

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

GLENN E. YOUNKER	:	CASE NO. 06-CV-62991
	:	
Plaintiff,	:	JONATHAN P. HEIN, JUDGE
	:	
vs.	:	
	:	
EDS THIRD PARTY LIABILITY	:	
DEPARTMENT, et. al.	:	
	:	
Defendants.	:	JUDGMENT ENTRY -
	:	<u>Motion for Summary Judgment</u>

This matter came before the Court upon the motion for summary judgment as filed by Clarion Health Partners on January 19, 2007. The matter is now before the Court pursuant to a Briefing Schedule filed February 2, 2007 and the deadlines contained therein.

Case Facts

From the pleadings, the facts to resolve this matter are not in dispute. These facts include the unfortunate motor vehicle collision which occurred on December 22, 2004 in Darke County, Ohio, wherein Glenn Younker was severely injured. In response to his injuries, Mr. Younker was transported to various medical providers in Indiana. Eventually, he was discharged but continued to suffer permanent injuries as a result of the motor vehicle collision.

The tortfeasor in the collision was Seth G. Fourman, a resident of Darke County. Mr. Fourman was insured through American Family Insurance Group. As a result of settlement negotiations between counsel for Mr. Fourman and American Family Insurance, a settlement was reached whereby the policy limits of \$100,000 were paid to Mr. Fourman. His attorney received \$34,675.93 and the balance of \$65,324.07 was deposited with this Court for purposes of determining distributions to creditors.

Clarion Health Partners perfected a lien for the value of its medical services in the amount of \$23,633.91. Perfection of the lien was accomplished pursuant to the provisions of Indiana statute IC-32-33-4-2. Clarion Health Partners now claims that its perfected lien for \$23,633.91 should receive a higher priority of distribution when compared to other, unsecured creditors. The additional amounts due for creditors who have not been dismissed herein are as follows:

Indiana Family and Social Services	\$ 1,169.92
Clarian Radiology	\$ 1,120.00
Emergency Medical Group, Inc.	\$ 2,270.00
Clarian Health Partners (additional amounts)	\$125,733.64
Park Assoc. / Waters of Indiana	\$ 17,264.52
PRN Pharmaceutical Services	\$ <u>2,724.82</u>
TOTAL	\$150,282.90

Stated another way, there are remaining claims which total \$173,916.81 (\$23,633.91 + \$150,282.90) but remaining settlement proceeds of only \$65,324.07. [The claims of other defendants have been dismissed for failing to appear as previously ordered.]

Legal Analysis

The first question for the Court to consider is whether Indiana law should be applied to give the lien of \$23,633.91 a priority over other creditors.

In deciding this case, basic principles of contract law may be applied. These principles include the Court giving meaning to the intentions of the parties. When there is ambiguity, any written agreement should be construed against the party who drafted the agreement. *Faruque v. Provident Life & Accident Ins. Co.*, (1987), 31 Ohio St.3d 34; *Columbiana Co. Bd. of Commissioners v. Nationwide Ins. Co.* (1998), 130 Ohio App. 3d 8.

Regarding the choice-of-law analysis, "the parties to a contract are largely free to negotiate the law to be applied to disputes arising thereunder. See 1 Restatement of Conflicts at

15, Section 6, Comment g; see, also, *id.* at Section 187. However, this Court has not been provided with any documents from which to discern any agreements between the parties; indeed, the existence of such an agreement would be surprising in view of the nature of emergency medicine and the circumstances of Mr. Younker's arrival in Indianapolis. Therefore, an analysis under contract law appears less than helpful.

Therefore, the Court considers a choice of law analysis under a tort analysis since the accrual of the settlement proceeds were the result of tortious conduct. The law on this issue was succinctly stated in *Scanlon v. Pfaller*, 2006-Ohio-2022:

{¶¶6} In determining the choice of law, the court must take into account the following factors: the place of the injury; the place where the conduct causing the injury occurred; the domicile, residence, nationality, place of incorporation, and place of business of the parties; the place where the relationship between the parties, if any, is located; and any factors under Section 6 of Restatement of the Law 2d, Conflict of Laws 10, which the court may deem relevant to the litigation. *Id.*; *Bertram v. Norden*, 159 Ohio App.3d 171, 176-178, 2004-Ohio-6044.

Section 6 of 1 Restatement of the Law 2d, Conflict of Laws 10, 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 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 law to be applied.

Applying these principles, there are factors supporting both the application of

both Indiana law and the application of Ohio law. For the following reasons, the Court decides to apply Ohio law: (1) the tortious conduct which was the source of the funds involved herein

occurred in Ohio; (2) the tortfeasor apparently resided in Ohio; (3) the claims settlement process occurred in Ohio with counsel licensed by the State of Ohio representing the claimant; (4) local counsel were not aware of Indiana law and its priority claims, including priorities for hospitals and rights of an injured party to recover hedonic damages when settlement proceeds are insufficient to pay all medical bills; (5) both states' laws are equally compelling; (6) the filing of litigation in Ohio and the submission of the parties to this jurisdiction; and (7) the ease of determining under Ohio law the pending motion for summary judgment and Plaintiff's motion to amend his complaint.

Therefore, applying Ohio law, the Court determines that the priority claim of Clarian Health Partners is not recognized by this Court when applied to the distribution of proceeds on deposit with the Clerk of Courts. Similarly, the Court finds that the Plaintiff's motion to amend his complaint to seek additional hedonic damages is not granted.

The only remaining issue to adjudicate is the distribution of funds on deposit with the Clerk of Courts. After deducting the court costs of \$665.07, there remains the sum of \$64,659.00 to distribute. Each remaining defendant is entitled to a proportionate share of the proceeds, as follows (rounded off):

Indiana Family and Social Services 434.95	\$ 1,169.92 / \$173,916.81 =	0.6727%	\$
Clarian Radiology \$ 416.39	\$ 1,120.00 / \$173,916.81 =	0.6440%	
Emergency Medical Group, Inc.	\$ 2,270.00 / \$173,916.81 =	1.3052%	

\$ 843.92		
Clarian Health Partners	\$ 23,633.91 / \$173,916.81 =	13.5894%
\$ 8,786.75		
Clarian Health Partners	\$125,733.64 / \$173,916.81=	72.2956%
\$46,745.38		
Park Assoc. / Waters of Indiana	\$ 17,264.52 / \$173,916.81 =	9.9269%
\$ 6,418.61		
PRN Pharmaceutical Services	\$ 2,724.82 / \$173,916.81 =	1.5667%
\$ <u>1,013.00</u>		
TOTAL		
\$64,659.00		

Conclusion

The Court finds that the \$23,633.91 expenses owed to Clarion Health Partners is not a priority lien and its motion for summary judgment is denied. Further, the Court finds that all creditors remaining herein shall receive a pro-rata share of the funds held on deposit after the payment of court costs. Finally, the Court finds that the plaintiff is not granted leave to file an amended complaint.

IT IS THEREFORE ORDERED AND DECREED that the rights and priorities of the remaining Defendants herein are adjudicated as set forth above and that the amount on deposit shall be distributed by the Clerk of Courts as set forth above. Costs of \$665.07 are taxed to the funds on deposit. If any additional costs are incurred, they shall be paid from the Plaintiff's deposit before it is returned to Plaintiff. **FINAL APPEALABLE ORDER.**

Jonathan P. Hein, Judge

cc: Paul Wagner, Attorney for Plaintiff (via fax)
William Cooper, Attorney for Clarian Health, et. al. (via fax)
Daniel Miller, Attorney for Indian Attorney General (via fax)
Jason Aslinger, Attorney for Park Associates (via fax)
Scott Weltman, Attorney for PRN Pharmaceuticals (via fax)
Other parties of record by ordinary U.S. Mail

jph/research/choice of forum - tort