

S T A T E O F M I C H I G A N
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

GREAT LAKES AMERICAN LIFE
INSURANCE COMPANY,

Plaintiff,

vs.

CASE NO. 89-64911-CK

CITIZENS INSURANCE COMPANY
and CRUZ PAIZ,

Defendants.

HONORABLE DAVID SOET

OPINION

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HONORABLE DAVID SOET
Circuit Judge

OPINION

All parties have moved for summary disposition pursuant to MCR 2.116(C)(10) and all relevant factual issues appear to be determined or admitted.

The Court believes that injured auto accident victims have a right to recovery of a full panoply of damages, both economic and non-economic, under the No-Fault Act except when the injuries fail to meet its threshold requirements. A contrary holding - such as Plaintiff here seeks - would create a constitutionally-defective distinction between injured persons who would have to reimburse health insurance carriers for medical expenses under subrogation clauses and those who could recover and keep their

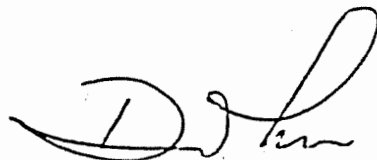
full and just award. While the Supreme Court did not quite reach this conclusion in *Great American Insurance v Queen*, 410 Mich 73 (1980) (compare the majority opinion, at 97, and concurring opinion, at 114-116), it did reach that result in *Sibley v DAIIE*, 431 Mich 164 (1988) although it did not give its decision a constitutional sheen. The question hence is whether Plaintiff Great Lakes or Defendant Citizens Insurance is responsible for payment of all Cruz Paiz medical bills.

Plaintiff relies on *Foremost Life Ins Co v Waters*, 415 Mich 303 (1982) which factually appears to be on all fours with the case at bar. While the *Waters* decision is somewhat difficult to reconcile in light of its predecessor, *Queen*, this Court notes that *Waters* appears to be a narrow holding which never considers the underlying policy issues relative to priorities on payment of PIP benefits with which the Court came to grips in *Federal Kemper v Health Ins*, 424 Mich 537 (1986). The Court concludes that *Federal Kemper* clearly, by implication, overrules *Foremost Life Ins Co v Waters*.

A secondary issue might arise, grounded on *Sibley*, supra, as to whether Plaintiff or Defendant Citizens should pay as that decision would justify Citizens paying if Plaintiff Great Lakes did not. On this issue, the Court is of the opinion that *Federal Kemper* applies to require payment of medical expenses by the health insurance carrier. Sibley merely justifies and redirects the obligation for payment of an injured person's medical

expenses when, by reason of a preempting federal statute, liability for such costs cannot be imposed on a health insurance carrier. That situation does not here arise.

The motion of Plaintiff Great Lakes for summary disposition is denied and the motion of Defendant Paiz is granted pursuant to MCR 2.116(C)(10) as against Plaintiff. The motion of Defendant Citizens for summary disposition is also denied being without merit on the legal issue raised.

A handwritten signature in dark ink, appearing to read 'H. David Soet', is written over a horizontal line.

H. DAVID SOET, Circuit Judge

DATED: April 5, 1990