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Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002684-MR

MABLE RAINES APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 97-CI-00164

LECIA M. TRUE AND PREFERRED
RISK FINANCIAL, INC. APPELLEES

OPINION
REVERSING AND REMANDING WITH DIRECTIONS
** ** ** ** **

BEFORE: THE COURT SITTING EN BANC.

JOHNSON, JUDGE: This appeal presents two issues for this Court's consideration. First, we are asked to determine whether the trial court erred in interpreting the procedure established in Coots v. Allstate Insurance Co., Ky., 853 S.W.2d 895 (1993), as relieving a tortfeasor from liability to the plaintiff for damages in excess of the tortfeasor's liability coverage once a Coots substitution is made by the underinsured motorist (UIM) carrier. Next, we are asked to determine whether the trial court erred in determining that the plaintiff was not entitled to stack UIM coverage provided by a policy in which she was identified

within the declarations as a resident driver, but which otherwise did not afford her UIM coverage.

The facts necessary for a resolution of the issues in this appeal are not in dispute. On January 20, 1996, while operating her own motor vehicle, Mable Raines was injured in a collision caused by the appellee, Lecia M. True. At that time, True maintained $100,000 of automobile liability coverage with Kentucky Farm Bureau Mutual Insurance Company. Raines had $50,000 of UIM coverage with the appellee, Preferred Risk Financial, Inc. Ted Rice, Raines' companion with whom she resides and jointly owns a home, also obtained an automobile liability policy from Preferred Risk, identical to Raines' policy, containing $50,000 of UIM coverage on his vehicle. The declarations page of each of the Preferred Risk policies listed Raines and Rice as the "named insured" of their respective vehicle; however, the declarations page of both policies also identified both Raines and Rice as drivers of the insured vehicles.[1]

On May 16, 1997, Raines filed a complaint in the Lincoln Circuit Court in which she alleged that she incurred "serious physical injury" and medical expenses of $17,500, as a result of True's "negligent and careless operation" of her vehicle. In her complaint and in an amended complaint, Raines

[1]Raines' name and birthday were contained in the columns provided for "Driver Name" and "Birth Date" on the declarations page of Rice's policy, immediately below Rice's name, following these sentences: "These are the drivers we show residing in your household. All licensed drivers who live in your home should be listed (including students temporarily away at school).

also named as a defendant, Preferred Risk, and sought to obtain the limits of the UIM coverage under the policies issued to her and Rice should True's liability insurance coverage be insufficient to compensate her for the damages she had incurred. Preferred Risk filed a cross-claim seeking subrogation from True in the event it was determined to be liable to Raines for UIM under either policy.

The matter proceeded to trial on February 24, 1998. At the close of Raines' case on the second day of trial, Farm Bureau offered its policy limits of $100,000, to settle Raines' claims against its insured, True. Raines, True and Farm Bureau reached a tentative settlement; however, Preferred Risk, desiring to preserve its cross-claim against True for subrogation, utilized the procedure established in Coots, supra, and substituted its $100,000 to prevent True's release from liability.

The trial continued and, at the conclusion of all the evidence, the trial court directed a verdict in favor of Raines on the issue of liability. The jury, instructed solely on the issue of damages, returned a verdict awarding Raines the sum of $219,071.00.[2] On March 12, 1998, the trial court entered its jury verdict and trial order in which it awarded Raines a judgment against True in the sum of $109,071,[3] and a judgment

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[2]This total was reached by adding the following elements of damages awarded: $19,920 for medical expenses up to the date of trial; $50,000 for physical pain and mental suffering; $24,151 for lost wages; and, $125,000 for impairment of Raines' power to earn money in the future.

[3]$10,000 in basic reparations benefits was deducted from the total jury award.

against her UIM carrier, Preferred Risk, in the amount of $50,000, for the coverage provided by her own policy.[4] Finally, the trial court awarded Raines a judgment against both Preferred Risk and True for the remaining $50,000 of damages to be allocated between those two defendants contingent on the trial court's ruling on the issue of whether Raines was entitled to stack the UIM coverage afforded by Rice's policy.

Both Preferred Risk and True moved the trial court to alter, amend or vacate the judgment. Preferred Risk argued that Raines was not entitled to stack coverage purchased by Rice as she was not an "insured" as defined by his policy, nor was she driving Rice's automobile at the time of the accident. It insisted that the fact that Raines was listed as a "licensed driver" residing in Rice's home on the declarations page of Rice's policy did not make her an "insured" for purposes of UIM coverage. In support of her motion, True argued that she should not be held personally liable to Raines for any amount exceeding her liability insurance coverage because she offered, and Raines agreed to accept, the limits of her liability coverage to settle Raines' claims against her. She also argued that Raines was not entitled to stack the coverage afforded under Rice's policy as she was not Rice's spouse.

With respect to True's motion, Raines argued that the recently rendered opinion of the Supreme Court of Kentucky in <u>Nationwide Mutual Insurance Co. v. State Farm Automobile</u>

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[4]It also awarded Preferred Risk a judgment against True for $50,000 on its cross-claim for subrogation.

Insurance Co., Ky., 973 S.W.2d 56 (1998), was dispositive of the issue of True's liability to her for the damages not covered by liability or UIM insurance. However, the trial court accepted True's argument that she was not liable to Raines for any amount in excess of the $100,000 paid by her liability insurance carrier, Farm Bureau, and reasoned as follows:

> By settling with the Defendant and accepting the settlement amount, the Plaintiff waives any claim for additional recovery against the Defendant. It is immaterial that the UIM carrier actually puts up the settlement money. . . . The Plaintiff has still settled that portion of its claim. It accepted the benefit of the settlement and in doing so waived any right to have judgment against the Defendant for sums in excess of the settlement amount.
>
> That the Plaintiff is "faced with uncompensated damages" is of no consequence. The possibility of uncompensated damages is the price paid for the guarantee of at least $100,000.00 of compensated damages. Had the total jury verdict been less than the settlement amount, we would not expect the Plaintiff to return the excess settlement as "overcompensated damages."

The trial court also decided the UIM stacking question in favor of the insurer, Preferred Risk. It determined that since Raines was not an "insured" as defined by the terms of Rice's policy, she was not entitled to stack UIM benefits provided by that policy with those contained in her own policy. Accordingly, the trial court amended its judgment, whereby the amended judgment did not allow Raines to recover from either True or Preferred Risk that portion of the jury's verdict not covered by True's liability coverage or Raines' own UIM policy. It awarded Raines a total of $150,000, a difference of $59,071 from

its original judgment. Following another post-judgment motion, the final order was entered on October 9, 1998. This appeal followed.

Raines argues that the trial court erred in its determination that True was no longer exposed to personal liability to her once she agreed to accept True's offer to settle her claim for the limits of True's liability insurance. We agree. The trial court's characterization of the negotiations which transpired between True and Raines as a "settlement," subject to enforcement after the matter had been concluded by a jury verdict, is clearly erroneous. The record demonstrates that Raines and True did not reach a settlement. During the trial, True offered to settle for her policy limits. Raines was willing to settle with True and accept True's policy limits, but not at the risk of impairing her contractual claim for UIM benefits against Preferred Risk. True was apparently not willing to settle for anything less than a general release, and when notified of the proposed settlement, Preferred Risk declined to waive its subrogation rights. To allow its insured to have the benefit of her bargain, Preferred Risk then agreed to substitute $100,000 for True's policy limits to prevent any release of True. Thus, it is clear that Raines did not agree to give True a general release and there was no meeting of the minds, and no settlement between Raines and True for the trial court to enforce.

The scenario presented in the case sub judice was not directly addressed in Coots. The damages sustained by the

plaintiffs in Coots had not yet been determined,[5] and thus it was not necessary for the Court to address the effect of the substitution procedure on the tortfeasor's potential liability for damages in excess of the insurance available to the plaintiff. True insists that a Coots substitution is the equivalent of an agreement between the plaintiff and the tortfeasor and that the latter's liability cannot exceed the combined limits of the liability coverage and the UIM coverages. Indeed, Coots suggests once a substitution is made

> [t]he tortfeasor is not a party unless the UIM carrier elects to advance the amount of the policy limits of the tortfeasor's policy so as to avoid his release. Then the UIM carrier has the option to keep the tortfeasor in the case by naming him as a third party defendant upon whom ultimate liability will be fixed by virtue of subrogation (emphasis added).[6]

However, True's reliance on Coots for limiting her exposure to liability to only that amount sufficient to reimburse Preferred Risk is not persuasive since the procedure contemplated in Coots was not the procedure followed by the parties in the instant case. Coots contemplates that once a substitution is made, the plaintiff (who has been spared the cost of litigating with the tortfeasor) will proceed directly against her own insurer for UIM. At that point, as explained in Schmidt v. Clothier, 338 N.W.2d 256, 263 (Minn. 1983), the case upon which Coots is predicated, "[t]he underinsurer would then have to arbitrate the underinsured claim and could, thereafter, attempt

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[5] Id., 853 S.W.2d at 904.

[6] Id. at 903.

to negotiate a better settlement [with the tortfeasor] or could proceed to trial in the insured's name." However, after Preferred Risk's substitution in the instant case, Raines' claim against True proceeded to verdict. There was no agreement or understanding between any of these parties that True's insurer would be obligated to pay its $100,000 limits should the verdict be less than the $100,000 amount it had originally offered to Raines. Thus, True's attempt to characterize the substitution as the equivalent of a settlement clearly fails for lack of any consideration for such an agreement.[7]

It is obvious that a Coots substitution would not occur in the first instance unless there was a reasoned belief, by both the liability carrier who offers to settle for policy limits and the UIM carrier who substitutes its money to protect its subrogation rights, that the plaintiff's damages were caused by the alleged tortfeasor and exceed her liability coverage. In such cases, depending on the amount of both the UIM coverage and the tortfeasor's personal assets at risk, the most a liability insurer may be able to do, in defense of its insured, is to obtain an agreement in which the plaintiff agrees to release the tortfeasor from all personal claims while preserving the UIM carrier's right of subrogation. In any event, in the instant

[7]True has no disagreement with the holding in Nationwide, supra, a case in which the Court held that after a Coots substitution, the tortfeasor was only liable to the UIM carrier for the amount of damages determined by the jury, although that amount was less than the limits of the tortfeasor's policy offered to the plaintiff. Thus, it is apparent that True did not believe, nor does she argue, that she was bound to pay her policy limits regardless of the jury's verdict.

case there was no agreement concerning the limits of True's liability and there was no agreement inuring to True's benefit implicated by Preferred Risk's payment to its own insured, Raines. Accordingly, we hold that the trial court erred as a matter of law in interpreting Coots as relieving True of liability to Raines for the jury's award in excess of the insurance coverage.

The second issue presented by this appeal, that is, Raines' entitlement to stack UIM coverage under Rice's policy, is more troublesome to resolve. Raines insists that she had a reasonable expectation of entitlement to such coverage. The trial court determined that the doctrine of reasonable expectations was "immaterial" as Raines was not an "insured" within the definition of that term contained in Rice's policy. The endorsement of Rice's policy pertaining to UIM coverage provides as follows:

> We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of bodily injury":
>
> 1. Sustained by an "insured"; and
>
> 2. Caused by an accident.

The policy further defined an "insured" for purposes of UIM coverage as "[y]ou or any 'family member,'" or "[a]ny other person 'occupying your covered auto.'" The term "you" is defined near the beginning of the policy as "1. [t]he 'named insured' shown in the Declarations; and 2. the spouse if a resident of the same household." Raines was not identified on the declarations page of Rice's policy as the "named insured," she is not a

"family member" as that phrase is defined in by the policy,[8] nor is she, by virtue of her cohabitation with Rice, a spouse of the "named insured." Further, there is no dispute that Raines was driving her own vehicle at the time of the collision and was not "occupying" Rice's vehicle.

Raines has never argued that she was entitled to coverage by virtue of the policy's definition of "family member." Nor, has Raines argued that there is any ambiguity in the policy's use of the term "spouse," or that her status as "companion" should cause her to be treated as a spouse. However, Raines has contended all along that having been specifically identified on the declarations page of Rice's policy, by name and birth date, as a "licensed driver" residing in Rice's household, she and Rice had a reasonable expectation that she was an "insured" as contemplated by his policy and is therefor entitled to the coverages provided under his policy as well as those provided in her own separate policy. Inexplicably, the trial court did not address the argument central to the coverage issue, which is whether Raines' prominent listing as a resident licensed driver in the declarations of Rice's policy, created an ambiguity as to her status vis-a-vis the policy's benefits so as to implicate the doctrine of reasonable expectations.

The rules of construction this Court uses in considering such coverage issues are well established.

[8]The policy defined "family member" to mean "a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child."

> [I]n this state doubts concerning the meaning of contracts of insurance are resolved in favor of the insured. State Auto. Mutual Ins. Co. v. Ellis, Ky.App., 700 S.W.2d 801, 803 (1985). But, in the absence of ambiguities or of a statute to the contrary, the terms of an insurance policy will be enforced as drawn. Osborne v. Unigard Indemnity Co., Ky.App., 719 S.W.2d 737, 740 (1986); Woodard v. Calvert Fire Ins. Co., Ky., 239 S.W.2d 267, 269 (1951). Unless the terms contained in an insurance policy have acquired a technical meaning in law, they "must be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the prevailing rule that uncertainties and ambiguities must be resolved in favor of the insured." Fryman v. Pilot Life Ins. Co., Ky., 704 S.W.2d 205, 206 (1986). Although restrictive interpretation of a standardized adhesion contract is not favored, neither is it the function of the courts to make a new contract for the parties to an insurance contract. Moore v. Commonwealth Life Ins. Co., Ky.App., 759 S.W.2d 598, 599 (1988). Under the "doctrine of reasonable expectations," an insured is entitled to all the coverage he may reasonably expect to be provided according to the terms of the policy. Woodson v. Manhattan Life Ins. Co., Ky., 743 S.W.2d 835, 839 (1987).[9]

Preferred Risk's major response to Raines' argument is that as Rice's "companion," and not his spouse, she is not an insured under his policy. As stated before, Raines is aware that she is not Rice's spouse, and she has not claimed any right to coverage by virtue of her status as Rice's companion. Raines' argument is predicated on the fact that she is listed and identified on the declarations page of Rice's policy as a "driver" of Rice's vehicle. She insists that there is no reason

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[9] Hendrix v. Fireman's Fund Insurance Co., Ky.App., 823 S.W.2d 937, 938 (1991).

for her to have been so listed except to change the terms of the policy to otherwise include her as an insured.

Preferred Risk's only specific argument in this regard is that

> [i]nsurers always want to know the drivers in an insured's household because it is possible that such drivers may sometimes drive the insured vehicle and thereby become insureds (as permissive users) for liability purposes. However, listing someone as a resident driver does not change the definition of insured. Nor does it render all such listed people "named insureds" under the policy.[10]

Preferred Risk has not cited us to any authority for its position that the listing of specific persons by name in the declarations is not germane to coverage issues. Nor do we find Preferred Risk's explanation very satisfying. An examination of Rice's policy reveals that it provides liability coverage to "any person using 'your covered auto'." There is no provision in the policy that permissive users be listed in the policy or identified as likely or potential drivers on the declarations sheet before liability coverage is effective. There is no provision excluding liability coverage for permissive drivers residing in the named insured's household who have not been listed on the declarations page. Further, there is no definition of "driver" in the policy, nor any explanation for listing the

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[10]It is implied by this argument that the insurer uses the information concerning drivers who reside in an insured's household for purposes of determining the risk and thus, the premium to be charged. However, if the only purpose of the names of drivers is to determine rates for liability coverage, the list would more appropriately be contained in the application for insurance, not on the declarations page. In any event, if this is the purpose, it was not revealed in the declarations or in any other portion of the policy.

drivers on the declarations page, or an explanation of the status of benefits or rights flowing to or responsibilities otherwise associated with the named drivers. For these reasons, we believe that the listing of Raines along with Rice as a resident driver on the declarations page created an ambiguity implicating the doctrine of reasonable expectations.

Inconsistencies between the declarations and other sections of an automobile policy have, in this jurisdiction, been determined sufficient to create an ambiguity so as to invoke the doctrine of reasonable expectations.[11] Further, our research reveals the existence of foreign cases that have addressed the doctrine with respect to the specific issue of a listed or named driver in the declarations of the policy who did not otherwise fall within the parameters of coverage offered by the policy.

In Lehrhoff v. Aetna Casualty and Surety Co., 638 A.2d 889 (N.J. Super. Ct. App. Div. 1994), the plaintiff, an adult who sought uninsured motorist coverage under his father's automobile policy, was denied coverage based on the policy's definition of "covered person" for purposes of such coverage. Similar to the facts in the instant case, the son, along with other family members, was named on the declarations page as a regular driver of the insured vehicle under the heading, "Driver Information." In determining that the plaintiff was entitled to coverage

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[11]See Simon v. Continental Insurance Co., Ky., 724 S.W.2d 210, 213 (1986) (declarations page which listed limits of $100,000 in liability coverage and $10,000 in uninsured coverage, but which omitted limits for UIM coverage was viewed as ambiguous and insured was held to have "the right to expect that he had underinsured motorist coverage" to the extent of his liability coverage).

because of his placement in the declarations, the Court reasoned as follows:

> There has been little judicial consideration of the import of the declaration page of an insurance policy in terms of the construction of the policy as a whole and in terms of its capacity to define the insured's reasonable expectations of coverage. We, however, regard the declaration page as having signal importance in these respects. A personal automobile insurance policy is a bulky document, arcane and abstruse in the extreme to the uninitiated, unversed and, therefore, typical policyholder. We are persuaded, therefore, that a conscientious policyholder, upon receiving the policy, would likely examine the declaration page to assure himself that the coverages and their amounts, the identity of the insured vehicle, and the other basic information appearing thereon are accurate and in accord with his understandings of what he is purchasing. . . . We are, therefore, convinced that it is the declaration page, the one page of the policy tailored to the particular insured and not merely boilerplate, which must be deemed to define coverage and the insured's expectation of coverage. And we are also convinced that reasonable expectations of coverage raised by the declaration page cannot be contradicted by the policy's boilerplate unless the declaration page itself clearly so warns the insured.[12]

Likewise, in Mallane v. Holyoke Mutual Insurance Co. in Salem, 658 A.2d 18 (R.I. 1995), the Court determined that the plaintiff, the brother of the "named insured," was entitled to uninsured motorist coverage under his brother's policy. Like Raines, the plaintiff in Mallane was listed on the declarations page under the heading "driver name," and like Rice's policy, the Mallane policy did not otherwise define "driver." Although the

[12] Id. at 892

plaintiff in Mallane was not entitled to uninsured motorist coverage under the terms of the brother's policy, the Court held "that the listing of drivers' names on the declarations page, without more, gives rise to an ambiguity in respect to whether such drivers are in fact covered under the terms of the policy."[13] The Court concluded that it was reasonable for the plaintiff to believe he was insured as "[t]he typical purchaser of insurance would likely believe that persons listed as named drivers on the declarations sheet were covered insureds under the policy."[14]

The trial court ignored the fact that Raines was identified in the declarations of Rice's policy, that portion of the policy "tailored to the particular insured,"[15] and thus ignored the implications of that fact with respect to the doctrine of reasonable expectations. Preferred Risk contends however, that "[e]ven if Raines were somehow found to be an insured under the Rice policy, she [would] not qualify as a 'first class' insured." Quoting Chaffin v. Kentucky Farm Bureau Insurance Co., Ky., 789 S.W.2d 754, 756 (1990), Preferred Risk argues that only first class insureds, i.e., the "named insureds and their family members," can stack such benefits as only "an

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[13]Id. at 20. Cf. Jarvis v. Aetna Casualty and Surety Co., 633 P.2d 1359, 1364 (Alaska 1981) (the Court concluded that the plaintiff, a "named driver" listed in the declarations of his father's policy, was not entitled to coverage, but was nevertheless critical of the insurer's "inclusion of 'information' on the face of a policy that is nowhere explained in the accompanying thirteen pages of fine print.").

[14]Id.

[15]Lehrhoff, 638 A.2d at 892.

insured who pays separate premiums for multiple items of the same coverage has a reasonable expectation such coverage will be afforded." However, as the declarations did not purport to name all the residents in Rice's household, it is apparent that Rice's premium was calculated based on Raines' status as a resident driver and not her status as a potential "occupant." Thus, Preferred Risk's argument that the ambiguity should be resolved by construing the benefits flowing to named drivers to be equivalent to those available to a mere occupant is untenable.[16] Stated differently, the first-class/second-class distinction is irrelevant when the person seeking coverage is identified by name in the policy. Otherwise, the coverage obtained by persons residing with, and paying premiums for, others to whom they are neither married nor related, would be illusory.

We conclude that by obtaining two separate, identical policies listing each other within the declarations as drivers of their respective vehicles, and there otherwise being no explanation for the inclusion of their companion as a named driver within the declarations, it was reasonable for Raines and Rice to expect that they purchased coverage entitling the "driver" named in their respective policies to have all the protections and coverage afforded thereunder.[17]

Accordingly, those portions of the judgment of the Lincoln Circuit Court relieving True of any liability to Raines

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[16]See Simon v. Continental Insurance Co., supra at 212.

[17]See Jones v. Bituminous Casualty Corp., Ky., 821 S.W.2d 798, 802 (1991); and State Farm Mutual Automobile Insurance Co. v. Shelton, Ky., 368 S.W.2d 734 (1963).

and concluding that Raines is not entitled to recover UIM under Rice's policy with Preferred Risk are reversed. The matter is remanded for entry of a judgment in the amount of $209,071, with said amount allocated between the appellees, True and Preferred Risk, in a manner consistent with this Opinion.

JUDGES BARBER, COMBS, HUDDLESTON, JOHNSON, KNOPF, MILLER, SCHRODER, and TACKETT CONCUR.

MILLER, JUDGE, ALSO CONCURS BY A SEPARATE OPINION IN WHICH JUDGES BARBER, HUDDLESTON, SCHRODER, AND TACKETT JOIN.

GUDGEL, CHIEF JUDGE, CONCURS IN PART AND DISSENTS IN PART BY A SEPARATE OPINION IN WHICH JUDGES BUCKINGHAM, DYCHE, EMBERTON, GUIDUGLI, AND MCANULTY JOIN.

* * *

MILLER, JUDGE, CONCURRING: I concur with the majority, but wish to make some observations.

Subrogation claims emanating from motor vehicle accidents have caused untold confusion resulting in protracted and expensive litigation often defeating the underlying purpose of automobile insurance -- to compensate injured persons. Litigation involving automobile accidents and resulting injuries, in far too great a number of cases, culminates in disputes between insurance carriers as to which one shall incur the greater loss.

The case at hand is typical. In my opinion, the case of <u>Coots v. Allstate Insurance Co.</u>, Ky., 853 S.W.2d 895 (1993), should be re-examined. It affords no adequate solution to the handling of subrogation claims. I am of the opinion a tort-

feasor should not be impeded in settlement with an injured party simply because the tort-feasor's subrogee (in this case, his UIM carrier) will not negotiate a release of its rights. In this regard, it should be noted that subrogation is equitable in nature. Equity should never tolerate a subrogee's recovery to the extent of adversely affecting the subrogor's right to obtain compensation for his injuries, nor should a subrogation claim have the effect of preventing a tort-feasor from making reparation and obtaining a release of liability.

The solution is for the court to exercise its equitable powers as a matter of law to monitor a settlement and recognize the subrogation claims in whole, in part, or not at all, depending upon the overall equities of the case. Subrogation is a creature of equity. See Payne v. Standard Accident Insurance Co., Ky., 259 S.W.2d 491 (1952). It must not be enforced to work an injustice or defeat legal rights or superior equity claims. Probst v. Wigginton, 213 Ky. 610, 281 S.W. 834 (1926). The doctrine is, of course, not inflexible. Id. I am of the opinion these foregoing rules are applicable to subrogations whether emanating from common law or statute. I know of no rule of law requiring subrogation claims be recognized in their entirety simply because they might arise from statute.

JUDGES BARBER, HUDDLESTON, SCHRODER, AND TACKETT JOIN IN THIS OPINION.

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GUDGEL, CHIEF JUDGE, CONCURRING IN PART, AND DISSENTING IN PART: Respectfully, I dissent from so much of the majority

opinion as holds that Raines is entitled to recover UIM benefits under Rice's policy. The majority concludes that, by listing Raines on the policy's declarations page as a "licensed driver" of the insured vehicle, Preferred Risk created an ambiguity with respect to Raines' right to UIM coverage such that, pursuant to the doctrine of reasonable expectations, she was entitled to recover UIM benefits under Rice's policy. Viewed in its proper factual context, I find this conclusion to be both unwarranted and unjustified.

On the date of her injury, Raines neither owned nor occupied the vehicle insured by Rice's policy. Instead, Raines was operating her own insured vehicle. Moreover, it is undisputed that Raines did not fall within the definitions of "named insured," "insured," "family member," or "spouse" as used in Rice's policy to describe and limit applicable coverages. Further, since at the time of the collision Raines was occupying her own vehicle rather than Rice's, she was not eligible to benefit from the coverage applicable to occupants of Rice's insured vehicle. Finally, since Raines neither paid nor was charged a premium for being listed as a driver on Rice's policy, her only connection to that policy stems from the fact that he caused her to be listed as a driver of the vehicle on the declarations sheet. Indeed, the record is silent as to whether Raines was even aware that she was listed as such.

It is not unusual for a liability insurance company to list on a policy's declarations sheet those persons who, in addition to the named insured, will be driving the insured

vehicle. This not only serves an underwriting purpose, but it also eliminates potential disputes as to whether the driver's use was permissive, so as to obligate the insurer to provide liability coverage under the policy in the event that person subsequently is involved in an accident in the insured vehicle. Unfortunately, the term "driver" is nowhere defined in Rice's policy. Moreover, a person such as Raines, who is listed as a driver, presumably would not receive a copy of the policy's declarations sheet.

Here, even if we assume that the mere listing of Raines as a driver on the policy's declarations sheet created an ambiguity as to whether UIM coverage was available to her under the policy, I fail to perceive that Raines and/or Rice had any reasonable expectation of coverage. In short, I cannot accede to the proposition that, while she was operating a vehicle owned and separately insured by her, Raines reasonably expected that she was simultaneously covered for UIM benefits under a policy which insured Rice's vehicle and merely designated her as a driver. In my opinion, the majority's conclusion to that effect extends the reasonable expectations doctrine far beyond the parameters of either the foreign authorities cited in support of its position or any other reasonable limits.

For example, Lehrhoff v. Aetna Casualty and Surety Co., 271 N.J. Super. 340, 638 A.2d 889 (N.J. Super. Ct. App. Div. 1994), involved a family policy issued to the father. The son, who claimed to be an insured, was listed as a driver and took the insured vehicle to California on a temporary basis while he

worked and applied for law school. He was then injured while he was a pedestrian. The insurer denied the son's claim for uninsured motorist (UM) benefits under the policy, asserting that the son was no longer a resident of the father's household as required by the policy, even though there was a clear factual dispute as to whether the son enjoyed dual residency in both California and New Jersey. The court disagreed with the insurer and held that, in the factual situation presented, the policyholder father would have understood and expected that, while temporarily in California with the insured vehicle, the son would be entitled to all the coverages and protections afforded by the policy insuring that vehicle.

Similarly, in Mallane v. Holyoke Mutual Insurance Co. in Salem, 658 A.2d 18 (R.I. 1995), the plaintiff was injured while riding in an uninsured vehicle. The plaintiff made a claim for UM benefits under a policy, issued to his brother, on which he was listed as a driver. Because the policy's cancellation provision referred to the suspension or revocation of the driver's license of "any driver," the court concluded that the policy contained an ambiguity and that, without more, it was not unreasonable for any driver named on the declarations page to expect UM coverage under the policy.

Here, by contrast, Raines is seeking UIM coverage over and above that which she requested and paid for on her own vehicle, and as to which policy she was designated as the named insured. Given these facts, where Raines did not otherwise meet the policy's express coverage requirements, I believe it would be

unreasonable for Raines and/or Rice to expect that she was afforded such additional UIM coverage under Rice's policy merely because she was listed on the declarations page of his policy as a driver of his insured vehicle. As noted earlier, I believe that reaching such a conclusion extends the reasonable expectations doctrine far beyond its reasonable parameters. Therefore, I would affirm so much of the court's judgment as denies Raines' claim for UIM benefits under Rice's policy. Otherwise, I concur in the majority opinion.

JUDGES BUCKINGHAM, DYCHE, EMBERTON, GUIDUGLI, AND MCANULTY JOIN IN THIS OPINION.

BRIEF AND ORAL ARGUMENT (BEFORE THE PANEL) FOR APPELLANT:

Paul V. Hibberd
Louisville, KY

BRIEF AND ORAL ARGUMENT (BEFORE THE PANEL) FOR APPELLEE, LECIA M. TRUE:

Robert R. Baker
Stanford, KY

BRIEF FOR APPELLEE, PREFERRED RISK FINANCIAL, INC.:

O. Lee Cave, III
Debbie D. Sandler
Louisville, KY

ORAL ARGUMENT (BEFORE THE PANEL) FOR APPELLEE, PREFERRED RISK FINANCIAL, INC.:

O. Lee Cave, III
Louisville, KY