

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

JERRY CHEEK,

APR 24 1990

Plaintiff-Appellant,

v

No. 115104

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff appeals by right from a January 27, 1989 order, granting summary disposition in favor of defendant on plaintiff's claim for uninsured motorist benefits. Plaintiff sought benefits based on allegations that he sustained injuries when a passing truck generated a gust of wind, thereby causing him to fall. The sole issue concerns whether the trial court erred in holding that the allegations do not satisfy the physical contact requirement in the uninsured motorist provision of the party's insurance contract.

We have reviewed the provision, as set forth in defendant's affirmative defenses, in accordance with general principles of contract construction, State Farm Mutual Automobile Ins Co v Descheemaeker, 178 Mich App 729; 444 NW2d 153 (1989), and the underlying fraud prevention purpose of the physical contact requirement. We hold that a gust of wind generated by a passing truck does not satisfy the physical contact requirement. While cases generally hold that physical contact can occur indirectly through an intermediate tangible object such as a rock cast off by a disappearing vehicle onto an insured's vehicle, fairly read, the plain and ordinary meaning of "physical contact" does not include intangible forces such as wind. Compare Hill v Citizens Ins Co, 157 Mich App 383; 403 NW2d 147 (1987); Auto Club

Ins Ass'n v Methner, 127 Mich App 683; 339 NW2d 234 (1987), 1v
den 418 Mich 940 (1984). See also Fore v Travelers Ins Co, 528
So2d 1091 (La App, 1988); Cochran v Riggins Heavy Hauling, 516
So2d 1303 (La App, 1987).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy
/s/ Kathleen Jansen