STATE OF MICHIGAN

COURT OF APPEALS

LM GENERAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

HARTFORD INSURANCE COMPANY,

Defendant,

and

TRUMBULL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 16, 2021

No. 353697
Wayne Circuit Court
LC No. 19-006793-CZ

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

This is the second chapter of an ongoing dispute between two insurance companies. The first chapter arose from a lawsuit brought by a claimant seeking payment of first-party no-fault benefits. The claimant identified two potential sources of no-fault coverage: LM General Insurance Company and the Hartford Insurance Company, known here as Trumbull Insurance Company. The claimant sued both insurance companies, and LM General paid the benefits under protest. The only dispute in that case was which of the two insurance companies was first in priority for payment.

Trumbull admitted liability after LM General filed a motion for summary disposition to which Trumbull did not respond. Trumbull then agreed to an order, and the case was dismissed. But Trumbull never reimbursed LM General.

LM General filed this lawsuit seeking reimbursement from Trumbull. The circuit court granted summary disposition to Trumbull based on the one-year-back rule, MCL 500.3145(1), which at the time provided, in relevant part, that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

The one-year-back rule does not apply for two reasons. LM General is not a "claimant" under the no-fault act, and this is not an action seeking the "payment" of no-fault benefits. Further, the underlying claim brought by the claimant was timely under the one-year-back rule, eliminating that defense even if the one-year-back rule does apply. We reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

Fectoria Hana sustained injuries in a 2016 car accident. Trumbull insured a vehicle owned by Hana's husband. Hana was a named insured on the policy for that vehicle, but her first name was misspelled as Victoria. And although she had retained her unmarried name, the policy identified her as having her husband's last name (Azir). When Trumbull refused to pay first-party no-fault benefits on her behalf, she sued Trumbull and LM General, which insured the car in which she was riding when the accident occurred. Meanwhile, LM General had stepped up and paid $210,321.59 on Hana's behalf. According to information filed by Trumbull in the circuit court, LM General's last payment of first-party benefits was made in June 2019, and the first in September 2016.

The two insurance company defendants were able to resolve Hana's first-party no-fault action rather expeditiously. After the confusion about Hana's name was cleared up, LM General sought summary disposition, presumably relying on MCL 500.3114(1).[1] On the day before the hearing, Trumbull's lawyer sent an email to counsel for LM General stating: "Regarding your MSD set for tomorrow afternoon, I have reviewed the issue and had discussions with the adjuster and we agree that we are in priority over Liberty. Therefore, to avoid you having to go to court and argue the motion, please send over an order for our review." An order was sent and approved, and the case was dismissed with prejudice. In retrospect, LM General should have demanded entry of a judgment. But LM General's lawyer probably assumed that Trumbull's counsel's word was good. Unfortunately, that turned out to have been a misplaced assumption.

Time went by (approximately six months) and Trumbull did not reimburse LM General for the $210,321.59 in benefits that LM General had paid on Hana's behalf. LM General brought this action in May 2019, and as we have noted, the circuit court determined that under the one-year-back rule, LM General was out of luck. LM General now appeals that ruling.

[1]MCL 500.3114(1), the applicable section of the priority statute, provides that a personal injury protection policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household . . . ." Once LM General and Trumbull established that Fectoria Hana was the wife of the named insured, Trumbull's responsibility under the no-fault act was obvious and irrefutable.

II. ANALYSIS

This case involves statutory interpretation, so our review is de novo. *Fuller v GEICO Indemnity Co*, 309 Mich App 495, 498; 872 NW2d 504 (2015). In construing the statute at issue, we begin with the plain language. *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 278; 884 NW2d 257 (2016).

There are several reasons that the one-year-back rule is inapplicable to this second chapter of the insurance companies' current quarrel.

The one-year-back rule, MCL 500.3145, "is not a statute of limitations, but a damages-limiting provision." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 212; 815 NW2d 412 (2012). At the time of the events underlying this suit, the statute provided:

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. *However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.* The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.
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> (2) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident. [MCL 500.3145, as enacted by 1972 PA 294 (emphasis added).[2]]

LM General is not a "claimant" as that term was used in § 3145(1). A "claimant" is someone who has a right to payment of PIP benefits from a no-fault insurer. Usually (but not always), the claimant is the insured. Under the circumstances presented in this case, LM General, an insurance company, is not a "claimant."

In *Allstate Ins Co v State Farm Mut Auto Ins Co*, 321 Mich App 543, 555; 909 NW2d 495 (2017), we noted that the no-fault act does not define the term "claimant." Injured people may be claimants, we observed, but whether medical providers could also qualify as "claimants" was cast

[2] MCL 500.3145 was amended by 2019 PA 21, effective June 11, 2019.

in doubt by the Supreme Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017). *Allstate*, 321 Mich App at 555-556. We summarized:

> Although a healthcare provider may request and receive payment from a no-fault insurer for services furnished to an injured person, MCL 500.3112; *Covenant Med Ctr*, 500 Mich at 195, 208-209, that does not mean that the provider is a "claimant" entitled to receive no-fault benefits. *Rather, it is the injured person who is the claimant that receives PIP benefits, in the form of the insurer paying the healthcare providers*. [*Id*. at 558 (emphasis added).]

Allstate is analogous to the case before us. There, the claimant was a pedestrian struck by a car. *Id*. at 546. The Michigan Assigned Claims Plan (MACP) assigned Allstate to pay the injured claimant's no-fault benefits, and Allstate did so. *Id*. at 546-547. Allstate later learned that the driver responsible for the accident was insured by State Farm. Allstate sued State Farm to recoup the no-fault benefits it had paid on the claimant's behalf. *Id*. at 547. To avoid repaying Allstate, State Farm invoked a limitations provision pertaining to MACP claimants that is somewhat similar to MCL 500.3145(1). *Allstate*, 321 Mich App at 547-548. The MACP-related statute, MCL 500.3175(3), stated in part: " '[a]n action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant.' " *Allstate*, 321 Mich Ap at 548.

This Court explained that MCL 500.3175(3) did not preclude Allstate from recovering against State Farm despite that Allstate named State Farm as a defendant more than two years after Allstate had been assigned the claim. The injured party was the claimant, we highlighted, "because she had a right to PIP benefits from [Allstate]." *Allstate*, 321 Mich App at 559. And since Allstate had made two payments on the claimant's behalf within one year of naming State Farm as a party defendant, we found that the payments satisfied the limitations period applicable to the MACP. *Id*. at 560-561.

Hana was the claimant in the 2017 action, and her claim for benefits was timely under the one-year-back rule. Because LM General is not a "claimant" under the no-fault act and made payments to Hana in a timely fashion, *Allstate* counsels that the one-year-back rule does not apply, despite that some of LM General's timely payments to the claimant (Hana) were made more than a year before it was forced to file this suit.[3]

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[3] Application of the one-year-back rule in these circumstances does not vindicate the purpose of the rule, which was intended to protect insurers against stale claims so as to maintain the system's "fiscal integrity."

> Given that Michigan is the only state with a no-fault automobile-injury reparations scheme with mandatory, unlimited, lifetime medical benefits, the Legislature adopted a unique approach to defining the temporal limitations for filing suit without allowing open-ended liability or time-barring claims before they accrue. The Legislature addressed this problem by enacting the one-year-back rule, which

Trumbull resists this interpretation of the one-year-back rule, insisting that as Hana's "subrogee," LM General acquired only the same rights as Hana would have had. Hana could not have recovered no-fault benefits had she filed suit in 2019 when LM General did, Trumbull reasons, because more than a year had elapsed since her last loss was incurred.[4] Whether LM General is actually Hana's "subrogee" is not entirely straightforward. A subrogee is "one who is substituted for another in having a right, duty, or claim." *Harris v Auto Club Ins Ass'n*, 494 Mich 462, 472 n 29; 835 NW2d 356 (2013) (cleaned up). Hana brought an action for benefits. LM General is not suing to enforce a right, duty, or claim owed to Hana; her claim for benefits has been paid and liability decided. Rather, LM General alleges that Trumbull violated an entirely separate and distinct agreement to reimburse LM General for the payments that LM General had made. See *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 407; 751 NW2d 443 (2008) (finding that a fraud action was not subject to the one-year-back rule "because the one-year-back rule applies only to actions brought under the no-fault act" and a fraud action was "a distinct and independent action"). This action was filed not to determine whether a no-fault claimant was entitled to benefits, or which insurance company was responsible for payment. Those questions were answered in chapter one. Although the no-fault insurance system supplies this chapter's factual background, the central issue is whether Trumbull's promise to pay is legally enforceable. Accordingly, the one-year-back rule does not apply.

And even if we assume that LM General is Hana's subrogee, her claim was timely under the one-year-back rule. Standing in Hana's shoes, so is LM General's.[5]

> limits recovery to losses incurred within one year before suit was filed. Thus, the creation of MCL 500.3145(1) was the Legislature's reasonable and simple approach to resolving the problem of allowing a reasonable amount of time for pursuing a claim while protecting the fiscal integrity of the no-fault system. [*Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 220-221; 815 NW2d 412 (2012).]

That purpose was fulfilled when Hana timely sought payments from either LM General or Trumbull, and LM General paid.

[4] That allegation appears to be incorrect. The ledgers attached to Trumbull's motion in the circuit court indicate that LM General made a number of payments for services incurred in 2019, less than a year before LM General filed suit.

[5] Our Supreme Court's recent decision in *Esurance Prop & Casualty Ins Co v Mich Assigned Claims Plan*, __ Mich __; __ NW2d __ (2021) (Docket No. 160592), reinforces this conclusion. *Esurance* involved an *equitable* subrogation claim arising from an insurance company's payment of no-fault benefits that it later determined it did not owe. The Supreme Court upheld the insurance company's right to pursue equitable subrogation against the entity potentially responsible for payment, the Michigan Assigned Claims Plan. Citing several statutory pillars of the no-fault act, the Court summarized:

> What emerges from these statutes is an axiom of both no-fault insurance law and practice: insurers like Esurance must pay PIP benefits to claimants promptly and

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh

> sort out priority and reimbursement issues later. That axiom is actualized by the very real possibility that steep penalties will be assessed against an insurer that drags its feet in paying PIP benefits to claimants. [*Id*., slip op at 18.]

The Supreme Court did not directly address the one-year-back rule in *Esurance*, but if it applied, Esurance's victory would be hollow indeed. The Court did point out that the no-fault act "strongly incentivize[s] insurers like Esurance to adhere to the no-fault act's 'pay promptly, litigate later' logic." *Id*., slip op at 16. LM General not only paid promptly—it rapidly resolved Hana's underlying, timely filed lawsuit. The letter and spirit of *Esurance* buttress our decision here.