UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHNNIE RAY VANOVER and
GOLDA VANOVER,

Plaintiffs,

and

CHILTON INSURANCE COMPANY,

Intervenor,

v.

COMMERCIAL CARRIERS, INC.
and THOMAS McGOWAN,

Defendants,

and

GRANITE STATE INSURANCE COMPANY,
OLD REPUBLIC INSURANCE COMPANY,
and CITIZENS INSURANCE COMPANY
OF AMERICA,

Third Party Defendants.
_____/

File No. 1:90-CV-252

HON. ROBERT HOLMES BELL

O P I N I O N

Nine motions are currently pending in this auto negligence case.[1] In order to put the motions in context the Court will summarize the facts which gave rise to Plaintiffs' claims and the

[1]Granite State Insurance Company's opposition to first amended complaint (Docket # 77); Old Republic Insurance Company's motion for summary judgment (Docket # 83); Chilton Insurance Company's motion for summary judgment and amended motion for summary judgment (Docket #'s 84 & 91); Granite State Insurance Company's motion for summary judgment (Docket # 85); Plaintiff Golda Vanover and Plaintiff Johnnie Ray Vanover's motions for order to withdraw funds from the registry of the court (Docket #'s 86 & 87); Old Republic's motion for reconsideration of opinion and order of July 25, 1991 (Docket # 89); and Citizens Insurance Company's motion for summary disposition (Docket # 92).

year limit for wage loss pursuant to section 3109(1) of the Michigan no-fault law. In an opinion dated July 25, 1991, this Court held that Chilton could impress its lien for the full amount of benefits paid. Plaintiff was granted leave to add Granite State, his no-fault insurer, as a party.

Plaintiffs entered into a settlement with Commercial Carriers and McGowan for $235,000. The settlement documents indicate that this amount was allocated as $100,000 to Johnnie Ray Vanover for noneconomic losses, and $135,000 to his wife Golda Vanover for loss of consortium. The settlement money was deposited in the court pending a determination of the effect of the allocation on Chilton's lien, and pending resolution of Plaintiffs' new claims against Granite State.

On October 18, 1991, Plaintiff filed a "Third-Party Complaint" against Granite State seeking judgment for the amount of medical expenses paid by Chilton. Granite State filed a counterclaim against Plaintiff seeking reimbursement for no-fault benefits mistakenly paid. Granite State claims that Plaintiff was not entitled to no-fault benefits because he was not "an occupant" of the vehicle at the time of the accident that caused the injury.

On October 29, 1992, Plaintiffs filed an amended third party complaint adding Old Republic Insurance Company (insurer for Commercial Carriers) and Citizens Insurance Company of America (insurer for Baker). Plaintiff seeks judgment against the three insurance companies for the amount of medical expenses paid by Chilton.

party recovery to the extent that the workers' compensation payments exceed no-fault benefits. Hearns v. Ujkaj, 180 Mich.App. 363, 367-68, 446 N.W.2d 657 (1989), app. den., 434 Mich. 907 (1990).

Under Texas law there is no similar limitation on a workers' compensation carrier's right to reimbursement for benefits paid out of the workers' compensation claimant's tort recovery against a third party.

> If at the conclusion of a third party action a worker's compensation beneficiary is entitled to compensation, the net amount recovered by the claimant from the third party action shall be applied to reimburse the insurance carrier for past benefits and medical expenses paid.

Tex. Rev. Civ. Stat. art. 8308-4.05 (formerly Tex. Rev. Civ. Stat. art. 8307, § 6a(c)).

In the July 25, 1991, opinion, this Court recognized the conflict between the operation of the Michigan No-Fault Insurance Act M.C.L. § 3101 et seq.; M.S.A. § 24.13101 et seq., and the Texas Workers Compensation Act. Because this is a diversity action, the Court was obligated to apply the law it believed the highest court of the state would apply if it were faced with the issue. Mahne v. Ford Motor Co., 900 F.2d 83, 86 (6th Cir.), cert. denied, 498 U.S. 941 (1990). This Court determined, on the basis of Sibley v. Detroit Auto. Inter-Insurance Exchange, 431 Mich. 164, 427 N.W.2d 528 (1988), that Michigan courts would give effect to the Texas statute.

In Sibley the Michigan Supreme Court held that § 3109(1) of the no-fault insurance act did not apply to the benefits plaintiff

believes that the auto insurers have raised an important issue which was not adequately briefed or considered in this Court's original opinion. Their cogent arguments merit this court's reconsideration of its prior opinion.

In their motions for reconsideration the auto insurers contend that Sibley is distinguishable because it involved a lien arising under FECA, a federal law. A FECA beneficiary who receives money from a third party must refund to the United States the amount of compensation paid by the United States. 5 U.S.C. § 8132. The section is mandatory in nature: "No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States." 5 U.S.C. § 8132. The Sibley court was compelled to give effect to the federal law under the doctrine of federal preemption.

The instant case differs from Sibley because the lien at issue arises under another state's laws, not under federal law. Federal preemption is accordingly not implicated. The sovereignty of a state statute does not extend beyond the territorial limits of the state except so far as is allowed by State comity. Thus, there is no requirement that courts in Michigan give effect to Texas workers compensation lien law. Whether to do so involves considerations of comity.

"The rule of comity is not allowed to operate when it will contravene the rights of a citizen of the State where the action is brought." Keehn v. Charles J. Rogers, Inc., 311 Mich. 416, 425, 18

> The history of § 3109(1) indicates that the Legislature's intent was to require a set-off of those government benefits that duplicated the no-fault benefits payable because of the accident and thereby reduce or contain the cost of basic insurance.

Id. at 544. "Because the first-party insurance proposed by the act was to be compulsory, it was important that the premiums to be charged by the insurance companies be maintained as low as possible." Id. at 547.

In Queen, the Michigan Supreme Court noted that the provision requiring set-offs is directed to the allocation of costs between insurance systems:

> The provision which requires this subtraction applies to all benefits paid under state or federal law and expresses a legislative decision to forbid double recovery under government programs and to allocate the cost of providing the minimum level of benefits mandated by the no-fault act as much as possible to other sources.

Queen, 410 Mich. at 95.

It is clear from the language of the statute that the legislature also determined that this section is applicable to both domestic and out-of-state workers' compensation carriers:

> Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury.

M.C.L. § 500.3109; M.S.A. § 24.13109 (emphasis added).

The Michigan workers' compensation program, like the Texas workers compensation program, contains a reimbursement provision that appears to allow the workers' compensation carrier full reimbursement from an employee's tort recovery. See M.C.L. § 418.827(5); M.S.A. § 17.237(827)(5). Nevertheless, the Michigan

reverses the priority scheme set forth by the Michigan legislature, it violates the Michigan public policy in favor of set-offs for the no-fault carrier and it thwarts the public policy of keeping auto insurance rates down.

There are additional considerations that prompt this Court's reconsideration of its earlier decision. As shown by this case, to allow the Texas workers compensation carrier to enforce its lien under Texas law is practically unworkable. It leaves the question of primary responsibility for payment unsettled, it requires the re-opening of files after passage of time and destruction of evidence, it prevents the insurer ultimately responsible for payment from being able to monitor medical costs at the time they are incurred, and it causes delays in the ultimate payment of benefits to the injured worker. The Court believes that such a result is contrary to both Michigan and Texas public policy.

Upon reconsideration, the Court believes that Sibley is distinguishable, that it should not be followed in this case, and that comity does not require the Court to give effect to Texas law regarding the extent of a workers compensation lien. Accordingly, Defendant insurers' motions for reconsideration must be granted, and this Court's opinion and order dated July 25, 1991, will be vacated. Moreover, Plaintiffs' motion for partial summary judgment against Chilton will be granted and Chilton's lien will be limited to the amount paid in excess of no-fault benefits. The Court regrets the inconvenience caused by the earlier opinion. The Court is convinced, however, that it is beneficial to all parties to

denied.

V.

Plaintiffs Johnnie Ray Vanover and Golda Vanover have filed motions to withdraw funds from the registry of the court. The motions request the full amount of the settlement ($235,000) to be paid over to Plaintiffs and their attorney.

The Court has determined that Chilton is entitled to a lien on the settlement to the extent of those payments it made in excess of no-fault benefits. Since Plaintiffs' motion does not account for Chilton's valid lien, Plaintiffs' motions must be denied.

Chilton and Plaintiffs shall submit an order to this court for disbursement of funds consistent with this opinion within 30 days.

VI.

In summary, this Court concludes that Chilton's lien is limited to the benefits paid in excess of no-fault benefits, that Plaintiffs' first amended third-party complaint against Granite State, Old Republic and Citizens must be dismissed, that Chilton's motion for summary judgment must be denied, and that Plaintiffs' motions to withdraw funds must be denied.

The Court still has before it Granite State's counterclaim. In its counterclaim Granite State seeks reimbursement for the $93,403.22 it paid Mr. Vanover in no-fault benefits (three years wage loss benefits) under the allegedly mistaken belief that Mr. Vanover was an occupant of the vehicle under M.C.L. § 500.3114(3).

Granite State's counterclaim is not currently before the Court as neither Granite State nor Plaintiffs have filed a motion for

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ORDER AND JUDGMENT

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Defendant Old Republic's motion for reconsideration of opinion and order of July 25, 1991 (Docket # 89) is **GRANTED.**

IT IS FURTHER ORDERED that this Court's opinion and order dated July 25, 1991, are **VACATED.**

IT IS FURTHER ORDERED that Old Republic Insurance Company's motion for summary judgment (Docket # 83), Granite State Insurance Company's motion for summary judgment (Docket # 85) and Citizens