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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2238**

Minnesota O&M Surgery, P.A., et al.,
Appellants,

vs.

Charter Oak Fire Insurance Company
n/k/a The Travelers Companies, Inc.,
Respondent.

**Filed June 13, 2011
Affirmed
Muehlberg, Judge***

Hennepin County District Court
File No. 27-CV-10-13552

James C. Erickson, Erickson, Bell, Beckman & Quinn P.A., Roseville, Minnesota (for appellants)

Jonathan D. Jay, Terrance C. Newby, Leffert, Jay & Polglaze P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Appellants challenge the district court's application of their insurance policies' \$25,000 limit of insurance for valuable papers and records to their loss of photographs, x-rays, and slides. Because we conclude that the photographs, x-rays, and slides fall within the policies' definition of valuable papers and records, we affirm.

FACTS

Appellants Minnesota O&M Surgery P.A. and Northside Minnesota O&M Surgery P.A. stored photographs, x-rays, and more than 88,000 slides in the home of their principal, Dr. Mohamed El Deeb. Dr. El Deeb used the slides, which were images of patients and procedures, "all the time" as "a teaching tool" in connection with presentations and lectures, as well as to document the care of his own patients and to illustrate procedures for prospective patients. The record does not reflect the subjects of the photographs and x-rays.

On August 3, 2006, a fire in Dr. El Deeb's home damaged or destroyed at least some of the photographs, x-rays, and slides. Cleaning the smoke-damaged slides alone was estimated to cost more than \$500,000, and appellants filed claims under insurance policies issued to them by respondent Charter Oak Fire Insurance Company. On or about August 25, 2008, respondent advanced a \$25,000 payment to each appellant for the alleged losses of the photographs, x-rays, and slides, asserting that the items were "valuable papers and records" and that its liability was therefore limited to \$25,000 per policy.

Appellants commenced this action on January 22, 2009, seeking a declaratory judgment that the photographs, x-rays, and slides were covered by the policies and not subject to the \$25,000 limit. All parties moved for summary judgment. The district court granted summary judgment to respondent on October 28, 2010, agreeing with respondent that its liability for the alleged losses of the photographs, x-rays, and slides was limited to \$25,000 per policy. This appeal follows.

DECISION

Appellants argue that the district court erred by granting respondent's motion for summary judgment and denying appellants'. Summary judgment is appropriate when there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from a summary judgment, this court considers de novo whether there are any genuine issues of material fact 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).

The district court's summary judgment decision in this case turned entirely upon interpretation of the parties' insurance policies. "Interpretation of an insurance policy is a question of law that [this court] review[s] de novo." *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 894 (Minn. 2006). "If the language of an insurance contract is unambiguous, it must be given its plain and ordinary meaning." *Id.* "But if the language is ambiguous, it will be construed against the insurer, as drafter of the contract." *Id.* "Coverage provisions are construed according to the expectations of the insured." *Id.* "While the insured bears the initial burden of

demonstrating coverage, the insurer carries the burden of establishing the applicability of exclusions.” *Id.* “Insurance contract exclusions are construed narrowly and strictly against the insurer and, like coverage, in accordance with the expectations of the insured.” *Id.* (citation omitted).

Appellants’ policies each included coverage for “Business Personal Property located in or on the buildings described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises.” Although Dr. El Deeb’s home, where the loss occurred, was not one of the buildings described in the declarations, an endorsement to the policies provided, “With respect to medical, surgical, and dental equipment and instruments (including tools, materials, supplies and scientific books) owned and used by you in the medical or dental profession . . . , this insurance applies while such property is away from the described premises.” An “instrument” is “[a] means by which something is done” or “[a]n implement used to facilitate work.” *The American Heritage Dictionary of the English Language* 908 (4th ed. 2000). That the endorsement specifically states that “materials” and “scientific books” are included in its usage of the word “instrument” suggests that the parties intended that a broad definition of the term apply. The photographs, x-rays, and slides were “instruments” within the meaning of the endorsement, as they were used to facilitate appellants’ work, and are therefore covered under the endorsement.

Respondent does not dispute that the photographs, x-rays, and slides were covered under the endorsement. Instead, respondent argues that the policies’ \$25,000 limit for valuable papers and records applies. The endorsement states that it changes the policies

by adding language extending coverage to off-site equipment and instruments at Paragraph A.7.f of the policies' Businessowners Property Coverage Special Form. Paragraph A.7 of the Businessowners Property Coverage Special Form is entitled "Coverage Extensions," and provides that "payments made under the following Coverage Extensions are subject to and not in addition to the applicable Limits of Insurance." Because the endorsement expressly added the off-site coverage under Paragraph A.7, it created a coverage extension, which was subject to any limits of insurance.

Appellants' policies included a \$25,000 limit of insurance for valuable papers and records. The policies defined "Valuable Papers and Records" as follows:

31. "Valuable Papers and Records"

a. Means inscribed, printed or written:

(1) Documents;

(2) Manuscripts; or

(3) Records;

including abstracts, books, deeds, drawings, films, maps or mortgages; and

b. Does not mean "money" or "securities" or "Electronic Data Processing Data and Media."

Therefore, if the photographs, x-rays, and slides were valuable papers and records, they were subject to the \$25,000 limit.

Without addressing whether the photographs, x-rays, and slides were "inscribed, printed or written," the district court concluded that they were valuable papers and records because they were "film" and because they "fall within the type of material typically covered by a standard valuable papers and records exclusion." Appellants argue that by concluding that "films" were "Valuable Papers and Records" even if they were not "inscribed, printed or written," the district court "effectively changed the wording of

the policy: it struck ‘including’ and substituted ‘also.’” (emphasis omitted). We need not decide whether the district court correctly interpreted the word “including” because we conclude that the photographs, x-rays, and slides were all “printed.”

A “photograph” is “[a]n image, especially a positive print, recorded by a camera and reproduced on a photosensitive surface.” *The American Heritage Dictionary* at 1323. “Printed” is the past participle of “print,” which can mean “[t]o produce a photographic image from (a negative, for example) by passing light through film onto a photosensitive surface, especially sensitized paper.” *Id.* at 1395. Photographs meet this definition of “printed.” The district court therefore correctly determined that the photographs were subject to the \$25,000 limit for valuable papers and records.

An “x-ray” is “[a] photograph taken with x-rays.” *Id.* at 1990. As discussed immediately above, photographs are printed because they are made by “passing light through film onto a photosensitive surface.” The record is silent as to whether the x-rays in this case were made by this method. But a “print” can also be “[a] photographic image transferred to paper *or a similar surface*, usually from a negative.” *Id.* at 1395. There is no dispute in this case that the x-rays were photographic images on a surface. And it would be an absurd reading of the policy to limit coverage of photographic images created on photosensitive paper from negatives, but not photographic images appearing directly on photosensitive film. *See RAM Mut. Ins. Co. v. Meyer*, 768 N.W.2d 399, 406 (Minn. App. 2009) (stating that courts must construe insurance contracts so as to avoid absurd results), *review denied* (Oct. 20, 2009). We therefore conclude that the x-rays were “printed” within the meaning of the valuable-papers-and-records definition, and that

the district court correctly determined that they were subject to the \$25,000 limit of insurance.

The same reasoning applies to the slides. A “slide” is “[a]n image on a transparent base for projection on a screen.” *The American Heritage Dictionary* at 1636. The slides in this case were photographic images of patients and procedures. Even if the slides were not created by “passing light through film onto a photosensitive surface,” *id.* at 1395 (definition of “printed”), they are still photographic images on a surface. We therefore conclude that they are “printed” within the meaning of the valuable-papers-and-records definition, and that the district court correctly concluded that the \$25,000 limit applies to their coverage.

Affirmed.