IN THE SUPREME COURT OF MISSISSIPPI

ALFA INSURANCE CORPORATION — APPELLANT

V. — CAUSE NO: 2007-IA-00029 & 2007-CA00037

THOMAS HASSELLE
AND SHIRLEY HASSELLE — APPELLEES

BRIEF OF APPELLEES

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that Justices of this Court may evaluate possible disqualification or recusal.

NAME	POSITION
Honorable Debbra K. Halford	Chancery Court Judge
Honorable Angela T. Miller	Attorney for Appellees
Thomas Hasselle and Shirley Hasselle	Appellees
Honorable Toby J. Gammill	Attorney for Appellant
Alfa Insurance Corporation	Appellant

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TABLE OF CONTENTS

PAGE

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TABLE OF CASES AND AUTHORITIES

STATEMENT OF THE ISSUES

I. Whether the Alfa Insurance Corporation policy language, as written, regarding liability coverage is ambiguous - subject to more than one interpretation.

II. Whether the broad definition of "covered person" as found in the policy, combined with the exclusion from coverage of "any bodily injury to any covered person" renders the policy coverage void to the extent that it effectively nullifies coverage under the policy for classes of insured not included or considered as part of a "family member exclusion."

III. Whether a conflict exists between the purported exclusionary clause contained in the insurance policy and Mississippi Code Annotated § 63-15-43 such that allowing the clause to operate would be a contravention of the law as mandated by the legislature.

STATEMENT OF THE CASE

This case arises from a denial of coverage under an automobile liability policy for bodily injury to an insured. Coverage was initially extended in writing to the insured under the liability portion of the policy, however, when the insured demanded additional compensation to which she was entitled, the appellant, Alfa Insurance Corporation, denied coverage altogether under the liability provision of the policy.

Alfa, then seeking to justify its decision not to pay the claim, afterward decided to invoke what it considers a "family member exclusion" in its policy to support the new position that the insured was excluded from coverage.

The nature of the proceeding below consisted of a petition for declaratory judgment filed nearly six months after the injury occurred. The chancellor denied summary judgment to Alfa, ruling in favor of coverage for Shirley Hasselle. Alfa takes exception to the chancellor's ruling and thus, appeals the judgment of the lower court.

STATEMENT OF FACTS

Thomas Hasselle and Shirley Hasselle, purchased their automobile and homeowners insurance coverage from Alfa Insurance Corporation for many years prior to ever having the necessity of making a claim for payment under their automobile liability policy.

The automobile liability policy coverage was 50/100/25 in effect at the time Thomas Hasselle, a seventy-three year old retired minister, accidently backed his Ford Explorer into his sixty-nine year old wife, Shirley Hasselle, severely injuring her.

Based on assurances by the Alfa agent that they were fully covered, Reverend Hasselle attended to the needs of his wife from July 26, 2005, the date of the accident, until October 2005. Hasselle was also caring for his handicapped adult daughter, whom his wife, a nurse, had cared for prior to her injury. During that period Hasselle diligently delivered his wife's medical bills to his local Alfa agent's office. By October, 2005, facing mounting medical bills and with Alfa not having paid even the $5,000.00 in medical payments under the policy, Reverend Hasselle sought assistance in obtaining payment owed to his wife under their automobile insurance policy.

Reverend Hasselle had followed the advice of his agent, Curtis Seay, to bring all medical bills into his office. He was never advised of an exclusion in the policy for bodily injury to family members. The claim was neither promptly nor thoroughly investigated or adjusted by the

insurance company. The only investigation Hasselle recalls was one telephone call regarding the incident from an older man.

Defendants had not made an offer on the claim for any amount prior to October, 2005 when the attorney demanded the policy limits of $50,000. Mrs. Hasselle's hospital bill alone was over $21,000.00. Two months after the accident she was discharged home from the hospital by ambulance, confined to the bed, and later required extensive physical therapy to be able to walk again. Even now, she has tremendous difficulty from the injury. Medicare, which should have been a secondary provider, paid many of her medical bills.

Alfa unreasonably delayed payment of the medical coverage under the policy.

On October 20, 2005, by letter, an Alfa claims adjuster, Sean Oakley, offered payment of $40,000.00 in full settlement of Mrs. Hasselle's claims under the liability provision of the policy, The Hasselles responded by letter requesting the limits of all applicable coverage, fully expecting that Alfa would reasonably offer the $50,000 bodily injury liability limits plus the $10,000 uninsured/ underinsured motorist coverage in view of the extensive damages suffered by Shirley Hasselle. Rather, Alfa responded with a denial of liability coverage.

In an attempt to create an appearance of having a reasonable basis on which to deny coverage, but actually to camouflage its willful misconduct in handling Mrs. Hasselle's claim, in December, 2005 Alfa filed a declaratory judgment action and interplead the uninsured/ underinsured motorist coverage of $10,000 and the remaining unpaid $3523.75 medical payments.

SUMMARY OF THE ARGUMENT

On July 26, 2005, Thomas accidentally backed into Shirley Hasselle while driving their 2000 Chevrolet Blazer, their insured vehicle, pinning her to the house and causing severe

injuries to both her legs. Shirley Hasselle's medical bills for a nine day stay in the hospital for and surgery on two broken legs exceeded $21,000.00. She was confined to the bed for over two months, and had to learn to walk again. Prior to the accident Mrs. Hasselle was a very active 69 year-old woman who cared for her disabled daughter, her home and other family members. Now able to walk again, she still suffers psychological trauma from the accident..

The Hasselle's sought the assistance of an attorney on October 11, 2005. Shirley Hasselle demanded the $50,000 per person bodily injury liability limit under the motor vehicle policy along with the $10,000 under insured coverage. Alfa offered $40,000; which, considering Mrs. Hasselle's injuries, was insufficient, then withdrew the offer and refused to make another offer, citing an exclusion in the policy.

One of the best arguments for ambiguity in the policy language lies in the fact that Alfa Insurance Company's own adjuster, if believed, made a mistake in interpreting the language authorizing liability coverage under the policy.

Furthermore, while Alfa claims to rely on a family member exclusion to deny coverage to Shirley Hasselle, the definition of excluded covered persons in this policy far exceeds the scope of what has previously been allowed by this court to operate as a family member exclusion.

Finally, the position taken by Alfa to exclude from liability coverage, covered family members, nullifies the effect of Mississippi Code Annotated § 63-15-43 and is contrary to the legislative intent of the Mississippi Motor Vehicle Safety Responsibility laws.

ARGUMENT

I. Whether the Alfa Insurance Corporation policy language, as written, regarding liability coverage is ambiguous - subject to more than one interpretation.

Based on plaintiff's extensive damages, it was reasonable to offer the liability limits of $50,000, the underinsured limits of $10,000 and the $5,000 medical coverage. However, even if the applicability of the liability coverage was legitimately contested, (which we submit that it was

not), the obligation of Alfa to pay the uninsured/underinsured and medical payments coverage

was never at issue. Yet, the interplead funds were not disbursed until after the declaratory judgment was entered a year later in December, 2006. Any delay in payment by Alfa of those uncontested coverages was designed to accomplish ends contrary to abiding by the terms of the policy, and constituted breach of the contract and breach of the implied covenants of good faith

and fair dealing.

Using unreasonable interpretation in translating policy language, language that is contrary to the reasonable expectation of the insured should be strongly discouraged. The law of the state of Mississippi governing contracts applies to insurance contracts also.

"Our jurisprudence requires that the language in insurance contracts, especially exclusionary clauses, be construed strongly against the drafter." ***Nationwide Mut. Ins.***

Co. v. Garriga, 636 So.2d 658, 662 (Miss. 1994). "In addition, any ambiguities in an insurance contract must be construed against the insurer and in favor of the insured and a finding of coverage." ***Id.*** ***Burton v. Choctaw County***, 730 So. 2d. 9, (Miss. 1997) states that " The goal of any insurance policy is to protect the insured by providing them coverage; however, a policy should be drafted to accommodate the average person who will give its terms a general reading. An insurance policy should be strictly construed against the insurer, and the insurer has the burden of phrasing the terms in clear language."

"We start with the basic principles involved in analyzing contracts between individuals and insurance companies. This state's law recognizes the general rule that provisions of an insurance contract are to be construed strongly against the drafter." ***Williams v. Life Insurance Company of Georgia,*** 367 So.2d 922, 925 (Miss. 1979). Any ambiguities in an insurance contract must be construed against the insurer and in favor of the insured and a finding of coverage. *Government Employees Insurance Company v. Brown,* 446 So.2d 1002, 1006 (Miss. 1984) (hereinafter *GEICO*); *Monarch Insurance Company of Ohio v. Cook,* 336 So.2d 738, 741 (Miss. 1976).

Insurance policies are contracts of adhesion, drafted unilaterally and as such, the consumer has no bargaining power. The insurance policy, if allowed to stand as defendants wish to interpret, it would be contrary to public policy and would constitute an unconscionable contract. Under the common law contracts contrary to public policy are unenforceable. ***In re Koestler: Casualty Reciprocal Exchange v. Federal Insurance Company,*** 608 So.2d 128, 1262 (Miss. 1992).

East Ford v. Taylor, 826 So.2d 709 (Miss. 2002) uses the law of contracts to analyze an arbitration provision in a contract. The Court insists that ordinary state law principles should apply in determining the legal constraints on arbitration. Those legal principles considered by the Mississippi Supreme Court included theories of fraud, unconscionability, and lack of consideration. Quoting a federal district court case, the Court examined both procedural and substantive unconscionability, ***Pridgen v. Green Tree Financial Servicing Corporation***, 88 F Supp 2d.655 (S.D. Miss. 2000) , the Court stated that procedural unconscionability may be proved by showing "a lack of knowledge, lack of voluntariness, inconspicuous print, the use of complex legalistic language, disparity in sophistication or bargaining power. The provisions in question in the insurance contract herein are certainly written in complex legalistic language. Reverend Hasselle has no legal training and up to this point was not aware that insurance policies contained "family member exclusions" or any other exclusion of liability for covered persons. Alfa's policy reads as follows:

"Covered Person-------means:

1. You and your.

2. Family members.

3. Any other person while using the covered car with the express permission of you or a family member.

4. Under Part A, any person or organization legally responsible for the use of the covered car by covered persons as defined under the Three subsections above.

5. Under Part D, any person while occupying your covered car." (Record page 39)

Then the exclusion applies to,: "*9. Any bodily injury to any covered person.*" (Record page42).

The language in the policy seeks to designate for some categories of covered persons, which covered persons are covered by Part A (liability coverage) and which are covered by Part D (uninsured/underinsured motorist coverage), specifically designating under which parts of the policy that those persons listed in items 4, and 5 are covered, but fails to designate under which Part of the policy the persons listed in items numbered 1, 2, and 3 are covered.

In a fair reading of the policy it is not possible to interpret whether the policy intends for persons listed in the first three categories to be covered by Part A, Part D or both. As an insured, the interpretation would surely be that coverage existed under both provisions.

Even in Part D 1.where the policy defines "uninsured car " it says nothing about a car owned by covered person under the policy. In fact, farther down on page 19 of the policy, Part D specifically states that "An uninsured car does not include any land motor vehicle: 1. Insured under the liability coverage of this policy; 2. Furnished for the frequent or regular use of you, your spouse, or any family member;"(record page 47)

These statements contradict the company's interpretation of the policy and reflect the ambiguity of the policy, illustrating the fact that the adjuster, Sean Oakley,

merely made a reasonable interpretation of the policy language, no doubt an interpretation that he had made numerous times before in adjusting this same language and on which he had based payment to the insured.

II. Whether the broad definition of "covered person" as found in the policy, combined with the exclusion from coverage of "any bodily injury to any covered person" renders the policy coverage void to the extent that it effectively nullifies coverage under the policy for classes of insured not included or considered as part of a "family member exclusion."

All contracts contain an implied covenant of good faith and fair dealing and there should be no incentive to profit from the wrongful denial of claims. This state's Supreme Court has held that an insured shall receive full benefit for what he pays. *Hartford Accident & Indemnity Co. v. Bridges,* 350 So.2d 1379, 1381 (Miss. 1977). In *Hartford,* this Court noted that there is persuasion to the argument that if an insured has paid for coverage, accordingly he should be entitled to it, "limited only by the amount of damages which may be judicially determined."

Furthermore, implicit in the contract is a duty to deal fairly with the insured which includes a duty to disclose policy terms to the insureds and not to cloak the policy provisions in impenetrable language contrived to confuse. Allowing Alfa to evade its obligation to pay the Hasselle's claim creates the incentive to distort the meaning of the clear language in its contract.

III. Whether a conflict exists between the purported exclusionary clause contained in the insurance policy and Mississippi Code Annotated § 63-15-43

such that allowing the clause to operate would be a contravention of the law as mandated by the legislature.

Insurance contracts are construed to conform to the state law which they purport to satisfy. The policy in question purports to satisfy the requirements of § 63-15-43 Mississippi Code Annotated which makes automobile insurance mandatory. The objective of the statute is to ensure that there is coverage to cover damages in an accident. Alfa mailed cards with the policy instructing the Hasselles' to keep the cards in the vehicle as proof of coverage. However, when Mrs. Hasselle was injured there was no coverage for her injuries according to Alfa. This is in direct contravention to the requirements under the statute and constitutes a negligent misrepresentation on the part of Alfa. . The statute reads, "Such owner's policy of liability insurance: shall pay on behalf of the insured named therein... all sums which the insured shall become legally obligated to pay as damages arising out of the ownership by him..."

Intentional loss is already excluded from the contract such that there is no necessity to maintain the extraordinarily oppressive family exclusion.

Alfa takes the plain meaning of the terms in the policy and distorts them to attempting to justify a denial of liability coverage. The definition of covered person in the policy is "You and your family members any other covered person while using the covered car with the express permission of you or a family member."

The liability exclusion upon which Alfa relies in this case states, "We do not provide liability coverage for any bodily injury to any covered person.

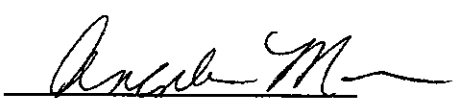
It is understandable that Alfa did not rely on this provision in the first instance and made an offer under the liability provision in the policy. This is not a "family member exclusion" as Alfa claims, but a broad and extreme exclusion of all coverage of any person riding in the covered vehicle which would give the policy no effect at all. However, Alfa simply wants to use that language to arbitrarily exclude whomever it chooses, whenever it chooses.

CONCLUSION

Thomas Hasselle and Shirley Hasselle request that this honorable court affirm the ruling of the Chancery Court's Order finding that Shirley Hasselle is not excluded from coverage under the bodily injury liability provisions this policy.

This the 19th day of September, 2007.

Respectfully submitted,
Shirley Hasselle and Thomas Hasselle



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Certificate of Service

I, Angela T. Miller, attorney for Appellees, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing **APPELLEES BRIEF** to:

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RESPECTFULLY SUBMITTED this the 19th day of **September, 2007.**

ANGELA T. MILLER