STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

BILL E. KOOI,

Plaintiff-Appellant

vs

File No. 87-23158 AV
OPINION ON APPEAL

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Defendant-Appellee

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Defendant in District Court filed a Motion for Summary Disposition alleging that even assuming all the facts contained within the complaint were true, that defendant is entitled to a summary disposition due to their contention that the injury did not arise "out of the ownership operation maintenance or use of a motor vehicle as a motor vehicle" as required by Section 3105(1) of the No-Fault Act. The District Judge William D. Cole held for defendant and granted the motion indicating that the state of the law appeared to be influx and stated in his opinion as follows:

> "And while the pushed vehicle may have been one - - -apparently by admission, was a vehicle that otherwise was capable of normally operating as a motor vehicle, in this case, it seems to this court that its sole function at this particular event was for the purpose of assisting the race, and while it is admittedly a motor vehicle, it does not seems to this court that the kind of activity is the use of a motor vehicle as a motor vehicle."

This Court reverses the lower Court holding dismissing the case and sets aside the order granting summary disposition on the basis alleged remanding same for further proceedings.

In this case the facts are fairly well agreed upon, the essential facts being that at a race track, one of the race car vehicles became stuck. Another vehicle which had regularly been used on the highways and was a registered vehicle, came along in the field where the race car was stuck and with a special front end assisted in pushing the stuck race car. At this point, it is

the lower Court was required to rely are all older and of a lesser import, that is, being the most recent decisions of the Court of Appeals whereas the Bialochowski case is a Michigan Supreme Case. It is in a phrase, the most decision and that being "the latest and the greatest" precedent in the State of Michigan. This Court relies on the Michigan Supreme Court's most recent pronouncement and interpretation of this section of the Act notwithstanding the legitimacy of the defendant's argument and the court's preference for those arguments. I believe precedent has been set by higher court and we must follow that.

I do not believe the lower court was, nor am I impressed, with the factual situation where the cars were in a field adjacent to a race track. There is no contention that such vehicle involved in the accident was a race vehicle itself and not being used in a "normal" fashion. I would distinguish the Bialochowski case from the race car track cases. However, I feel the Bialochowski case is a more remote interpretation of Section 3105 of the no-fault act where a motor vehicle with some modifications is not being used at the time as a motor vehicle but the modifications of pumping cement at the time were being used and it was in the course of that operation that the accident occurred. In our case, the vehicle was being employed pushing another car, a more "normal" use of a motor vehicle than pumping cement through special modifications or attachments to the truck of the Bialochowski case.

Plaintiff may submit an order in accordance with this opinion remanding same to District Court for further proceedings.

Dated Nov 3, 1987

cc: Mr. John A. Braden, Atty
Mr. Darrel G. Brown, Atty

Michael E. Kobza

MICHAEL E. KOBZA
Circuit Judge