

STATE OF MICHIGAN
COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

RICHARD C. DAVIS,

Defendant-Appellant,

and

MARK SOKOLOWSKI, LISA SOKOLOWSKI,
SHANNON MARIE WILSON, FRANCES JOAN
LADI, LAURA LEE WILSON, DEBORAH
YAGER, individually and as personal
representative of the ESTATE OF MARK YAGER,
TADEUSZ DOBROWOLSKI, CHARLES
CRADDUCK, DIANE CRADDUCK, JAMES
SNIDER, MEGAN SHIER, MANDY WALKER,
and GARY KRESS,

Defendants-Appellees.

UNPUBLISHED

April 26, 2002

No. 224879

Charlevoix Circuit Court

LC No. 99-193118-CZ

Before: Hoekstra, P.J., and Whitbeck, C.J., and Talbot, J.

PER CURIAM.

Defendant Richard C. Davis appeals as of right from the trial court's final order in this interpleader action. Defendant challenges the trial court's rulings allowing defendant's insurer, plaintiff Auto-Owners Insurance Company, to pay into the court its insurance policy limit;¹ discharging plaintiff from further obligation, including the obligation to defend its insured; and distributing the interpleaded funds to the other defendants, who are the plaintiffs in the

¹ Plaintiff had in effect at the time of a fireworks explosion an executive umbrella insurance policy providing insurance coverage of \$1 million for the occurrence.

underlying personal injury lawsuits that arose as a result of an explosion during the launching of fireworks at the Charlevoix Venetian Festival in July 1997.

Defendant's first two issues in the instant appeal allege that the trial court erred in granting plaintiff's motion to allow interpleader and to discharge plaintiff from further contractual obligation, and in granting defendants Sokolowskis' motion to require the interpleader funds to be deposited with the court. With regard to these issues, defendant previously sought leave to appeal, which this Court denied "for lack of merit in the grounds presented." Although defendant's first two issues, we think, present substantive questions of jurisprudential significance, we are bound under the law of the case by this Court's previous ruling on these issues. *City of Marysville v Pate, Hirn & Bogue, Inc*, 196 Mich App 32, 34; 492 NW2d 481 (1992); *People v Freedland*, 178 Mich App 761, 770; 444 NW2d 250 (1989); Cf *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000) (a denial of leave to appeal without comment on the merits is not a substantive disposition that invokes the law of the case); *People v Willis*, 182 Mich App 706, 708; 452 NW2d 888 (1990). Because this Court already issued an order indicating "lack of merit on the grounds presented" concerning defendant's first two issues before us now, we cannot address the merits of those issues.²

Defendant also argues that the trial court erred in allowing the interpleaded funds to be distributed to defendants-appellees before settlement, mediation, or trial in the underlying personal injury actions in which defendants-appellees are plaintiffs. Because this issue arose after defendant applied for leave to appeal and this Court has not yet addressed this issue, it is properly before us. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998).

Here, under the terms of the insurance policy, plaintiff has paid its full policy liability limit into the court as the interpleaded funds, and with respect to this money, defendant has received the full benefit of the insurance contract. Once it has been determined that the duties under the contractual relationship have been fulfilled, defendant has no claim to or legal interest in the funds. Defendant has not shown, nor are we aware of, a basis on which defendant can contest the trial court's distribution of the funds.³ Because defendant has no legally protected interest with respect to the moneys that plaintiff admitted were owed to defendants, i.e., plaintiffs in the underlying personal injury actions, defendant is not entitled to contest the distribution of those funds.

² Defendant has not demonstrated that the law of the case doctrine is otherwise inapplicable. See, e.g., *Sumner v General Motors Corp (On Remand)*, 245 Mich App 653, 662; 633 NW2d 1 (2001) (law of the case doctrine inapplicable where an intervening change of law has occurred); *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000) (law of the case doctrine inapplicable where facts do not remain materially the same). We note that the law of the case doctrine applies regardless of the correctness of this Court's previous decision. *Sumner, supra*.

³ Although use of the insurance money from defendant's policy for the creation of a litigation fund to pursue the underlying claims against defendant appears manifestly unfair, that outcome is a possibility whether the trial court endorses the action or whether the claimants reach a private agreement outside the confines of the lawsuit.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot