

IN THE SUPREME COURT OF MISSOURI

SC94075

ADAM DUTTON

Plaintiff-Appellant,

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Defendant-Respondent.

Appeal from the Circuit Court of Jackson County, Missouri

The Honorable Marco A. Roldan

Transferred after en banc opinion from the Missouri Court of Appeals,
Western District

**BRIEF OF THE MISSOURI INSURANCE COALITION AND THE NATIONAL
ASSOCIATION OF MUTUAL INSURANCE COMPANIES AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANT-RESPONDENT**

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Interest of Amici Curiae

The Missouri Insurance Coalition (“MIC”) and the National Association of Mutual Insurance Companies (“NAMIC”) (collectively the “*Amici*”) submit this brief as *Amici Curiae* in support of Respondent’s position that the trial court did not err in entering summary judgment in favor of Respondent in this matter.

MIC is a not-for-profit trade association. Its members write approximately 90% of the property and casualty insurance policies in Missouri. MIC provides a forum for discussion and the exchange of information to continually promote improvement in the quality of services offered by its members. As a Missouri organization, MIC is interested in the establishment of fair and predictable laws affecting insurance claims on which its members and their insureds can rely.

NAMIC is the largest property/casualty insurance trade association in the country, with its members comprising 50% of the nation’s automobile/homeowners market. Founded in 1895, its 1,400 member companies serve more than 135 million auto, home and business policyholders. NAMIC’s 176 Missouri members underwrite 53% of the state’s property/casualty insurance coverage.

The issues involved in the present action are of great interest to *Amici's* members and their policyholders. The Court's decision in this matter will likely (and immediately) be relied upon in many cases. The resolution of the issues involved could impact motor vehicle liability policies, including potential increases to premiums. *Amici* hope to assist the Court by offering a perspective relevant to the pending issues based on their broad, collective expertise. *Amici Curiae* have endeavored not to duplicate arguments they anticipate will be made in Respondent's brief; however, some overlap is inevitable as both briefs support the trial court's judgment.

Consent of the Parties

Counsel for Respondent consented to the filing of this *Amici Curiae* Brief. However, Counsel for Plaintiff withheld his consent. This *Amici Curiae* Brief is, therefore, filed as an attachment to *Amici's* Motion for Leave to File Amicus Curiae Brief pursuant to Rule 84.05(f)(3).

Statement of Jurisdiction and Statement of Facts

Amici Curiae adopts and incorporates herein Respondent's Statement of Jurisdiction and Statement of Facts.

Argument

Point Relied On

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF RESPONDENT AMERICAN FAMILY BECAUSE THE FORD OWNER'S LIABILITY POLICY DID NOT PROVIDE COVERAGE FOR THE NISSAN IN THAT 1) THE FORD POLICY DID NOT SPECIFICALLY DESIGNATE OR IDENTIFY THE NISSAN AS AN INSURED VEHICLE AND 2) THE EXCLUSION OF THE NISSAN AS AN "OWNED VEHICLE" DID NOT VIOLATE MISSOURI'S POLICY THAT THE MINIMUM 25/50 LIABILITY COVERAGE BE PROVIDED.

Introduction

Amici Curiae Missouri Insurance Coalition and National Association of Mutual Insurance Companies are concerned with the consequences which will likely result if an owner's liability policy is required to provide additional coverage for other owned vehicles not specifically identified and insured in the policy and if the distinction between motor vehicle "owner's" policies and "operator's" policies is blurred.

Missouri's legislature has mandated financial responsibility of \$25,000/\$50,000 in minimum liability coverage. It does not require more than that minimum coverage. Nor does it require the minimum liability coverage be contained in only one policy. The "Motor Vehicle Liability Policy" statute allows the minimum coverage requirements to be fulfilled by the policies of one or more insurance carriers *together*.

Missouri’s Motor Vehicle Financial Responsibility Law Does Not Require or Govern *Additional Liability Coverage*

The State of Missouri has long required drivers on its highways to maintain financial responsibility.¹ Missouri’s judiciary has recognized a public policy that favors adequate compensation for persons injured in motor vehicle accidents by the negligence of others. The legislature has set the amounts determined to be adequate compensation through §303.190’s minimum liability coverage mandates.²

Missouri’s Motor Vehicle Financial Responsibility Law (“MVFRL”) differentiates between vehicle “owners” and non-owner “operators.”³ Section 303.025.1 requires a

¹ Missouri’s Motor Vehicle Financial Responsibility Law (“MVFRL”), §§303.010 – 303.370, RSMo. The MVFRL was enacted in 1986, replacing the former “Motor Vehicle Safety Responsibility Law.” The Safety Responsibility Law was not a compulsory insurance law in that it required proof of an owner’s responsibility only after the occurrence of an accident. The MVFRL, however, is compulsory because it requires a vehicle owner to maintain financial responsibility. *See Halpin v. American Family Mut. Ins. Co.*, 823 S.W.2d 479, 480 (Mo. banc 1992).

² \$25,000 for one person in any one accident and, subject to said limit for one person, \$50,000 for two or more persons in any one accident, and \$10,000 for property damage in any one accident. §303.190.2(2), RSMo. This is often depicted as, “25/50” or “25/50/10”

³ *See* §303.025, RSMo.

motor vehicle owner to maintain financial responsibility on such owned vehicle.⁴ An owner may meet that financial responsibility by procuring a “motor vehicle liability policy.”⁵

The matter currently before the Court involves an owner’s “motor vehicle liability policy” and the application of §303.190. A “motor vehicle liability policy” (as contemplated by §303.190) is described as an “owner’s policy” or “operator’s policy” of liability insurance that is limited to the minimum requirements prescribed therein.⁶

Section 303.190 sets the minimum amount of liability coverage a vehicle owner must obtain.⁷ Owners are not obligated, however, to obtain that minimum coverage through only one policy or one insurance carrier.⁸

⁴ Vehicle owners must keep proof of insurance in the owned vehicle. §§303.024.4(3) and 303.024.5, RSMo.

⁵ §303.025.2, RSMo.

⁶ §303.190.2 (owner’s policy), 303.190.3 (operator’s policy), and 303.190.7 (limiting the statutory application).

⁷ See §§ 303.190.2(2) and 303.190.3, RSMo., setting the minimum of \$25,000 per person and \$50,000 per accident.

⁸ §303.190.10. RSMo.

Requiring every liability policy to provide the statutory minimum coverage would defeat §303.190.10, which specifically allows a motor vehicle owner or operator to obtain the statutory “motor vehicle liability policy” through multiple policies or insurers.⁹ Likewise, requiring every owner’s policy to provide additional coverage for all other owned vehicles contradicts §303.190.

“The requirements of a motor vehicle liability policy may be fulfilled by the **policies of one or more insurance carriers which policies together meet such requirements.**”

§303.190.10, RSMo., (emphasis added).

In fact, there would be no need for the requirement of §303.190.2(2) to specifically identify the owned vehicle if the statute required every policy to provide minimum coverage on all owned vehicles.

⁹ An unfortunate side effect of our legal system can be an inadvertent drifting that occurs throughout decades of interpretations and opinions by the various appellate courts, interspersed with statutory changes by the legislature. *Amici Curiae* postulate such drifting may have occurred with respect to the application of §303.190’s Motor Vehicle Liability Policy.

Section 303.190 permits motor vehicle owners to obtain coverage in excess or in addition to the prescribed minimums.¹⁰ Public policy is satisfied when the minimum coverage requirements are met.¹¹ Any excess or additional coverage is not subject to the MVFRL:

“[S]uch excess or **additional coverage shall not be subject to the provisions of this chapter.** With respect to a policy which grants such excess or additional coverage the term “motor vehicle liability policy” shall apply only to that part of the coverage which is required by this section.”

§303.190.7, RSMo. (emphasis added)

Redefining *additional* liability coverage as the required statutory minimum, and allowing those ‘minimum’ coverages to “stack,” contradicts §303.190, which specifically excludes such additional coverage from the defined “motor vehicle liability policy” and the purview of the MVFRL.¹²

¹⁰ §303.190.7, RSMo.

¹¹ *First Nat’l. Ins. Co. of America v. Clark*, 899 S.W.2d 520, 523 (Mo. banc 1995).

¹² The Court permitted stacking of uninsured motorist coverage in 1976. *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538 (Mo banc 1976). However, uninsured motorist coverage and liability coverage are conceptually dissimilar. *Gibbs v. Nat’l. Gen’l. Ins. Co.*, 938 S.W.2d 600, 606 (Mo. App. S.D. 1997). Unlike liability coverage, uninsured

“Owner’s Policy” versus “Operator’s Policy”

An “owner’s” policy insures a specified vehicle owned by the policyholder.¹³ An owner’s policy must identify the vehicle owned and insured.¹⁴ An “operator’s” policy, on the other hand, insures a particular person when using “any motor vehicle *not owned* by him or her.” §303.190.3 (emphasis added). When reviewing a liability policy, it is important to recognize the distinction between an owner’s policy (insuring a vehicle) and an operator’s policy (insuring an individual’s use of any non-owned vehicle).

By definition, coverage on an *owned* motor vehicle cannot be acquired through an operator’s policy (insuring the use of any *non-owned* vehicle). However, contracts for

motorist coverage is not categorized as either an “operator’s” policy or “owner’s” policy. Uninsured motorist coverage is tied to an individual and protects the insured from bodily injury damages. *See Madden* at 543.

One important distinction is that §379.203.1 specifically requires every liability insurance policy to provide uninsured motorist coverage: “No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued ... unless coverage is provided therein or supplemental thereto, ... for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles[.]” The law provides no statutory requirement that every liability policy cover all vehicles owned by the policyholder.

¹³ §§303.025.1 and .2 and 303.190.2(2), RSMo.

¹⁴ §303.190.2(1), RSMo.

insurance may contain separate coverage for both owner's policies and operator's policies.¹⁵ A coverage provision that insures the named insured's occasional or incidental use of a *non-owned* vehicle should not be used to extend owner's liability coverage to other vehicles. To do so would disregard the statutory distinction between owner's and operator's policies. Indeed, this Court previously recognized that such occasional use coverage did not add a new specified vehicle.¹⁶

The Policy at Issue

At the time of the accident in which Adam Dutton was unfortunately injured, Barbara Hiles owned two vehicles: a Nissan Maxima car (involved in the accident) and a Ford F-250 truck (not involved in the accident). American Family insured both vehicles,

¹⁵ Use of the term "policy" to describe the insurance contract between the policyholder and the insurer and to describe the separate coverages contained within the insurance contract may have resulted in inadvertent confusion or misinterpretation. *Amici Curiae* have endeavored herein to consistently use "policy" to refer to the "motor vehicle liability policy" as defined in §303.190, RSMo.

¹⁶ *State Farm Mut. Auto. Ins. Co. v. Western Cas. & Sur. Co.*, 477 S.W.2d 421, 423-424 (Mo. banc 1972).

each under a separate insurance contract.¹⁷ One contract described the Ford F-250 as the insured vehicle; the other contract described the Nissan Maxima as the insured vehicle.¹⁸

It is undisputed that the Ford policy was an owner's liability policy. It identified the Ford F-250 truck as the "insured car."¹⁹ The Ford policy did not specifically identify the Nissan Maxima.

Vehicles Specified in a Policy

Amici Curiae's members have operated with the understanding that an owner's liability policy must *specifically* identify the owned and insured vehicle.²⁰ Missouri statutes require an explicit description of the insured vehicle, as does the Missouri Department of Revenue.

¹⁷ There is no "operator's" policy at issue here. As noted above, an operator's liability policy insures an individual against loss from using a vehicle he or she does not own. §§303.025.1 and 303.190.3, RSMo.

¹⁸ Both owner's policies here provided the statutory minimum coverage for each specified motor vehicle (the Nissan and the Ford F-250).

¹⁹ The insured car was described in the declarations as a "2003 Ford F250 Super Duty" with "VIN 3FTNF20L03MB31876."

²⁰ I.E.: VIN number; and year, make and model.

Section 303.190.2(1), mandates an owner’s policy to:

“designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted[.]”

Pursuant to Missouri law, an insurer of an owner’s liability policy must provide the policyholder with an insurance card that specifically identifies the insured vehicle.²¹

Section 303.024 requires the “insurance identification card” to contain certain essential information, including,

a **“description of the insured motor vehicle, including year and make or at least five digits of the vehicle identification number ..[.]”**

§303.024.2(5), RSMo. (emphasis added)

and

the prominent statement, **“THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND.”**

§303.024.2(6) (emphasis added).

²¹ The insurance identification card must be carried in the insured motor vehicle at all times. §303.024.5, RSMo. The insurer must issue a new insurance identification card when, “the insured motor vehicle is changed, when an additional motor vehicle is insured, and when a new policy number is assigned.” §303.024.3, RSMo.

In its endeavors to be certain that motor vehicles meet the MVFRL requirements, the Missouri Department of Revenue (DOR) also requires specific identification of insured vehicles. The DOR requires insurance identification cards contain the year and make of the insured vehicle and at least the last 5 digits of the vehicle identification number.²²

Proof of financial responsibility is required for vehicle registration and for the purchase or renewal of license plates.²³ The DOR accepts insurance identification cards, policy declarations, and policy binders as proof of financial responsibility.²⁴

Each month, insurance companies are required to provide the DOR with information on vehicles they insure that are principally garaged in Missouri.²⁵ Accordingly, identification of each insured vehicle must be of sufficient description to allow the insurance company to properly report to the DOR. If a particular vehicle's liability coverage served to insure the policyholder's other, non-specified vehicles, the insurer would be unable to provide required information, including year, make, and

²² 12 CSR 10-25.060(2)(E).

²³ §§303.026. 2 and 303.160.2, RSMo.

²⁴ 12 CSR 10-25.080 and 10-25.130.

²⁵ §303.026.3, RSMo., and 12 CSR 10-25.150.

vehicle identification number, to the DOR or on insurance cards. Without essential information describing insured vehicles, insurance cards could not be properly created, registration of vehicles could become more burdensome and the DOR's efforts to curb the number of uninsured vehicles on Missouri highways could be hindered.

The Ford Liability Policy

Appellant asserts that because the Ford policy is a “motor vehicle liability policy” under §303.190, it must therefore provide minimum coverage for every vehicle owned by the policyholder (Hiles) regardless of the owned vehicle exclusion.^{26& 27}

²⁶ The Ford liability policy is written in such way as to provide coverage for the insured's incidental use of non-owned vehicles. Use of other owned vehicles is not covered by the Ford policy, in that Exclusion 9 states, “Bodily injury or property damage arising out of the use of any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you or any resident of your household.” (emphasis in original omitted)

²⁷ The primary authority cited by Appellant are *American Standard Ins. Co. v. Hargrave*, 34 S.W.3d 88 (Mo. banc 2000) and *Karscig v. McConville*, 303 S.W.3d 499 (Mo. 2010), which are distinguishable from the facts of this case. In both *Hargrave* and *Karscig*, the insureds were covered by separate insurance policies on different vehicles purchased by separate parties. The *Karscig* case involved an owner's policy covering the vehicle involved in the accident and a separate operator's policy covering the tortfeasor driver involved in the accident.

To find coverage under an *owner's policy* of a vehicle not involved in the accident (the Ford policy), Appellant seeks to transform an incidental-use provision, *covering an insured individual owner*, into the statutorily defined “motor vehicle liability policy,” and require additional coverage for a vehicle not specifically designated by the insurance contract (the Nissan). Broadening this provision, which benefits insureds, to provide additional State-mandated minimum coverage on every other vehicle owned by the policyholder would extend coverage beyond that intended by the parties and for which no premium was paid by the owner.²⁸

Requiring this additional coverage would essentially increase the MVFRL's minimum liability coverage by a multiple equal to the number of vehicles owned by the policyholder.²⁹ In other words, the minimum coverage would be calculated by multiplying the statutory coverage by the number of owned vehicles.³⁰ Taken to its logical conclusion would mean that, if the insured had a separate insurance contract on

²⁸ There was no evidence presented to the trial court about the intent of the parties to the insurance contract on the Ford. *Amici Curiae* doubts the parties intended for the Ford policy to provide additional coverage for the Nissan, especially since the Ford policy expressly excluded it.

²⁹ This would necessarily impose varying minimum coverage requirements on motor vehicle owners and almost certainly result in increased policy premiums.

³⁰ E.g. \$25,000/person times the number of vehicles owned by policyholder.

each of his five owned vehicles, there would be twenty-five liability policies. The consequences from adopting this argument would impair the right to contract for coverage under separate insurance contracts and constrict consumers' ability to purchase insurance from different insurers. Further, §303.190.10 expressly states that those twenty-five policies – together – may combine to meet the 25/50 liability minimums.

The Exclusion at Issue

The Ford policy provision excluding other owned vehicles is not necessary to a determination of coverage in this matter.³¹ The purpose of the “motor vehicle liability policy” statute is served when an owner procures the 25/50 minimum liability coverage. The exclusion of other owned vehicles does not diminish the statutory minimum coverage requirements.

To the extent an owner has procured liability coverage up to the 25/50 minimum, the owner has satisfied the requirements of the “motor vehicle liability policy” statute. Any public policy invalidating exclusions not provided by statute is not applicable to this

³¹ Relying upon the faulty premise that the Ford liability policy provides separate, additional minimum coverage for every vehicle owned by the policyholder, Appellant argues that the Ford policy Exclusion 9 is invalid as to the statutory minimum. However, §303.190 is not applicable to non-specified vehicles in an owner's liability policy.

situation since the owner complied with the MVFRL's public policy by procuring a separate owner's policy on the vehicle involved in the accident (the Nissan).

The exclusion at issue makes sense when viewed in light of §303.025.1:

No owner of a motor vehicle ... shall operate, register or maintain registration of a motor vehicle, or permit another person to operate such vehicle, unless the owner maintains the financial responsibility ... furthermore, no person shall operate a motor vehicle owned by another with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers the person's operation of the other's vehicle[.]

An insurer should be able to reasonably assume the policyholder has insured her other vehicles as statutorily required.³² Section 303.025.1 prohibits an operator from using a non-owned vehicle that the operator knows is not properly insured. It is not unreasonable for a policy provision (like the one at issue) to exclude the insured's use of other owned vehicles, since the insured would know if the vehicle is or is not properly insured.

³² In this case, American Family knew Barbara Hiles' other vehicle (the Nissan) met the MVFRL requirements since it provided the owner's liability policy on that vehicle.

Conclusion

The trial court's judgment should be affirmed. It is not reasonable to read §303.190, RSMo., in a way that requires the Ford F-250 owner's liability to provide *additional* coverage for every *other* vehicle owned by the policyholder.

Respectfully submitted,

/s/ Jill R. Jackson

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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned JILL R. JACKSON, of lawful age, first being duly sworn, states upon her oath that on this 7th day of July 2014, the foregoing Motion for Leave to Appear as *Amici Curiae* and File *Amici* Brief was filed by submission to the Court's electronic filing system, to be served upon all counsel of record through said electronic filing system as contemplated by Rules 81.005 and 103.

The undersigned further certifies that the foregoing *Amici* Brief complies with Supreme Rule 84.06(b) and contains 3610 words, as determined by Microsoft Word.

/s/ Jill R. Jackson

JILL R. JACKSON, Attorney