STATE OF MICHIGAN

COURT OF APPEALS

MID CENTURY INSURANCE COMPANY,

Plaintiff-Appellant,

v

AETNA CASUALTY & SURETY COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 19, 1998

No. 198120
Oakland Circuit Court
LC No. 95-589651-NF

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

In this dispute between two insurers over the payment of personal protection benefits under the no-fault act, MCL 3.101 *et seq*.; MSA 24.3101 *et seq*., plaintiff Mid Century Insurance Company (Mid Century) appeals as of right from the trial court's decision granting summary disposition to defendant Aetna Casualty and Surety Company (Aetna) on Mid Century's claim seeking contribution from Aetna. We affirm.

As an initial matter, we reject as entirely unfounded Mid Century's claim that the trial court violated the law of the case doctrine when it considered and granted Aetna's renewed motion for summary disposition. The law of the case doctrine applies only when an appellate court has decided a legal question. *In re Forfeiture of $19,250*, 209 Mich App 20, 30; 530 NW2d 759 (1995).

In their 1994 lawsuit against Mid Century, Marion and Alma Lyons sought no-fault benefits for injuries allegedly arising from their 1981 car accident. Under the no-fault act, an insurer is liable only to pay personal protection benefits for bodily injury that arises from a specific and identifiable motor vehicle accident. MCL 500.3105; MSA 24.13105; *Williams v DAIIE*, 169 Mich App 301, 304; 425 NW2d 534 (1988); *Wheeler v Tucker Freight Lines Co, Inc*, 125 Mich App 123, 126-128; 336 NW2d 14 (1983). Accordingly, Mid Century is liable to pay personal protection benefits only to the extent that the Lyons' injuries are attributable to the 1981 accident, including any aggravation of the Lyons' injuries originally caused by their previous accidents occurring in 1976 and 1977. See *Mollitor v Associated Truck Lines*, 140 Mich App 431, 438; 364 NW2d 344 (1985).

Notwithstanding, Mid Century argues that, because several doctors have been unable to determine the extent to which the 1981 accident aggravated the Lyons' preexisting conditions from the previous two car accidents, "the only equitable course, and the one required by Michigan no-fault law, is for Mid-Century and Aetna to *share* the costs of caring for Mr. and Mrs. Lyons equally." (Emphasis in original). In support of its position, Mid Century relies on MCL 500.3115(2); MSA 24.13115(2), which provides as follows:

> When 2 or more insurers are in the *same order of priority* to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the *same order of priority*, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among insurers. [Emphasis added.]

However, a plain reading of the no-fault provisions establishing orders of priority reveals that partial recoupment under § 3115 only applies where there is a single identifiable event or accident and two or more insurers have issued policies making them equally responsible for the payment of personal protection benefits for injuries arising from that accident. See, e.g., MCL 500.3114(4) and (5); MSA 24.13114(4) and (5); MCL 500.3115(1); MSA 24.13115(1); see also *DAIIE v Home Ins Co*, 428 Mich 43; 405 NW2d 85 (1987). In other words, recoupment under § 3115, as well as under the common law, applies only where two or more insurers are each liable for the same loss. See *Hastings Mutual Ins Co v State Farm Ins Co*, 177 Mich App 428, 436-437; 442 NW2d 684 (1989). Here, it is clear that Aetna and Mid Century are not liable for the same loss. To the contrary, Aetna is liable for the loss resulting from the 1976 and 1977 accidents, while Mid Century is liable for the loss, if any, attributable to the 1981 accident. Accordingly, because recoupment does not apply under these circumstances, the trial court properly granted summary disposition in favor of Aetna.

What remains, then, is Mid Century's own liability to pay benefits, which, as stated, necessarily depends on the connection between the Lyons' injuries and the 1981 accident, a factual question to be resolved in the underlying lawsuit. See *McKim v Home Ins Co*, 133 Mich App 694, 699; 349 NW2d 533 (1984).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.