UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTOMOBILE CLUB INSURANCE ASSOCIATION, a Michigan Reciprocal Inter Insurance Exchange, individually and as subrogee of JOSEPH SPINA, Guardian and Conservator of KENNETH JAMES SPINA, and KENNETH JAMES SPINA,

Plaintiff,

v.

Civ. Action No. 89-72264
Hon. Bernard A. Friedman

HEALTH AND WELFARE PLANS, INC., a Michigan corporation, NATIONAL LABOR UNION HEALTH AND WELFARE FUND, GEORGE VITALE, and JOSEPH MURULLO, Joint Trustees of the NATIONAL LABOR UNION HEALTH AND WELFARE FUND, Jointly and Severally,

Defendants.
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MEMORANDUM OPINION AND ORDER

I. Introduction

This matter is presently before the court on (1) defendant National Labor Union Health and Welfare Fund's ("the Fund") motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) and/or summary judgment under Rule 56; (2) the Fund's motion to stay these proceedings pending a ruling in FMC Corp. v. Cynthia Ann Holliday, 885 F.2d 79 (3d Cir. 1989), cert. granted 58 U.S.L.W. 3526 (U.S. Feb. 20, 1990) (No. 89-1048); and (3) plaintiff Automobile Club Insurance Association's ("Automobile Club") motion for partial summary judgment. Co-defendant Health and Welfare Plan, Inc. has joined in the Fund's motion for judgment on the pleadings and/or summary judgment.

The court held a hearing in this matter on May 24, 1990.

II. Facts

The basic facts involved in this lawsuit are not in dispute. On June 23, 1983, Kenneth James Spina was injured in an automobile accident. At the time of the accident, plaintiff Automobile Club was Spina's no-fault insurer. Spina also had a health insurance policy with the defendant Fund, which is a self-insured multi-employer benefit plan organized under § 302(c)(5) of the Labor-Management Relations Act, 29 U.S.C. § 186(c)(5). In addition, there is no dispute that the Fund is also governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Defendant Health and Welfare Plans, Inc. administered the Fund. Both insurance policies contained coordination of benefits clauses which placed primary liability for personal injuries resulting from automobile accidents on the other carrier.

As a result of theses conflicting provisions, both carriers initially refused to cover all of Spina's losses. The Fund claimed that its coordination of benefits provision in its plan excluded coverage for injuries suffered in automobile accidents. The Automobile Club apparently asserted that under Michigan law, its obligation to pay was secondary to that of the Fund.

Spina's guardian and conservator filed suit against both carriers in state court to recover the insurance benefits.

In 1987, the parties entered into a stipulation dismissing the case without prejudice. The Automobile Club contends that it also entered into a settlement agreement with the Fund at that time. According to plaintiff, the settlement agreement provided that the Automobile Club would pay Spina more than $25,000 in outstanding medical expenses as well as $10,000 for Spina's attorney's fees. In addition, the parties allegedly agreed to be bound by the decision of the Sixth Circuit in Northern Group Services, Inc. v. State Farm Mutual Automobile Insurance Co., 833 F.2d 85 (6th Cir. 1987), cert. denied, 108 S.Ct. 1754 (1988), which was pending at the time of the settlement. The agreement allegedly provided that if the Sixth Circuit's ruling was favorable to no-fault carriers, the Fund would reimburse the Automobile Club for its payments to Spina with interest.

The court's ruling in Northern Group Services did favor no-fault insurers, but the Fund refused to reimburse the Automobile Club. The Fund contends that there was no agreement to reimburse plaintiff on the basis of the ruling in Northern Group Services. In 1988, the Automobile Club moved to reopen the state action but the court denied that motion. Plaintiff subsequently filed the instant action in state court, which defendants removed to federal court.

In count I of the complaint, plaintiff alleges that the Fund breached its contract with the Automobile Club regarding settlement of the Spina lawsuit. Count II seeks recovery on a quasi-contract or unjust enrichment theory. Plaintiff avers that

defendants owed a duty to pay health insurance benefits to Spina pursuant to the policy of insurance involving him. The Automobile Club contends that under state and federal law, the Fund was not entitled to coordinate benefits which would otherwise have been payable by plaintiffs. The Automobile Club argues that it discharged the liabilities of Spina and therefore defendants are liable to plaintiff for the amounts expended in favor of him. In count III, plaintiff proceeds on a subrogation theory, arguing that it is the subrogee of Spina for all amounts expended on his behalf which the Fund was obligated to pay under the insurance policy with Spina. Finally, count IV seeks recoupment of all monies the Automobile Club spent on medical expenses for Spina which the Fund allegedly should have paid.

III. Discussion

A. Defendant's Motion for Judgment on the Pleadings and/or Summary Judgment

In its motion for judgment on the pleadings and/or summary judgment, the Fund argues that plaintiff's claims for breach of contract, unjust enrichment and recoupment are state law claims which ERISA preempts. The Fund also asserts that plaintiff's claim for subrogation to Spina's right to benefits from the Fund is preempted by ERISA, specifically relying on the Sixth Circuit's decision in Liberty Mutual Insurance Group v. Iron Workers Health Fund of Eastern Michigan, 879 F.2d 1384 (6th

Cir. 1989)[1]. Even if not preempted, the Fund argues that the subrogation claim is barred by the applicable statute of limitations. Moreover, the Fund contends that it is not liable on the subrogation claim because the Michigan Insurance Code's no-fault coordination of benefits provisions are not enforceable against "voluntary associations of employees" like the Fund. Finally, even if the subrogation claim is not preempted, the Fund argues that the court should not retroactively apply the Sixth Circuit's decision in Northern Group Services against the Fund.

1. Standard of Review

The Fund has brought its motion pursuant to Fed. R. Civ. P. 12(c) and 56. Rule 12(c) provides that after the pleadings are closed, a party may move for judgment on the pleadings. However, if the court considers any matters outside the pleadings when ruling on such a motion, the court should treat the motion as one for summary judgment under Rule 56. Because the court will consider matters outside the pleadings, the court will treat the motion as exclusively one for summary judgment.

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[1]The Fund draws a sharp line between plaintiff's claims for breach of contract, unjust enrichment, and recoupment on the one hand and subrogation on the other. While the first three are clearly state law claims and subrogation involves the insured's rights under ERISA, it is not at all clear that this distinction has any practical effect. The unjust enrichment, recoupment, and subrogation claims are all predicated on the theory that under Michigan law, the Fund has primary liability for Spina's medical benefits. For all these claims, the key issue the court must address is whether ERISA preempts Michigan law with respect to coordination of benefits.

The standards the court must use in deciding motions for summary judgment are clear. Fed. R. Civ. P. 56(c) dictates the entry of summary judgment if the pleadings, depositions, answers to interrogatories, admissions on file, and the affidavits, if any, demonstrate that no genuine issues of material fact exist and the moving party is entitled to a judgment as a matter of law. Under Rule 56(e), the mere existence of some alleged factual dispute will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The movant in a motion for summary judgment has the initial responsibility of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. Fed. R. Civ. P. 56(e). There is no express or implied requirement that the moving party support its motion with affidavits or similar materials negating the opponent's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the non-movant cannot establish an essential element of its claim and summary judgment is appropriate, the movant is entitled to entry of summary judgment as a matter of law. Id. at 322. The non-movant "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989), quoting Anderson, 477 U.S. at 257. However, the court must believe the evidence of the

non-movant and draw all justifiable inferences in his favor. U.S. v. Diebolt, 369 U.S. 654, 655 (1962); Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970).

2. ERISA Preemption

Under ERISA, if a state law "relate[s] to" an ERISA plan it is preempted. See 29 U.S.C. § 1144(a); Liberty Mutual, 879 F.2d at 1386. However, under 29 U.S.C. § 1144(b)(2)(A), if the state law "regulates insurance," it is not preempted. Id. "But [under 29 U.S.C. § 1144(b)(2)(B)] an ERISA covered employee benefit plan that provides insurance coverage is "deemed" not to be an insurance company for the purposes of state laws regulating insurance, and ERISA, therefore, preempts such state laws." Id.; see also Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 45 (1987).

With respect to plaintiff's breach of contract claim, it is clear that that cause of action does not involve an ERISA plan such that the act preempts the claim. To be sure, plaintiff seeks recovery from an ERISA plan for insurance benefits paid to an insured. However, plaintiff does not seek recovery under the plan itself or under any state law which requires an ERISA plan to reimburse a no-fault carrier. Instead, plaintiff alleges that the Fund breached a separate contract the Fund entered into in order to settle a legal dispute. For the court to hold that ERISA preempts such a claim would entitle ERISA plans to freely breach settlement agreements regarding ERISA benefits and then

hide behind ERISA's broad preemption provision to avoid liability. As a result, the court will deny the Fund's motion as to the breach of contract claim.

Plaintiff's remaining claims in essence allege that under applicable law the Fund, rather than the Automobile Club, is liable for Spina's medical and other expenses. The difficulty presented here is that the two insurers had coordination of benefits clauses in their policies with Spina which imposed liability on the other carrier. However, Michigan courts have held that under M.C.L.A. § 500.3109a[2],

> [I]f a claimant for personal injury benefits has health/accident insurance and no-fault insurance policies, both of which seek to place primary responsibility for automobile injury benefits on the other, it is the [health/accident] insurance carrier that is primarily liable.

Allstate Insurance Co. v. Detroit Millmen's Health and Welfare Fund, 729 F. Supp. 1142, 1144 (E.D. Mich. 1990), citing Federal Kemper Insurance Co. v. Health Administration, Inc., 424 Mich. 537, 551 (1986).

Thus, state law provides that in the instant case, the

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[2]M.C.L.A. § 500.3109a provides:

> An insurer providing personal protection insurance benefits shall offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions required to be offered by this section shall be subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household.

Fund is primarily liable for paying Spina's medical and other expenses which arose out of the automobile accident. The question the court must address in this case, however, is whether ERISA preempts that state law.

The Sixth Circuit has had several opportunities to address this question and has reached results which at first glance are in conflict. In Liberty Mutual, the court held that ERISA preempted Michigan law which imposed primary liability on the ERISA plan when the plan itself excluded coverage of injuries resulting from automobile accidents. 879 F.2d at 1388. However, in Northern Group Services, the court held that ERISA did not preempt the very same Michigan law when "[t]he ERISA plans contain coordination of benefits provisions that purport to make the liability of the plans secondary to state mandated no-fault automobile insurance." 833 F.2d at 87. In the instant case, plaintiff argues that Northern Group Services controls while defendants claim that Liberty Mutual does.

Because the relevant clause in the Fund's policy is more similar to that involved in Northern Group Services than the one in Liberty Mutual, the court finds that the former case controls. As noted above, the ERISA plan in Liberty Mutual contained a clause which totally excluded benefits for injuries caused in an automobile accident. See also Allstate, 729 F. Supp. 1142 (Holding that ERISA preempted Michigan law when plan had a total exclusion provision regarding automobile accidents). In the instant case, the Fund's policy at the time of the

accident did not totally exclude all coverage for automobile accidents; instead, it provided that it would coordinate benefits with no-fault carriers in such circumstances.

The Liberty Mutual court noted the importance of the distinction between the provisions involved in the two cases:

> It would appear at first blush that Northern Group Services requires us to hold in this case that § 3109a is not preempted by ERISA. However, such a ruling would ignore the very different effect of the application of § 3109a to the . . . [coordination of benefits provision] contained in the benefit plan considered by the Northern Group panel and . . . its effect upon the exclusion of coverage language in the Fund plan before us. The Northern Group Services court was not interpreting a statute which requires ERISA plans to provide coverage for automobile accidents even where the plan's unambiguous language excludes such coverage. Section 3109a, as it had then been interpreted by Federal Kemper, did not regulate the content of welfare benefits provided by ERISA plans, but merely required plans which provide automobile accident coverage to assume the primary liability when such coverage is also provided by a no-fault carrier. In this case, however, the state regulation in question, as we have assumed the Michigan courts would interpret it, is plainly a mandated-benefit statute of the type discussed in Metropolitan Life [Insurance Co. v. Massachusetts, 471 U.S. 724 (1985)]. It would require the ERISA plan to provide a benefit which would not otherwise by provided to employees: coverage for injuries incurred as the result of an automobile accident.

879 F.2d at 1387-88.

As a result, the court concluded that if § 3109a and Federal Kemper required "that health and accident insurance policies in Michigan must provide automobile coverage even when such coverage is specifically excluded, thus requiring this court to disregard the Fund's automobile accident exclusion clause in this case," ERISA preempts application of the law to the Fund.

Id. at 1386, 1388. However, because the Fund in the instant case had a coordination of benefits clause rather than a total exclusion clause, Liberty Mutual is not controlling.

Although the Fund contends that it has "effectively" denied coverage for all automobile accident-related injuries since its organization, the policy itself did not originally include such a blanket exclusion such as that involved in Liberty Mutual. Instead, it contained a coordination of benefits provision which apparently accomplished the Fund's objectives of denying coverage for automobile accidents.

Apparently realizing that its coordination of benefits clause would no longer accomplish the same result after Northern Group Services was decided, the Fund amended the policy language to explicitly exclude coverage for injuries resulting from automobile accidents. This is the type of provision discussed in Liberty Mutual. Although this language was not adopted at the time of Spina's accident or when he applied for benefits under the plan which the Fund refused to pay, the trustees of the Fund made this amendment retroactive so that it applied to him. According to one of the administrators of the plan, the amendment excluding benefits for injuries arising out of automobile accidents was applied to all pending claims as well as all later filed claims. See Second Declaration of John O'Brien at para. 3. The amendment does not apply to valid claims filed after Northern Group Services was decided but prior to the date of the plan amendment. Id.

According to the Fund, the trustees have broad discretion to deny benefits under the plan and that the court may not reject the trustees' action unless it was arbitrary and capricious. Defendant argues that the trustees' decision to exclude automobile accident coverage retroactively was not arbitrary or capricious because it served to accomplish the purposes of the plan and did not defeat Spina's reasonable expectations.

Defendant is correct that as a general matter, "[a]mendments to a pension plan are void [only] if the trustees acted arbitrarily or capriciously in enacting the amendment." Baker v. Lukens Steel Co., 793 F.2d 509, 513 (3d Cir. 1986); see also Nationwide Mutual Insurance Co. v. Teamsters Health and Welfare Fund, 695 F. Supp. 181, 184 (E.D. Pa. 1988) ("[A]s to an amendment to a plan by a plan administrator or trustee, the scope of review is limited to whether the amendment is arbitrary and capricious"); Pierce v. NECA-IBEW Welfare Trust Fund, 488 F. Supp. 559, 564 (E.D. Tenn. 1978), aff'd 620 F.2d 589 (6th Cir. 1980) (same). The court should consider four factors in determining whether the trustees' action in amending the plan was arbitrary and capricious:

> "1) the extent to which the participant was an intended beneficiary of the plan;
>
> 2) the extent to which the amendment is applied retroactively to strip the participant of previously earned credits;
>
> 3) the extent to which he was notified of the amendment;

4) the extent to which it is shown that actuarial concerns require denial of benefits to him."

Baker, 793 F.2d at 513, quoting Agro v. Joint Plumbing Industry Board, 623 F.2d 207, 210 (2d Cir. 1980).

In arguing that the trustees' action was not arbitrary and capricious, the Fund makes two main assertions. First, it claims that the trustees' decision not to extend plan coverage to injuries arising from automobile accidents resulted from their reasonable and appropriate concern for the financial security of the Fund. According to defendant, the Fund has always sought to exclude automobile accident coverage because of the high costs associated with medical services following such accidents. Defendant alleges that these accidents are unpredictable and potentially catastrophic for the Fund because it was self-funded until 1989 and financed by fixed contributions such that it could not increase contributions to meet higher expenditures due to accidents.

In addition to arguing that actuarial concerns motivated the decision to make the amendment retroactive, defendant also contends that Spina was not an intended beneficiary of the benefits plaintiff now claims because the Fund never paid benefits for injuries arising out of automobile accidents. Therefore, the Fund argues, Spina was not unfairly stripped of a benefit previously due him.

While the Fund has expressed undoubtedly legitimate concerns for the financial viability of the plan in the face of a flood of benefit requests for coverage of injuries related to

automobile accidents, the court must reject the Fund's claim that the amendment was not arbitrary and capricious as a matter of law. Although the Fund may have always intended otherwise, the language of the plan itself did not totally exclude automobile accident coverage at the time of Spina's accident or when he filed for benefits. Instead, the plan provided that it would coordinate benefits with a no-fault carrier which would have primary liability for such coverage. At the time Spina's benefit accrued, the plan did not provide that it would never cover medical expenses for injuries arising out of automobile accidents. Instead, the plan would coordinate its coverage with an insured's no-fault carrier. In any event, Spina could reasonably expect that he had insurance coverage for automobile accidents in some form under his policy with the Fund. Before Spina dismissed his lawsuit against the Fund, it became clear that under Federal Kemper, the Fund had primary liability for those benefits. When the trustees later amended the plan to retroactively exclude automobile accident coverage completely, then, it is clear that the amendment was applied retroactively to strip the participant of a previously earned credit.

In addition, Spina was entitled to a coordinated benefit in the event of an automobile accident pursuant to the specific terms of the plan, regardless of the Fund's "intent" with respect to such benefits. Thus, the court does not agree that Spina was not an intended beneficiary of the plan with respect to automobile accident coverage.

Moreover, Spina could not have received notice of the amendment because he applied for the accrued benefit long before the amendment was adopted. This reinforces the conclusion that the amendment was retroactively adopted to strip Spina of an accrued benefit.

Accordingly, the court finds that the Fund's retroactive application of the plan amendment which totally excluded automobile accident coverage to plaintiff was arbitrary and capricious as a matter of law. The coordination of benefits clause in effect at the time Spina's benefit accrued applies in this case rather than the total exclusion clause which the trustees adopted at a later date. Thus, the court's ruling in Northern Group Services rather than the Liberty Mutual decision governs in this case.

3. Retroactive Application of Northern Group Services

The court next turns to defendant's argument that it should not apply Northern Group Services retroactively to the instant case. In Smith v. General Motors Corp., 747 F.2d 372, 375 (6th Cir. 1984), cited by defendant, the court stated:

> The traditional method for determining the retroactivity of a decision in a civil case is to undertake the three-part analysis called for by Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07, 92 S.Ct. 349, 355-56, 30 L. Ed. 2d 296 (1971): (1) does the decision represent a "clear break" with past law; (2) would retroactive application further or retard operation of the new rule; and (3) could retroactive application "produce substantial inequitable results."

Although the Sixth Circuit had not previously ruled on

whether ERISA preempted § 3109a at the time Northern Group Services was decided, that decision did not necessarily represent a clear break with past law. The result in that case was that under Michigan coordination of benefits law the ERISA plan was liable for automobile accident benefits. The Federal Kemper court had held the previous year that health insurance plans had primary liability for automobile accident-related injuries rather than no-fault carriers when both had coordination of benefits clauses placing primary responsibility on the other. Thus, the decision of the Northern Group Services court that this state law applied to ERISA plans did not represent a "clear break" with the past. Moreover, as plaintiff notes, the U.S. Supreme Court held before Northern Group Services was decided that ERISA did not preempt some state statutes. See Metropolitan Life, 471 U.S. 724 (1985)(Holding that ERISA did not preempt a state statute which required that specific minimum mental-health-care benefits be provided to a state resident insured under an ERISA plan); Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1 (1987)(Finding that ERISA did not preempt a state law requiring employers to provide a one-time severance payment to employees in the event of a plant closing). In addition, the court does not find that it is inequitable to apply the Northern Group Services rule to defendants any more than it was inequitable to apply it to the pension fund involved in Northern Group Services itself. Further, retroactive application would further operation of the rule as it gives effect to the state law regarding coordination

of benefits already in effect at the time of the ruling.

Accordingly, the court determines that ERISA does not preempt plaintiff's state law claims as a matter of law. As a result, summary judgment is not appropriate on the basis of ERISA preemption.

4. Applicability of Michigan Insurance Code

Because the court finds that ERISA does not preempt plaintiff's state law claims, the court must next address defendant's argument that the Fund is not governed by the Michigan Insurance Code. The insurance code provides that it does not apply to "[v]oluntary associations of employees which provide death, accident, or sickness benefits to persons employed by the same employer." M.C.L.A. § 500.128(d). In Udell v. Georgie Boy Manufacturing, 174 Mich. App. 171 (1988), the court dealt with a factual situation nearly identical to the instant case. The Udell court ruled that an employee's benefit plan, which included a coordination of benefits provision, was not primarily liable for the employee's medical expenses which arose out of an automobile accident. The court ruled that (1) ERISA preempted the Michigan Insurance Code; (2) the benefit plan was not engaged in the insurance business under the code and was not subject to its provisions; and (3) the plan was a voluntary association of employees and therefore exempt from the code. The Fund argues that Udell controls in the instant case and that it is therefore not subject to the code.

The Fund does acknowledge that the Michigan Supreme Court vacated and remanded Udell for reconsideration in light of Northern Group Services. See Udell v. Georgie Boy Manufacturing, Inc., 432 Mich. 888 (1989). However, the Fund contends that because the court of appeals on remand did not address its earlier ruling with respect to the plan's exemption from the code because it was a voluntary association of employees, that portion of the opinion is still good law.

On remand, however, the court of appeals in Udell reversed itself and held that ERISA did not preempt M.C.L.A. § 500.3109a. Udell v. Georgie Boy Manufacturing, Inc., No. 116780, slip op. at 2 (Mich. Ct. App. June 28, 1989). The court did not rely on the "voluntary association of employees" argument for a finding that even though not preempted, the code did not apply to the plan. Thus, the court implicitly refused to adopt the reasoning urged on the court by the Fund. Because Udell does not stand for the proposition that the insurance code does not apply to the Fund, and defendant has not cited any other authority for that assertion, the court finds that the insurance code applies to the Fund.

5. Statute of Limitations

The Fund also argues that the statute of limitations has run on the subrogation claim. Because plaintiff is the subrogee of Spina, it is apparently seeking recovery against the Fund under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B),

the provision under which Spina himself could sue the Fund. That section allows a participant or beneficiary in an employee pension benefit plan to recover benefits due and enforce and/or clarify his or her rights under the plan. There is no dispute that § 502(a)(1)(B) of ERISA does not contain a statute of limitations applicable and that as a result, the court must look to the limitations period for the most analogous state law cause of action. See Jenkins v. Local 705 International Brotherhood of Teamsters, 713 F.2d 247, 251 (7th Cir. 1983). The Fund argues that the relevant statute of limitations is that relating to actions to recover personal or property protection benefits in automobile accidents. See M.C.L.A. § 500.3145(1). That statute has a one-year limitations period on such actions.

Plaintiff, on the other hand, avers that an action for benefits under an ERISA plan is most analogous to an action for breach of contract, which has a six-year limitations period in Michigan. See M.C.L.A. § 600.5807. Although this matter involves automobile accident benefits, the court agrees with plaintiff that the most analogous limitations period is that applicable for contract actions. Several courts have already held that an action under § 502(a)(1)(B) seeking pension benefits and a clarification of rights under the terms of the benefit plan based on the written terms of the plan is governed by the statute of limitations for actions on written contracts. See Fogerty v. Metropolitan Life Insurance Co., 850 F.2d 430, 432 (8th Cir. 1988); Jenkins, 713 F.2d at 253; Nolan v. Aetna Life Insurance

Co., 588 F. Supp. 1375, 1379 (E.D. Mich. 1984).

Because plaintiff brought this action within six-years of the automobile accident, it is not barred by the statute of limitations.

Thus, the court will deny defendant's motion for summary judgment in its entirety as it is not entitled to summary judgment as a matter of law.

B. Plaintiff's Motion for Summary Judgment

Plaintiff moves for partial summary judgment on the issue of whether defendant is liable to reimburse plaintiff for medical expenses plaintiff paid to Spina. In its brief, plaintiff argues that if the court finds that ERISA does not preempt its state law claims, then it is entitled to recover under its unjust enrichment and subrogation claims. Plaintiff does not seek summary judgment as to its breach of contract claim or its recoupment claim. The Fund has not filed a response to this motion.

Because, as discussed above, Michigan law makes clear that a health insurer is primarily liable for medical expenses of an insured arising out of an automobile accident, the court finds that summary judgment is appropriate on these claims in favor of plaintiff. The court will therefore grant plaintiff's motion for partial summary judgment. Because plaintiff will therefore receive all the relief it seeks in its complaint, the court will dismiss his other claims without prejudice as they are moot.

C. Defendant's Motion for a Stay of Proceedings

As noted above, the Fund has moved for a stay of proceedings pending a ruling by the U.S. Supreme Court in FMC Corp. v. Cynthia Ann Holliday, 885 F.2d 79 (3d Cir. 1989), cert. granted 58 U.S.L.W. 3526 (U.S. Feb. 20, 1990) (No. 89-1048).

In determining whether to grant a stay, the court must consider whether (1) a failure to stay the proceedings will result in clear hardship or inequity to the moving party; and (2) the non-movant or the public will suffer harm from a stay. Ohio Environmental County Council v. U.S. District Court, 565 F.2d 393, 396 (6th Cir. 1977). The "burden is on the party seeking the stay to show that there is a pressing need for the delay." Id. Moreover, courts "must tread carefully in granting a stay of proceedings, since a party has a right to a determination of its rights and liabilities without undue delay." Id.

In the instant case, the court does not believe that it should exercise its discretion to enter a stay in this case. Although the FMC court relied in part on Northern Group Services in reaching its decision, see, e.g., 885 F.2d at 89, the case involves a Pennsylvania law rather than the Michigan no-fault statute. Accordingly, it is not at all clear that the supreme court's decision in that case, which is not due until late 1990 or early 1991, will be dispositive of the case at bar. The court does not find that the failure to stay the proceedings will result in great hardship or inequity for defendant, while plaintiff would have to wait a substantial period of time before

the supreme court decided a matter which may or may not control in this case. The court will therefore deny defendant's motion for a stay.

For the reasons set forth above,

IT IS HEREBY ORDERED that defendant National Labor Union Health and Welfare Fund's motion for summary judgment, filed April 6, 1990, is DENIED.

IT IS FURTHER ORDERED that defendant National Labor Union Health and Welfare Fund's motion to stay these proceedings, filed April 6, 1990, is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for partial summary judgment as to counts II and III, filed May 7, 1990, is GRANTED. The court will dismiss counts I and IV without prejudice as they are moot. The clerk of the court shall enter judgment accordingly.

BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Dated: JUN 7 1990