

SUPREME COURT OF LOUISIANA

No. 98-CC-2040

JESSE MARCUS, LINDA MARCUS, INDIVIDUALLY AND ON BEHALF OF
THEIR MINOR CHILD, JESSE MARCUS, JR.

Versus

THE HANOVER INSURANCE CO., INC., AMERICAN DEPOSIT INSURANCE
CO., INC., J & J MECHANICAL, INC., AND JOHN F. SANCHEZ

LEMMON, J., Concurring

This is a case of statutory violation,¹ and it is critical to focus on which statute was violated by this particular automobile liability insurance policy exclusion.

In Adams v. Thomas, 98-2003 (La. 4/11/99), ____ So. 2d ____, this court recently reviewed a policy exclusion that denied coverage when the driver did not have a valid driver's license. We held that such an exclusion violates La. Rev. Stat. 32:900B(2), which requires an owner's policy of automobile liability insurance to provide coverage to a driver who is operating the vehicle with the permission of the named insured.

The statutes violated in the present case were La. Rev. Stats. 32:861 and 862, which require every owner of a motor vehicle to provide security for the motoring public, generally by obtaining an automobile liability insurance policy that contains liability limits specified in La. Rev. Stat. 32:900B(2), which in turn requires every owner's policy of liability insurance to insure the named insured and other insured

¹I do not perceive any public policy violation in the exclusion presently under review. One motivation of the insurer for this exclusion was to deflect the responsibility for insurance coverage of vehicles used in business to the owner of the business, and arguably the insurer could have validly made the business owner's liability policy primary and the individual's policy secondary.

persons with mandatory minimum limits of \$10,000 and \$20,000. The policy exclusion at issue violated these statutes by denying any coverage for certain uses of the vehicle. The issue of vehicle usage is more properly addressed to the application for insurance and the process for calculating premiums.

The appropriate remedy for a policy exclusion's violation of a statute presents a difficult question. In Adams, there was only a \$10,000/\$20,000 policy, and the court, after invalidating the exclusion, was not faced with the issue of whether the applicable policy limits were the amount stated in the policy or the mandatory minimum amount.

The instant case squarely presents that issue, but in the context of a different statutory violation. In Adams, the exclusion that violated the omnibus coverage requirement was invalid at any level of policy limits. In the present case, however, the exclusion that violates the mandatory minimum liability insurance coverage requirement would have been valid if it had denied coverage over the mandatory minimum amount when the vehicle is being operated "in any business other than an auto business." There appears to be no statutory basis for denying applicability of the exclusion to deny coverage over the mandatory minimum amount required by the pertinent statutes. The exclusion which, in effect, only partially violated the statutes needs only to be partially deleted.

In summary, I would hold that the pertinent statutes "write" coverage into the policy up to the mandatory minimum amount, just as this court held in Adams that a different statute "writes" coverage into the policy for a driver operating a vehicle with the permission of the named insured.