

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Aaron R. Carlson and  
Robert S. Carlson,

Appellants,

-vs-

Allstate Insurance Company and  
Midwest Family Mutual Insurance  
Company,

Respondents,

and

Court of Appeals Number: A06-1664

Allstate Insurance Company,

Respondent

-vs-

Michael J. Fay, Individually, and  
Mike Fay Insurance Agency,

Respondent.

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**BRIEF OF RESPONDENT ALLSTATE INSURANCE COMPANY**

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## LEGAL ISSUES

- I. Did the Allstate policy provide UM coverage to a pedestrian not named as an insured, not a resident relative, not a student, and not occupying or alighting from an automobile at the time of an accident? The trial court answered “no.”
- II. Does the Minnesota No-Fault Act mandate coverage in this case? The trial court answered “no.”
- III. Was the language of the insurance policy ambiguous? The trial court answered “no.”

## STATEMENT OF THE CASE

Plaintiff Aaron Carlson was walking across Lyndale Avenue, on his way to a New Year’s party, when he was struck by an uninsured vehicle. He was 28 years old, living and working in the Twin Cities, and had use of a Ford car leased and insured by his father. He filed a suit against the uninsured driver, the uninsured driver defaulted, and a judgment was entered in Hennepin County.

Plaintiffs then sued defendants, and sought uninsured motorist benefits from Allstate Insurance Company. The legal issues were submitted to Judge Gary J. Pagliaccetti upon cross-motions for summary judgment. Judge Pagliaccetti granted Allstate’s motion, finding that Aaron Carlson had no insurable interest in his father’s vehicle, that he was not an insured under the terms of the Allstate policy, that he was not entitled to coverage under the Minnesota No-Fault Act, that Allstate’s policy language was unambiguous, and that plaintiffs had no reasonable expectation of coverage under the facts and law.

## STATEMENT OF FACTS

These facts are uncontested: (a) Aaron Carlson was not a “resident relative” at the time of the accident; (b) Aaron Carlson was not a student living away from home at the time of the accident; and (c) Aaron Carlson was not occupying or alighting from an automobile at the time of the accident. (See Index of Appellants, A-174 and 175)

Aaron Carlson was listed as a “driver,” but not a named insured on the policy. (App. P. 109). Given Aaron Carlson’s circumstances (he was 28, living and working in the Twin Cities, and his parents lived in Hibbing), agent Mike Fay had no option but to list him as a driver and not as an insured for the 2002 Ford Focus. (App. P. 77 [p. 23, l. 8]). Agent Fay listed Aaron Carlson as a “driver” rather than as an insured because Carlson “was not titled, nor listed on any lease, so he had no first-hand direct relationship on a vehicle. And number 2, since he was not a resident of the household and not a student, as it turned out, that he was not eligible to be listed on that policy any other way than the way he was.” (App. P. 77 [p. 24, ll. 9-14]). (See also, App. P. 176).

## ARGUMENT

The trial court correctly ruled that plaintiffs have no viable uninsured motorist claim against Allstate Insurance Company.

I. The Allstate policy language does not support UM coverage in this case.

The uninsured motorist portion of the Allstate policy defines insured persons as:

1. **You** and any **resident** relative.
2. Any person while in, on, getting into or out of an insured auto with **your** permission.
3. Any other person who is legally entitled to recover because of bodily injury to **you**, a **resident** relative, or an occupant of **your** insured with **your** permission. (App. P. 123).

Aaron Carlson does not meet the policy's definition of an insured. He admits that he was not a resident relative under the policy, and he does not claim that he was "in, on, getting into or out of" his father's automobile. Indeed, he had parked that vehicle, had walked to the front of it, and then walked to the Lyndale Avenue centerline when he was struck. (App. P. 57 [p. 21, l. 23] and P. 56 [p. 20, l. 7]). There is no connection between the automobile insured by Allstate and the subject incident.

II. The Minnesota No-Fault Act does not support UM coverage in this case.

Where a claimant is not occupying a vehicle, the analysis starts with Minn. Stat. §65B.49, subd. 3a(5): "if at the time of the accident the injured person is not

occupying a motor vehicle, the injured person is entitled to select any one limit of liability for any one vehicle afforded by a policy under which the injured person is insured.”

The next step in the analysis is to decide who is an insured. Per Minn. Stat. §65B.43, subd. 5, an insured includes the person named as an insured in the policy, together with those resident relatives of the named insured who are not identified by name in some other policy of motor vehicle insurance. It is undisputed that Aaron Carlson was neither a named insured on his father’s Allstate policy nor a resident relative. Rather, he was listed as a driver.

The Minnesota Supreme Court directly addressed this issue in Becker v. State Farm Mut. Auto. Ins. Co. 611 NW2d 7 (Minn. 2000). “We hold that the correct interpretation of “insured” as used in Minn. Stat. §65B.49, subd. 3a(5), is limited to those persons specifically listed in Minn. Stat. §65B.43, subd. 5; that is, the named insured, or spouse, minor, or resident relative of the named insured, in the policy of the occupied vehicle.” Appellants’ attempts to parse the terms “insured” and “an insured” run contrary to both plain meaning and Becker.

Because the first essential element of any uninsured motorist claim under the Minnesota No-Fault Act is that the injured party be an insured under the terms of the UM policy, and because Aaron Carlson does not meet that required element, his UM coverage claims against Allstate fail.

III. The terms of the insurance contract were unambiguous.

In interpreting an insurance policy, words should be given their plain meaning. *See, Scottsdale Ins. Co. v. Transport Leasing/Contract, Inc.*, 671 NW2d 186 (Minn. App. 2003). While ambiguity must be resolved in favor of the insured it cannot be read into the plain language of an insurance company were it does not legitimately exist. *See, Employers Mut. Cas. Co. of Des Moines v. Kangas*, 310 Minn. 171, 245 NW2d, 873, 876 (1976).

There is no ambiguity in the Allstate insurance policy. Persons listed as “insureds” are insureds. Persons not listed as “insureds” are considered insureds only if they are resident relatives or are actually in or alighting from an insured vehicle at the time of the accident. This policy provision is essentially identical to the Minnesota No-Fault Act’s UM coverage provisions—and there is no ambiguity in either. Only if a policy is ambiguous can extrinsic evidence be admissible—not to vary or modify the policy’s terms—but to aid in ascertaining the parties’ mutual intent at the time of contracting. *See, Holm v. Mutual Serv. Cas. Ins.*, 261 NW2d 599, 600 (Minn. 1977).

As Judge Pagliaccetti determined, “the language in the policy was clear as to who was considered an ‘insured.’”

Plaintiffs have no reasonable expectation of coverage where the policy language is unambiguous. The doctrine of reasonable expectations may protect an insured only if there exists some language in the policy or statement by the insurer

sufficient to raise an expectation of coverage. *See, Bob Useldinger & Sons, v. Hangsleben*, 505 NW2d 323, 327 (Minn. 1993) (finding reasonable expectations principle inapplicable where nothing in contracts would reasonably cause policy holders to expect coverage); *Hubred v. Control Data Corp.*, 442 NW2d 308, 311 (concluding insureds could show no facts or circumstances to justify reasonable expectation of particular coverage); *Seaway Port Auth. v. Midland Ins.*, 430 NW2d 242, 249 (Minn. Ct. App. 1988) (holding doctrine did not apply where nothing in language of policy would reasonably lead insured to expect coverage). The insured must demonstrate both subjective expectation and objective reasonableness for the rule to apply.

When, as here, a policy is unambiguous, the insureds' expectations will be considered reasonable only where: (1) the insurer misrepresented coverage terms; (2) the contract contains hidden exclusions; or (3) legal technicalities of policy language would defeat coverage the insured reasonably believed was in place. *See, Conwed Corp. v. Employers Reinsurance*, 816 F. Sup. 1355, 1359 (D. Minn. 1993). None of the three factors are present in this case.

Because the policy was unambiguous, and because the policy was in accord with the Minnesota No-Fault Act's similarly unambiguous UM provisions, plaintiffs had no reasonable expectation that Aaron Carlson would be covered while away from the vehicle and proceeding across a busy street to a party.

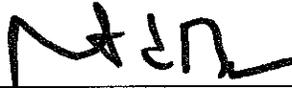
CONCLUSION

Aaron Carlson is not entitled to UM coverage through his father's Allstate policy. He was 28 years old at the time of the accident, had no insurable interest in the vehicle, was not a resident relative, was not temporarily away at school, and was not in or alighting from the car when the incident occurred.

Plaintiffs argue that had they known this accident would occur, they would have listed Aaron as a co-lessee on the Ford Focus. Hindsight is interesting, but the fact of the matter is that he had no ownership interest in the vehicle and was not listable as an "insured". The Allstate policy and the Minnesota No-Fault Act support the trial court's granting of Allstate's motion for summary judgment.

Dated this 10<sup>th</sup> day of November, 2006.

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