

STATE OF MICHIGAN
COURT OF APPEALS

LAKE STATES INSURANCE COMPANY,

Plaintiff-Appellant,

v

ENCOMPASS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

October 14, 2004

No. 248062

Oakland Circuit Court

LC No. 2002-043677-CZ

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this subrogation action seeking to recover personal protection insurance benefits that it erroneously paid to defendant's insured. The trial court granted defendant's motion for summary disposition, finding that plaintiff failed to bring the action within the one-year limitation period of MCL 500.3145.

When the underlying facts are not disputed, whether a claim is barred by a statutory limitations period is a question of law that this Court reviews de novo. *Pitsch v ESE Michigan, Inc*, 233 Mich App 578, 600; 593 NW2d 565 (1999).

MCL 500.3145 provides:

(1) 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 therefore, 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.

In *Amerisure Companies v State Farm Mut Automobile Ins Co*, 222 Mich App 97; 564 NW2d 65 (1997), the plaintiff mistakenly paid personal injury benefits to Leroy Rister, believing that he was an employee of its insured, rather than an independent contractor who was insured by defendant. The plaintiff sought to recover the amount of benefits paid to Rister that should have been paid by the defendant. This Court found that the action was barred by MCL 500.3145:

Consequently, we hold that the one-year period of limitation of § 3145 of the no-fault act governs actions between no-fault insurers for recovery of monies mistakenly paid by the secondary insurer. Such actions are ones of subrogation, and, as such, plaintiff acquired no greater rights than Rister had against defendant. Because Rister's right against defendant was to maintain a cause of action for payment of personal injury protection benefits, plaintiff's subrogation action squarely falls within the parameters of § 3145 of the no-fault act. [*Id.* at 103.]

Plaintiff cites *Titan Ins Co v Farmers Ins Exchange*, 241 Mich App 258; 615 NW2d 774 (2000), asserting that the general six-year statute of limitations should apply to its claim. However, *Titan* involved a claim for recoupment under MCL 500.3115(2), when insurers are in the same order of priority for payment of PIP benefits. The Court found that the case was distinguishable from *Amerisure*, in which the insurer's right to recovery or reimbursement was subrogated to the insured's right to recovery and, thus, subject to the one-year period of limitations in § 3145. *Id.* at 262.

Here, plaintiff sought subrogation, as the two insurers were at different levels of priority. Recoupment concerns equitable distribution of loss between insurers in the same order of priority. MCL 500.3114(6). Following *Amerisure, supra*, the trial court properly granted plaintiff's motion for summary disposition under MCR 2.116(C)(7).

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell