STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Plaintiff/Counterdefendant-Appellant,

v

LILLIE ROSEMOND, LORETTA OGLESBY, PAMELA CRUELL, PIERRE CRUELL and LORENZO CRUELL,

Defendants/Counterplaintiffs-Appellees,

and

MAKEBA T. CRUELL, Personal Representative of the Estate of SUMMER A. CRUELL, Deceased,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 208146
Wayne Circuit Court
LC No. 96-632219 CK

MAKEBA T. CRUELL, Personal Representative of the Estate of SUMMER A. CRUELL, Deceased,

Plaintiff-Appellee,

v

LILLIE ROSEMOND and LORETTA OGLESBY,

Defendants,

and

No. 212933
Wayne Circuit Court
LC No. 96-618624 NO

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

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Garnishee Defendant-Appellant.

Before: Jansen, P.J., and Collins and J.B. Sullivan,* J.J.

PER CURIAM.

In Docket No. 208146, plaintiff/counterdefendant Michigan Basic Property Insurance Association ("Michigan Basic") appeals of right from the order granting summary disposition in favor of defendants/counterplaintiffs, Lillie Rosemond, Loretta Oglesby, Pamela Cruell, Pierre Cruell and Lorenzo Cruell, and defendant Makeba Cruell, as personal representative of the Estate of Summer Cruell, deceased (hereafter "the Estate"), pursuant to MCR 2.116(C)(10), thereby dismissing Michigan Basic's complaint for declaratory judgment. In Docket No. 212933, garnishee-defendant Michigan Basic appeals by leave granted, challenging the orders granting summary disposition to the Estate and ordering Michigan Basic to pay the $100,000 limit on its insurance policy, as well as statutory interest on the entire $1,000,000 default judgment entered against Loretta Oglesby. We affirm.

These consolidated cases arose out of a residential fire that occurred on March 10, 1996 at 418 Marlborough in the City of Detroit. The fire destroyed the premises which was owned by defendant-counterplaintiff Lillie Rosemond, and caused the death of Summer Cruell, a twenty-month old child of Makeba and Lorenzo Cruell. Prior to 1986, Rosemond lived in the house as a tenant, but in 1986 purchased it and obtained $8,000 fire and $100,000 liability coverage through Michigan Basic. In 1988, Rosemond's sister, defendant-counterplaintiff Loretta Oglesby,[1] her daughter, Pamela Cruell, Pamela's two children, and Oglesby's sons, Pierre and Lorenzo Cruell moved into the home with Rosemond. On the date of the fire, Oglesby was baby-sitting Summer and the other children; she left the children unattended and the children apparently started the fire while playing with matches or a lighter. On March 27, 1996, the Estate filed a wrongful death action alleging negligent maintenance of the premises by Rosemond as owner and negligent supervision by Oglesby. The insurance policy, which had been renewed annually and was in effect on the date of the fire, described the "residence premises" as "owner occupied," and defined "residence premises" as "the one family dwelling, other structures, and grounds, or that part of any other building *where you reside . . .*" (emphasis added). The original application did not inquire where the applicant resides, and the term "reside" is not defined in either the original application, subsequent applications, the residential inspection form or in the policy.

Using dictionary definitions, Michigan Basic first argues that the trial court erred in granting summary disposition on its claim that it had no duty to defend or indemnify either Rosemond or Oglesby

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[1] Loretta Oglesby died during the pendency of this case.

because the policy was void *ab initio* due to Rosemond's intentional misrepresentation that she was an owner-occupant who "resided" at the insured premises. We disagree. This Court reviews a grant of summary disposition de novo. *Royce v Citizens Ins Co*, 219 Mich App 537; 557 NW2d 144 (1996). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* Giving the benefit of reasonable doubt to the nonmovant, the court must determine whether the evidentiary proofs create a genuine issue of material fact for trial. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999). The courts are liberal in finding a genuine issue of material fact. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). However, when the facts are undisputed, the question of whether one "resides" at a location is a question of law. *Stadelmann v Glen[s] Falls Ins Co*, 5 Mich App 536, 541; 147 NW2d 460 (1967).

Whether contract language is ambiguous is a question of law which is reviewed de novo. *Farm Bureau Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Wert v Citizens Ins Co*, 241 Mich App 313, 317; 615 NW2d 779 (2000). Ambiguities are to be construed against the drafter of the contract. *Id.* To void a policy because the insured has willfully misrepresented a material fact, an insurer must show that (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. *Mina v General Star*, 218 Mich App 678, 686; 555 NW2d 1 (1996), rev'd in part on other grounds, 455 Mich 866 (1997). A statement is material if it is reasonably relevant to the insurer's investigation of a claim. *Id.*

Our Supreme Court has determined that the term "reside" may be ambiguous in some contexts because it has both a legal or technical meaning and a general or popular meaning. *Heniser v Frankenmuth Mut Ins*, 449 Mich 155, 163; 534 NW2d 502 (1995). While the popular meaning includes actual physical presence, the legal term includes the intent to live at that location sometime in the future. *Id.* In *Heniser*, the plaintiff had sold his property prior to a fire which destroyed it but while the policy was still in effect. The Court found that, under either meaning, the plaintiff did not reside there because he admitted that he did not reside there at the time of the fire nor could he in the future. *Id.* The Court added:

> In this case, when Heniser signed the land contract, he affirmatively manifested his intent to no longer reside at the residence premises in the future, and relinquished his right to do so. We might be faced with a different situation if the insured has not affirmatively engaged in behavior that indicates an intent to no longer reside at the residence premises . . .[*Id.*, at 160, n 5.]

See also, *Beason v Beason*, 447 Mich 1023; 527 NW2d 425 (1994), wherein the Court reinstated the judgment of the trial court which found the word "reside" to be ambiguous in the context of a post-divorce motion to discontinue alimony.

In this case, virtually all the relevant facts come from the May 21, 1996 examination under oath (EUO) (see *Cruz v State Farm,* 241 Mich App 159; 614 NW2d 689 (2000), lv pending; *Thompson v State Farm,* 232 Mich App 38; 592 NW2d 82 (1998)), of Rosemond taken by Michigan Basic's attorney, David J. Berkal, who handled the entire matter for Michigan Basic. Rosemond testified that she was born in 1950 in Greenville, South Carolina, and has lived at 525 Philip since the fire as has her sister, Loretta Oglesby ("The one sitting out there"). Rosemond's other Michigan relatives include another sister, two cousins and various nieces and nephews, some of whom also lived at 418 Marlborough and now also live at 525 Philip, and some of whom lived at addresses unknown to Rosemond. Rosemond's husband died "about eight or nine years ago," and she had been separated from him for maybe 15 years before that. She moved to Michigan seventeen years ago, but spent time in South Carolina when her husband was dying and for a while after. She has not worked since she came to Michigan, but her sister, Loretta (Oglesby) stayed with her and helped with the bills as did Oglesby's daughter, Pamela Cruell. Other than the Marlborough property, Rosemond does not own, rent or lease any property. She has no health insurance, has never been involved in a lawsuit and does not have a Michigan driver's license because she never had a car. She has a South Carolina driver's license because her daughter, who lives there, has a car. She spends time in South Carolina because her three kids are there, but her permanent address is Michigan. The last time she filed tax returns was when her husband died. In 1995, she was in South Carolina from April to about October, but has been in Michigan since then. Rosemond's sister (Oglesby) makes the mortgage payments because Rosemond has no money. Oglesby does not work and has no income, but her daughter, Pamela, is on state assistance; the state was basically paying for the house. On Marlborough, Oglesby and her daughter each had a bedroom, the daughter sharing hers with her two little children, but Oglesby's sons, Lorenzo and Pierre, slept in the dining room/den, and Rosemond slept in the front room on the couch so that Oglesby, who has diabetes and high blood pressure, would have her own room. Rosemond went to the tenth grade in school. When asked how she buys clothes and gets about financially in her daily life, Rosemond answered, "Well, I don't. I just wear the clothes I got." When she was renting and then buying the house, she had a friend and got money from him, but when her sister and family moved in, in 1988, Pamela's A.D.C. paid for the house. No one in the family receives social security, no one is into drugs and Rosemond has no credit cards. The taxes and insurance for the house were paid through the mortgage payments. Gas and electricity were in Oglesby's name but were paid by the state. The utilities were in Oglesby's name because Rosemond had no money. Rosemond received her mail at Marlborough. She has no life or disability insurance, nor does she have a checking or savings account. At the time of the fire, Rosemond was on the west side of Detroit visiting her friend, John Erby, who stays at various times with various of his relatives, but doesn't live "at [a] certain place." Rosemond did not have a bag with her when she went to see Erby (around three o'clock the day of the fire) because she was not planning on staying there. The furniture in the Marlborough house belonged to Oglesby and Pam; when they moved in, Rosemond threw out what she had because it "wasn't that decent." Rosemond spent most of her time either with her daughter in South Carolina or with her friend, John Erby, and had done so for a number of years, but she usually was at the Marlborough house one or two nights per week. Her daughter in South Carolina has an extra room where Rosemond stays when she is there, but Rosemond has no clothes there. Rosemond considers Michigan to be her home, but has never registered to vote, and did not fill out or mail in any paperwork for the last census. Rosemond listed John Erby, who also stayed occasionally at the Marlborough address, as her husband because

"people were thinking we were married but we weren't." Dale A. Weible, the spokesperson for Michigan Basic testified that the company inspected the property in 1990 and 1992, two and four years, respectively, after Rosemond's sister and her family moved in, and found it eligible for coverage, the same coverage which was originally provided and renewed each and every year since 1986.

The trial court found that Rosemond purchased the home in 1986, and that two years later Oglesby and her family moved in and remained until the fire; the trial court also found:

> [t]he testimony further provides or supports the fact that Ms. Rosemond, although spending a great deal of time in South Carolina, testified with no dispute on this record that she considered the Michigan home her permanent address. She considered she lived in the home, and accessed that home when she was in Michigan. The fact that she spent a lot of time with her boyfriend while she was in Michigan, to me does not detract from the fact that she used 418 Marlboro [sic] as the home base.
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> [W]ith respect to [the query on the renewal form] have there been any changes in occupancy [?] [c]learly the answer is no. And all the evidence still supports the fact that there was no change in occupancy. And [with respect to the query] is the property no longer occupied by the named insured? Despite the fact that *there may be different styles of living arrangements*[,] this individual, it is uncontroverted, continues to live in the home for the purpose of [sic] which she bought it, which is a home base. She goes to visit her family, she is an older woman, she has this John Erby, who is her boyfriend that she spends a great deal of time with, but always returns to this home. That evidence is uncontroverted. [Emphasis added.]

We agree with the trial court. As noted, the *Heniser* Court determined that the term "reside" had at least two meanings, physical presence at the time of the loss, or intent to stay for the indefinite future. While Rosemond spent considerable time staying with her daughter in South Carolina and with her friend, John Erby, at various locations in the Detroit area, the Marlborough address was her home base. She testified she was at the Marlborough address the day of the fire, and, as a result of the fire, had to stay at 525 Philip with the others who had been staying at Marlborough. Further, there is no indication on the record that she intended to do anything other than continue the pattern she had had for many years. Under either definition of "reside," a term *undefined* in the original application, the renewal applications or in the policy, and considered to be ambiguous by our Supreme Court, Rosemond resided at the Marlborough location. Indeed, when asked by Rosemond's attorney, "Now, show me in the application for insurance where Ms. Rosemond made an affirmative representation as to where she was residing," Michigan Basic's Weible responded, "I guess it would be *assumptions by the company* as to where she was residing" (emphasis added).

We further emphasize that Michigan Basic inspected the property on at least two occasions, two and four years after Oglesby and her family moved in with Rosemond, and found it "owner" as opposed to "tenant" occupied and therefore eligible for continued coverage. Indeed, Weible testified

that the policy would not have been issued had the property been "tenant" occupied. Moreover, the record indicates that those inspections included Michigan Basic's inspector being admitted inside the home to view the living arrangements. We also agree with the trial court that there are different kinds of living arrangements, and that the expanded family unit had been in existence and was essentially unchanged for eight years prior to the fire. On the facts of this case, the trial court did not err in finding, as a matter of law, that Rosemond "resided" at the Marlborough address.

Michigan Basic makes much of the fact that the 1995 renewal form was signed by someone other than Rosemond. However, the record shows that the applications over the years were often signed by persons from the mortgage company as opposed to the applicant, and that the policy was continued nonetheless. The record also shows that, on December 24, 1992, at least four years after Oglesby and her family moved into the Marlborough address, Rosemond (her signature is on the inspection form) admitted to the home a Michigan Basic inspector whose report indicated that Rosemond and her family occupied the home. We note that on the original application and the renewal applications, the "insurable interest" similarly provided only for occupancy by "owner" or "tenant," and Michigan Basic does not dispute that there was no lease or rent involved in this case.

We also conclude that the trial court did not err in granting summary disposition with regard to whether Oglesby, Rosemond's sister, was a resident relative of Rosemond's household and therefore entitled to a defense and indemnification as an insured under the policy. The "Definitions" section of the policy provides, in pertinent part:

> 3. "insured" means you [the named insured] and residents of your household who are:
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> a. your relatives . . .

While the policy in question does not define "household," this Court has understood the term to mean "a family unit living under the same roof." *Thomas v Vigilant Ins Co*, 156 Mich App 280, 283; 401 NW2d 351 (1986). Given our determination that Rosemond resided at the Marlborough premises, it necessarily follows that there is no genuine issue of material fact regarding whether her sister, Oglesby, was a member of Rosemond's household, and summary disposition on this issue was proper.

Michigan Basic next argues that the trial court erred in finding as a matter of law that it owed Oglesby a duty to defend and/or indemnify because Oglesby failed to timely request a defense and/or refused to allow Michigan Basic to defend her. Again, we disagree. Ordinarily, an insurer has no duty to defend an insured absent a request to defend. *Celina Ins Co v Citizens Ins Co*, 133 Mich App 655, 662; 349 NW2d 547 (1984). However, it is well established that notice of suit from any source triggers an insurer's duty to defend. *Koski v Allstate Ins Co*, 456 Mich 439, 445; 572 NW2d 636 (1998), citing *Weller v Cummins*, 330 Mich 286, 293; 47 NW2d 612 (1961) ("if the insurance company received adequate and timely information of the accident *or the institution of an action for the recovery of damages it is not prejudiced, regardless of the source of its information"* [emphasis added]).

At the beginning of Rosemond's May 21, 1996, EUO, Michigan Basic's attorney asked Rosemond whether she had received his letter of April 9, 1996, requesting that she bring certain documents with her to the EUO. Rosemond testified that she had not received that letter but did receive Berkal's letter of May 6, 1996. Even without taking into account the Estate's claim that Michigan Basic knew of the law suit when it was filed on March 27, 1996, it is clear that, at least by April 9, 1996, Michigan Basic had knowledge of the lawsuit and that it would be required to defend if not indemnify Rosemond.

Moreover, the complaint named Rosemond as "owner" of the home and Oglesby as "tenant." Even though there is no evidence to indicate that Michigan Basic knew on April 9, 1996, that Oglesby was the sister of Rosemond and was therefore an insured under the policy, Michigan Basic did know on April 9, 1996, that the living arrangement was different than its policy indicated, and that someone named Oglesby, identified in the suit as a "tenant," stayed at the Marlborough address and was also a named defendant in the suit. In any event, the record is clear that by May 21, 1996, the day of Rosemond's EUO, Michigan Basic knew that Oglesby not only stayed at the Marlborough address, but also that she was Rosemond's sister and therefore an insured under Michigan Basic's policy. As this Court noted in *Alyas v Gillard*, 180 Mich App 154, 160; 446 NW2d 610 (1989):

> Upon notice, there is some burden on the insurer to act to protect its interests or those of its insured. *The insurance carrier will not be permitted to benefit by sitting idly by, knowing of the litigation, and watching its insured become prejudiced.*

Michigan Basic's failure to raise the "late notice" defense against Oglesby until its second amended complaint, filed a year later in April 1997, diminishes its argument that late notice was the reason for its failure, a year earlier, to tender a defense to Oglesby until after she was significantly prejudiced. There is no evidence on the record that Oglesby herself knew, until after the entry of the default judgment against her, that she was an insured under Rosemond's policy. Courts look to the sophistication of the insured as a factor in determining whether an insurer was prejudiced by late notice. See, e.g., *Alcazar v Hayes*, 982 SW2d 845, 855 (Tenn 1998). We also agree with "the weight of authority and the better rule" that written notice of an occurrence by the named insured inures to the benefit of other insureds if it is timely and sufficient to place the insurer on notice as to the extent of its possible liability. See *Employers Casualty Co v Glens Falls Ins Co*, 484 SW2d 570, 575 (Tex 1972) and cases and authorities cited therein.

However, Michigan Basic also argues that Oglesby refused the proffered defense. This argument similarly fails. On June 6, 1996, the Estate served not only Michigan Basic, but also Rosemond's counsel and apparently Oglesby as well, with a motion for entry of a default judgment against Oglesby. Knowing since May 21, 1996, that Oglesby was a defendant and an insured under the policy, Michigan Basic neither responded nor did it appear at the motion hearing on June 28, 1996, wherein the court entered an order of default against Oglesby in the amount of one million dollars. In fact, it was only after counsel, retained by Oglesby, sent a letter to Michigan Basic on July 10, 1996, chastising the company for its refusal to defend Oglesby despite its actual knowledge of both the suit and the default against Oglesby, and demanding that Michigan Basic "immediately" set aside the default against Oglesby, that Michigan Basic took any action at all with regard to Oglesby. That action was to

sue her by filing an action for declaratory judgment against both Rosemond and Oglesby, denying that it had a duty to defend or indemnify either one.

Having thus been left undefended and then sued by Michigan Basic, the fact that, at some later period in time, Oglesby took an action which can be construed as contrary to a request to defend is simply irrelevant. See also, *Koski, supra,* at 446, n 7 ("We emphasize that an insurer who knows of legal proceedings instituted against its insured, but nevertheless chooses to rest on its claim of noncoverage, faces a heavy burden in demonstrating prejudice from its insured's failure to comply with a notice provision"). In *Koski,* the Court stated that the "critical difference" between *Koski* and earlier cases was that, even though the *Koski* insurer had knowledge of the accident, it was undisputed that the *Koski* insurer had no knowledge of the lawsuit until three months after the default judgment. *Id.,* at 446. In the case at bar, Michigan Basic had knowledge of both the occurrence and the lawsuit within days of the suit being filed, and had knowledge that Oglesby was an insured more than a month before the entry of a default judgment against her. Under the facts of this case, Michigan Basic's refusal to defend borders on bad faith. Michigan Basic's reliance on *Wood v Duckworth,* 156 Mich App 160; 401 NW2d 258 (1986) and *Kermans v Pendleton,* 62 Mich App 576; 233 NW2d 658 (1975) is unavailing because those cases are factually distinguishable.

Michigan Basic next claims that the trial court erred in finding as a matter of law that Summer Cruell was not an insured under the policy and therefore was not excluded from liability coverage. We again disagree. While Summer's father, Lorenzo Cruell, resided at the Marlborough address, Rosemond testified that Summer lived with her mother at a different address. Rosemond's unrebutted testimony was supported by the child's death certificate and the fire department report both of which gave the child's address as 3495 Toledo, Detroit, Michigan, 48216.

In the garnishment action, Michigan Basic argues that the settlement between the Estate and Oglesby was unreasonable and reached in bad faith. We disagree. The general rule is that the insurer's unjustified refusal to defend makes it bound to pay the amount of any reasonable, good faith settlement made by the insured in the action brought against the insured by the injured party. *Detroit Edison Co v Michigan Mutual Ins Co,* 102 Mich App 136, 144; 301 NW2d 832 (1980). See also *Alyas, supra.*

Relying on *Akron Contracting Co v Oakland County,* 108 Mich App 767; 310 NW2d 874 (1981), Michigan Basic first argues that entry of a default judgment against Oglesby, before Rosemond's liability had been established, was improper. However, *Akron* relies in turn on *Frow v De La Vega,* 82 US (15 Wall) 552, 554; 21 L Ed 60 (1872), which has been limited to its facts. See, *In re Uranium Antitrust Litigation,* 617 F2d 1248, 1256-1258 (CA 7, 1980) (to the extent that *Frow* holds that there cannot be inconsistent adjudications as to joint liability or as to a single res in controversy, it is good law; however, when different results as to different parties are not logically inconsistent or contradictory, as in cases of joint and several liability, the rationale for *Frow* is lacking; *id,* at 1257-1258). In this case, the original complaint filed by the Estate alleged joint and several liability against Rosemond and Oglesby.

Further, having notice of Oglesby's policy coverage at least by May 21, 1996, Michigan Basic sat on that knowledge, choosing to ignore the notice of the default judgment against her and instead to

file a declaratory judgment action against Rosemond and Oglesby, initially without naming the estate as an interested party. See *Cloud v Vance,* 97 Mich App 446, 452; 296 NW2d 68 (1980). Such an action suggests that Michigan Basic may have hoped to improperly escape liability to the estate by getting a default judgment against Rosemond and Oglesby on coverage. *Id.* In any event, we do not find Oglesby's action unreasonable given that she was faced with a $1,000,000 default judgment and an insurance carrier who initially neglected her and then sued her to dispute coverage. She retained her own counsel and entered into an agreement which assigned her rights under the policy to the Estate and limited her personal liability to Michigan Basic's policy limit. Michigan Basic's tender of a defense, coming only after it initially refused to defend her and then filed suit against her, was a classic case of too little, too late. While we do not condone all the steps taken by the parties in this convoluted case, Michigan Basic's initial refusal to appear for and defend the at least "arguably" insured Oglesby (see, *Allstate Ins Co v Fick,* 226 Mich App 197, 202; 572 NW2d 265 (1997)) in the motion for default was the one move which clearly caused the other cards to fall.

Finally, Michigan Basic argues that the trial court erred in awarding the Estate post-judgment interest on the entire amount of the default judgment. We disagree. Section II, "Liability Coverages," in Michigan Basic's policy of insurance provided for "Additional Coverages" as follows:

> We cover the following in addition to the limits of liability:
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> 1. Claim Expenses. We pay:
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> d. interest on the *entire judgment* which accrues after entry of the judgment and before we pay or tender, [sic]or deposit in court that part of the judgment which does not exceed the limit of liability that applies [emphasis added];

In *Matich v Modern Research Corp,* 430 Mich 1; 420 NW2d 67 (1988), the Court was construing virtually identical policy provisions in two contracts of insurance. The issue in *Matich* was, as here, whether the liability of the insurers for postjudgment interest should be calculated on the basis of their respective policy limits or on the full amount of the judgment. *Id.,* at 23. The Court found that "each insurer contractually obligated itself to pay interest on 'the entire amount' of the judgment which 'accrued after entry of judgment . . .'" *Id.,* at 24. The Court noted that an insurer may not only limit the risk that it assumes but also, under policies such as the one here, may tender its policy limits and avoid liability for postjudgment interest. *Id.,* at 24-25. The Court concluded that, "given the clear language of the 'standard interest clause' in these policies, [the insurers] by the terms of their insurance policies assumed the obligation to pay postjudgment interest on the entire amount of the judgment . . ." *Id.,* at 26-27. *Matich* is directly on point.

The cases cited by Michigan Basic are inapposite in that they do not address a contractual provision to pay postjudgment interest on the entire judgment. Rather, they address a question not at issue here, i.e., the assessment of damages in an action against an insurer for refusing in bad faith to settle within policy limits. *Frankenmuth Ins Co v Keeley,* 436 Mich 372, 375; 461 NW2d 666 (1990), adopting Justice Levin's dissent in *Frankenmuth Mutual Ins Co v Keeley,* 433 Mich 525, 546; 447 NW2d 691 (1989).

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Joseph B. Sullivan