STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

AUTO-OWNERS INSURANCE COMPANY
and EARL ROBERT BEAM, JR.

Plaintiffs,

-vs- File No: 88-24207-CK

COUNTY OF MUSKEGON, CADILLAC INSURANCE COMPANY, MICHIGAN MUTUAL INSURANCE COMPANY, and CITIZENS INSURANCE COMPANY OF AMERICA,

Defendants.
_____/

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Muskegon, MI 49440

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_____/

OPINION IN RESPONSE TO PLAINTIFF AND DEFENDANTS' COUNTY, MICHIGAN MUTUAL, AND CITIZENS MOTION FOR SUMMARY DISPOSITION AND ATTORNEY FEES

The Michigan Assigned Claims Facility ordered plaintiff Auto-Owners Insurance Company to pay no-fault benefits to plaintiff Earl Beam, Jr. They sued the insurance companies of the owners of three vehicles they claimed were involved in the accident resulting in injuries to plaintiff Earl Beam, Jr. Citizen was the insurance company for the automobile owned by plaintiff Beam.

Auto-Owners moves for summary judgment, which is joined by Beam, requiring reimbursement for PIP benefits due Beam under the No-Fault Act, and specifically under MCL 500.3114(5). That statute sets forth the order of priorities for payments due to an injured motorcyclist by insurers of motor vehicles "involved in the accident". Citizens was also sued as the carrier for Earl Beam, Jr.'s automobile, and all parties stipulate and agree they should be dismissed from the case and the motion granted, or alternately a dismissal order entered.

Furthermore, the parties, although not in agreement on all facts, have consented to allowing the Court to make any factual determinations necessary, if there is a genuine dispute of facts, which would ordinarily prevent the Court from ruling on a motion for summary judgment. This would enable the Court to make a decision on these motions, since the Court is also the factfinder, no party requesting a jury trial. All parties filing the motions for summary judgment rely upon the deposition and certified pleadings filed in this case and no party has filed affidavits to support factual contentions.

FACTUAL BACKGROUND

Relying upon the depositions filed in this case, this Court finds no material dispute of fact existent in this case. There are contentions of fact which go to the issue of "fault", however, this Court, for reasons it will state shortly, is not seeking to determine the person "at fault". The Court finds the following facts to be undisputed and immaterial, leaving no genuine issue of fact unresolved, allowing the Court to rule upon the motions for disposition.

On May 26, 1988, Muskegon County Deputy Sheriff Joseph Alexander was proceeding west on Holton Road, approaching the intersection of Whitehall Road. He was acting in response to an emergency call and approached the intersection when the light was red, preventing vehicles from entering the intersection from his direction. Belinda Stacey was traveling north on Whitehall Road in the right through lane and behind her was a vehicle owned and driven by Gary Ward. Farther back and in the left through lane plaintiff Earl Beam, Jr., was traveling on a motorcycle which was uninsured. The Sheriff cruiser was self-insured by the County of Muskegon; the Stacey vehicle was insured by Michigan Mutual Insurance Company; the Ward vehicle was insured by Cadillac Insurance Company; and Beam's auto was insured by Citizen Insurance Company.

Upon approaching the intersection of M120, while traveling north on Whitehall Road, Stacey observed the Sheriff cruiser entering her intersection in front of her, requiring her to stop suddenly. The vehicle behind her, owned and driven by Gary Ward, had a choice to attempt to stop or swerve into the left through lane of traffic. He chose the latter, and in so doing realized the cruiser then was in front of him, requiring him to stop suddenly also. Beam was on his cycle and now was confronted with the vehicle which swerved from the right through lane to the left through lane and stopped suddenly in front of him, which required

him to attempt to stop the cycle and at the same time avoid contact with the Ward vehicle, now stopped in his lane of traffic. He was unable to turn and break, causing the cycle to fall to the ground, which resulted in injuries.

He sought benefits from the three insurance companies, as well as the insurance company of his automobiles, and all declined. Upon notifying the Michigan Assigned Claims Facility, Auto-Owners Insurance Company was directed to pay benefits, which they have done, causing them to seek reimbursement from the insurers through this lawsuit.

CONCLUSION AND LAW

All parties agree the operative statute is MCL 500.3114(5), which reads in part as follows:

> A person suffering accidential bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) the insurer of the owner or registrant of the motor vehicle involved in the accident.
>
> (b) ...
>
> (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
>
> (d) ...

All parties agree Citizens Insurance Company, as the insurer of the automobiles of the owner of the motorcycle, should be dismissed from the case, and an order shall be entered forthwith to that effect. They are being dismissed because all parties agree that in the order of priority they are in a lower priority separate class than the other three companies insuring the automobiles.

The legal issue for this Court to determine is if the Alexander, Stacey, and Ward vehicles are "involved in the

accident". This Court holds that they are "involved" in such a legal way as to make them liable to reimburse Auto-Owners the no-fault benefits due plaintiff Beam. This Court finds the case of Greater Flint HMO v Allstate, 172 Mich App 783 (Nov 1988) controlling. The facts in that case reveal a semi-truck made a fast lane change causing a chain reaction of rear-end collisions, which included in the line of cars which were required to stop those owned by Allstates insured's, Hall and Grossman. A vehicle owned by one Robert Buda, also an Allstate insured, was required to stop and was struck by a two motorcylists, also insured by Allstate. Plaintiff HMO, and McClennans (insured by Allstate) sued by Buda (insured by Allstate). Allstate filed a third party action against the two insurance companies for Hall and Grossman on a theory of joint liability under the No-Fault Act. They filed a motion for summary judgment on the grounds they were "not involved" under the terms of the Act for body injury "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." (MCL 500.3105(1)). Section 3114(5) permits a motorcyclist to claim no-fault benefits from the insurers of motorists and vehicle owners "involved in the accident".

In Greater Flint HMO, supra, the lower court granted the motion for summary disposition against the insurers of Hall and Grossman, who were in the chain of cars, but not the car struck by the motorcyclist. The court felt because they were not in physical contact, as was the Buda vehicle, they were not "involved". The Court of Appeals reversed using the analysis employed by the court in Kangus v Aetna Casualty, 64 Mich App 1 (1975). It is interesting they used the test in that case because the issue was different, that is, whether the car was used as a motor vehicle. Their analysis, however, discussed the causal connection between the injury and the use of the motor vehicle important for the discussion in the Flint HMO analysis.

In the Kangus case they stated:

> We conclude that while the automobile need not be the proximate cause of the injury, there still must be a causal connection between the injury sustained and the ownership, maintenance, or use of the automobile and which causal connection is more than incidential, fortuitous, or "but for". The injury most be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle. (pg 17).

In the Kangus action, Kangus was insured by Aetna. He and several occupants stopped his car and assaulted or participated in an assault upon a pedestrian. The pedestrian was struck by a passing vehicle and the pedestrian sued Kangus, who demanded his auto insurance company, Aetna, to defend this suit. They refused. The Kangus court held a causal connection between the use of a vehicle "as a vehicle" and the injury were not causally related or "foreseeably identifiable with the normal use ... of a vehicle". The Flint HMO opinion states:

> The relevant inquiry then is whether a causal nexus can be established that would link the injuries incurred in the accident to a motor vehicle. Here, the deposition testimony supports a reasonable inference that a sudden lane change of the lead vehicle, the semi-trailer truck, caused every driver in the chain of traffic, which included Grossman and Hall, to make an emergency stop which contributed to plaintiff's injuries. (pg 788)

The Court of Appeals found a question of fact and remanded same to the lower court.

As a corrollary to the extent of involvement, the court in Bromley v Citizens, 113 MA 131 (1982) stated that if a motorcyclist can show by sufficient facts that an unidentified driver of a motor vehicle forced him off the road causing injuries, he could collect even though no contact occurred between the auto and the cycle "as long as the causal nexus between the accident and the car is established" (pg 135).

In another case in which the auto was "not involved" was Peck v Auto-Owners Ins Co, 112 Mich App 329 (1982). That case involved a motorcyclist fleeing arrest by a chasing police car. The cyclist drove into a brick wall and sued for no-fault

benefits. The court found the accident in this case was not "foreseeably identifiable" with the normal use of a motor vehicle. The court went on to state:

> We distinguish this factual situation from one in which an injured driver swerved to avoid a collision with another vehicle. There the cause of the accident is the desire to avoid an imminent collision with another vehicle. The swerving is a foreseeable circumstance arising from the operation of a motor vehicle. Flight to avoid police, however, is not such a foreseeable possibility. (pg 334) (emphasis added).

Getting back to Kangus again, it must be iterated that what we are seeking is not a determination of the proximate cause or causes of the accident, but rather if in the particular circumstances there is a causal connection between the injury sustained and the ownership or use of a motor vehicle. The test in Kangus has been recently supported in a case involving the armed robbery of a taxicab driver and whether that "arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." The court held it did not and used the language of the Kangus case, which is quoted in this opinion, to sustain its opinion.

In this case, the Court was initially confronted with a situation similar to that in Flint HMO. The Court there indicated a set of facts existed, which should be decided by the trier of fact, and where preceding vehicles which were required to stop because of a vehicle that swerved into their lane of traffic were "involved". The situation in this case is such that although the parties disagree about some of the facts relating to proximate causation and negligence, they do not disagree as to why this accident occurred. Also, they all agree the Court may make factual determinations necessary for its decision in this case.

I have already found the facts as set forth in the preceding portion of this opinion, based on the depositions which all parties agreed the Court could review in making such factual

determinations. I did not need to make any factual determinations, rather find that there are no factual disputes among the essential witnesses, Alexander, Stacey, Ward, and Beam, to cause there to exist a "genuine issue as to any material fact", and as a matter of law may enter a judgment on the motions for summary disposition as filed by plaintiff Auto-Owners.

A substitution of attorneys for plaintiff Earl Beam was filed December 13, 1988 in this matter. This Court finds in favor of the motion for summary disposition filed by Auto-Owners, and grants a judgment for the reimbursement for all insurance benefits heretofore paid by them to Earl Beam, Jr. The Court also finds that the County of Muskegon, Cadillac Insurance Company and Michigan Mutual Insurance Company shall pay one-third of all benefits paid by Auto-Owners Insurance Company to date of judgment and a like amount for all future benefits they are required to pay under the terms of the Act.

It has been suggested that the Court should allocate fault among the three possible defendants and make determinations of greater or lesser fault based upon the involvement and actions of the drivers' of the insured vehicles. No authority has been suggested to this Court to lead me to believe that any other than an equal share treatment should be pursued, and any reference to the word "equitable distribution of loss among such insurers" as contained in MCL 500.3115, does not require a distribution of "fault". Such determinations being required to be made would contradict the intent and policy of the Act to require insurance companies to pay without fault determinations. The insurers simply fall into a category, and the language employed in Section 3115 is to require a recoupment of the expense of processing incurred by one of the several insurers in the same group to distribute the complete loss among all insurers rather than the one simply processing the claim.

Therefore, the Court finds that all insurers in the same group being "insurers of the owner or registrant of the motor vehicle involved in the accident" share equally in the liability.

The County of Muskegon has also raised the issue of governmental immunity under the Michigan Tort Immunity Act. The No-Fault Act requires all vehicles, unless exempted, to be registered under the laws of Michigan. This includes governmental vehicles. No-fault benefits are payable without resulting to a determination of "fault" or "tort negligence". This is not a tort, but absolute liability and the philosophy is quick payment to the injured victim. Tort liability and the resultant Governmental Immunity Act may be applicable outside of the context of no-fault benefits and obligations. However, again, no cases have been cited to support the concept and, in fact, the Court has been presented with two cases in opposition thereto. The first is Jones v Tronex Chemical Corp, 129 Mich App 188 (1983). That was a suit against the City of Detroit who owned a bus involved in an accident. The second is Beard v Detroit, 158 Mich App 441 (1987). This, likewise, was a suit between the plaintiff and a City of Detroit bus. There may be non-economic loss damages to which governmental immunity may be applicable, but not in the economic damages covered by the no-fault PIP benefits required to be paid.

For the reasons stated above, the motions for summary disposition filed by the County of Muskegon and Michigan Mutual Insurance are dismissed. The judgment for Auto-Owners operates for the benefit of Earl Beam, the titled plaintiff in this case. Implicit in the Auto-Owners' claim is a legal position identical to plaintiff Earl Beam, and technically he is included in the named relief. Therefore, the separate relief requested by his named and continuing attorney, Joseph VanLeuven, is superfluous, except for the portion of the attorney fees requested, which will be heard in a separate hearing. All motions for attorney fees

requested by the parties will be heard separately upon a taxed bill of costs being submitted to the Court.

Judgment for plaintiff Auto-Owners for the benefit of Earl Beam, Jr.

Dated: April 19, 1989

Honorable Michael E. Kobza
Circuit Judge
P16100