

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD69411

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MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JASON L. RICE,

RESPONDENT

90139

vs.

FILED

SHELTER MUTUAL INSURANCE COMPANY,

JUN 2 2009

APPELLANT.

Thomas F. Simon
CLERK, SUPREME COURT

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

Jurisdiction is proper in this court pursuant to Article V, section 3 of the Missouri Constitution and section 477.070 RSMo. (2000), in that this is an appeal from a final order rendered by the Circuit Court of Johnson County, Missouri, involving the interpretation of an automobile insurance policy; specifically, whether an exclusion contained in the uninsured motorist coverage provisions of Shelter's policies based on benefits paid to the insured pursuant to workers' compensation laws is enforceable under Missouri law.

STATEMENT OF FACTS

This action arises out of the interpretation of an exclusion contained in the uninsured motorist coverage section of three automobile liability policies issued to Michael and Connie Rice, and under which their son, Jason Rice, was an insured for purposes of an automobile accident on June 27, 2006.

Prior to June 27, Shelter Mutual Insurance Company issued three automobile insurance policies in the State of Missouri to Michael and Connie Rice, 1012 N. Jefferson, Carrollton, Missouri. All such policies were in full force and effect on June 27, 2006, and contained uninsured motorist coverage with Policy No. 24-1-5046691-1 containing \$100,000 per person/\$300,000 per accident; Policy No. 24-1-5046691-3 containing \$250,000 per person/ \$500,000 per accident; and Policy No. 24-1-5046691-6 containing \$250,000 per person/\$500,000 per accident. (LF, p. 61, ¶1) Jason Rice, who is the natural child of policyholders Michael and Connie Rice, was an insured within the meaning of the uninsured motorist coverage of the three aforementioned policies on June 27, 2006. (LF, p. 61, ¶1)

The three policies contained the following language:

**PART IV – UNINSURED MOTORISTS
COVERAGE E – UNINSURED MOTORISTS**

...

INSURING AGREEMENT FOR COVERAGE E

Subject to the limit of our liability stated in this Coverage, we will pay damages for bodily injury sustained by an insured which that insured, or that insured's legal representative, is legally entitled to recover from the owner or operator of an uninsured motor vehicle. The bodily injury must be caused by accident and arise out of the ownership or use of the uninsured motorist vehicle.

....

(LF, p. 61-62, ¶2; LF, p. 84)

Coverage E does not apply:

- ...
- (3) To damages sustained by any insured if benefits are:
 - (a) payable to, or on behalf of, such insured under any compensation law, as a result of the same accident, or
 - (b) required by any compensation law, to be provided to, or on behalf of, such insured as a result of the same accident.

This exclusion does not apply to the amounts of coverage mandated by any uninsured motorist insurance law or financial responsibility law applicable to the accident, but does apply to any amounts exceeding that mandate, and to coverages which are not mandated by such laws.

(LF, p. 62, ¶2; LF, p. 84-85)

DEFINITIONS

- ...
- (6) Compensation law means any law under which benefits are paid to a person as compensation for the effects of bodily injury, without regard to fault, because of that person's status as an employee or beneficiary. It includes, but is not limited to, workers' compensation laws, disability laws, the Federal Employers' Liability Act and the Jones Act.

(LF, p. 62, ¶2; LF, p. 68)

EFFECT OF UNINSURED MOTORIST INSURANCE LAWS OR FINANCIAL RESPONSIBILITY LAWS

If an applicable uninsured motorist insurance law or financial responsibility law renders any exclusion provision of this policy unenforceable, we will provide only the minimum limits required by such law. However, if other insurance covers our insured's claim and provides those required minimum limits, the exclusion provisions of this policy are fully enforceable.

(LF, p. 62, ¶2; LF, p. 85)

On June 27, 2006, Jason Rice was a passenger in a 2004 Chevrolet C-65 truck being operated by Plaintiff Daniel Patterson in a northerly direction on Highway 13 in

Johnson County, Missouri, when Judy S. Saimon operated a 1997 Ford Taurus across the centerline of Highway 13 and struck the truck being occupied by Jason Rice and Daniel Patterson, causing such truck to overturn and become engulfed in flames. (LF, p. 62-63, ¶3) Jason Rice and Daniel Patterson suffered burn injuries as a result of the accident. (LF, p. 63, ¶3)

At the time of the accident, Judy S. Saimon was operating an uninsured motor vehicle within the meaning of the three Shelter Mutual Insurance Company policies, referenced above. (LF, p. 63, ¶4) As a result of the accident, Jason Rice was entitled to recover from the owner or operator of an uninsured motor vehicle, as defined in the policies. (LF, p. 63, ¶4)

In the accident of June 27, 2006, Jason Rice sustained burn injuries. (LF, p. 63, ¶5) As a result of the accident, benefits were payable and were also required to be paid to Jason Rice under a compensation law, as defined in the Shelter policies. (LF, p. 63, ¶5)

Jason Rice received benefits under a compensation law, as defined in the Shelter policies. (L F, p. 63, ¶6)

On March 16, 2007, Jason Rice, through his attorney, submitted a demand to Shelter Mutual Insurance Company for payment of the per person limits of all three policies totaling \$600,000. (L F, p. 63, ¶7) On April 18, 2007, Shelter declined payment of \$600,000, but instead offered and paid \$25,000 per policy for a total of \$75,000, because the exclusion language of the uninsured motorist coverage for each policy provides that the uninsured motorist coverage does not apply to damages sustained by an

insured if workers' compensation benefits are payable, subject to the statutorily mandated minimum. (L F, p. 63, ¶7)

Jason Rice has fulfilled all terms and conditions precedent of the three subject policies and is entitled to all uninsured motorist benefits available through the three policies and pursuant to Missouri law. (L F, p. 63-64, ¶8)

Jason Rice, sued as a third party defendant in the original proceeding filed by plaintiff Daniel Patterson (LF, p. 1), filed his Third Party Petition against Shelter seeking uninsured motorist benefits. (LF, p. 8) Shelter and Rice agreed to litigate the issue regarding coverage in this case (L F, p. 63, ¶7), and filed their Stipulated Statement of Uncontroverted Facts with the trial court. (LF, p. 61) Both parties then filed motions for summary judgment on the coverage issue (LF, pp. 16 and 95), with supporting suggestions in support of, and in opposition to, the respective motions. (LF, pp. 51, 101, 107, 140 and 150) The trial court ultimately granted third party plaintiff Rice's motion. (LF, p. 189)

POINT RELIED ON

The trial court erred in entering summary judgment in favor of respondent Jason L. Rice because the uninsured motorist provision excluding coverage for damages sustained by an insured if benefits are payable to the insured under a workers' compensation law is valid and enforceable under Missouri law, in that the language of the exclusion does not violate §303.030 RSMo. of the Missouri Motor Vehicle Financial Responsibility Law or §379.203 RSMo., which collectively require automobile liability insurance policies to include uninsured motorist coverage in the amount of \$25,000 per person.

Cano v. Travelers Ins. Co., 656 S.W.2d 266 (Mo. banc 1983)

Williams v. Casualty Reciprocal Exchange, 929 S.W.2d 802 (Mo.App. WD 1996)

Todd v. Missouri United School Ins. Council, 223 S.W.3d 156 (Mo. banc 2007)

East Attucks Comm. Housing, Inc. v. Old Republic Sur. Co., 114 S.W.3d 311 (Mo.App. WD 2003)

Section 303.030 RSMo. (2000)

Section 379.203 RSMo. (2000)

ARGUMENT

The trial court erred in entering summary judgment in favor of respondent Jason L. Rice because the uninsured motorist provision excluding coverage for damages sustained by an insured if benefits are payable to the insured under a workers' compensation law is valid and enforceable under Missouri law, in that the language of the exclusion does not violate §303.030 RSMo. of the Missouri Motor Vehicle Financial Responsibility Law or §379.203 RSMo., which collectively require automobile liability insurance policies to include uninsured motorist coverage in the amount of \$25,000 per person.

The standard of review on appeal from summary judgment requires that this Court review the record in the light most favorable to the party against whom judgment was entered and the non-movant receives the benefit of all reasonable inferences from the record. Swartz v. Mann, 160 S.W.3d 411, 413-414 (Mo.App. WD 2005), citing ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993). This Court's review is "essentially de novo." Swartz, at 414; ITT, at 376. Summary judgment will be upheld on appeal only if (1) no genuine disputes as to material facts exist and (2) movant possesses the right to judgment as a matter of law. Swartz, at 414; ITT, at 380.

There are no genuine disputes of material facts in this case. The parties prepared and filed a Stipulated Statement of Uncontroverted Facts, from which their respective

motions for summary judgment were prepared. Thus, this Court's review is limited to whether or not respondent Rice was entitled to judgment as a matter of law.

A. The Trial Court's Basis for Granting Third Party Plaintiff's Motion for Summary Judgment

In its Final Judgment, the trial court provided the following analysis for its decision in favor of respondent Rice:

"The exclusionary language provides that if the insured receives benefits for bodily injury from an insurance source, including workers' compensation benefits, FELA benefits, Medicare, Medicaid, Social Security, VA benefits, or even health insurance benefits, the insured is not entitled to uninsured benefits under Coverage E. If all the overlapping exclusionary language contained in the policies is given meaning, then the insured received no perceivable value for the premiums paid for uninsured motorist coverage; and the appearance and reasonable expectation of having purchased Six Hundred Thousand Dollars of uninsured motorist coverage would be illusory. In *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983), the Missouri Supreme Court not only held that language in an uninsured motorist policy that purported to reduce the insurer's liability because of the receipt of workers' compensation benefits violated public policy, and the provisions of Mo.Rev.Stat. §579.203 (sic), but also that "[a] construction which may render a portion of the policy illusory should not be indulged in." *Cano* at 271. The exclusionary language of Coverage E in the

Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri.” (LF, p. 192)

Of most importance in the trial court’s Final Judgment is what it does NOT say with regard to the workers’ compensation exclusion at issue – namely, that the specific exclusion is void and contrary to public policy. Rather, the trial court generally referenced the “exclusionary language of Coverage E [the uninsured motorist coverage]” and concluded that if all the exclusionary language was given meaning, the insured received no value for the uninsured motorist premiums paid.

The trial court’s decision is not supported by Missouri law. The workers’ compensation exclusion in the uninsured motorist coverage provisions of respondent’s policy does not violate public policy, and specifically the Missouri Motor Vehicle Financial Responsibility Law (MVFRL) as set forth in §303.030 RSMo. and the mandatory minimum uninsured motorist coverage set forth in §379.203 RSMo. Enforcement of the workers’ compensation exclusion to respondent’s claim is required by the clear terms of the policy.

B. The Workers’ Compensation Exclusion does not Violate § 303.030 RSMo. of the Missouri Motor Vehicle Financial Responsibility Law or §379.203 RSMo.

I. Section 303.030 RSMo.

The relevant portion of §303.030 RSMo. provides as follows:

“5. No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in

this state, ...; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident”

II. Section 379.203 RSMo.

The relevant portion of §379.203 RSMo. provides as follows:

- “1. No 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.”

III. Cano v. Travelers Ins. Co.

The trial court interpreted the Cano decision to hold “that language in an uninsured motorist policy that purported to reduce the insurer’s liability because of the receipt of workers’ compensation benefits violated public policy, and the provisions of Mo.Rev.Stat. §579.203 (sic), but also that “[a] construction which may render a portion of the policy illusory should not be indulged in.” (LF, p. 192) The holding in Cano, however, was not so broad.

Plaintiff Cano was injured in an accident with an uninsured motorist while operating a vehicle owned by his employer. Cano v. Travelers Ins. Co., 656 S.W.2d 266 (Mo. banc 1983). Plaintiffs sought uninsured motorist benefits under the employer's automobile liability policy. Id. at 267. Defendant, the employer's insurer, sought to offset the amount plaintiff received in workers' compensation benefits from the amount owed under the uninsured motorist coverage based on the following off-set provision:

"2. Any amount payable under the terms of this insurance because of bodily injury sustained in an accident by a person who is an Insured under this insurance shall be reduced by:

(b) The amount paid and the present value of all amounts payable on account of such bodily injury under any Worker's Compensation law, disability benefits law or any similar law." Id. at 269-270.

The Cano plaintiff received over \$11,000 in workers' compensation benefits.¹ Id. at 268. In holding the off-set policy provision invalid, the court cited the following language from Douthet v. State Farm Mut. Auto Ins. Co., 546 S.W.2d 156 (Mo. banc 1977):

"The holdings in Cameron, Galloway and Webb that § 379.203 requires that coverage in the amounts required by the Safety Responsibility Law not be diminished by contractual limitation, absent express statutory authority therefor, govern the outcome of this case. It would violate the public policy expressed in §

¹ Section 303.030 RSMo. (1978) required \$10,000 per person of minimum coverage. *See also, Hines v. Government Employees Insurance Co., 656 S.W.2d 262, 263 (Mo. banc 1983).*

379.203 to permit diminution of coverage by requiring credit for workmen's compensation payments. Hence, we hold that the policy provision requiring reduction of sums payable under the policy by workmen's compensation payments is void." Douthet, at 159 (emphasis added).

The issue in Douthet also involved off-setting the insured's recovery of uninsured benefits by workers' compensation benefits, when the insured's uninsured benefits recovery already was below the statutorily required limits. Id. at 157-158. *See also, Williams v. Casualty Reciprocal Exchange*, 929 S.W.2d 802, 809 (Mo.App. WD 1996)("We also agree that Cano and Douthet do not explicitly require that the policy be held unenforceable above the \$25,000 statutory minimum, and that Missouri has held that household exclusion provisions contained in uninsured motorist policies are enforceable for amounts in excess of \$25,000.") Thus, what Cano and Douthet actually tell us is that an insurer cannot use workers' compensation benefits to off-set an insured's recovery of uninsured motorist benefits to an amount below that required by the MVFRL. This is not the issue of our appeal. Shelter is not, and has never taken the position that its insured, Mr. Rice, was entitled to less than the minimum required by the MVFRL. (LF, p. 63, ¶ 7)

IV. Workers' Compensation Exclusion

The actual exclusion in Shelter's policy under which Shelter determined Mr. Rice was entitled to the minimum uninsured benefits required by statute for each of the three policies states as follows:

Coverage E does not apply:

...
(3) To damages sustained by an insured if benefits are:

(a) payable to, or on behalf of, such insured under any compensation law, as a result of the same accident, or

(b) required by any compensation law to be provided to, or on behalf of, such insured as a result of the same accident.

This exclusion does not apply to the amounts of coverage mandated by an uninsured motorist insurance law or financial responsibility law applicable to the accident, but does apply to any amounts exceeding that mandate, and to coverages which are not mandated by such laws. (LF, pp. 84-85) (emphasis added)

...

The term “compensation law” is defined, in part, as follows:

DEFINITIONS

...

(6) Compensation law means any law under which benefits are paid to a person as compensation for the effects of bodily injury, without regard to fault, because of that persons’ status as an employee or beneficiary. **It includes, but is not limited to, workers’ compensation laws, (LF, p. 68) (emphasis added)**

...

Exclusions are policy provisions that limit risks that might otherwise be covered.

Todd v. Missouri United School Ins. Council, 223 S.W.3d 156, 160 (Mo. banc 2007).

“Insurance companies may compete for business by coverage terms, by price, or by

both. The parties may bargain and agree to such terms and provisions as they see fit subject only to the requirements that the contract is lawful and reasonable. The ability to uniquely define the risks insured against and to prescribe exclusions or add endorsements allows insureds to choose the coverage they desire at the lowest possible price.” Id. at 160-161. (citations omitted) “Definitions, exclusions, conditions and endorsements are necessary provisions in insurance policies. If they are clear and unambiguous within the context of the policy as a whole, they are enforceable.” Id. at 163.

The trial court, however, did not conclude the workers’ compensation exclusion at issue was ambiguous, which it clearly is not. Rather, it determined the “exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri.” (LF, p. 192)

“When the contract language is clear, ..., exceptions based on public policy must usually find support in necessary implication from statutory provisions.” Halpin v. American Family Mut. Ins. Co., 823 S.W.2d 479, 483 (Mo. banc 1992). *See also*, East Attucks Comm. Housing, Inc. v. Old Republic Sur. Co., 114 S.W.3d 311 (Mo.App. WD 2003)(“It should be noted, however, that for public policy to trump contract language that is clear and unambiguous, the “public policy must usually find support in necessary implication from statutory provisions.”)(citing, Halpin v. American Family, 823 S.W.2d 479 (Mo. banc 1992).

There is no “necessary implication” in §379.203 RSMo. that could render the workers’ compensation exclusion in Shelter’s policies void as against public policy. The exclusion specifically contemplates Shelter’s obligations under the MVFRL, and Shelter’s position always has been that it owed Mr. Rice the \$25,000 uninsured motorist benefits under each of the three policies as required by Missouri statute. In fact, Mr. Rice was paid the uninsured motorist benefits, based on the exclusion, for a total of \$75,000. (LF, p. 63, ¶ 7)

The trial court’s Final Judgment relies on “all the overlapping exclusionary language” – allegedly which includes not only workers’ compensation benefits, but also benefits from Medicare, Medicaid, Social Security, etc. – as the basis for the conclusion that the exclusionary language of Coverage E is so excessively broad to be void as against public policy. (LF, p. 192) However, Shelter did not rely upon respondent Rice’s receipt of any benefits other than those paid by workers’ compensation in its application of the policy exclusion at issue, and the true issue in this case is whether or not the exclusion based on respondent’s receipt of workers’ compensation benefits is enforceable. Essentially, the trial court ignored the clear and admitted unambiguous exclusion at issue in this case in an attempt to find additional coverage for Mr. Rice, and the court’s conclusions were not warranted or supported by any Missouri law.

The undisputed facts presented are that (1) Mr. Rice was injured in an accident and made an uninsured motorist claim; (2) he received workers’ compensation benefits as a result of the accident; (3) the insurance policies at issue contain an exclusion for damages sustained if benefits are paid or payable to the insured under a compensation

law, defined to specifically include workers' compensation; and (4) the policies at issue specifically state the exclusion does not apply to amounts mandated by any financial responsibility law, but does apply to any amount exceeding the legal mandate. (LF, pp. 62-63; pp. 68, 84-85) Under these facts, the policy language is not void as against public policy, and the trial court's attempt to find a public policy exception runs counter to Shelter's right to enter into bargained-for contracts with its insureds.

CONCLUSION

For the foregoing reasons, appellant Shelter Mutual Insurance Company respectfully requests this Court reverse the trial court's Final Judgment granting respondent's motion for summary judgment and direct the trial court to enter summary judgment in favor of Shelter Mutual Insurance Company.

Respectfully submitted,

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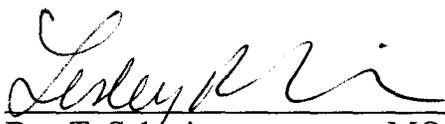
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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(c)

The undersigned hereby certifies, pursuant to Rule 84.06(c), that:

1. This certificate includes below the information required by Rule 55.03, including the undersigned's address, Missouri Bar number, telephone number, facsimile number, and electronic mail address.
2. This brief complies with the limitations contained in Rule 84.06(b).
3. This brief contains 3792 words, according to the word-processing system used to prepare the brief.
4. Microsoft Word 2002 was used to prepare this Brief of Appellant.
5. The floppy disk provided with this brief has been scanned for viruses and is virus free.

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APPENDIX

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Final Judgment in Third-Party Claim of Jason L. Rice
against Shelter Mutual Insurance Company A-1

Section 303.030, RSMo (2000) A-6

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a passenger in a motor vehicle involved in a collision in Johnson County, Missouri. Judy S. Saimon was operating an uninsured motor vehicle within the meaning of the three aforementioned automobile insurance policies. Jason L. Rice sustained personal injuries and damages for which he is legally entitled to recover against Judy S. Saimon for a sum equal to or greater than \$600,000. Jason L. Rice received workers' compensation benefits as a result of the injuries he received in the subject accident. Relying upon exclusionary language in its policies, Shelter Mutual Insurance Company paid the sum of \$75,000 to Jason L. Rice on April 18, 2007, but declined to pay the remaining \$525,000 demanded by Jason L. Rice. The parties have agreed that Jason L. Rice is entitled to all uninsured motorist benefits available through the three policies.

In examining the insuring language of the subject policies, the Court finds that Coverage E provided coverage for "Uninsured Motorists." Within Coverage E is contained the following:

INSURING AGREEMENT FOR COVERAGE E
Subject to the limit of **our** liability stated in this Coverage, **we** will pay damages for **bodily injury** sustained by an **insured** which that **insured**, or that insured's legal representative, is legally entitled to recover from the **owner** or **operator** of an **uninsured motor vehicle**. The **bodily injury** must be caused by **accident** and arise out of the **ownership** or **use** of the **uninsured motor vehicle**.

This language in conjunction with the stated coverages of uninsured motorist limits for the three subject policies, as stacked, provided \$600,000 for Jason L. Rice for the subject accident.

Also within the insuring language of Coverage E of the policies is contained a section entitled EXCLUSIONS:

EXCLUSIONS

If an applicable **uninsured motorist insurance law** or **financial responsibility law** renders any exclusion provision of this policy unenforceable, **we** will provide only the minimum limits required by such law.

However, if other insurance covers **our insured's claim** and provides those required minimum limits, the exclusion provisions of this policy are fully enforceable.

The EXCLUSIONS section of Coverage E also provides:

Coverage E does not apply:

* * *

- (3) To damages sustained by any **insured** if benefits are:
 - (a) payable to, or on behalf of, such **insured** under any **compensation law**, as a result of the same **accident**, or
 - (b) required by any **compensation law** to be provided to, or on behalf of, **such insured** as a result of the same **accident**.

This exclusion does not apply to the amounts of coverage mandated by any uninsured motorist insurance law or **financial responsibility law** applicable to the **accident**, but does apply to any amounts exceeding that mandate, and to coverages which are not mandated by such laws.

The phrase “compensation law” is defined under the policies as follows:

- (6) **Compensation law** means any law under which benefits are paid to a **person** as compensation for the effects of **bodily injury**, without regard to fault, because of that **person's** status as an employee or beneficiary. It includes, but is not limited to, workers' compensation laws, disability laws, the Federal Employers' Liability Act and Jones Act.

Immediately following the numbered paragraphs of the section entitled EXCLUSIONS under Coverage E, the policy also provides as follows:

**EFFECT OF UNINSURED MOTORIST INSURANCE
LAWS OR FINANCIAL RESPONSIBILITY LAWS**

If an applicable **uninsured motorist insurance law** or **financial responsibility law** renders any provision of this Part of the policy unenforceable, we will provide only the minimum limits mandated by such law.

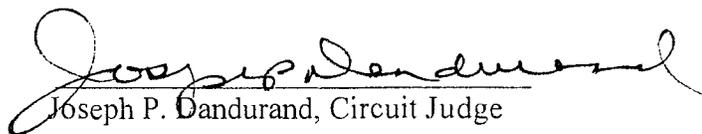
However, if other insurance covers an **insured's claim** and provides those required minimum limits, the provisions of this policy are fully enforceable.

In construing the EXCLUSIONS section of Coverage E, including the definition of Compensation Law, the Court takes the words and phrases in their plain, ordinary meaning, except as specifically defined within the policy. *Farmland Industries, Inc. v. Republic Ins. Co.*, 941 S.W. 2d 505, 508 (Mo. banc 1997).

The exclusionary language provides that if the insured receives benefits for bodily injury from any insurance source, including workers' compensation benefits, FELA benefits, Medicare, Medicaid, Social Security, VA benefits, or even health insurance benefits, the insured is not entitled to uninsured benefits under Coverage E. If all the overlapping exclusionary language contained in the policies is given meaning, then the insured received no perceivable value for the premiums paid for uninsured motorist coverage; and the appearance and reasonable expectation of having purchased Six Hundred Thousand Dollars of uninsured motorist coverage would be illusory. In *Cano v. Travelers Ins. Co.*, 656 S.W.2d 266 (Mo. banc 1983), the Missouri Supreme Court not only held that language in an uninsured motorist policy that purported to reduce the insurer's liability because of the receipt of workers' compensation benefits violated public policy, and the provisions of Mo.Rev.Stat. § 579.203, but also that "[a] construction which may render a portion of the policy illusory should not be indulged in." *Cano* at 271. The exclusionary language of Coverage E in the Shelter policies is so excessively broad as to be void and contrary to the public policy of Missouri.

Accordingly, Third-Party Defendant Shelter Mutual Insurance Company's Motion for Summary Judgment is denied, and Third-Party Defendant/Third-Party Plaintiff Jason L. Rice's Motion for Summary Judgment is granted. The Stipulated Statement of Uncontroverted Facts filed by Jason Rice and Shelter Mutual Insurance Company established a liquidated amount of \$525,000 at issue in this action because \$75,000 of the uninsured motorist coverage was voluntarily paid by Shelter Mutual Insurance Company prior to the filing of this action. Jason Rice is, therefore, entitled to recover interest on the liquidated amount of \$525,000 from April 18, 2007, pursuant to the provisions of Mo.Rev.Stat. § 408.020. Interest is assessed at 9% per annum from April 18, 2007, and interest is awarded in the amount of \$34,952.05.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT final judgment is hereby entered in favor of Third-Party Defendant/ Third-Party Plaintiff Jason L. Rice against Third-Party Defendant Shelter Mutual Insurance Company in the sum of Five Hundred Fifty-nine Thousand Nine Hundred Fifty-two and 05/100 Dollars (\$559,952.05). Costs are taxed against Third-Party Defendant Shelter Mutual Insurance Company. This is a final and appealable judgment that disposes of all the issues between Third-Party Defendant/Third-Party Plaintiff Jason L. Rice and Third-Party Defendant Shelter Mutual Insurance Company, and an express determination is hereby made pursuant to Civil Rule 74.01(b) that there is no just reason for delay.


Joseph P. Bandurand, Circuit Judge

11/17/08
Date

V.A.M.S. 303.030

C Vernon's Annotated Missouri Statutes Currentness

Title XIX. Motor Vehicles, Watercraft and Aviation

■ Chapter 303. Motor Vehicle Financial Responsibility Law (Refs & Annos)→ **303.030. Operator's license suspended on failure to give security for payment of damages after accident-- exceptions--insurance accepted**

1. If within twenty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of five hundred dollars, the director does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection 2 of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the director shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment for damages resulting from such accident as may be recovered against each operator or owner. Any person challenging the director's determination shall have the burden of proving he or she was not at fault.

2. The director shall, within ninety days after the receipt of such report of a motor vehicle accident, suspend the license of each operator, and all registrations of each owner of a motor vehicle, in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in the sum so determined by the director; provided notice of such suspension shall be sent by the director to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security; provided, however, that the period of suspension provided for in this section shall be in addition to any period of suspension imposed under sections 303.041 and 303.042.

3. Where erroneous information is given the director with respect to the matters set forth in subdivision (1), (2) or (3) of subsection 4 of this section, he shall take appropriate action as hereinbefore provided, within forty-five days after receipt by him of correct information with respect to said matters.

4. This section shall not apply under the conditions stated in section 303.070, nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the director, covered by any other form of liability insurance policy or bond; nor

(4) To any person qualifying as a self-insurer under section 303.220, nor to any person operating a motor vehicle for such self-insurer.

V.A.M.S. 303.030

5. No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

CREDIT(S)

(L.1953, p. 569, § 1 (§ 303.050). Amended by L.1965, p. 481, § 1; L.1969, 3rd Ex.Sess., H.B. No. 30, p. 107, § 1; L.1981, S.B. No. 201, p. 429, § 1; L.1986, S.B. No. 424, § 1, eff. July 1, 1987; L.1997, H.B. No. 207, § C, eff. Jan. 1, 1998.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Prior Laws and Revisions:

R.S.1949, § 303.020.
Mo.R.S.A. § 8470.14.
L.1945, p. 1207, § 3.

V. A. M. S. 303.030, MO ST 303.030

Statutes are current with emergency legislation approved through June 24, 2008, of the 2008 Second Regular Session of the 94th General Assembly.
Constitution is current through the November 7, 2006 General Election.

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(10) "Proof of financial responsibility", proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of two thousand dollars because of injury to or destruction of property of others in any one accident;

(11) "Registration", registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(12) "State", any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada;

(13) "Street or highway", the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(L. 1953 p. 569 § 303.010, A. L. 1965 p. 481)

Drivers' license law, Chap. 302, RSMo

303.030. Operator's license suspended on failure to give security for payment of damages after accident—exceptions—insurance accepted.—1. If within twenty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person in excess of one hundred dollars, the director does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection 2 of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the director shall determine the amount of security which shall be sufficient in his judgment to satisfy any judgment for damages resulting from such accident as may be recovered against each operator or owner.

2. The director shall, within ninety days after the receipt of such report of a motor vehicle accident, suspend the license of each operator, and all registrations of each owner of a motor vehicle, in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonres-

ident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in the sum so determined by the director; provided notice of such suspension shall be sent by the director to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security.

3. Where erroneous information is given the director with respect to the matters set forth in subdivision (1), (2) or (3) of subsection 4 of this section, he shall take appropriate action as hereinbefore provided, within forty-five days after receipt by him of correct information with respect to said matters.

4. This section shall not apply under the conditions stated in section 303.070, nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the director, covered by any other form of liability insurance policy or bond; nor

(4) To any person qualifying as a self-insurer under section 303.220, nor to any person operating a motor vehicle for such self-insurer.

5. No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars because of bodily injury to or

death of two or more persons in any one accident, and, if such injury to or destruction of property of not less than ten thousand dollars because of injury to or death of one person in any one accident. (L. 1953 p. 569 § 303.050 Sess. H. B. 30)

303.040. Motor vehicle operator—director to determine—ties to furnish information.—The operator or owner of every motor vehicle involved in an accident occurring on the streets or highways of this state, with an exception as provided in this section, shall, if a person is killed or injured or the property of any person is damaged in excess of one hundred dollars and the owner of such motor vehicle which is in this state if such owner shall carry motor vehicle liability insurance within sixty days after the date of such accident in writing to the director, if the accident agreed to be covered has not been made known to the director which shall be precluded from containing such information unless the director to determine the amount of the deposit of security under section 303.030 are inapplicable of insurance or otherwise provided in this chapter. The accuracy of such information shall be as he has reason to believe is not erroneous. If such operator is capable of making such report the motor vehicle operator shall, within sixty days after such accident, make such report also the owner and the operator report as is required by this section will be filed and the owner is so capable of making such report must accompany such report. The operator or owner shall file such additional relevant information as shall require.

2. If any party involved in such accident shall file a report under this section, within ten days after the receipt of such report, all other parties involved in such accident as specified in the report shall file such report within ten days after the receipt of such report as the director shall determine under section 303.030.

both of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit not less than two thousand dollars because of injury to or destruction of property of others in any one accident.

(L. 1953 p. 569 § 303.050, A. L. 1965 p. 481, A. L. 1969 3d Ex. Sess. H. B. 30)

303.040. Motor vehicle accidents to be reported—director to notify all other parties, parties to furnish information.—1. The operator or owner of every motor vehicle which is involved in an accident within this state or the owner of a legally or illegally parked car which in any manner involved in an accident within this state, with an uninsured motorist, upon the streets or highways thereof, in which any person is killed or injured or in which damage to property of any one person, including himself, in excess of one hundred dollars is sustained, or the owner or operator of every motor vehicle which is involved in an accident within this state if such owner or operator does not carry motor vehicle liability insurance shall within sixty days after such accident report the matter in writing to the director if settlement of the accident agreed to by all the parties involved has not been made. Such report, the form of which shall be prescribed by the director, shall contain such information as will enable the director to determine whether the requirements of the deposit of security under section 303.030 are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. The director may rely upon the accuracy of such information unless and until he has reason to believe that the information is erroneous. If such operator be physically incapable of making such report, the owner of the motor vehicle involved in such accident shall, within * sixty days after learning of the accident, make such report. If the operator is the owner and is incapable of filing such report as is required by this section then the report will be filed as soon as the operator-owner is so capable. If the report is late by reason of incapability, a doctor's certificate must accompany the report certifying same. The operator or the owner shall furnish such additional relevant information as the director may require.

2. If any party involved in an accident files a report under this section, the director shall, within ten days after receipt of the report, notify all other parties involved in the accident specified in the report that a report has been filed and such other parties shall then furnish within ten days the director with such information as the director may request to enable the director to determine whether the requirements of section 303.030 are applicable.

(L. 1953 p. 569, A. L. 1976 H. B. 1392)

* Word "with" appears in original rolls.

303.045. Records, where kept—destroyed, when.—The director of revenue shall keep all records filed under the provisions of sections 303.040, 303.100, and 303.150, in his custody at the City of Jefferson. All records and files pertaining to reports of accidents, unsatisfied judgments, and suspensions or revocations of license as the result of convictions may be destroyed, provided they have been finally closed by the director for a period of one year.

(L. 1957 p. 627 § 303.041, A. L. 1961 p. 494)

303.050. Security, form and amount—reduced, when.—1. The security required under this chapter shall be in such form and in such amount as the director may require but in no case in excess of the limits specified in section 303.030 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the director or state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

2. The director may reduce the amount of security ordered in any case within six months after the date of the accident if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith notwithstanding the provisions of section 303.060.

(L. 1953 p. 569 § 303.090)

303.051. Judgment-creditor entitled to notice of security held.—When a judgment is rendered and is secured as provided by this chapter, the director shall provide the judgment-creditor with information describing the form and amount of the security the judgment-debtor has deposited with the director.

(L. 1957 p. 634)

303.060. Security deposited with director of revenue—used to pay judgment—return.—1. Security deposited in compliance with the requirements of this chapter shall be deposited with the director of revenue, and shall be applicable only to the payment of a judgment or judgments rendered against the person or per-

V.A.M.S. 379.203

C Vernon's Annotated Missouri Statutes Currentness
Title XXIV. Business and Financial Institutions
 Chapter 379. Insurance Other Than Life (Refs & Annos)
 General Provisions

→ **379.203.** Automobile liability policy, required provisions--uninsured motorist coverage required--recovery against tortfeasor, how limited

1. No 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, or in the case of any commercial motor vehicle, as defined in section 301.010, RSMo, any employer having a fleet of five or more passenger vehicles, such coverage is offered 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. Such legal entitlement exists although the identity of the owner or operator of the motor vehicle cannot be established because such owner or operator and the motor vehicle departed the scene of the occurrence occasioning such bodily injury, sickness or disease, including death, before identification. It also exists whether or not physical contact was made between the uninsured motor vehicle and the insured or the insured's motor vehicle. Provisions affording such insurance protection against uninsured motorists issued in this state prior to October 13, 1967, shall, when afforded by any authorized insurer, be deemed, subject to the limits prescribed in this section, to satisfy the requirements of this section.
2. For the purpose of this coverage, the term "**uninsured motor vehicle**" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified herein because of insolvency.
3. An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within two years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.
4. In the event of payment to any person under the coverage required by this section, and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, with respect to payments made by reason of the coverage described in subsections 2 and 3 above, the insurer making such payment shall not be entitled to any right of recovery against such tort-feasor in excess of the proceeds recovered from the assets of the insolvent insurer of said tort-feasor.
5. In any action on a policy of automobile liability insurance coverage providing for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, the fact that the owner or operator of such uninsured motor vehicle whether known or unknown failed to

V.A.M.S. 379.203

file the report required by section 303.040, RSMo, shall be prima facie evidence of uninsured status, and such failure to file may be established by a statement of the absence of such a report on file with the office of the director of revenue, certified by the director, which statement shall be received in evidence in any of the courts of this state. In any such action, the report required by section 303.040, RSMo, when filed by the owner or operator of an uninsured motor vehicle, shall be prima facie evidence of lack of insurance coverage and the report, or a copy thereof, certified by the director of revenue, may be introduced into evidence in accordance with section 303.310, RSMo.

CREDIT(S)

(L.1967, H.B. No. 262, p. 516, § A. Amended by L.1971, H.B. No. 85, p. 398, § 1; L.1972, S.B. No. 458, p. 1005, § 1; L.1982, S.B. No. 480, p. 602, § 1; L.1991, H.B. Nos. 385, 386, 387, 389, 390 & 451, § A.)

HISTORICAL AND STATUTORY NOTES

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The 1971 amendment, in subsec. 4, added a proviso.

The 1972 amendment made no changes.

The 1982 amendment, in subsec. 1, inserted the second and third sentences; and added subsec. 5.

The 1991 amendment, in subsec. 1, inserted "or in the case of any commercial motor vehicle, as defined in section 301.010, RSMo, any employer having a fleet of five or more passenger vehicles, such coverage is offered therein or supplemental thereto" in the first sentence.

V. A. M. S. 379.203, MO ST 379.203

Statutes are current with emergency legislation approved through June 24, 2008, of the 2008 Second Regular Session of the 94th General Assembly.
Constitution is current through the November 7, 2006 General Election.

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