CLAUDE B. KENNEDY, JR., AND : CADDO NUMBER: 500,282

ROBBIE J. KENNEDY, INDIVIDUALLY

AND AS HUSBAND AND WIFE

VERSUS : FIRST JUDICIAL DISTRICT COURT

MICKEY JOE DURDEN, THE PHOENIX

INSURANCE COMPANYAND

CHEROKEE INSURANCE COMPANY : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT ON MOTION FOR**

**PARTIAL SUMMARY JUDGMENT TO DISMISS**

**INTERVENTION OF JOHNSON CONTROLS AND PLAINTIFFS’**

**MOTION FOR SUMMARY JUDGMENT AGAINST**

**THE INTERVENOR, JOHNSON CONTROLS**

It is important to note the relationship of the parties: (1) Plaintiff Kennedy was employed by C. Bean Transport but was the statutory employee of Johnson Controls; (2) Defendant Mickey Joe Durden, an uninsured motorist, rear ended the vehicle occupied by Kennedy; (3) Cherokee Insurance Company is the liability carrier of C. Bean Transport; (4) There was no valid rejection of the UM coverage and thus uninsured/underinsured motorists coverage is applicable by operation of law; (5) Johnson Controls paid Plaintiff Kennedy workers compensation benefits; (6) Johnson Controls has intervened in this lawsuit seeking reimbursement from, inter alia, C. Bean Transports Insurance Company in accordance with its UM coverage; (7) There is no liability coverage available as a result of Durden’s uninsured status.

The Cherokee policy states,

“This insurance does not apply to any of the following: 3 Worker’ Compensation – any obligation for which the “insured” (C. Bean Transport) or the “insurer’s insurer may be liable under any workers’ compensation disability benefits or unemployment compensation law or any other similar law.”

This Court relies on the Second Circuit Court of Appeal case, *Tommie’s Novelty v. Velasco*, 37925, (La. App. 2d Cir. 2/26/2004), a very similar case in which the Court wrote:

A workers' compensation insurer has a cause of action for reimbursement against third persons legally liable to pay damages to an injured employee, including a UM/UIM insurer. [LSA-R.S. 23:1101](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS23%3a1101&originatingDoc=I398412870ed511d9bde8ee3d49ead4ec&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))(A) and (B). The workers' compensation insurer must be reimbursed compensation benefits that were actually paid to the injured employee, from any judgment rendered against a third person, in preference to a claim of the injured employee or his dependent. [LSA-R.S. 23:1103](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS23%3a1103&originatingDoc=I398412870ed511d9bde8ee3d49ead4ec&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). Further, if a compromise with such third person is made by the employee, the workers' compensation insurer shall be liable to the employee for any benefits which are in excess of the full amount paid by such third person only after the insurer receives a dollar for dollar credit against the full amount paid in compromise. [LSA-R.S. 23:1102](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS23%3a1102&originatingDoc=I398412870ed511d9bde8ee3d49ead4ec&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))(B) and [LSA-R.S.23:1103](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS23%3a1103&originatingDoc=I398412870ed511d9bde8ee3d49ead4ec&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))(A).

However, our Louisiana Supreme Court, relying upon an individual's freedom to contract and the strong public policy considerations supporting full UM/UIM recovery, has held that there is no statutory prohibition against an employer contracting with its UM/UIM insurer to exclude workers' compensation reimbursement. Thus, a UM/UIM policy may validly exclude compensation reimbursement to a workers' compensation insurer. [Travelers Insurance Company v. Joseph, 95-0200 (La.6/30/95), 656 So.2d 1000](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995142486&pubNum=735&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).



In Travelers, the UM insurer filed a motion for summary judgment based on the exclusionary clause of its policy with regard to workers' compensation reimbursement. The trial court granted summary judgment in favor of the UM insurer. The court of appeal reversed; however, the Supreme Court reinstated the trial court's summary judgment in favor of the UM insurer. The Supreme Court held:

Although a compensation insurer may seek reimbursement from a UM insurer, a UM insurer may expressly exclude a compensation insurer's reimbursement in its UM policy under the Civil Code's freedom to contract on all matters not forbidden by law or public policy.

In the present case, the exclusionary language contained in the Lafayette policy is identical to the policy exclusion upheld in Travelers Insurance Company, supra. The pertinent policy language reads as follows:

C. EXCLUSION

This insurance does not apply to:

....

The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

The above exclusion applies equally whether the compensation insurer files suit directly against the UM/UIM carrier, as in Travelers, or whether the compensation insurer intervenes in the employee's suit against the UM/UIM insurer. [Cleaning Specialists, Inc. v. Johnson, 96-2677 (La.App. 4th Cir.5/21/97), 695 So.2d 562,](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997114671&pubNum=735&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) writ denied, [97-1687 (La.10/3/97), 701 So.2d 210.](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997207616&pubNum=735&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) The Louisiana Supreme Court has specifically held that the exclusionary clause was not against public policy. Travelers Insurance Company v. Joseph, supra. Additionally, where the exclusion prohibits any “direct or indirect benefit” to the compensation insurer, it applies to compensation already paid as well as to any future compensation payable by the compensation insurer. Cleaning Specialists, Inc., supra. Therefore, since the Lafayette UM/UIM policy provision expressly excludes reimbursement to a workers' compensation insurer, then Bridgefield cannot recover against Lafayette for reimbursement of either past or future compensation payments to Taylor. Taylor established that there were no genuine issues of material fact and he was entitled to judgment as a matter of law. Thus, the trial court correctly granted summary judgment in favor of Taylor. This assignment of error lacks merit.

We do not find any reason to create an exception to the above principle that would allow a validly excluded compensation insurer reimbursement or recovery from the UM/UIM policy proceeds because the compensation insurer asserts that the injured worker has committed fraud or made misrepresentations pursuant to [LSA-R.S. 23:1208](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000011&cite=LARS23%3a1208&originatingDoc=I398412870ed511d9bde8ee3d49ead4ec&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). Regardless of the underlying details of the claim, Bridgefield paid benefits to Taylor under the workers' compensation law, and therefore, Bridgefield's claim for reimbursement or recovery of benefits paid is validly precluded under the exclusionary provision of Lafayette's UM/UIM policy.

The Court believes the two motions, legal issues and answers to those issues are interrelated and the plaintiffs’ Motion for Summary Judgment Against the Intervenor, Johnson Controls, is granted.

Following review of the legal issues and applicable law, the Court concludes that the Motion for Partial Summary Judgment filed by Cherokee Insurance Company has merit and is granted. The intervention of Johnson Controls, Inc. is dismissed.

Signed this 10th day of April, 2013 in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

J. Allen Cooper, Jr., Counsel for Claude B. Kennedy, Jr. and Robbie J. Kennedy

Mark A. Perkins, Counsel for Cherokee Insurance Company

Eric E. Pope, Counsel for Johnson Controls, Inc.

Richard S. Vale, Counsel for Johnson Controls, Inc.

Mickey Joe Durden

5502 Hickory Ridge

Bossier City, LA 71111