FILED
04/12/2022
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 21-0487

OP 21-0487

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 72

HIGH COUNTRY PAVING, INC.,

Plaintiff, Appellee,
and Cross-Appellant,

v.

UNITED FIRE & CASUALTY COMPANY,

Defendant, Appellant,
and Cross-Appellee.

ORIGINAL PROCEEDING: Certified Question, United States Court of Appeals for the Ninth Circuit, Cause Nos. 20-35791 and 20-35826
Honorable M. Margaret McKeown and Ronald M. Gould, Circuit Judges, Hon. Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation

COUNSEL OF RECORD:

For Appellant:

Jon T. Dyre, Justin Harkins, Crowley Fleck PLLP, Billings, Montana

For Appellee:

Trent M. Gardner, Jeffrey J. Tierney, Goetz, Geddes & Gardner, P.C., Bozeman, Montana

Robert K. Baldwin, Baldwin Law, PLLC, Bozeman, Montana

For Amicus American Property Casualty Insurance Association:

Bradley J. Luck, Emma L. Mediak, Garlington, Lohn & Robinson, PLLP, Missoula, Montana

For Amicus Montana State Auditor, Commissioner of Securities and Insurance:

Ole Olson, Robert Stutz, Office of the Montana State Auditor, Commissioner of Securities and Insurance, Helena, Montana

For Amicus Montana Trial Lawyers Association:

Raph Graybill, Graybill Law Firm, PC, Great Falls, Montana

Submitted on Briefs: March 9, 2022

Decided: April 12, 2022

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 The United States Court of Appeals for the Ninth Circuit has submitted the following state law question to this Court:

> *Whether, when an insurance policy does not include either a table of contents or a notice section of important provisions, in violation of Mont. Code Ann. § 33-15-337(2), the insurer may nonetheless rely on unambiguous exclusions or limitations to the policy's coverage, given that § 33-15-334(2) provides that § 33-15-337(2) is "not intended to increase the risk assumed under policies subject to" its requirements?*

We accepted certification by Order dated October 5, 2021. For the reasons set forth below, we answer the question in the affirmative.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In accordance with M. R. App. P. 15(6)(a)(ii), the Ninth Circuit provided the relevant factual and procedural background to the certified question in its Certification Order, which we restate here.[1]

¶3 High Country Paving, Inc. ("High Country") purchased liability insurance from United Fire & Casualty Co. ("United Fire"), which included commercial auto liability

[1] High Country appears to take issue with the Ninth Circuit's factual recitation, providing additional facts outside the Ninth Circuit's Certification Order and arguing the Rules of Appellate Procedure require this Court to rely upon the parties' agreed upon facts, which the Ninth Circuit's Order dispensed with. We have explained this issue to High Country before. *See High Country Paving, Inc. v. United Fire & Cas. Co.*, 2019 MT 297, ¶ 12, 398 Mont. 191, 454 P.3d 1210. Moreover, should the parties disagree on the facts, as seems to be the case here, M. R. App. P. 15(6)(b) plainly delegates authority to the certifying court to determine the relevant facts and provide them in its certification order. We decline to consider additional factual matters raised by High Country in its briefing. Our decision is based on the facts as set forth in the Certification Order and our review of the coverage exclusion and statutory provisions that are at issue.

coverage, commercial umbrella coverage, and commercial general liability ("CGL") coverage. In August 2016, a High Country employee was operating a company truck and trailer when the trailer detached and hit another vehicle, killing the driver and injuring a passenger.

¶4 In settlement of the resulting claims brought by the driver's estate and the passenger, United Fire paid the combined $3 million limits of the commercial auto and umbrella policies but denied coverage under the CGL policy based on two exclusions: the Aircraft, Auto, or Watercraft ("AAW") exclusion, and the Multiple Liability Coverages Limitation ("MLCL") endorsement. United Fire argued the injuries arose from the use of a vehicle pulling a loaded equipment trailer and thus arose out of the use of an "auto," precluding coverage under the CGL policy pursuant to the AAW exclusion. United Fire further argued, because coverage was provided under the commercial auto policy, the CGL policy did not provide coverage pursuant to the MLCL endorsement.

¶5 High Country sued United Fire in state court for breach of contract for denying coverage under the CGL policy, along with a common law bad faith allegation and a claim under the Montana Unfair Trade Practices Act. United Fire removed the case to federal court based on diversity jurisdiction. As pertinent here, the District Court considered two questions regarding the breach of contract claim on cross-motions for partial summary judgment: (1) whether the AAW exclusion and MLCL endorsement were ambiguous and should be construed in favor of coverage, and (2) whether both provisions were void and unenforceable as a matter of law because they failed to comply with the requirements of

Montana's Property and Casualty Insurance Policy Language Simplification Act ("PSA") as interpreted in *Mont. Petroleum Tank Release Comp. Bd. v. Crumleys, Inc.*, 2008 MT 2, ¶ 53, 341 Mont. 33, 174 P.3d 948.

¶6 The District Court concluded that (1) the provisions were unambiguous and excluded coverage, but (2) the provisions were unenforceable based on a plain reading of *Crumleys* because the provisions were not listed in a table of contents or notice section of important provisions. United Fire appealed the District Court's decision that the provisions were unenforceable. High Country cross-appealed the District Court's ruling that the provisions were unambiguous and excluded coverage. United Fire moved to certify various questions related to its appeal to this Court; High Country opposed the motion. Citing the difficulties faced by lower courts in resolving the issue, the Ninth Circuit certified the issue to this Court.

STANDARD OF REVIEW

¶7 M. R. App. P. 15(3) permits this Court to answer a question of law certified to it by another qualifying court. Our review of the certified question is purely an interpretation of the law as applied to the agreed upon facts underlying the action. *Murray v. BEJ Minerals, LLC*, 2020 MT 131, ¶ 11, 400 Mont. 135, 464 P.3d 80 (citations omitted). The scope of our review is limited to the certified question. *Frontline Processing Corp. v. Am. Econ. Ins. Co.*, 2006 MT 344, ¶ 31, 335 Mont. 192, 149 P.3d 906.

DISCUSSION

¶8 United Fire argues the plain language of the PSA provides the Legislature's express intent. United Fire contends *Crumleys* proves distinguishable and inapplicable because *Crumleys* failed to increase the risk the insurer assumed. Finally, United Fire argues answering the certified question in the negative increases the risk assumed by insurers and affords High Country a windfall from coverage it did not purchase.

¶9 High Country implies the premise of the certified question is erroneous, arguing this Court already definitively interpreted the PSA in *Crumleys* and that addressing the issue anew would effectively overrule our holding there. High Country further contends the PSA's statement of purpose contained in § 33-15-334(2), MCA, constitutes nonoperative and irrelevant introductory language that should not control the PSA's specific requirements. Finally, High Country argues that United Fire's failure to comply with the requirements of § 33-15-337, MCA, should not allow it to rely on omitted policy provisions to deny coverage.

¶10 Section 33-15-334(1), MCA, provides that the purpose of the PSA "is to establish minimum language and format standards to make property and casualty policies easier to read." Subsection (2) establishes the following limitations on the PSA's provisions:

> Sections 33-15-333 through 33-15-340 are not intended to increase the risk assumed under policies subject to 33-15-333 through 33-15-340. Sections 33-15-333 through 33-15-340 are not intended to impede flexibility and innovation in the development of policy forms or content. Sections 33-15-333 through 33-15-340 do not grant authority to the commissioner to mandate the standardization of policy forms or content.

Section 33-15-337, MCA, sets forth minimum policy simplification standards. As pertinent here, § 33-15-337(2), MCA, mandates that "[t]he policy must include a table of

contents and notice section of important provisions." The Commissioner of Securities and Insurance has sole authority to enforce the PSA's requirements or seek remedies for violations. Section 33-15-338(2), MCA.

¶11 In construing a statute, this Court's task "is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or omit what has been inserted." *State v. Am. Bank of Mont.*, 2008 MT 362, ¶ 14, 346 Mont. 405, 195 P.3d 844 (citing § 1-2-101, MCA). Our objective is to implement the objectives the Legislature intended to achieve. *Mont. Vending, Inc. v. Coca-Cola Bottling Co.*, 2003 MT 282, ¶ 21, 318 Mont. 1, 78 P.3d 499. It is well-established that the starting point for interpreting a statute is the language of the statute itself. *Bullock v. Fox*, 2019 MT 50, ¶ 52, 395 Mont. 35, 435 P.3d 1187 (citation omitted). We must presume the Legislature would not pass useless or meaningless legislation. *Mont. Sports Shooting Ass'n, Inc. v. State*, 2008 MT 190, ¶ 15, 344 Mont. 1, 185 P.3d 1003. Accordingly, we must read and construe each statute as a whole to avoid absurd results and give effect to all provisions of the statute when possible. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487.

¶12 We have long relied on the stated purpose of legislation to guide our interpretation. *See, e.g.*, *Boldt v. State Farm Mut. Auto. Ins. Co.*, 151 Mont. 337, 340-41, 443 P.2d 33, 35 (1968) (noting the overall purpose of Montana's Motor Vehicle Safety Responsibility Act and certain exceptions and limitations to the requirements effectuating the statutory purpose therein). If the intent of the Legislature can be determined from the plain meaning

of the statutory language, the plain meaning controls and the Court may not go further and apply other means of interpretation. *Mont. Vending*, ¶ 21.

¶13 Read as a whole, the PSA expressly limits policies subject to its requirements from increased risk. The establishment of language and formatting standards to make insurance policies easier to read remains the PSA's underlying purpose and guides the requirements set forth in § 33-15-337(2), MCA. However, this purpose, and the requirements enacted to effectuate it, operate in tandem with the limiting language of § 33-15-334(2), MCA, and cannot be construed so as "to increase the risk assumed" under policies subject to the PSA. Thus, invalidating an unambiguous policy exclusion, as here, based on a technical violation of the PSA's requirements cannot result in increased risk being assumed by the insurer without undermining one of the PSA's express limitations. We decline to read the PSA in such a manner. Notwithstanding a technical violation of the PSA's requirements, invalidating unambiguous policy exclusions may not result in an increase of the risk assumed.

¶14 Contrary to High Country's argument, our holding does not require overruling *Crumleys*, which proves factually distinguishable. In *Crumleys*, the insured party, Visocan Petroleum Co. ("Visocan"), held a coverage extension providing for up to $100,000 of coverage for expenses to extract pollutants, provided Visocan notified the insurer, Federated Services Insurance Co. ("Federated"), of any damage or loss within 120 hours. *Crumleys*, ¶ 14. Federated denied coverage, citing Visocan's failure to provide timely notice. *Crumleys*, ¶ 15. On appeal, we concluded the 120-hour provision was void

and unenforceable because it was not included in a table of contents or notice section and thus failed to conform with the requirements of the PSA. *Crumleys*, ¶¶ 53-58.

¶15 Distinct from the case here, Federated denied the claim based on a failure to comply with the notice provision—not because of an unambiguous policy exclusion. Restated, our invalidation of the policy in *Crumleys* did not *extend* coverage. Rather, we invalidated a provision that otherwise denied rightful coverage. This distinction failed to "increase the risk assumed" by Federated and thus comported with the limitations of § 33-15-334(2), MCA. Here, conversely, High Country's coverage unambiguously excludes the risk it now asks this Court to impose upon United Fire. The express legislative purpose of the PSA compels us to decline to do so.

CONCLUSION

¶16 We conclude that, notwithstanding a failure to follow the provisions of § 33-15-337(2), MCA, the PSA's plain language in § 33-15-334(2), MCA, providing it is "not intended to increase the risk assumed[,]" allows an insurer to rely on unambiguous exclusions or limitations to a policy's coverage when invalidating such a provision would result in an increase of the risk assumed.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE