

III. FACTS AND PROCEDURAL HISTORY

Meridian insures Allgood's car. The policy states:

"We will pay for . . . loss . . .

Limit of Liability

- A. Our limit of liability for loss will be the lesser of the:
1. Actual cash value of the stolen or damaged property;
or
 2. Amount necessary to repair or replace the property with other property of like kind and quality." (emphasis supplied)

After a collision, Allgood made a claim for repair, and Meridian paid.

Allgood claims the repairs fail to return the vehicle to its pre-collision value, and it is now worth less. Meridian must pay the inherent diminution in value to cover the "loss" under the policy, she argues. Allgood claims the policy is ambiguous by comparing the "loss" and "limit of liability" sections above. Since the sections are contradictory, she maintains, the Court may interpret "loss" to include "diminished value", and Meridian's denial of this "loss" is a breach of the policy.

Meridian claims the policy is not ambiguous, and "diminished value" is not allowed by the policy's limitation language.

Allgood brings this action for herself, and a class of all others similarly situated.

IV. LAW

A motion to dismiss under Rule 12 (B) (6) tests the legal sufficiency of a claim, not the facts supporting it. This Court may only grant a motion to dismiss if it is apparent that the facts alleged in the complaint are incapable of supporting relief under any set of circumstances. Town of Plainfield v. Town of Avon (2001), Ind.App., 757 N.E.2d 705.

Summary judgment is proper if the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. T.R. 56 (C). The moving party must establish the “absence of any genuine issue of fact as to a determinative issue.” Jarboe v. Landmark Community Newspaper, Inc. (1994), Ind., 664 N.E.2d118, 123.

The interpretation and construction of contract provisions is a function for the courts. Centennial Mortgage, Inc. v. Blumenfeld (2001), Ind.App., 745 N.E.2d 268, 273. The primary goal of contract interpretation is to give effect to the parties’ intent. Beiger Heritage Corp. v. Montandon (1998), Ind.App., 691 N.E.2d 1334, 1336. The court should attempt to determine the intent of the parties at the time the contract was made by examining the language used to express their rights and duties. Exide Corp. v. Millwright Riggers, Inc. (2000), Ind. App., 727 N.E.2d 473, 478. Unless the terms of a contract are ambiguous, they will be given their plain and ordinary meaning. Centennial Mortgage, supra., at 273-74. The Court makes all attempts to construe the language in a contract so as not to render any words, phrases, or terms ineffective or meaningless. Zawistocki v. Gene B. Glick Co., Inc (2000), Ind.App., 727 N.E.2d 790, 794. Where the terms of a contract are clear and unambiguous, the terms are conclusive and we will not construe the contract or look at extrinsic evidence but will merely apply the contractual provisions. Id. at 274. The terms of a contract are not ambiguous merely because controversy exists between the parties concerning the proper interpretation of terms. Centennial Mortgage, supra., at 274. Rather, ambiguity will be found in a contract only if reasonable people would find the contract subject to more than one construction. Beiger Heritage, supra., at 1337. Any ambiguity in the contract is to be construed against the drafting party. Bicknell Minerals, supra., at 1313.

Indiana cases have held similar “Limits of Liability” provisions are unambiguous and limit recovery to the cost of repair. Hilton v. Allstate Insurance Company, Cause No. 1:03-CV-00172-RLY-VSS (S.D. Ind. 2003); Jett v. State Farm Mutual Automobile Insurance Company, Cause No. IP 02-332-C-Y/S (S.D. Ind. 2003).

The reasoning in these Indiana decisions is further supported by rulings in other jurisdictions: Smither v. Progressive County Mutual Insurance (2002), Tx.App. 76 S.W.3d 719 (“loss” is an unambiguous term that does not include diminished value); LUPU v. Shelter Mutual Insurance Company (2002), Mo.App., 70 S.W.3d 16 (“diminished value” is not covered in the policy); Smith v. Superior Insurance (2001), Fla.App., 802 So.2d 424 (diminished value was not a covered “loss” under the policy); Townsend v. State Farm Mutual Automobile (2001), La.App., 793 So.2d 473 (“loss” must be read in conjunction with the other policy provisions, particularly the provisions limiting the insurer’s liability); Driscoll v. State Farm Mutual Automobile Insurance, 227 F.Supp.2d 696 (E.D.Mich. 2002) (Insurer included in their policy a provision that expressly limited coverage to lesser of actual value or cost of repair); Carlton v. Trinity Universal Ins. Co. (2000), Tex.App., 32 S.W.3d 454 (Diminution in market value due to marketplace perception that a fully repaired vehicle was inferior was not part of the insurer’s obligation, since the car was fully repaired).

V. ANALYSIS

The evidence shows no dispute of fact. The Court then interprets the contract as a matter of law and construction.

Meridian's policy clearly shows it pays for "loss," limited to repair or replacement. The Court finds reasonable persons would not find this language allows more than one construction, and is therefore not ambiguous. Beiger Heritage v. Montandon, supra.

Even if there is no definition of "loss," the contract terms must be afforded their plain and ordinary meaning, and construed together so no term is rendered meaningless. The plain and ordinary meaning of these terms shows the policy allows only repair or replacement. Adding "diminished value" to "loss" only renders the "Limit of Liability" section meaningless. Centennial Mortgage, Inc. v. Blumenfeld, supra.; Zawistocki v. Gene B. Glick Co., Inc, supra.

Therefore, Allgood is not entitled to judgment as a matter of law, and her complaint cannot support relief.

VI. CONCLUSION

The policy is unambiguous, and does not include "diminished value" as a "loss."

Although there is no genuine issue of material fact, Allgood is not entitled to judgment as a matter of law.

The complaint fails to state a claim upon which relief can be granted.

VII. ORDER

Meridian's Motion to Dismiss is **GRANTED**.

Allgood's Motion for Partial Summary Judgment is **DENIED**.

Dated this 11th day of June, 2003

David J. Dreyer, Judge
Marion Superior Court