

STATE OF MICHIGAN
COURT OF APPEALS

NONA SWIKOSKI, Personal Representative of the
Estates of JAMES V. SWIKOSKI, deceased, and
MARTIN J. SWIKOSKI, deceased, and ALICE
BARD, Personal Representative of the Estate of
DANNY BARD, SR., deceased,

UNPUBLISHED
May 2, 2000

Plaintiffs-Appellants,

v

CITIZENS INSURANCE COMPANY,

No. 210343
Wayne Circuit Court
LC No. 96-611326-NO

Defendant-Appellee,

and

HARTFORD FIRE INSURANCE COMPANY,
REPUBLIC INSURANCE COMPANY and
FLOYD A. PAQUIN, JR.,

Defendants.

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

PER CURIAM.

This is a declaratory judgment action which plaintiffs filed when defendant Citizens Insurance Company, who issued a Commercial General Liability Coverage policy to the Sault Ste. Marie Tribe of Chippewa Indians, refused to defend and indemnify in an underlying negligence action filed by plaintiffs against the Tribe and Floyd Paquin. The trial court granted summary disposition in favor of Citizens in an order entered on January 27, 1997, and later denied plaintiffs' motion for rehearing in an order entered on October 3, 1997.¹ We affirm.

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

The underlying case arose as a result of circumstances occurring on September 4, 1993. On that date, decedents, James V. Swikoski, Martin J. Swikoski, and Danny Bard, were fishing in St. Martin's Bay near St. Ignace, Michigan. It is alleged that the propeller of their boat became tangled in fishing nets owned and maintained by Floyd A. Paquin, Jr. Paquin had been appointed a captain by the Tribe for purposes of regulating tribal fishing in the Great Lakes. Due to rough water, the boat became swamped. James V. Swikoski and Danny Bard drowned and Martin J. Swikoski died of exposure after floating with a life preserver for a number of hours. Plaintiffs filed a wrongful death claim in Wayne Circuit Court against Paquin and the Tribe. The Tribe was dismissed from that suit based on its sovereign immunity. Plaintiffs brought the present suit, seeking entry of a declaratory judgment declaring that the Tribe's insurer, Citizens, and two of Paquin's insurers, Hartford Fire Insurance Company and Republic Insurance Company, had duties to defend and indemnify Paquin in the underlying action. Defendant Citizens' motion for summary disposition was granted and plaintiffs' motion for reconsideration of the ruling was denied by the trial court. Only plaintiffs' claim against Citizens is at issue on appeal.

The insurance policy at issue is a commercial general liability policy entered into between the Tribe and Citizens. The policy provides in relevant part:

Section II - Who is an insured?

(1) If you are designated in the declarations as; (a) an individual, you and your spouse are insureds, but only with respect to the conduct of business of which you are the sole owner. (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business. (c) An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insured, but only with respect to their duties as your officers and directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

An endorsement, amending that section provides:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED (Section II) is amended to include as an insured any elective or appointive officer or a member of any board or commission or agency of yours while acting within the scope of their duties as such.

Paquin owned exclusively the fishing boat and the fishing nets in which decedents' boat ultimately became entangled. The Tribe had no ownership interest in Paquin's boat. Plaintiffs argue, however, that the trial court erred in granting Citizens' motion for summary disposition because Paquin's status as a holder of a fishing license issued by the Tribe and as captain of his fishing boat rendered him an

“officer” of the Tribe under the plain meaning of the policy. Alternatively, plaintiffs claim that the policy language is ambiguous and, thus, should be construed against Citizens.

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). The construction and interpretation of an insurance contract is a question of law for a court to determine that is likewise reviewed de novo. *Id.* Whether contractual language is ambiguous is also a question of law which is reviewed de novo. *Id.* If a word or phrase is unambiguous and no reasonable person could differ with respect to application of term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10). *Henderson, supra* at 353. If reasonable minds could differ about the conclusions to be drawn from the facts, a question for the factfinder exists, and summary disposition is not appropriate. *Id.*

The term “officer” is not defined within the policy at issue. However, the absence of the definition does not render the term ambiguous. An insurance policy’s terms are either clearly defined within the policy or are given their common meaning. *Id.* at 354; *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). The omission of a definition of a term that has a common usage does not create ambiguity. *Henderson, supra* at 354; *Michigan Millers, supra* at 567. “A court may not read ambiguities into a policy where none exist.” *Michigan Millers, supra* at 567. Policy terms should be given meaning based on their common use and the reasonable expectations of the parties. *Henderson, supra* at 354; *Michigan Millers, supra* at 567. The meaning of a term may be established through a dictionary definition. *Henderson, supra* at 354; *Michigan Millers, supra* at 568. *Random House Webster’s College Dictionary* (2d ed, 1996), defines “officer” as “a person appointed or elected to some position of responsibility or authority in some organization.” We conclude that definition, as opposed to alternate definitions that are based on an individual’s operation of a ship or vessel, is the definition in line with the reasonable expectations of the parties to the contract given that the policy is primarily intended to insure the Tribe’s several properties against loss and does not deal significantly with marine activity.

With that common meaning of “officer” in mind, the trial court did not err in finding that Paquin was not an “officer” of the Tribe and, thus, was not an insured under the policy. The evidence established that each commercial fisherman who wishes to use fishing waters controlled by the Tribe is required to obtain a license directly from the Tribe. Further, only members of the Tribe may obtain a license. Those seeking licenses must apply to the Tribe. Tribal representatives vote on the approval of all licenses. Each commercial fishing boat is required to be operated by a person appointed captain by the Tribe. Paquin, a member of the Tribe, was licensed by the Tribe as a commercial fisherman and was the captain of the boat he operated. However, Paquin was not an employee or agent of the Tribe, nor did he hold any position of authority as an enforcement official, conservation official, or as a member of any tribal agency or council. Paquin was required by tribal fishing regulations to file a monthly report with the Tribe indicating the amount and types of fish that he caught as well as the specific grid of the lake and the times that he fished. The evidence suggests that Paquin paid as much as 2.5 percent of his gross revenues to the Tribe as a condition of operating his boat in tribally controlled waters. Such evidence, we conclude, does not suggest that Paquin’s status as a holder of a fishing license and as a

captain bestowed authority or responsibility over the Tribe or any organization within the Tribe so as to render him an “officer” under the policy. Nor does the evidence suggest that Paquin should be rendered an insured based on his participation in a joint venture with the Tribe. By all indications, the percentage of Paquin’s gross revenues paid to the Tribe was a tax that the Tribe levied against all licensed commercial fisherman as a means of benefiting from the controlled waters.

Accordingly, the trial court did not err in finding that Paquin was not an “officer” and, thus, was not an insured under the policy issued by Citizens.

Affirmed.

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins

/s/ Joseph B. Sullivan

¹ Republic Insurance Company had been previously dismissed in an order entered on October 31, 1996, and the final order, which dismissed the remaining party, Hartford Insurance Company, was entered on March 4, 1998. Republic and Hartford are not involved in this appeal.