STATE OF MICHIGAN

COURT OF APPEALS

JUDY I. MARTIN,

Plaintiff-Appellee,

v

AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
April 11, 1997

No. 190044
Jackson Circuit Court
LC No. 95-071810-CZ

Before: Murphy, P.J., and Markey and A.A. Monton,* JJ.

PER CURIAM.

Defendant American Fellowship Mutual Insurance Company appeals by leave granted from the trial court's order denying defendant's motion for summary disposition and staying further proceedings pending appeal upon finding that the jury had to interpret defendant's uninsured motorist endorsement to plaintiff's policy and decide whether the policy required defendant as well as plaintiff to request arbitration. We reverse and remand.

This appeal concerns the meaning of the following language from defendant's insurance policy:

ARBITRATION

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

> that they are legally entitled to recover damages from the owner or the operator of an **uninsured motor vehicle**; or
>
> as to the amount of payment;

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* Circuit judge, sitting on the Court of Appeals by assignment.

> either they or **we** must demand, in writing, that the issues, excluding matters of coverage, must be determined by arbitration. A Demand For Arbitration **must** be filed within 3 years from the date of the accident or **we** will not pay damages . . . . [Emphasis original.]

I

Defendant argues that the trial court erred in denying defendant's motion for summary disposition because the policy language is unambiguous and clearly required plaintiff to demand arbitration within three years from the date of her accident as a condition precedent to receiving benefits and this she failed to do. We agree in part.

An insurance policy is similar to any other contract in that it is an agreement between the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). "When presented with a dispute, a court must determine what the parties' agreement is and enforce it." *Fragner v American Community Mut Ins Co*, 199 Mich App 537, 542-543; 502 NW2d 350 (1993). "Accordingly, the court must look at the contract as a whole and give meaning to all terms." *Churchman, supra* at 566.

Regarding plaintiff's intent, she had none. She had no input as to the terms of the policy. "Unlike most contractual relationships, where the parties negotiate contract terms, the terms of liability insurance contracts are standardized and are drafted by the insurance industry. Policyholders have little or no bargaining power to change terms." *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 448; 550 NW2d 475 (1996). Defendant's intent, that is, the intent of the policy language at issue, is twofold. First, uninsured motorists [UM] claims must be timely thus necessitating the language requiring that the insured, plaintiff, bring a UM claim, if at all, within three years from the time of the accident. Second, the resolution of that claim must be by arbitration.

Denying defendant's motion for summary disposition and staying the proceedings pending appeal, i.e., allowing plaintiff's claim to survive, effectuated both purposes. As for the first purpose, avoiding stale claims, there is no question that plaintiff notified defendant within three years of her accident regarding her UM claim. As to the second purpose, that plaintiff's UM claim be arbitrated, no one is claiming that instead it be litigated. (Of course, initially plaintiff filed suit but only because she was not aware that defendant's policy required arbitration.)

Defendant's position that plaintiff's claim is barred because she failed to demand arbitration within three years is wrong. The policy does not say that she alone bears the burden of demanding arbitration; it only states that either she or defendant demand it. Once plaintiff filed suit, two things occurred. First, plaintiff's complaint placed defendant on notice that there existed a bona fide dispute under the contract. At that juncture, defendant should have demanded arbitration, because plaintiff did not. Indeed, defendant raised the requirement that the matter be arbitrated in its affirmative defenses, and certainly it would be reasonable to deem the affirmative defense as a demand for arbitration i.e., defendant is saying this matter does not belong in this court but rather in arbitration. Whether by filing

the complaint or filing an arbitration request, plaintiff created a legal dispute regarding defendant's denial of coverage. In no way, however, are we imposing upon defendant the duty to request arbitration whenever it denies a claim for coverage. But under the facts presented here and the language of the arbitration agreement, defendant was equally obliged to demand arbitration. Second, the three year contractual limitation set forth in the arbitration agreement is tolled from the date plaintiff filed suit until the date the suit is dismissed. Plaintiff filed suit on March 24, 1995, eleven days before the three year anniversary of the date of the accident. Thus, after the circuit court action is dismissed, under any scenario, plaintiff would have eleven days to demand arbitration had defendant not already raised the issue in its affirmative defense and in its motion for summary disposition. See, MCL 600.5856; MSA 27A.5856; *Nielsen v Barnett*, 440 Mich 1, 10-13; 485 NW2d 666 (1992).

Defendant argues that such an interpretation of the policy's arbitration provision makes no sense. However, defendant has not provided any authority, and there is none, that imposes upon this Court a duty to strain to make sense of defendant's insurance contract. In fact, quite the opposite, we are to interpret ambiguities in the contract against defendant, defendant being its drafter. *American Bumper & Mfg Co, supra.* We construe an insurance contract against an insurance company because, as the drafter of the policy and the dictator of its contents, the insurance company had the ability, when it wrote the policy, to avoid the present dispute altogether. *Id.*

Granting defendant's motion yet allowing plaintiff's action to proceed is consistent with a literal reading of the first sentence of the arbitration language – "If **we** do not agree . . . either they [the insured, i.e., plaintiff] or **we** must demand in writing that the issues . . . be determined by arbitration" (emphasis in original). Establishing the meaning of a term such as "must" by resort to dictionary definitions is proper. *Michigan Millers Mut Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994). According to Webster's New World Dictionary, Third College Edition (1988), p 895, the word "must" expresses "compulsion, obligation, requirement, or necessity." Thus, when plaintiff failed to file an arbitration demand, the obligation, by process of elimination, fell to defendant. Reading the contract language literally, there is no ambiguity regarding the first sentence.

Defendants' also argue that it owes no money because plaintiff did not demand arbitration within three years of the accident, citing the second sentence of the arbitration language -- "A Demand for Arbitration **must** be filed within 3 years from the date of the accident or **we** will not pay damages . . ." (emphasis in original). However, in view of our previous analysis, this argument obviously fails.

II

Defendant next argues that the trial court erred in holding that the meaning of the policy language presents a jury question. We agree.

"An insurance policy is much the same as another contract; it is an agreement between the parties." *Fragner, supra* at 542. "When presented with a dispute, *a court* must determine the parties' agreement and enforce it." *Id* (emphasis added). We have already done so; thus, this issue is, for all intents and purposes, moot. The trier of fact will determine the intent of the parties only where the

agreement is thought to be ambiguous or unclear and, therefore, not susceptible to interpretation as a matter of law. *Chrysler Corp v Brencal Contractors, Inc*, 146 Mich App 766, 775; 381 NW2d 814 (1985).

Because we find that plaintiff's action should proceed to arbitration, we need not reach defendant's final issue regarding equitable estoppel.

The trial court's denial of defendant's motion for summary disposition and its decision that the meaning of the insurance policy involves a jury question is reversed. The matter is remanded to circuit court for entry of an order which should include a reasonable time frame within which plaintiff shall submit her written claims to arbitration in accordance with the defendant's insurance policy.

Reversed. Defendant as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Anthony A. Monton