STATE OF MICHIGAN

COURT OF APPEALS

NORTHLAND INSURANCE COMPANY,

Plaintiff-Appellant,

v

STEVEN L. GEISTEL, UNIVERSAL TRUCKING, INC., QUALITY STORES, INC., THOMAS L. MICHAELS, and AMERICAN MOTORISTS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
March 11, 1997

No. 185559
Muskegon Circuit Court
LC No. 94-031854-CK

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting in part and denying in part plaintiff's motion for summary disposition. We reverse the court's denial of plaintiff's summary disposition motion.

Plaintiff insured defendant Steven Geistel and defendant Universal Trucking, Inc., who leased a semi-tractor to defendant Quality Stores, Inc. Defendant American Motorists Insurance Company insured Quality. The semi-tractor was involved in an accident while driven by defendant Steven Geistel. The circuit court prorated coverage between plaintiff and defendant American in proportion to policy limits.

Plaintiff contends that the terms of an endorsement to its "bobtail" policy, as well as its policy as a whole, provided no coverage while the truck was being used to haul Quality's merchandise; therefore, sole responsibility rested with American. Thus, the trial court erred in granting summary disposition. We agree.

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* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

As the Michigan Supreme Court succinctly stated in *Auto-Owners Ins Co v Churchman,* 440 Mich 560, 566-567; 489 NW2d 431 (1992):

> An insurance policy is much the same as any other contract, in that it is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. Accordingly, the court must look at the contract as a whole and give meaning to all terms. Further, any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy. This Court cannot create ambiguity where none exists.
>
> Exclusionary clauses in insurance polices are strictly construed in favor of the insured. However, coverage under a policy is lost if any exclusion within the policy applies to an insured's particular claims. Clear and specific exclusions must be given effect. It is impossible to hold an insurance company liable for a risk it did not assume. [Citations omitted; emphasis added]

The parties' primary dispute concerns an endorsement entitled "Michigan Truckers--Insurance For Non-Trucking Use," which modified the insurance coverage that plaintiff provided to Universal under the "business auto coverage form" of plaintiff's policy. The endorsement reads as follows:

> For the covered "auto" described in this endorsement, LIABILITY COVERAGE, Michigan Personal Injury and Property Protection coverages are changed as follows:
>
> A. LIABILITY COVERAGE does not apply while the covered "auto" is used in the business of anyone to whom it is leased or rented if the lessee has liability insurance sufficient to pay for damages in accordance with Chapter 31 of the Michigan Code.
>
> B. Michigan Personal Injury and Property Protection coverages do not apply to "bodily injury" or "property damage" resulting from the operation, maintenance or use of the covered "auto" in the business of anyone to whom it is leased or rented if the lessee has Michigan Personal Injury and Property Protection coverages on the "auto."

In its opinion, the circuit court found that the endorsement did not apply because the leased truck was engaged in a trucking use for Quality hauling Quality's goods at the time of the accident. Apparently the court was persuaded by defendant American's assertion that this policy had no application because the accident at issue occurred while the vehicle was engaged in a trucking use and the heading of the endorsement states that it only applies to non-trucking uses. We disagree with this interpretation.

The fact that the caption of the endorsement refers only to "Non-Trucking Use" does not create an ambiguity in the insurance contract or make the endorsement inapplicable to the case at bar.[1] Rather, we find that the express language of the endorsement is unambiguous and subject to only one

interpretation: when the covered auto (i.e., leased truck) is used for the lessee's business and the lessee has sufficient liability and no-fault insurance for the auto, then plaintiff is not obligated to pay insurance benefits in the event of an accident that occurs during this use. This "bobtail" policy therefore only obligates plaintiff to provide liability and no-fault insurance coverage when the driver operates the vehicle in a non-trucking use, such as without cargo or a trailer. See *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 331-332; 520 NW2d 656 (1994). As this Court found in *Integral Ins Co, supra* at 331-332, the bobtail policy does not provide full coverage for the vehicle, but when provided in conjunction with the lessee's policy providing coverage when the truck is hauling cargo for the lessee "owner" under MCL 500.3101(2)(g); MSA 24.13101(2)(g),[2] the two policies together provide continuous insurance coverage for the truck.

We believe that the court did not clearly err in finding that the accident between Geistel and Michaels occurred while Geistel was hauling goods on behalf of Quality. MCR 2.613(C). We disagree, however, with the court's conclusion of law that plaintiff's motion for summary disposition must fail because Quality is not a "trucker" as defined under plaintiff's policy, i.e., "any person or organization engaged in the business of transporting property by 'auto' for hire." Plaintiff's declaration page noted that Quality's business was "non-trucking" and that it would be hauling Quality's products in the leased truck. The declaration page also contained the term "bobtail" hand written in next to the "non-trucking" notation. According to the express language in the body of the "Michigan Truckers—Insurance For Non-Trucking Use" endorsement, plaintiff would not be liable for liability or no-fault insurance coverage while the "covered 'auto'" is "used in the business of anyone to whom it is leased or rented" so long as the lessee has sufficient liability and no-fault insurance. Cf. *Engle v Zurich-American Ins Group*, 216 Mich App 482, 484, 486-487; 549 NW2d 589 (1996) (bobtail policy's exclusion from coverage does not apply because insured vehicle was not being used in the business of the lessee at the time of the accident). The endorsement does not apply exclusively to "truckers." Accordingly, we find that the trial court erred in denying plaintiff's motion on this basis.

Because we find that plaintiff and defendant American are not insurers on the same level of priority with respect to the accident that occurred while Geistel was hauling Quality's products with the leased truck, we find that plaintiff is entitled to summary disposition and that defendant American is solely responsible for indemnifying and defending Geistel and Universal in the Illinois litigation involving defendants. We also find that plaintiff is not entitled to recover from defendant American the costs and expenses that plaintiff incurred in the defense of Geistel and Universal. See *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482, 496; 496 NW2d 373, aff'd 445 Mich 558; 519 NW2d 864 (1994).

Reversed in part and remanded for entry of an order consistent with this decision.

Plaintiff being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/Roman S. Gribbs
/s/ Jane E. Markey

Justice Thomas G. Kavanagh did not participate.

[1] Notably, defendant Universal cites no case law supporting its contention that the caption of the endorsement controls or creates an ambiguity where the language of the endorsement is clear on its face.

[2] Quality was the owner of the truck as a lessee of the truck for more than thirty (30) days pursuant to MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i). As the lessor of the truck, plaintiff was not the "owner" of the leased vehicle under MCL 500.3101(2)(g)(ii); MSA 24.13101(2)(g)(ii). As an "owner" under the no-fault act, Quality satisfied its statutory responsibility to maintain no-fault insurance coverage on the truck through defendant Universal. As there is no dispute that defendant Universal provided sufficient liability and no-fault coverage for the truck, there is also no dispute that defendant Universal provided "sufficient" coverage under the language of the non-trucking use endorsement.