STATE OF MICHIGAN

COUNTY OF GENESEE

EMMA J. GOSLOW, Individually and as Personal Representative of the Estate of RUSSELL A. GOSLOW, Deceased,

Plaintiffs,

vs

SAFECO INSURANCE COMPANY OF AMERICA, a foreign Corporation,

Defendant.

_____/

File No. 85-79250-NO

OPINION

Plaintiff (Goslow) and Defendant (Safeco) have filed motions for summary judgment disposition, which have been presented in brief and oral argument.

Much additional effort has been made in reviewing the multitude of authority cited. The issue has not been decided by any Michigan Appellate Court, and reliance must be placed on the accepted interpretation of language comparable to that used in the specified statute.

The statutory provision, MCLA 500.3106 (2), defines the circumstances when no fault insurance benefits are not preserved when worker's compensation benefits are paid to an injured employee:

> "(2) Accidental bodily injury does not arise out of the ownership...unless the injury arose from the use or operation of another vehicle."

It is Safeco's position the underlined word "vehicle" should be considered as "motor vehicle", as defined in other parts of the No Fault Act. It is further contended by Safeco, the legislative intent was to prevent employees of the trucking industry from collecting both no-fault benefits and worker's compensation due to injuries caused while loading or unloading parked vehicles, in work-related accidents which could not be considered motor-vehicle accidents.

When the Michigan Supreme Court, in Pioneer Insurance vs. Allstate Insurance, 417 Mich 590 (1983) considered the terms "vehicle" and "motor vehicle" in the No Fault Act, it recognized the legislature had used these terms interchangeably. The Supreme Court considered the legislative intent, and found the terminology to be clear and unambiguous, and concluded the term "vehicle" was not intended to be synomous with "motor vehicle" in Section 3123 (1) (a).

By requiring the term "vehicle" in Section 3106 (2) to be construed as "motor vehicle", such as Safeco would propose, the factors the Supreme Court considered in Pioneer vs. Allstate, including the cite of the accident, would be superfluous.

The Court accepts the reasoning in Pioneer v Allstate. The Legislature did not intend the word "vehicle" to be synomonous with "motor vehicle." If it had, it would have used that specific term consistently in 3106 (2).

The Court has reviewed the lengthy briefs of Counsel and the authorities cited, and concludes that a forklift truck is a "vehicle" under 3106 (2), and the Plaintiff's motion for summary disposition is granted.

Donald R. Freeman, Circuit Judge

Dated: July 25, 1986