STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LENAWEE

KATHRYN KAY LEE,

Plaintiff

v

MADELINE and CLIFFORD DUNNING,

Defendants.

_____/

OPINION

File #86-3106 NI

Plaintiff was a passenger in a car driven by Defendant. She allegedly was injured in a one car accident in the State of Ohio.

Plaintiff claims that the abolition of tort liability under the so-called No-Fault Act (PA 1972, No. 294) is not applicable to her case by reason of MSA 24.13135; MCLA 500.3135, which reads in pertinent part as follows:

> "(2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by [section 3101] (3) and (4) was in effect is abolished except as to:"

The rule for deciding the effect to be given to statutes is well settled:

> "There seems to be no lack of harmony in the rules governing the interpretation of statutes. All are agreed that the primary one is to ascertain and give effect to the intention of the legislature. All others serve but as guides to assist the courts in determining such intent with a greater degree of certainty. If the language employed in a statute is plain, certain and unambiguous, a bare reading suffices and no interpretation is necessary. The rule is no less elementary that effect must be given, if possible, to every word, sentence and section. To that end, the entire act must be read, and the interpretation to be given to a particular word in one section arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole." Dussia v Monroe County, 386 Mich 244, 248 (1971) (Emphasis supplied)

There is an exception to the "plain meaning" doctrine however:

> "There is, however, an exception to this fundamental rule of statutory construction that arises when a literal reading of the statutory language "would produce an absurd and unjust result and would be clearly inconsistent with the purposes and the policies of the act in question." Salas v Clements, 399 Mich 103, 109; 247 NW2d 889 (1976)." Owendale Schools v State Board of Ed., 413 Mich, 8 (1982)

The purposes and policies of the No-Fault Act are:

> "One of its obvious goals is to keep so-called minor personal injury cases out of court. McKendrick v Petrucci, 71 Mich App 200; 247 NW2d 349 (1976). An equally clear purpose is to insure that the catastrophically injured victim may recover those damages traditionally allowable in tort. Workman v Detroit Automobile Inter-Insurance Exchange, 404 Mich 477; 274 NW2d 373 (1979). Another aim of the statute is to lower insurance premiums. Moore v Travelers Ins Co., 475 F Supp 891 (ED Mich, 1979). It is stated in Hill v Aetna Life & Casualty Co, 799 Mich App 725, 263 NW2d 27 (1977), that no-fault's basic purpose is to ensure compensation of persons injured in automobile accidents." Burk v Warren (After Remand) 137 Mich App 715, 724, 725.

At first glance it appears that the result in this case is absurd. No out-state persons or parties are involved and the lawsuit is in this state. Nevertheless, the plain unambiguous terms **Section 3135 (2)** quoted above state that because the accident happened in Ohio, Plaintiff is entitled to recover fully and Defendant does not have the same protections that Defendant would have, had the accident happened a few miles northwest in the State of Michigan.

While one must speculate a bit on the reasons, it seems to the Court that the conclusion to be reached by using the play on ambiguous language is neither absurd nor unjust.

Obviously the Michigan Legislature has no power to limit the liability that may be imposed on the motorists of our state while operating their vehicles outside of this state.

In terms of the goals as quoted from Burk above, if there are minor personal injury cases that go to court, they are most likely to be in the state where the accident occurs. There is no reason to presume that the catastrophically injured victim will not recover those damages traditionally allowable in Court under the laws of the state where the accident occurred. As to lowering of insurance premiums, it is unlikely that the volume of these cases is going to create serious change in insurance premiums. The insurance companies would no doubt have had to consider this factor when writing insurance to Michigan motorists whether it was in the statute or not, unless they were going to limit their insurance to operating the vehicle within the state of Michigan.

Accordingly, it must be assumed that the Legislature, dealing with an already over-complicated statute, opted to limit the tort shield to accidents

occurring within the state of Michigan. Since it applies equally to all, the Court cannot say that that result is either absurd or unjust.

Accordingly, since the statute is unambiguous on its face, the legislative intent must be gleaned from the clear and explicit words of the statute, which in this case result in Defendant having no benefit of the tort shield in MSA 24.13135, MCLA 500.3135. Sam v Ballardo 411 Mich 405, 418 (1981).

So Ordered.

Dated: FEB. 23 1987

Signed: Kenneth B. Glaser

KENNETH B. GLASER, JR.
Circuit Judge