

STATE OF MICHIGAN
COURT OF APPEALS

SARAH PERRY,

Plaintiff-Appellee,

v

MICHAEL F. SIED,

Defendant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Intervening Defendant-Appellant.

UNPUBLISHED

July 31, 1998

No. 199915

Wayne Circuit Court

LC No. 94-407514 NI

Before: White, P.J., and Hood and Gage, JJ.

MEMORANDUM.

Intervening defendant Auto Club Insurance Association (ACIA) appeals as of right from an order granting plaintiff's motion for application of Ontario law. We affirm.

Plaintiff, a Michigan resident, suffered injuries in Ontario when her vehicle was rear-ended by defendant Sied, also a Michigan resident. She filed suit in Wayne Circuit Court. Sied's policy with ACIA provided for limits of \$20,000 in United States currency. Sied's insurer, ACIA, intervened after plaintiff asserted that Ontario's insurance limits of \$200,000 in Canadian currency applied under a Power of Attorney and Undertaking (PAU) document ACIA filed with the Canadian government. The parties agreed to submit the issue of damages to arbitration, at which plaintiff was awarded \$95,000 in United States currency. Plaintiff then renewed her motion to apply Ontario law. The trial court granted plaintiff's motion after finding this Court's decision in *ACIA v Lozanis*, 215 Mich App 415; 546 NW2d 648 (1996), controlling.

We agree that *Lozanis, supra*, is controlling. In *Lozanis*, the claimant was injured by an unidentified motorist in Ontario. *Id.*, pp 416-417. The claimant's uninsured motorist policy with ACIA

had \$20,000 limits. Although the claimant filed suit in Ontario, that suit was enjoined. *Id.*, p 417. This Court concluded that ACIA had agreed in the PAU filed with the Canadian

government not to assert policy limits below \$200,000 against an insured injured in Ontario. *Id.*, pp 419-420. ACIA was therefore subjected to Canadian law, and the fact that ACIA had filed suit in Macomb County was not dispositive, since it had agreed to provide coverage for its insureds traveling in Canada. *Id.*, p 420. The Court concluded that the PAU did not require that the action be filed in Canada. *Id.*

Following *Lozanis*, we conclude that here, too, the fact that the action was filed in Wayne County is not dispositive. The accident occurred in Ontario, and ACIA agreed in the PAU to provide coverage up to the Ontario limits. Although the claimant in *Lozanis* filed suit in Ontario, that suit was enjoined and was not the basis for this Court's decision applying the Ontario limits. Neither *Lozanis* nor the instant case involved an Ontario judgment. We find *Lozanis* to be controlling authority for the application of the Ontario limits in this case.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Hilda R. Gage