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

ROCKWELL INTERNATIONAL CORPORATION EMPLOYEE HEALTH PLAN,

Plaintiff,

v.

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE; and BRADLEY DUNN,

Defendant.
_____/

File No. 1:99-CV-104

HON. ROBERT HOLMES BELL

O P I N I O N

This action for declaratory relief is before the Court on Plaintiff's motion for summary judgment.

I.

Plaintiff Rockwell International Corporation Employee Health Plan ("the Plan") is a self-funded group health plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1) et seq. Defendant Bradley Dunn ("Dunn") was eligible for health benefits under the Plan because he was a dependent of Plaintiff's employee, Robert Dunn. Dunn was injured in an automobile accident on April 9, 1997. The Plan paid medical benefits on his behalf in the amount of $96,152.65.

Dunn initiated a lawsuit in state court arising out of the accident and received a substantial settlement. Thereafter the Plan filed this declaratory judgment action seeking reimbursement from Dunn and his no-fault insurer, Defendant Detroit Automobile Inter-Insurance Exchange ("DAIIE"), a/k/a Auto Club Insurance Association ("ACIA"), for medical benefits paid on behalf of Dunn.

The Plan and Defendant DAIIE have entered into a stipulation for the voluntary dismissal of the Plan's claims against DAIIE. Accordingly, by order dated December 23, 1999, this Court dismissed Defendant DAIIE from this action. The only issue remaining is Plaintiff's claim that it is entitled to reimbursement from Defendant Dunn.

The Plan contains a "Reimbursement Provision" providing in pertinent part:

> As a condition of the Medical and Hearing Aid Benefits described in this book, and precedent to the payment of any Plan benefits to be paid the covered person, including Dependants, as a result of any loss or injury caused by the negligence of a third party, you are required to:
>
> Reimburse the Plan through MetraHealth to the extent of such benefits provided to you or your Dependents upon collection of damages whether by action at law, settlement, or otherwise . . . .

Plan, pp. 63-64.

The Plan clearly provides that when a Plan member is paid Plan benefits as a result of an injury caused by the negligence of a third party, upon collection of damages from the third-party, the recipient of Plan benefits is required to reimburse the Plan.

The Plan had a "Non-Duplication of Benefits" clause stating that Plan benefits "will not be payable to the extent that Mandatory No-Fault Automobile Insurance" benefits are equal to or more than Plan benefits, if the no-fault insurance does not include a coordination of benefits provision, or includes a coordination of benefits provision and is the primary plan as compared to the Rockwell Plan. p. 60. The Plan includes a comprehensive set of rules for determining which plan is primary, concluding with the provision that:

> If none of the above rules determines the order of benefits the plan that covered the patient for the longer period of time determines its benefits before the plan that covered the patient for the shorter time.

Plan, p. 61.

There is no dispute in this case that the Rockwell Plan covered Dunn for a longer period of time than ACIA, the no-fault insurer, and that pursuant to the Rockwell Plan's Non-Duplication of Benefits provision, the Rockwell Plan was primarily liable for

Dunn's medical bills.

Dunn does not deny that the Plan language requires reimbursement under the circumstances of this case. He does not argue that the reimbursement provision or the non-duplication of benefits provision is ambiguous, or that the Plan administrators improperly applied these provisions. Neither does he argue that the reimbursement provision is contrary to law. In fact, he acknowledges that under the current state of the law, an ERISA plan may require reimbursement from a tort recovery, despite the fact that the tort recovery is for pain and suffering and not for medical expenses.[1]

Dunn nevertheless opposes the Plan's request for

---

[1]In Ward v. Wal-Mart Stores, Inc. Assoc. Health & Welfare Plan Wal-Mart, No. 1:96-CV-866 (W.D. Mich. June 13, 1997), aff'd in part, rev'd in part, Nos. 98-1285, 98-1346 (6th Cir. Sept. 30, 1999), this Court gave effect to similar reimbursement language in the Wal-Mart Plan:

> The language clearly authorizes the Plan to recover for medical benefits paid, even from a settlement that compensates for pain and suffering only. The Court finds no abuse of discretion in the Plan's determination that it does have a right to reimbursement out of the Wards' auto-negligence settlement under this reimbursement provision.

p. 9. This determination was affirmed on appeal. Accord, Yerkovich v. AAA, 231 Mich. App. 54, 62-63, 585 N.W.2d 318 (1998), appeal granted, --- N.W.2d ---- (Mich. Sept. 29, 1999).

reimbursement on the basis that the Plan breached its fiduciary duty to him. Dunn makes the novel argument that because the Plan could have included a provision making its obligation to pay benefits secondary to a no-fault insurance policy, as is common in the industry, but did not do so, the Plan did not act in the best interests of the Plan beneficiaries, including Dunn.[2]

ERISA imposes high fiduciary standards on administrators of an ERISA plan, including a duty of loyalty, a "prudent person" fiduciary obligation, and a duty to act for the exclusive purpose of providing benefits to plan beneficiaries. Krohn v. Huron Memorial Hospital, 173 F.3d 542, 546-47 (6th Cir. 1999). Nevertheless, Dunn has provided the Court with no authority supporting his contention that the Plan cannot make itself the primary insurer under given circumstances, such as those present in this case. Dunn's right to benefits is controlled by the language of the Plan, not by what is common in the industry. He has not come forward with any authority in support of his

---

[2]Dunn argues that "[b]y failing to provide a provision that was common and familiar in the enterprise of ERISA Plan administration, the Plan breached its fiduciary to its beneficiary, Mr. Dunn. . . . This creation of primacy to a No-Fault policy, in light of the applicable law, both at a State and Federal level is clearly not in the best interest of its beneficiaries." Dunn's Response to Rockwell and DAIIE's motions for summary judgment, pp. 4-5.

argument that the Plan administrators breached their fiduciary duty by adopting this particular "Non-Duplication of Benefits" provision, or by applying this provision under the facts of this case. Neither has he come forward with any authority in support of his argument that the Plan administrators breached their fiduciary duty by adopting or applying the reimbursement provision.

Dunn complains that the Plan's failure to protect him from the known potential of having no available benefit is a breach of the Plan's fiduciary duty to him. Contrary to Dunn's argument, he has not been left paying for his own medical benefits. His reimbursement obligation only arises to the extent he has received a tort recovery. Moreover, this Court observes that the Michigan Court of Appeals has held that where an ERISA plan is primarily liable for the payment of medical expenses resulting from an automobile accident, and the plan member is required to reimburse the plan from a tort recovery, the plan member may look to her no-fault insurer to repay any sums she was required to reimburse the plan. Yerkovich v. AAA, 231 Mich. App. 54, 68, 585 N.W.2d 318 (1998), appeal granted, --- N.W.2d ---- (Mich. Sept. 29, 1999).

II.

Reference to Yerkovich brings the Court to Dunn's alternative argument.[3] Dunn argues that pursuant to the authority of Yerkovich, if he is required to reimburse the Plan, this Court should order ACIA to repay Dunn.

This issue is not properly before the Court. Dunn has not filed a cross-claim against ACIA requesting such relief. Moreover, any attempt on his part to amend his answer to include a cross-claim against Defendant ACIA at this time would be futile.

Because the Court is entering summary judgment for Plaintiff Rockwell, Rockwell's federal claim is no longer before the Court. The reimbursement issue between Dunn and ACIA arises under the State no-fault act. It is strictly an issue of state law over which this Court has no federal question jurisdiction. Since there is no allegation of diversity between Defendants ACIA and Dunn, the Court is not inclined to exercise jurisdiction over this potential state claim. As the Supreme Court has stated, "if the federal claims are dismissed before trial, . . . the state claims should be dismissed as well." United Mine Workers v.

---

[3]Plaintiff Rockwell Plan has also raised this as an alternative argument in its motion for summary judgment.

Gibbs, 383 U.S. 715, 726 (1966). See also Smith v. Freland, 954 F.2d 343, 348 (6th Cir.), cert. denied, 504 U.S. 915 (1992). Such a dismissal does not preclude litigation of the claims in the state courts. 3A J. Moore & J. Lucas, Moore's Federal Practice, ¶ 18.07[1.-3], 18-61 (2d ed. 1990).

Accordingly, Dunn's request for relief against Defendant ACIA is denied without prejudice to Dunn's ability to pursue this issue in State court.

III.

Finally, Plaintiff has requested "the Court" to reimburse it for the reasonable attorneys fees and costs incurred in the prosecution of this action. Plaintiff's Brief in Support of Motion for Summary Judgment p. 8. The Court knows of no legal authority requiring it to pay attorney fees, and the Court simply does not have funds from which to make such a reimbursement.

The Court assumes that Plaintiff is seeking an order requiring **Defendant Dunn** to pay attorney fees pursuant to 29 U.S.C. § 1132(g)(1). Section 1132(g) confers broad discretion on a district court in making an award of attorney's fees in an ERISA action:

> In any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee

and costs of action to either party.

29 U.S.C. § 1132(g)(1). In exercising its discretion the Court considers the following factors:

> (1) the degree of the opposing party's culpability or bad faith; (2) the opposing party's ability to satisfy an award of attorney's fees; (3) the deterrent effect of an award on other persons under similar circumstances; (4) whether the party requesting fees sought to confer a common benefit on all participants and beneficiaries of an ERISA plan or resolve significant legal questions regarding ERISA; and (5) the relative merits of the parties' positions.

Schwartz v. Gregori, 160 F.3d 1116, 1118 (6th Cir. 1998)(quoting Secretary of Dep't of Labor v. King, 775 F.2d 666, 669 (6th Cir.1985)), cert. denied, 119 S. Ct. 1756 (1999).

Upon consideration of all of these factors, the Court does not believe that an award of attorney fees is warranted in this action. The interaction between ERISA plans and State no-fault law is an evolving area of the law. Defendant Dunn has not shown bad faith in defending this action, and the Court finds no need to use attorney fees for their deterrent effect.

An order and judgment consistent with this opinion will be entered.

Date: December 23, 1999

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

3776C

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

FILED - GR
99 DEC 23 PM 4:36

ROCKWELL INTERNATIONAL CORPORATION EMPLOYEE HEALTH PLAN,

Plaintiff,

v.

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE; and BRADLEY DUNN,

Defendant.
_____/

File No. 1:99-CV-104

HON. ROBERT HOLMES BELL

ORDER AND JUDGMENT

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Plaintiff Rockwell International Corporation Employee Health Plan's motion for summary judgment (Docket # 16) is **GRANTED**.

IT IS FURTHER ORDERED that a **DECLARATORY JUDGMENT** is entered in favor of Plaintiff Rockwell Plan, declaring that the Plan is entitled to reimbursement from Bradley Dunn in the amount of $96,152.65.

IT IS FURTHER ORDERED that Plaintiff's request for an award of attorney fees is **DENIED**.

IT IS FURTHER ORDERED that this case is **DISMISSED** in its

entirety without prejudice to Defendant Dunn's right to seek relief from Defendant DAIIE in state court.

Date: December 23, 1999

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE