

STATE OF MICHIGAN
COURT OF APPEALS

LOCAL 3126 of the NATIONAL ASSOCIATION
OF LETTERS CARRIERS OF THE UNITED
STATES OF AMERICA and PAUL ROZNOWSKI,
Individually and as an agent/servant/employee of the
NATIONAL ASSOCIATION OF LETTER
CARRIERS OF THE UNITED STATES,

UNPUBLISHED

Plaintiff-Appellants,

v

JUDGE-MCKEE INSURANCE AGENCY, INC.,,

Defendant-Appellee.

No. 198934

Oakland Circuit Court

LC No. 95-507194-CK

Before: Gribbs, P.J. and Murphy and Gage, JJ.

Gage, J. (dissenting):

I respectfully dissent. I believe that the circuit court properly granted summary disposition to defendant because plaintiffs failed to come forward with clear, satisfactory and convincing evidence that defendant made an affirmative and material misrepresentation about their coverage under the policy.

While plaintiffs' treasurer testified that defendant's agent stated that "he knew what [plaintiffs] needed," the treasurer also stated that he would call defendant's agent and inform him "what we needed or what needed insurance. . . . Somebody would call, a lot of time it was me, and we'd tell [defendant's agent] what we needed, and he said he'd take care of it for us." Moreover, the treasurer testified that defendant never told him that there were no exclusions in plaintiffs' coverage. The treasurer had never read the policy, nor did he believe anyone else had, although it was in his possession. The treasurer also commented that four or five years prior to the underlying incident, another insurance agency had reviewed plaintiffs' policies to make sure they had the coverage they thought they needed.

An insured is held to the knowledge of the terms and conditions contained within the insurance policy, even though he has not read it. *Farm Bureau Mutual Ins Co of Michigan v Hoag*, 136 Mich App 326, 332; 356 NW2d 630 (1984). As the majority notes, this rule generally goes to the issue of

coverage. However, it also demonstrates the plaintiffs' lack of reliance on any alleged representations by defendant, because plaintiffs had the policy itself and can be held to a knowledge of its terms. The fact that plaintiffs told defendant's agent what they needed as well as their purchase of other insurance policies from other agencies demonstrates that they did not rely on any alleged representation that the policy in question was all inclusive. Finally, the April 1991 letter mentioned by plaintiffs' expert establishes in a convincing manner that plaintiffs understood their policy with defendant did not cover all situations and knew how to ask questions about additional coverage they might need.

/s/ Hilda R. Gage