such as exclusionary clauses which the insured has absolutely no choice in eliminating or rewriting, the contract is and must be viewed as one of adhesion.

The practicality of the matter is that most insureds do not understand their policies. Ordinarily persons making contracts of insurance do not read carefully the application, and a very small percentage, in all probability, of those securing insurance ever read or understand the contents of the policy.

Meanwhile, “[t]he principle of reasonable expectations insures that ‘[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.’” *Tegtmeyer*, 791 S.W.2d at 740 (internal citations omitted). If an insurance policy is purchased with uninsured motorist coverage above the statutory minimum for additional protection, why would a reasonable insured expect that protection would be reduced at all? An insured is reasonable in expecting that all insurance purchased is available.

CONCLUSION

For the reasons stated above, the Court should affirm the opinion of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that a copy of the computer diskette containing the full text of Brief of *Amicus Curiae* Missouri Association of Trial Attorneys In Support of Respondent is attached to the Brief and has been scanned for viruses and is virus-free.

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(b); and (3) this Brief contains 2646 words, as calculated by the Microsoft Word software used to prepare this brief.

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