

STATE OF MICHIGAN
COURT OF APPEALS

PEGGY HODGES,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

June 12, 1998

No. 200764

Wayne Circuit Court

LC No. 96-621582 CK

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of her action to compel defendant to arbitrate an uninsured motorist claim. MCR 2.116(C)(8) and (10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Giving the benefit of reasonable doubt to plaintiff, reasonable minds could not differ but that plaintiff made no application to defendant for uninsured motorist benefits. *Farm Bureau Mutual Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991). Plaintiff presented no documentation that would have created a factual question with regard to whether such an application had been made when faced with affidavits from two of defendant's claims adjusters indicating that no such application had been received. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The mere fact that plaintiff and her counsel corresponded with defendant's adjusters for five years following the accident does not give rise to an inference that plaintiff had made an application for uninsured motorist benefits, particularly where the correspondence makes no mention of an uninsured motorist claim. Moreover, there is no reason to believe that evidence of an uninsured motorist claim would be found in a destroyed claims file, where the destroyed file was that of plaintiff's daughter, the contents of the file pertained to collision damage to the vehicle and defendant had a file open that was devoted to plaintiff's first-party no-fault claim. Accordingly, the destruction of the daughter's file should not give rise to a presumption that plaintiff made an application for uninsured motorist benefits. *Isagholian v Transamerica Ins Co*, 208 Mich App 9, 15; 527 NW2d 13 (1994). Defendant may not be compelled to arbitrate a claim that was not made. Summary disposition properly entered.

Because the trial court correctly determined that plaintiff made no application for uninsured motorist benefits, it is unnecessary for this Court to address whether the language of the arbitration provision made notice to plaintiff by defendant of its intent to deny the uninsured motorist claim a condition precedent to plaintiff's arbitration request.

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage