STATE OF MICHIGAN

COURT OF APPEALS

WESTFIELD INSURANCE COMPANY,

Plaintiff-Appellant,

v

CRANE AND EQUIPMENT RENTAL, INC., and RETHA EARLENE LEVI and KATHLEEN KANE, as Co-Personal Representatives of the Estate of ALVIN R. LEVI, Deceased,

Defendants-Appellees.

UNPUBLISHED
October 1, 1999

No. 209118
Oakland Circuit Court
LC No. 96-529589 CK

Before: Gribbs, P.J., and O'Connell and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of declaratory relief, which denied plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and granted defendants' counter-motion for summary disposition pursuant to MCR 2.116(I)(2). We affirm.

Alvin Levi was killed when struck by a steel beam that dropped while being hoisted by a crane owned by defendant Crane and Equipment Rentals, Inc. ("CERI") and operated by Usztan Construction, Inc. ("Usztan"). An allegedly defective choker wire broke, causing the beam to break loose from the hoist. The crane was a mobile crane permanently attached to the bed of a 1978 Ford utility truck. Four hydraulic outriggers were attached to each corner of the truck bed and were used to lift the truck wheels off the ground and stabilize the crane during its operation. The crane was stabilized and engaged in crane operation at the time of the accident.

Levi's estate brought an action against the supplier of the steel beam and CERI. Plaintiff, Usztan's insurer, initially defended CERI in that action because CERI, as lessor of the crane, was named as an additional insured on Usztan's business-auto insurance policy. However, plaintiff brought a separate action for declaratory relief, seeking a declaration that coverage did not exist for the accident and that it owed no duty of defense or indemnity to CERI. Plaintiff argued that no coverage was

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

afforded for the crane accident because the crane did not meet the policy's definition of "auto." Defendant argued that the policy was ambiguous and should be construed in favor of the insured. The trial court held that coverage existed because the ambiguity of the policy regarding whether the crane was a covered auto must be resolved in favor of the insured. Questions of insurance policy interpretation, including whether the policy is ambiguous, are questions of law that we review de novo. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999); *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

Where an insurance policy is not ambiguous, the terms of the policy must be enforced as written. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). However, where an ambiguity does exist, we construe the policy in favor of the insured. *Id*. In determining whether a policy is ambiguous, we must read and interpret the policy as a whole. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). An insurance policy is ambiguous if its language can be reasonably understood in different ways. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). Our Supreme Court has explained:

> 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. [*Nikkel*, *supra* at 566-567, quoting *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982).]

We conclude that the policy issued by plaintiff is ambiguous, and we therefore construe the policy in favor of the insured and find that coverage exists in this case.

The business-auto declarations form of the insurance policy contains a listed "schedule of covered autos you own." Included on the list of "covered autos" is a "78 FORD W/ CRANE," which is the vehicle that was involved in the accident. Also, under the section entitled "Liability coverage," the policy states as follows:

> We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto."

Therefore, it would appear that liability coverage for the accident exists. However, plaintiff maintains that the vehicle does not fit within the policy's definition of "auto," and thus is not covered. The policy, in a different section, defines "auto" as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads but does not include 'mobile equipment.'" Plaintiff contends that the vehicle is "mobile equipment," which is defined by the policy to include vehicles "maintained primarily to provide mobility to permanently mounted . . . [p]ower cranes." Plaintiff is, of course, correct that the vehicle in question fits within the policy's definition of "mobile equipment" and is therefore not an "auto" as defined by the policy. However, the statement on the declarations form that the vehicle in question is a

"covered auto" is in conflict with the definitions section of the policy, which would seem to exclude the vehicle from coverage. We conclude that this creates an ambiguity, and we must resolve it in favor of the insured. Therefore, we hold that the trial court correctly found that the vehicle was covered under the business-auto policy for liability risks.[1]

Under the policy, in order for coverage to exist for the crane accident, the accident must have resulted from the ownership, maintenance, or use of a covered auto. Plaintiff argues that the accident involved negligence regarding workplace safety and had nothing to do with the ownership, maintenance, or use of the vehicle. We disagree.

The liability coverage contained in the policy is designed to cover the residual liability retained under the no-fault system. MCL 500.3135(1); MSA 24.13135(1) provides that tort liability exists for death, serious impairment of body function, or permanent serious disfigurement caused by the ownership, maintenance, or use of a motor vehicle. See also MCL 500.3101(1); MSA 24.13101(1); MCL 500.3131(1); MSA 24.13131(1); *Husted v Auto-Owners Ins Co*, 459 Mich 500, 507-508; 591 NW2d 642 (1999) (setting forth the residual-liability provisions of the no-fault act). The injury must be sufficiently causally connected to the ownership, maintenance, or use of the vehicle. *Kangas v Aetna Casualty & Surety Co*, 64 Mich App 1, 17; 235 NW2d 42 (1975). The causal connection must be more than incidental, fortuitous, or "but-for;" rather, "[t]he injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle." *Id*.

The injury in this case—death from a steel beam that fell from the crane—resulted from an allegedly defective choker wire on the crane itself. The causal connection between the injury and the vehicle is more than incidental, fortuitous, or "but-for." The injury resulted from an alleged malfunction of the vehicle itself. Therefore, we conclude that a sufficient causal connection exists between the injury and the ownership, maintenance, or use of the vehicle.[2] The trial court correctly concluded that the policy issued by plaintiff provided liability coverage for this crane accident.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns

[1] Plaintiff further argues that the only risks the vehicle was insured for were auto-related risks, such as occur when the vehicle is traveling from site to site. However, this argument fails because, under the definitions section of the policy, the vehicle would not be insured for any risks whatsoever, because it is not an "auto." But if the declarations form controls, the vehicle is listed as a "covered auto," and the policy does not limit coverage to risks arising from site-to-site travel, but specifically provides that liability coverage exists for covered autos. Therefore, plaintiff's position that the vehicle was covered only for site-to-site travel is untenable.

[2] We note that the vehicle need not be used "as a motor vehicle," as is required to recover no-fault personal protection insurance benefits under MCL 500.3105(1); MSA 24.13105(1). Whether a

vehicle is being used "as a motor vehicle" is a separate question from whether a sufficient causal connection exists between the injury and the use of the vehicle. *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 222 n 8; 580 NW2d 424 (1998).