

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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F. L. JURSIK COMPANY,

Plaintiff-Appellant,

v

THE TRAVELERS INDEMNITY  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

November 14, 1997

No. 199913

Wayne Circuit Court

LC No. 96-608592-CK

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Plaintiff F. L. Jursik Company appeals as of right a circuit court order granting summary disposition to defendant The Travelers Indemnity Insurance Company in this action for breach of insurance contract. We affirm.

I

Plaintiff, a Highland Park-based company that supplies truck parts, hired a man named Frank Hills to work at its parts supply counter. Plaintiff hired Hills through the Detroit Transition of Prisoners program, which helps ex-prisoners become productive members of society. Hills had just completed serving a sentence for breaking and entering and larceny. When plaintiff hired Hills, it had an employee dishonesty coverage policy with defendant that provided payment for losses caused by employee dishonesty. The policy had a clause that canceled coverage for an employee once plaintiff discovered that the employee causing a claimed loss had committed a dishonest act before or after beginning employment with plaintiff.

During the course of Hills' employment, he embezzled truck parts and equipment from plaintiff, resulting in a loss to plaintiff of nearly \$75,000. Plaintiff reported the loss to defendant, which denied the claim, relying on the cancellation clause in plaintiff's employee dishonesty coverage policy.<sup>1</sup>

Plaintiff filed a breach of contract complaint against defendant, arguing that defendant refused to honor the employee dishonesty coverage policy.<sup>2</sup> Defendant subsequently filed a motion for summary

disposition pursuant to MCR 2.116(C)(10), arguing that there was no question that the employee dishonesty coverage policy was automatically canceled regarding Hills when plaintiff hired Hills knowing that he had a criminal record. The circuit court granted defendant's motion, stating that the cancellation clause in the employee dishonesty coverage policy clearly stated that there is no coverage for an employee if the employer knows that the employee has a prior history of dishonest acts. This appeal followed.

## II

Plaintiff first argues that the circuit court erred in granting defendant's motion for summary disposition because a genuine issue of material fact existed regarding the meaning of the language in the employee dishonesty insurance policy. We disagree.

### A

Generally, an insurance policy is a contract between the insurer and the insured. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). Courts must interpret the policy to best effectuate the intent of the parties and the clear, unambiguous language of the policy. *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 381; 565 NW2d 839 (1997). Interpretation of an insurance policy requires a two-step inquiry. First, the court must determine if the general insurance agreement provides coverage for a particular act. If so, the court must then determine whether an exclusion applies to negate coverage. *Id.* at 382; *Frankenmuth Mutual Ins Co v Masters*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (1997) (Docket No. 193649, issued August 15, 1997).

Construction of an insurance policy is ordinarily a question of law for the court; however, where the language used is ambiguous or incomplete, or the circumstances are unusual, the substance of the parties' agreement is a question of fact for the jury. *Zinchook v Turkewycz*, 128 Mich App 513, 521; 340 NW2d 844 (1983). A provision is ambiguous when its words may reasonably be understood in different ways. *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996). Ambiguities should not be forced, however, and the intent of the parties should be given effect. *Fresard v Michigan Millers Mut Ins Co*, 414 Mich 686, 694; 327 NW2d 286 (1982).

### B

The language in dispute between plaintiff and defendant reads as follows:

#### A. COVERAGE

We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. **Covered Property:** Money, securities, and property other than money and securities.
2. **Covered Cause of Loss:** Employee dishonesty.

\* \* \*

**D. ADDITIONAL EXCLUSIONS, CONDITION AND DEFINITIONS:** In addition to the provisions in the Crime General Provisions Form, this Coverage Form is subject to the following:

\* \* \*

## **2. Additional Condition**

**Cancellation As To Any Employee:** This insurance is cancelled as to any “employee”:

a. Immediately upon discovery by:

(1) You; or

(2) Any of your partners, officers or directors not in collusion with the “employee;

of any dishonest act committed by that “employee” whether before or after becoming employed by you.

\* \* \*

## **3. Additional Definitions**

a. “Employee Dishonesty” in paragraph A.2 means only dishonest acts committed by an “employee”, whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:

(1) Cause you to sustain loss; and also

(2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including, salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:

(a) The “employer”; or

(b) Any person or organization intended by the “employee” to receive that benefit.

We find nothing ambiguous in the policy’s cancellation clause. The language of the clause, particularly when read within the context of the entire policy, cannot possibly be taken in different ways.

The clause itself clearly refers to “any dishonest act committed . . . *whether before or after becoming employed by you.*” Plaintiff’s suggested interpretation, that all “dishonest acts” must be committed in the course of employment with plaintiff, is strained at best. The definition of “employee dishonesty” refers the reader to paragraph A.2 of the policy, which provides that “employee dishonesty” is a covered cause of loss. “Employee dishonesty” is therefore not meant to define “dishonest acts” that preclude coverage, but rather, the acts that receive coverage. To read the definition in any other way forces an ambiguity, something this Court will not do. *Fresard, supra* at 694.

### III

Plaintiff next argues that the cancellation clause in the employee dishonesty coverage policy violates public policy. Specifically, plaintiff contends that employers will be less willing to hire ex-prisoners if the risk of potential loss from these employees remains on the employer. Thus, posits plaintiff, the cancellation clause violates the public policy of rehabilitating ex-prisoners. We are not persuaded that this clear and unambiguous exclusion, which refuses to hold the insurer liable for the risk of loss from an employee whom the employer knows or has ample reason to suspect is dishonest, but continues to employ, violates public policy.

### IV

An insurer is free to define or limit the scope of coverage in a policy so long as it is unambiguous and not in contravention of public policy. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 160; 534 NW2d 502 (1995). Indeed, clear and specific exclusions, such as the cancellation clause at issue here, must be enforced. *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 597; 489 NW2d 444 (1992). Accordingly, we hold that the circuit court correctly applied the clause to deny coverage to plaintiff and granted defendant’s motion for summary disposition.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ David H. Sawyer

/s/ Janet T. Neff

<sup>1</sup> Another employee, Edward Williams, embezzled \$2,730 worth of parts and equipment at the same time that Hills embezzled parts. Defendant also denied plaintiff’s claim for this loss, because plaintiff’s employee dishonesty coverage policy had a \$5,000 deductible. Plaintiff does not challenge defendant’s denial of this claim.

<sup>2</sup> Plaintiff also alleged that by denying coverage for its claimed losses, defendant violated Michigan’s Unfair Trade Practices Act, MCL 500.2006; MSA 24.12006, by denying the claims in bad faith, after a substantial delay and without adequate investigation; that defendant refused to honor the employee dishonesty coverage policy against plaintiff’s reasonable expectations and against public policy; and that defendant foisted an ambiguous contract on plaintiff. These counts were later dismissed by stipulation of the parties.

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