STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: September 18, 2019]

RICHMOND MOTOR SALES, INC., ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2015-5141**
NATIONWIDE MUTUAL INSURANCE COMPANY, a/k/a NATIONWIDE ASSURANCE, and VICTORIA MULLANEY, ***Defendants.***	:	

Consolidated with

NATIONWIDE MUTUAL INSURANCE COMPANY, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2016-2362**
VICTORIA MULLANEY and RICHMOND MOTOR SALES INC., ***Defendants.***	:	

Consolidated with

NATIONWIDE MUTUAL INSURANCE COMPANY, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2016-4417**
HERMAN MENDEZ and RICHMOND MOTOR SALES INC., ***Defendants.***	:	

Consolidated with

NATIONWIDE ASSURANCE COMPANY, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2016-5499**
DONOVAN BROWN and RICHMOND MOTOR SALES INC., *Defendants.*	:	

Consolidated with

MAPFRE U.S.A. CORPORATION d/b/a AMERICAN COMMERCE INSURANCE COMPANY, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2016-5540**
RICHMOND MOTOR SALES, INC., ALESIA A. ROSS, HAWAH S. WESSON, MARTHA GUITERREZ, RADHAMES MILLS, TERRELL JUDD, and ALLEN WHIGHAM, *Defendants.*	:	

Consolidated with

AMERICAN COMMERCE INSURANCE COMPANY a/k/a MAPFRE INSURANCE, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2017-0003**
LAURA A. MCCOY and RICHMOND MOTOR SALES, INC., *Defendants.*	:	

Consolidated with

PROVIDENCE MUTUAL INSURANCE COMPANY, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2017-0643**
TANOSHA POWELL and RICHMOND MOTOR SALES, INC., *Defendants.*	:	

Consolidated with

AMERICAN COMMERCE INSURANCE COMPANY a/k/a MAPFRE INSURANCE, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2017-0644**
LEAH ZINSSER and RICHMOND MOTOR SALES, INC., *Defendants.*	:	

Consolidated with

NATIONWIDE ASSURANCE COMPANY, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2017-1397**
NELSON SEMEDO AND RICHMOND MOTOR SALES, INC., *Defendants.*	:	

Consolidated with

QUINCY MUTUAL FIRE INSURANCE COMPANY,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-3450**
LUZ M. DELGADO and RICHMOND MOTOR SALES, INC.,	:	
Defendants.	:	

Consolidated with

AMERICAN COMMERCE INSURANCE COMPANY a/k/a MAPFRE INSURANCE,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-5070**
BRIAN MILLER and RICHMOND MOTOR SALES, INC.,	:	
Defendants.	:	

Consolidated with

USAA CASUALTY INSURANCE COMPANY,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-5657**
ANDREW SMITH, BRANDON DAVIS, RICHMOND MOTOR SALES, INC., and JOSEPH D. MAZZOTTA INSURANCE BROKERAGE, LLC,	:	
Defendants.	:	

Consolidated with

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2017-5721**
RICHMOND MOTOR SALES, INC. and JESSICA FAY, ***Defendants.***	:	

DECISION

LICHT, J. These thirteen cases were consolidated pursuant to Rule 42(a) for purposes of declaratory judgment and partial summary judgment. The parties submitted agreed-upon facts and present two questions for this Court's determination on Cross Motions for Summary Judgment. These questions, which were agreed upon by all parties after consultation with the Court on several occasions, are as follows:

Question 1: Do G.L. 1956 §§ 27-7-6 and 27-7-3 require an insurer to extend property damage coverage under an insured's private passenger automobile insurance policy for property damage to a rental motor vehicle, without regard to negligence, irrespective of policy provisions, defenses to coverage, and exclusions that the insurer may have with respect to its insured and/or the operator of the vehicle?

Question 2: Is a Non-Owner policy a "private passenger automobile insurance policy" subject to G.L. 1956 § 27-7-6?

I

Facts and Travel

The agreed-upon facts in this case are as follows:

1. Defendant Richmond Motor Sales, Inc. (Richmond) is a rental car company authorized to do business in the State of Rhode Island and is subject to the requirements of G.L. 1956 §§ 31-34-1 *et seq.* (Responsibility of Owners of Rental Vehicles).

2. Plaintiffs are all Insurers authorized to do business in the State of Rhode Island.

3. Individual Defendants all rented motor vehicles, each under 10,000 lbs., from Richmond for various time periods.[1]

4. When each subject rented motor vehicle was returned by the Individual Defendant to Richmond, it had sustained damage.

5. The subject vehicles that Richmond rented to the Individual Defendants are private passenger automobiles that were rented pursuant to written contracts between Richmond and the Individual Defendant.

6. Before entering into such contracts, each Individual Defendant identified an insurance policy issued to him or her by an insurer authorized to provide such insurance in the State of Rhode Island.

7. The insurance policies in question were issued pursuant to G.L. 1956 §§ 31-47-1 *et seq.* (Motor Vehicle Reparations Act).

8. After learning that each vehicle had sustained damage, Richmond submitted a claim for property damage to the rental vehicle to the Individual Defendant's insurer.

[1] The Court will assume without deciding, for purposes of answering the questions posed, that the motor vehicles were all rented for less than sixty days.

9. Each Individual Defendant's insurer, in turn, has denied Richmond's claim for property damage. Agreed-To Common Facts 1-9.

II

Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Employers Mutual Casualty Company v. Arbella Protection Insurance Company*, 24 A.3d 544, 553 (R.I. 2011) (internal quotations omitted). "[S]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted). However, "summary judgment should occasion the termination of a case only where it is absolutely clear that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." *Employers Mutual Casualty Company*, 24 A.3d at 553.

Under the Uniform Declaratory Judgments Act, the Superior Court has the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." G.L. 1956 § 9-30-1. "The purpose of declaratory judgment actions is to render disputes concerning the legal rights and duties of parties justiciable without proof of a wrong committed by one party against another, and thus facilitate the termination of controversies." *Millett v. Hoisting Engineers' Licensing Division of Department of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977) (internal quotations omitted). Thus, "[t]his power is broadly construed." *Bradford Associates v. Rhode Island Division of Purchases*, 772 A.2d 485, 489 (R.I. 2001) (internal quotations omitted).

III

Analysis

Both questions before the Court involve statutory construction, specifically of §§ 27-7-6 and 27-7-3. It is well established that '"when the language of a statute is clear and unambiguous, [this Court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."' *Liberty Mutual Insurance Co. v. Kaya*, 947 A.2d 869, 872 (R.I. 2008) (quoting *State v. LaRoche*, 925 A.2d 885, 887 (R.I. 2007)). Hence, when '"a statutory provision is unambiguous, there is no room for statutory construction and [the Court] must apply the statute as written."' *Retirement Board of Employees' Retirement System of State v. DiPrete*, 845 A.2d 270, 297 (R.I. 2004) (quoting *In re Denisewich*, 643 A.2d 1194, 1197 (R.I. 1994)). '"It is only when confronted with an unclear or ambiguous statutory provision that this Court will examine the statute in its entirety to discern the legislative intent and purpose behind the provision."' *Liberty Mutual Insurance Company*, 947 A.2d at 872 (quoting *LaRoche*, 925 A.2d at 888). Additionally, a statute may not be construed to render sentences, clauses, or words surplusage. *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987).

"[S]tatutes relating to the same subject matter should be considered together so that they will harmonize with each other and be consistent with their general objective scope." *State v. Such*, 950 A.2d 1150, 1156 (R.I. 2008) (citing *State ex rel. Webb v. Cianci*, 591 A.2d 1193, 1203 (R.I. 1991)); *see also Blanchette v. Stone*, 591 A.2d 785, 786 (R.I. 1991) ("When a court is called upon to construe the provisions of coexisting statutes, we attempt to follow the rule of statutory construction that provides that statutes relating to the same or similar subject matter should be construed such that they will harmonize with each other and be consistent with their general objective scope."). "Such statutes are considered to be *in pari materia* which stands for the simple

proposition that 'statutes on the same subject . . . are, . . . to be read in relation to each other.'" *Such*, 950 A.2d at 1156.

A

Question 1

Do §§ 27-7-6 and 27-7-3 require an insurer to extend property damage coverage under an insured's private passenger automobile insurance policy for property damage to a rental motor vehicle, without regard to negligence, irrespective of policy provisions, defenses to coverage, and exclusions that the insurer may have with respect to its insured and/or the operator of the vehicle?

Richmond argues that §§ 27-7-6 and 27-7-3 "require an insurer to extend property damage coverage under an insured's private passenger automobile insurance policy for property damage to a rental motor vehicle, without regard to negligence, irrespective of policy provisions, defenses to coverage, and exclusions that the insurer may have with respect to its insured and or the operator of the vehicle." Richmond Mem. 5.

Richmond has three arguments that support its position. First, Richmond points to the word "shall," contained in both §§ 27-7-6 and 27-7-3, and contends "shall" means that the statutes provide mandatory coverage for property damage to rented motor vehicles, regardless of any limitation, exclusion, or condition. Richmond contends that this meaning is clear and unambiguous and does not require a determination of statutory construction. Second, Richmond claims, somewhat circularly, that § 27-7-3 mandates that policy provisions inconsistent with § 27-7-6 be deemed void, and because § 27-7-6 requires that automobile insurance policies provide coverage for property damage to rented motor vehicles, any policy provisions that would exclude coverage of the same are void. Third, Richmond contends that the Rhode Island automobile

insurance policies at issue state in clear, unambiguous terms that property damage to rented motor vehicles is covered; therefore, coverage is already provided. Richmond Mem. 8.

Additionally, Richmond claims that public policy favors its position for two reasons. First, Richmond reasonably relies upon the property damage coverage to rented motor vehicles afforded in §§ 27-7-6 and 27-7-3 when renting vehicles to its customers. Second, insureds should not have to pay for separate short-term insurance for rental vehicles when their insurance policies are already required to provide such coverage.

Insurers agree with Richmond that § 27-7-6 is unambiguous but contend that Richmond's broad reading of the statute equates to placing strict liability on Insurers because such an interpretation would "override legitimate insurance policy exclusions and other provisions" in the insurance policies. Insurers argue that § 27-7-6 merely extends property liability coverage to a rented vehicle; it does not require coverage under all circumstances, as Richmond contends it does. To support their argument, Insurers point to the statute's use of the phrase "under the property damage liability section of an insured's private passenger automobile insurance policy" to argue that the statute limits its extension of coverage to that which the insured already has under his or her auto policy. Furthermore, Insurers contend that the statute cannot alter the terms of an insured's policy to create coverage because the policy is a contract between the insured and the insurer.

Second, Insurers contend that § 27-7-3 does not automatically void the provisions in the subject policies that exclude, condition, or limit coverage for property damage to rental vehicles because the validity of policy provisions that limit statutorily-mandated insurance coverage have been upheld in other contexts. Insurers look to § 27-7-2.1, Rhode Island's uninsured motorist coverage statute, which requires insurance carriers to offer uninsured motorist coverage (although, insureds can waive this coverage). Despite the requirement to offer this coverage, courts have upheld exclusionary clauses that limited or denied coverage for uninsured motorist benefits. Insurers point to *Henderson v.*

Nationwide Insurance Company, where the Supreme Court upheld an exclusion to uninsured coverage because the exclusion was consistent with the purpose of § 27-7-2.1,[2] and the statute "does not require insurance companies to provide policyholders with uninsured motorist coverage that protects them in virtually every circumstance." 35 A.3d 902, 907 (R.I. 2012).

Third, Insurers claim that Richmond's position contradicts the basic structure of liability insurance agreements because coverage provisions and exclusions must be read together. Insurers cite *Empire Fire & Marine Insurance Companies v. Citizens Insurance Company of America/Hanover Insurance*, 43 A.3d 56, 60 (R.I. 2012) for the proposition that the interpretation of the policy as a whole is "central to the resolution of an insurance-coverage dispute," and policy terms are not to be read in isolation.

Fourth, Insurers argue that public policy favors their position because § 27-7-6 is intended to confer a benefit on insureds, not rental car companies. Insurers point to the statute's use of the phrase "under the property damage liability section of an insured's private passenger automobile insurance policy" to support their position. Additionally, Insurers, not rental car companies, reasonably rely on § 27-7-6 when they issue policies, approved by the Department of Business Regulation, that contain such exclusions.

Finally, Insurers contend that Richmond's interpretation of § 27-7-6 is inconsistent with Rhode Island law governing rental car agreements. Specifically, § 31-34-7 requires certain language in rental car agreements, which reads, in part, "This contract offers, for an additional charge, a collision damage waiver to cover your responsibility for damage to the vehicle. Before deciding whether to purchase the collision damage waiver, you may wish to determine whether

[2] Cases where a policy exclusion has been found to be inconsistent with the purpose of § 27-7-2.1 are *Sentry Insurance Co. v. Castillo*, 574 A.2d 138, 140 (R.I. 1990) (where the policy narrowed the definition of "uninsured motor vehicle") and *Aldcroft v. Fidelity & Casualty Company of New York*, 106 R.I. 311, 318-19, 259 A.2d 408, 413-14 (1969) (where the policy reduced the amount of coverage to a quantity less than the statutory minimum).

your own automobile insurance affords you coverage for damage to the rental vehicle . . . . " Sec. 31-34-7(a). Such notice is included in Richmond's own rental agreements. Insurers' Ex. B. Insurers read this to mean that § 27-7-6 does not provide coverage for rental cars under every circumstance.[3]

The full text of each statute is below:

> "For liability assumed under a written contract, coverage shall be provided under the property damage liability section of an insured's private passenger automobile insurance policy. Property damage coverage shall extend to a rented motor vehicle, under ten thousand (10,000) lbs, without regard to negligence for a period not to exceed sixty (60) consecutive days." Sec. 27-7-6.
>
> "All policies described in this chapter shall be deemed to be made subject to the provisions of this chapter, and all provisions of policies inconsistent with this chapter shall be void." Sec. 27-7-3.

Richmond is correct that the word "shall" in § 27-7-6 extends mandatory coverage to rental vehicles, regardless of negligence, and Insurers do not contest that. However, the statute must be read as a whole and "may not be construed . . . to render sentences, clauses, or words surplusage." *Brennan*, 529 A.2d at 637. The statute does not simply state that "coverage shall be provided," it states that coverage "shall be provided under the property damage liability section of an insured's" policy. If the Court were to accept Richmond's interpretation of the statute, it would render the words after "shall be provided" meaningless. The fact that the statute already extends coverage beyond the liability policy by disregarding negligence does not mean the statute was intended to expand coverage in other ways also.[4] In fact, if the General Assembly intended to expand coverage

[3] Richmond counters that the collision waiver statute and § 27-7-6 are "in harmony" because "literal effect can be given to both statutes." According to Richmond, § 31-34-7 contemplates that individuals residing outside of Rhode Island (and thus, have non-Rhode Island automobile policies that are not afforded protection under § 27-7-6) may rent vehicles within Rhode Island.

[4] As Insurers point out, the "without regard to negligence" language means that liability coverage acts more like collision coverage in the case of a rental vehicle. Because collision is optional in

beyond the policy, it would have mentioned those specific expansions, as it already did with regard to negligence. Thus, the statute should be read to extend coverage to rental vehicles *only* as far as the liability section of an insured's policy applies to other liability claims. In other words, an insurer may deny coverage for damage to a rental car for any of the reasons it could deny coverage under the liability portion of its policy. Additionally, because the policy exclusions apply to rental cars, those exclusions are not automatically deemed to be void under § 27-7-3, and thus, the Court cannot accept Richmond's second argument.[5]

Furthermore, during oral argument, the Court queried Richmond's counsel if the property damage to the rental car exceeded the policy limits and whether the insurance carrier would have to cover all the damage. Counsel conceded that the policy limits apply to rental vehicles. During its rebuttal, Richmond argued that the limits apply because their application is not contrary to the "shall" directive found in § 27-7-6 because coverage would still be afforded, subject to a limit. According to Richmond, this is distinguishable from application of an exclusion because such application would mean there was no coverage at all, which would conflict with the word "shall." This argument is unpersuasive. If the policy limits apply, then it is logical that the other terms that limit or exclude coverage under the policy apply as well. It makes no difference that the policy limit is styled as a "limit" and the exclusions are styled as "exclusions"; they are all provisions of

Rhode Island, § 27-7-6 allows consumers who do not have collision coverage to have coverage for rented vehicles.

[5] The Court will not address Richmond's third argument (that the policies at issue state in clear, unambiguous terms that property damage to rented motor vehicles is covered) because that argument is beyond the scope of this Partial Summary Judgment as it would require the Court to delve into the specifics of each policy and has nothing to do with interpreting the statutes at issue. However, the Court notes that the main policy Richmond points to in support of its contention is the American Commerce Insurance Company policy. That policy does give coverage to rental vehicles but does not expand the scope of coverage beyond the policy exclusions that apply to its liability coverage.

the insured's private passenger automobile policy and the statute states that rental car coverage is provided "under the property damage liability section of an insured's private passenger automobile insurance policy." *See* § 27-7-6. If Richmond believes that coverage is mandatory in all situations because of the word "shall," it is illogical that it believes the policy limit applies for any reason other than that it knows that to argue that there are absolutely no limits to coverage on rented motor vehicles is an extreme position to take.

Another example shows why expanding coverage to those areas that insurers exclude under their policies is nonsensical. The very first exclusion states, "We do not provide Liability Coverage for any 'insured' who intentionally causes 'bodily injury' or 'property damage.'" Ex. B (internal punctuation altered). If exclusions did not apply to rental vehicles, any insured could rent a vehicle, intentionally hit pedestrians, other motorists, vehicles, buildings, road signs, or other obstacles, and the insurer would have to pay for the property damage to that rented vehicle. It is doubtful in this Court's mind that the General Assembly could have possibly intended such a result.

Richmond can rely on its renters having insurance when they rent vehicles from it—but its reliance cannot extend beyond what the renter's policies provide. Insurers correctly point out that this Court has already concluded that § 27-7-6 is a consumer protection statute, thereby intending to protect consumers and not rental car companies. *See Richmond*, Nos. PC 13-3954, PC 14-3632, PC 14-3636, 2015 WL 9234198, at *5 n.7 (R.I. Super. Dec. 11, 2015).[6]

Lastly, the Supreme Court has held that "[a]n insurance policy is foremost a contract between the insured and the insurer"; therefore, "neither the terms of the statute nor the public

[6] Transcript of the House of Representatives' approval of § 27-7-6 is Insurers' Ex. A; *see also Richmond*, 2015 WL 9234198, at *5 (opining that the transcript "further supports the Court's conclusions that § 27-7-6 is a consumer protection statute.").

policy expressed therein dictate the specific terms of the contract." *Henderson*, 35 A.3d at 908 (internal quotations omitted).[7] However, "contracts of insurance carriers must conform to constitutionally valid conditions imposed by the legislature." *Allstate Insurance Company v. Fusco*, 101 R.I. 350, 356, 223 A.2d 447, 450 (1966) (internal citation omitted).

In this case, the insurance policies must conform to the terms of § 27-7-6 by providing coverage to rental vehicles under the liability section of those policies. Therefore, the Court finds that provisions and exclusions under the liability section of an insurance policy apply to coverage of rental vehicles and answers Question 1 in the negative with one caveat: as Insurers have already conceded, coverage must be provided irrespective of negligence.

B

Question 2

Is a Non-Owner policy a "private passenger automobile insurance policy" subject to G.L. 1956 § 27-7-6?

Richmond contends that a "non-owner" automobile policy qualifies as a "private passenger automobile insurance policy" and therefore, is subject to § 27-7-6. Non-owner automobile insurance policies provide liability insurance to drivers who do not own a vehicle. According to Richmond, the term "private passenger automobile" within § 27-7-6 refers to the type of vehicle being operated, not the type of driver, and references to "private passenger automobiles" do not distinguish between owners and non-owners of vehicles. Richmond points to the applications and notices for these policies, which are issued by the Rhode Island Automobile Insurance Plan, to support its point. The applications are entitled "Private Passenger, Motorcycle, and Named Non Owner Application," and

[7] Although *Henderson* addressed exclusionary language under the uninsured statute, that case is still instructive to this Court because the Supreme Court upheld the validity of exclusionary clauses, even where an insurer is required to offer coverage.

the notices are similarly called "Private Passenger Automobile Policies." (Richmond's Ex. F). Finally, Richmond argues that § 27-7-3 makes all liability insurance policies, including non-owner policies, subject to the provisions of Chapter 27-7, including § 27-7-6.

Insurers counter that non-owner policies are not "private passenger automobile policies" because auto policies must be either an "owner's policy" or an "operator policy" (*i.e.*, non-owner policy), as defined by statute in § 31-34-24. Under that statute, non-owner policies only insure the named insured(s) from liability arising out of the insured's use of an unowned vehicle, and thus, by definition, those policies cannot be "private passenger automobile policies" because they insure a driver, not a specific vehicle.

By its terms, § 27-7-3 subjects "[a]ll policies described in [Chapter 7]" to its provisions. The Chapter begins in § 27-7-1, "Every policy written insuring against liability for property damage or personal injuries or both . . . . " This provision does not discriminate between owner and operator policies or exclude operator policies from what Chapter 7 "describes." Thus, Chapter 7 encompasses non-owner policies because those policies insure against liability, as described in § 27-7-1, and are "private passenger automobile insurance policies" subject to the provisions of § 27-7-6.

Additionally, Insurers' contention that non-owner policies do not insure a specific vehicle and thus are not "private passenger automobile policies" is unconvincing. First of all, there is nothing unusual about an insurer providing coverage to an insured when driving a vehicle not owned by him or her as this is the case with all owner's policies. Secondly, by its very definition, a non-owner policy provides coverage when the insured is driving a car, which he or she does not own. To suggest that the non-owner insured is protected when borrowing a car but not when renting a car is unpersuasive with this Court. Non-owner policies insure drivers of private

passenger automobiles—the driver is covered for driving the same type of vehicle as if he or she had an owner policy. The statute simply extends the coverage, just as it does with owner policies.

The Court answers Question 2 in the affirmative, also with one caveat: the policy limits, terms, and exclusions of non-owner policies apply to coverage of rented automobiles. This caveat is consistent with the Court's answer to Question 1.

IV

Conclusion

In light of the foregoing, the Court answers Question 1 in the negative because the provisions of an insured's liability policy, including the terms and exclusions, apply to coverage of a rented automobile. The Court answers Question 2 in the affirmative because non-owner policies are "private passenger automobile policies" within the meaning of § 27-7-6. Counsel shall confer to prepare the appropriate order for entry and distribute a draft to all parties before filing the same.