

*****Please see original opinion, *Sheaffer v. Westfield Ins.*, 2003-Ohio-2409.*****

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO

FIFTH APPELLATE DISTRICT

RICKY LEE SHEAFFER, Administrator	:	
of the Estate of JUDY KAY SHEAFFER,	:	
et al.	:	
	:	
Plaintiffs-Appellees	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ARGONAUT GREAT CENTRAL	:	
INSURANCE COMPANY	:	
	:	
Defendants-Appellants	:	CASE NO. 02 CA 14

{¶1} This matter is before the Court upon appellees’ Application for Reconsideration which we previously granted. In our decision rendered on April 29, 2003, we failed to address, under Argonaut’s Second Assignment of Error, whether Argonaut’s umbrella policy is an excess policy over the Westfield commercial auto policy.

{¶2} The record indicates the parties stipulated that the Westfield commercial auto policy is an automobile liability or motor vehicle liability policy of insurance within the meaning of R.C. 3937.18(L)(1), as amended by S.B. 57. Appellees maintain that if Argonaut’s umbrella policy serves as excess insurance above the Westfield commercial auto policy, it constitutes a motor vehicle liability policy as defined by R.C. 3937.18(L)(2) and was required to offer UM coverage. We agree.

{¶3} The S.B. 57 version of R.C. 3937.18(L)(2) provides as follows:

“(L) As used in this section, ‘automobile liability or motor vehicle liability policy of insurance means either of the following:

“* * *

“(2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section.”

{¶4} Under this version of the statute, as long as any of the insurance policies underlying Argonaut’s umbrella policy are motor vehicle liability policies, then the umbrella policy is also a motor vehicle liability policy. The Argonaut umbrella policy defines “underlying insurance” as:

“SECTION VI-DEFINITIONS

“* * *

“r. “Underlying insurance” means

“(1) the policies listed in Item 6 of the Declarations, including any renewal or replacement of such policies; and

“(2) any other insurance available to the insured except insurance purchased specifically to be either quota share with or excess of this policy.”

{¶5} Because the Westfield commercial auto policy falls within the definition of “underlying insurance,” as defined in Argonaut’s umbrella policy, the Argonaut umbrella policy is a motor vehicle liability policy under the S.B. 57 version of R.C. 3937.18(L)(2). Therefore, Argonaut’s umbrella policy contains UM coverage of \$1,000,000 even though we previously determined Argonaut’s CGL policy is not a motor vehicle liability policy.

{¶6} “IT IS SO ORDERED.”