STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN AFFILIATED HEALTHCARE SYSTEMS, INC., f/k/a LANSING GENERAL HOSPITAL, d/b/a MICHIGAN CAPITAL MEDICAL CENTER,

Plaintiff-Appellant,

v

CC SYSTEMS CORPORATION OF MICHIGAN,

Defendant,

and

PEOPLES LIFE INSURANCE COMPANY and STOP LOSS INTERNATIONAL CORPORATION,

Defendants-Appellees.

UNPUBLISHED
December 23, 2003

No. 225067
Ingham Circuit Court
LC No. 94-077781-CK

ON REMAND

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

The Supreme Court has remanded this matter for reconsideration of our original opinion in light of their decision in *Klapp v United Ins Group Agency, Inc*, 468 Mich 459; 663 NW2d 447 (2003). We again reverse the trial court.

Although the remand order does not specify what aspect of *Klapp* we are to reconsider this case in light of, presumably it is the clarification of the rule that an ambiguous contract is to be construed against the drafter. In *Klapp, supra* at 472, the Supreme Court concluded that this contract construction rule serves as a "tie-breaker." That is, a court is to look at extrinsic evidence of the parties' intent in the drafting the contract and should resort to the construction against the drafter rule only if the court is still unable to discern the intent of the parties from the extrinsic evidence. In our original opinion in this case, we concluded that, at a minimum, an ambiguity existed and we applied the traditional view of construing the contract against the insurer who drafted it. We did not explicitly consider whether extrinsic evidence could have resolved the matter short of applying the "construction against the drafter" rule.

Accordingly, we must consider whether there is extrinsic evidence that would support a conclusion that the parties intended the reinsurance agreement to be construed as defendants suggest. In doing so, we are not persuaded that our original conclusion is incorrect. The only argument based on extrinsic evidence that was offered by defendants is that the reinsurance agreement was based on a clause contained in the insurance contract utilized at the time by Blue Cross and Blue Shield of Michigan. This, however, does not support defendant's position because that Blue Cross contract has been interpreted as to provide coverage for the procedure involved in this case, not exclude coverage.

This Court, in *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644; 517 NW2d 864 (1994), concluded as a matter of law that the BCBSM plan did, in fact, provide the coverage at issue here. Therefore, if the reinsurance agreement in this case was intended to provide the same coverage on this issue as the Blue Cross policy, then the reinsurance agreement must provide coverage for the procedure at issue because the Blue Cross plan provided for such coverage. If, as defendants assert, the intent was for plaintiff to obtain reinsurance benefits consistent with the Plan, then the intent of the parties was to obtain coverage for autologous bone marrow transplant with high dose chemotherapy (ABMT/HDC).

Defendants dismiss this inconvenient fact by pointing out that *Taylor* was not decided until two years after the issue in this case arose. That, however, is irrelevant to the analysis. Defendants in essence argue that the reinsurance agreement should be interpreted in the manner that the drafter thought the BCBSM plan should be interpreted. The more straightforward analysis, however, is that outlined above: the clause in the contract at issue here was intended to mirror the coverage provided under the BCBSM plan, this Court has previously concluded that the BCBSM plan provides coverage for ABMT/HDC, and therefore so does the contract at issue in this case.

We once again reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski