STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

CNA INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
January 26, 1996

No. 166183
LC No. 92-012051 CK

Before: White, P.J., and T. G. Kavanagh,* and S. N. Andrews,** JJ.

PER CURIAM.

Defendant appeals by right the circuit court's declaratory judgment finding the uninsured motorist provision of defendant's automobile insurance contract ambiguous, and defendant responsible for a prorated portion[1] of the damages paid by plaintiff under a separate policy in settlement of an uninsured motorist claim based on the wrongful death of Ebern Ensign. We reverse.

Plaintiff's declaratory judgment complaint alleged that as of April 17, 1991, Ensign maintained concurrent and equally applicable uninsured motorist coverage issued by plaintiff and defendant, and that defendant was required to make a pro rata contribution to a prior settlement of the uninsured motorist claim, which was funded by plaintiff. In its answer, defendant argued that it was not required to contribute to the settlement entered into between Ensign's estate and plaintiff because Ensign was not a named insured under defendant's insurance policy.

Ultimately, each party submitted motions for summary disposition. The parties agreed to the following stipulated facts:

The underlying basis of this cause of action was a motor vehicle accident that occurred on April 17, 1991, on S. Dort Highway just south of its intersection with Mitchell Street, in Flint. At approximately 11:22 p.m., Ensign, age seventy-three, was walking in a westerly direction across Dort Highway and was struck by a 1990 Chevrolet Cavalier owned and operated by Stephen DeCourval. Ensign had parked a 1982 Buick Regal owned by his employer, The King Group, Inc., in the parking lot of the State Bar, located on the west side of Dort Highway. As an employment benefit, Ensign had the unrestricted use of the company-owned vehicle. After parking the car, Ensign walked east across Dort Highway and purchased a meal at the Kountry Kettle Restaurant. While returning back across Dort Highway to get to the Buick Regal, Ensign was struck and killed by the motor vehicle driven by DeCourval.

The police investigation revealed that DeCourval was traveling well in excess of the posted speed limit, was driving under the influence of intoxicating liquor, and may well have been driving without his headlights. On the date of the accident, DeCourval maintained no auto insurance policy with respect to the Cavalier.

*Former Supreme Court Justice sitting on the Court of Appeals by assignment. ** Circuit court judge sitting on the Court of Appeals by assignment.

The Buick Regal was provided to Ensign as a benefit of his employment with the King Group, and was a scheduled and endorsed vehicle under defendant's Business Automobile Coverage Policy of Insurance, number 9 00193007, with the named insured being the King Group, Inc. Defendant's policy was in effect on the date of the accident, and contained uninsured motorist coverage with a $40,000 limit.

In addition to the Buick Regal, Ensign personally owned a 1989 Plymouth Horizon which was insured with plaintiff. That policy provided uninsured motorist coverage with a limit of $50,000.

Following Ensign's death, his estate filed a claim for uninsured motorist benefits for wrongful death damages under plaintiff's policy. Plaintiff honored the claim and paid $50,000 to Ensign's estate. Prior to the settlement, plaintiff requested that defendant contribute to the settlement. Defendant refused, and plaintiff received an assignment from Ensign's estate of any uninsured motorist benefits that Ensign's estate may have been entitled to under defendant's policy.

Defendant based its refusal to contribute a pro rata share toward the previous settlement between plaintiff and Ensign's estate on the fact that Ensign was not an occupant of an insured vehicle, as required in order for coverage under defendant's policy to apply, since Ensign was not a named insured. Plaintiff stipulated that Ensign was not an "occupant" of the 1982 Buick Regal insured by defendant at the time of the accident. Plaintiff challenged the language of paragraphs B.1., B.3., and F.2. of Endorsement CA 21 31 05 89, which would require Ensign to be an occupant of an insured motor vehicle in order to recover uninsured motorist benefits.

At the hearing before the circuit court, the court stated that if defendant wanted to exclude Ensign as an insured under the policy issued to King Group, Inc., the policy should have clearly excluded him. The court concluded that the language of the insurance policy was ambiguous and that plaintiff was entitled to collect defendant's pro rata share of the payment to Ensign's estate.

This Court's review of a declaratory judgment is conducted de novo. *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994).

Defendant argues that the trial court erred in finding defendant's insurance contract ambiguous and in reforming the contract to include Ensign as an insured. We agree. Uninsured motorist coverage is not mandated by the no-fault statute, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*; *Rohlman v Hawkeye Security Ins*, 442 Mich 520, 522; 502 NW2d 310 (1993), and the insurance policy controls the award of uninsured motorist benefits. *Id.* at 533.

Defendant's commercial auto insurance policy provides in the introductory paragraph that throughout the policy the words "you" and "your" refer to the named insured shown in the declarations. The parties stipulated that the King Group, Inc., is the named insured. In the uninsured motorist coverage addendum to the insurance policy, section B discusses who is an insured. It states:

> B. WHO IS AN INSURED
>
> (1) You.
>
> (2) If you are an individual, any "family member."
>
> (3) Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto." The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.
>
> (4) Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured."

"Occupying" is defined in the uninsured motorist coverage section as "in, upon, getting in, on, out or off."

Persons falling within the "You" classification of the policy do not have to be occupying the motor vehicle at the time of the accident in order to qualify for uninsured motorist benefits. Coverage is "portable" as to these persons and they are insured for this coverage at all times. However, persons falling within the "Anybody Else" classification can only recover uninsured motorist benefits if they are occupying a covered motor vehicle at the time of the accident. In the former category, the focus is on the individual's status as an insured; in the latter, the focus is on the covered vehicle and its occupants.

Plaintiff argues that defendant's policy is ambiguous because "You" is The King Group, Inc., a corporation which cannot suffer bodily injuries. Plaintiff further argues that who is included within the term "You" is not addressed anywhere in the endorsement, nor the definitions or exclusions sections of defendant's policy. Further, an insured person must refer to at least three different sections of the policy in order to determine what classification he falls in. The benefits provided to "You" under the "Who is an Insured" section are, in turn, taken away by the introductory paragraph and the declaration page. According to plaintiff, because Ensign could fall under either classification, "You" or "Anybody Else," the policy is ambiguous and the trial court properly construed the policy against the drafter.

Courts have rejected arguments that insurance policies under which the only named insured is a corporation are, as such, ambiguous, or must be construed to provide coverage to individual corporate officers or employees on the basis that a corporation cannot suffer personal injuries. In *General Ins Co of America v Icelandic Builders, Inc*, 24 Wash App 656; 604 P2d 966 (1979), the issue was whether the son of the sole stockholder of a closely held corporation was an insured under the uninsured motorist coverage provision of a policy issued in the corporation's name only. It was similarly argued that because the named insured was a corporation that could not sustain bodily injuries, there was ambiguity as to who was entitled to benefits for bodily injury. The court held that the contract was not ambiguous, reasoning that the identification of a corporation as the named insured does not so obfuscate the meaning of the term "person" as to create an ambiguity. *Id.* at 659. As in the instant case, coverage under the policy was provided to any other person while occupying an insured vehicle. *Id.* at 660. The court affirmed the trial court's judgment that the son was not an insured holding that since the policy language described who is insured, there was no basis for applying other rules of construction, and that the court could not create an ambiguity where none exists and thereby rewrite a policy. *Id.*

In *Dixon v Gunter*, 636 SW2d 437, 438 (Tenn App 1982), the issue was whether an insurance policy issued to the corporation afforded uninsured motorist protection to the president and sole stockholder, who was killed in a collision with an uninsured motorist while operating a vehicle owned by a third party and not engaged in the business of the corporation. The trial court concluded there was no liability and dismissed the insurer because there was no evidence the deceased was an occupant of the insured vehicle or a temporary substitute vehicle when injured. *Id.* at 440. On appeal, the appellant argued the policy covered any auto and the uninsured motorist provisions covered "you[] or any family member," a provision which should be interpreted as meaning the individual owning the corporation's stock, since a corporation could not suffer personal injuries and could have no family member. The appellant also argued that the insurance policy should be construed against the drafter. *Id.* at 440-441. In rejecting the appellant's arguments, the court affirmed the trial court's conclusion that there was no coverage, and additionally noted that a corporation is an entity separate and apart from its individual officers, directors, stockholders and employees, and that individual owners of a corporation are not, as such, insureds under a policy issued to the corporation. The court also noted that there was no latent ambiguity in the policy requiring interpretation against the drafter. *Id.* at 441.

In *Meyer v American Economy Ins Co*, 103 Or App 160; 796 P 2d 1223 (1990), the court similarly rejected the plaintiff's claim as principal shareholder and employee of the corporation that was

the named insured in the policy at issue that some individual coverage under the uninsured motorist provision should be read into the contract because the insurance policy read literally rendered coverage a nullity.[2] The court also rejected the plaintiff's arguments that the policy was ambiguous and should be construed against the drafter. *Id.* at 1225.

Although involving personal protection benefits and not uninsured motorist coverage, this Court's decision in *Allstate Ins v Citizens Ins*, 118 Mich App 594; 325 NW2d 505 (1982), is in accord with the above holdings in that it rejected the argument that a president and sole stockholder with exclusive use of a corporate vehicle should be regarded as the insured person such that coverage is extended, where the named insured in the policy is the corporation. *Id.* at 600. The sole stockholder's son had been injured while a passenger in a vehicle not insured under the corporation's no-fault policy. The policy was issued to the corporation, and the corporation owned and insured three autos provided to the sole stockholder's family for personal use. This Court affirmed the trial court's conclusion that no PIP benefits were available because the son was not occupying one of the corporate cars, also rejecting the argument that the corporate veil should be pierced to expand protection to injuries sustained by corporate employees' relatives while occupying any car. *Id.* at 599, 602.

A clause in an insurance contract is valid as long as it is clear, unambiguous and not in contravention of public policy. *Raska v Farm Bureau Mutual Ins Co of Michigan*, 412 Mich 355, 361-362; 314 NW2d 440 (1982). A contract is said to be ambiguous when its words may reasonably be understood in different ways. *Id.* at 362. 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 leads one to understand there is no coverage under the same circumstances, the contract is ambiguous and should be construed against its drafter and in favor of coverage. *Id.* Nevertheless, if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear. *Id.*

We conclude defendant's policy is not ambiguous and the trial court erred in determining that Ensign was insured under the policy. At the beginning of defendant's policy, it is clearly established that "You" refers to the named insured shown in the Declaration, which in this case is the King Group, Inc. While plaintiff points to language found in a "Who is an Insured" section of the policy, that section is clearly part of the policy's liability coverage only; it is not contained or referred to in the uninsured motorist coverage section, which has its own "Who is an Insured" provision. The uninsured motorist provision is clear and unambiguous. Only The King Group, Inc., and persons added by way of endorsement are entitled to portable uninsured motorist coverage, i.e., benefits regardless of whether they are occupying a covered motor vehicle at the time of the accident. Since the King Group, Inc., is not an individual, and no individuals were added as insureds by way of endorsement, section B(2) of the uninsured motorist provision is inapplicable, and uninsured motorist coverage is only provided to those persons occupying a covered vehicle at the time of the accident. Ensign clearly falls within the "Anybody Else" section of the uninsured motorist provisions, and since it is undisputed he was not occupying a covered vehicle at the time he was struck, defendant is not liable for any portion of Ensign's damages.

In light of our disposition, we need not address defendant's remaining argument that the circuit court erred by prorating the parties' liability.

Reversed.

/s/ Helene N. White
/s/ Thomas G. Kavanagh
/s/ Steven N. Andrews

[1] Defendant's pro rata share was $22,000.

[2] The uninsured motorist provision under the heading "Who is an insured," provided "You or any family member." *Meyer*, 796 P 2d at 1224.