

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STANLEY FANNING

RESPONDENT,

**v.
PROGRESSIVE NORTHWESTERN
INSURANCE COMPANY**

APPELLANT.

DOCKET NUMBER WD75943

DATE: August 27, 2013

Appeal From:

Jackson County Circuit Court
The Honorable Edith Messina, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Attorneys:

Walter R. Simpson, Kansas City, MO, for respondent.

Nikki Cannezzaro, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STANLEY FANNING,

RESPONDENT,

v.

**PROGRESSIVE NORTHWESTERN
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APPELLANT.

No. WD75943

Jackson County

Before Division Two: Thomas H. Newton, Presiding Judge, Karen King Mitchell, Judge and Gary D. Witt, Judge

Progressive Northwestern Insurance Company appeals from the entry of summary judgment, based on stipulated facts, determining that its insurance policy with Stanley Fanning was ambiguous as to its underinsured motorist coverage and therefore coverage was found.

AFFIRMED

Division Two Holds:

On its declarations page, Progressive listed the limits of the underinsured motorist coverage as "\$50,000 each person/\$100,000 each accident." Within the policy Progressive specifically defined "Declarations Page" and stated that this page showed the coverages and limits of liability. However, the declarations page failed to disclose any limits on the underinsured motorist coverage and failed to make plain that this coverage was gap coverage and not excess coverage. The coverage that is unequivocally and unconditionally provided on both the declarations page and in the definition of the "declarations page" is negated by limitations found later within the policy. Further, the set-off provision was overall inaccurate and misleading.

An ordinary insured of average intelligence would not understand from the policy that (1) the at-fault driver would not be considered to be the owner or operator of an "underinsured" motor vehicle where the at-fault driver carried a liability policy with the same amount of coverage as the insured's underinsured coverage, and that (2) the underinsured policy limits would be reduced by the money received from the at-fault driver, possibly resulting in no payout.

Opinion by Gary D. Witt, Judge

August 27, 2013

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