

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THEODORE DUPUIE,

Plaintiff,

Case No.: 2:09-cv-12917
Hon. Denise Page Hood

vs

RLI TRANSPORTATION, a division
of RLI Insurance Company, a Foreign
Insurance Corporation,

Defendant.

THOMAS W. JAMES (P68563)
KATHLEEN JOHNSON (P67557)
GURSTEN, KOLTONOW, GURSTEN,
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**PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF
CLAIM REPRESENTATIVE IN MICHIGAN**

NOW COMES Plaintiff, THEODORE DUPUIE, by and through his attorneys,
GURSTEN, KOLTONOW, GURSTEN, CHRISTENSEN & RAITT, P.C., and for
Plaintiff's Motion to Compel Deposition of Claim Representative in Michigan, states
as follows:

1. This is an action for no-fault PIP benefits. Plaintiff was severely injured
in a motor vehicle accident on March 18, 2008 when his motorcycle was rear ended
by a semi-truck. Defendant is the no-fault insurer of the semi-truck.

2. Defendant is an insurance company that conducts business in Michigan

3. Plaintiff seeks the deposition of Defendant's claim representative, Josepha Laurant.

4. Plaintiff noticed the deposition of Ms. Laurant for January 12, 2010 in Defendant's counsel's Detroit office.

5. On January 7, 2010, Plaintiff's counsel called defense counsel to confirm the deposition of Ms. Laurant, but was informed that the deposition was not going on January 12, 2010.

6. Defendant's counsel contacted Plaintiff's counsel on January 12, 2010 and informed Plaintiff's counsel that the only available options for conducting the claim representative's deposition would be to do so in Atlanta, Georgia or via telephone.

7. Plaintiff's counsel informed Defendant's counsel that neither travelling to Atlanta, Georgia nor conducting the deposition via telephone would be acceptable.

8. Defendant avails itself of the protections and benefits of Michigan law by selling insurance in Michigan, thereby affecting Michigan residents, namely Plaintiff.

8. This Court has considerable discretion in selecting the time and location of a deposition. *Leist v. Union Oil Co.*, 82 F.R.D. 203, 204 (D.C. Wis. 1979); *Thompson v. Sun Oil Co.*, 523 F.3d 647, 648 (8th Cir. 1975); *Mill-Run Tours v. Khashoggi*, 124 F.R.D. 547, 550 (S.D.N.Y. 1989).

9. Under the factual and equitable circumstances of this case, Plaintiff is entitled to an order compelling the deposition of Ms. Laurant in Michigan.

WHEREFORE, for the reasons stated above and in the attached brief, Plaintiff respectfully requests that this Court issue an Order compelling Defendant to make available its claim representative for deposition in Wayne County Michigan at a date and time of mutual convenience to the parties, but before the close of discovery.

Respectfully Submitted,

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

By: /s/ Thomas W. James
THOMAS W. JAMES (P68563)
Attorney for Plaintiff

Dated: January 21, 2010

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DEPOSITION
OF CLAIM REPRESENTATIVE IN MICHIGAN**

Defendant RLI Transportation is a "...full service provider of insurance products and services for trucking, public auto and commercial auto customers," with numerous offices around the United States. Exhibit 1. Defendant RLI routinely reaches into other states, including Michigan, to provide insurance coverage to trucking companies. Exhibit 1. In this case, Defendant RLI reached into the State of Michigan by providing insurance coverage to ALCO Transportation, the owner of the semi truck that mowed Plaintiff down on his motorcycle. Despite the fact that Plaintiff suffered severe injuries, including lumbar fusion surgery, in this motorcycle

vs. semi collision, Defendant RLI has taken the unreasonable step of denying payment of Plaintiff's PIP benefits for his collision-related injuries, necessitating the filing of the present lawsuit.

Now, Plaintiff seeks to take the deposition of Defendant's claim representative, Josepha Laurant, in order to ascertain the reasoning behind Defendant RLI's refusal to pay Plaintiff's PIP benefits. Not surprisingly, Defendant RLI has once again taken an unreasonable course of action by demanding that the deposition of Ms. Laurant take place in Georgia, or over the telephone. However, as discussed in greater detail below, federal courts possess a substantial amount of discretion in determining the location of a deposition, and Plaintiff requests this Court to exercise its discretion in requiring the deposition of Ms. Laurant to take place in Michigan, not Georgia. Defendant RLI should not be permitted to reach into Michigan, conduct business, and earn a profit, and then evade ever having to come into this state when it violates the laws. Furthermore, considering the parties' relative financial positions, requiring the deposition of Ms. Laurant to occur in Michigan is warranted. Finally, while counsel for Defendant RLI has indicated that he would permit the deposition to occur over the telephone, a deposition via telephone will be inadequate, because this is a document-intensive No-Fault claim, and the ability to pass documents back and forth is essential. For these reasons, Plaintiff respectfully requests this Honorable Court to enter an order that the deposition of Josepha Laurant shall occur in Michigan.

I. THIS COURT SHOULD ENTER AN ORDER COMPELLING DEFENDANT'S ADJUSTER'S DEPOSITION TO OCCUR IN MICHIGAN.

Defendant RLI will undoubtedly argue that because its corporate headquarters are located in Georgia, the deposition of its adjuster should take place there. However, the law is clear that a defendant's geographical location does not dictate where its deposition will be taken. Indeed, the federal courts have routinely recognized the large degree of discretion they possess in determining the location of a deposition. For the reasons stated below, Plaintiff requests this Court to exercise its discretion, and enter an order compelling the deposition of Josepha Laurant to take place in Michigan.

A. THE FEDERAL COURTS POSSESS A SUBSTANTIAL AMOUNT OF DISCRETION IN SETTING THE TIME AND LOCATION OF DEPOSITIONS.

The federal courts have recognized the substantial discretion district courts possess in determining the time and location of a deposition. *See Leist v. Union Oil Co.*, 82 F.R.D. 203, 204 (D.C. Wis. 1979); *Thompson v. Sun Oil Co.*, 523 F.3d 647, 648 (8th Cir. 1975); *Mill-Run Tours v. Khashoggi*, 124 F.R.D. 547, 550 (S.D.N.Y. 1989). Generally, "...a party seeking discovery may set the place where the deposition will take place, subject to the power of the courts to grant a protective order designating a different location." *Philadelphia Indemnity Ins Co v. Federal Ins Co*, 215 F.R.D. 492, 495 (E.D. Pa. 2003). Courts look to the facts and equities of the particular case in determining the appropriate location for a deposition. *Farquhar v. Sheldon*, 116 F.R.D. 70, 72 (E.D. Mich. 1987). In determining the appropriate location for a deposition, courts are permitted to consider the relative expenses of the parties. *Philadelphia Indemnity Ins Co.*, 215 F.R.D. at 495. Courts

have also considered the location of the parties' attorneys in determining the appropriate location for a deposition. *Leist*, 82 F.R.D. at 204.

In this case, the facts and equities clearly warrant the taking of Ms. Laurant's deposition in Michigan, as opposed to Georgia. Plaintiff originally filed this action in a Michigan state court, where it would have remained had Defendant RLI not sought removal. Both Plaintiff's counsel and Defendant's counsel are located in Michigan. Plaintiff is located in Michigan. The collision forming the basis of this lawsuit occurred in Michigan. All of Plaintiff's treatment for his collision-related injuries has occurred in Michigan, with Michigan medical professionals. Plaintiff's replacement service providers reside in Michigan. Defendant RLI reached out to a Michigan trucking company and sold it insurance in Michigan. By way of contrast, the only involvement the State of Georgia has in this litigation is that the decision-maker on Plaintiff's entitlement to PIP benefits, Ms. Laurant, is located there.

In reaching its decision to deny the defendant's motion for protective order, the *Leist* court noted that the plaintiff was unemployed, and suffered from health problems. 82 F.R.D. at 203. In the present case, Plaintiff is presently unemployed, and continues to suffer from health problems due to his collision-related injuries. Further complicating Plaintiff's financial situation is Defendant RLI's cut off of his wage loss benefits. By way of contrast, Defendant RLI Transportation is a subsidiary of a large, national insurance corporation whose net earnings exceeded \$78,000,000.00 in 2008. Exhibit 2. Clearly, the parties' respective financial positions warrant conducting Ms. Laurant's deposition in Michigan.

In sum, a comparison of the parties' respective financial positions, the fact that both parties' counsel are located in Michigan, and the fact that the State of Georgia has absolutely no connection to the present lawsuit, warrants conducting the deposition in Michigan. Given the facts and equities of the present case, Plaintiff requests this Court to exercise its substantial discretion over the location of depositions and order that the deposition of Ms. Laurant shall occur in Michigan.

II. IT IS UNJUST TO ALLOW AN OUT-OF-STATE INSURER TO DELIBERATELY REACH INTO THE STATE OF MICHIGAN TO SOLICIT BUSINESS, AND THEN INSULATE THAT INSURER FROM THE DISCOVERY PROCESS IN A MICHIGAN LAWSUIT AGAINST IT.

As previously noted, Defendant RLI conducts business in the State of Michigan. Not only does Defendant RLI conduct business in this state, but it has declared its intent to "target" the State of Michigan as a source of business. Exhibit 3. In line with its goal to target Michigan, Defendant RLI sold commercial truckers insurance to the owner of the semi truck that rear-ended Plaintiff's motorcycle. Now that Defendant RLI is being sued for its wrongful refusal to pay Plaintiff PIP benefits in accordance with Michigan No Fault law, Defendant RLI wants to step away from Michigan, and force Plaintiff to take its adjuster's deposition in Georgia. However, when a corporation chooses to reach into Michigan and sell its products to Michigan residents, it is patently unfair to permit the corporation to avoid having to come to Michigan to answer for its wrongful conduct.

Additionally, conducting the deposition of Ms. Laurant in Georgia is patently unfair because it places an extra burden on its claimants to spend money on travel expenses and attorney time involved in travel. This is cost prohibitive to Plaintiff, who has been disabled from working since being injured by Defendant's insured.

Similarly, it would be unjust to require the Plaintiff to travel to Atlanta, Georgia to take the claim representative's deposition, or to require the Plaintiff to pay the claim representative's travel expenses. Conversely, there would be no undue burden to require Defendant's claim representative to travel to Michigan. These costs should be borne by Defendant as a cost of profiting from doing business in Michigan. A company who conducts business in Michigan cannot reasonably expect to be insulated from the discovery process in a state where a lawsuit arises.

III. CONCLUSION

It is within the discretion of this Court to choose a place of convenience for the taking of a deposition. The most convenient and fair location to conduct the deposition of the claim representative in this case would be in Michigan, as traveling to Georgia would place an undue burden on Plaintiff. Defendant regularly conducts business in the State of Michigan, and should reasonably expect that its agents will be required to travel if a lawsuit arises out of such business.

WHEREFORE, Plaintiff respectfully requests this honorable court grant his Motion to Compel Deposition of Claim Representative in Michigan.

Respectfully Submitted,

GURSTEN, KOLTONOW, GURSTEN,
CHRISTENSEN & RAITT, P.C.

BY: /s/ Thomas James
THOMAS W. JAMES (P68563)
Attorney for Plaintiff

Dated: January 20, 2010