STATE OF MICHIGAN

COURT OF APPEALS

ROBERT CHAMBERS,

Plaintiff-Appellant,

v

NATIONAL UNION FIRE INSURANCE COMPANY, AMERICAN HOME ASSURANCE COMPANY, GALLAGHER TRANSPORTATION SERVICES, and LANDSTAR RANGER, INC.,

Defendants-Appellees.

UNPUBLISHED
May 24, 2005

No. 260693
Genesee Circuit Court
LC No. 04-078561-NF

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition in favor of defendants. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured on April 24, 2003, while operating a vehicle leased by defendant Landstar Ranger. Plaintiff sought and received occupational accident benefits though a contractor protection plan, but not no-fault personal injury protection (PIP) benefits. Plaintiff asserted that, in early March 2004, he contacted Landstar seeking an application for PIP benefits, but was told, incorrectly, that he was not entitled to PIP benefits because his was a single-vehicle accident.[1] Plaintiff brought suit later that month, seeking unspecified damages, but did not file a claim for PIP benefits until early January 2005, over a year after the accident, and two weeks before the hearing on defendants' motion for summary disposition.

[1] At the time summary disposition was granted, plaintiff had not submitted any documentary evidence to support this assertion. Attached to plaintiff's appellate brief is his affidavit in which he sets forth averments regarding the request for an application from Landstar. However, the affidavit is dated several months after the dismissal, and it is not contained in the lower court record. The appellate record has not been expanded, and accordingly, we do not consider the affidavit in arriving at our decision.

The insurance contract provides that "no one may bring a legal action against us under this insurance until 30 days after the required written notice of 'accident' and reasonable proof of claim have been filed with us." The trial court stated, "prior to the complaint defendant was not given an opportunity to fail, refuse, or neglect to make proper payments." The court concluded, "No proof of claim was submitted until many months after the complaint was file[d], complaint was filed March 10, the proof of loss was submitted January 5 of 2005, so the motion is granted." The trial court's ruling was predicated solely on the contract language and not on MCL 500.3145(1). Plaintiff complied with § 3145(1) by filing suit within one year of the accident. Accordingly, MCL 500.3145(1) is not relevant to this appeal.

"An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by [the no-fault act]." MCL 500.3141. In *Koski v Allstate Ins Co,* 456 Mich 439, 444; 572 NW2d 636 (1998), our Supreme Court stated that "it is a well-established principle that an insurer who seeks to cut off responsibility on the ground that its insured did not comply with a contract provision requiring notice immediately or within a reasonable time must establish actual prejudice to its position." Citing *Wendel v Swanberg,* 384 Mich 468; 185 NW2d 348 (1971); *Weller v Cummins,* 330 Mich 286; 47 NW2d 612 (1951); 1 Windt, Insurance Claims & Disputes (3d ed), § 3.05, p 123. Here, the notice and proof of claim language at issue in the insurance contract does not relate to giving the insurer timely information in order to allow proper investigation of a claim so as to protect the insurer from questionable claims,[2] nor does it relate to any right of the insurer to deny benefits and cut off responsibility because of a lack of notice. Rather, the pertinent notice and proof of claim language is simply a condition precedent to filing suit. We conclude that evaluation of "prejudice" is equally applicable in this context and that there is a lack of prejudice. We are unaware of any no-fault statutory provisions that mandate notice and proof of claim prior to filing an action. Indeed, MCL 500.3145(1) merely requires an insured to file suit within a year of the accident, and the notice language of the statute comes into play only where an insured files an action beyond the one-year period following the accident and seeks refuge under tolling principles. While MCL 500.3142, which concerns penalty interest, speaks of benefits being overdue if not paid within 30 days after an insurer receives reasonable proof of loss, it does not mandate that an insured submit a proof of loss before filing an action.

We fail to see the harm or prejudice to defendants by permitting plaintiff to file suit without initially providing notice and a proof of claim. If defendants had no objection to providing PIP benefits as demanded in the complaint, they could have resolved the matter without resort to further unnecessary litigation. If defendants objected to providing PIP benefits as demanded in the complaint, then any earlier notice or claim submission would have been fruitless. Moreover, we cannot imagine that insureds in general will forgo providing notice and proof of claims to insurers before litigating in light of our holding.

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[2] "'One of the purposes of the provision requiring notice of accident is to give the insurance company knowledge of the accident so that it can make a timely investigation in order to protect its interests.'" *Koski, supra* at 444, quoting *Weller, supra* at 293.

With respect to the argument that there was no actual controversy when the complaint was filed, the record and the extent of this litigation strongly suggests that defendants were not and are not prepared to provide PIP benefits to plaintiff, and indeed a controversy exists.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski