

IN THE CIRCUIT COURT OF HOWELL COUNTY, MISSOURI
DIVISION I

FILED

NATIONAL GENERAL ASSURANCE)
COMPANY,)

Plaintiff,)

vs.)

JACKIE ALLMON,)

JACKIE BLACKWELL,)

RANDY ALLMON,)

THERESA VERNON, and)

SANDRA ROFFERS,)

Defendants.)

SEP 30 2004 3:53p.m.

CINDY WEEKS

Case No. 04AN-CV-00006-01
Circuit Clerk's Off. Recorder

JUDGMENT

The above-styled cause of action came before the Court on August 24, 2004, on Plaintiff's *Motion for Summary Judgment* and Defendants' *Amended Motion for Summary Judgment*. Plaintiff appeared through Attorney David Laws and Defendants appeared through Attorney Thomas Morrissey. The motions for summary judgment by Plaintiffs and Defendants, pursuant to Rule 74.04 of the Missouri Rules of Civil Procedure, were presented and argued to the Court.

FINDINGS OF FACT

The Court adopts the following facts as stipulated to by the parties and finds as follows:

1. National General Assurance Company issued a policy of insurance (hereinafter "the policy") to Jackie Allmon and Martha Allmon, policy number 0503268A01A, which was in effect on December 3, 2002.

2. On December 3, 2002, in Lake Jackson, Texas, Martha Allmon, a pedestrian, was struck by a 1994 Dodge Ram Truck operated by James Glenn.
3. Martha Allmon sustained fatal injuries as a result of the accident.
4. The Dodge Ram Truck operated by James Glenn did not make common physical contact with Jackie Allmon.
5. Jackie Allmon and Martha Allmon had been married for 49 years on December 3, 2002.
6. Jackie Allmon was present at the time of the impact between the person of Martha Allmon and the 1994 Dodge Ram Truck operated by James Glenn.
7. Jackie Allmon heard the impact between the 1994 Dodge Ram Truck operated by James Glenn and Martha Allmon.
8. Jackie Allmon observed the injuries sustained by Martha Allmon within minutes of the impact.
9. Jackie Allmon was taken by ambulance from the scene to the local emergency room.
10. James Glenn, a resident of Texas, was insured under a policy of insurance issued by State Farm Mutual Automobile Insurance Company which provided limits of liability in the amount of Twenty-Thousand Dollars (\$20,000.00) per person and Forty-Thousand Dollars (\$40,000.00) per occurrence for all damages for bodily injury sustained by any one person in any one auto accident.
11. The Texas Motor Vehicle Financial Responsibility Law only requires liability limits in the amount of Twenty-Thousand (\$20,000.00) per person and Forty-Thousand

Dollars (\$40,000.00) per occurrence for all damages for bodily injury sustained by any one person in any one auto accident.

12. State Farm Mutual Automobile Insurance Company paid to Jackie Allmon the sum of Twenty-Thousand Dollars (\$20,000.00) for the injuries to and death of Martha Allmon on behalf of James Glenn.

13. On January 2, 2003, National General Assurance Company paid to Jackie Allmon the sum of Five Thousand Dollars (\$5,000.00) under the medical payments portion of its policy for funeral expenses as a result of the fatal injuries sustained by Martha Allmon.

14. State Farm Mutual Automobile Insurance Company paid to Jackie Allmon the sum of Twenty-Thousand Dollars (\$20,000.00) for his bystander claim against James Glenn.

15. On November 13, 2003, National General Assurance Company paid the sum of Two Thousand, One Hundred and Twelve Dollars and Twenty-Five Cents (\$2,112.25) under the medical payments portion of its policy as a result of medical expenses incurred by Jackie Allmon.

16. On December 3, 2002, Jackie and Martha Allmon's covered autos were principally garaged in Missouri.

CONCLUSION OF LAW

17. The policy provides uninsured motorists coverage in the amount of \$100,000.00 per person and \$300,000.00 per accident for two separate vehicles which is stackable for total coverage of \$200,000.00 per person and \$600,000.00 per accident.

18. The 1994 Dodge Ram Truck that was operated by James Glenn was and is an “uninsured motor vehicle” as that term is defined in the policy.

19. The policy’s duplicate payments provision applies to reduce the wrongful death uninsured motorist limits by any amount paid by or on behalf of James Glenn for the wrongful death claim leaving \$180,000.00 in available coverage for the wrongful death of Martha Allmon.

20. Jackie Allmon’s shock as a result of the direct emotional impact on him from a sensory and contemporaneous observance of Martha’s death is a “bodily injury” as that term is defined in the policy.

21. Jackie Allmon sustained a separate “bodily injury” as that term is defined in the policy and the policy’s duplicate payments provision applies to reduce Jackie Allmon’s bystander uninsured motorist limits by any amount paid by or on behalf of James Glenn for Jackie Allmon’s bystander claim leaving \$180,000.00 in available coverage for Jackie Allmon’s bystander claim.

It is the intention of the Court to interpret language in a contract of insurance by its terms since such is essentially a transaction where the principals agree to a certain risk for a certain price. It is, however, not a determination which can be made absolutely exclusively of a philosophic presence of the precepts of the venue’s substantive law. A better argument can be made in favor of Jackie Allmon’s circumstances not being a “bodily injury” if the thrust of Missouri caselaw is entirely excluded. Such a semantic gymnastic is beyond the capacity of this Court. Perhaps it should not be. Nonetheless, Missouri respects physically non-touching damages as clearly within the concept of damages. This Court finds the language of the insurance policy permits this reading and

so finds. The bystander claim under Texas law is a codified equivalent of Missouri's recognition of non-contact damages.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that under policy number 0503268A01A issued by Plaintiff to Martha Allmon and Defendant Jackie Allmon, that up to \$180,000.00 of uninsured motorist benefits is available for the wrongful death of Martha Allmon and up to an additional amount of \$180,000.00 of uninsured motorist benefits is available for the bystander damages suffered by Jackie Allmon for total available coverage of \$360,000.00 as a result of the December 3, 2002, wreck in which Martha Allmon was struck by a vehicle driven by James Glenn.

Date: September 30, 2004.



R. JACK GARRETT
Presiding Judge, 37th Judicial Circuit

CERTIFICATE OF TRUE COPY
STATE OF MISSOURI }
COUNTY OF HOWELL } SS

I, Cindy Weeks, the duly elected, qualified and acting Clerk of the Circuit Court & Ex-Officio Recorder of Deeds of Howell County, Missouri, hereby certify under my hand and seal of office that the above and foregoing is a true and complete copy of the original WAN-COORDER National Travel

Assurance Co. v Allmon et al Judgment
now of record and on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in West Plains, Howell County, Missouri, this 30th day of September, 20 04

Cindy Weeks, Circuit Clerk
Cindy Weeks
Circuit Clerk & Ex-Officio Recorder

By Sherry D. O. O. O. O.