STATE OF MICHIGAN

COURT OF APPEALS

NORTHERN MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

DAVID HAMMAR, LISA HAMMAR, KEVIN HAMMAR, GREGORY YON, IRONWOOD TOWNSHIP, MARK RANDALL and DENNIS BEALS,

Defendants-Appellees.

UNPUBLISHED
November 12, 1996

No. 191642
LC No. G95-000048-CK

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff appeals by right the lower court's order granting defendants summary disposition, apparently pursuant to MCR 2.116(C)(10). Plaintiff filed this declaratory judgment action seeking clarification that it was not required to defend or indemnify Gregory Yon for injuries sustained by Kevin Hammar that resulted after Yon landed on Hammar during a parachute jump exhibition. The trial court found that the aircraft exclusion in Yon's homeowner's policy was ambiguous as applied to these facts and therefore construed the exclusion against plaintiff, finding it inapplicable. We affirm.

Plaintiff argues that the trial court erred in finding the exclusionary clause at issue ambiguous because its broad language, excluding injuries "directly or indirectly" resulting from the use of an airplane, clearly applied to these facts. We disagree. Although, as plaintiff argues, the exclusionary clause appears facially unambiguous, application of the exclusion to the facts of the case creates ambiguity. *Jones v Farm Bureau Mutual Ins Co*, 172 Mich App 24, 27; 431 NW2d 242 (1988). The trial court correctly found that the exclusionary clause required some unspecified degree of causation between the actual use of the airplane and the resultant injury. See *Engel v Credit Life Ins Co*, 145 Mich App 55; 377 NW2d 342 (1985); *Little v Kalo Laboratories, Inc*, 406 So 2d 678, 682 (La Ct App, 1981); *Chambers v Kansas City Life Ins Co*, 319 P2d 387 (Cal App, 1957).

Because the clause is ambiguous in this regard, the trial court did not err in construing it against plaintiff. *Fire Ins Exchange v Diehl, 450* Mich 678; 545 NW2d 602 (1996).

Plaintiff also argues that the parachute itself was an aircraft that triggered the exclusion. We disagree. This Court has already determined that parachutes are distinct from aircraft for the purposes of such exclusions. *Engel, supra,* 145 Mich App 61, 62.

Plaintiff also argues that the exclusionary clause should be given effect because homeowner's policies are not generally designed to cover such occurrences. However, if an insurer intends to exclude coverage under certain circumstances, it should clearly state those circumstances. *Fragner v American Community Mutual Ins Co,* 199 Mich App 537, 540; 502 NW2d 350 (1993). As illustrated in *Engel*, plaintiff could have specifically excluded skydiving and parachute jumping but failed to do so. *Engel, supra,* 145 Mich App 62. Consequently, the trial court did not err in finding the aircraft exclusion inapplicable to this skydiving accident.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin