

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE 52ND JUDICIAL DISTRICT
1st Division

WILLIAM CZERNIAWSKI,

Plaintiff,

vs.

Case No. 86-C00888-GC

FARMERS INSURANCE EXCHANGE,

Hon. Michael Batchik

Defendant.

DANIEL L. VOGT, (P37068)
UAW-FORD LEGAL SERVICES PLAN
Attorneys for Plaintiff
33067 Schoolcraft Road
Livonia, MI 48150
(313) 427-4505

MARK D. SHOUP, (P20392)
Attorney for Defendant
3166 Penobscot Building
Detroit, MI 48226
(313) 962-4500

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the City of
Walled Lake, County of Oakland, State of Mich-
igan, on 11-21-86.

PRESENT: HONORABLE
District Court Judge

Defendant's Motion for Summary Disposition having come
on to be heard, and oral argument by counsel for the parties
having been heard, and the Court being fully advised in the
premises,

TRUE COPY
DISTRICT COURT #52
D. M. Batchik
Deputy

IT IS HEREBY ORDERED AND ADJUDGED:

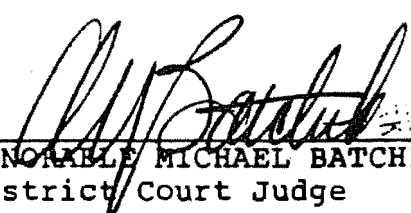
1. That Defendant's, FARMERS INSURANCE EXCHANGE, argument that it can reduce its liability to Plaintiff for No-Fault automobile insurance wage loss payments by setting off certain sums paid to Plaintiff as a fringe benefit of his employment is incorrect;

2. Said sums were paid to Plaintiff under a portion of the collective bargaining agreement between General Motors Corporation and the United Autoworkers' Union dated September 21, 1984, and entitled "Supplemental Agreement covering Group Life and Disability Insurance Program; exhibit B to Agreement".

3. Said payments are determined to be "collateral source benefits" under Brashear V. DAIE, 144 Mich. App. 667 (1985), and are not subject to "coordination" or other set off by the Defendant insurance company.

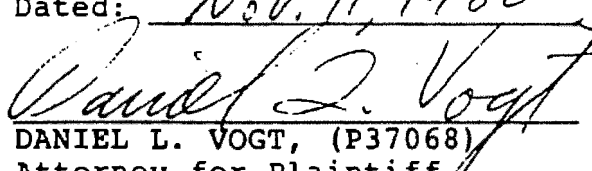
4. That Defendant's Motion for Summary Disposition, on the basis that its policy has a "coordination clause" and that it is entitled to set off its liability by the amount of the collateral source benefits, is therefore without merit and is hereby denied.

Dated: 11-21-86

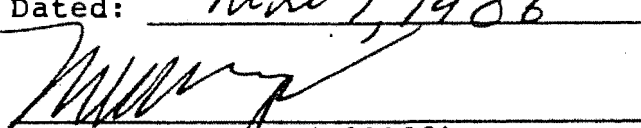

HONORABLE MICHAEL BATCHIK
District Court Judge

Approved as to form and content;
Notice of Entry waived:

Dated: Nov. 11, 1986


DANIEL L. VOGT, (P37068)
Attorney for Plaintiff
33067 Schoolcraft Road
Livonia, MI 48150
(313) 427-4505

Dated: Nov 7, 1986


MARK D. SHOUP, (P20392)
Attorney for Defendant
3166 Penobscot Building
Detroit, MI 48226
(313) 962-4500

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE 52ND JUDICIAL DISTRICT
1st Division

WILLIAM CZERNIAWSKI,

Plaintiff,

vs.

Case No. 86-C00888-GC

FARMERS INSURANCE EXCHANGE,

Hon. Michael Batchik

Defendant.

DANIEL L. VOGT, (P37068)
UAW-FORD LEGAL SERVICES PLAN
Attorneys for Plaintiff
33067 Schoolcraft Road
Livonia, MI 48150
(313) 427-4505

MARK D. SHOUP, (P20392)
Attorney for Defendant
3166 Penobscot Building
Detroit, MI 48226
(313) 962-4500

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY DISPOSITION

At a session of said Court held in the City of
Walled Lake, County of Oakland, State of Michigan
on 11-21-86

PRESENT: HONORABLE MICHAEL BATCHIK
District Court Judge

Plaintiff's Motion for Summary Disposition having come
on to be heard, supported by Plaintiff's pleadings and Affidavit
filed herein, and oral argument by counsel having been heard,
and the Court being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED:

1. The sums paid to Plaintiff under a portion of the
collective bargaining agreement contract between General Motors

MICHAEL BATCHIK
District Court Judge
M. Batchik
Copies

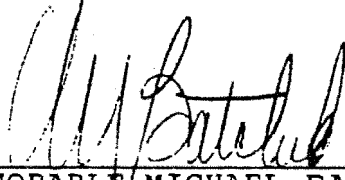
Corporation and United Autoworkers' Union, dated September 21, 1984, and entitled "Supplemental Agreement covering Group Life and Disability Insurance Programs; exhibit B to Agreement", are collateral source benefits under Brashear V. DAIIE, 144 Mich. App. 667 (1985), and therefore are not subject to set off or coordination by Defendant, FARMERS INSURANCE EXCHANGE.

2. Defendant has failed to support its denials and affirmative defenses herein with any evidence.

3. Therefore, in viewing the pleadings and properly presented facts in the light most favorable to Defendant, Defendant has failed to state a valid defense, MCR 2.116(c)(9), and also there remains no genuine issue as to any material fact, such that Plaintiff is entitled to judgment as a matter of law, MCR 2.116(c)(10).

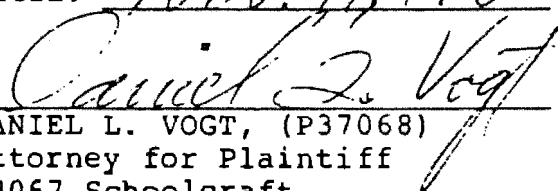
4. Plaintiff's Motion for Summary Disposition is hereby granted as to Count I and Count II of Plaintiff's Complaint.

Dated: 11/21/86



HONORABLE MICHAEL BATCHIK
District Court Judge

Approved as to form and content;
Notice of Entry waived:

Dated: Nov. 11, 1986


DANIEL L. VOGT, (P37068)
Attorney for Plaintiff
33067 Schoolcraft
Livonia, MI 48150
(313) 427-4505

Dated: Nov 8, 1986


MARK D. SHOUP, (P20392)
Attorney for Defendant
3166 Penobscot Building
Detroit, MI 48226
(313) 962-4500

Affidavit

I, David C. Beier, being first duly sworn,
state:

- 1) I am employed by UAW
since 1968, I currently serve in the position of Administrator
1983 and have held this position since 1983.
- 2) Based upon my position and experience in the course of said employment, I am personally familiar with and knowledgeable concerning the contents and meaning of the language of The Group Life and Disability Insurance Program for hourly employees pertaining to General Motors Corporation (GMC) employees.
- 3) The attached booklet entitled "Supplemental Agreement Covering Group Life and Disability Insurance Program" and subtitled "Exhibit B to Agreement between General Motors Corporation and UAW dated September 21, 1984" is a true and accurate copy of that part of the Contract between General Motors Corporation and the United Auto Workers Union (UAW) covering sickness and accident benefits available to GMC hourly employees in the Michigan Region, including the Detroit Diesel plant.
- 4) The Contract between GMC and the UAW provides for various benefits beyond sums to be paid to workers for work actually performed. These benefits are intended under the Contract to constitute a wage or income continuation plan meant to guarantee an employee a minimum income for life. Certain of these benefits, such as sickness and accident benefits under the Supplemental Agreement, are not payments for work performed during the time the employee is absent due to sickness or accident or otherwise.

- 5) Article I, section 1(a), Establishment and Effective Date of Program (pg. 2) of said Supplemental Agreement states and reflects the intent of GMC and the UAW that GMC would provide the sickness and accident income continuation benefits to its hourly employees. The benefits are to be provided through direct cash payments from GMC, or, at GMC's option, through an agent insurance company chosen to administer the program, under the standards agreed upon, using the mechanism of a group insurance policy to control GMC's costs and for ease of administration.
- 6) The use of an agent insurance company and group insurance policy by GMC, rather than direct payments, does not alter the nature of GMC's obligation, and is within the intent that sickness and accident benefits are paid through the policy as part of the wage continuation plan.
- 7) The facts stated above are true and accurate to my direct and personal knowledge; I am competent and qualified to testify as to these facts, and am willing to do so.

Date: Sept 22, 1986

Name:

Daniel E. Breen

Title: Administrator

Signed and sworn before me this 22nd day of September, 1986.

Sarah J. Bennett, Notary
MACOMB COUNTY, Michigan

My Commission Expires: 2/7/90

UAW-FORD LEGAL SERVICES PLAN

33067 SCHOOLCRAFT • LIVONIA, MICHIGAN 48150
(313) 427-4505

JUDITH E. WIGGINS
Managing Attorney

JILL KONEY DALY
ERIC L. DANIEL
PEGGY B. FORTSON
STEPHEN V. MOULTON
ANNA MARIE NOESKE
JOAN M. SCHULTZ
DANIEL L. VOGT
Staff Attorneys

April 22, 1987

RECEIVED BY SINAS
DRAMIS et. al.
APR 24 1987

Mr. George Sinas
Mr. Timothy J. Donovan
Attorneys at Law
Sinus, Dramis, Brake, Boughton,
McIntyre and Reisig, P.C.
520 Seymour Street
Lansing, Michigan 48933

RE: No-Fault "Wage Loss Case Law update":
"Wage Continuation Plan"

Dear Mr. Sinas and Mr. Donovan:

Some months ago I contacted your office for additional information and copies of pleadings in your case of Birch vs. INA. Mr. Donovan was kind enough to discuss the facts and issues of the Birch case and to forward copies of briefs and pleadings. Please accept my thanks for your kind assistance. The information and briefs provided proved helpful.

Mr. Donovan requested that I inform you of the result of my case once a conclusion was reached. I have therefore included a copy of the Order Denying Defendant's Motion for Summary Disposition, which summarizes the court's decision on the relevant legal issues. I also enclosed a copy of the Affidavit by the critical witness.

This case involved an argument for extending Birch and Brashear vs. DAIIE to cover sickness and accident disability insurance provided under a collective bargaining agreement between the UAW and General Motors Corporation. That portion of the agreement, referred to as the "Supplemental Agreement" covering "Group Life and Disability Insurance Program", provided that General Motors would provide for payments to hourly employees in lieu of wages when the employees were unable to work because of sickness or accident. The collective bargaining agreement language provided for GMC to pay either direct cash payments or to obtain group disability insurance program coverage, at the employer's option.

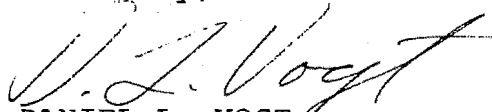
SINAS, cont.
DONOVAN, cont.
April 22, 1987
Page 2

Naturally, the insurance company argued these "insurance benefits" should be set off against the wage loss incurred by my client due to an automobile accident injury. I successfully argued that it made no difference whether the employer made the direct cash payments or chose to delegate the administration and shift the risk of the expense of the wage continuation plan to the insurance company through the mechanism of a group insurance policy, paid for by the employer. The court agreed that this did not change the nature of the wage continuation benefit. The group insurance benefits were held to be "collateral source payments", and therefore outside of the definition of "wage loss" against which insurance benefits could be coordinated.

Thus, this case represents an extension of the Brashear and Birch cases to cover employer provided sickness and accident disability plans, even where provided through a group insurance policy mechanism. The court entered the order denying the Defendant's Motion for Summary Disposition and ^{also} orally granted Plaintiff's Motion for Summary Disposition, after which the parties settled the claim and dismissal was entered.

I suggest and request that you include a summary of this case in the "Redbook" (Michigan No-Fault Auto Insurance Decisions published by the MTLA). Thank you for your firm's kind assistance with this matter. Feel free to call me if you have any questions about this case at any time.

Sincerely,



DANIEL L. VOGT
Attorney at Law

DLV/tsm
Enclosures