

ORDER OF COURT

NOW, this 24th day of August, 1981, the defendant's motion to strike off paragraphs 29-32 is denied; motion to strike paragraphs 33, 34 and 35 is granted; motion to strike paragraphs 36-39 is denied. The defendant's demurrer to Count III is sustained.

The plaintiffs are granted twenty (20) days from date hereof to file an amended complaint pursuant to this Opinion.

Exceptions are granted the plaintiffs and defendant.

REAM v. NATIONWIDE INSURANCE COMPANY, C.P. Centre County, No. 1979 - 3705

*Assumpsit - No-Fault Insurance - Work Loss Benefits Suit by Administrator*

1. In order for the parents of a decedent to recover "work loss" benefits under the Pennsylvania No-Fault Act, they must not only allege that they are the decedent's parents, but also that they were dependent on the decedent for support.

2. So long as a plaintiff is a survivor, as defined in the Pennsylvania No-Fault Act, he will not be denied work loss benefits because he elects to claim them on behalf of the decedent's estate.

*Stephen W. Furst, Esq., Attorney for Plaintiffs*

*James M. Horne, Esq., Attorney for Defendant*

MEMORANDUM AND ORDER

EPPINGER, P.J., September 2, 1981:

Plaintiffs are Norman and Phyllis Ream. Their son Jeffrey was killed in an automobile accident while driving a car covered by a "Pennsylvania No-Fault" policy issued by Nationwide Insurance Company.

The complaint alleges that Jeffrey was employed at the time of the accident with a potential to earn more than \$15,000 a year and claims that the decedent's estate or the parents as surviving heirs are entitled to receive an amount for his "work

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## SHERIFF'S SALES, cont.

Atherton, C.S., dated May 16, 1959, and recorded in Volume 518, Page 537.

### TERMS

As soon as the property is knocked down to the purchaser, 10% of the purchase price plus 2% transfer tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, October 26, 1981 at 4:00 P.M., E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold at the hour at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

RAYMOND Z. HUSSACK,  
Sheriff  
Franklin County  
Chambersburg, Pa.

(9-18-81, 9-25-81, 10-2-81)

## EDITOR'S NOTE

Because of problems with mix-ups and delays in mailing, the Board is considering using the document slots of the various Franklin County attorney subscribers, in the Recorder of Deeds Office, for purposes of delivery of most of the local distribution of the Journal. Another consideration is the present public feeling that there is too much waste in government spending. There is no doubt Second Class mail costs the postal system considerable money. While our effort in this regard may be less than a drop in the overall bucket, it is still better than the hypocrisy or easy economy of suggesting others must tighten the belt, but going ahead and using unnecessary fat, ourselves.

So, we intend to start this method of distribution with next week's issue. Subscribers other than Franklin County attorneys will still receive their copies by mail.

loss" in the amount of \$15,000 under the policy.

The issue raised by the company's demurrer is whether the plaintiffs must allege dependency upon the deceased in order to obtain the "work loss" benefits. The No-Fault Act permits recovery by a survivor of the deceased. And survivor is defined as a "spouse; or child, parent, brother, sister or relative dependent upon the deceased for support." Pennsylvania No-Fault Motor Vehicle Insurance Act, Act of 1974 July 19, P. L. 489, No. 176, Art II, Sec's. 201, 103, 40 P.S. Sec's. 1009.201(a), 1009.103.

The complaint here alleges that plaintiffs are the parents of the deceased but does not allege that they were dependent upon the deceased for support. We are inclined to believe that such an allegation is required. We are aware of lower court decisions which have concluded as we have and those that have concluded to the contrary and are advised that the issue is now before the appellate courts. We have deferred decision in this case hoping for a resolution to the problem, but that has not happened.

Originally we planned to grant the demurrer and allow plaintiffs to plead over. We assume that they would have alleged such dependency if it existed. Instead we are going to overrule the demurrer so that the case may go to trial with the suggestion that a special verdict be entered on this question. The defendant's position is preserved by its demurrer and if an appellate court rules that the dependency allegation is not required, the verdict may stand. If on the other hand it is found that the plaintiffs must appear to be dependent upon the deceased, then the verdict may be altered accordingly.

Defendant also demurred to the complaint on the grounds that plaintiff father brought this action, in part, in his capacity as administrator of his son's estate. That is what happened in *Pontius v. United States Fidelity & Guaranty Company*, No. 2702 S 1977 (C.P. Dauphin, April 29, 1981). In that case the court noted that plaintiff was a survivor as defined in the No-Fault Act and said that it would not deny him the work loss benefits because he elected to claim them on behalf of the estate.

## ORDER OF COURT

September 2, 1981, the demurrer of the defendant is overruled. Defendant is given twenty days from this date to file a responsive pleading if it elects to do so.