

IN THE SUPREME COURT OF MISSISSIPPI

**NOS: 2007-IA-00029-SCT
& 2007-CA-00037**

ALFA INSURANCE CORPORATION

APPELLANT

V.

THOMAS HASSELLE AND SHIRLEY HASSELLE

APPELLEES

BRIEF OF APPELLANT

**ORAL ARGUMENT
IS NOT REQUESTED**

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
I. NATURE OF CASE, COURSE OF PROCEEDINGS BELOW AND DISPOSITION IN THE COURT BELOW	2
II. STATEMENT OF FACTS	3
SUMMARY OF THE ARGUMENT	6
ARGUMENT	7
CONCLUSION	9
CERTIFICATE OF SERVICE	10

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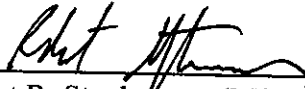
CERTIFICATE OF INTERESTED PERSONS

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 the Supreme Court Judge of Mississippi may evaluate possible disqualification or recusal:

- | | | |
|----|---|----------------------------------|
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| 3. | Thomas Hasselle | <i>Appellee</i> |
| 4. | Shirley Hasselle | <i>Appellee</i> |
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| 6. | Hon. Debbra K. Halford
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This the 28th day of June, 2007.

BY: WILKINS, STEPHENS & TIPTON, P.A.



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TABLE OF AUTHORITIES

Cases:

1. *Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*,
602 So.2d 855, 857 (Miss. 1992) 6, 8, 9
2. *Southern Guaranty Ins. Co. v. Gipson*, 156 So.2d 630, 632 (Ala. 1963) 8
3. *Orange v. State Farm Mut. Auto. Ins. Co.*, 443 S.W. 2d 650 (Ken. 1969) 8
4. *Peninsula Ins. Co. v. Knight*, 255 A.2d 55, 58 (Md. 1969) 8

Statutes

1. Miss. Code Ann. § 63-15-43 7

STATEMENT OF ISSUES

- 1. Whether the Chancery Court erred in finding that the Alfa automobile policy provides liability coverage to the defendant, Thomas Hasselle, for claims made against him by his wife, Shirley Hasselle.**
- 2. Whether the Chancery Court erred in finding that public policy overrides the clear and unambiguous language in Alfa's automobile policy excluding liability coverage for claims made by family members and named insureds.**

STATEMENT OF THE CASE

I. NATURE OF CASE, COURSE OF PROCEEDINGS BELOW AND DISPOSITION IN THE COURT BELOW

This case involves a coverage question under an automobile liability policy. On July 26, 2005, Thomas Hasselle accidentally struck his wife, Shirley Hasselle, with the automobile he was driving. Alfa Insurance Corporation ("Alfa") insured both Mr. and Mrs. Hasselle for liabilities arising out of their operation of the automobile involved in the accident. The subject insurance policy has an exclusion stating that there is no liability coverage for claims made by any other person covered under the policy or by any family member of a policyholder. Both Mr. and Mrs. Hasselle are named as insureds under the policy. Because Mrs. Hasselle is Mr. Hasselle's wife and because she is covered under the policy, there is no coverage for any claims she may make against her husband.

On December 22, 2005, Alfa filed a joint declaratory judgment action and interpleader against both Mr. and Mrs. Hasselle in the Chancery Court of Pike County, Mississippi. The declaratory judgment action requested that the court declare what liability coverage existed, if any, under the subject policy. The interpleader requested that the court disburse the uninsured motorist liability limits and remaining medical payments limits from the same policy to Mrs. Hasselle. Because Alfa contended that Mr. Hasselle did not have liability coverage under the subject policy, it admitted that he was uninsured and tendered to Mrs. Hasselle the limits of the uninsured motorist coverage. Mrs. Hasselle was entitled to this coverage because she was also a named insured under the same policy, and she was injured by someone with no liability insurance covering her injuries. Alfa thereafter filed a motion for summary judgment requesting that the court find that there is no liability coverage under the policy for claims asserted by Mrs. Hasselle against Mr. Hasselle. The

motion was denied by the chancery court. An agreed order was entered disbursing the med pay limits and uninsured motorist limits to Mrs. Hasselle.

On June 9, 2006, Mr. and Mrs. Hasselle filed a motion to amend their response to the complaint for declaratory judgment. (C.P., p. 92). Although not stated in the motion, the purpose of the amendment was to assert a counter-claim against Alfa alleging a breach of the duty of good faith and other similar counts. On the same date that the defendants filed their motion to amend, they also filed (without leave of court) their amended response which included their counterclaim. (C.P., p. 82). Alfa opposed the motion to amend, but the chancery court granted the motion on June 19, 2006. The defendants did not file the amended response after the chancery court granted their motion.

A trial was held before the chancery court on the declaratory judgment action, alone. During the trial, testimony was taken from Robert Sean Oakley, an adjuster employed by Alfa. At the conclusion of the trial, the chancery court ruled that it is against the state's public policy set out in the financial responsibility statute for an automobile insurer to have an exclusion from liability coverage that applies to a person who can sue an insured. (R., p. 38-39). The chancery court further ruled that Mrs. Hasselle is not excluded from the liability portion of the policy. (R., p. 40). The court delayed the trial of the counterclaim filed by the Hasselles, and this was not presented at the trial.

Alfa thereafter filed a petition for interlocutory appeal with the Mississippi Supreme Court. On February 16, 2007, the Court granted Alfa's petition.

II. STATEMENT OF FACTS

On July 26, 2005, Thomas Hasselle struck his wife, Shirley Hasselle, with his car, causing injuries to Mrs. Hasselle. Alfa Insurance Corporation issued an automobile insurance policy (the

“policy”) to Mr. and Mrs. Hasselle which was in effect at the time of the accident. Mrs. Hasselle has a potential claim against Mr. Hasselle for which he could have liability. The policy has an exclusion which provides that there is no liability coverage for claims made by any other person covered under the policy or claims made by family members of the policyholders. Because Mrs. Hasselle is Mr. Hasselle’s wife and is covered under the Policy, there is no coverage for any claim she asserts against her husband.

The policy provides as follows:

COVERAGES

LIABILITY COVERAGE

- (a) If this coverage is shown on **your** declaration, we will pay damages for **bodily injury** or **property damage** for which any **covered person** becomes legally responsible because of a **car** accident arising out of the ownership, **use** or maintenance of a **covered car** or **non-owned car**.

EXCLUSIONS

We do not provide Liability Coverage for:

- (9) Any **bodily injury** to any **covered person**.

(C.P., pp. 7-8; 41-42).

The policy provides the following definitions applicable to the liability coverage in this case.

Throughout this policy **you** and **your** means:

1. The named insured shown in the declaration.
2. The spouse if a resident of the same household.

We, us and **our** refer to the company providing this coverage.

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**.

Family member means:

1. A **person** related to **you** or **your** spouse by blood, marriage, or adoption who lives with you.
2. Includes **your** unmarried and unemancipated child while temporarily away at school.

(C.P., pp. 39-40).

Alfa filed the declaratory judgment action because the exclusion for liabilities to “covered persons” precludes coverage in this case. Mr. and Mrs. Hasselle’s counter-claim includes counts for breach of contract, breach of implied covenants of good faith and fair dealing, fraudulent misrepresentation and/or omission, negligent misrepresentation and/or omission, unconscionability, and includes a demand for punitive damages. (C.P., pp. 82-91). The allegations within these counts appear to relate to the position taken by Alfa in the declaratory judgment action with respect to the liability coverage for Mrs. Hasselle’s potential claim against Mr. Hasselle. However, the allegations do not specifically identify any facts or allege what conduct on the part of Alfa supports the claims asserted.

SUMMARY OF THE ARGUMENT

The Alfa policy has an exclusion applicable to the liability coverage. This exclusion applies to claims made by “covered persons”. “Covered persons” are defined to include both (1) named insureds and (2) family members living in the household with the named insured. Shirley Hasselle, who was struck by her husband, Thomas Hasselle, with the car he was driving is both a named insured and a family member living in his household. For that reason, any claims she may make against him are not covered by the liability portion of the policy.

The chancery court found that the public policy of this state overrides the clear and unambiguous language within the above referenced exclusion. In so finding, the court ignored case law from the Mississippi Supreme Court addressing this very issue. In *Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, this Court upheld the family member exclusion reasoning that there is “no valid reason why insurance companies should not have the right, by contract, to avoid coverage for those in the family circle” 602 So.2d 855, 857 (Miss. 1992). This Court was not persuaded by the public policy argument raised by the dissenting opinion in *Thompson*. In this case, the chancery court’s reasoning in support of its decision is essentially the same argument presented by the dissenting opinion in *Thompson*. Because the chancery court failed to follow the majority opinion in *Thompson*, which is binding Mississippi case law, this Court should reverse and render the order finding that liability coverage exists.

ARGUMENT

The clear and unambiguous language within Alfa's policy excludes the liability coverage for any claims made by Shirley Hasselle against her husband, Thomas Hasselle. The policy language quoted above states that "**We** do not provide Liability Coverage for . . . [a]ny **bodily injury** to any **covered person**" "Covered person" is defined to include "you", which in turn is defined to be the named insured shown in the declaration and the spouse of the named insured. "Covered person" is also defined to mean a "family member" which is defined to be any person related to the policyholder by blood, marriage or adoption who lives with the named insured.

Mrs. Hasselle is a "covered person" because she is one of the named insureds shown on the declarations and also because she is the spouse of the named insured. Mrs. Hasselle also falls within the definition of "covered person" because she is a "family member" as that term is defined in the policy.

The chancery court found that the subject policy provides liability coverage to Mr. Hasselle for any claims made against him by his wife. The chancery court's decision was not based upon its interpretation of the plain language within the policy. Rather, the chancery court found that "it is against public policy to exclude a person who could bring suit against an insured and recover" (R., p. 39). The chancery court referenced Mississippi's "Motor Vehicle Safety Responsibility laws", which are embodied in Miss. Code Ann. § 63-15-43. The chancery court held that its interpretation of the policy was "in such a manner as to not conflict" with Miss. Code Ann. § 63-15-43 and the Mississippi Department of Insurance guidelines. The court does not identify any specific guidelines from the Mississippi Department of Insurance applicable to this case.

The reasoning made by the chancery court decision is contrary to holdings of the Mississippi Supreme Court interpreting **identical exclusions** in automobile liability policies. Affirming the

chancery court's decision in this case would require a **reversal** of case law from the Mississippi Supreme Court spanning over forty (40) years.

The argument in favor of coverage which was made by Mr. and Mrs. Hasselle and adopted by the chancery court has already been considered and **rejected** by the Mississippi Supreme Court. See *Thompson v. Mississippi Farm Bureau Mut. Ins. Co.*, 602 So.2d 855, 857 (Miss. 1992). In *Thompson*, the court was faced with an exclusion in an automobile liability policy "providing no liability coverage for injuries sustained by a family member." 602 So.2d at 856. The trial court granted summary judgment to the insurer finding that the exclusion applied and that there was no coverage. *Id.* The Mississippi Supreme Court affirmed the trial court's holding. The Court observed that it had previously upheld a similar exclusion. *Id.* at 857 (citing *Perry v. Southern Farm Bureau Casualty Ins. Co.*, 170 So.2d 628 (Miss. 1965)). The Court explained that

[t]here is no valid reason why insurance companies should not have the right, by contract, to avoid coverage for those in the family circle, who, on account of their close intimacy, may be expected to be riding at frequent intervals in the insured car.

Thompson, 602 So.2d at 857 (quoting *Perry*, 170 So.2d at 630).

Another court observed that the purpose of this type of exclusion is to "exempt the insurer from liability to one who would naturally and inevitably be partial to another because of the close filial ties which exist between members of the same *family circle* living in the same household." *Southern Guaranty Ins. Co. v. Gipson*, 156 So.2d 630, 632 (Ala. 1963). Stated another way, "the clear purpose of the exclusion was to protect the insurer from overfriendly lawsuits, which nearly always would exist where plaintiff and insured defendant are bound by ties of kinship and are living together." *Orange v. State Farm Mut. Auto. Ins. Co.*, 443 S.W. 2d 650 (Ken. 1969). See also *Peninsula Ins. Co. v. Knight*, 255 A.2d 55, 58 (Md. 1969) (holding that "purpose of the household exclusion is so obviously to protect the insurer against collusive or cozy claims, to exempt him from

liability stemming from one whose natural ties and pulls are likely to favor a claimant who lives in the same household, that the courts have unhesitatingly recognized that purpose and excluded from policy coverage claimants who live in the same household as the named insured”).

The dissenting opinion in *Thompson* sets out an argument in favor of coverage which the chancery court adopted in this case. The dissenting opinion states that the enforcement of the family member exclusion “runs afoul of the public policies and legislative intent which underlie Mississippi’s Safety Responsibility Act.” *Thompson*, 602 So.2d at 863 (McRae, J., dissenting). Because the majority opinion in *Thompson* rejects the dissent’s public policy argument, the chancery court committed reversible error in adopting the very same reasoning as the basis for ignoring Alfa’s policy language. This Court should therefore reverse and render the chancery court’s ruling and find that there is no coverage for the potential claim of Mrs. Hasselle against her husband, Mr. Hasselle.

CONCLUSION

Alfa requests that this Court reverse and render the chancery court’s order finding that the Alfa policy provides liability coverage to Thomas Hasselle for any liability he may have in the future for claims made by his wife, Shirley Hasselle, against him resulting from the accident of July 26, 2005. The Court should find that there is no liability coverage under the subject policy. Also, because such a holding regarding liability coverage would appear to remove the basis for the counter-claim filed by Mr. and Mrs. Hasselle against Alfa, Alfa respectfully submits that this Court should also order that the chancery court should have dismissed the counter-claim with prejudice rather than continuing that matter to be tried at a later date.

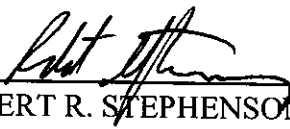
CERTIFICATE OF SERVICE

I, Robert R. Stephenson, attorney for the Appellant, do hereby certify that I have this day mailed via U.S. mail, postage pre-paid, a true and correct copy of the above and foregoing Brief of Appellant to:

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Hon. Debbra K. Halford
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Meadville, Mississippi 39653

This the 28th day of June, 2007.



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