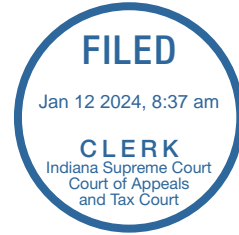


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Erie Insurance Exchange,  
*Appellant-Defendant,*

v.

Icon, Inc., d/b/a Allure on the  
Lake, et al.,  
*Appellees-Plaintiffs.*

January 12, 2024

Court of Appeals Case No.  
23A-PL-664

Appeal from the Porter Superior  
Court

The Honorable Michael A. Fish,  
Judge

Trial Court Cause No.  
64D01-2002-PL-1091

**Memorandum Decision by Chief Judge Altice**  
Judges Weissmann and Kenworthy concur.

**Altice, Chief Judge.**

## Case Summary

- [1] In this interlocutory appeal, Erie Insurance Exchange (Erie Insurance) claims that the trial court erred in granting partial summary judgment in favor of Icon, d/b/a Allure on the Lake (Icon), on Icon’s complaint for breach of contract. Erie Insurance contends that the trial court improperly determined as a matter of law that the commercial insurance policy (the Policy) it issued to Icon was ambiguous and entitled Icon to additional income protection coverage after a fire had destroyed Icon’s building.
- [2] We reverse and remand with instructions that the trial court enter partial summary judgment for Erie Insurance and to conduct further proceedings consistent with this opinion.

## Facts and Procedural History

- [3] The undisputed facts are that on June 3, 2019, a fire in Chesterton destroyed a banquet hall (the Hall) that Icon owned. At the time of the fire, the Hall was insured by Erie Insurance. The Policy stated that “in return for your *timely premium payment*, your compliance with all of the provisions of this policy . . . [Erie Insurance agrees] to provide the coverages you have purchased.” *Appellant’s Appendix Vol. II* at 85 (Emphasis added).
- [4] Page one of the Declarations in the Policy provides as follows:

COVERAGES	DEFAULT PREMIUM
PROPERTY PROTECTION - AS PER THE ATTACHED SUPPLEMENTAL DECLARATIONS	
1. BUILDINGS	\$ INCL
2. BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS	\$ INCL
3. INCOME PROTECTION	\$
4. GLASS AND LETTERING	\$
5. SIGNS, LIGHTS AND CLOCKS	\$

*Appellant's Appendix Vol. III* at 23.

- [5] As shown above, coverages for which a premium is paid, and which are afforded by the Policy are indicated by the notation “\$ INCL” in the “Premium” column on page one of the Declarations. *Exhibit C*. The notation “\$ INCL” was not shown for “3. Income Protection” on the Declarations. That Declarations page also specifically directs the insured to refer to the Supplemental Declarations to find additional information about included coverages under the Policy.
- [6] And as illustrated above, each type of coverage appears next to the numbers 1 through 5 which, in turn, corresponds to the description of the coverages provided under “SECTION 1 COVERAGES” in the Policy. *See id.* at 45-48 (defining Buildings – Coverage 1, Business Personal Property – Coverage 2, Income Protection – Coverage 3, Glass and Lettering – Coverage 4, and Signs, Lights and Clocks – Coverage 5).
- [7] Income protection coverage—as identified in “Coverage 3” of the Declarations—is defined as

loss of “income” and/or “rental income” you sustain due to partial or total “interruption of business” resulting directly from “loss” or damage to property on the premises described in the “Declarations” from a peril insured against. “Loss” or damage also includes property in the open, or in a vehicle, on the premises described in the “Declarations” or within 1,500 feet thereof.

*Id.* at 47.

- [8] The Supplemental Declarations specifically indicate what “amount of insurance” the Policy provides for by displaying a dollar amount under the “amount of insurance” column:

**D. Amount of Insurance**

We will pay the actual loss of “income” and/or “rental income” sustained by you up to the *Occurrence Limit* shown in the “Declarations.”

*Id.* at 48. (Emphasis in original). The “occurrence limit” on the primary Declarations page is \$1 million:

LIMITS OF INSURANCE		INCL
PREMIUM BASIS - COSTS		
EACH OCCURRENCE LIMIT	\$ 1,000,000	
DAMAGE TO PREMISES		
RENTED TO YOU LIMIT	\$ 1,000,000	ANY ONE PREMISES
MEDICAL EXPENSE LIMIT	\$ 10,000	ANY ONE PERSON
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	ANY ONE PERSON OR ORGANIZATION
GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000	

*Id.* at 23.

- [9] The “SUPPLEMENTAL DECLARATIONS” applicable to Icon’s Chesterton location states:

LOCATION OF PREMISES

526 INDIAN BOUNDARY RD, CHESTERTON,  
PORTER CO, IN 46304

OCCUPANCY/OPERATIONS

BANQUET/EVENT HALL

INTEREST OF NAMED INSURED IN SUCH PREMISES - OWNER

PROPERTY PROTECTION		CO-INS %	AMOUNT OF INSURANCE
COVERAGES			
1. BUILDINGS		80	\$ 1,545,000
2. BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS		80	\$ 80,000
3. INCOME PROTECTION	OCCURRENCE		
OPTIONAL COVERAGES - PROPERTY PROTECTION			
SEWER AND DRAIN BACKUP	DED \$ 500		\$ 50,000

*Id.* at 25.

[10] The Policy further provides that when additional income coverage is not purchased by the insured, some minimal, i.e., “standard” protection coverage is provided as part of the basic package:

**15. Income Protection Coverage**

**• Income Protection Coverage**

This extension provides for loss of “income” and/or “rental income” you sustain due to partial or total “interruption of business” resulting directly from “loss” or damage to the property on the premises described in the “Declarations” from a peril insured against. . . .

**• Amount of Insurance**

If the “loss” to property on the premises described in the “Declarations” results in partial or total suspension of your business, we will pay your actual loss sustained up to \$250 for each workday *not to exceed \$25,000 for any one loss.*

*Id.* at 61, 68, 70 (emphasis added).

[11] After the Hall was destroyed, Icon submitted a timely claim to Erie Insurance under the Policy. Although Erie Insurance paid both the property damage and building contents portion of Icon’s claim, it maintained that the maximum income protection afforded under the Policy was \$25,000 and not \$1 million because Icon did not pay a premium for additional income protection coverage.

[12] When Erie Insurance refused to pay for those additional losses, Icon filed an amended complaint against Erie Insurance on March 10, 2020, for breach of contract and bad faith. Thereafter, Erie Insurance filed a motion for partial summary judgment, claiming that it was entitled to judgment as a matter of law because Icon did not pay a premium for additional income protection and, therefore, the \$1 million maximum coverage was not available to Icon for its income losses.

[13] In response, Icon filed a cross-motion for partial summary judgment, claiming that it was entitled to judgment as a matter of law for up to \$1 million for income protection under the Policy. Icon maintained that the Policy’s “unambiguous language . . . states that Erie will pay Icon for lost income up to the ‘Occurrence Limit’ shown on the Declarations page, and nothing in the Policy states that coverage is limited to the dollar amount shown under the ‘Amount of Insurance’ column.” *Appellant’s Appendix Vol. II* at 10. Icon further asserted that the Policy does not “alert the insured that Additional Income Protection is only available if a ‘Deposit Premium’ is shown next to ‘Income

Protection’ on the Declarations Page.” *Id.* Rather, says Icon, the Policy directs the insured to the Occurrence Limit on the Declarations Page—which is \$1 million in coverage.

[14] Following a hearing on the respective summary judgment motions, the trial court granted Icon’s cross-motion for partial summary judgment, concluding that the Policy is ambiguous as to the available amount of income protection coverage to which Icon is entitled. In examining the Policy, the court determined that it could not be reasonably concluded that additional income protection was not included in Icon’s premium payments. Thus, in construing the terms of the Policy against Erie Insurance and in Icon’s favor, the trial court determined that \$1 million in income protection coverage was available to Icon, and that it was entitled to partial summary judgment on that issue.

[15] Erie Insurance now appeals.

## **Discussion and Decision**

### **I. Standard Of Review**

[16] Our summary judgment standard of review is well settled:

We review a summary judgment ruling *de novo*, applying the same standard as the trial court. The moving party bears the initial burden of making a *prima facie* showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. We construe all

factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party. Our review is limited to those facts designated to the trial court. Issues of statutory construction present questions of law, which we review de novo. We are not bound by the trial court's findings of fact and conclusions thereon, which merely aid our review by providing us with a statement of reasons for the trial court's actions.

*Ind. Univ. v. Thomas*, 167 N.E.3d 724, 731 (Ind. Ct. App. 2021).

[17] We further note that parties filing cross-motions for summary judgment neither alters this standard nor changes our analysis, in that we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. *Erie Indem. Co. for Subscribers at Erie Ins. Exch. v. Est. of Harris by Harris*, 99 N.E.3d 625, 629 (Ind. 2018). Matters involving disputed insurance policy terms present legal questions and are particularly apt for summary judgment. *Id.*

## **II. Erie Insurance's Claims**

[18] Erie Insurance contends that partial summary judgment granted in Icon's favor was improper because the trial court ignored the plain language of the Policy. Erie Insurance argues that the Declarations in the Policy demonstrate that Icon paid no premium for additional income protection coverage. Thus, Erie Insurance maintains that its maximum liability to Icon for income loss was \$25,000 and the trial court, therefore, should have entered partial summary judgment in *its* favor.



[19] Insurance policies are contracts subject to the same rules of judicial construction as other contracts. *Erie Indem. Co.*, 99 N.E.3d at 630. When interpreting an insurance policy, the court’s goal is to ascertain and enforce the parties’ intent as manifested in the insurance contract. *Burkett v. Am. Family Ins. Group*, 737 N.E.2d 447, 452 (Ind. Ct. App. 2000). Insurance policies must be read as a whole. *Allstate Ins. Co. v. Burns*, 837 N.E.2d 645, 651 (Ind. Ct. App. 2005). That is, specific words and phrases cannot be construed exclusive of other policy provisions. *Grimes v. Crockrom*, 947 N.E.2d 452, 455 (Ind. Ct. App. 2011). Furthermore, the language of an insurance policy should be construed “so as not to render any words, phrases or terms ineffective or meaningless.” *Erie Indem. Co.*, 99 N.E.3d at 630.

[20] Insurance policy provisions are ambiguous if they are “susceptible to more than one reasonable interpretation. *Id.* “When evaluating alleged ambiguities—whether there exist two reasonable interpretations for one policy term—courts read insurance policies “from the perspective of . . . ordinary policyholder[s] of average intelligence.” *Id.* If reasonably intelligent policyholders would honestly disagree on the policy language’s meaning, we will find the term ambiguous and subject to judicial construction. *Id.* On the other hand, if reasonably intelligent policyholders could not legitimately disagree as to what the policy language means, we deem the term unambiguous and apply its plain ordinary meaning. *Id.* An ambiguity does not exist merely because the parties proffer differing interpretations of the policy language. *Allstate Ins. Co. v. Kepchar*, 592 N.E.2d 694, 697 (Ind. Ct. App. 1992), *trans. denied*. When there is

ambiguity, insurance policies are to be construed strictly against the insurer and the policy language is viewed from the standpoint of the insured. *Bosecker v. Westfield Ins. Co.*, 724 N.E.2d 241, 243-44 (Ind. 2000).

[21] In this case, the first page of the Declarations in the Policy denotes the coverages for which Icon paid a premium. The letters “INCL” are listed under the “Deposit Premium” column. *Appellant’s Appendix Vol. III* at 23. There is no “INCL” for Coverage 3—income protection coverage—under the “Deposit Premium” column. While the trial court noted in its partial summary judgment order that it had to make an “assumption” that “INCL” meant “included” under the Policy, *Appellant’s Appendix Vol. II* at 15, it is well-settled that the failure to define a term in an insurance policy does not, on its own, make the term ambiguous. *See American Home Assur. v. Allen*, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004). Rather, where a term has a “plain and ordinary meaning,” the term should be given such meaning. *Eli Lilly and Co. v. Home Ins. Co.*, 482 N.E.2d 467, 470 (Ind. 1985). Thus, we may turn to dictionaries to provide the plain and ordinary meaning of the abbreviation “INCL.” *See, e.g., H.M. v. State*, 993 N.E.2d 1162, 1164 (Ind. Ct. App. 2013) (in determining the plain and ordinary meaning of a term, courts may use English language dictionaries as well as consider the relationship with other words and phrases).

[22] Merriam Webster’s Dictionary defines “incl” as an abbreviation for “include; included; including; inclusive. *See* <https://www.merriam-webster.com/dictionary/incl>. Additionally, the Cambridge Business English

Dictionary defines “incl” as the “abbreviation for including; used to say that something such as a price includes an amount or item.” *See* <https://dictionary.cambridge.org/us/dictionary/english/incl>. Thus, the plain meaning of “INCL” as used in the Policy is “including” or “included,” and it is clear that Icon did not pay a premium for income protection coverage. Such additional coverage was, therefore, not available to Icon.

[23] Regardless, Icon maintains that when the Declarations are read in conjunction with income protection under Coverage 3, the Policy can reasonably be construed that it provides \$1 million in income protection coverage to it. In support of its claim, Icon directs us to the following Policy language:

D. Amount of Insurance

We will pay the actual loss of “income” and/or “rental income sustained by you up to the Occurrence Limit shown in the “Declarations.”

*Appellant’s Appendix Vol. II* at 100.

[24] Notwithstanding Icon’s contention, it offers no explanation why it is entitled to \$1 million income protection coverage when it did not pay a premium for that coverage. Moreover, Icon would have us look to the “Each Occurrence Limit” shown on Page 1 of the Declarations as the indicator of the amount of coverage available for income protection under Coverage 3. That interpretation, however, contradicts the directive as to how the Policy is to be read. The Policy’s plain language makes it clear that the “Each Occurrence Limit” Icon

points to has nothing to do with the amount of income protection coverage available under the Policy. Rather, the “Each Occurrence Limit” found on Page 1 of the Declarations is specifically limited to include the total amount of insurance that will be paid for bodily injury or property damage liability and for medical expenses under the liability portion of the Policy. Hence, the unambiguous language of the Policy demonstrates that the “Each Occurrence Limit” on page 1 of the Declarations, which Icon relies upon, is a limit for general liability coverage, not a limit for property coverage. As a result, the \$1 million “Each Occurrence Limit” shown there is irrelevant to the amount of income protection coverage afforded under the Policy.

[25] In our view, the lack of a dollar amount for Coverage 3 under the “Amount of Insurance” column pertaining to Icon’s property is a clear and unambiguous statement that additional income protection coverage was *not* included for the subject property. As a result, the trial court erred in determining as a matter of law that Erie Insurance’s policy was ambiguous with respect to the availability and amount of income protection coverage available under the Policy. The Declarations show that Icon paid no premium for Coverage 3-income protection—and, in accordance with the plain language of the Policy, Erie Insurance did not provide such coverage to Icon. Thus, Icon is limited to income protection coverage up to \$25,000 in accordance with the standard protection section of the Policy. We therefore conclude that Erie Insurance was entitled to partial summary judgment.

[26] Reversed and remanded with instructions that the trial court enter partial summary judgment for Erie Insurance and to conduct further proceedings consistent with this opinion.

Weissmann, J. and Kenworthy, J., concur.