

# In The Court of Common Pleas, Licking County, Ohio

CLERK OF COURT  
LICKING COUNTY, OHIO

Dewey D. Keiffer,

Plaintiff,

v.

Hanover Insurance Co., et al.,

Defendants.

MAY 22 P 2:01

CASE NO. 00 CV 710

MEMORANDUM OF DECISION  
AND JUDGMENT ENTRY

## I. NATURE OF THE PROCEEDINGS

*This matter came before the Court on Plaintiff's Motion for Partial Summary Judgment. After consideration of the pleadings, affidavits, appropriate exhibits, and memoranda, this Court makes the following decision:*

## II. FACTS

On September 14, 1998, Plaintiff Dewey Keiffer was in a motor vehicle accident on I-95, in Liberty County, Georgia. At the time, Plaintiff was operating a semi-tractor trailer which was owned and insured by Cumbee Freight Systems Incorporated. The accident occurred when Plaintiff was driving southbound and the vehicle being operated by Defendant Santana Esquiél Dominquez pulled in front of Plaintiff's vehicle. Plaintiff's vehicle struck the vehicle being operated by Dominquez and flipped onto its left side, causing serious injuries to the Plaintiff. Defendant Dominquez was uninsured at the time of the accident.

Defendant Cumbee Freight Systems employed Plaintiff as a driver. Defendant Cumbee is an Illinois corporation with its principle place of business in Illinois. Plaintiff is an Ohio resident living in Heath, Ohio. Defendant Cumbee maintains facilities throughout the United States, including the Cumbee terminal in Newark, Ohio, where Plaintiff was employed. The vehicle operated by Plaintiff was registered and principally garaged in Ohio.

At the time of the accident, Defendant Cumbee Freight Systems and Defendant Hanover Insurance Company insured the truck being operated by Plaintiff under policy number ABZ

Judge  
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Judge  
Gregory E. Frost  
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4592758. There is no dispute the policy is an Illinois contract, even though the truck was registered and principally garaged in Ohio.

In his present Motion, Plaintiff seeks uninsured (hereinafter UM) motorist coverage under the Illinois policy. According to Plaintiff, although the Defendants signed a rejection of UM coverage in relation to the relevant policy, such rejection is invalid because it was executed months after the contract was entered into, and months after the date of the accident. In addition, Plaintiff argues the rejection form is invalid because it does not describe the coverage or coverage limits. According to Plaintiff, then, UM coverage exists as a matter of law pursuant to R.C. 3937.18. In response, Defendants do not address the merits of the UM coverage issue. Rather, the Defendants assert the present case is governed by Illinois law, rendering R.C. 3937.18 inapplicable to this case. Thus, Defendants argue Plaintiff's Motion must be denied.

### III. STANDARD OF REVIEW

The standard to be applied when construing a motion for summary judgment is set out in Ohio Rule of Civil Procedure 56(C), which states:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In applying this standard, a court must construe the evidence most strongly in favor of the non-moving party, and must not grant judgment unless "...reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made...." *Civ.R. 56(C)*.

Additionally, the Ohio Supreme Court has stated:

[A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claim....[T]he moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates

that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial....

*Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429, 674 N.E.2d 1164, 1171, quoting *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264, 274.

#### IV. CONCLUSIONS OF LAW

Plaintiff's Motion for Partial Summary Judgment must be granted. "It is well-settled in Ohio that in cases involving a contract, the law of the state where the contract is made governs interpretation of the contract." *Nationwide Mut. Ins. Co. v. Ferrin* (1986), 21 Ohio St.3d 43, 44, 487 N.E.2d 568, citing *Garlick v. McFarland* (1953), 159 Ohio St. 539, 545, 113 N.E.2d 92, 50 O.O. 445; and *Switzer v. Carroll* (CA 6, 1966), 358 F.2d 424, 426. With regard to conflict of law principles, the Ohio Supreme Court has also adopted Section 188 of 1 Restatement of the Law 2d, Conflict of Laws (1971), which states at 575:

In the absence of an effective choice of law by the parties..., the contacts to be taken into account...to determine the law applicable to an issue include:

- (a) the place of contracting;
- (b) the place of negotiations of the contract;
- (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 place of business of the parties....

In addition to the above applications, the Ohio Supreme Court has rendered a determination concerning choice of law by considering language of a particular policy.

In *Csulik v. Nationwide Mut. Ins. Co.* (2000), 88 Ohio St.3d 17, 723 N.E.2d 90, the Ohio Supreme Court construed an ambiguity in the relevant policy to render a determination that Pennsylvania law, as opposed to Ohio law, was applicable to a particular contract. In making this determination, the Ohio Supreme Court specifically stated, "[t]his case is simply one of an ambiguous clause in a particular insurance contract." *Id.*, at 20. Because the contract in *Csulik* set forth specific, yet conflicting, elements which had bearing upon jurisdiction, the court found the

contract language abrogated the general principle that the law of the state where a contract was entered into governed interpretation of that contract. Finally, because the contract provisions were conflicting, the court found ambiguity existed, and strictly construed the policy language against the insurer which led to the application of Pennsylvania law.

In addition to the above, the Ohio Supreme Court's decision in *Henderson v. Lincoln National Specialty Ins. Co.* (1994), 68 Ohio St.3d 303, 626 N.E.2d 657 must be discussed. In *Henderson*, the Ohio Supreme Court answered a certified question submitted by the United States District Court for the Northern District of Ohio, without further opinion, as follows:

The United States District Court for the Northern District of Ohio, Western Division, has certified the following question to us:

"Does Ohio Revised Code § 3937.18 apply to an automobile liability or motor vehicle liability policy of insurance covering vehicles registered and principally garaged in Ohio, when said policy was not delivered, or issued for delivery in Ohio by the insurer?"

The certified question is answered in the affirmative.

Plaintiff herein argues the above decision by the Ohio Supreme Court resolves the conflict of law question *sub judice*. Specifically, Plaintiff argues because the vehicle at issue was registered and principally garaged in Ohio, the Illinois policy covering that vehicle is subject to R.C. 3937.18. Moreover, Plaintiff asserts the *Henderson* case requires R.C. 3937.18 to apply, notwithstanding the fact the policy was issued in Illinois. In response, the Defendants argue pursuant to the holdings in *Ferrin and Gries, supra*, Illinois law is applicable to this case.

In considering the above authority, this Court finds its analysis must begin with the language of the contract. The relevant policy contains several provisions which have bearing on the choice of law issue. The first provision is found in the section discussing coverage, and states:

#### A. COVERAGE

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2. If this insurance provides a limit in excess of the amounts required by the applicable law where a covered "auto" is principally garaged, we will pay only after all liability bonds or policies have been exhausted by judgments or payments.

\*\*\*

Next, the policy includes the following language in an endorsement for Illinois changes, and states:

**CHANGES IN LIABILITY COVERAGE**

OUR LIMIT OF INSURANCE applies except that we will apply the limit shown in the Declarations to first provide the separate limits required by the Illinois Safety Responsibility Law....

Finally, the following endorsement concerning "ILLINOIS CHANGES – CANCELLATION AND NONRENEWAL," states:

**A. ... CANCELLATION**

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b. When this policy is in effect 61 days or more or is a renewal or continuation policy, we may cancel only for one or more of the following reasons by mailing you written notice of cancellation stating the reasons for cancellation.

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(6) A determination by the Director of Insurance that the continuation of the policy could place us in violation of the Illinois insurance laws.

It is undisputed the relevant policy is an Illinois contract. In addition, with the exception of the above, the policy contains no specific choice of law provision. Looking to the language of the above provisions, and being mindful of *Csulik*, this Court must determine if the above provisions have bearing upon jurisdiction, and if so, whether ambiguity exists in those provisions.

First, the Court finds the above provisions do have bearing, albeit indirectly, upon the jurisdictional question. The first provision, which is an excess clause, is worded in such a manner that it presumes the law of the state where a covered auto is principally garaged may apply to certain situations. Indeed, the first provision places jurisdiction directly at issue because it is based upon the presumption that some other law, *to wit*, the law where a covered auto is registered and principally garaged, will apply in certain situations. By including this provision, the Parties to the contract recognize Illinois law may not govern each situation. In addition, the second and third provisions discuss compliance with Illinois law, and presume Illinois law governs the contract. Because these provisions are all based upon an assumption of applicable law, the Court finds they have bearing on the jurisdictional question at bar.

clause may be construed to presume the contract could be or is subject to interpretation under a law outside of Illinois, such construction must be made if it favors the insured-Plaintiff.

In conjunction with the *Csulik* analysis, this Court must consider the Ohio Supreme Court's affirmative answer to the certified question raised in *Henderson v. Lincoln National Specialty Ins. Co.* (1994), 68 Ohio St.3d 303, 626 N.E.2d 657. As previously noted, the certified question asked "[d]oes Ohio Revised Code § 3937.18 apply to an automobile liability or motor vehicle liability policy of insurance covering vehicles registered and principally garaged in Ohio, when said policy was not delivered, or issued for delivery in Ohio by the insurer?" *Id.* The *Henderson* decision indicates R.C. 3937.18 is applicable to policies not delivered or issued for delivery in Ohio. Under *Henderson*, Ohio's uninsured/underinsured motorist coverage statute is applicable to the Illinois policy because the covered vehicle was registered and principally garaged in Ohio. Under this analysis, like the analysis under *Csulik*, Ohio law is applicable.

The analysis, however, cannot end here. As previously noted, in *Nationwide Mut. Ins. Co. v. Ferrin* (1986), 21 Ohio St.3d 43, 487 N.E.2d 568, the Ohio Supreme Court stated contract interpretation is generally governed by the law of the state where the contract is entered into. *Id.*, (citations omitted). In addition, the Ohio Supreme Court reiterated in *Ferrin*, that in the absence of a choice of law by the parties to a contract, certain contacts established by Section 188 of 1 Restatement of the Law 2d, Conflict of Laws (1971), must be considered. *Id.*, citing *Gries Sports Enterprises, Inc. v. Modell* (1984), 15 Ohio St.3d 284, 473 N.E.2d 807, at syllabus. Those contacts include the place of contracting; the place of negotiations; the place of contract performance; the location of the subject matter of the contract; and the domicile, residence, nationality, place of incorporation and place of business of the parties to the contract. *Ferrin, supra, citing Gries.*

Under *Ferrin* or *Gries*, Illinois law applies to the case at bar. First, the contract was entered into in Illinois. Second, the contract was negotiated in Illinois, and delivered in Illinois. Next, while the vehicle operated by Plaintiff was located in Ohio, said vehicle was only one of multiple

vehicles located nationwide which make up the subject matter of the contract. Finally, while Plaintiff is an Ohio resident living in Ohio, the Defendants are domiciled in Illinois with their place of business in Illinois. When construing all of the above, it is apparent that under the holdings of *Ferrin* and *Gries*, Illinois maintains more contacts, and therefore Illinois law is applicable.

In considering all of the above cited cases by the Ohio Supreme Court, this Court finds the holdings in *Csulik* and *Henderson* are dispositive of the choice of law issue *sub judice*. First, the pertinent contract provisions have indirect bearing on the choice of law question, similar to the provisions in *Csulik*. Also similar to *Csulik*, because the contract provisions have indirect bearing on the choice of law issue, they remove the policy from the general principal that the law of the state where the contract was entered into governs interpretation of the contract. In addition, when construing the policy provisions as a whole, those provisions are ambiguous. On the one hand, the excess clause is contained in the contract as a safeguard to limit the liability of the Defendants in relation to the financial responsibility requirements of an applicable law from a forum outside Illinois. Yet, the remaining clauses presume Illinois law will govern interpretation of the contract. Given this ambiguity in the provisions, the holding of *Csulik* requires this Court to strictly construe the Illinois policy against the Defendants, and liberally construe the Illinois policy in favor of the Plaintiff.

Likewise, the holding in *Henderson* is applicable because the facts in this case fall squarely under the question answered in *Henderson*. The policy in this case was not delivered or issued for delivery in Ohio, but the covered vehicle was registered and principally garaged in Ohio. Because these facts fall squarely into the certified question posed to the Ohio Supreme Court in *Henderson*, the affirmative answer to the question of whether R.C. 3937.18 applies to such a policy is dispositive. Thus, according to *Csulik*, *supra*, and *Henderson*, this Court finds Ohio law, and specifically R.C. 3937.18, is applicable to the Illinois policy herein.

Finally, because the Defendants' rejection of UM/UM coverage is invalid, such coverage exists pursuant to R.C. 3937.18 as a matter of law. Also, because R.C. 3937.18 requires UM/UM coverage equal the amount of the liability limits of a particular policy, the coverage available in this case is \$1,000,000.00, which equals the amount of liability coverage provided under the contract. Thus, Plaintiff's Motion for Partial Summary Judgment must be, and hereby is, granted as a matter of law.

#### V. CONCLUSION

Plaintiff's Motion for Partial Summary Judgment is granted. Accordingly, this Court holds: 1) uninsured motorist coverage is available to the Plaintiff under the relevant policy; 2) the amount of available coverage is \$1,000,000.00; and 3) Plaintiff is an insured under the relevant policy and entitled to make a claim for uninsured motorist coverage.

It is so ordered.

  
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Judge Jon R. Spahr

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