IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DENNIS ARMON, SR.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	Case No. 1016-CV38265
UNITED FINANCIAL CASUALTY COMPANY d/b/a PROGRESSIVE INSURANCE COMPANY,	)	Division No. 2
	)	
Defendant.	)	

SUGGESTIONS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, by and through his attorneys and on behalf of all others similarly situated, submits the following suggestions in support of his Motion for Summary Judgment:

INTRODUCTION

This case is brought by Dennis Armon, Sr., on behalf himself and others similarly situated against United Financial Casualty Company d/b/a Progressive Insurance Company (hereinafter "Progressive").[1] The facts of Plaintiff's case are simple: Mr. Armon went to Progressive to purchase commercial auto insurance; Mr. Armon was required to state the value of the vehicles he wished to insure and he did so; Progressive agreed to the values declared by Mr. Armon and charged Mr. Armon a premium based on each vehicle's stated amount (each a "Stated Amount"); Mr. Armon suffered the total loss of one of the vehicles insured by Progressive for a Stated Amount; and, after the loss, Progressive denied that the vehicle was worth the Stated Amount. While the facts are straightforward, the law is simpler, still: "What

[1] Plaintiff conceded to Defendant's Motion to Dismiss Dennis Lagares as a named plaintiff and class representative.

S
16 KSH
1-FSUGS

[Progressive] cannot do is to issue a policy, collect the premiums, and then argue that the value of the insured's insurable interest in the property is less than the coverage it underwrites." *Schubert v. Auto Owners Ins. Co.*, 649 F.3d 817, 828 (8th Cir. 2011) (quoting *G.M. Battery & Boat Co. v. L.K.N. Corp.*, 747 S.W.2d 624, 628 (Mo. 1988)). Thus, by denying that the value of the Plaintiff's property was equal to the coverage it underwrote, Progressive breached its contract with Plaintiff and violated the rule of law.

Plaintiff submits that the for the following additional reasons, summary judgment should be entered against Progressive: (1) Progressive's Missouri Commercial Auto Policy insures against loss or damage by fire and is therefore a stated value policy pursuant to section 379.160, Mo.Ann.Stat., which prohibits an insurer from denying that the value of the Plaintiff's property is equal to the Stated Amount; (2) Progressive's Missouri Commercial Auto Policy is, by its own terms, a valued policy, requiring that Progressive pay, in the event of a total loss, the Stated Amount; (3) Progressive's Missouri Commercial Auto Policy is, in the alternative, ambiguous with regards to the amount that will be paid to insureds in the event of a total loss, and, being that it is an adhesion insurance contract, the ambiguity must be resolved in favor of the insureds, requiring that Progressive pay to all insureds, in the event of a total loss, the Stated Amount; and (4) in any event, Progressive's Missouri Commercial Auto Policy must be construed so as to protect the reasonable expectations of all insureds, thus requiring that Progressive pay to all insureds, in the event of a total loss, the Stated Amount.

Thus, by whichever route the Court takes, the end result is the same—in the event of a total loss, Progressive must pay the Stated Amount. Accordingly, Plaintiff, on behalf of himself and all others similarly situated, requests that his Motion for Summary Judgment be granted.

Standard for Summary Judgment.

The Rules of Civil Procedure recognize summary judgment as a procedure by which the trial court can pretermit the need for a full trial on the merits. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. 1993). The Rules encourage use of the procedure "to permit resolution of claims as early as they are properly raised in order to avoid the expense and delay of meritless claims or defenses and to permit the efficient use of scarce judicial resources." *Id.* "Summary judgment is designed to permit the trial court to enter judgment, without delay, where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law." *Id.* "The burden on a summary judgment movant is to show a right to judgment flowing from facts about which there is no genuine dispute." *Id.*

To win his case for breach of contract, Plaintiff is required to prove that (1) there was a contract between himself and Progressive, (2) Progressive breached its obligation under the contract, and (3) Progressive's breach caused him damaged. *See D.R. Sherry Const., Ltd. v. Am. Family Mut. Ins. Co.*, 316 S.W.3d 899, 904 (Mo. 2010). In this case, there is no dispute between the parties as to the existence of an adhesion contract; there is only a dispute as to the meaning of the contract. Thus, in order to show a right to judgment, the burden is on Plaintiff to show that, notwithstanding the disagreement between the parties, the policy must be construed in his favor—that is, that Progressive agreed to pay the Stated Amount to Plaintiff in event of a total loss which it did not pay, thus breaching its obligations under the policy and causing damage to Plaintiff. As set forth below, Plaintiff easily satisfies his burden.[2]

[2] Plaintiff is not required to negate the conclusory allegations that are Defendant's affirmative defenses. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 383 (Mo. 1993). "Bare legal conclusions," such as those set forth by Progressive, "fail to inform the

The Meaning of the Policy is a Question of Law that May be Decided on the Motions for Summary Judgment

In light of Defendant's separate motion for summary judgment, there seems to be no dispute between the parties that the Court may properly decide as a matter of law the meaning of Progressive's Commercial Automobile Insurance Policy Form 6912. Indeed, as with any other contract, the meaning of an insurance contract is generally a question of law. *H.K. Porter Co., Inc. v. Transit Cas. Co. in Receivership*, 215 S.W.3d 134, 140 (Mo. Ct. App. 2006); *D.R. Sherry Const., Ltd. v. Am. Family Mut. Ins. Co.*, 316 S.W.3d 899, 902-03 (Mo. 2010). The meaning of an insurance contract becomes a jury question only when the court determines that the contract is ambiguous. *Id.* Defendant contends in its Suggestions in Support of Summary Judgment that there is no ambiguity in the contract. If that is true, it is because Progressive's Commercial Automobile Insurance Policy Form 6912 is unambiguously a valued policy. And if, it is a valued policy, the contract must be construed in Plaintiff's favor. *See* Part I-A and I-B, infra.

However, even if there is an ambiguity, where the contract is an adhesion insurance policy, as in this case, the ambiguity must be resolved in favor of the insured, thus eliminating the ambiguity and the jury question altogether. *See e.g., Estrin Const. Co., Inc. v. Aetna Cas. & Sur. Co.*, 612 S.W.2d 413, 418 (Mo. Ct. App. 1981); Parts I-C and II, infra.

Finally, whether or not the contract is ambiguous, the Court must construe Progressive's Commercial Automobile Insurance Policy Form 6912 so as to protect the reasonable expectations of all those insured. *See e.g., Estrin Const. Co., Inc. v. Aetna Cas. & Sur. Co.*, 612 S.W.2d 413, 418 (Mo. Ct. App. 1981); Parts I-C and II, infra. In this case, the insureds' reasonable expectation, in light of Missouri's valued policy statutes, *Huth* and its progeny, *infra*, the covenant of good faith and fair dealing, and the form policy itself, was that Progressive

---

plaintiff of the facts relied on" and, therefore, do not require that Plaintiff negate them in his motion for summary judgment. *Id.*

would pay the Stated Amount. Part II, infra. Plaintiff's objectively reasonable expectation, arising as it does from statute, case law, an implied covenant of good faith and fair dealing and from the language of the Progressive policy, itself, is such that no reasonable juror could fail to recognize.

Suffice it to say that the parties appear to be in agreement that the Court may decide the meaning of Progressive's Commercial Automobile Insurance Policy Form 6912 and thus, decide which of the two parties is entitled to judgment as a matter of law.

ARGUMENT

I. Progressive's Missouri Commercial Auto Policy is a Stated Value Policy.

Progressive's Missouri Commercial Auto Policy insures against loss or damage by fire and is therefore a stated value policy pursuant to section 379.160, Mo.Ann.Stat.

A. Missouri's Stated Value Statute Applies to Progressive's Missouri Commercial Auto Policy.

In Missouri there are three (3) valued policy statutes: Mo.Ann.Stat. §§ 379.140, 379.145, & 379.160. "Sections 379.140 and 379.145 apply only to real property, and § 379.160 applies to both real and personal property." *Polytech, Inc. v. Affiliated FM Ins. Co.*, 21 F.3d 271, 273 (8th Cir. 1994) (*citing Wells v. Missouri Property Ins. Placement Facility,* 653 S.W.2d 207, 210 (Mo.1983) (en banc); *Duckworth v. United States Fidelity & Guar. Co.,* 452 S.W.2d 280, 282–85 (Mo.Ct.App.1970)). "When any of these valued policy statutes apply, the insurer is estopped from denying that the value of the insured property at the time the policy was written is equal to the amount of insurance for which the policy was written. *Polytech, Inc.*, 21 F.3d at 273; *Wells,* 653 S.W.2d at 210.

Section 379.160(3), RSMo, provides in relevant part:

> that in all suits brought upon policies of insurance against loss or damage by fire hereafter issued or renewed, the defendant shall not be permitted to deny that the property insured thereby was worth at the time of the issuing of the policy the full amount insured therein on said property covering both real and personal property; . . .

Mo. Ann. Stat. § 379.160(3).

In *Gamel v. Continental Insurance Co.*, 463 S.W.2d 590 (Mo.App.1971), the court reviewed the history and purpose behind the valued policy statutes and noted:

> Section 379.140, V.A.M.S., was first enacted in 1879. It was construed and held constitutional in *Daggs v. Orient Ins. Co.*, 136 Mo. 382, 38 S.W. 85, where at l.c. the court points out the purpose of the statute is to *prevent insurance companies from taking reckless risks* in order to obtain large premiums by advising them in advance that they would be held to the value agreed upon when the policy was issued; that while *no company is required to insure property without first examining the premises*—and may even refuse full coverage thereafter—after having the *opportunity to inspect,* fixing the amount of the risk, and receiving the premium for such amount it was estopped from denying the valuation stated in the policy; that the purpose of the act was wise and wholesome but, if not, its change was for the legislative not judicial authority; and that such valued policies were in use as a result of contract long before enactment of statutes of this nature. The court then held that under such statutes the face value of the policy '... was conclusive, both at law and in equity, save in cases of fraud.'

Id. at 593 (emphasis in original). "In a valued policy, the value of the property insured is *agreed* upon by the parties. If a total loss of the insured property occurs, then the insurance company pays the stipulated value; the actual value is irrelevant." *Polytech, Inc. v. Affiliated FM Ins. Co.*, 21 F.3d 271, 273 (8th Cir. 1994) (emphasis in the original) (*citing Clark v. Aetna Cas. & Sur. Co.*, 778 F.2d 242, 247 (5th Cir.1985); *see also Runny Meade Estates, Inc. v. Datapage Technologies Int'l, Inc.*, 926 S.W.2d 167, 170 (Mo. Ct. App. 1996) ("Missouri is a valued policy state in which the value of the property insured is agreed upon by the parties. If a total loss of the insured property occurs, then the insurance company is not permitted to deny that the insured property was worth, at the time the policy was issued, the full amount for which it was insured." (internal citations omitted)). "The purpose of the valued policy statute is to place upon the

insurers the burden and responsibility for an evaluation of the insured's interest and of the property insured at the date of the insurance contract." *DeWitt v. Am. Family Mut. Ins. Co.*, 667 S.W.2d 700, 707-08 (Mo. 1984).

By its plain language, Missouri's valued policy statute applies to "all suits brought upon *policies of insurance against loss or damage by fire* hereafter issued or renewed." Mo. Ann. Stat. § 379.160(3) (emphasis added). Since Plaintiff has brought suit upon a policy that insured against loss or damage by fire, section 379.160(3) unquestionably applies. Therefore, summary judgment must be entered in favor of Plaintiff.

B. Progressive's Missouri Commercial Auto Policy, by its Own Terms, a Valued Policy.

Although statutory interpretation require application of section 379.160(3), RSMo, to Progressive's Missouri Commercial Auto Policy, this Court need not resolve the question of statutory interpretation in order to grant summary judgment in favor of Plaintiff. Valued policies are not created only by statute. They can also be created by contract.

> Long prior to the enactment of this statute "valued policies" were in use as the result of contracts. By a "valued policy" a valuation was fixed in advance by way of liquidated damages to avoid making a valuation after the loss had occurred. Such agreements have been uniformly upheld against the claim that they were wagering contracts; the construction put upon a "valued policy" being that the sum agreed upon was conclusive, both at law and in equity, save in cases of fraud.

Daggs v. Orient Ins. Co. of Hartford, Conn., 136 Mo. 382 (1896) (internal citation omitted). Indeed, in *Huth v. Gen. Acc. & Life Assur. Corp., Ltd.*, 536 S.W.2d 177, 180 (Mo. App. E.D. 1976), the court did not ultimately resolve the question of statutory interpretation because it found that the policy at issue, just as the Progressive policy, was, by its own terms, a valued policy. *Id.* The Court's reasoning in this regard is directly applicable to this case and merits quoting at length:

'In a valued policy the value of the subject matter is agreed upon beforehand. If there is anything in the policy which clearly indicates an intention on the part of the insurer to value the risk and loss, in whatever words expressed, the policy is valued.' *American Ins. Co. v. Gentile Bros. Co.*, 109 F.2d 732 (5 Cir. 1940) l.c. 735, cert. den. 310 U.S. 633, 60 S.Ct. 1075, 84 L.Ed. 1403.

We find several indications of intention to value the risk here. First: the scheduling of the items covered with an 'amount of insurance' listed for each. The sum of the parts is exactly equal to the total insurance provided on the face of the policy. The policies do not simply provide a grand total of indemnity against which a loss for actual value of any of the items covered could be sought, but a specified limited amount for each weapon. We are confident that neither party would contend that a loss of less than all the insured guns would allow a recovery up to the face amount of the policy upon a showing that the actual cash value exceeded the scheduled amount for the guns lost. *See Ball v. Aetna Casualty & Surety Co.*, 58 F.R.D. 362 (E.D.Ky.1973). Second: the premium charged is based upon a percentage of the total insurance provided. This has been held to be indicative of a valued policy. *See Ball v. Aetna Casualty & Surety Co.*, supra; *American Ins. Co. v. Gentile Bros. Co.*, supra; *Palatine Ins. Co. v. E. K. Hardison Seed Co.*, 42 Tenn.App. 388, 303 S.W.2d 742 (1957). Third: the use of the term 'amount of insurance' listed in the schedule indicates a specific value. Terms such as 'insured value' have been equated to language such as 'valued at' and are not equivalent to the term 'maximum value' found in open policies. *See Gerhard v. Boston Ins. Co.*, 99 F.Supp. 247 (D.C.Pa.1951). [...] The provision of the attachment deletes any reference to actual cash value referred to in the basic policy and indicates to us that the company has agreed to pay the full amount of the insured value of the guns or the replacement cost whichever is less. Such an undertaking is not inconsistent with the nature of the property insured. Guns, whether collector's or shooting, are frequently unique items, sometimes specially crafted or modified and difficult to duplicate. They do not lend themselves to valuation in the same sence (sic) that other species of property do. This is apparent from the use of a special gun form which varies considerably from the basic inland floater policy. If the guns are capable of repair or in this case replacement, the insurance company may invoke that option, otherwise it agrees to pay the insured the amount the insurance company has agreed is the value and for which it has charged a premium.

Huth, 536 S.W.2d at 180-81.

In the present case, the basic policy contract states under the heading, "Limit of Liability," the following:

1. The most we will pay for loss to your insured auto is the least of:
    a. the actual cash value of the stolen or damaged property at the time of the loss;

b. the amount necessary to replace the stolen or damaged property with other of like kind and quality:
c. the amount necessary to repair the damaged property to its pre-loss physical condition, however if we determine that the insured auto is a total loss, we may, at our option, pay the lesser of the actual cash value, Stated Amount, or the cost to replace, rather than repair the insured auto; or
d. the applicable Limit of Liability or Stated Amount of the property as shown on the Declarations Page.

Permanently attached equipment is included in the value of the insured auto, but only to the extent the value of the equipment has been included in the Limit of Liability or Stated Amount shown on the Declarations Page.

Exhibit C at 16.

The Declarations Page, titled "Auto coverage schedule," lists the insured autos and, significantly, a "Stated Amount" for each auto; opposite the listing for the "1992 International," the figure $28,000 was listed as the "Stated Amount." Exhibit A at 2. On a separate page accompanying the "Auto coverage schedule," a chart titled "Outline of coverage" includes the headings: "Description," "Limits," and Premium." Exhibit A at 1. Opposite "Collision," the chart describes the "limit" as "Limit of liability less deductible." On neither the declarations page nor its cover is there any reference to actual cash value. SOF ¶ 13; Exhibit E at 91:18-22. Moreover, the premiums charged for each auto are based upon the each autos corresponding stated amount. SOF ¶ 7; Exhibit D at 31:11-17, 32:07-32:11, 65:01-06, 69:21-70:02, 108:15-108:17; Exhibit E at 89:19-90:01, 137:3-137:10, 145:10-18; Exhibit F at 42:17-43:23; 54:23-55:18; 81:18-82:01. Thus, even more so here than in *Huth*, there is every indication in the policy of an intention on the part of the insurer, Progressive, to value the risk and loss. *See Huth*, 536 S.W.2d at 180.

Indeed, the Court need not speculate whether the parties intended a stated value policy; there is no disputing that Progressive and the insured agreed upon a specific value for each auto

upon which premiums were based. SOF ¶ 7; Exhibit F at 95:13-20. When asked why the stated amount was included in the policy, a representative for Progressive testified that "It's put on there because that's considered to be the amount that it's worth at the time they put it on the policy." Exhibit D at 25:23-26:10. The basic policy, itself, under the heading "Limit of Liability," states that the value of equipment attached to the commercial auto is included *in the value of the insured auto . . . to the extent the value of the equipment has been included in the Limit of Liability or Stated Amount shown on the Declarations Page.* SOF ¶ 14; Exhibit C at 16. Having fixed the amount of each insured auto, and receiving the premium for such amount, Progressive is estopped from denying the valuation stated in the policy. *Gamel,* 463 S.W.2d at 593.

This case is also similar to *Grantham v. Shelter Mutual Ins. Co.*, 721 S.W.2d 242 (Mo. App. W.D. 1986), in which the Missouri Court of Appeals for the Western District relied upon *Huth* in finding that the insurance policy at issue was a stated value policy.[3] In *Grantham*, the plaintiffs had purchased an insurance policy which contained the following two paragraphs:

> 10. VALUATION. The Company shall not be liable beyond the actual cash value of the property at the time any loss occurs. The loss shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.
>
> ---
>
> 12. COMPANY'S OPTIONS. It shall be optional with the Company to take all, or any part, of the property at the agreed or appraised value, or to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention to do so within sixty (60) days after the receipt of the proof of loss herein required.

[3] The parties did not brief the question of whether the policy was governed by § 379.160(3) RSMo 1978, and therefore the court did not consider the question. *Grantham v. Shelter Mut. Ins. Co.*, 721 S.W.2d 242, 244, fn. 1 (Mo. Ct. App. 1986).

Grantham, 721 S.W.2d at 243-44. Attached to the basic policy was a sheet entitled "Property Covered." *Id.* at 243. The "Property Covered" sheet listed the property insured and the "Amount of Insurance" for each. *Id.* Listed next to the silverware was the figure $11,714.00. *Id.* The sheet also stated: "This Company shall not be liable for more than the amount set opposite the respective articles covered hereunder, which amounts are agreed to be the value of said articles for the purpose of this insurance." *Id.* at 244. A second sheet listed the insured property with headings "Item No.," "Description," and "Limit of Liability." *Id.* The silverware was listed as Item No. 2 and under the "Limit of Liability" heading was the figure $11,714.00. *Id.*

After the plaintiff's home was burgled and the silverware stolen, Shelter Insurance sought to limit its liability on the silverware by arguing that it was liable only for the actual cash value of the silverware at the time of the loss, rather than the amount listed on the sheet entitled "Property Covered." *Id.* at 244. Shelter pointed to the valuation language in the basic policy which provided that it "shall not be liable beyond the actual cash value of the property at the time any loss occurs," in arguing that the plain language of the basic policy rendered the policy an "open" policy. *Id.* at 244. The plaintiffs maintained that the value stated in the declaration page opposite the silverware was evidence that the policy was a stated value policy and that Shelter was estopped from denying the value listed. *Id.* at 244. The Court of Appeals sided with the plaintiffs.

Writing for the Court, Judge Turnage held that the case was governed by *Huth,* 536 S.W.2d 177, discussed above, and that, consequently, the policy must be held to be a valued policy. *Id.* at 245. The case at bar is likewise governed by *Huth.* In the case at bar, the Auto coverage schedule lists opposite each insured auto a "Stated Amount" and no reference in made

in the Declarations Page to "actual cash value." Consequently, Progressive's Missouri Commercial Auto policy is a valued policy and Progressive is estopped from denying the valuation stated in the policy. Therefore, summary judgment must be entered in favor Plaintiff.

C. If Progressive's Missouri Commercial Auto Policy is Not, On its Face, a Valued Policy, it is Ambiguous and, Consequently, a Valued Policy.

In deciding *Grantham*, the Missouri Court of Appeals reasoned that even if the case were not governed by *Huth*, the Shelter insurance policy was nevertheless a valued policy. The Court held that the schedule of covered property which identified the "Limit of Liability" for the silverware as $11,714.00, conflicted with the actual-cash-value language in the basic policy rendering the policy ambiguous. *Id.* Noting that "[a]mbiguities in insurance contracts are properly resolved in favor of the insured," the Court reasoned that the ambiguity created by the conflicting valuations should be resolved in favor of the Granthams, with the result that the actual-cash-value clause would be disregarded. *Id.* (citing *Shelter Mutual Insurance Co. v. Brooks*, 693 S.W.2d 810, 812[2] (Mo. banc 1985)).

Like *Grantham*, this case is governed not only by *Huth*, *supra*, but also by the tenants of insurance contract interpretation. In adhesion insurance contracts, ambiguities are always resolved in favor of the insured. *Shelter Mutual Insurance Co. v. Brooks*, 693 S.W.2d at 812[2]. In this case, just as in *Grantham*, the basic policy purports to limit liability to the lesser of "the actual cash value, Stated Amount, or the cost to replace, rather than repair the insured auto" in the event the auto is un-repairable; or "the applicable Limit of Liability or Stated Amount of the property as shown on the Declarations Page." The phrase "actual cash value," however, is not defined in the policy. SOF ¶ 8. The most logically consistent interpretation of the policy is that the actual cash value is equal to the Stated Amount of the insured auto which is equal to the

"Limit of Liability." Indeed, the Declarations Page describes the limit of liability in the event of a collision as the "Limit of Liability less deductible," while the basic policy refers to the "value of the insured auto" as the "Limit of Liability or Stated Amount shown on the Declarations Page," while the schedule of insured autos on the Declarations Page refers only to a "Stated Amount." SOF ¶¶ 11, 12 and 14. Thus, "value of the insured auto," "Limit of Liability" and "Stated Amount," each refers to the same value – the stated amount listed opposite each insured auto in the auto coverage schedule. This interpretation comports not only with logic, but also with the reasonable expectations of the insureds and with the mandate that ambiguities be resolved in favor of the insured.

Consequently, Progressive's Missouri Commercial Auto policy is a valued policy and Progressive is estopped from denying the valuation stated in the policy on the date the policy was either written or renewed. Because Progressive was required to, but refused to pay the amount stated on the declaration page, less depreciation from the date the policy was written or renewed, Progressive breached its contract with Plaintiff and all members of the class. Summary judgment on this point must be entered in favor of Plaintiff.

II. Progressive's Missouri Commercial Auto Policy is, as a Matter of Law, a Valued Policy, under the Objectively Reasonable Expectations Doctrine.

"The basic purpose of contract law is to protect the reasonable expectations induced by agreements." *Estrin Const. Co., Inc. v. Aetna Cas. & Sur. Co.*, 612 S.W.2d 413, 418 (Mo. Ct. App. 1981). This is especially true when dealing with adhesion insurance policies. *Id.* "An [adhesion] insurance policy is a contract of a distinctive species." *Id.* Thus, "the rules of construction subserve to give effect as nearly as possible to the expectations which induced agreement." *Id.* at 419 (citation omitted).

Unlike a negotiated contract, where the words of agreement "describe the terms of the bilateral assent and so when stated unambiguously are sufficient to disclose the reasonable expectations of the parties," in a contract of adhesion, "the terms are imposed by the proponent of the form: they are not expected to be read and even if read, the adherent has choice only to conform." *Id.*

> The printed words of contract alone, therefore, are not enough to disclose the expectations of the parties. The court must look for that purpose to the full circumstances of the transaction whether the written words of contract be ambiguous or unambiguous. Our decisions understand that reality and give effect to the substance over the form of such an agreement.

Id.

Moreover, the question of reasonable expectations is resolved *without resort to individual inquiry*. The Western District Court of Appeals in *Estrin*, stated the principle:

> (A standardized agreement) *is interpreted* wherever reasonable *as treating alike all those similarly situated*, without regard to their knowledge or understanding of the standard terms of the writing.

612 S.W.2d at 426 (Mo. Ct. 1981) (citing Restatement (Second) of Contracts 2d s 237(2) (Tent.Draft 1973)) (emphasis added). *See also Niswonger v. Farm Bureau Town & Country Ins. Co. of Missouri*, 992 S.W.2d 308, 317 (Mo. App. E.D. 1999) ("[W]ords in an insurance contract are to be construed in accordance with the principle that the test is not what the insurer intended the words to mean, but rather what a *reasonable layperson* in the position of the insured would have thought they meant." (emphasis added)).

In the case at bar, Plaintiff maintains that the his objectively reasonable expectation, in light of Missouri's valued policy statutes, *Huth* and its progeny, the covenant of good faith and fair dealing, and the form policy itself, was that Progressive would pay the Stated Amount. Plaintiff further maintains that his objectively reasonable expectation, arising as it does from statute, case law, an implied covenant of good faith and fair dealing and from the language of the

Progressive policy, itself, is such that no reasonable juror could find otherwise. Indeed, as the Missouri Supreme Court opined, "[w]hat [an insurer] cannot do is to issue a policy, collect the premiums, and then argue that the value of the insured's insurable interest in the property is less than the coverage it underwrites." *G.M. Battery & Boat Co.*, 747 S.W.2d at 628 (Mo. 1988). The reasonable layperson must surely agree.

III. Conclusion.

With the value of the automobile on February 11, 2010, conclusively fixed at $28,000.00, and no diminution on the value thereof allowed in the policy, Progressive must pay to Plaintiff the full Stated Amount. What Progressive cannot do is to issue a policy, collect the premiums, and then argue that the value of insured automobile is less than the coverage it underwrites. *See Schubert v. Auto Owners Ins. Co.*, 649 F.3d 817, 828 (8th Cir. 2011); *G.M. Battery & Boat Co. v. L.K.N. Corp.*, 747 S.W.2d 624, 628 (Mo. 1988)). Accordingly, Plaintiff, on behalf if himself and all others similarly situated, requests that his Motion for Summary Judgment be granted.

Respectfully Submitted,

Andrew Schermerhorn #62101
John M. Klamann #29335
THE KLAMANN LAW FIRM, PA
929 Walnut Street, Suite 800
Kansas City, MO 64106
Phone: (816) 421-2626
Fax: (816) 421-8686
jklamann@klamannlaw.com

Martin M. Meyers #29524
THE MEYERS LAW FIRM, LC
503 One Main Plaza
4435 Main Street
Kansas City, MO 64111

Phone: (816) 444-8500
Fax: (816) 444-8508
mmeyers@meyerslaw.com

**ATTORNEYS FOR PLAINTIFF
AND THE PUTATIVE CLASS**

CERTIFICATE OF SERVICE

A true and accurate copy of the above and foregoing was e-mailed and mailed, via regular U.S. Mail, this 11th day of February, 2013 to:

Brian C. Fries, Esq.
bfries@latrhopgage.com
Lathrop & Gage, LC
2345 Grand Blvd.
Suite 2200
Kansas City, Missouri 64108-2618

Andrew Schermerhorn