

STATE OF MICHIGAN
IN THE 12TH DISTRICT COURT FOR THE COUNTY OF JACKSON

COLLEEN MARIE McCORMICK

Plaintiff

vs

No. 92 557 GC

FRANK BELL GOODWIN

Defendant

OPINION OF THE COURT

The Defendant has been sued under the mini tort section of the No Fault Law, MCLA 500.3135(e)(d). He has filed this Motion for Summary Disposition saying that Plaintiff is an uninsured motorist and as such is precluded by the law from recovery.

The Court has considered the briefs filed by the parties, the oral argument and the cases cited. The facts stipulated to for purpose of the Motions for Summary Disposition are that the Plaintiff McCormick was uninsured. Defendant Goodwin was insured. The parties vehicles collided and Goodwin was the tort

feasor. Plaintiff's vehicle was damaged in a dollar amount in excess of \$400.

The Court denies the Defendant's Motion for Summary Disposition. The No Fault Statute is a system of compensating injuries and damages incurred in auto accidents, where compensation is due, without regard to fault. In that statute tort liability for injuries and damages caused by the ownership, maintenance or use of an automobile was partially abolished.

Citizens Insurance Company of America vs Tuttle, 411 Michigan 536.

A person who fails to obtain insurance or security pursuant to the act remains subject to tort liability and is not protected by the abolition of Tort Liability as established in Section 3135 of the act. Smith vs Sutherland, 93 Michigan Appeals 24. The thrust of this statement is that the person who seeks protection, but is uninsured cannot avail himself of the benefits of the act. And the language of the act is clear in stating what the protections are, and what the exceptions are. Section 3131 of the act indicates that residual coverage is required to afford coverage for automobile liability retained by

the Section.

The No fault Act is also explicit about the impact of being uninsured as a victim in an automobile accident, see Section 3113 of the Act.

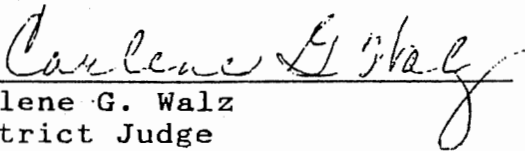
The benefit to the tort feisor here, Mr. Goodwin, is that he is protected to the extent of the provisions of the act because he is insured. He is not protected from liability from the mini tort action set forth in MCLA 500.3135(2)(d).

The victim, McCormick, though uninsured is not prevented by the act from suing the Defendant. The statute says that the tort feisor has exposure to liability. The Defendant could sue before no-fault and can sue after no-fault on the liability remaining under Section 3135.

The Plaintiff seeks costs and attorney fees. The Court has ruled in Kreighbaum vs Auto Club Ins. Ass., 170 Michigan Appeals 583, that where refusal or delay in paying a claim is the product of legitimate question of statutory construction,....no attorney fees or cost are awarded. This Court agrees with that position and awards no costs or attorney fees to either party.

The Plaintiff shall present an order which
reflects the Court's opinion.

DATED: June 18, 1992



Carlene G. Walz
District Judge