STATE OF MICHIGAN

COURT OF APPEALS

TAMIRA JONES,

Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
August 23, 2005

No. 261089
Wayne Circuit Court
LC No. 03-310745

Before: Zahra, P.J., and Cavanagh and Owens, JJ

PER CURIAM.

Defendant appeals by leave granted from the circuit court's order granting plaintiff partial summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a pedestrian, was struck and injured by an automobile whose driver has never been identified. Plaintiff had a no-fault insurance policy with defendant which provided both no-fault personal protection insurance (PIP) coverage and uninsured-motorist coverage.

Plaintiff submitted a claim for PIP benefits after the accident. Defendant provided benefits, but later concluded that plaintiff had made several material misrepresentations in connection with her claim, involving her address, employment, health insurance, and the extent of the attendant care service her sister was providing.[1] Plaintiff subsequently submitted a claim for uninsured-motorist benefits. Defendant cited a concealment or fraud clause in the insurance policy, and denied the claim on the basis of the alleged misrepresentations made in connection with the PIP claim.

Plaintiff filed suit alleging breach of contract. Defendant responded that plaintiff's misrepresentations in connection with her PIP claim voided the uninsured-motorist coverage. Plaintiff moved for partial summary disposition pursuant to MCR 2.116(C)(9) on the ground that

[1] The truth of these allegations was not determined below, and does not bear on our analysis.

no misrepresentations connected with her claim for PIP benefits afforded a basis for denying benefits in connection with the claim for uninsured-motorist benefits. The trial court granted plaintiff's motion, but stayed proceedings pending defendant's appeal.

Interpretation of an insurance contract poses a question of law subject to review de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). "[C]overage under a policy is lost if any exclusion within the policy applies to an insured's particular claims." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

This case concerns the following provision:

> This entire Policy is void if an **insured person** has intentionally concealed or misrepresented any material fact or circumstance relating to:
>
> a. this insurance;
>
> b. the Application for it.
>
> **We** do not provide coverage for any **insured person** if an **insured person** has intentionally concealed or misrepresented any material fact or circumstance relating to a claim for which coverage is sought under this Policy. [Bold in original.]

A fraud and concealment provision can void uninsured-motorist coverage where the fraud or concealment took place in connection with a claim for no-fault PIP benefits under the policy. *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 526-527, 532; 620 NW2d 840 (2001). In the instant case, the trial court acknowledged *Cohen, supra*, but noted that the language in the two policies differed somewhat, and concluded that *Cohen, supra*, was not controlling. The provision in *Cohen, supra*, read as follows:

> This entire Policy is void if an insured person has intentionally concealed or misrepresented any material fact or circumstances relating to:
>
> a. this insurance;
>
> b. the Application for it;
>
> c. or any claim made under it. [*Cohen, supra* at 527 (internal quotations marks omitted).]

The trial court emphasized that the provision in the instant policy says "under this policy," apparently in contrast to the reference in *Cohen, supra*, to the insurance in general or any clam made under it. The trial court concluded, "when [plaintiff] made her [uninsured-motorist] claim, that's not under this policy, and that's the problem."

We reverse and remand. We conclude that the operative words in this case are indistinguishable from the operative words in *Cohen, supra*, and that the decision in that case is controlling. Plaintiff's argument that the exclusion in the instant policy applies to only the

specific claim in connection with which the misrepresentations were offered is strained. The language refers to misrepresentations "relating to *a* claim for which coverage is sought under this Policy" (emphasis added). Had the exclusion referred to "the claim," instead of "a claim," plaintiff's argument would have merit. But the choice of the indefinite article cannot be ignored. See *Hagerman v Gencorp Automotive*, 457 Mich 720, 728-729; 579 NW2d 347 (1998) ("the" refers to a specific object, while "a" means "one" or "any"). By use of the indefinite article, the contract affords defendant the broadest protections in response to any material misrepresentation or omission in connection with any claim under the policy.

As was the case in *Cohen, supra*, this case concerns not statutorily mandated no-fault provisions, but optional uninsured-motorist coverage. Accordingly, we determine that the exclusion in question applies fully to plaintiff's uninsured-motorist claim, without concerning ourselves with its applicability to a no-fault claim. See *Cohen, supra* at 532.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens