Circuit Court for Prince George's County
Case No. CAL 14-19692

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2247

September Term, 2015

GEICO GENERAL INSURANCE COMPANY

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION

Kehoe,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kehoe, J.

Filed: July 12, 2018

This insurance coverage disputes pits GEICO General Insurance Company against United Services Automobile Association. At issue is how the uninsured/underinsured ("UM/UIM") provisions in each company's policy apply to injuries suffered by Linda Wright as a result of a motor vehicle accident in 2013. The Circuit Court for Prince George's County entered a declaratory judgment stating that the two insurers were obligated to pay benefits on a pro rata basis. GEICO has appealed. We will vacate the judgment of the circuit court and remand this case for further proceedings.

Background

In 2013, Wright was a passenger in an automobile that was involved in an accident with a vehicle driven by Ravindra Saboji. Wright suffered serious injuries. The parties do not dispute that Saboji was at fault.

The vehicle in which Ms. Wright was riding was owned by Ellen Ware. At the time, Ware had an automobile liability policy issued by USAA. Wright was insured by GEICO. Both policies provided UM/UIM coverage. The USAA policy had a maximum UM/UIM limit of $100,000. The limit in the GEICO policy was $300,000.

Ms. Wright filed a civil action against Saboji and GEICO, asserting a negligence claim against Saboji, and a breach of contract claim against GEICO. The latter claim was based upon GEICO's alleged refusal to pay benefits pursuant to the UM/UIM provisions in her policy. Ms. Wright filed an amended complaint joining USAA as an additional defendant and asserting a claim for UM/UIM benefits. USAA filed a cross-claim against GEICO,

seeking a declaratory judgement as to the respective obligations of each insurer under the UM/UIM provisions in each policy.

We won't belabor the procedural history. The coverage dispute came before the circuit court by means of a motion for summary judgment filed by USAA. The arguments made by the parties to the circuit court are essentially the same as those made on appeal, and we will summarize them later. The court issued a declaratory judgment that stated in relevant part (emphasis added):

> should the jury or any other finder-of-fact return a verdict for monetary damages in excess of the Defendant Ravindra Saboji's insurance policy, [USAA] and GEICO . . . are obligated to compensate [Wright] for uninsured/under-insured motorist benefits ***on a pro rata basis with [USAA] bearing one-third (1/3) of any excess obligation and GEICO . . . bearing two-thirds of any excess obligation (up to the limits of coverage)***.

Wright entered into a settlement with Saboji, and her claim against him was dismissed with prejudice. The declaratory judgment was entered as the final judgment in the case and this appeal followed.

Analysis

We review *de novo* a circuit court's decision to grant summary judgment. *Payne v. Erie Ins. Exchange*, 442 Md. 384, 391 (2015).

A Summary of the Parties' Contentions

The parties agree that UM/UIM coverage is available to Ms. Wright under both the GEICO and USAA Policies, because she was an "insured" under the GEICO policy and a "covered person" under the USAA policy. The dispute is whether one policy, but not the

other, must provide primary UM/UIM coverage or whether both policies concurrently provide primary coverage on a pro rata basis. GEICO argues that USAA is the primary carrier, so GEICO's responsibilities begin only when USAA's policy limit is exhausted. USAA contends that both insurers are primary carriers and that their liability is pro rata based upon the respective policy limits. The circuit court agreed with USAA.

GEICO's argument is based upon its reading of § 19-513 of the Insurance Article ("IA") of the Maryland Code, which it asserts is controlling. Its analysis begins with § 19-513(c), which explicitly provides that, in cases like the present one, the primary carrier for purposes of personal injury protection ("PIP") is the insurer of the motor vehicle which the injured person was occupying at the time of the accident. GEICO concedes that there is no provision in § 19-513 that clearly states that the same rule applies in UM/UIM cases. But, GEICO suggests, the language of § 19-513(d) points to the same result by necessary and unavoidable implication. As an alternative contention, GEICO posits that a reading of the relevant parts of the UM/UIM portions of its policy and the USAA policy points to the same conclusion.

USAA takes the position that it is the law of Maryland that courts should look to policy language to resolve disputes between parties "as to what, and from which company, coverage is to be made available." USAA states that the relevant language in both policies, properly interpreted, points to the conclusion that both carriers have primary coverage and that they are therefore required to compensate Ms. Wright pro rata according to the maximum limits in the UM/UIM provisions of each policy. In USAA's mind, § 19-513(d)

does not affect the result, because GEICO asks us "for all intents and purposes, to set forth new law which prescribes instances not explicitly set forth in section (d), where an insurer of a motor vehicle would be obligated to provide primary coverage for uninsured/underinsured benefits to an injured party."

Both parties, of course, cite reported decisions of appellate courts, both of Maryland and elsewhere, to support their positions. Both agree, however, that there is no case that directly addresses the meaning of § 19-513 in UM/UIM cases.

In our view, GEICO has the better argument. Subtitle 5 of Title 19 of the Insurance Article pertains to mandatory coverages. Section 19-513 prohibits duplicative and supplemental recoveries from multiple insurers from the coverages required by Subtitle 5.[1] As we will now explain, we read § 19-513 in much the same way as does GEICO.

1. IA § 19-513

In assessing GEICO's statutory argument, we will apply well-settled principles of statutory construction. The Court of Appeals has recently explained:

> The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology. In construing the plain language, a court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit

[1] The required coverages are: minimum liability (§ 15-504); personal injury protection (§ 19-505); uninsured/underinsured motorist coverage (§§ 19-509 and 19-509.1); and collision coverage (§ 19-512).

> or extend its application. Statutory text should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory. . . . It is also clear that we avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense.
>
> We analyze the contested provisions of Maryland's Insurance Article in the context of the statutory scheme and construe the plain language so that the various sections of the article do not conflict with one another. . . . In addition, the meaning of the plainest language is controlled by the context in which it appears. As this Court has stated, because it is part of the context, related statutes or a statutory scheme that fairly bears on the fundamental issue of legislative purpose or goal must also be considered. Thus, not only are we required to interpret the statute as a whole, but, if appropriate, in the context of the entire statutory scheme of which it is a part.

Woznicki v. GEICO Gen. Ins. Co.,443 Md. 93, 108–09 (2015) (quoting *Stickley v. State Farm Fire & Cas. Co*., 431 Md. 347, 358–59 (2013) (citations and quotations omitted in *Woznicki*)).

IA § 9-513 states in pertinent part (emphasis added):

> (a) This section does not prohibit a nonprofit health service plan or an authorized insurer, with the approval of the Commissioner, from providing medical, hospital, and disability benefits in connection with motor vehicle accidents.
>
> (b)(1) Notwithstanding any other provision of this subtitle, a person may not recover benefits under the coverages described in §§ 19-504,[2] 19-505,[3]

[2] IA § 19-504 pertains to required minimum liability coverages for motor vehicle insurance.

[3] Section 19-505 pertains to personal injury protection coverage

19-509,[4] 19-509.1,[5] and 19-512[6] of this subtitle from more than one motor vehicle liability insurance policy or insurer on a duplicative basis.

(2) Except as provided in § 19-509.1 of this subtitle, and notwithstanding any other provision of this subtitle, a person may not recover benefits under the coverages described in §§ 19-504, 19-505, 19-509, and 19-512 of this subtitle from more than one motor vehicle liability insurance policy or insurer on a supplemental basis.

(c)(1) The ***insurer of a motor vehicle*** for which the coverage described in § 19-505 of this subtitle is in effect ***shall pay*** the benefits described in § 19-505 of this subtitle to ***an individual who is injured*** in a motor vehicle accident:

(i) ***while occupying the insured motor vehicle***;

• • •

(d)(1) The ***insure****r* under a policy that contains the coverages described in §§ 19-505 and 19-509 of this subtitle shall pay the benefits described in §§ 19-505 and 19-509 ***to an individual insured under the policy*** who is injured in a motor vehicle accident:

(i) while occupying a motor vehicle for which the coverages described in §§ 19-505 and 19-509 of this subtitle are not in effect*;*

(ii) by a motor vehicle for which the coverages described in §§ 19-505 and 19-509 of this subtitle are not in effect as a pedestrian, while in, on, or alighting from a vehicle powered by animal or muscular power, or while on or alighting from an animal.

• • •

[4] Section 19-509 pertains to uninsured motorist coverage.

[5] Section 19-509.1 pertains to underinsured motorist coverage.

[6] Section 19-512 pertains to collision coverage.

> (2) Benefits payable under paragraph (1) of this subsection shall be reduced to the extent of any medical or disability benefits coverage that is:
>
> (i) applicable to the motor vehicle for which the coverages described in §§ 19-505 and 19-509 of this subtitle are not in effect; and
>
> (ii) collectible from the insurer of that motor vehicle.
>
> (e) Benefits payable under the coverages described in §§ 19-505 and 19-509 of this subtitle shall be reduced to the extent that the recipient has recovered benefits under the workers' compensation laws of a state or the federal government for which the provider of the workers' compensation benefits has not been reimbursed

In its brief, GEICO asserts:

> Admittedly, unlike PIP, Insurance Art., §19-513 does not explicitly mandate that the insurer providing UM/ UIM benefits to the motor vehicle in which a passenger is occupying while injured provide primary coverage. Instead, it does so implicitly under Insurance Art., § 19-513(d). Insurance Art., § 19-513(d) prescribes those limited instances where the insurer of the injured person, as opposed to the insurer of the motor vehicle he or she was occupying, must provide primary UM/UIM coverage. Under the plain and unambiguous language of Insurance Art., § 19-513(d), Ms. Wright's GEICO Policy would only be obligated to provide primary coverage for UM/UIM benefits in instances where Ms. Wright was injured while occupying a motor vehicle that did not maintain UM/UIM benefits, or when injured as a pedestrian by a motor vehicle that did not maintain UM/UIM benefits. Neither of those situations apply in the present matter.

Subsection (d) does not mention *underinsured* motorist coverage (§ 19-509.1) at all. However, the term "'uninsured' in § 19-509 includes 'underinsured.'" *GEICO v. Comer*, 419 Md. 89, 91n.1 (2011); *Waters v. U.S. Fid. & Guar. Co.*, 328 Md. 700, 712 (1992) (Underinsured motorist coverage was authorized by Chapter 510 of the Acts of 1981, and "the 1981 amendments make uninsured motorist coverage operate as underinsured motorist coverage." (footnote omitted). Thus, GEICO's point is well taken. Subsection (d)

unambiguously states that GEICO would be the primary UM/UIM carrier if its insured (Wright) were occupying an ***uninsured*** vehicle. If the General Assembly intended that GEICO would be the primary carrier regardless of whether Wright was occupying an insured or an uninsured vehicle—which, in effect, is USAA's reading of subsection (d)—surely the Legislature would have chosen different language. Moreover, treating USAA as anything other than the primary carrier in this case would be incongruent with an underlying premise of Maryland motor vehicle insurance law, namely, that "automobile liability coverage . . . follows the insured vehicle." *Maryland Ins. Admin. v. State Farm,* 228 Md. App. 126, 131 (2016), *aff'd,* 451 Md. 323 (2017)). Finally, our reading of subsection (d) is consistent with a well-recognized authority on Maryland automobile insurance law (emphasis added):

> The UM Statute does not expressly state that UM coverage on a vehicle is primary coverage to UM coverage provided by a passenger's own motor vehicle policy, but this is clearly the intent. Section 19-513(d) (formerly Section 543(c) of Article 48A), which establishes a priority of coverage when the insured is occupying a vehicle not covered by UM coverage, implies that the insurance covering the vehicle is primary to the passenger's personal policy. ***If, as Section 19-513(d) requires, the injured passenger's insurance is primary when he or she is occupying a vehicle not covered by UM coverage, then the opposite must be true when he or she is occupying a vehicle covered by UM coverage***. The typical other insurance clause recognizes this priority.

Andrew Janquitto, MARYLAND MOTOR VEHICLE INSURANCE § 8.10(B) 429–30 (3rd ed. 2001).

We now turn to the relevant provisions of the parties' policies, bearing in mind that "[i]nsurance companies . . . may limit their liability and impose whatever condition they

please in the policy so long as neither the limitation on liability nor the condition contravenes a statutory inhibition or the State's public policy." *Matta v. Government Insurance*, 119 Md. App. 334, 341 (1998) (citation and quotation marks omitted)). The pertinent public policy is that "innocent victims of motor vehicle accidents can be compensated for the injuries they suffer as a result of such accidents." *State Farm Mut. Auto. Ins. Co. v. DeHaan*, 393 Md. 163, 194 (2006). Consistent with this policy, "'an insured can purchase a higher amount of uninsured motorist insurance which will become available when the insured's uninsured motorist coverage, as well as his damages, exceed the liability coverage of the tortfeasor.'" *Erie Ins. Exch. v. Heffernan*, 399 Md. 598, 612 (2007) (quoting *Waters v. U.S. Fid. & Guar. Co*., 328 Md. 700, 712 (1992)).

2. The Insurance Policies

This Court recently summarized the appropriate approach for interpreting insurance policies:

> In interpreting the provisions of an insurance policy, we rely on the same principles that we apply to traditional contracts. [A] court's foremost goal in its interpretation of a contract is to ascertain and effectuate the intention of the contracting parties, unless that intention is at odds with an established principle of law. The primary source for determining the intention of the parties is the language of the contract itself. Therefore, in construing insurance contracts in Maryland we give the words of the contract their ordinary and accepted meaning, looking to the intention of the parties from the instrument as a whole. Moreover, a contract must be construed as a whole, and effect given to every clause and phrase, so as not to omit an important part of the agreement.

> As with any other contract, the court examines the contract language employed by the parties to determine the scope and limitations of the insurance coverage.

White Pine Ins. Co. v. Taylor, 233 Md. App. 479, 498 (2017) (citations, quotation marks, and bracketing omitted).

As an initial matter, USAA argues that GEICO did not raise the issue of the "other insurance" clauses and the lack of conflict between them at the trial court. USAA is correct, but its argument to the circuit court was based upon its reading of the other insurance provisions and the circuit court's judgment was as well. We conclude the issue is preserved for our review. *See* Md. Rule 8-131(a) (An appellate court will decide an issue that "plainly appears by the record to have been raised in or decided by the trial court.").

We think it will be useful to set out the provisions of GEICO's and USAA's policies side-by side, and we have done so on the following page. (Ms. Wright is a "covered person" for the purposes of the UM/UIM provisions of the USAA policy. Both policies define an "uninsured vehicle" to include an "underinsured vehicle.")

GEICO (Ms. Wright's Policy)		USAA (Ms. Ware's Policy)
[1] We will pay damages for bodily injury . . . caused by an accident which the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle arising out of the ownership, [or] use of that vehicle. • • • [2] ***When an insured occupies an auto or other motor vehicle not described in this policy, this insurance is excess*** over any other similar insurance available to the insured. The insurance which applies to the occupied auto or other motor vehicle is primary. [3] Except as provided above, if the insured has other similar insurance available to him and applicable to the accident, the damages will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. ***If the insured has other insurance against a loss covered by the Uninsured Motorist provisions of this policy, we will not be liable for more than our pro-rata share of the total coverage available.***		[1] We will pay compensatory damages which a covered person is legally entitled to recover from the owner or operator of an uninsured vehicle because of . . . bodily injury. • • • If there is other applicable insurance for UM Coverage available under one or more policies or provisions of coverage: • • • 2. Any insurance we provide with respect to a vehicle you do not own or ***to a person other than you or a family member will be excess over any collectible insurance***. 3. If the coverage under this policy is provided: a. ***On a primary basis, we will pay only our share of the loss that must be paid under Insurance providing coverage on a primary basis.*** Our share is the proportion that our limit or liability bears to the total of all applicable limits of liability for coverage provided on a primary basis. b. On an excess basis, we will pay only our share of the loss that must be paid under Insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

Because we have concluded that USAA is the primary carrier in this case, Wright has no right to compensation under the terms of the GEICO policy until USAA's underinsured motorist coverage is exhausted. Therefore, for purposes of USAA's policy, the GEICO

benefits do not constitute "collectible insurance." By the terms of its policy, USAA's limit is pro rata "to the total of all applicable limits of liability for coverage provided on a primary basis." At this point, there is no other insurer that is obligated to pay underinsured motorist benefits to Ms. Wright on a primary basis. This leads to the conclusion that GEICO has no obligation to pay underinsured motorist benefits to Ms. Wright unless and until USAA's policy limit is exhausted.[7]

[7] USAA relies on *Parsons v. Erie Insurance Group*, 569 F. Supp. 572, 580–81 ((D. Md. 1983). *Parsons* involved a coverage dispute between Erie Insurance and Progressive Insurance arising out of policies that each company had issued to different vehicles owned by different members of the same family. Progressive's policy provided coverage for a Ford Escort owned by Curtis Parsons. That policy's PIP and uninsured motorist provisions excluded coverage for a "bodily injury to an insured while occupying a [vehicle other than the Escort] owned by the named insured or any relative resident in the same household." *Id.* at 574. Erie issued a policy to Curtis's spouse, Frances, for a Pontiac Bonneville that excluded coverage for any loss "caused while the [Pontiac] is being operated by . . . Curtis Parsons." While driving the Pontiac, Curtis Parsons was involved in an accident with an uninsured motorist. He was killed. Ms. Parsons and their four children were injured. *Id.* at 572.

The relevant part of the Court's analysis pertained the insurers' obligations under the uninsured motorist provisions of their policies. The Court first held that the exclusion in the Erie policy was unenforceable because it denied benefits that Maryland's PIP and uninsured motorist statutes conferred upon Curtis Parsons and members of family. *Id.* at 579. In analyzing Progressive's contention that *it* was not obligated to pay *any* uninsured motorist benefits to any member of the Parsons family because Erie was obligated to pay uninsured motorist benefits, the Court stated:

> The Erie policy requires pro rata contribution from all insurers who provide UM coverage to the injured insured.
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> • • •
>
> It is clear from the language in the Progressive policy that the first paragraph of the "Other Insurance" provision applies only when the insured is occupying a vehicle not owned by the named insured. . . . Since the named

We vacate the judgment of the circuit court and remand this case to it for entry of a judgment declaring that USAA is obligated to pay uninsured/under-insured motorist benefits to Ms. Wright up to the limits in the USAA policy, and that GEICO is obligated to pay any remaining benefits, up to the limits of its coverage.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS VACATED AND THIS CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

> insured, Curtis Parsons, the decedent, undisputedly owned the vehicle, the first paragraph of the "Other Insurance" provision does not apply, and, therefore, the Progressive coverage for uninsured motorists benefits is not excess coverage forbidden by § 543. . . . Progressive is liable for its proportionate share of the loss. Therefore, this court concludes that Progressive and Erie are both liable for the claims of Frances Parsons and her children for UM benefits.

Id. at 581–82.

Parsons is of limited assistance to USAA for two reasons. First, *Parsons* predates a decision of the Court of Appeals, in which the Court emphasized the importance of what is now § 19-513 in resolving questions as to the "coordination and prioritization" of "PIP and uninsured motorist coverage under more than one insurance policy." *Bishop v. State Farm*, 360 Md. 225, 231 (2000). Second, as we have explained, in the present case GEICO's policy is clear that it is not obligated to pay underinsured motorist benefits in scenarios such as the one presented in this case until the coverage provided by the primary carrier is exhausted.