

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

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WILLIAM KUNG, by his Next Friend, ALLEN  
M. BENNETT,

Plaintiff-Appellee,

v

ERICK KUNG, SUSAN WEN KUNG, and  
HUI YEN WANG,

Defendants-Appellees,

and

AMY OLIVIA WILLIAMS,

Defendant,

and

AUTO CLUB GROUP INSURANCE COMPANY,

Garnishee Defendant-Appellant.

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UNPUBLISHED  
November 27, 2001

No. 225412  
Washtenaw Circuit Court  
LC No. 93-000003-NO

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Garnishee defendant Auto Club Group Insurance Company (ACGIC) appeals by leave granted from the trial court's order granting summary disposition to plaintiff William Kung by his Next Friend, Allen Bennett. We decide this appeal without oral argument pursuant to MCR 7.214(E). We reverse and remand.

I. Basic Facts And Procedural History

William Kung was three years old in 1992 when he was struck by a car Amy Williams was driving; his nanny, defendant Hui Yen Wang, was caring for him at the time. William Kung, by his next friend, filed this tort action against Erick and Susan Kung (his parents), Wang, and Williams. Following mediation, William Kung entered into a consent judgment with the Kungs for \$1,000,000, which was the coverage limit for bodily injury claims under their homeowner's insurance policy from ACGIC. ACGIC denied the claim because, it contended,

the Kungs' policy excluded coverage for bodily injury to any resident relative. Consequently, William Kung filed a garnishment claim against ACGIC.

William Kung and ACGIC filed cross-motions for summary disposition on stipulated facts. The evidence in the record indicated that the Kungs' original "H-5 Policy," which was in effect from March 28, 1991, to March 28, 1992, did not contain the exclusion on which ACGIC was relying to deny the claim. However, on October 1, 1991, ACGIC issued a new policy form that included language excluding coverage for "intra-household liability." When it was time for the Kungs to renew their policy in February 1992, ACGIC sent them a "renewal policy package," which consisted of ten items. Among those items was a new H-5 policy basic form, declaration certificate, and policyholder's "important" notice.

This last notice consisted of a double-sided sheet of paper. The front of the paper was entitled, "Important Information about your Homeowners Renewal Policy." Below the title the notice stated that the "new" policy contained "several important revisions, including changes to "add or clarify coverage limitations or exclusions." The notice further instructed policyholders to "take a few minutes to review a summary of the more important changes on the reverse side of this form," and also to "read the entire policy and carefully review your current coverage and limits." On the reverse side, the notice stated in pertinent part:

#### PART II – BODILY INJURY AND PROPERTY DAMAGE **NOT** COVERED

New or revised policy provisions have been made to clarify exclusions for the following:

- |                             |                                |
|-----------------------------|--------------------------------|
| * Intentional Acts          | * Criminal Acts or Omissions   |
| * Intra-Household Liability | * Pollution to the Environment |

Since each of these revisions may contain new information, we again urge you to read the full text of these provisions in your new policy.<sup>1</sup>

The enclosed new 15-page homeowner's policy had a table of contents that included a section under Part II – Liability Insurance Coverages entitled "Bodily Injury And Property Damage Not Covered" at pages 12-13. On page 13, the policy included numerous exclusions, including the intra-household liability exclusion providing that ACGIC would not provide coverage for

**bodily injury to you, any resident relative**, and any other person residing in **your** household. This exclusion does not apply to roomers, boarders or **residence employees**[.]

Thus, ACGIC claimed that it could not be required to pay for bodily injury William Kung sustained because he was the insureds' relative and live with them in their household.

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<sup>1</sup> Bolding in original.

William Kung responded that the notice was insufficient to inform the Kungs of the new exclusion under the renewal policy and, therefore, ACGIC could not rely on the exclusion to avoid providing coverage.

The trial court agreed with William Kung. It concluded that the notice ACGIC sent to the Kungs with their renewal policy did not clearly state that the new policy contained an exclusion, and that the “language appears to be carefully designed to hide or minimize, without actually omitting or misrepresenting, the fact that an exclusion has indeed been added.” The trial court determined that the statement in the notice that the new or revised policy provisions had been made to “clarify” exclusions did not provide clear notice that an exclusion had been *added*. The trial court also concluded that the phrase “intra-household liability” was “not one that a lay person would be likely to understand.”

## II. Standard Of Review

We review de novo orders granting or denying summary disposition.<sup>2</sup>

## III. Summary Disposition Legal Standards

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim.<sup>3</sup> When deciding a motion for summary disposition under MCR 2.116(C)(10), “the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial.”<sup>4</sup> Ordinarily, because our review is de novo, we also engage in this full consideration of the record evidence. In this case, however, because the parties have stipulated to the facts, we go straight to the heart of the matter to determine whether the notice of the intra-household liability exclusion was inadequate and, therefore, William Kung was “entitled to judgment as a matter of law.”<sup>5</sup>

## IV. The Notice

When an insurance policy is clear, courts are “bound by the specific language set forth in the agreement.”<sup>6</sup> As a result, it should come as no surprise that an insured has an obligation to read the insurance policy and raise questions concerning coverage within a reasonable time after the insurer issues the policy.<sup>7</sup> However, if “a policy is renewed without actual notice to the

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<sup>2</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

<sup>3</sup> *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

<sup>4</sup> *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); see also MCR 2116(G)(5).

<sup>5</sup> *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>6</sup> *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

<sup>7</sup> See *Harts v Farmers Ins Exchange*, 461 Mich 1, 8, n 4; 597 NW2d 47 (1999).

insured that the policy has been altered,” then the insured’s failure to read the renewed policy and raise any questions in a reasonable time is excusable.<sup>8</sup> Consequently,

“[w]hile the renewal of an insurance policy constitutes a separate contract to be governed by general contract principles, it is the general rule that an insurance company is bound by the greater coverage in an earlier policy where the renewal contract is issued without calling to the insured’s attention a reduction in policy coverage.”<sup>[9]</sup>

According to *Koski v Allstate Ins Co*,<sup>10</sup> whether the notice of reduced coverage in a renewal policy is adequate is a question of law that the court decides.

All the parties participating in this appeal rely on *Koski, supra*, to support their arguments concerning whether the notice of the intra-household liability exclusion was adequate. However, unlike in *Koski*, in this case ACGIC made a reasonable effort to inform the Kungs of the new intra-household liability exclusion in their renewal policy. The notice letter included in the Kungs’ renewal package called their attention to “Important Information about your Homeowners Renewal Policy,” informing them that the new policy contained “several important revisions, including changes to “add or clarify coverage limitations or exclusions.” The notice further instructed the Kungs to “take a few minutes to review a summary of the more important changes on the reverse side of this form” and also to “read the entire policy and carefully review your current coverage and limits.” Contrary to the trial court’s observation that the notice did not inform the Kungs that the renewal policy added a new exclusion, the notice did refer to “new” exclusions in the renewal policy. Taken as a whole, these warnings about the new contents of the policy were sufficient to inform the Kungs that they needed to read the policy and make timely inquiries regarding any coverage questions. ACGIC cannot be faulted for their failure to take those steps. Accordingly, the trial court erred in granting the Kungs summary disposition. ACGIC was, in fact, entitled to judgment as a matter of law.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Janet T. Neff  
/s/ Joel P. Hoekstra

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<sup>8</sup> *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981).

<sup>9</sup> *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 396; 256 NW2d 607 (1977), quoting *Government Employees Insurance Co v United States*, 400 F2d 172, 174-175 (CA 10, 1968).

<sup>10</sup> *Koski v Allstate Ins Co*, 213 Mich App 166, 170; 539 NW2d 561 (1995), rev’d on other grounds 456 Mich 439 (1998).