

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DONALD ARMON, SR. and DENNIS)
LAGARES,)

Plaintiffs,)

vs.)

UNITED FINANCIAL CASUALTY)
COMPANY d/b/a PROGRESSIVE)
INSURANCE COMPANY,)

Defendant.)

Case No. 1016-CV38265

Division No. 17

FILED-CIRCUIT COURT
JACKSON CO., MO-1
2012 DEC 17 PM 4: 17

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 74.04, defendant United Financial Casualty Company d/b/a Progressive Insurance Company ("Progressive") moves for summary judgment against Plaintiffs on all claims, which arise out of collision losses to their insured vehicles.

Summary judgment should be entered because Plaintiffs' claims, all of which sound in contract, fail as a matter of law. Counts I, II, III and V must fail because Plaintiffs' Progressive Commercial Auto Policy ("Policy") is unambiguous as a matter of law. Under the express terms of the Policy establishing the limit of liability for a total loss, Progressive has no duty to pay, and Plaintiffs have no right to receive, claim payments based on Stated Amounts that were higher than the actual cash values of their vehicles. Missouri law commands that this unambiguous Policy be enforced according to its terms. Count IV fails because RSMo § 379.160 does not apply to a collision loss under an automobile policy but is instead limited to a loss by fire under a fire insurance policy.

In support of this motion, Progressive files herewith its Statement of Uncontroverted Material Facts, including Exhibits A through D, and its Suggestions in Support of this Motion, all of which are incorporated herein by reference.

Accordingly, defendant United Financial Casualty Company d/b/a Progressive Insurance Company requests that its motion for summary judgment be granted.

Respectfully submitted,

LATHROP & GAGE LLP

By: 

Brian C. Fries (40830)

bfries@lathropgage.com

James Moloney (56267)

jmoloney@lathropgage.com

Rachel E. Stephens (59419)

rstephens@lathropgage.com

2345 Grand Boulevard, Suite 2200

Kansas City, Missouri 64108-2618

Telephone: (816) 292-2000

Telecopier: (816) 292-2001

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was served by Electronic Mail and by Hand Delivery, this 17th day of December, 2012, on the following counsel:

Martin M. Meyers
mmeyers@meyerslaw.com
The Meyers Law Firm, LC
503 One Main Plaza
4435 Main Street
Kansas City, MO 64111
FAX: (816) 444-8508

John M. Klamann
klamann@klamannlaw.com
The Klamann Law Firm, PA
929 Walnut Street, Suite 800
Kansas City, MO 64106
FAX: (816) 421-8686



An Attorney for Defendant.