

Summary of SC93904, *Rebecca Floyd-Tunnell, et al. v. Shelter Mutual Insurance Company*
Appeal from the Jackson County circuit court, Judge W. Brent Powell
Argued and submitted May 7, 2014; opinion issued July 29, 2014

Attorneys: Floyd and Floyd-Tunnell were represented by James E. Corbett, David T. Tunnell and Daniel P. Molloy of Corbett Law Firm PC in Springfield, (417) 866-6665; and Shelter was represented by William Clayton Crawford and James P. Maloney of Foland, Wickens, Eisfelder, Roper & Hofer PC in Kansas City, (816) 472-7474.

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: A woman appeals the trial court’s judgment limiting an insurance company’s liability for her husband’s death in an automobile accident with an uninsured motorist based on “partial exclusion” language in two of the couple’s automobile insurance policies. In a 5-2 decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment. Under the policies’ plain language, the insurance company was required to provide benefits for the death of its insured – the husband – and it paid those benefits to the widow as a person authorized by state law to receive such benefits. The amount of benefits owed, however, clearly and unambiguously was limited by the partial exclusion in the insurance policies. The insurance company owed \$100,000 for the policy covering the vehicle in which the husband was killed but only \$25,000 for each of the other two policies, which covered different vehicles.

Judge Richard B. Teitelman wrote a dissenting opinion. He would find that, because the woman was the relevant “insured,” the policies’ partial exclusion does not apply to her. He would reverse the trial court’s judgment and allow the woman to recover the full amount of the policies.

Facts: Doris Floyd and her husband were the named insureds on three automobile liability insurance policies issued by Shelter Mutual Insurance Company for three vehicles they owned. Each policy limited uninsured motorist coverage to \$100,000 per person and also included a partial exclusion that further limited such coverage to \$25,000 if the insured was injured while occupying a vehicle owned by the insured but not covered by the policy. One of the Floyds’ policies covered the vehicle the husband was driving when he was killed in an automobile accident with an uninsured motorist. Floyd sued Shelter, seeking \$100,000 of uninsured motorist coverage under each policy for a total of \$300,000. Shelter paid a total of \$150,000 – \$100,000 for the policy covering the vehicle the husband was driving when the accident occurred and \$25,000 for each of the other two policies. Ultimately, the trial court granted Shelter judgment, ruling that the partial exclusion applied and was unambiguous, limiting the company’s liability to \$25,000 under each of the other two policies. Floyd appeals.

AFFIRMED.

Court en banc holds: (1) Shelter’s policies provided uninsured motorist coverage for Floyd’s husband’s death – not for Floyd, who did not sustain bodily injuries. Under the plain language of the insurance policies, Shelter will provide uninsured motorist coverage for money owed to an

insured for bodily injury or death sustained by the insured and caused by an uninsured motorist. The policies each contain a severability clause, providing that the uninsured motorist coverage applies separately to each insured – Floyd and her husband. Only Floyd, however, is making a claim for coverage. Accordingly, she is entitled to coverage only if she sustained bodily injury caused by an uninsured motorist. But that is not what happened here. She did not sustain any bodily injury herself. As such, the plain language of the policies denies her coverage for damages she sustained as a result of her husband’s death. Shelter provided insurance benefits for the wrongful death of its insured, the husband. Because Floyd is a person authorized by state law to bring a claim for the wrongful death of her husband, Shelter properly paid those benefits to her.

(2) When the policies are read as a whole, the partial exclusion in the policies clearly and unambiguously limits the amount of Shelter’s liability for the husband’s death. Each policy limits Shelter’s liability for uninsured motorist coverage to \$100,000 per person and further limits this liability to \$25,000 when any part of the money owed to the insured for bodily injury that insured sustains is sustained while the insured is occupying a vehicle owned by the insured but not covered by that policy. The husband was occupying one vehicle he owned at the time of his death, but that vehicle was not covered by the policies for the other two vehicles. Shelter owed \$100,000 for the policy covering the vehicle in which Floyd’s husband was killed but only \$25,000 for each of the other two policies, which covered different vehicles.

Dissenting opinion by Judge Teitelman: The author would find that that, because Floyd was the relevant “insured,” the policies’ partial exclusion does not apply to her. He would reverse the trial court’s judgment, allowing Floyd to recover the full amount of the policies. Although Floyd is not seeking insurance coverage for a physical injury inflicted directly on her, this does not mean she was not injured. To the contrary, she has a separate and distinct claim allowing her to recover damages for things such as loss of consortium, companionship and economic support as a result of her husband’s death. The exclusion does not apply to Floyd because she did not occupy a motor vehicle in sustaining damages as a result of her husband’s wrongful death and because neither the husband nor his estate is “owed money” for his injuries. The damages for his death are personal to Floyd and other statutory beneficiaries. At best, the partial exclusion is ambiguous and must be construed strictly against Shelter.