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.

Petition for Reconsideration was presented in chambers by the defendant. The petition brought to our attention the recent decision in *Warren v. Reliance Insurance Co.*, 464 A. 2d 487 (Pa. Super. 1983). Perceiving the possibility that the *Warren* decision may have overruled the decision in *Williams v. Keystone Insurance Co.*, 302 Pa. Super. 44, 448 A. 2d 86 (1982) and because we specifically relied upon *Williams* in formulating our May 14, 1984, opinion, this Court vacated that Opinion and Order, and ordered supplemental briefs to be exchanged and filed. After careful research into this complex area of the law, both parties submitted their briefs. It now appears that the matter is finally ripe for adjudication.

Plaintiff contends:

1. Uninsured motorist benefits are added loss benefits under the Pennsylvania No-Fault Insurance Act. Therefore, his Count II claim is governed by 40 Pa. C.S.A. §1009.106(c)(1), the general statute of limitations which governs claims for no-fault benefits.

2. His claim for uninsured motorist benefits was filed before the expiration of the limitations period of Section 106(c)(1), and therefore it is not barred.

3. Even if a four-year statute of limitations is applied in this case, plaintiff's action was commenced within that time.

The defendant to the contrary urges:

1. Claims for uninsured motorist benefits are not governed by the statute of limitations contained in the No-Fault Act because they are not No-Fault benefits.

2. Claims for uninsured motorist benefits made to a servicing insurer are controlled by the four-year statute of limitations which governs implied contracts.

3. The statute of limitations expired exactly four years from the date of the accident. Plaintiff's action was commenced more than four years from that date, and the claim is time barred.

Initially, we note that no-fault benefits are ". . . basic loss benefits, added loss benefits or both." 40 Pa. C.S.A. §1009.103. Since uninsured motorist benefits are not included in the defin-

CONTAINING approximately seventeen (17) acres according to assessment records. Being the Northern portion of a larger tract of land shown and set forth on draft of John B. Kauffman, C.S., dated December 11, 1878. The said tract is the real estate conveyed by Paul Campbell, et al., heirs of William A. Campbell, deceased, to J. Arthur Yocum and Kathleen C. Yocum, his wife, by deed dated December 12, 1966, and recorded in Franklin County, PA, Deed Book, Vol. 705, Page 48. The easements involved are referred to in said deed, and they traverse over parts of the aforesaid Yocum Parent tract. All deed records hereinbefore mentioned are to be found in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in the Franklin County Court House, in Chambersburg, Pennsylvania.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP: Legal Reference Service of Franklin-Fulton Counties, Court House, Chambersburg, Pennsylvania 17201; Telephone No.: (717) 264-4125, Ext. 213.

10-5, 10-12, 10-19

LEGAL NOTICES, cont.

itions of either basic or added loss benefits, we cannot conclude that they are no-fault benefits. Id. at §103, 202, 207. In addition, the leading decision involving claims for uninsured motorist benefits under the No-Fault Act states very specifically that "[b]asic loss benefits and uninsured motorist benefits are separate and distinct. . ." *Tubner v. State Farm Mutual Automobile Insurance Company,* 496 Pa. 215, 220 n.13, 436 A. 2d. 621 (1981). For these reasons we will not consider uninsured motorist benefits to be no-fault benefits. Therefore, we also will not apply the statute of limitations provision found in the No-Fault Act.

Defendant concedes that the Count II claim relating to payment of uninsured motorist benefits is controlled by the decision in *Tubner v. State Farm,* supra. That case held that an uninsured individual such as the plaintiff has a statutory right to uninsured motorist benefits when he makes a legitimate claim against his servicing insurer under the assigned claims plan.

The defendant correctly contends that this statutory right is the equivalent of a contract implied in law between the accident victim and the servicing insurance company. A contract implied in law is a fictional contract created by the law for the purpose of enforcing legal duties by an action of assumpsit where no contract, in fact, exist. See *Cameron, to Use of Cameron v. Eynon.* 332 Pa. 529, 3 A. 2d 423 (1939). It is a relationship whereby an obligation is imposed upon a person, not by reason of any express or implied promise on his part to perform but rather in spite of any intention he may have to the contrary. It will be presumed where no proper contract exists and where it is necessary to account for a relationship found to exist between the parties. *DeGasperi v. Valicenti,* 198 Pa. Super. 455, 181 A. 2d 862 (1962).

> "Quasi-contracts [or contracts implied in law] are often assumed to be confined to obligations for the payment of money enforceable under common law procedure by the common counts. There are, however, unquestionably obligations imposed by law without reference to mutual assent and enforceable only in special assumpsit as if they were actual contracts." See 1 Williston on Contracts §3A at 13.

A servicing insurer such as I.N.A. assigned to a case under the Assigned Claims Plan is obligated to pay a legitimate claim under the No-Fault Act precisely as if there had been an express written

contract of insurance. *Tubner v. State Farm,* supra. This obligation is imposed upon it by reason of 40 Pa. C.S.A. §1009.101 et. seq. irrespective of its intent. Although no formal written contract exists in this case, Mr. Rotz may sue in assumpsit to enforce I.N.A.'s duty to pay and his right to receive benefits under the No-Fault Act. See also, *Warren v. Reliance Insurance, Co.,* supra, and *Zubris v. Pennsylvania Assigned Claims Plan,* 467 A. 2d 1139 (Pa. Super. 1983), both of which were actions in assumpsit under the Assigned Claims Plan of the No-Fault Act.

Section 5525 of the Act of 1976, July 9, P.L. 586, No. 142 §2, 42 Pa. C.S.A. §5525 provides inter alia: "The following actions and proceedings must be commenced within four years: (4) An action upon a contract implied in law. . ." Therefore, we conclude the statute of limitations applicable herein is four years.

The only remaining issue is whether the four-year statute of limitations runs from March 25, 1978, the date of the accident or October 26, 1979, the date plaintiff submitted his application for basic loss benefits to the Assigned Claims Bureau.

Defendant contends that this issue is governed by the decision in *Boyle v. State Farm,* 456 A. 2d 156 (Pa. Super. 1983). In that case the Superior Court held:

> "An action for benefits under an uninsured motorist coverage endorsement is essentially an action to enforce a contract. An action to enforce a contract does not accrue until the party's rights under the contract have vested. Under the terms of the uninsured motorist coverage endorsement, the insured's right to payment did not vest until: (1)the insured was in a motor vehicle accident, (2)the insured sustained bodily injury as a result of that accident, and (3)the insured knows of the uninsured status of the other owner or operator. When all three of these events have occurred the insured's cause of action accrues. . ." *Boyle,* supra at 162.

Defendant argues that the plaintiff's rights under the implied contract vested on March 25, 1978, the date of the accident. I.N.A. contends that this was the date that plaintiff met the three criteria identified *Boyle* and is therefore the date on which the statute of limitations began to run.

We disagree. The three criteria enunciated in Boyle are guideposts for determining when rights vest under a pre-existing

written contract. However, where the obligor has not been identified, there can be no contract, no vested rights and no cause of action. In the instant case, no individual was obligated to compensate the plaintiff for his injuries at the time of the accident. Mr. Rotz had no pre-existing contract for insurance and thus no enforceable rights. As against I.N.A. his rights did not vest until his claim was assigned. The earliest date which that event could have occurred was October 26, 1979, when Mr. Rotz filed his application for no-fault benefits with the Assigned Claims Bureau. Since plaintiff filed his praecipe for a summons in this case approximately two years and eight months after he applied to the Assigned Claims Bureau for no-fault benefits, his claim for uninsured motorist benefits is not time barred.

ORDER OF COURT

NOW, this 8th day of June, 1984, the defendant's Motion for Summary Judgment is dismissed.

Exceptions are granted the defendant.

MONT ALTO BOROUGH v. UNIVERSITY HILL, INC., ET. AL., C.P. Franklin County Branch, Volume 7, Page 302

Contract - Covenant Running With Land - Corporate Identity - Pierce Corporate Veil

1. A person may not be held liable on a personal agreement which she never signed.

2. Where parties agree to replace a water line upon the happening of certain events, it is a covenant that runs with the land in that replacement could be required at any time.

3. Where there are two corporate entities which are merely instrumentalities of each other or closely entwined, the courts in piercing the corporate veil will hold each legally accountable for the acts and responsibilities of the other.

4. Where the corporate form prejudices innocent parties or where two corporations are something less than bona fide independent entities, the court may pierce the corporate veil.