CHRISTINE BLACK MATHEWS, AS POWER OF ATTORNEY FOR JUSTIN MATHEWS	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
	:	No. 638 EDA 2025
ACE PROPERTY AND CASUALTY INSURANCE COMPANY	:	

Appeal from the Order Entered February 11, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 231000190

BEFORE: STABILE, J., LANE, J., and STEVENS, P.J.E.*

OPINION BY STEVENS, P.J.E.: **FILED SEPTEMBER 4, 2026**

Christine Black Mathews ("Appellant"), as Power of Attorney for Justin Mathews, appeals the order entered by the Court of Common Pleas of Philadelphia County granting the motion for judgment on the pleadings filed by ACE Property and Casualty Insurance Company ("ACE"). We affirm.

On September 29, 2019, Justin Mathews ("Mr. Mathews") was crossing an intersection on foot within a marked crosswalk in Brooklyn, New York, when he was hit by a vehicle driven by Brian Ash, an underinsured motorist. Amended Complaint, at ¶ 7-8. As a result of the significant injuries Mr. Mathews sustained in the crash, he was rendered quadriplegic and requires extensive medical care. ***Id.*** at ¶ 13-14.

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* Former Justice specially assigned to the Superior Court.

At the time of the accident, Mr. Mathews was employed as an executive of Interpublic Group of Companies ("IPG"). ***Id.*** at ¶ 15. Following the accident, Appellant, as Power of Attorney for Mr. Mathews, sought to recover uninsured/underinsured motorist (UM/UIM) benefits for her husband under insurance policies held by IPG, including the Great Northern Business Auto Coverage Policy ("Great Northern Policy") and the ACE Umbrella Plus New York Commercial Umbrella Liability Policy ("Umbrella Policy"). ***Id.*** at ¶ 16-23. Both of IPG's insurance policies were administered by Great Northern and ACE's parent company, Chubb Insurance Company ("Chubb"). ***Id.*** at ¶ 24.

In a letter dated May 18, 2020, Chubb agreed that Mr. Mathews was entitled to UIM coverage under the Great Northern Policy, specifically under an endorsement entitled "Drive Other Cars – Broadened Coverage for Named Individuals," which covered "all executives and officers of [IPG]" as "named insureds" if they are struck by a vehicle not owned by the insured while they are pedestrians. ***Id.*** at ¶ 17, 26; Chubb letter, 5/18/20, at 1.

However, in the same letter, Chubb denied Mr. Mathews coverage under the Umbrella Policy on behalf of ACE, asserting that the accident did not trigger the insuring clauses of the Umbrella Policy which only covers losses above the policy limit of an underlying insurance policy that the insured "becomes legally obligated to pay as damages because of 'bodily injury.'" Chubb letter, 5/18/20, at 3; Umbrella Policy, at 1.

Appellant filed a complaint on October 2, 2023 and an amended complaint on November 11, 2023 against ACE in the Court of Common Pleas

of Philadelphia County raising claims of breach of contract, bad faith, and breach of the duty of good faith and fair dealing as well as seeking a declaratory judgment.[1] After ACE filed preliminary objections to the Amended Complaint, the trial court entered an order on May 9, 2024, sustaining ACE's preliminary objections to the counts of bad faith and breach of the duty of good faith and fair dealing, but overruling the remaining objections.

On October 1, 2024, ACE filed a motion for judgment on the pleadings on the remaining claims, arguing that Mr. Mathews' claim for first-party UIM benefits was not covered by the Umbrella Policy, which only provided coverage for third-party liability claims, losses that an insured "becomes legally obligated to pay." On February 11, 2025, the trial court granted ACE's motion for judgment on the pleadings, entered judgment in its favor on Appellant's claims for breach of contract and declaratory judgment, and dismissed Appellant's Amended Complaint with prejudice.

On March 5, 2025, Appellant filed a timely appeal. Appellant complied with the trial court's directions to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Appellant presents the following question for our review on appeal:

> Did the trial court err in granting judgment on the pleadings where (a) the ACE Umbrella Plus policy provides coverage for bodily injuries caused by an uninsured/underinsured motorist because

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[1] The parties agreed that the Court of Common Pleas of Philadelphia County had personal jurisdiction over ACE pursuant to 42 Pa.C.S.A. § 5301(a) as ACE is incorporated in Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania. Amended Complaint, at ¶ 4-5.

> the policy's coverage for bodily injury follows the form of an underlying policy that provides coverage for bodily injury caused by an uninsured/underinsured motorist; or (b) in the alternative, the Umbrella Plus policy could be read to provide UM/UIM coverage such that the trial court should have applied the doctrine of *contra proferentem* or considered extrinsic evidence showing that ACE intended to provide such coverage.

Appellant's Brief, at 2.

We begin by setting forth the applicable standard of review:

> A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. Thus, in reviewing a trial court's decision to grant judgment on the pleadings, the scope of review of the appellate court is plenary; the reviewing court must determine if the action of the trial court is based on a clear error of law or whether there were facts disclosed by the pleadings that should properly go to the jury. An appellate court must accept as true all well-pleaded facts of the party against whom the motion is made, while considering against him only those facts which he specifically admits. Neither party can be deemed to have admitted either conclusions of law or unjustified inferences. Moreover, in conducting its inquiry, the court should confine itself to the pleadings themselves and any documents or exhibits properly attached to them. The court may not consider inadmissible evidence in determining a motion for judgment on the pleadings. Only where the moving party's case is clear and free from doubt such that a trial would prove fruitless will an appellate court affirm a motion for judgment on the pleadings.

Erie Ins. Exch. v. Russo, 343 A.3d 291, 295 (Pa. Super. 2025) (quoting ***Chris Eldredge Containers, LLC v. Crum & Foster Specialty Ins. Co.***, 335 A.3d 1216, 1119-20 (Pa. Super. 2025) (citations omitted)).

As a preliminary matter, we note that Appellant does not challenge the trial court's choice-of-law analysis or its decision to analyze the case under both Pennsylvania and New York law interchangeably. This Court has held

that "the first step in a choice of law analysis under Pennsylvania law is to determine whether a conflict exists between the laws of competing states … [i]f no conflict exists, further analysis is unnecessary." ***Budtel Associates, LP v. Continental Casualty Company, Assocs., LP v. Cont'l Cas. Co***., 915 A.2d 640, 644 (Pa. Super. 2006) (upholding trial court's decision to apply Pennsylvania substantive law after finding no conflict between Pennsylvania and New Jersey law on the issue of interpretation of insurance policies).[2]

As we agree with the trial court's finding that there is no conflict between Pennsylvania or New York law on the relevant issues of the interpretation of insurance policies and general contract interpretation principles, we need not proceed with further choice-of-law analysis.

Given that "[t]he interpretation of an insurance contract is a question of law," our standard of review is *de novo* and the scope of review is plenary. ***Clarke v. MMG Ins. Co.***, 100 A.3d 271, 275–76 (Pa. Super. 2014).

> The goal in construing and applying the language of an insurance contract is to effectuate the intent of the parties as manifested by the language of the specific policy. When the language of an insurance policy is plain and unambiguous, a court is bound by that language. Alternatively, if an insurance policy contains an ambiguous term, the policy is to be construed in favor of the insured to further the contract's prime purpose of indemnification and against the insurer, as the insurer drafts the policy, and

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[2] In ***Budtel***, this Court adopted a flexible choice-of-law analysis, displacing the traditional "*lex loci contractus*" rule for contract cases, which had previously required application of the law where the contract was formed. ***Budtel***, 915 A.2d at 644 (citing ***Griffith v. United Air Lines, Inc.,*** 416 Pa. 1, 203 A.2d 796 (1964) (abandoning the "*lex loci delicti*" rule in favor of a flexible approach to choice-of-law questions in tort cases)).

> controls coverage. Contract language is ambiguous if it is reasonably susceptible to more than one construction and meaning. Finally, the language of the policy must be construed in its plain and ordinary sense, and the policy must be read in its entirety.

State Farm Mut. Auto. Ins. Co. v. Dooner, 189 A.3d 479, 482 (Pa. Super. 2018) (quoting ***Pennsylvania Nat. Mut. Cas. Ins. Co. v. St. John***, 630 Pa. 1, 106 A.3d 1, 14 (2014)). "The insured bears the initial burden of establishing that the asserted claim is covered. If the insured is successful, the insurer bears the burden of establishing the applicability of an exclusion." ***MacMiles, LLC v. Erie Ins. Exch.,*** 286 A.3d 331, 334 (Pa. Super. 2022) (citing ***Erie Ins. Grp. v. Catania***, 95 A.3d 320, 322–23 (Pa. Super. 2014)).

We begin by reviewing the pertinent policy language. The Umbrella Policy states the following in the "Insuring Agreement": "We will pay on behalf of the 'insured' those sums in excess of the 'retained limit' that the 'insured' *becomes legally obligated to pay as damages* because of 'bodily injury.'" Umbrella Policy, at 1 (emphasis added).

The Umbrella Policy also defines the term "loss" as "sums paid in the settlement of a claim or 'suit' or satisfaction of a judgment which the 'insured' is *legally liable to pay as damages* because of 'bodily injury.'" Umbrella Policy, at 23 (emphasis added). The "Conditions" section of the Umbrella Policy provided the following provision which governed when a "loss" is payable:

> O. When a "Loss" is Payable
>
> Liability under this policy shall not apply unless and until the "insured" or "insured's" underlying insurer *has become obligated to pay* the "retained limit." Such obligation by the "insured" to pay part of the "loss" shall have been previously determined by a

> written agreement between the "insured," claimant, and us. We will obtain your consent to settle any claim within the "retained limit" unless such consent is unreasonably withheld.

Umbrella Policy, at 20 (emphasis added).

Based on these policy provisions, the trial court found the Umbrella Policy only provided coverage for third-party liability claims for which the insured becomes legally liable to pay as damages. Moreover, the trial court found that the "loss" provisions clarified that ACE was not obligated to pay for a "loss" unless Mathews or his underlying insurer (Great Northern) had become obligated to pay a third party.

This Court has found that materially identical language provides third-party liability coverage and does not provide first-party UM/UIM coverage. In ***Kromer v. Reliance Ins. Co.***, 677 A.2d 1224 (Pa. Super. 1996), this Court found the plain language in an umbrella insurance policy stating that the insurer agreed "to pay on behalf of the insured all sums which the insured *is legally obligated to pay*" only provided coverage for third-party liability claims against the insured and did not "express any intention of providing first party underinsured motorist coverage." ***Id.*** at 1230 (emphasis added).

Likewise, in this case, the parties agree that the insuring clauses of the Umbrella Policy only provide coverage for third-party liability claims; Appellant concedes the trial court was correct in finding Appellant's requested first-party UIM coverage for Mr. Mathew's own injuries does not constitute a sum which Mr. Mathews "became legally obligated to pay."

Instead, Appellant argues that the original terms of the ACE Umbrella policy were amended in its Automobile Liability Follow-Form Endorsement ("Follow-Form Endorsement"), which provided that coverage for "bodily injury" would "follow the terms, definitions, conditions, and exclusions of any 'scheduled underlying insurance.'" The Follow-Form Endorsement specifically states the following:

> THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
>
> This endorsement modifies all insurance provided under the following:
>
> COMMERCIAL UMBRELLA LIABILITY POLICY
>
> Auto Liability
>
> When insurance for "bodily injury" … is provided by an automobile liability policy listed in the "scheduled underlying insurance," coverage under this policy for such "bodily injury" … will follow the terms, definitions, conditions, and exclusions of "scheduled underlying insurance," subject to the "policy period" limits of this insurance, premium and all other terms, definitions, conditions, and exclusions of this policy. Coverage provided by this policy will not be broader than the coverage provided by "scheduled underlying insurance."

Follow-Form Endorsement, at 1.

While Appellant acknowledges that the default terms of the Umbrella Policy only provide coverage for third-party liability claims of bodily injury and contain no provision for first-party benefits, Appellant asserts that the Follow-Form Endorsement expands the Umbrella Policy's coverage to include first-party benefits by directing that coverage under the Umbrella Policy follows the form of the Great Northern policy's coverage for bodily injury, which includes

a UM/UIM endorsement. Appellant's Brief, at 6, 16. Appellant argues that the Follow-Form Endorsement incorporates the terms, definitions, conditions, and exclusions of the underlying policy. ***See Kropa v. Gateway Ford***, 974 A.2d 502, 505 (Pa. Super. 2009) ("[b]y definition, a following form policy incorporates terms from an underlying, primary policy").

We reject Appellant's invitation to find that in light of the Follow-Form Endorsement, the Umbrella Policy should be read to include first-party UIM benefits. Although the Follow-Form Endorsement indicates that coverage under the Umbrella Policy would follow the terms, definitions, conditions, and exclusions of the scheduled underlying insurance (the Great Northern Policy), the Follow-Form Endorsement clearly states that coverage is still "*subject to* the … terms, definitions, conditions, and exclusions of [the Umbrella] policy." Follow-Form Endorsement, at 1 (emphasis added). The "subject to" clause clarifies that the language of the Umbrella Policy is controlling when there is a conflict between the Umbrella Policy and the terms of the underlying policy. It is undisputed that the Umbrella Policy does not provide first-party benefits.

We find analogous the decision in ***Matarasso v. Continental Cas. Co.***, 82 A.D.2d 861, 440 N.Y.S.2d 40 (1981), in which the claimants recovered the maximum allowable benefits under their primary automobile policy's UM endorsement and sought to recover excess benefits under a commercial umbrella liability policy issued by Continental. The New York Supreme Court (Appellate Division) was tasked with deciding whether UM coverage was

provided by the umbrella liability policy, which incorporated by reference provisions of the underlying automobile policy.

The ***Matarasso*** Court found that the UM endorsement in the underlying automobile policy did not apply to the umbrella liability policy:

> The umbrella policy clearly provides excess protection for claimant Daniel Matarasso and his business against liability from third party claims. It incorporates the underlying policies insofar as they provide for protection against liability for damages to third parties. The uninsured motorist coverage provided by the underlying automobile liability policy does not involve claims of liability against the insured from third parties and is not incorporated by the umbrella policy. Any other interpretation would distort the actual purpose of the umbrella policy.

Id. at 862, 440 N.Y.S.2d at 41.

Turning back to the instant case, we find Appellant's argument unpersuasive using similar logic. We reiterate that the language of the Umbrella Policy clearly delineates that coverage is limited to the provision of excess protection for Mr. Mathews against third-party liability claims. The Follow-Form Endorsement does not expand the coverage of Umbrella Policy to include first-party UM/UIM benefits, as coverage is still subject to the terms, definitions, conditions, and exclusions of the Umbrella Policy. Rather, the Umbrella Policy follows the form of the underlying policy "insofar as [it] provide[s] for protection against liability for damages to third parties." ***Matarasso***, ***supra***.

Appellant also suggests that the trial court should have found that the Umbrella Policy contained an ambiguity which should have been interpreted against ACE as the drafting party. Appellant also argues that the trial court

should have considered extrinsic evidence to determine the meaning of the policy language.

Appellant is attempting to recreate an ambiguity where none exists. Courts "will not find a particular provision ambiguous simply because the parties disagree on the proper construction; if possible, it will read the provision to avoid an ambiguity." ***Dooner***, 189 A.3d at 482-83 (quoting ***Brown v. Everett Cash Mutual Insurance Company***, 157 A.3d 958, 962 (Pa. Super. 2017)).

Given that Appellant has not shown that an ambiguity exists in the policy, the trial court did not err in refusing to consider extrinsic evidence offered by Appellant to support her interpretation of the policy language. Where the language of an insurance policy is unambiguous, courts do not consider extrinsic evidence. ***Brosovic v. Nationwide Mut. Ins.***, 841 A.2d 1071, 1074 (Pa. Super. 2004).

For the foregoing reasons, we conclude the trial court correctly found that Mr. Mathews is not entitled to UIM coverage under the ACE Umbrella Policy. Therefore, we affirm the trial court's order granting ACE's motion for judgment on the pleadings.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/4/2026