STATE OF MICHIGAN

COURT OF APPEALS

JANE CAROL WHITE, Plaintiff-Appellant,	UNPUBLISHED December 9, 2003
v LAKE STATE INSURANCE COMPANY, Defendant-Appellee.	No. 241026 Alcona Circuit Court LC No. 00-010469-NF

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this no-fault automobile insurance case. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Plaintiff was injured in a multi-vehicle automobile accident involving both an uninsured and an underinsured motorist. She suffered a head injury and was restricted from performing any work. She was found to be disabled and receives social security disability benefits. She sought uninsured or underinsured benefits provided for in her no-fault automobile insurance policy. The trial court determined that her coverage limits were $100,000, that defendant was entitled to set off the social security benefits paid or payable, and that since the benefits would exceed $100,000, plaintiff was not entitled to recover.

Although the limits of liability clauses for uninsured and underinsured coverage provided for a set-off for disability benefits, plaintiff argues that she is nonetheless entitled to coverage based on the following exclusion clause:

> This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
>
> 1. Workers' compensation; or
>
> 2. Disability benefits law.

Plaintiff maintains that the term "any insurer" in the exclusion clause must be read to include defendant, and that this clause therefore precludes defendant from taking the set-off for social security disability benefits since this would benefit defendant under a disability benefits

law. Further, plaintiff asserts that this exclusion clause and the set-off provision in the limit of liability clauses are capable of conflicting interpretations that must be construed against defendant insurer. Finally, citing *Klever v Klever,* 333 Mich 179, 189; 52 NW2d 653 (1952), plaintiff asserts that the exclusion clause controls because it precedes the limits of liability clause.

An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999). Ambiguities are to be construed against the insurer, who is the drafter of the contract. *Wilkie v Auto-Owners Ins Co*, 245 Mich App 521, 524; 629 NW2d 86 (2001). Further, exclusionary clauses are to be strictly construed against the insurer. *Fire Ins Exchange v Diehl,* 450 Mich 678, 687; 545 NW2d 602 (1996). However, if a contract fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear. *Michigan Twp Participating Plan v Pavolich,* 232 Mich App 378, 382; 591 NW2d 325 (1998).

We conclude that the exclusionary clause, although inartfully worded, admits of but one reasonable interpretation that would preclude coverage. As interpreted, it does not conflict with the limits of liability clause and its placement in the contract before the limits clause is therefore irrelevant. The clause does not say that the exclusion provision or the policy shall not be construed to benefit "any insured" under the applicable laws. It says that "the coverage", meaning uninsured or underinsured coverage, shall not benefit "any insurer". It makes no sense to say that the coverage, which defendant is required to pay, shall not apply to benefit defendant. For the coverage to benefit defendant under any law, defendant would have to be making a claim against itself. Since this construction of the policy makes no sense, plaintiff's position must fail.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly