IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA
APPELLATE DIVISION

APPEAL NO.: CACE17-013776 (AP)
CASE NUMBER: CONO16-006781

SEA SPINE ORTHOPEDIC INSTITUTE, LLC, a/a/o CARMEN CHARRIEZ,
Appellant,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Appellee.

Dated: April 30, 2020.

Appeal from the County Court for the Seventeenth Judicial Circuit, Broward County; John D. Fry, Judge.

Chad A. Barr, Esq., of Law Office of Chad A. Barr, P.A., Altamonte Springs, Florida, for Appellant.

Antonio D. Morin, Esq., of Akerman LLP, Miami, Florida, for Appellee.

OPINION

Sea Spine Orthopedic Institute, LLC (Sea Spine) appeals an order of the county court granting Liberty Mutual Insurance Company's (Liberty Mutual) Cross-Motion for Declaratory Relief. Having carefully considered the briefs, the record, and the applicable law, this Court dispenses with oral argument and the order of the county court is hereby **REVERSED**, as set forth below:

In the proceedings below, Sea Spine filed a complaint for declaratory relief against Liberty Mutual requesting that the county court determine the amount of coverage available under an insurance policy. Therein, Sea Spine averred that "[d]efendant's policy of insurance is vague and ambiguous as to the amount of coverage available under its Personal Injury Protection (PIP) Coverage." (R. 16). Specifically, the parties disagreed as to whether the subject policy was limited to a total of $12,500 or $10,000, the amount paid out by Liberty Mutual. On February 6, 2017, Sea Spine filed its Motion for Summary Judgment Regarding Petitioner's Petition for Declaratory Relief (Motion). On May 2, 2017, Liberty Mutual filed a Cross-Motion for Declaratory Relief (Cross-Motion). The county court denied Sea Spine's Motion and granted Liberty Mutual's Cross-Motion, entering an order memorializing its findings on June 30, 2017.

As to the interpretation of insurance contracts, the law is well settled.

> Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written. Further, in order for an exclusion or limitation in a policy to be enforceable, the insurer must clearly and unambiguously draft a policy provision to achieve that result. Policy language is considered to be ambiguous if the language is susceptible to more than one reasonable interpretation, one providing coverage and the other limiting coverage. Ambiguous insurance policy exclusions are construed against the drafter and in favor of the insured.

Allstate Ins. Co. v. Orthopedic Specialists, 212 So. 3d 973, 975–76 (Fla. 2017) (internal punctuation and citations omitted). Applying the rules of insurance contract interpretation, this Court determines that the terms of Liberty Mutual's policy are ambiguous. Specifically, the policy is silent as to whether the benefits listed in the policy are stackable. This Court's determination is buttressed by Liberty Mutual counsel's testimony, which indicates that, pursuant to the policy, emergency medical condition (EMC) and accidental death benefits *are* stackable while EMC and bodily injury benefits *are not* stackable, without explanation as to why. (R. 337–339). Indeed, the subject policy is silent on this issue. Where a policy is silent as to a particular issue (e.g. whether policy benefits are stackable or not) this creates an ambiguity in the insurance contract. *See Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29 (Fla. 2000) (determining that if Auto-Owners intended to exclude or limit its liability coverage no matter how many of its vehicles were involved in an accident, it was incumbent upon Auto-Owners to do so unambiguously). Because the policy is ambiguous, the county court was bound to construe the contract in favor of coverage and strictly against the insurer. *See Washington Nat'l Ins. Corp. v. Ruderman*, 117 So. 3d 943 (Fla. 2013).

Rather, in rendering its decision, the county court improperly relied on extrinsic evidence, namely Florida's Personal Injury Protection (PIP) statute, to make meaning of the policy terms. (R. 328; 347–348). *See Ruderman*, 117 So. 3d

at 949 (explaining that Florida law does not require that resort must be made to consideration of extrinsic evidence before an insurance policy is found to be ambiguous and construed against the insurer). The fact that Liberty Mutual's policy incorporated, by reference, Florida's PIP statute, does not work to ameliorate the ambiguity created by the schedule of benefits. This exact argument was rejected by the Supreme Court of Florida in *Geico General Insurance Company v. Virtual Imaging Services, Inc.* *See Virtual Imaging*, 141 So. 3d 147, 159 (Fla. 2013) (explaining that because the Medicare fee schedules contained in the PIP statute merely represent an *option* for insurers, rather than a *requirement* for insurers, "neither the insured nor the provider knows without the policy providing notice by electing the Medicare fee schedules, that the insurer will limit reimbursements."). Similarly, in the instant matter, the fact that the PIP statute is incorporated into the subject policy did not put Sea Spine on notice of Liberty Mutual's intent to cap benefits at $10,000 upon a determination of an EMC.

Accordingly, the order granting Appellee's Cross-Motion is hereby **REVERSED**, and this case is **REMANDED** to the county court for further proceedings consistent with this Opinion. Appellant's Motion for Award of Appellate Attorney's Fees and Costs is hereby **GRANTED** as to appellate attorney's fees, with the amount to be determined by the county court upon remand. Further, Appellant's Motion for Award of Appellate Attorney's Fees and Costs is hereby

DENIED as to costs, WITHOUT PREJUDICE to Appellant to file a motion in the county court pursuant to Florida Rule of Appellate Procedure 9.400(a). *See* Fla. R. App. P. 9.400(a) ("Costs shall be taxed by the lower tribunal on a motion served no later than 45 days after rendition of the court's order.").

BOWMAN, LOPANE, and FAHNESTOCK, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Copies to:
The Honorable John D. Fry
Chad A. Barr, Esq.
Antonio D. Morin, Esq.