

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,
Plaintiff-Appellee,
v
NEW YORK LIFE INSURANCE COMPANY,
Defendant-Appellant.

NOV 29 1990

No. 115365

Before: Gribbs, P.J., and Cavanagh and Marilyn Kelly, JJ.
PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying defendant's motion for summary disposition. The underlying action involves an attempt by plaintiff no-fault insurer to recover from defendant medical insurer payments made by plaintiff to the insured. The sole issue on appeal is whether the one-year limitation period of MCL 500.3145(1); MSA 24.13145(1), applies in this case. We conclude that the limitation period does apply to bar this action and we reverse the decision of the trial court.

MCL 500.3145(1); MSA 13145(1), provides:

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. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice 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.

The insured in this case died on October 10, 1984. This action was filed on August 15, 1988.

First, we reject the trial court's finding that §3145 does not apply because this action involves "other health and accident coverage". Plaintiff paid personal protection benefits to its insured and subsequently sought reimbursement from defendant of a portion of those benefits. "No matter now one characterizes the plaintiff's action, it is, in effect, a suit for recovery of no-fault benefits paid". Badger State v Auto Owners, 128 Mich App 120, 127; 339 NW2d 713 (1983).

There is a conflict among panels of this Court as to whether the §3145 one-year statute of limitations applies when a no-fault insurer sues another insurer. This Court has ruled §3145 inapplicable to an insurance company's claim for reimbursement of money paid by mistake in two two-member majority opinions. See Madden v Employees Insurance of Wausau, 168 Mich App 33; 424 NW2d 21 (1988), lv den 431 Mich 905 (1988), M J Kelly dissenting; Adams v Auto Club Ins, 154 Mich App 186; 397 NW2d 262 (1986), lv den 428 Mich 870 (1987), J E Townsend dissenting in part.

However, we believe the line of cases applying §3145 to actions for reimbursement of personal protection insurance benefits paid to an insured reflects the better reasoned view. See Badger State, 128 Mich App at 120; Bohlinger v DAIIE, 120 Mich App 269; 327 NW2d 466 (1982); Allstate Ins Co v Frankenmuth Mutual Ins Co, 111 Mich App 617; 314 NW2d 711 (1981); Home Ins Co v Rosquin, 90 Mich App 682; 282 NW2d 446 (1979), lv den 408 Mich 855 (1980). As Judge Townsend suggested in his dissenting opinion in Adams, 154 Mich App at 197-200, consistent application of the one-year period of limitation is in keeping with the no-fault act's purpose, to ensure prompt settlement of claims. We

are not swayed by plaintiff's claim that application of §3145 in this case would be unfair. Plaintiff, as a no-fault insurer, is presumably well acquainted with the no-fault act and the workings of §3145. Badger State, 128 Mich App at 132; Home Ins Co, 90 Mich App at 686.

Reversed.

/s/ Roman S. Gribbs
/s/ Mark J. Cavanagh
/s/ Marilyn Kelly