2016 IL App (5th) 140517-U

NO. 5-14-0517

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LYLE D. WEBER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Richland County.
	)	
v.	)	No. 13-L-17
	)	
MITSUI SUMITOMO MARINE	)	
MANAGEMENT (USA), INC.,	)	Honorable
	)	Larry D. Dunn,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Partial summary judgment in favor of the defendant insurer in the plaintiff's declaratory judgment action was affirmed where the trial court properly found that (1) there is no ambiguity as between the exclusions and limits of insurance provisions of the underinsured motorist endorsement, and credits are allowed for workers' compensation benefits received; and (2) if the plaintiff's damages are found to equal or exceed the underinsured motorist policy limit, the credit for workers' compensation benefits received is to be deducted from the policy limit rather than the amount of his damages.

¶ 2 The plaintiff, Lyle D. Weber, appeals the trial court's order granting partial summary judgment in favor of the defendant, Mitsui Sumitomo Marine Management (USA), Inc. (Mitsui), in his declaratory judgment action, arguing that the trial court erred

in finding that (1) there is no ambiguity as between section C.1. under "Exclusions" and section D.2.b. under the "Limit Of Insurance" provisions of the underinsured motorist (UIM) endorsement, and credits are allowed for workers' compensation benefits he receives; and (2) in determining the amount he can recover from the UIM policy, the credit allowed for workers' compensation benefits he receives is to be deducted from the $1 million UIM policy limit if his damages are found to equal or exceed $1 million. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The parties stipulated to the pertinent facts, which can be summarized as follows. The plaintiff was injured in a motor vehicle accident in Wayne County, Illinois, on September 7, 2011, when he was rear-ended by a vehicle driven by Melinda Melton. Melton's vehicle was insured by Esurance under a policy with a $50,000 bodily injury liability limit. At the time of the accident, the plaintiff was acting within the course and scope of his employment with Valent USA Corporation (Valent). He was driving a vehicle owned by Valent and insured by Mitsui under a commercial automobile policy with a $1 million UIM coverage limit.

¶ 5 The plaintiff filed a claim against Melton's Esurance policy. With Mitsui's consent, the plaintiff settled his claim against Melton for her $50,000 policy limit.

¶ 6 The plaintiff also pursued a UIM claim under the Mitsui policy. The UIM endorsement provides, in pertinent part, as follows:

"A. Coverage

1. We will pay all sums the 'insured' is legally entitled to recover as compensatory damages from the owner or driver of an 'underinsured motor vehicle'. The damages must result from 'bodily injury' sustained by the 'insured' caused by an 'accident'. ***

2. We will pay only after all liability bonds or policies have been exhausted by payment of judgments or settlements, unless:

***

b. We and an 'insured' have reached a 'settlement agreement'.

* * *

C. Exclusions

This insurance does not apply to any of the following:

1. The direct or indirect benefit of any insurer under any workers' compensation *** law.

* * *

D. Limit Of Insurance

1. *** [T]he most we will pay for all damages resulting from any one 'accident' is the Limit of Insurance for Underinsured Motorists Coverage shown in this endorsement.

2. Except in the event of a 'settlement agreement', the Limit of Insurance for this coverage shall be reduced by all sums paid or payable:

a. By or for anyone who is legally responsible ***.

b. Under any workers' compensation *** law. ***

c. Under any automobile medical payments coverage.

* * *

F. Additional Definitions

* * *

3. 'Settlement agreement' means we and an 'insured' agree that the 'insured' is legally entitled to recover, from the owner or operator of the 'underinsured motor vehicle', damages for 'bodily injury' and, without arbitration, agree also as to the amount of damages."

¶ 7 In addition to the claims against the Esurance and Mitsui policies, the plaintiff also filed a workers' compensation claim with Mitsui, which was also Valent's workers' compensation carrier. Mitsui paid workers' compensation benefits on the plaintiff's behalf and, thus, had a lien against the proceeds of his settlement with Melton. Mitsui demanded reimbursement of its statutory lien and was reimbursed $37,500 from the proceeds of the plaintiff's settlement with Melton ($50,000 less $12,500 in attorney fees).

¶ 8 On March 13, 2014, the plaintiff filed his first-amended complaint against Mitsui. In count I, he sought a declaration that (1) Mitsui's UIM coverage does not apply to, and there is to be no credit or reimbursement given to, Mitsui's workers' compensation unit and (2) the $50,000 settlement with Melton is not to be credited against Mitsui's $1 million UIM policy limit. In count II, he sought a declaration that he has complied with his obligations under the UIM endorsement so that he can move forward with arbitration.

¶ 9 On June 2, 2014, the plaintiff filed a motion for summary judgment. In his motion, he sought declarations that (1) Mitsui is not entitled to a $50,000 credit on its $1 million UIM policy limit for his recovery from Melton; (2) Mitsui is not entitled to a workers' compensation lien on his UIM claim or a credit against its UIM policy limit for payments made by its workers' compensation unit; and (3) he has complied with his obligations under the UIM endorsement, and the case is ready for arbitration.

¶ 10 On June 3, 2014, Mitsui also filed a motion for summary judgment. In its motion, Mitsui sought the following declarations: (1) if the plaintiff's damages are found to exceed $1 million, the $1 million UIM policy limit is to be reduced by (a) any workers' compensation benefits he receives and (b) the amount of his settlement with Melton ($50,000) less the amount of that settlement used to pay off the workers' compensation lien ($37,500); and (2) if his damages are found to be less than $1 million, his damages are to be reduced by (a) any workers' compensation benefits he receives and (b) the amount of his settlement with Melton ($50,000) less the amount used to pay off the workers' compensation lien ($37,500).

¶ 11 On June 24, 2014, the matter came before the court for a hearing on the cross-motions for summary judgment. At that time, Mitsui had paid $146,867 in workers' compensation benefits on the plaintiff's behalf; his workers' compensation claim remained open and unresolved; and he was continuing to receive benefits. After hearing arguments of counsel, the court took the matter under advisement.

¶ 12 On September 22, 2014, the court entered its order ruling on the cross-motions for summary judgment. Initially, the court found that the parties had not yet reached a

"settlement agreement" as defined in the UIM endorsement; that they had not agreed upon the total value of the plaintiff's claim; that the amount that he was legally entitled to recover as compensatory damages from Melton was still in dispute and would likely be resolved by an arbitrator pursuant to the terms of the policy; and that Mitsui, as workers' compensation carrier, cannot claim or enforce a lien against the plaintiff's UIM claim.[1]

¶ 13 As to count I of the plaintiff's first-amended complaint, the court denied the plaintiff's motion for summary judgment and granted, in part, Mitsui's motion for summary judgment, making certain corrections to the amounts of credits/deductions allowed in light of the appropriate application of the common fund doctrine and section 5(b) of the Workers' Compensation Act (820 ILCS 305/5(b) (West 2014)).[2] The court granted the plaintiff's motion for summary judgment as to count II of his first-amended complaint, finding that he has fully complied with his obligations under the UIM endorsement and that his claim for damages may now be settled or arbitrated.[3]

¶ 14 The court held, *inter alia*, that (1) credits are allowed for workers' compensation benefits the plaintiff receives; and (2) in determining the amount he can recover from the UIM policy, the credit allowed for workers' compensation benefits he receives is to be

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[1]These matters have never been in dispute.

[2]The court denied that part of Mitsui's motion for summary judgment regarding a partial setoff of the plaintiff's settlement with Melton. Mitsui accepts that part of the court's ruling, and it is not at issue on appeal.

[3]Mitsui does not challenge this ruling, and it is not at issue on appeal.

deducted from the $1 million UIM policy limit if his damages are found to equal or exceed $1 million. The plaintiff filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). "When parties file cross-motions for summary judgment, they mutually concede that there are no genuine issues of material fact and that only a question of law is involved." *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 10. Construction of the terms of an insurance policy is a question of law properly decided on a motion for summary judgment. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010).

¶ 17 Our review of an order granting summary judgment is *de novo*. *Seymour v. Collins*, 2015 IL 118432, ¶ 42. Likewise, the construction of the terms of an insurance policy is a question of law subject to *de novo* review. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010).

¶ 18 "An insurance policy is a contract, and the general rules governing the interpretation of contracts also govern the interpretation of insurance policies." *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 24. "In construing an insurance policy, we must ascertain and give effect to the intentions of the parties, as expressed in the policy language." *West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 184 (2010). "If the policy language is unambiguous, the policy will be applied as

written unless it contravenes public policy." *Lay*, 2013 IL 114617, ¶ 24. "A policy provision is not rendered ambiguous simply because the parties disagree as to its meaning." *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). "Rather, an ambiguity will be found where the policy language is susceptible to more than one reasonable interpretation." *Id.*

¶ 19 The plaintiff first argues that the trial court erred in finding that there was no ambiguity as between sections C.1. and D.2.b. of the UIM endorsement, and credits are allowed for workers' compensation benefits he receives. He argues that, under the unique factual circumstances here, where Mitsui provided both workers' compensation and UIM insurance in connection with this occurrence, the UIM endorsement is ambiguous and should be construed against Mitsui, which drafted the policy language. More specifically, he argues that, "[w]hen read together, the exclusion language prevents [Mitsui] in its capacity as workers' compensation carrier from receiving any direct or indirect benefit from the [UIM] coverage and inconsistently provides under the limit of insurance section that [Mitsui] in its capacity as [a UIM] carrier will be entitled to a credit for any payments made by its workers' compensation insurance." We disagree.

¶ 20 Three provisions of the UIM endorsement make its intent clear. First, section A.2. provides that the policy "will pay only after all liability bonds or policies have been exhausted by payment of judgments or settlements." This is true of most UIM policies and reflects the fact that UIM coverage is "gap" coverage, which is intended to fill the gap between the coverage available to the underinsured driver who caused the injuries and the UIM policy limit. See *Sulser v. Country Mutual Insurance Co.*, 147 Ill. 2d 548,

555 (1992) (the legislative purpose of UIM coverage is "to place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance").

¶ 21 Second, section C.1. provides that "[t]his insurance does not apply to *** [t]he direct or indirect benefit of any insurer under any workers' compensation *** law." Thus, the UIM endorsement excludes coverage for benefits the insured receives from a workers' compensation carrier.

¶ 22 Third, section D.1. provides that the most the UIM policy "will pay for all damages resulting from any one 'accident' is the Limit of Insurance for [UIM] Coverage shown in this endorsement." Section D.2.b. then provides that "[e]xcept in the event of a 'settlement agreement', the Limit of Insurance for this coverage shall be reduced by all sums paid or payable *** [u]nder any workers' compensation *** law." Section D.2.b. could not be clearer. Here, it is undisputed that there was no "settlement agreement" as defined in the endorsement, and, thus, under the plain language of section D.2.b., the UIM policy limit is to be reduced by the workers' compensation benefits the plaintiff receives.

¶ 23 The plaintiff argues that section C.1. means that, in determining the amount of UIM coverage available to him, Mitsui (as the UIM carrier) is not entitled to a credit for the workers' compensation benefits paid because such a credit would benefit Mitsui (as the workers' compensation carrier). We disagree.

¶ 24 The plaintiff's interpretation isolates section C.1. from the remainder of the UIM endorsement, thereby violating the rule that an insurance policy must be read as a whole. See *Munoz*, 237 Ill. 2d at 433 ("[A]n insurance policy must be considered as a whole; all

of the provisions, rather than an isolated part, should be examined to determine whether an ambiguity exists.").

¶ 25 The plaintiff's interpretation would also render section D.2.b. meaningless as it would prevent Mitsui from doing exactly what that section requires, *i.e.*, reducing the policy limit by the amount of workers' compensation benefits the plaintiff receives. We "will not interpret an insurance policy in such a way that any of its terms are rendered meaningless or superfluous." *Wilson*, 237 Ill. 2d at 466.

¶ 26 Interpreting the UIM endorsement as a whole demonstrates that sections C.1. and D.2.b. are analogous. Section C.1. excludes coverage for benefits the insured receives from a workers' compensation carrier. Similarly, section D.2.b. requires that the UIM policy limit be reduced by the workers' compensation benefits the plaintiff receives. Both sections prevent the plaintiff from receiving double recovery for his damages from independent sources. There is no inconsistency between a provision excluding coverage for benefits paid by a workers' compensation carrier and a provision requiring that the policy limits be reduced by benefits paid by a workers' compensation carrier.

¶ 27 The plaintiff's interpretation of section C.1. also ignores the fact that section C.1. is an *exclusion*, which serves the purpose of removing persons or events from coverage that would otherwise be included. See *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 379 (2007). An exclusion narrows coverage; it does not expand coverage; therefore, the plaintiff's argument that section C.1. expands coverage for him is untenable.

¶ 28 The plaintiff's interpretation of section C.1. also ignores the fact that UIM coverage is designed "to place the insured in the same position he would have occupied if

injured by a motorist who carried liability insurance in the same amount as the policyholder." *Sulser*, 147 Ill. 2d at 558. Sections C.1. and D.2.b. advance this purpose.

¶ 29 If Melton had been fully insured, *i.e.*, if she had an insurance policy with a $1 million liability limit, the workers' compensation carrier would have had a lien on the proceeds of her policy. Thus, the plaintiff would have been required to fully reimburse the workers' compensation carrier for any amounts it paid him from the proceeds of Melton's policy. Therefore, the most the plaintiff would have recovered from Melton would have been the $1 million policy limit minus the amount of workers' compensation benefits he receives.

¶ 30 In the situation of an underinsured driver, however, the workers' compensation carrier does not have a lien on the UIM benefits. Therefore, to put the injured party in the same position he would have occupied if the underinsured driver had full coverage, the UIM endorsement provides that workers' compensation benefits are excluded from the UIM coverage provided and that the amount of workers' compensation benefits the plaintiff receives are to be deducted from the UIM policy limits. The trial court, therefore, properly found that there is no ambiguity as between sections C.1. and D.2.b. and that credits are allowed for workers' compensation benefits the plaintiff receives.

¶ 31 The plaintiff also argues that the trial court erred in finding that, in determining the amount he can recover from the UIM policy, the credit allowed for workers' compensation benefits he receives is to be deducted from the $1 million UIM policy limit if his damages are found to equal or exceed $1 million. In support of his argument, he relies on *McKinney v. American Standard Insurance Co. of Wisconsin*, 296 Ill. App. 3d

97 (1998). In doing so, however, he misinterprets *McKinney*, ignores the Mitsui policy language, and fails to address other controlling cases.

¶ 32 In *McKinney*, the plaintiff's wife and child were killed in a car accident. *Id.* at 98. The tortfeasor's insurance carrier paid the plaintiff the $300,000 policy limit, and the tortfeasor personally paid him another $18,000. *Id.* Alleging that his total damages exceeded $318,000, the plaintiff made a claim under his own insurance policy, which had a $50,000 UIM policy limit. *Id.* He argued that, because the tortfeasor was an underinsured driver, he was entitled to prove the entire amount of his damages and recover the difference between the amount paid and his total damages up to the full UIM policy limit. *Id.* at 98-99. The insurer denied that it owed any amount because the $318,000 recovered exceeded the $50,000 UIM policy limit and, therefore, moved for summary judgment. *Id.* at 99. The trial court granted the motion, and the plaintiff appealed. *Id.*

¶ 33 Unlike the UIM endorsement here, the limits of liability provision of the UIM endorsement in *McKinney* provided that " '[a]ny amounts payable will be reduced by *** [a] payment made or amount payable by or on behalf of any person or organization which may be legally liable.' " *Id.* at 98. The sole issue before the court in *McKinney* was "whether the term 'amounts payable' as used in the policy refer[red] to the total amount of damages legally due [the plaintiff] or [the plaintiff's] underinsured policy limit of $50,000." *Id.* at 99. The UIM endorsement there defined an underinsured motor vehicle as one with " 'a liability *** policy *** which provides bodily injury liability limits less than the damages an insured person is legally entitled to recover' " (emphasis omitted),

which the court noted was "broader and more inclusive than that found in the [Illinois Insurance] Code [(215 ILCS 5/1 *et seq.* (West 1996))]." *Id.* at 100. The court found that if the plaintiff could prove damages greater than $318,000, the at-fault driver would be considered an underinsured motorist under the policy. *Id.*

¶ 34 The court reasoned that, because the policy provided that it would pay "all compensable damages" the insured is legally entitled to recover, a reasonable person in the insured's position could conclude that "amounts payable" meant the total damages incurred. *Id.* at 100-01. The court, therefore, found that the term "amounts payable" was ambiguous and adopted the construction most favorable to the plaintiff. *Id.* at 101. Based on the policy language there, the *McKinney* court held that coverage for the UIM policy was available for that margin between the amount the plaintiff received from the underinsured driver and the actual damages he was entitled to recover, up to the $50,000 UIM policy limit. *Id.* at 101-02.

¶ 35 In contrast to *McKinney*, the UIM endorsement here does not use the term "amounts payable." Rather, the endorsement unequivocally provides that "the Limit of Insurance for this coverage shall be reduced by all sums paid or payable" by or for anyone who is legally responsible, under any workers' compensation law, and under any automobile medical payments coverage. The operative term−"Limit of Insurance"−is unambiguous and must be applied as written unless it is against public policy.

¶ 36 In *Sulser*, 147 Ill. 2d at 559, our supreme court interpreted a similar provision and found that it was not against public policy and allowed the insurer to deduct workers' compensation benefits from the UIM coverage limits. There, the plaintiff's husband was

killed in a motor vehicle accident involving an underinsured driver. *Id.* at 551. At the time of the accident, the plaintiff and her husband had a Country Mutual insurance policy with a $100,000 UIM policy limit. *Id.* The policy specified that any amounts the insured received from workers' compensation would be deducted from Country Mutual's coverage. *Id.* at 551-52. The plaintiff recovered $50,000 from the underinsured driver and then sought $50,000 from Country Mutual (the $100,000 UIM policy limit minus the $50,000 recovered from the underinsured driver). *Id.* at 552. Country Mutual claimed that any workers' compensation benefits the plaintiff received should also be deducted from the $100,000. *Id.* Because the parties had stipulated that the plaintiff had received more than $50,000 in workers' compensation benefits, Country Mutual argued that the plaintiff was entitled to nothing under the UIM policy. *Id.*

¶ 37 The sole issue on appeal in *Sulser* was whether an insurer may reduce payments due to an insured under UIM coverage by the amount of workers' compensation benefits the insured received. *Id.* at 551. The court found that such a reduction is not against public policy and held that, because the plaintiff had received $50,000 from the underinsured driver's coverage and $50,000 from workers' compensation, Country Mutual had no obligation to her under the $100,000 UIM policy. *Id.* at 559.

¶ 38 Here, because the policy language is clear and unambiguous and because a setoff of workers' compensation benefits is not against public policy, the trial court properly found that, in determining the amount the plaintiff can recover from the UIM policy, the credit allowed for workers' compensation benefits he receives is to be deducted from the $1 million UIM policy limit if his damages are found to equal or exceed $1 million.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of Richland County is affirmed.

¶ 41 Affirmed.