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6 LOS ANGELES
7 SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 GENERAL STAR NATIONAL
12 INSURANCE COMPANY, an Ohio
corporation,

13 Plaintiff,

14 vs.

15 BRENDA BAKER-WARNER aka
16 BRENDA BAKER, an individual,

17 Defendant.
18

Case No. BC 238482

~~REDACTED~~ JUDGMENT

19 This is a declaratory judgment action. It grows out of a fatal highway accident. The
20 driver of a truck owned by Gomez Trucking lost control of his truck and a collision or series
21 of collisions followed. Several persons suffered injuries and property damage was caused.
22 One person, the husband of defendant Baker-Warner, was killed.

23 Gomez Trucking was insured by a primary policy issued by Ranger Insurance.
24 Gomez Trucking was also insured by an excess policy issued by General Star National
25 Insurance Company.

26 Gomez Trucking was sued in an underlying action by defendant Baker-Warner for the
27 death of her husband. That underlying case was settled on the basis that Baker-Warner
28 would accept in full settlement the full limits of Ranger's policy plus an additional amount

1 from General Star equal to the policy limits of General Star's policy. Ranger has paid its full
2 policy limits and is not a party to this action.

3 General Star acknowledges that it is obligated to pay an amount in addition to the
4 amount paid by Ranger. However, the calculations of declaratory judgment action plaintiff
5 General Star differ from the calculations of declaratory judgment defendant Baker-Warner.

6 General Star's policy obligates General Star to indemnify its insured (Gomez
7 Trucking) for Gomez Trucking's "ultimate net loss in excess of the underlying insurance
8 stated in item 2 of the Declarations, but not in excess of the Company's (General Star's)
9 limits of liability stated in item 3 of the Declarations." (General Star policy, paragraph I).

10 The application of the "ultimate net loss" concept is not at issue here, since it is
11 conceded that Baker-Warner's loss exceeds the combined limits of the Ranger and General
12 Star policies. The question is what is the limit of the General Star policy as applied to
13 Baker-Warner's claim.

14 Pursuant to paragraph I of the General Star policy, quoted above, the loss amount
15 which General Star must pay is the amount between the "underlying insurance stated in Item
16 2 of the Declarations" and the limit of General Star's liability stated in Item 3 of the
17 Declarations.

18 The limit of liability stated in item 3 of the Declarations in the General Star policy is
19 "100% of the difference between \$750,000 each occurrence Bodily Injury and/or Property
20 Damage Liability combined and limits stated in item 2 above."

21 Hence General Star must not pay more than \$750,000 for any one occurrence for all
22 injury caused by that occurrence, including both Bodily Injury and Property Damage.

23 The issue thus resolves into what number is subtracted from \$750,000 in order to
24 determine the amount which General Star must pay in this case.

25 The interpretation of an insurance policy is generally a question of law. First resort
26 must be made to the language of the insurance contract (policy). If it has a plain meaning,
27 when interpreted in context, that meaning controls. If it has two or more possible
28 interpretations, any two of which are reasonable, the reasonable interpretation which favors

1 the insured controls except in circumstances not present here. Hence the questions becomes
2 whether, on the question of what amount is subtracted from \$750,000 to determine the
3 amount of General Star's limits of liability on the facts of this case, the policy has a plain
4 meaning or has more than one reasonable interpretation.

5 Item 3 provides that the limit of General Star's liability is \$750,000 less the "limits
6 stated in Item 2 above." Item 2 of the Declarations states that the underlying insurance
7 provides bodily injury coverage of \$250,000 for each person, with a \$500,000 limit for each
8 occurrence. In addition, Item 2 states that the underlying insurance provides property
9 damage coverage of \$100,000 for each occurrence. Thus the greatest total coverage that the
10 underlying insurance would provide for a single occurrence is \$600,000 (\$500,000 in bodily
11 injury coverage and \$100,000 in property damage coverage).

12 Item 3 speaks of excess coverage of the difference between \$750,000 and the "limits
13 stated" in Item 2. On a literal interpretation, it could be argued that the "limits stated" in
14 Item 2 are \$600,000. Hence, on a literal interpretation, it could be argued that the General
15 Star excess policy provides excess coverage in the amount of \$150,000 (\$750,000 minus
16 \$600,000).

17 General Star does not urge this construction, and in any event it would have to be
18 rejected as inconsistent with the structure of the policy. The policy as written calls for a
19 calculation of the "difference between" the excess limits stated in Item 3 and the underlying
20 limits stated in Item 2. If the limits of the General Star policy were calculated as discussed
21 above, there would be no need for a calculation. The excess limits could simply be stated as
22 the definite number of \$150,000. Since this was not done, but instead the calculation of a
23 "difference" was specified, it must be concluded that the parties did not intend a simple
24 excess limit of a definite number, notwithstanding the "stated" language.

25 The policy can be read consistently in its context by interpreting the language in Item
26 3 referring to the "limits stated in Item 2" to mean the limits "stated" in Item 2 on the facts of
27 a particular case. Item 2 provides a limit of \$250,000 for bodily injury to any one person,
28 but allows up to \$500,000 for bodily injury to more than one person in any one occurrence,

1 plus another potential \$100,000 for property damage. Hence the underlying insurance can
2 pay out different amounts in different circumstances. Each side seems to agree that the
3 proper application of the law and interpretation of the policy would be to determine what
4 relevant amount is payable pursuant to Item 2 and then to subtract that amount from
5 \$750,000 to determine the amount of General Star's policy limit on a particular set of facts.
6 The parties differ only in how to determine the amount to be subtracted from \$750,000.

7 Baker-Warner contends that since the limit for bodily injury to a single person is
8 \$250,000, and since she sues only with respect to bodily injury to a single person, then only
9 the sum of \$250,000 should be subtracted from \$750,000 to determine the limits of General
10 Star's coverage. Baker-Warner thus argues that she is entitled to \$500,000 from General
11 Star.

12 General Star contends that the total amount paid out by the underlying policy,
13 including all bodily injury to all injured persons plus all property damage payouts, must be
14 subtracted from \$750,000 to determine General Star's coverage limits. (Since the parties
15 have agreed that General Star will pay its policy limits, the identification of those limits also
16 identifies the amount which General Star must pay). Here the underlying policy paid out its
17 per-person bodily injury policy limits coverage of \$250,000 for the death of Ms. Baker-
18 Warner's husband, and also paid out an additional \$131,137.86 for bodily injury to others
19 and for property damage. The total paid by the Ranger policy hence aggregated to
20 \$381,137.86. Subtracting that amount from \$750,000 leaves \$368,862.14. This latter sum
21 is the amount which General Star has paid, and which General Star contends is its total
22 liability.

23 General Star's interpretation must be accepted as the only construction consistent with
24 the policy language. There are several reasons for this.

25 First, if General Star's policy were providing bodily injury coverage per person equal
26 to the difference between the set figure of \$250,000 and \$750,000, it is expectable that
27 General Star's policy would simply state that it is providing excess coverage of \$500,000 per
28 person for bodily injury (possibly subject to some further aggregate limit language). There

1 would be no need for any "difference" to be calculated if General Star's policy simply
2 provided this \$500,000 in excess coverage. This hypothetical \$500,000 excess coverage
3 would not be triggered unless the \$250,000 in underlying coverage were first exhausted,
4 hence there would be no need for any calculation of a "difference" for purposes of
5 determining policy limits. There would simply be \$500,000 in excess bodily injury coverage
6 for a single person once the \$250,000 in underlying coverage was exhausted.

7 Also, the papers filed by General Star state, and it is not controverted, that Federal
8 regulations require that truckers such as Gomez Trucking carry insurance with minimum
9 limits of \$750,000 per accident. (It was corroborated by internet search by the referee that a
10 Federal regulation, 49 CFR §387.9, was in force on the date in question, and did require
11 "minimum levels of financial responsibility," which was \$750,000 in the case of trucking of
12 non-hazardous materials. Although the regulation did not speak in terms of "per-accident"
13 or "per-occurrence," the language of "level of financial responsibility" appears to be the
14 equivalent).

15 General Star's papers also contend that Ranger and General Star established the
16 insurance program involved here in order to satisfy that minimum insurance coverage
17 requirement. This also was not controverted. If Baker-Warner's interpretation were
18 accepted, in many cases this insurance program would provide more than \$750,000 in
19 coverage per accident. For example, if the bodily injury limits of General Star's policy were
20 calculated on a per-person basis, and two persons suffered serious bodily injury exhausting
21 the \$250,000 in per-person bodily injury coverage in the underlying insurance, then each
22 could – just as Baker-Warner has done here – seek an additional \$500,000 from General
23 Star. General Star would of course contend that it could not be liable for more than an
24 aggregate of \$750,000, since that is what the General Star policy states ("\$750,000 each
25 occurrence"). Presumably General Star would then not pay out \$500,000 to each of the two
26 claimants, but instead would contend that it had only to split the aggregate of \$750,000
27 between the two claimants. However, adding that \$750,000 to the \$500,000 already
28 received by these two claimants as the per-person bodily injury policy limits of the

1 underlying primary yields a total of \$1.25 million in insurance of this one occurrence. This
2 is more than the minimum per accident required by Federal regulations. It is also an amount
3 that renders meaningless the concept of determining a "difference" between the amount
4 "stated" in the underlying insurance and \$750,000.

5 In addition, there is no evidence that Gomez Trucking intended to purchase insurance
6 for more than the minimum coverage required by Federal regulation. Unless Gomez
7 intended to do so, Gomez Trucking could not reasonably expect to have purchased more
8 than the minimum coverage required by Federal regulations. As shown above, if the limits
9 of General Star's policy were properly calculated as contended by Baker-Warner, Gomez
10 Trucking would have greater coverage than the minimum required.

11 Additionally, the General Star policy states that its \$750,000 limit applies per
12 occurrence ("\$750,000 each occurrence"). It would be consistent with this usage that the
13 General Star policy, when referring to the limits in the underlying policy, would also be
14 referring to the per occurrence limits. No reason has been suggested why Item 3 would have
15 been intended to apply on a per occurrence, while the amount to be deducted to determine
16 the "difference" was to be calculated on a per-person basis. If different concepts were
17 intended to be mixed in this fashion, it is expectable that this would be expressly stated.

18 Accordingly, by paying the amount of \$368,862.14 which General Star has already
19 paid, General Star has fully discharged its obligations under the General Star policy with
20 respect to the accident in question.

21 **JUDITH MEISELS ASHMANN**

22 **DATED: NOV 29 2001**

23

Hon. Judith M. Ashmann