FILED
FEB 2 2 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-553 / 89-406

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WEST TRUCKING LINE, INC.,

Appellant,

vs.

NORTHLAND INSURANCE COMPANY,

Appellee.

Appeal from the Iowa District Court for Washington County, Robert Bates, Judge.

In this insurance coverage dispute, the district court found that the policy provided no coverage and granted the insurer a summary judgment. Plaintiff has appealed. **REVERSED AND REMANDED FOR TRIAL.**

Sara Riley Brown of the Tom Riley Law Firm, Cedar Rapids, for appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J. 274

On February 3, 1988, a truck owned by West Trucking was involved in an accident with another vehicle. The driver of the other vehicle, whose negligence West maintains was the sole proximate cause of the accident, had insufficient insurance to pay the total damages caused by the accident.

The previous month, Linda West, on behalf of West Trucking, purchased insurance from Northland Insurance Company. Therefore, West looked to the underinsured motorist coverage provided by its own insurance carrier to recover for property damage resulting from the collision.

Northland refused to pay West's claim, maintaining the policy's underinsured motorist clause provided coverage only for bodily injury, not for property damage. Northland also argued the Iowa statute requiring underinsured motorist coverage, Iowa Code section 516A.1, requires underinsured motorist coverage only for bodily injury, not for property damage.

West Trucking filed suit for breach of contract and insurance bad faith for Northland's failure to provide property damage coverage pursuant to its insurance contract. Northland filed a motion for summary judgment. West resisted. After a hearing, the court granted Northland's motion. The district court agreed the policy's underinsured motorist clause provided no coverage for property damage, and the relevant statute required no such coverage.

West Trucking has appealed. West contends the policy is ambiguous on the subject of whether the underinsured motorist clause provides coverage for property damage. West argues this alleged ambiguity should be resolved in its favor. In addition, West contends coverage should be available under the doctrine of reasonable expectations because parts of the policy appear to provide the coverage in question.

We find there is a genuine issue of material fact in dispute. We reverse and remand for trial.

The principles governing our review of a motion for summary judgment are well established.

> The party moving for summary judgment asserts the lack of a genuine issue of material fact in the record entitles the movant to a judgment on the merits as a matter of law. In order to successfully resist a motion for summmary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact. All the evidence must be viewed in the light most favorable to the party resisting summary judgment. If reasonable minds could draw different inferences and reach different ultimate conclusions from the undisputed facts, the issues must be reserved for the fact-finder at trial and summary judgement is inappropriate. We are guided by the same principles in reviewing a grant or denial of summary judgment.

Liska v. First Nat'l Bank, 310 N.W.2d 531, 534 (Iowa App. 1981).

Item two of the declaration page (see Exhibit 1) is the schedule of coverages and covered autos. Under the liability heading (see exhibit 1, vertical column on left) the coverage is specified as (1) bodily injury-BI;

(2) property damage-PD; and Combined (1) and (2)-CSL. CSL stands for combined single limits. It combines both bodily injury and property damage with a single limit amount for each accident. To the right of this CSL designation under liability is the typewritten insertion $1,000,000, which indicates the insured is covered up to $1,000,000 for each accident, combining the bodily injury and property damage amounts.

Within the heading "additional coverages by endorsement" (see exhibit 1, vertical column on left), the form provides for BI, PD and CSL for uninsured and underinsured motorist coverage. Again, to the right of the CSL designation is the typewritten insertion $500,000 for each accident. This appears to indicate the policy provides uninsured/underinsured motorist coverage with a combined single limit of $500,000 for property damage and bodily injury.

The trial court granted summary judgment because a clause in the insurance contract limited underinsured/uninsured motorist coverage to "damage [that] must result from bodily injury sustained by the insured caused by an accident." This clause is found within the body of the insurance contract, not on the declaration page.

An insurance contract is, by its very nature, a contract of adhesion. Contractual provisions which are

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ambiguous, and thus, requiring construction, will be construed in a light most favorable to the insured. City of Cedar Rapids v. Northwestern Nat. Ins. Co. of Milwaukee Wis., 304 N.W.2d 228 (Iowa 1981).

Our supreme court has held it will adopt the construction most favorable to the insured when an insurance contract is ambiguous or is susceptible to two equally-proper constructions. Benzer v. Iowa Mutual Tornado Insurance Association, 216 N.W.2d 385, 388 (Iowa 1974); City of Spencer v. Hawkeye Security Insurance Co., 216 N.W.2d 406, 409 (Iowa 1974).

Insurance contracts are to be interpreted from the viewpoint of an ordinary person, not a specialist or expert. Steinbach v. Continental Western Ins. Co., 237 N.W.2d 780, 782 (Iowa 1976), citing to City of Spencer v. Hawkeye Security Insurance Co., 216 N.W.2d at 409.

Applying the principles cited regarding review of a summary judgment, we conclude the summary judgment is improper on the basis of this record. There is a genuine issue of material fact in dispute. Reasonable minds could reach different conclusions from the undisputed facts regarding the coverage purchased by West Trucking.

A reasonable layperson could conclude the declaration page provided property damage and bodily injury coverage for a combined single limit of $500,000 under the uninsured/underinsured provision. This conclusion would

then result in an insurance contract which is ambiguous and susceptible to two equally-appropriate constructions. Provisions of an insurance policy are to be interpreted strictly against the company which drafted them. Sable v. Horace Mann Life Ins. Co., 362 N.W.2d 495, 496 (Iowa 1985) citing to Lindstrom v. Aetna Life Ins. Co., 203 N.W.2d 623, 625 (Iowa 1973).

In light of this firm stance taken by our supreme court, we determine the policy does provide coverage for property damage as well as bodily injury under the under-insured motorist provision.

Northland argues because Iowa does not require uninsured or underinsured motorist coverage for property damage, the trial court properly granted the summmary judgment motion. This begs the issue. The question is what a reasonable person would think they had purchased based upon the declaration page and the contract provided by Northland Insurance.

In construction and application of a standardized insurance contract, the court strives to effectuate the reasonable expectations of the average member of the public who accepts it. C & J Fertilizer Inc., v. Allied Mutual Insurance Co., 227 N.W.2d 169, 176 (Iowa 1975).

The doctrine of reasonable expectation, adopted by the Iowa Supreme Court in Rodman v. State Farm Mutual Automobile Ins. Co.,208 N.W.2d 903 (Iowa 1973) provides:

> [I]n a contract of adhesion, such as an insurance policy, form must not be exalted over substance, and that the reasonable expectations of the insured may not be frustrated even though painstaking study of the policy provisions would have negated those expectations.

Farm Bureau Mutual Ins. Co. v. Sandbulte, 302 N.W.2d 104, 112 (Iowa 1981), citing to Rodman v. State Farm Mutual Automobile Ins. Co., 208 N.W.2d at 906.

Linda West, an officer of West Trucking who purchased the policy, stated she believed it did provide coverage for property damage. The declaration page indicates it provides for uninsured and underinsured motorist coverage for property damage and bodily injury for combined single limits of $500,000. The clause within the body of the contract which Northland relies on eviscerates the agreed upon terms.

The reasonable expectations giving rise to application of the doctrine can be established by proof of the underlying negotiations or can be inferred from the circumstances. Farm Bureau Mutual Ins. Co. v. Sandbulte, 302 N.W.2d at 112, citing to Restatement (Second) of Contracts § 237 at 541 comment f. The doctrine will apply here if the exclusion is (1) bizarre or oppressive, (2) eviscerates terms explicity agreed to, or (3) eliminates the dominant purpose of the transaction. Id.

This court concludes the doctrine of reasonable expectations is applicable. A layperson looking at the

declaration page could reasonably expect coverage for both bodily injury and property damages.

Based on the construction of the contract in favor of the insured and the doctrine of reasonable expectations, we hold West Trucking is covered for property damage under the Northland Insurance policy.

We reverse and remand for trial on the issue of Northland's bad faith breach of contract in failing to pay the claim.

REVERSED AND REMANDED FOR TRIAL

Schlegel, J., concurs; Habhab, J., dissents.

Northland Insurance Companies

COMMERCIAL AUTO POLICY DECLARATIONS

☐ Check here if PART 2 attached

Coverage is provided in Company checked
- [X] NORTHLAND INSURANCE COMPANY
- [ ] NORTHLAND CASUALTY COMPANY
- [ ] NORTHFIELD INSURANCE COMPANY

St. Paul, MN 55102-1399 STOCK COMPANIES

ITEM ONE—NAMED INSURED AND ADDRESS

West Trucking Line, Inc.
RR 1, Box 6
West Chester, LA 52359

Filings
See attached

Policy Period: From 1-13-88 To 1-13-89 (12:01 A.M. Standard Time at Named Insured's Garaging address)

- [ ] Individual
- [ ] Partnership
- [X] Corporation
- [ ] Joint Venture
- [ ] Other

POLICY NO: T 057340

PREVIOUS POLICY NO: T041526

Business of Named Insured: Trucking

AGENCY NO: 319

Garaging address if different:

Commodities hauled: Livestock & Grain

BRANCH: SOURCE: 2650

ITEM TWO—SCHEDULE OF COVERAGES AND COVERED AUTOS

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those autos shown as Covered Autos. Autos are shown as Covered Autos for a particular coverage by the entry of one or more of the Symbols from ITEM SIX next to the name of the coverage.

	Covered Autos	COVERAGES	LIMITS OF LIABILITY	PREMIUM
LIABILITY		(1) BODILY INJURY-BI	$ each person $ each accident	$
		(2) PROPERTY DAMAGE-PD	$ each accident	$
	46	COMBINED (1) AND (2)-CSL	$ 1,000,000. each accident	$ 13,333.00
ADDITIONAL COVERAGES BY ENDORSEMENT		PERSONAL INJURY PROTECTION-PIP or equivalent No-Fault coverage)	Separately Stated in each PIP endorsement	$
		ADDED PIP (or equivalent No-Fault coverage)	Separately Stated in each added PIP endorsement	$
		PROPERTY PROTECTION-PPI (Michigan Only)	Separately Stated in PPI endorsement	$
		AUTO MEDICAL PAYMENTS	$	$
		UNINSURED MOTORISTS-UM [X] Includes Underinsured Motorists-UIM — BI	$ each person $ each accident	$
		PD	$ each accident	$
	46	CSL	$ 500,000. each accident	$ 95.00
				$
	46a	CARGO	$ See Schedule each accident less the deductible $250 per covered auto	$ 2,001.00
				$
PHYSICAL DAMAGE		COMPREHENSIVE	Stated Amount, Actual Cash Value or Cost of Repairs, whichever is less minus the deductible.	$
	46	SPECIFIED PERILS		$ 2,473.00
	46	COLLISION		$ 7,989.00
				$
ADDITIONAL PREMIUM PER ENDORSEMENTS:				$
FORMS AND ENDORSEMENTS CONTAINED IN THIS POLICY AT ITS INCEPTION: T-001, T-006, T-007, TF-068, A910b, T-004, T-083, T-048, MCS-90, A1208, TF-029			ESTIMATED TOTAL PREMIUM (Refer to ITEM SIX for explanation)	$ 25,891.00

ITEM THREE—HIRED AUTO LIABILITY INSURANCE ESTIMATED COST OF HIRE $

Rate per $100 Cost of Hire	Minimum Premium	Advance Premium (incl. in ITEM TWO LIABILITY)
$ BI	$ BI	$ BI
$ PD	$ PD	$ PD
$ CSL	$ CSL	$ CSL

Cost of hire means the total cost you incur for the hire of autos you don't own. See 47 on back

ITEM FOUR—SCHEDULE OF COVERED AUTOS YOU OWN

	Year, Model, Trade Name, Body Type	Identification Number	Loss Payee
1	SEE ATTACHED SCHEDULE		
2			
3			

	LIABILITY PREMIUMS						STATED AMOUNT	PHYSICAL DAMAGE PREMIUMS				CARGO		
	BI CSL	PD	PIP	PPI	UM	OTHER		Comp S.P.	DED.	COLL.	DED.	DED	RATE	PREM
1	SEE ATTACHED SCHEDULE													
2														
3														

ITEM FIVE—NAMED LESSEE(S) AND ADDRESS

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Countersigned 1-13 19 88 By Doug Wilson

THESE DECLARATIONS TOGETHER WITH THE COMMERCIAL AUTO POLICY PROVISIONS AND ENDORSEMENTS EARLY ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY

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EXHIBIT #1

HABHAB, J. (dissenting)

I respectfully dissent. I do so for the reasons hereafter set forth. The policy[1] specifically states:

> We will pay: (1) All sums the insured is legally entitled to recover as damages from the owner or driver of the uninsured motor vehicle. The damages must result from bodily injury sustained by the insured, caused by the accident.

(Emphasis added.) I believe this policy provision clearly and unambiguously provides coverage for only bodily injury damages. I also believe that no average reasonable individual who reads this specific provision within the policy could arguably believe that the policy's uninsured motorist coverage includes property damages.

The declarations page does not state that "CSL" means both bodily injury and property damage. Rather, under the word "COVERAGES" in the liability section of the declarations page, one sees the following:

> (1) Bodily Injury - BI
> (2) Property Damage - PD
> Combined (1) and (2) - CSL

"CSL" refers to combined single limits. As it relates to the policy's liability coverage, the policy at hand had a $1,000,000 limit for each accident regardless of whether the damages were for bodily injury or property damage. No similar "statement" appears within the uninsured motorist section of the declarations page.

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1. I note the entire insurance policy is not of record.

Even if one assumes the declaration page to be confusing to the average reasonable person, that confusion is rectified by a reading of the specific aforementioned policy provision. The provision is clear, concise, and easily understandable to a person of average intelligence. As such, I would affirm the decision of the trial court in granting of summary judgment to appellee.