

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PATRICIA ANN MITCHELL,  
Plaintiff-Appellee,

UNPUBLISHED  
April 16, 2002

v

ALLEN BRADLEY COMPANY,  
Defendant-Appellant,

No. 228252  
Saginaw Circuit Court  
LC No. 98-021927 NI

and

KEVIN MICHAEL BEATTY,  
Defendant.

---

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant Allen Bradley appeals as of right from the trial court's order granting plaintiff a declaratory judgment that Michigan law applies to the subrogation dispute between the parties. We affirm.

Plaintiff and Allen Bradley are both residents of Ohio. Plaintiff is also Allen Bradley's employee. Plaintiff was injured in an automobile accident in Michigan while traveling within the scope of her employment. Plaintiff applied for and received workers' compensation benefits from Allen Bradley, which self-insures its potential workers' compensation liabilities. Plaintiff then sued defendant Kevin Michael Beatty in Michigan for her above-threshold, noneconomic injuries pursuant to MCL 500.3135. Following discovery, plaintiff and Beatty settled for \$95,000. Allen Bradley requested that plaintiff reimburse it for the workers' compensation benefits it had paid, and plaintiff refused and amended the complaint against Beatty to state a declaratory judgment count against Allen Bradley.

The applicable Ohio subrogation statute at that time, Ohio Rev Code Ann 4123.931 (West 2001) (RC 4123.931), supported Allen Bradley's request. Michigan law, on the other hand, did not. The Michigan Supreme Court had ruled that workers' compensation payors can be reimbursed only from settlements that, like workers' compensation benefits, compensate an injured person for economic damages like lost wages and medical expenses. *Great American Ins Co v Queen*, 410 Mich 73, 86; 300 NW2d 895 (1980). This policy prevents injured persons from

receiving duplicative benefits at the same time it prevents insurers from receiving windfalls. *Id.* at 95.

While this appeal was pending, Ohio ruled RC 4123.931 unconstitutional. *Holeton v Crouse Cartage Co*, 92 Ohio St 3d 115, 135; 748 NE2d 1111 (2001). The court reasoned that the policy underlying the statute was prevention of double recovery by a victim and foreclosure of a windfall to an insuring party. *Id.* at 122. Further, it said “due process requires that collateral benefits be used to reimburse workers’ compensation payments only when the former duplicate the latter.” *Id.* RC 4123.931, however, allowed reimbursement beyond a double recovery in various situations, including when the injured employee settled with the tortfeasor rather than trying the tort claim. *Id.* at 133; RC 4123.931(D). Therefore, it violated the guarantee of equal protection in Section 2, Article I of the Ohio Constitution, the prohibition against uncompensated takings in Section 19, Article I, and the guarantee in Section 16, Article I of a “remedy by due course of law” for injuries. *Holeton, supra* at 133, 130, 121.

Under Ohio common law, the *Holeton* decision revived the prior subrogation statute, Ohio Rev Code Ann 4123.93 (West 1994) (RC 4123.93). *State v Sullivan*, 90 Ohio St 3d 502, 508-509; 739 NE2d 788 (2001). Shortly thereafter, the Court of Appeals of Ohio, Eighth Appellate District, relied on the *Holeton* decision in holding RC 4123.93 unconstitutional. *Giles v Schindler Elevator Corp*, \_\_\_ Ohio App 3d \_\_\_; \_\_\_ NE2d \_\_\_; 2001 WL 1243923 \*1 (2001). The court reasoned that RC 4123.93(D) discriminated between injured employees who settle with the tortfeasor and those who try their tort claims just as RC 4123.931(D) did. *Id.* at \*2. Decisions of the Ohio Court of Appeals are precedential only in the district in which they are issued and persuasive elsewhere. *Pilkington v Saas*, 25 Ohio Law Abs 663, 667; 1937 WL 4383 \*1 (1937).

Allen Bradley argues on appeal that the trial court erred in deciding Michigan law applied to this dispute rather than Ohio law. Like jurisdiction, choice of law is a question of law that we review de novo. *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999). Michigan courts apply Michigan law to all cases “unless a ‘rational reason’ to do otherwise exists.” *Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274, 286; 562 NW2d 466 (1997). The rational reason principle is implemented by a two-part test. “First, we must determine if any foreign state has an interest in having its law applied. . . . If a foreign state does have an interest . . . , we must then determine if Michigan’s interests mandate that Michigan law be applied, despite the foreign interests.” *Id.* The foreign state’s choice of law rules are an appropriate source of information regarding its interest in having its law applied. *Id.* at 288-290.

The term “interest” derives from the “interest analysis” approach to choice of law advocated by Brainerd Currie. *Id.* at 280. *Sutherland, supra* at 280 n 9, cites Professor Currie’s book *Selected Essays on the Conflict of Laws*, in which he explained:

When it is suggested that the law of a foreign state should furnish the rule of decision, the court should, first of all, determine the governmental policy expressed in the law of the forum. It should then inquire whether the relation of the forum to the case is such as to provide a legitimate basis for the assertion of an interest in the application of that policy. The process is essentially the familiar one of construction or interpretation. Just as we determine by that process how a statute applies in time, and how it applies to marginal domestic situations, so we

may determine how it should be applied to cases involving foreign elements in order to effectuate the legislative purpose.

If necessary, the court should similarly determine the policy expressed by the foreign law, and whether the foreign state has an interest in the application of its policy. [Brainerd Currie, *Notes on Methods and Objectives in the Conflict of Laws, in Selected Essays on the Conflict of Laws* 177, 183-184 (1963).]

Applying the two-part *Sutherland* test to this case, we first must determine whether Ohio has an interest in applying RC 4123.93 to this dispute. *Sutherland, supra* at 286. According to Currie, that means “determin[ing] the policy expressed by [Ohio] law, and whether [Ohio] has an interest in the application of its policy.” Currie, *supra* at 184. Ohio’s policy is prevention of a double recovery by victims and foreclosure of a windfall to insurers. *Holeton, supra* at 122. As noted, RC 4123.93 does not implement that policy; therefore, Ohio would not have an interest in applying it to this dispute. The fact that this case involves an Ohio employer and employee, both of whom are also Ohio residents, reinforces this conclusion because it is they who should benefit most from the policy enunciated in *Holeton*.

The conclusion that Ohio has no interest may be confirmed by following the path the Supreme Court took in *Sutherland, supra* at 288-290, and applying Ohio’s choice of law principles to this issue. Ohio uses the balancing approach to choice of law set forth in Restatement 2d, Conflict of Laws (1971). *Morgan v Biro Mfg Co, Inc*, 15 Ohio St 3d 339, 341-342; 474 NE2d 286 (1984) (adopting the Restatement 2d approach in tort cases); *Schulke Radio Prod, Ltd v Midwestern Broadcasting Co*, 6 Ohio St 3d 436, 438-439; 453 NE2d 683 (1983) (adopting the Restatement 2d approach in contract cases). In an earlier case that, like this one, was neither tort nor contract, the Ohio supreme court applied the principles that now appear in 1 Restatement 2d, Conflict of Laws, § 6(2) (1971). *Fox v Morrison Motor Freight, Inc*, 25 Ohio St 2d 193, 195; 267 NE2d 405 (1971). Those principles are:

- (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. [1 Restatement 2d, Conflict of Laws, § 6(2), p 10.]

Applying those principles to this case, principles (f) and (g) are neutral because Michigan and Ohio law would be equally easy to determine and apply and both would provide “certainty, predictability and uniformity of result.” *Id.* at § 6(2)(f), p 10. Principle (d) is inapplicable to a

choice between the Michigan and Ohio subrogation rules because it applies, for the most part, to issues involving contracts and trusts of movables. *Id.* at § 6, Comment g on subsection (2), p 15. Similarly, principle (a) is inapplicable because it relates to the formulation of an overall choice of law rule, not the choice of law in a particular case. *Id.* at Comment d on subsection (2), p 13.

The remaining principles—(b), (c), and (e)—all favor Michigan law. Principle (b), the relevant policies of Ohio, favors Michigan law because Ohio has a stated policy of allowing subrogation only to the extent necessary to prevent double recovery by an injured party. *Holeton, supra* at 122. Michigan law would advance that policy; RC 4123.93 would not. Principle (c), the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, also favors Michigan law. First, Michigan has a subrogation policy identical to Ohio's. Second, Michigan was the site of the accident, a Michigan citizen was a party in the adjudication of plaintiff's claim, and it was the application of Michigan's no-fault insurance act, MCL 500.3101 *et seq.*, that created the recovery Allen Bradley seeks to attach. Together, these factors make Michigan an interested state on both a policy and a practical level. Finally, principle (e), the basic policies underlying the field of subrogation of economic benefits to recoveries of noneconomic benefits, supports Michigan law. See, e.g., 14 ULA 37, 64; *Tate v Industrial Claims Appeals Office of Colorado*, 815 P2d 15, 22-23 (Colo, 1991); *Fox v Atlantic Mutual Ins Co*, 132 AD2d 17, 24; 521 NYS2d 442 (1987). Therefore, because Ohio is in the curious position of having a subrogation statute in force that runs counter to its stated subrogation policy and probably to its constitution as well, it would choose to apply Michigan law to govern this dispute.

The trial court's choice of Michigan law is also congruent with the principle underlying the *Sutherland* test—that Michigan law should be applied “unless a ‘rational reason’ to do otherwise exists,” *Sutherland, supra* at 286—because it would be irrational to apply an Ohio statute that is diametrically opposed to Ohio's stated subrogation policy when application of Michigan law would implement the shared policy goals of both states. The trial court correctly decided that Ohio has no interest and that Michigan law applies.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell