STATE OF MICHIGAN

COURT OF APPEALS

UNIVERSAL UNDERWRITERS INSURANCE COMPANY OF KANSAS CITY, MISSOURI,

Plaintiff-Appellant,

v No. 102801

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

Before: MacKenzie, P.J., and Beasley and M.G. Harrison,* JJ.

PER CURIAM

Plaintiff, Universal Underwriters Insurance Company of Kansas City, Missouri, appeals from an order granting summary disposition in favor of defendant, Auto Owners Insurance Company.

In this case, which involves a question of priority between two insurance carriers, the parties stipulated the record for purposes of appeal. Both parties moved for summary disposition, and the trial court granted defendant's motion under MCR 2.116(C)(10).

Plaintiff insures Village Chrysler, Inc., an automobile dealership owned by Michael Carland and James Keller. Kenneth Weller is the dealership's sales manager and also drives the dealership's tow truck, picking up impounded vehicles for both the local police department and the sheriff department. For the latter service, Weller splits commissions with the dealership. On February 8, 1986, Weller brought an impounded car into the dealership. Because it was late at night and the road conditions were icy, he drove the impounded car into the dealership garage. When the brakes on the car failed, Weller hit and largely destroyed a Sun diagnostic scope, a diagnostic computer used to detect problems with a vehicle's performance. Plaintiff paid the dealership $12,000 (less $100 deductible) for the damage to the scope. Defendant, the no-fault insurance carrier of Weller,

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* Circuit Judge, sitting on Court of Appeals by assignment.

refused plaintiff's demand for payment under MCL 500.3125; MSA 24.13125. Then plaintiff, as subrogee of the dealership, brought suit against defendant.

This case centers initially around which of the two insurers has first priority for property protection insurance benefits for the damage caused to the diagnostic scope: plaintiff, as the insurer of the dealership, or defendant, as the insurer for the operator of the uninsured motor vehicle. By statute, priority is determined as follows:

> "A person suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority: insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident." MCL 500.3125; MSA 24.13125.

Defendant claims that an exclusionary clause in its insurance policy relieves it of liability for its insured's accident. That exclusionary clause provides:

> "Coverage does not apply: * * *
> "(5) to any occurrence arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place; * * *."

The trial court believed that, for purposes of MCR 2.116(C)(10), there was not any genuine issue as to any material fact. Exclusionary clauses similar to the one at issue have been upheld and enforced by this court.[1] Neither party has contended below or on appeal that defendant's exclusionary clause is void as against public policy because it seeks to limit liability to less than that mandated by statute.[2] Instead, the parties have limited their arguments to whether the exclusionary clause applies to the facts at hand.

In reviewing exclusionary clauses, any ambiguity in the language used is to be strictly construed against the insurer.[3] Despite this policy of interpreting insurance contracts in favor of coverage for the insured, an application of plain and unambiguous language should not be ignored.[4] In reviewing the language of the exclusionary clause at issue, we believe the language is clear and unambiguous. An ambiguity was defined in Raska v Farm Bureau Ins. Co.,[5] as follows:

"Any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy. * * *

"A contract is said to be ambiguous when its words may reasonably be understood in different ways.

"If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand there is no coverage under the same circumstnaces the contract is ambiguous and should be construed against its drafter and in favor of coverage.

"Yet if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous or, indeed, fatally unclear."

Under this Raska definition, we read the exclusionary clause to lend itself to only one interpretation for exclusion under these facts, that being that coverage is refused for those occurrences arising out of the operation of a storage garage.

In the within case, the diagnostic scope was damaged when Weller was driving the car into the dealership's garage to be stored as part of the dealership's role in assisting the police in its impoundment of vehicles. Although the dealership generally only charged for its towing service, the dealership retained the impounded vehicles until those charges were paid. After five days, though, additional charges for storage would be assessed. Impoundment typically required that the vehicle be stored in the dealership's garage. Upon occasion, such as when a vehicle had to be preserved as evidence, the police would request that the dealership store the vehicle inside its garage. So, while the dealership maintained it did not run a storage garage per se, the services it provided to accommodate the police and the sheriff's departments included storing vehicles on the dealership's premises overnight and, at times, for an even lengthier period of time.

We believe that the dealership's activities relating to the towing and storage of impounded vehicles necessarily fits within the exclusion under defendant's policy of insurance for the operation of a storage garage. Thus, we conclude that there was not any error in the grant by the trial court of summary disposition in favor of defendant on this basis. Also, we believe there was not any error in denial of plaintiff's motion for summary disposition.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ William B. Beasley
/s/ Michael G. Harrison

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1 Ohio Casualty Ins. Group v Robinson, 127 Mich App 138, 140; 338 NW2d 898 (1983).

2 MCL 257.520; MSA 9.2220 and MCL 500.3121; MSA 24.13121.

3 Van Hollenbeck v Ins. Company of North America, 157 Mich App 470, 477; 403 NW2d 166 (1987), lv den 428 Mich 903 (1987).

4 The Western Fire Ins. Co. v J. R. Snyder, Inc., 76 Mich App 242, 245; 256 NW2d 451 (1977), lv den 402 Mich 822 (1977).

5 412 Mich 355, 361-362; 314 NW2d 440 (1982), reh den 412 Mich 1119 (1982).