While we agree that there are certain matters which are normally included in the return which have no relevance to these proceedings, that does not bar their use since they contain facts and informatin which are clearly relevant. *Fannasy v. Howard,* 20 D&C2d 234, 239 (Dauphin 1959). The complaint contains lists of equipment and supplies which each doctor says was destroyed by the fire. One of the ways to verify these lists is by referring to the income tax return to see whether the equipment is shown on the depreciation schedules and the value of supplies claimed to be in inventory at the time of the fire bears a relationship to the inventory shown on the returns.

Dr. Bayer is saying he had to reconstruct 7300 charts. Dr. Witmer's number is 3800. A study of the income tax return could disclose whether the practices of each of the plaintiffs suggests those numbers of patients.

When a party brings a suit on a matter where his tax returns are relevant, he has, in effect, waived his privilege to protect the returns from discovery. See *Davis v. Buckham,* 68 D&C2d 734, 737-8 (Bucks 1975); *McDonough v. Linton's Lunch,* 10 D&C2d 528, 531 (Philadelphia 1956). But when the plaintiffs are required to produce their income tax returns, as here, the use will be restricted to this case.

ORDER OF COURT

May 30, 1984, the plaintiffs' motions for a protective order and to stay discovery proceedings are denied.

MELLOTT v. PRIME, INC., C.P. Fulton County Branch, No. 69 of 1982-C

Trespass - No-Fault Vehicle Act - Causation

1. Where a truck crashed into plaintiffs' home and plaintiff slipped and injured herself on the truck's cargo strewn about the house, the plaintiff's injury arose out of the use of a motor vehicle.

2. Plaintiff's complaint must allege facts meeting the threshold requirements of the No-Fault Act.

David S. Keller, Esquire, Counsel for Plaintiffs

Harvey Freedenberg, Esquire, Counsel for Defendant, Prime, Inc.

Sarah Slesinger Smith, Esquire, Counsel for Defendant, Pennsylvania Department of Transportation

OPINION AND ORDER

EPPINGER, P.J., July 18, 1984:

A tractor-trailer owned by Prime, Inc. travelling eastwardly on U.S. Route 30 down Sidling Hill ran through the guardposts and cable and crashed into the home of Wallace and Sara Mellott. As a result of the collision a cargo of frozen onions was strewn through the home and a fire was ignited. In attempting to put out the fire, Sara slipped on the onions. She was treated for smoke inhalation and injury to her knee.

In this suit, Sara seeks damages arising out of the injury to her knee and non-economic damages including emotional distress, mental trauma, pain, suffering, inconvenience, embarrassment, humiliation, and loss of life's pleasures. Wallace sues for loss of consortium.

Prime, Inc. filed preliminary objections in the nature of a motion to strike and a demurrer. In both, Prime argues Sara's injuries arose out of the use of a motor vehicle within the meaning of the No-Fault Motor Vehicle Insurance Act, 40 P.S. 1009.101 et seq. and fails to allege that she has satisfied the threshold requirements of §301(a) (5) of the act and that since this is so, she cannot recover for her noneconomic loss and Wallace cannot recover for loss of consortium.

We agree Sara's physical injuries arose out of the use of a motor vehicle since there is a causal relationship between such use and the injuries. *Fox v. State Automobile Insurance Co.,* Pa. Super. 461 A.2d 299, 301 (1983) a case which is factually similar to this one, and *Schweitzer v. Aetna Life and Casualty Co.,* 306 Pa. Super. 300, 303, 452 A.2d 735, 737 (1982). Sara has not alleged the threshold requirements have been met, but she should be permitted to file an amendment if the threshold requirements

can be plead. We take the same action on Wallace's derivative loss of consortium claim. See *Sturtz v. Ludy,* 15 D&C3d 289, 293 (Somerset 1979).

ORDER OF COURT

July 18, 1984,the preliminary objections of the defendent Prime, Inc. in the nature of motion to strike and a demurrer though well taken on the present complaint are sustained, but the plaintiffs are given twenty days from this date to file an amended complaint alleging facts showing the satisfaction of the threshold requirements of the No-Fault Motor Vehicle Insurance Act or suffer non pros.

ROTZ v. INSURANCE COMPANY OF NORTH AMERICA, C.P Franklin County Branch, A.D. 1982-209

Assumpsit - No-Fault Motor Vehicle Act - Statute of Limitaions - Uninsured Motorist

1. Uninsured motorist benefits are not basic or added loss benefits under the No-Fault Act and the Act's statute of limitations does not apply to an uninsured motorist's claim.

2. An uninsured plaintiff has a statutory right to uninsured motorist benefits under a contract implied in law between the accident victim and the insurance company.

3. The plaintiff's rights do no vest until his claim is assigned by the Assigned Claims Bureau and the statute of limitations runs from the date of assignment.

Barbara B. Townsend, Esquire, Counsel for Plaintiff

James D. Flower, Esquire, Counsel for Defendant

OPINION AND ORDER

KELLER, J., June 8, 1984:

On March 25, 1978, the plaintiff, Kenneth R. Rotz, was a passenger injured in a one-car automobile accident on Warm Spring Road in Franklin County, Pennsylvania. At the time of the accident both the driver and the automobile were uninsured. On October 26, 1979, plaintiff submitted a completed application for

basic loss benefits to the Assigned Claims Bureau of his designated servicing agent under the assigned claims plan of the Pennsylvania No-Fault Act. That agent, defendant-Insurance Company of North America (hereafter I.N.A.) assigned the claim to Essis, Inc., a wholly-owned subsidiary of I.N.A. with offices in Lemoyne, Cumberland County, Pennsylvania. Essis began paying benefits for personal injuries and reimbursement for medical expenses. The last of these was received in late July, 1980.

In November of 1979, the plaintiff made a demand on Essis for payment of work loss benefits. On December 5, 1979, Essis notified Mr. Rotz that proof of prospective employment and projected earnings must be submitted before Essis would pay such benefits. The required proof was never submitted and no payments for work loss benefits were ever paid.

On July 2, 1982, plaintiff commenced this action in assumpsit and trespass by filing a praecipe for a summons which was served on July 13, 1982. On September 16, 1983, he filed a two count complaint; the second count asserting a claim against defendant I.N.A. for non-payment of uninsured motorist benefits.

I.N.A. responded to plaintiff's Count II in its new matter by alleging that the matter of uninsured motorist benefits arose under an implied contract between the parties, that the statute of limitations on such contracts is four years and that such period had expired four years after the accident of March 25, 1978. Thus, the plaintiff's claim was barred and must be dismissed.

Plaintiff's reply denied the applicability of the four-year limitation period and, to the contrary, asserted compliance with the statute of limitations which governs actions under the Pennsylvania No-Fault Insurance Act.

On March 1, 1984, the defendant filed a motion for summary judgment as to Count II. The summary judgment motion was listed for the April Argument Court, briefed and orally argued on April 5, 1984.

Since the matter appeared to be ripe for disposition, this Court entered an Opinion and Order on May 14, 1984,* dismissing the motion for summary judgment. However, on May 16, 1984, a

*Editor's note: Not reported in this journal.