COURT OF APPEALS
DECISION
DATED AND FILED

May 8, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP1790 **Cir. Ct. No. 2004CV1640**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JAMES S. PETRAS,

PLAINTIFF-APPELLANT,

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

JEANNE M. KRULL, FARMERS INSURANCE EXCHANGE, ST. PAUL FIRE & CASUALTY COMPANY, PLAZA PARTNERS, LLC, ACUITY, A MUTUAL COMPANY, MANAGED HEALTH SERVICES INSURANCE CORP. AND BROWN COUNTY HUMAN SERVICES DEPARTMENT,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Brown County: RICHARD J. DIETZ, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. James Petras appeals a declaratory judgment holding the amount of underinsured motorist (UIM) coverage available to him may be reduced by both the amount paid by the tortfeasor's insurance company and the amount paid by worker's compensation. Petras argues the reducing clause in his policy from State Farm Mutual Automobile Insurance Company is ambiguous. We disagree and affirm the judgment.

Background

¶2 Petras was employed by Nextel Partners in Ashwaubenon. On September 18, 2001, he was seated at a table against the office's exterior wall. Jeanne Krull, driving in the parking lot, caused her vehicle to crash into the building wall. This collision thrust the table edge into Petras's midsection and propelled him across the floor, resulting in numerous injuries.

¶3 Nextel's worker's compensation carrier made payments to and on behalf of Petras. Petras sued Krull and her insurer for negligence; the insurer eventually tendered its $50,000 policy limits. Petras also sued State Farm, making a claim under his UIM policy.[1]

¶4 Petras's UIM coverage has an applicable policy limit of $100,000. State Farm sought a declaratory judgment based on its reducing clause, claiming it could reduce the $100,000 coverage by both the $50,000 that Krull's insurer paid as well as the approximately $36,000 Petras received under worker's

[1] Petras sued the building owner, Plaza Partners, LLC, and its insurer for negligent design and construction of the parking lot and a safe place violation, but makes no mention of the resolution of that claim in his brief. This appeal involves only the claim against State Farm.

compensation.[2] Based on these amounts, State Farm concluded it owed Petras the balance of $13,952.51.

¶5 Petras asserted that the reducing clause allows State Farm to reduce his UIM limit by either the payment from Krull's insurer or the payment from the worker's compensation carrier, but not both. In other words, Petras claimed he was entitled to $50,000 from State Farm, representing the policy limit minus Krull's payment.

¶6 The trial court expressed some concern over the policy language but nevertheless concluded the policy unambiguously reduced the UIM coverage by both payments. Accordingly, the court concluded State Farm owed Petras $13,952.51, which it paid. Petras appeals.

Discussion

I. Jurisdiction

¶7 Before we address the merits of the case, we note that State Farm has challenged the timeliness of the appeal and this court's jurisdiction. We resolve this question first.

¶8 The circuit court entered an order on March 22, 2006, and another order on May 30, 2006. Petras appealed on July 19, 2006. The appeal is untimely if the March order is the final order, but timely if the May order is the final document. State Farm asserts the March order is the final document because it left

[2] The trial court calculated that the worker's compensation carrier had paid out a total of $55,134.94 but recovered some of it, resulting in a net payment of $36,047.49. State Farm has not cross-appealed this determination of the worker's compensation outlay.

nothing for the trial court to do. Petras asserts the May order is final because it disposed of the matters in litigation.

¶9 The question of what constitutes a final judgment or order for purposes of appeal continues to arise in the courts. ***Wamboldt v. West Bend Mut. Ins. Co.***, 2007 WI 35, ¶15, 728 N.W.2d 670. A final judgment or order must dispose of the entire matter in litigation as to one or more parties. ***Id.***; *see also* WIS. STAT. § 808.03(1) (2005-06). It is not enough that the document explain the court's legal reasoning and conclusions; it must also explicitly dismiss or adjudge the case. ***Wamboldt***, 728 N.W.2d 670, ¶¶34-35.

¶10 For this reason, the March order was not final. It contains the court's legal reasoning and conclusions declaring the amount of coverage available to Petras from State Farm, but no more. The May order explicitly adjudicates the case, directing judgment be entered against State Farm. Because the May order is properly the final order, the appeal is timely.[3]

II. The Reducing Clause

¶11 Interpretation of an insurance policy is a question of law we review de novo. ***State Farm Mut. Auto. Ins. Co. v. Langridge***, 2004 WI 113, ¶13, 275 Wis. 2d 35, 683 N.W.2d 75. "We construe insurance policies to give effect to the

[3] Additionally, ***Wamboldt v. West Bend Mut. Ins. Co.***, 2007 WI 35, 728 N.W.2d 670, and its companion case, ***Tyler v. The Riverbank***, 2007 WI 33, 728 N.W.2d 686, direct that as of September 1, 2007, documents intended to be final for appeal purposes must have an explicit statement indicating such. ***Wamboldt***, 728 N.W.2d 670, ¶4; ***Tyler***, 728 N.W.2d 686, ¶25. "Absent such a statement, appellate courts should liberally construe ambiguities to preserve the right of appeal." ***Wamboldt***, 728 N.W.2d 670, ¶4. Although the explicit statement requirement is a prospective rule, we believe the suggestion for construing ambiguities among documents is fairly applicable now, as it indicates the appropriate method of interpretation.

intent of the parties." ***Id.*** To do this, we give words in the policy their common and ordinary meaning, that is, the meanings a reasonable person in the insured's position would have understood the words to mean. ***Folkman v. Quamme***, 2003 WI 116, ¶17, 264 Wis. 2d 617, 665 N.W.2d 857 (citations omitted).

¶12 The first task in construing a policy is to determine whether there is an ambiguity with respect to the disputed coverage. ***Langridge***, 275 Wis. 2d 35, ¶15. We interpret an insurance contract against the insured when the insurer's interpretation conforms to what a reasonable person in the insured's position would understand words to mean. ***Id.***

¶13 Here, the clause in question states:

> 2. The most we will pay is the lesser of:
>
> a. the limits of liability of this coverage reduced by any of the following that apply:
>
> > (1) the amount paid to the insured by or on behalf of any person or organization that may be legally responsible for the bodily injury; or
> >
> > (2) the amount paid or payable under any worker's compensation or disability benefits law; or
>
> b. the amount of damage sustained, but not recovered.

¶14 Petras's basic assertion is that the "or" between 2.a.(1) and 2.a.(2) indicated a choice between those two reductions, not the possible application of both. Alternatively, Petras argues the reducing clause is ambiguous. The trial court was concerned by the use of the disjunctive "or" between 2.a.(1) and 2.a.(2), but declined to rule the clause ambiguous.

¶15 Petras's interpretation ignores the existence of paragraph 2.b. The outline-style organization of the clause indicates State Farm will pay the lesser of

paragraph 2.a., which happens to have two components, or paragraph 2.b., which is not applicable here.

¶16 Paragraph 2.a. is the applicable portion of the reducing clause in this case. It refers to a payment of the $100,000 liability limit "reduced by any of the following that apply…." Petras contends that "any" cannot mean "all," so State Farm cannot reduce its UIM coverage by both payments.

¶17 However, "[t]he word any is defined as some; one out of many; an indefinite number[,] and is often synonymous with either, every, or all." ***State v. Timmerman***, 198 Wis. 2d 309, 316-17, 542 N.W.2d 221 (Ct. App. 1995) (quoting BLACK'S LAW DICTIONARY 94 (6th ed. 1990)) (internal quotations omitted) (probationers' release for "any of the following" reasons under WIS. STAT. § 303.08(1) (1994-95) refers to one or several of the enumerated choices); *see also* ***Taryn E.F. v. Joshua M.C.***, 178 Wis. 2d 719, 725-27, 505 N.W.2d 418 (Ct. App. 1993) (policy exclusion precluding coverage for intentional acts of "any insured" precluded coverage for all named insureds).

¶18 Thus, the UIM coverage could be reduced by payments by the tortfeasor, if applicable; payments from worker's compensation, if applicable; or both, if both are applicable. The "or" between 2.a.(1) and 2.a.(2) does not serve to direct a choice between them but, rather, indicates that the absence of one type of payment does not preclude reduction by the other.

¶19 "Merely being able to conjure up a remotely possible second interpretation is not sufficient to invoke the ambiguity rule…. If it were, no contract would be safe from modification by construction." ***United States Fire Ins. v. Ace Baking***, 164 Wis. 2d 499, 503, 476 N.W.2d 280 (Ct. App. 1991) (citation omitted). Thus, we will not rewrite State Farm's policy by interpretation

to bind it to covering a greater risk than that for which it has received premiums. *See* ***Langridge***, 275 Wis. 2d 35, ¶15.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.