STATE OF MICHIGAN

COURT OF APPEALS

LEAGUE GENERAL INSURANCE COMPANY,
a Michigan insurance company,

Plaintiff,

v

BUDGET RENT A CAR OF DETROIT,
PETER STRONG, DOROTHY STRONG,
CADILLAC INSURANCE COMPANY,

Defendants,

and

ST. PAUL FIRE & MARINE INSURANCE COMPANY,

Defendant-Appellee and
Cross-Plaintiff,

and

LAKE STATES MUTUAL INSURANCE COMPANY,

Defendant
Cross-Defendant Appellant,

and

MICHELLE HUMPHREY,

Defendant
Cross Defendant.

NOVEMBER 8, 1988

FOR PUBLICATION

No. 101383

Before: Gribbs, P.J., and Maher and J. L. Banks,* JJ.

PER CURIAM

Appellant Lake States Mutual Insurance Company appeals by right from an order of declaratory judgment in favor of appellee St. Paul Fire & Marine Insurance Company. This case involves questions of insurance coverage. We reverse.

The underlying facts are not in dispute. An automobile owned by Budget Rent-A-Car was rented by Dorothy Strong for use by her son, Peter Strong. The rental agreement, which was signed by Mrs. Strong, listed Peter as the only additional driver. Among numerous other exclusions, the rental agreement stated that, except for the named insured, no one under the age of twenty-one was allowed to use the rental vehicle. Budget was insured by St. Paul Insurance Company. St. Paul's insurance policy provides coverage for any person who uses a Budget automobile with Budget's permission.

Peter Strong drove the rental car to a party, where he became intoxicated. Peter gave his consent to his girlfriend, twenty-year-old Michelle Humphrey, to drive him and the car home. While Michelle was driving the car, it was involved in an accident. Both Michelle and Peter were injured.

Peter sued, seeking recovery from Budget's insurer, St. Paul, and from Michelle's insurer, Lake States. St. Paul cross-claimed against Lake States, arguing that Michelle was excluded from coverage under

*Circuit judge, sitting on the Court of Appeals by assignemnt.

St. Paul's policy because she was an unauthorized operator under the rental agreement. The trial court found that St. Paul was not Michelle Humphrey's insurer and that St. Paul had no duty to defend her against Peter Strong's claims.

Although the parties raise several issues, we believe that the pivotal question is whether all drivers who are less than twenty-one years old may be excluded from a rental agency's insurance coverage in this manner. We conclude that they may not.

As a general rule, any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy. Raska v Farm Bureau Insurance Co, 412 Mich 355; 314 NW2d 440 (1982). The owner of a motor vehicle is not ordinarily liable for any injury occasioned by the negligent operation of his motor vehicle unless the vehicle is being driven with his express or implied consent or knowledge. MCL 257.401; MSA 9.2101. See also Detroit Inter-Insurance Exchange v Swift, 11 Mich App 166, 169; 160 NW2d 738 (1968).

However, in this case we believe that St. Paul has attempted to circumvent the purpose of the No-Fault Act by indirectly excluding whole classes of unnamed drivers who could not be directly excluded from coverage.

Our Supreme Court has explained the legislative intent behind the no-fault statute in some detail. See State Farm v Ruuska, 412 Mich 321, 335-337; 314 NW2d 184 (1982). When an accident occurs in this state, the scope of the liability coverage required in an insurance policy is determined by Michigan's financial responsibility act, MCL 257.501 et seq; MSA 9.2201 et seq. State Farm v Ruuska, 90 Mich App 767, 772; 282 NW2d 472 (1979), aff'd 412 Mich 321; 314 NW2d 184 (1982).

The Financial Responsibility Act indicates a broad requirement of liability insurance. Where an insurance policy contains an exclusionary clause that was not contemplated by the Legislature, that clause is invalid and unenforceable. Irvine, 92 Mich App at 373-374.

Liability coverage may be excluded when a vehicle is operated by a named person. MCL 257.520; MSA 9.2220. Ruuska, 412 Mich at 337; DAIIE v Irvine, 92 Mich App 371, 375; 284 NW2d 535 (1979), lv den 407 Mich 963 (1980). However, an exclusionary provision that excludes coverage of any driver under 25 years of age is contrary to public policy and therefore invalid. Cadillac Mutual Insurance Co v Bell, 50 Mich App 144; 212 NW2d 816 (1973)

Here, the policy language ostensibly covers anyone who drives a rental car with Budget's consent. However, we do not doubt that St. Paul gave Budget a lower rate because of the extensive list of excluded drivers. Nor is there any doubt that St. Paul is the real party in interest in this matter, as evidenced by this suit, since St. Paul is the one who stands to benefit from enforcement of these exclusions.

Michigan courts take a dim view of exclusion clauses which would operate to violate the public policy of the financial responsibility act. Tahash v Flint Dodge Co, 115 Mich App 471, 476; 321 NW2d 698 (1982), lv den 418 Mich 878 (1983). Here the exclusion is implicit in the coverage offered by St. Paul. Equity will not permit that to be done by indirection which, because of public policy, cannot be done directly. Daley v City of Melvindale, 271 Mich 431, 436; 260 NW 898 (1935); Corkins v Ritter, 326 Mich 563, 568; 40 NW2d 726 (1950).

The law in Michigan clearly forbids the implicit exclusion from an insurance policy of an entire class of unnamed drivers. Bell, 144 Mich App at 146. Moreover, there are policy considerations in favor of insuring good samaritan drivers who come to the aid of those disabled by intoxication or sickness. For these reasons, we are unable to countenance St. Paul's attempt to exclude Michelle Humphrey from coverage under Budget's policy. We conclude that St. Paul was, in fact, Ms. Humphrey's insurer and reverse the decision of the lower court.

Reversed.

/s/ Roman S. Gribbs
/s/ Richard M. Maher
/s/ James L. Banks