No. 129031

In the

Supreme Court of Illinois

CARMEN GALARZA,

Appellee,

v.

DIRECT AUTO INSURANCE COMPANY,

Appellant,

v.

FREDY GUIRACOCHA and CHRISTOPHER GUIRACOCHA,
a minor by next best friend FREDY GUIRACOCHA,

Appellees.

On Appeal from the Appellate Court of Illinois,
First Judicial District, Nos. 1-22-0281 (cons. with 1-21-1595).
There Heard on Appeals from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 20 CH 4631 and 21 CH 02447.
The Honorable **David B. Atkins** and **Sophia Hall**, Judges Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLEES FREDY GUIRACOCHA and CHRISTOPHER GUIRACOCHA

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AND STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Illinois Trial Lawyers Association ("ITLA") is a nonprofit association of over 2,000 attorneys representing injured consumers and workers in this state's courts. The organization advocates for the legal rights of individuals who have been injured or wronged due to the actions of others. ITLA works to ensure that individuals have access to the legal system to seek fair compensation for their injuries or damages. The question that this case presents is of great importance to ITLA, its members, and the citizens that ITLA's members represent.

As ITLA states in this brief, when a motor vehicle driver injures a pedestrian or a bicyclist due to the driver's negligence or recklessness, the injured person is legally entitled to recover damages for their injuries from the at-fault party. To protect the public, the Illinois legislature has passed the Safety and Family Financial Responsibility Act, 625 ILCS 5/7-601(a), which mandates liability insurance coverage for automobiles and other motor vehicles designed to be used on a public highway. The purpose of the mandatory liability insurance requirement is to protect the public by securing payment of their damages. *State Farm Mut. Auto. Ins. Co. v. Smith*, 197 Ill. 2d 369, 376 (2001).

If the party responsible for an accident does not have the mandatory liability insurance as required by Illinois law, it puts pedestrians or bicyclists in a more vulnerable position compared to when the at-fault party has liability insurance. 625 ILCS 5/7-601(a). Such pedestrians or bicyclists can only be put in the same position as if the at-fault party carried liability insurance through the uninsured motorist provision of their own policies.

ITLA respectfully rejects the notion that under 215 ILCS 5/143a an automobile insurance policy sold in Illinois can restrict uninsured motorist coverage only to insureds-occupants of a vehicle because such injury would occur in the "context of using an auto." *Direct Auto Brief p. 4.* A baby occupying the back seat of an auto would not be "using" an auto more than a child on a bicycle hit by an auto. Both children would be injured in the context of "using" an auto but neither can be tied to liability for the crash.

When an at-fault driver injures a person covered under an automobile insurance policy, such injury occurs in the context of using an automobile whether the person is an occupant, a bicyclist, or a pedestrian. The at-fault uninsured driver in fact would be using an automobile at the time of the crash and such injuries will happen in the context of use of an automobile.

The public policy behind the uninsured motorist coverage is to place the insured in the same position as if the at-fault party carried the requisite liability insurance. Therefore, whether the injured person occupied a vehicle at the time of the crash with the uninsured vehicle is not the proper inquiry. The relevant inquiry is if such a person's injuries resulted "out of the ownership, maintenance or use of a motor vehicle," including the uninsured at-fault vehicle. 215 ILCS 5/143a. The injured person's status as a driver, pedestrian, or passenger is irrelevant since the statute includes "any person" in the protected category. 215 ILCS 5/143a.

A pedestrian or bicyclist injured by a vehicle is a *person* who suffered injuries arising out of the ownership, maintenance, or use of *a motor vehicle*. The plain language of Section 143a of the Illinois Insurance Code is unambiguous: the insurance

policies cannot be "renewed, delivered, or issued for delivery" in Illinois unless they provide coverage to "any person" for injuries arising from the ownership, maintenance or use of "a motor vehicle." 215 ILCS 5/143a. A pedestrian hit by an uninsured motor vehicle is a "person" injured by "a motor vehicle."

Any policy that purports to exclude such insured "person" because they were not inside a vehicle at the time of the crash is contrary to Illinois public policy and injurious to the public welfare.

ARGUMENT

I. Insurance policy terms that violate public policy are unenforceable

The public policy of Illinois is "reflected in its constitution, statutes, and judicial decisions." *Schultz v. Illinois Farmers Ins. Co.*, 237 Ill. 2d 391, 400 (2010). A statute that exists for protection of the public "cannot be rewritten through a private limiting agreement." *Progressive Universal Ins. Co. of Illinois v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 129 (2005), *as modified on denial of reh'g (June 9, 2005)*. Where coverage is mandated by the state's financial responsibility law, "a provision in an insurance policy that conflicts with the law will be deemed void. The statute will continue to control." *Id.*

Although an insurance policy is a contract, its terms must comply with the statutory requirements in effect at the time the policy was issued. *Thounsavath v. State Farm Mut. Auto. Ins. Co.*, 2018 IL 122558, ¶ 30. Insurers have no right to depart from valid statutory requirements in their policies. *Thounsavath v. State Farm Mut. Auto. Ins. Co.*, 2018 IL 122558, ¶ 17, 30.

Therefore, policy terms that conflict with a statute are void and unenforceable. *Schultz*, 237 Ill. 2d at 400. Such terms "cannot circumvent the underlying purpose of a statute in force at the time of the policy's issuance." *Schultz*, 237 Ill. 2d at 400. An insurance contract can be invalidated if it is "clearly contrary to what the constitution, the statutes, or the decisions of the courts have declared to be the public policy of Illinois, or unless the agreement is 'manifestly injurious to the public welfare.' " (Internal quotation marks omitted.) Ill. Const. art. I, § 12 (citations omitted).

II. An automobile insurance contract that excludes pedestrians or bicyclists from its uninsured motorist coverage is contrary to the Illinois Constitution and is therefore against public policy

The State of Illinois's aspirational goal is that there is a remedy for an alleged wrong. Ill. Const. art. I, § 12. ("Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation."); *Segers v. Indus. Comm'n*, 191 Ill. 2d 421, 435 (2000). Although the Illinois Constitution does not mandate a specific remedy or a form of remedy, the State of Illinois's aspiration and philosophy is that there be *some* remedy for *every* alleged wrong. *Berlin v. Nathan*, 64 Ill. App. 3d 940, 950 (1st Dist. 1978) (emphasis added); *King v. Mid-State Freight Lines*, 6 Ill. App. 2d 159, 173 (2d Dist. 1955)("the law is presumed to furnish a remedy for the redress of every wrong.")

The legislators have determined that members of the public who are injured by an uninsured at-fault driver have suffered a wrong and need help in securing payment for their damages. The "principal purpose" of the mandatory liability insurance requirement is "to protect the public by securing payment of their damages." *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 57 (2011), *citing to Squire v. Econ.*

Fire & Cas. Co., 69 Ill. 2d 167, 176 (1977)*; Direct Auto Ins. Co. v. Merx*, 2020 IL App (2d) 190050, ¶ 17. (same*). See* Illinois Safety and Family Financial Responsibility Law, 625 ILCS 5/7-601(a); Illinois Insurance Code, 215 ILCS 5/143a.

The purpose of the Financial Responsibility Law is "to place the policyholder in substantially the same position he would occupy, so far as his being injured or killed is concerned, if the wrongful driver had had the minimum liability insurance required by the Financial Responsibility Act [citation].'" *Phoenix Ins. Co.*, 242 Ill. 2d at 57, *citing to Squire*, 69 Ill. 2d at 176

The requirement that each automobile policy includes uninsured motorist and hit-and-run provisions ensures that victims of uninsured at-fault drivers have a way to secure payment for their damages. *Hoglund v. State Farm Mut. Auto. Ins. Co.*, 148 Ill. 2d 272, 278 (1992)(People buy uninsured motorist protection from insurance companies by paying premiums in case they become victims of an at-fault uninsured driver.)

When insurance companies collect premiums from their insureds for uninsured automobile and hit-and-run policies but deny their insureds coverage for being in the "wrong" automobile, *Direct Auto Insurance Company*, 2020 IL App (2d) 190050, ¶ 4, or a pedestrian or bicyclist as is with the case at bar, they violate the Illinois Constitution in two ways:

First, the insurance companies unlawfully deny a remedy the Illinois legislators have furnished to the people of Illinois to secure payment for their injuries through Section 7-203 of the Financial Responsibility Law, 625 ILCS 5/7-203, and Section 143a of the Illinois Insurance Code, 215 ILCS 5/143a.

Second, insurance companies deny their insureds the "substantial economic value in return for the premiums which have been paid." *Hoglund*, 148 Ill. 2d at 278.

The Illinois Constitution embodies the spirit of justice and equity to aspire that every wrong is remedied. Therefore, it is imperative that the Court recognizes when insurance companies violate public policy by restricting uninsured motorist coverage solely to their insureds who were passengers in a vehicle. This restrictive policy denies coverage for the same insureds who suffer injuries while outside of a vehicle. In both cases, the insured would suffer injuries when an uninsured driver uses an automobile.

To illustrate, a newborn child of an insured would not be held liable for any accident, whether they are inside or outside a vehicle. However, Direct Auto would provide uninsured motorist coverage for the newborn if injured in a car accident while inside an auto. Yet, Direct Auto seeks to deny coverage if the child is injured outside of the auto. This disregard for the fact that the child is injured by the use of an automobile in both cases violates public policy and should be rejected by the Court. *Direct Auto Insurance Company v. Merx*, 2020 IL App (2d) 190050, ¶ 33 (Ill.App. 2 Dist., 2020) (Stating that Direct Auto's argument rested on "tortured reading" of section 143a, where the insurance company maintained that it could limit coverage to accidents involving "vehicles specified in the policy.")

This Court should deem an insurance contract against public policy if it links the definition of "insureds" for uninsured motorist coverage to occupancy of a vehicle at the time of an accident caused by an at-fault uninsured driver that results in injuries. *Thounsavath*, 2018 IL 122558, ¶ 32 (Once the plaintiff was designated an

"insured" under her policies then, the insurance company was prohibited from "either directly or indirectly denying her underinsured motorist coverage.")

III. An automobile insurance policy that excludes insured pedestrians is contrary to the statutory text of Section 143a and is therefore against public policy

Although an insurance policy is a contract, its terms must comply with the statutory requirements in effect at the time the policy was issued. *Thounsavath*, 2018 IL 122558, ¶ 30. Insurers have no right to depart from valid statutory requirements in their policies. *Thounsavath*, 2018 IL 122558, ¶¶ 17, 30.

Section 143a(1) of the Illinois Insurance Code, 215 ILCS 5/143a, "expresses the public policy of this State concerning uninsured motorist coverage." *Squire*, 69 Ill. 2d at 176. It provides that "no automobile liability insurance policy shall be issued in this state unless coverage is provided therein, in limits set forth in section 7-203 of the Illinois Vehicle Code. *Squire*, 69 Ill. 2d at 176.

The Illinois Supreme Court has held that Section 143a of the Illinois Insurance Code is plain and unambiguous. *Thounsavath*, 2018 IL 122558, ¶ 33. Review of the text, syntax, and structure of Section 143a leaves no doubt that an insured injured while they were a pedestrian must be covered under uninsured and hit-and-run policies that insurance companies sell in Illinois. Moreover, the language of the statute leaves no doubt that pedestrians must be covered. We cite the relevant language of the statute with key concepts bolded:

> **143a. Uninsured and hit and run motor vehicle coverage.**
>
> (1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by **any person** arising out of the ownership, maintenance or use of **a motor vehicle** that is designed for use on public

> highways *** shall be renewed, delivered, or issued for delivery in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7-203 of the Illinois Vehicle Code **for the protection of persons insured thereunder** who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom [***].

215 ILCS 5/143a (Emphasis added)

The prepositional phrase "by any person" in the first sentence makes this mandatory statute applicable to "any person" who suffered damages arising out of the ownership, maintenance or use of "a motor vehicle." 215 ILCS 5/143a. The statute does not say a person in a specific auto or a person in an auto: "any person" is clear, unambiguous, and includes a pedestrian or a bicyclist. *Bauer v. H.H. Hall Const. Co.*, 140 Ill. App. 3d 1025, 1029 (5th Dist. 1986)(holding that "any person" in the Road Construction Injuries Act includes any bicyclist).

This sentence further defines the liability for the loss as "arising out of the ownership, maintenance, or use of a motor vehicle." The legislators chose the indefinite article "a" in front of "motor vehicle." Thus, the legislators did not limit the loss to the insured's vehicle or a vehicle the insured occupied. The indefinite article "a" expands the universe of motor vehicles to include "a motor vehicle" that is uninsured and injures a pedestrian. *United States v. Jain*, 174 F.3d 892, 897–98 (7th Cir. 1999) (interpreting the significance of an indefinite article in 18 U.S.C. § 4243 "an explicit condition of release," and determining that "the use of the indefinite article" expands the conditions.) Therefore, the indefinite article in "a motor vehicle" expands the universe of motor vehicles to include the motor vehicle that crashes into pedestrians.

Further review of the statutory language leaves no doubt that pedestrians must be covered. If the legislators wanted to exclude pedestrians, bicyclists, or other non-occupants, the legislators knew how to draft exclusions, because they chose to include one type of exclusion:

> **Uninsured motor vehicle coverage does not apply** to bodily injury, sickness, disease, or death resulting therefrom, of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of the policy.

215 ILCS 5/143a (Emphasis added)

Therefore, if the legislators wanted to exclude insured pedestrians, the legislators could have added such exclusions to the statute, but they chose not to. *Gutraj v. Bd. of Trustees of Police Pension Fund of Vill. of Grayslake, Illinois*, 2013 IL App (2d) 121163. (When the legislature uses certain language in one part of a statute but uses different language in another part, we assume that different meanings were intended.) Clearly, the legislators knew how to draft exclusions into the statute and chose not to exclude insureds who are pedestrians or bicyclists, or otherwise nonoccupants. Instead, they only excluded from coverage unnamed owned vehicles from uninsured-motorist coverage.

The legislative intent of Section 143a was to provide "extensive uninsured-motorist protection for those who are "insureds" under an automobile liability policy.'" *Squire*, 69 Ill. 2d at 178–79; *Direct Auto Insurance Company*, 2020 IL App (2d) 190050, ¶ 28. Therefore, uninsured and hit-and-run policies must cover pedestrians. *Direct Auto Insurance Company*, 2020 IL App (2d) 190050, ¶ 28 (Section 143a

"requires coverage of insured persons regardless of the motor vehicle the uninsured motorist is driving, and regardless of the vehicle in which the insured person is located when injured."). To exclude such insured would be contrary to the statute and the public policy embodied in the statute.

IV. An automobile insurance policy that excludes insured pedestrians is contrary to the Illinois Supreme Court decision in *Squire v. Economy Fire & Casualty Company* and is therefore against public policy

In *Squire v. Econ. Fire & Cas. Co,* a **pedestrian** sought a declaratory judgment to collect uninsured motorist benefits under a policy that provided for $10,000 and an endorsement for a second vehicle that provided for $10,000. The insurance company argued that the benefits under the endorsement were "against accidents caused by uninsured motorists while the insureds were riding in the second car." *Squire*, 69 Ill. 2d at 173. (Emphasis added)

The Illinois Supreme Court recognized that insured pedestrians are entitled to coverage under the second uninsured motorist coverage even if they were not injured while riding in that automobile. The Court rejected the insurance company's argument that benefits under the second policy were only against accidents while the insureds were riding in the second car, reversed the appellate court's decision that had disallowed coverage, and affirmed the trial court's decision that had allowed coverage. *Squire*, 69 Ill. 2d at 179. The Supreme Court held that Section 143a requires coverage of "insured persons" regardless of the vehicle and regardless of the vehicle in which the person was located. *Squire*, 69 Ill. 2d at 179 ("[I]t is well settled that section 143a requires coverage of insured persons regardless of the motor vehicle the

uninsured motorist is driving, and regardless of the vehicle in which the insured person is located when injured.")

The Illinois courts have determined that the legislature intended the uninsured-motorist coverage " 'to place the policyholder in substantially the same position he would occupy, so far as his being injured or killed is concerned, if the wrongful driver had had the minimum liability insurance required…" *Squire*, 69 Ill. 2d at 176 (quoting *Ullman v. Wolverine Ins. Co.*, 48 Ill. 2d 1, 4 (1970)). Therefore, "If a person constitutes an insured for purposes of liability coverage under a policy, the insurance company may not, either directly or indirectly, deny uninsured-motorist coverage to that person." *Schultz*, 237 Ill. 2d at 403. Therefore, under a binding Illinois Supreme Court precedent, it is the public policy of Illinois that insurance companies provide uninsured and hit-and-run coverage for insured pedestrians.

V. An automobile insurance contract that excludes pedestrians is manifestly injurious to the public welfare and is therefore against public policy.

In keeping with the State of Illinois's aspirational goal embodied in the Illinois Constitution that there is a remedy for an alleged wrong, the Illinois courts have identified the "principal purpose" of the mandatory liability insurance requirement as one "to protect the public by securing payment of their damages." *Progressive Universal Ins. Co. of Illinois*, 215 Ill. 2d at 129, *as modified on denial of reh'g (June 9, 2005)*. Courts have held that it is clear from the statute's language that the legislative intent was "to provide **extensive** uninsured-motorist protection" for those who are 'insureds' under an automobile liability policy. *Heritage Ins. Co. of Am. v. Phelan*, 59 Ill. 2d 389, 395 (1974) (Emphasis added)

Liability, uninsured motorist, and underinsured motorist coverages all "serve the same underlying public policy: ensuring adequate compensation for damages and injuries sustained in motor vehicle accidents." *Thounsavath*, 2018 IL 122558, ¶ 26. Therefore the public policy is that uninsured motorist or hit-and-run policies must provide coverage to pedestrians, bicyclists, or other nonoccupants injured in an accident with an at-fault uninsured driver.

Injured people incur medical bills, lose time from work, and many lose the ability to support themselves or their families, causing entire families to go on public assistance. According to the Illinois Department of Transportation between 2016 and 2020, approximately 22, 243 pedestrians were injured, with 807 fatalities, and 4, 773 requiring prolonged medical care.[1] During the same five-year period 2016-2020, approximately 12,530 pedal-cyclists were injured, with 110 fatalities, and 1,735 requiring prolonged medical care.[2]

Odds are that some of these 34,773 pedestrians and pedal cyclists will have no choice but to turn to their uninsured motorist coverage for assistance. If insurance companies exclude pedestrians or pedal cyclists from coverage, many injured victims will have to turn to taxpayer-funded public assistance.

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[1] 2016-2020 Illinois Crash Data Trends, https://idot.illinois.gov/Assets/uploads/files/Transportation-System/Resources/Safety/Crash-Reports/trends/Trends%202016-2020.pdf (See Table 24)

[2] 2016-2020 Illinois Crash Data Trends, https://idot.illinois.gov/Assets/uploads/files/Transportation-System/Resources/Safety/Crash-Reports/trends/Trends%202016-2020.pdf (See Table 23)

If insurance companies can exclude insured pedestrians or bicyclists from uninsured motorist or hit-and-run coverage, the result will be the unnecessary depletion of public assistance funds and the burden on Illinois taxpayers. ITLA submits that such a result will be manifestly injurious to the public welfare; therefore, the exclusion is against public policy.

CONCLUSION

The Court should stem the tide of exclusions that are sure to follow if insurance companies receive permission to exclude pedestrians and bicyclists from the mandate of Section 143a. Injured pedestrians, bicyclists, and other non-occupants belong to the "any person" group under Section 143a who suffer injuries when uninsured drivers crash into them. The Court should state that it is the public policy of Illinois that a **person** injured by an uninsured or a hit-and-run motor vehicle, including pedestrians, falls under the protection of Section 143a, and that any purported exclusion violates Illinois public policy. The Court should not give permission to insurance companies to write exclusions for pedestrians into insurance policy contracts. Permitting such exclusions is likely to leave thousands of severely injured insured persons each year without a remedy to recover for their medical bills, lost wages, lost normal lives, and even lost lives. This Court should stop this race to the bottom that will leave many Illinoisans injured by a motor vehicle without any remedy in violation of Ill. Const. art. I, § 2, and Illinois public policy.

Respectfully Submitted,

/s/ Sofia Zneimer
Sofia Zneimer

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 343(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 14 pages.

/s/ Sofia Zneimer
Sofia Zneimer

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

CARMEN GALARZA, *Appellee,*	)	
v.	)	
DIRECT AUTO INSURANCE COMPANY, *Appellant.*	)	No. 129031
v.	)	
FREDY GUIRACOCHA and CHRISTOPHER GUIRACOCHA, a minor, by next best friend FREDY GUIRACOCHA, *Appellees*.	)	

The undersigned, being first duly sworn, deposes and states that on May 10, 2023, there was electronically filed and served upon the Clerk of the above court the *Amicus Curiae* Brief of the Illinois Trial Lawyers Association in Support of the Appellees. On May 10, 2023, service of the Brief will be accomplished through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Petition for Leave to Appeal bearing the court's file-stamp will be sent to the above court.

/s/ Sofia Zneimer
Sofia Zneimer

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Sofia Zneimer
Sofia Zneimer