

STATE OF MICHIGAN
COURT OF APPEALS

NANCY JO DEAN, JODY DEAN and JAMES
DEAN,

UNPUBLISHED
September 19, 1997

Plaintiffs-Appellants,

v

No. 194917
Eaton Circuit Court
LC No. 95-000705-CK

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order dismissing their claims and granting defendant's motion for summary disposition.¹ We affirm.

On appeal, plaintiffs argue that the trial court erred in determining that plaintiffs failed to satisfy a condition precedent to filing an action at law and in granting summary disposition on that basis. We disagree. The policy contains an unambiguous requirement that an insured seek arbitration before initiating a lawsuit against the insurer. This requirement is consistent with Michigan's public policy that favors the resolution of disputes by arbitration. *Omega Construction Co, Inc v Altman*, 147 Mich App 649, 655; 382 NW2d 839 (1985). Plaintiffs' failure to seek arbitration by presenting a written demand as required by their policy must result in the dismissal of their claims. See *Lee v Auto-Owners Ins Co*, 201 Mich App 39, 42-43; 505 NW2d 866 (1993), vacated on other grounds, 445 Mich 908; 519 NW2d 890, modified on other grounds, 208 Mich App 207; 527 NW2d 54 (1994), vacated on other grounds, 451 Mich 874; 549 NW2d 565, modified on other grounds 218 Mich App 672; 554 NW2d 610 (1996).

Plaintiffs also argue that the applicable statute of limitations should not bar them from seeking contractual arbitration. We decline to rule on this issue. This timeliness issue was not specifically decided by the trial court and the trial court's decision dismissing plaintiffs' claims does not preclude plaintiffs from formally demanding arbitration as required by their policy. As a procedural matter, the

parties' timeliness dispute should be resolved by an arbitrator. *Huntington Woods v Ajax Paving Industries, Inc*, 177 Mich App 351, 356; 441 NW2d 99 (1989).

Affirmed.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra

¹ Defendant's motion was brought pursuant to MCR 2.116(C)(10) and the trial court presumably granted the motion based on this rule as it did not specify another basis. We note, however, that the motion for summary disposition could have also been granted pursuant to MCR 2.116(C)(7), which provides for summary disposition where the claim is barred by an agreement to arbitrate.