

IN THE COURT OF APPEALS OF IOWA

No. 2-721 / 12-0126
Filed October 31, 2012

**SHARON MOAD, Individually and as Personal Representative
of the ESTATE OF DOUGLAS MOAD, and as Personal
Representative on behalf of Travis Moad and Heather Johnson,**
Plaintiffs-Appellees,

vs.

**RICHARD LIBBY, as Personal Representative of the ESTATE OF
MATTHEW LIBBY, NORTHLAND INSURANCE COMPANY, and
PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD,**
Defendants,

and

**DAKOTA TRUCK UNDERWRITERS, RISK ADMINISTRATIVE
SERVICES, INC.,**
Intervenor-Appellant.

Appeal from the Iowa District Court for Johnson County, Nancy A.
Baumgarnter, Judge.

Intervenor appeals the district court's decision concluding Iowa law
applied to extinguish its workers' compensation lien. **REVERSED AND
REMANDED.**

Sasha L. Monthei of Scheldrup Blades Schrock Smith Aranza, P.C., Cedar
Rapids, for appellants.

Elizabeth J. Craig and Martin A. Diaz of Martin Diaz Law Firm, Iowa City,
for appellees.

Rene LaPierre of Klass Law Firm, L.L.P., Sioux City, for Northland
Insurance Company.

Frank Comito of Gaudineer, Comito & George, L.L.P, West Des Moines,
for Property and Casualty Insurance Company of Hartford.

Heard by Eisenhauer, C.J., and Vogel and Doyle, JJ. Vaitheswaran, J.,
takes no part.

VOGEL, J.

Douglas Moad, an over-the-road trucker, died following a motor vehicle accident that occurred while he was working in Iowa. In this appeal we review the district court's decision finding Iowa law applies to the question of whether a workers' compensation lien can be asserted against an employer's uninsured motorist policy. Dakota Truck Underwriters, Risk Administrative Services, Inc. (DTU), Moad's employer's workers' compensation carrier, asserts the district court erred in finding Iowa law applied to the question of whether DTU could recover the workers' compensation benefits provided to Moad and his family from the money received from Moad's employer's uninsured motorist carrier, Northland Insurance Company (Northland). DTU also asserts the district court erred in denying its motion to set aside the order approving the settlement of the uninsured motorist claims. Because we find the district court applied the wrong conflict of laws section, we reverse the district court's decision and remand for further proceedings.

I. BACKGROUND AND PROCEEDINGS.

Douglas Moad, a South Dakota resident, worked as an over-the-road truck driver for Gary Jensen Trucking Inc., which is a South Dakota corporation with its principle place of business in South Dakota. DTU issued Gary Jensen Trucking a workers' compensation insurance policy in South Dakota. DTU is also a South Dakota corporation with its principle place of business in South Dakota. Northland issued a liability insurance policy to Gary Jensen Trucking, which

included uninsured motorist coverage. Northland is a Minnesota corporation with its principle place of business in Minnesota.

On December 1, 2008, Douglas Moad and Matthew Libby were involved in a motor vehicle accident in Iowa. Libby was killed; Douglas was severely injured and died a few months later. Libby was uninsured. DTU paid workers' compensation benefits to Douglas and his wife Sharon Moad under its policy pursuant to South Dakota law.

On February 8, 2010, Sharon Moad, individually, as personal representative of Douglas's estate, and as personal representative on behalf of her and Douglas's children, Travis Moad and Heather Johnson (the plaintiffs), sued Libby's estate, along with Northland, and Property and Casualty Insurance Company of Hartford (Hartford), the Moads' personal automobile insurer. The plaintiffs' claims against Northland and Hartford sought uninsured motorist benefits. The plaintiffs sent DTU the original notice and petition of the lawsuit on February 25, 2011. DTU filed its notice of subrogation lien May 4, 2011. The plaintiffs eventually settled the uninsured motorist claim with both Northland and Hartford.¹ As part of that settlement, the plaintiffs received \$300,000 from Northland and \$2000 from Hartford. Northland agreed to contribute an additional \$100,000 to the plaintiffs if DTU was permitted to recover its subrogation lien

¹ The plaintiffs assert complications from the injuries sustained in the accident caused Douglas's death in February 2009. It appears this issue is still unresolved as part of the workers' compensation claim, which is currently on file in Iowa. However, for the purposes of the uninsured motorist settlement, the plaintiffs and Northland agreed the accident was solely Matthew Libby's fault and this fault "was the cause of damages sustained by the [plaintiffs]."

from Northland. The plaintiffs also agreed to file a motion to strike the lien to attempt to extinguish DTU's subrogation interest.

The plaintiffs sought approval from the court to accept the settlement and also filed a motion to strike or extinguish DTU's lien. Because the court approved the settlement before DTU was able to file a resistance, DTU sought to vacate the district court's approval. The court permitted DTU to intervene in the action and set DTU's motion to vacate for a hearing. After a hearing and additional briefing, the court denied DTU's motion to vacate the order approving the settlement and granted the plaintiffs' motion to strike or extinguish the subrogation lien. These rulings were based on the court's conclusion that Iowa law, rather than South Dakota law, applied to DTU's lien. DTU appeals this order asserting South Dakota law should apply.

II. SCOPE AND STANDARD OF REVIEW.

Our review of the court's order denying the motion to vacate and granting the motion to strike is for the correction of errors at law. Iowa R. App. P. 6.907. The district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

III. CONFLICT OF LAWS.

The question in this case centers on whether Iowa or South Dakota law applies to the recovery rights of a workers' compensation carrier from uninsured motorist benefits paid by an employer's uninsured motorist policy. The parties agree that if South Dakota law applies, DTU is entitled to recover its lien from Northland's policy. See *Kaiser v. N. River Ins. Co.*, 605 N.W.2d 193, 198 (S.D.

2000) (holding a workers' compensation carrier could recover its lien from the underinsured motorist policy of the employer). The parties also agree that if Iowa law applies, DTU has no right to assert its lien against the uninsured motorist coverage available to Moad. See *Michael Eberhart Constr. v. Curtin*, 674 N.W.2d 123, 129 (Iowa 2004) (holding a workers' compensation carrier could not recover its lien from the underinsured motorist policy of the employer).

In order to determine which state's law applies, Iowa employs the "most significant relationship" test contained in the Restatement (Second) of Conflict of Laws (Conflict of Laws). Both parties assert the applicable section from the Conflict of Laws is section 145, though DTU's attorney at oral argument for the first time asserted section 145 should not apply to this case.² Section 145 applies to "[t]he rights and liabilities of the parties with respect to an issue in tort." Restatement (Second) of Conflict of Laws § 145(1) (1971) [hereinafter Conflict of Laws]. This section was also employed by the district court in concluding that Iowa law applied to this case. The difficulty with applying section 145 to this case is that an uninsured motorist claim is a claim in contract, not in tort. *Wetherbee v. Economy Fire & Cas. Co.*, 508 N.W.2d 657, 659 (Iowa 1993). Conflict of Laws has a different section applicable to contract claims—section 188. Conflict of Laws § 188(1). Because the plaintiffs' claim against Northland is a contract claim, not a tort claim, we find the Conflict of Laws section applicable to this case is section 188.

² Under Conflict of Laws section 145(2) we analyze the following contacts to determine which state's law is applicable to an issue: "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered."

Conflict of Laws section 188(2) provides in the absence of a choice of law provision in the contract, we are to consider the following contacts in determining which state has the most significant relationship to the transaction and the parties: “(a) the place of contracting, (b) the place of negotiation 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 considering these contacts, we are to keep in mind the relevant factors of Conflict of Laws section 6:

- (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 interests of those states in the 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.

Id. at § 6.

In this case, section 188 first requires us to look to see if there is a choice of law provision in the contract at issue. *Id.* at § 188(2). The parties failed to provide Northland’s uninsured motorist policy or DTU’s workers’ compensation policy in the record on appeal in this case, so we are not able to determine if either contains a choice of law provision. Even if we were to assume there is no choice of law provision in either policy, we are still unable to resolve this case on appeal by analyzing the most significant relationship contacts as set forth in Conflict of Laws section 188(2), because the factual record was not developed at the trial court level as to these factors.

Absent from the record are: the place of contracting for either the uninsured motorist policy or the workers' compensation policy, the place of negotiation of the policies, the place of performance, and the location of the subject matter.

The domicile of the parties is the only factor that has been fully developed in the record because this factor is the same for both Conflict of Laws section 145 and section 188. Both Gary Jensen Trucking Inc. and Moad are domiciled in South Dakota. DTU is a South Dakota company, though it is unclear where it issued its workers' compensation policy to Gary Jensen Trucking, Inc. Northland is a Minnesota company, but again it is unclear where the uninsured motorist policy was issued.³

Ultimately, we find Conflict of Laws section 188 should have been applied and not section 145, and a remand is necessary to permit the parties and the district court to develop the factual record to analyze the contacts in section 188.

DTU asks us to apply Conflict of Laws section 185 to this case. Section 185 provides:

The 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.

This section specifically addresses which state's law should apply to the recovery rights of a workers' compensation carrier. However, Iowa has yet to adopt this

³ We acknowledge that counsel for DTU asserted at oral argument that the Northland policy was issued in South Dakota. However, as this assertion was not found anywhere in the record on appeal and we cannot accept counsel's statement as evidence to support this factor.

Conflict of Laws section. We leave it to our supreme court to determine whether or not section 185 of the Restatement (Second) of Conflict of Laws is to be adopted in Iowa. Until then, this case must be remanded to the district court for further proceedings to apply the Conflict of Laws section applicable to contract actions—section 188.

IV. CONCLUSION.

Because we find the district court applied the incorrect Conflict of Laws section to the question of which state's law applies to the recovery rights of a workers' compensation carrier from the uninsured motorist policy of an employer, we must reverse the district court's decision. A remand is necessary in this case for the district court to conduct further proceedings to develop the record to include the facts necessary to apply the correct Conflict of Laws section. We do not retain jurisdiction.

REVERSED AND REMANDED.