

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

FARM BUREAU TOWN & COUNTRY INSURANCE COMPANY OF MISSOURI

Appellant

v.

AMERICAN ALTERNATIVE INSURANCE CORPORATION

Respondent

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DOCKET NUMBER **WD73046**

DATE: June 14, 2011

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Patricia S. Joyce, Judge

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Appellate Judges:

Division Three  
Victor C. Howard, P.J., Thomas H. Newton, and Gary D. Witt, JJ.

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Attorneys:

Michael J. Schmid, Jefferson City, MO

Counsel for Appellant

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Attorneys:

Kent L. Brown, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

FARM BUREAU TOWN & COUNTRY INSURANCE  
COMPANY OF MISSOURI, Appellant, v. AMERICAN ALTERNATIVE  
INSURANCE CORPORATION, Respondent.

**WD73046**

**Cole County**

Before Division Three Judges: Howard, P.J., Newton, and Witt, JJ.

Day was a volunteer firefighter for the Fire District. The Fire District dispatched its volunteers to respond to an accident scene. Day left his girlfriend's house in his car and drove on the highway toward the scene. The dispatch call was cancelled while Day was en route. Day decided to exit the highway at the next exit, but before he could do so, he lost control of his vehicle and caused an accident in which one person was killed and several injured.

Day was insured by two policies from Farm Bureau: an auto policy and an umbrella policy. The Fire District had a commercial auto insurance policy from AAIC. The limits under Farm Bureau's auto policy were exhausted in covering claims from the accident. AAIC disputed whether Day was an insured under the Fire District's policy. Farm Bureau, from its umbrella policy, and AIC from the Fire District's policy, each paid in part to settle the additional claims while reserving the right to seek indemnity/contribution. Farm Bureau petitioned for indemnity/contribution from AAIC and AAIC filed counterclaims. The trial court found for AAIC. Farm Bureau appeals.

**REVERSED AND JUDGMENT ENTERED.**

**Division Three Holds:**

Farm Bureau raises three points. Farm Bureau first argues the trial court erred in finding Day was not an insured under AAIC's policy. Because insurance coverage is a matter of contract, absent a statute or public policy that requires coverage, we enforce an insurance policy as written. Under the AAIC policy's plain terms, we find that an ordinary person of average understanding purchasing the endorsement would have understood that it added coverage for volunteers driving their own vehicles to and from the scene of an emergency. Farm Bureau's first point is granted.

In the second point, Farm Bureau argues the trial court erred in finding in favor of AAIC because AAIC was the primary insurer and Farm Bureau's umbrella policy, as excess insurance, was not required to share in AAIC's liability. Under the AAIC policy's plain terms, we find that an ordinary person of average understanding purchasing the endorsement would not have understood that the policy was primary insurance for its volunteers driving personal cars. Farm Bureau's second point is denied.

In the third point, Farm Bureau contends in the alternative that if AAIC was not the primary insurer, the trial court erred because both policies' "other insurance" clauses are mutually repugnant, thereby requiring them each to pay a *pro rata* share of the settlement under the mutually repugnant doctrine. We agree. Consequently, Farm Bureau and AAIC are

responsible for *pro rata* shares of the liability over Mr. Day's underlying personal automobile policy. Farm Bureau's third point is granted.

Because both policies provided a maximum liability coverage of \$1,000,000, the Farm Bureau and AAIC policies are each liable for an equal share of the underlying claims. Each insurer was responsible for \$133,316.22. Consequently, we find AAIC liable to Farm Bureau for \$52,816.22 in monies Farm Bureau paid to settle claims.

Opinion by Thomas H. Newton, Judge

June 14, 2011

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**