STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY J. KANDAL, JR.,

Plaintiff-Appellant,

v No. 107639

FARM BUREAU INSURANCE GROUP,

Defendant-Appellee.

Before: MacKenzie, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition, based on plaintiff's failure to substantially comply with the notice requirements of the no-fault act, MCL 500.3145(1); MSA 24.13145(1). We affirm.

The facts are undisputed. On December 4, 1985 plaintiff was involved in a car accident. At that time he was insured by defendant under a no-fault policy. On December 23, 1985 plaintiff's attorney wrote the following letter to defendant:

> Please be advised that our office represents Anthony Frank Kandal, Jr., for personal injuries stemming from an automobile accident on 12-4-85. We enclose herewith a copy of the police accident report for your review.
>
> Please forward an acknowledgment of this claim and claim number and any first party no-fault benefit forms you require to be filed by Mr. Kandal.

The referenced police report stated that plaintiff was taken to the hospital but did not mention the nature of the injuries he sustained.

By letter dated January 13, 1986, defendant acknowledged receipt of plaintiff's letter and sent plaintiff's attorney an application for benefits form. A form was also sent directly to plaintiff. Plaintiff did not complete and return the application.

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HOOD, J. Concurring.

I agree that plaintiff did not substantially comply with the notice provisions of the no-fault act and that the decision of the trial court should therefore be affirmed. I write separately only to indicate my continued belief that in the proper case a plaintiff should be able to show a failure to discover the serious impairment. Horan v Brown, 148 Mich App 464, 384 NW2d 805 (1986), lv den 425 Mich 876 (1986).

/s/ Harold Hood

Almost two years later, on September 10, 1987, plaintiff's attorney again wrote to defendant, advising the insurer that plaintiff was being treated for a knee condition resulting from the December 4, 1985 accident and requesting another application for benefits form. Defendant did not provide an application. This refusal was based on MCL 500.3145(1); MSA 24.13145(1), which states in relevant part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. . . . The notice of injury required by this subsection . . . shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury. [Emphasis added.]

Plaintiff concedes that the December 23, 1985 letter did not state the nature of his injury, and thus was not in strict compliance with the notice requirement as stated in § 3145(1). Plaintiff maintains, however, that the letter was in substantial compliance with the notice requirement as construed by this Court in Dozier v State Farm Mutual Automobile Ins Co, 95 Mich App 121; 290 NW2d 408 (1980), lv den 409 Mich 911 (1980).

In Dozier, this Court noted that notice provisions serve the dual functions of providing insurers time to (1) investigate claims and (2) appropriate funds for settlement purposes, citing Davis v Farmers Ins Group, 86 Mich App 45; 272 NW2d 334 (1978), lv den 406 Mich 868 (1979). In light of these functions, the Dozier panel concluded that strict compliance with the notice requirement of § 3145(1) is not essential. Instead, the Dozier Court held that notice which "apprise[s] the insurer of the need to investigate and to determine the amount of possible liability of the insurer's fund, is sufficient compliance under § 3145(1)." 95 Mich App 128.

In Dozier, the notice at issue advised the insurer of "the injuries sustained by Mrs. Dozier in the accident of June 9th". See 95 Mich App 124. The Dozier panel found this informed the insurer of an accident and the fact that injuries were sustained, thus providing adequate warning so as to permit investigation of the matter. However, because the place and nature of the injury were omitted, the insurer was denied knowledge of the essential facts upon which its liability depended, therefore depriving it of the ability to appropriate funds for settlement purposes. Id, at 129-130. Thus the notice in Dozier was not in substantial compliance with § 3145.

Similarly, in this case, plaintiff did not substantially comply with § 3145(1)'s notice requirement. Based on the notice given, plaintiff could have suffered anything from critical closed head injuries to a broken toe. In the absence of information regarding the nature of his injury, "defendant [was] denied knowledge of the essential facts upon which its liability depend[ed] and therefore [could] not appropriate funds for settlement purposes". 95 Mich App 130.

Plaintiff argues that he could not tell defendant the nature of his injury because his knee injury did not manifest itself until June, 1987, a year and a half after the accident. As this Court stated in Kalata v Allstate Ins Co, 136 Mich App 500, 501; 356 NW2d 40 (1984):

> The no-fault insurance act expressly contemplates the accrual of an action at the time of the accident. Had the Legislature intended a discovery rule for the no-fault insurance act, it could have expressly so provided, as it did for medical malpractice claims. In fact, it appears that the Legislature intended to avoid the application of a discovery rule by stating that the claim accrues at the time of the accident rather than at the time of the injury.

Plaintiff's argument is thus without merit. Cf. Mielke v Waterman, 145 Mich App 22; 377 NW2d 328 (1985), lv den 424 Mich 873 (1986), Horan v Brown, 148 Mich App 464; 384 NW2d 805 (1986), lv den 425 Mich 876 (1986).

Given plaintiff's failure to substantially comply with the notice requirement, the question becomes whether defendant waived its claim of inadequate notice when it sent plaintiff an application for benefits form. Compare Dozier, supra, p 130. We think not. The act of sending an application for benefits form cannot be equated with an acknowledgment of liability. Compare Welton v Carrier's Ins Co, 421 Mich 571, 579; 365 NW2d 170 (1984), (opinion of Boyle, J.).

Finally, plaintiff contends that in order to raise an inadequacy of notice defense, defendant must show it was prejudiced by the inadequacy, citing Wendel v Swanberg, 384 Mich 468, 478-479; 185 NW2d 348 (1971). The contention is without merit. See Attorney General v State Farm Mutual Automobile Ins Co, 160 Mich App 57, 71; 408 NW2d 103 (1987), lv den 429 Mich 869 (1987), Heikkinen v Aetna Casualty & Surety Co, 124 Mich App 454, 463-464; 335 NW2d 1 (1983).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs