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December 30, 1987

Michigan Trial Lawyers Association
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RE: Michigan No-Fault Auto Insurance Decisions

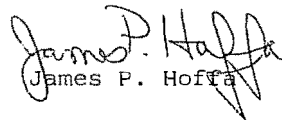
Gentlemen:

Please be advised that I am a regular subscriber to the Michigan No-Fault Auto Insurance Decisions compiled by George T. Sinas on behalf of MTLA.

At this time it is my pleasure to contribute to your decisions and, therefore, enclosed you will find a loading/unloading no-fault case which was originally decided by the 19th District Court and also the Wayne County Circuit Court's appeal decision.

Should you have a questions concerning this decision or if I may be of any assistance in any other matter, please do not hesitate to contact me.

Sincerely yours,


James P. Hoffa

JPH/vam

Enclosure

STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE 19th JUDICIAL DISTRICT

ROBERT LEE,

Plaintiff

vs

Civil No. 24071-C

COMMERCIAL CARRIERS, INC.,

Defendant.

JAMES P. HOFFA (P15028)
Attorney for Plaintiff
8325 E. Jefferson Ave.
Detroit, Mi. 48214
(313) 331-1111

JAMES R. STEGMAN (P20942)
Attorney for Defendant
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Ste. 1451
Southfield, MI. 48034
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ORDER

At a session of said Court held in
the City of Dearborn, County of
Wayne, State of Michigan on May 15, 1985

PRESENT: HONORABLE HENRY ARKISON
DISTRICT COURT JUDGE

Upon the reading and filing of both Plaintiff's and
Defendant's cross Motions for Summary Judgment and having
heard oral argument, and the Court being fully advised in the
premises thereof,

IT IS ORDERED that Plaintiff's Motion for Summary
Judgment is hereby granted in that the Court finds after
reviewing the record in this case that Plaintiff Robert Lee
was alighting from a vehicle within the meaning of MCLA
500.3106(1)(c) and that he was not involved in the process of
loading and that he is therefore entitled to no-fault benefits

based on MCLA 500.3106(1)(c).

IT IS FURTHER ORDERED that Defendant shall pay to Plaintiff Fifteen Thousand Two Hundred Fifty-Two Dollars and Forty-Four Cents (\$15,252.44) in no-fault benefits for the periods of 2/3/82 - 1/14/83; 9/15/83 - 10/24/83; 3/6/84 - 5/6/84 and 8/8/84 - 1/22/85.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is hereby denied.

IT IS FURTHER ORDERED that for the following periods Plaintiff shall be paid, pursuant to MCLA 500.3142, penalty interest in the amount of 12% simple interest per annum on the figures listed below commencing thirty days after each below listed period:

2/3/82 - 1/14/83
9/15/83 - 10/24/83
3/6/84 - 5/6/84
8/8/84 - 1/22/85

IT IS FURTHER ORDERED that Plaintiff shall also be entitled to judgment interest from the date of the filing of this complaint herein to the date of satisfaction of this judgment at the rate of 12% per year compounded annually pursuant to MCLA 600.6013.

Henry D. Chisum
DISTRICT COURT JUDGE
~~JUN 10 1985~~

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ROBERT LEE,

Plaintiff,

vs.

Case No. 85 516 553 AV

COMMERCIAL CARRIERS, INC.

Hon. Marvin R. Stempien

Defendant.

James P. Hoffa pl5028
Attorney for Plaintiff

James R. Stegman p20942
Attorney for Defendant

At a session fo said Court held in
the City-County Building, City of
Detroit, County of Wayne, State of

Michigan, ON: DEC 21 1987

PRESENT: _____
CIRCUIT JUDGE

OPINION AND ORDER ON APPEAL
AFFIRMING JUDGEMENT OF LOWER COURT

Defendant appeals the lower court's summary judgement in favor of Plaintiff ruling that Plaintiff was entitled to benefits under the no-fault automobile insurance statute.

Plaintiff is an employee of the Defendant corporation as a truck driver, whose duties include loading and unloading cargo onto and off of the tractor-trailer. Plaintiff-appellee was on top of the trailer, sweeping snow off of it. When he finished, he proceeded to climb down from the top of the trailer using a ladder affixed to the trailer. Plaintiff-appellee then slipped and fell and thereby sustained injuries. Defendant-appellant disputes that Plaintiff-appellee is entitled to no-fault automobile insurance benefits in addition to worker's compensation benefits.

The applicable statute is MCL 500.3106 (2) of the Michigan No-Fault Automobile Insurance Act which states:

"Accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle if benefits under the Workers' Disability Compensation Act no. 317 of Public Acts of 1969, as

amended, being 418.101 to 418.941 of the Michigan Compiled Laws are available to an employee who sustains the injury in the course of his or her employment while loading, unloading or doing mechanical work on a vehicle, unless the injury arose from the use or operation of another vehicle."

In the case before this court, the critical issue is whether the injury occurred while "loading" the vehicle. The facts indicate that Plaintiff-appellee never did load the truck on the day he was injured. The normal procedure for Plaintiff-appellee would have been to a) sweep off his truck, b) get on the dispatch board, c) wait to see if assigned a load and d) turn in the paperwork prerequisite to receiving a load. After (a) through (d) is completed, a driver may or may not be assigned a load for that day. Obviously, it is not until (a) through (d) and the assignment transpires that any loading occurs.

It is uncontroverted that Plaintiff-appellee completed only step (a) of his normal procedure, and that he never requested nor received a load on the day of his injury. It is this court's opinion that Plaintiff-appellee's activities on the day of his injury were too far removed from the loading process, and that, as a matter of fact, he was not loading his employer's truck when he was injured. Plaintiff-appellee was too many functions away from loading in his duties at the time of the injury to be disqualified for benefits under MCL 500.3106.

Accordingly, the lower court was correct in ruling that Plaintiff-appellee's activities do not fall within the exception of MCL 500.3106 (2), and that Plaintiff-appellee is entitled to No Fault Benefits.

IT IS HEREBY ORDERED that the judgement of the lower court is affirmed.

MARKVIN
Circuit Judge

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY _____
Deputy Clerk