# STATE OF MICHIGAN

# COURT OF APPEALS

---

MICHIGAN EDUCATIONAL EMPLOYEES MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,
Cross Appellant,

v

RICHARD MORRIS, Conservator of The Estate of Celia Annette Wooten, Legally Incapacitated Person,

Defendant-Appellant.
Cross Appellee.

UNPUBLISHED
November 22, 1996

No. 186256
LC No. 93-038659-NZ

---

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

The underlying facts are not in dispute. Because of a conflict in opinions from this court the coordination of social security disability benefits with plaintiff's policy providing benefits under the no-fault act remained in doubt for some period of time. The trial court recognized that plaintiff was entitled to summary disposition on the basis of the uncontested facts and the Supreme Court decision in *Profit v Citizens Insurance Co*, 444 Mich 281; 406 NW2d 514, (1993). At issue here is only the questions whether, in its opinion and order filed May 10, 1995, the trial court's limitation of reimbursement of the social security off-set to benefits received over a one year period is sustainable. We hold it is not and reverse in part and remand for further proceedings.

As a general rule, appellate court decisions are entitled to full retroactivity. *Jahner v Department of Corrections*, 197 Mich App 111; 495 NW2d 168, (1992). Prospective application is warranted only when overruling settled precedent or deciding questions of first impression whose result was not foreshadowed. Here defendant offers no evidence that there was general reliance on some interpretation of law other than the one announced by the Supreme Court in *Profit* prior to that decision. Furthermore the instant case was not even pending at the time *Profit* was decided. It was

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

not initiated until after *Profit* was decided and yet defendant refused to follow it. It therefore appears that application of *Profit* to this case is prospective not retroactive.

Defendant next claims that plaintiff should be held to a one year statute of limitations, § 3145 of the no-fault act does not apply to this action. *Auto Club v New York Ins Co*, 440 Mich 126; 137-138; 485 NW2d 695, (1992), *Westchester Ins Co v Safeco Ins Co*,203 Mich App 663, 668, 669; 513 NW2d 212 (1994). Because there is no other statute of limitations directly applicable, the general six-year limitation period of RJA §5813 applies.

We affirm as to the trial court's holding of liability but remand and order the judgment modified to reflect plaintiff's right to full reimbursement and remand for that purpose. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kenneth W. Schmidt