

Summary of SC90085, *Steve Ritchie and Anita Ritchie v. Allied Property & Casualty Insurance Company*

Appeal from the Jasper County circuit court, Judge David B. Mouton
Opinion issued Nov. 17, 2009

Attorneys: Allied was represented by Jared Robertson and Brian D. Malkmus of the Malkmus Law Firm LLC in Springfield, (417) 447-5000; and the Ritchies were represented by Glenn R. Gulick Jr. of the Gulick Law Office in Joplin, (417) 626-8579.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An insurance company appeals the trial court's judgment holding the insurance company liable for \$300,000 in damages to its insureds because the insureds had three policies that each provided \$100,000 in coverage. In a 6-1 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court's decision, but on different grounds. Because the policy is ambiguous as to whether it will allow "stacking" of coverage and as to whether the amounts the insureds already recovered should be deducted from the policy limits or instead should be deducted from their total damages, settled Missouri law requires the policy to be interpreted in favor of the insureds. This permits the insureds to recover the total \$300,000 in coverage provided by the three policies. Chief Justice William Ray Price Jr. dissents, arguing that the policy provisions are not ambiguous and should be enforced as written and that, under these provisions, the insurance company is only liable for the remaining \$40,000 of its \$100,000 limit of liability.

Facts: Riding as a passenger, Kelsey Ritchie was killed when her driver's vehicle collided with another vehicle. A trial court awarded Kelsey's parents, Steve and Anita Ritchie, a \$1.8 million judgment against both drivers for the wrongful death of their daughter. At the time of the accident, Kelsey was insured under a personal automobile policy purchased from Allied Property & Casualty Insurance Company. The Allied policy insured three vehicles owned by the Ritchies. The Ritchies paid separate premiums for coverage for each vehicle, including underinsured motorist coverage for each vehicle of \$100,000 per person and \$300,000 per accident. As both drivers were underinsured and jointly could pay only \$60,000 toward the judgment, the Ritchies sought recovery from Allied under their three underinsured motorist coverages. They asserted that they were entitled to the full \$100,000 per person underinsured coverage under each policy, for a total of \$300,000. Allied asserted they could recover only under one policy because the policies' "limit of liability" provisions prohibited "stacking" the three policies' coverages. As a result, it asserted, it only would pay the difference between the \$60,000 the Ritchies already had collected and a single \$100,000 coverage provision. The trial court agreed with the Ritchies. Allied appeals.

AFFIRMED.

Court en banc holds: (1) Missouri law is long-settled that insurance policy provisions cannot be interpreted in isolation; rather, the policy will be interpreted as a whole. If the policy as a whole is ambiguous as to coverage, then any ambiguity will be interpreted in favor of the insured, giving the policy the meaning that a reasonable lay person would give it. This policy applies when interpreting “limit of liability” and “other insurance” clauses. *Seeck v. Geico General Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007). Here, even though Allied’s “limit of liability” provision could be read in isolation to prohibit recovery under more than one of the \$100,000 policies (to prohibit “stacking” the policy coverage provisions), this provision must be read along with the language of the “other insurance” provision, which says that when the insured is riding in a vehicle the insured does not own, any coverage “shall be excess over any other collectible underinsured motorist coverage.” Because a reasonable lay person could interpret this as allowing recovery under more than one collectible underinsured motorist coverage where the injured insured is riding in a vehicle the insured does not own, the language creates an ambiguity and will be interpreted in favor of the insured.

(2) Allied is not entitled to a \$60,000 set-off (reduction) from the \$300,000 judgment for the \$60,000 the two drivers already have paid the Ritchies. The Allied policies’ “limit of liability” provision states in part that the “limit of liability shall be reduced by all sums ... [p]aid because of ‘bodily injury’ or by or on behalf of persons organizations who may be legally responsible.” Considered in isolation, this clause could be read to permit Allied to set off the amount the drivers already have paid the Ritchies from the amount stated in its limit of liability. But as recently decided in *Jones v. Mid-Century Ins. Co.*, 287 S.W.3d 687 (Mo. banc 2009), if a policy promises something at one point and takes it away at another, there is an ambiguity. Both the declarations page for Allied instant policy and the limit of liability provision state that coverage is provided up to \$100,000 per person, \$300,000 per accident, for each of the three vehicles the Ritchies own and, in multiple places, the policy states that “this is the most we will pay” and that this limit of liability is the maximum it will pay. Yet, as Allied has conceded, it never in fact will pay out the full amount under its interpretation of its limit of liability provision. An alternative construction exists, however, that gives meaning to all provisions. Under that interpretation, the limit of liability provision means that the amount of money already received from the tortfeasor must be deducted from the total damages before determining how much the insurer will pay, up to the limit of liability, so as to avoid the risk of a double recovery. Here, the \$60,000 the Ritchies received from the two drivers will be deducted from their \$1.8 million in damages. This still leaves an unsatisfied judgment of \$1.74 million. Accordingly, Allied must compensate the Ritchies for that unsatisfied judgment up to the limit of liability in the three policies – in this case \$300,000.

Dissenting opinion by Chief Justice Price: The author would find there is no ambiguity in the Allied policy and, therefore, would enforce its anti-stacking and limit-of-liability provisions as they are written. The fact that the policy uses both an “other insurance” clause and an anti-stacking clause makes the policy neither conflicting nor ambiguous. “Other insurance” clauses address rules for determining responsibility if more than one coverage is considered to apply, while stacking addresses whether more than one coverage that otherwise would apply in fact should apply at all. Here, because there were no other collectible underinsurance policies, the “other insurance” clause was not triggered. Further, under *Rodriguez v. General Acc. Ins. Co. of America*, 808 S.W.2d 379, 383 n.1 (Mo. 1991), underinsured motorist coverage assures the insured will receive the contracted amount of protection – here, a total of \$100,000. A mathematical inability to collect the full policy amount does not render the underinsured policy illusory or ambiguous. Because the Ritchies already have recovered \$60,000 and Allied’s policy only guarantees it will bring the Ritchies’ total recovery to \$100,000, they only should be permitted to recover \$40,000 from Allied. Although the author sympathizes with the Ritchies’ loss and notes that even \$300,000 will not come close to compensating them, he suggests the principal opinion effectively increases by more than threefold the risk Allied intended to cover with this type of policy for all its insureds, likely leading to a commensurate increase in premiums for all Missourians.