Insurance

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Recommended Citation
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INSURANCE—The United States Court of Appeals for the Third Circuit held that, under Pennsylvania law, the phrase "on authorized business" in a life insurance policy was ambiguous and could reasonably be interpreted to apply to an employee who was murdered by her estranged husband after she had completed her work shift but before she had left her employer's premises.


On November 25, 1987, Alma McMillan was murdered by her estranged husband as she was leaving the business premises of her employer, Trans World Airlines (hereinafter "TWA"). On the evening of her death, Ms. McMillan completed her work shift at 10:00 p.m., left her office several minutes later, exited the lobby of the TWA office, and entered a covered walkway connected to the office building. About one hour later, Ms. McMillan's body was found at the top of the steps leading from the walkway to the public sidewalk. According to police reports, Ms. McMillan was stabbed to death at approximately 10:15 p.m. The police later apprehended Ms. McMillan's estranged husband (hereinafter "Mr. McMillan"), who gave a full confession and was convicted of her murder. In his report to the police, Mr. McMillan stated that he knew Ms. McMillan would be on the walkway at 10:15 p.m. because she typically completed her work shift at 10:00 p.m. and needed to use the walkway in order to exit her employer's building.

As a TWA employee, Ms. McMillan received a group life insurance policy issued by State Mutual Life Assurance Company of America (hereinafter "State Mutual") to TWA in favor of TWA's employees. Under a provision marked "Hazard F," the policy provided for a payment of $100,000 to the insured employee's beneficiaries in the event of death resulting from "a felonious assault

2. Id.
3. Id.
4. Id.
5. Id.
6. Id at 1079.
7. Id at 1074.
while on authorized business of [TWA]." The interpretation of the phrase "on authorized business" was the central issue in this case.9

Ms. McMillan's beneficiaries (hereinafter "plaintiffs") brought suit against State Mutual in the United States District Court for the Eastern District of Pennsylvania to collect the $100,000 benefit under the insurance policy.10 The material facts of the case were undisputed, and both parties filed motions for summary judgment.11 The district court granted the plaintiffs' motion, finding that Ms. McMillan was on authorized business of TWA at the time of her fatal assault.12 State Mutual appealed the district court's judgment to the United States Court of Appeals, Third Circuit.13

Circuit Judge Rosenn, writing the majority opinion, stated the issue as follows: "Whether the phrase 'on authorized business' in an insurance policy can be reasonably interpreted to apply to an employee who has completed her work shift but not yet left the employer's premises."14

Citing Pacific Indemnity Corp. v Linn,15 the appellate court noted that the interpretation of the scope of coverage of an insurance contract is a question of law which is properly decided by the courts.16 The court also noted that Pennsylvania laws were to be

8. Id. "Felonious assault" was defined in the policy to include, among other things, robbery, assault and battery, murder and terrorism. The phrase "on authorized business" was not defined in the policy.
9. Id.
10. Federal jurisdiction was based on diversity of citizenship. The relevant portions of the diversity jurisdiction statute, codified in 28 USC § 1332 are as follows:
   § 1332. Diversity of citizenship; amount in controversy; costs
   (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between — (1) citizens of different States; . . .
   * * *
   (c) For the purposes of this section and section 1441 of this title — (1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. . . .
Diversity of Citizenship; Amount in Controversy; Costs, 28 USC §1332 (1988).
11. McMillan, 922 F2d at 1074.
12. Id.
13. Appellate jurisdiction of the United States Courts of Appeals is defined in 28 USC § 1291, which provides, in relevant part: "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States. . . ."
15. 766 F2d 754 (3d Cir 1985).
applied in this case, and that under Pennsylvania's choice of law principles, the court was guided by the law of the state where the insurance policy was contracted and delivered: in Ms. McMillan's case, Pennsylvania.

In applying Pennsylvania law to the issue presented on appeal, the court in McMillan addressed two questions: (1) whether the phrase "on authorized business" is ambiguous when it appears undefined in an insurance policy; and (2) if so, whether the phrase can be interpreted reasonably to apply to an employee who has completed her work shift but has not yet left the employer's premises.

State Mutual contended that the district court, in finding that Ms. McMillan was "on authorized business" of TWA when she was assaulted, failed to give effect to the phrase's plain unambiguous meaning. State Mutual argued that the only permissible reading of "on authorized business" was a narrow one comprising only those specifically assigned tasks carried out by employees during their working hours. In addressing this contention, the appellate court noted several Pennsylvania cases, including Houghton v American Guaranty Life Ins. Co., which emphasized that a court must enforce the clear meaning of the language of an insurance policy where that language is unambiguous, and that the court may

17. The Rules of Decision Act states:
The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. 28 USC § 1652 (1989).


20. Id at 1077.

21. 692 F2d 289, 291 (3d Cir 1982). In Houghton, the plaintiff purchased a supplemental health insurance policy from American Guarantee Life Insurance Company (hereinafter "AGLIC"). During the term of the policy, the plaintiff suffered a stroke and brain damage following a hip injury. The health insurance policy was later canceled by the insurer, and the insurer refused to pay for the plaintiff's stroke-related expenses incurred after the cancellation of the policy. The United States Court of Appeals for the Third Circuit found that there was no express language which would require that allowable expenses must occur during the term of the policy in order to warrant reinstatement. The court, therefore, upheld the decision of the United States District Court for the Eastern District of Pennsylvania, which found that the terms of the policy issued by AGLIC to the plaintiff provided coverage for medical expenses which she incurred after the termination of the policy, where the expenses were the result of the sickness which she suffered during the life of the policy. Houghton, 692 F2d at 291.
not create ambiguities where they do not exist.\textsuperscript{22} The court also noted findings in \textit{Celley v Mutual Benefit Health & Accident Assoc.},\textsuperscript{23} stating that a provision of an insurance policy is ambiguous if reasonably intelligent men would honestly differ as to its meaning.\textsuperscript{24} Additionally, the court noted that Pennsylvania law requires that ambiguous provisions in an insurance policy must be construed against the insurer and in favor of the insured, and that any reasonable interpretation offered by the insured must control.\textsuperscript{25} The majority offered two reasons for interpreting ambiguities against the insurance company: first, the insurance company and the insured are generally not equally situated and equity requires interpretation in favor of the weaker layperson rather than the expert insurer; and second, contract principles generally favor interpreting ambiguities against the writer of the policy.\textsuperscript{26} The United States Court of Appeals for the Third Circuit found that the phrase "on authorized business" was not defined in State Mutual's policy, and that it was ambiguous and capable of different interpretations.\textsuperscript{27} In reaching this conclusion, the majority noted that Webster's Dictionary contains no less than ten definitions of the word "business," ranging from the very inclusive "purposeful activity" to the more restrictive "a commercial or industrial enterprise."\textsuperscript{28} Similarly, the majority noted that in common usage, the meaning of "authorized" can be construed narrowly to include only required activities, or more broadly to include any activity that is not specifically prohibited.\textsuperscript{29} Thus, the majority reasoned, the phrase "on authorized business" might be understood to include only assigned tasks pursued by employees during specified work hours.\textsuperscript{30} On the other hand, the phrase might reasonably be construed to encompass any and all actions taken by employees which benefit an employer's enterprise and are not prohibited, whether or not they occur during work hours or at the work

\textsuperscript{22} Id.
\textsuperscript{23} 229 Pa Super 475, 324 A2d 430, 434 (1974). For further discussion of \textit{Celley}, see note 71 and accompanying text.
\textsuperscript{24} McMillan, 922 F2d at 1075.
\textsuperscript{25} Id. The court cited \textit{Mohn v American Cas. Co.}, 458 Pa 576, 326 A2d 346, 351 (1974), and others. See note 65 and accompanying text.
\textsuperscript{26} McMillan, 922 F2d at 1075. See note 67 and accompanying text.
\textsuperscript{27} McMillan, 922 F2d at 1076.
\textsuperscript{28} Id.
\textsuperscript{29} Id.
\textsuperscript{30} Id.
The majority found nothing in the policy which served to define the phrase "on authorized business" more clearly, and concluded that the phrase was intended to have a general definition in the Hazard F provision. The majority noted also that if State Mutual wanted to cover only felonious assaults committed during a period identified by the most restrictive understanding of "on authorized business," the insurer could adopt more precise language to accomplish that purpose. Citing Celley v Mutual Benefit Health and Accident Ass'n, the majority concluded that State Mutual's failure to clarify the phrase reinforced a conclusion of ambiguity under Pennsylvania law.

The Third Circuit Court then addressed the second question presented, namely, whether any reasonable construction of the phrase "on authorized business" could apply to Ms. McMillan's activity at the time of her death. No Pennsylvania court has interpreted the phrase "on authorized business," and, more specifically, no court has interpreted that particular phrase in an insurance contract. However, the majority noted that Pennsylvania courts have adopted a broad understanding of the word "business" when construing the phrase "in furtherance of the employer's business."

Noting that employers expect their employees to arrive at an appointed time in order to conduct the employer's business, and that employees are similarly expected to depart shortly after scheduled hours so that other employees are not distracted, the court reasoned that the processes of arriving to and departing from the

31. Id.
32. Id.
33. Id.
35. McMillan, 922 F2d at 1077.
36. Id. The court defined the phrase "any reasonable construction" broadly, to encompass not only the most sensible interpretation of the phrase, but also, in effect, any interpretation of the phrase "on authorized business" that could be reached by a reasonable policy reader. Id.
37. Id.
38. Id at 1078. The court noted that Pennsylvania courts have found that "business" would include pre-work preparation such as dressing in work uniforms, preparation of equipment, participation in employer-sponsored recreation, and other established courses of conduct, although not occurring during work hours or at the workplace. The court cited Hemmler v WCAB (Clarks Summit State Hosp.), 131 Pa Commw 24, 569 A2d 395, 397 (1990), which found that playing basketball with other employees during the lunch hour was in furtherance of the employer's business; and Artrip v WCAB, 54 Pa Commw 502, 421 A2d 1254, 1257 (1980), which found that test driving a snowmobile at home, while living on corporate property, was in furtherance of an employer's business.
work station are governed by the procedural practices of the employer.\textsuperscript{39} The processes of arrival and departure, then, are part and parcel of the authorized business of the employer.\textsuperscript{40} Thus, the majority found that when Ms. McMillan left her office shortly after completing her shift, she was expected and authorized to do so by the procedural practices of TWA's enterprise.\textsuperscript{41}

Clearly, Ms. McMillan could not be deemed to have been on TWA's authorized business from the moment she punched out until the next time she reported again for work, and the majority recognized that there must be some instant when her separation from the authorized business was complete.\textsuperscript{42} The majority concluded that the earliest point of separation from her employer's "authorized business" would not occur until Ms. McMillan had fully departed from TWA's business premises.\textsuperscript{43} Until that point, she would be found to be in an area required by her employer and for its benefit.\textsuperscript{44}

Seeking reasonable definitions for the phrase "business premises," the majority noted that the Pennsylvania Supreme Court has found, under the Pennsylvania Workmen's Compensation statute, that an employer's premises includes all of the area which an employee is required to traverse to access the work site, regardless of who actually owns or controls the area.\textsuperscript{45} Thus, the majority concluded that the Pennsylvania Supreme Court would include, in the broad definition of "on authorized business," the time and transitional effort of an employee from the moment the employee enters the work premises in preparation for work and the time regularly spent in preparation for departure and reaching the public thoroughfare.\textsuperscript{46} Applying this definition to the instant case, the majority concluded, "[Ms.] McMillan was not free of her employer's requirements and not severed from its authorized business, at least until the moment when she would have reached some public thor-

\textsuperscript{39} McMillan, 922 F2d at 1078.
\textsuperscript{40} Id.
\textsuperscript{41} Id at 1079.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id, citing Epler v North Am. Rockwell Corp., 482 Pa 391, 393 A2d 1163, 1167 (1978), which held that a parking lot near the work site was part of the employer's premises; and Brown v WCAB (Transworld Airlines), 505 Pa 35, 476 A2d 900 (1984), which held that an employee who was injured on the first-floor landing of a multipurpose commercial building was on the "employer's premises."
\textsuperscript{46} McMillan, 922 F2d at 1079.
oughfare and regained the unimpeded freedom to choose her next course of direction." The majority determined that Ms. McMillan never reached the instant of separation from TWA's business on the night she was murdered. The opinion stated, "Tragically, she met her untimely end while standing upon a walkway which she was required to pass over by her employer at a time dictated by her employer's schedule and for its benefit, making it reasonable to conclude that she was on her employer's authorized business when assaulted." Further, the majority found that "Ms. McMillan's consistent observance of TWA's work schedule, and the causal connection between McMillan's work departure at the time and place designated by TWA and her assailant's foul plan to meet her at that moment, further bolsters the conclusion that she was on TWA's authorized business at the time."

Finally, the majority found additional support for its conclusion that Ms. McMillan was still "on authorized business" at the time of her death in the Pennsylvania Workmen's Compensation Statute's definition of the phrase "in the course of employment." The statute defines "course of employment" to include employees who have been injured while still on an "integral part of the employer's operating premises, within a reasonable time after the work period ended." In Newhouse v W.C.A.B., the Pennsylvania Commonwealth Court found that fifteen minutes after "punching out" is a reasonable time after the work period.

In affirming the judgment of the district court, the United States Court of Appeals for the Third Circuit concluded that the phrase "on authorized business" in State Mutual's policy was ambiguous and must be interpreted in favor of the plaintiffs. The court also held that a reasonable person could conclude that Ms. McMillan, who was still on her employer's premises shortly after completing work, was "on authorized business" of TWA at the time of her assault.

47. Id.
48. Id.
49. Id.
50. Id.
51. Id.
54. Newhouse, 530 A2d at 547.
55. McMillan, 922 F2d at 1080.
56. Id.
Judge Stapleton dissented, finding that Ms. McMillan was on her own business and not on the business of her employer when she met her death. Judge Stapleton clearly distinguished the concept of doing the employer’s business from that of being on the employer’s premises, and noted that the Pennsylvania legislature recognized and intended the same distinction when drafting the two-pronged standard contained in the Pennsylvania Workmen’s Compensation Act. The Act states that compensation must be paid both (1) when the employee is engaged “in the furtherance of the employer’s business”; and (2) when the employee, even though not so engaged, (a) is on the employer’s premises, (b) is required by the nature of his employment to be there, and (c) is injured by the condition of the premises or by operation of the employer’s business or affairs thereon. Citing Serafin v W.C.A.B., Judge Stapleton would not include, in the definition of “doing the employer’s business,” someone who has completed his or her day’s work and is on the way home. Thus, Judge Stapleton would find that Ms. McMillan would not meet the first prong of the standard. Judge Stapleton noted further that Ms. McMillan would not meet the second prong of the Workmen’s Compensation standard, since Ms. McMillan was not injured by a condition of the premises or by operation of the employer’s business thereon. Judge Stapleton would have reversed the judgment of the district court and remanded with an instruction to enter judgment for TWA and State Mutual.

The interpretation of insurance policies under Pennsylvania law is well settled. When interpreting an insurance policy, which is a contract, courts are required to determine the intent of the parties as disclosed by the language of the policy. If the language is clear

57. Id at 1081 (Stapleton dissenting).
58. Id at 1080.
60. 62 Pa Commw 413, 436 A2d 1239 (1981). The court held in Serafin that an employee who is injured while going to or returning from work, absent special circumstances, is not engaged in furthering the business of his employer. Id at 1241.
61. McMillan, 922 F2d at 1081.
62. Id.
63. Id.
64. Id.
65. In Moore v Stevens Coal Co., 315 Pa 564, 173 A 661 (1934), the Pennsylvania Supreme Court stated:
   In interpreting contracts, as in interpreting wills, the guide to intentions is the terms used unless they are ambiguous. The respective rights and obligations which the
words of a contract clearly express are the rights and obligations which the court must recognize and enforce.

The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention existed in the minds of the parties, but what intention is expressed by the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they made for themselves, without regard to its wisdom or folly.

Moore, 173 A at 662, 663, quoting Restrictions to Terms of Contract, 13 CJ § 485 (1917).

See also Lovering v Erie Indemnity Co., 412 Pa 551, 195 A2d 365 (1963), which held that a policy provision requiring the insured to “prosecute his claim to a final contested judgment in a Court of Record against all known persons who might reasonably be considered responsible for his damages” would cover the insured’s injuries caused by an uninsured motorist who failed to appear at trial and who was judgment proof after the trial court entered verdicts for the insured. Lovering, 195 A2d at 368. The court explained: “If the insurance company intended to exclude indemnity where the negligent defendant keeps his distance from court, that exclusion should have been incorporated in the policy.” Id.

In Mohn v American Cas. Co. of Reading, 458 Pa 576, 326 A2d 346 (1974), the Pennsylvania Supreme Court held that an insurance policy protecting against death resulting exclusively from “bodily injury which is effected solely by external violent and purely accidental means” would cover the insured who was killed by a police officer while fleeing from the scene of a burglary. Mohn, 326 A2d at 352. The court stated specifically, “No provision was made that conduct should be excluded from coverage because it posed an unreasonable risk of harm to the deceased.” Id. The following year, the Pennsylvania Superior Court, when deciding Blocker v Aetna Cas. & Surety Co., 232 Pa Super 111, 332 A2d 476 (1975), stated that, “The policy must be read in its entirety; it should be construed according to the plain meaning of the words used, so as to avoid ambiguity while at the same time giving effect to all its provisions.” Blocker, 332 A2d at 478.

The federal district courts sitting in Pennsylvania have adopted the same “rule of construction” when deciding Pennsylvania cases, as evidenced in Treasure Craft Jewelers, Inc. v Jefferson Ins. Co., 683 F2d 650 (3d Cir 1978), which held: “Since the policy is a contract, the court’s duty is to ascertain the intent of the parties as manifested in the language of the agreement. In discharging its duty, the court should attempt to view the policy in its entirety, and give effect, if possible, to all portions of the contract.” Treasure Craft Jewelers, Inc., 683 F2d at 652. Eastern Associated Coal Corp. v Aetna Cas. & Surety Co., 632 F2d 1068 (3d Cir 1980), cited Mohn v American Cas. Co. of Reading, 326 A2d 346 (1974) and held that the insured mining company’s business interruption insurance policy covered the value of the lost production of metallurgical coal measured by the contract price of such coal, and that the policy language covering expenses “incurred by the assured to reduce loss” did not cover new brokerage and substitute coal expenses incurred by the insured to meet contract obligations. Eastern Associated Coal Corp, 632 F2d at 1075, 1078.

66. In Thompson v Craft, 238 Pa 125, 85 A 1107 (1913), the Pennsylvania Supreme Court noted that, “In construing a contract, a word will not be given a different meaning from what it fairly and ordinarily imports, unless there is something to show that the word was used in an unusual sense.” Thompson, 85 A at 1110. In Thompson, the court held that where an option to purchase coal provided that it would be void if the vendor’s wife refused to sign the deed, and the vendor later accepted purchase money on account stating that the
urance policies are frequently considered to be contracts of adhesion, any ambiguity in the policy must be construed against the insurer, and in a manner which is more favorable to the insured.  

contract of sale was made absolute, the term “absolute” indicated a contract in direct contradistinction to the contract created by the option. Id at 1111. Thus, the contract of sale was free from the condition imposed by the option contract. Id.

See also Morris v American Liability & Surety Co., 322 Pa 91, 185 A 201 (1936), which stated: “The usual dictionary meaning of words employed in a contract must control in the absence of a clear expression of a contrary intention.” Morris, 185 A at 202. In D’Orazio v Masciantonio, 345 Pa 428, 29 A2d 43 (1942), the Pennsylvania Supreme Court stated that “the ordinary meaning of language throughout the country should be applied unless circumstances show that a different meaning is applicable.” D’Orazio, 29 A2d at 45, citing Restatement of Contracts § 235a (1932). When deciding D’Orazio, the court found that when parties to a mortgage agreed that “as long as [a stated] interest is paid ‘on the balance of the principal’ the mortgage shall not be considered in default and no foreclosure [can] be resorted to,” there is only a moral obligation on the debtor to pay the principal. Id at 44.

Similarly, in Pennsylvania Mfrs.’ Ass’n Ins. Co. v Aetna Cas. & Surety Co., 426 Pa 453, 233 A2d 548 (1967), the court stated that where the language of an insurance policy is clear and unambiguous, it cannot be construed to mean other than what it says and must be given the plain and ordinary meaning of the terms used. Pennsylvania Mfrs.’ Ass’n Ins. Co., 233 A2d at 551. In that case, the Pennsylvania Supreme Court held that where a provision of an insurance policy excluded application of the policy to injuries of the insured’s employees, the policy did not cover the insured’s employee. Id.

The District Court for the Eastern District of Pennsylvania followed the prior decisions of the Pennsylvania Supreme Court when deciding St. Paul Fire and Marine Ins. Co. v United States Fire Ins. Co., 655 F2d 521 (3d Cir 1981). In St. Paul, the court cited Eastern Associated Coal Corp. v Aetna Cas. and Surety Co., 632 F2d 1068 (3d Cir 1980), and Pennsylvania Mfrs.’ Ass’n Ins. Co., stating: “Pennsylvania holds that if the words of an insurance policy are clear and unambiguous, they are to be given their plain and ordinary meaning.” St. Paul, 655 F2d at 524. Thus, the court held that specific provisions in an endorsement stating that “‘damages’ means all damages ‘payable’ because of injury to which this insurance applies” was not ambiguous, notwithstanding the definition of “damages” as those arising from “bodily injury” or “property damages” in an underlying automobile policy to which malpractice endorsement was attached. The court found that the endorsement’s application was not limited to bodily injury. Id.

67. In 1928, the United States Supreme Court stated in Stipich v Metropolitan Life Ins. Co., 277 US 311 (1928): “If provisions in an insurance policy are with equal reason open to two constructions, the most favorable to the insured will be adopted.” Stipich, 277 US at 321. Thus, the Court held that a provision that any knowledge gained by the insurance agent shall not be considered as having been brought to the knowledge of the insurer unless stated in the application, does not apply to knowledge gained after the application has been forwarded to the insurer. Id.

The principle that, in case of doubt or ambiguity, the provisions of an insurance policy will be viewed in the light most favorable to the insured was cited with approval by the Pennsylvania Supreme Court in Brans v New York Life Ins. Co., 299 Pa 11, 148 A 855 (1930). The Pennsylvania Supreme Court held in Brans, however, that where a policy provides that the policy holder is in default if any premium is not paid on the due date, but a grace period of one month is allowed, a notice that the insured is ill and that the premium will be paid when he gets well will not save the policy from forfeiture if the premium is not actually paid within the grace period. Brans, 148 A at 857.

The principle of construing ambiguities in favor of the insured has, however, been followed in Pennsylvania consistently since that time. See, MacDonald v Metropolitan Life
principle stems from the courts' concern that insurance companies,

*Ins. Co.*, 304 Pa 213, 155 A 491 (1931), which held that a contract of insurance will, if possible, be so construed as to protect the insured, and doubts, if any, will be resolved in his favor. *MacDonald*, 155 A at 492. Thus, the court held that where the date at which a reinstated policy is to begin is uncertain, the policy must be construed so as to protect the policyholder. Id. See also *Armon v Aetna Cas. & Surety Co.*, 369 Pa 465, 87 A2d 302 (1952), which held that "where an insurance policy is reasonably susceptible of two interpretations, it is to be construed in favor of the insured in order not to defeat, without plain necessity, the claim to indemnity which it was the insured's object to obtain." *Armon*, 87 A2d at 303.

In this action on a policy which insured "against all damage caused solely by the accidental discharge, leakage or overflow of water . . . from . . . rain or snow admitted directly to the interior of the building through defective roofs, leaders or spouting," and in which it appeared that a clogged downspout caused an overflow which entered the building and damaged the plaintiff's goods, the *Armon* court held that the loss had resulted through defective spouting within the coverage of the policy. Id at 304.

In *Cadwallader v New Amsterdam Cas. Co.*, 396 Pa 582, 152 A2d 484 (1959), the court stated that any ambiguity in a contract of insurance must be resolved in favor of the insured. *Cadwallader*, 152 A2d at 487. In that case, the court found that the insurance company had a duty to defend a claim against an insured lawyer who was charged with negligence and unlawful conspiracy (not insured against) under a policy provision which required the insurer to defend against an action on "any claim . . . arising out of the performance of professional services for others . . . as a lawyer, and caused by any negligent act, error or omission of the insured." (The provision excluded intentional misconduct.) *Sykes v Nationwide Mut. Ins. Co.*, 413 Pa 640, 198 A2d 844 (1964), stated:

It is of course clear that if there [is] any ambiguity in the contract of insurance it must be resolved in favor of the insured since it was the insurer who wrote the contract. The person who writes with ink which spreads and simultaneously produces two conflicting versions of the same proposition cannot complain if the person affected by both propositions chooses to accept that which is more helpful to him and which is against the interests of the contract writer. *Sykes*, 198 A2d at 845.

In *Penn-Air Inc. v Indemnity Ins. Co. of N. Am.*, 439 Pa 511, 269 A2d 19 (1970), the court restated the principle: "The policy is to be construed most strongly against the insurer and liberally in favor of the insured to effect its dominant purpose of indemnity or payment to the insured where terms of the policy are ambiguous or uncertain and the intention of the parties is unclear." *Penn-Air Inc.*, 269 A2d at 22. The court held, however, that an inference of criminal intent could not be drawn when an insured aircraft owner's pilot took the aircraft without authorization, unless there was evidence that the pilot did not intend to return the aircraft. Id at 24. Therefore, the aircraft's subsequent crash was not covered under a policy providing coverage for loss or damage to the aircraft while in flight if caused by theft. Id.

In *Cohen v Erie Indemnity Co.*, 288 Pa Super 445, 432 A2d 597 (1981), an insured driver had an accident while operating his father's automobile without permission. *Cohen*, 432 A2d at 598. The Pennsylvania Superior Court was called upon to interpret a provision of an automobile policy which modified the definition of insured persons (with respect to non-owner/operators) with a proviso that operation must be with permission of the owner. The court noted that several appellate courts had reached directly contrary conclusions after reviewing policy provisions that were almost identical to the provision in the case at bar. Id at 599. Therefore, the court reached the "inescapable conclusion" that the provision was susceptible to more than one interpretation and was ambiguous. Id. The court found that such ambiguity required that the issue of coverage be resolved in favor of the insured driver. Id.
because of their superior bargaining position, should not be permitted to thwart the policy purchaser's reasonable expectations. Nevertheless, the language of the policy may not be tortured to create ambiguities where none exist.

Contracts are not rendered ambiguous by the mere fact that the parties do not agree upon their construction. An ambiguous contract is one capable of being understood in more than one sense, an agreement obscure in meaning through indefiniteness of expression or by having a double meaning. A contract is ambiguous if, and only if, it is reasonably susceptible of different constructions. "It is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from

68. See Sykes, 198 A2d 844 (1964). See also Collister v Nationwide Life Ins. Co., 479 Pa 597, 388 A2d 1346 (1978), wherein the court stated:

The traditional contractual approach fails to consider the true nature of the relationship between the insurer and its insureds. Only through the recognition that insurance contracts are not freely negotiated agreements entered into by parties of equal status; only by acknowledging that the conditions of an insurance contract are for the most part dictated by the insurance companies and that the insured cannot 'bargain' over anything more than the monetary amount of coverage purchased does our analysis approach the realities of an insurance transaction. . . . The reasonable expectation of the insured is the focal point of the insurance transaction involved here. Courts should be concerned with assuring that the insurance purchasing public's reasonable expectations are fulfilled.

Collister, 388 A2d at 1353.

69. See Urian v Scranton Life Ins. Co., 310 Pa 144, 165 A 21 (1933), wherein the court stated:

If doubt exists as to the meaning of the language in an insurance policy, it should be resolved in favor of the insured rather than in the interest of the insurer. But this rule has no application where the language is clear and unambiguous; in such cases it cannot be construed to mean otherwise than what it clearly says.

Urian, 165 A at 22. Thus, the court held that where an accident policy, the language of which is clear and unambiguous, states as an exception from liability that which is simply a cause, without any reference to an act or omission to act by the insured or any other person, "no recovery can be had in cases where the injury or death is due to that cause." Id at 24. See also Smith v Cassida, 403 Pa 404, 169 A2d 539 (1961), wherein the court stated: "An insurance policy, like every other contract, must be read in its entirety and the intent gathered from a consideration of the entire instrument. It cannot be construed to mean otherwise than what it clearly says." Smith, 169 A2d at 541.

In Patton v Patton, 413 Pa 566, 198 A2d 578 (1964), the court stated:

If the language of the policy is uncertain or ambiguous, then, and only then, must the policy be construed most strongly against the insurer. If the language of the policy is certain and unambiguous, a construction cannot be adopted which conflicts with the plain meaning of such language, unless the construction is manifestly absurd or effectually prevents a recovery under all circumstances.

the nature of language in general, its meaning depends.”

A provision of an insurance policy is ambiguous if reasonably intelligent men, considering the provision in the context of the entire policy, would honestly differ as to its meaning. When deciding whether a term is ambiguous or not, the court may consider whether alternative or more precise language would have put the matter beyond reasonable question.

After deciding in the McMillan case that the phrase "on authorized business" was ambiguous, and that arriving to and departing from an employer's premises are reasonably part of the authorized business of the employer, the appellate court sought to define the boundaries of the "employer's premises." The court looked to the Pennsylvania Supreme Court's decisions defining the boundaries of "the employer's premises" under Pennsylvania Workmen's Compensation law.

The Workmen's Compensation Act of June 2, 1915 (hereinafter the "Act"), provides that compensation should, in all cases, be made by the employer "for personal injury to, or for the death of, such employee, by an accident, in the course of employment . . . without regard to negligence," except when the injury or death is intentionally self-inflicted. The Act has been revised several times.

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70. Whiting Stoker Co. v Chicago Stoker Corp., 171 F2d 248, 251 (7th Cir 1949).
72. Celley, 324 A2d 430 (1974), holding that the term "eye trouble" in an insurance contract is ambiguous. Id at 437. Mazilli v Accident & Cas. Ins. Co. of Winterthur, Switzerland, 35 NJ 1, 170 A2d 800 (1961), holding that the insured's wife, who was living in a bungalow on insured's property (150 feet from insured's home) may be considered to be a member of the insured's household. Mazilli, 170 A2d at 810.
73. McMillan, 922 F2d at 1078.
74. Id.
76. Id. The Act further provides:

The term 'injury by an accident in the course of his employment,' as used in this article, shall not include an injury caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee or because of his employment; but shall include all other injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employee, who though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employee's presence thereon being required by the nature of the employment.

Pub L No 736, Art. III, § 301.
times since 1915, most recently in 1989.\textsuperscript{77} Section 301 has not, however, been revised so as to significantly affect the definitions of the terms "employer's premises" or "in the course of employment."\textsuperscript{78}

In \textit{Dzikowska v Superior Steel Co.},\textsuperscript{79} decided in 1918, the Pennsylvania Supreme Court held that in order to hold an employer liable under the Act, it was not necessary to show that the injury arose out of the employment, but rather it was sufficient if the injury occurred in the course of employment, except for injuries intentionally self-inflicted or intentionally caused by a third person for personal reasons.\textsuperscript{80} The court further held that employment is not broken by mere intervals of leisure (i.e., breaks or meals); and that if an accident occurred to a workman during such time, the employer was liable under the Act, especially where the accident occurred on or about the employer's premises, unless the workman was doing something that was wholly foreign to his employment.\textsuperscript{81} Liability existed even though the workman was paid by the hour for the time he was actually at work.\textsuperscript{82} Thus, the court found that Dzikowska's injuries were compensable under the Act.\textsuperscript{83}

In 1921, the Pennsylvania Superior Court applied the holding of \textit{Dzikowska} when it decided, in \textit{Hale v Savage Fire Brick Co.},\textsuperscript{84} that the Act did not require an employee to be actually engaged in his work when he was injured in order to make his injury compensable.\textsuperscript{85} In \textit{Hale}, the claimant was injured when he fell over a wall while running away from two fellow workmen who were attempting to take his tobacco during the lunch hour.\textsuperscript{86} The court found that the claimant was still in the course of his employment while he was eating lunch on the employer's premises, and was therefore entitled to compensation. The fact that the claimant was running away from his fellow employees was, according to the court, immaterial.

\textsuperscript{78} 77 Pa Stat § 411 (1) (Purdon Supp 1990).
\textsuperscript{79} 259 Pa 578, 103 A 351 (1918).
\textsuperscript{80} \textit{Dzikowska}, 103 A at 352. Dzikowska's heirs sought to recover under the Act for fatal injuries resulting when Dzikowska set fire to his oil-soaked clothing while lighting a cigarette during a break on his employer's premises.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} 75 Pa Super 454 (1921).
\textsuperscript{85} \textit{Hale}, 75 Pa Super at 461.
\textsuperscript{86} Id at 455. Hale's injury occurred while he and his fellow workers were eating lunch on their employer's premises. Id.
and incidental.\textsuperscript{87}

The following year, the Pennsylvania Supreme Court refused to grant compensation for injuries occurring off the premises of the employer, unless they were sustained while the worker was actually engaged in the transaction of the employer's business. In \textit{Maguire v James Lees & Sons Co.},\textsuperscript{88} the court denied compensation to the heirs of an employee who was killed by two subordinates while on his way home after work.\textsuperscript{89} The employee had argued with the two subordinates two hours before, while at work, concerning a work-related matter.\textsuperscript{90} The court found that Maguire's death was not due to an accidental injury incurred during the course of his employment, as that term is defined in the Act.\textsuperscript{91}

In 1924, the Pennsylvania Supreme Court found in \textit{Malky v Kis-kiminetas Valley Coal Co.}\textsuperscript{92} that the Workmen's Compensation Act was broad enough to include every accidental injury received on the premises of the employer during the hours of employment, so long as the nature of employment demands the employee's presence at the work site.\textsuperscript{93} The court further held that the actual hours for which one is engaged to serve is not controlling; rather, whether the employee's presence on the premises is required by the nature of his service must be determined from all the facts and circumstances.\textsuperscript{94}

In 1929, the Pennsylvania Supreme Court decided that an employee injured on his employer's premises while on his way to or from work should be compensated under the Workmen's Compensation Act. In \textit{Black v Herman},\textsuperscript{95} the court held that where an employer leases the business premises which includes stairs and a platform necessary for employees to reach the work site, an injury sustained by an employee on the platform on his way to work is

\begin{itemize}
\item \textsuperscript{87} Id at 461.
\item \textsuperscript{88} 273 Pa 85, 116 A 679 (1922).
\item \textsuperscript{89} \textit{Maguire}, 116 A at 679.
\item \textsuperscript{90} Id.
\item \textsuperscript{91} Id at 680.
\item \textsuperscript{92} 278 Pa 552, 123 A 505 (1924).
\item \textsuperscript{93} \textit{Malky}, 123 A at 506. In \textit{Malky}, the court compensated a miner who was injured when a bomb was thrown into a company-maintained bunkhouse where the miner was sleeping. The bunkhouse was located on company premises for the convenience of the employer. The court found that liability exists whether or not the employee's presence was actually required at the particular place where the injury occurred, as long as there was nothing to prove virtual abandonment of the course of his employment, or that, at the time of the accident, he was engaged in something wholly foreign to his employment. Id.
\item \textsuperscript{94} Id.
\item \textsuperscript{95} 297 Pa 230, 146 A 550 (1929).
\end{itemize}
within the course of employment and is compensable.\textsuperscript{96}

The breadth of the employer's premises was extended slightly in 1931, when the Superior Court of Pennsylvania held that a private street abutting the employees' store entrance was so used by the defendant company as to form part of the "premises" of its store operations.\textsuperscript{97} In \textit{Fenney v N. Snellenburg & Co.}, the court found that the plaintiff employee was within the protection of the Act when she fell on a private street leading to the employee entrance of her employer's business premises.\textsuperscript{98} The superior court defined the terms "employer's premises" to include property owned, leased, or controlled by the employer and so connected with the employer's property as to form a component or integral part of it.\textsuperscript{99}

Deciding \textit{Barton v Federal Enameling & Stamping Co.}\textsuperscript{100} in 1936, the Pennsylvania Superior Court broadened the reach of the "employer's premises" to compensate an employee of a manufacturing plant who was injured after work while driving on a private road built by the employer.\textsuperscript{101} The court noted that the driveway was the only automobile entrance to the plant, and that it was owned or controlled by the employer, who permitted employees to use it.\textsuperscript{102}

Interestingly, in 1947, the Pennsylvania Superior Court held in \textit{Sheridan v Glen Alden Coal Co.}\textsuperscript{103} that a parking lot furnished by the defendant employer for employees' use was not so connected with the defendant's business or its operating premises as to form an integral part of the workplace.\textsuperscript{104} The superior court found that an accident sustained by the claimant while on the employee parking lot did not occur on the premises of the defendant employer within the meaning of the Act.\textsuperscript{105}

In \textit{Lints v Delaware Ribbon Mfrs. Inc.},\textsuperscript{106} decided in 1953, the Pennsylvania Superior Court denied compensation to an employee who was injured when trying to re-enter the employer's building

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  \item \textsuperscript{96} \textit{Black}, 146 A at 551.
  \item \textsuperscript{97} \textit{Fenney v N. Snellenburg & Co.}, 103 Pa Super 284, 157 A 379 (1931).
  \item \textsuperscript{98} \textit{Fenney}, 157 A at 380.
  \item \textsuperscript{99} Id.
  \item \textsuperscript{100} 122 Pa Super 587, 186 A 316 (1936).
  \item \textsuperscript{101} \textit{Barton}, 186 A at 317.
  \item \textsuperscript{102} Id.
  \item \textsuperscript{103} 160 Pa Super 115, 50 A2d 540 (1947).
  \item \textsuperscript{104} \textit{Sheridan}, 50 A2d at 541.
  \item \textsuperscript{105} Id, citing the Workmen's Compensation Act, § 301 of the Act of 1915, as reenacted and amended by the Act of June 21, 1939, Pub L No 520 §1, 77 Pa Stat § 411 (Purdsons Supp 1990).
  \item \textsuperscript{106} 178 Pa Super 426, 98 A2d 643 (1953).
\end{itemize}
through a boiler room to return to an allegedly compulsory employer-sponsored Christmas party.\textsuperscript{107} The court reiterated:

Where an entrance or exit is provided by the employer for his employees, or where such exit or entrance is available and intended for use, or is the usual means of ingress and egress to the employers place of business, or where the employee must cross the property of the employer or of the employer's landlord to reach or leave work, then such entrance or exit, whether located on property under the control of the employer or not, is a part of the employer's premises.\textsuperscript{108}

The court reasoned that although the path to the boiler room was owned and controlled by the employer, there was no evidence that the route was "provided" by the employer, no evidence that it was a "usual" means of ingress or egress to or from the employer's plant, and certainly no evidence that the path was a "necessary" means of ingress or egress.\textsuperscript{109}

In 1957, the Pennsylvania Supreme Court denied relief under the Act to an elderly man who slipped on the public sidewalk at the foot of the stairs of his employer's building, while on his way home after his work shift.\textsuperscript{110} In \textit{Eberle v Union Dental Co.}, the court held that while the employee was required to use the stairway to go to and from his place of employment, once he reached the bottom of the stairway, he was free to go any way he wanted to go. The court stated that since nothing further was required of him by the nature of his employment, he was, at that point, no more than a member of the public using the sidewalk.\textsuperscript{111} As a result, the court did not reach the question of whether or not the claimant was injured on premises which were under the control of the employer.\textsuperscript{112}

In \textit{Hesselman v Somerset Community Hosp.},\textsuperscript{113} decided in 1964, the Pennsylvania Superior Court granted relief under the Act to a hospital employee who was injured in a public alley while on his way to work.\textsuperscript{114} The court found that, for all practical purposes, the alley was the employer's property. The alley was cared for and maintained by the hospital, and the claimant was required to use it

\textsuperscript{107} \textit{Lints}, 98 A2d at 644.

\textsuperscript{108} Id at 645 (citations omitted).

\textsuperscript{109} Id.

\textsuperscript{110} \textit{Eberle v Union Dental Co.}, 390 Pa 112, 134 A2d 559 (1957).

\textsuperscript{111} \textit{Eberle}, 134 A2d at 561.

\textsuperscript{112} Id.

\textsuperscript{113} 203 Pa Super 313, 201 A2d 302 (1964).

\textsuperscript{114} \textit{Hesselman}, 201 A2d at 305. The claimant was injured in an alley as he was about to enter his employer's building through a doorway leading from the alley. Id at 303.
as a means of access to the laundry building. The fact that the public may also have had the right to use the alley did not prevent the claimant from successfully asserting that it was a part of the employer’s premises within the purview of the Act.

In 1965, one year after the *Hesselman* case, the Pennsylvania Superior Court granted relief under the Act to a nurse at the same hospital who slipped on ice in the hospital parking lot while on her way into the hospital to begin her shift. In *Shaffer v Somerset Community Hosp.*, the court held that the parking lot was clearly an integral part of the hospital premises, and that the claimant was injured in the course of her employment. The court distinguished this case from *Young v Hamilton Watch Co.*, wherein compensation was denied to a claimant injured in the employer’s parking lot, saying, “The parking lot there [in Young] ... did not adjoin the employer’s plant, which was surrounded by a fence and policed by guards. It was separated from the plant by a public highway. . . . The Young case is not here controlling.”

In 1977, the Pennsylvania Commonwealth Court went one step further, and held that fatal injuries sustained by an employee who suffered an epileptic seizure while driving in the company parking lot prior to work and crashed into an abutment on the employer’s property, were compensable under the Act. In *W.C.A.B. (Mary Slaugenhaupt) v United States Steel Corp.*, the parties agreed that although the epileptic seizure caused the accident, the employee’s death was not caused by the epilepsy itself, but by the traumatic injuries resulting from the force of the car striking the abutment. The commonwealth court then noted that it is not necessary to show that the employer has been negligent or that the condition of the parking lot is faulty, since it is sufficient for recov-
ery that a condition of the premises was a cause of the injury.\textsuperscript{124} The court stated:

We have found no case in which compensation has been denied a worker injured on his employer's premises because the injuries were not shown to have been caused by faulty conditions or negligent operations. Except for some of the parking lot cases where the presence of ice or snow is noted without other comment, the premises cases rarely mention the condition of the employer's premises and when they do it is not in critical terms.\textsuperscript{125}

When deciding \textit{Epler v North Am. Rockwell Corp.}\textsuperscript{126} in 1978, the Pennsylvania Supreme Court cited with approval the superior court's decisions in \textit{Shaffer v Somerset Community Hosp.}\textsuperscript{127} and \textit{Hesselman v Somerset County Hosp.}\textsuperscript{128} In \textit{Epler}, the Pennsylvania Supreme Court awarded compensation under the Act to the widow of an employee who was killed by an automobile while crossing a public thoroughfare after his work shift was completed and while on his way to a parking lot adjoining his employer's plant.\textsuperscript{129} The parking lot was provided by his employer for employees who drove to work.\textsuperscript{130} Epler was effectively assigned to park in that particular lot.\textsuperscript{131} Citing the Ingersoll-Rand, Shaffer, and Hesselman decisions (among others), the Pennsylvania Supreme Court found that the parking lot on which the claimant's vehicle was parked was an integral part of the employer's business, and thus the claimant was "on the employer's premises" when he was killed.\textsuperscript{132} The Pennsylvania Supreme Court found also that the employee was entitled to compensation even though the accident occurred after the completion of the work assignment for a given day, stating: "Under established law of this jurisdiction any injury occurring to an employee up until the time he leaves the premises of the employer, provided that it is reasonably proximate to work hours, is compensable."\textsuperscript{133} In addition, the Pennsylvania Supreme Court found no reason to deny compensation in this particular case simply because the accident occurred while the claimant was

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\item \textsuperscript{124} Id at 275.
\item \textsuperscript{125} Id.
\item \textsuperscript{126} 482 Pa 391, 393 A2d 1163 (1978).
\item \textsuperscript{127} See note 117 and accompanying text.
\item \textsuperscript{128} See note 113 and accompanying text.
\item \textsuperscript{129} \textit{Epler}, 393 A2d at 1167.
\item \textsuperscript{130} Id at 1164.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Id at 1166.
\item \textsuperscript{133} Id at 1165.
\end{itemize}
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crossing a public road.\textsuperscript{134} The court noted that there are circumstances where a public area can properly be considered "on the employer's premises" within the meaning of the Act, even though the employer does not own the property.\textsuperscript{135} Since the Act is not premised upon employer negligence but rather on the employment relationship, the critical factor, according to the court, is not the employer's control over the area, but instead the fact that he caused the area to be used by his employees in performance of their assigned tasks.\textsuperscript{136}

Based on these decisions, it is likely that had Alma McMillan tripped and fallen—or even suffered a heart attack—as she proceeded through the TWA walkway on her way home after her work shift, the Pennsylvania courts would have compensated her injuries under the Act.\textsuperscript{137} The walkway connected her employer's building to the public sidewalk, and Ms. McMillan was apparently required to use the walkway in order to exit her workplace. The walkway could reasonably be considered an integral part of TWA's premises.\textsuperscript{138}

Pennsylvania courts have broadly construed the Act's requirements that, in order to be compensated for an injury suffered while not actually engaged in the employer's work: (1) the employee must be on the company premises; (2) the employee must be required to be on the premises by the nature of the work; and (3) the injury must be the result of a condition of the premises or the operation of the employer's business.\textsuperscript{139} The courts have found, in effect, that since it is unnecessary to show that an injury was caused by a negligent condition of the employer's premises in order to be compensable under the Act, it is unnecessary to show that the injury resulted from any condition of the premises at all.\textsuperscript{140} It is no longer necessary to show that the injury was caused by some operation of the employer's business.\textsuperscript{141} It is enough to show that the

\textsuperscript{134} Id at 1166.
\textsuperscript{135} Id.
\textsuperscript{136} Id at 1167.
\textsuperscript{138} See Shaffer v Somerset County Hosp., 205 Pa Super 419, 211 A2d 49 (1965), and note 117 and accompanying text.
\textsuperscript{140} See WCAB v United States Steel Corp., 31 Pa Commw 329, 376 A2d 271 (1977), and note 121 and accompanying text.
\textsuperscript{141} See WCAB v U. S. Steel Corp., note 121 and accompanying text.
employer caused the area to be used by his employees in performance of their assigned tasks. This construction virtually ignores the language in the Act, and flies in the face of the accepted rules of statutory construction requiring that all provisions of a statute must be read and given meaning.

As Justice Stapleton argues in the dissent in McMillan, the Pennsylvania legislature purposefully required that an injury must result from a condition of the premises or the operation of the business in order to be compensable under the Act. The legislators included that language in order to require some causal connection between the employer's business and the injury. Thus, it may be argued that the Pennsylvania courts have construed Section 411(1) of the Act too broadly by disregarding the requirement that an employee who is injured while not actually furthering her employer's business must show that the injury is the result of some (albeit not necessarily negligent) condition of the premises or the operation of the business. Nevertheless, the Pennsylvania courts' previous decisions discussed above would clearly support an argument that, had Ms. McMillan fallen or suffered a heart attack while proceeding through the walkway after work, her injuries would have been found compensable by a court interpreting the Act.

But Ms. McMillan did not suffer a heart attack. She was stabbed by her estranged husband. The Act expressly excludes compensation for injuries intentionally caused by a third person for personal reasons. For that reason, Ms. McMillan's beneficiaries did not seek to recover Workmen's Compensation; rather, they sought benefits under an insurance contract issued by State Mutual in favor of Ms. McMillan. Since the beneficiaries' cause of action was not a Workmen's Compensation claim, it is arguable that the Third Circuit Court of Appeals relied too heavily on decisions interpreting the Act when interpreting the insurance contract.

Ms. McMillan's group life insurance contract was separate and distinct from the Act. That policy provided, inter alia, a Hazard F provision to pay Ms. McMillan's beneficiaries $100,000 in the event

142. See Epler v North Am. Rockwell Corp., 482 Pa 391, 393 A2d 1163 (1978), and note 125 and accompanying text.
143. McMillan, 922 F2d at 1080.
144. Id.
147. McMillan, 922 F2d at 1078.
of her death resulting from "a felonious assault while on authorized business of [TWA].\textsuperscript{148} While the appellate court is correct in its assessment that, under Pennsylvania law, ambiguous terms in an insurance contract should be construed in favor of the insured,\textsuperscript{149} the court may have passed too swiftly over the reasons for this policy.

Ambiguous terms are construed in favor of the insured in order to protect the reasonable expectations of the consumer purchaser.\textsuperscript{150} In short, the earliest decisions were based on the principle that it is unconscionable to allow an insurance company to sell an innocent consumer an insurance contract that, through ambiguous and confusing terms, excludes coverage for the very situation that the purchaser intended to insure.\textsuperscript{151} But if the terms of the contract are clear and unambiguous, the intent of the parties, as manifested in the language of the contract, is controlling.\textsuperscript{152} Thus, the Pennsylvania courts do not attempt to protect the insurance purchaser under any and all circumstances,\textsuperscript{153} but rather they seek to ensure that the consumer gets what she reasonably expected she purchased.\textsuperscript{154}

In deciding the McMillan case, the Third Circuit seemed to overlook the obvious purpose of the Hazard F provision, disregard many of the facts in the case, and ignore what the parties' reasonable expectations would have been in the circumstances. The court focused on the fact that, at the time of her death, Ms. McMillan was on her employer's premises, and that she was required to be there at that time because of her employer's work schedule. The court thus decided that Ms. McMillan was on authorized business when she was stabbed, and so her beneficiaries should receive the benefit under the Hazard F provision. The Third Circuit Court of

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\item[148.] Id at 1074.
\item[149.] See note 69 for a history of Pennsylvania cases holding that ambiguous terms in an insurance contract must be construed in favor of the insured and against the insurer.
\item[150.] See discussion of Collister v Nationwide Life Ins. Co., 479 Pa 597, 388 A2d 1346 (1978), in note 68, holding that courts should be concerned with assuring that the insurance purchasing public's reasonable expectations are fulfilled.
\item[151.] Armon v Aetna Casualty & Surety Co., 369 Pa 465, 87 A2d 302 (1952), held: "Where an insurance policy is reasonably susceptible of two interpretations, it is to be construed in favor of the insured in order not to defeat, without plain necessity, the claim to indemnity which it was the insured's object to obtain." Armon, 87 A2d at 303. See note 67.
\item[152.] Moore v Stevens Coal Co., 315 Pa 565, 173 A 661 (1934). See note 65.
\item[154.] See note 69.
\end{itemize}
Appeals seems to have disregarded two important facts: Ms. McMillan’s assailant was her estranged husband, and she was assaulted for purely personal reasons entirely unrelated to her employment with TWA.

One might reasonably expect a provision such as the Hazard F to be included in a group life insurance policy issued in favor of airline employees, in order to provide special compensation for beneficiaries in the event that the employee is killed by a terrorist, a highjacker, an irate customer, or an emotionally disturbed passenger. Due to the nature of their employment, airline employees may be exposed to this type of danger more frequently than others, and it is certainly reasonable that their group life insurance would include a provision covering that peculiar risk. If Ms. McMillan has been attacked by such an assailant—or even a stranger who stalked the TWA walkway waiting for any person who entered—Ms. McMillan’s beneficiaries could reasonably contend that her death was a result of her employment. She would have been exposed to the attack because her employment “placed” her on the walkway at the time of the attack. But the facts of the case show that Ms. McMillan was not exposed to the assault for any reason remotely related to her employment: she was exposed to the assault because she married (or, perhaps, wished to divorce) her estranged husband. It is likely that Ms. McMillan’s estranged husband would have found and killed her elsewhere, had he not found her on the TWA walkway that evening.

A reasonable consumer would not expect that a provision of an insurance policy covering a “felonious assault . . . while on authorized business” would cover non-business-related domestic violence that happened to occur on the employer’s premises. There was no evidence presented to indicate that Ms. McMillan actually anticipated or expected that the provision would cover domestic violence, or that she participated in the group life insurance policy even partially to secure coverage against such an attack. It is not likely that Ms. McMillan’s (or TWA’s) reasonable expectations would have been thwarted had the court denied recovery for domestic violence under the Hazard F provision.

By broadly construing the terms “on authorized business” to include domestic violence occurring on an employer’s premises, the Third Circuit Court of Appeals is clearly warning insurance companies to be precisely, perhaps excruciatingly, specific about which circumstances will be covered by a particular policy provision and which will not be covered. While this increased specificity might
appear to be favorable to the consumer at first glance, it is likely to be a double-edged sword.

First, excruciating specificity is likely to make already-complicated insurance contracts even more confusing to the average reader. The average consumer will be discouraged from reading the insurance policy, and will thereby be placed at a greater risk that his expectations may be thwarted by unambiguous terms that he did not read.

Secondly, insurance company lawyers will undoubtedly redouble their efforts to write clear, unambiguous terms that severely limit any contract provision that might (otherwise) have been susceptible to over-broad interpretation by the courts. Since insurance contracts are designed to protect against unknown, future events, it is impossible for the insurance company or the insurance purchaser to guess exactly what the circumstances of any future claim might be. Flexibility in the interpretation of insurance provisions after the claim-producing event occurs is necessary to ensure that the consumer's reasonable expectations are fulfilled. This is among the reasons why the courts have traditionally ruled in favor of any "reasonable construction" of "ambiguous" terms offered by the insured. But if insurance lawyers must draft precise, specifically limited provisions to prevent possible over-broad construction, they will leave no room for interpretation. The specific, scrupulously "unambiguous" terms of the policy will control, and any flexibility of "reasonable construction" once enjoyed by insurance purchasers will be lost. The terms of the policy will be painfully clear—but future events will remain, just as painfully, unknown.

The courts must be careful not to overburden insurance companies in their zeal to favor consumers. As the majority in McMillan readily admits, insurance companies have the ability to write policy provisions to accomplish their own purposes. Over-broad policy constructions that stretch the bounds of reasonable interpretation will encourage them to do just that. When insurance companies write excruciatingly precise policy provisions, insurance purchasers may know exactly which circumstances are covered and which are not, and they may get exactly what they pay for. However, that purchase will offer little comfort or security since con-

155. McMillan, 922 F2d at 1077.
sumers will just have to hope that unknown, future events will fit into the specific, narrow, and carefully limited provisions of their insurance contracts.

Ann E. Rice