STATE OF MICHIGAN

COURT OF APPEALS

JOHN UDELL and TRANSAMERICA INSURANCE COMPANY,

Plaintiffs-Appellants,

v No. 116780

GEORGIE BOY MANUFACTURING, INC., ON REMAND

Defendant-Appellee.

Before: Sullivan, P.J., and McDonald and Cynar, JJ.

PER CURIAM.

Our prior judgment in this case which appeared at 174 Mich App 171; ___ NW2d ___ (1988) was vacated and remanded by the Supreme Court for reconsideration in light of Northern Group Services v Auto Owners Ins Co, 833 F2d 85 (CA 6, 1987), cert den ___ US ___; 108 S Ct 1754; 100 L Ed 2d 216 (1988). See Udell v Georgie Boy Manufacturing, Inc, ___ Mich ___; ___ NW2d ___ (Docket No. 84131; rel'd 4/5/89). A full statement of facts is included in our prior opinion. It is sufficient to state here that plaintiff John Udell was injured in an automobile accident while he was employed by defendant Georgie Boy Manufacturing. He was covered under a group insurance plan known as the Georgie Boy Manufacturing Trust, which provided hospitalization and medical benefits. He was also insured by plaintiff Transamerica Insurance Company for personal injury protection under Michigan's no-fault act. Udell applied to the trust for payment of his incurred expenses, but the trust refused payment under its coordination of benefits provision, contending that Transamerica's policy was primary to defendant's plan and, therefore, that Transamerica was responsible for Udell's hospitalization and medical bills. Transamerica paid Udell personal injury protection (PIP) benefits and, then, filed a

complaint to recover from Georgie Boy the PIP benefits it had paid.

In our previous opinion, a majority of this Court affirmed the trial court's grant of summary disposition in favor of defendant Georgie Boy, ruling, in essence, that the Employee Retirement Income Security Act (ERISA), 29 USC 1001 et seq., preempted applying the coordination of benefits provision of this state's no-fault act. MCL 500.3109a; MSA 24.13109(1).

We now hold this case is controlled by Northern Group Services, Inc, supra, a case in which the plaintiff sought to have the coordination of benefits section of Michigan's no-fault act declared preempted by the Employee Retirement Income Security Act (ERISA), 29 USC 1001 et seq.

In Northern Group Services, Inc, the lower court held that ERISA preempted the Michigan law under 29 USC 1144(a) because Michigan law related to the employee benefit plans. Further, the Michigan law was not protected by the savings clause contained in ERISA, USC 1144(b)(2)(A), and the plans were excluded by the deemer clause, USC 1144(b)(2)(B). Therefore, the lower court concluded that because the plans were protected by ERISA, Michigan could not regulate the benefits provided. The Court of Appeals for the Sixth Circuit reversed, holding:

> [T]he Michigan law conflicts directly with the plan: it allocates obligations to make insurance payments contrary to the express coordination-of-benefits language of the plan. Holding that the state law does not "relate to" the plan would run contrary to the plain meaning of the text and to the relevant case law and legislative history. Northern Group Services, Inc, 89 (footnote omitted).

The court went on to say:

> The Michigan legislature and courts simply have superimposed upon this body of law a reasonable policy judgment that a conflict between benefits available under no-fault and other benefits should be resolved in favor of the no-fault insurer. This resolution eliminates duplication of recovery by the insured and furthers the twin purposes of § 3109a to contain both auto insurance costs and health insurance costs.
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> * * *

> The State legislature and its courts simply have decided that medical expenses resulting from an auto accident should be paid first by those who have specifically insured the medical risk in the form of health and hospitalization coverage rather than by the no-fault insurance liability carrier. Auto no-fault coverage is compulsory, and the State therefore has a strong, legitimate interest in keeping down the costs of this coverage. This interest is not likely to be exercised in a parochial or discriminatory way. When there is multiple coverage, loss simply is first spread to entities other than the no-fault insurers. ERISA plans are treated no differently than other entities providing "coverage". Id., p 93.

See also Federal Kemper Ins Co, Inc v Health Ins Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986), and especially Auto Club Ins Ass'n v Frederick & Herrud, Inc, ___ Mich App ___; ___ NW2d ___ (Docket No. 96693; rel'd March 6, 1989).

The trial court order granting summary disposition in favor of defendant is therefore reversed and the case is remanded for further proceedings. We do not retain jurisdiction.

/s/ Joseph B. Sullivan
/s/ Gary R. McDonald
/s/ Walter P. Cynar