STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,

v

VICTORIA JOHNSON,

Defendant-Appellant.

UNPUBLISHED
May 4, 2001

No. 218225
Lenawee Circuit Court
LC No. 97-007719-CK

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM.

In this action involving a farm tractor-automobile accident and interpretation of an uninsured motorist coverage provision in an insurance contract, defendant appeals as of right the circuit court's grant of summary disposition to plaintiff. Because we conclude that the policy language in question is reasonably susceptible to multiple interpretations, including an interpretation that would afford coverage under the instant fact, and is therefore ambiguous, we reverse.

The facts viewed in a light most favorable to defendant are that on June 21, 1996, defendant was at a Meijer's gas and service station located at the corner of US 223 and Division Street in Adrian, Michigan, standing alongside her vehicle as she pumped gas into it. The Meijer's service station gas pumps and diesel pumps are accessed directly from paved public access entrances and exits on both Division Street and US 223. As defendant pumped gas into her vehicle, an uninsured farm tractor owned by Ray McCarley was also present at the service station. After McCarley fueled the tractor, and while he was standing on the steps of the tractor cab, he started the tractor. Because the tractor was in gear, it moved forward. The tractor struck defendant's vehicle, causing her to fall and strike her head on the pavement and suffer severe injuries.

McCarley testified at deposition that he lived on a fifteen-acre farm in Adrian and that about two hours before the accident, he had picked up the tractor at the house of a friend who had borrowed it. He testified that he did not have enough fuel to make the drive home from his friend's, and therefore went to the Meijer's service station for diesel fuel. McCarley testified that he drove to the service station on roads used by normal vehicular traffic, and estimated that the distance between his friend's house and the Meijer's service station was seven miles. McCarley

testified that it would not have been possible to travel between his house and his friend's house, or between his friend's house and Meijer's, without using such roads.

Defendant sought damages from plaintiff under the uninsured motorist provisions of her no fault policy. Plaintiff denied benefits based on the policy's language excluding from the definition of "uninsured motor vehicle," a land motor vehicle "designed for use mainly off public roads except while on public roads." The circuit court granted plaintiff summary disposition, concluding that there was no coverage because the accident did not occur within the right of way of a publicly maintained road.

The uninsured motorist provisions of the insurance policy state in pertinent part:

> We will pay damages for ***bodily injury*** an ***insured*** is legally entitled to collect from the owner of an ***uninsured motor vehicle***. The ***bodily injury*** must be caused by accident arising out of the operation, maintenance or use of an ***uninsured motor vehicle***.
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> ***Uninsured Motor Vehicle*** - means:
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> 1. A land motor vehicle, the ownership, maintenance or use of which is:
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> a: Not insured or bonded for bodily injury liability at the time of the accident. . .
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> * * *
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> An ***uninsured motor vehicle*** does not include a land motor vehicle:
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> * * *
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> 5. designed for use mainly off public roads except while on public roads.

The insurance policy does not define the terms "public roads," "public," or "road."

As this case involves interpretation of an uninsured motorist policy, we must determine the parties' intention from the language of the insurance contract. *Berry v State Farm Mutual Auto Ins Co*, 219 Mich App 340, 346-347; 556 NW2d 207 (1996). The *Berry* Court noted:

> Uninsured motorist coverage is not required by statute. *Citizens Ins Co of America v Buck*, 216 Mich App 217, 224; 548 NW2d 680 (1996). However, such coverage may be purchased to provide an insured with a source of recovery if the tortfeasor is uninsured. *Id.* Because uninsured motorist benefits are not required by statute, the contract of insurance determines under what circumstances such benefits will be awarded. *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 525; 502 NW2d 310 (1993). The policy definitions control. *Id. Thus, this Court's duty is to determine from the language of the policy the parties' apparent intention. Doubtful or ambiguous terms must be construed in favor of the insured and against the insurer, the drafter of the policy. Rohlman v Hawkeye-Security*

Ins Co (On Remand), 207 Mich App 344, 350; 526 NW2d 183 (1994). [Emphasis added.]

"A contract is said to be ambiguous when its words may reasonably be understood in different ways." *Auto Club Ins Ass'n v DeLaGarza*, 433 Mich 208, 213; 444 NW2d 803 (1989), quoting *Raska v Farm Bureau Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982).

> If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand there is no coverage under the same circumstances the contract is ambiguous and should be construed against its drafter and in favor of coverage.
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> Yet if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous or, indeed, fatally unclear. [*DeLaGarza, supra* at 213, quoting *Raska, supra* at 362.]

The terms of a contract must be enforced as written where there is no ambiguity. *Henderson, supra* at 354. Where there is an ambiguity, the interpretation that favors coverage should be enforced.

Exclusionary clauses are strictly construed in favor of the insured. *Trierweiller v Frankenmuth Mutual Ins Co*, 216 Mich App 653, 657; 550 NW2d 577 (1996). However, "clear and specific exclusions must be given effect. An insurance company should not be held liable for a risk it did not assume." *Id.*, citing *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992). An insurer is free to define or limit the scope of coverage as long as the policy language fairly leads to only one reasonable interpretation and is not in contravention of public policy. *Trierweiller, supra* at 657.

In *Leski v State Farm Mutual Auto Ins Co*, 367 Mich 560; 116 NW2d 718 (1962), the Michigan Supreme Court considered whether a policy provision substantially identical to that at issue in the instant case was ambiguous. The insurance policy in *Leski* provided benefits for death of the insured or relative while occupying an automobile, but excluded from the definition of automobile "a farm type tractor or other equipment designed for use principally off public roads, *except while actually upon public roads.*" *Id.* at 565-566 (emphasis added). As in the instant case, the term "public roads" was not defined in the policy.

The sole question in *Leski* was whether the policy's provision providing benefits "in connection with certain operations of a farm tractor 'while actually upon public roads' [could] be reasonably construed to include the situs of the accident."[1] *Id.* at 565. The *Leski* Court answered that question in the affirmative:

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[1] The plaintiff's son, Fred Leski, was driving a farm tractor between the cities of Marshall and Albion, from his employer's farm, located south of I-94, to another farm on the north side of I-94, near the Partello road interchange. On the date of the accident, I-94 was not completed, no

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> Defendant contends the policy in question is an automobile insurance policy and not a policy generally covering the operation of farm tractors of the type here involved. Defendant also says farm tractors of this type are expressly excluded from coverage under the policy unless, and only unless, the accident occurs while the farm tractor is actually upon public roads.
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> Defendant contends the conclusion is, therefore, inescapable that *the manifest underwriting intents was to exclude from coverage of the policy the risks normally attending the operation of a farm tractor in its ordinary place of usage*. To this extent we agree. *A description of the ordinary place of usage would be in and about the fields and premises of a farm.* Admittedly, this accident did not occur in such a place. What, then, did the underwriter intend? *It seems clear that it intended to extend the coverage to operation of a farm tractor in other than its ordinary place of usage; in other words, in a type of operation in which the tractor would be used on the road going to and from farms or when used on the road for hauling.*
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> In arriving at a construction of the language in an insurance contract, it is a well-established rule that, in case of reasonable uncertainty, doubt, or ambiguity, courts should construe policies of insurance which are not standard policies strictly or most strongly against the insurer. In view of the apparent uncertainty and doubt which surrounds the provisions of the policy in this case, we apply the above rule of law.
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> The trial court found as a matter of fact, and it is supported by the record, that others besides decedent used this same route to pass from ramp "C" to the field,

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fences or physical obstructions had been erected along the right of way or parallel thereto, and "strips of the main pavement were in place, but the shoulders abutting said strips and the Partello road overpass were not completed." *Id.* at 562.

While attempting to climb an embankment of a ditch to go into a field, Leski's tractor tipped backward and he was fatally injured. The site of the accident was within the right of way of the uncompleted I-94, and "the northerly bank of the ditch was situated approximately 32 feet north of the presently paved portion of ramp C and approximately 24 feet north of the now constructed north shoulder of ramp C." *Id.* at 563. The accident site was not within the part of the highway intended or designed for vehicular traffic, but it was admitted that, under abnormal or emergency conditions, it was conceivable that a motor vehicle might enter on or travel over the place where the accident occurred. Before and after the date of the accident, "persons not connected with the construction of the highway or the State highway department utilized the main strips of I-94 for vehicular transportation, although without the approval of the State highway department." *Id.* at 562-563. Facts to which the parties had stipulated at the bench trial indicated that the plaintiff and her family used the temporary road crossing of I-94 almost daily, but ramp C was not open to traffic on the date of the accident and decedent did not have permission to use the highway or right of way on or before the accident date.

although at the time of such it was not a road officially opened to public travel by the State Highway department.

* * *

Defendant contends that a proper construction of the critical policy language "while actually upon public roads" should be in terms of what a layman would understand these words as meaning in everyday parlance. We believe that a reasonable understanding of the preceding language by a layman would be that he was purchasing a policy of insurance that would protect him in the event of an accident at the place and in the manner which caused decedent's death.

The cases cited by both plaintiff and defendant and the dictionary definitions of the word "public" and the word "road" are not applicable in this case. Here, we are determining what construction the parties placed upon these critical words at the time of purchase of the policy. *We believe a reasonable interpretation is the one applied by the trial court, and that had the defendant insurance company desired to exclude the situs of the accident it would have been a simple matter for it to do so.*

The fact we are dealing with a farm tractor in other than its ordinary place of usage, the fact that we are construing an insurance contract provision that is uncertain or at least doubtful, the fact that we are dealing with a record that discloses some common usage of the area where the accident occurred, the fact that we are dealing with the provisions of an insurance contract which must be construed most strongly against the insurer, and the fact that at least 1 reasonable interpretation of the provision involved would include the situs of the accident, leads us to the conclusion that the finding of the trial court was supported by the record. [*Leski, supra* at 566-568. Emphasis added.]

Plaintiff argues that notwithstanding *Leski*, the language of the exclusion is not ambiguous and this Court should simply apply the term's ordinary meaning and avoid strained interpretations. Plaintiff quotes certain dictionary definitions of the terms "public," "public works," and "roadway," and a statutory definition of highway or street, MCL 257.20; MSA 9.1820 and MCL 257.64; MSA 9.1864, and notes that the no-fault act adopted the definition of "highway" in MCL 257.20; MSA 9.1820. However, even assuming that reference to dictionary definitions is appropriate, there are multiple dictionary definitions of "public." Plaintiff opts for a particular definition; defendant relies on other definitions -- "exposed to general view, open," and "accessible to or shared by all members of the community"--found in an on-line version of Webster's Dictionary, www.m-w.com/cgi-ein-netdict.[2]

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[2] The dictionary often relied on by this Court, Random House Webster's College Dictionary (1997), supports that the term "public" is susceptible to more than one meaning, as it defines "public" to include: "**3. open to all persons** . . . . 5. maintained at the public expense and under public control. . . . . 7. familiar to the public; prominent. . . 8. **open to the view of all; existing**

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Plaintiff's argument that this Court should simply adopt "the ordinary meaning" of the term "public," does not take into account that the term "public" has multiple definitions and is susceptible to different meanings, and that the issue here is interpretation of the phrase "except while upon public roads" as used in an insurance contract as a counter-balance to "designed for use mainly off public roads." Similarly, plaintiff's argument that we should look to the definition of "highway" adopted by the no-fault act, MCL 500.3101; MSA 24.13101, and foreclose defendant's claim based thereon also fails. See e.g., *Trierweiler, supra* at 657 (noting in the context of uninsured motorist coverage that the insurance policy's language controlled, the no-fault act did not apply, and the trial court thus erred in looking to the no-fault act's definition of "motor vehicle" in interpreting the phrase "land motor vehicle," citing *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 68; 467 NW2d 17 [1991].)

The policy language at issue is susceptible to more than one interpretation in this case. The policy purports to grant coverage where the insured is legally entitled to collect from the owner of an uninsured motor vehicle. An uninsured motor vehicle is defined as a land motor vehicle which is not insured for bodily injury. The policy then excludes from the definition a land motor vehicle "designed for use mainly off public roads except while on public roads." When read as a whole, rather than divided into two parts, the exclusion can reasonably be understood to deny coverage for injuries caused by an uninsured vehicle designed for uses other than travel in public, except when the vehicle is used for travel in public. To be sure, the policy does not use these words, but neither does it provide a definition for the words used that would exclude this interpretation. While plaintiff's interpretation of the contract as focusing on public ownership is certainly reasonable, it is not the only interpretation. "Public" can also be understood as referring to access (see n 2), and the exclusion itself can be understood to exclude a vehicle that was not designed for transportational use in public, except when so used.

We conclude, following *Leski*, that the circuit court erred in concluding that because the accident did not occur within the right of way of a publicly maintained road, there was no coverage. Although *Leski* is not on all fours with this case, its analysis, as defendant argues, turns largely on the type of operation of the tractor, i.e., whether it was in normal use; on the farm or in the fields, the Court concluding that the intent of the policy was "to extend the coverage to operation of a farm tractor in other than its ordinary place of usage; in other words, in a type of operation in which the tractor would be used on the road going to and from the farms or when used on the road for hauling." *Leski, supra* at 566. While the accident in *Leski* occurred within the right-of-way of a not-yet-opened road, the *Leski* Court did not rely on this fact. Rather, the Court focused on the fact that there was a farm tractor in other than its ordinary place of usage, the fact that there was "some common usage" of the area where the accident occurred, and the fact that the meaning of the exclusion was ambiguous and should be construed against the insurer.

Here, the tractor was being used for travel in areas open to the public, and not for work on a farm; and the accident site in the instant case accommodated ongoing public vehicular traffic,

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or conducted in public." [Emphasis added.]

as vehicles entered, obtained fuel and departed. The farm tractor was not being put to its ordinary non-public use at the time of the accident. Although the property on which the service station sits is privately owned, the public is invited to drive onto and do business there. The service station is accessed through two public paved entrances and exits and when the instant accident occurred, the farm tractor was on its way out of the station, had been started, was in gear and moved forward. As in *Leski*, a reasonable understanding of the instant policy language by defendant would be that she was purchasing an insurance policy that would protect her in the event of an accident with an uninsured vehicle at a public location such as the Meijer's service station. Although the exclusionary language is susceptible to both parties' interpretations, we are obliged to strictly construe the exclusionary language against plaintiff insurer. *Century Surety v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998); *Trierwiller, supra* at 657. We conclude that the policy language in question is reasonably susceptible to multiple interpretations, including an interpretation that would afford coverage under the instant facts, and is therefore ambiguous.

Reversed.

/s/ Helene N. White
/s/ Joel P. Hoekstra