SHARON ADVANI,

Plaintiff,

e No. 86-CV-10438-BC

vs.

EUGENE LINDINGER, MICHIGAN STATE POLICE, by and through its unknown agents, employees and/or servants, MICHIGAN STATE HIGHWAY DEPARTMENT, JOHN DOE I, JOHN DOE II, JOHN DOE III, and each of them, and OTSEGO COUNTY ROAD COMMISSION,

Defendants.

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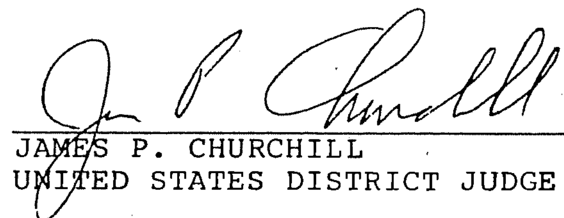
ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

For reasons stated in the Court's accompanying Memorandum Opinion, IT IS ORDERED THAT Defendant Eugene Lindinger's motion for partial summary judgment is **denied.**



JAMES P. CHURCHILL
UNITED STATES DISTRICT JUDGE

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MEMORANDUM OPINION

This matter, which arises from a simple factual setting, presents an interesting legal question apparently of first impression under Michigan law.[1] Specifically, Defendant Eugene Lindinger's motion for partial summary judgment requires the Court to address the issue of whether non-resident motorists who are not covered by qualifying No-Fault insurance[2] may avail themselves of the Michigan No Fault Act's limitation of liability provision.[3]

Plaintiff's claim began as a multiple-defendant action involving a variety of defendants whom the plaintiff has since dismissed voluntarily. In its present posture, the case simply is an action by Sharon Advani, an Illinois resident, against Eugene Lindinger, a Canadian national, based on an automobile collision that occurred in Michigan.[4] The accident in question was one in a series of accidents that occurred in "blizzard-like" conditions on I-75 near Vanderbilt, Michigan. The collision between Plaintiff Advani's car and Defendant Lindinger's van followed several accidents which clogged the road

and compelled Defendant Lindinger to abandon his van in an effort to warn oncoming traffic of the danger resulting from the multiple-car collision. Before abandoning his disabled van, Defendant Lindinger turned on his emergency lights as a signal to approaching traffic. Positioning himself 75 feet from his van, Defendant Lindinger signalled to cars as they approached the accident scene in an effort to prevent additional collisions. Soon thereafter, Plaintiff Advani drove past Lindinger and ran into the rear of Lindinger's van at an allegedly great speed. Plaintiff Advani filed her suit against Lindinger based on Lindinger's allegedly negligent act of abandoning his disabled van in a location where it could be hit by passing cars.

In the course of litigation, Defendant Lindinger filed the motion for summary judgment that is now before the Court. This motion is based on the provisions of the Michigan Motor Vehicle Personal and Property Protection (No Fault) Act, M.C.L.A. § 500.3101 et seq., which place express limitations on the amount of recovery available to persons injured in motor vehicle actions in Michigan.[5] Defendant relies specifically on M.C.L.A. § 500.3135(2), which abolishes "tort liability arising from the ownership, maintenance, or use within [Michigan] of a motor vehicle with respect to which the security required by section 3101(3) and (4) was in effect...." Two limitations are placed on the broad abolition of tort liability,[6] but neither is of any import as far is the motion before the Court is concerned. Rather, the Court simply must decide whether Defendant Lindinger, who did not possess insurance as prescribed by the Michigan No Fault Act, can rely on the No Fault Act's abolition of tort liability. Analysis of the No Fault statutory scheme clearly indicates that Defendant Lindinger cannot rely on the No Fault Act's broad tort

abolition as a shield against Plaintiff Advani's tort claim. Further, review of Michigan choice of law rules suggests that Michigan's limitation of liability provision may not even apply to the case. Under either form of analysis, however, Defendant Lindinger's motion for partial summary judgment must be denied.

I. The Michigan No Fault Act

The Michigan No Fault Act unequivocally provides a substantial restriction on recovery for injuries resulting from motor vehicle accidents in Michigan. In the absence of "death, serious impairment of body function, or permanent serious disfigurement," M.C.L.A. § 500.3135(1), the No Fault Act abolishes tort liability for non-economic damages. See M.C.L.A. § 500.3135(2); Drake v. Gordon, 644 F. Supp. 376, 378 (E.D. Mich. 1986). If this general limitation applies to the case before the Court, Plaintiff Advani is limited to the $400.00 "mini-tort" recovery prescribed in M.C.L.A. § 500. 3135(2)(d).

As a threshold matter, though, the No Fault Act's abolition of tort liability applies only to "tort liability arising from the ownership, maintenance, or use within [Michigan] of a motor vehicle with respect to which the security required by section 3101(3) and (4) was in effect...." M.C.L.A. § 500.3135(2). Thus, the broad abrogation of tort liability in the No Fault Act is wholly inapplicable in cases involving defendants who are not covered by insurance as "required by section 3101(3) and (4)." Cf. Gersten v. Blackwell, 111 Mich. App. 418, 422 (1981) (suggesting that defendant who does not "maintain the requisite security" is not "relieved of all tort liability" pursuant to M.C.L.A. § 500.3135(2)).

In defining the "required" security under the No Fault Act,

Section 3101(3) simply refers to policies which provide coverage to the extent prescribed in Section 3101(1). See M.C.L.A. § 500.3101(3) Section 3101(1), in turn, "requires all motorists who are Michigan residents to purchase a [No Fault] policy." Drake, 644 F. Supp. at 378; M.C.L.A. § 500.3101(1). Although non-resident drivers are not required to obtain statutorily defined No Fault policies unless they drive in Michigan for more than 30 days in a calendar year, see M.C.L.A. § 500.3102(1), a "non-resident motorist who operates a vehicle for fewer than thirty days in Michigan may purchase a no-fault insurance policy." Drake, 644 F. Supp. at 378 (emphasis added); Gersten, 111 Mich. App. at 424 ("The purchase of no-fault insurance by transient nonresident motorists is ... on a voluntary basis."). Thus, a non-resident such as Defendant Lindinger may assume the burdens and benefits of the Michigan No Fault Act by purchasing a no-fault policy. This provides non-residents with the opportunity to either opt in or opt out of the Michigan no-fault scheme.

Defendant Lindinger was insured by the Insurance Corporation of British Columbia at the time that Plaintiff Advani hit his van. Defendant concedes that his insurer is not, and never was, "an insurer duly authorized to transact business" in Michigan. M.C.L.A. § 500. 3101(3). Further, defendant concedes that his "nonadmitted insurer" did not "voluntarily file the certification" required of admitted insurers. M.C.L.A. § 500.3163(2). Consequently, neither the Insurance Corporation of British Columbia (the insurer) nor Defendant Lindinger (the insured) has "the rights and immunities" under the Michigan No Fault Act. See M.C.L.A. § 500.3163(3) (emphasis added).

Absent the protection of the Michigan No Fault Act's broad tort abolition, Defendant Lindinger is exposed to unlimited tort liability.

The failure of his insurer to "voluntarily file the certification" permitted by the Michigan No Fault Act makes potentially unlimited liability inescapable. Any other result would be legally unsound; Defendant Lindinger cannot avail himself of the benefits of the No Fault Act without assuming the Act's burdens. Thus, Defendant Lindinger is not entitled to partial summary judgment based on the Michigan No Fault Act's abolition of tort liability. Michigan choice of law rules also suggest that the No Fault Act's limitation of liability is inapplicable in the case before the Court. This fact strengthens the Court's conviction that the tort abolition provision cannot form an appropriate basis for Defendant Lindinger's motion for partial summary judgment.

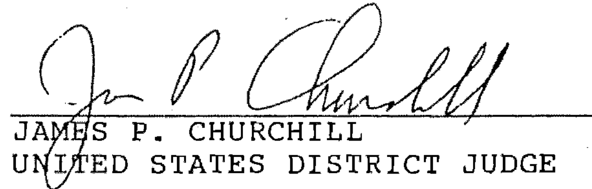
II. Choice of Law Regarding Limitation of Liability

The Michigan Supreme Court recently provided choice of law rules governing the application of limitation of liability provisions in cases of automobile accidents. See Olmstead v. Anderson, 428 Mich. 1 (1987). The Olmstead court addressed a case involving a collision between a Michigan resident and several Minnesota citizens which occurred in Wisconsin. Id. at 1. In seeking to limit damages, the defendant in Olmstead argued that Wisconsin's $25,000.00 wrongful death cap controlled the case. Id. at 4. The Michigan Supreme Court rejected this claim by reasoning that "[s]ince neither party in this case is a citizen of Wisconsin, that state has no interest in seeing its limitation of damage provision applied." Id. at 28. Similarly, neither Plaintiff Advani nor Defendant Lindinger is a Michigan citizen. Thus, Olmstead indicates that Michigan's limitation of liability provision cannot be applied simply because Michigan was the situs of the accident. See id. at 29 (citing collected cases); see also

Penwest Dev. Corp. Ltd. v. Dow Chemical Co., 667 F. Supp. 436, 442 (E.D. Mich. 1987) ("When neither party is a resident of Michigan, Michigan law generally will not be applied even if Michigan is the place of the wrong."). Although Michigan would have a sufficiently significant interest in applying its limitation of liability provision to protect an insured whose insurer had voluntarily chosen to opt into the Michigan No Fault Act, see Olmstead, 428 Mich. at 29 (quoting Reich v. Purcell, court reasons that "Defendant's liability should not be limited when no party to the action is from a state limiting liability and when defendant, therefore, would not have secured insurance if any, without any such limit in mind") (emphasis added), Defendant Lindinger's insurer did not voluntarily choose to participate in Michigan's no-fault scheme. Because Defendant Lindinger's insurer chose not to participate in Michigan's no-fault scheme, Defendant Lindinger "cannot reasonably complain when compensatory damages are assessed in accordance with the law of his domicile and [Plaintiff Advani] receive[s] no more than [she] would have had [she] been injured at home." Id. (quoting Reich). Thus, Defendant Lindinger cannot rely upon the Michigan No Fault Act's limitation of liability provision.

Because Defendant Lindinger's motion for partial summary judgment exclusively relies on the Michigan No Fault Act's general abrogation of tort liability, the motion must be denied based on the fact that Michigan's limitation of liability provision does not apply to the case before the Court. This determination, however, does not imply that Michigan law necessarily controls issues in the case concerning negligence, statute of limitations constraints, and damages. Rather, the Court's holding merely indicates that Michigan does not have a sufficient interest in applying its limitation of liability provision

for the benefit of a non-resident motorist who has not chosen to participate in the Michigan no-fault scheme. An appropriate order will enter denying Defendant Lindinger's motion for partial summary judgment.



JAMES P. CHURCHILL
UNITED STATES DISTRICT JUDGE

1. Although Michigan courts have addressed cases involving accidents between residents and non-residents, see, e.g., Gersten v. Blackwell, 111 Mich. App. 418 (1981), no reported case has dealt with an accident in Michigan between two non-residents.

2. M.C.L.A. § 500.3163 describes the methods by which insurers may participate in the Michigan No Fault Act. Absent compliance with one of the methods for participating in the no-fault scheme, an insurer cannot provide qualifying no-fault insurance. See generally Kriko v. Allstate Ins. Co. of Canada, 137 Mich. App. 528, 531-32 (1984).

3. The limitation of liability provision, which is set forth in M.C.L.A. § 500.3135, will be discussed in detail in the Court's opinion.

4. The only connection between the State of Michigan and the accident underlying this lawsuit is the fact that the accident occurred in Michigan. Under Michigan choice of law rules, this connection is too tenuous to permit the Court to apply the Michigan No Fault Act's limitation of liability provision to the matter before the Court. See Olmstead v. Anderson, 428 Mich. 1, 28-29 (1987). This issue will be discussed in detail in the Court's opinion.

5. M.C.L.A. § 500.3135 defines several exceptions to the general rule of tort abolition found in that section.

6. The first exception is the broad rule that tort liability "remains" in the cases of "death, serious impairment of body function, or permanent serious disfigurement." M.C.L.A. § 500.3135(1). The second type of exception deals with allowable losses even when the broad tort abolition provision applies. See M.C.L.A. § 500.3135(2)(a)-(d).

CERTIFICATE OF SERVICE

UNITED STATES OF AMERICA)
)
EASTERN DISTRICT OF MICHIGAN)

CASE NO: 86-CV-10438-BC

Pursuant to Rule 77(d), FRCivP, I, the undersigned, hereby certify that I have on the 24th day of December, 1987, mailed a copy of the MEMORANDUM OPINION and ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGME[illegible] in the foregoing cause to the following persons at the addresses given.

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