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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

GOLDEN EAGLE INSURANCE  
CORPORATION,

Plaintiff and Appellant,

v.

PENSKE TRUCK LEASING CO., L.P.,

Defendant and Respondent.

E062118

(Super.Ct.No. CIVRS1400836)

OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza,  
Judge. Affirmed.

Lindahl Beck and Kelley K. Beck for Plaintiff and Appellant.

Murchison & Cumming and Edmund G. Farrell for Defendant and Respondent.

This appeal arises from a declaratory relief action to determine the limits of liability coverage that defendant and respondent Penske Truck Leasing Co., L.P. (Penske) agreed to provide its rental customer under the Liability Insurance provision of its

standard rental agreement. Plaintiff and appellant Golden Eagle Insurance Corporation (Golden Eagle) filed a motion for summary judgment arguing that Penske's rental agreement provides for coverage up to the \$750,000 limit required by the Motor Carriers of Property Permit Act.<sup>1</sup> Penske opposed the motion, arguing that the agreement provides for coverage in accordance with the automobile liability policy required by California's Financial Responsibility Law.<sup>2</sup> Specifically, these limits are \$15,000 per person for bodily injury; \$30,000 per occurrence; and \$5,000 for property damage (15/30/5 limits).

The trial court denied Golden Eagle's motion and ruled that Penske's coverage was limited to the 15/30/5 limits of a basic automobile liability insurance contract. Because the issue was dispositive to the action, the court entered judgment in favor of Penske. Golden Eagle appeals from that judgment, arguing that the trial court's interpretation of Penske's rental agreement was wrong as a matter of law. We affirm.

## I

### FACTS AND PROCEDURAL BACKGROUND

Golden Eagle insured X-ACT Finish & Trim Inc. (X-ACT) under a policy effective January 27, 2012 to January 27, 2013. Under this policy, the coverage limit for

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<sup>1</sup> Vehicle Code section 34600 et seq. All further unspecified statutory references are to this code.

<sup>2</sup> Section 16000 et seq.

bodily injury or property damage caused by an accident was \$1 million. This coverage limit applied to “[a]ny ‘Auto,’ ” including vehicles X-ACT owned and rented.

On August 16, 2012, X-ACT rented a 26-foot flatbed truck from Penske. Under its standard rental agreement, Penske rents to its customers either household rentals or commercial rentals. When the vehicle is a household rental, Penske provides its Liability Insurance (as defined in the agreement) free of charge. For commercial rentals, the rental agreement states that “[l]iability insurance is required,” and requires the customer to choose between purchasing Penske’s Liability Insurance or “providing its own coverage.”<sup>3</sup>

X-ACT rented the flatbed truck as a commercial rental and elected to purchase Penske’s Liability Insurance for \$20 a day. About a week later, one of X-ACT’s employees was involved in an accident with another vehicle while driving the flatbed truck. Five individuals who were injured in the accident sued X-ACT, its employee, and Penske for personal injury damages in excess of \$50,000 per person. Penske accepted X-ACT’s tender of the lawsuit and its defense, but took the position that its coverage was limited to the 15/30/5 limits required for automobile liability insurance under the Vehicle Code. Penske denied any obligation to act as X-ACT’s primary insurer to provide coverage above those limits.

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<sup>3</sup> Penske’s Liability Insurance for household and commercial customers is identical.

In response to Penske’s position, Golden Eagle filed a declaratory relief action seeking a judgment that Penske is obligated to provide X-ACT “with primary coverage for the damages alleged in the personal injury action . . . up to a combined single limit of \$750,000.” After the hearing on Golden Eagle’s motion for summary judgment on the scope of Penske’s coverage, the court ruled that the coverage was limited to the 15/30/5 limits and ordered that judgment be entered in favor of Penske.

## II

### DISCUSSION

The sole issue in this appeal is the scope of insurance coverage Penske agreed to provide X-ACT, a commercial rental customer, under its rental agreement. Where a trial court’s order granting summary judgment is based on the interpretation or application of the terms of an insurance policy and the facts are undisputed, our review is *de novo*. (*Cooper Companies v. Transcontinental Ins. Co.* (1995) 31 Cal.App.4th 1094, 1100; see also *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) We interpret an insurance policy under the established rules of contract interpretation. (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 194-195.)

“Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs its interpretation. [Citation.] Such intent is to be inferred, if possible, solely from the written provisions of the contract. [Citation.]” (*Community Redevelopment Agency v. Aetna Casualty & Surety Co.* (1996) 50

Cal.App.4th 329, 338, citing Civ. Code, §§ 1636, 1639.) If contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) We interpret the words of a contract in their “ordinary and popular sense,” unless “a special meaning is given to them by usage.” (Civ. Code, § 1644.) If the language is not clear, “it must be read in conformity with what the insurer believed the insured understood thereby at the time of formation.” (*Buss v. Superior Court* (1997) 16 Cal.4th 35, 45.) If the language “remains problematic,” it must be read “in the sense that satisfies the insured’s objectively reasonable expectations.” (*Ibid.*)

The language this case turns on is the definition of liability insurance in Penske’s standard rental agreement (Liability Insurance provision). If a customer renting a commercial rental elects to purchase the Penske coverage, the Liability Insurance provision states: “Penske agrees to provide liability protection for Customer and any Authorized Operator, and not others, subject to any limitations herein, in accordance with the standard provisions of *a basic automobile liability insurance policy* as required in the jurisdiction in which the Vehicle is operated, against liability for bodily injury, including death, and property damage arising from use of Vehicle as permitted by the Rental Agreement, *with limits as required by the state financial responsibility law* or other applicable statute.” (Italics added.)

The plain terms of this provision establish that Penske is promising to provide a basic “automobile liability insurance policy” with the limits required by California’s

Financial Responsibility Law. Under California’s Vehicle Code and Insurance Code, “automobile liability insurance” is a term of art and triggers various requirements that are different from the requirements for “motor vehicle liability insurance” or the requirements “applicable to commercial vehicles.” (*Integon Preferred Ins. Co. v. Isztojka* (E.D. Cal. 2011) 771 F.Supp.2d 1224, 1226 (*Integon*); see generally *State Farm Fire & Casualty Co. v. Superior Court* (1989) 215 Cal.App.3d 1455, 1465.) The coverage requirements for automobile liability insurance are contained in Division 7 of the Vehicle Code, a division entitled, “Financial Responsibility Laws.” (Veh. Code, § 16000 et seq.) Pursuant to sections 16054 and 16056 of the Vehicle Code, an “automobile liability policy” must provide coverage limits “of not less than fifteen thousand dollars (\$15,000) [in the case of] bodily injury to or death of one person in any one accident and . . . of not less than thirty thousand dollars (\$30,000) [in the case of] bodily injury to or death of two or more persons in any one accident, and . . . of not less than five thousand dollars (\$5,000) [in the case of] injury to or destruction of property of others in any one accident.” (Veh. Code, §§ 16054, 16056.) Thus, the 15/30/5 limits are the minimum statutorily required limits for an automobile liability policy. Because Penske’s Liability Insurance provision promises only a “basic automobile liability insurance policy . . . with limits as required by [California’s] financial responsibility law,” we conclude that it is clear that Penske agreed to provide X-ACT with the 15/30/5 limits.

Golden Eagle argues that the text of the Liability Insurance provision is not clear and that this interpretation is not the only reasonable one. It asserts that it is equally, if not more, likely that Penske agreed to provide the coverage limit for commercial motor vehicles required under the Motor Carriers of Property Permit Act. We do not agree.

The Motor Carriers of Property Permit Act is contained in Division 14.85 of the Vehicle Code. (§ 34600 et seq.) The act defines a “motor carrier of property” as “any person who operates any commercial motor vehicle.” (§ 34601, subd. (a).) A “commercial motor vehicle,” as defined in the act, includes “any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motor vehicle used to transport property for compensation.” (§ 34601, subd. (c).) The Motor Carriers of Property Permit Act requires motor carriers of property to maintain “adequate protection against liability . . . for the payment of damages in the amount of a combined single limit of not less than seven hundred fifty thousand dollars (\$750,000) . . . [for] bodily injuries to, or death of, one or more persons, or damage to or destruction of, property.” (§ 34631.5, subd. (a)(1).)

A plain reading of Penske’s Liability Insurance provision does not support an interpretation that Penske intended to provide a liability policy with the \$750,000 limit required under the Motor Carriers of Property Permit Act. In clear terms, the Liability Insurance provision promises to provide “a basic automobile liability insurance policy.” The Vehicle Code makes clear that there are financial responsibility requirements for an

automobile liability insurance policy and “separate provisions applicable to commercial vehicles.” (*Integon, supra*, 771 F.Supp.2d at p. 1226.) By the clear language of the Liability Insurance provision, Penske promises to provide its commercial rental customers with only the coverage required for an automobile liability insurance policy. Had Penske intended to provide the \$750,000 combined single limit required for commercial motor vehicles under the Motor Carriers of Property Permit Act, its Liability Insurance provision would not include the phrase “basic automobile liability insurance policy,” but rather “commercial vehicle liability insurance policy,” or the like.

Nothing in the Liability Insurance provision or any other part of the rental agreement mentions a “commercial motor vehicle,” a “commercial vehicle liability insurance policy,” a “motor carrier of property,” or the “Motor Carriers of Property Permit Act.” We cannot read such references into the provision to trump the clear existing reference to basic automobile liability insurance.

Golden Eagle asserts a number of arguments for why we should interpret the Liability Insurance provision as referencing the Motor Carriers of Property Permit Act, but we find those arguments unpersuasive because each requires us to overlook the clear phrase “basic automobile liability insurance policy.” Golden Eagle’s arguments would only apply if we were to find that phrase to be ambiguous, which we do not. (Civ. Code, § 1638.)

Specifically, Golden Eagle argues that because Penske did not capitalize the phrase “financial responsibility law” or place quotes around it, a reasonable customer would not understand that Penske was referring to the required coverage limits in Division 7 of the Vehicle Code. This argument misses the focus of our interpretation of the Liability Insurance provision. It is not the phrase “financial responsibility law,” but “basic automobile liability insurance policy” that dictates the scope of Penske’s coverage. To be sure, there are “various” financial responsibility laws in California’s Vehicle Code. (See, e.g., *Integon, supra*, 771 F.Supp.2d at pp. 1226-1227 [“The California Appellate Courts have . . . noted that the California Legislature has distinguished between, and imposed different financial responsibility requirements upon, commercial and noncommercial vehicles”].) But here Penske has explicitly identified the type of financial responsibility laws that apply to its coverage: those applicable to automobile liability insurance. Thus, even if a typical customer is not likely to know the particular financial responsibility requirements for automobile liability insurance, the customer could reasonably be expected to understand that it was not receiving the level of coverage required for commercial vehicles.

For this reason, we also reject Golden Eagle’s argument that the Motor Carriers of Property Permit Act would be “objectively understood” by a commercial rental customer as a financial responsibility law. We do not disagree that the Motor Carriers of Property Permit Act contains a financial responsibility law. However, because it is a financial

responsibility law that applies to commercial vehicle insurance not automobile insurance, it is not *the* financial responsibility law referenced in the Liability Insurance provision.

Furthermore, it makes no difference to our analysis whether Penske knew or should have known that the flatbed truck was a “commercial motor vehicle” or X-ACT was a “motor carrier of property” as those terms are defined in the Motor Carriers of Property Permit Act. Penske is under no legal obligation to provide its customers with the coverage limit that the Motor Carriers of Property Permit Act might impose on them. It is free to contract with its customers to provide insurance with the coverage limits of its choosing.

“[A]n insurer has a right to limit the policy coverage in plain and understandable language, and is at liberty to limit the character and extent of the risk it undertakes to assume [citations].” (*Hackethal v. National Casualty Co.* (1987) 189 Cal.App.3d 1102, 1109.) “[C]ourts may not rewrite the insurance contract or force a conclusion to exact liability where none was contemplated.” (*Ibid.*) Here, Penske has chosen to provide basic automobile insurance. It is X-ACT’s legal obligation, as the “operator” of a “commercial motor vehicle” to comply with the Motor Carriers of Property Permit Act. (§ 34601, subd. (a) [defining “motor carrier of property” as one who operates a commercial motor vehicle]; § 34631.5, subd. (a)(1) [requiring that “[e]very motor carrier of property . . . shall provide and thereafter continue in effect adequate protection against

liability . . .”].)<sup>4</sup> X-ACT’s obligations arising from its status as a motor carrier of property are not at issue in this case.

Similarly, we also reject Golden Eagle’s argument that the 15/30/5 limits required by California’s Financial Responsibility Law cannot be the correct interpretation of coverage under the rental agreement because such coverage “would not even satisfy Penske’s own financial responsibility obligation as the owner of the commercial vehicle.” The issue before us is the scope of coverage X-ACT is entitled to under the rental agreement. Penske’s obligations to maintain its own insurance are not relevant to that issue.

Next, Golden Eagle argues that the Liability Insurance provision necessarily refers to the \$750,000 coverage limit in the Motor Carriers of Property Permit Act because the provision promises coverage with “limits as required by the state financial responsibility law *or other applicable* statute.” Golden Eagle argues that the *only* statute “applicable” to X-ACT and the type of vehicle it rented is the Motor Carriers of Property Permit Act, and therefore the Liability Insurance provision promises coverage under that act. Again, this argument ignores the words “basic automobile liability insurance policy.” Those words modify the phrase “other applicable statute,” and thus that phrase cannot be interpreted as a reference to the Motor Carriers of Property Permit Act because that act is

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<sup>4</sup> It appears that X-ACT has satisfied its statutory mandate by purchasing insurance from Golden Eagle with a \$1 million limit for accidents.

not applicable to basic automobile insurance. Instead, the phrase “other applicable statute” refers to other laws that might apply to automobile liability insurance policies, such as federal laws or the laws of U.S. territories. Conceivably, it could also apply to other laws applicable to automobile insurance coverage, in the event a particular state does not have a “financial responsibility law” regarding automobile insurance. Because California’s Vehicle Code contains a financial responsibility law governing automobile insurance, the “other applicable statute” language is not triggered in this case.

Next, Golden Eagle points to the differences in coverage for commercial and household rental customers under Penske’s rental agreement as a ground for finding the Liability Insurance provision ambiguous. Under the rental agreement, commercial rental customers must pay \$20 a day for Penske’s liability coverage, whereas “household rental” customers receive coverage for free.<sup>5</sup> Additionally, commercial rental customers are given the choice between purchasing Penske’s coverage or providing their own. If a customer elects to provide its own coverage, such coverage must be in “accordance with the standard provisions of a basic automobile liability insurance policy” with a combined single limit of \$1 million. Golden Eagle argues that this disparate treatment of commercial rental customers demonstrates that Penske intended to provide those customers with the higher coverage limit in the Motor Carriers of Property Permit Act.

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<sup>5</sup> As noted *ante*, the language describing the Penske-provided coverage is identical for commercial and household customers.

We disagree. The fact that Penske may treat its commercial and household customers differently does not affect our task in interpreting the Liability Insurance provision. We do not need to know the reasons why Penske imposed a price difference between household and commercial customers for its coverage, or why it chose \$1 million as the required limit for customer-provided insurance, in order to interpret the meaning of a “basic automobile liability policy.” Penske is free to choose the scope of the insurance it agrees to provide its customers, and where it has delineated that scope in clear terms like it has here, we must uphold it. (See *Hackethal v. National Casualty Co.*, *supra*, 189 Cal.App.3d at p. 1109.)

Finally, Golden Eagle argues that if Penske had reasonably wanted to convey to its customer that it was providing the 15/30/5 limits as opposed to a \$750,000 combined single limit, “it could have plainly said so” by stating that it was providing the “minimum” coverage required by California’s Financial Responsibility Laws. Inserting the word “minimum” before the word “limit” would not change the fact that the type of policy Penske promised was an automobile liability insurance policy, not a commercial motor vehicle liability insurance policy. Golden Eagle cites a number of cases from other states where the rental company used the word minimum before limit when describing the scope of their automobile liability insurance coverage. Those cases involve the interpretation of the scope of automobile liability insurance policies. (See *State Farm Mut. Auto. Ins. Co. v. Esswein* (Mo. Ct.App. 2000) 43 S.W.3d 833; *State Farm Auto.*

*Ass'n v. Morgan* (La. Ct.App. 1998) 709 So.2d 346; *Lindsey v. Colonial Lloyd's Ins. Co.* (La. 1992) 595 So.2d 606; *Donegal Mut. Ins. Co. v. Long* (Pa. Super. Ct. 1989) 387 Pa.Super. 574; *Puckett v. Hertz Corp.* (La. Ct.App. 1988) 535 So.2d 511.) The cases have no bearing on the issue here because they do not involve the question of whether the rental agreement provided for something *other than* automobile liability insurance.

We adhere to the settled rule that “[c]ourts will not strain to create an ambiguity where none exists.” (*Waller v. Truck Ins. Exchange, Inc.*, *supra*, 11 Cal.4th at pp. 18-19.) The phrase “basic automobile liability insurance policy” is clear, and therefore the proposition that Penske intended to provide a commercial motor vehicle liability policy must fail.

### III

#### DISPOSITION

The judgment is affirmed. Respondent shall recover costs on appeal.

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CODRINGTON  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.