STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1443

Quality Pork Processors, Inc.,
Appellant,

vs.

The American Home Assurance Company,
Respondent,

Workers Compensation Reinsurance Association,
Defendant.

Filed April 12, 2011
Affirmed
Larkin, Judge

Mower County District Court
File No. 50-CV-09-399

John S. Beckmann, Hoversten, Johnson, Beckmann & Hovey, LLP, Austin, Minnesota (for appellant)

Leon R. Erstad, Erstad & Riemer, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, §10.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's declaration that a $600,000 retained amount (i.e., deductible) applies to each of appellant's employees that suffered bodily injury by disease under appellant's workers' compensation insurance policy. Because the unambiguous contractual language requires appellant to retain $600,000 for "each [p]erson for [d]isease," we affirm.

FACTS

Appellant Quality Pork Processors, Inc. operates a meat-packing plant. Respondent American Home Assurance Company provided a workers' compensation and employer's liability insurance policy to Quality Pork.

Approximately 12 Quality Pork employees developed a medical condition while working at the Quality Pork processing plant in the brain harvesting area.[1] The Mayo Clinic identified their condition as a disease called Progressive Inflammatory Neuropathy (PIN). Persons experiencing PIN have symptoms which may include pains in their hands and feet, headaches, and other neurological symptoms. The Mayo Clinic believed that PIN was caused by the inhalation of aerosolized pig-brain proteins during the pig-brain extraction process and that repeated exposure could, in a small portion of the population, cause an auto-immune disease that resulted in a progressive peripheral neuropathy. The affected employees' levels and duration of exposure varied widely. For example, one

[1] Employees in the brain harvesting area used jets of compressed air to blow pig-brain tissue out of skulls. This process resulted in the dispersion of swine brain proteins into the air in aerosol form.

employee was exposed from 1998 through February 2007; another was only exposed during the months of September through December 2006.

Quality Pork ceased the pig-brain extraction process in November 2007. On December 20, 2007, the Minnesota Department of Health advised Quality Pork that the employees with the medical condition identified as PIN were suffering from a work-related occupational disease.

Quality Pork requested coverage under its insurance policy with American Home. The policy applies a $600,000 retained amount (i.e., deductible) for "Each Accident or each Person for Disease," but the policy does not define the terms "accident" or "disease." Quality Pork submitted a claim, asserting that PIN was caused by an accident and that Quality Pork therefore is subject to a single $600,000 retained amount. American Home disagreed; it contended that the $600,000 per-person retained amount applies.

Quality Pork sought a declaratory judgment in district court that all coverage related to bodily injury due to PIN is subject to a single $600,000 retained amount under the policy covering July 1, 2007, through July 1, 2008. The parties brought cross-motions for summary judgment. The district court concluded that the contract is unambiguous, reasoning that "[t]he [retained amount] is applied in the disjunctive. If there is a disease, then the [retained amount] is applied for 'each person for disease.' If there is an accident, then the [retained amount] is to be applied for 'each accident.'" Because the parties agreed that the bodily injuries were caused by PIN and that PIN

qualifies as an "occupational disease," the district court granted summary judgment in American Home's favor. This appeal follows.

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Id.* "On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "We review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

"Construction of an insurance policy involves a question of law." *Gen. Cas. Co. of Wis. v. Outdoor Concepts*, 667 N.W.2d 441, 443 (Minn. App. 2003). "Where there is no dispute as to the material facts, this court independently reviews the district court's interpretation of the insurance contract de novo." *Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.*, 625 N.W.2d 178, 183 (Minn. App. 2001).

"In interpreting a contract, the language is to be given its plain and ordinary meaning." *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn.

1998). An ambiguity exists where the language used in a contract is reasonably subject to multiple interpretations. *ICC Leasing Corp. v. Midwestern Machinery Co.*, 257 N.W.2d 551, 554 (Minn. 1977). "Minnesota appellate courts have followed the rule that any reasonable doubt as to the meaning of insurance policy language will be resolved in favor of the insured." *Amatuzio v. U.S. Fire Ins. Co.*, 409 N.W.2d 278, 280 (Minn. App. 1987). But a court should not "read an ambiguity into the plain language of a policy in order to provide coverage." *Farkas v. Hartford Accident and Indemnity Co.*, 285 Minn. 324, 327, 173 N.W.2d 21, 24 (1969).

The parties agree that the material facts are undisputed. But they disagree regarding whether the retained-amount provision in the policy is ambiguous. The provision states that a $600,000 retained amount will apply for "Each Accident or each Person for Disease." Quality Pork argues that the provision is ambiguous and that it therefore must be construed in Quality Pork's favor. Specifically, Quality Pork argues that the provision is ambiguous because the policy does not define the term "accident" and the injury-causing event here—the pig-brain extraction process—theoretically could qualify as an "accident" depending on how this term is defined. Like the district court, we are not persuaded.

The phrases "Each Accident" and "each Person for Disease" are separated by the disjunctive "or." According to the *American Heritage Dictionary* "or" is "[u]sed to indicate an alternative." *The American Heritage Dictionary* 1271 (3d ed. 1992). Because the phrases are stated in the disjunctive, the retained-amount provision unambiguously indicates that the injury causing event is either classified as an "accident" or "disease."

The district court therefore correctly reasoned: "If there is a disease, then the [retained amount] is applied for 'each person for disease.' If there is an accident, then the [retained amount] is to be applied to 'each accident.'" Because the parties agree that the bodily injuries here were caused by PIN and that PIN is a disease, the each-person-for-disease retained amount applies, not the each-accident amount.

Moreover, although the policy does not define the term "accident," certain policy language suggests that "accident" refers to a single incident or occurrence. The policy states that bodily injury by accident "must occur during the policy period," and that bodily injury by disease is only covered if "[t]he employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease occurs during the policy period." This language suggests that bodily injury by accident results from a single incident, whereas bodily injury by disease results from repeated or continuous exposure. As applied to the facts here, the source of the employees' bodily injuries—various periods of repeated or continuous exposure to the aerosolized pig-brain proteins—is disease, not accident.

In sum, although the word accident is not defined in the policy and could theoretically be defined to include a disease, under the plain language of this policy and the undisputed facts of this case, the injuries were caused by disease, not by accident. As applied to these facts, the retained-amount provision is not ambiguous, and this court will not accept the invitation to create ambiguity where none exists. *See Lhotka v. Ill. Farmers Ins. Co.*, 572 N.W.2d 772, 774 (Minn. App. 1998), *review denied* (Minn. Mar. 19, 1998). Because the source of the employees' bodily injuries is PIN and PIN is a

disease, the district court properly declared that a retained amount of $600,000 is applicable to each of the employees injured by PIN.

Affirmed.

Dated:

Judge Michelle A. Larkin