# STATE OF MICHIGAN

# COURT OF APPEALS

GREATER FLINT HMO,
a Michigan nonprofit corporation and
healthmaintenance organization,

Plaintiff,

v

ALLSTATE INSURANCE COMPANY,
an Illinois corporation,

Defendant/Third-Party
Plaintiff-Appellant,

v

MID-CENTURY INSURANCE COMPANY and
THE NATIONAL BEN FRANKLIN INSURANCE COMPANY,

Third-Party Defendants-Appellees.

NOVEMBER 8, 1988

FOR PUBLICATION

No. 99859

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DONALD McCLELLAND and MARJORIE McCLELLAND,

Plaintiffs,

v

ALLSTATE INSURANCE COMPANY,
an Illinois corporation,

Defendant/Third-Party
Plaintiff-Appellant,

v

MID-CENTURY INSURANCE COMPANY and
THE NATIONAL BEN FRANKLIN INSURANCE COMPANY,

Third-Party Defendants-Appellees.

No. 99860

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Before: Kelly, P.J., and Sullivan and M.J. Shamo,* JJ.

PER CURIAM

Allstate Insurance Company (Allstate) appeals as of right a circuit court order granting summary disposition under MCR 2.116(c)(10) as to the third-party defendants, Mid-Century Insurance Company and the National Ben Franklin Insurance Company. We reverse.

A brief recitation of the facts and procedure below is helpful. On Sunday afternoon, August 26, 1984, an unidentified semi-truck traveled into the left-hand lane of southbound I-75 at the Zilwaukee Bridge in Saginaw. This maneuver forced the vehicle behind the truck to suddenly stop. An unidentified driver in the chain of traffic was unable to respond in time and, as a result, there were multiple rear-end collisions down the line to the appellees' insureds, Kirby Grossman and Barbara Hull. Both the trucker and the unidentified driver left the scene.

*Recorder's Court judge, sitting on the Court of Appeals by assignment.

Robert Buda, Allstate's insured, saw the taillights in front of him and came to a sudden stop approximately ten feet behind the unidentified vehicle. Buda then felt a slight impact from behind, but saw no contact between his car and the oncoming motorcycles directly behind, nor could he say definitely that any motorcycle hit his vehicle. Unfortunately, as the motorcyclists attempted to stop, they collided. Plaintiffs Donald and Marjorie McClelland were among the motorcyclists injured.

The McClellands, also insured by Allstate, and their subrogee, Greater Flint HMO, each sued Buda. Allstate, the insurer of the vehicle operated by Buda, defended against the claims. Allstate brought third-party claims against Mid-Century and National Ben Franklin, the insurers of Hull and Grossman, respectively, on a theory of joint liability under the no-fault act.

The parties filed various motions for summary disposition, agreeing, however, that the dispositive issue was whether any of defendants' cars were sufficiently "involved" in the motorcycle collisions to trigger no-fault liability in their insurers.

After hearing a lengthy discussion on the merits and considering submitted deposition testimony, the court denied Allstate's motion and, also, plaintiffs' cross-motion for summary disposition against Buda. The court's decision was premised on a finding that a question of material fact existed whether there was an impact between Buda's vehicle and the motorcycles. This ruling is not challenged on appeal. However, based on the absence of contact between the vehicles driven by Grossman, Hull and Buda or the motorcycles, the court granted summary disposition as to third-party defendants, Mid-Century and National Ben Franklin. In essence, the court concluded that there was no evidence of any "involvement" of those vehicles. It is this ruling that is challenged by Allstate on appeal.

The no-fault act provides coverage for accidental bodily injury "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." MCL 500.3105(1); MSA 24.13105(1). Under the act, motorcycles are excluded from the definition of motor vehicles. MCL 500.3102(2)(c); MSA 24.13101(2)(c). However, § 3114(5) permits a motorcyclist who suffers accidental bodily injury arising from a motor vehicle accident to claim no-fault benefits from the insurers of the motorists and vehicle owners "involved in the accident," and sets forth a priority scheme for determining the insurers' order of priority. "Motor vehicle accident" as used in the act, "means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle." MCL 500.3101(2)(f); MSA 24.13101(2)(f).

Thus, the issue to be resolved is whether the third-party defendants' insureds' motor vehicles might be found to have been sufficiently "involved" in a "motor vehicle accident" in which plaintiffs were injured to trigger liability under the no-fault act.

The test for determining motor vehicle "involvement" for no-fault liability purposes was set forth in Kangas v Aetna Casualty & Surety Co, 64 Mich App 1, 17; 235 NW2d 42 (1975), lv den 395 Mich 787 (1975), in the context of a pre-no-fault insurance contract:

> "[W]e conclude that while the automobile need not be the proximate cause of the injury, there still must be a causal connection between the injury sustained and the ownership, maintenance or use of the automobile and which causal connection is more than incidental, fortuitous, or but for. The injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle."

Recently, our Supreme Court appeared to adopt the Kangas test for purposes of no-fault liability. Thorton v Allstate Ins Co, 425 Mich 643; 391 NW2d 320 (1986).

In this case, the court granted summary disposition as to the third-party defendants, Mid-Century and National Ben Franklin, based on the absence of physical contact between their insureds, Grossman and Hull, and Buda or the motorcycles. However, the court's reliance on a requirement of "physical contact" is inconsistent with the Kangas test. Moreover, it is not difficult to imagine a situation in which there may be a

causal nexus between a motorist's conduct and an accidental injury quite apart from any physical contact between the insured and the other vehicles involved. See Bromley v Citizens Ins Co, 113 Mich App 131, 135; 317 NW2d 318 (1982) (fact that insured's car did not actually touch plaintiff's motorcycle held irrelevant as long as the causal nexus between the accident and the car is established.)

The relevant inquiry then is whether a causal nexus can be established that would link the injuries incurred in the accident to a motor vehicle. Here, the deposition testimony supports a reasonable inference that a sudden lane change of the lead vehicle, the semi-truck, caused every driver in the chain of traffic, which included Grossman and Hull, to make an emergency stop which contributed to plaintiffs' injuries.

When according Allstate the benefits of any reasonable doubt when reviewing the record, as we must in a motion for summary disposition premised on MCR 2.116(C)(10), the evidence does not preclude a finding that the truckers' action caused everyone in the chain of traffic to react to a single hazard which, in turn, created a risk for each motorist in the line. If indeed the trier of fact would so find, then the insurer of each motorist so "involved" would share in the liability to injured plaintiffs in accordance with § 3114(5). Thus, there remains a question of fact whether the involvement of the Hull and Grossman vehicles in these circumstances is sufficiently "involved" in the accident to trigger liability under the no-fault act. Accordingly, summary disposition was improper.

We note in passing that under the no-fault act fault is irrelevant, that is, the issue is not guilt or innocence but, rather, whether one fits within the protected class. Sanford v Insurance Co of North America, 151 Mich App 747, 753; 391 NW2d 473 (1986), lv den 426 Mich 876 (1986).

Reversed.

/s/ Michael J. Kelly
/s/ Joseph B. Sullivan
/s/ M. John Shamo