ORIGINAL

IN THE SUPREME COURT OF OHIO

THERESA MILLER, et al.,	)	CASE NO. 12-0053
Plaintiffs/Appellees,	)	
v.	)	*On Appeal from the Portage County Court of Appeals, Eleventh Appellate District*
MOTORISTS MUTUAL INSURANCE COMPANIES, et al.,	)	*Court of Appeals Case No. 2011-P-0016*
Defendant/Appellant	)	

MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT/APPELLANT MOTORISTS MUTUAL INSURANCE COMPANY

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC AND GREAT GENERAL INTEREST

A fundamental and obvious principle of law is that the common law of Ohio must be applied consistently and faithfully by trial courts and appellate courts in resolving disputes between litigants. Otherwise, the failure of Ohio courts to apply well-established Ohio law not only deprives a litigant of the protections afforded by Ohio law in a particular dispute, but also creates uncertainty and confusion for all future litigants. This appeal involves the interpretation of an insurance contract by the Court of Appeals in a manner in which the well-established rules of contract interpretation have not been followed, which is why this appeal presents a matter of public and great general interest. After all, whenever an appellate court has failed to properly follow and apply Ohio law, the Ohio Supreme Court, as the court of last resort, should address and remedy such appellate action to enforce existing Ohio law, to promote consistent application of existing Ohio law, and to eliminate the confusion and uncertainty caused by the inconsistent application of Ohio law.

This appeal arises out of a motor vehicle accident which occurred when Daniel Masterson negligently drove his vehicle left-of-center into a group of motorcycles traveling in the opposite direction. Mr. Masterson's vehicle struck two separate motorcycles which were a distance of 24.18 feet apart, and the time between the two impacts was .3 of a second. The issue in this litigation is whether the accident caused by Mr. Masterson constituted a single "accident" or more than one "accident" for purposes of liability coverage under an auto liability policy issued by Motorists Mutual Insurance Company (hereinafter "Motorists"). The word "accident" is not defined in the Motorists' policy, but the Limit of Liability provision in the policy contemplates that multiple vehicles may be involved in and multiple claims may arise out of a single "accident". The Trial Court determined that the word "accident" is not ambiguous when

the policy is considered as a whole, and the Trial Court further applied the "causation approach" in holding that only a single "accident" had occurred. The Court of Appeals reversed the Trial Court's Judgment Entry by holding that the word "accident" is ambiguous since it is not defined in the policy and, in doing so, the Court of Appeals did not reconcile the plain and ordinary meaning of the word "accident" with the Limit of Liability provision in the policy. In other words, the Court of Appeals failed to interpret the insurance contract as a whole, as required by the Ohio Supreme Court in *Westfield Insurance Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849, 797 N.E. 2d 1256, ¶11. By failing to apply the rules of contract interpretation set forth in *Galatis*, the Court of Appeals has issued a holding which conflicts with the unambiguous language in the insurance contract, contradicts the intent of the parties, and deprives Motorists of the rights and protections afforded under Ohio law.

In addition, due to the holding by the Court of Appeals, there is presently much confusion in the State of Ohio regarding when the "causation approach" should be utilized in determining whether a single "accident" or multiple "accidents" have occurred for purposes of liability coverage provided by insurance policies issued in Ohio. It is generally recognized that the "causation approach" is the majority view in jurisdictions throughout the United States, but the Eleventh District Court of Appeals has now issued an opinion which can only be considered a minority opinion. The factual circumstances in this case are not unusual and the language found in the Motorists' policy exists in countless liability policies issued to insureds throughout the State of Ohio, so the issues in the present appeal will undoubtedly arise in future cases. Due to this confusion and uncertainty created by the Court of Appeals, this case presents a matter of public and great general interest. Accordingly, Motorists respectfully requests this Honorable Court to accept this discretionary appeal.

STATEMENT OF THE CASE AND FACTS

This appeal involves an insurance coverage dispute as to whether the accident caused by Daniel Masterson on July 12, 2008, constituted a single "accident" or more than one "accident" for purposes of liability coverage under Policy No. 5613-06-623507-02A issued by Motorists. The facts regarding the accident are undisputed. Mr. Masterson was operating a 2005 Saturn westbound on State Route 5 in Portage County, Ohio, at a speed of approximately 54-55 mph. (Stipulations, T.d. 9, Ex. B). Six motorcycles were traveling in the opposite direction at a speed of approximately 50-55 mph. (Stipulations, T.d. 9, Ex. A). As the Masterson vehicle and the group of motorcycles approached one another, Mr. Masterson's vehicle traveled left-of-center. (Stipulations, T.d. 9, Ex. A). The Masterson vehicle first struck the motorcycle operated by David H. Perrine and less than 1 second later, the Masterson vehicle struck a second motorcycle, operated by Geoffrey Davis. (Stipulations, T.d. 9, Ex. B).

Following the accident, the Ohio State Highway Patrol performed an extensive investigation and prepared a Reconstruction Report, No. 2008-154-67. (Stipulations, T.d. 9, Ex. B). The accident reconstruction confirmed that the impacts involving the Perrine motorcycle and the Davis motorcycle occurred almost simultaneously. In fact, the Ohio State Highway Patrol concluded that: 1) Mr. Masterson's pre-crash speed was in the range of 54-55 mph; 2) there was no evidence of any pre-crash braking by the Masterson vehicle; 3) the physical distance between the two impact areas was 24.18 feet; and 4) the time between the two impacts was .3 of a second. (Stipulations, T.d. 9, Ex. B). These conclusions by the Ohio State Highway Patrol establish that when Mr. Masterson's vehicle swerved left of center, his vehicle struck the Perrine vehicle and then, <u>just .3 of a second later</u>, struck the Davis motorcycle. Thus, Mr. Masterson did not have time to take any evasive action, such as braking, swerving, etc., between the two impacts.

Following the accident, multiple claims were asserted against Mr. Masterson, and the issue arose as to the amount of liability coverage available under the policy issued by Motorists. Policy No. 5613-06-623507-02A provides liability coverage under Endorsement PP 70 02 (10-06) entitled "Personal Auto Policy" as follows:

> **PART A – LIABILITY COVERAGE**
>
> **INSURING AGREEMENT**
>
> A. We will pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident...

(Stipulations, T.d. 9, Ex. C, PP 70 02 (10-06), p. 2 of 12). In addition, the Section entitled "Limit of Liability" in Endorsement PP 70 02 (10-06) provides as follows:

> **LIMIT OF LIABILITY**
>
> D. When a Liability limit is shown in the Declarations for **bodily injury** and **property damage**, the first paragraph of the **LIMIT OF LIABILITY** provision in Part A is replaced by the following:
>
> The limit of liability shown in the Declarations for "each person" for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of a **bodily injury** sustained by any one person in any one auto accident. Subject to this limit for "each person," the limit of liability shown in the Declarations for "each accident" for Bodily Injury Liability is our maximum limit of liability for all damages for **bodily injury** resulting from any one auto accident....This is the most we will pay regardless of the number of:
>
> 1. Insureds;
> 2. **Claims made;**
> 3. Vehicles or premiums shown in the Declarations; or
> 4. **Vehicles involved in the auto accident.**

(Stipulations, T.d. 9, Ex. C, PP 70 02 (10-06), p. 4 of 12). The word "accident" as utilized in the liability coverage provisions in Endorsement PP 70 02 (10-06) is not a defined word.

The Trial Court ruled in an Order and Journal Entry filed on March 8, 2011, that the word "accident" in the Motorists' policy is clear and unambiguous when considered in the context of

the entire policy and that, while applying the "causation approach," the incident involving Mr. Masterson constituted a single "accident" for purposes of liability coverage under the Motorists' policy. (See Appendix, Ex. B). The Eleventh District Court of Appeals subsequently reversed the Trial Court's Judgment Entry by holding that the word "accident" is ambiguous since it is not defined and by refusing to apply the "causation approach". (See Appendix, Ex. A). Motorists has prosecuted this appeal to the Ohio Supreme Court as the Eleventh District Court of Appeals has erred by failing to apply the "causation approach" in determining whether a single "accident" or multiple "accidents" occurred, and by holding that the word "accident" is ambiguous despite a clear intent to the contrary when the policy is considered as a whole.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: When there is but one proximate, uninterrupted and continuing cause of a motor vehicle accident involving multiple vehicles, the "causation approach" applies and requires the finding that a single "accident" occurred for purposes of liability coverage under an insurance policy, even if the word "accident" is not defined in the policy.

Several Ohio courts have adopted the "causation approach" in determining the number of "accidents" which have occurred for purposes of liability coverage under an insurance policy. *Progressive Preferred Ins. Co. v. Derby*, 6th Dist. No. F-01-002, 2001 WL 672177 (June 15, 2001); *Greater Cincinnati Chamber of Commerce v. Ghanbar*, 157 Ohio App. 3d 233, 2004-Ohio-2724 (1st Dist.); and *Dutch Maid Logistics, Inc. v. Acuity*, 8th Dist. Nos. 91932 and 92002, 2009-Ohio-1783, *appeal not accepted,* 2009-Ohio-4233. The application of the "causation approach" by Ohio courts is consistent with the majority view of courts throughout the United States which have addressed the same or similar issue. *State Auto Property & Cas. Co. v. Matty*, 286 Ga. 611, 613, 690 S.E.2d 614, 617 (2010); *CSX Transportation, Inc. v. Continental Ins. Co.*, 343 Md. 216, 233, 680 A.2d.1082, 1091 (1996); *Derby*, at *3; and *Dutch Maid Logistics* at ¶26.

In the present case, the Trial Court properly applied the "causation approach" and held that the incident involving Mr. Masterson constituted a single "accident" since the "same act of continuous force" caused the multiple impacts with the motorcycles. Upon appeal, the Eleventh District Court of Appeals declined to apply the "causation approach" by attempting to distinguish the Motorists' policy on the basis that the word "accident" is not defined and is, therefore, ambiguous. However, Ohio law requires the application of the "causation approach" in determining whether a single "accident" or multiple "accidents" occurred for purposes of liability coverage under an insurance policy, even if the word "accident" is not defined in the policy.

The Sixth District Court of Appeals utilized the "causation approach" in *Progressive Preferred Ins. Co. v. Derby* while determining whether an accident involving two impacts constituted a single "accident" or two "accidents" under a Progressive policy. The Court of Appeals first looked to the policy which defined the word "accident" as follows:

> A sudden, unexpected and unintended event, or a continuous or repeated exposure to that event that causes bodily injury or property damage and arises out of the ownership, maintenance or use of your insured auto.

Derby at *3. The Court of Appeals in *Derby* then adopted the "causation approach" to determine the number of accidents under the Progressive policy, and noted as follows:

> The rationale underlying the cause approach is the fact that "[p]roximate cause is an integral part of any interpretation of the words "accident" or "occurrence" as used in a contract for liability insurance."... Thus, where there is but one proximate, uninterrupted and continuous cause, all injuries and damages are included within the scope of that single proximate cause... We agree with this reasoning and, as do most of the jurisdictions, adopt a cause approach in determining the number of accidents or occurrences under a liability policy.

Derby at *3. In applying the "causation approach", the Court of Appeals identified the single key factor as being "whether the tortfeasor ever regained control of his or her vehicle after the

first collision." *Derby* at *4. The *Derby* Court also looked at the "interdependent nature of the two impacts and their continuity and proximity in time and location". *Derby* at *4. The Court of Appeals ultimately held that "all of these events were in a continuous series, closely linked in both time and space", that a single "accident" had occurred within the meaning of the policy, and that Progressive was entitled to summary judgment as a matter of law. *Derby* at *5.

The Sixth District Court of Appeals in *Derby* relied heavily on the prior opinion of the U.S. District Court, Northern District of Ohio, in *Banner v. Raisin Valley, Inc.*, 31 F. Supp.2d 591 (N.D. Ohio 1998), in which the driver of a tractor-trailer crossed left of center and struck four oncoming vehicles which were just a few car lengths apart. *Id.* at 592. Multiple claims were asserted against the driver of the tractor-trailer, who was insured by Reliance Insurance Company. *Id.* at 591. The Reliance policy defined the word "accident" as "including continuous or repeated exposure to the same conditions resulting in bodily injury or property damage". *Id.* at 592. The U.S. District Court recognized that this definition contemplates multiple injuries resulting from a single cause, <u>and that the limitation of liability section of the Reliance policy applies regardless of the number of vehicles involved in the accident</u>. *Id.* at 592. The Court then applied the "causation approach" in determining the number of accidents under the Reliance policy. In doing so, the U.S. District Court noted that the majority of out-of-state jurisdictions have adopted the "causation approach" and that the "common thread between these cases is whether the driver ever regained control of his vehicle." *Id.* at 593. The U.S. District Court then analyzed the relevant facts and held that only a single "accident" had occurred despite the fact that the tractor-trailer had struck four separate motor vehicles.

A similar result was reached by the Eighth Appellate District in *Dutch Maid Logistics, Inc., v. Acuity*, 8th Dist. Nos. 91932 and 92002, 2009-Ohio-1783, *appeal not accepted,* 2009-

Ohio-4233. In this case, one of Dutch Maid Logistic's employees was driving a tractor-trailer on a highway when he caused a multi-vehicle accident resulting in two deaths and bodily injuries to three other persons. *Id.* at ¶4. At the time of the accident, Dutch Maid Logistics was insured by Acuity. The Trial Court granted summary judgment in favor of Acuity on the basis that there was only one "accident" for purposes of liability coverage. *Id.* at ¶9. On appeal, the Eighth District Court of Appeals noted that very few Ohio courts have addressed the issue regarding how to determine the number of "accidents" which have occurred under the terms of a liability insurance policy, but that the "causation approach" has been adopted as the majority view. *Id.* at ¶26. After applying the "causation approach", the Eighth District Court of Appeals affirmed the summary judgment in favor of Acuity on the basis that a single "accident" had occurred despite the injuries to multiple persons.

The First Appellate District reached a similar result in *Greater Cincinnati Chamber of Commerce v. Ghanbar* involving different policy language than found in the policies analyzed in *Derby*, *Banner*, and *Dutch Maid Logistics*. In *Ghanbar*, the tortfeasor drove into an Oktoberfest celebration, injuring more than 20 people. *Ghanbar*, 157 Ohio App.3d. 233, 2004-Ohio-2724 (1st Dist.), ¶2. The Trial Court granted summary judgment in favor of Progressive on the basis that the multiple injuries had resulted from a single accident, which was appealed. In upholding the summary judgment in favor of Progressive, the Court of Appeals noted that the Progressive policy defined the word "accident" as a "sudden, unexpected and unintended occurrence." *Id.* at ¶9. The Court found the following facts to be extremely relevant:

> The injuries occurred as a result of a single act on the part of [the tortfeasor]. The evidence in the record indicated that [the tortfeasor] plowed through a crowd of people and injured them almost simultaneously. A single, indivisible course of conduct caused the injuries in question, and the trial court did not err in holding that the incident constituted a single occurrence with multiple victims.

Id. at ¶10. Based on such relevant facts, the Court of Appeals held that a single "accident" occurred, despite the multiple victims.

During the appeal in *Ghanbar*, the plaintiffs argued that the Trial Court had erred in applying the "causation approach" since the Progressive policy did not contain the explicit language that an accident includes "continuous or repeated exposure to the same conditions." The Court of Appeals rejected this argument. In fact, the First Appellate District specifically held that the Trial Court reached the correct result regardless if the policy defined the word "accident" or not. In addressing this issue, the Court of Appeals held as follows:

> Moreover, even if the trial court did apply the causation theory, we hold that there was no error. As we have already held, the policy language in the case at bar supported the trial court's conclusion that the injuries had resulted from a single accident. The trial court's inquiry into whether a single cause had resulted in the injuries would have been proper even in the absence of language defining an "accident" in terms of causation. The question whether there had been a single accident under the policy was inextricably linked to the question of causation, and the trial court came to the proper conclusion under the undisputed facts of this case. Even in the absence of the "continuous or repeated exposure" language, the Court correctly held that there was only one accident in the case at bar.

Ghanbar at ¶12. Based on the foregoing, the Court of Appeals upheld the summary judgment in favor of Progressive on the basis that only one "accident" had occurred, despite the fact that the Progressive policy did not contain the "continuous or repeated exposure" language relied upon by the Courts in *Derby*, *Banner*, and *Dutch Maid Logistics*.

As noted above, the Progressive policy in *Ghanbar* defined "accident" as a "sudden, unexpected and unintended occurrence,", which is the common and ordinary meaning of the word. Thus, under the *Ghanbar* holding, the "causation approach" must be applied in cases involving insurance policies which do not provide a definition of the word "accident" or when the definition, if provided, does not include the "continuous or repeated exposure" language. The holding in *Ghanbar* is the exact result reached by Courts in out-of-state jurisdictions which

have applied the "causation approach" in cases where the insurance policies did not include a definition of the word "accident." See *State Auto Property & Cas. Co. v. Matty*, 286 Ga. 611, 690 S.E. 2d 614 (Ga. 2010); *Truck Ins. Exchange v. Rohde*, 49 Wash. 2d 465, 303 P. 2d 659 (1956); *St. Paul-Mercury Indemn. Co. v. Rutland*, 225 F. 2d 689 (1955). Accordingly, the Court of Appeals erred in the present case when it refused to apply the "causation approach".

In this case, the Eleventh Appellate District refused to apply the "causation approach" by attempting to distinguish the Motorists' policy due to the lack of a definition of the word "accident". Yet, this is a distinction which does not make any difference under Ohio law. The fact that the word "accident" is not defined in the insurance policy does not mean that such word is ambiguous, as suggested by the Court of Appeals. In the absence of a definition in the policy, the Court must look to the common and ordinary meaning of the word. *Galatis* at ¶11). Many Ohio courts have applied the plain, common and ordinary meaning of the word "accident" in other cases, which is generally defined as an unintended, unexpected and unforeseeable event. *Randolph v. Grange Mut. Cas. Co.*, 57 Ohio St. 2d 25, 29, 385 N.E. 2d 1305 (1979); *Westfield Cos. v. Gibbs*, 11th Dist. No. 2004-L-058, 2005-Ohio-4210; *Havel v. Grange Mutual Cas. Co.*, 11th Dist. No. 2004-G-2609, 2006-Ohio-7014; and *Haimbaugh v. Grange Mutual Cas. Co.*, 10th Dist. No. 07 AP-676, 2008-Ohio-4001. This plain and ordinary meaning, standing alone, is not ambiguous.

If the word "accident" had not been defined in the policies analyzed in *Banner*, *Derby*, and *Dutch Maid Logistics,* the holdings would have been the same (i.e., a single "accident") in all three cases based on the common and ordinary meaning of the word "accident". The First Appellate District in *Ghanbar* recognized that the application of the "causation approach" would result in the determination of a single "accident" even in the absence of the definition of the

word "accident" in the policy. In fact, the First District Court of Appeals specifically stated as follows:

> The trial court's inquiry into whether a single cause had resulted in the injuries would have been proper even in the absence of language defining an "accident" in terms of causation. The question whether there had been a single accident under the policy language was inextricably linked to the question of causation, and the trial court came to the proper conclusion under the undisputed facts of this case. Even in the absence of the "continuous or repeated exposure" language, the court correctly held that there was only one accident in the case at bar.

Ghanbar, 157 Ohio App.3d 233, 2004-Ohio-2724, at ¶12. As implicitly recognized by the First Appellate District, a consistent application of Ohio law should require the application of the "causation approach" in all cases where there is an issue over whether one or more "accidents" occurred for purposes of liability coverage.

In *Ghanbar*, the Progressive policy did not contain the phrase "continuous or repeated exposure to the same conditions" in the definition of "accident". Instead, the Progressive policy defined the word "accident" as a "sudden, unexpected and unintended occurrence," which is essentially the common law definition of the word. The First Appellate District held in *Ghanbar* that multiple injuries caused by the tortfeasor as a result of an indivisible course of conduct constituted a single "accident" for purposes of liability insurance coverage. However, the Eleventh District Court of Appeals has implicitly rejected the *Ghanbar* rationale by holding that the absence of a definition of the word "accident" rendered the policy ambiguous. Yet, the Ohio Supreme Court has held that the "mere absence of a definition in an insurance contract does not make the meaning of the term ambiguous." *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E. 2d 684 (1995). Moreover, the Plaintiffs/Appellants, who are not parties to the insurance contract, are not entitled to the benefit of a strict construction or interpretation of the language in the policy. *Galatis* at ¶14. If the policy is not deemed to be

ambiguous simply because of the lack of a definition, and the plain and ordinary meaning of the word "accident" is applied, then the result should be the identical holding reached by the First Appellate District in *Ghanbar*.

The Court of Appeals should have applied the "causation approach" in analyzing how many accidents occurred for purposes of liability coverage in order to be consistent with Ohio law and the majority of jurisdictions which have considered the same or similar issue. Under the "causation approach", this event caused by Mr. Masterson constituted a single "accident" for purposes of liability coverage under the Motorists' policy even though the word "accident" is not defined in the policy. This is especially true in light of the Limitation of Liability provision in the Motorists' policy which, when the policy is interpreted as a whole, requires the finding that the word "accident" is not ambiguous and that multiple vehicles can be involved in and multiple claims can arise out of a single "accident", as discussed below.

> **Proposition of Law No. 2:** The undefined word "accident" in a liability insurance policy is not ambiguous when the policy, interpreted as a whole, establishes the intent of the parties that multiple vehicles may be involved in and multiple claims may arise out of a single auto accident.

In its Opinion filed on November 28, 2011, the Eleventh District Court of Appeals failed to follow the Ohio Supreme Court's mandate that courts in Ohio must "examine the insurance contract as a whole and presume that the intent of the parties is reflected in the language used in the policy." *Galatis* at ¶11. Although the word "accident" is not defined, the "Limit of Liability" section of Endorsement PP 70 02 (10-06) provides, in pertinent part, as follows:

> **LIMIT OF LIABILITY**
>
> D. ...Subject to this limit for "each person," the limit of liability shown in the Declarations for "each accident" for Bodily Injury Liability is our maximum limit of liability for all damages for bodily injury resulting from any one auto accident... This is the most we will pay regardless of the number of:

1. Insureds;
2. **Claims made;**
3. Vehicles or premiums shown in the declarations; or
4. **Vehicles involved in the auto accident.**

(Stipulation, T.d. 9, Ex. C, PP 70 02 (10-06), p. 4 of 12). Thus, the language utilized in the "Limit of Liability" section of the Motorists' policy specifically contemplates that multiple vehicles may be involved in and multiple claims may arise out of a single auto accident. In its Opinion, the Court of Appeals chose to ignore the Limit of Liability provision and failed to interpret the word "accident" in the context of the policy as a whole. If the Court of Appeals had considered the policy as a whole, the Court of Appeals would have been required by Ohio law to reach a different result.

The "Limit of Liability" section of the Motorists' policy eliminates any alleged ambiguity in the word "accident" as used in the policy. As required by *Galatis*, the word "accident", as an undefined word, must not only be given its plain and ordinary meaning, but must also be applied in a manner which is consistent when the insurance contract is considered as a whole. Here, if the insurance contract is viewed in its entirety, then the only consistent meaning and application of the word "accident" inevitably leads to the conclusion that multiple vehicles can be involved in and multiple claims can arise out of a single "accident", even though the word "accident" has not been specifically defined in the policy.

The inclusion of this type of limit of liability language as found in the Motorists' policy was instrumental in the application of the "causation approach" by the Eighth District Court of Appeals in *Dutch Maid Logistics*, 8th Dist. Nos. 91932 and 92002, 2009-Ohio-1783, *appeal not accepted,* 2009-Ohio-4233, ¶29. Likewise, courts in out-of-state jurisdictions have relied heavily upon such Limit of Liability provisions in holding that the "causation approach" should be

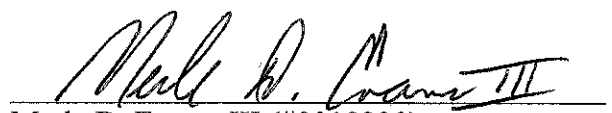
applied even though the word "accident" is not defined in the policy. For instance, in *State Auto Property & Cas. Co. v. Matty,* the Supreme Court of Georgia analyzed a State Auto policy which did not define the word "accident' but which provided the identical Limit of Liability provision which is contained within the Motorists' policy and held that the "policy at issue in this case, viewed as a whole, shows a clear intent to limit liability in accidents involving multiple vehicles". *Matty,* 286 Ga. 611, 613. In the present case, the Eleventh District Court of Appeals did not even attempt to reconcile the plain and ordinary meaning of the word "accident" with the Limit of Liability provision in the Motorists' policy; if it had, then the Court of Appeals could have only concluded, in interpreting the policy as a whole, that the Motorists' policy specifically contemplated that multiple vehicles could be involved in and multiple claims can arise out of a single "accident".

CONCLUSION

Defendant/Appellant Motorists Mutual Insurance Company respectfully asserts that the Eleventh District Court of Appeals erred in reversing the Trial Court's Judgment Entry filed on March 8, 2011. As held in *Ghanbar*, the "causation approach" should be applied in all cases in determining the number of "accidents" for purposes of liability coverage under an insurance policy, including those cases where the policies do not provide a definition of the word "accident" or where the definition does not include the "continuous and repeated exposure" language. Moreover, the Motorists' policy includes a Limit of Liability provision which clearly and unambiguously contemplates that multiple vehicles can be involved in and multiple claims can arise out of a single auto "accident", which eliminates any alleged ambiguity in the undefined word "accident". Yet, the Court of Appeals failed to consider the policy as a whole and did not interpret the word "accident" consistently with the Limit of Liability provision in the

policy, as required by Ohio law. If the Court of Appeals had considered the policy as a whole, then the Court of Appeals should have utilized the "causation approach" in determining the number of "accidents", thereby resulting in the conclusion that Daniel Masterson caused a single "accident" for purposes of liability coverage under the Motorists' policy. Since this is a matter of great concern for insurers, policyholders and claimants, and since the identical issue will undoubtedly arise in future cases, Defendant/Appellant Motorists Mutual Insurance Company respectfully requests this Honorable Court to accept this discretionary appeal.

Respectfully submitted,



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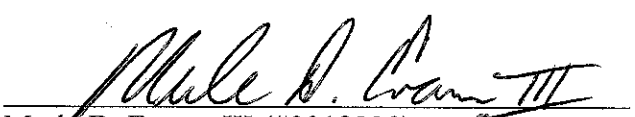
PROOF OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail, postage prepaid, to Attorney for Plaintiffs/Appellees, Robert P. Rutter, Esq., One Summit Office Park, Suite 650, 4700 Rockside Road, Independence, Ohio 44131, this 11th day of January, 2012.



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APPENDIX

Exhibit

Opinion and Judgment Entry from the Portage County Court of Appeals, *Miller v. Motorists Mut. Ins. Co.*, 11th No. 2011-P-0016, 2011-Ohio-6099..... A

Judgment Entry of the Portage County Court of Common Pleas filed on March 8, 2011..... B

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FILED
COURT OF APPEALS
NOV 28 2011
LINDA K FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

THERESA MILLER, et al.,	:	**OPINION**
Plaintiffs-Appellants,	:	**CASE NO. 2011-P-0016**
- vs -	:	
MOTORIST MUTUAL INSURANCE COMPANY, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2010 CV 0428.

Judgment: Reversed.

Robert P. Rutter, Rutter & Russin, One Summit Office Park, Suite 650, 4700 Rockside Road, Independence, OH 44131 (For Plaintiffs-Appellants).

Merle D. Evans, III, Day Ketterer Ltd., Millennium Centre, Suite 300, 200 Market Avenue, North Canton, OH 44701-4213 (For Defendants-Appellees).

MARY JANE TRAPP, J.

{¶1} Appellants, Theresa Miller and Geoffrey Davis, appeal from a decision of the Court of Common Pleas of Portage County, granting summary judgment in favor of appellee, Motorist Mutual Insurance Company ("MMIC"), and denying appellants' motion for summary judgment. While the parties stipulate to the facts in this case and to the liability of the tortfeasor, they disagree over whether the multiple collisions giving

rise to this case constituted one "accident" for the purposes of insurance liability limits, or two. Given the failure of the insurance company to include a more precise definition of the policy term "accident," and use limiting language found in other policies that has withstood judicial scrutiny, we find that the incidents giving rise to Ms. Miller and Mr. Davis's claims constitute two accidents.

{¶2} **Substantive Facts and Procedural History**

{¶3} The facts in this case are undisputed. On the evening of July 12, 2008, Daniel Masterson was heading westbound on State Route 5, when he took his eyes off the road in order to reach to the floorboard to retrieve his lighter, and veered into the eastbound lane of traffic. The SUV Mr. Masterson was driving collided with a group of motorcycles headed eastbound. Mr. Masterson first collided with a motorcycle driven by David Perrine. In an attempt to avoid hitting Mr. Perrine's motorcycle, Michael Reese, who was driving behind Mr. Perrine, took evasive action, but was unable to avoid hitting Mr. Perrine's motorcycle and sliding into his path. Mr. Perrine and his passenger, Julia Hill, and Mr. Reese and his passenger, Kim Mook, sustained injuries.

{¶4} Within .3 seconds of striking Mr. Perrine, Mr. Masterson struck a motorcycle driven by Geoffrey Davis, and then traveled back across the westbound lane before crashing into a guardrail. Mr. Davis and his passenger, Theresa Miller, were also injured.

{¶5} Mr. Masterson was insured by MMIC, and his policy contained liability coverage for bodily injury with split limits of $100,000 for "each person" and $300,000 for "each accident." No dispute exists as to Mr. Masterson's liability, nor is there a

dispute that the collective value of the injuries sustained by Mr. Perrine, Ms. Hill, Mr. Reese, Ms. Mook, Mr. Davis, and Ms. Miller exceeded $300,000.

{¶6} A dispute does exist, however, as to whether the incidents constitute one accident, limiting MMIC's liability to a single $300,000 per accident payment, or whether they constitute two accidents, increasing MMIC's exposure in this case to, at most, $500,000. Ms. Miller and Mr. Davis contend that Mr. Masterson's collision with their motorcycle constitutes a separate accident from the initial collision with Mr. Perrine's motorcycle, and that they are entitled to a separate $300,000 per accident payment.

{¶7} Because MMIC's liability for at least one accident was not disputed, the parties entered into a Covenant Not to Execute, which provided that MMIC would make one "each accident" payment of $300,000 to be split among the six injured parties, but provided for the ability to file a declaratory action seeking interpretation of MMIC's policy, and determination of whether the incidents constituted one or two accidents. The Covenant Not to Execute further provided that, should a court determine the incident to be two accidents, MMIC would pay an additional $100,000 each to Ms. Miller and Mr. Davis.

{¶8} Ms. Miller and Mr. Davis ultimately filed a declaratory judgment action, and the parties submitted cross-motions for Summary Judgment and Declaratory Relief. The trial court granted summary judgment in favor of MMIC, finding "[t]he whole incident was one brief continuous course of conduct." The trial court relied on language in the "Limitation of Liability" portion of the policy to determine that "the term 'accident' or 'any one auto accident' includes all the vehicles involved in the collision." Applying the policy language to its finding that there was one continuous course of conduct, the trial court

held that there was only one accident, and that the parties were "therefore limited to a single recovery under the 'Each Accident' portion of [MMIC's] policy, regardless of the number of motorcycles involved in the incident."

{¶9} Ms. Miller and Mr. Davis timely appealed, and now bring the following assignment of error:

{¶10} "The trial court erred in ignoring this Court's decision in *Godwin* and in granting MMIC's motion for summary judgment and denying the plaintiffs' motion for summary judgment."

{¶11} **Standard of Review**

{¶12} We review de novo a trial court's order granting summary judgment. *Hapgood v. Conrad*, 11th Dist. No. 2000-T-0058, 2002-Ohio-3363, ¶13, citing *Cole v. Am. Industries and Resources Corp.* (1998), 128 Ohio App.3d 546. "A reviewing court will apply the same standard a trial court is required to apply, which is to determine whether any genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law." Id., citing *Parenti v. Goodyear Tire & Rubber Co.* (1990), 66 Ohio App.3d 826, 829.

{¶13} "Since summary judgment denies the party his or her 'day in court' it is not to be viewed lightly as docket control or as a 'little trial.' The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt* [(1996), 75 Ohio St.3d 280], the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element

of the nonmoving party's claim. The evidence must be in the record or the motion cannot succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112." *Welch v. Ziccarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, ¶40.

{¶14} **Interpretation MMIC's Policy**

{¶15} The controlling portion of MMIC's policy provides:

{¶16} "A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

{¶17} "1. Insureds;

{¶18} "2. Claims made;

{¶19} "3. Vehicles or premiums show in the Declarations; or

{¶20} "4. Vehicles involved in the auto accident."

{¶21} The policy, however, fails to define "accident." Construction of written contracts, including insurance contracts, is a matter of law. *Time Warner Entertainment Co., LP v. Kleese-Beshara-Kleese*, 11th Dist. No. 2009-T-0010, 2009-Ohio-6712, ¶27, citing *Alexander v. Buckeye Pipeline Co.* (1978), 53 Ohio St.2d 241, paragraph one of the syllabus. "We review the interpretation of contracts de novo. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm* (1995), 73 Ohio St.3d 107, 108. We must give the language of an insurance policy its plain and ordinary meaning. *Dairyland Ins. Co. v. Finch* (1987), 32 Ohio St.3d 360, 362. We cannot create ambiguity where there is none; a policy must be resolved in favor of the insured only when a provision in a policy is ambiguous and susceptible to more than one reasonable interpretation. *Hacker v. Dickman.* (1996), 75 Ohio St.3d 118, 119." *OSI Sealants, Inc. v. Wausau Underwriters Ins. Co.*, 11th Dist. No. 2003-L-181, 2005-Ohio-2528, ¶19. Because language in insurance policies is selected by the insurers, and they have ample opportunity to specifically define terms and protect themselves from liability, any ambiguity will be construed in favor of the insured. See *Gomolka v. State Auto Mut. Ins. Co.* (1982), 70 Ohio St.2d 166, 169.

{¶22} The question before the trial court and this court is whether the policy term "accident" is ambiguous. MMIC invites us, despite having failed to provide a definition for "accident," to construe the term as the courts did in *Banner v. Raisin Valley, Inc.* (N.D. Ohio 1998), 31 F.Supp.2d 591 and *Progressive Preferred Ins. Co. v. Derby* (June 15, 2001), 6th Dist. No. F-01-002, 2001 Ohio App. LEXIS 2649, and adhere to a "causation approach."

{¶23} The "causation approach" to policy interpretation focuses on the cause of the insured event, not the effects. See *Banner* at 593. However, "both the decisions in *Banner* and in *Derby*, while citing to the causation view in determining that one accident or occurrence had resulted in multiple injuries, were fundamentally based on construction of the term 'accident' in the subject liability policies. And, the definition of accident in each policy demanded those courts find that one accident or occurrence had resulted in multiple injuries." *Nationwide Mut. Ins. Co. v. Godwin*, 11th Dist. No. 2005-L-183, 2006-Ohio-4167, ¶48.

{¶24} In both *Banner* and *Derby*, the limitation of liability clause contained the same "regardless of the number of vehicles involved in the auto accident" language found in MMIC's policy. This is the limiting language relied upon by the trial court below. In an attempt to distinguish this case from *Godwin*, the trial court surmises that the *Godwin* court "apparently had insufficient policy language to help define the terms 'accident' or 'occurrence,' because the *Godwin* decision does not refer to such limiting language in its opinion.

{¶25} But, the real distinction lies in an omission in the MMIC policy, and it is this distinctive omission that controls the outcome of the case before us.

{¶26} While the *Godwin* decision only alludes to the policy language that controlled the outcome in *Banner* and *Derby*, we definitively find that the interpretation reached in *Banner* and *Derby* was dictated by the inclusion of a standard policy definition of the term "accident" as "a sudden, unexpected and unintended event, or a continuous or repeated exposure to substantially the same conditions." Unlike *Banner* and *Derby*, the MMIC policy contains no such standard policy language. MMIC chose

the less descriptive and thus less limiting definitional language, and thus we have no alternative but to construe the ambiguity against the insurance company.

{¶27} Furthermore, MMIC suggests that the liability provisions, when considered as a whole, are clear and unambiguous as to the meaning of "accident." We however, look to the plain meaning of the word. The plain and ordinary meaning of "accident" is "an unexpected and undesirable event." Webster's II New College Dictionary (1999) 6. "A person unversed in the technicalities of insurance law might, therefore, easily conclude that [the insured's striking of each of the vehicles], sequentially, constituted separate accidents or occurrences, rather than the single accident or occurrence of losing control of the [car] ***." *Godwin* at ¶49.

{¶28} We may arrive at this same conclusion from a causation analysis as well. In considering the cause of Mr. Perrine, Ms. Hill, Mr. Reese, and Ms. Mook's injuries as compared to the cause of Ms. Miller and Mr. Davis's injuries, they appear decidedly different. The injuries to the former group are as a direct result of Mr. Masterson's collision with Mr. Perrine's motorcycle. Ms. Miller and Mr. Davis's injuries, however, do not stem from that collision; instead, they are a direct result of an independent collision between Mr. Masterson's vehicle and their own motorcycle.

{¶29} The trial court reasoned "there is no legal or practical difference between a succession of collisions caused by a single vehicle striking one vehicle ahead of it - which strikes the next vehicle ahead, and where a single vehicle strikes multiple vehicle in succession. The *same active continuous force* is causing damage to multiple vehicles ***." (Emphasis added.) The trial court then concludes that MMIC's policy "clearly applies to both types of accidents and the results should be the same."

{¶30} We would agree with the trial court, had MMIC included the "continuous or repeated exposure to substantially the same conditions" language in its policy, but it did not. Thus, as a matter of contract interpretation the results *cannot* be the same.

{¶31} MMIC's liability policy specifically accounts for and limits its liability in an event such as the first collision, a chain reaction if you will, whereby the same automobile strike causes injuries to multiple parties and vehicles. The policy, however, does not specifically contemplate and limit MMIC's liability in a sequence of events as presented in this case, where two separate and distinct automobile strikes cause injury to multiple parties. MMIC had the opportunity to define accident and construct its policy in a way which limited its liability in a situation such as the one before us. It chose not to do so, and thus we must construe the ambiguity in favor of Ms. Miller and Mr. Davis.

{¶32} The assignment of error is meritorious and the judgment of the Court of Common Pleas of Portage County is reversed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

THERESA MILLER, et al.,

Plaintiffs-Appellants,

- vs -

MOTORISTS MUTUAL INSURANCE, COMPANY, et al.,

Defendants-Appellees.

JUDGMENT ENTRY

CASE NO. 2011-P-0016

FILED
COURT OF APPEALS
NOV 28 2011
LINDA K FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

For the reasons stated in the opinion of this court, the assignment of error has merit, and it is the judgment and order of this court that the judgment of the Court of Common Pleas of Portage County is reversed and judgment is entered for the appellants.

Costs to be taxed against appellees.

Mary Jane Trapp
JUDGE MARY JANE TRAPP

FOR THE COURT

FILED
COURT OF COMMON PLEAS
MAR 08 2011
LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

THERESA MILLER, Plaintiff,	)	CASE NO. 2010 CV 0428
v.	)	JUDGE JOHN A. ENLOW
MOTORIST MUTUAL INSURANCE, COMPANY, et al., Defendants.	)	**ORDER AND JOURNAL ENTRY**

***

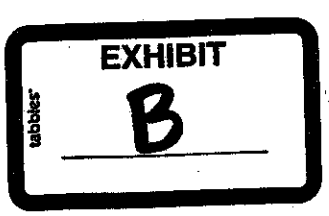
I. INTRODUCTION

This matter is before the Court upon cross-motions of Plaintiffs Theresa Miller ("Miller") and Geoffrey Davis ("Davis") (collectively "Plaintiffs") and Defendant Motorist Mutual Insurance Company ("Motorist") for summary judgment.

The parties seek declaratory relief to determine the meaning of the term "accident" as used in Motorist's insurance policy. The issue presented is whether the term "accident" is ambiguous and subject to different, reasonable interpretations, or unambiguous and has a clear meaning.

II. STANDARD OF REVIEW

At this stage of the proceedings, the granting of judgment is only proper where no genuine issue of material fact remains for determination, the evidence being construed most strongly in favor of the defending party. Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St. 2d 317, 327. Initially, the movant has the burden of demonstrating to the court that there is no genuine issue



of material fact. "To accomplish this, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. * * * If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293. After the movant has met that burden, the defending party cannot rest on his pleadings, but must produce some credible evidence on those issues upon which he bears the burden of proof at trial. *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, at paragraph three of the syllabus.

III. STIPULATION OF FACT

The parties' stipulation of fact establishes that Motorist's insured, Defendant Daniel Masterson ("Tortfeasor"), was driving on a two lane highway approaching Plaintiffs. Plaintiffs were in the opposing lane riding motorcycles along with five other motorcycles, all being driven in a close group, two abreast, and in their proper lane. As the motorcycles drew near, Tortfeasor dropped his lighter on the floorboard of his vehicle. When he reached down to get the lighter, he took his eyes off the road and went left of center. Tortfeasor did not notice he was left of center until his vehicle struck the first motorcycle. He then claimed to have "blacked out."

The first motorcycle struck by Tortfeasor spun in circles toward the edge of the roadway and crashed on the pavement, seriously injuring the driver. Tortfeasor's vehicle continued left

of center almost striking a second motorcycle, which swerved toward the right edge of the roadway, struck the first motorcycle skidding into his path, and crashed. Tortfeasor, still left of center, then struck a third motorcycle, the one driven by Davis, causing Davis and Miller, his rider, to crash into a guardrail. They both suffered serious, disabling injuries.

The physical evidence at the scene revealed that after hitting the two motorcycles, Tortfeasor's vehicle swerved abruptly to the right and crashed into a guardrail.

The Ohio State Patrol conducted a crash scene analysis and produced a detailed "Reconstruction Report." The physical evidence at the crash scene established that the collisions between Tortfeasor and the first and third motorcycles occurred 24 feet apart. The data system recorder in Tortfeasor's vehicle confirmed that he was going 55 mph. The elapse time between the two collisions was also recorded and indicated that these two collisions happened 0.3 seconds apart. Calculating the speed of Tortfeasor's vehicle and the physical evidence showing the collisions were 24 feet apart confirmed the recorder's reading of 0.3 seconds between the two collisions.

The recorder also indicated that Tortfeasor's brakes were not applied throughout the collisions and his final crash into a guardrail.

Motorist tendered the limits of Tortfeasor's policy.

The parties stipulated that if the term "accident" used in Motorist's insurance policy is ambiguous, Plaintiffs shall receive

an additional $100,000 each for their injuries. If, however, the term "accident" is not ambiguous, all the crashed motorcycles are limited to a single recovery under Motorist's maximum policy limit, which has already been tendered to all of those injured in the incident.

IV. ANALYSIS OF LAW AND FACT

A. Issue Presented

The legal issue is this: Does the term "accident" in Motorist's insurance policy have a clearly evident meaning, or is it ambiguous and subject to different, reasonable interpretations in the factual context presented.

Plaintiffs assert that Tortfeasor's collision with each separate motorcycle is a separate "accident" under Motorist's policy, thus allowing multiple recoveries under the "Each Accident" portion of the policy. Motorist, on the other hand, maintains that Tortfeasor's collisions with the motorcycles are a single "accident" under its policy, thus limiting Plaintiffs and the other injured riders to a single recovery under the "Each Accident" portion of the policy.

B. Standard of Interpretation

The construction of insurance contracts is a matter of law. In construing contracts common words are given their ordinary meaning unless manifest absurdity would result, or unless some other meaning is clearly evident from the overall contents of the

insurance policy. Where the provisions of an insurance policy are clear and unambiguous courts will not enlarge the scope of the terms of the contract by implication in order to adopt a meaning different from that contemplated by the parties.

But where the language of an insurance policy is ambiguous and subject to different, reasonable interpretations, construction of the contract by the court is appropriate to resolve the ambiguity. Where the insurer has solely determined the policy language, an ambiguous term is construed most favorably for the insured.

C. Application of Law to Motorist's Policy

The parties have stipulated to the facts, so there is no dispute as to what happened.

Here, Tortfeasor negligently collided with two motorcycles and ran another off the road. The whole incident was one brief continuous course of conduct. Tortfeasor had lost proper control of his vehicle, crossed the center line toward six grouped motorcycles approaching in their proper lane, crashed into two motorcycles and ran another off the road, and then recrossed the center line and crashed into a guardrail. The two actual collisions with motorcycles occurred 24 feet apart, happening in 0.3 seconds. Plaintiffs were severely injured.

This legal dispute centers on whether the motorcycle crashes are separate "accidents" under the terms of Motorist's insurance policy. If each crashed motorcycle is a separate "accident," Plaintiffs are entitled to the stipulated recovery allowing

$100,000 to each Plaintiff.

Motorist's insurance policy does not set out an expressed definition of "accident" or "auto accident," so the other provisions of the policy must be examined in order to discern the meaning of the word "accident."

Motorist's policy declaration lists the coverages and limits of liability as being $100,000 for "Each Person" and $300,000 for "Each Accident."

The "Limit of Liability" section in the policy provides as follows:

"A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

"1. **Insureds**; (Emphasis sic)

"2. Claims made;

"3. Vehicles or premiums shown in the Declarations; or

"4. **Vehicles involved in the auto accident.**" (Emphasis added).

This policy provision expressly states that the maximum limit of coverage for all damages resulting from "one auto accident" is $300,000, "**regardless of the number of * * * [v]ehicles involved in the auto accident.**" (Emphasis added). This provision is clear that the term "accident" or "any one auto accident" includes all the vehicles involved in the collision. This term cannot be separated into numerous "accidents" arising from the same incident.

Motorist's policy language gives the term "accident" a clear and evident meaning in the context of the stipulated facts presented. The expressed wording of the policy clearly limits the term "accident" to include the whole incident, regardless of the number of vehicles involved. Any reasonable policy holder (here, the Tortfeasor) reading Motorist's policy would conclude that an "accident" included all vehicles involved. Thus, the term "accident" is not ambiguous and not subject to a different, reasonable interpretation.

In conclusion, the provisions of Motorist's insurance policy render the term "accident" clear and unambiguous. As there is no ambiguity, this Court cannot change the policy terms in order to adopt a meaning different from that contemplated by the parties to the policy. Plaintiffs are therefore limited to a single recovery under the "Each Accident" portion of Motorist's policy, regardless of the number of motorcycles involved in the incident. Thus, Plaintiffs cannot access the additional amounts of recovery stipulated between the parties.

(1) Plaintiffs' arguments.

Plaintiffs principally rely upon *Nationwide Mut. Ins. Co. v. Godwin*, 11th Dist. No. 2005-L-183, 2006-Ohio-4167, which found that the words "accident" and "occurrence" were not defined in the insurance policy, and concluded that those terms were ambiguous under the facts presented in that case. But in *Godwin*, the appeals court apparently had insufficient policy language to help define

the terms "accident" or "occurrence." Here, in contrast, Motorist's policy expressly includes in "any one accident" all the vehicles involved, and limits any recovery to a single recovery under the "Each Accident" portion of the policy.

Finally, Plaintiffs admit that a rear-end collision damaging multiple vehicles would be one "accident" under the Motorist's policy. But there is no legal or practical difference between a succession of collisions caused by a single vehicle striking one vehicle ahead of it - which strikes the next vehicle ahead, and where a single vehicle strikes multiple vehicles in succession. The same active continuous force is causing damage to multiple vehicles. Motorist's policy clearly applies to both types of accidents, and the results should be the same.

V. CONCLUSION

Upon review and consideration of the motions, pleadings, and stipulations of the parties filed herein, and construing the evidence most strongly in favor of the opposing party, the Court finds that there exists no genuine issue of material fact, and that Motorist is entitled to declaratory judgment as a matter of law.

IT IS THEREFORE ORDERED that the motion of Defendant Motorist Mutual Insurance Company for summary judgment seeking declaratory relief against Plaintiffs Theresa Miller and Geoffrey Davis be and hereby is granted, and it is declared that the term "accident" as used in Motorist's policy of insurance is not ambiguous and

provides a single recovery to Plaintiffs under the "Each Accident" portion of Motorist's policy in a collision involving multiple motorcycles.

IT IS FURTHER ORDERED that the motion of Plaintiffs Theresa Miller and Geoffrey Davis for summary judgment seeking relief against Defendants Motorist Mutual Insurance Company and Daniel Masterson be and hereby is denied.

Costs taxed to Plaintiffs.

The Clerk is directed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ. R. 58(B).

SO ORDERED.

JOHN A. ENLOW
JUDGE, COURT OF COMMON PLEAS

cc: Robert P. Rutter, Attorney for Plaintiffs
Merl D. Evans, III, Attorney for Motorist

NOTICE: AN ORDER HAS BEEN FILED IN THE CASE IDENTIFIED BELOW:

Notice is being mailed by regular mail on or before the 3rd day after the filing date of the entry to each attorney of record or each party with no attorney of record. Notice will not be sent to parties in default for failure to appear.

FILED
COURT OF COMMON PLEAS
March 8, 2011
LINDA K. FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

Mail to:

File Copy

Case Number: 2010 CV 00428

THERESA MILLER et al VS. MOTORISTS MUTAL INS CO et al

Date entry was filed: MARCH 8, 2011

Court of Common Pleas, Portage County, Ravenna , Ohio

Certificate of Service Completed and filed by the Clerk

The document described above was mailed by ordinary mail to attys/parties by the clerk on **MARCH 8, 2011.**

Linda K Fankhauser, Clerk of Courts

Deputy Clerk

cc:
MERLE D EVANS III
ROBERT PAUL RUTTER

SCANNED