

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENISE SIMS and JOSEPH SIMS,

Plaintiffs-Appellees,

and

ITT HARTFORD,

Intervening Plaintiff-Appellant,

v

AVIS RENT A CAR SYSTEM, INC.,

Defendant.

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UNPUBLISHED

July 23, 1999

No. 206569

Wayne Circuit Court

LC No. 95-533364 NO

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Intervening plaintiff (ITT) appeals as of right from an order dismissing the case between plaintiffs and defendant and denying its lien. We reverse and remand.

In November 1994, plaintiff Denise Sims, a Texas resident employed in Michigan, flew into Detroit Metropolitan Airport. As plaintiff boarded a shuttle bus owned and operated by defendant, the rear door of the bus closed, squeezing plaintiff's body. Fellow passengers forced open the door, freeing plaintiff and helping her inside. As the bus driver proceeded to the rear of the bus, apparently to ascertain what had happened, the bus began to move forward. Plaintiff was injured after the driver returned to the front of the bus and slammed on its brakes, causing plaintiff, who had been standing, to fall to the floor. After plaintiff filed the instant suit, ITT sought to intervene. ITT asserted that it had paid plaintiff in Texas over \$68,000 as the worker's compensation insurance carrier for plaintiff's employer, Republic Bancorp, and it was therefore entitled to a share of whatever plaintiff might recover against a third party tortfeasor. Eventually, the parties stipulated that ITT would intervene as a silent party plaintiff. The stipulation further provided that neither plaintiff nor defendant waived any objections to ITT's claim of entitlement to a lien on any proceeds plaintiff might recover in this action. Plaintiffs and

defendant subsequently entered a settlement agreement pursuant to which plaintiffs received \$400,000. The trial court ultimately determined that under Michigan law ITT was not entitled to any portion of these proceeds, and entered the order of dismissal from which ITT appeals.

At the outset, we note plaintiffs' insistence that their dispute with ITT falls within the jurisdiction of the Michigan Bureau of Worker's Disability Compensation "by virtue of the simple fact that the plaintiff Denise Sims' injury occurred in this state." Plaintiffs cite several Michigan cases allegedly supporting their argument. Plaintiffs' position, however, is without merit. All of the cases cited by plaintiffs involved out-of-state employees injured in Michigan who had applied to the Michigan Bureau of Worker's Disability Compensation seeking worker's compensation benefits. Because plaintiff received the benefits, for which ITT now seeks repayment, in Texas and failed to even apply for a Michigan worker's compensation hearing until near the end of the trial court proceedings, this case is clearly distinguishable from those relied on by plaintiffs.

ITT contends that the trial court erred in dismissing its lien claim because plaintiff filed for and collected worker's compensation benefits in Texas, and therefore ITT's lien claim should have been determined according to Texas law, which entitles ITT to the lien. Whether ITT had a right to assert a worker's compensation lien against the settlement reached between plaintiffs and defendant is a question of law that we review de novo. *McKenney v Crum & Forster*, 218 Mich App 619, 622; 554 NW2d 600 (1996). A determination regarding ITT's entitlement to a lien depends on which state's law controls the analysis.<sup>1</sup> This Court also reviews de novo questions involving conflicts of law. *Burney v P V Holding Corp (On Remand)*, 218 Mich App 167, 171; 553 NW2d 657 (1996).

When more than one state's law is implicated in a particular suit, a court in determining which jurisdiction's law to apply must consider and balance the interests of each involved state. *Hall v General Motors Corp*, 229 Mich App 580, 585; 582 NW2d 866 (1998).

*Olmstead [v Anderson*, 428 Mich 1; 400 NW2d 292 (1987)] provides the analytical framework for deciding this case. That is, we will apply Michigan law unless a "rational reason" to do otherwise exists. In determining whether a rational reason to displace Michigan law exists, we undertake a two-step analysis. First, we must determine if any foreign state has an interest in having its law applied. If no state has such an interest, the presumption that Michigan law will apply cannot be overcome. If a foreign state does have an interest in having its law applied, we must then determine if Michigan's interests mandate that Michigan law be applied, despite the foreign interests. [*Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274, 286; 562 NW2d 466 (1997).]

Although this balancing approach most frequently favors using Michigan's law, Michigan courts nonetheless use another state's law where the other state has a significant interest and Michigan has only a minimal interest in the matter. *Hall, supra*.

In the instant case, Texas has an interest in having its law applied. Plaintiffs are permanent Texas residents. In September 1995, plaintiff filed a notice of injury and claim for compensation with

the Texas Workers' Compensation Commission for the November 1994 injuries she sustained on defendant's shuttle bus during the course of her employment with Republic Bancorp. Plaintiff received an amount between \$68,000 and approximately \$80,000 in worker's compensation benefits from ITT in Texas as a result of filing her Texas application. Based on these circumstances, we find that Texas possesses a significant interest in applying its law to ensure that insurers who pay worker's compensation benefits in Texas obtain reimbursement to the extent prescribed by the Texas Legislature.

Because we have determined that Texas has an interest in having its law applied, we must now consider whether any Michigan interests exist that would warrant application of Michigan law to the instant dispute despite Texas' interest in the matter. *Sutherland, supra*. Plaintiff's injury occurred in Michigan during the course of plaintiff's employment with Republic Bancorp. Furthermore, defendant owns and operates a car rental facility at Detroit Metropolitan Airport. Any potential Michigan interest related to defendant, however, has vanished because defendant itself has no further interest in this litigation; plaintiffs and defendant settled their action, and the only remaining issue involving the settlement is whether ITT may obtain a lien on the settlement proceeds. Although plaintiff filed a Michigan application for worker's compensation benefits, plaintiff did not file the application until June 9, 1997, several days after the trial court hearing regarding ITT's lien claim. No indication exists that ITT has paid plaintiff any worker's compensation benefits pursuant to this application. We note that the record does not contain evidence regarding Republic Bancorp's state of incorporation or the locations where it maintains operations, where Republic Bancorp entered their insurance agreement, or to what extent plaintiff actually worked in Michigan. Plaintiff's alleged that Republic Bancorp was a Michigan corporation, that ITT "availed [itself] of Michigan jurisdiction by selling workers' compensation insurance to a Michigan company where employees work in the State of Michigan," and that plaintiff spent "protracted periods of time working in the Detroit area." Even assuming the existence of these additional Michigan contacts, however, we conclude that these various Michigan contacts are insufficient to establish a Michigan interest in applying its law to this case. With respect to the only remaining issue between plaintiffs and ITT, that is to what extent ITT may recoup worker's compensation benefits it paid to the injured employee plaintiff, Michigan simply has no interest in applying its law to this determination where no Michigan worker's compensation benefits have been paid.<sup>2</sup>

Accordingly, we conclude that a rational reason exists for applying for applying Texas law in this case instead of Michigan law. *Sutherland, supra; Hall, supra*. The trial court therefore erred in dismissing ITT's lien claim on the basis that Michigan law required it to do so. Thus, we must remand so that the trial court may determine, applying Texas law, the specific amount of ITT's lien.<sup>3</sup>

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage  
/s/ Michael R. Smolenski  
/s/ Brian K. Zahra

<sup>1</sup> Both Michigan and Texas law allow a worker's compensation carrier that has paid benefits to seek reimbursement from any funds that the employee recovers in a third-party tort action. MCL 418.827; MSA 17.237(827); *Beaudrie v Anchor Packing Co*, 206 Mich App 245, 247-248; 520 NW2d 716 (1994); Tex Labor Code Ann 417.001; *Autry v Dearman*, 933 SW2d 182, 187 (Tex App, 1996).

The Michigan statute provides as follows:

(1) Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his or her dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with this section. If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. . . . Any party in interest shall have a right to join in the action.

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(5) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits. [MCL 418.827(1) and (5); MSA 17.237(827)(1) and (5).]

The Texas statute similarly provides as follows:

(a) An employee or legal beneficiary may seek damages from a third party who is or becomes liable to pay damages for an injury or death that is compensable under this subtitle and may also pursue a claim for workers' compensation benefits under this subtitle.

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the

legal beneficiary. If the recovery is for an amount greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiary, the insurance carrier shall:

- (1) reimburse itself and pay the costs from the amount recovered; and
- (2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary. [Tex Labor Code Ann 417.001(a) and (b).]

In Michigan, however, when an employee is injured in a motor vehicle accident in the course of his employment, his entitlement to compensation for his injuries, from all sources, is governed by the worker's compensation act and the no-fault act. *Great American Ins Co v Queen*, 410 Mich 73, 86; 300 NW2d 895 (1980). Thus, in cases governed by the Michigan act, worker's compensation carriers are only entitled to seek reimbursement for payments that did not substitute for no-fault benefits. *Id.* at 85. ITT argued that no such restriction existed under Texas law.

<sup>2</sup> The rationale behind applying Texas law in this situation is well-explained in the following passage:

When resolving a dispute over subrogation rights, there are strong reasons for applying the law of the state whose workers' compensation law was invoked by the employee-claimant to recover workers' compensation benefits. . . . First, subrogation rights in the worker's compensation situation arise exclusively under the applicable worker's compensation act. As a result, since the employer's right to subrogation, if any, is created by statute, the state statute creating such rights should be applied to determine each of the employer's rights and liabilities thereunder. Second, it has been determined that the state whose worker's compensation program is most significantly involved has the most significant interest in the application of its policies. Finally, the application of the statute assures uniform and predictable results and does not allow one party to take advantage of the portion he likes and disregard those portions of which he disapproves. [*Brown v Globe Union*, 694 F Supp 795, 798 (D Colo, 1988).]

See also Restatement Conflict of Laws, 2d, § 185, p 551, which suggests that

[t]he local law of the state under whose workmen's compensation statute an employee has received an award for an injury determines what interest the person who paid the award has in any recovery for tort or wrongful death that the employee may obtain against a third person on account of the same injury.

<sup>3</sup> Although the trial court's order specified the amount to which ITT would be entitled in the event this Court reversed its decision to deny ITT's lien, the record reflects that ITT disputed the accuracy of the trial court's figure.