STATE OF MICHIGAN

COURT OF APPEALS

BAKER COLLEGE OF FLINT,

Plaintiff-Appellant,

v

SCOTTSDALE INSURANCE CO,

Defendant-Appellee.

UNPUBLISHED
September 17, 1996

No. 178221
LC No. 92-017731

Before: Markey, P.J., and McDonald and M. J. Talbot*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a December 14, 1995, order granting judgment in favor of defendant in this insurance policy declaratory cause of action. We affirm.

The focus of the instant matter concerns the exclusionary language contained in defendant's 1992/1993 insurance policy and its effect on an underlying law suit against plaintiff. Defendant maintained plaintiff withheld key information prior to renewing the 1992/1993 policy and as a result, plaintiff was precluded from coverage with respect to a subsequent lawsuit.

On appeal, plaintiff argues the trial court misinterpreted the exclusionary language found in the applicable insurance policy and renewal application. We disagree.

When interpreting an insurance policy, courts will analyze the document like a contract. *Allstate Insurance Co v Keillor (After Remand)*, 450 Mich 412; 537 NW2d 589 (1995), citing *Auto-Owners Ins Co v Churchman*, 440 Mich 560; 489 NW2d 431 (1992). Courts are to determine the essence of the agreement and effectuate the intent of the parties. *Id.* In order to do this, the court must look to the contract as a whole and give meaning to all terms. *Id.* Clauses are valid as long as they are clear, unambiguous and not in contravention of public policy. *Id.* Courts will not create ambiguities where none exist. *Id.* Where there is no ambiguity, reviewing courts will enforce the terms

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

of the contract as written. *Arco Indus Corp v American Motorists Ins Co*, 448 Mich 395; 531 NW2d 168 (1995).

Exclusionary clauses within insurance policies operate to negate insurance coverage. *Heniser v Frankenmuth Ins*, 449 Mich 155; 534 NW2d 502 (1995). It is the insured's burden to prove its claim falls within the terms of the policy. *Id.* Policy exclusions presume coverage exists, but the question then focuses on whether the particular loss is excluded from coverage for some reason. *Id.* Clear and specific exclusions must be enforced. *Group Ins Co v Czopek*, 440 Mich 590; 489 NW2d 444 (1992); also see *Allstate Ins v Goldwater*, 163 Mich App 646; 415 NW2d 2 (1987) (inartfully worded contracts which yield but one interpretation may not be said to be ambiguous or fatally unclear). In this case the language appearing in the renewal application and the original contract are clear and unambiguous.

Question seven of the renewal application reads: "DOES ANY BOARD MEMBER EMPLOYEE OR VOLUNTEER HAVE ANY KNOWLEDGE OF ANY NEGLIGENT ACT, ERROR, OMISSION, OR BREACH OF DUTY WHICH MAY REASONABLY BE EXPECTED TO RISE TO A CLAIM?" Plaintiff answered "no" in response to this question when it renewed its application in 1992.

Another pertinent section includes paragraph seven of the original contract which provides:

> The Company shall not make payment nor defend any lawsuit in connection with any claim made against the insured:
>
> 7. Arising from any circumstance(s) or incident(s) which might give rise to a claim hereunder, <u>which is known to the insured prior to the inception of the policy and is not disclosed to the Company prior to inception.</u> (Emphasis added.)

Plaintiff's failure to disclose the potential lawsuits merited exclusion under the express terms of the parties' agreement.

Affirmed. Costs to defendant.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Michael J. Talbot