UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

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| Case No. | 2:21-cv-00716-RGK-AFM | Date | March 31, 2022 |
| Title | ***Lilly Miller v. UNUM Life Insurance Company of America, et al.*** | | |

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| Present: The Honorable | R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE | |
| Joseph Remigio | Not Reported | N/A |
| Deputy Clerk | Court Reporter / Recorder | Tape No. |
| Attorneys Present for Plaintiff: | Attorneys Present for Defendant: | |
| Not Present | Not Present | |

**Proceedings:** **(IN CHAMBERS) Order Re: Court Trial**

## I. INTRODUCTION

On January 26, 2021, Lilly Miller ("Plaintiff") filed a complaint against Unum Life Insurance Company of America ("Defendant") and Global Paratransit, Inc.[1] (ECF No. 1.) The action arises out of Defendant's denial of Plaintiff's claim for benefits under an Accidental Death and Dismemberment ("AD&D") Plan that Defendant issued and administered. Plaintiff seeks to enforce her rights under the Employee Retirement Income Security Act of 1974 ("ERISA").

The parties have submitted their trial briefs to the Court for a bench trial. (ECF Nos. 36, 37, 41, 42.) For the following reasons, the Court grants judgment in favor of Plaintiff.

## II. RELEVANT PLAN PROVISIONS

Plaintiff claims that she, as the surviving beneficiary of her son Ali Miller ("Miller"), was unfairly denied AD&D benefits. Miller participated in an employee benefit plan (the "Plan") offered by his employer, Global Paratransit, and funded by a group policy (the "Policy") issued by Defendant. (Administrative Record (hereafter, "AR") 28–78, ECF No. 40-1.) The Plan provided Miller $50,000 of life insurance and $50,000 of AD&D insurance. (AR 31.) The Policy is governed by ERISA. 29 U.S.C. §§ 1001 *et seq.*

[1] The parties stipulated to a dismissal of Global Paratransit, Inc. on February 16, 2021, stating that "Unum is responsible for payment of any and all AD&D benefits that may be due to Plaintiff under the Policy, as well as any judgment requiring the payment of benefits under the Policy, and attorneys' fees and costs, if awarded." (ECF No. 13.)

The Policy has several coverage exclusions. At issue here is an exclusion for "accidental losses caused by, contributed to by, or resulting from . . . an attempt to commit or commission of a crime" (the "Crime Exclusion"). (AR 62.) The Policy includes a Glossary, but the Glossary does not define the term "crime." (*See* AR 66–68.)

## III. FINDINGS OF FACT[2]

The following facts are based on the administrative record.

### 1. *Miller's Accident*

Plaintiff's claim for AD&D benefits arose from her son Miller's unfortunate death in a motorcycle accident. On July 12, 2019, Miller was driving his motorcycle and collided with a Toyota Camry that was attempting a left-hand turn into his path of travel. (AR 307, 317.) After the accident, the California Highway Patrol ("CHP") prepared a Traffic Collision Report (the "TRC Report"). Included in the TRC Report was a speed analysis based on footage from surveillance cameras and a nearby Tesla vehicle that captured the accident. (AR 303–04.) The speed analysis determined that Miller was travelling between 58 and 63 miles per hour at the time of the accident. (*See* AR 426, 436, 447, 454, 467, 478.) The speed limit on that portion of the road is 35 miles per hour. (*See* AR 197.) Accordingly, Miller was travelling nearly 30 miles per hour over the speed limit at the time of the accident. In a supplemental report, CHP noted that if Miller had travelled at the speed limit, the accident would not have occurred. (AR 484.)

### 2. *Defendant's Denial of Coverage*

In October 2019, Plaintiff filed her claim for both life and AD&D benefits. (AR 17–20.) While Defendant paid the $50,000 life insurance benefit, it determined that the Crime Exclusion precluded AD&D benefits. (AR 196–200.) Specifically, Defendant informed Plaintiff that Miller's "actions of driving at a speed greater than the posted speed limit contributed to the accident. According to the police report, he was in violation of a California Vehicle Code which is considered a crime in the state of California." (AR 197.)

Plaintiff thereafter appealed Defendant's denial of AD&D benefits, arguing that it was improper for Defendant to apply the Crime Exclusion to a traffic infraction, since a traffic infraction is not

[2] This opinion serves as the findings of fact and conclusions of law required by Federal Rule of Civil Procedure ("Rule") 52. Fed. R. Civ. P. 52. Any finding of fact that actually constitutes a conclusion of law is adopted as such, and vice-versa.

generally considered to be a crime. (AR 249–54.) She also argued that a review of the complete police report indicated that the driver of the Toyota Camry was primarily at fault for the accident due to her failure to yield to oncoming traffic. (AR 282.) Defendant denied Plaintiff's benefits appeal, again citing to the Crime Exclusion. (AR 738–42.)

## IV. CONCLUSIONS OF LAW

The parties dispute whether Defendant correctly denied Plaintiff AD&D benefits under the Crime Exclusion. Defendant believes that the Crime Exclusion unambiguously applies to speeding, whereas Plaintiff argues that the provision is ambiguous and thus should be interpreted against Defendant, the drafter of the Policy.

### 1. *Jurisdiction*

The Court has jurisdiction over this ERISA matter pursuant to 28 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

### 2. *Judicial Standard*

Under 29 U.S.C. § 1132(a)(1)(B), a disability plan participant may bring a civil action to recover benefits under the terms of the plan. 29 U.S.C. § 1132(a)(1)(B). A "participant" is an employee or their beneficiary who is eligible for a benefit under an employee welfare benefit plan. 29 U.S.C. §§ 1002(7), 1002(3). A plan administrator's benefit determination is reviewed *de novo*, unless the benefit gives the plan administrator discretionary authority to determine eligibility for benefits or to construe the terms of the plan. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Here, the parties stipulated prior to trial that the standard of review for this matter is *de novo*. (*See* Order re Joint Stipulation re Standard of Review, ECF No. 27.) When *de novo* review applies, the court "proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits." *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963–64 (9th Cir. 2006). The administrator's decision is given no deference; the court "determines in the first instance if the" benefits denial was correct. *Muniz v. Amec Const. Mgmt. Inc.*, 623 F.3d 1290, 1295–96 (9th Cir. 2010).

### 3. *Discussion*

#### *a. ERISA Policy Interpretation Principles*

The question presented by the parties is one of interpretation: whether the word "crime" in the Crime Exclusion includes a traffic infraction like speeding. Interpretation of an ERISA insurance policy is "governed by a uniform body of federal law." *Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437, 1441 (9th

Cir. 1990). Federal common law requires the court to "interpret terms in ERISA insurance policies in an ordinary and popular sense as would a person of average intelligence and experience [in the beneficiary's position]." *Babikian v. Paul Revere Life Ins. Co.*, 63 F.3d 837, 840 (9th Cir. 1995). If, after review, the court determines that "two reasonable and fair interpretations are possible, an ambiguity exists." *Evanston Ins. Co. v. Fred A. Tucker & Co., Inc.*, 872 F. 2d 278, 279 (9th Cir. 1989). The court should "not artificially create ambiguity where none exists. If a reasonable interpretation favors the insurer and any other interpretation would be strained, no compulsion exists to torture or twist the language of the policy." *Evans*, 916 F.2d at 1441.

Where an ambiguity exists, the court "must resolve it in favor of the insured." *Babikian*, 63 F.3d at 840. This is because insurance policies are "almost always drafted by specialists employed by the insurer," and the "insurer should be expected to set forth any limitations on its liability clearly enough for a common layperson to understand." *Kunin v. Benefit Trust Life Ins. Co.*, 910 F.2d 534, 538–39 (9th Cir. 1990). If the insurer does not make its liability limitations clear, "it should not be allowed to take advantage of the very ambiguities that it could have prevented with greater diligence." *Id.* at 540.

*b. Interpretation of the Crime Exclusion*

The Crime Exclusion states that Miller's plan "does not cover any accidental losses caused by, contributed to by, or resulting from . . . an attempt to commit or commission of a crime." (AR 782.) Defendant proffers two primary arguments for why the Crime Exclusion unambiguously incorporates speeding: (1) that speeding is, in fact, a crime under California law[3]; and (2) that dictionaries define crime as any "illegal act for which someone can be punished by the government." (*See* Def.'s Opening Trial Br. at 10, ECF No. 37.) Plaintiff does not (indeed, cannot) dispute that speeding is a crime in California. Rather, she argues that the statutory definition does not control when interpreting an insurance contract. Instead, the court must determine whether an insured "person of average intelligence and experience" would consider speeding a crime. *Babikian*, 63 F.3d at 840. She argues that the average insured would not, and therefore the Crime Exclusion is ambiguous.

The Court agrees with Plaintiff and finds that, as applied to speeding, the term "crime" is amenable to at least two "reasonable and fair interpretations." *Evanston Ins. Co.*, 782 F.2d at 279.

[3] California Vehicle Code § 22350 provides that "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property." A violation of Section 22350 is punishable by a fine. *See* Cal. Veh. Code § 42001. Finally, California law defines a crime as "[A]n act committed . . . in violation of a law . . . and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine." Cal. Penal Code § 15. Because speeding is a violation of the law punishable by a fine, it is definitionally a crime in California.

Unlike numerous other terms in the Policy—including terms that provide the basis for other Policy Exclusions—the word "crime" is not explicitly defined. (*See* AR 66–68 (defining terms such as "Intoxicated," "Injury," and "Sickness").) And Defendant is not entitled to rely on the fact that speeding is statutorily defined as a crime in California, especially where unearthing the statutory definition requires cross-referencing three distinct sections of the California Vehicle and Penal Codes. *See* Cal. Veh. Code §§ 22350, 42001; Cal. Penal Code § 15. The insured should not be expected to parse through multiple statutes or "consult a long line of case law or law review articles and treatises to determine the coverage he or she is purchasing under an insurance policy. Policy language should be given its plain meaning, unless a technical meaning is provided in the insurance policy." *Walker v. Metro. Life Ins. Co.*, 24 F. Supp. 2d 775, 780 (E.D. Mich. 1997). Without a definition in the Policy, the term "crime" could reasonably be interpreted either broadly—as covering all possible minor and severe violations of both California's Penal and Vehicle Code—or more narrowly, to apply only to violations of the Penal Code.

Defendant's own claims manuals emphasize the point. Around 2016, Defendant distributed a claims manual stating that the "'[a]ttempt to commit' or 'commission' policy language was not intended to apply to activities which would generally be classified as traffic violations." (AR 254.) Before Miller's death, Defendant removed this language from its operative claims manual. (*See* Order re Contents of Claims Manual, ECF No. 35.) Despite this change, Defendant did not adjust the Policy itself. While a claims manual is not part of the Policy and is "peripheral to any interpretation of the Plan," *Wade v. Life Ins. Co. of N. Am.*, 271 F. Supp. 2d 307, 324 (D. Me. 2003), it is a useful tool here to demonstrate ambiguity. Although the Crime Exclusion Policy language never changed, Defendant changed its mind internally as to whether that language applied to traffic infractions—seemingly proof positive that, even to Defendant, the Policy's language is open to at least two reasonable interpretations.

Defendant proffers several arguments against ambiguity, all of which are unavailing. Defendant points to a definition of "crime" in Merriam-Webster's online dictionary that purportedly demonstrates that the word has just one common application: "an illegal act for which someone can be punished by the government." *See* Merriam Webster, "Crime" (last visited March 21, 2022), https://www.merriam-webster.com/dictionary/crime. But Defendant ignores the alternative definitions in its own source. For example, the above "illegal act" definition is clarified with: "*especially*: a gross violation of the law." *Id.* And an alternative definition is, "a grave offense especially against morality." *Id.* Rather than help Defendant, Merriam-Webster demonstrates that the term is easily susceptible to multiple interpretations—and perhaps even shows that the term is more commonly associated with "serious" offenses such as burglary, assault, or murder.

Defendant also cites to several courts that have affirmed its interpretation of the Crime Exclusion language as applied to speeding and argues that this Court should do the same. *See, e.g.*, *Boyer v. Schneider Electric Holdings*, 993 F.3d 578 (8th Cir. 2021); *Caldwell v. Unum Life Ins. Co. of Am.*, 786

Fed. App'x 816 (10th Cir. 2019); *Oomrigar v. Unum Life Ins. Co. of Am.*, 2017 WL 3913277 (D. Utah Sep. 6, 2017). But Defendant ignores a key fact: all three courts analyzed the Crime Exclusion under the abuse of discretion standard, a deferential standard of review that asks merely whether an insurer's benefits denial was "arbitrary and capricious." *See, e.g.*, *Caldwell*, 786 Fed. App'x at 818. By contrast, this Court's review is *de novo*. District courts that have reviewed Defendant's Crime Exclusion *de novo* have found that the term is ambiguous as to speeding. *See, e.g.*, *Fulkerson v. Unum Life Ins. Co. of Am.*, 2021 WL 1214683, at *5–6 (N.D. Ohio March 31, 2021). Further, other courts that have grappled with the word "crime" (both within the ERISA context and without) have determined that, standing alone, the term is ambiguous. *See, e.g.*, *United States v. Stitt*, 139 S. Ct. 399, 405 (2018) (finding that, as pertains to the Armed Career Criminal Act, "the word 'crime' itself[] is ambiguous."); *Am. Family Life Assurance Co. v. Bilyeau*, 921 F.2d 87, 89–90 (6th Cir. 1990) (finding "the contractual language regarding commission of a crime" ambiguous); *Stamp v. Metro. Life Ins.*, 466 F. Supp. 2d 422, 429 (D.R.I. 2006) (holding that the term "serious crime" in an ERISA plan is ambiguous).

Because it is unclear whether the Crime Exclusion should be read broadly or narrowly (or somewhere in between), the Court concludes that it is ambiguous. Therefore, it must construe the ambiguity strictly against the insurer. Accordingly, the Court finds that Defendant improperly included speeding within the ambit of the Crime Exclusion, and thus improperly denied Plaintiff's AD&D benefit claim.

## V. CONCLUSION

For the foregoing reasons, the Court **ENTERS JUDGMENT FOR PLAINTIFF.** Plaintiff is instructed to file a proposed judgment that accords with this Order by **April 8, 2022**.

**IT IS SO ORDERED.**

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