

STATE OF MICHIGAN
COURT OF APPEALS

LOIS LOUELLA QUANTON, d/b/a LLQ
TRANSPORT,

Plaintiff-Appellant,

v

OIDA RISK RETENTION GROUP, INC. a/k/a
COMMERCIAL TRUCK CLAIMS
MANAGEMENT,

Defendant-Appellee.

UNPUBLISHED
April 21, 2005

No. 253355
Jackson Circuit Court
LC No. 02-005886-NI

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

PER CURIAM.

In this declaratory action for determination of insurance coverage stemming from a vehicular accident involving plaintiff's semi-tractor and trailer, plaintiff appeals as of right from the trial court's order granting defendant insurance company's motion for summary disposition under MCR 2.116(C)(10). We affirm.

A trial court's decision with regard to a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A trial court "may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

Plaintiff leased her 1995 Peterbilt truck to the Four Star Trucking Company, with the driver, Tracy Miller, acting as her independent contractor on the lease. Four Star is a trucking firm that operated as a motor carrier transporting property "from the point of origin to the point of destination." Plaintiff explained that when a steel company needed a load of steel hauled somewhere, the steel company would call Four Star to see if a truck and driver were available to make the delivery. In accordance with the terms of the lease between plaintiff and Four Star, plaintiff's truck was only insured "while the equipment is loaded and in transporting carriers [sic] traffic from point of origin to point of destination."

As a result of this provision, plaintiff obtained an "Unladen Truckers Liability Policy" from defendant, which purportedly provided coverage when

the “covered auto” is bobtailing or deadheading. Bobtailing means that the “covered auto” is being operated without a “trailer” attached. Deadheading means that the “covered auto” is being operated with an attached “trailer” which does not contain or carry any cargo.

The policy also contained a provision that excluded coverage “while [the covered auto is] being used for hire.”

We initially point out that the insurance policy issue that is in dispute between the parties is a not a dispute over coverage. Michigan courts are clear that the scope of coverage is a separate inquiry from whether coverage is negated by an exclusion. *Heniser v Frankenmuth Mutual Ins*, 449 Mich 155, 172; 534 NW2d 502 (1995). In other words, when confronted with an insurance contract dispute, a court first decides whether coverage may exist under a policy and then whether coverage is precluded by an exception. *Allstate Ins Co v McCarn*, 471 Mich 283, 287; 683 NW2d 656 (2004).

In this case, the terms of the policy provided coverage for plaintiff’s truck at the time of the accident on September 8, 2000, because it was not carrying cargo. The policy provides coverage “when the ‘covered auto’ is being operated with an attached ‘trailer’ which does not contain or carry any cargo.” Moreover, plaintiff was a “Named Insured” under the policy because the certificate was in her name, and Miller was an authorized driver. Additionally, plaintiff’s vehicle was a “Covered Auto” under the policy because it was “scheduled on the [insurance] certificate . . . at the time of the loss.”

Thus, because it is clear that plaintiff’s truck was covered under the policy at the time of the accident, the sole issue in this case is whether coverage was excluded because plaintiff’s truck was “being used for hire” at the time of the accident.

Insurance contracts are construed in accordance with the principles of contract construction. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 417; 668 NW2d 199 (2003). An insurance contract should be read as a whole and meaning given to all terms. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 50 n 11; 664 NW2d 776 (2003). Further, exclusionary clauses are to be strictly construed against the insurer. *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996), overruled in part on other grounds by *Wilkie, supra* at 59-63.

Plaintiff argues that because the phrase “while being used for hire” in the policy is not clearly defined, the commonly used meaning of the terms at issue should apply. Plaintiff argues that the commonly used meaning of “for hire” means “available for rent.” Plaintiff maintains that because her truck was leased to Four Star at the time of the accident, the truck could not possibly have been “available for rent,” and the policy exclusion therefore did not apply. We disagree.

As plaintiff correctly points out, the terms of an insurance policy are given their commonly used meanings, unless clearly defined in the policy. *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). Moreover, an ambiguity is not created because the definition of a word that has a common usage has been omitted. *Id.*

A starting point for discerning the plain meaning of the “for hire” language in the policy is the Michigan Motor Carrier Act (MCA), MCL 475.1 *et seq.*, which regulates and controls the use of highways by vehicles operated by carriers of property for hire. The MCA defines “for hire” as “remuneration or reward of any kind, paid or promised, either directly or indirectly.” MCL 475.1(e). In *Westlake Transport v PSC*, 255 Mich App, 589, 617; 662 NW2d 784 (2003), this Court provided further insight into the general meaning of the “for hire” language when it stated as follows:

A private carrier is “any person engaged in the transportation of property by motor vehicle upon public highways where the transportation is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation.” MCL 475.1(q). A “for hire” motor carrier is one that receives “remuneration or reward of any kind, paid or promised, either directly or indirectly.” MCL 475.1(e). Thus, “for hire” motor carriers are engaged in the business of transportation.

In this case, neither party could dispute that Four Star was a “for hire” motor carrier under MCL 475.1(e). As plaintiff explained at her deposition, her truck was leased to Four Star, a company that was paid by steel companies to haul their steel. In other words, plaintiff’s truck was not a “private carrier” because Four Star was a separate entity from the steel companies and operated to haul steel when called upon to do so.

Plaintiff explained that when a call for a load of steel to be shipped would come in, she would get a commission for each load for which she was able to obtain an available driver and truck. Plaintiff further explained that when Miller was available, she would receive twenty-five percent of his earnings based on Miller’s agreement with Four Star. Thus, under the common meaning of the terms “for hire” within the trucking industry, plaintiff’s truck was “for hire” through Four Star to transport a load of steel for any of the steel companies that happened to need a load of steel hauled. The question then becomes whether plaintiff’s truck was in the accident “while being used” for hire, i.e. while being operated for “promised” remuneration.

Again, this Court must look to other means to define the phrase “while being used for hire,” because it is not clearly defined under the policy. One avenue for discerning the common and ordinary meaning of insurance policy terms is through dictionary definitions. *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). *Random House Webster’s College Dictionary* (1997) defines “used” as “employed for a purpose.” “While” is defined by that dictionary as “in the time that.”

Here, although Miller could not be located during discovery to testify about exactly what he was doing at the time of the accident, plaintiff testified that Miller was “probably en route to my house, I would imagine, to pick up coil racks to haul the load.” Plaintiff further stated, “I believe [at the time of the accident] he was under dispatch from me, for Four Star, to go to Saginaw, to Worthington, Jackson to pick up a load for Saginaw.” A receipt from Miller’s trip and pay records confirms that Miller made the delivery of steel to Saginaw on September 8, 2000.

We find that although exclusions are to be strictly construed against the insurer, the common meaning of the policy controls and the exclusion must apply. When plaintiff’s truck

was called and it was on the way to pick up coil racks to haul a load, the truck was “employed for a purpose,” and plaintiff would be paid when the delivery was made. Thus, plaintiff’s truck was “being used for hire” because the purpose of the trip was to haul the steel and plaintiff would receive payment for the delivery. The mere fact that Four Star regularly carried steel products does not mean that plaintiff’s truck was not “hired” each time a dispatch call came in and plaintiff’s driver was contacted to pick up the load and make a delivery. The policy does not contemplate any sort of arrangement the driver may have for hauling loads or getting “hired.” All the policy requires is that the truck be covered by being under a long-term lease with a carrier that offers plaintiff’s truck to companies that need property transported, and the fact that plaintiff’s carrier, i.e. Four Star, regularly carried steel for various companies does not mean it was not hired each time it took a load or received a dispatch call.¹

Affirmed.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Bill Schuette

¹ The cases of *Engle v Zurich-American Ins Group*, 216 Mich App 482; 542 NW2d 589 (1996), and *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich app 526; 547 NW2d 52 (1996), on which plaintiff relies, are distinguishable and do not require us to reverse the trial court’s order in this case.