

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GOODWIN & BIGELOW CONSTRUCTION,  
INC.,

UNPUBLISHED  
June 4, 1996

Plaintiff-Appellant,

v

No. 175953  
LC No. 92-010654-CK

CH & P DRILLING COMPANY,

Defendant-Appellee.

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Before: Gribbs, P.J., and Hoekstra and Stark\*, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting summary disposition in favor of defendant. We affirm.

Defendant contracted to have plaintiff remove concrete slabs from defendant's truck bed with a crane. The concrete slabs weighed over twenty-one tons apiece, but plaintiff alleges that one of defendant's employees told plaintiff that the slabs weighed only ten tons apiece. Plaintiff's crane operator brought plaintiff's crane to the site, placed the crane next to defendant's truck and set outriggers off the crane to stabilize it. When plaintiff's crane operator attempted to move one of the slabs with the crane, the unexpected additional weight of the slab caused the crane's boom to collapse, tipping the crane and partially crushing the cab. Plaintiff filed suit, alleging that defendant breached its contract and was negligent by representing that the slabs weighed ten tons when they actually weighed over twenty-one tons.

At the motion hearing, defense counsel argued that plaintiff's property damage claim arose from the use of motor vehicles and was subject to the no fault act. MCL 500.3101 et seq; MSA 24.13101 et seq. Plaintiff argued that the no fault act does not apply because the negligence at issue was not the result of a motor vehicle's involvement and because the property protection provisions of the no fault act do not provide coverage for the loading and unloading of a motor vehicle.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

As plaintiff indicates, the no fault act does not necessarily abolish tort liability in cases where there is a nonmotorist defendant. Cf *Celina Ins Co v Aetna*, 434 Mich 288; 454 NW2d 93 (1990); *Citizens Ins Co of America v Tuttle*, 411 Mich 536; 309 NW2d 174 (1981). However, in this case, where defendant's alleged negligence was related to the unloading of defendant's truck, we find that defendant was not a true nonmotorist. The accident in this case, which occurred during the unloading process, was "intricately connected to the performance of the unloading function" and therefore arises out of the use of a motor vehicle as a motor vehicle. *Gordon v Allstate Ins Co*, 197 Mich App 609, 614; 496 NW2d 357 (1992).

Plaintiff also contends that the no fault property protection provisions do not apply to property damage arising from the loading or unloading process, even when the thing being loaded or unloaded is a motor vehicle. Plaintiff relies on *Ford v Insurance Co of North America*, 157 Mich App 692; 403 NW2d 200 (1987). We find that *Ford* is no longer controlling in light of our Supreme Court's decision in *Bialochowski v Cross Concrete*, 428 Mich 219; 407 NW2d 355 (1987). Although *Bialochowski* interpreted §3105(1) of the no fault act, while *Ford* and the instant case involve §3121(1), the scope of coverage of the two provisions is identical.

In *Bialochowski*, our Supreme Court concluded that a concrete pumping truck, which had been parked, stabilized and used as a piece of construction machinery to pour concrete, was nonetheless a motor vehicle, being used for such, for the purpose of the no fault act. We believe the *Bialochowski* interpretation of "use of a motor vehicle as a motor vehicle" must be seen as having overruled the contrary interpretation in *Ford*. In *Bialochowski*, our Supreme Court concluded that the phrase 'use of a motor vehicle as a motor vehicle' "is not limited to normal vehicular movement on a highway." *Id.* At 228. Here, as in *Bialochowski*, the accident occurred while the vehicles were being used for their "intended purpose". *Id.* Since the no fault act abolishes tort liability arising from the ownership, maintenance or use of a motor vehicle, the trial court correctly held that plaintiff should look to defendant's no fault insurer for liability. MCL 500.3135; MSA 24.13135.

Affirmed.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Charles H. Stark