



Arkansas Association of Defense Counsel

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Choice of law analysis and right of subrogation for workers' compensation payments

It is well settled in Arkansas that an insurer's right of subrogation for workers' compensation payments is subject to the made whole doctrine. *Phillip Morris USA v. James*, 79 Ark. App. 72 (2002). It is not as clear, however, whether Arkansas' made whole doctrine will apply to workers' compensation payments made outside of this state.

Consider the following facts:

- Injured worker/soon to be plaintiff resides in Louisiana
- Injured worker/soon to be plaintiff works in Louisiana
- Automobile accident happened in Arkansas while injured worker/soon to be plaintiff is in course and scope of employment
- Workers' compensation claim filed in Louisiana and injured worker/soon to be plaintiff recovers payments
- Plaintiff files tort lawsuit in Arkansas
- Tortfeasor resides in Arkansas
- Plaintiff's only connection to Arkansas is passing through the state when the accident occurred
- In Louisiana, the made whole doctrine does not apply to the right of subrogation for workers' compensation payments (La. R.S. § 23:1101; 23:1102; and 23:1103)

Although there is not an Arkansas case precisely on point with the above facts, the

United States Court of Appeals for the Eighth Circuit, analyzing Arkansas law, considered a similar issue. In *Lane v. Celadon Trucking, Inc.*, 543 F.3d 1005 (8th Cir. 2008), the issue was whether Indiana's lien reduction statute should apply to Celadon's workers' compensation subrogation lien on proceeds from a third-party settlement or whether Arkansas' made whole doctrine should apply. In *Lane v. Celadon, supra*, Lane was a citizen of New Mexico and worked as a truck driver for Celadon, which was a Delaware corporation with its principle place of business in Indiana. Celadon was self-insured for workers' compensation. As part of his employment relationship with Celadon, Lane signed a contract agreeing that the laws of the State of Indiana, including the Indiana Workers' Compensation Act would apply regarding any job-related injury. *Id.* at 1005-1006. In the course and scope of his employment with Celadon, Lane was traveling through the State of Arkansas and was injured when he was involved in a tractor-trailer collision. As a result of the accident, Celadon paid workers' compensation benefits under Indiana workers' compensation laws. *Id.* at 10006. Lane then filed a personal injury lawsuit against the at-fault driver and filed that lawsuit in Arkansas district court. Lane ultimately settled his personal injury claim with the at-fault driver and then litigated, with Celadon, the issue of whether Celadon's workers' compensation lien was subject to Arkansas' made whole doctrine or whether Indiana law applied. *Id.* at 1006-1007.

The district court in *Lane v. Celadon, supra*, ruled that Indiana law applied. On appeal, Lane argued the district court erred in applying Indiana law rather than Arkansas' made whole doctrine to Celadon's workers' compensation lien. *Id.* In analyzing the issue,

the Court of Appeals applied Arkansas' choice of law principles. The Court of Appeals acknowledged the Arkansas Supreme Court had not addressed the choice of law question when resolving a dispute over subrogation rights arising out of workers' compensation benefits paid to an employee. As such, the Court of Appeals for the Eighth Circuit was tasked with determining what decision the Arkansas Supreme Court would make if faced with the same issue. *Id.*

In determining what choice of law method to use, the Eighth Circuit determined that, under Arkansas law, the court must first decide which state has the most significant relationship to the parties and the issues and then apply Leflar's five choice-influencing factors. *Id.* at 1011, citing *Ganey v. Kawasaki Motors Corp., USA*, 366 Ark. 238, 234 S.W.3d 838 (2006); *Wallis v. Mrs. Smith's Pie Co.*, 261 Ark. 622, 550 S.W.2d 453 (1977). The court reviewed the facts of the case and noted that Lane was not a resident of Arkansas and the only connection with Arkansas in the lawsuit was the accident's location. The court determined that under the first step of the choice of law analysis, Indiana had a more significant relationship to the parties and the issues than did Arkansas. *Id.*

The next step under Arkansas conflict of law principles is to apply the five Leflar's choice-influencing factors. *Lane v. Celadon, supra*, at 1010. The five factors are: "1) predictability of results; 2) maintenance of interstate and national order, 3) simplification of the judicial task; 4) advancement of the forum's governmental interests; and 5) application of the better rule of law." *Id.*, citing *Ganey v. Kawasaki*, 234 S.W.3d at 846.

In order to foster predictability, the goal is that the decision in litigation on a particular set of facts should be the same regardless of where litigation occurs in order to prevent forum shopping. *Lane v. Celadon, supra*, at 1011 (internal citations omitted). The court in *Lane* determined that the application of Indiana law fostered predictability.

The second factor is maintenance of interstate and international order. "When the forum state has little or no contact with a case and nearly all of the significant contacts are with another state, the second factor, maintenance of interstate and international order, suggests that the forum should not apply its own law to the dispute." *Lane v. Celadon, supra*, at 1011, citing *Hughes v. Wal-Mart Stores, Inc.*, 250 F.3d 618, 620-21 (8th Cir. 2001). In *Lane v. Celadon*, the court determined that the second factor favored an application of Indiana law since the only contact with Arkansas was the location of the accident and Indiana had the most significant contacts with the parties and with Celadon's workers' compensation lien. *Lane v. Celadon, supra*, at 1011.

The third factor is simplification of the judicial task. The court in *Lane v. Celadon, supra*, determined that the third factor did not favor application of either state's laws. The court acknowledged that it was easy to apply the laws of both states.

The fourth factor is advancement of the forum's governmental interests. The court in *Lane v. Celadon* acknowledged that Arkansas has an interest in protecting those injured by negligent conduct within its borders, but stated that this interest is only slight. In contrast, the purpose of workers' compensation statutes is to protect the rights of the employee and the employer or insurer. *Id.* at 1011 (internal citations omitted). The court determined that applying Arkansas' made whole doctrine to Celadon's workers' compensation lien would do little to advance Arkansas' governmental interests because of Arkansas' limited connection to the case. The court held that Arkansas' governmental interests were outweighed by those of Indiana.

The fifth factor is a determination and application of the better rule of law. The court in *Lane v. Celadon* acknowledged that courts should refrain from pronouncing the better law when the other factors point toward the application of one state's law. *Id.* at 1011 (internal citations omitted). The court did not determine which state's workers' compensation

subrogation law was better and noted the states had differing social policies that were reflected in the different choices made by state legislatures. *Id.*

The court ultimately held that the choice of law analysis resulted in an application of Indiana law rather than the law of the forum State of Arkansas. The court determined that Indiana law governed Celadon's recovery of its workers' compensation subrogation claim. *Id.*

It should be noted that in *Lane*, a written contract existed between the employer and employee wherein the parties agreed that the laws of the State of Indiana would apply. However, the holding in *Lane* never stated that fact was outcome determinative. Footnote 2 of the opinion simply states the existence of the contract contributed to the court's initial determination that Indiana had a more substantial relationship with the parties. Significantly, the court never addressed the existence of this contract with respect to its analysis of the five choice of law principles.

Since *Lane v. Celadon*, the United States District Court for the Eastern District of Arkansas, Jonesboro Division, followed that same analysis with respect to a workers' compensation subrogation claim. In *Peckin Ins. Co. v. Correct Roofing and Constr., Inc.*, 2015 US Dist. LEXIS 38884 (E.D. Ark., February 5, 2015), the district court was faced with the same issue regarding whether to apply Arkansas' made whole law to a workers' compensation subrogation claim or whether to follow Tennessee law with respect to that claim. Unlike the facts in *Lane*, *supra*, in *Peckin*, one of the victims was an Arkansas resident and one of the victims' employers did significant business in Arkansas. Although workers' compensation benefits were paid in accordance with Tennessee workers' compensation laws, the district judge applied the choice of law analysis set forth in *Lane* and determined that Arkansas law should apply. *Peckin Ins. Co. v. Correct Roofing, supra.*

Although the analysis in *Lane v. Celadon* is thorough and instructive regarding this issue, the plaintiffs' bar often cites to

Orintas v. Meadows, 17 Ark. App. 214; 706 S.W.2d 199 (1986) in support of the argument that Arkansas' made whole doctrine should apply. However, the facts in *Orintas* can and should be distinguished.

In *Orintas*, the issue was whether to apply Louisiana's worker's compensation statute or Arkansas's worker's compensation statute with respect to division of liability settlement proceeds. The Court was specifically tasked with determining how to apply the statutes with respect to the appropriate amount of attorney's fees to be paid to the injured party's attorney. The court in *Orintas* never considered the issue of whether a worker's compensation carrier's right of subrogation should be construed in accordance with Arkansas's made whole doctrine or with the law of another state. As such, it should be argued that the holding in *Orintas* is not binding authority with respect to a case involving facts similar to those outlined above.

Additionally, the court in *Orintas* never analyzed the five choice of law factors that must be considered in determining whether to apply the law of the forum state or the law of a foreign state. Although the court briefly mentioned there are five factors that should be considered, the court did not list the factors and likewise did not do a factor by factor choice of law analysis with respect to the facts at issue in that case. *Orintas*, 17 Ark. App. 214 at 216; 706 S.W.2d 199 at 201. The court ultimately held that the trial court's decision to apply Arkansas worker's compensation law to the distribution of the settlement proceeds and payment of attorney's fees was not clearly erroneous. *Orintas*, 17 Ark. App. 214 at 219; 706 S.W.2d 199 at 202.

The opinion in *Lane* was delivered in 2008, which is more than two decades after the opinion in *Orintas*. The Court in *Lane* did not overlook the opinion in *Orintas*. In fact, the Court specifically cited to *Orintas* and acknowledged the facts were similar, but stated an analysis of that opinion revealed ". . . that the Arkansas appellate court was primarily concerned with the rights of attorney Orintas,

an Arkansas citizen, rather than the rights of the non-resident employees.” *Id.* at 1008.

Unless and until we have an opinion from the Court of Appeals or the Supreme Court, the decision in *Lane, supra* seems to be the most instructive and thorough analysis on the issue.

The thanks of the AADC go out to Debbie Denton of Anderson, Murphy & Hopkins.



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