

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JUDITH SABLES, Individually and as Personal  
Representative of the Estate of RONALD J.  
SABLES, M.D., Deceased,

UNPUBLISHED  
November 16, 2001

Plaintiff-Appellee/Cross Appellant,

v

SENTRY LIFE INSURANCE COMPANY,  
AMERICAN MEDICAL ASSOCIATION,  
and AMA INSURANCE AGENCY,

No. 227039  
Macomb Circuit Court  
LC No. 99-000577-CK

Defendants-Appellants/Cross  
Appellees.

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Before: Holbrook, Jr., P.J., and Cavanagh and R. S. Gribbs\*, JJ.

PER CURIAM.

Defendants appeal as of right an order granting plaintiff summary disposition of her breach of contract claim. Plaintiff cross-appeals an order granting summary disposition of her misrepresentation claim in favor of defendants. We reverse in part and affirm in part.

At the time the decedent was diagnosed with pseudomyxoma peritonea in June 1996, he was a practicing physician insured by and through defendants under a policy that provided monthly disability income. The decedent applied for monthly disability benefits in July 1996, which he received from September 1996 until his death on January 1, 1997. The policy also contained an accelerated benefit amendatory rider that provided for one payment of an amount equal to twelve times the monthly payment upon receipt of proof that the insured suffered a terminal condition. In March 1997, plaintiff filed a claim for accelerated benefits under this rider. Along with her claim, plaintiff provided one letter stating that the decedent had suffered from a terminal condition. Defendants denied her claim because it was untimely and because two physicians' statements of terminal condition did not accompany the claim. Thereafter, plaintiff filed a complaint alleging breach of contract and misrepresentation.

Defendants argue that the trial court erred in granting summary disposition in plaintiff's favor on her breach of contract claim because the policy was unambiguous and plaintiff did not comply with the policy requirements. We agree. The trial court's ruling on a motion for

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

summary disposition is reviewed de novo on appeal. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Construction and interpretation of an insurance contract are issues of law reviewed de novo on appeal. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Defendants primarily argue that the disability policy terminated upon the decedent's death; therefore, the accelerated benefit rider was not in force at the time proof of the decedent's terminal condition was submitted. We agree. An insurance policy is a contract that should be read as a whole to determine what the parties' intended to agree on. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). We examine the language of the applicable insurance policy and interpret its terms in accordance with well-established principles of construction. See *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999). If there is a conflict between the terms of a rider and the form provisions of an insurance contract, the language of the rider controls. See *Royce v Citizens Ins Co*, 219 Mich App 537, 544; 557 NW2d 144 (1996); *Morbark Industries, Inc v Western Employers Ins Co*, 170 Mich App 603, 613; 429 NW2d 213 (1988).

The accelerated benefit amendatory rider was the operative provision under which plaintiff submitted her claim and provided, in pertinent part:

Sentry will pay an Accelerated Benefit subject to the terms of this rider when we receive Proof of the Terminal Condition of the Insured. The Insured does not have to satisfy the Elimination Period to receive an Accelerated Benefit.

The Accelerated Benefit amount is equal to twelve (12) times the Monthly Indemnity amount applicable to the Insured at the time we receive Proof of the Terminal Condition.

No other benefit provided by the policy will accrue or be payable during this twelve (12) month period if the Insured elects this benefit.

#### Definitions

A Terminal Condition is a sickness and/or injury which, in the opinion of two Physicians, will result in death within twelve (12) months and for which there is no treatment available that will extend life. This rider must be in force on the date Proof of Terminal Condition is certified.

Proof of the Terminal Condition is satisfactory written certification by two Physicians that the Insured will not live more than twelve (12) months. Proof of the Terminal Condition must be based on all clinical, radiological, histological and laboratory evidence of the diagnosed condition. We may require additional tests and that the Insured be examined by a Physician of our choice, at our expense.

The rider provision clearly required the claim for accelerated benefits to be submitted while the insured was alive. First, this was a rider to a disability policy, not a life insurance policy. See *Parrish v Paul Revere Life Ins Co*, 103 Mich App 95; 302 NW2d 332 (1981).

Second, the plain language, including the use of present and future tense terms, reveals the intention that the insured be alive when a claim is filed. Third, with regard to the proof of terminal condition definition, Sentry reserved the right to require additional testing and examination of the insured. Fourth, the benefit amount was to be twelve times the “amount applicable to the Insured at the time we receive Proof of the Terminal Condition.” Plaintiff submitted proof of the terminal condition after the decedent died, consequently, the “amount applicable to the Insured” was zero. Fifth, included under the definition of “terminal condition” was a requirement that the rider be in force on the date the proof of terminal condition was certified. Because of decedent’s death, neither the rider nor the policy were in force when plaintiff submitted the claim. An insurance contract is not ambiguous if it fairly admits of only one interpretation. *Matakas v Citizens Mut Ins Co*, 202 Mich App 642, 650; 509 NW2d 898 (1993). This amendatory rider is unambiguous and reveals the clear intent to provide for benefits during the insured’s life, not after his death. Consequently, plaintiff could not have been led to a reasonable expectation of receiving accelerated benefits after the decedent’s death, unless the claim had been filed prior to his death. See *Vanguard Ins Co v Clarke*, 438 Mich 463, 472; 475 NW2d 48 (1991).

The trial court’s reliance on the “payment of claims” and “proofs of loss” provisions of the general policy was misplaced, as discussed above. Further, there were no “accrued indemnities unpaid at the Insured’s death” as referenced by the payment provision because a claim for accelerated benefits had not been made prior to the insured’s death. Additionally, plaintiff’s claim was not a “claim for loss for which the policy provides any periodic payment” as required by the loss provision. Rather, plaintiff filed a claim for a single payment under the accelerated benefits rider. In sum, plaintiff’s claim for accelerated benefits was properly denied and the trial court erred in granting plaintiff summary disposition on her breach of contract claim.

On cross-appeal, plaintiff argues that the trial court erred in summarily dismissing her misrepresentation claim. We disagree. Plaintiff failed to establish a prima facie case of fraud, innocent misrepresentation, or silent fraud because she failed to submit proof of any false or misleading representation. See, generally, *M & D, Inc v W B McConkey*, 231 Mich App 22; 585 NW2d 33 (1998). Plaintiff primarily argues that defendants’ failure to disclose the accelerated benefit claim procedure constituted silent fraud because defendants were allegedly aware of the decedent’s terminal condition. However, plaintiff did not prove that some form of representation was made under circumstances that gave rise to a legal duty of disclosure. See *Hord v Environmental Research Institute of Michigan (After Remand)*, 463 Mich 399, 412-413; 617 NW2d 543 (2000); *M & D, Inc, supra* at 29. Similarly, plaintiff did not prove that defendants knew that the decedent had a terminal condition that would result in death within twelve months of his claim for disability benefits. Consequently, the trial court properly dismissed plaintiff’s misrepresentation claim.

Reversed in part and affirmed in part. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.  
/s/ Mark J. Cavanagh  
/s/ Roman S. Gribbs