STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

FARM BUREAU INSURANCE COMPANY
OF MICHIGAN,

Plaintiff,

File No. 92-43362-CZ

vs

Hon. Donald E. Shelton

KENNETH ELLIOT,

Defendant.

OPINION AND ORDER GRANTING SUMMARY DISPOSITION
IN FAVOR OF DEFENDANT

At a session of said Court held
in the County of Washtenaw, State
of Michigan, on September 18, 1992

This case began with an accident in which the defendant was injured on July 11, 1990. At the time of his injury, defendant was the operator of a tractor/trailer in the course of his employment. Plaintiff is the no-fault insurance carrier for the defendant's employer. Defendant applied for and received no-fault benefits from the insurance company for some period of time. Eventually, however, the insurance company decided that defendant's injuries had occurred while he was in the process of unloading the tractor/trailer while it was parked. Based upon that conclusion, the insurer

discontinued paying no-fault benefits to defendant pursuant to MCL 500.3106(2). On June 23, 1992, the insurance company filed this action seeking to force the defendant to reimburse plaintiff for the amounts it paid to him prior to its determination to stop benefits.

Defendant filed a motion for summary disposition alleging that the applicable period of limitations expired prior to the filing of the suit. The parties are in agreement that all but a few minor expenses were paid more than one year before the suit was filed. The issue before the Court is whether the one year limitation period contained in the no-fault statute, MCL 500.3145, applies or whether the general six year statute of limitations applies to plaintiff's claim.

The Court of Appeals has issued two conflicting opinions on this issue. In spite of counsel's attempts to distinguish the two cases, they are in essential conflict as to which limitation period applies to such cases. In *Badger State Mutual Casualty Insurance Company v. Auto-Owners Insurance Company*, 128 Mich App 120 (1983), a no-fault insurer sued a workers' compensation carrier to recover medical benefits it had erroneously paid to a person who injured in the course of his employment. The court held that a suit to recover such payments is an action "for recovery of personal protection insurance benefits" and that the one year no-fault limitation applied:

> **. . . we find that the trial court was correct in finding that Sec. 3145(1) applied to this case and precluded plaintiff's claim. In the instant case, plaintiff is clearly seeking recovery of the no-fault benefits paid to Read [the driver]. As the trial court stated, while plaintiff's arguments are compelling, 'the statutory language of MCL 500.3145**

> **and 500.3146 makes mandatory the one-year statute of limitations where an action is commenced for recovery of personal insurance benefits . . . [t]he legislature intended by this section to make the subject matter of the action determinative of the limitation rather than the position of the defendant, as plaintiff would advocate.'**
> 128 Mich App 120 at 128-129.

Three years later, however, in *Adams v. Auto Club Insurance Association*, 154 Mich 186 (1986), a different panel of the Court of Appeals dealt with a counter-claim by a no-fault insurer to recover wage loss benefits which it claimed had been erroneously overpaid to it insured. A divided panel construed the insurer's claim as a "common-law right of action" and applied the general six year statute of limitations:

> **. . . we believe that because defendant's action seeking recovery for amounts overpaid involves a common-law right of action, the limitation found in 3145(1) is not applicable. Since there is no other statute of limitations directly applicable, the general six-year limitation argued by defendant must be applied. Although we recognize that a strong argument to the contrary could be made, see *Badger State Mutual Casualty Ins Co v. Auto-Owners Ins Co*, . . . we believe that plaintiff's argument tortures the language of Sec. 3145 and the legislative intent in enacting that section in attempting to extend the limitation period found in that section to the facts of this case involving a common-law right of action. Therefore, defendant's claim against the plaintiff is not barred by the one-year period of limitation provision of Sec. 3145(1).**
> 154 Mich App 186 at 196.

Given the dates of these directly conflicting Court of Appeals opinions, neither is controlling precedent for the Court in this case. The better reasoned of the two cases, however, is clearly *Badger State Mutual Casualty Insurance Company v. Auto-Owners Insurance Company, supra.* The best statement of the this reasoning, however, is found in the dissenting opinion of Judge Townsend in the *Adams* case:

> It has been recognized repeatedly by Michigan courts that the general purpose of the no-fault act is to ensure the prompt settlement of no-fault claims. . . .
> A corollary of the goal of prompt claim resolution is the goal of finality of claim resolution.
> . . .
> In this case both opposing parties seek recovery of no-fault benefits. Plaintiff claimed that additional no-fault benefits should be paid and defendant claimed that it should receive reimbursement of no-fault payments made in error or by mistake. The nature of the damages sought by both opposing parties is the same. The terms of the no-fault statute and of the same insurance contract must be applied to determine the proper amount of benefits payable or reimbursable. It matters not whether the defendant's form of action is based upon the statute or on common law.
> It is patently unfair to apply a one-year period of limitation to a claim for payment of no-fault benefits and to grant a six-year period of limitation to advance a claim for reimbursement of no-fault benefits paid in error under the same insurance contract and as a result of the same motor vehicle accident.
> 154 Mich App 186 at 199-200.

It is the basic unfairness of the *Adams* result that compels the finding that the legislature intended that no-fault payments made, or payments unmade, should be final after a year had passed. To carve out an exception to this finality that only operates to benefit one party to the no-fault insurance contract is unfair to the parties and ignores the obvious intent of the legislature.

Plaintiff's action is barred by the one year period of limitation contained in the no-fault statute. Accordingly, Defendant's motion for summary disposition is GRANTED and plaintiff's complaint is DISMISSED.

Donald E. Shelton
Circuit Judge