NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 09 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEMPER INDEPENDENCE INSURANCE COMPANY,

Plaintiff - Appellee,

v.

RICHARD S. DAVIS, as Personal Representative of the Estate of Kevan Thatcher-Stephens; et al.,

Defendants,

and

MELISSA BENCH, as Personal Representative of the Estate of Charles Ashley Bench,

Defendant - Appellant.

No. 07-16197

D.C. No. CV-05-03069-PA

MEMORANDUM*

KEMPER INDEPENDENCE INSURANCE COMPANY,

Plaintiff - Appellee,

v.

No. 07-35555

D.C. No. CV-05-03069-PA

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

RICHARD S. DAVIS, as Personal Representative of the Estate of Kevan Thatcher-Stephens; et al.,

Defendants,

and

MARK LOUIS ROBUSTELLI,

Defendant - Appellant.

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Argued and Submitted December 11, 2008
Portland, Oregon

Before: O'SCANNLAIN, GRABER, and BYBEE, Circuit Judges.

After a fatal car crash, the surviving victims and representatives of the deceased victims filed insurance claims against Kemper Independence Insurance Company. Kemper, as plaintiff, filed this declaratory judgment action against the claimants, as defendants, to clarify the extent of coverage under an insurance policy. The district court granted summary judgment to Kemper, and Defendants bring this timely appeal. On de novo review, ACLU v. City of Las Vegas, 333 F.3d 1092, 1096-97 (9th Cir. 2003), we affirm.

The question on appeal is the maximum extent of liability under the policy's personal catastrophe endorsement for damages arising from the accident. Kemper contends, and the district court held, that the limit is $1 million. Defendants argue that the amount is $3 million, representing $1 million for each covered person (Kevan Thatcher-Stephens and his parents). Because this is a diversity action arising from an accident in Oregon, Oregon law applies. Bell Lavalin Inc. v. Simcoe & Erie Gen. Ins. Co., 61 F.3d 742, 745 (9th Cir. 1995). We therefore examine the personal catastrophe endorsement according to the method described in Holloway v. Republic Indem. Co. of Am., 147 P.3d 329, 333-34 (Or. 2006).

Using that analysis, we conclude that the term "occurrence" has only one plausible interpretation, "accident," even though it is not defined within the personal catastrophe endorsement itself. We cannot stop at the plain meaning stage of the analysis, because "occurrence" has several possible meanings in insurance contracts. But at the contextual stage, we find a definitive answer in the endorsement and in the policy as a whole. Condition 1, requiring an insured to give notice in writing when there is an "occurrence" that may be covered by the endorsement; the definition of "occurrence" as an "accident" at the beginning of the policy as a whole; and Coverage A read in conjunction with the retained limit and limit of liability provisions, all show that "occurrence" means "accident."

AFFIRMED.