

STATE OF MICHIGAN
COURT OF APPEALS

J.C. PENNEY CASUALTY INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION,

Defendant-Appellee.

June 7, 1989

FOR PUBLICATION

No. 105202

Before: Murphy, P.J., and MacKenzie and Reilly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant Michigan Catastrophic Claims Association (MCCA). The sole issue is whether plaintiff, an insurer who has never written automobile no-fault insurance coverage in the state of Michigan, is entitled to reimbursement from the catastrophic claims fund for no-fault benefits in excess of \$250,000 paid to or on behalf of a nonresident insured injured within the state of Michigan. We hold that plaintiff is not entitled to such reimbursement and affirm.

Andrea Craver was rendered a quadriplegic in a one-car automobile accident which occurred in Michigan. Craver, who is an Ohio resident, was riding with another Ohio resident in a car registered in the state of Ohio.

Plaintiff had issued a policy of insurance to Craver's father, an Ohio resident, insuring Ohio registered vehicles. After the accident, Craver filed a claim with plaintiff under her father's Ohio policy for benefits under Michigan's automobile no-fault insurance act (the Act), MCL 500.3101 et seq.; MSA 24.13101 et seq. Pursuant to § 3163 of the Act, plaintiff was obligated to provide no-fault benefits to its out-of-state insureds injured within the state of Michigan. Accordingly, plaintiff paid no-fault insurance benefits to Craver. When the no-fault benefits paid approached \$250,000, plaintiff filed with defendant MCCA a claim under the catastrophic claims statute, MCL 500.3104; MSA 24.13104 for reimbursement of benefits paid in excess of \$250,000. Defendant denied the claim. This declaratory judgment action followed.

The MCCA is a nonprofit association which must provide 100% indemnification for members' losses in excess of \$250,000 in each loss occurrence. MCL 500.3104(1) and (2); MSA 24.13104(1) and (2). Membership in the MCCA is determined as follows:

"Each insurer engaged in writing insurance coverages which provide the security required by section 3101(1) within this state, as a condition of its authority to transact insurance in this state, shall be a member of the association and shall be bound by the plan of operation of the association." MCL 500.3104(1); MSA 24.13104(1). (Emphasis added.)

The security required by section 3101(1) is a policy of no-fault insurance on a motor vehicle required to be registered in Michigan. MCL 500.3101(1) and (3); MSA 24.13101(1) and (3).

The MCCA's expenses are funded through a premium charged to members. MCL 500.3104(7)(d); MSA 24.13104(7)(d). The premium charged to each member of the MCCA is assessed as follows:

"Each member shall be charged an amount equal to that member's total earned car years of insurance providing the security required by section 3101(1) . . . written in this state

during the period to which the premium applies, multiplied by the average premium per car. The average premium per car shall be the total premium calculated divided by the total earned car years of insurance providing the security required by section 3101(1) . . . written in this state of all members during the period to which the premium applies." MCL 500.3104(7)(d); MSA 24.13104(7)(d). (Emphasis added.)

At all times pertinent to this case, plaintiff was authorized to write automobile insurance coverage in Michigan. However, plaintiff has never written an automobile insurance policy issued to a Michigan resident on a vehicle registered in the state of Michigan.

On these facts, we agree with the trial court's conclusion that plaintiff was not entitled to reimbursement out of the fund. Plaintiff in this case has never issued a no-fault insurance policy on a vehicle registered in Michigan and thus is not "engaged in writing" automobile no-fault insurance coverage in Michigan, a prerequisite to membership in the MCCA. Furthermore, plaintiff has never paid any premium to the MCCA and the MCCA has no way to calculate a premium for plaintiff, since premiums are based on policies written in Michigan. Since plaintiff does not write policies in this state plaintiff cannot be a member insurer of the MCCA entitled to reimbursement from the fund.

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Maurcen Pulte Reilly