

STATE OF MICHIGAN
COURT OF APPEALS

MIDWEST MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHAEL RAY SYAKOVICH,

Defendant-Appellee,

and

BARBARA GALE JACKSON,

Defendant.

UNPUBLISHED

December 28, 1999

No. 206169

Wayne Circuit Court

LC No. 97-711113-NI

Before: Cavanagh, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of summary disposition in favor of defendant Michael Ray Syakovich and against plaintiff entered by Wayne Circuit Judge Susan D. Borman in this insurance liability dispute.

On October 9, 1993, defendant Syakovich was operating a motorcycle owned by Ronald Marofsky and insured under a motorcycle policy issued by plaintiff Midwest. He was struck by a car owned and operated by defendant Barbara Gale Jackson. As a result of the accident Syakovich sustained injuries to his left shoulder, left hip and left elbow, which required a resection of the left acromio-clavicular joint and which caused permanent disability. Syakovich received personal injury protection benefits through his personal automobile carrier for approximately three years. Just under three years after the accident occurred, he sent Midwest a letter stating that Syakovich would be asserting a claim under the uninsured motorist portion of Marofsky's motorcycle policy.

Midwest filed a complaint against Marofsky, Syakovich and Jackson for the purpose of determining questions of coverage between the parties arising out of claims for: (1) uninsured motorist coverage by Syakovich against Midwest pursuant to a Michigan motorcycle policy issued by Midwest

to Marofsky and (2) a potential subrogation action by Midwest against Jackson to recover any sums which Midwest may be found to owe to Syakovich under the insurance policy because of injuries negligently inflicted upon Syakovich by Jackson. Plaintiff Midwest denied that it owed money to Syakovich under the uninsured motorist coverage of its motorcycle policy because Syakovich gave Midwest late notice and consequently prejudiced Midwest's subrogation rights. An amended complaint filed by Midwest eliminated Marofsky from the cause of action.

Defendant Syakovich moved for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) asserting that defendant's rights are clearly defined in plaintiff's policy, defendant has made demand for arbitration pursuant to the terms of the policy and where terms of the policy are ambiguous, provisions of coverage are to be decided in favor of defendant insured. The court ordered summary disposition in favor of defendant and against plaintiff and dismissed plaintiff's complaint. The court further ordered that the matter be submitted to arbitration. The court reasoned that the parties must go to arbitration because the insurance policy itself includes a clause that states that the issue of whether there is insurance coverage is decided in arbitration and either party can ask for arbitration. The court further reasoned that although it may be feasible that there is no coverage in this case because this incident was not reported promptly to the insurer, per the insurance contract, it is the arbitrators who must make that determination, not the court.¹

Plaintiff argues that the trial court erred when it granted summary disposition in favor of defendant because the insured is not entitled to arbitration of his uninsured motorist claim against the insurer since the insured prejudiced plaintiff by violating the "prompt" notice condition of the policy which eliminated the insurer's rights of subrogation. We disagree.

An insurance policy is much the same as another contract; 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. *Engle v Zurich-American Ins Group (On Remand)*, 230 Mich App 105, 107; 583 NW2d 484 (1998). The terms of an insurance policy are given their commonly used meaning, in context, unless clearly defined in the policy. *Group Ins Co v Czopek (After Remand)*, 440 Mich 590, 596; 489 NW2d 444 (1992). In this case, the uninsured motorist coverage endorsement of the insurance policy contains an arbitration clause on page 24 which provides:

ARBITRATION

If we and an **insured person** do not agree:

1. Whether that person is legally entitled to recover damages under this endorsement [Uninsured Motorist Coverage Endorsement - Michigan];

or

2. As to the amount of damages:

either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

. . . A decision agreed to by two of the arbitrators will be binding as to:

1. Whether the **insured person** is legally entitled to recover damages; and
2. The amount of damages.

On page 21 of the insurance policy an “insured person” as used in this endorsement means:

1. **You** or any **relative**.
2. Any other person **occupying your insured motorcycle**.
3. Any person for damages that person is entitled to recover because of **bodily injury** to which this coverage applies sustained by a person in 1. or 2. above.

“Occupying” is defined in this endorsement as “if upon, getting in, on, out or off.”

In this case, Syakovich was operating a motorcycle owned by Ronald Marofsky and insured under Marofsky’s motorcycle policy issued by plaintiff Midwest when the accident occurred. By the plain meaning of the policy, therefore, Syakovich is considered to be “an insured”. Consequently, Syakovich and Midwest had a dispute as to whether coverage existed for Syakovich under the policy. The language of the policy is also clear in this matter. The insured’s own policy states that the issue of whether the insured person is legally entitled to recover damages under the uninsured motorist coverage endorsement is a matter to be decided by arbitration. Michigan public policy favors arbitration to resolve disputes. *Rembert v Ryan’s Family Steak Houses, Inc.*, 235 Mich App 118, 123; 596 NW2d 208 (1999). The jurisdiction of the arbitrator is established by the parties’ contract. *Beattie v Autostyle Plastics, Inc.*, 217 Mich App 572, 577-578; 552 NW2d 181 (1996). The insurance contract between the insurer and the insured determines the scope of arbitration. *Federal Kemper Ins Co v American Bankers Ins Co of Florida*, 137 Mich App 134; 357 NW2d 834 (1984). “The scope of a court’s consideration whether an issue is arbitrable is sharply limited. If a claim on its face is governed by the contract, it should be decided by the arbitrator unless strong evidence demonstrates that the matter is outside the scope of the arbitration provision.” *Id.* at 139, quoting *American Fidelity Fire Ins Co v Barry*, 80 Mich App 670, 673; 264 NW2d 92 (1978). Although a party cannot be required to arbitrate an issue he has not agreed to submit, arbitration clauses in contracts are liberally construed and any doubts about arbitrability should be resolved in favor of arbitration. *Omega Construction Co v Altman*, 147 Mich App 649, 655; 382 NW2d 839 (1985). In this case, because the arbitration clause states that either party may request arbitration regarding whether the insured person is legally entitled to coverage under the insurance policy, the trial court

properly granted summary disposition in favor of defendant and properly ordered that this matter be submitted to arbitration.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

¹ An amended order for summary disposition as to only defendant Michael Ray Syakovich was filed because the original order purported to dispose of the entire case even though defendant Jackson did not join the summary disposition motion and was not affected in any way by the court's decision. Subsequently, an order for dismissal without prejudice was filed which dismissed the cause of action as to defendant Barbara Gale Jackson only. Consequently, Jackson is not a party to this appeal.