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## Allstate Prevails in Suit Over Exclusionary Clauses for Uninsured Motorist Coverage

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removing the property from the real estate market. However, the court noted that it is still the prerogative of the parties to establish a new financing condition or to extend a financing condition. Nevertheless, such amendments or extensions should be "express and not left to implication from extension of the date of performance of the contract."

**Buyer didn't act in bad faith or participate in unfair practice**

In ruling against Dr. Hobbie, however, the appellate court found that he had not acted in bad faith. The court dismissed an unfair practice claim against Dr. Hobbie, arguing that he was "untutored in the perils of the modern real estate transaction, and unaware of the potential difficulties that might arise from even the possibility of toxic pollution" on the property. "Ineptitude there may have been; bad faith and unfair practice there was not. Not every unlawful act is automati-

cally an unfair (or deceptive) one under M.G.L.A. 93A §1."

This ruling reinforces a well-grounded legal principle that consumers in the real estate market would be wise to heed: Assumption is the mother of all mishaps, and the home of true security in is found the written document.

## *Allstate prevails in suit over exclusionary clauses for uninsured motorist coverage*

by Aaron R. Pettit

In *Luechtefeld v. Allstate Ins. Co.*, 656 N.E.2d 1058 (Ill. 1995), the Supreme Court of Illinois held that an exclusionary clause denying uninsured-motorist coverage for vehicles owned by the insured, when such vehicles have uninsured-motorist coverage under another insurance policy, did not violate public policy.

On December 10, 1990, the plaintiff, Harry Luechtefeld ("the plaintiff"), suffered personal injuries when the motorcycle he was driving was struck by an uninsured motorist. The motorcycle was insured under a policy issued by Pekin Insurance Company ("Pekin"), which provided uninsured motorist coverage with limits of \$20,000 per person. The plaintiff was also the named insured in a policy issued by Allstate Insurance Company ("Allstate") to cover three automobiles the plaintiff owned. Since the plaintiff's damages exceeded the \$20,000 limit on the Pekin policy, the plaintiff filed a claim with Allstate, claiming that his injuries were covered under the uninsured-motorist provisions of the Allstate policy.

Allstate denied the claim, citing an exclusionary clause in the policy excluding uninsured-motorist coverage for vehicles the insured owned which had uninsured-motorist coverage under another policy. Allstate argued that this clause clearly excluded coverage for the plaintiff's motorcycle accident because the Perkin policy covered the motorcycle.

The plaintiff then brought a declaratory judgment action in the circuit court of St. Clair County, seeking a determination of his rights under the Allstate policy. He claimed the exclusionary clause was ambiguous and should therefore be construed against Allstate. In addition, he asserted that the clause should be unenforceable because it violated public policy. The trial court granted Allstate's motion for summary judgment, finding that the policy unambiguously excluded the plaintiff's claim. The appellate court reversed, finding that the exclusion was invalid for public policy reasons the clause was unambiguous.

The Illinois Supreme Court first rejected the

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plaintiff's argument that the clause was ambiguous and found that the clause clearly excluded uninsured-motorist coverage for injuries sustained in a vehicle insured under another policy.

### Uninsured-motorist coverage

In determining whether the clause violated the public policy of the state, the court looked to § 143a of the Illinois Insurance Code, 215 ILCS 5/143a (1992). Section 143a provides that every liability insurance policy in Illinois must provide coverage for injury or death caused by an uninsured vehicle. Allstate argued that the exclusion did not violate the policy underlying § 143a because the clause did not take effect unless the insured had uninsured-motorist coverage under another policy. The court agreed with Allstate's argument, stating that the Illinois Supreme Court has consistently recognized that the purpose of § 143a is to place the insured in the same position he would occupy if the uninsured driver had been minimally insured. The court said the exclusionary clause did not defeat the purpose of § 143a because the clause only takes effect if the insured has coverage under another policy. Since the plaintiff had coverage under the Pekin policy, he was put in the same position as if the uninsured driver had been minimally insured.

### Public policy argument

The plaintiff further argued that the exclusionary clause was invalid under the reasoning expressed in *Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167 (1977). In *Squire*, the insurance policy excluded uninsured-motorist coverage for vehicles not listed in the policy. The court held that this clause violated the public policy embodied in § 143a because it could leave a person unprotected for accidents with uninsured motorists. The plaintiff contends this holding meant that when an insured purchases an insurance policy which includes uninsured-motorist coverage, the policy provides such coverage for any vehicle the insured owns, even if the vehicle is insured under another policy.

The court rejected the plaintiff's interpretation of *Squire* and made a distinction between the policy in

*Squire* and the Allstate policy. In *Squire*, the policy excluded uninsured-motorist coverage whenever the insured was injured in a vehicle not listed in the policy, whether the injured party it was insured under another policy. The exclusionary clause in the Allstate policy, on the other hand, excluded coverage only if another policy covered the vehicle. Thus, the court concluded, enforcement of the exclusionary clause in the Allstate policy would never leave an insured without coverage, whereas the clause in the *Squire* case could have left an insured without uninsured-motorist coverage in violation of § 143a.

The plaintiff also argued that the exclusionary clause violated public policy because it punished him for buying the second policy from Pekin. The plaintiff asserted that had he never purchased the second policy, the Allstate policy would have provided coverage. Therefore, he gained nothing in purchasing the Pekin policy. The court rejected this argument for two reasons. First, the court stated that the plaintiff did receive valuable consideration for the Pekin policy in the liability coverage for his motorcycle. Second, the court stated that the plaintiff's argument was unpersuasive because he was asking the court to address a scenario not present in the case. The court said that its place was not to predict the outcome of the case had the plaintiff not purchased the second policy.

Additionally, the court addressed the reasoning underlying the appellate court's holding that the clause violated public policy. The appellate court based its holding on the belief that the clause should be declared invalid to encourage consumers to purchase increased uninsured-motorist protection. The court emphasized that the purpose of the uninsured-motorist statute was not to encourage the purchase of maximum uninsured-motorist coverage, but to ensure that a motorist injured by an uninsured driver be left in as good a position as he would have been in if the uninsured motorist had insurance. Further, the court stated that invalidating the exclusionary clause would not accomplish the result the appellate court sought, but would, on the other hand, encourage consumers to purchase adequate uninsured-motorist protection for one automobile and minimal or no coverage for all other automobiles.

## Repugnant to system of justice

Finally, the court stated that the relief the plaintiff sought was contrary to public policy considerations previously recognized by the Supreme Court of Illinois. The plaintiff insured his motorcycle for only \$25,000 per person. Thus, if the motorcycle was involved in an accident in which the plaintiff was at fault, the injured party would only be able to recover \$25,000. In this case, the plaintiff attempted to recover more benefits for himself than he elected to make

available to third parties whom he injured. The Supreme Court of Illinois previously stated that this outcome would be repugnant to the system of justice.

For these reasons, the Supreme Court of Illinois held that the clause unambiguously prohibited the plaintiff from seeking uninsured-motorist coverage from Allstate and that enforcement of this clause did not violate public policy. Accordingly, the judgment of the appellate court was reversed, and the judgment of the circuit court was affirmed.

## *A muppet will not be confused with lunchmeat*

by Tisha Pates Underwood

Muppet fans can take comfort in knowing that the latest addition to the muppet family—a wild boar named Spa'am—is not overly confusing with the lunchmeat SPAM. This issue was recently the center of a legal controversy when Jim Henson Productions ("Henson") intended to include the Spa'am muppet in its latest movie "Treasure Island" and portray Spa'am on merchandise. Before releasing the movie and merchandise, Hormel Foods Corp. ("Hormel"), the maker of SPAM, filed suit in the U.S. District Court of the Southern District of New York. Hormel alleged that the proposed use of Spa'am constituted 1) trademark infringement and false advertising in violation of the federal Lanham Act and 2) unfair competition, deceptive practices, and trademark dilution in violation of New York's common law. In *Hormel Foods Corp. v. Jim Henson Prods. Inc.*, 36 U.S.P.Q.2d 1812 (1995), the court found that "Spa'am", the muppet, would not be

confused by consumers with "SPAM", the lunchmeat, and held that "Spa'am" does not dilute the "SPAM" trademark. Accordingly, Henson did not violate either the federal Lanham Act or New York's trademark laws.

### **Trademark infringement and false advertising claims under the Lanham Act rejected**

Hormel alleged that Henson's Spa'am constituted trademark infringement under the Lanham Act, 15 U.S.C. § 1114(1) (1988). This section prohibits the use of a copy or colorable imitation of another's trademark. In order to determine whether Spa'am constituted this type of imitation, the court needed to determine whether consumers would mistakenly believe that Hormel approved the use of the SPAM trademark in the creation and marketing of Spa'am. To do this, the court turned to the eight factors

established in *Polaroid Corp. v. Polarad Elec. Corp.*, 287 F.2d 492 (2d Cir. 1961). These factors include: strength of plaintiff's mark, similarity of uses, proximity of the products, likelihood that the prior owner will bridge the gap (likelihood that one of the manufacturers will expand into the domain of the other), actual confusion, defendant's good or bad faith in using plaintiff's mark, quality of the junior user's product, and sophistication of consumers. Furthermore, since the Spa'am case involved a parody of the SPAM lunchmeat, the court held there were additional First Amendment considerations and the eight *Polaroid* factors should be applied with proper weight given to those considerations.

The court held that all of the *Polaroid* factors were either inapplicable or favored Henson. Hormel failed to show likelihood of consumer confusion and, thus, the existence of trademark infringement. The court noted, "[N]o one likes to