NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2452

SHIRLEY G. LOCKMAN, INDIVIDUALLY
AND ON BEHALF OF, STANLEY G. LOCKMAN,
AND SHANDRICKA GREVIOUS

VERSUS

UNOPENED SUCCESSION OF ADEYA JARMIN,
RICKEY K. COLLIGAN, JR., USAGENCIES,
STATE FARM INSURANCE COMPANY,
ST. PAUL FIRE AND MARINE INSURANCE COMPANY,
NEW HAMPSHIRE INSURANCE COMPANY,
LOUISIANA MUNICIPAL RISK MANAGEMENT AGENCY,
THE TOWN OF MARINGOUIN, AND SAFEWAY
INSURANCE COMPANY OF LOUISIANA

Judgment Rendered: NOV 14 2007

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Appealed from the 18th Judicial District Court
in and for the Parish of West Baton Rouge
State of Louisiana
Suit Number 35,215, Division A

Honorable James J. Best, Judge

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BEFORE: CARTER, C.J., PETTIGREW, GAIDRY, McDONALD,
AND McCLENDON, JJ.

McClendon, J. dissents and assigns reasons.

GAIDRY, J.

This is an appeal of a summary judgment granted in favor of New Hampshire Insurance Company (New Hampshire) finding that its policy with Mr. Stanley G. Lockman, the plaintiffs' deceased husband and father, did not provide him with uninsured/underinsured (UM) coverage for the accident at issue. For the following reasons, we reverse.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This matter arises from a head-on collision that occurred on Louisiana Highway 413 shortly before midnight on December 6, 2004, tragically resulting in three fatalities. Killed as a result of this accident were Mr. Lockman, who was operating a 1999 GMC Yukon owned and insured by his employer, the Town of Maringouin, southbound on La. 413; Ms. Adeya Jarmin, the driver of a red Ford Ranger traveling northbound on La. 413; and Raven Jarmin, a minor child passenger in Ms. Jarmin's vehicle. The petition alleged that Ms. Jarmin was extremely intoxicated and left her northbound lane of travel after negotiating a curve, crossed the center line and both southbound lanes of travel. Despite Mr. Lockman's attempts to swerve outside his own fog-line to avoid Jarmin's out-of-control vehicle, a head-on collision occurred.

Mr. Lockman's widow, Shirley Lockman, and his major daughter, Shandricka Grevious, filed a petition for survival and wrongful death damages, alleging that Ms. Jarmin's intoxication and negligence were the sole cause of the accident. The petition named numerous insurers as defendants, including the appellee herein, New Hampshire Insurance Company.[1] The petition alleged that New Hampshire provided UM coverage for Mr. Lockman pursuant to a policy issued to Lockman d/b/a Drikas Trucking.

[1] Also named was the insurer of Ms. Jarmin, which provided the minimum 10/20/10 coverage, and the insurer of the Town of Maringouin, which has asserted that there is no UM coverage on the GMC Yukon being driven by Mr. Lockman when he was killed. That insurer is still a defendant in the suit, but is not involved in this appeal.

New Hampshire filed a motion for summary judgment asserting that the policy it issued to Mr. Lockman's trucking business provided neither liability nor UM coverage on the vehicle being driven by Mr. Lockman at the time of the accident. The trial court found no genuine issue of material fact regarding a lack of coverage under the policy and granted New Hampshire's motion. The trial court also found no just reasons for delay and certified the judgment as a final judgment pursuant to La. C.C.P. art. 1915(B)(1). This appeal by the plaintiffs followed.

Summary Judgment

We review a district court's decision to grant a motion for summary judgment *de novo,* using the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Duncan v. U.S.A.A. Insurance Company*, 2006-0363, p. 3 (La. 11/29/06), 950 So.2d 544, 547. Summary judgment shall be rendered if there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

Summary judgment may be rendered on the issue of insurance coverage alone. See La. C.C.P. art. 966(E); *Halphen v. Borja*, 2006-1465, p. 3 (La. App. 1st Cir. 5/4/07), 961 So.2d 1201, 1204, writ denied, 2007 So.2d 1198 (La. 9/21/07), 964 So.2d 338. Summary judgment declaring a lack of coverage under an insurance policy *may not be rendered unless* there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded. *Id.* An insurer seeking to avoid coverage through summary judgment must prove some provision or exclusion applies to preclude coverage. *Id.*

ANALYSIS

The starting point for interpreting an insurance policy and resolving the issue of whether the New Hampshire policy issued to Mr. Lockman d/b/a Drikas

Trucking provides UM coverage for the accident at issue is an examination of the relevant policy provisions.

THE POLICY

Stanley Lockman d/b/a Drikas Trucking is the named insured under New Hampshire's Business Auto Policy No. ARL-077-49-119. Item One of the declarations page provides a policy period of 10/04/04 to 01/02/05 and reflects an estimated premium in the amount of $581.00, an additional premium for endorsements in the amount of $100.00, and indicates that the total premium of $681.00 is payable at inception. Item Two, entitled "Schedule of Coverages and Covered Autos" provides:

> This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.

Immediately following this provision, coverage details for liability and UM are listed separately.

Liability Coverage

The Schedule of Coverages and Covered Autos for liability reflects coverage up to a combined single limit of $1,000,000 per any one accident or loss. A corresponding premium for this coverage in the amount of $551.00 also is listed.

"COVERED AUTOS" for liability coverage is designated by the use of the numerical symbol "07". The Business Auto Coverage Form contains nine separate definitions of "covered auto" depending on the symbol selected by the insured in Item Two. Symbol "07" corresponds with the section entitled "SPECIFICALLY DESCRIBED AUTOS," which provides, "[o]nly those autos described in Item Three of the Declarations for which a premium charge is shown...." Item Three of

Mr. Lockman's policy, entitled Schedule of Covered Autos You Own, lists only one vehicle: a 1986 Peterbilt Semi Trailer.

Section II of the Coverage Form for Liability provides in pertinent part, the following:

1. WHO IS AN INSURED

The following are "insureds":

a. You ***for any covered "auto"***.

Based on the foregoing liability provisions, it is clear (and undisputed) that Mr. Lockman, the named insured, would have liability coverage up to $1,000.000 for damages arising out of any accident involving his use of the Peterbilt Semi Trailer listed by him in Item 3 of the Covered Autos section of his policy.

Uninsured Motorists Coverage

Item Two of the declarations page reflects that UM coverage is also provided by the policy, in the same limits as liability – combined single limit of $1,000,000. The corresponding premium for this coverage is listed as $30.00; however, an additional $100.00 "premium for endorsements" is added at the bottom for a total premium of $681.00. The numerical symbol "07" is also listed under "Covered Autos".

The UM coverage, *in contrast with the liability coverage,* provides in pertinent part as follows:

B. Who Is An Insured

1. ***You***

New Hampshire denied coverage, asserting that Mr. Lockman was not a covered insured because he was not driving his Peterbilt Semi Trailer. The plaintiffs contend, on the other hand, that the language of the New Hampshire policy clearly allows UM coverage for Mr. Lockman, as an insured, regardless of

the vehicle he was driving. In the alternative, the plaintiffs contend the policy language is ambiguous and, therefore, must be resolved in favor of the insured.

As noted earlier, summary judgment declaring a lack of coverage may not be rendered unless there is no reasonable interpretation of the policy under which coverage could be afforded. *Halphen*, 2006-1465 at p. 3, 961 So.2d at 1204.

INSURANCE POLICY INTERPRETATION

An insurance policy is an agreement between the parties and should be interpreted by using ordinary contract principles. Our judicial responsibility in interpreting insurance contracts is to determine the parties' common intent. If the language in an insurance policy is clear and explicit, no further interpretation may be made in search of the parties' intent. The determination of whether a contract is clear or ambiguous is a question of law. *Halphen*, 2006-1465 at p. 3, 961 So.2d at 1204.

If there is an ambiguity in the policy, it must be resolved by construing the policy as a whole; one policy provision is not to be construed separately at the expense of disregarding other policy provisions. Ambiguity will also be resolved by ascertaining how a reasonable insurance policy purchaser would construe the clause at the time the insurance contract was entered. If, after applying the other general rules of construction, an ambiguity remains, the ambiguous contractual provision is to be construed against the insurer who issued the policy and in favor of coverage for the insured. *Id.*, 2006-1465 at p. 4, 961 So.2d at 1205; see also La. C.C. arts. 2045-2050, 2056.

APPLICATION OF LEGAL PRINCIPLES

New Hampshire argues that the only reasonable interpretation of the policy that can be made is that coverage, both liability and UM, is provided only when the *vehicle* operated is insured under the policy. New Hampshire's argument is based

on the aforementioned provision in the policy under Item 2 of the Declarations (Schedule of Coverages and Covered Autos), which provides:

> This policy provides only those coverages where a charge is shown in the premium column below. ***Each of these coverages will apply only to those "autos" shown as covered "autos".*** "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.

(Emphasis added.)

As also noted earlier herein, the symbol "07" (corresponding to specifically described autos specifically listed in Item 3, in this case, the 1986 Peterbilt Semi Trailer) is listed after each, the liability and the UM coverage. Thus, according to New Hampshire, since Mr. Lockman was not operating the Peterbilt Semi Trailer listed as a covered auto in the policy, there is no coverage afforded him for the accident at issue.[2]

However, the declarations coverage provision relied on by New Hampshire is only part of the policy. As noted above, the law mandates that we construe the policy as a whole; one policy provision cannot be construed separately at the expense of disregarding other provisions. As argued by the plaintiffs, the coverage provision, when read together with the "Who Is An Insured" provisions, establishes a reasonable interpretation of the policy under which UM coverage is afforded Mr. Lockman, regardless of which vehicle he was driving. Again as previously noted, there is a significant difference in the policy language between who is an insured for liability coverage and who is an insured for UM coverage.

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[2] New Hampshire also relies on appeal on cases that apply La. R.S. 22:680(e) and hold that UM coverage is statutorily denied when "such motor vehicle is not described in the policy." Defendant's reliance on the statute, and therefore, the cases applying it, is misplaced. Defendant's argument fails to acknowledge the statutory language immediately preceding the aforementioned language which significantly distinguishes this case from those to which the statute applies. The statute declares UM coverage does not apply to vehicles not listed in the policy when the accident occurs "while occupying a ***motor vehicle owned by the insured.***" (Emphasis added.) The cases relied on by the defendant are also factually distinguishable. In each of those cases, an employee, ***driving his own vehicle*** during the course and scope of his employment, made a claim seeking to be considered an insured under the ***employer's UM policy.*** In that factual scenario, both common sense and the policy considerations underlying UM coverage support the statutory mandate that said vehicle be listed in the policy. However, in this case, the New Hampshire insured was ***occupying his employer's vehicle,*** and making a claim ***under his own UM policy***, pursuant to which policy a separate premium had been paid for UM coverage for the insured, Mr. Lockman. Therefore, both the statute and the jurisprudence are inapplicable herein.

Under Section II, "Liability Coverage", the policy very clearly limits the classification of an insured as follows: " You for any covered auto". Under the UM coverage portion of the policy, the language defining an insured conspicuously omits the limitation "for any covered auto," providing that an insured for UM coverage is simply: "You." ("You" is the named insured, Mr. Lockman.)

We agree with the plaintiffs that this significant difference in the policy language for who is an insured depending on the type of coverage yields a very reasonable interpretation of the policy that the limitation for "covered autos" as defined by the numerical symbol selected by the insured is *not applicable* to UM coverage, which covers the insured, "you" with no limitation. The language, and the fact that it is different depending on the coverage referenced, clearly establishes that Mr. Lockman has UM coverage for any vehicle he is driving, and that he has liability coverage only when he drives the listed Peterbilt.

To the extent that these provisions are rendered ambiguous when read in conjunction with the declarations language regarding covered autos, this is an ambiguity which the law mandates be construed against the insurer who issued the policy and in favor of coverage for the insured. *Halphen,* 2006-1465 at p. 4, 961 So.2d at 1205; La. C.C. arts. 2445-2050, 2056. Therefore, notwithstanding that the language found on the declarations page purports to insure only certain designated covered autos, the contrary provisions identifying an insured for purposes of UM coverage as "you" (Mr. Lockman) *regardless of the vehicle being occupied*, creates an ambiguity we must construe in favor of coverage.

Because there is a very reasonable interpretation of the policy that affords UM coverage to Mr. Lockman for any losses sustained as a result of the accident, summary judgment may not be granted as a matter of law.

Accordingly, the judgment rendered by the trial court granting New Hampshire's Motion for Summary Judgment and dismissing it from this lawsuit is reversed, and this matter is remanded to the trial court for further proceedings consistent herewith. Costs of this appeal are assessed to New Hampshire.

REVERSED AND RENDERED.

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McCLENDON, J., dissents and assigns reasons.

I agree with the majority that the starting point for interpreting a policy is the policy itself. However, unlike the majority, I find that a reading of the entire commercial auto policy shows that no UM coverage applies to the particular facts here. Specifically, the UM endorsement listing of "you" as the insured is prefaced by the following language "For a covered 'auto' . . . this endorsement modifies insurance provided . . . ." In the declarations section, the SCHEDULE OF COVERAGES AND COVERED AUTOS provides: "Each of these coverages will apply only to those 'autos' shown as covered 'autos.' 'Autos' are shown as covered 'autos' for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage." Under the heading for UM coverage, the symbol relating to specifically described autos was entered. The only auto meeting that definition was the 1986 Peterbilt truck owned by Mr. Lockman d/b/a Drikas Trucking. The UM coverage form signed by Mr. Lockman states that his choice

for UM coverage "shall apply to the motor vehicles described in the policy . . . ." Thus, Mr. Lockman's commercial auto policy did not afford UM coverage to him while driving another vehicle for either personal use or in the course and scope of another business or job. For these reasons, I respectfully dissent.