STATE OF MICHIGAN

COURT OF APPEALS

JACK A. BROOKS and CAROLINE S. BROOKS,

Plaintiffs-Appellees,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
March 7, 1997

No. 188365
Macomb Circuit Court
LC No. 91-000120-CK

Before: White, P.J., and Cavanagh, and J.B. Bruff,* JJ.

MEMORANDUM.

Defendant, Auto Club Group Insurance Company, appeals as of right from a judgment granting plaintiffs' motion for summary disposition on the issue of liability, and awarding damages and penalty interest. We affirm.

Defendant denied plaintiffs' claim under their fire insurance policy based on a clause in the policy excluding coverage for a loss caused by an action by an insured person with the intent to cause a loss. The plaintiffs' adult son, who lived with them at the time of the fire and fit the definition of an insured person, pled guilty to attempted arson of his parents' mobile home. Relying on *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 449 NW2d 419 (1993), the circuit court granted plaintiffs' motion for summary disposition on the issue of liability, finding that defendant's fire insurance policy violated public policy and required reformation so as to preclude recovery only as to the insured who had intentionally caused the fire.

On appeal, defendant argues that *Borman* is no longer controlling due to changes in the statute. We disagree.

Insurance contracts are subject to statutory regulation and statutory provisions must be read into them. *Smart v New Hampshire Ins Co*, 428 Mich 236, 240; 407 NW2d 362 (1987). MCL 500.2806; MSA 24.12806 establishes that all fire insurance contracts must conform with the Michigan

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

standard fire insurance policy mandated by statute. MCL 500.2833(2); MSA 24.12833(2) sets forth the contents of the Michigan standard fire insurance policy and states:

> Except as otherwise provided in this act, each fire insurance policy issued or delivered in this state pursuant to subsection (1) shall contain, at a minimum, the coverage provided in the standard fire policy under former section 2832.

Section 2832 of 1956 PA 218 was repealed effective January 1, 1992. It provided in relevant part as follows:

> This entire policy shall be void if, whether before or after a loss, *the* insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto. [Emphasis added.]

In *Borman, supra*, the Michigan Supreme Court held that §2832 mandated that coverage not be denied to an insured who is innocent of wrongdoing, notwithstanding wrongdoing by another insured, and held that coverage can only be denied to the particular insured guilty of the intentional wrongdoing. Although the *Borman* Court interpreted the provisions of §2832, which has since been repealed, the provisions of §2832 have been incorporated by reference in §2833(2). As §2832 mandated coverage for an innocent coinsured, §2833(2) precludes the denial of that coverage. We see no basis for concluding that §2833(1)(c) was intended to change this result.

Defendant also asserts that the lower court erroneously determined that plaintiffs were entitled to twelve percent penalty interest pursuant to MCL 500.2006; MSA 24.12006. We disagree. Defendant contends that it should not have to pay penalty interest under MCL 500.2006(1); MSA 24.12006(1), which provides in pertinent part that the failure to pay an insurance claim on a timely basis is an unfair trade practice unless the claim is reasonably in dispute. However, this Court has held that an insurance company cannot include a clause in its policy which is invalid in light of explicit statutory requirements, and then claim it reasonably denied liability for benefits based upon the invalid clause. *Siller v Employers Ins of Wausau*, 123 Mich App 140, 144; 333 NW2d 197 (1983). Therefore, as defendant here was aware that the statutory provision of MCL 500.2833(2); MSA 24.12833(2) mandated that its fire insurance policy provide, at a minimum, coverage for an innocent coinsured, it is precluded from claiming that it reasonably denied liability for benefits. The circuit court did not err in granting plaintiffs twelve percent penalty interest.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff