

STATE OF MICHIGAN
COURT OF APPEALS

CHARLOTTE JACKSON, Personal
Representative of the Estate of Alvin Cook,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 5, 2004

No. 246388
Wayne Circuit Court
LC No. 01-116994-NF

Before: Murphy, P.J., and Griffin and White, JJ.

PER CURIAM.

Plaintiff's decedent was killed in a hit-and-run accident. After defendant insurer refused to pay uninsured motorist benefits, plaintiff brought a breach of contract action. The circuit court granted defendant summary disposition. Plaintiff appeals the circuit court's order by delayed leave granted. Because the policy provision requiring the person making a claim to report a hit-and-run accident to defendant within thirty days is ambiguous in the context of bodily injury causing death, we conclude that the circuit court erred in granting summary disposition to defendant. We therefore reverse.

I

On January 11, 2000, plaintiff's decedent, Alvin Cook, was struck and killed by a hit-and-run driver as he walked on the side of a road. On May 10, 2000, decedent's mother, plaintiff Charlotte Jackson, presented a claim for personal protection insurance benefits (PIP) and contractual uninsured motorist (UIM) benefits to defendant insurer. Plaintiff claimed the benefits pursuant to her automobile insurance policy with defendant, on the basis that her son was a resident relative, and therefore an insured. See n 5, *infra*. After defendant denied the UIM claim, plaintiff brought the instant action.

A

Under the parties' insurance contract a condition precedent for recovery of UIM benefits is that the claimant report a hit-and-run accident to defendant within thirty days. Plaintiff did not comply with the thirty-day notice provision. Plaintiff contends that the policy's thirty-day notice provision is ambiguous as to the estate, impossible to perform by the estate, and/or is

unenforceable as unconscionable. We conclude the notice provision is ambiguous in the context of a death.

B

The principles for analyzing an uninsured motorist benefit contract for ambiguity are set forth in *Hellebuyck v Farm Bureau General Ins Co of Michigan*, 262 Mich App 250, 254; 685 NW2d 684 (2004):

Defendant argues on appeal that the circuit court erred by finding the policy language ambiguous and relieving plaintiff of his obligation to comply with the one-year time limit. The construction and interpretation of the language of an insurance contract presents an issue of law that is reviewed de novo. *Allstate Ins Co v Muszynski*, 253 Mich App 138, 140-141; 655 NW2d 260 (2002). “This Court interprets an insurance contract by reading it as a whole and according its terms their plain and ordinary meaning.” *Farm Bureau Mutual Ins Co v Buckallew*, 246 Mich App 607, 611; 633 NW2d 473 (2001). The terms of an insurance policy are to be enforced as written when no ambiguity is present. *Id.* A contract is ambiguous when its words may be reasonably understood in different ways. *Raska v Farm Bureau Mutual Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982). If a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous. *Id.* This Court will construe a policy containing ambiguous terms in favor of the insured and against the insurer. *Buckallew, supra* at 612.

C

The policy at issue here states in pertinent part:¹

REPORTING A CLAIM – INSURED’S DUTIES

* * *

5. Other Duties Under Personal Injury Protection, Uninsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

The *person* making claim also shall:

a. under the personal injury protection, uninsured motor vehicle and death, dismemberment and loss of sight coverages:

(1) give us all the details about the death, injury, treatment and other information we need to determine the amount payable.

¹ All emphases are in the original.

(2) be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. The *person*, or his or her legal representative if the *person* is dead or unable to act, shall authorize us to obtain all medical reports and records.

(3) answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

b. under the uninsured motor vehicle coverage:

(1) report a “hit-and-run” accident to the police within 24 hours and to us within 30 days.

(2) let us see the insured *car* the *person occupied* in the accident.

Under the policy definitions *person* means a human being.

The policy section repeatedly refers to “the *person*,” indicating, as in *Halton v Fawcett*, 259 Mich App 699, 701-702; 675 NW2d 880 (2003), app held in abeyance 677 NW2d 29 (2004), that “the *person* making claim” is the person referred to throughout the section. That person is required to submit to examination by physicians chosen by State Farm, is entitled to a copy of the report, and must authorize State Farm to obtain medical records. If the person is dead or unable to act, the person’s legal representative must provide the authorization. Also, the person must let State Farm see the car the person occupied.

The fair import of these sections is that the “person making claim” means the person who sustained bodily injury, as defined in the policy,² arising out of the operation, maintenance or use of an uninsured motor vehicle, and that the policy at least contemplates that if the person is unable to act, the person’s legal representative shall do so.

Other provisions, such as 5a.(1) and 5b.(1), the latter at issue here, allow for a broader interpretation of the word “person” to include anyone making claim.³ However, if the person is to be the same person, as the word “the” indicates, *Halton, supra*, one is of necessity again directed to the person making claim to have suffered bodily injury arising from the ownership, maintenance or use of an uninsured motor vehicle, because under the policy “the person making

² ***Bodily Injury*** – means bodily injury to a *person* and sickness, disease or death which results from it.

³ The phrase “person making claim” is itself ambiguous. The policy does not say “the person making a claim” or “the person making the claim,” which might indicate that “claim” means the actual formal request for payment under the policy, so that the person making the claim is the person who submits the claim. Rather, the policy says “the person making claim,” which can be understood, consistent with the provisions requiring examination, as referring to the person who claims to be entitled to damages for bodily injury arising out of the operation, maintenance or use of an uninsured motor vehicle, or the person’s legal representative.

claim” must take additional actions that by their terms can apply only to the person suffering bodily injury.⁴

The policy is thus ambiguous regarding who may be the “person making claim” and therefore who has the obligation to provide notice. It is unclear whether the “person making claim” must be the person who suffered bodily injury (or that person’s legal representative) or whether any person may be the person making claim. If the policy is interpreted as referring to one person, someone seeking to act in behalf of an insured,⁵ who suffered bodily injury resulting in death or incapacitation, could be jeopardizing coverage by providing notice before being certain that he or she will be appointed the insured’s legal representative.⁶

In light of our reversal of the circuit court on the basis that the policy’s notice provision is ambiguous and unenforceable, we need not address plaintiff’s arguments that the thirty-day notice provision was tolled until the estate was formed, that the notice provision may be enforced only if defendant can prove actual prejudice, or that the notice provision is unconscionable.

Because the policy is ambiguous and not enforceable, the circuit court erred in granting defendant summary disposition. We therefore reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Helene N. White

⁴ Unlike the dissent, we read *Halton*, *supra*, as supporting plaintiffs’ position, rather than defeating it. *Halton* does, indeed, hold that “person” “refers to a human being, whether in their individual or representative capacity.” However, that does not eliminate the ambiguity created by the actual language of the insurance policy. The statutory provision at issue in *Halton* had none of the conflicting language present here. In *Halton*, the Court held that the statute required only that the same “person” (human being) file the notice and commence the action. Here, the same definite article “the” is used throughout the policy provision, so that the “*person* making claim” is the same person referred to throughout the section. In *Halton*, the statutory duties of the person referred to by the statute did not conflict; there is nothing inconsistent in requiring the person who commenced the lawsuit to file the notice. Here, however, the policy provides that “the *person* making claim” must also be examined by physicians chosen by the insurance company, and “the *person* making claim” or “his or her legal representative if the *person* is dead or unable to act must authorize the insurance company to obtain all medical reports and records. These provisions create an ambiguity not present in *Halton*.

⁵ Under the Uninsured Motor Vehicle coverage, a resident relative is included in the definition of an insured.

⁶ Unlike the dissent, we do not think the questions of notice and who is the proper claimant under the policy can be separated in this context. The policy states that “the *person* making claim” must report the accident. But “the *person* making claim” has other enumerated duties under the policy as well; and when the section is read as a whole, it is ambiguous regarding who can properly be “the *person* making claim.” It is therefore ambiguous regarding who has the duty to report the accident within 24 hours, any human being, or the person suffering bodily injury or that person’s legal representative.

