

NO. A07-1627

State of Minnesota
 In Court of Appeals

Michael Bundul as Trustee for the Heirs and
 Next of Kin of Carol Bundul, and individually,
Plaintiff-Respondent,

and

Benjamin Bundul,
Involuntary Plaintiff,

vs.

Travelers Indemnity Company d/b/a Travelers,
Defendant-Appellant,

and

Dick Devine and David Agency, Inc.,
Defendant.

**BRIEF OF AMICUS CURIAE
 MINNESOTA ASSOCIATION FOR JUSTICE**

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STATEMENT OF THE ISSUE

WHETHER A FAMILY EXCLUSION CONTAINED IN AN UMBRELLA POLICY MAY BE ENFORCED WHEN THE COVERAGE IS TRIGGERED AS A RESULT OF AN AUTOMOBILE ACCIDENT?

The district court invalidated the family exclusion contained within the policy based upon the principles of Minnesota's No-Fault Act prohibiting family exclusions in automobile insurance policies.

Apposite Cases:

Himes v. State Farm Fire and Casualty Co., 284 N.W.2d 829 (Minn. 1979)

Apposite Statutes:

Minn. Stat. § 65B. 43 Subd. 5

Minn. Stat. § 65B. 48

STATEMENT OF THE CASE

This is an appeal from the denial of Appellant Travelers motion for summary judgment. The Honorable Harry S. Crump, Hennepin County District Court denied Travelers motion finding the household exclusion contained within the policy invalid when the coverage is triggered as a result of an automobile accident. The Court noted the exclusion was contrary to the Minnesota No-Fault Act's "overarching concern for adequate compensation for auto accident victims...".

The brief of Amicus Curiae, the Minnesota Association for Justice, is addressed to the issue of whether the household exclusion contained within the policy of insurance is enforceable.¹

¹ The following disclosure is made pursuant to Rule 129.03, Minnesota Rules of Civil Appellate Procedure: This brief was prepared solely by Andrew L. Davick, Esq., and no party to this litigation authored any portion of this brief. No person or entity other than Amicus Curiae and Meshbesh & Spence, Ltd. made any financial contribution to the preparation or submission of this brief.

STATEMENT OF THE FACTS

Amicus Curiae, Minnesota Association for Justice, agrees with the facts contained in Respondent's "Statement Of The Facts."

ARGUMENT

The issue before this Court is whether the “household” exclusion contained within Travelers policy is enforceable under Minnesota Law. Based upon past precedent and the primary purpose and goal of the No-Fault Act, Amicus Curiae, the Minnesota Association for Justice submits the exclusion is unenforceable as it is contrary to law and the principles espoused in Minnesota’s No-Fault Act. The Bundul’s purchased a policy of insurance from THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, a subsidiary of Travelers. In purchasing this automobile policy, they reasonably expected to receive the protections it was intended to provide. The Bundul family and all others similarly situated should be allowed to receive the full protections of their purchased automobile insurance coverage without being subject to an unenforceable exclusion that runs contrary to the stated purpose of Minnesota’ No-Fault Act.

The automobile accident is, perhaps, one of the most pervasive tragedies of the twentieth century. Disability and death mount exponentially despite increasing technological efforts to manufacture safer vehicles. Economic hardships, unfortunately, compound the human costs of automobile accidents. The Minnesota legislature recognized this detrimental impact upon injured persons and adopted the No-Fault Act “to relieve the severe economic distress” of accident victims. See generally Minn. Stat. § 65B.42. It is with this principle in mind that Amicus Curiae, Minnesota Trial Lawyers Association, submits this brief for consideration.

A. THE EXCLUSION IS UNENFORCEABLE UNDER MINNESOTA LAW

Prior to enactment of the No-Fault Act, accident victims faced immediate out of pocket expenses without any hope of recovery. Serious automobile related injuries caused employment disability, wage loss, and often an inability to pay the continuously rising costs of medical care. Accident victims suffered "severe economic distress." Simply put, the No-Fault Act was created to remedy the situation and solve these societal problems by providing prompt and full recovery for medical bills and wage loss.

To ensure that parties receive full recovery for their injuries, the legislature required every owner of a motor vehicle in the State of Minnesota to obtain liability insurance coverage. The mandatory coverage provision is contained in Minn. Stat. § 65B.49. Although Minn. Stat. § 65B.49 requires coverage of only \$30,000 per person and \$60,000 per occurrence it does allow insured parties to contract for any additional protection offered by their insurers. In the instant case, the Bundul's chose to contract for \$1.5 million in protection. The first \$500,000 came from the underlying policy with an additional \$1,000,000 in PLUS coverage. This additional automobile accident insurance coverage is nothing more than an extension of the underlying policy. Travelers argument that the policy is not an automobile liability policy is a distinction without merit. Simply because the coverage is included within the PLUS policy, along with other additional forms of coverage, does not change its very nature as a plan of reparation security and automobile insurance. This is evident not only because of the contractual prerequisite of maintaining the underlying

\$500,000 in coverage but by the fact additional premiums were charged for having additional vehicles covered under the policy. (AA-100).

This very issue was addressed in State Farm Mutual Ins. Co. v. Marley, 151 S.W.2d 33 (Ky. 2004). Kentucky, like Minnesota, is a No-Fault state with compulsory insurance. In Marley, State Farm sought to deny umbrella coverage based on a household exclusion. The Court noted the “MVRA” (Kentucky’s No-Fault Act) stated purpose was to ensure that motor vehicle accident victims are fully compensated for their injuries. Id. at 36. The mere fact the policy is labeled as an umbrella policy and written separately from the underlying policy does not validate a household exclusion. Id. 35, 36. There is no reason to discriminate between those with minimum coverage and those who have purchased additional optional coverage.

Id. More specifically, the Court stated:

An umbrella insurance policy must be considered in accordance with the nature of the claims that it is called upon to cover. An umbrella policy was purchased to serve as an extension of the automobile policy limits and any distinction between the automobile liability and an umbrella liability policy is a distinction without difference.

The Bundul’s purchased this coverage to protect them against this very loss. Many people like the Bundul’s justifiably assume and reasonably expect their coverage to protect them in trying and difficult times. Invalidating an exclusion simply because it is included in a policy of insurance that covers both automobile claims and other tort claims is against public policy. The Minnesota No-Fault Act specifically states in Minn. Stat. 65B.48:

Every owner of a motor vehicle of a type which is required to be registered or licensed

or is principally garaged in this state shall maintain during the period in which operation or use is contemplated a plan of reparation security under provisions approved by the commissioner, insuring against loss resulting from liability imposed by law for injury and property damage sustained by **any person** arising out of the ownership, maintenance, operation or use of the vehicle...

Minn. Stat. § 65B.48. The No-Fault Act specifically excludes the use of household exclusions. See Himes v. State Farm Fire and Casualty Co., 284 N.W.2d 829 (Minn. 1979).

See also Minn. Stat. 65B.43, Subd. 5. The policy was nothing more than an extension of underlying coverage. It specifically covered losses resulting from automobile accidents once the underlying coverage had been exhausted. Families such as the Bundul's should be able to reasonably anticipate that their automobile coverage will be available for these very instances. Any attempt to limit this coverage would be contrary to the principles of the No-Fault Act and Minnesota's long standing tradition of prohibiting household exclusions and family immunity in automobile accident cases. See Beaudette v. Frana, 173N.W.2d 416 (Minn. 1969); Balts v. Balts, 142 N.W.2d 66 (Minn. 1966); Himes v. State Farm Fire and Casualty Co., 284 N.W.2d 829 (Minn. 1979); Minn. Stat. §65B.23 (repealed upon passage of the Minnesota No-Fault Act and specifically addressing familial exclusions).

CONCLUSION

Based upon the foregoing reasons, Amicus Curiae submits the purpose and the goal of the No-Fault Act requires a finding of coverage in this instance. The exclusion runs contrary to Minnesota's longstanding tradition of relieving the severe economic distress of accident victims. The "household" exclusion must be invalidated and the Bundul's allowed to seek the additional coverage under the policy.

Respectfully submitted,

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Date: 10/26/07

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CERTIFICATE OF BRIEF LENGTH

The undersigned counsel for Appellant certify that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in proportionately spaced typeface utilizing Microsoft WordPerfect 10 and contains 1340 words, excluding the Table of Contents and Table of Authorities.

Dated: 10/26/07

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