

STATE OF MICHIGAN  
COURT OF APPEALS

ALVIN J. CONRAD and EVELYN CONRAD,

Plaintiffs-Appellees,

v

AUTO CLUB INSURANCE ASSOCIATION  
a/k/a AAA MICHIGAN,

Defendant-Appellant.

June 20, 1989

FOR PUBLICATION

No. 106439

Before: Wahls, P.J., and Reilly and G. S. Allen,\* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's grant of summary disposition to plaintiffs and the denial of defendant's motion for similar relief. Defendant asserts that the trial court erred in concluding that defendant could not deduct plaintiff's workers' compensation benefits from the personal protection insurance benefits defendant was otherwise obligated to pay plaintiff under an insurance contract. We agree and reverse.

Plaintiffs purchased a no-fault automobile liability policy from defendant which specifically provided for noncoordinated personal protection insurance (PIP) benefits. Thereafter, plaintiff Evelyn Conrad was injured at a car wash when she was pinned between two automobiles during the course of her employment. In addition to her receipt of workers' compensation benefits, Mrs. Conrad also filed a claim with defendant for PIP benefits. Although defendant paid the claim, defendant deducted a set-off equal to the amount of the workers' compensation benefits.

Plaintiffs subsequently filed the instant action to recover the set-off amount and both parties then moved for summary disposition under MCR 2.116(C)(10). Without detailing its reasoning, the trial court granted summary disposition to plaintiffs. However, the record indicates that the trial court apparently concluded that defendant had waived its right to a set-off by charging plaintiff a higher premium for the noncoordinated PIP benefits. Having reviewed the underlying contract, we now conclude that this decision was error.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. Brackens v Detroit Osteopathic Hospital, 174 Mich App 290, 292; \_\_\_ NW2d \_\_\_ (1989). Giving the benefit of all reasonable doubt to the opposing party, the court will grant the motion only if it is impossible for the claim or defense to be supported at trial because of a deficiency which cannot be overcome. Brackens, supra; Rizzo v Kretschmer, 389 Mich 363, 371-373; 207 NW2d 316 (1973). In the instant case, the validity of the parties' respective claims is determined by the terms of the underlying insurance contract. See Hagerl v Auto Club Group Insurance Co, 157 Mich App 684; 403 NW2d 197, lv den 428 Mich 900 (1987). In examining that policy we are mindful that any clause is valid provided it is clear, unambiguous and consistent with public policy. Auto-Owners Insurance Company v Farm Bureau Mutual Insurance Company, 171 Mich App 46, 53; 429 NW2d 637 (1988); Raska v Farm Bureau Mutual Insurance Company of Michigan, 412 Mich 355, 361-362; 314 NW2d 440 (1982), reh den 412 Mich 1119 (1982).

\*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant originally deducted the set-off from plaintiff's PIP benefits pursuant to the following provision in the contract:

"We will subtract benefits provided or required to be provided under the laws of any state or federal government from the benefits otherwise payable under this coverage . . ."

We conclude that this provision clearly and unambiguously authorizes defendant to deduct workers' compensation benefits, which are required to be provided under Michigan law, from otherwise payable PIP benefits, regardless of whether plaintiffs purchased coordinated or noncoordinated benefits. We note that this provision is included in the policy's "Limits of Liability" section. Although other provisions in that section refer to deductions applicable only if the policy is for coordinated benefits, there is nothing to indicate that the instant provision only applies where the insured has purchased coordinated benefits. To the contrary, the instant provision clearly details that it applies to "benefits otherwise payable under this coverage . . ." The plain import of this phrase is that the set-off will apply to any benefits payable under the entire policy. Moreover, the term "coverage" is also "a word of precise meaning in the insurance industry, [and] refers to protection afforded by an insurance policy, or the sum of the risks assumed by a policy of insurance." LeBlanc v State Farm Mutual Automobile Insurance Company, 410 Mich 173, 204; 301 NW2d 775 (1981). Thus, the clear and unambiguous language of the policy authorizes defendant to deduct a set-off equal to plaintiff's workers' compensation benefits.

Further, the operation of this provision is consistent with public policy. Under Michigan's no-fault automobile insurance act, workers' compensation benefits are statutorily required to be subtracted from PIP benefits. MCL 500.3109(1); MSA 24.13109, Joiner v Michigan Mutual Insurance Company, 161 Mich App 285, 291; 409 NW2d 808 (1987). The purpose of this statutory mandate is to eliminate "duplicative benefits recovery" in an effort to ensure lower premiums for no-fault insurance. Sibley v DAIE, 431 Mich 164, 168; \_\_\_ NW2d \_\_\_ (1988); Gregory v Transamerica Insurance Company, 425 Mich 625, 631-632; 391 NW2d 312 (1986). Public policy demands that no-fault insurance premiums be kept as low as possible since such insurance is compulsory. Gregory, supra; citing O'Donnell v State Farm Mutual Automobile Insurance Co, 404 Mich 524, 547; 273 NW2d 829 (1979). Consequently, we conclude that the trial court erred in granting summary disposition to plaintiffs because the underlying insurance contract clearly authorized the set-off deducted by defendant. Further, since the set-off was clearly authorized, we conclude that defendant is rightfully entitled to summary disposition.

Reversed and remanded for entry of summary disposition in favor of defendant.

/s/ Myron H. Wahls  
/s/ Maureen Pulte Reilly  
/s/ Glenn S. Allen