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

JOHNNIE RAY VANOVER and
GOLDA VANOVER,

Plaintiff,

and

CHILTON INSURANCE COMPANY,

Intervenor,

File No. 1:90-CV-252

v.

HON. ROBERT HOLMES BELL

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.
_____/

O P I N I O N

This matter is before the Court on cross-motions for summary judgment filed by Counter-Plaintiff Granite State Insurance Company and Plaintiffs Johnnie Ray and Golda Vanover on Granite State's claim for recovery of no-fault benefits mistakenly paid to Plaintiff Johnnie Ray Vanover.

The procedural history and factual background of this case are set forth in detail in this Court's opinion of August 5, 1993. There is no dispute as to the operative facts as they relate to the current motions. On January 6, 1988, Plaintiff Johnnie Ray

Vanover's truck was struck by a car driven by Anita Baker. Plaintiff pulled to the side of the exit ramp and crossed I-94 to exchange information with Baker. They were both hit by a truck driven by Thomas McGowan and insured by Commercial Carriers. Anita Baker was killed in the accident and Plaintiff Johnnie Ray Vanover was injured. Granite State, the insurer of Plaintiff's truck, paid Plaintiff wage loss benefits in the amount of $93,403.22 under the Michigan No-Fault Act.

At issue before the Court is Granite State's counterclaim against the Plaintiffs. Granite State claims it is entitled to reimbursement of the no fault benefits paid because it paid Plaintiff wage loss benefits pursuant to section 3114(3) of the Michigan No Fault Act, M.C.L. 500.3114(3); M.S.A. § 24.13114(3), under the mistaken belief that Mr. Vanover was an "occupant" of his employer's vehicle at the time of the accident. Granite State contends that there is no question of fact that Mr. Vanover was not an "occupant" of the vehicle at the time of the accident, and that it is accordingly entitled to reimbursement of the no fault benefits paid.

For purposes of this motion the Court will assume that Mr. Vanover was not an "occupant" of his employer's vehicle at the time of the accident. The only issue remaining is whether Granite State is entitled to recover the benefits paid under the mistaken belief that Mr. Vanover was an "occupant."

Granite State does not seek reimbursement under any provision of the No-Fault Act. Instead, it claims it has a common law right

of reimbursement for payments mistakenly made. In support of this contention Granite State cites Couper v. Metropolitan Life Ins. Co., 250 Mich. 540 (1930). In Couper the insurance company overpaid disability benefits "by reason of an error committed by one of defendant's employees." Id. at 541-42. The Court held that the insurance company was entitled to reimbursement:

> It is well settled law that a payment, although voluntarily made, if made under a mistake of a material fact, may be recovered, even if the mistake be due to a lack of investigation.

Id. at 544.

The no-fault act did not abolish the common-law right to recover payments made under a mistake of fact. (Adams v. Auto-Club Ins. Co., 154 Mich.App. 186, 194-95 (1986)). In Adams the no-fault insurer made a mistake of fact concerning plaintiff's average income and as a result made an overpayment of wage loss benefits. The court held that the insurer was entitled to reimbursement for the overpayment.

Granite State's reliance on Couper and Adams is misplaced. First, in those cases the insureds received more benefits than they were due. That is not the case with Mr. Vanover. There is no question that he was entitled to no-fault wage loss benefits. The only question Granite State raises is who was required to make those payments.

Because payments were unquestionably due from one insurer or another, what we are faced with is a priority problem. In such a case Granite State's remedy is to seek recoupment from other insurers, not reimbursement from the victim of the accident.

> [W]henever a priority question arises between two insurers, the preferred method of resolution is for one of the insurers to pay the claim and sue the other in an action of subrogation. This resolution permits the insured person to receive prompt payment while the insurers thereafter dispute their liabilities.

Allstate v. Citizens Ins. Co., 118 Mich.App. 594, 603-04; 325 N.W.2d 505 (1982)(citations omitted). See also State Farm Fire & Cas. Co. v. Citizens Ins. co., 100 Mich.App. 168, 177; 298 N.W.2d 651 (1980).

Second, Couper and Adams allowed reimbursement where the overpayment was the result of a mistake of fact. Significantly, Granite State has not argued that it made the no-fault payments to Mr. Vanover based upon a mistake of fact. Neither has it come forward with any evidence that it did not know the location of Mr. Vanover vis-a-vis his automobile at the time of the accident, or that it was mistaken or misled as to the facts surrounding the accident.

It is a general rule that equity will not relieve against a mistake of law. Stone v. Stone, 319 Mich. 194, 198 (1947). A mistake of law, unlike a mistake of fact, ordinarily will not be forgiven. Smith v. General Mortgage Corp., 73 Mich.App. 720, 727 (1977). This rule, however, is not absolute, especially where it would impose an undeserved loss on one party while simultaneously conferring an unearned benefit upon the other. Id. In fact, Michigan courts do not always draw a strict distinction between mistakes of fact and mistakes of law:

> The important question was not whether the mistake was one of law or fact, but whether the particular mistake

> was such as a court of equity will correct, and this depends upon whether the case falls within the fundamental principle of equity that no one shall be allowed to enrich himself unjustly at the expense of another by reason of an innocent mistake of law or fact entertained by both parties.

Moritz v. Horsman, 305 Mich. 627, 634 (1943).

Several factors convince this Court that equity does not dictate that Plaintiffs should refund the no-fault benefits received from Granite State.

First, as discussed previously, Plaintiff has not been unjustly enriched. He was entitled to wage loss benefits. Second, at the time of Plaintiff's accident in 1988, the contours of the term "occupant" as used in the no-fault law were not clear. Michigan courts were applying inconsistent definitions. Cf. Royal Globe Ins. Cos. v. Frankenmuth Mut. Ins. Co., 419 Mich. 565 (1984)(woman injured in garage after exiting automobile was not an "occupant"), with Nickerson v. Citizens Mutual Ins. Co., 393 Mich. 324 (1975)(Pre-no-fault case--plaintiff who was injured while standing in front of stalled car on the roadside met policy's "occupancy" requirement). See also 7 Michigan Lawyers Weekly 303 (January 18, 1993); 5 Michigan Lawyers Weekly 1135 (August 12, 1991). Recently in Rohlman v. Hawkeye Security Ins. Co., 442 Mich. 520 (1993), the Michigan Supreme Court reversed the lower court's reliance on Nickerson. The Court held that "occupant" should be given its common meaning, and that meaning does not include one who was not physically inside the vehicle when the accident occurred. Id. at 532.

Notwithstanding the recent decision in Rohlman, given the

state of the law in 1988, it would not have been unreasonable for the parties to believe that Plaintiff Vanover was an "occupant" of the vehicle at the time of the accident because he had only temporarily exited his vehicle after a collision to exchange information and to render aid to another motorist as required by law. M.C.L.§§ 257.618 & .619; M.S.A. §§ 9.2318 & .2319.

It was not until November 27, 1991, that Granite State filed its counterclaim against Plaintiffs claiming that Plaintiff was not an "occupant" and seeking reimbursement of the benefits paid. The goal of the no-fault act was to provide victims of motor vehicle accidents "assured, adequate, and prompt" reparation for certain economic losses. Shavers v. Attorney General, 402 Mich. 554, 579 (1978). These purposes would not be served if the Court invited no-fault providers to attempt to later recover payments made based upon the Michigan courts' changing interpretation of the no-fault act.

It is well settled that the right to restitution is terminated or diminished if circumstances have "so changed that it would be inequitable to require the other party to make full restitution." Moritz, 305 Mich. at 635. Adams recognized that a payment made under a mistake of fact could only be recovered "provided the payment has not caused such a change in the position of the payee that it would be unjust to require a refund." 154 Mich.App. at 194. It would not be recoverable if the plaintiff could establish some detrimental reliance. Id.

In this case Granite State's payment of no-fault benefits to

Mr. Vanover has caused a change in Mr. Vanover's position such that it would be unjust to require a refund. Due to the lapse of time Mr. Vanover is now foreclosed by statute from recovering these no-fault benefits from other insurers who might have been liable. M.C.L. § 500.3143; M.S.A. § 24.13143.

In view of the fact that there is no allegation that Mr. Vanover did anything to mislead Granite State, it would be unfair to penalize Mr. Vanover for Granite State's late decision that it was under no duty to pay wage loss benefits.

For all these reasons, the Court finds that Plaintiffs are not liable to Granite State for reimbursement of no-fault benefits. Accordingly, Granite State's motion for summary judgment is denied, Plaintiffs' motion for summary judgment is granted, and judgment is entered for Plaintiffs on Granite State's counterclaim.

An order consistent with this opinion will be entered.

Date: January 3, 1994

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

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ORDER AND JUDGMENT

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Granite State Insurance Company's motion for summary judgment (Docket # 110) is **DENIED.**

IT IS FURTHER ORDERED that Plaintiffs Johnnie Ray Vanover and Golda Vanover's motion for summary judgment (Docket # 112) is **GRANTED.**

IT IS FURTHER ORDERED that **JUDGMENT** is entered for Plaintiffs Johnnie Ray Vanover and Golda Vanover on Granite State Insurance Company's counterclaim.

Date: January 3, 1994

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE