

No. 1-11-0986

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MEREDITH RIES,)	Appeal from
)	the Circuit Court
Plaintiff-Appellant,)	of Cook County
)	
v.)	No. 07 L 10844
)	
GOVERNMENT EMPLOYEES INSURANCE)	
COMPANY,)	Honorable
)	Bill Taylor
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *HELD:* A new trial for the appellant is required because the trial court judge abused his discretion by issuing an erroneous jury instruction that did not fairly apply applicable law to the evidence presented. There was evidence that the instruction had the effect of misleading the jury and had a probable effect on the verdict.

¶ 2 Meredith Ries brought this action against Government Employees Insurance Company (GEICO) who insured her automobile. Ries' auto was damaged in an accident and a dispute

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arose between the parties as to whether GEICO honored its obligations under the insurance policy. A jury returned a verdict in favor of GEICO. Ries appeals on the ground that the trial court improperly instructed the jury by adding a requirement for Ries under the contract that did not exist in the written contract. For the reasons that follow, we reverse and remand for a new trial.

¶ 3

BACKGROUND

¶ 4 Ries was in an auto accident while driving her car that was insured by GEICO. A dispute arose between Ries and GEICO regarding the amount that GEICO was proposing to pay Ries for damage to her auto pursuant to the insurance contract. A jury trial was held on the issue of whether GEICO had honored its contractual obligation to participate in the process set out in the parties' insurance contract clause that governed disputes that might arise when the parties do not agree on the amount GEICO is willing to pay for damages to an insured's auto.

¶ 5

ANALYSIS

¶ 6 The specific language of the insurance contract between Ries and GEICO that forms the basis of this appeal is as follows:

"If we and the insured do not agree on the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In that event, we and the insured will each select a competent appraiser. The appraisers will select a competent and disinterested umpire. The appraisers will state separately the actual cash value and the amount of the loss. An award in writing of any two will

determine the amount of the loss. We and the insured will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and the umpire." GEICO/Ries Insurance Contract, Conditions § 6- Appraisals.

¶ 7 Nowhere in Ries's contract with GEICO is Ries charged with a duty to actually pay to GEICO any deductible, but simply provides that GEICO will deduct the deductible amount from the total property damage figure it pays out for damage to Ries's auto. See GEICO / Ries Insurance Contract, Conditions § 5, Insured's Duties in Event of Loss and Collision, § 2.

¶ 8 Section 5 of the parties' insurance contract entitled "Insured's Duties In Event of Loss" states:

"In the event of loss the insured will:

(a) Protect the auto, whether or not the loss is covered by this policy. Further loss due to the insured's failure to protect the auto will not be covered. Reasonable expenses incurred for this protection will be paid by us.

(b) File with us, within 91 days after loss, his sworn proof of loss including all information we may reasonably require.

(c) At our request, the insured will exhibit the damaged property."
GEICO/Ries Insurance Contract, § 5.

¶ 9 Based on the above-mentioned sections of the auto insurance contract between Ries and GEICO, Ries contends that a new trial should be ordered because the trial court's jury instruction regarding Ries's obligation under the contract was improper, false and misleading in that it never required her to pay her deductible upfront, and certainly not as a condition of instituting the appraisal process.

¶ 10 Over Ries' objections, the trial court submitted the case to the jury after, *sua sponte*,

modifying Illinois Pattern Jury Instruction, Civil, No. 700.07 by adding a contractual requirement not found in the contract that stated that Ries had to actually pay her deductible before she could participate in the dispute resolution procedure to resolve the dispute she had with GEICO about the amount of damage to her auto. The modified jury instruction given to the jury read, as follows:

"As stated in instruction one, the first element of the contract claim that Ms. Ries must prove is that she performed all the obligations required of her under the contract. To recover on her claim, Ms. Ries must prove that she did what the contract required her to do as follows:

One, timely invocation of the appraisal clause; and two, payment of the deductible. You will address this issue in question one of your verdict."

¶ 11 The trial court has an obligation to evaluate a jury instruction to determine if it is applicable to the case, supported by the evidence of record and is an accurate statement of the law to be applied by the jury. *Luye v. Schopper*, 348 Ill. App. 3d 767, 773 (2004). We review a trial court's decision regarding the content of a given jury instruction for abuse of discretion. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505 (2002).

¶ 12 We agree that the above jury instruction, as modified by the trial court, was improper because it inaccurately stated the terms of the contract while actually purporting to do so. The trial court abused its discretion by instructing the jury in a manner that did not comport with the contract terms in evidence. Every party is entitled to jury instructions that are both legally accurate and

factually supported by the record. While the trial court is afforded broad discretion in choosing the form and substance of the jury instructions, *Townsend v. Fassbinder*, 372 Ill. App. 3d 890, 902 (2007), such discretion is not unfettered.

¶ 13 Our appellate review of a jury instruction focuses on whether the instruction, when viewed in light of the particular issue presented, fairly and adequately presented the evidence and informed the jury of the legal principles to be applied. An erroneous jury instruction warrants a new trial only if the error misled the jury or had a probable effect on the verdict. In this case, there is ample evidence that the jury instruction most probably misled the jury and effected the jury's verdict.

¶ 14 On its face, the modified jury instruction's language misinformed the jury that there existed a contract requirement for Ries to actually pay the deductible. It further instructed the jury that if it found that Ries had not actually paid the deductible, it would require the jury to find against Ries. This modified instruction was incorrect on both items and constitutes reversible error. This instruction was also misleading to the jury as evidenced by the jury's multiple questions sent to the trial court during their deliberations specifically about the issue of Ries actually being required to pay, up-front, the deductible before GEICO would participate in any dispute over the amount of damages owed to her.

¶ 15 For example, the jury asked the court:

"We need to know if we feel she was not to pay her deductible until she picked up her car, would that relieve her of her responsibility of paying the \$500? Can we decide this ourselves?"

"Are we allowed to decide that part two of question one is not applicable?"

"...if on question one, if we agree to number two and not to number one, is the answer

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automatically no? Example, if we say yes to one but no to two, is the answer no?"

In other words, the jury was as puzzled as we are about this instruction, given the evidenced adduced at trial. There was no written requirement in the insurance contract that Ries pay the deductible before she could utilize the disputed damages provision set out in the contract. The instruction was misleading and it is more probable than not that the jury's questions were motivated by the jury instruction that forms the basis of Ries's appeal.

¶ 16 For the reasons stated, the judgment of the trial court is reversed and the case is remanded to the circuit court for a new trial with directions to not utilize this modified jury instruction.

¶ 17 Reversed and remanded with directions.