

1989

## Iowa Supreme Court Establishes Exhaustion Presumption in Tortfeasor Liability Policy Settlements for Underinsured Motorist Insurance

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### Recommended Citation

Stephen Kirkwood *Iowa Supreme Court Establishes Exhaustion Presumption in Tortfeasor Liability Policy Settlements for Underinsured Motorist Insurance*, 2 Loy. Consumer L. Rev. 24 (1989).

Available at: <http://lawcommons.luc.edu/lclr/vol2/iss1/10>

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**Anti-Eviction Act** (from page 23)

consistently prevented her from paying the rent by the fifth of the month, the court held that the provision requiring her to do so was unreasonable and therefore unenforceable.

Karen M. Cichowski

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**Iowa Supreme Court Establishes Exhaustion Presumption In Tortfeasor Liability Policy Settlements For Underinsured Motorist Insurance**

In *Estate of Rucker v. National General Insurance Co.*, 442 N.W.2d 113 (Iowa 1989) (en banc), the Supreme Court of Iowa considered a dispute concerning the effects of a settlement upon an underinsured motorist policy which contained an exhaustion requirement. The exhaustion requirement precluded coverage if the injured party settled for less than the tortfeasor's full policy amount. The court held that the exhaustion requirement was against public policy. Instead, the injured party will be assumed to have exhausted the tortfeasor's policy limits by settling the claim. The injured party may then recover from the underinsured motorist policy the difference between the actual injury and the tortfeasor's policy limit, subject to the underinsured motorist policy limits.

**Background**

While bicycling on June 4, 1986, Herbert F. Rucker ("Rucker") was struck and killed by a pick-up truck driven by Carl F. Bunse ("Bunse"). Bunse had a \$100,000 automobile liability insurance policy with Farm Bureau Mutual Insurance Company ("Farm Bureau"). Under Rucker's settlement with Farm Bureau,

Rucker would receive an immediate payment of \$25,750, monthly payments of \$500, and a guaranteed minimum total payout of \$115,750. The present value of the guaranteed payout was \$85,250. Rucker had underinsured motorist coverage of \$20,000 through his automobile insurance agency, National General Insurance Company ("National"). Iowa Code Section 516A.1 requires that automobile insurance policies include this type of coverage unless the insured objects in writing. Iowa Code § 516A.1 (1988). The goal of the underinsured motorist coverage statute is to fully compensate the victim. The underinsured motorist coverage applies whenever the tortfeasor has less insurance than the victim has injury.

After Rucker's estate ("the estate") settled with Farm Bureau, the estate sought benefits from National under Rucker's underinsured motorist policy. When National refused to pay, the estate filed suit against National for the underinsured motorist policy benefits. National argued that the policy explicitly required that the estate exhaust Bunse's liability policy limits before claiming underinsured policy benefits. The estate failed to do this because the settlement with Farm Bureau had a present value less than Bunse's policy limits. In contrast, the estate argued that the exhaustion requirement was against public policy.

**The District Court's Decision**

The district court held that the exhaustion requirement did not violate public policy. However, the district court held that the estate satisfied the exhaustion requirement because the \$115,000 guaranteed pay-out under the settlement exceeded the \$100,000 policy limit. Therefore, the estate was entitled to the underinsured motorist benefits to the extent it could demonstrate damages in excess of the \$100,000 liability policy limit. The Supreme Court of Iowa granted National's application for interlocutory appeal.

**The Iowa Supreme Court Decision**

The Iowa Supreme Court held that, as a matter of law, a settlement must be valued at its present value. The \$85,250 present value of the estate's settlement was \$14,750 below the liability policy limit and therefore the estate failed to fulfill the exhaustion requirement.

The court also held, however, that the exhaustion requirement was against public policy and therefore void. The goal of the underinsured motorist coverage is to fully compensate the victim; it applies whenever the tortfeasor has less insurance than the victim has injury. If the tortfeasor's liability insurance does not fully compensate the insured's loss, the insured can recover the amount of the loss minus the amount paid by the tortfeasor's insurance, subject to the limits of the policy.

The court stated that private and public policy considerations support encouraging an injured party to settle for less than a tortfeasor's liability policy limits. It may be in the injured party's best interest to settle with the tortfeasor's liability insurer for an amount less than the policy limit, even when liability and damages are certain, to avoid the cost, delay and uncertainty of a lawsuit. An exhaustion requirement discourages prompt settlement and increases courts' litigation caseload. When settlement is in the injured person's best interest, failure to fully exhaust the liability policy should not be a bar to receiving underinsured motorist coverage. An exhaustion requirement that does so, the court held, violates public policy.

The court held that an injured person may accept what he or she considers the best settlement offer without losing the underinsured motorist benefits. The court will assume that the settlement exhausted the tortfeasor's liability policy. The injured person may then recover the difference between the damages actually suffered and the limit of the underin-

sured motorist policy, subject to the limits of the policy. The assumption that the settlement exhausts the liability policy will avoid making the amount of the insurer's liability dependent upon the amount of the settlement the insured accepts. It will also aid the settlement process and thereby benefit both the injured person and the tortfeasor's liability insurer.

The court held that in the present case the estate could recover from National the amount which the actual damages exceeded Bunse's \$100,000 liability policy, subject to the \$20,000 underinsured motorist policy limit. The court remanded the case to the district court to determine the estate's actual damages.

#### The Dissent

The dissent, written by Justice Carter with two justices joining, argued that insurance policies should be enforced unless they conflict with statutory provisions. Justice Carter found no such conflict between the exhaustion requirement and the statute that requires underinsured motorist coverage. He also found nothing unreasonable in the underinsured motorist policy's provision requiring exhaustion of the liability policy. The dissent added that if the injured party settles before trial for less than the liability policy limits, the settlement amount indicates the real worth of the claim. The injured party may receive the underinsured motorist benefits, notwithstanding the exhaustion requirements, merely by fully litigating the claim.

Stephen Kirkwood

### Minnesota's Consumer Protection Act Includes Residential Leases, But Florida's Consumer Protection Act Excludes Real Estate Sales

Minnesota and Florida enacted consumer protection acts in order to protect consumers from deceptive, unfair and discriminating practices of any trade, commerce or business. The Minnesota Court of Appeals in *Love v. Amsler*, 441 N.W.2d 555 (Minn.App. 1989), construed its act broadly and held that deceptive landlord practices as related to residential leases violated the Minnesota Prevention of Consumer Fraud Act. Minn. Stat. §§ 325F.68-325F.70 (1988). The Florida District Court of Appeals in *Kingswharf v. Kranz*, 545 So. 2d 276 (Fla.App. 3 Dist. 1989), however, interpreted its act narrowly and held that real estate sales were not included in the Florida Deceptive and Unfair Trade Practices Act. Fla. Stat. §§ 501.201. - 501.213. (1988).

#### *Love v. Amsler*

In 1986, Boyd Amsler ("Amsler") rented a house to Marsha Love ("Love") for \$385.00 per month plus utilities. Amsler kept the water service in his name and required Love to pay him directly for the water bills he received. However, Amsler never showed Love a bill nor gave her a receipt for the payments she made.

After renting for nine months, Love withheld \$113.00 from her rent payment. Amsler filed a suit against her for unpaid rent and water bills and for attorney's fees. He claimed \$275.97 for unpaid water bills incurred over seven months. Love and Amsler settled their dispute and Love planned to vacate the house. Four days before Love moved out, Amsler filed a pro se action claiming \$1,341.00 for unpaid rent and costs of cleaning the house. This time he claimed that Love owed him \$460.98 for the water bills over the same seven month period. Love filed suit against Amsler in the Minnesota

District Court of Appeals for the Third District for breach of the covenant of habitability and violation of the Minnesota Prevention of Consumer Fraud Act ("Minnesota Act"). Minn. Stat. §§ 325F.68 - 325F.70 (1988). Amsler's action was joined as a counterclaim to Love's suit.

#### The Minnesota District Court's Decision: Landlord Violated the Consumer Protection Act

At trial, a housing inspector testified that numerous hazards existed in the property Amsler rented to Love. The gas space heater which provided the only heating source was declared unsafe by the inspector. The house walls were covered with soot. The gas water heater was not properly ventilated and as a result potentially lethal fumes backed up into the living room. The house also had dangerous electrical and structural defects, serious flooding problems, poor drainage, defective insulation and a defective roof. Additionally, Love presented evidence that Amsler had previously made claims for over \$27,000.00 in various courts against 32 other tenants. In his suits, Amsler usually claimed unpaid water bills and cleaning costs. Amsler also requested attorney's fees although he pursued the cases on his own behalf.

The trial court found that Amsler had violated the Minnesota Act. That court held that Amsler's pattern of requiring tenants to pay unsubstantiated water bills, cleaning costs, and nonexistent attorney fees constituted unfair and deceptive trade practices. Additionally, the court held that because Amsler had breached the covenant of habitability, Love could recover a portion of her previous rent payments as damages. Amsler appealed.

#### The Court of Appeals of Minnesota Affirms

The appellate court noted that Minnesota courts had not determined whether the Minnesota Act applied to leased housing, although other states had included leased

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