STATE OF MICHIGAN

COURT OF APPEALS

CHARLES SPRINGER,

Plaintiff/Counter-Defendant-Appellee,

v No. 103886

ALLSTATE INSURANCE COMPANY, a foreign insurer,

Defendant/Counter-Plaintiff-Appellant.

Before: Beasley, P.J., and Gillis and J.T. Hammond,* JJ.

PER CURIAM.

Plaintiff Charles Springer brought this action to compel defendant Allstate Insurance Company to pay no-fault work loss benefits for an injury suffered by plaintiff. Allstate appeals by right the trial court's grant of summary disposition in favor of plaintiff. We reverse.

Plaintiff and his coworker, James Monroe, worked for Signal Delivery Company delivering packages. Monroe drove the truck and, upon arriving at a delivery destination, positioned the truck and went to the door to establish that someone would accept delivery. Meanwhile, plaintiff went to the rear of the truck, opened the doors, and, when given the signal, began to unload the packages. Plaintiff was injured when he fell while exiting the cab of the truck on his way to the back of the truck to await Monroe's signal, while Monroe went to the door of the delivery destination.

As a result of his accident, plaintiff received workers' compensation benefits. He also sought no-fault work loss benefits from defendant, as the no-fault carrier of plaintiff's employer. After paying plaintiff's work loss benefits for four months, defendant refused to pay any more work

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*Circuit judge, sitting on the Court of Appeals by assignment.

loss benefits on the ground that plaintiff was barred from receiving no-fault benefits by the loading-unloading exclusion of MCL 500.3106(2); MSA 24.13106(2). The exclusion was added by amendment in 1982 and, at the time of plaintiff's injury, provided:

> "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 . . . 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."

Thus, if plaintiff was in the process of loading or unloading within the meaning of the exclusion, he is barred from receiving no-fault benefits. The court below ruled that plaintiff was not loading or unloading within the meaning of §3106(2). The court seemingly based its conclusion on the fact that at the time plaintiff slipped and fell, there had been no determination whether, in fact, any unloading would even take place at that delivery location. We believe the trial court's ruling is erroneous.

The most important rule of statutory construction is to discover and give effect to the legislative intent. In Re Certified Questions, 416 Mich 558, 567; 331 NW2d 456 (1982); Bell v F J Boutell Driveway Co, 141 Mich App 802, 809; 369 NW2d 231 (1985). In construing the amendment at issue, this Court has concluded that the Legislature intended a broad interpretation of the terms "loading" and "unloading" in §3106(2) to include the complete operation of loading and unloading, including activities preparatory to the actual loading/unloading. Bell, supra; Gray v Liberty Mutual Ins Co, 149 Mich App 446, 449-451; 386 NW2d 210 (1986); Gibbs v United Parcel Service, 155 Mich App 300; 400 NW2d 313 (1986); MacDonald v Michigan Mutual Ins Co, 155 Mich App 650, 657; 400 NW2d 305 (1986); Crawford v Allstate Ins Co, 160 Mich App 185; 407 NW2d 618 (1987). This Court has further concluded

that the Legislature's intent in the amending the statute was to eliminate the duplication of benefits for work-related injuries except when the actual driving or operation of a motor vehicle is involved. Crawford, supra, at 186.

Generally, the only cases in which this Court has found that the loading/unloading exclusion of §3106(2) does not bar recovery for an injury arising out of activities preparatory to loading and unloading are cases in which the injury was to the truck driver, who was not charged with the responsibility to load or unload the vehicle. See Marshall v Roadway Express, Inc, 146 Mich App 753; 381 NW2d 422 (1985), and Cobb v Liberty Mutual Ins Co, 164 Mich App 66; 416 NW2d 328 (1987). Jasinski v Nat'l Indemnity Ins Co, 151 Mich App 812; 391 NW2d 500 (1986), relied on by plaintiff, is inapplicable to the instant case. In Jasinski, the issue was not raised as to whether the plaintiff's no-fault work loss benefits were completely barred where he was injured while "alighting" from the cab of his truck. The issue centered on which of two insurance companies would be liable to pay the benefits.

Plaintiff and defendant in the instant case both claim support for their respective positions from the fact that §3106(2) was amended by 1986 PA 318 to preclude workers from receiving workers' compensation benefits and no-fault work loss benefits if injured while "entering into or alighting from the vehicle," as well as while loading, unloading or doing mechanical on a vehicle. Plaintiff and defendant agree that plaintiff would be barred from recovering no-fault benefits under the language of the new amendment. Plaintiff argues that 1986 PA 318 is a recognition by the Legislature that before the amendment, §3106(2) did not bar benefits for an injury such as plaintiff's. Defendant argues that the amendment merely clarifies the previous legislative intent in enacting §3106(2) in 1982. In examining the legislative history of §3106(2), as amended by 1986 PA 318, we are persuaded that defendant is correct in this regard.

The Senate Fiscal Agency's Second Analysis of this statute, then S.B. 730, stated:

> "In 1981, the legislature amended the Insurance Code attempting to make it clear that no-fault automobile insurance benefits would not be available to an employee who was injured while loading, unloading, or doing mechanical work on a vehicle in the course of his or her employment, if workers' compensation benefits were available to the employee. This action was a response to court interpretations of the no-fault act that had allowed workers injured while loading and unloading trucks to collect no-fault benefits for their injuries, benefits that were significantly higher than those to which they were entitled under workers' compensation.
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> "The [new] bill would make it clear once and for all that no-fault benefits should not be paid to employees injured while loading and unloading, getting into or out of, or performing maintenance on parked vehicles if the employees had available to them workers' compensation benefits.

The above legislative analysis clearly suggests that the legislative intent in enacting §3106(2) in 1982 was to preclude workers from receiving both workers' compensation and no-fault benefits. We believe that the language of 1986 PA 318 excluding no-fault benefits for persons injured while entering into or alighting from a vehicle merely clarifies, and does not change, the Legislature's intent in enacting § 3106(2) in 1982. Raymond v Commercial Carriers, Inc, 173 Mich App 290; 433 NW2d 342 (1988), does not require a contrary result.

We hold that plaintiff is barred from receiving no-fault work loss benefits by the loading/unloading exclusion of the parked vehicle provision of the no-fault act, MCL 500.3106(2); MSA 24.13106(2). The trial court's grant of summary disposition in favor of plaintiff is reversed.

Reversed and remanded for further proceedings in accord with the decision of the Court.

/s/ William R. Beasley
/s/ John H. Gillis
/s/ John T. Hammond