

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JACQUELINE THIEMANN

APPELLANT,

**v.
COLUMBIA PUBLIC SCHOOL DISTRICT**

RESPONDENT.

DOCKET NUMBER WD72791

DATE: March 22, 2011

Appeal From:

Boone County Circuit Court
The Honorable Kevin M.J. Crane, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt,
Judge

Attorneys:

Walter H. Bley, Jr., Columbia, MO, for appellant.

Wilbur L. Tomlinson, St. Louis, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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JACQUELINE THIEMANN,

APPELLANT,

v.

COLUMBIA PUBLIC SCHOOL DISTRICT,

RESPONDENT.

No. WD72791

Boone County

Before Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Jacqueline Thiemann appeals from a grant of summary judgment in favor of the Columbia Public School District and from the denial of her cross-motion for summary judgment in a case involving a coverage dispute under a self-funded Medical Benefits Plan. Thiemann contends that the trial court erred because: (1) the plain terms of the Medical Benefit Plan provided coverage for her procedure; and (2) in the alternative, the Medical Benefit Plan is an ambiguous adhesion contract which must be construed against the Columbia Public School District to afford coverage.

Reversed and remanded with instructions.

(1) The inclusion of a "discretionary authority" provision in this non-ERISA Plan does not modify our standard of review in determining whether the Plan provides coverage from *de novo* to abuse of discretion.

(2) The applicable coverage provision in the Plan contains two subparts. Thiemann is not eligible for coverage under the first subpart.

(3) The term "medical condition" which appears in the second subpart of the applicable coverage provision in the Plan is not defined. We afford the term its plain and ordinary meaning, and determine that the term refers to any state or situation relating to the prevention, cure, and alleviation of disease. Thiemann suffered from a medical condition, employing this definition.

(4) Because Thiemann suffered from a medical condition which required hospitalization or anesthesia, she is eligible for coverage under the second subpart of the applicable coverage provision.

(5) We are not permitted to define the term "medical condition" to refer to a condition other than that for which treatment was sought as requested by the Columbia Public School District. The effect of such a definition would be to create an express exclusion to coverage not

currently set forth in the Plan. Missouri strictly construes exclusionary clauses against an insurer, who also bears the burden of showing that an exclusion applies.

(6) As the first and second subparts of the applicable coverage provision are separated by the word "or," a disjunctive that generally corresponds to the word "either," the Plan is obligated to afford Thiemann coverage, even though the effect of affording coverage under the second subpart is to restore coverage expressly denied Thiemann under the first subpart.

(7) Because the plain language of the Plan afforded Thiemann coverage, we need not address Thiemann's alternative claim that the Plan is ambiguous.

(8) Thiemann is entitled to a judgment affording her coverage under the Plan. However, a genuine issue of fact remains in dispute with respect to the amount of coverage or other damages to which she is entitled, requiring remand for further proceedings.

Opinion by Cynthia L. Martin, Judge

March 22, 2011

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