

STATE OF MICHIGAN
COURT OF APPEALS

COMMUNITY RESOURCE CONSULTANTS,
INC.,

Plaintiff-Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 1, 2007

No. 269726
Ingham Circuit Court
LC No. 04-000879-CK

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. The question in this case is not whether there is a genuine issue of material fact. Instead, it is a question of law: For purposes of MCL 500.3145(1), when is a loss “incurred”?

The “one-year back” rule of MCL 500.3145(1) provides in relevant part that a claimant “may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.” In *Bombalski v Auto Club Ins Ass’n*, 247 Mich App 536; 637 NW2d 251 (2001), this Court addressed the meaning of “incurred.” The *Bombalski* Court noted that in *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 636-638; 552 NW2d 671 (1996), this Court defined “incur” as “to become liable for.” *Bombalski, supra* at 542 (quotation marks omitted). The *Bombalski* Court noted that Black’s Law Dictionary (7th ed), p 771, similarly defines “incur” as “[t]o suffer or bring on oneself a liability or expense.” *Bombalski, supra* at 542 (internal parentheses omitted). As the *Bombalski* Court observed, “[O]bviously, [the] plaintiff became liable for her medical expenses when she accepted medical treatment.” *Id.* at 542, quoting *Shanafelt, supra* at 638. Therefore, our case law makes clear that a loss is incurred at the time the treatment or services are provided, and not at the time the plaintiff submits a bill for the treatment or services in question.

Plaintiff's own records indicate that the services at issue, in the amount of \$19,684.64, were provided before June 18, 2003. Therefore, they were barred by the one-year back rule of MCL 500.3145(1). There is no issue of fact, and the central legal question has already been settled. I would reverse and remand for entry of judgment in favor of defendant in the amount of \$19,684.64.

/s/ Kathleen Jansen