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STATE OF MICHIGAN
COURT OF APPEALS

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

AUG 15 1990

Plaintiff-Appellee,

SEP 17 1990

v

No. 118115

STATE FARM MUTUAL INSURANCE
COMPANY,

Defendant-Appellant.

Before: McDonald, P.J., and MacKenzie and Weaver, JJ.

PER CURIAM.

Defendant appeals by leave granted from a May 18, 1989, order denying defendant's motion for summary disposition filed pursuant to MCR 2.116(C)(7) and (10), in this no fault reimbursement action. We reverse.

We disagree with defendant's contention that the settlement in question clearly encompassed only damages for pain and suffering, finding a question of fact existed whether the settlement also included monies for medical expenses and wage loss. Thus, we find no error in the trial court's denial of defendant's motion for summary disposition based on MCR 2.116(C)(10). Dumas v Automobile Club Ins Ass'n, 168 Mich App 619; 425 NW2d 480 (1988).

Nonetheless, granting plaintiff has a right of reimbursement, that right is granted by Sec 3116 of the Insurance Code and is subject to the one year statute of limitations contained in Sec 3146. MCL 500.100 et seq.; MSA 24.1100 et seq. As plaintiff failed to file the instant action within one year of the time payment was made to the claimant subrogor, December 20, 1985, or the date plaintiff received formal denial of its claim, December 23, 1985, the action is barred under Sec 3146. Lewis v DAIIE, 426 Mich 93; 393 NW2d 167 (1986). The trial court

therefore erred in failing to grant defendant's motion for summary disposition pursuant to MCR 2.116(C)(7).

Reversed.

/s/Gary R. McDonald
/s/Barbara B. MacKenzie
/s/Elizabeth A. Weaver