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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2355-12T3

SHERRY CLEMENTE, individually and as Administratrix of the ESTATE OF ANTHONY CLEMENTE,

Plaintiff,

v.

NEW JERSEY TRANSIT, NEW JERSEY TRANSIT RAIL OPERATIONS, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Defendants,

and

NEW JERSEY TRANSIT and NEW JERSEY TRANSIT RAIL OPERATIONS,

Defendants/Third-Party Plaintiffs-Respondents,

v.

BEAVER CONCRETE CONSTRUCTION COMPANY, INC., TNT EQUIPMENT SALES & RENTALS, INC., ACE FIRE UNDERWRITERS INSURANCE COMPANY, QBE INSURANCE CORPORATION, ACE PROPERTY & CASUALTY INSURANCE COMPANY, and WILLIS OF NEW JERSEY INC.,

Third-Party Defendants,

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Third-Party Defendant/
Appellant,

and

NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Second Third-Party Defendant/
Plaintiff,

v.

QBE INSURANCE CORPORATION and
INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Second Third-Party Defendants.

Argued October 13, 2015 – Decided November 12, 2015

Before Judges Simonelli, Carroll, and Sumners.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-8977-08.

Paula M. Carstensen (Nicolaides Fink Thorpe Michaelides Sullivan LLP) of the Illinois bar, admitted pro hac vice, argued the cause for appellant (Riker Danzig Scherer Hyland & Perretti, LLP and Ms. Carstensen, attorneys; Michael J. Rossignol, of counsel and on the brief, Ms. Carstensen, Barbara I. Michaelides, of the Illinois bar, admitted pro hac vice, and Anthony J. Zarillo, Jr., on the brief).

William H. Mergner, Jr. argued the cause for respondent (Leary, Bride, Tinker & Moran, P.C., attorneys; Mr. Mergner, on the brief, Peter M. Bouton, of counsel and on the brief).

PER CURIAM

This insurance coverage dispute has its genesis in the tragic workplace death of Anthony Clemente. Clemente was working on a bridge on property owned by respondents New Jersey Transit and New Jersey Transit Rail Operations (collectively, "NJT"). He was performing bridge work while in a platform scissor lift mounted on a GMC truck when he was killed by an arc of electricity from overhead wires. At the time of the accident, Clemente was employed by Beaver Concrete Construction Company (Beaver). Beaver had been retained by the New Jersey Department of Transportation (DOT) to perform construction work near NJT's Morristown rail line in Newark.

Clemente's widow, Sherry Clemente (plaintiff), filed a wrongful death and survival action against NJT and DOT alleging negligence in failing to maintain a safe worksite. NJT and DOT then impleaded Beaver and Beaver's insurers, QBE Insurance Corporation (QBE) and appellant Insurance Company of the State of Pennsylvania (ICSOP). QBE had issued two policies to Beaver: a primary commercial general liability (CGL) policy, and a primary commercial automobile (auto) policy. Each policy had a $1,000,000 limit. ICSOP issued Beaver an excess liability policy with limits of $9,000,000. The ICSOP policy follows form to the QBE policies' terms, definitions, conditions, and exclusions, unless otherwise provided.

Pertinent to this appeal, NJT sought coverage as an additional insured under the excess follow-form auto policy that ICSOP had issued to Beaver. The underlying QBE auto policy extends additional insured status to permissive users of Beaver's automobiles, and NJT asserted that it fell within this category.

ICSOP, in turn, impleaded NJT's insurers, Traveler's Insurance Company (Travelers); and NJT's captive insurer, ARH III Insurance Company (ARH III). ICSOP contended that if it was required to indemnify NJT, then the Travelers and ARH III policies should share in the loss. NJT maintains a primary $2,000,000 per-occurrence railroad protective policy with Travelers. NJT also set up and maintains its own captive insurer, ARH III, which issued "Deductible Reimbursement Coverage" to NJT. This coverage reimburses deductible expenditures actually made by NJT between $5,000,000 and $10,000,000 if NJT pays an amount in that range from its self-insured retention (SIR). NJT also maintains liability insurance with Lexington Insurance Company (Lexington) that includes a $10,000,000 deductible/SIR, which NJT itself must pay before any coverage under the Lexington policy is triggered. The ICSOP, Lexington, and ARH III policies each contain varying forms of "other insurance" clauses that purport to make their coverage excess to other available coverage.

Following discovery, NJT, DOT, QBE, and ICSOP filed cross-motions for summary judgment regarding the insurers' duties. The trial court entered orders on March 9 and March 25, 2011, declaring that NJT was entitled to coverage under the QBE underlying auto policy and the ICSOP excess policy that each insurer issued to Beaver.[1] The court found that the "hi-rail" vehicle involved in the accident qualified as an "auto" under QBE's auto policy. The court further found that NJT was a permitted user of the vehicle by virtue of "the manner in which [NJT] was overseeing and protecting the [h]i-[r]ail vehicle on NJT property from the hazards of passing trains and high-voltage catenary wires." On June 2 and June 10, 2011, the court entered further orders granting NJT's motion that ICSOP indemnify it under the excess follow-form policy, and denying ICSOP's cross-motion for summary judgment and dismissal of NJT's third-party complaint.

On June 24, 2011, the court granted summary judgment to DOT on plaintiff's claims. DOT then voluntarily dismissed its third-party claims for indemnification against QBE and ICSOP. Thereafter, plaintiff and the remaining parties agreed on a

[1] The court also found that DOT was entitled to coverage under an exception to the auto exclusion of the CGL policy. All claims involving DOT were later resolved. Thus, the court's ruling with respect to the CGL policy is not the subject of this appeal, and we express no opinion regarding its correctness.

$10,000,000 settlement, funded as follows: $2,000,000 from Travelers; $1,000,000 from the QBE auto policy; $3,000,000 from the ICSOP excess policy; and $4,000,000 from NJT.

Pursuant to the settlement, ICSOP reserved its right to recoup all or part of its $3,000,000 contribution from NJT or ARH III if it ultimately succeeded on appeal in reversing the trial court's coverage rulings. NJT likewise reserved its right to recoup its $4,000,000 contribution from ICSOP. Both NJT and ICSOP reserved the right to litigate the issue of priority of coverage. QBE subsequently settled with NJT and paid the full limits of the auto insurance policy. QBE has not appealed.

NJT and ICSOP filed cross-motions for summary judgment seeking to determine the priority of coverage. After considering oral argument, the trial court concluded that NJT was not required to contribute its SIR to the settlement. Consequently, the ARH III $5,000,000 fronting policy was not triggered. The judge then allocated payment of the settlement as follows: (1) $2,000,000 from Travelers; (2) $1,000,000 from QBE's auto policy; and (3) $7,000,000 from ICSOP's excess policy. The court also assessed attorney's fees and costs against ICSOP in favor of NJT as the successful claimant in an insurance coverage action, pursuant to Rule 4:42-9(a)(6). This appeal by ICSOP followed and relates solely to its coverage dispute with NJT and ARH III.

On appeal, ICSOP argues that, since Clemente's injury arose out of his operation of a lifting device attached to the vehicle, it is excluded from coverage under the QBE auto policy, to which ICSOP's excess policy follows form. ICSOP further argues that NJT does not qualify as an additional insured under the auto policy because it did not exert active or actual control over the scissor-lift truck when the incident occurred. Alternatively, ICSOP argues that, even if coverage attaches, the trial court erred in declining to order NJT's self-insurance to contribute to the settlement of plaintiff's claim.

We review a grant of summary judgment under the same standard as the motion judge. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). We must determine whether there are any genuine issues of material fact when the evidence is viewed in the light most favorable to the non-moving party. Id. at 38, 41. "The inquiry is 'whether the evidence presents a sufficient disagreement to require submission to a [finder of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). "[T]he legal conclusions undergirding the summary judgment motion itself" are reviewed "on a plenary de novo basis."

Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

Interpretation of an insurance contract is a matter of law subject to our de novo review. Sealed Air Corp. v. Royal Indem. Co., 404 N.J. Super. 363, 375 (App. Div.), certif. denied, 196 N.J. 601 (2008). Consequently, it is generally appropriate to resolve questions of law on summary judgment. Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 473 (App. Div. 1996) (citing Weedo v. Stone-E-Brick, Inc., 155 N.J. Super. 474, 479 (App. Div. 1977), rev'd on other grounds, 81 N.J. 233 (1979)).

ICSOP first argues that the court erred in finding coverage under the auto policy rather than the CGL policy. Importantly, ICSOP concedes that the scissor lift truck that Clemente was working on when injured is an "automobile" as that term is defined in the auto policy. ICSOP's argument largely centers on its contention that the vehicle falls within the operations exclusion of the auto policy.

Under the auto policy, coverage extends to bodily injury caused by an "'accident' [] resulting from the ownership, maintenance or use of a covered 'auto.'" The types of loss excluded from coverage are set forth in the policy:

> **B. Exclusions**
>
> This insurance does not apply to any of the following:

. . . .

9. Operations

"Bodily injury" . . . arising out of the operation of any equipment listed in paragraphs 6.b. and 6.c. of the definition of "mobile equipment."

Pertinent here, paragraph 6.b. of the mobile equipment definition includes "[c]herry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers . . . ."

In arguing that the operations exclusion applies, ICSOP contends that the scissor-lift platform, mounted on the hy-rail vehicle, is akin to a "[c]herry picker[] [or] similar device." ICSOP further points out that the hy-rail was operating as a lifting device when the accident occurred.

"In considering the meaning of an insurance policy, we interpret the language 'according to its plain and ordinary meaning.'" Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010) (quoting Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992) (additional citation omitted)). "If the terms are not clear, but instead are ambiguous, they are construed against the insurer and in favor of the insured, in order to give effect to the insured's reasonable expectations." Ibid. (citations omitted). "A 'genuine ambiguity' arises only 'where the phrasing of the policy is so confusing that the average

policyholder cannot make out the boundaries of coverage.'" Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 274 (2001) (quoting Weedo, supra, 81 N.J. at 247).

"[P]olicies should be construed liberally in [the insured's] favor to the end that coverage is afforded to the full extent that any fair interpretation will allow." Id. at 273 (second alteration in the original) (citations and internal quotation marks omitted). Exclusions are generally narrowly construed, and the burden is on the insurer to bring the claim within the exclusionary language. Flomerfelt, supra, 202 N.J. at 442. Nevertheless, "[e]xclusionary clauses are presumptively valid and are enforced if they are specific, plain, clear, prominent, and not contrary to public policy." Id. at 441 (citations and internal quotation marks omitted).

Guided by these principles, we are not persuaded by ICSOP's argument that the scissor-lift platform mounted on the hy-rail vehicle is a cherry picker or similar lifting device and thus falls within the operations exclusion. As NJT aptly points out, the Occupational Safety and Health Administration (OSHA) recognizes a distinction between these two types of vehicles, and categorizes and regulates them differently. Whereas cherry pickers fall within the category of aerial lifts (29 C.F.R. § 1926.453), a platform scissor lift, such as that involved here,

more appropriately fits within the classification of a mobile scaffold (29 C.F.R. § 1926.452(w)).

A Beaver employee, Thomas Johnson, succinctly explained the difference between a cherry picker and the lifting device that was being used to perform the bridge work when Clemente suffered his tragic injury. At his deposition, Johnson testified:

> Q. Do you know . . . what a cherry picker is?
>
> A. I know what a cherry picker is.
>
> Q. Could you give us your understanding of what a cherry picker is?
>
> A. Cherry picker on a truck is what Bell Telephone . . . [or] Verizon would have, where a guy goes up in a single basket, one person or a double basket or a little confined area where they go from the deck of the truck up to a certain [] height.
>
> Q. Were you aware of whether or not any of the vehicles as you described a cherry picker were used in the Beaver project?
>
> A. There was one on the project but on this day it was not used because it was already returned. It was off rent. It was a rented vehicle. It was returned.
>
> Q. So if I understand you correctly, the cherry picker had been rented by Beaver and utilized previously and returned to the company that they rented it from?
>
> A. Correct.

Had the insurer intended to exclude the operation of all types of chassis mounted lifting devices from coverage under the

auto policy it could have easily done so. Here, however, the exclusion is limited by its express terms to "[c]herry pickers and similar devices." As noted, such exclusionary provisions are to be "strongly construed against the insurer." Westchester Fire Ins. Co. v. Cont'l Ins. Cos., 126 N.J. Super. 29, 41 (App. Div. 1973), aff'd, 65 N.J. 152 (1974). To the extent that any ambiguity exists as to which "similar devices" fall within the operations exclusion, we must resolve the ambiguity in favor of coverage. Flomerfelt, supra, 202 N.J. at 441. Applying these well-established tenets of construction, we conclude that the scissor-lift involved here is not a cherry picker or similar device. Accordingly, the trial court correctly found that coverage exists under the auto policy, as long as NJT qualifies as a "user" of the vehicle. We consider this issue next.

The QBE auto policy, to which ICSOP's excess policy follows form, defines an "insured" as the owner of a covered "auto," as well as those who use a covered auto with the insured's permission. ICSOP argues that the trial court erred in deeming NJT an additional insured under the policy because it was not actively using the hy-rail vehicle when Clemente's injury occurred. ICSOP submits that NJT's mere passive role as property owner precludes it from qualifying as an additional insured entitled to coverage.

ISCOP cites Greentree Assocs. v. U.S. Fid. & Guar. Co., 256 N.J. Super. 382 (App. Div. 1992), in support of its position. There, plaintiff Greentree was the general contractor at a large housing project. Id. at 384. Greentree retained a subcontractor to perform certain site clearing work. Ibid. During the course of the work, one of the subcontractor's employees was injured while refueling the subcontractor's vehicle. Id. at 384-85. After suit was filed, Greentree sought coverage as an additional insured under the subcontractor's business auto policy. We concluded:

> Greentree did not assume any control or direction over [the subcontractor's] vehicles or the operation of unloading the gasoline from the pickup truck and funneling it into the bulldozer. It [] therefore was not a user of those vehicles entitled to coverage as an additional insured.
>
> [Id. at 387.]

NJT argues that its assignment of three employees whose sole function was to control and directly supervise Beaver's work crew and truck while on NJT property qualifies it as a "user" of the vehicle under any reasonable construction of the auto policy. It contends that ICSOP's reliance on Greentree is misplaced, and instead cites Conduit & Found. Corp. v. Hartford Cas. Ins. Co., 329 N.J. Super. 91, 101 (App. Div.), certif. denied, 165 N.J. 135 (2000), as the controlling authority.

In Conduit, the employee of a subcontractor, Universal, was fatally injured in an automobile accident at a construction site. Id. at 93-94. At the time of the accident, construction traffic was utilizing the eastbound lane of Route 80, and Universal's vehicle, traveling eastbound, was hit by another subcontractor's vehicle traveling westbound. Id. at 97 n. 5. Universal's insurance carrier, Hartford, appealed a determination that its CGL policy provided coverage, arguing that the automobile exclusion contained in the policy precluded coverage. Id. at 94-95.

We agreed, finding that, even though the liability was generally premised on workplace negligence, the specific allegations focused on traffic supervision, an "activity entirely concerned with vehicular use." Id. at 99. The underlying personal injury litigation, and therefore, the source of the insurer's responsibility, "all came about because of bodily injuries that arose from the use of an automobile." Id. at 100. Thus, we concluded that the automobile exclusion in the Hartford CGL policy barred recovery and that the applicable policy was Universal's business automobile policy. Ibid.

In reaching that conclusion, we recognized that an injury need not be the direct and proximate result of the "use" of a vehicle to satisfy the "arising out of" element. Id. at 100-01. Rather, "to determine whether an injury arises out of the . . .

use of a motor vehicle thereby triggering automobile insurance coverage, there must be a substantial nexus between the injury suffered and the asserted negligent . . . use of the motor vehicle." Penn Nat. Ins. Co. v. Costa, 198 N.J. 229, 240 (2009). The substantial nexus test has been described as follows:

> The inquiry should be whether the negligent act which caused the injury, although not foreseen or expected, was in the contemplation of the parties to the insurance contract a natural and reasonable incident or consequence of the use of the automobile, and thus a risk against which they might reasonably expect those insured under the policy would be protected.
>
> [Westchester Fire Ins. Co., supra., 126 N.J. Super. at 38.]

Here, the essence of plaintiff's claim was that NJT was responsible for the control and supervision of the work site, which necessarily included the safe operation of Beaver's vehicles within the work area. There was clearly a substantial nexus between the injury that Clemente sustained and NJT's supervision of the movement of his vehicle in and around the area where the accident occurred.

In its interrogatory answers, ICSOP acknowledged the role that NJT personnel played at the construction site. First, ICSOP admitted that NJT employee "[Anthony Araujo] was present at the jobsite and his responsibilities related, generally, to

being a flagman [and] Messrs. Picton and Meisner were present at the jobsite and their responsibilities related, generally, to being class A linem[e]n." Second, ICSOP admitted that "on the day of the incident Messrs. Araujo, Picton and Meisner were involved in observing, supervising and/or controlling the parameters of the activities of the Beaver personnel performing work on or in the immediate vicinity of the railroad tracks and catenary wires, including the use of the Hy-Rail vehicle." Third, ICSOP concedes that at the time of the accident, NJT employee Araujo "was walking in the immediate vicinity of the accident." Fourth, ICSOP admitted that NJT provided all Beaver employees, including Clemente, with safety training while working on NJT property.

Additionally, at his deposition, Johnson testified to the role played by the NJT flagman, Araujo, with respect to the movement of Beaver's vehicles in the work area:

> Q. How would that be communicated to you?
>
> A. The flagman would tell us you can't move.
>
> Q. Once you were on the tracks and you were being told you can go from point A to point B, stay here, don't go there, were all those communications through the flagman?
>
> A. Yes. The majority of [the] time it came from him when I was allowed to move the truck.

> Q. So . . . once you were on those tracks you don't go anywhere that he doesn't let you go?
>
> A. Correct.
>
> Q. And he can tell you you can move the vehicle from point A to point B but no further[,] right?
>
> A. Correct.
>
> Q. And you had no ability to disregard where he told you you could drive that vehicle; [sic] right?
>
> A. He has the final say on the track.
>
> Q. As far as where you could go, he was in control of that when you were on the tracks?
>
> A. Yes.

During his deposition, Beaver employee Charles Proto, who was also present on the hy-rail vehicle with Clemente and Johnson, corroborated much of Johnson's testimony:

> Q. Was it your understanding that before the truck could be put on the rails . . . the flag man had to be present?
>
> A. Yes.
>
> . . . .
>
> Q. Was it typical for [the Transit flag man] to be physically in the vehicle once you got on the trucks if you were moving from one point to another?
>
> A. Yes.
>
> Q. Were there times when he was not or was that the rule?

A. No. The flag man was with us all the time.

Q. What was your understanding of the purpose that he served?

A. So I don't get hit by a train.

Q. So would it be fair to say that when that vehicle was being operated on the railroad tracks, that you were obligated to follow the directions of that flag man?

A. Yes.

Q. You couldn't go anywhere that he didn't give you permission to go. Is that right?

A. Correct.

Q. And that would have been true at all times?

A. Yes.

Q. And once you were stationary –

A. Yes.

Q. --and performing the work, was it your understanding that he would remain there in proximity to the vehicle to make sure that no trains came down into the area where your vehicle was stationary?
A. That was my understanding.

. . . .

Q. So the only way for you to get on or off those tracks would have been for somebody from [NJT] to unlock and open the gate and give you permission to move through, one way or the other?

A. Correct.

> Q. And was it your understanding on this project that from the moment that you were on those tracks until the moment you got off that in terms of your movement from place to place you were being supervised or controlled by whoever was there from [NJT]?
>
> A. Correct.

Araujo was the NJT flag man assigned to the Beaver project. He testified that on the morning of the incident, he met Beaver workers prior to their entrance onto the NJT train tracks for the purpose of informing them when there was no train travel and it was safe to traverse the area. Araujo would then escort the Beaver workers across the track to and onto the truck. Araujo further testified that "[he] was with the truck itself the whole time from the beginning to the end." After the truck stopped at the 7th Street Bridge, Araujo began to walk to the bridge entrance to close the gate when the injury to Clemente occurred.

We conclude that the record as a whole establishes that NJT actively exerted control over the Beaver vehicle to ensure its safety within the project area. Araujo traveled with the Beaver work crew in the hy-rail truck, controlled when it was permitted to enter the tracks on the day of the incident, and remained with the Beaver workers at all times. We thus find no basis to disturb the trial court's finding that NJT qualified as a "user" of the vehicle so as to invoke coverage as an additional insured under the auto policy.

Finally, ICSOP argues that even if NJT is entitled to coverage, the trial court erred in declining to order NJT's self-insurance to contribute to the $10,000,000 settlement. ICSOP asserts that because "[NJT's] self-insurance is the functional equivalent of insurance" it must share a loss with other insurance that concurrently covers the same loss. Consequently, ICSOP contends that NJT's SIR and its captive insurer's ARH III fronting policy are required to share in the $10,000,000 settlement, citing White v. Howard, 240 N.J. Super. 427 (App. Div.), certif. denied, 122 N.J. 339 (1990) (requiring a self-insured car rental agency to contribute to the settlement of a personal injury claim against a motorist with the motorist's own insurer).

Initially, we observe that NJT, as a public entity, is exempt from New Jersey's Compulsory Insurance Law, N.J.S.A. 39:6B-1 to -3. This statute requires owners of motor vehicles registered or principally garaged in New Jersey to maintain motor vehicle liability insurance coverage for at least the statutory minimum limits. Robinson v. Zorn, 430 N.J. Super. 312, 318-19 (App. Div.), certif. denied, 216 N.J. 8 (2013). NJT contends that private owners of twenty-five or more vehicles are permitted to "self-insure" if they obtain a certificate of self-insurance from the Commissioner of Insurance, N.J.S.A. 39:6-52, and that such "self-insurance" is the functional equivalent of a

primary insurance policy. In contrast, NJT submits that its SIR/deductible is considered to be "no insurance."

We find support for NJT's position in Scott v. Salerno, 297 N.J. Super. 437, 448-51 (App. Div.), certif. denied, 149 N.J. 409 (1997). There we observed:

> Rutgers [Casualty Insurance Company] contends that if it is under a duty to provide coverage for this accident, its coverage must be prorated with the coverage afforded Bally's in accordance with the "other insurance" clause contained in this policy . . . .
>
> Bally's [sic] automobile liability is insured by the National Union Fire Insurance Company (National Union) with limits of $2,000,000. Bally's [sic] retention or deductible on this policy is $150,000. In other words, the National Union policy does not come into effect with respect to any loss until the first $150,000 of the loss has been paid by Bally's. While Bally's may be viewed as a practical matter as being self-insured for the first $150,000 of any loss by virtue of the retention or deductible in the policy, this retention or deductible does not qualify as other insurance under the Rutgers policy.
>
> "Other insurance" means "'another policy of insurance covering the same risks . . . .'"
>
> [Id. at 448-49 (quoting Am. Nurses Ass'n v. Passaic Gen. Hosp., 192 N.J. Super. 486, 495 (App. Div.)) (quoting Universal Underwriters Ins. Co. v. Marriott Homes, Inc., 286 Ala. 231 (1970)), aff'd in part, rev'd in part, 98 N.J. 83 (1984)).]

In the context of the present case, where NJT is not subject to the compulsory auto insurance requirements, we find the panel's reasoning in Scott persuasive. The insurance policy that NJT purchased from Lexington explicitly provides for a $10,000,000 SIR/deductible. Thus, the Lexington policy does not provide NJT with any coverage for the first $10,000,000 of any loss. Additionally, because NJT must have paid the first $5,000,000 of its SIR itself, payment under the ARH III deductible reimbursement policy is not triggered. As a result, no "other insurance" applies, and ICSOP alone is responsible to afford coverage between $3,000,000 and $10,000,000, as the trial court correctly determined.

Affirmed.