[Cite as *Motorists Mut. Ins. Co. v. Brickner*, 2009-Ohio-4843.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Motorists Mutual Insurance Company,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-281 (C.P.C. No. 07 CV 7578)
Stanley Brickner et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
Mid-American Fire & Casualty Company and Indiana Insurance Company,	:	
Defendants-Appellants.	:	
Motorists Mutual Insurance Company,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-282 (C.P.C. No. 07 CV 7578)
Stanley Brickner et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
Marjorie A. Brickner, Executrix of the Estate of Stanley W. Brickner, Deceased,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 10, 2009

Gallagher Gams Pryor Tallan & Littrell LLP, *Andrew J. Kielkopf* and *Patricia Boyer*, for appellee Motorists Mutual Insurance Company.

Crabbe, Brown & James LLP, and *Daniel J. Hurley*, for appellant Marjorie A. Brickner.

Freund, Freeze & Arnold, and *Richard J. Silk, Jr.*, for appellants Indiana Insurance Company and Mid-American Fire & Casualty Company.

APPEALS from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} Defendants-appellants Marjorie Brickner, Indiana Insurance Company, and Mid-American Fire & Casualty Company appeal from the December 16, 2008 decision and entry of the Franklin County Court of Common Pleas granting summary judgment in favor of plaintiff-appellee Motorists Mutual Insurance Company ("Motorists"). For the reasons that follow, we reverse the judgment of the trial court.

{¶2} This controversy arises out of an automobile accident that occurred on April 29, 2004 involving Geoffrey C. Bobbitt and Stanley Brickner.[1] At the time of the accident, Brickner was driving his personal automobile while doing business for Wank Brickner Marketing LLC, d/b/a WB Marketing LLC ("WB Marketing"). WB Marketing had a business insurance policy with Motorists. WB Marketing, as well as its members, including Brickner, were named insureds on the Motorists policy.

[1] Stanley Brickner died during the course of this litigation, and his wife Marjorie became the executrix of his estate.

{¶3} Bobbitt and his wife filed a personal injury complaint against Indiana Insurance Company, Mid-American Fire & Casualty Company, and Brickner. Upon learning that Brickner was in the course and scope of his employment with WB Marketing at the time of the accident, Mid-American filed a third-party complaint against WB Marketing. In a separate action, Motorists filed a complaint for a declaratory judgment urging the trial court to issue a declaration that Brickner was not operating a "covered auto" at the time of the accident. The trial court consolidated the two cases.

{¶4} The trial court granted summary judgment in favor of Motorists finding that Brickner's vehicle was not a covered auto within the meaning of the Business Auto policy.

{¶5} This appeal followed with Brickner asserting the following as error:

> The trial court erred in granting plaintiff Motorists Mutual Insurance Company's motion for summary judgment and in denying the motion for summary judgment of Marjorie Brickner, Executrix of the Estate of Stanley Brickner, deceased.

{¶6} Appellants Indiana Insurance Company and Mid-American also asserted an assignment of error as follows:

> The trial court erred, to the prejudice of appellants, in granting summary judgment in favor of Motorists Mutual Insurance Company and denying the cross-motion of appellant Marjorie Brickner for summary judgment.

{¶7} Our review of a summary judgment motion is de novo. *Helton v. Scioto Cty. Bd. Of Commrs.* (1997), 123 Ohio App.3d 158, 162. "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Civ.R. 56(C) provides that summary judgment may be

granted when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 1997-Ohio-221.

{¶8} In this case, the facts are not in dispute, but the interpretation of the contract of insurance is. Interpretation of an insurance policy is a question of law. *Blair v. Cincinnati Ins. Co.,* 163 Ohio App.3d 81, 2005-Ohio-4323, ¶8. When construing an insurance policy, the court is to give a reasonable construction to the contract in conformity to the intentions of the parties as gathered from the ordinary and commonly understood meaning of the language used. *Raboin v. Auto-Owners Ins. Co.,* 6th Dist. No. E-07-026, 2008-Ohio-605, ¶11. If the language of an insurance policy is clear and unambiguous, the policy must be enforced as written with the words given their plain and ordinary meaning. *Cincinnati Indemn. Co v. Martin*, 85 Ohio St.3d 604, 607, 1999-Ohio-322.

{¶9} If terms are ambiguous, they are to be construed strictly against the insurer and liberally in favor of the insured. *King v. Nationwide Ins. Co.* (1988), 35 Ohio St.3d 208, syllabus. If the drafter of the policy has used conflicting language or provisions, the policy is to be interpreted in a light that is in favor of the policy holder. *Boyle v. Great-West Life Assur. Co.* (1985), 27 Ohio App.3d 85, 89.

{¶10} Turning to the specifics of this case, the Motorists policy provides in pertinent part:

> We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto."
>
> * * *
>
> **1. WHO IS AN INSURED**
>
> The following are "insureds":
>
> a. You for any covered "auto."
>
> b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
>
> (1) The owner or anyone else from whom you hire or borrow a covered "auto."
>
> (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
>
> * * *
>
> (5) A * * * member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

{¶11} Under the plain language of the policy, Brickner, as a named insured and also as a member of a limited liability company, is covered under the business automobile liability policy if he is using a covered auto.

{¶12} Numerical symbols on the declarations page of the policy describe two types of autos that are covered autos for purposes of the policy. The first type of covered autos under Symbol 8 relates to hired autos only. That category of autos is not at issue here. The second type of covered autos under Symbol 9 applies to nonowned autos. That section describes these covered autos as follows:

> 9 = NONOWNED "AUTOS" ONLY. Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees," partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

{¶13} The business auto coverage form also states that: "Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations."

{¶14} Motorists cites *Uzhca v. Derham*, 2nd Dist. No. 19106, 2002-Ohio-1814, for the principle "that a consistent interpretation of the word is preferable to ascribing it different meanings depending on where in the policy it appears." Motorists therefore, takes the position that, because Brickner is a named insured on the policy, Symbol 9 must be interpreted by substituting Brickner's name for "you" and "your" in a consistent manner. This would lead to a reading of Symbol 9 as follows:

> Only those "autos" [Brickner] do[es] not own, lease, hire, rent or borrow that are used in connection with [Brickner's] business. This includes "autos" owned by [Brickner's] "employees," partners (if [Brickner is] a partnership), members (if [Brickner is] a limited liability company), or members of their households but only while used in [Brickner's] business or [Brickner's] personal affairs.

{¶15} Reading Symbol 9 in this way results in lack of clarity. It makes no sense to describe an individual as a partnership or a limited liability company. The standardized language appears to be geared toward the named insured being either a sole proprietor or some type of business entity, not a member of a limited liability company. The intent of the provision is to provide coverage to members of limited liability companies while engaged in company business, not to exclude them. Interpreting the policy in the manner

advocated by Motorists results in no coverage to three of the named insureds while engaged in company business. They would only be covered if they rented an automobile pursuant to Symbol 8 of the policy.

{¶16} Motorists asserts that the purpose of a business auto liability policy is to protect the corporate entity from the potential liability that ensues from the use of motor vehicles. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶20. Motorists then extends this argument to assert that under its interpretation of Symbol 9, Brickner would be driving a covered auto if WB Marketing were being sued, but not if Brickner is sued. This skirts the issue of interpretation of Symbol 9 of the policy. Since both Brickner and WB Marketing are named insureds, coverage should not be dependent on which one is being sued. This fact serves to distinguish the cases cited in which the named insured was a company, and an employee was seeking coverage under the policy.

{¶17} In interpreting the policy, we must bear in mind that this particular policy contains multiple named insureds. This leads us to conclude that the term "you" can apply to WB Marketing or any of the three members listed on the declaration page as named insureds. It is not reasonable to construe the policy in a manner that excludes one at the expense of another. Further, it is reasonable to infer that the business referred to in Symbol 9 means the business of WB Marketing, a named insured.

{¶18} Using the same consistency argument cited above, if WB Marketing is substituted for "you" and "your," Symbol 9 would read as follows:

> Only those "autos" [WB Marketing] do[es] not own, lease, hire, rent or borrow that are used in connection with [WB

> Marketing's] business. This includes "autos" owned by [WB Marketing] "employees," partners (if [WB Marketing is] a partnership), members (if [WB Marketing is] a limited liability company), or members of their households but only while used in [WB Marketing's] business or [WB Marketing's] personal affairs.

{¶19} Even if the language is deemed ambiguous because of multiple named insureds, the rules of interpretation cited above compel a reading that is in favor of the policy holders not the policy drafters.

{¶20} Based on the foregoing, we sustain each of appellants' assignments of error. The judgment of the Franklin County Court of Common Pleas is reversed and remanded for further proceedings consistent with this decision.

Judgment reversed and remanded for further proceedings.

BRYANT and CONNOR, JJ., concur.

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