

STATE OF MICHIGAN
COURT OF APPEALS

RENITA SPENCER f/k/a RENITA TILLMAN,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

January 24, 2008

No. 271702

Wayne Circuit Court

LC No. 03-338538-NF

Before: Saad, P.J., and Jansen and Beckering, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent from the majority's opinion affirming the award of attorney fees in favor of plaintiff under the no-fault act. MCL 500.3148(1) provides:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, *if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.* [Emphasis added.]

In other words, "attorney fees are payable only on *overdue* benefits for which the insurer has unreasonably refused to pay or unreasonably delayed in paying." *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 485; 673 NW2d 739 (2003) (emphasis in original). When an insurer's refusal to pay or delay in paying benefits is the product of a bona fide legal or factual dispute, the refusal or delay is not unreasonable within the meaning of MCL 500.3148(1). *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 66; 404 NW2d 199 (1987); *Roberts v Farmers Ins Exchange*, 275 Mich App 58, 67; 737 NW2d 332 (2007); *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 629; 550 NW2d 580 (1996).

In this case, it appears undisputed that plaintiff did in fact have a shoulder injury. However, the parties disagreed below concerning whether plaintiff's shoulder injury had been *caused* by her automobile accident. It is well settled that only those injuries that are *caused* by the insured's use of a motor vehicle can trigger an insurer's liability under the no-fault act. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 531; 697 NW2d 895 (2005). Therefore, if

plaintiff's shoulder injury were not caused by the automobile accident, defendant would have had no liability to pay benefits for the injury. See *id.*

I conclude that there was indeed a bona fide dispute regarding the factual and proximate causation of plaintiff's shoulder injury. Plaintiff contended that the injury was wholly caused by her automobile accident. Defendant contended that it was not. Because defendant's refusal to pay benefits to plaintiff was at least partially based on the parties' genuine dispute concerning the causation of the injury, defendant's refusal to pay was not unreasonable within the meaning of MCL 500.3148(1). See *Gobler, supra* at 66; *Roberts, supra* at 67; *Beach, supra* at 629.¹ I would reverse.

/s/ Kathleen Jansen

¹ My conclusion in this regard is not affected by this Court's recent decision in *Moore v Secura Ins*, 276 Mich App 195; 741 NW2d 38 (2007). Although the *Moore* majority acknowledged the above rule of *Gobler, Roberts, and Beach*, it nonetheless concluded that it had been unreasonable for the insurer in that case to withhold benefits despite the bona fide factual dispute concerning the insured's injuries. In other words, it appears that the *Moore* majority may have disregarded its obligation to follow the rule of *Gobler, Roberts, and Beach* as binding precedent. Again, as stated above, if an insurer's refusal to pay or delay in paying benefits is the product of a bona fide legal or factual dispute, the refusal or delay is not unreasonable within the meaning of MCL 500.3148(1). *Gobler, supra* at 66; *Roberts, supra* at 67; *Beach, supra* at 629. Following this established rule of law, I conclude that defendant's failure to pay benefits in the present case was not unreasonable as it was the product of a bona fide dispute concerning the factual and proximate causation of plaintiff's shoulder injury.