Finding Ambiguity in Policy's Use of Bold Italics

by Kathleen J. St. John

Ahh, Autumn. The season for taking long drives in the country. Maybe find a roadside store selling apples, pumpkins, and mums. Head down Route 3 through Wayne, Holmes, and Knox Counties – the route from Cleveland to Columbus before I-71 was built. See the Amish horse-drawn buggies sharing the road with motorists; see the locals riding your bumper because you're not driving fast enough....

But I digress.

A recent case out of the Ninth District got me thinking about those horse-drawn buggies, and the ever-frustrating language of insurance policies. More importantly, it got me thinking about useful ways to get around that language, and not only in cases involving buggy collisions.

The case, *Miller v. Troyer*[1], arose from a collision between a motorcycle and an Amish horse-drawn buggy. The insureds, Matthew and Jody Miller, were riding Matthew's motorcycle when the buggy veered left-of-center, striking them. Matthew was killed, and Jody injured. As the buggy-driver carried no insurance, Jody, as administrator of Matthew's estate, filed a claim with their insurer, Westfield, for UM coverage. When Westfield denied the claim, Jody sued the buggy-driver and Westfield. The trial court granted summary judgment to Westfield, and, after Civ. R. 54(B) language was added to the judgment, Jody appealed.

For coverage to apply under the policy, the insured had to have been legally entitled to recover from the owner or operator of an "uninsured motor vehicle." As relevant here, the policy defined "[u]ninsured motor vehicle" to mean "a land motor vehicle or trailer of any type *** [t]o which no bodily injury or liability bond or policy applies at the time of the accident." The Estate argued that this language was ambiguous, as a horse-drawn buggy might be a "motor vehicle" or a "trailer of any type."

Westfield argued that "no reasonable construction of the terms would allow for the conclusion that a horse-drawn buggy qualified as either a motor vehicle or trailer as those terms were defined in the general provisions section of the policy."[2] The general provisions section of the policy had a narrower definition of "trailer" than that implied by the language in the UM section of the policy. In the general provisions section, "trailer" was defined as "a vehicle designed to be pulled by a*** [p]rivate passenger auto; or *** [p]ickup or van" but not "a mobile home or any vehicle used as an office, store, display, residence or passenger conveyance."[3] In the UM section, however, there was no definition of the terms "land motor vehicle" or "trailer of any type", leaving them open to a more liberal construction.

Now, in the past, when Ohio courts have been presented with the question of whether a horse-drawn buggy is an "uninsured motor vehicle", the answer has been "no" – although the policy language varied slightly in each case.[4] But, in *Miller,* the court dug deep, perceiving a

potential ambiguity that no one else had mentioned. The court noted that the general provisions portion of the policy, which was applicable to all sections of the policy, stated that when bold italics were used, they referred back to the policy's definitions section. The definitions section did define "motor vehicle" and "trailer," but when the terms "land motor vehicle" and "trailer of any type" were used in the UM coverage section of the policy, those terms were not bolded and italicized. "Thus," the court stated, "there is an argument to be made that the definitions of motor vehicle and trailer contained in the general provisions portion of the policy might not apply to the terms used in the uninsured motorists coverage portion of the policy."[5]

The Ninth District thus reversed and remanded for the parties to brief, and the trial court to decide, whether the absence of bolding and italics in the UM coverage's use of the terms "land motor vehicle" and "trailer of any type" freed them from the restrictive definitions in the general provisions portion of the policy.

It is an interesting argument – all the more so as the brainchild of the appellate court, rather than the parties. The rank unfairness of denying UM coverage to the decedent's Estate simply because the tortfeasor's vehicle was operated by horsepower instead of mechanical power may have resonated with the court.

But the *Miller* decision is not without precedent. One of the cases cited in *Miller* involved a similar argument. In *Shroeder v. Auto-Owners Ins. Co.*[6], the UM policy afforded coverage for injuries sustained while the insured was a pedestrian, but was silent on whether coverage existed while the insured was riding a bicycle. The plaintiffs argued the policy was ambiguous as to whether a bicycle rider was a pedestrian. The ambiguity consisted of the policy's inconsistent use of bold face type, which was supposed to mean a term was specially defined. But although "pedestrian" was in bold face type, the policy failed to define it. In affirming the judgment in favor of the plaintiff, the Sixth District noted,

> There is authority that, when the same word appears in both bold face and in ordinary type in the same contract, a different meaning may be ascribed to each.*** It has also been held that, when a term specially defined in the policy when appearing in bold face type is printed in another type face, the term is ambiguous because it may be read as defined or as in common usage.***[7]

The court concluded that while the failure to define the specific meaning of pedestrian "might inject a certain amount of confusion into the mix, we are not certain that, by itself, it makes the term susceptible to more than one interpretation."[8] Still, in the absence of a specific definition, the court examined the word's common usage and, relying on *Black's Law Dictionary* and a decision cited in *Black's*, concluded that the term could be construed to include bicycle riders, and thus was ambiguous requiring construction in favor of coverage.[9]

The *Miller* and *Schroeder* decisions remind us to think outside the box when arguing policy language. Variations in type face could hold the key to coverage for your clients when past decisions would otherwise seem to foreclose recovery.

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End Notes:

1. 9th Dist. Wayne No. 2016 CVC-C 000458, 2018-Ohio-3419 (Aug. 27, 2018).
2. *Id*. at ¶8.
3. *Id*. at ¶16.
4. *See, e.g., Wilbur v. Allstate Ins. Co.*, 11th Dist. Geauga No. 90-G-1600, 1991 Ohio App. LEXIS 5741, 1991 WL 252851; and *Hutchinson v. Erie Ins. Co.*, 5th Dist. Stark No. 95CA0329, 1997 Ohio App. LEXIS 1954, 1997 WL 219236.
5. *Id*. at ¶17.
6. 6th Dist. Lucas No. L-03-1349, 2004-Ohio-5667.
7. *Id*. at ¶28, citing *Silverman v. Economy Fire & Cas. Co.*, 272 Ill. App.3d 490, 493, 650 N.E.2d 603, 208 Ill. Dec. 909 (1995); and *City of Boise v. Planet Ins. Co.*, 126 Idaho 51, 55, 878 P.2d 750 (1994).
8. *Id*. at ¶29.
9. *Id*. at ¶¶ 30-34.