STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA ANN MITCHELL,

Plaintiff-Appellant/Cross-Appellee,

v

TRAVELERS PROPERTY CASUALTY and CITIGROUP AND THE TRAVELERS,

Defendants-Appellees/Cross-Appellants,

and

TRAVELERS INDEMNITY COMPANY OF ILLINOIS,

Defendant-Appellee.

UNPUBLISHED
December 13, 2002

No. 234941
Saginaw Circuit Court
LC No. 00-032410-CK

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

Plaintiff appeals, and defendants cross appeal, from a judgment of the circuit court granting summary disposition to defendants. We affirm in part, reverse in part and remand.

Plaintiff is a resident of the state of Ohio. On July 10, 1996, while in the course of her employment by the Allen-Bradley Co, an Ohio corporation and a wholly owned subsidiary of Rockwell International Corporation, she was a passenger in an automobile driven by a co-worker, Timothy Driscoll, in the City of Saginaw. Their vehicle, a rental car registered and licensed in the State of Michigan, was struck by a vehicle driven by Kevin Beatty. At the time of the accident, defendant Travelers had issued a commercial insurance policy providing Rockwell and all of its subsidiaries with automobile insurance coverage. The policy was designed to be applicable in every state and specifically included underinsured/uninsured motorist coverage endorsements for every state, including Michigan and Ohio. In addition to obtaining a recovery

against Beatty, plaintiff commenced this action seeking to recover additional damages under the underinsured motorist coverage of the Travelers policy issued to Rockwell.[1]

The parties filed cross motions for summary disposition. The trial court granted defendants' motion, concluding that, while Ohio law applied, coverage was precluded because the policy required that plaintiff be occupying a vehicle registered or principally garaged in Ohio at the time of the accident. Plaintiff's appeal argues that the trial court misinterpreted Ohio law. Defendants cross appeal, arguing that, although the trial court correctly interpreted Ohio law, it erred in concluding that Ohio law, rather Michigan law, applies to this dispute. We agree with plaintiff that Ohio law applies and that the trial court misinterpreted Ohio law.[2]

We turn first to the issue raised on cross appeal, namely whether to apply Michigan or Ohio law to this dispute. Traditionally, Michigan applied a rule that a contract dispute is to be resolved by the law of the state in which the contract was entered into. *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 122; 528 NW2d 698 (1995). However, Michigan has moved away from this approach in favor of a more policy-centered approach. *Id.* at 122-123. The Court in *Chrysler* looked to 1 Restatement Conflict of Laws, 2d, § 188, as did the trial court in the case at bar, for guidance. That section provides as follows:

> (1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and to the parties under the principles stated in § 6.
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> (2) In the absence of an effective choice of law by the parties (see § 187), the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
>
> (a) the place of contracting;
>
> (b) the place of negotiation of the contract;

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[1] Coverage for plaintiff exists under an Ohio Supreme Court decision in *Scott-Pontzer v Liberty Mutual Fire Ins Co*, 85 Ohio St 3d 660; 710 NE2d 116 (1999), which held that under certain insurance policy definitions of "insured" an automobile insurance policy issued to a corporation provides coverage to all employees of the corporation, even where the employee was not acting in the scope of his employment and was not occupying a car owned by the employer. Although the trial court found, and defendants argue, that there is no coverage for other reasons, neither the trial court nor defendants argue that the language of the policy involved in the case at bar takes it outside the holding in *Scott-Pontzer*.

[2] We note that a related case, *Mitchell v Allen Bradley Co*, unpublished opinion per curiam of the Court of Appeals, issued April 16, 2002 (Docket No. 228252), previously dealt with a choice of law issue in determining the subrogation rights of plaintiff's employer against the settlement between plaintiff and Beatty to recover workers' compensation benefits paid plaintiff by her employer. Although we chose to apply Michigan law in that case, the underlying issues are different and that case does not control here.

(c) the place of performance;

(d) the location of the subject matter of the contract; and

(e) the domicile, residence, nationality, place of incorporation, and the place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Section 6 of the Restatement provides as follows:

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include:

(a) the needs of the interstate and international systems;

(b) the relevant policies of the forum;

(c) the relevant policies of other interested states and the relative interest of those states in determination of the particular issue;

(d) the protection of justified expectations;

(e) the basic policies underlying the particular field of law;

(f) certainty, predictability and uniformity of result; and

(g) ease in the determination and application of the law to be applied.

Turning to the applications of the factors in § 188(2), the trial court found the first, the place of contracting, to be of no use. The insurance contract was entered into in Pennsylvania, which has no interest in this dispute and neither party argues that Pennsylvania law should be applied. We agree with the trial court. Similarly, the trial court rejected, as do we, the place of negotiation of the contract.

The trial court also found the third factor, the place of performance, to be of minor importance. The trial court noted that performance was designed to be nationwide. We agree. We might give plaintiff a bit more consideration under this contract, however, than did the trial court inasmuch as the contract specifically included an Ohio endorsement for underinsured motorist coverage, the provision at dispute here, and plaintiff is an Ohio resident.

Turning to the fourth factor, the location of the subject matter of the contract, as the trial court noted, the insurance policy is an intangible and, therefore, this factor is of little relevance.

It is the fifth factor that the trial court found to be most useful, as do we. Plaintiff is a resident of the state of Ohio. Although it is not clear to us in which state Rockwell is incorporated, its subsidiary, and plaintiff's employer, Allen-Bradley, is an Ohio corporation. Plaintiff is seeking coverage under the policy specifically because the policy provides coverage to Allen-Bradley. On the other hand, Michigan has little involvement in this dispute, other than being the location of the accident and the place of domicile of the tortfeasor, who is not a party to this dispute. No party to the instant dispute is domiciled in Michigan nor does it appear that any of the corporations involved are incorporated in Michigan. While clearly the parties conduct some business in Michigan—plaintiff was in Michigan on company business at the time of the accident—that is not an overwhelming factor in the relationship of the parties. Like the trial court, we find the most significant connection to this case is the state of Ohio: Travelers issued an insurance policy to Rockwell to include coverage for its wholly-owned Ohio subsidiary, plaintiff is employed in Ohio by the subsidiary, and plaintiff resides in Ohio. Accordingly, the trial court properly concluded that Ohio law should apply.

Defendants also argue that the trial court did not give enough consideration to the factors listed in § 6. However, the clear language of § 188 indicates that the factors set forth in § 188 are the ones to be used in applying the principles of § 6. Therefore, the focus by the trial court on § 188 was appropriate. In any event, even if § 6 contains additional factors to be considered, we are not persuaded that it compels a different result. Although defendants raise a number of arguments on this point, we shall look briefly at the primary basis of defendant's argument, the advancement of Michigan public policy.

Defendant argues that Michigan law should prevail because a failure to do so would undermine Michigan public policy. We disagree. It is true that we will apply Michigan law, even where the parties agree in a contract to apply the law of another state, in order to uphold fundamental public policy of Michigan. See, e.g., *Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54; 554 NW2d 17 (1996) (Michigan franchise law applied to dispute between a Michigan franchisee and a Pennsylvania franchisor where the franchise agreement selected Pennsylvania law). The public policy that defendants identify as needing the application of Michigan law in order to be upheld is the enforcement of insurance contracts as written. However, there is no such public policy in Michigan that we will uphold the provisions of an insurance contract even where the contract fails to conform to statutory requirements. While it is true that the exclusion in the policy would likely be upheld under Michigan law, but not under Ohio law, that is because the exclusion fails to comply with a requirements of an Ohio statute in effect at the time of the accident. The mere fact that the Michigan insurance code differs on this particular point from the Ohio statute does not constitute a public policy of Michigan enforcing insurance contracts and Ohio not enforcing them. Indeed, if an insurance policy in Michigan were not in compliance with statute, we would enforce the statute.[3]

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[3] For example, Michigan's insurance code requires that fire insurance policies contain certain provisions. MCL 500.2833. Under defendants' theory, if a policy failed to contain those required provisions, we would enforce the policy rather than the statute because of Michigan's supposed public policy of enforcing insurance policies as written.

The distinction between the case at bar and the *Martino* case is that in *Martino*, Michigan law protected the rights of Michigan residents doing business in Michigan. In the case at bar, the accident that gave rise to the claim for coverage happened in Michigan, but the relationship between the parties largely exists in Ohio. That is, unlike in *Martino*, the rights of a Michigan citizen or business are not implicated in this case; by applying Ohio law we would not be ignoring statutory protections afforded by the Michigan Legislature that a Michigan resident would justifiably rely upon.

Also in the public policy arena, defendants argue that applying Michigan law would advance current Ohio public policy as reflected in changes to Ohio insurance law which occurred after the accident in the case at bar. While it may well be true that a different result would obtain under current Ohio law, we hardly view that as a strong reason to choose Ohio law over Michigan law. If Ohio perceived the need to apply its changes retroactively, then application of Ohio law would still achieve that result. However, defendants do not demonstrate that the changes in Ohio law are to be applied retroactively.

In sum, we agree with the trial court that Ohio law should be applied. Where an Ohio resident is looking to a policy intended to be applicable in Ohio to cover an Ohio business, it is reasonable that that Ohio resident would look to Ohio law to determine whether she had coverage. Similarly, the insurance company issuing a policy which clearly intended to cover insureds in Ohio should reasonably contemplate a need to comply with Ohio law. In short, coverage in Ohio was anticipated, an accident occurring in Michigan was happenstance. Therefore, we conclude that Ohio law should apply.

Having concluded that Ohio law applies, we now turn to the issue raised by plaintiff, namely whether the trial court erred in its conclusion that there was no coverage under Ohio law. We agree with plaintiff that the trial court misinterpreted Ohio law.

The trial court quoted Ohio Revised Code § 3937.18(a) as follows to support its conclusion:

> (A) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state *with respect to any motor vehicle registered or principally garaged in this state* unless both of the following coverages are offered to persons insured under the policy due to bodily injury or death suffered by such insured:
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> (1) Uninsured motorist coverage . . . .
>
> (2) Underinsured motorist coverage . . . [Emphasis added.]

The trial court read the highlighted phrase in the statute as meaning that underinsured motorist coverage only applied to vehicles registered or principally garaged in Ohio. This, however, ignores how Ohio courts have interpreted the statute. It is clear from a review of Ohio cases that a claimant in Ohio of uninsured or underinsured motorist coverage need not be occupying a motor vehicle registered or garaged in Ohio in order to be entitled to coverage.

In *Martin v Midwestern Group Ins Co*, 70 Ohio St 3d 478; 639 NE2d 438 (1994), the plaintiff was injured while riding a motorcycle and struck by an uninsured drunk driver. The plaintiff was insured by the defendant under an automobile insurance policy that named two automobiles, but not the motorcycle. The plaintiff sought coverage under the uninsured motorist coverage of the automobile policy. The defendant denied coverage on the basis of an "other owned vehicle" exclusion because the plaintiff was occupying a vehicle that he owned, but which was not named in the policy (i.e., the motorcycle). The Ohio Supreme Court held that the plaintiff was entitled to coverage, opining, *supra* at 482, as follows:

> Because we do not believe *Hedrick* [*v Motorists Mut Ins Co*, 22 Ohio St 3d 42; 488 NE2d 480 (1986)] is in accord with the law of our state, which is that uninsured motorist coverage was designed by the General Assembly to protect persons, not vehicles, we now expressly overrule it. If an insured is negligently injured by an uninsured motorist, he cannot be denied uninsured motorist coverage by a policy exclusion requiring that he be occupying an insured automobile under the policy.
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> Accordingly, we hold that an automobile liability insurance policy provision which eliminates uninsured motorist coverage for persons insured thereunder who are injured while occupying a motor vehicle owned by an insured, but not specifically listed in the policy, violates R.C. 3937.18 and is therefore invalid.

Similarly, the Ohio Supreme Court found that underinsured motorist coverage applied when the plaintiff was struck while riding a bicycle. *Bagnoli v Northbrook Property & Casualty Ins Co*, 86 Ohio St 314; 715 NE2d 125 (1999).

The misinterpretation by the trial court is that it read the Ohio statute as limiting the underinsured motorist coverage to vehicles registered or principally garaged in Ohio. However, the clear reading of the Ohio statute is that, under the statute as it existed at the time of the accident, insurers who offered a policy which covered a vehicle registered or principally garaged in Ohio were required to offer underinsured and uninsured motorist coverage. Thus, it is the issuing of a policy that covered an Ohio vehicle that triggered the requirement of offering underinsured and uninsured motorist coverage. Once the coverage was provided, as demonstrated by *Martin* and *Bagnoli*, it extended to all accidents involving the insured and an uninsured or underinsured vehicle, not just those accidents occurring while the insured was occupying a vehicle named in the policy.

Defendants point out that none of these cases specifically involved an accident occurring while the insured occupied a vehicle that was registered and principally garaged outside the state of Ohio. Defendants suggest that we are making a great leap to conclude that coverage would extend to such vehicles. We disagree. The Ohio Supreme Court has concluded that uninsured and underinsured motorist coverage applies when riding a non-covered motorcycle and while riding a bicycle. While it might be argued that the motorcycle constituted a motor vehicle registered and garaged in Ohio, the bicycle clearly was not. We see no reason to provide coverage while riding a bicycle, but not while riding in a vehicle registered and garaged in Michigan.

For the above reasons, we conclude that the trial court erred in determining that there was no coverage under Ohio law. The grant of summary disposition in favor of defendants is reversed. On remand, the trial court shall enter a grant of summary disposition in favor of plaintiff on the issue of coverage under the underinsured motorist benefits. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Michael J. Talbot