

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**AMERICAN NATIONAL PROPERTY & CASUALTY CO,  
RESPONDENT**

**vs.**

**RANDALL WYATT,  
APPELLANT**

**ROBIN FERGUSON,  
APPELLANT**

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DOCKET NUMBER WD75226

DATE: MARCH 26, 2013

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable James F. Kanatzar, Judge

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Appellate Judges:

Division One: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

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Attorneys:

Nicki Cannezarro, for Respondent

Andrew Protzman, for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**AMERICAN NATIONAL PROPERTY & CASUALTY CO, RESPONDENT**

**v.**

**RANDALL WYATT, APPELLANT  
ROBIN FERGUSON, APPELLANT**

WD75226

Jackson County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., Joseph M. Ellis and Gary D. Witt, JJ.

On August 16, 2010, Joyce Bentley drove her granddaughter, Megan Wyatt, and Megan's friend, Robin Ferguson (collectively, "the Plaintiffs"), to her house for an overnight visit. Bentley parked her car in the garage, shut the garage door, and went inside, neglecting to turn off the car engine. Later that day, police entered the house and found Bentley and Robin unconscious and Megan dead from carbon monoxide inhalation. Bentley later died at the hospital.

Megan's father subsequently filed a wrongful death claim against Bentley and American National Property & Casualty Company ("ANPAC"), with whom Bentley had a "Missouri Tenants Homeowners Policy" at the time of the incident. Similarly, Robin, by and through her biological father and next friend, filed a negligence claim against Bentley and ANPAC.

In response to these lawsuits, ANPAC filed a declaratory judgment action in the Circuit Court of Jackson County seeking a declaration that its policy excluded coverage for the claims asserted against Bentley. The parties subsequently filed competing motions for summary judgment based upon an agreed set of stipulated facts. Ultimately, the trial court granted ANPAC's motion for summary judgment, concluding that the pollution exclusion in Bentley's policy precluded coverage because carbon monoxide from a vehicle is a "pollutant" under the unambiguous terms of the policy. Now on appeal, the Plaintiffs contend the trial court erred in granting summary judgment in ANPAC's favor because the exclusionary language related to pollutants was ambiguous and should have been construed against ANPAC.

**REVERSED.**

**Division One holds:**

(1) The trial court erred as a matter of law in granting ANPAC's summary judgment motion because the exclusionary language regarding pollutants contained in Bentley's

policy was ambiguous in that a policyholder would understand the pollutant exclusion as being limited to irritants and contaminants commonly thought of as pollution and not as applying to every possible irritant or contaminant imaginable and an insured could reasonably read the pollution exclusion in a manner that would not exclude coverage for injuries caused by accidental accumulation of carbon monoxide within a building or residence from a source originating therein. Thus, because an ambiguity exists with respect to the policy's language, the doctrine of reasonable expectations is applicable, and, absent clear and unambiguous exclusion of liability for injuries resulting from carbon monoxide poisoning, a reasonable person purchasing a homeowners or tenants insurance policy would certainly expect coverage for such a risk to be included in a homeowners or tenants policy.

Opinion by Joseph M. Ellis, Judge

Date: MARCH 26, 2013

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