STATE OF MICHIGAN

COURT OF APPEALS

MARINE OFFICE OF AMERICA CORPORATION,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
May 9, 1997

No. 189722
Wayne Circuit Court
LC No. 94-420296-CK

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Defendant Automobile Club Insurance Association appeals as of right the entry of judgment for plaintiff Marine Office of America following denial of defendant's motion for summary disposition and its motion for reconsideration. We reverse.

Plaintiff filed the instant action seeking payment from defendant of a judgment against defendant's insured, Armor Protective Services (Armor). The judgment against Armor arose out of an incident which occurred on July 19, 1990. Plaintiff's insured, C&L Rigging and Storage (C&L), was hired by American State Equipment Company (American) to transport American's crane from Detroit to Muskegon. C&L hired Armor to provide an escort vehicle to travel ahead of the truck towing the crane and inform the truck driver of any forthcoming hazards, such as low overpasses. According to plaintiff's complaint, Armor failed to inform the C&L driver of a low overpass, which resulted in a collision between the structure and the crane. Plaintiff, as C&L's insurer, paid American for damage to the crane.

Plaintiff brought suit against Armor. Defendant — Armor's no-fault and residual liability insurer — refused to defend or indemnify Armor. Judgment was entered in that action in favor of plaintiff and against Armor. Plaintiff then filed the instant action seeking to recover the amount of the judgment from defendant.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing in part that its residual liability policy only provided coverage for damage to property arising out of the ownership, maintenance, or use of an insured vehicle and that the instant

damages did not "arise out" of the use of the insured escort vehicle. The trial court denied defendant's motion and instead entered judgment for plaintiff. Defendant thereafter filed a motion for reconsideration, which was also denied.

Defendant argues that it is entitled to summary disposition pursuant to MCR 2.116(C)(10) because the damage to the crane did not arise out of the use of the insured escort vehicle. We agree.

Damage arises out of the ownership, maintenance, or use of a motor vehicle if:

(1) the accident arose out of the inherent nature of an automobile, being used as an automobile;

(2) the accident arose within the natural territorial limits of the automobile, and the actual use, loading, or unloading of the vehicle had not terminated; and,

(3) the automobile did not merely contribute to the cause or condition which produced the damage, but rather, itself produced the injury.

See *Wakefield Leasing Corp v Transamerica Ins Co*, 213 Mich App 123, 128; 539 NW2d 542 (1995).

In the instant action, the escort vehicle was neither the instrumentality that caused the damage to the crane nor did the use of the escort vehicle, as an automobile, produce the damage. Rather, the damage was caused by the failure of the driver of the escort vehicle to communicate the forthcoming hazard to the driver of the vehicle hauling the crane. Defendant's no-fault policy is not the legal equivalent of a bond guaranteeing the performance of the escort driver. Therefore, the trial court should have granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) because, on the undisputed facts, it is clear that the damage to the crane did not arise out of the ownership, maintenance, or use of the escort vehicle.

Defendant's additional arguments that the damages to the crane are excluded by various clauses in its policy and provisions of the no-fault act need not be addressed.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White