

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| <b>DENNIS ARMON, SR.,</b>        | ) |                              |
|                                  | ) |                              |
| <b>Plaintiff(s),</b>             | ) |                              |
|                                  | ) |                              |
| <b>vs.</b>                       | ) | <b>CASE NO. 1016-CV38265</b> |
|                                  | ) |                              |
| <b>UNITED FINANCIAL CASUALTY</b> | ) | <b>DIVISION 17</b>           |
| <b>COMPANY d/b/a PROGRESSIVE</b> | ) |                              |
| <b>INSURANCE COMPANY,</b>        | ) |                              |
| <b>Defendant(s).</b>             | ) |                              |

**ORDER**

On this date, the Court takes up Defendant’s Motion for Summary Judgment, filed December 17, 2012, Plaintiff’s response, filed on February 19, 2013, and Defendant’s Reply, filed March 15, 2013. The Court also takes up Plaintiff’s Motion for Summary Judgment, filed on February 11, 2013, Defendant’s response, filed March 15, 2013 and Plaintiff’s reply, filed March 25, 2013.

Plaintiffs argue that summary judgment should be entered against Progressive because the language of the policy is ambiguous with regard to the amount that would be paid in the event of a total loss. Plaintiffs contend that since the contract is an adhesion insurance contract, the ambiguity must be resolved in favor of the insured, resulting in the payment of the Stated Amount to all insureds in the event of a total loss. In the alternative, Plaintiff argues that the Commercial Auto Policy insures against loss or damage by fire and is therefore a state value policy pursuant to RSMo. §379.160.

Defendant argues that counts I, II, III, and V should fail because the Progressive Commercial Auto Policy is unambiguous as a matter of law and should be enforced according to its to its terms. Defendant further argues that count IV fails because RSMo §379.160 does not apply to a collision loss under an automobile policy, but it limited to loss by a fire under a fire insurance policy.

The Court has made another exhaustive review of the court file and all arguments.

With regard to count IV, Missouri case law is unclear as to whether the stated value policy provision in RSMo. §379.160 applies to insurance policies where the loss is other than by fire. However,

case law is clear that stated value policies can be created by contract. *Huth v. Gen. Accident & Life Assurance Corp.* 536 S.W.2d 177 (Mo. App. 1976). This occurs where the value of the subject matter is decided beforehand, and it is the intent of the parties to create such a contract. *Id.* One indication of a stated value policy exists where the premium charged is based upon a percentage of the total insurance provided. During oral arguments, defendant admitted that the stated value is requested and required beforehand and is a “significant part” of the premium calculation because of the unique nature of the subject matter. Consequently, there is an issue of fact with regard to whether the Commercial Insurance Policy is a stated value policy.

As to counts, I, II, III and V, while the terms of the policy might be found on their face to be unambiguous, the Court also has a responsibility to protect the expectation of the agreement, and in a form contract such as the Commercial Insurance Policy at issue, those expectations do not reside altogether in the words, ambiguous or unambiguous, but in the total transaction. *Estrin Const. Co., Inc. v. Aetna Cas. And Sur. Co.*, 612 S.E.2d 413 (1981). The Court construes the legal operation of the contract from the words, but the finder of fact interprets the context of the agreement for the sense the parties expected from the words. *Id.* Based on the arguments of the parties, the Court finds that there are still several issues of fact regarding the expectation and the context of the agreement.

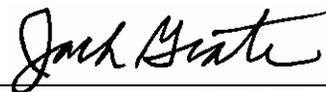
These are issues the jury must sort out. Therefore, both parties have failed to show that “[either have] a right to a judgment as a matter of law.” *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W. 2d 371, 376 (Mo. 1993). Accordingly, both parties motion for summary judgment are DENIED.

SO ORDERED.

4/2/13

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DATE

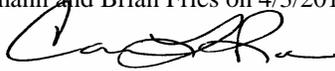


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JACK GRATE, Circuit Judge

**Certificate of Service**

This is to certify that a copy of the foregoing was hand delivered/faxed/mailed and/or sent through the eFiling system to the following: Martin Meyers, John Klamann and Brian Fries on 4/3/2013.



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Judicial Administrative Assistant/Law Clerk