STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CYNTHIA C. RUZAK,

Plaintiff,

v

File No. 06-25177-NI
HON. PHILIP E. RODGERS, JR.

USAA INSURANCE AGENCY, INC.,
a foreign corporation,

Defendant.
/

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Attorneys for Plaintiff

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Attorney for Defendant

DECISION AND ORDER
CROSS-MOTIONS FOR SUMMARY DISPOSITION

This auto negligence, breach of contract and declaratory judgment action arises out of a single vehicle accident that occurred on October 21, 2004 in Leelanau County. The Plaintiff was a passenger in an automobile being driven by her husband, Jay Ruzak, when he lost control of the vehicle, left the roadway and struck a tree. As a result of the accident, the Plaintiff was seriously injured and sought damages from Mr. Ruzak for his negligence and against the Defendant insurance company for breach of contract for failure to pay benefits under the bodily injury liability coverage provisions of the policy of insurance issued by the Defendant. The Defendant insurance company filed a declaratory judgment action seeking the Court's determination of the applicable limits of the bodily injury liability coverage.

The Defendant filed a motion for summary disposition, pursuant to MCR 2.116(C)(10), claiming that there is no genuine issue of material fact that the maximum amount of liability insurance coverage under the policy is $20,000. The Plaintiff responded to the Defendant's motion by filing a counter-motion for summary disposition, pursuant to MCR 2.116(C)(10),

claiming that there is no genuine issue of material fact that the maximum amount of liability insurance coverage under the policy is $300,000.

The construction and interpretation of the language in an insurance contract is a question of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003); *Shefman v Auto-Owners Ins Co*, 262 Mich App 631, 636; 687 NW2d 300 (2004). Courts view insurance contracts similarly to other contracts, as agreements between the parties, and will determine the terms of the agreement and enforce them accordingly. *Whitaker v Citizens Ins Co of America*, 190 Mich App 436, 439; 476 NW2d 161 (1991).

An insurance policy must be enforced in accordance with its terms. *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 207; 476 NW2d 392 (1991). Furthermore, the terms of the contract must be interpreted in accordance with their "commonly used meaning," *Group Ins Co of Michigan v Czopek*, 440 Mich. 590, 596; 489 NW2d 444 (1992); *Fireman's Fund Ins Co v Ex-Cell-O Corp*, 702 F Supp 1317, 1323, n 7 (ED Mich 1988). If the language within an insurance contract is clear and unequivocal, the court will enforce the contract's terms and not rewrite the contract.

An insurance policy must be read as a whole to determine if it is ambiguous. There is no ambiguity where the terms of the contract are clear. *Churchman, supra* at 567, 489 NW2d 431; *Metropolitan Property & Liability Ins Co v DiCicco,* 432 Mich 656, 666; 443 NW2d 734 (1989), reh den with addenda to opinion 433 Mich 1202; 446 NW2d 291 (1989), citing *Edgar's Warehouse, Inc v United States Fidelity & Guaranty Co*, 375 Mich 598; 134 NW2d 746 (1965); *Patek v Aetna Life Ins Co*, 362 Mich 292; 106 NW2d 828 (1961); *Dimambro-Northend Associates v United Construction, Inc*, 154 Mich App 306, 313; 397 NW2d 547 (1986); *Farm Bureau Mutual Ins Co v Hoag*, 136 Mich App 326, 332; 356 NW2d 630 (1984). Where there is no ambiguity, the terms of the contract will be enforced as written. *Stine v Continental Casualty Co*, 419 Mich 89, 114; 349 NW2d 127 (1984); *Murphy v Seed-Roberts Agency, Inc*, 79 Mich App 1, 7-9; 261 NW2d 198 (1977). However, reasonable doubts and ambiguities will be construed most favorably to the insured, particularly against the insurer who drafted the contract. *Erickson v Citizens Ins Co*, 217 Mich App 52, 54; 550 NW2d 606 (1996); *Auto Club Ins Ass'n* v *DeLaGarza,* 433 Mich 208, 214; 444 NW2d 803 (1989); *Powers v DAIIE*, 427 Mich 602, 624; 398 NW2d 411 (1986); *Calhoun v Auto Club Ins Ass'n,* 177 Mich App 85; 441 NW2d 54 (1989).

The rules of construction which pertain to insurance policies were set forth by the Michigan Supreme Court in *Fresard v Michigan Millers Mutual Insurance Co*, 414 Mich 686, 694; 327 NW2d 286 (1982). There the Court wrote as follows:

> When examining the language of this or any other insurance policy, we are mindful of several other principles of construction so rudimentary as to be axiomatic:
>
> > The contract should be viewed as a whole.
> > The intent of the parties should be given effect.
> > An interpretation of the contract which would render it unreasonable should be avoided.
> > Meaning should be given to all terms.
> > Ambiguities should not be forced.
> > Conflicts among clauses should be harmonized.
> > The contract should be viewed from the standpoint of the insured.
> > The insurer should bear the burden of proving an absence of coverage.

Recognizing these principles of construction, the Court must decide whether any factual issues exist with regard to a potential ambiguity in the interpretation of the subject insurance policy. If not, then the Court must decide whether the applicable limit of liability is $300,000 as asserted by the Plaintiff or $20,000 as asserted by the Defendant.

According to the Declaration Page, there is liability coverage for bodily injury in the amount of $300,000 for each person under Part A of the policy. Part A of the policy provides, in relevant part, as follows:

DEFINITIONS

Covered person as used in this Part means:

1. **You** or any **family member** for the ownership, maintenance, or use of any auto or trailer.
2. Any person using **your covered auto.**

* * *

INSURING AGREEMENT

A. **We** will pay compensatory damages for **BI** or **PD** for which any **covered person** becomes legally liable because of an auto accident.

* * *

LIMIT OF LIABILITY

For **BI** sustained by any one person in any one auto accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for **BI** Liability.

EXCLUSIONS

* * *

C. There is no coverage for **BI** for which a **covered person** becomes legally responsible to pay a member of that **covered person's** family residing in that covered **person's** household. This exclusion applies only to the extent that the limits of liability for this coverage exceed $20,000 for each person or $40,000 for each accident.

The Defendant relies upon Part A, Exclusion C and argues that it clearly and unambiguously provides that coverage under circumstances involving family members is no greater than $20,000 per person. The Defendant relies upon the policy language and the recent unpublished per curiam opinion of the Court of Appeals in *GEICO Indemnity Ins Co v Williamson*, decided August 17, 2006 (Docket No. 267618).[1]

The Plaintiff, on the other hand, claims that this exclusion is ambiguous because it can be read to mean that, if the liability limit for bodily injury under the policy, which is $300,000, exceeds $20,000, there is no coverage. Since it is against the public policy of this state to include a provision in an insurance policy that excludes coverage for bodily injury to any insured or a member of the insured's family, the Plaintiff claims, she is entitled to full coverage.[2]

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[1] Of course, unpublished decisions of the Court of Appeals are not binding precedents. MCR 7.215(C)(1). However, they do offer this Court a glimpse into what future published decisions might hold and cannot simply be ignored.

[2] The Plaintiff also argues that to allow the Defendant's construction of Exclusion C would defy the insured's reasonable expectations. This argument is rejected because our Supreme Court has held that "[t]he rule of reasonable expectations clearly has no application when interpreting an unambiguous contract because a policyholder cannot be said to have reasonably expected something different from the clear language of the contract. That is, one's alleged 'reasonable expectations' cannot supersede the clear language of a contract. Therefore, if this rule has any meaning, it can only be that, if there is more than one way to reasonably interpret a contract, i.e., the contract is ambiguous, and one of these interpretations is in accord with the reasonable expectations of the insured, this interpretation should prevail. However, this is saying no more than that, if a contract is ambiguous and the parties' intent cannot be discerned from extrinsic evidence, the contract should be interpreted against the insurer. In other words, when its application is limited to ambiguous contracts, the rule of reasonable expectations is just a surrogate for the rule of construing against the drafter." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 60; 664 NW2d 776 (2003).

An insurance contract is ambiguous when its provisions are capable of conflicting interpretations. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). The issue of ambiguity in the interpretation of an exclusionary clause in insurance contracts was discussed by the Michigan Supreme Court in *Raska v Farm Bureau Insurance Co,* 412 Mich 355, 362 (1982). There, the *Raska* Court said:

> The only pertinent question, therefore, is whether the exclusionary clause in this contract is ambiguous, for if it is not ambiguous we are constrained to enforce it. A contract is said to be ambiguous when its words may be reasonably understood in different ways. If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances, and under 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. 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. See also, *Allor v Dubay*, 317 Mich 281 (1947).

The Plaintiff's construction of Exclusion C is strained. The Plaintiff has essentially reworded Exclusion C in an attempt to create an ambiguity and take advantage of the fact that it is against the public policy of this state to include a provision in an insurance policy that excludes coverage for bodily injury to any insured or a member of the insured's family. *State Farm Mut Automobile Ins Co v Sivey,* 404 Mich 51, 57-58; 272 NW2d 555 (1978). The underlying rationale for this policy has been that the operation of such a provision "prevents coverage required by the financial responsibility law [MCL 257.520(b)(2)]." *Id* at 58. Exclusion C, however, provides exactly that - the coverage required by the financial responsibility law.

Under MCL § 257.520(b)(2), liability insurance policies are required to insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle. MCL § 257.520(b)(2) does not, however, prescribe any particular limit on that liability.

MCL § 500.3101, et seq., requires that an automobile insurance policy provide liability coverage to the extent required by section 3009(1). Section 3009(1) provides:

> (1) An automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for property damage, bodily

> injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall not be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to a limit, exclusive of interest and costs, of **not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 accident, and subject to that limit for 1 person, to a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and to a limit of not less than $10,000.00 because of injury to or destruction of property of others in any accident.** [Emphasis added].

The minimum coverage required by MCL § 500.3101(1) is exactly what is provided by Exclusion C of the subject insurance policy. This Court, therefore, declines to discern ambiguity solely because the Plaintiff wishes it were so.

"[Our Supreme Court] has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms." *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 290; 195 NW2d 865 (1972). To do so would be contrary to the most fundamental principle of contract interpretation--the court may not read ambiguity into a policy where none exists. *Michigan Millers Mut Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994).

Nor does the location of the limitation on liability in the exclusions section of the policy render it ambiguous. "An insurer is free to . . . 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." *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161; 534 NW2d 502 (1995). "Any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy." *Raska, supra* at 361-362. To determine otherwise would hold an insurer liable for a risk it did not assume. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

The subject insurance policy is not ambiguous. Exclusion C limits the liability coverage for a member of the insured's household to $20,000.

Based on this analysis, the Court should grant summary disposition in favor of the Defendant and declare the limit of liability to be $20,000.

However, this Court will not do so for a number of reasons. First, this analysis ignores the reality that most insureds do not read their policy and, even if they did, they would not

understand it. Second, permitting an insurer to limit its liability under an exclusion when every other provision in the policy, including the Declaration Page and the Part A - Liability Coverage section, prominently proclaims that Mr. Ruzak and his family members, including the Plaintiff, have $300,000 of liability coverage is repugnant. Third, permitting an insurer to limit its liability when bodily injury is suffered by a member of an insured's family when an insured is at-fault without providing notice to the insured or an opportunity for the insured to insure against such risk is unconscionable. And, fourth, permitting an insurer to limit its liability in a policy designed and offered exclusively to military and ex-military personnel who rely upon the insurer to provide them with the adequate insurance coverage they deserve is reprehensible.

> An insurance policy, though in form a contract, is a product prepared and packaged by the insurer. The buyer scarcely understands the detailed content of what he is buying. When a court construes a policy, it cannot be indifferent to that reality. [*Raska v Farm Bureau Ins Co*, 412 Mich 355, 370; 314 NW2d 440 (1982) quoting *DiOrio v New Jersey Manufacturers Ins Co*, 63 NJ 597, 602; 311 A2d 378 (1973).]

This Court can not imagine that the Ruzaks knew or understood that their insurance policy contained an exclusion that would limit the available coverage when either of them suffered bodily injury as the result of a one-car accident. No evidence has been produced that would suggest that the Ruzaks were given notice of this limitation or that they benefited from some reduction in their premium because of this exclusion. It would be unconscionable to permit an insurance company to collect premiums for coverage with one hand and take that coverage away with the other by upholding an un-bargained for exclusion that limits its exposure. This is especially true when doing so would provide more protection for a drunk driver or a fleeing felon who causes the accident than for the insured's love who was simply a passenger in the insured vehicle.

As dissenting Justice Williams noted in *Raska, supra* at 370:

> This Court is made up of human beings who are aware that very few insureds will try to read the detailed, cross-referenced, standardized, mass-produced insurance form, nor necessarily understand it if they do. Courts generally have gradually moved away from the traditional rule of caveat emptor, realizing that the modern insurance contract is not made between parties of equal bargaining strength with each side taking a part in choosing the language of the agreement and understanding what the contract means.

Justice Levin's approach in *Lotoszinski v State Farm Mut Automobile Ins Co*, 417 Mich 1, 15-16; 331 NW2d 467 (1982) (Levin, J., dissenting) is particularly compelling:

> It is the historic responsibility of the courts to protect, in the exercise of the judicial power, against imposition in commercial transactions. Fairness is the proper inquiry where a court is assessing policy language marketed and purchased without negotiation or explanation of the scope of the coverage.
>
> The governing rule of law cannot rightfully be predicated on the assumption that [the plaintiff] would read the policy, that if she did read it she would or could understand its esoteric verbiage, anticipate the situation which developed and deduce that she was not covered. Many competent lawyers would, unless they set aside time for careful reading and reflection, have failed that exam.

Furthermore, this Court is not inclined to give effect to clauses that limit liability which are unconscionable and inconspicuous. In the instant case, the subject limitation of liability is contained within the exclusions section of the policy. Yet, it is not an exclusion; it is a limitation. In order to be properly understood as a limitation, it should have been included in the Limit of Liability section, not the exclusions. See, *State Farm Mutual Automobile Ins Co v Ruuska*, 90 Mich App 767; 282 NW2d 472 (1979)

> In *Ruuska*, the insurer sold automobile insurance policies on two cars owned separately by Arvid and Gloria Carlson, a father and daughter who resided in the same household. Gloria Carlson was involved in an accident while driving her father's car. Gloria Carlson, fearing that her liability would exceed the limits under her father's policy, sought to have the two policies "stacked". The insurer admitted coverage under the policy on the father's car, but denied coverage under Gloria Carlson's own policy. The policy provided coverage for her while using a non-owned automobile only if the automobile was not owned by (or registered in the name of or furnished or available for the frequent use by) the named insured, his or her spouse, or any relative of either residing in the same household. Because her father resided in the same household, a car owned by him was not a non-owned automobile under her policy. The trial court had held that the definition of non-owned automobile contravened the no-fault act and was, therefore, void. This Court held that nothing in the no-fault act required an insured to have residual liability coverage when driving the automobile of another. This Court also concluded that a non-owned automobile exclusion of the type used was generally valid. The exclusion was held invalid, however, because the definition of "non-owned vehicle" in the policy was in conflict with its normal usage and was *hidden among the provisions of the policy rather than highlighted in any way.* One judge concurred in a separate opinion, but would have upheld the trial court's ruling that the exclusion was invalid under the no-fault act. [Emphasis added].

This Court also finds it incongruous that, in order to exclude a specific driver from coverage, the insured must authorize the exclusion and the policy must contain prominent notice

of the exclusion, but coverage for a member of one's household can be limited to the statutory minimum regardless of the general limit of liability without notice and without authorization.

The Michigan Legislature has authorized a narrow exception to the general rule of comprehensive coverage in Michigan, which allows certain persons to be excluded from coverage while operating an automobile covered in a no-fault policy. MCL § 500.3009(2); *Detroit Automobile Inter-Ins Exchange v Comm'r of Ins*, 86 Mich App 473; 272 NW2d 689 (1978). The language is highly specific and detailed requirements must be met before a named individual is deemed excluded:

> When authorized by the insured, automobile liability or motor vehicle liability coverage may be excluded when a vehicle is operated by a named person. Such exclusion shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance referred to in subsection (3) of section 4 of Act No. 198 of the Public Acts of 1965, as amended, being section 257.1104 of the Compiled Laws of 1948: Warning when a named excluded person operates a vehicle all liability coverage is void. No one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable. MCL § 500.3009(2); MSA § 24.13009(2).

In *Allstate v DAIIE*, 73 Mich App 112, 116; 251 NW2d 266 (1977), the Court held that "the insured must necessarily have notice of [the name of the excluded driver] by virtue of the statutorily required authorization". Even more to the point, in *Citizens Mutual Ins Co v Central National Ins Co of Omaha*, 65 Mich App 349; 237 NW2d 322 (1975), the Court found invalid a policy provision attempting to exclude passengers of a motorcycle from coverage. The Court stated that a clear intent of § 3009 was to allow an insurance company to exclude only named persons, not classes of persons such as passengers.

Thus, in order for an insurance company to exclude a particular driver, the insurance company is required to give notice on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance. Yet, to reduce one's coverage under some limited set of circumstances simply because the injured party is a member of the insured's household does not require notice of any kind. This Court cannot discern a reason for the distinction. The same type of authorization and notice requirements should apply to a provision in the policy that limits the insurer's liability when the injured party is a member of the insured's household.

While the Court understands that the law cannot distinguish veterans from other citizens for insurance purposes, the facts here are especially repugnant. The Defendant markets solely to members of the armed forces. The implication of that fact is that the company is sensitive to their needs and gives them a worthwhile deal. Yet, without prominent notice, liability limits are radically reduced for injuries suffered by family members, caused by family members. This exclusion shows contempt by the Defendant for veterans, the very group it pretends to serve. Similar exclusions by other carriers show equal contempt for their insureds. One hopes our system of justice will find such behavior unconscionable and a violation of public policy. If insurance carriers are to be allowed to treat family members different than stranger felons fleeing crime scenes who slam into their car, perhaps it does no violence to the hoary law of contracts to demand that such a limitation of liability be conspicuous.

For these reasons, this Court denies Defendant's motion for summary disposition and enters summary disposition for the Plaintiff and declares the limit of liability in this case is $300,000.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 10/9/06