STATE OF MICHIGAN

COURT OF APPEALS

BERNARD E. ELY,

Plaintiff-Appellee,

v

WOLVERINE MUTUAL INSURANCE COMPANY,

Defendant-Appellant,

and

WILLIAM L. FEGEL,

Defendant.

UNPUBLISHED
March 1, 2002

No. 225584
Wayne Circuit Court
LC No. 98-817652-CK

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

In this case involving a dispute over insurance coverage, defendant appeals by right from an order granting judgment for plaintiff, following a bench trial. We affirm.

I

The engines on plaintiff's yacht were damaged by overheating after an anchor chain wrapped around the vessel's propeller, sending the vessel's starboard stern into a sandbar where sand and shells were sucked into the cooling system for the engines, completely clogging the strainers and impeding the flow of cooling water over the engines. An exclusion to plaintiff's "all-risk" insurance policy precluded recovery for loss or damage "caused by" or "resulting from," among other things, overheating or foreign matter entering the motor except by vandalism.

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

II

Defendant argues that the exclusion clause at issue is unambiguous and excludes coverage for overheating, regardless whether an anchor chain caught on the propeller and inhibited plaintiff's ability to maneuver the boat. We disagree. Whether language in an insurance policy is ambiguous is a question of law, reviewed de novo by this Court. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

A

To determine if a provision in an insurance contract is ambiguous, this Court must look to the language of the policy and interpret the terms in accordance with Michigan's well-established principles of contract construction. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353-354; 596 NW2d 190 (1999). "An insurance contract is ambiguous when its provisions are capable of conflicting interpretations."

> If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand that there is no coverage under the same circumstances the contract is ambiguous and should be construed against its drafter and in favor of coverage.
>
> Yet if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous or, indeed, fatally unclear. [*Nikkel, supra* at 566, quoting *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982).]

If the exclusion is ambiguous, the exclusion must be construed against defendant, in favor of coverage. *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996); *Wilkie v Auto-Owners Ins Co*, 245 Mich App 521, 524; 629 NW2d 86 (2001).

The policy at issue states that it "insures against all risks of direct physical loss or damage except as hereinafter provided." Thereafter, under "exclusions," the policy states that it does not apply:

> to loss or damage caused by or resulting from wear, tear, gradual deterioration, inherent vice, latent defect, obsolescence, corrosion, rust, dampness of atmosphere, freezing, overheating or extreme temperatures, marring, scratching, insects, vermin or marine life, and foreign matter entering motor unless by vandalism.

Defendant contends that the policy unambiguously excludes coverage for damage from overheating, regardless whether the accidental wrapping of the anchor chain around the propeller led to the overheating. However, in the context of the "all risks" coverage, the exclusion can also reasonably be read to exclude coverage if overheating or extreme temperature is the sole or independent cause of the damage, but not if the damage results from an accident or collision, which only incidentally involves overheating in the sequence of events. In fact, defendant's own witness indicated that if the proximate cause of the overheating had been a collision with another

boat, the exclusion would not preclude coverage. We find, as did the trial court, that a fair reading of the exclusion clause leads to differing interpretations of coverage, and is therefore ambiguous. Because the clause is ambiguous, it must be construed in favor of coverage.

B

The exclusion precludes recovery for a loss "caused by" or "resulting from" the specifically listed, excluded events. In the absence of specific contractual language to the contrary, Michigan courts have long applied the "proximate cause" standard to determine if insurance was precluded by the occurrence of a particular event. *Berger v Travelers Ins Co*, 379 Mich 51, 53; 149 NW2d 441 (1967), citing *Nickola v United Commercial Travelers of America*, 372 Mich 600; 127 NW2d 309 (1964); *Michigan Sugar Co v Employers Mut Liability Ins Co of Wisconsin*, 107 Mich App 9, 13-15; 308 NW2d 684 (1981); *Vormelker v Oleksinski*, 40 Mich App 618, 629-630; 199 NW2d 287 (1972). Moreover, cases from other jurisdictions have concluded that in reference to an excluded peril, the terms "caused by" or "resulting from" require the insurer to prove that the excluded peril is the proximate cause of the loss. *Great Northern Ins Co v Dayco Corp*, 637 F Supp 765, 778 (SD NY, 1986), citing *Pan American World Airways, Inc v Aetna Casualty & Surety Co*, 505 F2d 989, 1006 (CA 2, 1974); *Resolution Trust Corp v Fidelity & Deposit Co of Maryland*, 205 F3d 615, 655-656 (CA 3, 2000). Because the insurance contract at issue contains no contrary standard, we find that the excluded cause, in this case overheating, must be the proximate cause of the loss to preclude recovery.

The trial court determined that the proximate cause of plaintiff's loss was an anchor chain and line wrapped around the vessel's propeller, beginning a sequence of events culminating in the engines overheating. The court also concluded that no foreign matter entered the motor. We review the trial court's findings of fact for clear error. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000).

The appropriate definition of proximate cause in an insurance context is "'that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred ….'" *Michigan Sugar, supra* at 14, quoting *Weissert v Escanaba*, 298 Mich 443, 452; 299 NW 139 (1941). The insurer bears the burden of proving that an exclusion to coverage is applicable. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161 n 6; 534 NW2d 502 (1995).

Plaintiff presented evidence that an anchor chain and line wrapped around the vessel's propeller, making navigation difficult and impeding plaintiff's ability to turn the vessel, which ultimately led to the engine damage. As plaintiff attempted to turn the vessel, the current took the vessel toward other boats and a sandbar. Although plaintiff was eventually able to turn the boat, the starboard stern was momentarily grounded on the sandbar. During the grounding, sand and shells were swept into the cooling system, depositing in the strainers designed to keep foreign matter from entering the engines. The strainers clogged, impeding the flow of water cooling the engines. The engines overheated, requiring replacement or repair. Plaintiff's expert testified that the strainers were not part of the motor, and that their purpose was to prevent foreign matter from entering the motor.

Defendant offered no evidence that foreign matter went beyond the strainers, and relied on its assistant claims manager's understanding that the strainers were part of the motor. Defendant also presented no evidence concerning when the damage to the engines occurred. Finally, defendant presented no evidence that a new, independent cause broke the sequence and produced the injury. *Michigan Sugar, supra* at 14-15.

The evidence presented supports the trial court's factual findings regarding both foreign matter in the motor and proximate cause. Exclusionary clauses are to be strictly construed against the insurer. *Fire Ins Exchange, supra* at 687. In light of the facts surrounding the damage, we find no clear error in the court's findings. The proximate cause of the loss was not excluded by the policy; therefore, plaintiff is entitled to insurance coverage.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie