

STATE OF MICHIGAN
COURT OF APPEALS

ADDIE R. FAULK, Personal Representative of the
Estate of STYRON H. FAULK, Deceased,

UNPUBLISHED
November 12, 1999

Plaintiff-Appellee,

v

No. 209348
Wayne Circuit Court
LC No. 95-532635 NF

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

STATE FARM MUTUAL INSURANCE
COMPANY,

Defendant.

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant Auto Club Insurance Association appeals as of right from the trial court's order compelling arbitration of plaintiff's claim for uninsured motorist benefits.¹ We reverse.

Auto Club first argues that the trial court erred in ordering arbitration of plaintiff's uninsured motorist claim because a dispute over coverage existed and because disagreements concerning coverage are explicitly exempted from arbitration. We agree.

The arbitration provision in Auto Club's insurance policy provides, in pertinent part:

1. If we do not agree with the **insured person(s)**:

a. that they are legally entitled to recover damages from the owner or the operator of an **uninsured motor vehicle**; or

b. as to the amount of the payment;

either they or **we** must demand, in writing, that the issues, *excluding matters of coverage*, be determined by arbitration. . . . Unless otherwise agreed by express written consent of both parties, *disagreements concerning insurance coverage*, insurance afforded by the coverage, or whether or not a **motor vehicle** is an **uninsured motor vehicle** are *not subject to arbitration* and suit must be filed within 3 years from the date of the accident. [Bold in original; italics added.]

This provision constitutes a narrow arbitration clause, which reserves for the courts the resolution of whether an exclusion applies, or in other words, whether coverage exists. *Linebaugh v Farm Bureau Mut Ins Co*, 224 Mich App 494, 500-503; 569 NW2d 648 (1997). Because the contract at issue in this case expressly exempts coverage disputes from arbitration, and because the underlying issue in this case concerns whether coverage is excluded by certain policy exclusions, the trial court erred in submitting the parties' dispute to arbitration. See *City of Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992); MCL 600.5001(2); MSA 27A.5001(2); see also MCR 3.602(B)(2).

Auto Club next argues that the trial court erred in failing to find that coverage was excluded in this case under the terms of its policy. We agree. Although the trial court did not reach this issue, this Court may review an issue if the question is one of law and the facts necessary for its resolution have been presented. *Carson Fisher Potts and Hyman v Hyman*, 220 Mich App 116, 119; 559 NW2d 54 (1996).

Plaintiff's policy with Auto Club contains the following uninsured motorist exclusions:

1. This coverage does not apply to **bodily injury** sustained by an **insured person**:
 - a. while **occupying** a **motor vehicle** which is owned by **you** or a **resident relative** unless that **motor vehicle** is **YOUR CAR**;
 - b. while **occupying** a **motor vehicle** which provides the same or similar coverage for **you** or a **resident relative**. But this exclusion will not apply to the extent that the Limit of Liability of this coverage is greater in amount than the limit of Liability of that same or similar coverage[.] [Emphasis in original.]

These exclusions are clear and unambiguous, and must be enforced as written. *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 657; 550 NW2d 577 (1996). Here, it is undisputed that plaintiff's decedent lived with plaintiff, that the decedent was killed while operating his motorcycle, and that the motorcycle was not named in the declarations' page of plaintiff's insurance policy with Auto Club. Rather, the decedent's motorcycle was insured with defendant State Farm Mutual Insurance Company, which provided a higher amount of uninsured motorist coverage than plaintiff's policy with Auto Club. Coverage is therefore precluded in this

case by both exclusions. See *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 67-73; 467 NW2d 17 (1991); see also *American States Ins Co v Kesten*, 221 Mich App 330, 332-333, nn 1-2; 561 NW2d 486 (1997).

Reversed.

/s/ Jeffrey G. Collins
/s/ Mark J. Cavanagh
/s/ David H. Sawyer

¹ Defendant State Farm, who insured plaintiff's decedent, does not appeal the trial court's order requiring it to arbitrate plaintiff's claims.