

Summer 1997

Resolving a Peculiar Paradox: Uninsured Motorist Coverage Applied to an Underinsured Tortfeasor

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Recommended Citation

Thomas D. Bixby, *Resolving a Peculiar Paradox: Uninsured Motorist Coverage Applied to an Underinsured Tortfeasor*, 62 MO. L. REV. (1997)

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Bixby: Bixby: Resolving a Peculiar Paradox:
**Resolving a Peculiar Paradox:
Uninsured Motorist Coverage Applied to
an Underinsured Tortfeasor**

*Ragsdale v. Armstrong*¹

I. INTRODUCTION

The language of uninsured motorist insurance contracts may create a gap in coverage between the limits of the tortfeasor's liability coverage and the limits of the uninsured motorist coverage contract² when the tortfeasor is from a state with a Motor Vehicle Financial Responsibility Law (MVFRL) which has a lower minimum limit of financial responsibility than that of Missouri.³ The gap is created by policy language requiring that the tortfeasor have *no insurance* in order for the uninsured motorist coverage to come into play.⁴ That gap may be exacerbated due to the insured's right to "stack" uninsured motorist policies when he or she has multiple vehicles insured.⁵ The result is a peculiar paradox: the victim is better off if the tortfeasor had no insurance at all than if the tortfeasor had coverage less than the coverage required by law.⁶

In *Ragsdale v. Armstrong*, the Missouri Supreme Court attempted to resolve this problem,⁷ but no proposed rule of law garnered a majority of the court's support.⁸ This Note reviews the various approaches to resolving the issue, and proposes that a critical factor—the reasonable expectation of the consumer when purchasing a policy of uninsured motorist coverage—has not been taken into account.

1. 916 S.W.2d 783 (Mo. 1996).

2. 1 ALAN I. WIDISS, UNINSURED AND UNDERINSURED MOTORIST INSURANCE § 8.25 (2d ed. 1990).

3. The MVFRL in Missouri requires \$25,000 per person and \$50,000 per incident coverage. MO. REV. STAT. §§ 303.025.2, 303.160.1, and 303.190.2(2) (1994).

4. 1 WIDISS, *supra* note 2, § 8.25.

5. Cameron Mut. Ins. Co. v. Madden, 533 S.W.2d 538, 544-45 (Mo. 1976). Missouri Courts have required, as a matter of contract law, that uninsured motorist policies be "stacked" so that the policyholder receives the benefit of multiple policies if he or she has paid for multiple policies. *Id.* at 544-45. For example, if a person with two vehicles, each covered by an uninsured motorist policy of \$100,000, is injured by an uninsured motorist, the person is entitled to coverage under each policy, for a total coverage of up to \$200,000.

6. 1 WIDISS, *supra* note 2, § 8.25.

7. 916 S.W.2d at 786 (Robertson, J., dissenting).

8. *Id.* at 784.

II. FACTS AND HOLDING

In November of 1990, Shelley Armstrong, a resident of the State of Louisiana, caused an auto accident in which Missouri residents John and Donna Ragsdale were injured.⁹ Armstrong had liability insurance coverage in the amount of \$10,000 per person and \$20,000 per accident;¹⁰ the Ragsdales had purchased from Shelter Mutual Insurance Company (Shelter) uninsured motorist coverage in the amount of \$100,000 on one vehicle and \$50,000 on another.¹¹ The Ragsdales sued Armstrong and Shelter.¹² Armstrong settled with Donna Ragsdale for \$7,500 and with John Ragsdale for the policy limit of \$10,000;¹³ however, John Ragsdale's damages were in excess of \$150,000.¹⁴ The remaining issue for the court to resolve was whether, and to what extent, Shelter was to be liable for John Ragsdale's injuries under the two uninsured motorist policies the Ragsdales had purchased.¹⁵

The Boone County Circuit Court determined that, because she had coverage less than that required by the Missouri MVFRL, Armstrong was an uninsured motorist.¹⁶ As a result of this finding, the court ruled that Shelter was liable on each uninsured motorist policy to the extent of the policy limits, with an offset in the amount of Armstrong's liability insurance settlement: an award of \$140,000.¹⁷ The Missouri Court of Appeals affirmed.¹⁸ The Supreme Court granted transfer on Shelter's appeal.¹⁹

9. *Id.* (Benton, J., concurring).

10. *Id.* Armstrong's policy was in compliance with Louisiana statutes, which require that an "owner's policy of liability insurance . . . [s]hall insure the person named therein . . . as follows: (a) Ten thousand dollars because of bodily injury to or death of one person in any one accident, and, (b) Subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident." LA. REV. STAT. §32:900.B(2). Although the Louisiana statutes allow auto policies to contain a provision increasing liability coverage to "meet the requirements of the motor vehicle financial responsibility laws of" other states in which the insured travels, LA. REV. STAT. § 22:629 A(1), Armstrong's policy did not contain such a provision. Telephone interview with Sidney Wheelan, paralegal in office of Ragsdale's attorney, Rex Gump, Esq., March 12, 1997.

11. *Ragsdale*, 916 S.W.2d at 784 (Benton, J., concurring).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Ragsdale*, 916 S.W.2d at 784 (Benton, J., concurring).

18. *Id.*

19. *Id.*

Shelter asserted that the trial court erred in two ways.²⁰ First, Shelter maintained that because Armstrong was not uninsured—merely underinsured—the Ragsdales were entitled to recover on their uninsured motorist coverage only to the extent required by public policy.²¹ Shelter argued that the amount required by public policy was the minimum amount of liability coverage mandated by state law (\$25,000),²² less the offset provided by the settlement with Armstrong, for a total award of \$15,000.²³ Second, Shelter argued that the number of uninsured motorist policies it had sold to the Ragsdales was irrelevant.²⁴ “Stacking” of the policies should not have been allowed because the award was not based on the uninsured motorist insurance contracts purchased by the Ragsdales,²⁵ but on public policy considerations requiring only a total of \$25,000 in coverage.²⁶

The Missouri Supreme Court did not reach agreement on the issues in the case.²⁷ In a *per curiam* decision, the Court simply ordered that the trial court decision be reversed, and judgment in favor of the Ragsdales in the amount of \$40,000 be entered.²⁸ Four judges supported reversing the trial court,²⁹ and a

20. *Id.* at 785.

21. *Id.*

22. MO. REV. STAT. § 303.025.1 (1994) provides that “[n]o owner of a motor vehicle registered in this state shall operate the vehicle . . . unless the owner maintains the financial responsibility as required by this section.” MO. REV. STAT. § 303.025.2 (1994) states that “[a] motor vehicle owner shall maintain his financial responsibility . . . with a motor vehicle liability policy which conforms to the requirements of the laws of this state.” MO. REV. STAT. § 303.190.2(2) (1994) declares that a “motor vehicle liability policy” will “insure the person named therein . . . against loss from liability imposed by law for damages . . . subject to limits . . . as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident . . .”

23. *Ragsdale*, 916 S.W.2d at 785.

24. *Id.*

25. Uninsured motorist insurance is required coverage as per MO. REV. STAT. § 379.203.1 (1994), which states that “[n]o automobile liability insurance . . . shall be delivered . . . in this state unless coverage is provided therein . . . in not less than the limits for bodily injury or death set forth in section 303.030, RSMo, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.” MO. REV. STAT. § 303.030.5 (1994) sets the same minimum standards for uninsured motorist coverage as are provided for liability coverage: “[E]very such policy . . . is subject, if the accident has resulted in bodily injury or death, to a limit . . . of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident . . .”

26. *Ragsdale*, 916 S.W.2d at 785.

27. *Id.* at 783-84.

28. *Id.*

29. *Id.* at 783-85. Judges Price, Limbaugh, Covington, and Robertson supported reversing the trial court. *Id.*

different combination of four judges supported the recovery by the Ragsdales of "at least \$40,000."³⁰

III. LEGAL BACKGROUND

The disjointed decision in *Ragsdale* arose as a result of tension between the public policy established by mandatory uninsured motorist coverage³¹ on the one hand, and traditional contract law on the other.³² The explosion in the number of vehicles on the road after World War II and the resulting explosion of accidents³³ led to increasing concern over problems created by financially irresponsible motorists.³⁴ As a result, Motor Vehicle Financial Responsibility Laws (MVFRLs) were passed in all fifty states and the District of Columbia.³⁵ The purpose of these laws is "to provide a prescribed level of minimum protection for those who may be injured . . . as a consequence of the negligent operation of an insured vehicle."³⁶ The requirement that drivers purchase uninsured motorist insurance is a natural outgrowth of the failure of MVFRLs to eliminate the problem of "financially irresponsible" drivers³⁷—those who drive without adequate insurance or financial resources to compensate victims of their negligence.³⁸ Forty-nine states have enacted laws which require either that uninsured motorist coverage be *offered* in conjunction with auto liability policies, or that uninsured motorist coverage be *provided* with such policies;³⁹ Missouri statutes require that such coverage be provided.⁴⁰

Although the requirements vary among those states mandating uninsured motorist coverage, any auto liability policy sold in a state with such a mandate typically must include coverage "for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of

30. *Id.* Judges Price, Benton, Holstein, and White supported an award of "at least \$40,000." *Id.*

31. MO. REV. STAT. § 379.203 (1994).

32. *Ragsdale*, 916 S.W.2d at 786.

33. 1 WIDISS, *supra* note 2, § 1.1.

34. 1 WIDISS, *supra* note 2, § 1.1.

35. "Compulsory Automobile Insurance" Chart prepared by National Association of Insurance Commissioners, 1992, updated 1993 (on file with Author). Thirty-eight states and the District of Columbia have MVFRLs which require liability coverage and twelve states have MVFRLs which are optional. *Id.*

36. 2 WIDISS, *supra* note 2, § 31.1.

37. 1 WIDISS, *supra* note 2, § 1.1.

38. 1 WIDISS, *supra* note 2, § 1.1.

39. 1 WIDISS, *supra* note 2, § 2.5.

40. MO. REV. STAT. § 379.203.1 (1994).

uninsured motor vehicles."⁴¹ This coverage normally is required in the amount of the statutory minimum for liability insurance mandated by the state's MVFRL.⁴²

Missouri statutes are typical of the statutes of those states requiring that uninsured motorist coverage be provided.⁴³ Specifically, the Missouri MVFRL requires that "[a] motor vehicle owner shall maintain his financial responsibility,"⁴⁴ and that "no person shall operate a motor vehicle owned by another with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers his operation of the other's vehicle."⁴⁵ The "vast majority" of people satisfy their financial responsibility by purchasing an automobile liability insurance policy⁴⁶ "which conforms with the laws of the state."⁴⁷ A liability policy "relates to the use and operation of a particularly described motor vehicle."⁴⁸

A "motor vehicle liability policy" is defined in Section 303.190, for purposes of the Missouri MVFRL.⁴⁹ That section states that "as . . . used in this chapter,"⁵⁰ a motor vehicle liability policy will insure the person named in the policy and any other person "using any such motor vehicle . . . with the express or implied permission of such named insured, against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and . . . fifty thousand dollars because of bodily injury to or death of two or more persons."⁵¹

Missouri statutes further require that "[n]o automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state . . . unless coverage

41. 1 WIDISS, *supra* note 2, § 2.2.

42. 1 WIDISS, *supra* note 2, § 2.12.

43. 1 WIDISS, *supra* note 2, § 2.2.

44. MO. REV. STAT. § 303.025.2 (1994).

45. MO. REV. STAT. § 303.025.1 (1994).

46. 1 WIDISS, *supra* note 2, §1.1; *First Nat'l Ins. Co. v. Clark*, 899 S.W.2d 520, 522 (Mo. 1995).

47. MO. REV. STAT. § 303.025.2 (1994). Although an owner/operator of a motor vehicle may provide a bond, MO. REV. STAT. § 303.160.1(2) (1994), a certificate of deposit, MO. REV. STAT. § 303.160.1(3) (1994), or a certificate of self insurance, MO. REV. STAT. § 303.160.1(4) (1994), as alternatives to purchasing automobile liability insurance (as set out in MO. REV. STAT. § 303.160 (1994)), for purposes of this Note, only the insurance option will be discussed.

48. *First National*, 899 S.W.2d at 522.

49. MO. REV. STAT. § 303.190.1 (1994).

50. MO. REV. STAT. § 303.190.1 (1994).

51. MO. REV. STAT. § 303.190.2(2) (1994).

is provided therein" for uninsured motorist protection.⁵² The amount of the coverage is established by reference to Missouri's MVFRL,⁵³ which provides for minimum coverage of \$25,000 per person, and \$50,000 per accident.⁵⁴ Uninsured motorist policies, in contrast to liability policies, are related to insured individuals rather than specific vehicles.⁵⁵

Uninsured motorist statutes are designed "to give persons who are injured by financially irresponsible motorists the same protection they would have had if they had been involved in an accident caused by a financially responsible motorist."⁵⁶ In order to ensure broad coverage, the Missouri statutes specify that coverage for "hit and run" accidents be provided as part of the uninsured motorist coverage,⁵⁷ that such coverage apply even if no "physical contact was made between the uninsured motor vehicle and the insured or the insured's motor vehicle,"⁵⁸ and that a vehicle shall be deemed to be "uninsured" even if a policy covers the vehicle when the insurer issuing that policy is insolvent.⁵⁹

Missouri courts have held,⁶⁰ and consistently maintained,⁶¹ that an owner of uninsured motorist insurance covering multiple vehicles is entitled to uninsured motorist coverage for each vehicle for which coverage is purchased.⁶² Such multiple coverage is typically referred to as "stacking."⁶³ Specifically, the court in *Cameron Mutual Insurance Co. v. Madden* held "that the public policy expressed in § 379.203 prohibits the insurer from limiting an insured to only one

52. MO. REV. STAT. § 379.203(1) (1994).

53. MO. REV. STAT. § 379.203(1) (1994).

54. MO. REV. STAT. § 303.030.5 (1994).

55. *First Nat'l Ins. Co. v. Clark*, 899 S.W.2d 520, 522 (Mo. 1995).

56. *Cook v. Pedigo*, 714 S.W.2d 949, 953 (Mo. Ct. App. 1986).

57. MO. REV. STAT. § 379.203.1 (1994) provides that coverage "exists although the identity of the owner or operator or the motor vehicle cannot be established because such owner or operator and the motor vehicle departed the scene . . ."

58. MO. REV. STAT. § 379.203.1 (1994).

59. MO. REV. STAT. § 379.203.2 (1994).

60. *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 544-45 (Mo. 1976).

61. *See, e.g., Krombach v. Mayflower Ins. Co.*, 785 S.W.2d 728 (Mo. Ct. App. 1990); *Bergtholdt v. Farmers Ins. Co.*, 691 S.W.2d 357 (Mo. Ct. App. 1985); *Maxon v. Farmers Ins. Co.*, 791 S.W.2d 437 (Mo. Ct. App. 1990); *Tegtmeier v. Snellen*, 791 S.W.2d 737 (Mo. Ct. App. 1990).

62. *Cameron*, 533 S.W.2d at 544-5.

63. 12A GEORGE J. COUCH, COUCH CYCLOPEDIA OF INSURANCE LAW § 45.628 (2d ed. 1981). The term "stacking" may also encompass combining multiple policies of other types of coverage (*i.e.* liability policies) or different types of coverage (*i.e.* liability with uninsured or medical pay coverage). Not all types of stacking are allowed by Missouri courts. In the context of this Note, stacking will refer only to that involving uninsured motorist coverage.

of the uninsured motorist coverages provided by” the insurer.⁶⁴ “An insured under uninsured motorist coverage is entitled by the statute to the . . . protection that he purchases and for which he pays premiums. It is useless and meaningless and uneconomic to pay for . . . insurance and simultaneously have this coverage canceled by an insurer’s exclusion.”⁶⁵ As such, the victim of a negligent, uninsured driver in Missouri is entitled to stack coverage for multiple uninsured motorist policies if necessary to compensate him or her for losses.⁶⁶ This allows such victims to recover more than the statutory minimum of the MVFRL by operation of law.⁶⁷

Thus, the Missouri legislature generally requires that any motor vehicle operated in the state carry with it liability coverage for negligent actions of its driver.⁶⁸ When a driver violates the MVFRL by driving a vehicle without insurance (or a statutorily acceptable alternative), protection normally is provided to an injured individual by the uninsured motorist coverage requirements set out in section 379.203.⁶⁹ This coverage must be provided with any automobile liability insurance issued or delivered in the state.⁷⁰

Despite these provisions, gaps in the statutory scheme remain.⁷¹ Initially, uninsured motorist coverage could be obtained almost solely in the amount of the minimum requirements of the various states’ MVFRLs.⁷² This resulted in a peculiar paradox: consumers could purchase liability policies (which protected others) with limits of hundreds of thousands of dollars, but were unable to protect themselves (and their families) from uninsured motorists in an amount greater than the minimum state requirements.⁷³ In the late 1960s and the 1970s many states required insurers to offer uninsured motorist coverage policies with higher limits.⁷⁴ Eventually, most companies voluntarily offered such coverage in all states, effectively eliminating this problem.⁷⁵

64. *Cameron*, 533 S.W.2d at 543-44.

65. *Id.* at 543 (quoting *Tucker v. Government Employees Ins. Co.*, 288 So. 2d 238 (Fla. 1973)).

66. *Cameron*, 533 S.W.2d at 544-45.

67. *Id.*

68. MO. REV. STAT. § 303.025.2 (1994). Exceptions include those instances in which the driver was not aware of the lack of insurance on a vehicle he or she was borrowing with permission, MO. REV. STAT. § 303.025.1 (1994), and in which a driver used another’s vehicle without permission, MO. REV. STAT. § 303.190.1(2) (1994).

69. MO. REV. STAT. § 379.203.1 (1994).

70. *Id.*

71. *See, e.g.*, MO. REV. STAT. § 379.203.1 (1994).

72. 2 WIDISS, *supra* note 2, § 31.4, n.11.

73. 2 *Id.* § 31.4.

74. 1 WIDISS, *supra* note 2, § 8.25.

75. 1 *Id.*

Higher limit uninsured motorist coverage creates another problem—a peculiar paradox which still exists today: when a driver insured with some liability insurance causes an accident with an individual who has uninsured motorist coverage with a limit higher than the driver's liability coverage, and damages exceed the liability coverage, the uninsured motorist coverage for which the victim has paid is *not* effective because the tortfeasor is not uninsured.⁷⁶ As a result, the harmed party would actually be better off if the tortfeasor had *no* insurance than if he or she had some liability coverage.⁷⁷ This situation caused many states to require that *underinsured* motorist coverage be available,⁷⁸ and many insurers then began to provide such coverage in states where it was not mandatory.⁷⁹ Underinsured motorist coverage, either in conjunction with or to supplement uninsured motorist coverage,⁸⁰ is designed to provide coverage “for accidents involving insured motorists with liability coverages that were not sufficient to provide complete compensation for claimants who were entitled to recover.”⁸¹

Although many states mandate that underinsured motorist coverage be offered or provided,⁸² Missouri is not among them.⁸³ However, Missouri insurers typically make such coverage available: each of the ten companies with the largest market shares⁸⁴—together representing over two-thirds of the market⁸⁵—sells underinsured motorist coverage.⁸⁶ In the case of each company, underinsured motorist coverage must be purchased as a rider to liability/uninsured motorist coverage.⁸⁷

76. 1 *Id.*

77. 2 WIDISS, *supra* note 2, § 31.3.

78. 2 *Id.* § 31.5.

79. 2 *Id.* § 31.6.

80. 2 *Id.* § 31.5.

81. 2 *Id.* § 31.4.

82. 2 *Id.* § 32.4. “Several states in New England—including Connecticut, Maine, Massachusetts, and Vermont—have adopted legislation that makes *underinsured* motorist coverage mandatory.” *Id.* (emphasis added). “In most of the states, the *underinsured* motorist insurance legislation requires that the coverage be ‘made available’ or ‘offered’ to insurance purchasers.” *Id.* (emphasis added). One should distinguish between the mandatory offering of coverage and the coverage being available upon request. In the latter case, there is no requirement that the consumer be made aware of such coverage. *Id.*

83. No Missouri statute or regulation imposes such a requirement.

84. Missouri Department of Insurance, *1995 Missouri Market Share Report*, May 1996, at 64.

85. *Id.*

86. Memorandum from Silver Graham, Property & Casualty Specialist II, Missouri Department of Insurance, to the Author (Jan. 1997) (on file with Author).

87. *Id.*

The definitions of specific uninsured motorist policy terms have been left largely to the discretion of the insurance industry.⁸⁸ As a result, the terms of policies often have been narrowed to the extent that they conflict with the public policy behind uninsured motorist coverage.⁸⁹ One example of such narrow policy terms is the definition of “uninsured motorist” or “uninsured motor vehicle” in policies.⁹⁰ This definitional problem is the issue presented in *Ragsdale*: Does a tortfeasor who has liability insurance in an amount less than that required by a state’s MVFRL qualify as an uninsured motorist for purposes of uninsured motorist coverage?⁹¹

Prior to *Ragsdale*, Missouri courts had split on the issue. In *Brake v. MFA Mutual Insurance Co.*, the Missouri Court of Appeals, St. Louis District, determined that it “could not in good conscience hold that ‘uninsured’ includes ‘underinsured.’”⁹² The tortfeasor in *Brake* had liability insurance which complied with the Missouri MVFRL.⁹³ The accident caused by the tortfeasor injured twenty-one persons,⁹⁴ however, and the limits on the policy were paid without compensating Brake in the minimum amount required by the MVFRL for an individual, despite the fact that her loss exceeded that minimum.⁹⁵ The *Brake* court found that the public policy enunciated by the General Assembly in MO. REV. STAT. § 379.203 (1994) was that “every insured . . . is entitled under the uninsured motorist coverage to payment of the damages which she could have recovered had the tortfeasor maintained a policy of liability insurance in a sum sufficient to respond in damages to the extent of the . . . statutory minimum.”⁹⁶ The court held that “[t]he term ‘uninsured motor vehicle’ as used in § 379.203, par. 1 . . . [is] not ambiguous . . . ‘Un’ means not. An uninsured vehicle is one which is not insured.”⁹⁷ The court stated that “[n]o exception was made by the General Assembly for the protection of an injured party where multiple claims reduce his participation in the proceeds of the tort-feasor’s policy.”⁹⁸ The court went on to point out that a situation in which “a tortfeasor’s policy is issued in an amount less than the limits prescribed by [the state MVFRL]” is another example of a situation in which the “general public policy of the Uninsured Motorist Law may be frustrated but for which the General

88. 1 WIDISS, *supra* note 2, § 2.3.

89. 1 *Id.*

90. 1 *Id.* § 2.11

91. *Ragsdale v. Armstrong*, 916 S.W.2d 783, 784 (Mo. 1996).

92. *Brake v. MFA Mut. Ins. Co.*, 525 S.W.2d 109, 114 (Mo. Ct. App. 1975).

93. *Id.* at 110.

94. *Id.*

95. *Id.*

96. *Id.* at 111.

97. *Id.* at 112.

98. *Brake*, 525 S.W.2d at 113.

Assembly has made no provision."⁹⁹ This was the case despite the "anomalous result" that the injured party would be better off if the tortfeasor had no insurance than if he or she had some coverage.¹⁰⁰

Eleven years later, the Missouri Court of Appeals, Eastern District, reversed direction in *Cook v. Pedigo*.¹⁰¹ In *Cook*, the tortfeasor carried liability insurance in an amount less than that required by the Missouri MVFRL.¹⁰² The court determined that "[t]he *Brake* court's assertion that an underinsured motorist cannot qualify as an uninsured motorist under § 379.203.1 went far beyond the particular factual situation before the court That assertion thus clearly constitutes obiter dictum."¹⁰³ The court asserted that "[n]o other reported Missouri decision has considered whether an underinsured automobile—that is one that is covered by liability insurance, but in an amount less than the statutory minimum—may be an uninsured motor vehicle."¹⁰⁴

The court then analyzed MO. REV. STAT. § 379.203 and the public policy it represents:

This provision demonstrates the legislature's intention to allow any insured motorist who is injured by a negligent and financially irresponsible motorist to recover at least the statutory minimum amount. This legislative intent would be thwarted by a rule that precluded a claimant from recovering under his uninsured motorist protection because the tortfeasor carried less than the statutory minimum amount of insurance. We conclude, therefore, that an underinsured motorist should be considered an uninsured motorist . . . for purposes of Missouri's uninsured motorist protection statute, § 379.203.1.¹⁰⁵

The court labeled the assertion made in *Brake*—that "uninsured" meant only those situations in which no insurance existed—as being a "narrow and cramped construction of the statutory language."¹⁰⁶ The court went on to hold that, due to the public policy set out in the statute, a victim may recover under his uninsured motorist coverage if the tortfeasor is underinsured, although the recovery is to be "limited to the difference between the tortfeasor's liability insurance and the minimum liability requirements under the [MVFRL]."¹⁰⁷

Courts in other states which have addressed the issue have uniformly determined that where the legislature has passed an uninsured motorist coverage

99. *Id.*

100. *Id.*

101. *Cook v. Pedigo*, 714 S.W.2d 949 (Mo. Ct. App. 1986).

102. *Id.* at 950.

103. *Id.* at 951.

104. *Id.*

105. *Id.* at 952.

106. *Cook*, 714 S.W.2d at 952.

107. *Id.*

statute, the motorist with coverage less than that required by the state's MVFRL should be viewed as uninsured despite contract language to the contrary.¹⁰⁸ One approach used to overcome such contrary language in uninsured motorist insurance contracts is to rely on "the public policy underlying the uninsured motorist statutes[:] that an insured person should be assured at least the minimum amount of compensation which is provided for by the state's [MVFRL]."¹⁰⁹ For example, the New York Supreme Court, Appellate Division, held:

[T]he legislative purpose behind the [New York uninsured motorist insurance requirement] is to protect persons who are injured by financially irresponsible motorists from the financial burden this lack of coverage might impose. The statute is to be liberally construed in order to effectuate the purpose of affording a person injured in an accident involving an uninsured driver the same protection that he would have if he had been involved in an accident caused by an automobile covered by a standard New York State automobile liability insurance policy.¹¹⁰

However, because the court superseded contract language due to the public policy of the uninsured motorist statute, it was willing to do so only "[t]o the extent that the respondent's recovery from the [tortfeasor is] . . . less than . . . [the MVFRL] minimum limits."¹¹¹

Similarly, the Rhode Island Supreme Court determined that the Rhode Island General Assembly "has require[d] insurance carriers authorized to do business in the state to provide protection against the negligent operation of uninsured automobiles in favor of those motorists who . . . contract with licensed

108. Lee R. Russ, Annotation, *Uninsured and Underinsured Motorist Coverage: Recoverability, Under Uninsured or Underinsured Motorist Coverage, of Deficiencies in Compensation Afforded Injured Party by Tortfeasor's Liability Coverage*, 24 A.L.R. 4th 13, 19 n.10 (1983) ("Although no case has been found denying recovery under an uninsured motorist policy when the tortfeasor carried some liability insurance, but with limits less than the statutory minimum, the reader's attention is directed to *Brake v. MFA Mut. Ins. Co.*"). For a discussion of *Brake*, see *supra* text accompanying notes 92-100.

A Michigan court did hold that a tortfeasor whose coverage was less than the Michigan MVFRL was *not* uninsured for purposes of uninsured motorist insurance coverage. *St. Bernard v. Detroit Auto. Inter-Ins. Exch.*, 350 N.W.2d 847, 851 (Mich. Ct. App. 1984). However, its decision was based upon the legislature's repeal of the mandatory uninsured motorist coverage statute as part of the implementation of a no-fault auto insurance scheme. 1 WIDISS, *supra* note 2, § 8.21. Michigan is the only state *not* to require uninsured motorist coverage or an offer of coverage. 1 WIDISS, *supra* note 2, § 1.1.

109. 1 WIDISS, *supra* note 2, § 8.21.

110. *Neals v. Allstate Ins. Co.*, 311 N.Y.S.2d 315, 316-17 (App. Div. 1970).

111. *Id.* at 317.

carriers for liability coverage in the interests of the public generally.”¹¹² The court then interpreted the intent of the legislature to be that the definition of an uninsured automobile must as a matter of public policy be construed to include a vehicle with liability insurance in an amount less than that required by the MVFRL, and that uninsured motorist coverage should “be construed to include any differential between liability insurance carried by the tortfeasor and the minimum limits mandated by the legislature.”¹¹³

A second approach used to overcome language in uninsured motorist insurance contracts has been to use a legislative definition of uninsured vehicle to invoke coverage under the uninsured motorist policy.¹¹⁴ Although California courts have not addressed the identical issue raised in *Ragsdale*,¹¹⁵ it appears that this approach does not limit recovery to the minimum established by the MVFRL.¹¹⁶ The California District Court of Appeals, First District, determined that “the declared legislative and judicial policy of this state is to give monetary protection to those who, lawfully using the highways, suffer injury through negligent use of the highways by others.”¹¹⁷ The court reviewed two provisions of the California uninsured motorist laws which were “in obvious conflict.”¹¹⁸ The first provision required uninsured motorist coverage in the amounts specified by the MVFRL;¹¹⁹ the second provision defined uninsured motor vehicle as a vehicle which had *no* liability insurance coverage.¹²⁰ The court then resolved the conflict “by construing the second provision to define as uninsured a vehicle carrying insurance . . . in limits less than the financial responsibility requirements of the Vehicle Code.”¹²¹ Therefore, any vehicle carrying less than the minimum required by the MVFRL is to be construed as uninsured, and “[t]he statutory scheme contemplates that once the uninsured motorist coverage comes into play, the injured insured has resort to the full coverage for which he has paid.”¹²²

Like the California courts, the New Hampshire Supreme Court held that “once an insured becomes liable on its uninsured motorist coverage, the insured

112. *Allstate Ins. Co. v. Fusco*, 223 A.2d 447, 450 (R.I. 1966).

113. *Id.* at 450-51.

114. *Taylor v. Preferred Risk Mut. Ins. Co.*, 37 Cal. Rptr. 63, 64 (Dist. Ct. App. 1964).

115. Neither *Taylor*, nor any other California case, involved an insured whose uninsured motorist coverage exceeded the MVFRL minimum.

116. *Taylor*, 37 Cal. Rptr. at 64.

117. *Id.*

118. *Id.*

119. *Id.* at 63-64.

120. *Id.* at 64.

121. *Id.*

122. *Kirkley v. State Farm Mut. Ins. Co.*, 95 Cal. Rptr. 427, 429 (Ct. App. 1971).

will receive the difference between the amount of his damages or the [uninsured motorist policy limits] . . . whichever is the lesser, and the tort-feasor’s liability coverage.”¹²³ The New Hampshire Court relied on an explicit statutory definition (rather than the California Court’s constructive definition) of “uninsured motorist” in which the statute states that a motorist is to be considered uninsured if he or she carries liability insurance with limits lower than the New Hampshire MVFRL.¹²⁴ Reasoning that “[w]hen an insured purchases additional coverage, he reasonably expects to be protected against uninsured motorists up to the amount for which he paid,”¹²⁵ the court concluded that “once a victim is injured by a motorist who falls within the definition of an uninsured motorist, the proper figure to which one should look to determine maximum recovery is the amount of coverage purchased.”¹²⁶

IV. INSTANT DECISION

In *Ragsdale*, the Missouri Supreme Court split into four factions, ranging from a strict contract interpretation of no recovery¹²⁷ to recovery to the full extent of policy limits, including stacking the Ragsdales’ two uninsured motorist policies.¹²⁸ The *per curiam* decision relied on different combinations of these opinions to reach the two prongs of its result: overturning the trial court decision, and awarding \$40,000 in damages.¹²⁹ As shown in the chart below, each result was reached in a 4-3 decision.¹³⁰

Judge	Overturn Trial Judge	Award of (at least)\$40,000
Price	Yes	Yes
Benton (joined by Holstein and White)	No	Yes
Limbaugh (joined by Covington)	Yes	No
Robertson	Yes	No

123. *Vigneault v. Travelers Ins. Co.*, 382 A.2d 910, 913 (N.H. 1978).

124. *Id.* at 913-14.

125. *Id.* at 914.

126. *Id.*

127. *Ragsdale v. Armstrong*, 916 S.W.2d 783, 785-86 (Mo. 1996) (Limbaugh, J., dissenting).

128. *Id.* at 785 (Benton, J, concurring). An offset for Armstrong’s liability insurance carrier’s contribution was to be allowed in the amount of \$10,000.

129. *Id.* at 783-84.

130. *Id.*

Each of the four opinions recognized, either explicitly or implicitly, that under a strict construction of the terms of the contract, no coverage would be afforded John Ragsdale under the uninsured motorist policies.¹³¹ The various opinions differed, however, on whether and why uninsured motorist coverage should be allowed the Ragsdales, and what the extent of the coverage should be.¹³²

A. The Robertson Opinion

Judge Robertson argued that the uninsured motorist contract language should be superseded in order to “indulge the fiction, demanded by the public policy set out in the statutes, that Armstrong [the tortfeasor] was uninsured [but] only to the extent that her liability coverage did not meet Missouri statutory minimums.”¹³³ This position would result in Ragsdale receiving a recovery of \$25,000¹³⁴—the amount established by the state MVFRL.¹³⁵ This rationale and result are consistent with those of New York and Rhode Island cases, *supra*.

B. The Benton Opinion

Judge Benton’s opinion took the second approach discussed in Section III above: it attempted to use a statutory definition in its interpretation of the contract in order to resolve the issue.¹³⁶ Although Missouri statutes do not define “uninsured motor vehicle,”¹³⁷ Judge Benton found that the Ragsdales’ uninsured motorist policy defined an uninsured motor vehicle as one which does not have a bodily injury liability insurance policy.¹³⁸ Judge Benton then looked to the statutes to find a definition of such a policy,¹³⁹ and he found that the statutes define a “motor vehicle liability policy” as one which provides the minimum amount of coverage under the MVFRL.¹⁴⁰ Since Armstrong’s policy did not fit

131. *Id.* at 784-86.

132. *Id.*

133. *Ragsdale*, 916 S.W.2d at 786 (Robertson, J., dissenting).

134. *Id.* Ragsdale would receive \$10,000 from Armstrong’s liability insurer and the balance from his uninsured motorist coverage. *Id.*

135. MO. REV. STAT. § 303.190.2(2) (1994).

136. *Ragsdale*, 916 S.W.2d at 784-85 (Benton, J., concurring).

137. *Id.* at 786 (Limbaugh, J., dissenting).

138. *Id.* at 784 (Benton, J., concurring) (“The Ragsdales’ insurance policy defines ‘uninsured motor vehicle’ as “a motor vehicle not insured by a bodily injury liability . . . insurance policy.”) (emphasis in original).

139. *Id.* at 784-85 (Benton, J., concurring).

140. *Id.* at 785 (Benton, J., concurring). The term used in the Ragsdales’ policies was “bodily injury liability . . . insurance policy,” whereas the term used in the statute

the statutory definition of a motor vehicle liability policy, Judge Benton concluded that, by the terms of the Shelter uninsured motorist contract, Armstrong was uninsured.¹⁴¹ John Ragsdale then was entitled to recover under the terms of his contracts, including stacking his uninsured motorist policies, although Shelter should be entitled to an offset in the amount of Armstrong's liability coverage.¹⁴² This rationale and result are similar to those reached in the California and New Hampshire cases discussed above.¹⁴³

C. *The Limbaugh Opinion*

Judge Limbaugh's opinion, to use the words of Judge Robertson, "ignore[d] the public policy of the state relating to uninsured motorist coverage."¹⁴⁴ Judge Limbaugh found that the analysis should begin and end with the contract language,¹⁴⁵ and that the contract language was clear: "The words 'not insured' necessarily refer to a person not protected by liability insurance. Because the Armstrong vehicle *was* insured by a liability insurance policy at the time of the accident, the Ragsdales should not be able to invoke the uninsured motorist coverage."¹⁴⁶ This opinion does not appear to have support from any similar case in a state with an uninsured motorist law,¹⁴⁷ and goes further than even Shelter argued the court should go.¹⁴⁸

D. *The Price Opinion*

Judge Price agreed with the Robertson opinion in regard to the public policy argument allowing recovery to the extent of the statutory minimum of the MVFRL,¹⁴⁹ but he insisted that it was appropriate to do so for each uninsured

was "Motor Vehicle Liability Policy." MO. REV. STAT. § 303.190 (1994). The discrepancy between the terms is not addressed by the opinion. *Ragsdale*, 916 S.W.2d at 784-85 (Benton, J., concurring).

141. *Ragsdale*, 916 S.W.2d at 785 (Benton, J., concurring).

142. *Id.* The total recovery would then be \$150,000: \$10,000 from Armstrong's liability carrier, and \$140,000 from the Ragsdales' uninsured motorist coverage. The total recovery would be equal to the coverage limits under the Ragsdales' two uninsured motorist policies. *Id.*

143. *Taylor v. Preferred Risk Mut. Ins. Co.*, 37 Cal. Rptr. 63, 63-64 (Dist. Ct. App. 1964); *Vigneault v. Travelers Ins. Co.*, 382 A.2d 910, 914 (N.H. 1978).

144. *Ragsdale*, 916 S.W.2d at 786 (Robertson, J., dissenting).

145. *Id.* (Limbaugh, J., dissenting).

146. *Id.* at 785 (Limbaugh, J., dissenting).

147. *See Russ*, *supra* note 108, at 19 n.10.

148. *Ragsdale*, 916 S.W.2d at 785.

149. *Id.* at 784 (Price, J., concurring).

motorist policy purchased by the Ragsdales, based on the state's stacking policy.¹⁵⁰ This result would award John Ragsdale a total of \$50,000: \$10,000 to be paid by Armstrong's liability carrier, and the balance to be paid by Shelter under the Ragsdales' two uninsured motorist policies.¹⁵¹

V. COMMENT

The net result of the court's opinion in *Ragsdale* is less than satisfying. Although it would appear that a victim may collect on his or her uninsured motorist coverage when a negligent driver with a liability policy which has limits less than required by the MVFRL causes damages in excess of his or her coverage, the extent to which such recovery may be made and the rationale for such recovery are not clear.

The Limbaugh opinion is clearly out of step with the mainstream judicial response to the issue¹⁵² as well as the public policy set out in the statute.¹⁵³ This interpretation would seem to be a "narrow and cramped construction of the statutory language" indeed.¹⁵⁴ The Price opinion relies on the public policy espoused by the uninsured motorist insurance requirement¹⁵⁵ of ensuring minimum coverage of \$25,000 on the one hand, and the court approved policy favoring stacking¹⁵⁶ on the other.¹⁵⁷ However, the result advocated by Judge Price would appear to be incompatible with these two policies in that once the public policy goal of providing \$25,000 in coverage has been attained, either stacking should not come into play at all (as per the Robertson opinion¹⁵⁸), or the rationale behind stacking—that "[a]n insured . . . is entitled . . . to the . . . protection that he purchases and for which he pays premiums"¹⁵⁹—would seem to require coverage to the extent of the policy limits for each policy purchased (as per the Benton opinion).¹⁶⁰

150. *Id.* For a discussion of stacking, see *supra* text accompanying notes 60-67.

151. *Ragsdale*, 916 S.W.2d at 784 (Price, J., concurring). Although the Price result is identical to that of the *per curiam* decision, it is not the holding of the court *per se.* *Id.* at 783-84.

152. See Russ, *supra* note 108, at 19 n.10.

153. *Ragsdale*, 916 S.W.2d at 786 (Robertson, J., dissenting).

154. *Cook v. Pedigo*, 714 S.W.2d 949, 952 (Mo. Ct. App. 1986).

155. MO. REV. STAT. § 379.203.1 (1994).

156. *Cameron Mut. Ins. Co. v. Madden*, 533 S.W.2d 538, 544-45 (Mo. 1976).

157. *Ragsdale*, 916 S.W.2d at 784.

158. *Id.* at 786-87.

159. *Cameron*, 533 S.W.2d at 543 (quoting *Tucker v. Government Employees Ins. Co.*, 288 So. 2d 238, 242 (Fla. 1973)).

160. *Ragsdale*, 916 S.W.2d at 785.

Although the Benton opinion also has its weaknesses, it is closer to the mark. Its reliance on a statutory definition to interpret the contract is a reasonable approach to developing a resolution. However, as Judge Robertson suggested, Judge Benton “scour[ed] the Shelter insurance policy for words that permit the Court to find Shelter intended to invoke the statutory definition of a ‘motor vehicle insurance policy.’”¹⁶¹ Unlike New Hampshire, where the legislature explicitly defined the term “uninsured motor vehicle,”¹⁶² or even California, where the courts relied on a constructive expansion of the definition of “uninsured motor vehicle” found in statute,¹⁶³ the Benton opinion had to go a step further.¹⁶⁴ Judge Benton relied on Shelter’s definition of “uninsured motor vehicle,”¹⁶⁵ but seized upon that definition’s use of the term “*bodily injury liability . . . insurance policy*”¹⁶⁶ as being sufficiently similar to the statutory term “motor vehicle liability policy” as to use the statutory definition of the latter for the definition of the former.¹⁶⁷ Furthermore, as pointed out in both the Limbaugh and Robertson opinions, the statutory definition of “motor vehicle liability policy” “applies only to the provisions of Chapter 303, the Motor Vehicle Financial Responsibility Law . . . [and not to] the contents of uninsured motorist [contract] provisions.”¹⁶⁸

The most sound of the opinions appears to be that of Judge Robertson. He forged a compromise between the public policy of the state uninsured motorist statutes on the one hand, and the policy language of the uninsured motorist contract entered into by the Ragsdales and Shelter on the other.¹⁶⁹ However, Judge Robertson himself labelled the compromise “rough justice at best.”¹⁷⁰ This is so because an important aspect of the case was not raised. Specifically, “it is interesting to speculate what the court would have done had the claimant’s argument been predicated on alleged ambiguity in the parties’ contract arising from conflict between the definition of the uninsured vehicle and the expectations of a reasonable person purchasing uninsured motorist coverage” in excess of the minimum required by the MVFRL.¹⁷¹

161. *Id.* at 786.

162. *Vigneault*, 382 A.2d at 914.

163. *Taylor v. Preferred Risk Mut. Ins. Co.*, 37 Cal. Rptr. 63, 64 (Dist. Ct. App. 1964).

164. *Ragsdale*, 916 S.W.2d at 784-85 (Benton, J., concurring).

165. *Id.* at 784.

166. *Id.* (Emphasis in original).

167. *Id.* at 785.

168. *Id.* See MO. REV. STAT. § 303.190.1 (1994) (“A ‘motor vehicle liability policy’ as said term is used in this chapter shall mean”) (emphasis added).

169. MO. REV. STAT. § 303.190.1 (1994).

170. *Ragsdale*, 916 S.W.2d at 787.

171. 1 WIDISS, *supra* note 2, § 8.25.

As stated in Section III above, a lack of underinsured motorist coverage creates a peculiar paradox: a person with uninsured motorist coverage limits of \$50,000 per person will be better off if involved in an accident with a person with no insurance than in an accident with a person covered by the statutory minimum.¹⁷² Although a consumer certainly may choose such a peculiar result, one must wonder if a choice is actually being consciously made, or if it is being made by default through ignorance of the paradox created by the gap in coverage.¹⁷³

In the absence of an offer of underinsured motorist coverage, an argument can be made that the decision to purchase coverage with such a gap is based on a lack of understanding of how the coverage works. Furthermore, one might argue that, under the "reasonable expectations doctrine," the insurer should be held to the reasonable expectations of the consumer.¹⁷⁴ The reasonable expectations doctrine "provides [that] the objective reasonable expectations of adherents . . . to insurance contracts will be honored even though a thorough study of the policy provisions would have negated these expectations."¹⁷⁵

Although the Missouri Supreme Court limited the use of the reasonable expectations doctrine,¹⁷⁶ those limitations do not prohibit the use of the doctrine in *Ragsdale*.¹⁷⁷ In applying the doctrine, the Missouri Court of Appeals, Western District, stated that "a term of a non-negotiated insurance policy, or other

172. 1 *Id.*

173. For example, underinsured motorist coverage in the Jefferson City, Missouri area is offered, for as little as \$6 per year for limits of \$50,000 per person and \$100,000 per incident, by one of the ten insurers with the largest market share in the state. Memorandum from Silver Graham, Property & Casualty Specialist II, Missouri Department of Insurance, to the Author (Jan. 1997) (on file with Author).

174. *Estrin Constr. Co. v. Aetna Cas. & Sur. Co.*, 612 S.W.2d 413, 426 (Mo. Ct. App. 1981).

175. *Robin v. Blue Cross Hosp. Serv., Inc.*, 637 S.W.2d 695, 697 (Mo. 1982).

176. *Id.* at 697-98. The Missouri Supreme Court held in *Robin* that the reasonable expectation "argument is predicated upon the existence of an adhesion contract between [plaintiff] and the insurers." *Id.* at 697. Furthermore, the Supreme Court suggested that the use of the reasonable expectation doctrine might be limited to situations in which "the negotiations regarding [the insurance policies] were between the individual insured and the insurer"—in contrast to the insured's employer and the insurer, as was the case in *Robin*. *Id.*

177. Neither of the limitations set out by the Supreme Court would affect the *Ragsdales'* case. The contract between the *Ragsdales* and Shelter, with no third party intervening, was a classic contract of adhesion—a "[s]tandardized contract form offered to consumers . . . on an essentially 'take it or leave it' basis without affording consumer realistic opportunity to bargain," BLACK'S LAW DICTIONARY 40 (6th ed. 1990). The contract was between the *Ragsdales* and Shelter, with no third party intervening. *Ragsdale*, 916 S.W.2d at 784.

standard contract, which does not meet reasonable expectations of the great majority of adherents is unfair and so subject to the judicial power to correct."¹⁷⁸

In a second case¹⁷⁹ decided by the Missouri Court of Appeals, Western District, the court determined that an expectation of an insured may be "totally reasonable despite policy language that points toward [a contrary result]."¹⁸⁰ "The principle of reasonable expectations insures that '[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."¹⁸¹

In a third Western District case involving a consumer's reasonable expectations, the Missouri Court of Appeals held that the owner of uninsured motorist policies would reasonably expect that his minor children would be covered by the policies,¹⁸² and that they should be covered¹⁸³ despite the fact that "[t]he terms of the insurance policy are unambiguous in limiting those who are entitled to stack the uninsured motorist coverage to the policyholder and his spouse."¹⁸⁴

Professor Widiss has concluded that the policyholder in a situation like that of the Ragsdales would reasonably expect to be protected by his or her uninsured motorist coverage:

[W]hen a purchaser has specifically sought excess [higher limit uninsured motorist] coverage for which the company charged a separate premium, it seems justified to conclude that by requesting the coverage and paying an extra premium for uninsured motorist coverage above the minimum amount set by the state's financial responsibility laws, the typical purchaser has either actual or reasonable expectations that the higher limit uninsured motorist coverage will provide indemnification for injuries caused either by an uninsured motorist or by someone carrying liability insurance with lower limits.¹⁸⁵

If the Ragsdales had, in fact, understood the gap in coverage created by the contract language, it seems very unlikely that they—or the "great majority of

178. *Estrin*, 612 S.W.2d at 426.

179. *Tegtmeyer v. Snellen*, 791 S.W.2d 737 (Mo. Ct. App. 1990).

180. *Id.* at 740.

181. *Id.* (quoting ROBERT E. KEETON, BASIC TEXT ON INSURANCE LAW, at 351 (1971)).

182. *Husch By Husch v. Nationwide Mut. Fire Ins. Co.* 772 S.W.2d 692, 694-95 (Mo. Ct. App. 1989).

183. *Id.* at 694.

184. *Id.* at 693.

185. 1 WIDISS, *supra* note 2, § 8.25.

adherents¹⁸⁶ to uninsured motorist policies similarly situated—would have been willing to pay extra premiums to protect themselves (and their families) from an uninsured motorist with coverage in excess of the MVFRL minimum, yet refuse to spend a comparable,¹⁸⁷ small¹⁸⁸ amount of money to protect themselves (and their families) from underinsured motorists.¹⁸⁹ In short, the gap in coverage created by the contractual distinction between an uninsured and underinsured motorist does not appear to be a reasonable expectation of the “great majority of adherents”¹⁹⁰ to an uninsured motorist insurance contract, and, therefore, should be “subject to the judicial power to correct.”¹⁹¹

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186. *Estrin Constr. Co. v. Aetna Cas. & Sur. Co.*, 612 S.W.2d 413, 426 (Mo. Ct. App. 1981).

187. The premium for an uninsured motorist policy with limits of \$50,000 per person and \$100,000 per accident in the Jefferson City, Missouri area range from \$10 to \$21.20 among the top ten carriers. Memorandum from Silver Graham, Property & Casualty Specialist II, Missouri Department of Insurance, to the Author (Jan. 1997) (on file with Author). The premium for underinsured coverage with the same limits and location ranges from \$5 to \$17.70. *Id.*

188. The premium for underinsured coverage quoted in footnote 187 would seem to be a minimal amount in contrast to the annual premium for liability, comprehensive, or collision coverage which can easily run into hundreds of dollars per year.

189. The Author is the Director of the Division of Consumer Affairs for the Missouri Department of Insurance, and has oversight of personnel responding to nearly 6,000 consumer complaints and over 70,000 consumer inquiries relating to insurance matters annually. Based on this experience, the Author does not believe that most consumers have an understanding of how uninsured and underinsured coverage would work in a situation such as that presented in *Ragsdale*.

190. *Estrin*, 612 S.W.2d at 426.

191. *Id.*