UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT F. SWANKIE and
BARBARA SWANKIE,

Plaintiffs,

-v-

D.L. PETERSON TRUST, a
Maryland Corporation,
jointly and severally,

Defendant.
_____/

CASE NO.: 89-CV-71161-DT

HONORABLE PATRICK J. DUGGAN

OPINION

Plaintiff, Robert Swankie[1], brings this action to recover damages for injuries allegedly resulting from an automobile accident which occurred on August 10, 1987. The driver of the motor vehicle was plaintiff's co-employee, James Walter Haran. Both plaintiff and Haran were employed by Hoechst Celanese Corporation ("HC") and both were acting in the scope and course of their employment at the time of the accident. Defendant, D.L. Peterson Trust was the lessor and HC, was the lessee of the subject motor vehicle. Plaintiff claims that "by virtue of M.C.L. 257.401 et seq. and the Michigan Common law, defendant, D.L. Peterson Trust, is liable [for plaintiff's injuries] as owner of said vehicle." Plaintiff's Complaint at ¶12. Defendant presently

[1] Although plaintiff's wife, Barbara Swankie, is also a named plaintiff in the present action (seeking loss of consortium), for ease of reference, this opinion will refer only to plaintiff Robert Swankie.

moves for summary judgment[2] arguing that: (1) it is not an "owner" of the subject motor vehicle pursuant to M.C.L. 257.401a; (2) the exclusive remedy provisions of the Michigan Worker's Compensation Act (M.C.L. 418.131) forecloses plaintiff's suit against his employer, HC, and (3) M.C.L. 418.827 immunizes plaintiff's employer from a collateral civil suit based on the negligence of a co-employee acting within the scope of employment.

Since this defendant is admittedly not plaintiff's employer, it is unclear to this Court why defendant asserts arguments 2 and 3 above. The "exclusive remedy" provision of the Worker's Compensation Act does not bar a claim against a party who is not an employer. In fact, the "exclusive remedy" provision may not bar a claim against a fellow employee if liability is asserted against the fellow employee based on ownership of the vehicle. Miller v. Massullo, 172 Mich.App. 752 (1988).

Plaintiff's primary assertion is that defendant is a "co-owner" of the subject vehicle with HC and that nothing in the language of either M.C.L. 257.37 or M.C.L. 257.401, as it existed on the day of the accident, precludes the existence of a joint ownership of a motor vehicle in Michigan.

At the time plaintiff's cause of action accrued[3] M.C.L.

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[2] Defendant brings this motion pursuant to Fed.R.Civ.P. 56(b) and/or Fed.R.Civ.P. 12(b). Because defendant's motion refers to matters outside the pleadings, this Court will treat it as one for summary judgment.

[3] A cause of action accrues when all the facts become operative and are known which in the present case would be August 10, 1987, the date of the accident. See In re Certified Questions, Karl v. Bryant Air Conditioning Co.,

257.401 stated, in pertinent part, the following regarding liability of an owner for negligent operation of a motor vehicle:

> The owner of a motor vehicle shall be liable for any injury occasioned by the negligent operation of such motor vehicle whether such negligence consists of a violation of the provisions of the statutes of the state or in the failure to observe such ordinary care in such operation as the rules the common law requires... .

M.C.L. 257.37, as it existed at the time the cause of action accrued, defined "owner" in the following manner:

> Sec. 37. "Owner" means: (a) Any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.
>
> (b) A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner.

Both M.C.L. 257.401 and M.C.L. 257.37 have since been amended, effective May 23, 1988, and now state in pertinent part:

> Sec. 401. (1) Nothing herein contained shall be construed to abridge the right of any person to prosecute a civil action for damages for injuries to either person or property resulting from a violation of any of the provisions of this act by the owner or operator of a motor vehicle, his or her agent or servant...

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416 Mich 558, 573 (1982).

> (2) A person engaged in the business of leasing motor vehicles who is the lessor or a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days shall not be liable at common law for damages for injuries to either person or property resulting from the operation of the leased motor vehicle.
>
> Sec. 37. "Owner" means any of the following:
> (a) Any person, firm, association, or corporation renting a motor vehicle or having the exclusive use therof, under a lease or otherwise, for a period that is greater than 30 days.
> (b) Except as otherwise provided in section 401a, a person who holds the legal title of a vehicle.***
> (Emphasis indicates language of amendment).

M.C.L. 257.401a, referred to in the amended version of 257.401 is a newly enacted section and states:

> Sec. 401a. As used in this chapter, "owner does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

In support of its argument for summary judgment, defendant cites to the above quoted amended statutes and points to affidavits attached to its brief which indicate that the subject vehicle was leased by HC from defendant for a period in excess of thirty days and that defendant is engaged in the business of leasing motor vehicles. Thus, defendant contends that pursuant to the amended statutes it is not an "owner" of the subject vehicle for purposes of the attaching civil liability under Michigan's Motor Vehicle Code.

In opposition to this argument, plaintiff does not dispute the facts as asserted by defendant, but rather, makes the assertion (without citation to case law or other authority), that because the effective date of the amendments was May 23, 1988, the amendments do not apply to this claim which arose on August 10, 1987.

> Generally, a statute is presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect.

Allstate Insurance Company v. Faulhaber, 157 Mich.App. 164, 166 (1987) (citation omitted).

> An exception to the general rule is recognized where a statute is remedial or procedural in nature. Hansen-Snyder Co v General Motors Corp, 371 Mich 480; 124 NW2d 286 (1963). Thus, statutes which operate in furtherance of a remedy or mode of procedure and which neither create new rights nor destroy, enlarge, or diminish existing rights are generally held to operate retrospectively unless a contrary legislative intention is manifested.

Franks v. White Pine Copper, 422 Mich 636, 672 (1985).

In this Court's opinion the amendments are remedial. Imposition of liability upon the owner for the negligence of another did not exist at common law. Geib v. Slater, 320 MIch 316 (1948). It was a "remedy" created by statute. The amendment does not deprive an injured plaintiff of a cause of action. It does not change the fact that the owner of the vehicle involved in the accident is liable to the plaintiff. It merely clarifies precisely who the "owner" is under section 401.

Prior to the amendments, courts had interpreted the language of the statute to impose liability on both the title holder and

lessee where the lease is for more than 30 days (and the lessee has no right to purchase). Mathews v. Wosek, 44 Mich.App. 706 (1973); Miller v. Massullo, supra. The legislature, by the amendments, has indicated its clear intention that both are not the owner. Where the title holder is in the business of leasing motor vehicles and leases a vehicle for more than 30 days, only the lessee is the owner.

The purpose of the owner's liability statute is to place the risk of damage or injury upon the person or entity who has ultimate control of the vehicle and thereby to promote safety in transportation. Sexton v. Ryder Truck Rental, 413 Mich 406, 437 (1982). Designating the lessee as the "owner" fulfills this purpose. Thus, this Court holds that the statutory amendments and additions imply an intention to reform existing rights and/or serve to clarify existing uncertainty and are therefore remedial and should be given retroactive effect. It is therefore this Court's conclusion that defendant is not an "owner" under section 401. Defendant's Motion for Summary Judgment must therefore be GRANTED.

An order shall issue forthwith.

DATED: DEC 22 1989

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies sent to:
Sheldon L. Miller, Esq.
Stephen T. Moffett, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEC 22 1989

ROBERT F. SWANKIE and
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D.L. PETERSON TRUST, a
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CASE NO.: 89-CV-71161-DT

HONORABLE PATRICK J. DUGGAN

ORDER
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

At a session of said Court, held in the U.S. District Courthouse, City of Detroit, County of Wayne, State of Michigan on DEC 22 1989

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT

This matter is before the Court on defendant's Motion for Summary Judgment. For the reasons set forth in an opinion issued this date.

IT IS ORDERED that defendant's Motion for Summary Judgment be and the same is hereby GRANTED and plaintiff's complaint is DISMISSED.

DATED: DEC 22 1989

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Pursuant to Rule 77(d),
Fed.R.Civ.P. copies
mailed this date to the
following parties:
Sheldon L. Miller, Esq.
Steven T. Moffett, Esq.