

**NAMIC Arbitration Committee
Case #00-0000**

Petitioning Company Name)
(Insured) (..... Petitioner
Claim No. 333-333-333)

vs.

Respondent Company Name)
(Insured) (..... Respondent
Claim No. 444-555-666)

This case occurred in the State of Missouri in which Pure Comparative Negligence Law applies. Respondent is not making a counter claim.

FACTS

The accident occurred on August 1, 1999, at approximately 7:30 p.m. at the intersection of Hebron and Stewart Road in DeKalb, Missouri. The weather was clear and dry. The roadway was gravel where this incident occurred. It is noted that this is an uncontrolled intersection with view obscured by brush at a corner involved in this intersection and accident. The Petitioner was northbound on Hebron and the Respondent vehicle came from their left on Stewart Road. The impact occurred in the intersection and it is noted that the speed limit is 60 mph in this country setting. The directional right-of-way per Missouri Statute 304.351 is governing in this situation and is quoted by both the Petitioner and Respondent in this case. The Respondent vehicle was eastbound on Stewart Road. It is also indicated that the Respondent vehicle was coming from a very infrequently traveled portion of the roadway which may even be considered a long driveway in this situation.

PETITIONER'S CONTENTIONS

FACTS: This accident occurred at the uncontrolled intersection of Hebron Road and Northeast Stewart Road in DeKalb County, Missouri on August 1, 1999, at approximately 7:45 p.m. Both roads have gravel surfaces. Hebron Road runs north and south, is 18 feet in width; Northeast Stewart Road runs east and west, is 12 feet wide on the west side of intersecting Hebron Road and is 18 feet wide on the east side. Eastbound vehicles on Stewart Road have a steep grade as they enter onto Hebron Road. The speed limit, as per the Missouri State Highway Patrol Report, is 60 miles per hour. Please note that this is a rural area. At the time of the accident, there was brush on the southwest corner obscuring both driver's view of the other (Ex. 1).

Petitioner driver was travelling northbound on Hebron Road, driving a 1993 Chevrolet pickup truck. As petitioner neared intersecting Stewart Road, he caught a glimpse of the top of respondent's 1984 Ford Bronco. Petitioner immediately applied his brakes. Respondent did not brake, but continued into the intersection where the collision occurred (Ex. 2) (Ex. 3).

The Missouri State Highway Patrol investigated the accident (Ex. 5). Respondent was listed with two contributing circumstances, "failure to yield" and "inattention". Petitioner was listed with no contributing circumstances.

CONTENTIONS: Petitioner contends respondent's failure to yield the right-of-way to the vehicle on the right places the majority of negligence on respondent. Petitioner further contends respondent was inattentive, as he failed to take any type of evasive action.

Missouri Statute 304.351 sets out the right-of-way at intersections (Ex. 6). Section 2. states when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. Petitioner was located to respondent's right and respondent had the duty to yield. Petitioner caught a glimpse of the top of respondent's Bronco before respondent actually entered the intersection. At that point, petitioner reduced his speed, which slowed his progression into the intersection. On the other hand, respondent did not take any type of evasive action, but basically drove into the intersection directly into petitioner's path.

It is questionable as to whether the road respondent was on would be of the same class as the road petitioner was on. This is a short road, and is more narrow, at least on the west side, where respondent was travelling. In any event, the investigating officer did determine petitioner had the right-of-way over respondent as per the probable contributing circumstances and the officer's remarks in the narrative (Ex. 5, p. 4).

CONCLUSION: Petitioner concludes the majority of negligence rests on respondent who failed to yield the right-of-way. Petitioner requests the Committee to find in their favor, making their award accordingly.

EXHIBITS:

- Denial
- Evidence of Payment
- Police Report
- Diagram
- Photos of Scene
- Photos of Damage
- Petitioner's Statement
- Witness Statement(s)
- Legal Items

RESPONDENT'S CONTENTIONS

This accident occurred on August 1, 1999 at approximately 8:00 p.m. at the intersection of Hebron County Road and Stewart County Road in rural DeKalb County, Missouri. It was daylight and cloudy. The gravel road surface was dry. The intersection is a rural, unmarked junction between two county roads. The surface is straight with a crest at the accident site.

Respondent was eastbound on Stewart. Petitioner was northbound on Hebron County Road.

Respondent's view of intersection was blocked by overgrown brush, and as a result, Respondent cautiously entered the intersection. Petitioner crested the hill, based upon diagram by MSHP report, was in the center of the road, and recklessly entered the intersection.

Missouri Statutes provide instructions for vehicles at intersections: "RSMo 304.351. Right-of-way at intersection--signs at intersections--1. The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway, provided, however, there is no form of traffic control at such intersection." As noted above, this was an unmarked intersection.

The Missouri State Highway Patrol investigated the accident, and Respondent is named as Vehicle #1 and Petitioner is named as Vehicle #2 in this report. Quoting from an independent accident reconstruction firm's unbiased analysis and reconstruction of the accident "Vehicle #1 was clearly in the intersection prior to Vehicle #2 arriving and would have had the right of way ..." (Midwest Accident Reconstruction Services, L.C., page 5).

Respondent entered intersection prior to Applicant and had lawful total control of intersection.

Respondent respectfully requests for a Committee ruling denying Petitioner's damages.

EXHIBITS:

- Denial
- Evidence of Payment
- Police Report
- Diagram
- Photos of Scene
- Photos of Damage
- Petitioner's Statement
- Witness Statement(s)
- Legal Items

REMARKS

The Petitioner in this case provides a recorded statement of their driver and their passenger, photos and a diagram of the scene, as well as, the above cited statute governing control at an uncontrolled intersection. The Respondent submits photos of Petitioner vehicle and also quotes a different subsection of the quoted statutes from the State of Missouri 304.351. Clearly it is shown from the photographs presented that this is a secondary roadway and possibly less than that where the Respondent was proceeding from prior to the impact. It is also clear that the visibility and control of this intersection is extremely hard to determine due to the visibility issues created by the adjacent grading of the highway as well as the bushes growing at this corner of the intersection obscuring views of both vehicles as they approached the intersection. It would seem extremely likely that any vehicle proceeding on these roadways and approaching this unmarked intersection would do so with speed well below the 60 mph general speed limit quoted. The Petitioner vehicle was clearly proceeding on the main traveled roadway in this situation with also the directional right-of-way, being to the right of the Respondent vehicle, just prior to the impact. It is, therefore, supported by the evidence as presented, that the Petitioner had the most likely directional right-of-way and control of the intersection both by direction and points of impact. It might have been helpful if there were also photographs of the Respondent vehicle to again

support the points of impact to each vehicle as well as the severity of impact indicating speed on the part of both vehicles, however, that evidence was not presented by either party. It would appear that the great responsibility for yielding at this intersection would have been on the Respondent in this case, however, it is also demonstrated fairly well that there are questions of speed and lookout on the part of the Petitioner which affects their recovery.

DECISION

Based on the evidence presented, it is the decision of the committee that the Petitioner is awarded 60% of their damages. Those damages being \$3,218.30, therefore, 60% of that amount is \$1,930.98.

This is agreed to by a vote of the committee of 3 to 0 .