

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER HARWOOD,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee,

and

CLYDE ANTHONY OWENS,

Defendant.

UNPUBLISHED

January 10, 2006

No. 263500

Wayne Circuit Court

LC No. 04-433378-CK

Before: White, P.J., and Jansen and Wilder, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent. Plaintiff commenced this action on October 27, 2004, only twenty-six days after his attorney wrote defendant demanding arbitration of the claim. Nevertheless, plaintiff submitted the affidavit of his wife attesting that she informed defendant's agent of the loss and claim orally in the summer of 2004, more than thirty days prior to October 27, 2004, and produced a declarations sheet that she claimed was faxed to her by the agent. Admittedly, the contract requires written notice. However, defendant has not demonstrated prejudice from the twenty-six day (as opposed to thirty day) written notice, and the timely oral (as opposed to written) notice. There has been substantial compliance with the terms of the contract, which distinguishes this case from *Rory v Continental Ins Co*, 473 Mich 457; 703 NW2d 23 (2005). At a minimum, the action should have been dismissed without prejudice, since compliance with the notice provisions was still possible.

/s/ Helene N. White