STATE OF MICHIGAN

COURT OF APPEALS

AMERISURE MUTUAL INSURANCE COMPANY, Plaintiff-Counterdefendant-Appellee,	UNPUBLISHED September 23, 2004
v	No. 245228 Oakland Circuit Court
AMERICAN COUNTRY INSURANCE COMPANY, Defendant-Counterplaintiff-Appellant.	LC No. 01-032434-CK

Before: Murphy, P.J., and O'Connell and Gage, JJ.

PER CURIAM.

In this action involving a claim and counterclaim for declaratory relief, defendant appeals as of right an order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10) and requiring defendant to provide insurance coverage on a co-primary basis with plaintiff for injuries sustained by a passenger who fell out of a motor vehicle. We reverse and remand for entry of an order granting summary disposition in favor of defendant.

On June 23, 2000, Michael Furtah was one of several passengers in a vehicle variously described as a "limobus," a "coach," a "motor bus," or a modified "1996 Ford passenger van." Because the use of the vehicle implicated the provisions of the Motor Bus Transportation Act (MBTA), MCL 474.101 *et seq.*, we shall refer to the vehicle as a motor bus. Furtah fell out of the motor bus and sustained injuries that gave rise to an underlying personal injury suit.

The registered owner of the motor bus was TVP, Inc., but, through an arrangement with Diamond Touch Limousine Service, Inc., the vehicle was placed into the service of transporting passengers for hire by Diamond Touch with TVP receiving a percentage of the income generated by the service. The motor bus was insured by plaintiff through a policy issued to TVP. Plaintiff accepted premiums for insuring the motor bus, which by description was specifically listed in the policy as a covered auto. The coverage included the mandatory no-fault personal injury protection (PIP) benefits, as well as tort liability coverage in the amount of $500,000.

Defendant insured Diamond Touch through a policy that provided for $1,000,000 in tort liability coverage. The liability coverage applied not only to vehicles owned by Diamond Touch

and particularly listed in the policy, but also to leased, hired, rented, or borrowed vehicles used and operated by Diamond Touch in the business and not specifically listed in the policy. The policy also provided that, as to any covered vehicles owned by Diamond Touch, the coverage was primary, and with respect to covered vehicles not owned by Diamond Touch, the coverage was excess over any other collectible insurance. The motor bus involved in the accident was not particularly listed by description in the policy. In addition to the $1,000,000 in liability coverage under its policy with defendant, Diamond Touch also had tort liability protection in the amount of $4,000,000 from American Alternative Insurance Company (AAIC).

In regard to PIP benefits, defendant contends that, because the motor bus at issue was not listed in the policy, there was no specific PIP coverage *for the vehicle* under the terms of the policy. However, the insurance policy provisions would still extend PIP benefits or coverage because defendant was the insurer of the operator of the subject vehicle, i.e., Diamond Touch.[1] Defendant maintains that under MCL 500.3114[2] and other provisions of the insurance policy, it "would become highest in priority for payment of PIP benefits only if TVP, Inc., as the owner of the auto involved, did not provide coverage for that vehicle." As plaintiff was in fact the insurer of the vehicle and insured the owner of the vehicle, as reflected by its policy with TVP, plaintiff was the sole primary insurer under the policies and statute. Plaintiff essentially concedes that, looking solely to the insurance policies, its coverage is primary and defendant's coverage is secondary.

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[1] We note the mandatory nature of PIP benefits as reflected by this Court in *Cruz v State Farm Mut Automobile Ins Co*, 241 Mich App 159, 164; 614 NW2d 689 (2000), aff'd 466 Mich 588; 648 NW2d 591 (2002), wherein the panel stated:

> The no-fault act mandates that insurers "pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1). Because personal protection insurance benefits are mandated by the no-fault statute, the statute is the "rule-book" for deciding the issues involved in questions regarding awarding those benefits. [Citations omitted.]

[2] MCL 500.3114(2) provides that "[a] person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle." MCL 500.3114(4) provides:

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Plaintiff's argument below and on appeal is that the insurance coverage provided by defendant did not comply with the MBTA. Additionally, according to plaintiff, the certificate of insurance issued and filed by defendant on behalf of Diamond Touch, done so in order to obtain the necessary certificate of authority for Diamond Touch to operate its business, effectively modified defendant's policy such that it created co-primary insurance obligations on the part of both parties. We find it unnecessary to determine the nature of any particular obligation defendant has under MCL 474.109(2) of the MBTA because, assuming defendant has an obligation to comply with the statute, it was satisfied and the policy issued was consistent with the MBTA requirements. Moreover, we find it unnecessary to determine if the certificate of insurance filed with the Michigan Department of Transportation (MDOT) operated to negate or modify the provisions of defendant's insurance policy because the policy was consistent with the certificate of insurance.

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id*. at 120. The reviewing court should consider "the substantively admissible evidence actually proffered in opposition to the motion." *Id*. at 121. Also reviewed de novo as questions of law are the proper application and interpretation of the no-fault act, *Farmers Ins Exchange v AAA of Michigan*, 256 Mich App 691, 694-695; 671 NW2d 89 (2003), and the proper application and interpretation of contract language. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447, (2003).

The goal of statutory interpretation is to determine and give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). This Court is obligated, where reasonably possible, to construe contracts that are potentially in conflict with a statute in harmony with the statute. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002). If at all possible, we construe a contract "in a manner that renders it compatible with the existing public policy as reflected in the no-fault act." *Id.*

As a motor carrier of passengers, defendant's insured, Diamond Touch, was unambiguously forbidden to "operate upon a public highway without first having obtained from the department a certificate of authority." MCL 474.105. Among other requirements to acquire a certificate of authority, MCL 474.109(2) imposes the following:

> (2) An applicant shall acquire the following insurance coverage of liability for acts of omissions of the applicant as a motor carrier of passengers:
>
> (a) Bodily injury and property damage liability insurance with a minimum combined single limit of $5,000,000.00 for all persons injured or for property damage.

(b) Personal protection insurance and property protection insurance as required by sections 3101 to 3179 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws. A motor common carrier of passengers shall maintain the insurance described in this subsection as a condition of maintaining a certificate of authority issued under this act.

Under the clear statutory scheme, defendant's insured, Diamond Touch, was obligated to acquire liability insurance with a minimum coverage of $5,000,000 and PIP insurance.

As required by the MBTA, defendant filed a certificate of insurance with MDOT.[3] The certificate of insurance contained the following language:

> This is to certify that the American Country Insurance Company (hereinafter called Company) at 222 N. LaSalle St., Chicago, IL 60601 has issued to Diamond Touch Limousine, Inc. at 28474 Utica Rd., Roseville, MI 48066 the policy of insurance to provide under Terms and Coverages described as follows. Check as applicable:
>
> ☒ This insurance is to provide personal and property protection insurance as required by Section 500.3101 of the Michigan Compiled Laws (Michigan No-Fault).
>
> ☒ This insurance is to provide liability insurance that is primary and the company shall not be liable for amounts in excess of $1,000,000 for each accident.
>
> ☐ This insurance is to provide liability insurance that is excess and the company shall not be liable for amounts in excess of $_____ for each accident in excess of the underlying limit of $_____ for each accident.
>
> Policy No. LCA0801145 effective from 9-16-99 to 9-16-00 12:01 a.m., standard time at the address of the insured as stated in said policy.
>
> The receipt of this certificate by the department certifies that a policy or policies of Public Liability (or Automobile Bodily Injury and Property Damage Liability) insurance has been issued by the Company identified on the face of this form to provide the coverage for the protection of the public required under Section 9 of Act No. 432 of the Public Acts of 1982, being Section 474.109 of the Michigan Compiled Laws with respect to the operation, maintenance, or use of any vehicle for which the intrastate motor carrier of passengers authority is

[3] "A certificate of insurance meeting the requirements of section 9(2) of the act [MCL 474.109(2)] shall accompany the application." 1985 AACS, R 474.103(6).

> required or has been issued by the Department of Transportation of the State of Michigan, regardless of whether or not such motor vehicles are specifically described in the policy or policies or not. Whenever requested by the Michigan Department of Transportation of the State of Michigan, the Company agrees to furnish said department a duplicate original of said policy and all endorsements thereon. . . . [Certificate of Insurance, 9/23/99.]

Diamond Touch had also submitted another certificate of insurance that was mostly identical, except that it certified that AAIC provided $4,000,000 of excess liability insurance under the third checkbox; the first two checkboxes were blank.

As noted earlier in this opinion, defendant supplied Diamond Touch with PIP coverage under the insurance policy. Even though the coverage might have been secondary to plaintiff's policy under the circumstances of this case, there was in fact coverage, and had there not been primary coverage supplied by plaintiff through its policy with TVP, the PIP coverage afforded by defendant's policy would have protected Furtah. In other words, the protection the Legislature sought for persons injured while riding as passengers in a motor bus was satisfied by the insurance policy issued by defendant to Diamond Touch. The policy meets the criteria of MCL 474.109(2)(b) and is consistent with the certificate of insurance filed with MDOT.

With respect to tort liability coverage, the $1,000,000 policy issued by defendant, when considered with the $4,000,000 liability coverage issued by AAIC, satisfied the requirements of MCL 474.109(2)(a). Defendant's policy is also consistent with the certificate of insurance issued by defendant in regard to liability insurance. While the certificate of insurance makes reference to liability insurance "that is primary," we agree with defendant's contention that the reference merely distinguishes defendant's policy from the AAIC policy. Defendant's policy was primary and the AAIC policy was secondary for purposes of the $5,000,000 liability coverage requirement of MCL 474.109(2)(a). The "primary" language contained in the certificate of insurance pertains to allowing the two insurers, defendant and AAIC, to aggregate the financial security limits required by the MBTA. See *Harco Nat'l Ins Co v Bobac Trucking, Inc*, 107 F3d 733, 736 (CA 9, 1997). But this did not mean that defendant's liability coverage was automatically primary or co-primary to other existing coverage that was not reflected in a certificate of insurance filed with the MDOT to acquire a certificate of authority necessary to operate a motor bus. Had plaintiff's primary policy not existed, recovery was then available under defendant's policy. Once again, the protection the Legislature sought for persons injured while riding as passengers in a motor bus was satisfied by the insurance policies issued by defendant and AAIC to Diamond Touch.[4] Nothing in the certificate of insurance or MCL 474.109(2) dictates the priority of coverage between the insurance reflected in the certificate and any other insurance potentially applicable to the same loss.

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[4] We also note that the priority of coverage in regard to the respective liability coverages appears now to be moot. The parties acknowledge that the underlying personal injury action was resolved for the total sum of $3,005,000 with both parties paying their policy limits.

Reversed and remanded for entry of an order granting summary disposition in favor defendant. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Hilda R. Gage