

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN F. KOCH and JANET KOCH, Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	
VENEZIA TRANSPORTATION SERVICE and DARRIN J. ROZZI	:	
Defendant	:	NO. 00-5686

Newcomer, S.J. June , 2001

M E M O R A N D U M

Presently before this Court is plaintiffs' Motion in Limine to Preclude Evidence of the New Jersey Verbal Threshold and defendant's Response thereto. For the reasons set forth below, the Court will grant plaintiffs' Motion.

I. BACKGROUND

This action arises from a motor vehicle accident that occurred on or about November 23, 1999 on the Schuylkill Expressway near Philadelphia, Pennsylvania. Plaintiff John Koch, a New Jersey resident at the time of the accident, was allegedly rear-ended by a truck driven by Defendant Darrin Rozzi, a resident of Pennsylvania at the time of the accident. Defendant Venezia Transportation is the trucking company that owned the truck and was a resident of Pennsylvania at the time of the accident.

Plaintiffs filed the instant Motion in Limine to preclude defendants from asserting that plaintiffs' claims for non-economic loss are subject to any lawsuit, or verbal,

threshold, under New Jersey law. They argue that New Jersey's law limiting recovery of non-economic damages does not apply in this case. Defendants contend that Plaintiff John Koch is a New Jersey insured who elected to pay lower insurance premiums for a reduced ability to recover damages if injured in an automobile accident, and as such an insured should be limited in claiming non-economic damages here in Pennsylvania.

II. DISCUSSION

A. CHOICE OF LAW

First, this Court must determine whether it must apply Pennsylvania or New Jersey law. In a diversity action, "the choice of law rules of the forum state [determine] which state law will be applied." Shuder v. McDonald's Corp., 859 F.2d 266, 269 (3d Cir. 1988) (citing Klaxon Co. v. Stentor Elec. Mfg. Co., Inc., 313 U.S. 487, 496 (1941)). Accordingly, this Court applies the choice of law rules of Pennsylvania.

Pennsylvania's choice of law analysis consists of two parts. First, the court looks to see whether a "false conflict" exists. LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). A false conflict exists where "only one jurisdiction's governmental interests would be impaired by the application of the other jurisdiction's law." Id. (quoting Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187 (3d Cir. 1991)).

"'False conflict' really means 'no conflict of laws.' If the

laws of both states relevant to the set of facts are the same, or would produce the same decision in the lawsuit, there is no real conflict between them." Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 659 n. 20 (1985) (quoting R. Leflar, American Conflicts Law § 93, p. 188 (3d ed 1977)). When a false conflict exists, the court need not decide the choice of law issue, and the court may rely interchangeably on the laws of both states. Lucker Mfg. v. Home Ins. Co., 23 F.3d 808, 813 (3d Cir. 1994).

If there is no false conflict, that is, if there is a true conflict, the court next must determine which state has the greater interest in the application of its law. LeJeune, 85 F.3d at 1071. To make this determination, the court must look "to see what contacts each state has with the accident, the contacts being relevant only if they relate to the 'policies and interest underlying the particular issue before the court.' When doing this it must be remembered that a mere counting of contacts is not what is involved. The weight of a particular state's contacts must be measured on a qualitative rather than quantitative scale." Id. at 1072 (quoting Cipolla v. Shaposka, 439 Pa. 563, 566, 267 A.2d 854 (1970)).

In the instant case, this Court determines that there exists only a false conflict of laws because the laws of both New Jersey and Pennsylvania would produce the same result. In a recent decision handed down in Harris v. Bainhauer, III, 2001

U.S. Dist. Lexis 5501 (E.D. Pa. Apr. 16, 2001), modified, Harris v. Bainhauer, III, No. 00-3328 (E.D. Pa. Apr. 19, 2001) (Judge Robreno issued an "Amended Memorandum" replacing the Memorandum issued on April 16, 2001 with corrections in several places where "New Jersey" was changed to "Pennsylvania"), Judge Robreno found that New Jersey law did not permit a Pennsylvania driver to assert the verbal threshold defense (limiting a plaintiff's recovery of non-economic damages) when involved in an accident in Pennsylvania. In that case, like the instant one, an accident occurred in Pennsylvania, plaintiffs were New Jersey drivers registered and insured in New Jersey, and defendant was a Pennsylvania driver registered and insured in Pennsylvania. As this Court agrees with Judge Robreno's analysis, under New Jersey law, plaintiffs are not limited in their claim for non-economic damages in this case.

Similarly, under Pennsylvania law, plaintiffs' claim seeking non-economic damages from defendants is not limited. Although Pennsylvania has enacted limited tort provisions like those in New Jersey, it does not have a counterpart to New Jersey's "deemer statute," whereby out-of-state drivers are entitled to protections of the verbal threshold defense when a defendant's insurer is authorized to transact automobile or motor vehicle business in the state of New Jersey. Under Pennsylvania law, no limited tort provisions would apply to plaintiffs in this

case.

Therefore, neither application of New Jersey law nor Pennsylvania law limits plaintiffs' claims for non-economic damages. Because the laws of New Jersey and Pennsylvania would produce the same decision in the lawsuit with respect to the application of the verbal threshold, there is no real conflict between them. Accordingly, plaintiff's Motion will be granted.

An appropriate Order follows.

Clarence C. Newcomer, S.J.

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and DARRIN J. ROZZI	:	
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O R D E R

AND NOW, this day of June, 2001, upon consideration of plaintiffs' the Motion in Limine to Preclude Evidence of the New Jersey Verbal Threshold, it is hereby ORDERED that said Motion is GRANTED and the defendants are hereby precluded from asserting that plaintiffs' claims for non-economic loss are subject to any lawsuit, or verbal, threshold under New Jersey law.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.