UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

NATIONWIDE INSURANCE COMPANY,
Subrogee of JAMES GROOMS and
KAREN GROOMS.

v File No. G88-557 CA6

J. T. BATTS, INC.,

Defendant.
_____/

JUDGMENT ORDER

In accordance with the opinion dated January 19, 1989;

IT IS HEREBY ORDERED that defendant's Motion for Summary Judgment is GRANTED, and that Plaintiffs' Motion for Summary Judgment is DENIED;

IT IS FURTHER ORDERED that Judgment is entered IN FAVOR of DEFENDANT, J. T. BATTS, Inc., and AGAINST PLAINTIFFS, Nationwide Insurance Company, James Grooms and Karen Grooms.

DATED in Kalamazoo, MI:
1/19/89

RICHARD A. ENSLEN
U.S. District Judge

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OPINION

This matter is before the Court on cross motions for summary judgment. For the reasons stated below, the Court will grant defendant's motion and deny plaintiffs'.

Facts

On April 5, 1987, James and Karen Grooms were injured in an automobile accident. They incurred medical expenses in the amount of $20,930.50. At the time of the accident, the Grooms had no-fault automobile personal injury protection benefits under a coordinated benefits policy issued by Nationwide Insurance Company ("Nationwide"). Mr. Grooms was an employee of J.T. Batts, Inc. ("Batts") and he and his wife were participants in Batts' Employee Medical Benefit Plan ("the plan"). The plan is an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1002(1). It provides for reimbursement to employees and covered dependents for certain medical, dental, surgical and hospital care expenses. The plan also contains an exclusionary clause which provides that, "Expenses are not covered and no benefits shall be paid on account of medical charges for services incurred as a result of a motor vehicle accident."

The plan refused to reimburse the Grooms for their medical expenses incurred as a result of the automobile accident. Nationwide paid the medical expenses and, together with the Grooms, sued Batts in Ottawa County Circuit Court for reimbursement.[1] Batts removed the case to this Court on the grounds that the Grooms' claim is one for denial of benefits which arises under ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B).[2]

In its motion for summary judgment, Nationwide argues that Michigan law requires Batts to reimburse it for the medical expenses paid on behalf of the Grooms since, under Michigan law, health and accident insurers are deemed the primary insurer for such losses, while no-fault insurers are deemed secondary insurers. Federal Kemper Insurance Co. v. Health Insurance Administration, Inc., 424 Mich. 537 (1986); Auto Owners Insurance Co. v. Lacks Industries, 156 Mich. App. 837 (1986). Batts does not dispute that Federal Kemper applies to ERISA employee welfare benefit plans. Northern Group Services v. Auto Owners Insurance Co., 833 F.2d 85 (6th Cir. 1987). Rather, Batts argues that, because its plan totally excludes coverage for automobile accident-related expenses, the Federal Kemper rule does not mandate that it provide coverage for the Grooms' expenses.

Standard

The Court may not grant summary judgment unless there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Electric Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). No material facts remain in dispute in this action, and the only remaining question is which party is entitled to judgment as a matter of law.

Discussion

1. Jurisdiction. Only the defendant responded to an order requesting the parties to discuss whether this case was properly removed. I originally believed the case presented a federal question only by way of Batt's defense, since I understood Batts to argue that removal was proper because ERISA pre-empted the Michigan law on this subject. In its responsive brief, however, Batts has clarified its position.

Batts argues that the Grooms' claim against it arises under ERISA, since they argue that the plan unreasonably denied coverage for their automobile accident-related injuries. This is a claim to recover benefits due under an ERISA plan, within the meaning of 29 U.S.C. §1132(a)(1)(B). Since Nationwide has standing to pursue this claim only because it is the Grooms' subrogee, its claim against Batts is also a claim for denial of benefits, arising under section 1132. See Herman Hospital v. Meba Medical & Benefits Plan, 845 F.2d 1286 (5th Cir. 1988); Misic v. The Building Service Employees Health and WElfare Trust, 789 F.2d 1374 (9th Cir. 1986); Wisconsin Department of Health and Social Services v. Upholsterers International Union Health and Welfare Fund, 686 F. Supp. 708 (W.D. Wis. 1988). Batts further disclaims any argument that Federal Kemper is pre-empted by ERISA. Instead, Batts argues that even under Federal Kemper it has no objection to pay benefits for the Grooms' injuries.

I agree that federal jurisdiction exists in this case. The plaintiffs' complaint, although pleaded in a single count, actually raises two claims. One arises under federal law, and the other arises under state law. First, the plaintiffs claim that Batts improperly denied them benefits under an employee welfare benefit plan because the plan provision that excludes coverage for automobile accident-related injuries is void as a matter of public policy. Thus, their claim is one to "recover benefits due to [them] under the terms of

[their] plan [or] to enforce [their] rights under the terms of the plan...." 28 U.S.C. §1132(a)(1)(B). Nationwide is subrogated to the Grooms, for purposes of this claim, and the Grooms' claim arises under ERISA. Removal was, therefore, proper.[3] The plaintiffs' second claim arises under state law. Nationwide argues that, under Federal Kemper, Batts must assume primary liability for the Grooms' medical expenses. Because this claim is virtually identical to the ERISA claim, the Court will exercise its pendent jurisdiction and decide all the issues presented.[4] See Gaff v. Federal Deposit Insurance Corp., 814 F.2d 311 (6th Cir. 1987).

2. Batts' Denial of Benefits. The plaintiffs argue that, under Federal Kemper, the Batts plan must accept primary coverage for the Grooms' medical expenses. Federal Kemper held that, where no-fault and health or accident insurance policies contain conflicting coordination of benefits clauses, the no-fault insurer's clause takes precedence, leaving the health insurer primarily liable for the insured's health-related expenses. Id., 424 Mich. at 551. In that case, the Michigan Supreme Court construed a health insurance policy containing an "excess" coverage clause. Id. at 544. The clause read, "Under 'No Fault' legislation the benefits of this plan shall be determined after the benefits provided by 'No Fault' legislation in those states where such legislation is in force and allowable by law." Id. at 540. Thus, the health insurance policy unambiguously provided some amount of coverage for victims of automobile accidents. It provided coverage to the extent that "No Fault" legislation required it to do so. The only question presented, and the only question decided by the Michigan Supreme Court, was whether this clause provided coverage only after an insured's no-fault coverage had been exhausted, or whether Michigan's no-fault insurance statute, MCL 500.3109a, required the health insurer to accept primary liability. The Supreme Court found that

section 3109a required health insurers, whose plans contained coordination of benefits clauses, to accept primary liability.

That holding simply does not apply to the Batts plan. The Batts plan provides no coverage for injuries sustained in automobile accidents, whether or not the participant has other insurance to cover the loss. The plan does not contain a coordination of benefits clause, it contains an outright excusion of coverage. Federal Kemper did not address this issue, and no Michigan case has extended the Federal Kemper holding to invalidate exclusions from coverage for automobile accident-related injuries.[5] Because the plan language is clear and unambiguous, it must be enforced. Fresard v. Michigan Millers Mutual Insurance Co., 414 Mich. 616 (1982); Raska v. Farm Bureau Mutual Insurance Co., 412 Mich. 344, 361-62 (1982); Usher v. St. Paul Fire & Marine Insurance Co., 126 Mich. App. 443, 447 (1983).

Nationwide argues that Batts' exclusionary clause is void as a matter of public policy because it subverts the Federal Kemper holding. Because the Batts plan seeks to avoid the effect of Federal Kemper by completely excluding coverage to that of a no-fault insurer, Nationwide argues that the plan suffers from the same defects as the policy at issue in Federal Kemper. As indicated above, I do not read Federal Kemper so broadly. Federal Kemper did not require health insurance plans to offer coverage for automobile accident-related injuries. Rather, it held only that, where such coverage existed, it was primary to the coverage available under no-fault insurance policies. In the absence of an authoritative state court ruling to that effect, I am unwilling to extend Federal Kemper to invalidate the exclusionary clause at issue here.[6] State law, therefore, does not mandate that Batts provide the coverage sought, and in fact requires that Batts' exclusionary clause be enforced. See Raska, 412 Mich. at 361.

Similarly, federal law does not require ERISA plans to provide coverage for automobile accident injuries. As the Sixth Circuit held in Moore v. Reynolds Metals Company Retirement Program, 740 F.2d 454, 456 (6th Cir. 1984), "[C]ourts have no authority to decide which benefits employers must confer upon their employees...." See also Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981) (private parties creating an employee benefit plan have discretion to define the content of benefits under the plan). No federal court has ever mandated that ERISA plan include coverage for particular injuries and the statute does not contain that requirement. Batts, therefore, was not required by Michigan or federal law to provide an employee welfare benefit plan which offered coverage for automobile accident-related injuries. Its plan does not provide that coverage, and the exclusion form coverage is not dependent upon the existence of any other insurance. Under these circumstances, the plain language of the plan must be given effect. The Grooms' were not entitled to receive benefits from the plan. Thus, the plan's denial of benefits was not arbitrary and capricious. Varhola v. Cyclops Corp., 820 F.2d 809 (6th Cir. 1986); Cook v. Pension Plan for Salaried Employees for Cyclops Corp., 801 F.2d 865, 860 (6th Cir. 1986); Moore, 740 F.2d at 457. The defendant's motion for summary judgment is granted.

DATED in Kalamazoo, MI:
Jan 19, 1989

RICHARD A. ENSLEN
U.S. District Judge

FOOTNOTES

1/ In its complaint, Nationwide alleged that it had paid medical and hospitalization expenses on behalf of the Grooms, and "has become subrogated in like amount." Complaint, ¶8. Nationwide argues, therefore, that it has become subrogated to the Grooms and sues to enforce their right to benefits under the plan.

2/ Section 1132(a)(1)(B) provides that, "A civil action may be brought (1) by a participant or beneficiary....(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

3/ This case thus differs from Transamerica Insurance Co. v. Michigan Laborers' Health Care Fund, No. L88-259 (W.D. Mich. Nov. 9, 1988) (Gibson, J.) (unpublished), and State Farm Mutual Automobile Insurance Co. v. Employee Benefit Administrators, Inc., No. G87-284 (W.D. Mich. October 20, 1988) (Gibson, J.) (unpublished). In those cases, the plaintiff no-fault insurers did not claim rights as subrogees of their insured, the participants in the ERISA plans at issue. The no-fault insurers did not claim an arbitrary and capricious denial of benefits by the ERISA plans. Instead, they argued only that Federal Kemper gave them an independent cause of action, arising under state law, for reimbursement from the ERISA plans. Since ERISA does not preempt the Federal Kemper claim, and since the no-fault insurers did not raise a claim under ERISA, the federal question arose only by way of defense and removal was improper.

4/ Nationwide's Federal Kemper claim arises under state law. Northern Group Services did not hold that ERISA required employee welfare benefit plans to provide for primary coverage of automobile accident-related injuries. It held that ERISA did not preclude state law mandating that result. Further, an insurer suing to recover payments under Federal Kemper is not, in its own right, a beneficiary or participant in an ERISA plan with standing to sue under 29 U.S.C. §1132(a). Thus, Nationwide's Federal Kemper claim, as opposed to its insureds' ERISA claim, exists only as a matter of state law and provides no independent basis for federal jurisdiction.

5/ Plaintiffs argue that Auto-Owners Insurance Co. v. Lacks Industries, 156 Mich. App. 837 (1986), extends Federal Kemper to policies containing outright exclusions of coverage. I disagree. The clause at issue in Auto-Owners excluded coverage for, "Charges for or in connection with a sickness or accident for which the employee or dependent is entitled to benefits under any No Fault Automobile...Statute under which the covered person is entitled to benefits." Id. at 838-39. Again, the exclusion from coverage is made dependent upon the existence of other insurance, as was the exclusion in Federal Kemper.

6/ In its reply brief, Nationwide basically concedes that exclusionary clauses are enforceable under Michigan law. It states, "Of course, plaintiff does not contend that defendant is not entitled to include neutral exclusionary clauses in its plan. For example, if defendant excluded coverage for broken legs, defendant would not be required to pay benefits for a broken leg merely because the broken

leg incurred [sic] in an automobile accident." Reply Brief at 5. The exclusionary clause at issue here, however, is "neutral." It excludes coverage for "medical charges for services incurred as a result of a motor vehicle accident." This language does not refer to the existence of other insurance, it excludes coverage based upon the cause of the injury. The clause is every bit as "neutral" as a clause extending coverage for all broken legs.