CASE NO. SC97511

IN THE SUPREME COURT OF MISSOURI

LESLIE SEATON
Plaintiff/Respondent,

v.

SHELTER MUTUAL INSURANCE COMPANY
Defendant/Appellant.

BRIEF OF *AMICUS CURIAE* MISSOURI ASSOCIATION OF TRIAL ATTORNEYS IN SUPPORT OF RESPONDENT

Filed by Consent

Appeal from the Circuit Court of St. Louis County, Missouri
15SL-CC03927
Transfer from the Missouri Court of Appeals, Eastern District
ED105895

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INTERESTS OF AMICUS CURIAE

The Missouri Association of Trial Attorneys (MATA) is a non-profit, professional organization of approximately 1,400 trial lawyers in Missouri, most of whom are engaged in personal injury litigation involving Missouri citizens. For over fifty years, MATA lawyers have worked to advance the interests and protect the rights of individuals across our State. In doing so, MATA's membership strives to promote the administration of justice, preserve the adversary system, and ensure those citizens of our State with a just cause will be afforded access to our courts.

Whether an insurance agency can preclude purchased underinsured motorist coverage by defining a commonsense term in a nonsensical way is an issue of considerable interest to MATA and its members. The answer to such question affects the vast majority, if not all, of Missourians and the vast majority of people who are currently accessing or would seek to access Missouri's civil justice system. Accordingly, this issue is of considerable interest to MATA and its members.

CONSENT OF THE PARTIES

MATA has received consent from counsel for Plaintiff/Respondent to file this brief. Counsel for MATA sent a request via electronic mail for consent for the filing of this *Brief of Amicus Curiae in Support of Respondent* by MATA to counsel for the Defendant/Appellant, on February 7, 2019. MATA then reached out to counsel for Defendant/Appellant by telephone on February 13, 2019 and confirmed consent with counsel.

JURISDICTIONAL STATEMENT

MATA hereby adopts the Jurisdictional Statement of Defendant/Appellant.

STATEMENT OF FACTS

MATA hereby adopts the Statement of Facts of Plaintiff/Respondent.

ARGUMENT AND AUTHORITY

I. Denying an Insured Purchased Underinsured Motorist Coverage by Defining a Common Sense Term in a Nonsensical Manner Violates the Public Policy of Missouri in that it Defeats the Reasonable Expectations of the Insured by Providing Only Illusory Coverage.

Public policy in Missouri requires that every insured receives the full amount of coverage purchased through an underinsured motorist policy. Insurance policies which purport to provide coverage but also contain clauses which ultimately result in a deprivation of the purchased coverage are contrary to the reasonable expectations of the insured, illusory in nature and should be against public policy.

Unlike statutorily mandated uninsured motorist coverage, Missouri law does not require drivers to procure uninsured motorist coverage ("UIM") by statute; it is purely optional coverage available for purchase by Missouri consumers. *Hempen v. State Farm Mutual Automobile Ins. Co.*, 687 S.W.2d 894, 894-95 (Mo. banc 1985). The purpose of UIM is to compensate the victim of an underinsured motorist's negligence where the third party's liability limits are not adequate to fully compensate the victim for her injuries. Missouri insureds purchase UIM to protect themselves from those drivers who fail to adequately insure against accidents. *Marshall v. Northern Assurance Co. of Am.*,

854 S.W.2d 608, 611 (Mo. App. W.D. 1993); I Mo. Insurance Practice § 6.26 (MoBar 4th ed. 1995).

The ordinary expectations of a consumer who contracts for UIM coverage is that he is purchasing excess insurance to cover that margin between his total damages and the underinsured driver's liability limits, and he pays premiums for this additional coverage with the expectation that this insurance will be available in the event of an accident. The normal purchaser of insurance would understand the term "underinsured coverage" to mean that he would be compensated, up to the limit of coverage, if injured by a driver carrying liability insurance insufficient to meet his or her losses. *Krombach v. Mayflower Ins. Co. Ltd.*, 785 S.W.2d 728, 733 (Mo. App. E.D. 1990). This expectation is perfectly reasonable; to think otherwise contradicts the common sense of consumers. The *Krombach* Court concluded that to construe the policy in any other way would result in rendering the language meaningless and providing illusory coverage. "The principle of reasonable expectations insures that '[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.'" *Tegtmeyer v. Snellen*, 791 S.W.2d 737, 740 (Mo. App. W.D. 1990) (quoting R. Keeton, Basic Text on Insurance Law § 6.3(a), at 351 (1971)).

Missouri courts have long recognized that "although customers typically adhere to standardized agreements … they are not bound to unknown terms which are beyond the range of reasonable expectation." *Estrin Construction Co., Inc. v. Aetna Casualty & Surety Co.*, 612 S.W.2d 413, fn. 3 (Mo. App. W.D. 1982). Even though insurance

companies argue that questions concerning the enforceability of underinsured motorist policies are determined solely on contractual construction or ambiguity due to the fact that the underinsured coverage is not statutorily mandated, the Court's decision making authority is not limited to the contractual interpretation of these policies. The Court may also consider whether the insurance policy in question defeats the reasonable expectations of Missouri's insured. Moreover, considerations of public policy are not dependent on the presence of some ambiguity. Public policy concerns can result in even clear and unambiguous policy provisions being declared void and unenforceable. "'[C]ases should not and will not turn on how well the insurer drafts a limiting clause because the law does not permit insurers to collect a premium for certain coverage, then take that coverage away by such a clause no matter how clear or unambiguous it may be.'" *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 545 (Mo. 1976) (quoting *Great Central Ins. Co. v. Edge*, 298 So. 2d 607 (Ala. 1974)). "It is useless and meaningless and uneconomic to pay for additional bodily injury insurance and simultaneously have this coverage cancelled by an insurer's exclusion." *Cameron Mut. Ins. Co.*, 533 S.W.2d at 543.

The Court's inquiry into the reasonable expectations of the insured requires the Court to view the policy through the eyes of a reasonable lay person, and based upon that perspective, to determine what coverage the reasonable insured believes and expects the policy to provide. *See Niswonger v. Farm Bureau Town & County Ins. Co.*, 992 S.W.2d 308, 320 (Mo. App. E.D. 1999). The Shelter Insurance policy fails to adequately inform a reasonable insured that UIM liability will be precluded as to any relatives (that would

otherwise be covered) that own a motor vehicle. In the present case, the Court should look beyond the language in Shelter's exclusions and definitions to determine whether the insurance policy as a whole was illusory, contrary to the reasonable expectations of insureds in Missouri, and hence, contrary to public policy.

Shelter's UIM policy creates an unfair illusion of coverage that cannot be ignored. Leslie Seaton paid for her daughter to be covered by three UIM policies in the event she was damaged by an underinsured tortfeasor, and she paid consideration to Shelter for each policy with that simple expectation in mind. When tragedy struck, and the tortfeasor's insurance coverage was insufficient, Shelter refused to honor two of Leslie Seaton's policies based on a nonsensical application of the term "relative," which under Shelter's definition would exclude any relative that owned a motor vehicle.

The purpose of UIM coverage is to compensate the victim of an underinsured motorist's negligence where the third party's liability limits are not adequate to fully compensate the victim for her injuries. The reasonable expectation of Leslie Seaton when she contracted for UIM coverage was that she was purchasing excess insurance to cover that margin between total damages and the underinsured driver's liability limits. Contrary to Shelter's actions, Leslie Seaton reasonably expected to recover damages up to the limit of all three policies under which her daughter was an insured and for which separate premiums had been paid.

Ultimately, we believe the Missouri Supreme Court would not tolerate policy provisions that would, in any situation, allow UIM coverage to be precluded because of a common sense term being defined in a nonsensical manner. Allowing exclusionary

policies such as this opens the door for insurance companies to exclude away purchased coverage and creates an injustice the citizens of Missouri cannot afford. Missouri citizens should have a reasonable expectation that when they purchase separate policies for underinsured motorist coverage, they will receive adequate compensation for losses caused by an underinsured motorist, up to the aggregate limits of the policies they have purchased.

Shelter would have this Court hold that the reasonable insured expects to have her purchased UIM coverage precluded as to any relatives (that would otherwise be covered by the policies) if they own a motor vehicle. Would it ever be reasonable for an insured to expect to pay a premium for insurance benefits that could never be collected? Obviously not, for if that were the case, the conscientious insured that expects excess coverage would simply be paying something for nothing. Thus, enforcing Shelter's definition and exclusionary provision renders the insured's expected coverage **meaningless and extraneous** and would completely eliminate any insured's incentive to protect themselves and their loved ones by purchasing excess coverage.

The result advocated by Shelter is inconsistent with laypeople's understanding of the nature and purposes of UIM coverage. Shelter offers UIM coverage knowing its insureds believe it provides something it does not. Shelter's policy language violates the purpose of UIM coverage and operates as a hidden precluding clause by effectively defining the term "relative" in a nonsensical manner. For Shelter to represent $100,000 of UIM coverage under each policy for Leslie Seaton's relatives, when, in fact, that

coverage is not attainable, is inequitable and contrary to the reasonable expectations of Missouri insureds.

CONCLUSION

For the reasons stated above, the Court should affirm the opinion of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that a copy of the computer diskette containing the full text of Brief of *Amicus Curiae* Missouri Association of Trial Attorneys In Support of Respondent is attached to the Brief and has been scanned for viruses and is virus-free.

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(b); and (3) this Brief contains 1584 words, as calculated by the Microsoft Word software used to prepare this brief.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed on this 15th day of February, 2019, to:

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