

STATE OF MICHIGAN  
COURT OF APPEALS

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MATTHEW T. OVERALL,  
Plaintiff-Appellee,

UNPUBLISHED  
December 28, 2001

v

No. 225545  
Oakland Circuit Court  
LC No. 97-000149-NO

PAUL J. RIHARB,

Defendant-Appellee,

and

FARM BUREAU MUTUAL INSURANCE  
COMPANY,

Defendant-Appellant.

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Before: Murphy, PJ, and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant Farm Bureau Mutual Insurance Company (Farm Bureau) appeals as of right from the trial court's order denying Farm Bureau's motion for summary disposition and holding Farm Bureau responsible for expenses incurred by defendant Paul J. Riharb (defendant) in defending the underlying action. In the underlying action, plaintiff Matthew T. Overall (plaintiff) filed a lawsuit against defendant alleging assault and battery, and later amended that complaint to include a claim of negligence. We affirm.

Farm Bureau argues that plaintiff's amended complaint adding a count of negligence was an obvious attempt to trigger insurance coverage for an otherwise intentional act and thus it was entitled to summary disposition in its favor. We disagree. We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

An insurer's duty to defend is broader than its duty to indemnify. *Radenbaugh v Farm Bureau General Ins Co of Michigan*, 240 Mich App 134, 138; 610 NW2d 272 (2000). An insurer has the duty to defend its insured "if the allegations of the underlying suit arguably fall within the coverage of the policy." *Radenbaugh, supra* at 137, quoting *Royce v Citizens Ins Co*, 219 Mich App 537, 543; 557 NW2d 144 (1996). Further, "an insurer has a duty to defend, even where only some of the theories of liability are covered by the policy." *South Macomb Disposal*

*Authority v American Ins Co (On Remand)*, 225 Mich App 635, 691; 572 NW2d 686 (1997). Any doubt regarding insurance coverage must be resolved in the insured's favor. *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 455; 550 NW2d 475 (1996); *Radenbaugh, supra*. However, Farm Bureau correctly argues that there is Michigan case law indicating that "mere allegations of negligence in a transparent attempt to trigger insurance coverage by characterizing intentionally tortious conduct as negligent will not persuade the court to impose a duty to defend." *Iowa Kemper Ins Co v Ryan*, 172 Mich App 134, 137; 431 NW2d 434 (1988).

Here, upon review of the allegations in the underlying complaint, as amended, and the insurance policy, we conclude that the underlying allegations arguably come within the policy coverage. Although Farm Bureau cites Michigan case law and maintains that plaintiff's amendment to the complaint is an obvious or transparent attempt to trigger insurance coverage by adding a claim covered in the insurance policy, it fails to support this argument with anything more than speculation. Farm Bureau merely cites the timing of the amendment to the claim, that being after discovery and mediation, in support of its argument. Here, the conduct of defendant is sufficiently ambiguous to raise a question of whether his actions were intentional or negligent. Having reviewed the limited record before us,<sup>1</sup> we are not prepared to say that the addition of the negligence claim was a transparent attempt to trigger insurance coverage. See *Auto Club Ins Ass'n v Williams*, 179 Mich App 401, 406, n 1; 446 NW2d 321 (1989); *Farmers & Merchants Mut Fire Ins Co v LeMire*, 173 Mich App 819, 824-825; 434 NW2d 253 (1988).

Farm Bureau also contends that defendant's intentional conduct precludes him from receiving reimbursement of defense costs concerning the original complaint and concerning the amended complaint. Farm Bureau cites no law in support of this argument.<sup>2</sup> "A party may not leave it to this Court to search for authority to sustain or reject its position." *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000).

Affirmed.

/s/ William B. Murphy  
/s/ Janet T. Neff  
/s/ Joel P. Hoekstra

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<sup>1</sup> The record is devoid of complete copies of the depositions taken in this matter and does not contain a transcript of the trial.

<sup>2</sup> Farm Bureau also argues that because plaintiff's original complaint alleged only assault and battery against defendant, defendant is not entitled to insurance coverage because assault and battery are intentional acts that the insurance policy specifically excludes from coverage. We need not reach this issue because neither plaintiff nor defendant suggested that Farm Bureau was required to defend and indemnify with regard to the original complaint that solely claimed assault and battery. However, to the extent that the trial court held Farm Bureau responsible for defense costs that could be attributed to the defense of the original complaint, Farm Bureau cited no law in support of its argument that the trial court erred.