

Negligence Law Section

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Insurance Report

READING THE POLICY – ENDORSEMENTS AND RIDERS

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Understanding endorsements and riders to the insurance policy is essential in any case involving a coverage dispute. It seems simple enough – the endorsement trumps the terms of the policy, so just enforce the terms of the endorsement and that is the end of the inquiry. But as with interpretation of any contract, reconciling endorsements with underlying insurance policies can sometimes prove tricky.

Some insurers refer to “riders” when they are adding coverage, and “endorsements” when modifying existing coverage, but the terms have become virtually interchangeable, and they both serve the purpose of amending the insurance contract. The insurance contract usually has a declarations page that identifies the coverage and premiums to be paid as well as listing the forms that comprise the contract, including the basic policy document and any applicable endorsements.

Endorsements can expand coverage by adding covered persons or risks, and they can narrow or exclude coverage. For example, an endorsement that sometimes seen in the life insurance context may provide added coverage for long term care, although freestanding long term care policies are becoming more common. Endorsements may provide conversion from existing term life insurance to permanent life insurance without a medical exam, or waiver of life insurance premiums if the insured becomes critically ill or disabled. Other endorsements may provide added benefits for losses resulting from accidents, or exclude losses from certain types of illnesses or injuries.

In the homeowners insurance context, it is not unusual to find endorsements adding or restricting coverage for floods, earthquakes, forest fires, windstorms or other location-specific risks. Other named peril endorsements may provide specific coverage for lightning, windstorm, hail, explosion, riot, civil commotion, smoke, vandalism, theft, or plumbing discharge. There may be endorsements adding coverage for second homes or other structures on the homeowner’s property, or specified high-value jewelry or artwork. A common endorsement excludes coverage for losses caused by mold or fungi.

Many automobile policies in Michigan include endorsements that make the coverage consistent with the no-fault act. In some cases these endorsements completely replace the corresponding terms of the policy, while other endorsements may address specific issues such

as exclusions related to excess or coordinated coverage. Endorsements may add coverage for specifically identified non-relatives, typically significant others who are not spouses, and endorsements may also exclude coverage for named relatives or residents who have bad driving records. Other endorsements may cover motor homes, customized vans, classic or antique cars, off-road vehicles, trailers, or restored salvage vehicles. Commercial vehicle policies typically have many endorsements. Perhaps the most common automobile insurance endorsements provide coverage for optional uninsured and underinsured motorist coverage.

Standard commercial general liability policies may have many endorsements. An additional named insured endorsement is common, particular in construction cases where contractors require their subcontractors to add them under the subcontractor's policy. Additional named insured endorsements also may provide coverage for owners, renters, or managers of property. Other entities, such as subsidiary or parent corporations, also may be added to coverage by endorsement. Endorsements may add or exclude coverage for specific types of risks, such as advertising injury or loss due to pollution.

Any endorsement must be read in harmony with the underlying insurance contract it amends if possible, giving all of the language its ordinary and plain meaning and avoiding strained constructions. *Thomas v Vigilant Ins Co*, 156 Mich App 280, 282; 401 NW2d 351 (1986), but if the terms conflict in some way, the endorsement will control. "The general rule, in Michigan as elsewhere, is that, if there is an ambiguity such that all parts of the contract cannot be harmonized, the language of the policy endorsement or rider controls." *Morbark Industries, Inc v Western Employers Ins Co*, 170 Mich App 603, 613, 429 NW2d 213 (1988); *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369, 380, 460 NW2d 329 (1990) ("When a conflict arises between the terms of an endorsement and the form provisions of an insurance contract, the terms of the endorsement prevail").

The scope of an endorsement may be limited to harmonize it with the underlying policy. In *Hawkeye*, a case involving a dispute over damages resulting from defective workmanship of a concrete roof, the policy contained an exclusion applicable "to property damage to the named insured's products arising out of such products or any part of such products." The trial court interpreted this to mean that the policy, "read as a whole, is unequivocal in that it does not provide coverage for property damage to work product due to faulty workmanship." Vector argued that this exclusion was superseded by three endorsements, including one that explicitly extended coverage to concrete construction. But the Court of Appeals interpreted the endorsement as providing "coverage of property damage resulting from the defective work product," and that the policy terms still excluded "coverage of damage to the work product itself."

As with any contract, there are two types of ambiguity that may be recognized in an insurance policy: patent ambiguity or latent ambiguity. *Shay v. Aldrich*, 487 Mich. 648, 667-69, 790 N.W.2d 629, 641 (2010). A patent ambiguity is one "that clearly appears on the face of a document, arising from the language itself." *City of Grosse Pointe Park v. Michigan Municipal Liability & Property Pool*, 473 Mich. 188, 198, 702 N.W.2d 106, 113 (2005), quoting Black's Law Dictionary (7th ed). On the other hand, a latent ambiguity is one "that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed." *Id.* Latent ambiguities sometimes arise when trying to interpret endorsements in conjunction with the underlying policy form, and this can lead to the use of extrinsic evidence to prove "the actual intent of the parties as an aid to the construction of the contract." *Id.*

These conflicts frequently arise in interpreting endorsements for uninsured or underinsured motorist coverage, which is optional and not regulated by the no-fault act. The uninsured/underinsured endorsement may include definitions or terms that seem to conflict with the terms of the underlying policy applicable to PIP coverage, but the optional uninsured/underinsured coverage must be read separately, and it is the endorsement that will control the conditions and scope of coverage.

As a practical matter, it is always important to get the insurance policy together with the declarations and all endorsements, recognizing that the effective date of an endorsement may differ from that of the underlying policy. Most importantly, it cannot be overstated that the policy and the endorsements must be read together as a whole and harmonized, or that the terms of the endorsement will control in the event of any true conflict.

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