

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PROGRESSIVE MICHIGAN
INSURANCE,

Plaintiff,

vs.

Case No. 2015-692-CB

U.S. CARGO EXPRESS, LLC and
GRANGE INSURANCE COMPANY,

Defendants.

OPINION AND ORDER

Defendant Grange Insurance Company ("Defendant Grange") has filed a motion for reconsideration of the Court's January 15, 2016 Opinion and Order granting, in part, Plaintiff's motion for summary disposition.

In the interests of judicial economy the factual and procedural statements set forth in the Court's January 15, 2016 Opinion and Order are herein incorporated.

I. Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on

appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

II. Arguments and Analysis

In its motion, Defendant Grange contends that it is not liable to Plaintiff because Plaintiff is required to make a claim against the insurer with the highest order of priority to provide the benefits in question, which in this case is Auto-Owners Insurance Company.

The general rule expressed by MCL 500.3114(1) is that an accident victim must look first to his or her own insurer, or that of a spouse or resident relative for PIP benefits. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527; 530; 740 NW2d 503 (2007). In its motion, unlike in its prior pleadings, Defendant Grange provides that Court with evidence that Mr. McCowan may have been covered by a policy issued to the members of his household by Auto-Owners. (See Defendant Grange's Exhibit 1.) Specifically, the testimony at issue evidences that Auto-Owners issued a policy on Mr. McCowan and his wife's three personal vehicles. (Id.) However, the specifics of the policy and any impact that policy may have in the instant dispute are unclear. Nevertheless, the Court is satisfied that Auto-Owners must be joined to this action as a defendant pursuant to MCR 2.205(A) as Auto-Owner's presence in this matter is necessary in order to permit the court to render complete relief.

While the Court remains convinced that Defendant Grange is higher in priority than Plaintiff, Plaintiff, as Mr. McGowan's subrogee, must first seek to collect from Mr.

McGowan's personal insurance carrier, if any. MCL 500.3114(1). In order to determine if Auto-Owners is such a carrier, and therefore first in priority, Auto-Owners must be joined to this action so that the issue can be resolved with all parties with an interest in this matter present.

III. Conclusion

For the reasons discussed above, Defendant Grange's motion for reconsideration of the Court's January 15, 2016 Opinion and Order is GRANTED, IN PART, and DENIED, IN PART. Specifically, the portion of the January 15, 2016 Opinion and Order holding that Defendant Grange is first in priority is VACATED; the remainder of the Opinion and Order remains in effect. Further, Plaintiff shall join Auto-Owners Insurance Company as a defendant in this action within 21 days of the date of this Opinion and Order.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: FEB 12 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge

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