STATE OF MICHIGAN

COURT OF APPEALS

MARYLAND CASUALTY COMPANY, Plaintiff-Appellant,	UNPUBLISHED August 4, 2005
v	No. 261824 Kent Circuit Court
ALLSTATE INSURANCE COMPANY, Defendant-Appellee.	LC No. 04-003384-CK

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

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

On June 10, 1988, L. Gregory Krugielki sustained permanently disabling injuries in a motor vehicle accident. Krugielki resided in the household of Rosina Krugielki and Larry Krugielki, whose vehicles were insured by plaintiff and defendant, respectively, and occupied the vehicle insured by plaintiff at the time he was injured.

The policies issued by plaintiff and defendant were in equal priority. MCL 500.3114(1). When two insurers are in equal priority with regard to the payment of personal injury protection (PIP) benefits, the insurer paying the benefits is entitled to "partial recoupment" of those benefits and related expenses from the other insurer. MCL 500.3115(2). Plaintiff commenced payment of PIP benefits to Krugielki, and sought recoupment of fifty percent of those benefits from defendant. In a letter dated September 12, 1988, defendant cited case law that held that if a claimant was occupying a vehicle specifically insured by one of two insurers in equal priority, that insurer would be responsible for payment of all benefits and would not be entitled to reimbursement.[1]

[1] *Allstate Ins Co v Transamerica Ins Co*, 138 Mich App 782; 360 NW2d 925 (1984), disapproved by *DAIIE v Home Ins Co*, 428 Mich 43; 405 NW2d 85 (1987).

Plaintiff continued to pay PIP benefits to Krugielki, and took no further action until early 2004, when it informed defendant that the authority on which defendant had relied as support for its assertion that it was not liable for payment of any benefits to Krugielki had been "effectively overruled." Plaintiff asserted that defendant "incorrectly denied paying fifty percent" of the PIP benefits due Krugielki. Defendant declined plaintiff's request for reimbursement.

Plaintiff filed suit seeking a declaration that defendant was required to reimburse it for fifty percent of the PIP benefits paid to Krugielki, and to pay fifty percent of benefits in the future. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claim was barred by the applicable six-year statute of limitations. MCL 600.5813. Defendant asserted that plaintiff's claim accrued on the date on which the wrong upon which the claim was based occurred, and that under the facts of this case that date was September 12, 1988, the date it (defendant) denied plaintiff's request for reimbursement of fifty percent of PIP benefits paid to Krugielki. MCL 600.5827. The trial court granted defendant's motion, finding that plaintiff's claim against defendant accrued in 1988, and was barred by the statute of limitations.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An action brought by an insurer against another insurer of the same priority for partial recoupment of PIP benefits already paid to a claimant is not subject to the one-year limitation period for claims seeking payment of PIP benefits.[2] Rather, a statutory recoupment action brought pursuant to MCL 500.3115(2) is subject to the general six-year limitations period in MCL 600.5813. *Titan Ins Co v Farmers Ins Co*, 241 Mich App 258, 263; 615 NW2d 774 (2000).

The one-year back rule in MCL 500.3145(1) is tolled from the date the insured makes a specific claim to the date the insurer formally denies the claim. *Lewis v DAIIE*, 426 Mich 93, 101; 393 NW2d 167 (1986). No authority holds that a formal denial must actually contain the term "denied." The only possible meaning of defendant's September 12, 1988 letter to plaintiff was that defendant refused to pay fifty percent of the PIP benefits due to Krugielki.[3] We conclude that the trial court correctly found that no question of fact existed as to whether defendant's denial of plaintiff's request for partial recoupment was sufficient.

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[2] MCL 500.3145(1) provides that an action for recovery of PIP benefits may not be brought later than one year after the date of the accident that caused the injury, unless written notice of the injury has been provided to the insurer within one year after the accident. If such notice has been given, an action may be commenced within one year after the most recent loss has been incurred. The claimant may not recover benefits for any loss incurred more than one year before the date on which the action was filed.

[3] Plaintiff effectively admitted as much in early 2004 when it informed defendant that the authority on which defendant relied to deny the request for partial recoupment was not viable.

Furthermore, we hold that the trial court did not err in determining that plaintiff's action was barred by the statute of limitations. A statutory recoupment claim is subject to the general six-year limitations period in MCL 600.5813. *Titan*, *supra*. A claim accrues when the wrong on which it was based was done, regardless of when damage results. MCL 600.5827. Plaintiff correctly points out that PIP benefits accrue and are payable when the allowable expense or loss is incurred, and not when the injury occurs. MCL 500.3110(4). However, no authority supports plaintiff's assertion that a new claim accrues each time it pays PIP benefits to Krugielki. A statutory recoupment claim brought by an insurer is distinguishable from a claim brought by an insured for PIP benefits. *Titan*, *supra* at 262. The obligation of an insurer or insurers to pay PIP benefits to Krugielki came into existence when Krugielki's disabling accident occurred in 1988. Plaintiff began paying benefits, and sought partial recoupment from defendant. Defendant denied plaintiff's request via a letter dated September 12, 1988. Plaintiff's claim under MCL 500.3115(2) occurred at the time defendant wrongly denied the request for partial recoupment. MCL 600.5827. Plaintiff failed to file suit within the applicable six-year limitations period after its claim accrued; thus, its claim was barred. MCL 600.5813. Summary disposition was correctly granted for defendant.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray