

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of CLIFFORD ANTHONY STOUT,  
Deceased.

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GREAT LAKES PETROLEUM  
CORPORATION, KENNETH LEUTSCHER and  
EMPIRE FIRE & MARINE INSURANCE  
COMPANY,

UNPUBLISHED  
January 26, 2010

Petitioners-Appellants,

v

KIMBERLY STOUT, Personal Representative of  
the Estate of CLIFFORD ANTHONY STOUT,

No. 288057  
Muskegon Probate Court  
LC No. 05-082127-DE

Respondent-Appellee.

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Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Petitioners appeal as of right a probate court order vacating a temporary restraining order (TRO) and denying their motion for a permanent injunction. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

On September 7, 2005, a gasoline tanker truck owned by petitioner Great Lakes Petroleum, Inc. and driven by petitioner Kenneth Leutscher, rear-ended a pickup truck occupied by Clifford Anthony Stout. The force of the collision propelled Stout's truck into a vehicle driven by Steven Dagger, which in turn impacted a car occupied by Ambyr Walker and Brandy Bills. Stout died in the crash and the other accident victims sustained injuries.

In June 2008, respondent Kimberly Stout, the personal representative of the decedent's estate, entered into a release and settlement agreement with Great Lakes, Leutscher, and their insurance company, petitioner Empire Fire and Marine Insurance Company. The release provided that in consideration for a \$600,000 payment to the estate, respondent "release[d], acquit[ted] and forever discharge[d]" petitioners from any liability or damages

which the undersigned may now have or may hereafter accrue on account of or in any way growing out of any and all known, and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages and consequences thereof resulting or to result from the accident, casualty, or *event which occurred on or about September 7, 2005, which acts formed the basis of a claim made by the Estate of Clifford Anthony Stout, Deceased.* [Emphasis added].

The Release's third paragraph reads in its entirety, "It is also agreed that the undersigned will indemnify and hold harmless the parties herein released from any and all claims, including attorneys' fees, which may be brought against the parties herein released as a result of the above-described incident." After a hearing conducted on June 30, 2008, the probate court entered an order approving the settlement described in the release.

On July 10, 2008, Dagger filed a lawsuit against Great Lakes and Leutscher. Petitioners promptly sought a TRO to prevent respondent from distributing the settlement proceeds, asserting that "[c]onsistent with the release . . . , the Estate is required to defend and indemnify . . . [petitioners] from said claims." The probate court entered a TRO, but subsequently declined to issue a permanent injunction. In a thoughtful written opinion, the probate court astutely concluded that the language of the release did not obligate respondent to indemnify petitioners regarding claims brought by the other accident victims. The court reasoned as follows:

At the end of the first paragraph of the Release, the Release states that all claims are released "resulting from or to result from the accident, casualty, or event which occurred on or about September 7, 2005, *which acts formed the basis of a claim made by the estate of Clifford Anthony Stout, Deceased.*" [Emphasis in original.]

Because the "accident, casualty, or event" parameters are defined in the Release itself as those acts which "formed the basis of a claim made by the estate of Clifford Anthony Stout, Deceased," it is clear that the Release covers only the specific "accident," "occurrence," or "incident" that caused harm to the decedent, i.e., the specific collision impact to the decedent's vehicle.

To extend the coverage of the Release to *other* collisions between *other* parties in *other* vehicles in the chain reaction would require a construction of the Release to mean that the term "accident," "incident," "occurrence," etc., . . . means the entire, global event as a single accident. That construction would mean that the grammatical modification and explanation of the terms "accident, casualty, or event" by the phrase "which acts formed the basis" of the decedent's claim, would be meaningless. When reading the Release as a whole, that is the only definition of "accident," etc., that makes both common and legal sense. [Emphasis in original].

Petitioners contend that the release language unambiguously shields them from "any and all claims" which might be brought against the appellants as a result of the accident of September 7, 2005," including claims by accident victims other than the decedent. Contract interpretation presents a question of law that we consider de novo. *Holmes v Holmes*, 281 Mich App 575, 587; 760 NW2d 300 (2008). We review for an abuse of discretion a trial court's grant or denial of

injunctive relief. *Detroit Fire Fighters Ass'n, IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008).

“It is universally recognized that a contract which purports to confer an express right to indemnification against the consequences of one’s own negligence is subject to strict construction and will not be so construed unless the contract language clearly evidences that such was the intended effect.” *Skinner v D-M-E Corp*, 124 Mich App 580, 585; 335 NW2d 90 (1983). The indemnification clause here mandates that respondent indemnify petitioners “from any and all claims ... which may be brought against the parties herein released as a result of the above-described incident.” The release earlier defines the “above-described incident” as “the accident, casualty, or event which occurred on or about September 7, 2005, which acts formed the basis of a claim made by the Estate of Clifford Anthony Stout, Deceased.” The modifying phrase, “which acts formed the basis of a claim made by the Estate of Clifford Anthony Stout, Deceased,” clearly and unambiguously limits the scope of the “above-described incident” to the acts giving rise to *the estate’s* claim. See *Holmes*, 281 Mich App at 593-594 (describing the rules governing contract interpretation).

Furthermore, had the drafters of the release intended to encompass within the reach of the indemnification clause all potential September 7, 2005 accident claimants, they could have omitted the phrase “as a result of the above-described incident,” and thus drafted the indemnification to read as follows: “It is also agreed that the undersigned will indemnify and hold harmless the parties herein released from any and all claims, including attorneys’ fees, which may be brought against the parties herein released.” By excluding language directly referencing the decedent’s accident, the parties to the release could have demonstrated their intent to require indemnification for claims brought by other accident victims. However, the indemnification clause here incorporates claims brought “as a result of the above-describe incident,” which according to the release itself plainly includes only those acts comprising the subject of claims by respondent on behalf of the decedent’s estate. We conclude that the probate court correctly interpreted the release’s indemnification provision as extending only to accident-related claims by the estate, and that the court properly denied petitioners’ request for a preliminary injunction.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder